Dual Nationality Acquired under Bilateral Treaties: The Case Study of the Dual Citizenship Arrangement between Russia and Turkmenistan

M aster thesis
20 points

Prof. Ineta Ziemele

Public International Law

Spring 2005
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Introduction

On 10 April 2003, the President of Russia, Vladimir Putin, and the President of Turkmenistan, Saparmurat Niyazov, met in Moscow and reached an accord which soon led to a heated debate over the status of the ethnic Russian community in Turkmenistan and badly frayed Russian-Turkmen relations. That day the Presidents signed a Protocol on Terminating the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship. The Dual Citizenship Agreement that had been in effect since December 1993 provided for the right of citizens of one state party to take, without losing their citizenship, the citizenship of the other party and charged equally both states with the defense and protection of dual citizens’ rights and freedoms. The latter arrangement in the Agreement was obviously the key proviso for Russia’s efforts to protect those Russians who had found themselves in Turkmenistan after the disintegration of the Soviet Union. Thus, it could be argued that for a decade the Agreement had been a rather effective tool for the Kremlin to exert its influence on the regime in power in Turkmenistan and to push its agenda in the country through the periodic expression of its concerns about the ill-treatment of local Russians.

Nevertheless the Dual Citizenship Agreement was terminated. The readiness of the Turkmen autocratic ruler Niyazov, who presides over the country notoriously known as one of the most repressive and closed in the world, to repeal the Agreement in order to elude being controlled from the outside and tighten his iron grip of the entire society is quite understandable. Yet, reasons of why the Russian leadership appeared to be willing to give it up are not so easy to figure out. Why was Russia prompted to sacrifice an estimated 100,000 of dual-citizenship holders and deprive them of an opportunity to assert their rights in the lawless society of Turkmenistan?

To shed some light upon the Russian stance in this regard, it is worth mentioning that along with terminating the Dual Citizenship Agreement on 10 April, a major 25-year contract on natural gas supplies from Turkmenistan to Russia was concluded on hugely advantageous terms for Russia that gave rise to severe criticism of Putin about the perceived “people-for-gas” trade-off. The analysis can be complicated further by pointing to the fact that on the same day Putin and Niyazov also signed another remarkable document, an agreement on security cooperation. This agreement, which was done in the immediate aftermath of the fall of Saddam Hussein’s dictatorship in Iraq and seizure of Baghdad by US troops on 9 April, could be viewed as an attempt, on the one hand, by Russia to counteract growing US assertiveness in the region and, on the other, by Niyazov’s regime to get an extra guarantee of its viability. However, did the economic and geopolitical gains, if any, acquired by Russia outweigh the misfortune suffered by the Russian minority in Turkmenistan? The answer to this question seems to be highly speculative and subjective, nevertheless some rationale must be found.

Given the above stated, it is possible to say that the agreements of 10 April constitute a complex deal, involving the issues of human rights, energy politics, and regional security, which consequences are still uncertain.
and go definitely beyond the context of pure Russian-Turkmen bilateral relations and will continue in the future. No doubt, it will not be possible to cover all these fascinating topics in this work; rather the focus of the thesis will be on the Dual Citizenship Agreement’s “life-cycle,” reasons for its conclusion and subsequent termination, its current status, as well as its impact on all those directly and indirectly affected by the Agreement’s twists and turns.

The study of the Agreement will allow touching upon some important theoretical questions in international law. As its title suggests, the thesis is devoted to the issue of nationality in international law, generally, and dual nationality, specifically. Even more specifically, it is about the legal institute of dual citizenship established between two countries under a bilateral treaty. The preliminary research on the topic has demonstrated that institutionalized dual citizenship is a very rare case in international law. Throughout the history of humankind there have been numerous international agreements, both bilateral and multilateral, aimed at regulating the issues of dual citizenship in terms of diplomatic protection, military service, civil status, taxation, etc., avoiding dual citizenship, eliminating dual citizenship, and so forth. At the same time, there are only few instances in modern international law when states purposefully created dual citizenship, allowing their citizens to acquire another citizenship, while retaining their original citizenship.

Being centered on the concept of institutionalized dual citizenship, especially as for its application to the case under consideration, the thesis is built around the following research questions: What is institutionalized dual citizenship within the broader framework of the umbrella term “dual nationality/citizenship” in international law? What is special about it? Why do states conclude the treaties on dual citizenship and, by doing so, recognize that aliens can acquire their citizenship en masse? How does the Russian-Turkmen case fit earlier practice in this field and current international law framework? and etc.

The thesis’ structure is pretty simple: it consists of three major parts subdivided into smaller pieces. The first one is devoted to the discussion of how international law has been dealing with the issues of dual citizenship from the time immemorial till the present day. The second part is about the Dual Citizenship Agreement itself. In the third part, the dispute between Russia and Turkmenistan over the Agreement and the institute of dual citizenship is examined in the light of the applicable rules of international law.
PART I. THE CONCEPT OF DUAL CITIZENSHIP IN INTERNATIONAL LAW

1. Revisiting Dual Citizenship in General

The very term “dual citizenship” points to an array of complexities, collisions, and intricacies that are going together with the phenomenon it describes. The normal reaction to any problematic situation is to contain it, if not to get rid of it for good. Such is that of international community: the general stance of modern international law and domestic legal systems towards dual citizenship, though it is tending to be more neutral, is to oppose it to avoid practical difficulties effecting diplomatic protection, military service, civil status, taxation, and so on. But this end is not so easy achievable due to “the fundamental freedom of states to choose the criteria for the conferment of their nationality”\(^1\) and, as a result, there is “no rules of customary international law [which] limit the competence of States in the field of nationality.”\(^2\)

However, despite such an uncertainty and disfavor with regard to dual citizenship, a number of persons holding two or more citizenships has been steadily growing worldwide.\(^3\) The fact that the theory appears to be at variance with the realities of an ever-changing world has recently stimulated a boom in international discourse on the subject matter.\(^4\) In this climate, there have been some developments intended to accommodate and regulate


dual citizenship. The most recent one is the 1997 *European Convention on Nationality*, a comprehensive international treaty dealing with the issues of nationality (citizenship), including dual one.

The 1997 *Convention* in Article 2(b) provides the definition of “multiple nationality” (an umbrella term for, *inter alia*, dual nationality), which “means the simultaneous possession of two or more nationalities by the same person.” In its turn, nationality “means the legal bond between a person and a State.” There are many other accepted definitions of citizenship (nationality), a couple of them are worth quoting here. Thus,

“Nationality as a legal term denotes the existence of a legal tie between an individual and a State, by which the individual is under the personal jurisdiction of that State.”

The International Court of Justice in the *Nottebohm* case has described nationality as

“a legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of

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6 Two different terms (“citizenship” and “nationality,” derivative from “citizen” and “national,” respectively) are employed in legal texts to describe more or less the same concept – the legal relationship between a person and a State. The differences between these terms still exist, but are extremely rare, so they are often used interchangeably. Illustrative in this regard would be the relevant quotation from the famous Oppenheim’s treatise on international law, which fuses one term with the other into one definition: “Nationality of an individual is his quality of being a subject of a certain State and therefore its citizen,” see Oppenheim, Lassa F., *International Law*, Vol. I (“Peace”), 4th ed. by Arnold D. McNair, London/ New York/ Toronto: Longmans, Green and Co., 1928, pp.524-525 (emphasis added). For a more detailed discussion on nationality and citizenship, see Zilbershats, Yaffa, *infra* note 9, pp.4-5. For the sake of uniformity and consistency of terminology the author hereof has chosen to cling to the term “citizenship” and use it throughout this thesis, unless sources cited apply the other one.
7 *European Convention on Nationality*, supra note 5.
8 *Ibid.,* Article 2(a).
the state conferring nationality than with that of any other state.”

What is common in all the given definitions of nationality (citizenship), as well as in any others, is that they point to the inherent characteristic of citizenship as a kind of a “bond,” “tie,” “link,” etc. – something that connects an individual to a state. Ideally, one individual should have connection with one state. But nothing is ideal in this world; and there can be many instances when people have connection to more than one state, or two states or more claim that they have their jurisdiction over the same person. This leads to an aberration from the normal way of doing things that is now known as dual or multiple citizenship.

2. Historical Overview

It may be assumed that instances of dual citizenship are as old as the concepts of state and citizenship themselves. The content of dual citizenship has changed depending on how the notions of state and citizenship evolved over time, after the tribal organization of people based on blood kinship transformed first into political communities (polities or states), whose membership was in the form of citizenship. The incidence of dual citizenship was the inevitable result of an interaction between different political communities coupled with migration and exogamy, which had to be addressed somehow. The concept of dual citizenship was invented, applied, rejected, redefined, and again applied in different historical contexts. The knowledge of those transformations would be definitely relevant and valuable to any discussion of dual citizenship today.

2.1. Dual Citizenship in Classical Antiquity

2.1.1. Ancient Greece

The phenomenon of multiple citizenship was known as far back as the epoch of ancient Greek civilization. But here it should be clarified that the theory of citizenship of that time did not recognize the idea of multiplicity of citizenship as such. Citizenship in the archaic world of Greece was based on a principle of personality: the status of each person depended on birth, that is to say, on the status of this person’s parents. The general approach to the problem of who ought to qualify as a citizen, formulated by Aristotle, was that “in practice a citizen is defined to be one

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of whom both the parents are citizens.”

This can be seen as one of the first significant formulations of the legal rights of citizenship known as the *jus sanguinis*.

Archaic Greeks organized themselves politically into innumerable tiny city-states (the *polis*), each of which granted its own citizenship. Each person lived according to the law of the *polis*, to which he belonged and of which he was a citizen. If a citizen left his *polis* of origin and moved to another one, he did not acquire, as a rule, the citizenship status in the *polis* of settlement. The *polis* tried to preserve the “purity” of their citizenry and not to admit aliens as new citizens, or, at least, to limit their rights to a certain extent.

However, in the course of time and as a result of the intensification of political, economic, cultural, and other relations between the Greek *polis*, the attempts to arrest the uncontrolled rise in multiple citizenship appeared to be not very effective and, eventually, doomed to failure. A number of the *polis*, therefore, started revising their stand in this regard and allowing for multiple citizenship to exist. Moreover, according to historical evidences, it sometimes happened that the *polis* deliberately granted their citizenship to foreigners, if they needed so.

“Also in the 4th century a great number of citizenships were granted to individuals from whom favours were expected or by whom they had already been conferred, or both. (One standard motive, occasionally made

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14 Some authors maintain that in the Greek *polis* citizenship was extended exclusively to adult males, so excluding women and children, not to mention slaves and foreigners. See, e.g., Castles, Stephen and Alastair Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging*, Houndmills, Basingstoke/ New York: Palgrave, 2000. But it is clear from the Aristotelian definition of citizenship that in order to qualify for citizenship a person must have had parents, both the father and mother, who were citizens. Hence, it would be more correct to talk about the different sets of rights and duties for male-citizens and female-citizens, respectively. For instance, males were entitled to participate in public life and make laws, under which the entire community was supposed to live, but, at the same time, they had the duty to fight to defend their *polis*. That was not true for females. For some references to the literature sources on feminine citizenship in ancient Athens, see Cohen, Edward E., “‘Whoring Under Contract’: The Legal Context of Prostitution in Fourth-Century Athens,” in Hunter, Virginia and Jonathan Edmondson (eds.), *Law and Social Status in Classical Athens*, Oxford: Oxford University Press, 2000, pp.149-174.
16 Thus, Pericles (b. 495 BC – d. 429 BC), an outstanding Athenian statesman, in 451 BC passed a law conferring Athenian citizenship upon those of Athenian parentage on both sides. See the *New Encyclopedia Britannica. Micropædia*, 15th ed., Vol. 9, Encyclopedia Britannica, Inc., 1993, p.290. It should be noted that the law was not intended to restrict economic and social opportunities for foreigners, but rather to restrict access to the participation in public life. For instance, under the law “no one should [be] admitted to the franchise who was not of citizen birth by both parents” (Aristotle, *The Athenian Constitution*, transl. by Sir Frederic G. Kenyon, Section 2, Part 26, <http://classics.mit.edu/Aristotle/athenian_const.2.2.html>, accessed on 22 October 2004).
explicit, for the recording of such honours in permanent form was to induce the recipient to continue his generosity.) Most of the evidence is Athenian, but the phenomenon was surely not confined to Athens. Even Persian satraps like Orontes could be enrolled as Athenian citizen, not to mention Macedonians like Menelaus the Pelagonian, a king of the Lyncestians (an independent Macedonian subkingdom…) This man received citizenship in the 360s [BC] because he was reported by the Athenian general Timotheus as helping Athens in its wars in the north. A further and frequent motive for such honours […] is an expression of gratitude for gifts of grain. The Spartocid kings of Bosporus (southern Russia) were honoured because they had promised to provide Athens with wheat, as their father Leucon had done before them.”

In addition to a grant of citizenship, another conduit for multiple citizenship to occur was through the functioning of the legal mechanism of *epigamia* (Ἐπιγάμια), viz. the institutionalized right of citizens of different *polis* to contract a marriage stipulated in a special agreement concluded between the *polis*. Agreements on *epigamia* were usually concluded as an indication of close and friendly relations between the *polis*. “Athens, for example, granted *epigamia* to Euboea as late as the 5th century, a time when Athenian citizenship was fiercely protected.” On the contrary, the revocation of *epigamia* was thought as a clear and unequivocal expression of animosity, like when “there was an early arrangement [on *epigamia*] between the islands of Andros and Paros, which […] ended when relations went sour.”

Agreements on *epigamia* guaranteed a full set of civil rights and citizenship status to spouses (and their children) who were settling outside their *polis*. Thus, “the offspring of marriage were treated as citizens of the wife’s *polis* if the husband settled there; and so was the husband.”

In ancient Greece there were a certain number of federal states, usually originated from various associations or unions of the *polis* or based on tribal communities, which were well-enough organized to deal with “complex” citizenship. One of the biggest and most developed federal states of that time was the Aetolian League (367–189 BC), or “simpolity” of

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18 Resident aliens were not allowed, as a rule, to get married to local citizens. One of experts in Ancient History and Classics asserts that:
“a metic [resident alien] could not marry an Athenian citizen. By the fourth century it was an indictable offence punishable by sale into slavery.”
20 Ibid.
21 Ibid.
Aetolia, with the federal capital in Thermum. Under its constitution, the Aetolian League was a federal state, *i.e.* a polity which was blending together the sovereignty of the League itself and that of its member-states.

As far as the issue of citizenship is concerned, there was, on the one hand, all-Aetolian citizenship throughout the whole League’s territory, but, on the other hand, each constituent *polis* retained its own citizenship. In other words, a citizen of a member-*polis* was, at the same time, a citizen of the League. This “two-layer” citizenship or “co-citizenship” could be quite reasonably seen as a form of multiple citizenship, too.

The members of the League were also “linked to the confederacy by isopolity (potential citizenship).” Isopolity, or *isopolitia*, is a regime of “equal rights of citizenship, as in different communities; mutual political rights,” which was institutionalized in the form of a special arrangement, by which the constituent *polis* could grant their citizenship to citizens of other *polis*, “mainly for various services rendered.” The distinctive feature of isopolity is that it was an official recognition by member-states of the mutual right to grant their citizenship as opposed to a unilateral grant of citizenship described in the above-quoted piece.

To all appearances, multiple citizenship in Ancient Greece reached a rather high stage of development, when there were diverse forms and ways of its emergence and regulation, so its tangible traces could be found in legal systems of posterior nations and civilizations.

2.1.2. Ancient Rome

The complexities of citizenship and multiple citizenship in Rome in its early history were similar, to a significant extent, to those of ancient Greece. Rome, beginning itself as a city-state, imitated the political organization and societal structure of the Greek *polis* and inherited the notion of citizenship of a small community. It observed the personality principle in deciding who a Roman citizen was: only persons of Roman parentage on both sides could qualify for Roman citizenship. This pattern of determining the membership in a community was also followed by other Latin city-states in Italy that led to the emergence of the “general rule of antiquity that the law of the community was for the members of that community only, and that the stranger was without rights.”

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“If there was no treaty to the contrary with his state the foreigner could be seized as a slave and his property taken by the first comer as goods without an owner. Where there was a treaty, protection of the citizen of the contracting states could be arranged, and the development of the *jus gentium* secured protection even for those without a treaty.”

To seriously talk about the recognition of the right to a second citizenship in the condition of such hostility towards alien elements would have been virtually meaningless. The unicity of Roman citizenship for Roman citizenship holders and its incompatibility with any other citizenships were crystallized in Cicero’s formula of citizenship exclusiveness, maintaining that “we cannot belong to this state and another as well.” Citizens of other Latin city-states, who were admitted to Roman citizenship by grant or became Roman citizens by taking up permanent residence in Rome, had to adjure their citizenship of origin before. Either did Romans upon acquiring citizenship in Latin cities.

The negative attitude towards extending citizenship remained almost the same in the process of the foundation of colonies by the Latin League, a treaty-based confederation of politically independent Latin cities in the 6-4th centuries BC under the leadership of Rome. Colonial settlements planted by the Romans and Latins on newly conquered land were regarded, from the viewpoint of then existed law, as new states. The subsequent legal result was that the “Roman or citizen of any Latin state who became a member of a Latin colony lost his original citizenship, for the colony was a separate state, and the rule was that no one could be a citizen of two states at the same time.”

When Rome surpassed other members of the Latin League to such an extent that it was able to dissolve the League once and for all and consolidate its political, economic and military power in the Apennines, it paved its way to world supremacy. As Rome expanded from a city-state to a vast empire, it had to adapt its state machinery and fundamental principles, including that of citizenship, to a new reality. The strictness of the original rule of Roman citizenship exclusiveness and incompatibility became “incompatible” with the needs and wants of the growing empire, which was incorporating more peoples and counteracting with more nations. Now citizenship took on a bit new meaning; it was no longer bound to

27 Jolowicz and Nicholas, p.59.
28 Ibid., p.72.
29 On the history of the Latin League, see The *New Encyclopaedia Britannica. Macropædia*, Vol. 20, p.285. The Latin League was established to produce “cooperation in religion, law, and warfare. All Latins could participate in the cults of commonly worshiped divinities […]. Latins freely intermarried without legal complications. When visiting another Latin town, they could buy, sell, litigate, and even vote with equal freedom. If a Latin took up permanent residence in another Latin community, he became a full citizen of his new home [upon the preceding renunciation of original citizenship]. [In times of common danger [Latin states] banded together for mutual defence)” (ibid.).
30 Jolowicz and Nicholas, p.59.

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membership of a specific city-state or community based on kinship, but rather it was “a privileged extra status that a man could have […] over and above his existing rights.”

This interpretation of citizenship allowed for citizenry expansion and resulted in what is now known as “multiple citizenship.” It became quite a common practice of granting Roman citizenship to individual foreigners for services rendered for the Roman good. This naturally raised the problem, for such individuals, whether they must have abandoned all their former legal rights and could have escaped all their former legal duties in their states of origin, in which they might have continued to live. As it is pointed out by the experts in the field,

“[I]n the inscription of Rhosos […] the citizenship is given by Octavian under a hitherto unknown lex Munatia Aemilia (42 B.C.) to a certain Seleukos for services rendered, and it is stated that he, and his family, are to have the choice of being judged in their own city according to their own laws, or before the Roman magistrates, with perhaps the possibility of a free city of their own choosing. They are thus given a choice of jurisdictions, but […] the law to be applied is only mentioned in connection with their own city, and takes it to be the general rule that, so far from citizenship implying that Roman law and nothing else applied, the normal course was that new citizens not only continued to be members of their old city but were still subject to its laws.”

Whether the above-quoted piece correctly describes a situation as having two citizenships or not could be a subject of a heated debate. What is certain is that it points to the simultaneous possession of two sets of legal relationships, one of which is an extra status, leaving its possessor additional rights and duties. This type of dual citizenship arrangement presumed an interaction of two separate independent jurisdictions and could be rightfully coined as “horizontal duality.”

There is an accepted view among scholars that there was also a “vertical” dimension of citizenship within the Roman Empire, when Roman citizenship “remained compatible with local citizenships whose obligations were unaffected by it.”

Alluding to Ulpian, a Roman jurist of the 3rd century AD, Jean Bodin wrote that a free man could be recognized as a citizen by two states, if one of them (Rome) wields power over the other, and should obey the laws of his own state, as well as those of the Roman Empire. It meant that a person might be a citizen of Rome and also have

33 Jolowicz and Nicholas, p.73 (emphasized in the original text).
35 See Bodin, Jean, Methodus ad facilem historiarum cognitionem (Method for the Easy Comprehension of History), transl. from Latin into Russian by M.S.Bobkova, Moscow:
rights as a member of a subordinate community. Or, to put in another wording, the coexistence of two citiﬁcations (superior – Roman and inferior – local) could be tolerated within the pale of one legal system.36 The climax was reached when “[i]n 212 Emperor Antonine, nicknamed Caracalla, granted Roman citizenship to practically all free inhabitants of the empire.”37 In his famous Edict, Caracalla proclaimed,

“It is most ﬁtting that, as I ascribe the causes and the reasons of events to divine origin, I should attempt to render thanks to the immortal gods for their preservation of me in so great a danger. I believe, therefore, that most magniﬁcently and reverently I can perform a service not unworthy of their majesty, if I make my offerings to the gods in company with the foreigners who at any time have entered the number of my subjects, as well as with my own people. I grant, therefore, to all foreigners throughout the Empire the Roman citizenship…”38

The Edict is notable for its unprecedented generosity in granting Roman citizenship to the foreigners who were residing in the territory of the Roman Empire at that time. What is more notable is that there was no requirement to the grantees to disavow their original citizenship that even allowed for some authors to claim that “after Caracalla’s Edict was issued, all the Empire’s inhabitants were formally to have dual citizenship.”39 The latter claim, however, seems to be too far-reaching, simply because not all Roman subjects had local citizenship, e.g. natives of Rome itself. Nevertheless, it can hardly be contested that after Caracalla’s Edict dual citizenship as an established concept of law became an undisputable reality and was widely applied in the period of the late Empire.

2.2. Middle Ages

The fall of the Roman Empire in the West in the 5th century AD heralded the demise of the ancient Greek and Roman world and ushered in a thousand-year epoch of darkness and ignorance in European history. Many of the improvements in economy, political and social strictures, arts,

39 Koptev, supra note 36 (translated by the author hereof).
science, and so forth achieved in the period of Classical Antiquity decayed substantially in the time of feudalism. This decline had negative impact on the state of legal thought, too, for many of ancient legal concepts were either completely forgotten or remained dormant for long. Dual citizenship would suffer a similar fate.\textsuperscript{40}

International community of medieval Europe consisted mostly of the states politically organized in the form of sovereign monarchies. Jean Bodin, a 16\textsuperscript{th} century French jurist and political philosopher, who is universally credited for introducing the concept of sovereignty into political theory and international law, in his famous \textit{Six Books of the Commonwealth} (1576), underscoring the unchallengeable character of the sovereign, wrote that “it is the distinguishing mark of the sovereign that he cannot in any way be subject to the commands of another.”\textsuperscript{41} As the bearers of supreme sovereignty within the controlled territory, the monarchs regarded everything or everyone found oneself in the territory of their domain as their own possessions. People were treated not like citizens, \textit{i.e.} holders of rights and duties, but rather simply like subjects, and their position within the state was reduced almost to that of slaves, whose rights were practically denied. The very definition of a citizen was constructed in self-elucidative terms,

\begin{quote}
“A citizen is to be defined as a free subject who is dependent on the sovereignty of another… [And] every citizen is a subject since his liberty is limited by the sovereign power to which he owes obedience… [Whereas] the principal mark of sovereign majesty and absolute power is the right to impose laws generally on all subjects regardless of their consent…”\textsuperscript{42}
\end{quote}

In such circumstances, the theory and practice of citizenship abandoned the principle of personality (and its derivative – the rule of the \textit{jus sanguinis}) and, instead, switched to the principle of territoriality whereby citizenship was conferred merely on the basis of the fact of birth on a state’s territory, notwithstanding who the parents were. That was the principle which came to be known as the \textit{jus soli}, or the “rule of Europe.” It was “in accordance with the feudal bond between the individual and the soil

\begin{flushleft}
\textsuperscript{40} Some scholars go as far as to aver that citizenship itself was almost completely discarded. In a short overview on the history of citizenship given at the beginning of his book, Sørensen claims that “[f]ollowing the collapse of the Roman Empire, citizenship was lost as a political concept until the Medieval and Renaissance [era],” see Sørensen, Jens Magleby, \textit{The Exclusive European Citizenship: The Case for Refugees and Immigrants in the European Union}, reprint. ed., Aldershot/ Brookfield/ Singapore/ Sydney: Ashgate, 1999, p.18. This view does not seem to be correct, since people still remained connected to states and, as we know, this connection is citizenship, whichever its content is.
\textsuperscript{42} \textit{Ibid.} (emphasis added).
\end{flushleft}
upon which he dwelt.”

Even if the parents were aliens, their offspring would be considered a citizen of the state of birth, not that of parentage.

All the stated about the nature of sovereignty at that time is leading to a conclusion that sovereign rights over the subjects were exclusive, meaning that they could not be divided between several sovereign monarchs. The exclusiveness of sovereignty implied, in its turn, another concept relevant to the capacity of the subjects – their inviolable allegiance to the sovereign. In Bodin’s opinion, “…just as the rear-vassal owes an oath of fealty in respect of and against all other, […] so the subject owes allegiance to his sovereign prince in respect of and against all others…”

As a corollary of this formulation of allegiance to the sovereign, it was impossible for an individual to owe allegiance to two sovereigns at once and, therefore, it was permissible for him to have one, and only one, citizenship.

“[A] citizen cannot be the subject of more than one sovereign, unless they are both members of a federated state. For princes are not subject to any jurisdiction which delimits their claims over their subjects, as are lords and masters in respect of their vassals and slaves.”

The notion of personal allegiance persisted in Europe throughout the Middle Ages and reflected prevailing model of the individual’s relationship to the state. Not only did the subject have to give his allegiance to one sovereign, his loyalty must have been perpetual and immutable, hence, excluding the right to forsake his sovereign. In common law this requirement was at the heart of the doctrine of perpetual (or natural) allegiance, which was encapsulated in the formula nemo potest exuere patriam (“no man can renounce his own country”). It was not permissible for the subjects to withdraw from their countries; nor was their naturalization before another sovereign recognized, if they nevertheless happened to move out from their original domicile. “In this world, the law did not recognize dual nationality as a legitimate status; it was considered not so much a problem as it was an offence.” That posture explained great

44 Bodin designated the rule that people took citizenship depending on the place of birth, even though their parents were foreigners, as “incontestable,” see Bodin, supra note 41.
45 Ibid.
46 Ibid.
47 In Black’s Law Dictionary it is defined as “…that kind of allegiance which is due from all men born within the king’s dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own.” See Black’s Law Dictionary, 6th ed., St.Paul, Minn.: West Publishing Co., 1990, p.74.
48 Black’s Law Dictionary, p.1038.
efforts put forth by European states to control and regulate the comings and goings of their subjects.\textsuperscript{31}

Perpetual allegiance suited well the social and economic order of early medieval Europe, where population mobility was highly constrained, but it could not withstand a later situation, where individuals could easily remove themselves from their land of birth and move into another place. Although the doctrine of perpetual allegiance itself did not recognize dual citizenship, its operation in an environment of greater global mobility gave rise to a large number of people holding dual citizenship. This happened because “[a]ny subject of a sovereign requiring perpetual allegiance who naturalized in another state found himself a dual national in the sense that two sovereigns now demanded his allegiance.”\textsuperscript{52} As a result, in spite of outright rejection of dual citizenship in theory and bitter hostility towards it in practice, citizenship duality continued to remain a reality of every-day life in the period under consideration.

2.3. Dual Citizenship after the Emergence of Modern Nation-States

The dismantling of the feudal structures of society in western Europe and great social transformations of the 17\textsuperscript{th} and 18\textsuperscript{th} centuries marked by such extraordinary events as British Revolution of 1688, American Revolution of 1776, and French Revolution of 1789 resulted in a reconsideration of the concept of citizenship. A modern theory of citizenship was formulated, proceeding from a new understanding of sovereignty and relation between states and people. Sovereignty was no longer viewed to be vested exclusively with the monarch.\textsuperscript{53} Nor were people equaled with subjects, rather they were members of a political community who had a certain set of rights and duties \textit{vis-à-vis} the state.\textsuperscript{54} As a result, the need to redefine allegiance to the state arose; the doctrine of perpetual allegiance was steadily fading away.

Although the fact that the principle \textit{nemo potest exuere patriam} was gradually replaced by the principle of free choice by an individual to transfer allegiance from one state to another which was a step forward in the general evolution of citizenship law, national legislation and international conventions went on reflecting a tendency to eliminate instances of dual citizenship. The practice initiated by the United States in the so-called


\textsuperscript{52} Spiro, p.1421.

\textsuperscript{53} In Article 3 of the \textit{Declaration of the Rights of Man and of the Citizen} approved by the National Assembly of France on 26 August 1789, it is declared, “The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation,” <http://www.hrcr.org/docs/frenchdec.html>, accessed on 22 December 2004.

\textsuperscript{54} Citizens became entitled to make all the laws under which they live, because “[l]aw is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation,” \textit{ibid}. 
Bancroft treaties (1868 onwards), which exemplified new developments concerning the regulation of dual citizenship in international law, might be elucidative for this point.

Naturalized citizens constituted a large proportion of the US population who from time to time came for temporary visits to their native countries and could face legal complications, e.g. drafting into military service, because of their previous connection to those countries. To solve the problem the United States negotiated and entered into a series of naturalization conventions, named the Bancroft treaties after the US Ambassador in Berlin George Bancroft, who took part in making up the first of such treaties with Prussia in 1868. The treaties analogous to that with Prussia were concluded by the United States with Austria-Hungary, Belgium, Denmark, Ecuador, Mexico, Norway, Sweden, and others (26 in total), by which the parties reciprocally recognize naturalization upon five years’ residency in the other contracting party conditioned by a disqualifying clause in case of the return to the state of origin for more than two years. “The purpose of these treaties was to gain recognition of the right of expatriation for naturalized U.S. citizens and to prevent foreign governments from imposing […] obligations on their former citizens.”

As these arrangements between the United States and other states were done and the expatriation clause was put into practice, the incidence of dual citizenship was reduced. The operation of the Bancroft treaties led to the recognition of the fact that the state has an obligation to release its citizens if they acquired the citizenship of another state. By the beginning of the 20th century, the right to expatriation moved towards general international acceptance. The role of an individual increased in matters of citizenship, as the change of citizenship would require the individual’s consent. The hostile trend towards dual citizenship, however, remained virtually unchanged.

3. The Regulation of Dual Citizenship in Modern International Law

3.1. Earlier Multilateral Attempts to Regulate Dual Citizenship

In the 20th century, attempts to avoid or to reduce cases of dual citizenship or to resolve the conflicts arising therefrom were also made on multilateral level. The Harvard Draft Convention on Nationality, prepared in 1929 for the 1930 Conference on the Codification of International Law held at The Hague in 1930, provided explicitly for the prevention of the duality (although one has to make necessary allowance for its nature de lege ferenda). Recognizing virtual inevitability of such cases and saying that a “person may have the nationality at birth of two or more states, of one or

55 For a more detailed account on the Bancroft treaties, see Bar-Yaacov, pp.163-173; Donner, pp.42-43; Spiro, pp.1424-1430.
56 Donner, p.43.
more state *jure soli* and of one or more *jure sanguinis*”\(^{57}\) (Article 10), it stipulates in Article 12 that

“A person who has at birth the nationality of two or more states shall, upon this attaining the age of twenty-three years, retain the nationality only of that one of those states on the territory of which he then has his habitual residence; if at that time his habitual residence is in the territory of a state of which he is not a national, such person shall retain the nationality only of that one of those states of which he is a national within the territory of which he last had his habitual residence.”\(^{58}\)

There are other provisions in the *Harvard Draft Convention* that are aimed at avoiding dual nationality in certain specific cases:

“Except as otherwise provided in this convention, a state may naturalize a person who is a national of another state, and such person shall thereupon lose his prior nationality.”\(^{59}\)

and

“(a) When the entire territory of a State is acquired by another State, those persons who were nationals of the first State become nationals of the successor State, unless in accordance with the provisions of its law they decline the nationality of the successor State.

(b) When a part of the territory of a State is acquired by another State or becomes the territory of a new State, the national of the first State who continue their habitual residence in such territory lose the nationality of that State and become nationals of the successor State, in the absence of treaty provisions to the contrary, unless in accordance with the law of the successor State they decline the nationality thereof.”\(^{60}\)

Although the 1930 Hague Conference’s final document – the *Convention on Certain Questions Relating to the Conflict of Nationality Laws* – did not become an exact replica of the *Harvard Draft*, it did, nevertheless, provide for some rules to avoid instances of dual citizenship or their consequences. It first of all specifies in the preamble its object and purpose:

\(^{57}\) *Harvard Draft Convention on Nationality*, 23 Am.J.Int’l.L. 11 (Special Supp. 1929), reproduced in Zilbershats, p.188.

\(^{58}\) Ibid.

\(^{59}\) Ibid., Article 13.

\(^{60}\) Ibid., Article 18, p.189.
“...it is the general interest of the international community to secure that all its members should recognize that every person should have a nationality and should have one nationality only;

...[and] the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality.”

In Article 3 the Convention concedes the possibility of a person possessing more than one nationality, as “[s]ubject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.” But in Article 5 it forges a method intended to reduce the possibility provided for in Article 3 to nihil. The former says,

“Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.”

It should be admitted, however, that such a provision would not necessarily prevent a person from holding more than one nationality, if he wants to keep it. The Convention gives a dual national the right to opt for either nationality he possesses.

“Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.

This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the

62 Ibid.
63 Ibid.
State whose nationality he desires to surrender are satisfied.”

There have been several universal and regional international instruments concluded to regulate specific issues of dual nationality concerning, for example, military obligations of dual nationals. Of a particular interest here is the stand of international law with regard to citizenship of women, because it was a case when international law legitimized the accumulation of nationalities. The departure from the principle of “one nationality only” is allowed in order to comply with other principles, which seem to be more important.

In case of a married woman, there can be a conflict of the principles of equality of sexes, family unity, single nationality of family, women’s rights and the principle of avoidance of dual citizenship. On the one hand, if a marriage with an alien must have automatically led to the change of nationality, it would infringe upon the right of a woman to personal freedom. On the other hand, single nationality of family could be achieved only if one of spouses would take citizenship of the other. In order not to sacrifice these principles, an imperative to have only one nationality by both spouses should be put aside. As a result, dual citizenship of women is allowed. In this regard, for instance, Article 1 of the Convention on the Nationality of Married Women of 1957 says

“…that neither the celebration nor the dissolution of marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.”

The Convention on the Elimination of All Forms of Discrimination Against Women of 1979 is in the same line, demanding State Parties to

“…grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall

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64 Ibid., Article 6.


automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." 67

3.2. The Most Recent Developments Concerning the Issues of Dual Citizenship

The most recent international law documents dealing with issues of citizenship, in general, and of dual citizenship, in particular, are the European Convention on Nationality of 1997 and the Draft Articles on Nationality of Natural Persons in Relations to the Succession of States. The latter was adopted by the International Law Commission (hereinafter, the ILC) at its fifty-first session in 1999. 68 These instruments do not suggest how states should act with regard to dual or multiple citizenship. They do not make it obligatory for states to make sure that people should possess only one citizenship, thus allowing multiple citizenship, but they do permit states to pursue a single citizenship policy if they so wish.

3.2.1. The 1997 European Convention on Nationality

The 1997 European Convention on Nationality is the first international treaty indicating "that States, at least in Europe, are no longer prepared to recourse to multilateral international instruments in order to limit the occurrence of multiple nationality […] The absence of international constraints gives room to greater flexibility in relation to their specific approach to the problem." 69

In two cases – in accordance with the principle of equality of spouses – the Convention explicitly requires the States Parties to allow multiple nationality: (i) in the case of marriage of nationals of different states and (ii) for children born from nationals of different states. Article 14(1) is of relevance on this point,

“A State Party shall allow:

a) children having different nationalities acquired automatically at birth to retain these nationalities;

68 Moreover, the UN General Assemble adopted a resolution taking a note of the Articles in 2001.
b) its nationals to possess another nationality where this other nationality is automatically acquired by marriage.”

As for other cases, the Convention leaves it up to the states to decide whether to permit their citizens to have additional citizenships. Thus, in Article 15 it provides that,

“The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:

a) its nationals who acquire or possess the nationality of another State retain its nationality or lose it;

b) the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.”

In paragraph 96 of the Explanatory Report to the Convention the Council of Europe clarifies the meaning of Article 15, stating that “Article 15 specifically indicates that the Convention does not limit the right of States Parties to allow multiple nationality. This article makes it clear that States, which so wish, are free to allow other cases of multiple nationality.”

3.2.2. The 1999 ILC Draft Articles on Nationality of Natural Persons in Relations to the Succession of States

Being based on the general principle first articulated in Article 15(1) of the 1948 Universal Declaration of Human Rights that “[e]very one has the right to a nationality,” Article 1 of the Draft Articles declares the right of every individual to a nationality as it applies in the particular context of a succession of states:

“Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.”

70 European Convention on Nationality, supra note 5.
71 Ibid.
74 Draft Articles on Nationality of Natural Persons in Relations to the Succession of States, Report of the International Law Commission, 1999, Chapter IV,
The collateral interpretation of the phrase “individual […] has the right to the nationality of at least one of the States concerned” suggests cleaning up the way for states towards multiple nationality. But under no circumstances it should be regarded as an affirmative provision. Rather the ILC takes a neutral position in this respect: “The recognition of the possibility of multiple nationality resulting from a succession of States does not mean that the Commission intended to encourage a policy of dual or multiple nationality. The draft articles in their entirety are completely neutral on this question, leaving it to the discretion of each and every State.”

Moreover, the Draft Articles provide sufficient opportunities (see, e.g., Articles 8, 9 and 10) to those states which favor a policy of single nationality to apply such a policy.

4. Bilateral Treaties Encouraging Dual Citizenship

In addition to multilateral endeavors noted previously, the issue of dual citizenship has been regulated on a bilateral level as well. A number of treaties were concluded that followed a standard pattern, namely intending to eliminate dual citizenship or settle various conflicts of national citizenship laws. For example, the Soviet Union, though not denying dual citizenship in principle, concluded a series of dual citizenship conventions with other socialist countries with a view to put obstacles in the ways of its coming into existence. These conventions provided for measures to prevent cases of dual citizenship. The basic principle underlying the conventions was that person resident in the territory of one contracting party, with citizenship of two contracting parties could opt for one of them. In other words, persons whom both contracting parties regarded under their national legislation as their citizens might decide which citizenship they intended to retain.

The socialist conventions on regulation of dual citizenship issues and prevention of dual citizenship cases were typical attempts to contain dual citizenship. However, there have been treaties which deliberately encourage and institutionalize dual citizenship. The discussion of this type of treaties seems to be of particular relevance to the study of Russian-Turkmen dual
citizenship created exactly under the respective bilateral treaty, since it would be certainly useful to get acquainted with similar cases of the past.

The treaties conductive to dual citizenship are not numerous; in modern international law there are only few instances when states ruled for dual citizenship, allowing their citizens to acquire another citizenship, while retaining their original citizenship. One Soviet expert in the field, for example, points to an agreement concluded on 27 June 1960 between France and the Malagasy Republic on the status of persons born on St. Mary Island. According to Article 1 of the Agreement, the transferred Island is an inalienable part of the Malagasy territory. At the same time, Article 3 establishes that the persons born on the Island are allowed to exercise the full set of rights inherent to French citizenship, though they keep holding Malagasy citizenship as well. Citizenship duality occurred in this case can be viewed as a compromise “by-product” of states succession. But this product is obviously of temporary nature, as it is going to expire as soon as the last French-Malagasy dual citizen leaves this world.

Notable also is that treaties making for dual citizenship can be concluded between countries, which are closely connected to one another in terms of common history and intimate friendship. Here, it would be mostly appropriate to recall a number of treaties on dual nationality concluded between Spain and a dozen of Latin American states in the 1950-70s. The institutionalization of dual nationality under these treaties was prompted by the existence of a communal body of Spaniards and Latin Americans interwoven with common traditions, culture and language. Dual nationality was viewed as a means to underscore this unity and let citizens of one state not to perceive themselves as aliens in another one. In the preamble to the Agreement on Dual Nationality between the Dominican Republic and Spain the Contracting Parties voiced their desire to

“[strengthen] the links between their two countries and making it easier for their nationals to become Spanish or Dominican, as the case may be, while retaining their original nationality, thereby paying a tribute to their historical lineage and the common fundamental ties existing between the Dominican Republic and Spain…”

The Agreement offers Dominicans and Spaniards an opportunity “to acquire Spanish or Dominican nationality, as the case may be, under the conditions and in the form provided for in the legislation in the force each of

80 Chernichenko S.V., Mezhdunarodno-pravovye voprosy grazhdanstva (International Legal Aspects of Citizenship), Moscow: Mezhdunarodnye otnosheniya, 1968, p.105.
the Contracting Parties, without thereby losing their former nationality” (Article 1). The second nationality is acquired by nationals of one country upon taking up residence in the country granting the new nationality and entering their names in registers to be determined the country in which the new nationality is acquired. “From the date of registration, Dominicans in Spain and Spaniards in the Dominican Republic shall enjoy the full legal status of nationals in the form laid down in [the Agreement] and in the laws of both countries.”

Treaties on dual nationality entered by Spain with other Latin America countries were worded along the same lines as the one with the Dominican Republic. All of them provide that “nationals of one contracting party resident in the territory of the other may, in conformity with the legislation of the country of residence, acquire its nationality and submit to its laws, while retaining their nationality of origin.” The rights and duties concomitant to the new nationality, as to the exercise of civil and political rights, issuance of a passport, possibility of diplomatic protection, fulfillment of military obligations and so on, are supposed to be governed by the laws of the country granting the new nationality. It follows from that it is not allowed to enjoy the rights intrinsic to both nationalities at the same time. A dual national can exercise only a set of the rights entailed on the nationality of the country of residence, which is obviously the one granting the new nationality. As the Agreement on Dual Nationality between the Dominican Republic and Spain reads in Article 3,

“In no circumstances shall nationals of both Contracting Parties referred to in this Agreement be subject simultaneously, as nationals of both, to the legislation of both, but only to the legislation of the country which has granted the new nationality.”

The rights and duties arising from the previous nationality are to be deactivated at the moment of obtaining the new nationality. So, what has been established under these treaties is not “a regime of two concurrent nationalities of equal validity. Rather, [it is] the coexistence of a ‘full’ nationality with a secondary, or ‘dormant’ nationality, […] the dominant nationality being that of the country of domicile.” The “dormant” rights and duties are revived, when an individual with two nationalities resumes permanent residence in the country of origin. The returnee’s original nationality becomes, in this case, the dominant nationality again, while the second nationality turns to the state of hibernation.

Remarkable is also a treaty between Argentina and Italy on dual nationality as of 29 October 1971, which was modeled on the Spanish-Latin-American treaties. The treaty was pushed ahead by Italy, taking

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83 Ibid.
84 Ibid., p.24
85 Donner, p.203.
86 Agreement on Dual Nationality between the Dominican Republic and Spain, p.24.
88 See de Groot, pp.16-17.
seriously “the symbolic nature of citizenship as regards the relationship of Italian communities abroad with the mother country.”\textsuperscript{89} The treaty is based on the possibility of maintaining dual nationality without having the same degree of legal obligation towards the two countries. Under the treaty, persons who are Italians or Argentineans by birth or their descendants are entitled to acquire the second citizenship and keep their original citizenship. In the meanwhile, the rights and duties the previous citizenship entails should be suspended, and the civil and political status of dual citizens is to be governed by the law of the country of residence.

5. Concluding Remarks

To conclude Part II of this thesis, it is possible to confidently say that modern international law, especially taking into account the most recent European Convention on Nationality and ILC Draft Articles, adopts a quite neutral approach regarding dual citizenship, allowing the retention of more than one citizenship by a person. According to the present status of international law encapsulated in the wording by the ILC that “[i]t is not for the Commission to suggest which policy States should pursue on the matter of dual or multiple nationality,”\textsuperscript{90} states have the discretion to decide whether to allow it.

A good consensus exists in scholarly discourse as to a special advantage inherent to dual citizenship purposefully created on the basis of bilateral treaties. Indeed, institutionalized dual citizenship is an unambiguous indication of a high degree of unity and harmony in the relations between two states, which are closely connected because of common history or united by common interests. These relations usually are not burdened with problems that tend to happen in case of incidental occurrence of dual citizenship. Bilateral treaties, which are made to institutionalize dual citizenship, either solve these problems or compel attention to them. Self-limitation by states of their exercise of power over a person and state sovereignty, to which states have to submit themselves by concluding international treaties, are neither detrimental to their prestige nor at significant variance with any other treaty obligations they might assume. In the next part of this thesis it is attempted to find out whether the same logic applies to the Dual Citizenship Agreement between Russia and Turkmenistan.


\textsuperscript{90} Commentary to the Draft Articles on Nationality of Natural Persons in Relations to the Succession of States, Commentary 2 to Article 9, Report of the International Law Commission, 1999, Chapter IV.
PART II. DUAL CITIZENSHIP ARRANGEMENT BETWEEN RUSSIA AND TURKMENISTAN

1. Towards Russian-Turkmen Dual Citizenship

1.1. Citizenship in the Wake of States Succession after the dissolution of the USSR

Parceling out pieces of the human constituency in case of states succession raises some of the most difficult problems in international law. Political, legal, and technical complexities that sprang up in the aftermath of the splintering of the Soviet Union are not something special in this regard. Quarrels between the former Soviet republics about how to sort out which share of the Soviet population pool now belongs to whom still have not calmed down.91 Indeed, in a situation where many members of particular ethnic groups found themselves “abroad” overnight, that is to say, living in the territories populated by other ethnic groups and now governed by new national authorities, the issue of citizenship has become extremely painstaking.

Some of countries hailing from the USSR have been inclined to reject granting their citizenship to people of not-local ethnic origin on the ground of their alien ethnicity or downgrade them to the status of second-class citizens. This must have normally provoked a response by the kin-states,92 where the majority of the deprived’s co-ethnics live. Since a huge number of ethnic Russians (about 25 million people) have remained outside the Russian territory after the dissolution of the Soviet Union in 1991, Russia has been effusively involved in struggles with almost all other Soviet successor states for the rights of her “compatriots.”93 The widespread violation of human rights (particularly, social and economic) of nominal citizens in these countries gave rise to very serious tensions among “titular” and “alien” ethnic groups and made local Russians seek protection by their historic homeland.

It is worth to note that much of the pain incurred by the unraveling divorce could have been allayed, had the divorced constituents followed the formula which had been enunciated well before the formal separation took place. The Law of the USSR on the Procedure of Deciding Questions Connected to the Exit of a Union Republic from the USSR of 3 April 1990 envisaged the following scenario of states succession regarding citizenship:

“Article 15. Citizens of the USSR on the territory of exiting republic are afforded the right of choice of citizenship, place of residence and employment. The exiting republic compensates all expenses connected with the resettlement of citizens outside the confines of the republic.

Article 16. In accordance with the generally recognized principles and norms of international law and the international obligations of the USSR, the exiting republic guarantees the civil, political, social, economic, cultural and other rights and freedoms of citizens of the USSR who remain to reside on its territory without any discrimination whatever on grounds of race, color of skin, gender, language, religion, political or other convictions, [ethnic] or social origin, property status, place and time of birth.”

As it turned out, although these statutory pronouncements were largely ignored by most of the exiting republics of the USSR, they did serve to set the general tone for dealing with citizenship matters by Russia and Turkmenistan in their respective laws on citizenship. Both countries adhered to the principles of equality, non-discrimination on any grounds, respect for the right of choice of citizenship and any other human rights and, as a consequence, opted for a so-called “zero option” approach towards old Soviet citizenship. “Zero option” meant that “the newly independent states offered citizenship to any Soviet citizen who was resident on the territory of the state in question in December 1991 and who chose to take it.”

One has indeed to admit that the “zero option” concept looks really attractive, inasmuch as it allows eschewing to a significant extent such common curses of states succession as, e.g., refugee flows and statelessness, by means of summary grant of citizenship and, at the same time, keeps the states from potential encroachment on each other’s population inheritance.


95 Bloed, p.42.
1.1.1. The Russian Law on Citizenship of 1991

Being in line with the preferred “zero option” mode of succession in citizenship matters, Article 13 of the Law on Citizenship of the Russian Soviet Federated Socialist Republic (the RSFSR) of 28 November 1991 ascribed Russian citizenship to all citizens of the USSR permanently residing in the territory of the RSFSR on the date of entry into force of the Law, if within one year from that date they do not indicate their wish not to belong to the citizenship of the Russian Federation. The Law came into force on the day of its publication in mass media, i.e. on 6 February 1992. The technicalities for this centerpiece provision on automatic acquisition of Russian citizenship were elaborated in the Regulation of the Procedure for Considering Questions of Citizenship of the Russian Federation approved on 10 April 1992, which says,

“For persons permanently residing on the territory of the Russian Federation on the day of the Law’s entry into force and in possession of a passport of citizen of the USSR, there is no requirement to file a statement for formalizing recognition of Russian citizenship.

Until the introduction of proof of identity and passport of citizen of the Russian Federation, the document confirming Russian citizenship is the passport of the USSR issued on the territory of the Russian Federation at the place of permanent residence.”

Permanent residents entitled to Russian citizenship were considered those who had got themselves formally registered with a local office of the Ministry of Internal Affairs and had in their passports a permanent residence stamp – the infamous propiska. So, citizenship was in fact determined by the propiska, with other aspects being of minor importance. Of course, the propiska test operated restrictively, excluding some categories of people, like the military billeted outside the Russian Federation in the territory of the rest of the Soviet republics or those who had temporarily left the confines of the country before 6 February 1992 in connection with employment, education, medical treatment, business and so on. Such categories were covered later by separate legislative acts.

A specific quality of Russia in the processes of states succession was her aspiration to pose herself as a heir to the USSR and claim for having the status of not just an ordinary successor state but rather a continuing one. Russia’s claim for such continuation was generally honored by the international community without strong reservation. Since Russia strove to fill the USSR’s shoes, some obligation was presumably owed all Soviet citizens (not only those residing on the Russian soil), where the future of

96 See Ginsburgs, p.152.
98 Vedomosti Rossiiskoi Federatsii, no.17, item 952, 1992.
their citizenship affiliation was concerned. Evidently, Russia was now called upon to enunciate her succession policy towards citizens of the former USSR located elsewhere. The Law on Citizenship confirmed the right of citizens of the USSR permanently residing on the territory of other republics directly forming integral part of the USSR as of 1 September 1991 to acquire Russian citizenship by registration if they were not citizens of those republics and within 3 years of the date of entry of the present Law into force expressed their desire to acquire Russian citizenship. The choice of wording seemed to be wise enough to cover all interested individuals and present Russia as “last resort” for every former Soviet subject without getting involved in complicated arguments with other former Soviet republics about possible infringement of their newly gained sovereignty.

1.1.2. Conferment of Citizenship by Turkmenistan: Law on Citizenship of 1992

Turkmenistan’s policies towards people living in the country in the time of the USSR collapse were similar to those of Russia and just as hospitable. Under the Law on Citizenship of Turkmenistan as of 30 September 1992, all those who were permanently residing in the country at the moment of the Law’s enactment were indiscriminately granted Turkmen citizenship. Article 49 of the Law on Citizenship says,

“All citizens of the former USSR permanently residing in the territory of Turkmenistan by the time this Law comes into force shall be recognized as citizens of Turkmenistan, unless they renounce citizenship of Turkmenistan in written form.

Citizens of the former USSR born in the territory of Turkmenistan and moved out with the purpose to permanently domicile in other states of the former USSR before this Law comes into force shall be recognized as citizens of Turkmenistan, if they confirm in written form their wish to retain citizenship of Turkmenistan within one year from the day this Law comes into force. These provisions also apply to lineal descendants of the said persons.”

Here, too, the only tool to screen bidders for Turkmen citizenship was the propiska, but not, e.g., ethnic origin or any other distinction. Like Russia, Turkmenistan did not take any steps to revise the residency registry system in the form of the propiska inherited from the Soviet regime, so the

countries’ operational procedures on these matters continued to follow the precedent set in the USSR. For all its negative features, the propiska provided some degree of uniformity in the way citizenship issues were settled in both countries in the early 1990s.

1.2. Legal Grounds for Dual Citizenship between Russia and Turkmenistan

In the early post-USSR phase, Russia and Turkmenistan differed in their policies towards dual citizenship. Russia exercised rather cautious approach in this respect and strictly limited the application of dual citizenship. In Article 3(1) the Russian Law on Citizenship directed that “acquisition of the citizenship of the RSFSR by a foreign citizen can occur contingent on his renunciation of his former citizenship, except where otherwise provided by an international treaty of the Russian Federation.”

Furthermore, there was a requirement set by Article 37(3) of the same Law to the effect that a person willing to acquire Russian citizenship and belonging to the citizenship of another state must append to his application for admission to Russian citizenship a document confirming the termination of his former citizenship. In this Article, too, the exception clause provided for only one case when a person was allowed to possess simultaneously the citizenship of another state with which Russia had contracted a corresponding treaty. Therefore, it could be surely argued that Russia ruled out the institute of dual citizenship, except in one designated case – the existence of a treaty on dual citizenship.

In comparison with Russia, Turkmenistan appeared to be much more liberal with regard to the issue of dual citizenship. The country’s Law on Citizenship explicitly provided for the possibility of holding dual citizenship, since “Turkmenistan recognizes dual citizenship, i.e. the belongingness of an individual to citizenship of other states, together with that of Turkmenistan.” Curious to note is that unconditionally allowing such duality Turkmenistan stood aloof from all the other former Soviet republics (not only Russia), which were not very enthusiastic about this sort of citizenship.

While Turkmenistan’s liberalism persisted for more than a decade, Russia changed her attitude towards dual citizenship quite soon. Russia’s original clamp on dual citizenship was probably calculated to make Russian-speaking communities in other parts of the former USSR not to flee to proper Russia in a rush. The prime objective was to stabilize potentially volatile situation with Russians in the “near abroad” and exercise as much control over the flow of migratory traffic into Russia in order to avoid spontaneous wholesale stampede of local Russians that would certainly gravely deplete Russia’s own strained resources. However, already in 1992,

103 Ibid., p.160.
104 Law on Citizenship of Turkmenistan, Article 9 (translated by the author hereof).
the position of Russians in those areas gave signs of seriously deteriorating. As one commentator testifies,

“The restrictive citizenship laws promulgated in the various successor republics, a pervasive climate of discrimination in daily life, the government campaigns to ‘nativize’ civic and cultural mores, especially the official state language and school curriculum, all conspired to spread fear among local residents of ‘foreign’ extraction that for them the future held only the prospect of marginalized existence in this environment swamped by a wave of radical nationalism.”

Not surprisingly, the Russian leadership was propelled by various political factions to somehow help those left beyond the Russian Federation and defend them by mobilizing available diplomatic and legal resources. Among perspective methods to tackle the problem was mentioned dual citizenship as a means of defending the rights of Russian compatriots residing abroad. Dual citizenship was thought to enhance the sense of security and certainty among the affected persons in order to prompt them to remain where they were then living and adjourn their plans to move out. The merits and faults of dual citizenship were comprehensively analyzed in political and legal discourse in Russia, and the concept was generally endorsed as being worth to push forward.

The Russian legislature responded to the public opinion by approving a package of amendments to the Law on Citizenship on 17 June 1993. Most relevant to this discussion is the one affected the wording of Article 3(1). The original version cited above in this subchapter had made acquisition of Russian citizenship by a foreigner contingent upon renunciation of his former citizenship. According to the new redaction,

“A person possessing the citizenship of the Russian Federation is not recognized as belonging to the citizenship of another state, unless otherwise provided by an international treaty of the Russian Federation.”

Under this provision foreigners converting into Russian citizens were no longer required to renounce their original citizenship and submit a document confirming such a move. Now, the Russian authorities would give no effect to whichever foreign citizenship the converts might also have. Therefore, although the new law did not recognized on its face dual citizenship within the Russian Federation’s territorial jurisdiction, it had nevertheless paved the way for multiple affiliations by Russian citizens with other states, which could be easily enjoyed outside Russia. The second part

106 Ginsburgs, p.173.
107 For an informative account of the discussion, see ibid, pp.171-236.
109 Ibid. (translated and quoted in Ginsburgs, p.177).
110 Article 3(3) of the Law on Citizenship of the RSFSR was repealed.
of Article 3(1) to the effect that dual citizenship is allowed where provided by a corresponding international treaty of the Russian Federation remained intact. Moreover, the Constitution of the Russian Federation, adopted in a nationwide referendum on 12 December 1993, mandated in Article 62(1) that the “citizen of the Russian Federation may have the citizenship of a foreign state (dual citizenship) in conformity with the federal law or international treaty of the Russian Federation.”

In that vein, Moscow’s new agenda in its policy regarding Russian compatriots was to forge a series of agreements with the former Soviet republics in order to solicit dual citizenship in a bilateral setting. However, since dual citizenship inevitably implies dual loyalty, Russia’s subtle hints on or open talks about dual citizenship were perceived by her partners as a threat to their just-gained independence and national security. Talking about how to institute dual citizenship with the members of the former Soviet Union, A.K.Mikitaev, the then-Chairman of the Commission on Questions of Citizenship of the Supreme Soviet of the Russian Federation, said,

“… for [dual citizenship] to operate, special inter-state agreements are necessary. And so far, we have not succeeded in concluding them. The republics that had just won independence perceive dual citizenship as a threat to their sovereignty…”

Despite the fact that getting the intended states to sign agreements on dual citizenship had proved a difficult mission, Russia tenaciously continued pursuing her policy. And the first agreement that marked success in this venue was an accord on dual citizenship between Turkmenistan and the Russian Federation, which recognized that Russians living in Turkmenistan had competing ties, allegiances, and loyalties and offered a degree of protection and reassurance to concerned local Russians that their rights would be adequately defended and promoted. That was the Russian authorities’ vision of local Russians’ perspectives at places outside Russia where they were at that moment. According to Jakhan Pollyieva, the then-Division Head in the Office of the Russian Federation President’s Advisor on Political Issues, “at a recent meeting of the Commission on Citizenship Issues in the Office of the President of the Russian Federation this treaty was reckoned one of the most promising ways of solving the problems of ethnic Russians living in CIS countries.” Whether the accord indeed justified hopes rested on it will be examined in detail in the next chapters hereof.

113 Russia managed to conclude only one comparable accord – the Agreement on Dual Citizenship with Tajikistan as of 7 September 1995.
114 “Jakhan Pollyieva: chastnyi vzgliad na obschie problemy” (Jakhan Pollyieva: Personal View on General Problems), Turkmenskaia iskra, no.117(20638), 25 May 1994, p.3 (translated by the author hereof).
2. Textual Analysis of the 1993 Dual Citizenship Agreement

Turkmenistan’s exceptional generosity in granting its citizenship in the early 1990s was reaffirmed by the conclusion of the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship (hereinafter – the Dual Citizenship Agreement), which was signed by the then-President of the Russian Federation Boris Eltsin and the President of Turkmenistan Saparmurat Niyazov in Ashgabat on 23 December 1993. Medjlis (Parliament) of Turkmenistan ratified the Dual Citizenship Agreement just three days after signature. Russia did so almost one year later, on 25 November 1994. The Agreement ultimately came into force on 18 May 1995, when the parties exchanged the instruments of ratification with each other.

In the preamble to the Agreement the parties declared that they were aspiring to settle dual citizenship matters in a just and humane manner for the purposes of promoting further their relations. At the follow-up press conference Boris Eltsin called the Agreement “unprecedented” and “the act of our peoples’ strong confidence in and profound respect to each other.” Turkmenistan’s President agreed with his Russian colleague and emphasized that “henceforth the relations between two states will be attaining a special level, at the basis of which are mutual respect and legal regulation.”

The Agreement’s key proviso is worded in Article 1(1) in the following way: “Each of the Parties recognizes the right of its citizens to take, without loosing its citizenship, the citizenship of the other Party.” It is added in Article 1(2) that “[acquisition by the citizen of one Party the citizenship of the other Party shall be done on the basis of free will of the citizen in accordance with the terms and procedures established by the legislation of the Party, whose citizenship is being acquired.”

Article 2 of the Agreement entitles the citizens of one Party who have acquired the citizenship of the other Party without loosing their original citizenship before the Agreements comes into force to retain the citizenships of both Parties. In Article 3 one can find a number of rules

118 Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship (translated by the author hereof).
119 Ibid. (translated by the author hereof).
dealing with the citizenship of dual citizens’ children, the most important of them is that if at least one of parents holds both Russian and Turkmen citizenships, the children acquire both citizenships at birth and have the right to opt for either citizenship or retain both of them at the age of 18.

Article 4 rules that the termination of each Party’s citizenship by dual citizens shall be done in accordance with the legislation of the Party which citizenship is being terminated. At the same time, in a safety clause it reads that “none of professional or other activities of a person holding citizenships of both Parties can be a reason for terminating the citizenship of any Party.” The latter provision was a clear sign of Parties’ more confidence in each other, about which two Presidents were talking upon signing the Agreement (see their statements a couple of paragraphs above). In her interview to Turkmen Press News Agency, Nabat Kerbabaieva, the then-Head of Citizenship and Pardon Division, the Office of the President of Turkmenistan described this in the following way,

“For the sake of state interests, our legislation, as it is well known, envisages the loss of Turkmen citizenship when the citizen of Turkmenistan has enrolled in military service, security service, police, or justice bodies of another country. In accordance with the fourth article of the [Dual Citizenship] Agreement, this requirement shall be no longer valid with respect to Russia.”

Yet, the Agreement vests dual citizens with the full rights and freedoms but, at the same time, imposes upon them the duties of citizenship of the Party, in which territory they permanently reside. In the same vein, social security services shall be provided to dual citizens in accordance with the legislation of the Party, in which territory they permanently reside, unless otherwise is provided for in separate bilateral treaties. And finally, dual citizens shall do compulsory military service in the territory of the Party where they permanently reside at the moment of drafting. Those dual citizens who have already served in the armed forces of one of the Parties are to be relieved from drafting in the other one.

Article 6 of the Agreement, according to which both states are charged with the protection of dual citizens, is perhaps crucial for Russian efforts to present dual citizenship as a tool to protect ethnic Russians living outside Russia. It reads,

“Persons holding citizenship of both Parties shall be entitled to enjoy the protection and patronage by each of the Parties. Protection and patronage of these persons in a third state shall be extended by the Party

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120 Ibid. (translated by the author hereof).
121 “Soglashenie o dvoinom grazhdanstve: nashi prava i obiazannosti” (The Agreement on Dual Citizenship: Our Rights and Duties), Turkmenskaia iskra, no.20(20541), 25 January 1994, p.3 (translated by the author hereof).
122 Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship, Article 5.
in which territory they permanently reside or, at their request, by the other Party which citizenship they also hold.”

Article 7 of the Agreement is a sort of “no arbitration” clause, which says that “points of dispute between the Parties over interpretation and application of this Agreement shall be settled through diplomatic channels,” thus in fact excluding any recourse to judicial or quasi-judicial means of dispute settlement.

A concluding article of the Agreement is Article 8 which states that “this Agreement shall be subject to ratification, come into force on the day of the exchange of ratification instruments and be effective for five years. It shall be automatically prolonged for next five-year periods, unless one of the Parties expresses its desire to cancel it no later than six months prior to the expiration of its term.”

3. Moves to Dismantle the Dual Citizenship Regime

3.1. Freedom of Movement from and to Turkmenistan Curtailed

The Dual Citizenship Agreement operated more or less smoothly without giving rise to serious criticism till 1999, when a threat to it started looming. On 9 June 1999, Turkmenistan withdrew from the Bishkek agreement on visa-free movement of CIS members’ citizens within the members’ territories as of 19 October 1992, and afterwards concluded a series of agreements regulating the movement of persons with CIS members, including Russia, on a bilateral basis. Under a new entry-exit procedure all foreigners wishing to visit Turkmenistan must have obtained entry visas; and all Turkmen citizens were required to get exit visas before leaving Turkmenistan for any foreign country with only few exceptions, such as that regarding dual Russian-Turkmen citizens stipulated in a new consular convention with Russia.

Official reasons given by Turkmen authorities for such an action were that “it is necessary to spur on the fight with international crime, first and foremost with drug-trafficking and illegal migration, that is impossible to do when borders are ‘open.’” But in reality the truth was that by that time the authoritarian regime in the country consolidated and the cult of personality by Niyazov (once granted with the title “Turkmenbashi,” or Head of the Turkmen people) flourished to such an extent that he was made

123 Ibid. (translated by the author hereof).
124 Ibid. (translated by the author hereof).
125 Ibid. (translated by the author hereof).
127 Ibid. (translated by the author hereof).
the President for life the exact same year.\textsuperscript{128} Anything or anyone posing even a slightest threat to his iron grip on power and absolute control over the society might not be tolerated. Autarkic policies, aimed at “immuring” the country and averting any “undesirable” influence from outside, appeared to be obviously incompatible with a situation, where a certain part of Turkmen subjects (those holding dual citizenship) continued having the right to freely travel without being checked and screened by the authorities.\textsuperscript{129} The imposition of the visa requirement upon one part of population and the lifting of the requirement for the rest would inevitably create tension within the society, which must have been eased somehow. Of course, it would be eased at the expense of depriving right-holders of their rights, because to act otherwise would contradict the regime’s \textit{modus operandi}. Everything suggested that trouble was brewing for the \textit{Dual Citizenship Agreement}.

3.2. Assassination Attempt against the Turkmen President and Consequent “Witch-Hunt”

The turning point for the \textit{Dual Citizenship Agreement} was 25 November 2002, when an assassination attempt against Niyazov was

\textsuperscript{128} On 28 December 28 1999, the Turkmen Parliament adopted a constitutional law that gave “the first President of Turkmenistan the exclusive right to be the head of the state without any term’s limitation” (United Nations Development Programme (UNDP), \textit{Descriptive Report on the Governance in Turkmenistan}, Ashgabat: UNDP Office in Turkmenistan, 2001, p.8).

allegedly made. Whether it was true is still highly speculated, but what is certain is that he used it as a pretext for cracking down on the dissent and all forms of uncontrolled activities in the country. Niyazov blamed the Turkmen opposition leaders living in exile (most of them in Russia) for the assassination attempt. An unfortunate fact for the Agreement was that many of them happened to be dual citizens, as well as some of those who had been arrested under suspicion of being involved in the conspiracy to assassinate Niyazov. Turkmenistan made a request to extradite opposition leaders hiding in Russia, which was not honored because of their Russian citizenship. This made him imply that all dual citizens living in Turkmenistan and outside were his actual or potential enemies. To minimize the risk these “enemies” presented and to hold unfettered sway over them, it was decided to get rid of the very source of these troubles – the institute of dual Russian-Turkmen citizenship. The Dual Citizenship Agreement would be living the rest of its days.

3.3. Niyazov Mounts an Attack on Dual Citizenship

For the first time Niyazov publicly stated that the Dual Citizenship Agreement could be “temporarily suspended” in his speech delivered on national television on 13 January 2003. In his opinion the Agreement enabled criminals to escape punishment, because “they go there [to Russia], obtain local passports, and become citizens of that country and, as a result, they are beyond the scope of our laws.” He further said that “if we want the Agreement be operative further, our laws shall cover those who have committed crimes here [in Turkmenistan] and received Russian citizenship.” He also noted that his proposal concerning the Dual Citizenship Agreement had been presented to Russian partners, and Russia had agreed on it.

The Russian Ministry of Foreign Affairs rebounded immediately and the next day requested the Turkmen authorities to explain the reasons for their demarche and asked them whether Turkmenistan was going to unilaterally abrogate the Agreement. On 15 January 2003, Ashgabat

134 Ibid. (translated by the author hereof).
135 Ibid.
136 See MID Rossii trebuuet ob’iasnenii turkmenskogo demarsha (The Ministry of Foreign Affairs of Russia Demands an Explanation of the Turkmen Demarche), Lenta.Ru, 14
disavowed its intention to clamp down on the *Dual Citizenship Agreement*,¹³⁷ which operation routinely continued henceforth. Any talks about the *Agreement* calmed down for a while.

### 4. The Dual Citizenship Agreement Cancelled

#### 4.1. The Deal's Entourage

Three months later, on 10 April 2003, Niyazov arrived in Moscow for talks with the President of Russia Vladimir Putin on bilateral relations, energy cooperation, and combating drug-trafficking and organized crime. The summit’s agenda, which had been made public prior to their meeting, was silent on any matters concerning the *Dual Citizenship Agreement* but, instead, focused on a protocol on ratification of the Treaty on Friendship and Cooperation between two states of 2002, an agreement on security cooperation, and agreements on cooperation in natural gas deliveries and the development of oil fields in the Turkmen section of the Caspian Sea.¹³⁸

Central in this package was the agreement between two monopolies – *Gazprom* and *Turkmenneftegaz* – on cooperation in the gas sector intended for 25 years. This agreement was extremely important for the Russian corporation, as gas supplies from Turkmenistan could supplement *Gazprom’s* shortage of mineral resources and relieve it, at least temporarily, of costly investments in new natural gas field exploration and development in Siberia.¹³⁹ The Russian leadership fervently favored this deal, as they perceived that it could also help restore Russia’s sway in Turkmenistan, in particular, and in the whole Central Asia, in general.

Under the gas agreement Turkmenistan undertook an obligation to supply 2 trillion cubic meters of natural gas to Russia during a quarter of a century. Niyazov called the signed agreement “historic for bilateral relations.”¹⁴⁰ He especially noted that “this is approximately 200 billion US Dollars, which will be income of Turkmenistan, and 300 billion US Dollars, which will be income of Russia”¹⁴¹ for the specified period.

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4.2. The Protocol on Terminating the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship of 10 April 2003

Against such a spectacular background the conclusion of a protocol on terminating the Dual Citizenship Agreement passed almost unnoticed by mass media. Indeed, it was considered primarily as of technical character, that of legalizing the legitimate intention of both parties to stop their obligations under the Agreement. In his follow-up press-release the President Putin articulated the Russian rationale that had been behind the decision to cancel the Agreement, stating that “[w]e came to the conclusion that the Dual Citizenship Agreement had succeeded in its object and agreed upon its termination. Most people who wished to move to the Russian Federation solved, in general, the problem for themselves.”\textsuperscript{142} The text of the Protocol on Terminating the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship of 10 April 2003 follows,

“Turkmenistan and the Russian Federation have agreed on the following:

1. From the day this Protocol takes effect, the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship, dated 23 December 1993, will be annulled.

2. The present Protocol will come into force from the date of the last written notification that the Parties have completed all the necessary internal procedures.”\textsuperscript{143}

The mechanism of the termination of the Dual Citizenship Agreement written in the Protocol is pretty straightforward: the Agreement expires upon putting the Protocol into effect, while the Protocol itself comes into forth upon its ratification, basically, by both Parties. A simple,
routine procedure in international law! But if there is no interest in doing things, even simple things may be made damned complicated that was demonstrated by a subsequent chain of events concerning dual citizenship between Russia and Turkmenistan.

4.3. The Decree of the President of Turkmenistan on Settling the Issues Relating to the Revocation of Dual Citizenship between Turkmenistan and the Russian Federation of 22 April 2003

Very fast, less than a couple of weeks after signing the Protocol, the Parliament (Mejlis) of Turkmenistan ratified it, and an instrument of ratification was sent in due course to the Russian counter-partners. The next, logical step for Turkmenistan would be to wait until the Russian Parliament (State Duma) would do the same and, then, proceed to a set of organizational and legislative measures aimed at settling all possible problems that might be caused by the withdrawal from the Dual Citizenship Agreement. And “measures” were actually taken. On 22 April, the President of Turkmenistan issued a decree, which would provoke a large-scale and long-lasting crisis in relations between Russia and Turkmenistan.

The Decree on Settling the Issues Relating to the Revocation of Dual Citizenship between Turkmenistan and the Russian Federation is a “masterpiece” of its kind, which is worth quoting here in full,

"In accordance with an agreement concluded on 10 April 2003 between Turkmenistan and the Russian Federation on revoking dual citizenship status, I resolve:

1. Persons with dual citizenship, under the Agreement of 23 December 1993 between Turkmenistan and the Russian Federation, are provided with the right of choosing citizenship of one of these countries [Turkmenistan or Russia] within the next two months.

2. Persons with dual citizenship of Turkmenistan and the Russian Federation permanently residing in Turkmenistan have to submit their applications to Turkmenistan’s interior agencies within two months on choosing citizenship status. Persons who fail to submit notifications on their choice [of citizenship] within the given period of time will become Turkmen citizens.

Persons with dual citizenship of Turkmenistan and the Russian Federation permanently residing in the Russian Federation or in other countries who fail to inform Turkmenistan’s consulates in foreign countries in the appropriate manner and within the given period of time about their choice of Turkmen citizenship will lose Turkmen citizenship status. This does not apply to those with criminal records and those on the wanted list. If a person wishes to give up
Turkmen citizenship, the procedures defined in Turkmenistan’s legislation for giving up Turkmen citizenship will apply.

3. During the period of determining citizenship status, persons with double citizenship residing permanently in Turkmenistan are to observe common regulations set for Turkmen citizens entering and leaving the country. Persons with dual citizenship residing permanently in other countries are to observe regulations set for foreigners entering and leaving the country.

4. Regulations are to be approved on settling the issues of revoking dual citizenship status of Turkmenistan and the Russian Federation.

[Signed by] President of Turkmenistan, Saparmurat Turkmenbashi [Niyazov].

5. A Crisis Broke Out

5.1. Panic and Confusion Among Dual Citizenship Holders

The Decree was apparently intended to clarify the procedures for implementation in Turkmenistan of the Protocol’s provisions relating to the termination of the Dual Citizenship Agreement with Russia, but it prompted instead widespread confusion and had dual citizenship community seized with panic. Hundreds of agitated people besieged the Embassy of the Russian Federation in Ashgabat in an effort to clarify the meaning of the Decree, but the diplomats confined themselves to general reassuring statements with a view to calming them down. Many citizens of Turkmenistan, however, responded with skepticism to the reassuring announcements by the Russian diplomats, and, indeed, this response proved to be justified.

It was reported that the sale of airline tickets to individuals with dual citizenship wishing to fly to Russia on Russian passports was terminated; and those who decided to travel to Russia under Turkmen passports could not do this freely, since Turkmen passport holders could leave the country only after obtaining an exit visa, the issuance of which was severely curtailed. Turkmenistan Airlines cancelled two of its daily flights from

Ashgabat to Moscow, because too many tickets remained unsold. At the same time, it was also reported that prices for apartments in Ashgabat had dropped precipitously, at least threefold, as those in Turkmenistan who had opted for a Russian passport could have ended up forfeiting their homes and other property, as, under Turkmen law, only Turkmen citizens have the right to own real estate. Furthermore, new guidelines for state control of visits by foreigners, adopted in February but published only on 21 April, compounded the mood of suspicion of travelers from Turkmenistan.

5.2. Russia’s First Response

Few days after the Decree was issued, the Kremlin did not react to this unilateral action by the Turkmen authorities regarding Russian-Turkmen citizens; Russian mass media completely ignored this topic. It seemed that the Decree of 22 April was completely unexpected to the Russian authorities and they were caught off guard by the speed with which Niyazov moved to eliminate dual citizenship. “In the Kremlin they would never have thought their Turkmen partner would dare do such a thing,” one Russian commentator noted with surprise. But anyone who has at least basic knowledge in the country would never be surprised as, given Niyazov’s mercurial nature and unlimited discretion, Turkmen internal and external policies can take serious and unpredictable twists at any point.

Russia’s dilatory tactics in reacting to Niyazov’s Decree might be explained by her attempts to try quiet diplomacy in order to get the Turkmen leader to soften the measure’s impact. Inasmuch as Turkmen official structures rebuffed the Russian covert feelers, the next step was made by the Russian Foreign Ministry which expressed “serious concern” to their

148 The President of Turkmenistan signed the resolutions on improving the procedures for the entry, exit and stay of foreign citizens in Turkmenistan. “The documents necessary for processing entry visas to Turkmenistan, work and residency permits are sent by diplomatic representative offices and consulates of Turkmenistan abroad, as well as by the consular services of the Ministry of Foreign Affairs of Turkmenistan, to a commission responsible for control over the issuing of visas”. In addition, Niyazov signed a resolution with the aim of setting up a unified database of the state service of Turkmenistan on the register of foreigners and providing efficient control over foreign visitors entering, leaving and staying in Turkmenistan, see “Gossluzhba Turkmenistana po registratsii inostrannyh grazhdan sozdaiet edinuiu informatsionnuu bazu dannyh” (The State Service of Turkmenistan on the Register of Foreigners is Setting up a Unified Database), Turkmenistan.Ru, 4 June 2003, <http://www.turkmenistan.ru/index.cfm?r=2&d=2930&op=viw>, accessed on 8 January 2005.
Turkmen colleagues regarding “Ashgabat’s actions in connection with the termination of the agreement on dual citizenship.” Russia’s position was that Russia had not ratified the Protocol on the termination of the Agreement yet, and the Agreement remained to be in force. “Had the Protocol come into effect, it would have no retroactive force, and citizens who had obtained dual citizenship should retain it in the future.” The Ministry also expressed its “deep concern” regarding a provision in the Presidential Decree, according to which dual citizens must have chosen either citizenship within two months, because it would be detrimental to their interests and basic rights. It further urged that this would have far-reaching consequences for Turkmenistan. The crisis in the bilateral Russian-Turkmen relations precipitated by the mutually agreed revocation of dual citizenship was doomed to burst out.

5.3. Russia and Turkmenistan Clinched Tightly

After the first displeasure expressed by the Russian Ministry of Foreign Affairs about Ashgabat’s swift action to eliminate dual citizenship, rancorous rhetoric between Russia and Turkmenistan was escalating as each country staked out increasingly divergent positions on the issue. Russia reaffirmed her position that the procedures stipulated in the Protocol had not been properly followed and fully completed and, therefore, the Dual Citizenship Agreement was still in force. It was articulated by the official representative of the Russian Foreign Affairs Ministry Aleksandr Yakovenko who said on 4 June 2003 that Russia “continues to regard as effective” the Dual Citizenship Agreement. He went on saying that Turkmenistan withdrew from the Agreement unilaterally, “against the provisions and procedures stipulated by the Protocol for renouncing the document;” then, the Protocol “has no retroactive force and is intended to regulate relations regarding citizenship that arise after it has come into effect.” He reassured that “Russia is taking active measures through diplomatic channels to ensure that the rights and interests of its compatriots in Turkmenistan are not infringed upon.”

151 Ibid. (translated by the author hereof).
152 Ibid.
154 Ibid. (translated by the author hereof).
155 Ibid. (translated by the author hereof).
These “active measures” appeared to be very simple. To address the principal concern of dual citizens, namely their continued ability to enter Russia, the Russian Ministry of Foreign Affairs and Embassy in Ashgabat started issuing entry visas to the holders of Russian passports as if they were foreigners, not Russian citizens. Such an unprecedented move by Russia was in strict compliance with Article 3 of the Decree on the revocation of dual citizenship, which says “… persons with double citizenship residing permanently in Turkmenistan are to observe common regulations set for Turkmen citizens entering and leaving the country.” Otherwise, they would not be allowed to leave Turkmenistan. The statement by the head of the Russian Foreign Ministry’s Consular Department Vladimir Kotenev in the aftermath of two-day talks held in Ashgabat, on 6-7 June, between the two countries’ Foreign Ministries that the President Niyazov’s decision to annul the Dual Citizenship Agreement was illegal, which Russia would not recognize, was nothing but purely rending the air.\(^{156}\)

In a press release dedicated to the results of the talks with the Russian delegation on June 6 the Turkmen Ministry of Foreign Affairs reaffirmed the country’s withdrawal from the Dual Citizenship Agreement as “logical and legitimate,” and asserted that the number of individuals affected was only 47, not the approximately 100,000 estimated in foreign press reports.\(^{157}\) The discrepancy in the figures was of such magnitude that it was clear that for the Turkmen Ministry there was no problem at all. Nevertheless, it proposed to create a bilateral intergovernmental commission to settle the issue.\(^{158}\) Although there were no signs that the Turkmen authorities held themselves responsible for derailing the April arrangements with Russia, the President Niyazov’s public affirmation on June 9 that Turkmen citizens “have the same rights and liberties as people in other countries of the world,”\(^{159}\) giving particular emphasis to freedom of movement, suggested his sensitivity to international pressure relating to the dual citizenship issue that was proved to be true later on.

In the meantime, the Russian Parliament (the State Duma) arrived on the scene. Dmitriy Rogozin, the Chairman of the State Duma’s Foreign

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156 See “Stenogramma vystuplenia Direktora Departamenta konsul’skoi sluzhby MID Rossii V.V.Koteneva na press-konferentsii po itogam peregovorov po probleme dvoinogo grazhdanstva, sostoiavshisya 6-7 iunia s.g. v Ashgabate, Moskva, 9 iunia 2003” (The Record of the Speech Delivered by the Director of Consular Service Department of the Russian Ministry of Foreign Affairs V.V.Kotenev at a Press-Conference Devoted to the Results Achieved at the Negotiations on the Problem of Dual Citizenship Which Took Place on 6-7 June of This Year in Ashgabat, Moscow, 9 June 2003), Information Bulletin, 11 June 2003, Information and Press Department, the Ministry of Foreign Affairs of the Russian Federation, <http://www.ln.mid.ru/ns-rsng.nsf/6bc38acea6ade44b432569c700419ef5/432569d800222146643256d42002a9821?OpenDocument>, accessed on 30 December 2004.


158 Ibid.

Relations Committee, condemned the Turkmen authorities for denying Russians in Turkmenistan the right to Russian citizenship and for planning “the mass deportation” of Turkmenistan’s Russian population, a reference to the Presidential Decree of 22 April. Russian politicians and mass media “suddenly” discovered what had been known well before to anyone interested that virtually all human rights had been flagrantly violated in that country, that Turkmen officials were involved in drug trafficking and had supported Afghanistan’s former rulers, the radical Islamic Taliban movement. They could not avoid, of course, touching upon the latest “fashion” in international relations, that is to say, making allegations of supporting “international terrorism” by Niyazov’s regime. It would be logically then to propose that such a kind of “regime should be isolated by the international community,” and “preventive measures” should be taken against it.

The Turkmen authorities readily “paid back,” accusing Russian leaders of engineering a mass media campaign designed to discredit Turkmenistan. On June 16, Niyazov himself blamed some Russian mass media outlets for attempting to delude public opinion by disseminating false inventions about the situation in Turkmenistan. He was mostly regretful about the fact that “some representatives of state organs of Russia have also turned out to be involved in this unseemly act.”

He demanded that Moscow, using a whole range of available legal means, bring to book those responsible for spreading vicious propaganda against Turkmenistan. Feeling insulted, he attempted to blackmail Russia threatening to set up a special national commission on finding out “legitimacy of getting Russian citizenship by Turkmen people” (fortunately, it remained no more than an empty threat). Deliberating on the commission’s future mandate, he said,

“The commission is to examine each case of receiving Russian citizenship and find out legitimacy of issuing passports […] If Russian citizenship was obtained by an honest way, the commission should fix exact dates for moving to Russia, rendering assistance and giving time for collecting things, without infringing upon the rights of a given citizen […] In other cases, not a single

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person who wants to retain dual citizenship, should be permitted to enter and stay in Turkmenistan."\(^{164}\)

It was believed that the Moscow was instead prepared to toughen its stance on Turkmenistan concerning human rights violations, as it was growing increasingly vexed by Turkmenistan’s intransigent position on the dual citizenship issue. Vyacheslav Igrunov, Deputy Chairman of the State Duma’s Committee on CIS Affairs told that Russia had an obligation to intervene in Turkmen affairs, citing human rights concerns, since “responsibility for human rights protection falls on the international community; and Russia, being a member of this community, is undoubtedly obliged to defend human rights in any corner of the world, including Turkmenistan.”\(^{165}\) One Russian official had even hinted that Moscow would be justified in seeking “regime change” in Turkmenistan.\(^{166}\) Another one called for the imposition of “certain sanctions” against Turkmenistan, if the Turkmen leadership would fail to make any changes to the policy it was pursuing.\(^{167}\)

In addition to Russian politicians’ verbal exercises about possible ways to exert influence on the Turkmen authorities in order to make them ease their position on dual citizenship, a few acts were done in this direction before the deadline of 22 June to opt for either citizenship, Russian or Turkmen, under the Decree of 22 April. On 19 June, the State Duma’s Foreign Relations Committee included Turkmenistan on the list of countries to which Russians are advised not to travel.\(^{168}\) Next day, the State Duma almost unanimously adopted the Statement “On the Observance of the Rights of the Citizens of the Russian Federation in Turkmenistan,”\(^{169}\) which generally reiterated Russia’s refusal to recognize Turkmenistan’s move to rescind the Dual Citizenship Agreement without waiting for the same on the part of Russia. It addressed the situation in Turkmenistan concerning the


\(^{166}\) Ibid.


rights of dual citizens in the context of the overall human rights situation in the country and on the basis of general norms and principles of international law and UN, OSCE, and CIS documents, which had been signed by both Russia and Turkmenistan. The Duma found “particularly humiliating for the honor and dignity of the Russian Federation’s citizens a requirement by the Turkmen authorities to get permission for leaving Turkmenistan.”

An appeal was made in the Declaration to the Russian executive to exert influence on the Turkmen leadership so that the problems of Russian citizens were resolved.

Political pressure on Turkmenistan reached its culmination, when the Russian President Vladimir Putin promised at a news conference on 20 June that Russia would always defend Russians resided outside the country, including those in Turkmenistan. He said: “We will consistently defend our citizens, wherever they live, in Europe, Africa or in Central Asia.” At the same time, Putin acknowledged that the Dual Citizenship Agreement had indeed come to an end, but explained that this did not affect those already holding dual citizenship. In his opinion, it was agreed that the decision to revoke such citizenship would have a bearing on those citizens who might wish to acquire a second citizenship in the future: from now on, there would be no such opportunity any more.

It is no surprise that after this Niyazov had to step back. Putin said that Niyazov had given him assurances that Turkmenistan would not undertake any actions aimed at worsening the situation of the citizens of Russia until the completion of the work of a high-level bilateral commission on settling any issues arising from the termination of the Dual Citizenship Agreement. Indeed, the deadline for citizenship option, 22 June, passed virtually unnoticed. Nothing changed after it expired: dual citizens were not forced to renounce either citizenship and kept having the same status as before, while the Turkmen authorities did not allow them leave the country without having both Turkmen exit visa and Russian entry visa. The only thing Russia had done to help dual citizens surmount obstacles to exist posed by Turkmenistan was that the Russian Embassy in Turkmenistan began issuing multiple entry visas to them free of charge, according to the Russian Charge d’Affaires in Turkmenistan Andrey Molochkov.

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170 Ibid. (translated by the author hereof).
172 Ibid.
6. The Road to Nowhere

6.1. The Russian-Turkmen Commission on Citizenship Matters

On its face, the dispute over dual citizenship was frozen for a while, and further clarification of the issue seemed to have been postponed until the interstate commission tasked with studying the issue completes its work. The first meeting of the Russian-Turkmen Commission on Citizenship Matters was held in Ashgabat, on 8-9 July 2003. The results produced by the Commission were fixed in a protocol signed by the delegations’ heads. The Russian side tried to present as their victory that the Turkmen delegation agreed to withdraw its demand that Russian passports’ holders secure an exit visa in order to be permitted to leave Turkmenistan in favor of a compromise procedure. The “compromise” was achieved on the terms that instead of Russian exit visas, dual citizens would be issued “multiple exit permissions for the period up to one year.” What is the difference between “exit visas” and “exit permissions”? It seems to be no more than merely a matter of semantics.

The Turkmen delegation also made other “concessions,” e.g. such as its pledge that the rights of Russian citizens living in Turkmenistan would be fully protected and official statement that there would be no discrimination against the rights and interests of the Russian citizens residing in Turkmenistan. What was behind these promises should be revealed by the next meeting of the Commission, which was planned in September or October of that year.

6.2. The Turkmen Constitution Revised and Amended

To the accompaniment of the assurances of cooperation and professions of good will the Turkmen State kept fulfilling its President’s wish to get rid of dual citizenship. Actually, a following course of events


175 See ibid.
might have easily been forecast: it is not acceptable in Turkmenistan to
discuss Niyazov’s decisions; his orders must be executed unquestioningly,
even if they are against law or common sense. Now they changed the
costitutional bases of citizenship in Turkmenistan.

In the first half of the year 2003, rumors had it that a number of
amendments were planned to introduce to the Turkmen Constitution. The
Turkmen leadership did not specify what kind of amendments would be
proposed, save vague statements that they would be aimed at “enhancing the
security of neutral Turkmenistan.” But being aware of what Niyazov was
preoccupied with at that time, it would be a very good guess to presume that
they would ban Turkmen citizens from obtaining other citizenships. They
were to be presented at an annual session of Halk Maslahaty (the People’s
Council),176 which would be held in the city of Turkmenbash177 on 14-15
August. Of course, there could not be any public discussion of the
amendments prior to their adoption or after they became a law.

Secrecy about the contents of the amendments was kept till a very
last moment. Even on the first day of the session, Halk Maslahaty’s
delegates did not have any draft documents in their hands. Next day, on 15
August, Niyazov, as a Chairman of Halk Maslahaty, read them out and
proposed to the delegates to vote for them. As had always happened,
Niyazov’s proposal received enthusiastic support of the delegates, who
unanimously adopted the amendments without even having a look at the
text. One could imagine that most of Halk Maslahaty’s participants got
acquainted with what they had adopted, only when a new revised edition of
the national Constitution was published in governmental press, on 20
August.178

The amended Constitution of Turkmenistan outlawed dual
citizenship as such. Article 7 was supplemented with a provision which

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176 Under Article 45 of Constitution of Turkmenistan, Halk Maslahaty “is the permanently
functioning highest representative organ of the people’s power and possesses the authority
of the highest State power and administration” (Constitution of Turkmenistan as amended
Publications, Inc., p.10). Halk Maslahaty is a hybrid organ composed of representatives of
the legislative, executive, and judicial power. It has 2,507 members: the President, deputies
of the Parliament (Mejlis), the Chairman of the Supreme Court, the Prosecutor General,
members of the Cabinet of Ministers, heads of administrations of five regions and the city
of Ashgabat, heads of cities that are administrative centers of regions and districts, heads of
self-government bodies of cities and villages that administrative centers of districts,
representatives elected from each electoral district, and also representative of selected
NGOs (Article 46). The functions of Halk Maslahaty are to approve the Constitution and
constitutional laws and amendments, to form the central commission for elections and
referendums, to make decisions on referendums, to set the date of presidential and other
elections at various levels, to discuss and approve national programs of political, economic
and social development (Article 48). The functioning of Halk Maslahaty can be stopped
only by its own decree (Article 47).

177 Formerly Krasnovodsk.

178 “Constitution of Turkmenistan,” Neitral’nyi Turkmenistan (Neutral Turkmenistan), 20
on 2 January 2005 (in Russian).
says, “Citizenship of another State is not recognized for a citizen of Turkmenistan.”

7. Stalemate: Is There Still Dual Citizenship between Russia and Turkmenistan?

After such a turn, the status of dual citizens (or whoever they were) became even more uncertain. Turkmenistan would treat people with two passports residing in the Turkmen territory, as if they were only Turkmen citizens. Russian citizenship as a second one would not be recognized any longer. This understandably caused anxiety to the Russian authorities, who called Turkmenistan’s abolition of dual citizenship illegal. The First Deputy of the Russian Foreign Minister Eleonora Mitrofanova stated, “As regards the abolition of dual citizenship in Turkmenistan, we think that actions taken by the Turkmen authorities are illegal, because the Russian side has not ratified the Protocol on the termination of the Agreement on dual citizenship.”

She stressed that “ratification must be bilateral and only then the Agreement comes into force.”

Numerous attempts by Russia to reactivate the work of the Russian-Turkmen Commission on Citizenship Matters during 2003 and 2004 were not successful. It virtually ceased to exist. From the Turkmen point of view there was nothing to discuss: national legislation does not provide for dual citizenship, while international obligations regarding dual citizenship are no longer valid. The issue of the rights and status of dual citizens in Turkmenistan had gone off the boil simply in the course of time, when the most problematic requirement of having exit permissions prior to leave Turkmenistan was lifted. On 8 January 2004, the President of Turkmenistan signed a decree, according to which previously introduced order of exit of citizens from Turkmenistan calling for obtaining permissions to exit Turkmenistan was abolished. A couple of months later, he issued another decree on improvement of exit order for citizens of Turkmenistan, which was to “ensure the freedom of exit of citizens from Turkmenistan to foreign countries and remove any obstacles as regards going abroad in accordance with the legislation of Turkmenistan.”

Now dual citizens can freely buy

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179 Constitution of Turkmenistan, supra note 171, p.3.
181 Ibid.
183 Postanovlenie Presidenta Turkmenistana “O sovershenstvovании poriadka vyiezda grazhdan iz Turkmenistana” (Decree of the President of Turkmenistan “On Improvement
airtickets and leave Turkmenistan for Russia upon the presentation of both Russian and Turkmen passports without having either an exit or entry visa. They can come back to Turkmenistan in the same way. So, the most urgent problems were settled, but the legal dispute over Russian-Turkmen dual citizenship was left unsolved and has remained in the state of hibernation up to now.


184 Personal communication of the author hereof with few Russian-Turkmen dual citizens in March 2005.
PART III. DUAL CITIZENSHIP CONTROVERSY BETWEEN RUSSIAN AND TURKMENISTAN IN LIGHT OF APPLICABLE RULES OF INTERNATIONAL LAW

1. International Treaties as Limitations on the States’ Sovereignty in Citizenship Matters

It is a generally accepted view that, in principle, questions of citizenship fall within the domestic jurisdiction of each state. Many prominent writers have repeated it in numerous works. For instance, Ineta Ziemele and Gunnar Schram put it as follows: “It used to be generally recognized that most rules on nationality fell within the scope of domestic jurisdiction and therefore within the domain of municipal law.”\(^\text{185}\) It should be acknowledged that they ground this proposition on a high legal authority. As early as 1923, the Permanent Court of International Justice in its Advisory Opinion concerning the *Nationality Decrees Issued in Tunis and Morocco* case stated:

> “The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of this Court, in principle within this reserved domain.”\(^\text{186}\)

However, although nationality is mainly governed by national legislation, the competence of states in this field is not unlimited and may be exercised only within the limits set by international law. The same Court in the same Advisory Opinion noted that “jurisdiction [over nationality questions] which, in principle, belongs solely to the State, is limited by rules of international law.”\(^\text{187}\) The Court’s position was later reiterated by its successor, the International Court of Justice in the *Nottebohm* case of 1955.\(^\text{188}\)

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\(^{185}\) Ziemele and Schram, p.298.


\(^{187}\) Ibid.

\(^{188}\) When considering whether the act of granting nationality to Nottebohm by Liechtenstein as the Claimant State directly entails an obligation on the part of Guatemala as the Respondent State to recognize its effect, the ICJ observed:

> “It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. It is not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain. Furthermore, nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it. Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in
Similarly, Article 2 of the 1929 Harvard Draft Convention on Nationality asserts that the power of a state to confer its nationality is limited by rules of international law:

“Except as otherwise provided in this convention, each state may determine by its law who are its nationals, subject to provisions of any special treaty to which the state may be a party; but under international law the power of a state to confer its nationality is not unlimited.”

Article 1 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws provides that:

“It is for each state to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality.”

More recently, Article 3 of the 1997 European Convention on Nationality was worded along the same lines:

“1. Each State shall determine under its own law who are its nationals.
2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality.”

On the basis of the pieces of law reproduced above, one can make a conclusion that in this stage of the development of international relations and international law a state is free to legislate on nationality issues, but its right to use its discretion thereof may be restricted by obligations which it may have undertaken towards other states. It is especially notable that both the Harvard Draft Convention, the Conflict of Nationality Laws Convention and the European Convention refer to “special treaty” or “international

question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the State.

But the issue which the Court must decide is not one which pertains to the legal system of Liechtenstein. It does not depend on the law or on the decision of Liechtenstein whether that State is entitled to exercise its protection, in the case under consideration. To exercise protection, to apply to the Court, is to place oneself on the plane of international law. It is international law which determines whether a State is entitled to exercise protection and to seise the Court.”

See the Nottebohm case, supra note 11, pp.20-21.


Convention on Certain Questions Relating to the Conflict of Nationality Laws, supra note 74.
conventions” which may limit the competence of states in the field of nationality.

2. The Russian-Turkmen Institutionalized Dual Citizenship and the Law of Treaties

Coming back to the dispute between Russia and Turkmenistan, it is apparent that there are such treaties or conventions, that is to say the Dual Citizenship Agreement and the Protocol on its termination. What is written in those documents must matter most. Of particular interest here is another Advisory Opinion of the Permanent Court of International Justice of 15 September 1923, concerning the Acquisition of Polish Nationality under the Polish Minorities Treaty of 28 June 1919. Having been asked to render its opinion about a question of interpretation of a Treaty clause, the Court, inter alia, stated:

“Though, generally speaking, it is true that a sovereign State has the right to decide what persons shall be regarded as its nationals, it is no less true that this principle is applicable only subject to the Treaty obligations referred to [in the Minorities Treaty].”

Taking into account that there is very little in terms of international law rules of general character applicable to the case under consideration, involving the issue of institutionalized dual citizenship, and the fact that the form of dual citizenship between Russia and Turkmenistan was created under the bilateral treaty, the most appropriate approach in dealing with the dispute would be first of all to analyze the Dual Citizenship Agreement and the Protocol themselves. Then, the analysis of the terms and conditions stipulated in these two documents should be done in a broader framework of the international law of treaties as it is laid down in the Vienna Convention of the Law of Treaties of 1969.

But before doing this, it would be reasonable here to recall the positions of both sides of the dispute. Russia’s position has been reaffirmed many times by different national authorities and can be summarized in the following way: (i) Russia did not ratify the Protocol on terminating the Dual Citizenship Agreement and, therefore, the Agreement remained in force; (ii) even if it could be assumed that the Protocol had come into effect and, as a result, the Agreement had indeed ceased to be operative, the termination of the Agreement would have no retroactive force, meaning that dual citizens may not be lawfully deprived of one of their citizenships. At the same time, Turkmenistan is of opinion that the termination of the Dual

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191 Acquisition of Polish Nationality, Advisory Opinion, P.C.I.J., 1923, Series B, no.10, p.16 et seq.
192 Ibid.
Citizenship Agreement implies the termination of dual citizenship as such. Moreover, the Constitution of Turkmenistan, after being amended in 2003, outlaws dual citizenship.

It should be acknowledged that the position of Russia would find a strong support by international law. Under Article 54 of the Vienna Convention, to which both Russia and Turkmenistan are parties, the “termination of a treaty […] may take place: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States.”194

Russia and Turkmenistan negotiated and consented to voluntarily terminate the Dual Citizenship Agreement in the Protocol on terminating the Agreement. The States agreed that the Agreement is annulled on the day, when the Protocol comes into force. The Vienna Convention provides that a “treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.”195 In the Protocol, which is an international treaty itself, the States agreed on a “manner” and timing it enters into force, specifically “from the date of the last written notification that the Parties have completed all the necessary internal procedures,”196 one of which is the ratification by the Russian Parliament. Without waiting for such an act by Russia, Turkmenistan, obviously, did not comply with the concerted mode of the Protocol’s putting into effect. Nor did it observe such universally recognized principles of international law as good faith and the pacta sunt servanda.

As far as the principle of non-retroactivity is concerned, international law does not favor Turkmenistan’s position, too, suggesting that the status of dual citizens may not be changed anyway: whether the Dual Citizenship Agreement is considered to be terminated or still in force. Spelling out the principle itself in Article 24, the said Vienna Convention stipulates consequences of the termination of an international treaty as follows,

“Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

[…]

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.”197

Having concluded the Dual Citizenship Agreement and, thus, allowed having dual citizenship for their citizens, Russia and Turkmenistan created “a legal situation” in the Article 24’s terminology. This “legal

194 Ibid.
195 Ibid., Article 24(1).
196 Protocol on Terminating the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship, supra note 141.
197 Vienna Convention of the Law of Treaties, Article 70(1).
situation” existed for about ten years and gradually brought about a bulk of rights and obligations in accordance with the provisions enshrined in the Agreement, which could have been rescinded only if the parties involved had agreed to such a rescission. The latter is definitely not true: it is agreed in the Protocol that “[f]rom the day this Protocol takes effect, the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship, dated 23 December 1993, will be annulled.”198 The Protocol says nothing about the annulment of the institute of Russian-Turkmen dual citizenship, nor does it make dual citizenship holders to renounce either citizenship.

As for the attempts of Niyazov’s regime to hide behind newly concocted constitutional provisions outlawing dual citizenship and use the Constitution of Turkmenistan as safe heavens and justification for failing to comply with their own international obligations, they would be extremely easy targets in any international judicial forum. It is a well-established principle of public international law that a state cannot invoke its internal legislation as a justification for a non-compliance with its obligations under international law. For example, when considering Poland’s argument that the question of treatment of Polish nationals was to be decided, inter alia, on the basis of the Constitution of the Free City of Danzig where the alleged violations took place, the Permanent Court of International Justice in its Advisory Opinion concerning the Polish Nationals in Danzig case held that

“… according to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter’s Constitution, but only on international law and international obligations duly accepted.”199

Even more, not only are states prevented from invoking their national constitutions or other legislation in international realm,200 the enactment of a legislative act contrary to international obligations could be regarded as another separate violation. According to Ian Brownlie, “there is a general duty to bring national law into conformity with obligations under international law; and in this connection the opinion has been expressed that where a state adopts legislation on its face contrary to its obligations the legislation may itself constitute the breach of an obligation.”201

The above stated demonstrates that Turkmenistan’s position (more correctly, that of its President) in regard to the dispute over dual citizenship with Russia is very vulnerable and can hardly be defended on the basis of applicable rules of international law. Acting the way he had actually acted

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198 Protocol on Terminating the Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship, supra note 141.
200 See Article 27 (“Internal law and observance of treaties”) of the 1969 Vienna Convention, which reads, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”
with regard to the revocation of Russian-Turkmen dual citizenship, Niyazov was simply trying to apply at an international level the kind of lawlessness, arbitrariness, and savagery he was accustomed to behave within Turkmenistan.

Though it is quite obvious that Turkmenistan is very likely to lose the case in an international legal proceeding, Russia’s capability to bring it to a court or arbitration tribunal is going to be highly constrained due to, inter alia, a “no arbitration” clause in Article 7 of the Dual Citizenship Agreement, under which the disputes between the Parties “over interpretation and application of the Agreement shall be settled through diplomatic channels,” virtually leaving no room for any judicial or quasi-judicial means of dispute settlement. Neither can Russia effectively exercise diplomatic protection against Turkmenistan if affected individuals would seek her protection.

3. The Russian-Turkmen Institutionalized Dual Citizenship and Diplomatic Protection

According to the classical doctrine of diplomatic protection, a state may espouse the claims of its citizens who have been injured by acts contrary to international law by another state, provided that local remedies have been exhausted without satisfaction. This rule was repeated on many occasions, including the ICJ’s judgements. In the Barcelona Traction case the Court observed that

“within the limits prescribed by international law the State must be viewed as the sole judge to decide whether its protection will be granted, to what extent it is granted, and when it will cease… Since the claim of the State is not identical with that of the individual or corporate person whose claim is espoused, the State enjoys complete freedom of action.”

202 Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship (translated by the author hereof).

203 Though the prospects for judicial dispute settlement are very obscure, this does not necessarily mean that an adjudication or arbitration is impossible whatsoever. Turkmenistan has violated its obligations under the Dual Citizenship Agreement and the Protocol on its termination and, by doing so, injured its Russian counterpart. Under the rules on states responsibility, a breach of an international obligation of the state constitutes an internationally wrongful act which entails the international responsibility of that state. This responsibility remains unless and until the injured state waives its claim for reparation (See Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.IV.E.1). Until Russia validly waives her claim (this has not been done yet), the “window of opportunity” for adjudicating the dispute under consideration will remain open.

204 See Donner, p.19.

The Court did not specify in its judgement the “limits prescribed by international law,” which are meant to restrict the state’s discretion as to whether to extend its protection or not. But there are such limits indeed. If a point of controversy arises directly between two states each of which considers a person concerned to be its citizen (like in the presently discussed case), a rule of international law encapsulated in often-quoted Article 4 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws should apply: “A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.”

The Hague Convention’s Article 4, if applied, would prevent Russia from claiming to have the right to exercise diplomatic protection in favor of Russian-Turkmen dual citizens against Turkmenistan. One would rejoin pointing to Article 6 of the Dual Citizenship Agreement, which endows persons holding citizenship of both Russia and Turkmenistan with the right “to enjoy the protection and patronage by each of the Parties” to the Agreement. Some experts even find this provision “unusual by international standards, where dual citizenship implies the precedence of norms of whichever state the individual finds him/herself; here lies the heart of other states’ objections to the concept.”

But this provision should not be read in isolation but together with the second sentence of the Article: “Protection and patronage of these persons in a third state shall be extended by the Party in which territory they permanently reside or, at their request, by the other Party which citizenship they also hold.” This means that Article 6 does not cover all possible instances, but rather entitles both states to afford diplomatic protection to dual citizens against third states. The Agreement is completely silent about whether Russia and Turkmenistan may exercise diplomatic protection against each other.

Under the general rules of interpretation of international treaties, in the absence of any specific provision in a treaty on a point of concern the applicable law is international law, as provided in paragraph 3(c) of Article 31 of the Vienna Convention of the Law of Treaties. Article 4 of the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which excludes diplomatic protection in the case of dual citizenship where the individuals concerned possess citizenship of both protecting and responding states, has been already mentioned herein. But this rule being codified in 1930 seems to become quite antiquated in the course of time; and many significant developments have occurred since then in the concept of diplomatic protection.

For a further legal authority for the subject matter can be consulted a caselaw of numerous claims and arbitral tribunals deciding claims of dual citizens. Of the precedents it is worth pointing, first, to the Mergé case

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206 Convention on Certain Questions Relating to the Conflict of Nationality Laws.
207 Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship (translated by the author hereof).
208 Hurlburt, p.77.
209 Agreement between Turkmenistan and the Russian Federation on Regulating the Issues of Dual Citizenship (translated by the author hereof).
decided by the Italian-United States Conciliation Commission on 10 June 1955.210 Mrs. F.S. Mergé submitted her claim as a citizen of the US by birth seeking compensation from Italy for the loss of property in that country in the wartime. The Italian Government contended that the claim ought to be dismissed on the grounds that Mrs. Mergé was also an Italian citizen by marriage and, in order to prop up its contention, referred to Article 4 of the 1930 Hague Convention. In its analysis, the Commission admitted that Article 4 applied, as Mrs. Mergé was in fact a citizen of both the claimant and defendant states in the case. However, the Commission took into account another principle of international law relevant to the case, namely the principle of effective or dominant nationality, which would be in favor of the claimant. The Commission treated the two principles as equally persuasive and came to an important dictum that in cases where the claiming state was that of dominant or effective nationality the principle of dominant or effective nationality should take precedence over the principle of no diplomatic protection to a dual citizen against a state of his another citizenship.211 The claim was eventually dismissed. However, it should be noted that the Commission did so on the grounds that the claimant “can in no way be considered to be dominantly a United States national,“212 but not on the basis of the Hague Convention’s Article 4.

The most recent major claims commission is the Iran-United States Claims Tribunal established in 1981 by an agreement between Iran and the US in the aftermath of the Islamic Revolution in Iran to settle claims of US citizens against Iran and Iranian citizens against the US. Having started its work, the Tribunal was compelled to decide on the eligibility as claimants of persons simultaneously possessing Iranian citizenship in accordance with Iranian law and US citizenship in accordance with US law. As the Tribunal’s statutory document said nothing about its mandate in case of dual citizenship, the Tribunal had to turn to the general principles of international law as applicable law. In the Esphahanian case,213 having studied the body of international law on the subject, including the Nottebohm and Mergé cases, the arbitrators found that the applicable rule is that of dominant and effective nationality. In the end, the Tribunal arrived at the conclusion that it has jurisdiction over claims of Iranian-US dual citizens, when the dominant nationality is that of the claimant and not of the respondent state. It also added that in cases of diplomatic or consular protection of dual citizens physically present in a state which considers them as its own citizens against that state the “formal protection will be denied.”214 On other occasions the Tribunal reiterated and confirmed the right of an individual to bring claims against the state whose nationality he also possesses, contrary to the provisions of the Hague Convention’s Article 4, but on the condition of

211 Ibid., p.455.
212 Ibid., p.456.
214 Ibid., p.165.
fulfilling the requirements of the rules of dominant and effective
nationality.\footnote{See, e.g., the \textit{Golpira} case (Golpira vs. The Government of the Islamic Republic of Iran), Award No.32-211-2, 2 Iran-U.S.C.T.R., p.171.}

If the rule of the Hague Convention’s Article 4 as modified by the subsequent arbitration practice had been applied to the Russian-Turkmen dispute, this would not seriously challenge the position of Turkmenistan. The persons concerned are those Russian-Turkmen dual citizens who live in Turkmenistan and, as a result, their dominant and effective nationality linked to the place or permanent residence\footnote{See Articles 5 and 6 of the \textit{Dual Citizenship Agreement}.} is that of Turkmenistan. Being guided by international law at its present stage of development, a hypothetical Russian-Turkmen arbitration tribunal would definitely deny Russia’s right for diplomatic protection and dismiss claims of permanent residents of Turkmenistan holding dual citizenship, unless it sets a precedent.
Conclusion

The status of the Dual Citizenship Agreement and Protocol to revoke Russian-Turkmen dual citizenship remains unclear. While both Putin and Niyazov agreed to the revocation, their subsequent understandings of the terms and scope of these two documents have differed significantly. Russia insists that it will continue to recognize the Dual Citizenship Agreement until the State Duma ratifies the Protocol. Even then, it will not enforce it retroactively. The Turkmen authorities, much to the dismay of their Russian partners, ratified the Protocol only two weeks after signing the Protocol and unilaterally selected a date for beginning to enforce their new citizenship policy. Upon the pressure from the Russian government, this policy was left inactive but not cancelled whatsoever.

In the past, international law has favored reducing cases of multiple citizenships where possible. In today’s world, however, the global community is moving towards increased recognition of the many affiliations, ties, and loyalties that people enjoy. In its turn, the Turkmen government seems to be moving in the opposite direction, creating a society in which diversity and pluralism are met with retribution. The termination of the Agreement is the regime’s overt effort to shield itself from criticism and pressure, this time by neutralizing potential political opponents. To rid Turkmenistan of a handful of opposition activists unfortunately holding dual citizenship, the regime was willing to compromise the well-being of many innocent people.

Many scholars view dual citizenship as an indication of the maturity and democratic nature of states allowing it. Thomas Frank is of opinion that “[t]he response of a legal system to a citizen’s claim to ‘dual nationality’ is an excellent indicator of that society’s tolerance not merely for multiple loyalty but for the right of individuals to choose their affiliations.”217 Similarly, by institutionalizing dual citizenship in their bilateral relations the states demonstrate their trust and confidence in both one another and their citizens.

In 1994, deliberating on the newly established institute of dual citizenship between Russia and Turkmenistan and dual citizenship holders, Jakhan Pollyieva who has been already quoted herein enthusiastically said, “Being the subjects of both states, these persons, as no one else, are interested in preserving peace and good-neighbor relations. They are ‘living guarantee’ of friendship between Turkmenistan and Russia… With their help, it is possible to preserve all of the best that has happened in the history of two peoples, including, first of all, the potential of mutual understanding which has been attained for many years…”218 It is very sad to note that just a decade later both Russia and Turkmenistan appeared to be unable to live up to high expectation for the institute of dual citizenship and their own promises and obligations enshrined in the Dual Citizenship Agreement.

217 Frank, supra note 4, p.378.
218 “Jakhan Pollyieva: chasnyi vzgliad na obschie problemy” (Jakhan Pollyieva: Personal View on General Problems), p.3 (translated by the author hereof).
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