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Citizenship in Return for Allegiance

A Study on the Facilitated Naturalization of Undocumented Stateless Persons in Sweden

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Contents

Abstract

Following the UNHCR:s launch of the *#IBelong Campaign to End Statelessness by 2024* in November 2014, a *Global Action Plan to End Statelessness: 2014 – 2024* was adopted urging states to undertake ten actions to end statelessness, including to facilitate the naturalization of stateless migrants. While the facilitated naturalization of stateless persons would certainly reduce the occurrence of statelessness and its consequences, states remain reluctant to lower the standards of naturalization for stateless persons for various reasons.

This thesis is concerned with the problem that a considerable number of undocumented stateless persons who apply for Swedish citizenship by naturalization after four years of lawful residence in the country have their applications rejected on the ground that they have failed to meet the identity requirement laid down in the Swedish Citizenship Act. The requirement, which asks the applicant to prove her identity by submitting a passport or other recognised national identity document, applies even in cases where the applicant has never possessed a passport or identity card nor been able to obtain one in the country of origin. Instead, the Citizenship Act provides that those who lack acceptable documentation may be exempted from the strict identity requirement at the earliest after eight years of residence, provided that the Swedish Migration Agency determines that they have made their identities credible. As a consequence, it may take eight years or more before an undocumented stateless person is able to acquire Swedish citizenship.

With this problem is mind, the purpose of this thesis is to evaluate whether the identity requirement in the Swedish Citizenship Act can be amended to facilitate the naturalization of undocumented stateless persons in light of Sweden's international obligations on nationality, statelessness and naturalization. This further comprises a comparative study of the function of naturalization as expressed by the requirements for naturalization and the preconditions for revocation of citizenship by denaturalization in Sweden and the United States of America.

In conducting the comparative study, it is assumed that the naturalization of undocumented stateless persons could be facilitated if the function of naturalization in the Citizenship Act was reconceptualised as a contract of allegiance between the state and the naturalized citizen. By applying a contractual approach to naturalization, the response to a failure of the naturalized citizen to be loyal to the state could be to revoke the person's citizenship. By allowing for denaturalization in cases where a naturalized citizen has been granted citizenship on the basis of a false identity, Sweden could be willing to take the risk of offering citizenship to those persons who need it the most but who are unable to meet the strict identity requirement after four years of residence. On the basis of the comparison with the function of naturalization as expressed in the law of the United States, I conclude by giving some suggestions on how the identity requirement could be amended to facilitate the naturalization of undocumented stateless persons.

Preface

I would like to thank my supervisor Professor Emeritus Göran Melander for your time this semester. It has been a pleasure to meet with you and discuss the issue of access to citizenship for undocumented stateless persons. I also wish to express my gratitude to Karol Nowak for giving me some helpful guidance and inspiration during the first months of the thesis project and to Eduardo Gill-Pedro for your invaluable support towards the end. Further, I am indebted to Maria Green and Frank Baber at the Raoul Wallenberg Institute for your helpful comments and for proof reading the chapter on U.S. naturalization law – I wouldn't want to get it all wrong!

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To my family in Sweden and in Kenya – a heartfelt thank you for your support and care throughout the years. I look forward to spending more time with you now that I am 'out on the other side'.

To my dear Raj. Thank you for your patience, love and care. I would not have managed this without you. Living together with a law student is not easy. Living together with a thesis writing law student is worse. Thank you for reminding me to eat, drink and sleep, and for making me laugh and think positively. I promise I will do the dishes again from now on and take you out for dinner.

Jennifer Kyllergård

Lund in May 2018

Abbreviations

CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
HRC	Human Rights Council
ICJ	International Court of Justice
ILC	International Law Commission
MIG	Code for the case law of the Migration Court of Appeal in Sweden
PCIJ	Permanent Court of International Justice
Prop.	Proposition / Government Bill
SMA	Swedish Migration Agency
SOU	Statens offentliga utredningar / Public Inquiries
UDHR	Universal Declaration of Human Rights
UN	Utlänningsnämnden / The Aliens Board
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
U.S.	The United States of America
U.S.C.	United States Code. In full, *The Code of Laws of the United States of America*. It is the official compilation and codification of the general and permanent federal statutes of the United States.
USCIS	United States Citizenship and Immigration Services

Terminology

Stateless person	A stateless person is not recognised as a national by any state under the operation of its law. The stateless person may be recognised as stateless under the 1954 Statelessness Convention.
Undocumented stateless person	An undocumented stateless person lacks the identity documents normally required to prove her or his identity. The undocumented stateless person may struggle to be recognised as stateless under the 1954 Statelessness Convention.
Naturalization	The act of granting of citizenship after application.
Facilitated naturalization	A simplified naturalization procedure whereby certain requirements have been removed or relaxed.

I have resided lawfully in this country for ten years now. I recently turned 25 years old. I have a job and pay taxes. I speak fluent Swedish, but I am not a Swedish citizen. Nor am I a citizen of any other country. I am stateless. I have never been able to leave Sweden, not even for a short holiday, because no other country would grant me an entry visa. This despite holding an alien's passport from the Swedish immigration authorities. I was recently invited to attend a conference in Germany, but I had to decline my seat because I did not have a passport. I really hope that I can acquire Swedish citizenship soon. It would make me feel safer and freer. It would change my life.

– 'K', an undocumented stateless person living in Sweden

1 Introduction

1.1 Background

> 'International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings. In practice, however, those who enjoy the right to a nationality have greater access to the enjoyment of various other human rights.'[1]

The plight of the world's stateless persons has received renewed attention following the launch of the UNHCR:s *#IBelong Campaign to End Statelessness by 2024*, in November 2014. To achieve the objective of the campaign, the UNHCR adopted the *Global Action Plan to End Statelessness: 2014 – 2024*, in consultation with governments, international organisations and civil society. Acting as a guiding framework, the *Global Action Plan* lists ten actions that states are urged to undertake to 'resolve existing major situations of statelessness and prevent new cases from emerging'[2]. Action number 6 calls upon states to grant protection to stateless migrants and to facilitate their naturalization.

With the UNHCR campaign in mind, it is promising to observe that Sweden made a number of amendments to the Swedish Citizenship Act[3] in 2014 to facilitate for stateless children to acquire Swedish citizenship.[4] These positive developments notwithstanding, the number of stateless persons in Sweden remains considerably large. Next to the approximately 23 000 persons with residence permits who were registered as stateless at the end of 2017[5], around 4-5 percent of the approximately 217 000 asylum applications that Sweden received between 1 January 2015 and 31 December 2017 were lodged by stateless persons.[6] In addition, there were approximately 11 000

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[1] UN Human Rights Council (HRC), Report of the Secretary-General, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless*, 16 December 2015, A/HRC/31/29, para. 27.

[2] UNHCR, fact sheet on statelessness and the *#IBelong Campaign to End Statelessness by 2024*, available at http://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf. Accessed 20 March 2018 at 10:30.

[3] Lag (2001:82) om svenskt medborgarskap; in English the (2001:82) Act on Swedish Citizenship.

[4] See Lag (2014:481) om ändring av lagen (2001:82) om svenskt medborgarskap; in English the (2014:481) Act on Amendments to the (2001:82) Act on Swedish Citizenship.

[5] Statistics Sweden (Statistiska centralbyrån), data from the Swedish Population Register, available at http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__BE__BE0101__BE0101F/UtlmedbR/table/tableViewLayout1/?rxid=6002f150-c8a4-4587-989d-947b18c7c6e5#. Accessed 15 May 2018 at 11:00. For a comprehensive report on the current situation of stateless persons in Sweden, see UNHCR, Report *Mapping Statelessness in Sweden*, UNHCR Regional Representation for Northern Europe Stockholm, second edition, December 2016.

[6] Swedish Migration Agency (Migrationsverket), data available at https://www.migrationsverket.se/download/18.4a5a58d51602d141cf41003/1515076326490

residents with unknown nationality registered at the end of 2017[7] and approximately 2 000 asylum applications lodged by persons of unknown nationality between 1 January 2015 and 31 December 2017.[8]

One of the main practical consequences of being stateless in Sweden is the difficulty to travel across international borders. Although it is possible for stateless persons to apply for and obtain an alien's passport from the Swedish Migration Agency, the travel document tends to be of little practical use since other states are often reluctant to grant stateless persons visas to visit their countries.[9] Therefore, acquiring Swedish citizenship by naturalization and obtaining a Swedish passport is a practical and sustainable solution to their limited freedom of movement.

Although stateless persons can apply for Swedish citizenship after four years of residence in the country, a considerable number of them are denied naturalization on the ground that they have not proven their identities in accordance with the strict identity requirement in the Swedish Citizenship Act. The requirement, which requires every applicant to prove his or her identity with a passport or national identity card, applies even in cases where the applicant has never possessed a passport or national identity card nor been able to obtain one in the country of origin. Instead, the Citizenship Act provides that those who lack acceptable identity documents may be exempted from the strict identity requirement at the earliest after eight years of residence if the Swedish Migration Agency determines that they have made their identities credible. As a consequence, it may take eight years or longer before an undocumented stateless person is able to acquire Swedish citizenship.

The difficulties faced by many stateless persons when trying to prove who they are is further reflected in the Swedish Migration Agency's statistics from the past five years, with an average of 26 % of stateless persons having their citizenship applications turned down on the ground of failing to prove their identities, as compared to 20 % for applicants in general.[10]

With regards to the considerable number of undocumented stateless persons who are denied citizenship after four years of residence in Sweden and the practical limitations to the freedom of movement that many of them face as a consequence of the lack of nationality, this thesis is devoted to addressing the issue of access to citizenship for undocumented stateless persons living in Sweden.

/Asyls%C3%B6kande%20till%20Sverige%202000-2017.pdf. See data under the title 'Statslös' for stateless persons. Accessed 15 May 2018 at 11:10.

[7] Statistics Sweden, see data available at http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__BE__BE0101__BE0101F/UtlmedbR/table/tableViewLayout1/?rxid=6002f150-c8a4-4587-989d-947b18c7c6e5. Accessed 15 May at 11:15.

[8] Swedish Migration Agency, see data available at https://www.migrationsverket.se/download/18.4a5a58d51602d141cf41003/1515076326490/Asyls%C3%B6kande%20till%20Sverige%202000-2017.pdf. See data under the title 'Okänt' for persons with unknown nationality. Accessed 15 May at 12:10.

[9] Sveriges Radio, 'Lång väntan på medborgarskap för många statslösa', 16 October 2016 at 16:10, available at http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6541083. Accessed 20 February at 10:40.

[10] Swedish Migration Agency, see data in the Appendix, p. 69, under Swedish Migration Agency, Settled Citizenship Cases 2013-01-01 – 2018-04-25.

1.2 Purpose and Research Questions

The purpose of this thesis is to evaluate whether the identity requirement in the Swedish Citizenship Act can be amended to facilitate the naturalization of undocumented stateless persons in light of Sweden's international obligations on nationality, statelessness and naturalization. This further comprises a comparative study of the function of naturalization as expressed in the requirements for naturalization and the preconditions for denaturalization in Sweden and the United States of America (hereinafter the United States).

The study in the comparative part is based on three assumptions. Firstly, it is assumed that a state will be more willing to take the risk of offering citizenship to undocumented stateless persons if the state simultaneously retains the possibility of revoking decisions to grant naturalization when citizenship has been obtained on the basis of false identity information. The act of submitting false information is also called misrepresentation.

Secondly, it is assumed that the legal position of a state on the requirements for the granting of citizenship by naturalization and the revocation of citizenship on the ground of misrepresentation can be understood by identifying what the function of naturalization is. By 'function' is meant what purpose a state has in organizing the procedure of naturalization in a certain way, for instance to control the manner in which new members are admitted into the community.[11]

If the granting of citizenship by naturalization requires that the state and the individual enter into a relationship in the form of a contract, the function of naturalization can be identified as a contract of allegiance. By 'contract of allegiance' is meant a mutual contract between the state and the individual whereby the protection provided by the state to the individual is conditional on the individual showing true allegiance to the state. If the individual fails to be loyal to the state, for instance by not speaking truthfully about her identity at the stage of naturalization, the contractual relationship between the state and the individual citizen ceases to exist.[12]

Applying this to the Swedish context, it is thirdly assumed that the function of naturalization in the Swedish Citizenship Act is not one of contractual allegiance because a naturalized Swedish citizen cannot be held accountable for a failure to fulfil her end of the contract by having her citizenship revoked on the ground of misrepresentation.

The distinction between the function of naturalization as a contract of allegiance and the function of naturalization in Swedish law can be illustrated in the following way:

Contract of allegiance	State ←→ Citizen
Sweden	State → Citizen

[11] Orgad, L., 'Naturalization' (Ch. 16). In: Shachar, A., Bauböck, R., Bloemraad, I., and Vink, M. (eds.), *The Oxford Handbook of Citizenship*, OUP, Oxford, 2017, p. 339.
[12] Ibid., p. 340.

The three assumptions applied to the comparative part of the study can be boiled down to the following:

> By viewing the function of naturalization as a 'contract of allegiance', the identity requirement in the Swedish Citizenship Act could be amended to facilitate the naturalization of undocumented stateless persons because Sweden would be willing to take the risk of offering citizenship in return for retaining the possibility of revoking citizenship acquired on the basis of false identity information.

The reason why the United States is employed as a comparison to Sweden is that the two states represent two opposing 'groups' of legal tradition in respect of naturalization and denaturalization policy. Sweden represents the view of states whose laws do not provide for any involuntary deprivation of citizenship, while the United States represents the view of states whose laws allow for citizenship to be revoked by denaturalization on certain grounds, such as in cases of misrepresentation where citizenship has been acquired on the basis of an incorrect identity. It must however be emphasised that the United States' approach to naturalization does not necessarily mean that it is any easier for undocumented stateless persons to acquire citizenship in the United States.

For the purpose of the thesis, the main research questions (in bold) and sub-questions are:

Is Sweden obliged under international law to facilitate the naturalization of undocumented stateless persons?

- What are the international law standards for nationality, statelessness and naturalization?
- What are the international obligations of Sweden on the conferral of Swedish citizenship by naturalization to stateless persons?

What is the function of naturalization expressed in the Swedish Citizenship Act?

- What does Swedish citizenship mean?
- What are the requirements for the acquisition of citizenship by naturalization in the Swedish Citizenship Act?
- What does the identity requirement mean?
- How is the identity requirement applied to:
  - Persons recognised as stateless under the 1954 Statelessness Convention?
  - Undocumented stateless persons?
- What is the prevailing legislative position in Sweden on the identity requirement?
- What are the preconditions for loss of citizenship in the Swedish Citizenship Act?
- What is the prevailing legislative position in Sweden on the revocation of Swedish citizenship by denaturalization?

How can the function of naturalization in the Swedish Citizenship Act be changed to facilitate the naturalization of undocumented stateless persons?

- What is the function of naturalization expressed by the naturalization requirements and preconditions for denaturalization in the citizenship legislation of the United States?

1.3 Methodology

This thesis comprises a *de lege lata* (= the law as it exists) study of international law, international human rights law and citizenship law in view of the purpose to investigate whether the identity requirement in the Swedish Citizenship Act can be amended to facilitate the naturalization of undocumented stateless persons *de lege ferenda* (= what the law should be).

A combination of legal dogmatic/legal analytical methodology and comparative methodology is employed to achieve the purpose of the thesis. The legal dogmatic method is not easily defined[13] but it is often described as a legal research method aimed at solving problems of law by establishing the content of positive law. The contents of positive law emanate from the recognised sources of law, including international[14] and domestic rules, principles, legal doctrine, case law and leading legal scholarship.[15]

Applying the legal dogmatic method to the Swedish context, the traditional Swedish legal dogmatic method takes its point of departure in the legal sources that are ranked in accordance with the doctrine on the hierarchy of sources of Swedish law[16]:

1. The Swedish Constitution
2. Legislation
3. Legislative preparatory works[17]
4. Case law

[13] Sandgren, C., 'Är rättsdogmatiken dogmatisk?' In: *Tidskrift for Rettsvitenskap 2004-2005*, pp. 648-656 (649-50). Sandgren argues that the precise meaning of legal dogmatism is difficult to establish as it can be decided by several different factors, including 1. Its method and materials (legal dogmatism is decided by the recognised sources of law which are used in accordance with the doctrine on the hierarchy of legal sources), 2. Its purpose (to establish positive law), 3. Its function (legal dogmatism determines what is an acceptable legal argument), 4. Its internal perspective (legal dogmatism works from within the framework of positive law), 5. Its use (to interpret and systemise the law), 6. The character of the legal rules (being perceived as authoritative rules), or 7. Its presuppositions (legal dogmatism presupposes for example material legal guarantees).

[14] Public international law further comprises written sources such as reports, documents, explanations, protocols and papers, as well as unwritten sources.

[15] Vranken, J., 'Exciting Times for Legal Scholarship'. In: *Law and Method*, February 2012, pp. 42-62 (43).

[16] Kleineman, J., 'Rättsdogmatisk metod' (Ch. 2). In: Korling, F. and Zamboni, M. (eds.), *Juridisk metodlära*, Studentlitteratur AB, Lund, 2013, pp. 21-45 (21).

[17] Legislative preparatory works are ascribed high value as a legal source for the interpretation of the law in Sweden; See further Munck, J., 'Rättskällor förr och nu'. In: *Juridisk Publikation*, *Jubileumsnummer 2014*, pp. 199-208 (201-204).

5. General principles of law
6. Custom and practice
7. Legal scholarship[18]

Just like legal practitioners use the legal dogmatic method to identify the applicable law, legal scholars often refer to the method to explain the structure of their research. The widespread use of the legal dogmatic method is however criticised by some Swedish scholars because of the ambiguity of the method[19] coupled with the failure of many scholars to explain what they mean by applying it. In fact, it has been proposed that the method should be defined as a 'legal analytical method' instead of 'legal dogmatic method' as the use of the term 'dogmatic' suggests a rigid application of legal sources, when in reality the purpose of most legal research is not to establish the law but rather to systemise legal materials, to develop legal concepts, to analyse arguments and possible solutions, to formulate doctrine and principles and to critically examine the contents of positive law.[20]

Other Swedish scholars defend the legal dogmatic method, arguing that the connection between dogmatic method and dogmatic doctrine is linguistically unfortunate and that the legal dogmatic method does not at all have to be dogmatic in nature.[21] Instead, the point of legal dogmatic analysis is to analyse the various elements in the doctrine on the hierarchy of legal sources with a view to determining how a legal rule may be applied to solve a particular legal issue.[22]

The different views of scholars notwithstanding, the legal dogmatic or legal analytical method is applied in this thesis through the examination of the international law standards on the facilitated naturalization of stateless persons in order to identify whether Sweden has an international legal obligation to facilitate the naturalization of undocumented stateless persons.

Next to the legal dogmatic method, comparative methodology is employed in the thesis. The comparative method is 'the study of, and research in, law by the systematic comparison of two or more legal systems; or parts, branches or aspects of two or more legal systems'.[23] In essence, a comparison is about attempting to understand similarities and differences between legal systems for the purpose of acquiring deepened knowledge, identifying practical legislative solutions, harmonising and communicating across the boundaries of different legal systems.[24]

When it comes to the application of the comparative method, it is in fact more correct to speak of several comparative methods because comparisons between legal systems do not follow a particular methodological

[18] 'Juridisk doktrin' in Swedish.
[19] See footnote 13.
[20] Sandgren, p. 648 et seq.; Agell, A., 'Rationalitet och värderingar i rättsvetenskapen'. In: *Svensk Juristtidning* (SvJT), 2002, p. 243 et seq.
[21] Kleineman, p. 26.
[22] Ibid., p. 26; See also Jareborg, N., 'Rättsdogmatik som vetenskap'. In: *SvJT*, 2004, pp. 1-10.
[23] Kamba, W. J., 'Comparative Law: A Theoretical Framework'. In: *The International and Comparative Law Quarterly*, 1974, p. 486.
[24] Valguarnera, F., 'Den komparativa metoden' (Ch. 6). In: Korling, F. and Zamboni, M. (eds.), *Juridisk metodlära*, Studentlitteratur AB, Lund, 2013, pp. 141-73 (141-43).

structure. At least four main comparative methods have been identified, including comparative legal history, comparative legal cultures, legal transplants and the functional method of comparative law.[25]

For the purpose of this thesis, the legal transplant method is employed in the sense that it enables suggestion-making on how the law can be amended by referring to legislative solutions in the legal systems of other countries.[26] By comparing the requirements for naturalization and the preconditions for revocation of citizenship by denaturalization in Sweden and the United States, the function (purpose) of naturalization can be identified with a view to making suggestions on how the Swedish Citizenship Act can be amended to facilitate the naturalization of undocumented stateless persons.

Simultaneously, the legal transplant method may also be applied to define the relationship between law and society. If employed in that sense, it must be observed that there are different scholarly views on the feasibility of legal transplants. One view suggests that a genuine legal transplant is not possible to achieve because it may be incompatible with the cultural, economic, political and ideological considerations that created a particular legal system. The other, opposing view is that the legal system is not a product of such external considerations and that the law in fact is completely separated from culture, economics and politics in general.[27]

With these alternative views on the legal transplant method in mind, it must be stressed that the point of making a comparison with the function of naturalization in the United States in this thesis shall not be understood to imply that the Swedish legislator *should* adjust the Citizenship Act to U.S. standards nor that such a legislative solution *would* facilitate the naturalization of undocumented stateless persons. Rather, the point is to conduct a solutions-orientated, albeit hypothetical, comparative study of the approach to naturalization in a legal system that differs greatly from the Swedish one.

1.4 Materials

In the second chapter, I describe the meaning of statelessness by referring to the definition of 'stateless person' in the 1954 Convention on the Status of Stateless Persons as well as reports and literature on the subject of statelessness. Furthermore, the causes and consequences of statelessness are identified with reference to relevant reports and literature.

The third chapter initially looks at the meaning of nationality and citizenship in international and domestic law and the modes of acquisition and loss of citizenship. In these sections, leading literature in the field of nationality and statelessness, including Doctor Paul Weis' nominal writings on the subject, are used to describe the concepts. This is followed by the main study of international law standards on nationality, statelessness and naturalization. I refer to primary sources of international law and international

[25] Valguarnera, pp. 147-67.
[26] Ibid., pp. 157-58.
[27] Ibid., pp. 158-60.

human rights law, including conventions that lay down the right to a nationality and the international law limitations on the discretion of states in matters pertaining to nationality and statelessness. The relevant international case law is also addressed, both at international and regional level. Lastly, I examine whether Sweden is obliged to facilitate the naturalization of undocumented stateless persons by drawing on existing articulations of the principle of facilitated naturalization, in particular in the Council of Europe's Convention on Nationality, and the Council's recommendations and explanatory report that urge states parties to simplify the naturalization procedure for stateless persons. The study further comprises references to relevant principles of international human rights law as well as Doctor Laura van Waas' analysis of the international standards on naturalization in her doctoral dissertation.

The fourth chapter is devoted to a study of the identity requirement in the Swedish Citizenship Act with a view to identifying the function of naturalization as expressed by the requirements for naturalization and preconditions for loss of citizenship. The study looks at the contents of the Swedish Citizenship Act as well as relevant preparatory works and case law which give guidance on how to interpret the identity requirement within the current framework. I have benefitted greatly from Håkan Sandesjö and Kurt Björk's commentary to the Citizenship Act in identifying the current standards.

Finally, the fifth chapter entails a comparative study of requirements for naturalization and preconditions for denaturalization in the United States for the purpose of addressing the third and last research question, namely how the function of naturalization in the Swedish Citizenship Act can be amended to facilitate the naturalization of stateless persons. Relevant sources of U.S. law are addressed, including the U.S. Constitution, the Immigration and Nationality Act and relevant case law.

1.5 Delimitations

In terms of statelessness, the scope of the study is limited to those who are *de jure* stateless, meaning that they are stateless because they are not recognised as nationals of any state under the operation of its law. The meaning of *de facto* statelessness will however also be explained.

Furthermore, the group of *de jure* stateless persons entails both stateless persons who migrate to Sweden, including but not limited to refugees, and stateless persons who are stateless *in situ*, meaning persons who are born and live in the country without being recognised as its nationals. This being said, it must be stressed however that the problem of statelessness in the Swedish context is mainly faced by persons who have migrated to Sweden at a later point in life than birth, especially considering that the Citizenship Act was amended in 2014 to guarantee the conferral of Swedish citizenship to children born stateless in the country.[28]

[28] See footnote 4.

Apart from the general adress of modes of citizenship acquisition and loss, the study is limited to the granting of citizenship by naturalization after application.

In examining Sweden's international obligations on the conferral of citizenship by naturalization and the facilitated naturalization of undocumented stateless persons, both international and European regional standards will be addressed.

With regards to the purpose of the thesis, the study focuses on the content and application of the identity requirement and not the other requirements for naturalization laid down in the Citizenship Act.

In terms of the comparative study on the function of naturalization, the study is limited to viewing the function of naturalization as a form of contract between the state and the individual which confers mutual rights and obligations on both parties and which ceases to exist if one of the parties fails to uphold the obligations. This means that other possible functions of naturalization, such as testing whether a person deserves to be granted citizenship or the building of a national identity, to mention some, will not be addressed.

Lastly, as was pointed out in the section on methodology, the discussion on whether the naturalization of undocumented stateless persons could in fact be facilitated by changing the function of naturalization is kept at a principled level, meaning that it is hypothetical and not based on empirical observations.

1.6 Current Research

Firstly, Doctor Paul Weis' monograph *Nationality and Statelessness in International Law* (Sijthoff and Noordhoff International Publishers) from 1956 (republished in 1979) must be mentioned as it is considered a standard work on issues of nationality and statelessness under international law.

In regards of more contemporary research, the international normative framework on statelessness was thoroughly examined by Doctor and Assistant Professor Laura van Waas in her doctoral dissertation *Nationality Matters: Statelessness under International Law* (Intersentia) from 2008. Van Waas is founder and Co-Director of the Institute on Statelessness and Inclusion which is affiliated with Tilburg University in the Netherlands and continues to publish widely on nationality and statelessness. In 2014, she co-edited the volume *Nationality and Statelessness under International Law* (Cambridge University Press) together with Doctor Alice Edwards.

The volume *Understanding Statelessness* (Routledge), published by editors Tendayi Bloom, Katherine Tonkiss and Phillip Cole in 2017, brings together contributions from leading critical thinkers on the theoretical, legal and political concept of statelessness.

In the same year, *The Oxford Handbook of Citizenship* (Oxford University Press) was published by editors Ayelet Shachar, Rainer Bauböck, Irene Bloemraad and Maarten Vink. This volume offers a comprehensive guide to the contemporary challenges and prospects of citizenship in a

globalised world with contributions from prominent scholars in political science, law, sociology and philosophy.

When it comes to naturalization, there are plenty of studies comparing naturalization policies between various countries, including studies on states' use of naturalization requirements such as civic and language tests, integration contracts and loyalty oaths to define the boundaries of citizenship. In a contribution on naturalization to *The Oxford Handbook of Citizenship*, Professor Liav Orgad points to the need for further research into the correlation between the requirements for access to citizenship and the conceptions of nationhood, the societal and individual effects of naturalization requirements and the legitimate goals of naturalization.

In the Swedish context, the standard work referred to in the field of citizenship law is Doctor Hedvig Lokrantz Bernitz's doctoral dissertation *Medborgarskapet i Sverige och Europa: Räckvidd och rättigheter* (Iustus Förlag) from 2004 which examines the legal status of nationality and citizenship in Sweden and the European Union.

A brief and accessible overview of the Swedish requirements for naturalization was published by Doctor Patrik Bremdal in 2016 with the title *Rätt till medborgarskap? Om de svenska naturaliseringsreglerna* (Iustus Förlag).

Lastly, for a recent and comprehensive report on the issue of statelessness in Sweden, see the report *Mapping Statelessness in Sweden* that was published by the UNHCR Regional Representation for Northern Europe in 2016.

1.7 Disposition

The first chapter provides an introduction to the thesis topic by identifying the problem, purpose, research questions, methodology, materials, delimitations and current research.

Part I to the thesis includes chapters 2 and 3. In the second chapter, the meaning, causes and consequences of statelessness are described. The third chapter entails an examination of the international law standards on nationality, statelessness and naturalization with a view to addressing the first research question of whether Sweden has an international obligation to facilitate the naturalization of undocumented stateless persons.

Part II to the thesis comprises chapters 4, 5 and 6. The fourth chapter provides for the contents and application of the Swedish Citizenship Act with a focus on the identity requirement in the naturalization procedure. The purpose of the chapter is to answer the second research question, namely what is the function of naturalization expressed in the Citizenship Act. This is followed by a comparative study in the fifth chapter which examines the requirements for naturalization and the preconditions for denaturalization in the United States. Drawing on the comparative study, the sixth chapter concludes on the third research question of how the function of naturalization in the Citizenship Act can be changed to facilitate the naturalization of undocumented stateless persons.

Part I

2 Understanding Statelessness

2.1 The Magnitude of Statelessness

As pointed out by Laura van Waas in her doctoral dissertation on statelessness from 2008, 'the only fact about which there is any certainty is that no one really knows the full extent of the problem [of statelessness]'[29].

One of the main methodological challenges to making more precise estimations of the global number of stateless persons is that the definition of statelessness is ambiguous in terms of whom it applies to.[30] The UNHCR, which is the United Nations agency entrusted with the mandate to protect stateless persons[31], has explained that the question of who is stateless is a 'mixed question of fact and law' requiring a 'careful analysis of how a state applies its nationality laws in an individual's case'[32]. The definition of statelessness is also subject to continuous discussion amongst academics.[33] With no universally accepted interpretation or application of the term 'stateless', states and organisations retain the discretion to apply their own definitions of statelessness, including the procedures for the recognition of statelessness and the requirements for proving it.[34]

Despite the uncertainty surrounding the number of stateless persons, all estimations so far indicate that there are at least a couple of million stateless persons worldwide. According to the official estimation of the UNHCR, there are at least 10 million people[35] in the world, but the agency has stated that 'the true total may be closer to 15 million'[36].

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[29] van Waas, L., *Nationality Matters: Statelessness under International Law*, Intersentia, 2008, p. 9.

[30] For a detailed account of the challenges to the mapping of statelessness, including methodological issues relating to definition and the gathering of data, see the report *The World's Stateless*, Institute of Statelessness and Inclusion, December 2014, Ch. 2, pp. 37-52.

[31] UNGA, Res. 3274 (XXIX), 10 December 1974; A/Res/49/169, 23 December 1994; A/Res/50/152, 21 December 1995.

[32] UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, Geneva, 2014, paras. 23-24.

[33] See 2.2.

[34] van Waas, *Nationality Matters* […], p. 9; States may however be bound by the definition of statelessness provided in the 1954 Statelessness Convention if they are parties to the Convention.

[35] UNHCR, *A Special Report: Ending Statelessness Within 10 Years*, at http://www.unhcr.org/protection/statelessness/546217229/special-report-ending-statelessness-10-years.html p. 20. Accessed 21 March at 11:40; Compare with the 'low end estimate' of approximately 11 million people according to Refugees International in Lynch, M., *Lives on Hold: The Human Cost of Statelessness*, Refugees International, Washington D.C., February 2005, p. 1; The UNHCR made an estimate of 5,8 million stateless persons globally in 2006, but the agency maintained that the number was not adequate in relation to the real number of stateless persons worldwide as it only included populations covered by reliable official statistics, see UNHCR, *2006 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*, June 2007, p. 5, 14 and Annex Table 14 on Stateless Persons.

[36] UNHCR, 'The World's Stateless People'. In: *Refugees*, No. 147, Issue 3, 2007, p. 8.

2.2 The Meaning of Statelessness

According to the United Nations' *A Study of Statelessness*[37] from 1949, *de jure* stateless persons are persons who are not nationals of any state, either because they at birth or subsequently were not given a nationality, or because they during their lifetime lost their own nationality and did not acquire a new one.[38]

The term *de jure* stateless person was subsequently laid down in the Convention relating to the Status of Stateless Persons which was adopted in 1954. Article 1 paragraph 1 provides that a stateless person is 'a person who is not considered as a national by any State under the operation of its law'[39]. The International Law Commission (ILC) considers that the definition of 'stateless person' has acquired customary status.[40]

In addition to those recognised as *de jure* stateless, there are persons who may technically be citizens of a state but are unable to enjoy the benefits of their citizenship due to a lack of proof of citizenship or due to the inability or unwillingness of the state to protect them. These persons may lack an effective nationality[41] and be described as *de facto* stateless. The legal concept of *de facto stateless* is however 'broad and imprecise' and there is no legally binding definition of it in international law.[42]

The *UN Study of Statelessness* was first to formulate a definition of *de facto* stateless persons as those persons who, having left the country of which they are nationals, no longer enjoy the protection and assistance of their national authorities, either because the authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.[43] By protection is meant diplomatic and consular protection and assistance provided by the state of nationality in relation to the host state.[44]

The meaning of *de facto* statelessness was discussed more recently at an expert meeting on the concept of stateless persons under international law held in Prato, Italy in 2010. While some participants were of the opinion that a person's nationality could be ineffective both inside and outside of his or her country of nationality, the majority of participants argued that *de facto*

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[37] *A Study of Statelessness*, Department of Social Affairs to the Secretariat of the Secretary-General, United Nations Publications, New York, No. XIV, 2, 1949.
[38] Ibid., p. 8.
[39] Convention relating to the Status of Stateless Persons, adopted by the United Nations General Assembly on 28 September 1954, entered into force 6 June 1960, art. 1: '1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.'
[40] International Law Commission (ILC), *Draft Articles on Diplomatic Protection with commentaries*, 2006, p. 49.
[41] A recommendation that *de facto* stateless persons should as far as possible be treated like *de jure* stateless persons to facilitate their acquisition of an *effective nationality* (my emphasis) was added to the Final Act of the 1961 Convention on the Reduction of Statelessness. However, only 71 states have ratified or acceded to the Convention so far.
[42] Opeskin, B. and Shearer, I., 'Nationality and Statelessness'. In: *Foundations of International Migration Law*, Opeskin, B., Perruchoud, R., and Redpath-Cross, J. (eds.), CUP, Cambridge, 2012, pp. 8-9.
[43] *A Study of Statelessness*, p. 9.
[44] Ibid., p. 32.

statelessness is defined on the basis of the right of the state to protect its nationals abroad, which is one of the primary functions of nationality in international law. Based on this position, the expert meeting concluded that 'De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection [here] refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.'[45]

Irrespective of the precise scope of *de facto* statelessness, it remains a fact that there until now exists no internationally binding treaty on the protection of *de facto* stateless persons. States are therefore not obliged under international law to recognise *de facto* stateless persons nor afford them any special protection.

It shall also be pointed out that some scholars have questioned the use of the terms *de jure* and *de facto* stateless persons altogether. Weis has argued that it would be more appropriate to use the term '*de facto* unprotected persons' to describe refugees and '*de jure* unprotected persons' to describe stateless persons.[46] Laura van Waas has claimed that the conceptualisation of statelessness into the classes of *de jure* and *de facto* statelessness is a false dichotomy because in reality, those who cannot access their human rights cannot successfully claim protection at all.[47]

2.3 The Causes of Statelessness

The reason why statelessness may occur in the first place is that states are relatively free to determine their domestic laws for the acquisition and revocation of citizenship as long as they are within the limits of international law and international human rights law. This state of affairs corresponds with the universally recognised principle that it is within the domestic jurisdiction of each sovereign state to decide whom is to be considered its nationals, a principle which is laid down in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.[48] The occurrence of statelessness as such can therefore not be considered inconsistent with international law. Nevertheless, statelessness remains undesirable considering that nationality is the principal link between the individual and international law and since the rules of international law relating to diplomatic

[45] UNHCR, *Expert Meeting on the Concept of Stateless Persons under International Law, Summary Conclusions*, Prato, Italy, 27-28 May 2010, pp. 5-8. Quote from p. 6.
[46] Weis, P., *Nationality and Statelessness in International Law*, Sijthoff and Noordhoff International Publishers, Alpen aan den Rijn, 1979, p. 164. See also ILC, *Report on Nationality, Including Statelessness*, by Manley O. Hudson, Special Rapporteur, A/CN.4/50, 1952, p. 17.
[47] van Waas, *Nationality Matters* […], pp. 19-27.
[48] Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted by the League of Nations on 12 April 1930, art. 1.

protection are based on the view that the status of nationality is essential for securing the protection of the individual's rights at the international level.[49]

Statelessness can be caused by several factors which all have in common that they amount to the denial, deprivation or withdrawal of citizenship. Such policies are mainly the result of state action (or inaction) and their precise content depend on how they are designed and implemented by the individual state.[50] The UNHCR[51] has listed a number of factors that may cause statelessness:

> **Conflict of laws**. State A, in which the individual is born, grants nationality by descent (*jus sanguinis*) and State B in which the parents hold nationality grants nationality by birth in the territory of the state (*jus soli*) resulting in statelessness for the individual.
>
> **Transfer of territory**. Including issues such as state independence, dissolution, succession and restoration.
>
> **Laws relating to marriage**. Laws that prescribe that a woman who marries a foreign national loses her citizenship. If her husband is stateless or if the law in his country of nationality does not provide for her automatic acquisition of citizenship she becomes stateless.
>
> **Administrative practices**. For example, administrative regimes preventing certain groups and individuals from accessing their rights, including the establishment of legal identity through the formal registration of births, marriages and deaths.
>
> **Discrimination**. Arbitrary national laws and policies targeting specific groups, for example on the basis of race, ethnicity, religion or gender. Women may for instance be denied the right to pass on their nationality to their children.
>
> **Laws relating to the registration of births**. When children born of stateless parents are left unregistered at birth and are denied the documents necessary to establish their identities including fundamental details such as name, date and place of birth.

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[49] Weis, P., p. 162; Oppenheim, L. V., *International Law, Volume I: Peace*, Lauterpacht, H. (ed.), eighth edition, 1955.

[50] Blitz, B. K. and Lynch, M., 'Statelessness: The Global Problem, Relevant Literature, and Research Rationale' (Ch. 1). In: *Statelessness and the Benefits of Citizenship: A Comparative Study*, Blitz, B. K. and Lynch, M. (eds.), The Geneva Academy of International Humanitarian Law and Human Rights and the International Observatory on Statelessness, Oxford Brookes University, 2009, p. 8 et seq.

[51] UNHCR, *Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, June 1996 (rev. in January 1999), p. 3; For reports describing the causes of statelessness in more detail, see for example *The World's Stateless*, Institute of Statelessness and Inclusion, December 2014, pp. 23-27; Southwick, K. and Lynch, M., *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, Refugees International, Washington D.C., March 2009, pp. 2-3.

Jus sanguinis. The principle of nationality being based solely on descent, often only of the father, which in some regions results in the inheritance of statelessness.

Denationalization. An administrative decision to revoke the citizenship of an individual or a group of people. Denationalization policies can for example be arbitrary when implemented for the purpose of collectively expelling a group of people on the basis of their ethnicity or religion.

Renunciation. When a person renunciates her citizenship without prior acquisition of another nationality.

Automatic loss by operation of law. Through loss of a genuine and effective link or connection with the state which the individual does not expressly indicate s/he wishes to maintain. May be associated with faulty administrative practices which fail to notify the individual of this obligation.

2.4 The Consequences of Statelessness

From the perspective of the individual, being stateless often involves living a marginalised and insecure life on the edge of society, with no or little hope of resolving one's situation. Their vulnerable position further renders them exposed to discrimination, abuse and persecution[52] by authorities as well as other individuals.[53]

Regardless of whether a person becomes stateless at birth or at a later point in life, the lack of a nationality can have several consequences for the individual, including practical limitations to their enjoyment of basic human rights and freedoms. Statelessness can also have implications for the family, wider society and international community at large as it may cause social and economic tension and political unrest, or worse, internal or international conflicts. Unrest and conflicts inflicted by serious restrictions to or violations of the fundamental rights of stateless can further lead to mass displacement within or outside the country of habitual residence, or arbitrary collective expulsion across international borders. Large groups of displaced or expelled people fleeing across borders can cause strains on the capacity of receiving countries and lead to unstable international relations between states.[54]

Some of the common consequences of statelessness[55] are listed here:

[52] For example the case of the Rohingya of Myanmar.
[53] van Waas, *Nationality Matters* […], p. 12; *The World's Stateless*, Institute of Statelessness and Inclusion, December 2014, pp. 28-31; Southwick and Lynch, *Nationality Rights for All* […], pp. 2-3.
[54] van Waas, pp. 13-14; *The World's Stateless* […], p. 31.
[55] van Waas, pp. 12-15; *The World's Stateless* […], pp. 28-31; Southwick and Lynch, pp. 2-3.

Participating in political decision making. Limited or no access to participation in political decision making, including voting or standing for elections, or performing certain public functions, such as civil servant positions.

Healthcare. Limited or no access to healthcare services, medicines and treatments of injuries or illnesses.

Employment. Limited or no access to regular and gainful employment. Stateless persons can easily become a target of exploitation in the form of forced labour or human trafficking.

Education. Limited or no access to education, limitations to entering and completing schooling.

Housing and land. Limited or no access to buying or inheriting a house or a plot of land.

Investments, business and finances. Limited possibilities to registering a business or a car, opening a bank account or getting a loan.

Social security and retirement. Limited or no access to social security benefits and pensions.

Civic registration. Limited or no access to birth, marriage or death certificates.

Passports, travel documents and other identity documents. No access to obtaining a passport and limited or no access to travel documents and other forms of identity documents, such as identification papers/cards and driving licences. In Sweden, stateless persons who are residents can apply for travel documents if they have been recognised as stateless in accordance with the 1954 Convention Relating to the Status of Stateless Persons, or aliens' passports if they have not been recognised as stateless under the Convention. In practice however, these documents do not guarantee that the stateless person will be able to travel across international borders as states may be reluctant to grant them visas.

Freedom of movement. Limited enjoyment of freedom of movement within the state of residence due to a lack of documentation to prove one's identity. The international freedom of movement is effectively limited by the lack of a passport. Illegal travel is a possible but dangerous option. Stateless persons who have lawful residence in for example Sweden may be able to travel abroad and subsequently be re-admitted, but the policies differ from country to country. The policy for granting visas to stateless persons holding travel documents or aliens' passports is however subject to the discretion of every state.

Arbitrary arrest and detention. Prolonged and sometimes indefinite detention, for example with the objective of expulsion.

Access to justice. Limited or no access to courts for the purpose of asserting one's rights or claiming reparations as a victim of crime or exploitation.

Diplomatic protection. No right to the diplomatic protection of a state in other countries due to the lack of nationality. In Sweden, stateless persons who are permanent residents might be able to receive diplomatic protection from Swedish diplomatic missions abroad, but it is not certain as the state in which the person is present might not recognise the right of Sweden to provide diplomatic protection.

Mental well-being. Statelessness can have an impact on the person's well-being. Stateless may suffer from a diminished sense of self-worth or a confused sense of identity and belonging which can cause anxiety, depression and feelings of hopelessness.

2.5 Summary

In this chapter, I have identified the meaning, causes and consequences of statelessness. In the Swedish context, certain consequences of statelessness are more felt than others, in particular the practical limitations on stateless persons' freedom of movement across international borders and the lack of diplomatic protection.

In the next chapter, I will study the meaning of nationality and citizenship in domestic and international law, the modes of acquisition and loss of citizenship and the international law standards on nationality, statelessness and naturalization with the view to identify whether Sweden has an international obligation to facilitate the naturalization of undocumented stateless persons.

3 Nationality and Statelessness

3.1 The Meaning of Nationality and Citizenship

3.1.1 Linguistic and Conceptual Origins of Nationality

The word *nationality* stems from *nation* (originally from *natio* in Latin, which means birth, family or people). Nationality in the politico-legal sense of the word denotes membership of a state and has different meaning attached to it under domestic law and international law respectively.[56] These will be addressed in the next sections. Nationality in the historico-biological sense signifies membership of a nation or 'nationhood'. Membership is based on the subjective understanding of a common ethnic identity ascribed to a specific group of people, such as descent by family lineage, or origin by ethnic characteristics like a common language, geographical origin, history or culture.[57]

The origins of the concept of nationality as it is understood today can be traced back to the Peace of Westphalia in 1648. The peace treaties brought an end to non-territorial rule and gave rise to the new regime of sovereign states controlling the territories of Europe. While the aim of the treaties was not to impose an order where states each formed their own individual nations with a view to govern their own populations, it did sow the first seeds to what would later on develop into the modern nation state. Following eighteenth-century Enlightenment and under the influence of both liberal and anti-liberal ideals of nationalism, sovereign states strived to make their civilian populations congruent with communities of people sharing a common nationhood – their 'nationals'.[58]

Today, it is hard to come across an example of the ideal nation state – a state in which all inhabitants possess the same nationality and citizenship. Instead, a state's population tends to consist of several groups with different ethnic backgrounds. This notwithstanding, the nation state remains important as it is the entity through which the state operates externally in relation to other states.[59]

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[56] Weis, P., pp. 3-4.

[57] Weis, ibid.; Lokrantz Bernitz, H., *Medborgarskapet i Sverige och Europa: Räckvidd och rättigheter* ('Nationality and Citizenship in Sweden and the European Union'), Iustus Förlag, Uppsala, 2004, p. 42; Sandesjö, H. and Björk, K., *Medborgarskapslagen med kommentarer* ('The Swedish Citizenship Act with Commentaries'), third edition, Norstedts Juridik, Stockholm, 2015, pp. 16-17.

[58] Gans, C., 'Citizenship and Nationhood' (Ch. 6). In: *The Oxford Handbook of Citizenship*, Shachar, Bauböck, Bloemraad and Vink (eds.), OUP, Oxford, 2017, pp. 108-109. See his chapter in full for a description of the development of the idea that a state's civilian population should be coterminous with nationhood.

[59] Lokrantz Bernitz, pp. 42-43; Sandesjö and Björk, pp. 16-18.

3.1.2 Nationality as a Concept of Domestic Law

As explained in the previous section, historical events and developments have amounted to the standard that each sovereign nation state decides who its nationals are. The term nationality is thus defined by the domestic law of each individual state, which means that there are as many definitions of nationality as there are states.[60]

The contents of the rights and duties of nationals are also determined by the law of the state concerned.[61] Being a national of a state usually gives rise to entitlements such as social benefits, goods and services as well as the rights of permanent residence, to participate in public life and to vote, and diplomatic protection of the state when abroad. In addition to these entitlements, nationals have a duty to pay taxes and sometimes a duty to perform military service.[62]

The understanding of nationality as a matter of domestic law is confirmed by the principle laid down in the first sentence of article 1 to the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws[63], which states that 'It is for each State to determine under its own law who are its nationals'. Moreover, article 2 to the Convention provides that 'Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State.' The principle was further affirmed by the International Court of Justice in the Nottebohm case, stating that 'international law leaves it to each State to lay down the rules governing the granting of its own nationality'.[64]

3.1.3 Nationality as a Concept of International Law

In international law, nationality can mean both citizenship and nationhood. Nationality as a synonym to citizenship signifies that a person is a member of a state as determined by domestic law. The relationship between the terms nationality and citizenship will be further addressed in the next section.

Nationality in the sense of nationhood signifies the legal bond between the individual as a national and the state of nationality as seen from

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[60] *Towne v. Eisner*, 245 U.S. 418, 423 (1918) (Justice Holmes).
[61] Weis, p. 29 et seq., 59.
[62] Edwards, A., 'The meaning of nationality in international law in an era of human rights: Procedural and substantive aspects' (Ch. 1). In: *Nationality and Statelessness under International Law*, Edwards, A. and van Waas, L. (eds.), CUP, Cambridge, 2014, pp. 12-13; Shearer, I. and Opeskin, B., 'Nationality and Statelessness'. In: *Foundations of International Migration Law*, Opeskin, B., Perruchoud, R., and Redpath-Cross, J. (eds.), CUP, Cambridge, 2012, p. 93.
[63] Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted by the League of Nations on 12 April 1930, art. 1 first sentence: 'It is for each State to determine under its own law who are its nationals'; art. 2: 'Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State.'
[64] Nottebohm Case, *Liechtenstein v. Guatemala* (second phase), Judgement of 6 April 1955: I.C.J. Reports 1955, p. 23.

an international point of view. This relationship, also referred to as the *status of nationality*[65] or *bond of nationality*[66], confers upon the state of nationality certain rights and duties established under customary international law[67] in relation to other states. The concept of nationality under international law further includes certain common practices on rules for the acquisition of nationality as well as procedural safeguards against arbitrary loss or deprivation of nationality[68], but those aspects will be examined further under 3.2 and 3.3.

By virtue of the bond of nationality, the state of nationality has a duty vis-à-vis other states to readmit its own nationals if they are expelled from another state and to allow them to reside within its territory. As for rights, the state of nationality is entitled to exercise permanent and unconditional protection of its nationals in relation to other states.[69] Therefore, harm inflicted on a national by another state which amounts to a violation of international law gives the state of nationality the right to make a claim for diplomatic protection on behalf of that national. The reason for the status or bond of nationality being based on inter-state relations is that the subjects of international law are precisely states. Individuals in turn are connected to international law indirectly through their status as nationals of a state.[70]

As provided in the second sentence of article 1 to the 1930 Hague Convention, the law enacted by the state for determining its nationals 'shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality'.[71] In the Nottebohm case, the ICJ referred to the Hague Convention[72], as well as to the practice of states, arbitral and judicial decisions and the opinions of writers, to hold that nationality under international law signifies 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties'.[73] This means that

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[65] See Weis, pp. 29 et seq., 59.
[66] See Edwards, p. 13.
[67] Apart from the rights and duties established under customary international law, the state of nationality may also hold other rights and duties in relation to other states under international treaty law in form of bilateral, regional and international agreements.
[68] Edwards, p. 13.
[69] Weis, pp. 3 et seq., 29 et seq., 59 et seq.; Edwards, p. 13; Lokrantz Bernitz, pp. 37-40; Sandesjö and Björk, pp. 16-17.
[70] Weis, pp. 29 et seq., 59 et seq.
[71] 1930 Hague Convention (see footnote 63 for full reference), art. 1 second sentence: 'This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.'
[72] 1930 Hague Convention, art. 1 (see footnote 63); art. 5: '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*' (my emphasis).
[73] Nottebohm Case, p. 23 (see footnote 64 for full reference). Compare with the *Dickson Car Wheel Company Case*, Special Claims Commission between the United States and Mexico, UN Reports, 1931 vol. IV, pp. 669-91, 678. In: *Annual Digest*, 1931-32, Case No.

a decision of a state to grant a person nationality may be challenged by other states against which the state of nationality has raised a claim for diplomatic protection, if there is no genuine link between the state and the claimed national.[74]

The understanding that nationality signifies a legal bond between the state and the individual is further expressed in the definition of nationality in article 2 to the 1997 European Convention on Nationality.[75]

3.1.4 The Relationship between Nationality and Citizenship

Although 'nationality' and 'national' are the terms commonly employed in international law and in the domestic law of several countries, the terms 'citizenship'[76] and 'citizen' will primarily be used in this thesis hereinafter. The reason for this is that the study is mainly concerned with Swedish domestic law, which specifically uses the term citizenship to describe the relationship between the state and the individual citizen (see 4.2). This notwithstanding, when referring to sources of law which contain the terms 'nationality' and 'national', such as in the case of international treaty texts, the original terms will be quoted and not substituted by 'citizenship' and 'citizen'.

There are two general views on how the terms nationality and citizenship should be understood in international law.[77] According to the first, more traditional view, as formulated by Paul Weis:

> The terms 'nationality' and 'citizenship [conceptually and linguistically] emphasize two different aspects of the same notion: State membership. 'Nationality' stresses the international, 'citizenship' the national, municipal, aspect. Under the laws of most States citizenship connotes full membership,

115, in which it was stated that 'The only juridical relation […] which authorizes a State to exact from another the performance of conduct prescribed by international law with respect to individuals is the bond of nationality. This is the link existing between that law and individuals and through it alone are individuals enabled to invoke the protection of a State and the latter empowered to intervene on their behalf.'

[74] For some other important decisions where the concept of 'effective nationality' has been discussed, see Canevaro Case, *Italy v. Peru*, 1912, 11 R.I.A.A. 397, 6 AJIL 746; Salem Case, *Egypt v. U.S.*, 1932, 2 R.I.A.A. 1161; *Iran v. United States*, Case No. A/18, 1984, 5 Iran-U.S. Claims Tribunal Reports 251.

[75] European Convention on Nationality, adopted by the Council of Europe on 6 November 1997, entered into force 1 October 2009, art. 2: 'a) "Nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin'.

[76] The definition and meaning of modern citizenship was first formulated by T. H. Marshall in 1950. In his view, the concept of citizenship has developed into a structure consisting of three parts: the civil, the political and the social. The three parts combined give the individual her personal position and status as a full and equal citizen and member of the community. See Marshall, T. H., *Citizenship and Social Class*, CUP, Cambridge, 1950, p. 10 et seq. See also Kivisto, P. and Faist, T., *Citizenship: Discourse, Theory and Transnational Prospects*, Blackwell Publishing, 2007, pp. 51-56; Lokrantz Bernitz, p. 45.

[77] Edwards, p. 13.

> including the possession of political rights; some States distinguish between different classes of members (subjects and nationals).[78]

The traditional distinction between the terms nationality and citizenship has subsequently been upheld by *inter alia* the International Law Association[79] and various scholars.[80]

According to the second view, which is adopted by many scholars of international human rights law, the terms nationality and citizenship can be used as synonyms to each other. In anticipation of the First Conference on the Codification of International Law in the Hague 1930, it was stated that:

> 'Nationality has no positive, immutable meaning. On the contrary its meaning and import have changed with the changing character of States … It may acquire a new meaning in the future as the result of further changes in the character of human society, and developments in international organization. Nationality always connotes, however, membership of some kind in the society of a State or nation.'[81]

Although there are contexts were the distinction may be upheld, the terms nationality and citizenship are nonetheless closely connected to one another. As put by Alice Edwards, 'From a rights perspective, the label is less important than the ability to exercise rights'.[82] The second view on the understanding of the terms nationality and citizenship thus emphasises the function of nationality and citizenship as a means to access and enjoy rights.

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[78] Weis, pp. 4-5. See reference in Edwards, p. 13.
[79] International Law Association, Committee on Feminism and International Law, *Final Report on Women's Equality and Nationality in International Law*, Report of a conference held in London, International Law Association, London, 2000. Available at www.unhcr.org/3dc7cccf4.pdf. See pp. 12-13. Accessed 10 April at 12:30. See reference in Edwards, pp. 13-14.
[80] Boll, A., 'Nationality and Obligations of Loyalty in International and Municipal Law'. In: *Australian Yearbook of International Law* 24, 2003, pp. 37-63 (37). See reference in Edwards, pp. 13-14; Lokrantz Bernitz, pp. 37-51.
[81] Hudson, M. O. and Flournoy Jr., R. W., 'Nationality – Responsibility of States – Territorial Waters, Drafts of Conventions prepared in Anticipation of the First Conference on the Codification of International Law, The Hague 1930'. In: *American Journal of International Law* 23, 1929, Supplement, 21. See reference in Edwards, p. 14.
[82] Edwards, p. 14.

3.2 Modes of Acquisition of Citizenship

Citizenship can be acquired by birth on the territory of a state, by descent or by naturalization. The possession of citizenship signifies a social fact of attachment between the individual and the state, established either by a connection to the territory or by descent.

3.2.1 By Birth

The acquisition of citizenship by birth is based on two principles, *jus soli* and *jus sanguinis*. *Jus soli*, or the law of the soil, concerns the acquisition of citizenship by birth in the territory of the state. The United States of America, whose naturalization law will be examined in the study in chapter 4, is an example of a country where *jus soli* is the main principle applied for the conferral of citizenship at birth.[83]

Jus sanguinis, or the law of the blood, then, concerns the acquisition of citizenship by descent. According to this principle, a child will acquire the citizenship of both parents unless the law of the state in question provides that a child born of an unmarried woman shall acquire the citizenship of the mother, or if the parents have different citizenship, the citizenship of the father.[84] Sweden applies *jus sanguinis* as the main principle for the acquisition of citizenship by birth.[85]

While most states tend to give precedence to either *jus soli* or *jus sanguinis*, it is common to apply a combination of them.[86] The widespread state practice and uniformity of nationality laws has been held to indicate 'a consensus of opinion of States that conferment of nationality at birth has to be based on either [*jus soli* or *jus sanguinis*] or on a combination of these principles'.[87] In fact, it has been suggested that the practice of states in this regard is recognised by international customary law.[88]

3.2.2 By Naturalization

Citizenship can also be acquired at a later point in a person's life by naturalization.[89] The English word *naturalization* (or *naturalisation*) stems from the French word *naturaliser*, meaning to admit an alien to citizenship (originally from *natio* in Latin, which means birth).

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[83] Lokrantz Bernitz, p. 72.
[84] Weis, p. 95.
[85] Lokrantz Bernitz, pp. 72, 136-38.
[86] Bauböck, R. 'Political Membership and Democratic Boundaries' (Ch. 4). In: *The Oxford Handbook of Citizenship*, Shachar, A., Bauböck, R., Bloemraad, I., and Vink, M. (eds.), OUP, Oxford, 2017, p. 70; Lokrantz Bernitz, p. 189.
[87] Report by M. O. Hudson, Special Rapporteur, *Nationality, including Statelessness*, A/CN.4/50, ILC Yearbook, 1952-II, p. 7.
[88] Van Panhuys, H. F., *The Role of Nationality in International Law*, A. W. Sijthoff, Leiden, 1959, pp. 160-61.
[89] Weis, p. 96.

According to Oppenheim[90], citizenship can be acquired by naturalization both in the wider and in the stricter sense of the term. In the wider sense, citizenship can be acquired by marriage, legitimation, option, acquisition of domicile or entry into state service, but also by reintegration or resumption, by subjugation after conquest or by cession of territory. In the strict sense, citizenship may be acquired by grant of a formal decision after application. The type of naturalization that will be addressed in this thesis is the strict type of acquisition where citizenship is granted after application.

Countries that provide for the acquisition of citizenship by naturalization set up various criteria that applicants are required to meet. The precise criteria differ from country to country as it is within the discretion of the sovereign state to decide what is required of a person to become a naturalized citizen.[91] Common naturalization requirements include having lawful residence in the country for a minimum period of time, demonstrating language skills and knowledge of the constitutional structure of the state, having a record of good behaviour and taking an oath of allegiance to the state at a public citizenship ceremony. It is becoming increasingly common that aspiring citizens take language and knowledge tests to prove their allegiance to their new country of nationality.[92]

According to Weis, the prerequisite of legal residence in the state for a minimum period of time is more or less universal.[93] The residence requirement, which is based on the principle of *jus domicilii* – the acquisition of citizenship by long-term residence[94] – follows the principle of a genuine link under international law. By genuine link is meant that there is a genuine connection or social fact of attachment between the individual and the state.[95]

[90] Oppenheim, L.V., *International Law* [...], 1955, pp. 650, 656-7.
[91] Weis, p. 101.
[92] Weis, p. 100; Orgad, pp. 339-43. For comparative studies on naturalization policies, see for example Weil, P., 'Access to Citizenship: A Comparison of Twenty-Five Nationality Laws'. In: Aleinikoff, A. T. and Klusmeyer, D. (eds.), *Citizenship Today: Global Perspective and Practices*, Carnegie Endowment for International Peace, Washington, 2001; Bauböck, R., Ersbøll, E., Gronendijk, K., and Waldrauch, H. (eds.), *Acquisition and Loss of Nationality, volume 1: Comparative Analyses: Policies and Trends in 15 European Countries*, Amsterdam University Press, Amsterdam, 2006; Bauböck, R., Ersbøll, E., Gronendijk, K., and Waldrauch, H. (eds.), *Acquisition and Loss of Nationality, volume 2: Country Analyses*, Amsterdam University Press, Amsterdam, 2006; Bauböck, R., Sievers, W., and Perchinig, B. (eds.), *Citizenship Policies in the New Europe*, Amsterdam University Press, Amsterdam, 2009; Howard, M. M., *The Politics of Citizenship in Europe*, Cambridge University Press, Cambridge, New York, 2009; Goodman, S. W., *Immigration and Membership Politics in Western Europe*, Cambridge University Press, Cambridge, 2014.
[93] Weis, p. 100.
[94] Bauböck, 'Political Membership and Democratic Boundaries', pp. 68-9.
[95] Nottebohm Case, pp. 22-23; Lokrantz Bernitz, p. 197.

3.3 Modes of Loss and Deprivation of Citizenship

Just like with acquisition of citizenship, the sovereign state decides the preconditions for the loss of citizenship under domestic law provided that they are consistent with jus cogens norms, international treaty obligations and international customary law. Loss of citizenship may be caused automatically by operation of law, by an act of the individual citizen or by an act of the state. Loss of citizenship that is caused by an act of the state is termed deprivation of citizenship or denationalisation.

3.3.1 By Operation of Law

Citizenship can be lost automatically by operation of law, for example if the law prescribes that a certain situation or certain conduct of a citizen leads to her losing her citizenship.[96] This includes *inter alia* changes to a person's personal status such as marriage, divorce, legitimation, recognition or adoption.[97]

Expiration is a form of denationalisation whereby a person who has taken up residence abroad and not renewed her passport or returned to the country of citizenship over a prescribed statutory period of time loses her citizenship by operation of the law.[98]

Citizenship may further be automatically lost as a result of the acquisition of another citizenship. This form of loss of citizenship, which is called substitution, does not require any action by the state or the individual. Thus, substitution takes place simply by operation of the law in states which recognise it as a mode of loss of citizenship.[99]

3.3.2 By an Act of the Individual

Loss of citizenship can be caused by an act of the individual citizen. The individual may explicitly and on a voluntary basis renounce her citizenship for the purpose of acquiring citizenship in her new country of residence. This is called expatriation, which in some jurisdictions requires a decision of release whereby the state gives its formal consent to the individual's renunciation of citizenship.[100]

[96] Oppenheim, p. 658.
[97] Edwards, p. 22.
[98] Oppenheim, p. 658; Edwards, p. 23.
[99] Weis, p. 116.
[100] Ibid.; Oppenheim, p. 648.

3.3.3 By an Act of the State

Citizenship may be lost by an act of the state, for instance by a decision of a court to deprive a person of her citizenship by denationalisation as a penalty for committing a serious crime. While the procedure of denationalisation as a penalty may be interpreted more narrowly to include only loss of citizenship by decision of a court, it is more often understood in the wider sense to include administrative decisions made by authorities in general. Even deprivation of citizenship by operation of law on certain grounds, for example if a citizen joins a foreign army, falls under the wider sense of the term. The legislator may thus prescribe for the deprivation of citizenship as a form of punishment on various grounds.[101] Denaturalization is a specific type of denationalisation whereby citizens who have originally acquired their citizenship by naturalization have their citizenship revoked on certain grounds laid down in law.

The legislation on the loss of citizenship differs greatly from country to country. In some countries, amongst them Sweden (see 4.3)[102], the law contains no provision for the deprivation of citizenship. In others, the act of depriving someone of her citizenship may either be effectuated automatically, by operation of law, on the basis of certain acts or omissions, or after a decision of a court or administrative authority. Depending on the legislation and the specific ground for the loss of citizenship concerned, it may apply to all citizens or to naturalized citizens only. In for example the United States, citizenship may be revoked automatically on certain grounds, for instance if the citizen joins a foreign force or military service or accepts a foreign distinction.

Laws may further prescribe that citizenship may be revoked following a decision of the state on other grounds, for example if a citizen is convicted of certain crimes, or in the case of a naturalized citizen, for expatriating or misrepresenting herself when applying for naturalization. Revocation of citizenship obtained by naturalization on the ground of misrepresentation is for example sanctioned in the law of the United States (see 5.3).[103]

[101] Weis, pp. 115-16.
[102] Ibid., p. 118.
[103] Ibid., pp. 118-19.

3.4 International Law on Nationality, Statelessness and Naturalization

3.4.1 State Discretion in Nationality Matters

According to a general principle of international law, states have an obligation not to interfere in the domestic affairs of other states.[104] Moreover, every state has a right 'to exist and … to protect and preserve its existence'[105]. These general principles recognise the independence of states and their discretion to decide in domestic matters.

The relationship between international law and questions of nationality has been pronounced upon by the Permanent Court of International Justice (PCIJ) in the *Nationality Decrees Issued in Tunis and Morocco Opinion* in 1923, stating that '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'.[106] While the PCIJ at the time found that the status of international law was such that questions relating to the conferral and loss of nationality were in principle within the 'reserved domain' of states, it did also acknowledge that the discretion of the state is 'nevertheless restricted by obligations which it may have undertaken towards other States'.[107]

The principle on the discretion of the state to determine its nationals was subsequently reiterated in article 1 to the 1930 Hague Convention. Even here, the discretion of states is limited by their obligations under 'international conventions, international custom, and the principles of law generally recognized with regard to nationality'.[108]

Although nationality matters have traditionally been considered subject to the discretion of states, the interests of the individual in the area of nationality have gradually gained recognition following the emergence of the regime of international human rights law after the Second World War. Importantly, it has been recognised that the right of states to decide who their nationals are is not absolute and that states must comply with their human rights obligations on the granting of nationality.[109] These obligations will be addressed in the following sections.

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[104] See for example UN General Assembly (UNGA), Resolution 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 21 December 1965. See reference in Edwards, p. 25.
[105] ILC, *Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States* (Memorandum submitted by the Secretary-General), A/CN.4/2, 1948. See reference in Edwards, p. 25.
[106] *Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion, 1923, Permanent Court of International Justice (PCIJ) Series B No. 4, p. 24.
[107] Ibid.
[108] 1930 Hague Convention, art. 1 second sentence (see footnotes 63 and 71 for full reference).
[109] *Proposed Amendments to the Naturalization Provision of the Political Constitution of Costa Rica*, Advisory Opinion, OC-4/84, 19 January 1984, Inter-American Court of Human Rights (IACtHR) Series A No. 4, para. 32: 'Despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on

3.4.2 The Right to a Nationality

Article 15 to the Universal Declaration of Human Rights (UDHR) provides that 'everyone has the right to a nationality' and that 'no one shall be arbitrarily deprived of his nationality nor denied the right to change [it].'[110] While the article does proclaim a right to nationality, the UDHR is not legally binding and entails no corresponding obligation on states to grant nationality.[111]

The right to a nationality is further recognised in a number of legally binding instruments. At the universal level, recognition of the right can be found in articles 1 to 3 to the Convention on the Nationality of Married Women[112], article 24(3) to the International Covenant on Civil and Political Rights (ICCPR)[113], article 9 to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[114], articles 7 and 8 to the

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the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights.'; See also Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34, 14 December 2009, para. 20.

[110] The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly on 10 December 1948, art. 15: '1. Everyone has the right to a nationality; 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'

[111] Edwards, p. 14.

[112] Convention on the Nationality of Married Women, adopted by the United Nations General Assembly on 20 February 1957, entered into force 11 August 1958, art. 1: 'Each Contracting State agrees that neither the celebration nor the dissolution of a 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.'; art. 2: 'Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.'; art. 3: '1. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalisation procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy; 2. Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.' Sweden signed and ratified the Convention on 6 May 1957 and 13 May 1958 respectively.

[113] International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966, entered into force 23 March 1976, art. 24: '3. Every child has the right to acquire a nationality.' Although the provision does not articulate a corresponding duty on states to grant nationality, the UN Human Rights Committee (HRC) has stated that art. 24(3) requires states 'to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born', in CCPR General Comment No. 17, *Article 24 (Rights of the Child)*, 7 April 1989, para. 8. This includes the obligation on states to register every child immediately after birth, as required by ICCPR art. 24(2): '2. Every child shall be registered immediately after birth and shall have a name.' Sweden signed and ratified the Convention on 29 September 1967 and 6 December 1971 respectively.

[114] Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, entered into force 3 September 1981, art. 9: '1. States Parties shall grant women equal rights with men to

Convention on the Rights of the Child (CRC)[115], article 29 to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[116] and article 18(1)(a), (b) and (2) to the Convention on the Rights of Persons with Disabilities (CRPD).[117]

At the regional level, recognition of the right to a nationality can be found in article XIX to the American Declaration of the Rights and Duties of Man[118], article 20 to American Convention on Human Rights (ACHR)[119], article 6(3) and (4) to the African Charter on the Rights and Welfare of the

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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 automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband; 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.' Sweden signed and ratified the Convention on 7 March 1980 and 2 July 1980 respectively.

[115] Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, entered into force 2 September 1990, art. 7: '1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents; 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.'; art. 8: '1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference; 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.' Sweden signed and ratified the Convention on 26 January 1990 and 29 June 1990 respectively.

[116] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly on 18 December 1990, entered into force 1 July 2003, art. 29: 'Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.' Sweden has not acceded to the Convention.

[117] Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006, entered into force 3 May 2008, art. 18: '1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability; b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement; 2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.' Sweden signed and ratified the Convention on 30 March 2007 and 15 December 2008 respectively.

[118] American Declaration of the Rights and Duties of Man, adopted by the Organization of American States on 2 May 1948, art. XIX: 'Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.'

[119] American Convention on Human Rights, adopted by the Organization of American States on 22 November 1969, entered into force 18 July 1978, art. 20: '1. Every person has the right to a nationality; 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality; 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.'

Child[120], article 24 to the Commonwealth of Independent States (CIS) Convention on Human Rights and Fundamental Freedoms[121], article 4 to the European Convention on Nationality[122], article 19 to the Charter for European Security of the Organization for Security and Co-operation in Europe (OSCE)[123], article 6 (g) and (h) to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[124], article 7 to the Covenant on the Rights of the Child in Islam[125], article 29 to the revised Arab Charter on Human Rights[126], and article 18 to the Association of

[120] African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity on 1 July 1990, entered into force 29 November 1999, art. 6: '3. Every child has the right to acquire a nationality; 4. State Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth he is not granted nationality by any other State in accordance with its laws.'

[121] CIS Convention on Human Rights and Fundamental Freedoms, adopted by the Commonwealth of Independent States on 26 May 1995, entered into force 11 August 1998, art. 24: '1. Everyone shall have the right to citizenship; 2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.'

[122] European Convention on Nationality, adopted by the Council of Europe on 6 November 1997, entered into force 1 October 2009, art. 4: 'The rules on nationality of each State Party shall be based on the following principles: a) everyone has the right to a nationality; b) statelessness shall be avoided; c) no one shall be arbitrarily deprived of his or her nationality; d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.' Sweden signed and ratified the Convention on 6 November 1997 and 28 June 2001 respectively. It entered into force for Sweden on 1 October 2001.

[123] Charter for European Security of the Organization for Security and Co-operation in Europe, adopted by the Organization for Security and Co-operation in Europe on 19 November 1999, art. 19: 'We reaffirm our recognition that everyone has the right to a nationality and that no one should be deprived of his or her nationality arbitrarily. We commit ourselves to continue our efforts to ensure that everyone can exercise this right. We also commit ourselves to further the international protection of stateless persons.' Sweden is a participating state to OSCE.

[124] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Union on 11 July 2003, entered into force 25 November 2005, art. 6: 'States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband; h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.'

[125] Covenant on the Rights of the Child in Islam, adopted by the Organization of the Islamic Conference (OIC) on 30 June 2005, art. 7: '1. A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother; 2. States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory; 3. The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.'

[126] Arab Charter on Human Rights, adopted by the Council of the League of Arab States on 22 May 2004, entered into force 15 March 2008, art. 29: '1. Everyone has the right to

Southeast Asian Nations (ASEAN) Human Rights Declaration (AHRD).[127] The right to a nationality is further affirmed in several soft law instruments, including a General Assembly resolution from 2012.[128]

Contrary to the aforementioned treaties which explicitly articulate the right to a nationality, the European Convention on Human Rights (ECHR)[129] and the African Charter on Human and Peoples' Rights (ACHPR)[130] do not entail an explicit right to a nationality. The need to recognise the existence of an autonomous right to citizenship under the ECHR has however recently been called upon by a dissenting judge in a case before the European Court of Human Rights (ECtHR).[131]

3.4.3 International Law Limitations on State Discretion

States are limited in their discretion to decide on the conferral and loss of citizenship by obligations arising from international treaty law, customary law and general principles of international law. These limitations include the prohibition against the arbitrary deprivation of nationality, non-discrimination in respect of nationality conferral and loss, and the duty to prevent and avoid statelessness.

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nationality. No one shall be arbitrarily or unlawfully deprived of his nationality; 2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child; 3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.'

[127] ASEAN Human Rights Declaration, adopted by the Association of Southeast Asian Nations on 18 November 2012, art. 18: 'Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.'

[128] UNGA, Res. 67/149, A/RES/67/149, 20 December 2012; Executive Committee (ExCom) Conclusion No. 106 (LVII), A/AC.96/1035, *Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 2006; ExCom Conclusion No. 107 (LVIII), A/AC.96/1048, *Children at Risk*, 2007, para. (h), lit. 19.

[129] Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 4 November 1950, entered into force 3 September 1953. Sweden notified its intention to ratify the Convention on 4 February 1952. It came into effect 3 September 1953.

[130] African Charter on Human and Peoples' Rights, adopted by the Organization of African Unity on 27 June 1981, entered into force 21 October 1986.

[131] European Court of Human Rights (ECtHR), *Ramadan v. Malta*, application no. 76136/12, 21 June 2016, see the dissenting opinion of Judge Pinto De Albuquerque, pp. 26-44. A request for referral to the Grand Chamber is currently pending.

3.4.3.1 The Prohibition of Arbitrary Deprivation of Nationality

According to a 2009 Report of the Secretary General[132], the right to a nationality implies not only the right of each individual to acquire and change a nationality but also to retain it. This corresponds with the fundamental principle of international law that states may not arbitrarily deprive persons of their nationality.[133]

The prohibition of the arbitrary deprivation of nationality is laid down in article 15 to the UDHR and a number of international human rights law treaties, including article 18(1)(a) to the CRPD[134], article 20(3) to the ACHR[135], article 24(2) to the CIS Convention on Human Rights and Fundamental Freedoms[136], and article 29(1) to the Arab Charter on Human Rights.[137] In comparison, the ECHR[138] and the ACHPR[139] do not provide an explicit prohibition against the arbitrary deprivation of nationality. The ECtHR has however stated that an arbitrary denial of citizenship might in certain circumstances raise an issue under article 8 on the right to family and private life due to the impact of such a denial on the individual's private life.[140]

In order for the deprivation of nationality not to be arbitrary, it has been held in the case law of the ECtHR and the Court of Justice of the European Union (CJEU) that the state must ensure that the measure serves a legitimate purpose consistent with international law and international human rights law, that it is not excessively intrusive to the desired result and that it is proportional to the interests to be protected.[141]

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[132] Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34, 14 December 2009, para. 21.
[133] General Assembly resolution A/RES/50/152, Office of the United Nations High Commissioner for Refugees, 9 February 1996, para. 15.
[134] CRPD, art. 18(1)(a), see footnote 117.
[135] ACHR, art. 20(3), see footnote 119.
[136] CIS Convention on Human Rights and Fundamental Freedoms, art. 24(2), see footnote 121.
[137] Arab Charter on Human Rights, art. 29(1), see footnote 126.
[138] ECHR, see footnote 129.
[139] ACHPR, see footnote 130.
[140] ECtHR, *Karassev v. Finland*, application no. 31414/96, 12 January 1999 (decided inadmissible), para. 80; *Savoia and Bounegru v. Italy*, application no. 8407/05, 11 July 2006 (decided inadmissible); *Genovese v. Malta*, application no. 53124/09, 11 October 2011, para. 30 (violation of art. 14 in conjunction with art. 8 due to the arbitrary difference in treatment of children born out of wedlock in terms of their access to citizenship); *Ramadan v. Malta*, application no. 76136/12, 21 June 2016, para. 62 (no violation of art. 8).
[141] European Court of Human Rights, *Karassev and Family v. Finland*, application no. 31414/96, 12 January 1999; Court of Justice of the European Union, C-135/08, *Rottmann v. Freistaat Bayern*, Judgement of the Grand Chamber of 2 March 2010; Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/25/28, 19 December 2013, para. 4; A/HRC/13/34, para. 25; On the meaning of the notion of 'arbitrary' in international law, see for example Human Rights Committee, CCPR General Comment No. 16, *Right to respect of privacy, home, correspondence, and protection of honour and reputation (Article 17)*, para. 4 on 'arbitrary interference'; Human Rights Committee, *van Alphen v. The*

3.4.3.2 The Principle of Non-Discrimination

States' nationality laws shall not be discriminatory. The general principle of non-discrimination in the field of nationality is affirmed in several international conventions. According to the article 9 in the 1961 Convention on the Reduction of Statelessness, deprivation of nationality on grounds of race, ethnicity, religion or political beliefs is prohibited.[142] Furthermore, article 5(d)(iii) to the Convention on the Elimination of Racial Discrimination (CERD)[143] provides that states must undertake to guarantee the equal enjoyment of the right to a nationality without any distinction on the basis of race, colour, or national or ethnic origin. The prohibition against racial discrimination is considered a *jus cogens* norm under international law.[144]

Discrimination on the ground of gender is also prohibited under international law.[145] Articles 1-3 to the Convention on the Nationality of Married Women[146] and article 9 to CEDAW[147] prohibit automatic changes to a woman's nationality upon marrying a man of foreign nationality or during marriage following a change of nationality by the husband. Article 9 CEDAW further obliges states to ensure that women are neither rendered stateless nor forced to take on the nationality of their husbands.

3.4.3.3 The Duty to Prevent Statelessness

States have a duty to prevent and reduce statelessness[148] in their nationality laws. This duty, which has been described as a negative duty arising from the right to a nationality[149], precedes any other international agreements in the field of nationality law.

At the universal level, the first attempt to codify rules against statelessness is found in the League of Nations' 1930 Hague Convention on

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Netherlands, Comm. No. 305/1988, 23 July 1990, para. 5.8; Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/22/44, 24 December 2012, para. 61.

[142] Convention on the Reduction of Statelessness, adopted by the United Nations General Assembly on 30 August 1961, entered into force 13 December 1975, art. 9: 'A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.' Sweden acceded to the Convention on 19 February 1969.

[143] International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on 21 December 1965, entered into force 4 January 1969, art. 5: 'In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d)(iii) The right to a nationality.' Sweden signed and ratified the Convention on 5 May 1966 and 6 December 1971 respectively.

[144] See for example the *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Judgement of 21 December 1962: I.C.J. Reports 1962, p. 319.

[145] See for example ECtHR, *Genovese v. Malta*, application no. 53124/09, 11 October 2011; Human Rights Council, Res. 10/13, Human rights and arbitrary deprivation of nationality, 26 March 2009, paras. 2-3.

[146] See footnote 112.

[147] See footnote 114.

[148] See 2.2 for the definition of 'stateless person' under international law.

[149] Blackman, J., 'State Successions and Statelessness: The Emerging Right to an Effective Nationality under International Law'. In: *Michigan Journal of International Law*, volume 19, issue 4, pp. 1141-94 (1176). See reference in Edwards, p. 27.

Certain Questions Relating to the Conflict of Nationality Laws[150] and the Protocol relating to a Certain Case of Statelessness.[151]

The 1930 Hague Convention lays down rules for the avoidance of situations of statelessness that states parties must observe when applying their domestic nationality laws. Articles 7 and 12 contain safeguards against statelessness following voluntary renunciation of nationality[152] and articles 8, 9, 13, 16 and 17 following a change in civil status or the nationality of a family member.[153] Furthermore, the Convention provides for the acquisition of citizenship in the case of foundlings in accordance with article 14 and children

[150] Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted by the League of Nations on 12 April 1930, entered into force 1 July 1937. Sweden ratified the Convention on 6 July 1933.

[151] Protocol relating to a Certain Case of Statelessness, adopted by the League of Nations on 12 April 1930, entered into force 1 July 1937. Sweden has not acceded to the Protocol; van Waas, L., 'The UN statelessness conventions' (Ch. 3). In: Edwards, A. and van Waas, L. (eds.) *Nationality and Statelessness under International Law*, CUP, Cambridge, 2014, pp. 69-70.

[152] 1930 Hague Convention, art. 7: '1. In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality; 2. An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him; 3. The State whose nationality is acquired by a person to whom an expatriation permit has been issued, shall notify such acquisition to the State which has issued the permit.'; art. 12: '1. Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs; 2. The law of each State shall permit children of consuls de carrière, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born, in any case in which on birth they acquired dual nationality, provided that they retain the nationality of their parents.'

[153] 1930 Hague Convention, art. 8: 'If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.'; art. 9: If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.'; art. 13: 'Naturalisation of the parents shall confer on such of their children as, according to its law, are minors the nationality of the State by which the naturalisation is granted. In such case the law of that State may specify the conditions governing the acquisition of its nationality by the minor children as a result of the naturalisation of the parents. In cases where minor children do not acquire the nationality of their parents as the result of the naturalisation of the latter, they shall retain their existing nationality.'; art. 16: 'If the law of the State, whose nationality an illegitimate child possesses, recognises that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of such State relating to the effect upon nationality of changes in civil status.'; art. 17: 'If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality.'

born to parents who are stateless or of unknown nationality as provided in article 15.[154]

In addition to the 1930 Hague Convention, the Protocol Relating to a Certain Case of Statelessness was adopted but with only one substantive article providing that a state whose nationality is not conferred in accordance with the *jus soli* principle must grant its nationality to a person born in its territory of a mother possessing the nationality of that state if the father is stateless or of unknown nationality.[155] Sweden has not acceded to the Protocol.

Turning to the conventions specifically addressing statelessness, the 1954 Convention Relating to the Status of Stateless Persons[156] aims to regulate and improve the status of stateless persons and to assure them the widest possible exercise of their fundamental rights and freedoms without discrimination.[157] It does not contain any provisions instructing states parties on how to prevent and reduce statelessness except for the requirement to facilitate the assimilation and naturalization of stateless persons by expediting naturalization proceedings and reducing the related charges and costs as provided in article 32.[158]

The 1961 Convention on the Reduction of Statelessness on the other hand places specific obligations on states to prevent, reduce and avoid statelessness. Articles 1 to 4 to the Convention provide the circumstances under which states parties are obliged to grant nationality to persons who would otherwise be stateless, in particular children born on their territory or children born to their nationals abroad.[159] Articles 5 to 7 in turn require states

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[154] 1930 Hague Convention, art. 14: '1. A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known; 2. A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.'; art. 15: 'Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.'

[155] Protocol relating to a Certain Case of Statelessness, art. 1: 'In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State.'

[156] Convention Relating to the Status of Stateless Persons, adopted by the United Nations General Assembly on 28 September 1954, entered into force 6 June 1960. Sweden signed and ratified the Convention on 28 September 1954 and 2 April 1965 respectively.

[157] See the preamble to the 1954 Convention Relating to the Status of Stateless Persons.

[158] 1954 Convention, art. 32: 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'

[159] Convention on the Reduction of Statelessness (see footnote 142 for full reference), see for example art. 1(1): 'A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law; second paragraph: Subject to the provisions of paragraph 2 of this Article, no such application may be rejected. A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its

parties to ensure that any loss of nationality by operation of law or on the request of individual shall be conditional upon the possession or acquisition of another nationality.[160] As for deprivation, article 8 provides that states may not deprive a national of her nationality, with the exceptions of cases where the person has acquired her nationality by misrepresentation or fraud, or if the state at the time of signature, ratification or accession retained the right to deprive nationals of their nationality as prescribed by law and the person has failed in her duty of loyalty to the state. Deprivation on these grounds is thus permitted even if such measures would leave the person stateless.[161]

Despite the comparably low number of states parties to the 1961 Convention (71 at the time of writing), it has been argued that state practice is generally indicating an increasing willingness amongst states to enact provisions against statelessness in their domestic law, even without acceding to the Convention.[162] According to Edwards, the duty to prevent statelessness is an emerging norm of customary international law at least when children are concerned.[163]

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nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.'

[160] Convention on the Reduction of Statelessness, see for example art. 5(1): 'If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.'; art. 6, 'If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.'; art. 7: '1. a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality', and 2: 'A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.'

[161] Convention on the Reduction of Statelessness, art. 8: '1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless; 2. Notwithstanding the provisions of paragraph 1 of this Article, a person may be deprived of the nationality of a Contracting State: (a) in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is permissible that a person should lose his nationality; (b) where the nationality has been obtained by misrepresentation or fraud; 3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time: (a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State; (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State; 4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.'

[162] van Waas, L., 'The UN statelessness conventions' […], pp. 82-83; see reference in Edwards, p. 28.

[163] Edwards, p. 29.

At regional level, there are several treaties which oblige states to grant nationality to persons if they would otherwise become stateless. These include article 20(2) to the ACHR[164], article 6(4) the African Charter on the Rights and Welfare of the Child[165], the Council of Europe Convention on the avoidance of statelessness in relation to State Succession[166], and the European Convention on Nationality.

The European Convention on Nationality, to which Sweden is a state party, enshrines a number of overarching principles which the rules of nationality in every state party shall be based on. These include the principle on the avoidance of statelessness, the right of every person to a nationality, the prohibition of arbitrary deprivation of citizenship and the prohibition against automatic changes to a person's nationality status as a consequence of marriage.[167]

Article 7(3) to the Convention on Nationality places an obligation on states to refrain from depriving persons of their nationality if it would leave them stateless[168], with the exception of cases where nationality has been acquired by means of fraudulent conduct, false information or concealment of relevant facts as provided in article 7(1)(b).[169] Although the provision allows for statelessness to be caused on that ground, states are recommended to be restrictive and to take into account the gravity of the facts and other relevant circumstances, such as the genuine and effective link of the person with the state concerned, when contemplating whether to deprive someone of his or her nationality.[170]

3.4.3.4 Facilitated Naturalization of Stateless Persons

In light of the above mentioned international obligations on states concerning the prohibition against arbitrary deprivation of citizenship, the prohibition against discrimination and the duty to prevent statelessness, the existence of

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[164] ACHR, art. 20(2), see footnote 119; Inter-American Court of Human Rights, *Dilcia Yean and Violeta Bosico v. Dominican Republic*, 8 September 2005, Series C No. 130.
[165] African Charter on the Rights and Welfare of the Child, art. 6(4), see footnote 120.
[166] Council of Europe Convention on the avoidance of statelessness in relation to State Succession, adopted by the Council of Europe on 19 May 2006, entered into force 1 May 2009, arts. 2, 3, 5, 6, 8, 9 and 10; Sweden has not acceded to the Convention. See also Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34, paras. 47-55; ILC, *Articles on Nationality of Natural Persons in Relation to the Succession of States, with commentaries, Supplement No. 10*, A/54/10, 3 April 1999.
[167] See footnote 122.
[168] European Convention on Nationality, art. 7: '3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.'
[169] European Convention on Nationality, art. 7: '1. A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases: b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant.'
[170] Council of Europe, Recommendation no. R (99) 18 of the Committee of Ministers to member States on the avoidance of statelessness, 15 September 1999, p. 3, clause 1.4.II.C(c).

any international standards for the facilitated naturalization of stateless persons and what the concept entails shall be examined in this section.

At the outset, some guidance may be found in the Recommendation 564 of the Consultative Assembly (now the Parliamentary Assembly) of the Council of Europe on the acquisition by refugees of the nationality of their country of residence, from 1969. Although this document is addressed to refugees, it may be applied per analogy to non-refugee stateless persons since article 34 to the 1951 Convention relating to the Status of Refugees[171] places the same obligation on states parties as article 32 in the 1954 Statelessness Convention does to stateless persons, namely to facilitate the naturalization of refugees by expediting naturalization proceedings and reducing the related charges and costs.[172]

Recommendation 564 invites member states to facilitate the naturalization of refugees in Europe 'by making every effort to remove, or at least reduce, legal obstacles to naturalisation, such as the minimum period of residence when it exceeds five years, the cost of naturalisation fees when it exceeds the financial possibilities of the majority of refugees, the length of time elapsing between the receipt of applications for naturalisation and their consideration, and the requirement that refugees should prove loss of their former nationality.'[173]

As pointed out in 3.4.3.3, the 1954 Statelessness Convention entails only one provision on naturalization, namely article 32.[174] While it does oblige states parties to facilitate the naturalization of stateless persons by quickening the procedure and reducing the charges and costs, it does not provide any guidance as to which pre-conditions on eligibility for naturalization are legitimate and which pre-conditions are not justifiable to require of stateless persons.[175] In the words of Laura van Waas, article 32 is 'at most, an opportunity to enjoy facilitated naturalisation.'[176] As for the 1961 Statelessness Convention, it obliges states parties to grant nationality to children born in their territories but does not provide any provision on the facilitated naturalization of stateless persons in general.

A treaty with a more proactive regulation of naturalization is the 1997 European Convention on Nationality, which under article 6(3) requires all states parties to provide for the possibility of naturalisation of persons lawfully and habitually resident on their territories and to not demand a residence period exceeding ten years for them to lodge their applications.[177]

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[171] Convention relating to the Status of Refugees, adopted by the United Nations General Assembly in Geneva on 28 July 1951, entered into force 22 April 1954. Sweden signed and ratified the Convention on 28 July 1951 and 26 October 1954 respectively.

[172] 1951 Refugee Convention, art. 34: 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'

[173] Recommendation 564 (1969) of the Consultative Assembly of the Council of Europe, 30 September 1969, para. 9(1)(b).

[174] See footnote 158.

[175] van Waas, *Nationality Matters* […], p. 366.

[176] Ibid., p. 365.

[177] European Convention on Nationality (see footnote 122 for full reference), art. 6(3): 'Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for

Moreover, article 6(4)(g) instructs states to facilitate the acquisition of its nationality for stateless persons lawfully and habitually resident on its territory.[178] In the Explanatory Report to the European Convention on Nationality, the provision on facilitated naturalization is explained to include favourable conditions such as a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees.[179]

In addition, the Council of Europe Committee of Ministers stated in its Recommendation on the Avoidance and Reduction of Statelessness from 1999 that states, in order to facilitate naturalization, should reduce the required periods of residence in relation to the normal periods of residence required, not require more than an adequate knowledge of one of its official languages, ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees, and ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of the state.[180]

Lastly, an international human rights law standard that may be invoked by stateless persons in cases of naturalization is the prohibition on discrimination in article 3 paragraph 1 to CERD[181], which provides that states may not discriminate against any particular group or nationality when determining the domestic preconditions for naturalization. It would for instance be discriminatory if a state directly or indirectly hinders stateless persons as a group from accessing naturalization. Furthermore, states may not establish and maintain 'unreasonable impediments' to naturalization.[182]

According to Laura van Waas, the principle of unreasonable impediments could be 'an important interpretative tool in assessing the compliance with human rights standards of any obstacles that stateless persons encounter within the context of naturalization.'[183] As an example, she identifies that an impediment which becomes unreasonable is when a state requires a stateless person to present a full range of documentation to support his or her naturalization application, such as identity documents, without allowing for alternative forms of evidence when the applicant is unable to produce the documents required.[184]

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naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application.'

[178] European Convention on Nationality, art. 6: '4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: g) stateless persons and recognised refugees lawfully and habitually resident on its territory.'

[179] Council of Europe, *Explanatory Report to the European Convention on Nationality*, 6 November 1997.

[180] CoE, Recommendation No. R (99) 18 of the Committee of Ministers to member States on the Avoidance and Reduction of Statelessness, 15 September 1999, clause 1.4.II.B.

[181] Convention on the Elimination of All Forms of Racial Discrimination, art. 1(3): 'Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.'

[182] Human Rights Committee, *Individual complaint of Capena v. Canada*, case no. 558/1993, A/52/40, volume II, 3 April 1997, para. 11.3.

[183] van Waas, *Nationality Matters* […], p. 368.

[184] Ibid.

3.5 Conclusions

Based on the study of the international law standards on nationality, statelessness and naturalization, I can make the following conclusions in respect of the first research question:

> **Is Sweden obliged under international law to facilitate the naturalization of undocumented stateless persons?**

As a sovereign state, Sweden has a right to determine who its citizens are. This right is recognised under international law. The extent to which Sweden retains its discretion in conferring Swedish citizenship is however limited by its obligations under international law and international human rights law.

While the right to a nationality is laid down in a considerable number of international human rights treaties, there is not a corresponding duty on Sweden to grant citizenship. This notwithstanding, Sweden must still observe the principles against arbitrary deprivation of citizenship and discrimination in the conferral of citizenship as well as the prevention and reduction of statelessness that are laid down in the human rights and statelessness conventions.

An area of nationality law which remains largely within the discretion of the Swedish State is the conferral of citizenship by naturalization. As discovered in the study of the international law standards, there is no human right to naturalization. While one can identify expressions of a requirement for facilitated naturalization in for example the 1954 Statelessness Convention, it only requires Sweden to facilitate the naturalization of stateless persons by making the naturalization procedure more efficient and by reducing the fees. The strongest articulation of a standard for facilitated naturalization of stateless persons is found in the 1997 European Convention on Nationality which specifically obliges Sweden to facilitate the acquisition of nationality for stateless persons who are lawfully and habitually resident in its territory. The facilitated naturalization comprises giving stateless persons favourable conditions for naturalization by reducing the length of required residence, less stringent language requirements, a simplified procedure and lower fees.

With regards to undocumented stateless persons, there is no international standard which obliges Sweden to lower the identity requirement as a means to facilitate their naturalization. Despite this, international human rights law obliges Sweden to not discriminate against stateless persons as a group nor uphold unreasonable impediments to their naturalization. Importantly, Sweden must allow for stateless persons to submit alternative forms of evidence when they lack the documents normally required to prove their identities.

Considering that Sweden is not explicitly obliged under international law to facilitate the naturalization of undocumented stateless persons, the next part in this thesis will seek to identify how the naturalization of undocumented stateless persons could be facilitated by changing the expressed function of naturalization in Swedish citizenship law.

Part II

4 The Swedish Citizenship Act

4.1 The Elements of Swedish Citizenship

Citizenship translates to *medborgarskap* in Swedish. The term *medborgarskap* is exclusively used to define the relationship between the citizen and the state under Swedish law.[185] In comparison, the Swedish term for nationality, *nationalitet*, signifies ethnic characteristics such as language and descent. Despite its narrower meaning, *nationalitet* may still be used as a synonym to *medborgarskap* in the sense of belonging to a nation. When used in that sense, the meaning of *nationalitet* corresponds to that of *medborgarskap*.[186]

The Instrument of Government, *regeringsformen*, is one out of the four constitutional acts of Sweden and entails provisions on the governance of the state. Chapter 8 paragraph 2 provides that provisions relating to Swedish citizenship are set forth in law, namely the Act on Swedish Citizenship, *Lag (2001:82) om svenskt medborgarskap* (abbreviated *MedbL* in Swedish). The Citizenship Act regulates how a person becomes and ceases to be a Swedish citizen. Amendments to the Citizenship Act were made in 2015, introducing *inter alia* a new paragraph 1 on the meaning of Swedish citizenship[187]:

> Swedish citizenship is a legal relationship between the citizen and the state which entails rights and duties for both parties. Swedish citizenship unifies all citizens and stands for affinity with Sweden. Swedish citizenship represents the formal membership in Swedish society and is a basis for Swedish democratic governance.[188]

The Inquiry that was appointed to consider and submit proposals for amendments to the Citizenship Act proposed that a new paragraph 1 should be added to the Act to clarify the fundamental meaning of Swedish citizenship and to emphasise its significance.[189] The Inquiry also suggested that the fundamental meaning of Swedish citizenship should constitute a basis for the message to be conveyed to new citizens at the citizenship ceremonies.[190] Following the amendments to the Citizenship Act, it became mandatory for all municipalities in Sweden to hold an annual citizenship ceremony during which new citizens are informed about the meaning of Swedish citizenship. All new citizens who have acquired Swedish citizenship by naturalization

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[185] Lokrantz Bernitz, p. 41.
[186] Ibid., pp. 40-43.
[187] Amendments through Lag (2014:481) om ändring av lagen (2001:82) om svenskt medborgarskap, which entered into force on 1 April 2015. See also the Government Bill, *Proposition*, Prop. 2013/14:143, pp. 10-13.
[188] *My translation*. See the Appendix, p. 67, for the Swedish wording of para. 1(1).
[189] Public Inquiry, *Statens offentliga utredningar*, SOU 2013:29, p. 14; Summary of the Inquiry in English, available at https://www.government.se/legal-documents/2013/04/sou-201329/. Accessed 18 April at 13:10.
[190] Ibid.

during the past 18 months are offered the opportunity to attend the ceremony and celebrate their new citizenship.[191]

Next to the fundamental rights and freedoms that are guaranteed to Swedish citizens and aliens in Sweden alike in accordance with Chapter 2 to the Instrument of Government[192], Swedish citizens enjoy certain rights and freedoms by virtue of their citizenship. They may not be banished nor prevented from entering Sweden[193], enjoy unlimited freedom of movement within the country and are free to leave it if they so desire.[194] When it comes to participation in public decision making, only Swedish citizens are eligible to vote and stand in general elections.[195] Public offices such as head of state (the monarch of Sweden), ministers of government, judges, parliamentary ombudsmen and state auditors can only be held by Swedish citizens.[196] The same applies to all other public appointments for which Swedish citizenship is required by law, for example membership of the police or defence forces.[197]

In addition to these fundamental rights and freedoms, all Swedish citizens from the age of 16 to 70 have the duty to defend the country if summoned by the defence forces.[198]

4.2 Acquisition of Swedish Citizenship by Naturalization

4.2.1 Requirements for Naturalization

The provisions concerning the acquisition of Swedish citizenship after application (naturalization) are laid down in paragraphs 11-13[199] in the Citizenship Act. As explained under section 3.2.2, naturalization means that a person acquires citizenship by grant of a formal decision. The general requirements that need to be fulfilled by a person applying for Swedish citizenship are provided in paragraph 11:

[191] The Act on Swedish Citizenship, para. 29, added by amendment through Lag (2014:481) om ändring av lagen (2001:82) om svenskt medborgarskap. See also Prop. 2013/14:143, pp. 14-17.
[192] Including, amongst others, freedom of speech, information, assembly, demonstration, association and religion and the right to equal treatment.
[193] Instrument of Government, Ch. 2 para. 7 first subsection.
[194] Ibid., Ch. 2 para. 8.
[195] Ch. 3 para. 4.
[196] Ch. 5 para. 2; Ch. 6 para. 2; Ch. 11 para. 11; Ch. 12 para. 6.
[197] Ch. 12 para. 6.
[198] Lag (1994:1809) om totalförsvarsplikt; in English the (1994:1809) Act on Military Service, Ch. 1 para. 2.
[199] Para. 13 will not be addressed further in the study. It provides that it shall be determined in a decision concerning naturalization whether the unmarried children of the applicant who are under 18 years of age also shall be granted Swedish citizenship.

An alien[200] may after application be granted Swedish citizenship (be naturalized), if he or she has

1. proven his/her identity,

2. reached 18 years of age,

3. a permanent residence permit in Sweden,

4. had habitual residence in the country

a) for two years in respect of Danish, Finnish, Icelandic or Norwegian citizens,

b) for four years in respect of a person who is stateless or who has been recognised as a refugee in accordance with Chapter 4 paragraph 1 in the Aliens Act (2005:716)[201],

c) for five years in respect of all other aliens, and

5. had and can be expected to have good behaviour.[202]

A person applying for Swedish citizenship by naturalization has to prove her identity (*styrka sin identitet* in Swedish). This is provided in paragraph 11 point 1. The strict identity requirement was not originally laid down in the 1950 Act on Swedish Citizenship[203], the probable reason being that the legislator at the time considered it self-evident that the identity of the applicant would be established.[204] During the following decades however, the existence of the identity requirement was confirmed in case law.[205] The identity requirement was subsequently codified in law by an amendment to the 1950 Citizenship Act in 1999.[206]

Although there is no legal definition of the term 'identity' in Swedish law, it is maintained in the decisions of the Swedish Migration Agency (SMA) that the identity for the purpose of naturalization consists of the applicant's name, date of birth and nationality.[207] The applicant must therefore have established her name, date of birth and nationality in order to be considered to have proven her identity. It has however been recognised by the legislator that there may be cases where it is difficult to establish the nationality of the applicant due to circumstances beyond her control, such as vague provisions pertaining to the acquisition of citizenship in the country of origin. Provided that the identity of the applicant has been established with regards to the other basic details such as name and date of birth, the inability

[200] Aliens are all persons who are not Swedish citizens. See Prop. 1950:217, p. 93.
[201] The most recent amendment to para. 11 was made in 2005. The amendment entered into force on 30 March 2006. See SFS, *Svensk författningssamling*, 2005:722.
[202] *My translation*. See the Appendix, p. 67, for the Swedish wording of para. 11.
[203] Lag (1950:382) om svenskt medborgarskap; in English the (1950:382) Act on Swedish Citizenship.
[204] Sandesjö and Björk, *Medborgarskapslagen med kommentarer*, p. 98.
[205] Government decision, *Regeringsbeslut*, Reg. 1987-12-03 U 2783/87.
[206] Amendments through Lag (1998:1453) om ändring i lagen (1950:382) om svenskt medborgarskap; in English the (1998:1453) Act on Amendments to the (1950:382) Act on Swedish Citizenship, which entered into force on 1 January 1999. See also the preparatory works Prop. 1997/98:178; Report, *Betänkande*, Bet. 1998/99:SfU3; Parliament Briefs, *Riksdagsskrivelse*, Rskr. 1998/99:27 and SFS 1998:1453.
[207] Prop. 1997/98:178, p. 15; The Migration Court of Appeal, *Migrationsöverdomstolen*, MIG 2011:11; Sandesjö and Björk, p. 98.

to establish the applicant's nationality will not impede her possibilities of becoming a citizen.[208]

In order to prove one's identity for the purpose of naturalization, the applicant needs to present some form of identification document to the SMA. The identification document should normally be a passport, but an identification card or other type of identification document which has been issued by the competent authorities in the country of origin can also be accepted provided that it entails a photograph of the applicant.[209] If the applicant has been permanently residing in a country other than the country of nationality, an identification document issued by the competent authorities in that country can be accepted[210], but not if it has been issued by for instance a non-governmental organisation.[211] The document must be authentic, not too simple and issued in such a manner that the competent authorities in the state in question have been able to confirm the identity of the person. The standard of proof is the same regardless of the country of origin, although some consideration as to the technical features of the document may be made in regards of documents issued in developing countries as compared to developed countries.[212] It is further a requirement that the applicant has been present in person before the issuing authority when applying for and obtaining the passport or identification card.[213]

The person applying for citizenship is responsible to show that the identification document submitted is authentic.[214] If the document is simple and easy to forge the applicant will be requested to provide the SMA with additional proof to support her claimed identity.[215] Documents which are found to be manipulated will normally not be accepted.[216] A foreign drivers licence can be accepted as proof of identity only if the document has been issued in accordance with the same standards as are applied to passports and identification cards.[217] Birth, baptism or wedding certificates or other similar documents which are issued for other purposes than to certify a person's identity are not accepted without additional proof to support the claimed identity.[218] The identity has however been found proven on the basis of two grade certificates and a certificate of identity in a case from 1994, for the reason that the authorities in the country of origin had refused to issue the applicant new identification documents and there had been no reason to question his identity during his period of residence in Sweden.[219] This means that the identity can be considered proven on the basis of a free evidentiary

[208] Prop. 1997/98:178, p. 8; Sandesjö and Björk, p. 98-99.
[209] The Aliens Board, *Utlänningsnämnden*, UN 9309-0797 1994-03-14.
[210] Prop. 1997/98:178, p. 8.
[211] UN 9401-0962 1994-10-17. The case concerned a Red Cross passport issued by the UNHCR.
[212] Prop. 1997/98:178, p. 8; MIG 2010:17.
[213] UN 9312-0694 1994-10-28; UN 9402-0629 1994-10-28.
[214] UN 9401-0518 1994-10-26.
[215] UN 9309-1832 1994-05-19.
[216] UN 9406-0621 1995-08-17.
[217] UN 9312-0694 1994-10-28.
[218] UN 9201-8097 1993-01-29.
[219] UN 9312-0689 1994-10-06.

assessment[220] if there are additional circumstances which, taken together with the submitted documents, lend strong support to the applicant's identity.[221]

If the applicant has no document to prove or support her claimed identity, it may still be possible to consider the identity of the applicant adequately proven if a close relative attests to her identity. In order for such a testimony to be accepted, the relative must (1) have acquired Swedish citizenship and have submitted an accepted type of identification document at the time of his or her application for naturalization, (2) the relative be either the spouse, parent, sibling or adult child of the applicant, and (3) the relative and the applicant have made concurrent statements about the applicant's identity, family details and background in the naturalization process as well as during all previous interactions with the SMA.[222] If the person called upon to testify is the applicant's spouse, it is required that they have lived together before settling in Sweden and for a period long enough for the spouse to have acquired in-depth knowledge about the applicant's identity and background.[223]

An applicant who has corrected her claimed identity during the period of residence may not invoke her five-year residence period in paragraph 11 point 4 from the day that she was registered as a resident. Instead, the five-year residence period will start counting from the day that the SMA confirmed her correct identity. Exceptions may be made in cases where the applicant has tried to correct inaccurate data about her identity in the Swedish Population Register in good faith.[224]

4.2.2 Stateless Persons and the Identity Requirement

4.2.2.1 The Lower Level of Proof in the Asylum Process

Before looking at how the identity requirement in paragraph 11 point 1 to the Citizenship Act applies to persons recognised as stateless under the 1954 Statelessness Convention and undocumented stateless persons, it must be pointed out that many of the persons who are unable to prove their identities when applying for Swedish citizenship have originally come to Sweden as asylum seekers and been granted residence permits on the ground of their need for international protection. In the asylum process, it is sufficient that the asylum seeker makes her identity credible. Although the ambition of the SMA is to establish the asylum seeker's identity with as much certainty as possible, it has been confirmed that the level of proof in the identity assessment shall be set at the same level as the assessment of the asylum

[220] Prop. 1997/98:178, p. 8.
[221] UN 94/12179 1996-09-27; MIG 2010:17.
[222] Prop. 1997/98:178, p. 8 et seq.; UN 9203-0435 1993-02-25; UN 9307-1745 1993-10-07; UN 9312-0355 1995-03-13; UN 9404-1087 1995-03-13; UN 9401-0461 1995-03-13; MIG 2010:17.
[223] UN 97/02381 1998-05-04.
[224] Reg. 1991-05-23 U 3675/91; Reg. 1991-07-25 U 8265/90.

claims, namely that the applicant shall make it credible that she has a well-founded fear of persecution on one of the grounds in the 1951 Refugee Convention.[225] The reason for this is that it is difficult to establish the identities of asylum seekers with full certainty because many of them lack passports or other accepted identity documents.

The lower level of proof required for assessing the identity of asylum seekers is however not sufficient in the naturalization process. The Citizenship Act prescribes a strict identity requirement since naturalization concerns the right to citizenship and not the right to international protection against persecution. Furthermore, the identity of an applicant in a naturalization case can be examined more carefully than in an asylum case because applications for naturalization do not have to be tried as urgently as asylum applications. The Migration Court of Appeal has confirmed that the strict identity requirement applies in the naturalization process. A person applying for Swedish citizenship must therefore prove her identity in accordance with the requirements mentioned in 4.2.1.[226]

4.2.2.2 Persons Recognised as Stateless by the 1954 Convention

Persons who have been recognised as stateless in accordance with the 1954 Statelessness Convention can apply for Swedish citizenship after four years of residence in Sweden. This is prescribed in paragraph 11 point 4(b) to the Citizenship Act.

There is no special procedure for the determination of statelessness in Sweden. Instead, it is carried out by the SMA as an integrated part of the identity assessment in the asylum process. A stateless person who has sought asylum must therefore make her identity, including name, age and statelessness, credible in order to be recognised as stateless under to the 1954 Convention.[227]

When a stateless person applies for Swedish citizenship she must still prove her identity in accordance with the strict identity requirement in paragraph 11 point 1 to the Citizenship Act. To prove her identity, she is required to submit an accepted type of identification document for stateless persons issued by the competent authorities in the former country of residence (compare with 4.2.1). Even if the SMA considers that the applicant has made her statelessness credible for the purpose of asylum, she will be denied naturalization if she cannot prove her identity in accordance with paragraph 11 point 1. This means that persons who have been recognised as stateless under the 1954 Statelessness Convention may still not acquire citizenship after four years of residence in Sweden if they fail to submit the adequate documentation to prove who they are.

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[225] MIG 2007:9; UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees*, paras. 41-42, 93, 195-196, 204-205.
[226] MIG 2012:1.
[227] UNHCR, *Mapping Statelessness in Sweden*, Regional Representation for Northern Europe, Stockholm, 2nd edition, December 2016, p. 33 et seq.

Applicants who cannot prove their identities must wait to be exempted from the strict identity requirement through an exemption rule which is prescribed in paragraph 12 to the Citizenship Act. The exemption rule will be addressed in the following sub-section.

4.2.2.3 Undocumented Stateless Persons

When the identity requirement was codified in paragraph 11 to the Citizenship Act, an exemption from the same requirement was laid down in the second subsection to paragraph 12 (marked in bold):

> If the requirements in paragraph 11 are not met, and if nothing else follows from the second subsection, the applicant may still be naturalized if
>
> 1. the applicant has previously been a Swedish citizen
> 2. the applicant is married to or cohabiting with a Swedish citizen, or
> 3. there are otherwise special reasons for it.
>
> **An applicant who cannot prove his/her identity in accordance with paragraph 11 point 1 may be naturalized only if he/she has had habitual residence in the country for at least eight years and has made it credible that his/her claimed identity is true.**[228]

In its Bill to the Parliament[229], the Government explained that the purpose of the exemption rule was to alleviate the situation for those applicants who were unable to meet the strict identity requirement. At that time, the number of refugees and other persons in need of international protection who did not have adequate identity documents had increased considerably. In many cases, people had fled from war-torn countries without their passports and without being able to obtain new ones from the non-functioning state apparatus. In other cases, people may have knowingly disposed of their documents before coming to Sweden either to conceal their real identities or out of fear of being sent back.

Recognising the difficult situation of the many people concerned, the Government admitted that it should be possible to exempt persons applying for naturalization from the strict identity requirement provided that they were unable to prove their identities for reasons beyond their control.[230] It was however simultaneously emphasised that naturalization is a privilege and not a right for the individual and that the state has an exclusive right to make a discretionary decision on whom to grant Swedish citizenship. Knowledge of the applicant's identity further enables the SMA to make an adequate assessment of whether the applicant has met the other requirements for naturalization. This corresponds with the fundamental principle of administrative law that a person shall make her identity known to the authorities in procedures of public administration. The cautionary approach

[228] *My translation*. See the Appendix, p. 68, for the Swedish wording of para. 12.
[229] Government Bill, Prop. 1997/98:178, section 5 on exemption from the requirement of proven identity, *Dispens från kravet på styrkt identitet*.
[230] Prop. 1997/98:178, section 5 on exemption from the requirement of proven identity; Sandesjö and Björk, pp. 151-52.

taken to the question of identification is also reflected in the fact that a decision to grant someone citizenship on the basis of false information can neither be declared null and void nor be revoked.[231]

An applicant who cannot prove her identity has to have had continuous residence in Sweden for at least eight years and make it credible (*göra det sannolikt* in Swedish) that her claimed identity is true.[232] If the applicant has corrected her claimed identity during the period of residence, the eight-year period will count from the day that the SMA confirmed the correct identity.[233] According to the Government, the extended period of residence provides the SMA with better opportunities to evaluate the credibility of the applicant's statements. It also gives the applicant an incentive to make a bigger effort to try obtain a new identity document from the authorities in the country of origin. The requirement may further act as a deterrent towards persons who are attempting to withhold their real identities and take advantage of the exemption rule.[234]

The exemption from the strict identity requirement is mainly intended to be applied in cases where the applicant is unable to prove her identity without being at fault, for instance when the person has come from a country where the state apparatus has collapsed, or the person is a refugee and is unable to obtain a new passport out of fear of persecution. The exemption may also be afforded applicants who themselves are the cause of their failure to submit adequate identity documents. However, such circumstances will obviously have a negative impact on the assessment of their credibility.[235]

When evaluating the credibility of an applicant, all circumstances in the individual case shall be taken into consideration in the overall assessment.[236] The main consideration to be made is whether the applicant's statements about her identity and the reasons for her not being able to submit adequate documents to prove her identity are credible.

In regards of the credibility of the applicant's identity, one important factor to consider is whether the applicant has maintained the same information about her identity during the entire period of residence in Sweden. If no contradictory information has come to the knowledge of the SMA, it is considered that the applicant has made her identity credible. It would on the other hand be problematic for the applicant if she has made a certain statement about her identity when applying for the residence permit and a different one when applying for naturalization later on. It shall further be taken into consideration whether an applicant who has corrected her identity during the period of residence has done it at her own initiative or by request from the Swedish authorities. The corrected identity will also be subject to a credibility assessment and the applicant will have to explain why she has withheld her true identity.[237] Depending on the circumstances in the

[231] Prop. 1997/98:178, p. 15.
[232] Ibid., p. 16; UN 02/03675 2003-01-20.
[233] Prop. 1997/98:178, p. 20.
[234] Ibid., p. 16.
[235] Ibid.
[236] Ibid., p. 17.
[237] Ibid.

individual case, the submission of false identity documents may impede the overall credibility of the applicant.[238]

Moving on to the applicant's credibility in terms of the reasons for her failure to submit an identity document, it is firstly considered under what circumstances the applicant arrived in Sweden. The circumstances may be such that they have a negative impact on the overall assessment and give reason to question the applicant's credibility. Another consideration to be made is why the applicant has not been able to obtain new identity documents from the authorities in the country of origin during her period of residence in Sweden. It is a basic requirement that the applicant shall have done what can be reasonably expected of her to prove her identity.[239] The applicant's chances of being exempted from having to apply for a new identity document will however not be enhanced if she has made contradicting statements about her background during the asylum process and the naturalization process.[240] When it comes to refugees, it is normally not reasonable to demand that they contact the authorities in the country of origin.[241] The same applies to persons who have fled from war-torn countries where the state apparatus has ceased to work. If the conditions in the country improve later on, it may however be considered possible for the applicant to apply for new documents.[242]

In the evaluation of whether an applicant has done everything that can be reasonably expected of her to obtain a new identity document in the country of origin, the SMA may also take into consideration considerable economic consequences that such an attempt would have for the applicant concerned. Whether such economic consequences are considerable enough to justify an exemption from the main rule is evaluated in each individual case. Consideration may also be given to circumstances that are connected to the applicant's personal situation such as income, financial obligations like alimony, family situation and state of health.[243]

4.3 Revocation of Swedish Citizenship by Denaturalization

4.3.1 Preconditions for Denaturalization

The Government has stated that a decision to grant a person Swedish citizenship must be preceded by a thorough investigation into the applicant's identity in order to avoid that citizenship is granted on the basis of false information.[244] The importance of establishing the true identity of the applicant has to be seen in light of the fact that a decision to naturalize a

[238] UN 00/02146 2000-02-20; UN 99/07882 2000-03-02.
[239] Prop. 1997/98:178, p. 18.
[240] UN 99/02081 1999-10-27.
[241] MIG 2017:10.
[242] Prop. 1997/98:178, p. 18; UN 99/00984 1999-11-12.
[243] Prop. 1999/2000:147, p. 51; UN 99/08848 2000-05-24.
[244] Prop. 1994/95:179, p. 57; Sandesjö and Björk, p. 99.

person cannot be revoked even if the applicant has submitted false information about her identity.

The rule that a naturalized citizen cannot be stripped of her citizenship corresponds with the fundamental principle of Swedish administrative law that a decision in favour of an applicant cannot be revoked.[245] The rule is further affirmed in Chapter 2 paragraph 7 second subsection first sentence to the Instrument of Government, which provides that no Swedish citizen who is or has been residing in the country may be deprived of her citizenship.[246] All Swedish citizens, including naturalized citizens, are thus protected against deprivation of citizenship in accordance with the Swedish Constitution.

In order for deprivation of citizenship of naturalized citizens to be allowed, the Instrument of Government would have to be amended. This would require that the Swedish Parliament adopts a suggested amendment twice with a general election taking place in between the two decisions.[247]

In fact, the only rule that provides for the loss of Swedish citizenship is the statutory limitation laid down in paragraph 14 to the Citizenship Act:

> A Swedish citizen loses his/her Swedish citizenship when reaching 22 years of age, if he or she
>
> 1. was born abroad
> 2. has never had habitual residence in Sweden, and
> 3. has not been present in Sweden under conditions which express a sense of affinity with the country.
>
> If an application is made before the Swedish citizen reaches 22 years of age, he/she may be permitted to keep his/her citizenship.
>
> When someone loses his/her Swedish citizenship in accordance with sub-section one, his/her child will also lose his/her Swedish citizenship if the child acquired it because the parent was a Swedish citizen. The child will however not lose his/her citizenship if the other parent remains a Swedish citizen and the child derives his/her Swedish citizenship from that parent.
>
> Loss of Swedish citizenship will not be effectuated if it would lead to the person becoming stateless.[248]

Loss of citizenship is thus only allowed if the person concerned was not born in Sweden, has not resided in nor expressed a sense of affinity with the country, and has not lodged an application to keep her Swedish citizenship before turning 22 years old. Furthermore, the act of revocation may not be carried out if it would make the person stateless.[249] This is in line with Sweden's obligations as a state party to the 1961 Convention on the Reduction of Statelessness.

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[245] Förvaltningslag (2017:900); in English the (2017:900) Administrative Procedure Act, para. 37.
[246] See also Prop. 1997/98:178, p. 18 et seq.; Bet. 1998/99:SfU3; Rskr. 1998/99:27; Reg. 1997-06-19 In96/810/IE.
[247] Instrument of Government, Ch. 8, para. 14.
[248] *My translation*. See the Appendix, p. 68, for the Swedish wording of para. 14.
[249] Sandesjö and Björk, pp. 158-59.

The Citizenship Act clearly provides for no involuntary revocation of Swedish citizenship. Nevertheless, the question of whether it would be lawful to denaturalize a naturalized Swedish citizen has been subject to considerable deliberation throughout the years. When drafting the 1950 Citizenship Act, the Government proposed that a paragraph be introduced allowing for the expatriation of naturalized citizens who were convicted of crimes against the safety of the nation or high treason.[250] The head of department responsible for submitting the Government Bill did however recognise that expatriation could amount to persons becoming stateless.[251] The Council on Legislation[252] in turn pointed out that allowing for the possibility of depriving naturalized persons of their citizenship would amount to a degradation of their status in comparison to born citizens and that such a change to the principle of equality amongst citizens would require an amendment to the Constitution.[253]

The question of whether it would be possible to revoke a naturalized citizen's citizenship on the basis of a false identity has further been addressed in court. In 1989, the Court of Appeal in Stockholm, *Svea hovrätt*, had to decide whether to confirm or amend the judgement of the District Court (*tingsrätten*) in which the decision to grant naturalization was declared null and void and the defendant was ordered to be deported from Sweden for acquiring citizenship on the basis of false identity information. The Court of Appeal, however, found that the false information did not necessarily mean that the immigration agency had mistaken the defendant for someone else and that it had not been established whether the application for naturalization would have been turned down if the true identity had been known. Therefore, the Court of Appeal dismissed both the decision to declare the defendant's naturalization null and void and the order of deportation.[254]

In another case from 1997, the Prosecutor in Kalmar filed a petition requesting the Government to declare the naturalization of the defendant null and void since the person had acquired citizenship on the basis of a false identity. The Government dismissed the petition however, reiterating that the rules pertaining to the loss of citizenship in the Citizenship Act have to considered against the constitutional rule[255] that no Swedish citizen may be deprived of her citizenship. The defendant's citizenship could thus not be revoked.[256]

The possibility of introducing a rule allowing for the denaturalization of a Swedish citizen who has submitted false information in her application for citizenship has been discussed on several occasions by the Swedish legislator. The investigations did however not materialise into any concrete suggestions, one of the main arguments being that denaturalization would

[250] Prop. 1950:217, p. 48 et seq.
[251] Prop. 1950:217, p. 51 et seq., with reference to SOU 1949:45.
[252] The Council on Legislation, *Lagrådet*, reviews the constitutionality of the Bills drafted by the Government and the Parliament committees.
[253] Prop. 1950:217, p. 90.
[254] Svea hovrätt, Judgement of 21 April 1989, case no. B 637/89.
[255] Instrument of Government, Ch. 2 para. 7 second subsection.
[256] Reg. 1997-06-19 In 96/810/IE.

have considerable negative consequences for the individual that could not be justified.[257]

The discussion on denaturalization was resumed by an Inquiry[258] that published the report SOU 2006:2 on the reconsideration of citizenship in 2006. The Inquiry proposes that it should be possible to reconsider and revoke a wrongful decision to grant someone Swedish citizenship if the person has acquired it through bribery or other unlawful means, or by submitting false information about one's identity for the purpose of concealing a severe criminal record or terrorist affiliations. The possibility of declaring a wrongful naturalization decision null and void is also considered by the Inquiry. The report, which would require an amendment to the Swedish Constitution, did however not receive enough parliamentary support.[259]

In 2013, another Inquiry published a report on the meaning of Swedish citizenship. Although the Inquiry was not instructed to address the question of reconsidering naturalization decisions that have been made on the basis of false identity information, the report raises the concern that the prohibition on the revocation of citizenship may negatively influence the way people perceive the meaning and value of Swedish citizenship.[260]

4.3.2 The Current Debate

As mentioned under 4.3.1, the question of whether it should be possible to revoke citizenship by denaturalization has been examined and discussed by the legislator on several occasions.

The political debate on the matter was most recently resumed by the Moderate Party (*Moderaterna*) in 2017, a year before the upcoming general elections taking place in September 2018. According to the Moderate Party, it should be possible to revoke Swedish citizenship acquired by naturalization if the person concerned has committed serious crimes against the safety of the nation, such as terrorist acts, or if the person has acquired citizenship through bribery or by submitting false identity information.

The Moderate Party further proposes that the requirements for naturalization should be amended to include a language and civics test and that the residence requirement should be raised from five to seven years. Persons who have employment and learn the Swedish language quickly should be awarded with a three-year bonus, enabling them to acquire citizenship earlier than the standard seven years. According to the Moderate Party, making these amendments to the Citizenship Act would streamline Swedish citizenship law with other comparable countries in Europe and enhance respect for the status of Swedish citizenship.[261]

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[257] SOU 1994:33, p. 48; Prop. 1994/95:179, p. 57; Prop. 1997/98:178, p. 18 et seq.; Prop. 1999/2000:147, p. 48.

[258] Utredningen om omprövning av medborgarskap, in English The Inquiry on the Re-examination of Citizenship, *Direktiv*, Dir. 2004:126.

[259] SOU 2006:2, p. 153 et seq., p. 161 et seq.; Sandesjö and Björk, pp. 99, 168.

[260] SOU 2013:29, p. 106.

[261] Tobé, T. and Magnusson, H., 'Skärp reglerna för svenskt medborgarskap', published on Göteborgs-Posten's website on 21 September 2017, available at http://www.gp.se/debatt/sk%C3%A4rp-reglerna-f%C3%B6r-svenskt-medborgarskap-

Whether the other political parties share the Moderate Party's view remains to be seen, but it is apparent that the question on the revocation of citizenship has received renewed attention and will likely be subject to further debate in the years to come.

4.4 Conclusions

In light of the requirements for naturalization and the non-existent preconditions for the revocation of Swedish citizenship under the current Swedish Citizenship Act, I can conclude that the function of naturalization as expressed by the Act is to recognise the naturalized citizen as an equal to citizens by birth and to manifest the affinity with and the unconditional membership of the person in Swedish society.

While the granting of citizenship does lead to a legal relationship being established between the individual and the state which confers both rights and duties, the validity of the granting of naturalization is not dependent on the individual being loyal to the state because a naturalized Swedish citizen cannot be held accountable for a failure to speak truthfully about her identity by being deprived of her citizenship.

The fact that Swedish citizenship cannot be revoked is compensated by a thorough investigation into the person's identity. The rule that undocumented stateless persons cannot be exempted from the strict identity requirement until having resided in the country for eight years gives the Swedish Migration Agency more time to investigate the person's identity. Once the SMA grants a person Swedish citizenship, the decision is definite and irrevocable.

1.4656185. Accessed 4 May at 11:00; See also interview with Tomas Tobé on Dagens Juridik's website, 'Moderaterna vill återkalla medborgarskap vid terrorbrott – men inte för 'vanliga mord'', published on 12 March 2018, available at http://www.dagensjuridik.se/2018/03/moderaterna-vill-aterkalla-medborgarskap-vid-terrorbrott-men-inte-vanliga-mord. Accessed 4 May at 11:23.

5 Comparative Study

5.1 The Elements of U.S. Citizenship

U.S. citizenship confers several rights and duties on citizens, including the freedom to pursue 'life, liberty and the pursuit of happiness'[262]. The First Amendment to the Bill of Rights[263] guarantees to all persons the enjoyment of fundamental rights and freedoms. These include the right to freedom of speech, press, religion, assembly, association and the right to petition to the government for a redress of grievances.[264] The Bill of Rights further guarantees *inter alia* the protection of property[265] and the right to a fair and speedy trial by jury.[266] While most of the rights and freedoms in the Bill of Rights have been recognised to apply equally to non-citizen residents[267], the rights to apply for federal employment, to vote in elections and to run for elected office are reserved for U.S. citizens.[268]

In addition to the rights attached to U.S. citizenship, U.S. citizens have certain responsibilities. Some of the responsibilities are specifically mentioned in the Oath of Allegiance, a statement which all persons aspiring to become naturalized citizens must take. These include the responsibility to support and defend the Constitution, to respect and obey federal, state and local laws and to defend the country when required to do so by law. The Oath of Allegiance will be addressed further below. Other responsibilities of U.S. citizens include *inter alia* respecting the rights, beliefs and opinions of others, participating in the democratic process and serving on a jury if called upon.[269]

The equality of U.S. citizens is laid down in the Fourteenth Amendment to the Constitution. It provides that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside [and that] no state shall […] deny to any person within its jurisdiction the equal protection

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[262] The U.S. Declaration of Independence, https://www.loc.gov/rr/program/bib/ourdocs/DeclarInd.html. Accessed 2 May 2018 at 12:10.
[263] The Bill of Rights, comprises the first ten Amendments to the U.S. Constitution, available at https://www.law.cornell.edu/constitution/billofrights. Accessed 2 May at 13:00.
[264] First Amendment, available at https://www.law.cornell.edu/constitution/first_amendment. Accessed 2 May at 13:15.
[265] Fourth Amendment, available at https://www.law.cornell.edu/constitution/fourth_amendment. Accessed 2 May at 13:35.
[266] Sixth Amendment, available at https://www.law.cornell.edu/constitution/sixth_amendment. Accessed 2 May at 14:00.
[267] See for example *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), in which the Supreme Court *inter alia* held that the term 'person' in the Fifth Amendment on the right not to be witness against oneself, nor to be deprived of life, liberty or property without due process of law, applies to aliens living in the United States; *Fong Yue Ting v. United States*, 149 U.S. 698 (1893), in which the Supreme Court ruled that Chinese laborers are entitled to protection of the laws 'like all other aliens residing in the United States', p. 724.
[268] See the U.S. Constitution, e.g. Article I Sections 2 and 3, and Twenty-sixth Amendment.
[269] See list of responsibilities on https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities. Accessed 2 May at 14:40.

of the laws.'[270] The only difference between citizens by birth and naturalized citizens in terms of rights is that naturalized citizens cannot be elected President of the United States.[271]

5.2 Acquisition of U.S. Citizenship by Naturalization

Foreign nationals residing in the United States can be granted U.S. citizenship by naturalization if certain requirements are met.[272] The requirements for naturalization are laid down in the 1952 Immigration and Nationality Act.[273]

To begin with, the applicant must be at least 18 years old. Parents can petition for their children to acquire U.S. citizenship as part of their own applications for naturalization.[274]

The applicant must further have entered the United States lawfully and acquired status as a permanent legal resident. To enter the country lawfully, the person must have submitted a valid immigrant visa and a valid passport or other suitable travel document proving her identity to the U.S. border control.[275] Once a permanent legal resident, the person must reside in the country for a continuous period of five years, or three years if the person is a spouse to a U.S. citizen, and have been physically present in the territory of the country for at least half of that time.[276]

The applicant is also required to take a naturalization test in which she demonstrates her ability to understand, speak, read and write in basic English as well as a basic knowledge and understanding of U.S. history and the principles and form of government.[277]

To be considered for naturalization, the applicant must further show that she has good moral character and that she has maintained the same standard during the entire period of residence.[278]

The applicant must also show that she is attached to the principles of the Constitution of the United States, and that she is well disposed to the good order and happiness of the country. This includes demonstrating commitment to the principles and ideals laid down in the Constitution, including the Bill of Rights, and belief in representative democracy.[279]

Lastly, the applicant must take an oath whereby she pledges allegiance to the United States. Taking the Oath of Allegiance is mandatory for all

[270] Fourteenth Amendment, https://www.law.cornell.edu/constitution/amendmentxiv. Accessed 2 May at 14:55.
[271] U.S. Constitution, Article II Section 1.
[272] Information on naturalization available at U.S. Citizenship and Immigration Services (USCIS) website, https://www.uscis.gov/citizenship/educators/naturalization-information. Accessed 3 May at 10:45.
[273] 1952 Immigration and Nationality Act (INA), available at https://www.uscis.gov/laws/immigration-and-nationality-act. Accessed 3 May at 11:10.
[274] INA Sec. 320 [8 U.S.C. 1431].
[275] INA Sec. 211 [8 U.S.C. 1181].
[276] INA Sec. 316(a)(1) and (2) [8 U.S.C. 1427].
[277] INA Sec. 312 [8 U.S.C. 1423].
[278] INA Sec. 316(a)(3) [8 U.S.C. 1427].
[279] Ibid.

persons who have applied to become U.S. citizens by naturalization.[280] The Oath is taken by making a verbal statement at the naturalization ceremony or before a court. Each candidate shall proclaim the following:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform non-combatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.[281]

Once the candidate has taken the Oath of Allegiance, she is admitted to U.S. citizenship and granted a certificate of naturalization.[282]

5.3 Revocation of U.S. Citizenship by Denaturalization

A naturalized U.S. citizen can have her citizenship revoked by denaturalization on one of the grounds specified in the Immigration and Nationality Act.[283] Spouses and children who have obtained U.S. citizenship through a person who is subject to denaturalization will also have their citizenship revoked.[284] In comparison, born U.S. citizens may never be stripped of their citizenship, but they may renounce it voluntarily.[285]

The grounds for denaturalization include (1) acquiring U.S. citizenship on the basis of concealment of relevant facts or by wilful misrepresentation, (2) refusing to testify, within the first ten years following naturalization, in proceedings before a congressional committee investigating one's alleged participation in subversive activities, (3) membership in a subversive group within five years of becoming a naturalized citizen, and (4) dishonourable military discharge before completing five years of service.[286] The denaturalization ground relevant to this thesis is the first one on concealment of relevant facts and wilful misrepresentation.

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[280] INA Sec. 337 [8 U.S.C. 1448].
[281] The Oath of Allegiance is available at https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america. Accessed 3 May at 14:30.
[282] INA Sec. 338 [8 U.S.C. 1449]. Information about the naturalization ceremony available at https://www.uscis.gov/us-citizenship/naturalization-ceremonies. Accessed 3 May at 15:10.
[283] INA Sec. 340(a) [8 U.S.C. 1451].
[284] INA Sec. 340(d) [8 U.S.C. 1451].
[285] INA Sec. 349 [8 U.S.C. 1481].
[286] INA Sec. 340(a) [8 U.S.C. 1451] for points 1-3, and INA Sec. 328(a) and (f) [8 U.S.C. 1439], 329(a) and (c) [8 U.S.C. 1440] for point 4.

If a naturalized citizen is found to have acquired U.S. citizenship by wilfully concealing a relevant material fact such as a criminal record, or by wilfully misrepresenting herself by lying about her real identity, an order for denaturalization may be issued against her. The ground for denaturalization covers both omissions and affirmative misrepresentation. Misrepresentation may for example be oral testimony provided by the applicant during the naturalization interview, or information submitted on the application form.

The burden of proof is set high in cases concerning revocation of citizenship. It requires the U.S. government to show that the citizen was not eligible for naturalization in the first place.[287] The determination of whether a naturalized citizen shall be subjected to revocation is carried out by a court. In the procedure, the court determines whether (1) the naturalized citizen has concealed or misrepresented some fact or facts, (2) the concealment or misrepresentation was wilful, (3) the concealed or misrepresented fact or facts were material, and (4) the naturalized citizen procured her citizenship as a result of the concealment or misrepresentation. When testing whether the concealed facts were material, the court considers whether they had a tendency to affect the decision to naturalize the person concerned.[288]

In relation to misrepresentation by the submission of a false identity, it is possible to decide that the misrepresentation is harmless if the person can demonstrate that the relevant line of inquiry that the government official was prevented from conducting would not have affected the decision to grant naturalization.[289] The burden of proof lies on the individual in this regard.

5.4 Conclusions

On light of the foregoing, the function of naturalization expressed in the citizenship law of the United States is a form of contract – a contract of allegiance. It confers mutual rights and duties on both the state and the individual. The citizen is guaranteed her fundamental rights and freedoms and the protection of the state in exchange for her pledging her allegiance to the nation. All aspiring U.S. citizens must take the Oath of Allegiance in order to be granted naturalization. If a naturalized citizen is subsequently found to have lied about her identity, she may have her citizenship revoked on the ground of misrepresentation. This reflects the understanding that the person was never eligible for U.S. citizenship in the first place, because she failed being loyal to the state.

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[287] *Kungys v. United States*, 485 U.S. 759, 767 (1998); USCIS Policy Manual, Volume 12: *Citizenship and Naturalization*, Part L, Chapter 1, Section A.

[288] INA Sec. 340(a); *Maslenjak v. United States*, 528 U.S. _ (2017); *Kungys v. United States*, 485 U.S. 759, 767 (1998); *United States v. Nunez-Garcia*, 262 F. Supp.2d 1073 (C.D. Cal. 2003); *United States v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003); *United States v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002); *United States v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001); Policy Manual, Volume 12, Part L, Chapter 2, Section B(1).

[289] USCIS Policy Manual, Volume 8: *Admissibility*, Part J, *Fraud and Wilful Misrepresentation*.

6 Conclusions

6.1 Concluding Remarks

The purpose of this thesis has been to evaluate whether the identity requirement in the Swedish Citizenship Act can be amended to facilitate the naturalization of undocumented stateless persons in light of Sweden's international obligations on nationality, statelessness and naturalization. This has further comprised a comparative study on the function of naturalization as expressed by the requirements for naturalization and the preconditions for revocation of citizenship by denaturalization in Sweden and the United States respectively.

In the examination of the international standards on nationality, statelessness and naturalization in Part I, I came to the conclusion that Sweden is obliged under the European Convention on Nationality to facilitate the naturalization of stateless persons, but that the identity requirement remains largely within the discretion of the state provided that Sweden allows for alternative forms of evidence to be submitted in applications by stateless persons when they lack the full range of documentation normally required by the Citizenship Act.

In view of the examination of the Swedish Citizenship Act in chapter 4, Sweden may exempt stateless persons without the documents required to prove their identities from the strict identity requirement in the naturalization procedure, but only if they have made their identities credible and have had their habitual residence in the country for at least eight years. In my opinion, a minimum of eight years of residence is a long time considering the difficult situation for undocumented stateless persons in Sweden and especially the practical limitations to their freedom of movement across international borders that they suffer from as a consequence of them being stateless.

Against this background and in view of the findings from the comparative study on the naturalization and denaturalization rules in the United States, this leads me to answer the third research question:

> **How can the function of naturalization in the Swedish Citizenship Act be changed to facilitate the naturalization of undocumented stateless persons?**

By viewing the function of naturalization as a contract between the state and the naturalized citizen, as illustrated through the comparison with the United States, the importance of the definite identification of the person would be reduced in return for it being possible to revoke citizenship when it has been granted on the basis of an incorrect identity. Therefore, the naturalization of undocumented stateless persons could potentially be facilitated if Sweden viewed the function of naturalization as a contract of allegiance.

6.2 Suggestions

In order for it to be possible to revoke a naturalized citizen's citizenship on the ground of misrepresentation, amendments to the Instrument of Government and the Citizenship Act are required.

Based on the results of the study in Part II, the second sub-section first sentence to Chapter 2 paragraph 7 in the Instrument of Government could be amended to provide the following:

> No Swedish citizen who is or has been residing in the country may be deprived of her citizenship. A Swedish citizen who has acquired citizenship by naturalization may however be deprived of it under certain conditions. These conditions shall be prescribed by law.

Paragraph 11 in the Swedish Citizenship Act could be amended to provide:

> An applicant who is unable to prove his/her identity in accordance with paragraph 11 point 1 may still be naturalized after having had habitual residence in the country for four years, if he/she has made it credible that his/her claimed identity is true.

To emphasise the obligation on the applicant to speak truthfully about her identity when applying for Swedish citizenship, a paragraph could be added to paragraph 14 in the Citizenship Act stating:

> If a naturalized Swedish citizen has acquired his/her Swedish citizenship by wilfully concealing a relevant fact or by misrepresenting him/herself, he/she may have his/her Swedish citizenship revoked.

The provision could further include a statute of limitation of for example five or ten years:

> Revocation of Swedish citizenship acquired by naturalization on the ground of wilful concealment of a relevant fact or misrepresentation shall not be effectuated if the concealment or misrepresentation was discovered by Swedish authorities after five / ten years from the day of naturalization.

With regards to guarantees of judicial review, it shall be possible to appeal a decision to revoke a naturalized citizen's citizenship to the Swedish courts.

In terms of the requirements for naturalization, it is not necessary to incorporate an oath of allegiance à la United States into the Swedish Citizenship Act. It is sufficient that the duty of applicants to speak truthfully about their identities is emphasised by making them aware at the point of naturalization of the risk that they may have their citizenship revoked on the ground of misrepresentation.

In conclusion, by amending the Citizenship Act in accordance with these suggestions, undocumented stateless persons could be granted citizenship after residing in the Sweden for four years in return for their allegiance and loyalty to their new country.

Appendix

The (2001:82) Act on Swedish Citizenship
Lag (2001:82) om svenskt medborgarskap

The meaning of Swedish citizenship
Medborgarskapets betydelse

1 § Det svenska medborgarskapet är ett rättsligt förhållande mellan medborgaren och staten som medför rättigheter och skyldigheter för båda parter. Medborgarskapet förenar alla medborgare och står för samhörighet med Sverige. Medborgarskapet representerar det formella medlemskapet i det svenska samhället och är en grund för folkstyrelsen.

I denna lag regleras hur en person blir och upphör att vara svensk medborgare.

SFS 2014:481

Acquisition of Swedish citizenship after application (naturalization)
Förvärv av svenskt medborgarskap efter ansökan (naturalisation)

11 § En utlänning kan efter ansökan beviljas svenskt medborgarskap (naturaliseras), om han eller hon har

1. styrkt sin identitet,
2. fyllt arton år,
3. permanent uppehållstillstånd i Sverige,
4. hemvist här i landet
    a) sedan två år i fråga om dansk, finländsk, isländsk eller norsk medborgare,
    b) sedan fyra år i fråga om den som är statslös eller att bedöma som flykting enligt 4 kap. 1 § utlänningslagen (2005:716),
    c) sedan fem år i fråga om övriga utlänningar, och
5. haft och kan förväntas komma att ha ett hederligt levnadssätt.

SFS 2005:722

Exemptions from the naturalization requirements
Undantag från naturalisationsvillkor

12 § Om kraven i 11 § inte är uppfyllda får, om inte annat följer av andra stycket, sökanden ändå naturaliseras, om

1. sökanden tidigare har varit svensk medborgare,
2. sökanden är gift eller sambo med en svensk medborgare, eller
3. det annars finns särskilda skäl till det.

En sökande som inte kan styrka sin identitet enligt 11 § 1 får naturaliseras, endast om han eller hon sedan minst åtta år har hemvist här i landet och gör sannolikt att den uppgivna identiteten är riktig.

Loss of Swedish citizenship
Förlust av svenskt medborgarskap

14 § En svensk medborgare förlorar sitt svenska medborgarskap när han eller hon fyller tjugotvå år, om han eller hon

1. är född utomlands,
2. aldrig haft hemvist i Sverige, och
3. inte heller varit här under förhållanden som tyder på samhörighet med landet.

På ansökan som görs innan den svenske medborgaren fyller tjugotvå år får dock medges att medborgarskapet behålls.

När någon förlorar svenskt medborgarskap enligt första stycket, förlorar även hans eller hennes barn sitt svenska medborgarskap, om barnet förvärvat detta på grund av att föräldern varit svensk medborgare. Barnet förlorar dock inte sitt medborgarskap om den andra föräldern har kvar sitt svenska medborgarskap och barnet härleder sitt svenska medborgarskap även från honom eller henne.

Förlust av svenskt medborgarskap sker inte om detta skulle leda till att personen blir statslös.

Swedish Migration Agency

Settled citizenship cases 2013-01-01 - 2018-04-25

Decisions	2013	2014	2015	2016	2017	2018
APPROVED	34426	29990	35867	47308	55420	19509
DENIED	5582	4510	5544	7310	7632	2466
DISCONTINUED	149	152	211	227	281	97
MISCELLANEOUS	1064	911	1078	1951	2028	953
In total	**41221**	**35563**	**42700**	**56796**	**65361**	**23025**

Grounds for denied applications All nationalities	2013	2014	2015	2016	2017	2018
MORE THAN TWO GROUNDS	2	2	5	3	3	
NO PERMANENT RESIDENCE	199	250	168	232	252	90
HABITUAL RESIDENCE + IDENTITY	165	128	163	157	199	69
HABITUAL RESIDENCE + BEHAVIOUR	25	21	19	22	27	11
HABITUAL RESIDENCE + MISCELLANEOUS	4	3	6	11	7	
HABITUAL RESIDENCE REQUIREMENT 4 YEARS NOT MET	2	6	20	10	31	12
HABITUAL RESIDENCE REQUIREMENT NOT MET	1770	1384	2362	3955	4074	1188
UNCONFIRMED IDENTITY	1615	1096	1128	1137	984	449
BEHAVIOUR + IDENTITY	20	18	21	11	18	3
BEHAVIOUR + MISCELLANEOUS						1
BEHAVIOUR REQUIREMENT NOT MET	1359	1122	1036	1233	1340	401
HABITUAL RESIDENCE REQUIREMENT 5 YEARS NOT MET	214	261	203	47	260	91
AGE + MISCELLANEOUS			1		2	
AGE REQUIREMENT NOT MET	19	25	47	55	59	20
MISCELLANEOUS	179	184	357	428	366	130
MISCELLANEOUS + UNCONFIRMED IDENTITY						1
(tom)	9	10	8	9	10	
In total	**5582**	**4510**	**5544**	**7310**	**7632**	**2466**

Grounds for denied applications Stateless persons	2013	2014	2015	2016	2017	2018
MORE THAN TWO GROUNDS		1				
NO PERMANENT RESIDENCE	10	20	35	45	24	17
HABITUAL RESIDENCE + IDENTITY	10	7	13	13	10	1
HABITUAL RESIDENCE + BEHAVIOUR	1	1	1		3	
HABITUAL RESIDENCE + MISCELLANEOUS				1	1	
HABITUAL RESIDENCE REQUIREMENT 4 YEARS NOT MET		2	14	9	22	8

HABITUAL RESIDENCE REQUIREMENT NOT MET	98	103	328	478	371	135
UNCONFIRMED IDENTITY	248	135	105	124	160	82
BEHAVIOUR + IDENTITY	1	4	2		3	
BEHAVIOUR + MISCELLANEOUS						1
BEHAVIOUR REQUIREMENT NOT MET	76	76	45	60	135	63
HABITUAL RESIDENCE REQUIREMENT 5 YEARS NOT MET		3	3		5	3
AGE + MISCELLANEOUS			1			
AGE REQUIREMENT NOT MET	10	12	30	22	11	7
MISCELLANEOUS	40	52	105	109	74	38
MISCELLANEOUS + UNCONFIRMED IDENTITY						1
In total	**494**	**416**	**682**	**861**	**819**	**356**

Bibliography

United Nations Documents

General Assembly Resolutions

UNGA, Res. 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 21 December 1965.

UNGA, Res. 3274 (XXIX), Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply, 10 December 1974.

UNGA, A/Res/49/169, Office of the United Nations High Commissioner for Refugees, 23 December 1994.

UNGA, A/Res/50/152, Office of the United Nations High Commissioner for Refugees, 21 December 1995.

UNGA, A/Res/67/149, Office of the United Nations High Commissioner for Refugees, 20 December 2012.

Human Rights Council

Human Rights Council, Res. 10/13, Human rights and arbitrary deprivation of nationality, 26 March 2009.

Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/13/34, 14 December 2009.

Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012.

Human Rights Council, Report of the Secretary-General to the General Assembly, *Human rights and arbitrary deprivation of nationality*, A/HRC/25/28, 19 December 2013.

Human Rights Council, Report of the Secretary-General, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless*, A/HRC/31/29, 16 December 2015.

Human Rights Committee

Human Rights Committee, CCPR General Comment No. 16, *Article 17 (Right to Privacy) The Right to Respect of Privacy, Home, Correspondence, and Protection of Honour and Reputation*, 8 April 1988.

Human Rights Committee, CCPR General Comment No. 17, *Article 24 (Rights of the Child)*, 7 April 1989.

Human Rights Committee, van Alphen v. The Netherlands, Comm. No. 305/1988, 23 July 1990.

Human Rights Committee, *Individual complaint of Capena v. Canada*, case no. 558/1993, A/52/40, volume II, 3 April 1997.

International Law Commission

ILC, *Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States* (Memorandum submitted by the Secretary-General), A/CN.4/2, 1948.

ILC, *Report on Nationality, Including Statelessness*, by M. O. Hudson, Special Rapporteur, A/CN.4/50, ILC Yearbook, 1952-II.

ILC, *Articles on Nationality of Natural Persons in Relation to the Succession of States, with commentaries, Supplement No. 10*, A/54/10, 3 April 1999.

ILC, *Draft Articles on Diplomatic Protection with commentaries*, 2006.

United Nations High Commissioner for Refugees

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees*, Geneva, 2011.

UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, Geneva, 2014.

UNHCR, Executive Committee Conclusion No. 106 (LVII), A/AC.96/1035, *Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 2006.

UNHCR, Executive Committee Conclusion No. 107 (LVIII), A/AC.96/1048, *Children at Risk*, 2007.

UNHCR, *Expert Meeting on the Concept of Stateless Persons under International Law, Summary Conclusions*, Prato, Italy, 27-28 May 2010.

UNHCR, *Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, June 1996 (rev. in January 1999).

UNHCR, *2006 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*, June 2007.

UNHCR, 'The World's Stateless People'. In: *Refugees*, No. 147, Issue 3, 2007.

UNHCR, Report *Mapping Statelessness in Sweden*, UNHCR Regional Representation for Northern Europe Stockholm, second edition, December 2016.

UNHCR, fact sheet on statelessness and the *#IBelong Campaign to End Statelessness by 2024*, available at http://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf. Accessed 20 March 2018 at 10:30.

UNHCR, Special Report *Ending Statelessness within 10 Years*, available at http://www.unhcr.org/protection/statelessness/546217229/special-report-ending-statelessness-10-years.html. Accessed 21 March at 11:40.

Studies

A Study of Statelessness, Department of Social Affairs to the Secretariat of the Secretary-General, United Nations Publications, New York, No. XIV, 2, 1949.

Council of Europe

Council of Europe, Recommendation 564 (1969) of the Consultative Assembly of the Council of Europe, 30 September 1969.

Council of Europe, *Explanatory Report to the European Convention on Nationality*, 6 November 1997.

Council of Europe, Recommendation no. R (99) 18 of the Committee of Ministers to member States on the avoidance of statelessness, 15 September 1999.

Swedish Preparatory Works

Government Bills

Prop. 1950:217, *Proposition om svensk medborgarskapslag*.

Prop. 1994/95:179, *Ändringar i utlänningslagen (1989:529)*.

Prop. 1997/98:178, *Medborgarskap och identitet*.

Prop. 1999/2000:147, *Lag om svenskt medborgarskap*.

Prop. 2013/14:143, *Ett medborgarskap som grundas på samhörighet*.

Public Inquiries

SOU 1949:45, *Betänkande med förslag till nya medborgarskapslagar för Danmark, Norge och Sverige*.

SOU 1994:33, *Vandelns betydelse i medborgarskapsärenden, m.m*.

SOU 2006:2, *Omprövning av medborgarskap*.

SOU 2013:29, *Det svenska medborgarskapet*.

Summary of SOU 2013:29 in English, available at https://www.government.se/legal-documents/2013/04/sou-201329/. Accessed 18 April at 13:10.

Investigations

Dir. 2004:126, *Utredningen om omprövning av medborgarskap*.

Reports

Bet. 1998/99:SfU3.

Parliament Briefs

Rskr. 1998/99:27.

U.S. Citizenship and Immigration Services

USCIS Policy Manuals

USCIS Policy Manual, Volume 8: *Admissibility*, Part J, *Fraud and Wilful Misrepresentation*.

USCIS Policy Manual, Volume 12: *Citizenship and Naturalization*, Part L, Chapter 1, Section A; Chapter 2, Section B(1).

USCIS Online Sources

Information on citizenship rights and responsibilities, available at https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities. Accessed 2 May at 14:40.

Information on naturalization, available at https://www.uscis.gov/citizenship/educators/naturalization-information. Accessed 3 May at 10:45.

Information on the Oath of Allegiance, available at https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america. Accessed 3 May at 14:30.

Information about the naturalization ceremony, available at https://www.uscis.gov/us-citizenship/naturalization-ceremonies. Accessed 3 May at 15:10.

Literature in English

Books and Chapters

Bauböck, R., Ersbøll, E., Gronendijk, K., and Waldrauch, H. (eds.), *Acquisition and Loss of Nationality, volume 1: Comparative Analyses: Policies and Trends in 15 European Countries*, Amsterdam University Press, Amsterdam, 2006.

Bauböck, R., Ersbøll, E., Gronendijk, K., and Waldrauch, H. (eds.), *Acquisition and Loss of Nationality, volume 2: Country Analyses*, Amsterdam University Press, Amsterdam, 2006.

Bauböck, R., Sievers, W., and Perchinig, B. (eds.), *Citizenship Policies in the New Europe*, Amsterdam University Press, Amsterdam, 2009.

Bauböck, R., 'Political Membership and Democratic Boundaries' (Ch. 4). In: Shachar, A., Bauböck, R., Bloemraad, I., and Vink, M. (eds.) *The Oxford Handbook of Citizenship*, Oxford University Press (OUP), Oxford, 2017.

Edwards, A., 'The meaning of nationality in international law in an era of human rights: Procedural and substantive aspects' (Ch. 1). In: Edwards, A. and van Waas, L. (eds.) *Nationality and Statelessness under International Law*, Cambridge University Press (CUP), Cambridge, 2014.

Howard, M. M., *The Politics of Citizenship in Europe*, CUP, Cambridge, New York, 2009.

Gans, C., 'Citizenship and Nationhood' (Ch. 6). In: Shachar, A., Bauböck, R., Bloemraad, I., and Vink, M. (eds.) *The Oxford Handbook of Citizenship*, OUP, Oxford, 2017.

Goodman, S. W., *Immigration and Membership Politics in Western Europe*, CUP, Cambridge, 2014.

Kivisto, P. and Faist, T., *Citizenship: Discourse, Theory and Transnational Prospects*, Blackwell Publishing, 2007.

Marshall, T. H., *Citizenship and Social Class*, CUP, Cambridge, 1950.

Opeskin, B. and Shearer, I., 'Nationality and Statelessness'. In: Opeskin, B., Perruchoud, R., and Redpath-Cross, J. (eds.) *Foundations of International Migration Law*, CUP, Cambridge, 2012.

Oppenheim, L. V., *International Law, Volume I: Peace*, eighth edition, edited by H. Lauterpacht, Longmans, Green, London, 1955.

Orgad, L., ‘Naturalization’ (Ch. 16). In: Shachar, A., Bauböck, R., Bloemraad, I., and Vink, M. (eds.) *The Oxford Handbook of Citizenship*, OUP, Oxford, 2017.

Van Panhuys, H. F., *The Role of Nationality in International Law*, A. W. Sijthoff, Leiden, 1959.

Van Waas, L., *Nationality Matters: Statelessness under International Law*, Intersentia, 2008.

Van Waas, L., ‘The UN statelessness conventions’ (Ch. 3). In: Edwards, A. and van Waas, L. (eds.) *Nationality and Statelessness under International Law*, CUP, Cambridge, 2014.

Weil, P., ‘Access to Citizenship: A Comparison of Twenty-Five Nationality Laws’. In: Aleinikoff, A. T. and Klusmeyer, D. (eds.) *Citizenship Today: Global Perspective and Practices*, Carnegie Endowment for International Peace, Washington, 2001.

Weis, P., *Nationality and Statelessness in International Law*, second edition, Sijthoff & Noordhoff International Publishers, Alpen aan den Rijn, The Netherlands (and Germantown, Maryland, U.S.A.), 1979.

Journals

Blackman, J., ‘State Successions and Statelessness: The Emerging Right to an Effective Nationality under International Law’. In: *Michigan Journal of International Law*, volume 19, issue 4.

Boll, A., ‘Nationality and Obligations of Loyalty in International and Municipal Law’. In: *Australian Yearbook of International Law* 24, 2003.

Hudson, M. O. and Flournoy Jr., R. W., ‘Nationality – Responsibility of States – Territorial Waters, Drafts of Conventions prepared in Anticipation of the First Conference on the Codification of International Law, The Hague 1930’. In: *American Journal of International Law* 23, 1929, Supplement, 21.

Kamba, W. J., ‘Comparative Law: A Theoretical Framework’. In: *The International and Comparative Law Quarterly*, 1974.

Vranken, J., ‘Exciting Times for Legal Scholarship’. In: *Law and Method*, February 2012.

Literature in Swedish

Books and Chapters

Bremdal, P., *Rätt till medborgarskap? Om de svenska naturalisationsreglerna*, first edition, Iustus Förlag, Uppsala, 2016.

Kleineman, J., 'Rättsdogmatisk metod' (Ch. 2). In: Korling, F. and Zamboni, M. (eds.) *Juridisk metodlära*, first edition, Studentlitteratur, Lund, 2013.

Lokrantz Bernitz, H., *Medborgarskapet i Sverige och Europa: Räckvidd och rättigheter*, Iustus Förlag, Uppsala, 2004.

Sandesjö, H. and Björk, K., *Medborgarskapslagen med kommentarer*, third edition, Norstedts Juridik, Stockholm, 2015.

Valguarnera, F., 'Den komparativa metoden' (Ch. 6). In: Korling, F. and Zamboni, M. (eds.) *Juridisk metodlära*, first edition, Studentlitteratur, Lund, 2013.

Journals

Agell, A., 'Rationalitet och värderingar i rättsvetenskapen'. In: *Svensk Juristtidning* (SvJT) 2002.

Jareborg, N., 'Rättsdogmatik som vetenskap'. In: *SvJT*, 2004.

Munck, J., 'Rättskällor förr och nu'. In: *Juridisk Publikation, Jubileumsnummer 2014*, 2014.

Sandgren, C., 'Är rättsdogmatiken dogmatisk?'. In: *Tidskrift for Rettsvitenskap*, volume 118, nr 4-5, 2005.

Reports

Blitz, B. K. and Lynch, M., 'Statelessness: The Global Problem, Relevant Literature, and Research Rationale' (Ch. 1). In: Blitz, B. K. and Lynch, M. (eds.) *Statelessness and the Benefits of Citizenship: A Comparative Study*, The Geneva Academy of International Humanitarian Law and Human Rights and the International Observatory on Statelessness, Oxford Brookes University, 2009.

International Law Association, Committee on Feminism and International Law, *Final Report on Women's Equality and Nationality in International Law*, Report of a conference held in London, International Law Association,

London, 2000. Available at www.unhcr.org/3dc7cccf4.pdf. Accessed 10 April at 12:30.

Lynch, M., *Lives on Hold: The Human Cost of Statelessness*, Refugees International, Washington D.C., February 2005.

Southwick, K. and Lynch, M., *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, Refugees International, Washington D.C., March 2009.

Van Waas, L., De Chickera, A., and Albarazi, Z., *The World's Stateless*, Institute of Statelessness and Inclusion, December 2014.

Online Sources

Debate Articles

Tobé, T. and Magnusson, H., 'Skärp reglerna för svenskt medborgarskap', published on Göteborgs-Posten's website 21 September 2017, available at http://www.gp.se/debatt/sk%C3%A4rp-reglerna-f%C3%B6r-svenskt-medborgarskap-1.4656185. Accessed 4 May at 11:00.

Interviews

Interview with Tomas Tobé on Dagens Juridik's website, 'Moderatarna vill återkalla medborgarskap vid terrorbrott – men inte för 'vanliga mord'', published 12 March 2018, available at http://www.dagensjuridik.se/2018/03/moderaterna-vill-aterkalla-medborgarskap-vid-terrorbrott-men-inte-vanliga-mord. Accessed 4 May 11:23.

Radio

Sveriges Radio, 'Lång väntan på medborgarskap för många statslösa', published 16 October 2016 at 16:10, available at http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6541083. Accessed 20 February at 10:40.

Statistics

Statistics Sweden (Statistiska centralbyrån), data from the Swedish Population Register, available at http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__BE__BE0101_

_BE0101F/UtlmedbR/table/tableViewLayout1/?rxid=6002f150-c8a4-4587-989d-947b18c7c6e5#. Accessed 15 May 2018 at 11:00.

Statistics Sweden, data available at http://www.statistikdatabasen.scb.se/pxweb/sv/ssd/START__BE__BE0101__BE0101F/UtlmedbR/table/tableViewLayout1/?rxid=6002f150-c8a4-4587-989d-947b18c7c6e5. Accessed 15 May at 11:15.

Swedish Migration Agency (Migrationsverket), data available at https://www.migrationsverket.se/download/18.4a5a58d51602d141cf41003/1515076326490/Asyls%C3%B6kande%20till%20Sverige%202000-2017.pdf. See data under the title 'Statslös' for stateless persons. Accessed 15 May 2018 at 11:10.

Swedish Migration Agency, data available at https://www.migrationsverket.se/download/18.4a5a58d51602d141cf41003/1515076326490/Asyls%C3%B6kande%20till%20Sverige%202000-2017.pdf. See data under the title 'Okänt' for persons with unknown nationality. Accessed 15 May at 12:10.

Table of Cases

International Judgements, Decisions and Advisory Opinions

Permanent Court of Arbitration

Canevaro Case, *Italy v. Peru*, 3 May 1912, 11 R.I.A.A. 397, 6 AJIL 746.

Permanent Court of International Justice

Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 1923, PCIJ Series B No. 4.

International Court of Justice

Nottebohm Case, *Liechtenstein v. Guatemala* (second phase), Judgement of 6 April 1955, I.C.J. Reports 1955.

South West Africa Cases *(Ethiopia v. South Africa; Liberia v. South Africa)*, Judgement of 21 December 1962, I.C.J. Reports 1962.

Special Claims Commissions and Tribunals

Dickson Car Wheel Company Case, Special Claims Commission between the United States and Mexico, UN Reports, 1931 vol. IV, pp. 669-91, 678, in *Annual Digest*, 1931-32, Case No. 115.

Salem Case, *Egypt v. U.S.*, 1932, 2 R.I.A.A. 1161.

Iran v. United States, Case No. A/18, 1984, 5 Iran-U.S. Claims Tribunal Reports 251.

Regional Judgements, Decisions and Advisory Opinions

European Court of Human Rights

Karassev v. Finland, application no. 31414/96, Decision of 12 January 1999.

Savoia and Bounegru v. Italy, application no. 8407/05, Decision of 11 July 2006.

Genovese v. Malta, application no. 53124/09, Judgement of 11 October 2011.

Ramadan v. Malta, application no. 76136/12, Judgement of 21 June 2016.

Inter-American Court of Human Rights

Proposed Amendments to the Naturalization Provision of the Political Constitution of Costa Rica, Advisory Opinion, OC-4/84, 19 January 1984, Series A No. 4.

Dilcia Yean and Violeta Bosico v. Dominican Republic, Judgement of 8 September 2005, Series C No. 130.

Court of Justice of the European Union

C-135/08, *Rottmann v. Freistaat Bayern*, Judgement of the Grand Chamber of 2 March 2010.

Swedish Judgements and Decisions

Government decisions
Regeringsbeslut

Reg. 1987-12-03 U 2783/87.

Reg. 1991-05-23 U 3675/91.

Reg. 1991-07-25 U 8265/90.

Reg. 1997-06-19 In96/810/IE.

The Aliens Board
Utlänningsnämnden

UN 9201-8097 1993-01-29.

UN 9203-0435 1993-02-25.

UN 9307-1745 1993-10-07.

UN 9309-0797 1994-03-14.

UN 9309-1832 1994-05-19.

UN 9312-0689 1994-10-06.

UN 9401-0962 1994-10-17.

UN 9401-0518 1994-10-26.

UN 9312-0694 1994-10-28.

UN 9402-0629 1994-10-28.

UN 9312-0355 1995-03-13.

UN 9401-0461 1995-03-13.

UN 9404-1087 1995-03-13.

UN 9406-0621 1995-08-17.

UN 94/12179 1996-09-27.

UN 97/02381 1998-05-04.

UN 99/02081 1999-10-27.

UN 99/00984 1999-11-12.

UN 00/02146 2000-02-20.

UN 99/07882 2000-03-02.

UN 99/08848 2000-05-24.

UN 02/03675 2003-01-20.

The Migration Court of Appeal
Migrationsöverdomstolen

MIG 2007:9.

MIG 2010:17.

MIG 2011:11.

MIG 2012:1.

MIG 2017:10.

Svea Court of Appeal
Svea hovrätt

Judgement of 21 April 1989, case no. B 637/89.

United States Judgements and Decisions

The Supreme Court of the United States

Fong Yue Ting v. United States, 149 U.S. 698 (1893).

United States v. Wong Kim Ark, 169 U.S. 649 (1898).

Towne v. Eisner, 245 U.S. 418 (1918).

Kungys v. United States, 485 U.S. 759 (1998).

Maslenjak v. United States, 528 U.S. _ (2017).

District Courts

United States v. Tarango-Pena, 173 F. Supp.2d 588 (E.D. Tex. 2001).

United States v. Ekpin, 214 F. Supp.2d 707 (S.D. Tex. 2002).

United States v. Reve, 241 F. Supp.2d 470 (D. N.J. 2003).

United States v. Nunez-Garcia, 262 F. Supp.2d 1073 (C.D. Cal. 2003).