A rights-based approach to statelessness

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Part I Meaning of nationality and statelessness

2 Definitions of nationality and statelessness under international law

2.1 Constitutive definitions vs. regulative rules

In order to understand current statelessness policies, and in particular its two main objectives to avoid statelessness and to protect stateless persons, it is important to analyse the meaning of the concepts of nationality and statelessness under international law. Whom exactly do the policies aim to protect, what exactly are they aiming to avoid, and why?

Nationality is a word that evokes many associations, such as a sense of belonging, a legal status, participation in the political project of a state, access to specific rights, and owing of specific duties. Statelessness, generally understood as the lack of a nationality,[19] may therefore be associated with a sense of exclusion,[20] lack of a legal status, disenfranchisement, rightlessness or freedom from duties. Many of these associations play a role in the way nationality and statelessness are addressed under international law and policy, but not all of them define what nationality and statelessness are.

The main goal of this part of the thesis is to draw a clear distinction between the definitions on the one hand, and the normative discussions on the other hand in the context of nationality and statelessness. This distinction is essential for understanding my criticism of policies on statelessness, which are discussed in part II of this thesis.[21]

[19] See more in sections 2.2-2.3.
[20] For example in C. Vlieks, E. Hirsch Ballin, and M. José Recalde Vela, 'Solving Statelessness: Interpreting the Right to Nationality', *Netherlands Quarterly of Human Rights*, Vol. 35, No. 3, (2017), on p. 160: 'Exclusion […] lies at the core of statelessness'.
[21] M. J. Gibney, 'Statelessness and citizenship in ethical and political perspective' in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014), pp. 44-63.

The importance of distinguishing between norms that describe and norms that prescribe goes beyond the domain of legal scholarship. The concept of constitutive and regulative propositions or rules is rooted in philosophy and logic.[22] Constitutive propositions are the ones that describe the world, while regulative propositions prescribe what one ought to do or think.[23] Constitutive rules describe observable facts or actions in terms of institutional facts or actions. A useful way to draw the distinction between the constitutive and the regulative norms is through the way in which actions or facts relate, logically and temporally, to the rules:

> *Regulative rules regulate a pre-existing activity, an activity whose existence is logically independent of the rules. Constitutive rules constitute (and also regulate) an activity the existence of which is logically dependent on the rules*.[24]

Linguists speak of rules that constitute language and rules that regulate the use of language. Constitutive rules are rules that 'make' the language into what it is. If a person violates a constitutive rule of a language, the status of that person as 'native speaker' (and thus the constitutive rule-maker) is questioned. Regulative rules on the use of language are external non-linguistic rules that prescribe how language *should* be used, for example rules on clarity, conciseness, (in-)formality and so on.[25]

The domain of law is well familiar with the distinction between constitutive and normative rules. For example, there are laws that define what marriage *is*. Depending on the jurisdiction, marriage may be defined as a union between two people concluded in accordance with a prescribed procedure. Other laws, norms and moral standards may regulate how marriage *should be*. The latter may include, depending on the jurisdiction, the obligation to be faithful, laws that prohibit domestic violence between spouses, or an obligation to support each other financially. However, when the laws or moral norms that regulate how marriage should be are broken, that does not mean the marriage is not there. The contrary would mean that the violated norms are in fact constitutive. There are thus distinct rules that regulate what marriage *is*, and how it *should be*.

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[22] F. Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life*, (Clarendon Press, 22 Aug 1991), pp. 6-7.
[23] S. G. French, 'Kant's Constitutive-Regulative Distinction', *The Monist*, Vol. 51, No. 4, (1967), pp. 623-639.
[24] J. R. Searle *Speech Acts* (Cambridge, 1969), chapter 2, as quote in C. Cherry, 'Regulative Rules and Constitutive Rules', *The Philosophical Quarterly* , Vol. 23, No. 93, (1973), pp. 301-315.
[25] R. McLain, 'The Role of Explanation in Teaching Standard English: Constitutive and Regulative Rules in Language', *College English*, Vol. 38, No. 3, (1976), pp. 242-249.

The two categories of rules perform distinct functions, and there is no inherent value in merging or combining them.

The scholarly discourse on nationality and statelessness, however, tends to systematically confuse descriptive and normative rules that govern these phenomena in law,[26] which leads to problems in policy-making.[27] In the first part of my thesis I try to disentangle, on the one hand, legal rules that *constitute/define/describe* what nationality and statelessness *are*, from, on the other hand, (legal and moral) rules and norms that *regulate* how nationality and statelessness *should be*. It often boils down to arguing that nationality *is* absolutely not what it *should* be under international law. Similarly, statelessness *is* not necessarily what nationality *should not be*. In other words, a person with a 'bad' nationality (depending on the normative framework, it can be a rightless, disenfranchised or an excluded national) is still very much a national under international law.[28] Likewise, a stateless person may be in a situation that fulfills normative criteria of a 'good' nationality, for example have a strong sense of belonging, a genuine link with a state, and access to extensive rights, and nevertheless still be stateless under international law.[29] The descriptive definitions of nationality and normative standards on nationality have two distinct functions. Descriptive definition of nationality serves the purpose of distinguishing between nationals and non-nationals – everyone falling under the definition is a national, while everyone not falling under the definition is not a national. Normative standards prescribe how nationality *should* be: for example, how it should be acquired and lost[30] and what should the content of the relationship between a state and its national be.[31] Problems occur when the policies on statelessness confuse normative standards and descriptive definitions. For example, when a policy asserts that nationality *is* a package of human rights, but that individuals who enjoy that package of rights are not per definition nationals, and individuals who do not enjoy that package of rights are not per definition stateless. This leads to misinformed policy making, such as justifying the goal to avoid statelessness by asserting that nationality *means* access to

[26] For notable exception, see M. J. Gibney, 'Statelessness and citizenship in ethical and political perspective' in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014), pp. 44-63.
[27] See chapter 5, section 5.5, and chapter 6.
[28] See section 2.4.
[29] See section 2.3.
[30] See section 2.5 below, and chapter 4.
[31] See chapter 3.

rights, while in practice, due to the definitions applied, rightlessness is not necessarily solved through the avoidance of statelessness.[32]

2.2 Nationality and citizenship as non-statelessness

'Nationality' and 'citizenship' are two terms which in literature are sometimes used interchangeably,[33] and sometimes with distinct meanings.[34] When nationality and citizenship are used with different meanings, it is usually done in order to emphasize various aspects or types of belonging to a state. However, there is no consistency in legal and academic sources as to what belonging to a state exactly entails, and what the difference between the terms nationality and citizenship is.[35] For example, 'nationality' can be used to refer to the *international* or *external* aspects of state membership, such as in the context of crossing borders, private international law, and claiming diplomatic protection, as opposed to 'citizenship' which refers to more *national* and *internal* aspects of that legal bond, such as political participation, enjoyment of specific rights or fulfilment of specific duties.[36] Another distinction often made is between 'citizens' as members with full political participation rights, and 'nationals' as members whose political rights are restricted.[37] Children are, under such definition, nationals but not citizens. A similar distinction can be made between citizenship as referring to political aspects of state membership

[32] See more in chapter 6, in particular section 6.5. See also E. F. Cohen, *Semi-Citizenship in Democratic Politics*, (CUP 2009), pp. 18-19, where the author argues that '[e]xtrapolating what citizenship is from a notion of what citizenship ought to be has the tendency to produce misleading and sometimes troublesome conclusions'.
[33] See, for example, O. Vonk, *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*, (Martinus Nijhoff 2014), pp. 24-26; E.Hirsch Ballin, *Citizens' Rights and the Right to Be a Citizen*, (Brill 2014), pp. 71-73.
[34] For example, in C. Dumbrava, *Nationality, Citizenship, and Ethno-Cultural Belonging. Preferential Membership Policies in Europe*, (Palgrave 2014).
[35] See, for a more extensive discussion of variations in terminology O. Vonk, *Nationality Law in the Western Hemisphere. A study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Carribean*, (Brill Nijhoff 2014), p. 24 - 26.
[36] For example, C. Santulli, *Irrégularités internes et efficacité internationale de la nationalité*, (Paris II 1995), p. 40. De Groot questions the usefulness of such a distinction in legal scholarship on nationality, see G.-R. de Groot, *Staatsangehörigkeitsrecht im Wandel: eine rechtsvergleichende Studie über Erwerbs- und Verlustgründe der Staatsangehörigkeit*, (Asser Institute 1988), pp. 14-15.
[37] See, for example, J. Roche, 'Children: Rights, Participation and Citizenship', *Childhood* ,Vol. 6, (November 1999), pp. 475-493.

and nationality as referring to its legal aspects.[38] Citizenship can be used in a wider meaning to refer to membership not only of states, but also in non-state communities, such as the European Union,[39] while nationality is typically used to refer to membership in a state.[40]

In addition, 'nationality' may refer to ethnic belonging, or have connotations of ethnic belonging, and be opposed to 'citizenship', which is then the only one of the two terms that signifies a legal bond with a state.[41] Particularly when studying questions of nationality in the context of Central and Eastern Europe, it is useful to remember that in Slavic languages the word related to the English word 'nationality' (in Russian - национальность) refers to the person's ethnic belonging, while the word related to 'citizenship' (in Russian - гражданство) is the only one used to indicate the legal bond between the state and its people.[42] Even in some older English and French texts the words 'nationality' and 'nationalité' can sometimes also be used with connotations of ethnic belonging, and opposed to 'citizenship' or 'citoyenneté' which refer to the civic legal membership in a state.[43]

[38] See C. Dumbrava, *Nationality, Citizenship, and Ethno-Cultural Belonging. Preferential Membership Policies in Europe*, (Palgrave 2014).
[39] In European Union law and legal scholarship on EU, citizenship is often assumed to refer to the EU citizenship, while legal membership in Member States or other states is referred to as 'nationality'. See also G.-R. de Groot, 'Towards a European Nationality Law' in *Migration, Integration and Citizenship. A Challenge for Europe's Future* by H. Schneider (ed.), (Forum Maastricht 2005), Vol. I., p. 14.
[40] This distinction is, for example, drawn in , K. Tonkiss, 'Statelessness and the performance of citizenship-as-nationality' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds), (Routledge 2017), pp. 241-254.
[41] For example, in H. Lardy, 'Citizenship and the Right to Vote', *Oxford Journal of Legal Studies,* Vol. 17, No. 1, (Spring 1997), p. 76-77. The European Convention on Nationality addresses such linguistic differences by specifically indicating that 'nationality', for the purposes of the Convention, 'means the legal bond between a person and a State and does not indicate the person's ethnic origin'. See Council of Europe European Convention on Nationality of 1997, art. 2(a). Interestingly, understanding nationality as linked with ethnicity sometimes leads to the use of the word statelessness to describe the situation of ethnic groups that do not have an ethnic nation-state of their own, such as, for example, the Scottish or the Roma nations, see J. Minahan, *Encyclopedia of the Stateless Nations: Ethnic and National Groups Around the World,* 4 Volumes, (ABC-CLIO 2002).
[42] Some national laws on citizenship of Central and Eastern European states emphasize that the relevant law regulates the legal bond between the state and its people, and not issues of ethnic belonging. See, for example, Law on the Citizenship of the Republic of Macedonia of 11 November 1992 [including amendments up to 2011], art. 1, which reads: 'The citizenship shall be a legal relationship between the persons and the state and shall not denote the ethnic origin of the persons'; and Law on Montenegrin Citizenship, No. 01-288/2, of 21 February 2008, [including amendments up to 2014], art. 1, which reads 'Montenegrin citizenship represents a legal relationship between a physical person […] and Montenegro […] and it does not indicate national or ethnicity origin'.
[43] See more in G.-R. de Groot, *Staatsangehörigkeitsrecht im Wandel: eine rechtsvergleichende Studie über Erwerbs- und Verlustgründe der Staatsangehörigkeit*, (Asser Institute 1988), pp. 11-12.

Distinguishing between 'nationality' and 'citizenship', and sometimes introducing other (third) terms for describing (aspects of) belonging to a state,[44] challenges the assumption that state membership can be understood as a single homogenous legal and political status, and asserts that its different types (or aspects) warrant separate terms, and separate analyses. The distinctions also shed doubt on the adequacy of a binary understanding of nationality versus statelessness,[45] which flows from the UN Convention Relating to Status of Stateless Persons of 1954 (hereafter – 1954 Convention) definition of statelessness discussed in the next section, where an individual can either be a national or a stateless person, but nothing more than, less than, or in between these categories. It is difficult to disagree with authors who suggest well-informed and well-argued nuanced approaches that involve distinguishing between several ways of being a national or a citizen.[46] In fact, one of the core premises of this thesis is that different instances of state membership are not equivalent to each other in their function as protection statuses.[47] Being a national, as well as being stateless, can imply a wide variety of life circumstances, and those differences have implications for formulating, understanding and implementing policies on statelessness. I therefore agree that state membership can hardly be captured in one substantive concept.

However, in this thesis I opt for using the two terms, 'nationality' and 'citizenship', interchangeably, to refer to the opposite of 'statelessness'. Such use of terminology might not be the most suitable for describing the content of how state membership and the lack thereof functions, but it is most suitable for analysing policies on statelessness. Understanding the functioning of state membership in practice is not the primary aim of this study. The primary aim

[44] Dumbrava, for example, distinguishes between three different types of belonging to a state: nationality as a legal belonging, citizenship as political belonging, and a third category of 'ethno-cultural belonging', see C. Dumbrava, *Nationality, Citizenship, and Ethno-Cultural Belonging. Preferential Membership Policies in Europe*, (Palgrave 2014).

[45] See criticism on binary understanding of nationality vs. statelessness T. Bloom, 'Members of colonised groups, statelessness and the right to have rights' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 165-167; K. Tonkiss, 'Statelessness and the Performance of Citizenship-As-Nationality' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 241-254; E. F. Cohen, *Semi-Citizenship in Democratic Politics,* (CUP 2009), in particular chapter 5.

[46] Lindsey Kingston speaks, for example, of a 'spectrum' of state membership, degrees of citizenship and degrees of statelessness. See L. N. Kingston 'Statelessness as a Lack of Functioning Citizenship' *Tilburg Law Review* Vol. 19, No. 1-2 (2014), pp. 127-135. See also C. Dumbrava, *Nationality, Citizenship, and Ethno-Cultural Belonging. Preferential Membership Policies in Europe*, (Palgrave 2014); K. Tonkiss, 'Statelessness and the Performance of Citizenship-As-Nationality' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 241-254; E. F. Cohen, *Semi-Citizenship in Democratic Politics,* (CUP 2009).

[47] See chapter 3 below.

is to analyse policies on statelessness as formulated and understood on the international level, which largely rely on binary opposition between statelessness and non-statelessness, where the non-statelessness is sometimes referred to as citizenship, and sometimes as nationality, and generally indicates formal legal membership in a state.[48] Policy documents often avoid distinguishing between different types, aspects and implications of state membership, and solely focus on distinguishing between those who are state members (nationals/citizens) and those who are not (the stateless). Even though this 'blindness' to nuances of belonging to a state, and the focus on the state as a cornerstone of membership, has been rightfully problematized in previous studies on citizenship and nationality, in this thesis I choose to mirror the terminology used in most policy documents on statelessness. This is done to avoid confusion which would occur if the terminology of analysis was not consistent with the terminology used in the source documents.

The rest of the chapter is structured as follows. Section 2.2 introduces and discusses the international definition of a stateless person as codified in the 1954 Convention, with special attention to the binarity between a national and a stateless person inherent in the definition, and whether the exclusion clauses of this Convention impact either definition. Section 2.3 focuses on the concept of nationality, which is not clearly defined in international law, but does serve to distinguish between nationals and non-nationals. I derive a definition of a national from the definition of a stateless person, and argue that it most accurately describes how international law distinguishes between nationals and non-nationals. The only factor which *defines a national* under international law is whether any state considers that person as its national. Other norms and rules regulating access to nationality or the relationships among states and between states and their nationals, discussed in section 2.4 and chapters 3 and 4, may represent normative ideas and rules about how nationality *should* be, but do not define what a national *is*. Section 2.4 looks at classic international norms that pre-date the human rights era about obligations of states to recognize nationality decision of other states, and illustrates that such norms have no bearing on the definition of a national and of a stateless person.

[48] See more on the definition of nationality and statelessness under international law in sections 2.3 and 2.4 below.

2.3 Definition of a stateless person under international law

2.3.1 The 1954 Convention definition

Article 1 of the 1954 UN Convention Relating to the Status of Stateless Persons, defines a stateless person as a person:

> *who is not considered as a national by any State under the operation of its law.*

This is the only definition of statelessness contained in a UN-level treaty. It has also been mentioned by the International Law Commission as a definition that has 'acquired customary nature'.[49] Many national legal systems that work with the concept of statelessness mirror this definition.[50]

The definition's main message is that statelessness entails absence of *any* nationality. Statelessness is thus a legal condition where an individual is not a national of any state at all. Non-membership in the (main) state of residence or in the state where the person wants to build his or her future is not a sufficient condition for establishing statelessness. A person who is not a national of the state of his or her preference, permanent residence or strongest affiliation, but is a national of some other state, however insignificant the connection to the latter state, is not stateless according to this definition.[51] One of the implications of such a definition is that a

[49] See International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, (2006), p. 49, as also referenced in the UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), p. 9. See also L. van Waas and A. de Chickera, 'Unpacking Statelessness' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 53-69.

[50] See, for example, Maltese Citizenship Act, No. XXX, of 21 September 1964, art. 2, which defines stateless as 'destitute of any nationality'; Law on the Citizenship of the Republic of Moldova, No. 1024-XIV, of 2 June 2000, [including amendments up to September 2014], art. 1, where stateless person is defined as 'person who is neither a citizen of the Republic of Moldova, nor a citizen of another state'; and Law on the Citizenship of Ukraine, N 13, of 2001 [including amendments up to February 2016], art. 1, where a stateless person is defined as a 'person, who is not considered as a citizen by any state according to its law'. Note, however, alternative national definitions of a stateless person, such as, for example. in the Federal Law on the Citizenship of Russian Federation, No. 62-FZ, of 31 May 2002, [including amendments up to 2014], art. 3, where a stateless person is defined as 'a person who is not a citizen of the Russian Federation and does not have proof of being a citizen of a foreign state'. The implication of such an alternative definition is discussed in chapter 5, section 5.4.3.

[51] See more on the genuine link criterion in section 2.5.2 below.

person cannot be stateless in one state, and not stateless in another state; a stateless person is stateless everywhere, that fact is not altered by national laws.[52] Another implication is that every person is either a national of one or more states, or is stateless. A person cannot avoid being either a national or a stateless person, and also cannot be both at the same time. This binary vision on nationality and statelessness flows from the UN definition of a stateless person, where the presence of one legal condition excludes the other, and the absence of one indicates the presence of the other.

2.3.2 Meaning of 'operation of law'

The UNHCR has devoted some attention to the meaning of the word 'operation' of law in the 1954 Convention's definition of a stateless person, as possibly indicating the factual implementation of law as opposed to black letter law.[53]

Interestingly, the nuance of 'operation' of law only appears in the English and French authentic language versions of article 1 of the 1954 Convention, but not in the Spanish authentic version.[54] In French a reference to the application (*application*) of legislation appears in the definition of a stateless person, which can be seen as mirroring the English 'operation of its law':

> *le terme "apatride" désigne une personne qu'aucun Etat ne considère comme son ressortissant par application de sa législation.*

The Spanish definition of a stateless person, however, speaks merely of 'accordance with legislation' (*conforme a su legislación*):

[52] Even though the formal bureaucratic recognition of that fact might be influenced by national laws that regulate statelessness identification procedures, see more in chapter 5 section 5.4.
[53] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), p. 12, para 23. See also UK Supreme Court judgment Pham vs. Secretary of State for the Home Department, 25 March 2015, which discusses in detail the UNHCR guidance on the meaning of the words 'operation of law' in the 1954 Convention's definition of a stateless person.
[54] According to the closing paragraph of the text of the 1954 Convention, the Convention has three authentic languages: English, French and Spanish.

> *el término «apátrida» designará a toda persona que no sea considerada como nacional suyo por ningún Estado, conforme a su legislación.*

Since the word 'operation' does not feature in all three authentic versions of the text of the Convention, it is questionable whether this word can be relied on for creative interpretations of this definition. It is also interesting to note that both Spanish and French versions use the word 'legislation' as opposed to 'law', raising questions as to how broadly the concept of 'law' can be interpreted, and whether case law, for example, can be seen as relevant for establishing whether a person is a national.

An earlier convention, the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (hereafter – the Hague Convention), also speaks merely of 'law', and not 'operation of law', when establishing how states determine who their nationals are:

> *It is for each State to determine under* its own law *who are its nationals.*
> […]
> *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.*[55] [emphasis added]

The difference in speaking of *operation of law*, as opposed to merely *law*, is therefore not very solid with regard to how international law conceptualizes the legal means through which states create, maintain and dissolve nationality links. Purely from the point of view of reasonableness, however, it does make sense to suggest that if a state has one set of rules codified in law to grant and withdraw nationality, but applies a completely different set of rules in practice, the latter should be considered when establishing whether a person is a national, and consequently also for conceptualizing nationality under international law. Such a discussion can be linked to unsolved questions about what law in fact is. Is it the text passed by the parliament, or rules that are in fact enforced by state authorities and that regulate how society functions? Relying on a strict definition of law as only documents passed through formal legislative channels would lead to a

[55] Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 12 April 1930, arts. 1, 2. In French, the other authentic language of the 1930 Hague Convention, the same text speaks again of 'legislation' where the English text uses the word 'law'.

conclusion that nationality can only exist in highly organized states, with perfect rule of law. However, international law accepts every state's ability to determine who its nationals are, also states that operate in conditions of various degrees of legal disorganization.[56] I do not think the word 'operation' in front of the word 'law' is particularly useful for understanding the definitions of nationality and statelessness, and thus the fact that it is lacking in one of the three authentic languages of the 1954 Convention is no major conceptual challenge. Instead, law, or legislation, needs to be understood as also including rules which are in practice created and enforced by state authorities, even if such rules do not appear fully consistent with relevant norms within the relevant legal system concerning law-making and enforcement.

2.3.3 Exclusion clauses

The 1954 Convention has historical links to the 1951 Refugee Convention, as the two were developed alongside each other. In this context it is interesting to take a look at the exclusion clauses of the 1954 Convention, some of which overlap with the exclusion clauses of the 1951 Refugee Convention.[57] The exclusion clauses exclude certain types of persons from the scope of the application of the Conventions. Does that mean the excluded individuals also fall outside the definitions of a refugee and a stateless person?

The exclusion clauses read as follows:

> *This Convention shall not apply:*
>
> *(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;*
> *(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;*

[56] See more in B. L. Fisher, 'The Operation of Law in Statelessness Determinations under the 1954 Statelessness Convention', *Wisconsin International Law Journal*, Vol. 33, No. 2, (2015), pp. 254-289.
[57] 1951 UN Convention Relating to the Status of Refugees, art. 1 (C-F).

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Contrary to some national practices,[58] I believe that the exclusion clauses should not be interpreted to mean that the persons who fall under them are necessarily not stateless. Considering the binarity of statelessness-nationality definitions, it would lead to the absurd conclusion that the excluded categories are necessarily nationals. Thus, factors as '*receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection'* or being *'guilty of acts contrary to the purposes and principles of the United Nations'* would somehow determine the nationality status of a person. There is nothing about the distinctive features of persons who fall under the exclusion clauses that could influence the question of whether a person is a national, a stateless person, or even belongs to some third nationality category. It makes more sense to conclude that the 1954 Convention does not apply to all stateless persons, and not that those to whom the Convention does not apply are thereby not stateless.[59]

This approach can also be found in UN High Commissioner for Refugees (hereafter – UNHCR) explanatory documentation on the protection of stateless persons. The UNHCR Handbook on the Protection of Stateless Persons (hereafter – UNHCR Handbook) refers to those excluded under article 1(2) as 'persons who fall within the "stateless person" definition [and] are nevertheless

[58] For example, in the UK stateless persons who fall under the exclusion clauses are denied recognition as stateless, see UK Immigration Rules, part 14: stateless persons, paras. 401-402.

[59] See also on the position of the Germans living in the territories occupied by the Netherlands: G.-R. de Groot, 'De Duits-Nederlandse grenscorrecties 1949/1963 en het Nederlandse nationaliteitsrecht' in *Studies over de sociale economische geschiedenis van Limburg/ Jaarboek van het Sociaal Historisch Centrum Limburg* by A. Knotter en W. Rutten (eds.), Vol. L VIII, (Maastricht 2013), pp. 147-161.

excluded from the protection of this treaty'[60] and '[p]ersons [who are not] entitled to the protection of the 1954 Convention even though they meet the stateless person definition'.[61]

In this context it is interesting to compare the implications of the exclusion clauses of the 1954 Convention with those of the 1951 Refugee Convention. As mentioned earlier, the two have broad substantive overlaps. However, being excluded from the scope of protection or from the scope of definition has different implications in the contexts of statelessness and refugeehood. Labelling someone as a refugee only has legal meaning in the context of securing protection. A refugee is defined through the concepts of persecution and fear,[62] implying the need for remedying those harms through protection. This is not the case with the definition of stateless. Statelessness merely signifies lack of a nationality; its definition does not include issues of protection. Statelessness is a legal fact that can have relevance outside the context of protection, for example in private international law or family law disputes.[63] Because being a refugee can mean nothing other than needing protection, the question of whether the exclusion clauses of the Refugee Convention exclude from the definition or from protection is less relevant. The same logic cannot be applied to statelessness, where the definition is de-coupled from the issue of protection. The definition of a stateless person says nothing about whether a stateless person needs protection; it merely indicates that the person lacks any nationality.[64] That is an additional reason to believe that the exclusion clauses of the 1954 Convention do not alter the definition of a stateless person.

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[60] UNHCR '*Handbook on Protection of Stateless Persons*', Geneva 2014, p. 9.
[61] UNHCR '*Handbook on Protection of Stateless Persons*', Geneva 2014, p. 40.
[62] A refugee is defined by the 1951 Convention relating to the Status of Refugees, and the 1967 amending Protocol, as 'any person who […] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it'.
[63] Such as when determining which country has jurisdiction over a divorce case, or how property can be inherited, the nationality and statelessness of the parties involved may play a role. See, for example, the Dutch Civil Code, book 10 (*Burgerlijk Wetboek Boek 10, Internationaal Privaatrecht*), art. 16. Interesting to mention here a judgment by a Dutch court where statelessness was relevant for the determining which rules governing the acquisition of a name by a child should be applied: Judgment of the Dutch Council of State (*Raad van State*) of 23 July 2014, No. 201310945/1/A3 (ECLI:NL:RVS:2014:2760).
[64] Chapters 3 below focuses on the relationship between nationality and rights, and explains that having a nationality does not per definition mean having sufficient protection, and that statelessness does not necessarily mean not enjoying or needing protection.

2.4 Definition of a national under international law

While international law has a fairly clear definition of a stateless person, a similar explicit definition of a national is lacking. At the same time, nationality is an essential concept in the international legal order composed of sovereign states,[65] and the implications of its meaning extend far beyond the scope of statelessness policies. Many international conventions and policy documents invoke the concept of nationality,[66] but none of them explicitly define it. Perhaps as a result of the lack of a clear definition, nationality has been ascribed different, sometimes conflicting, meanings in both policy and scholarship.

The European Convention on Nationality seems to offer something that resembles a definition of a nationality, namely 'the legal bond between a person and a State'.[67] This provision contains some important features regarding how nationality is generally understood under international law. Firstly, it is a *legal* bond, thus a status somehow derived from the national legal system. Secondly, it is a bond between *a person* and *a state*. It is an individual legal status attributed to a physical person,[68] and connects that person to a state.[69] This definition is, however, not specific enough to distinguish nationality from other types of legal bonds a state may have with a person, such as a legal bond between a state and its permanent foreign residents, its tourists, its civil service, its diplomatic representatives, its legally formalized ethnic diaspora living abroad,[70] or

[65] The ability to grant nationality to individuals is a defining feature of statehood in international law, as codified in the Montevideo Convention on the Rights and Duties of States of 1933, art. 1.
[66] For example, the UN Convention on the Reduction of Statelessness of 1961; the Council of Europe European Convention on Nationality of 1997; the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 12 April 1930; UN Convention on the Elimination of all Forms of Discrimination Against Women of 1979, art. 9 ; UN Convention on the Rights of the Child of 1989, arts. 7-8; Convention on the Rights of Persons with Disabilities of 2006, art. 18.
[67] A word related to the English word 'nationality' is used with the meaning of ethnic belonging in Slavic languages. Even in English and French some older literature may use the word 'nationality' referring to ethnicity, see section 2.2 above. See also G.-R. de Groot, *Staatsangehörigkeitsrecht im Wandel: eine rechtsvergleichende Studie über Erwerbs- und Verlustgründe der Staatsangehörigkeit*, (Asser Institute 1988), pp. 11-12.
[68] The concept of nationality of ships or commercial entities also exists under international law, but is not further discussed in this thesis.
[69] The definition of a state is thus also important for understanding what nationality is, and the issue of disputed statehood poses results in disputed nationality statuses. The issue of disputed states, however, falls outside of the scope of this thesis, see chapter 1, section 1.1 above.
[70] See, for example, C. Luk, *Diaspora status and citizenship rights: A comparative-legal analysis of the quasi-citizenship schemes of China, India and Suriname*, (Wolf Legal Publishers 2017).

its prisoners of war. As explained above in section 2.2, this definition to some extent serves the purpose of preventing the concept of nationality from being interpreted as ethnic belonging, but is not sufficiently specific to define what nationality is.

The term 'nationality' is not defined under the 1954 Convention, but the definition of a stateless person as a person 'who is not considered as a national by any State under the operation of its law'[71] forms the best basis available in international conventions for understanding who a national is in international law.[72] In particular, a person is a national if he or she is *considered under the operation of the law of any State as a national of that state*. It is clear from the text of the Convention, for example, that the person concerned does not need also to consider him- or herself to be a national of a state for the nationality bond with that state to exist. The role of the agency and consent of the individual in conceptualizing state membership is discussed in some more detail in chapter 4. While the individual's perspective sometimes matters in the normative framework about how nationality should be acquired and lost, it has no impact on how nationality is defined under international law. The unilateral proclamation of the fact that an individual is its national by any state is what construes the fact of a person being a national according to the 1954 Convention. A definition of a national which can thus be derived from the 1954 Convention is the following:

> *A national is a person who is considered as its national by any State under the operation of its law.*

Arguably, the combination of these two elements – the legal nature of the bond, as well as the state's monopoly on deciding whether the bond exists is what most accurately, although somewhat circularly, defines the concept of nationality under international law. Nationality is a status that a state calls into existence by pronouncing a person to be its national. It is the descriptive definition of what nationality actually is under international law, and should be distinguished from legal norms about how nationality should be acquired, lost and lived.

[71] UN Convention Relating to Status of Stateless Persons of 1954, art. 1.
[72] As mentioned before in section 2.3.1above, the International Law Commission referred to the 1954 Convention's definition of a stateless person as having acquired customary nature. See International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, (2006), p. 49, as also referenced in the UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), p. 9.

2.5 Rules on acquisition and loss of nationality, and on the recognition of nationality bonds created by foreign states

2.5.1 Rules on recognition of nationality bonds created by other states

According to the Hague Convention:

> *It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.*[73]

According to this Convention, states are generally obliged to recognize nationality laws and decisions of other states, but there are exceptions to this rule. In particular, states may refuse to give effect to a nationality law of another state if it is not 'consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality'.

The exact content of those conventions, custom and principles have been changing over time, and new norms about when and how nationality should be granted and withdrawn have developed since the adoption of the Hague Convention. The 1961 Convention on the Reduction of Statelessness, discussed in more detail in chapter 5, section 5.1.2, is an example of such a set of norms.[74] Another example of a principle generally recognized with regard to nationality is a prohibition on involuntary naturalizations: the general practice of states indicates that

[73] The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 12 April 1930, art. 2.
[74] See for a more detailed up to date description of such norms A. Edwards, 'The meaning of nationality in international law in an era of human rights: Procedural and substantive aspects' in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014), pp. 23-29.

naturalization can only take place with consent of the person who is naturalized.[75] If a state considers a specific person to be (or not to be) one of its nationals in violation of such rules, other states *have an option* of not recognizing a nationality bond created as a result of such violations. But they do not *have to* refuse recognition; they merely have an option to do so.

The possibility of not recognizing or not giving effect to a nationality bond in a jurisdiction of a specific state is clearly distinguishable under international law and practice from a nationality bond not being there. Rules on how nationality *should* be acquired and lost, and consequently rules on when recognition of a nationality bond can be denied by third states, do not impact the definition of what nationality *is*.[76] That is evidenced by practice of states and soft law documents that make non-recognition of internationally illegal nationality decisions by third states optional, and sometimes even discourage it. When a state decides that a person is one of its nationals in contradiction to international law, other states have an option not to recognize such a decision. If a state, however, decides that a person is not one of its nationals in contradiction to international law, not giving legal effect to such a decision abroad makes little sense. It is often considered something of an absurdity[77] not to recognize the lack of a nationality bond, or, in other words, to treat a person as a national of a foreign state, while the relevant foreign state denies the existence of the nationality bond (even when the nationality bond *should* be there according to international rules). The UNHCR Handbook confirms that even if a state leaves someone without a nationality against international standards, the lack of nationality should not be denied

[75] R. Donner, '*The Regulation of Nationality in International Law*', 2nd edition, (Transnational Publishers 1994), pp. 128-150, 160-165. See also below chapter 4, section 4.4, on the role of voluntariness in naturalizations.
[76] A particularly good example of this is the *Nottebohm* case discussed in section 2.5.2 below: ICJ, Nottebohm judgment (Lichtensten vs. Guatemala), 5 April 1955, Second Phase, Judgments [1955] ICJ 1, *ICJ Reports 1955*.
[77] See, for example, UK House of Lords, judgment in Stoeck v. Public Trustee, by Justice Russell, 14 April 1921, which reads: 'How could the municipal law of England determine that a person is a national of Germany? It might determine that for the purposes of English municipal law a person shall be deemed to be a national of Germany, or shall be treated as if he were a national of Germany; but that would not constitute him a national of Germany, if he were not such according to the municipal law of Germany. In truth there is not and cannot be such an individual as a German national according to English law'. See also M. O. Hudson, Special Rapporteur of the International Law Commission, report 'Nationality, Including statelessness', *Yearbook of the International Law Commission*, Vol. II, Doc. No. A/CN.4/50, (1952), p. 10; A. Harvey, 'Statelessness: the "de Facto" Statelessness Debate', *Journal of Immigration Asylum and Nationality Law*, Vol. 24, No. 3, (2010), p. 258; R. Donner, '*The Regulation of Nationality in International Law*', 2nd edition, (Transnational Publishers 1994), pp. 166-174; J. H. Verzijl, *International law in historical perspective*, Vol. V, (Martinus Nijhoff Publishers 1992), pp. 44-47. See also UK Supreme Court, Pham vs. Secretary of State for the Home Department, 25 March 2015.

recognition.[78] The perspective of the state of nationality is still decisive in establishing the existence of a nationality bond, as opposed to international rules that dictate how such a bond *should* be established and terminated, and whether it *needs to be recognized* by third states. Not complying with international obligations on how nationality should be acquired and lost is undoubtedly a violation of international norms, and can be invoked by third states as a reason not to give effect to certain existing nationality bonds in specific circumstances. However, such international laws do not form a basis for a descriptive definition of what nationality actually is, and they are not decisive in establishing the existence of a nationality bond.[79]

A closer look at the often cited *Nottebohm* judgment of the ICJ illustrates further that international law clearly distinguishes between the question of the existence of a nationality bond and the obligations of third states to recognize the effects of such a bond.

2.5.2 The 'genuine link' doctrine and the *Nottebohm* judgment

The landmark judgment of the International Court of Justice *Nottebohm* is often invoked by scholars to suggest that nationality in international law is defined not only through the mere existence of a legal bond of nationality, but also through the content of the factual relationship between the state and its national, labelled in that judgment as the 'genuine link'.[80] The 'genuine link' doctrine developed in that judgment speaks of the 'bond of attachment'[81] between a state and its national, and 'the existence of a long-standing and close connection', which can be expressed though, for example, permanent residence, affiliation with 'traditions', 'interests' and

[78] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), p. 23, para 56. See more in chapter 6, section 6.2.4, and chapter 8, section 8.3.
[79] See also R. W. Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', *The American Journal of International Law*, Vol. 24, No. 3, (July 1930), pp. 469-470.
[80] See, for example, A. Edwards, 'The meaning of nationality in international law in an era of human rights: Procedural and substantive aspects' in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014); C. Vlieks, E. Hirsch Ballin, and M. José Recalde Vela, 'Solving Statelessness: Interpreting the Right to Nationality', *Netherlands Quarterly of Human Rights*, Vol. 35, No. 3, (2017), pp. 158-175; G. M. Gauci and K. Aquilina, 'The Legal Fiction of a Genuine Link as a Requirement for the Grant of Nationality to Ships and Humans – the Triumph of Formality over Substance?', *International and Comparative Law Review*, Vol. 17, No. 1, (2017), pp. 167–191.
[81] ICJ, Nottebohm judgment (Lichtensten vs. Guatemala), 5 April 1955, Second Phase, Judgments [1955] ICJ 1, *ICJ Reports 1955*, p. 26.

'way of life' characteristic for the state, maintenance of family ties, as well as the existence of reciprocal rights and duties between the national and the state. [82]

I think that there are a number of compelling reasons not to consider the *Nottebohm* decision's genuine link concept as a basis for a definition of nationality under international law; it is unhelpful for establishing whether a nationality bond exists, and for distinguishing between nationals and non-nationals. Adopting the 'genuine link' doctrine as a basis for defining what nationality is blurs the boundary between what nationality actually *is* under international law, and the normative rules about how some may believe it *should* function. Many individuals, including myself, are nationals of states with whom they do not enjoy many of the substantive connections invoked in *Nottebohm*, and yet who would indisputably be seen as nationals by relevant states and international institutions. It is possible to argue that such people *should not* be nationals of states with whom they lack strong connections, but it is nevertheless important to realize that under current international legal regime they *are* nationals of such states. More importantly perhaps, there are many people who do have a 'genuine link' to a specific state, but do not enjoy nationality there. There are compelling arguments for their inclusion in the citizenry of such states, yet it is important to distinguish the discourse on such changes from recognizing the reality that these individuals *are currently not* nationals of the relevant states.

Not only is it unhelpful to adopt the 'genuine link' doctrine as a basis for a definition of nationality, there is also no basis for it in the judgment. The judgment concerned itself with a very peculiar diplomatic protection case,[83] and did not in any way draw conclusions as to whether the person, Mr Nottebohm, was a national of the applicant state, Liechtenstein, based on the fact that Liechtenstein considered Mr Nottebohm to be one of its nationals. It is thus not about the existence of the nationality status: no judgment is passed on whether Liechtenstein was allowed, under international law, to grant Mr Nottebohm its nationality, and whether Mr Nottebohm was in fact a national of Liechtenstein. The wording of the judgment makes it clear that the sole aim of the judgment is to answer the specific question at stake, namely whether

[82] ICJ, Nottebohm judgment (Lichtensten vs. Guatemala), 5 April 1955, Second Phase, Judgments [1955] ICJ 1, *ICJ Reports 1955*, p. 26.
[83] For the background of this case, see various case notes written about this case, for example by J. L. Kunz, 'The Nottebohm Judgment', *American Journal of International Law*, Vol. 54, No. 3, (1960), pp. 536-571; and by J. M. Jones, 'The Nottebohm case', *International and Comparative Law Quarterly*, Vol. 5, No. 2, (1956), pp. 230–244.

Guatemala, the respondent state, was obliged to recognize the naturalization of Mr Nottebohm by Liechtenstein in the context of diplomatic protection claims at stake. The Court even emphasized that it was not ruling on whether other states were supposed to recognize the naturalization of Mr Nottebohm by Liechtenstein, but only whether Guatemala was supposed to do that in the particular context of this case:

> *The Court must ascertain whether the nationality conferred on Nottebohm by Liechtenstein by means of a naturalization which took place in the circumstances which have been described, can be validly invoked as against Guatemala, whether it bestows upon Liechtenstein a sufficient title to the exercise of protection in respect of Nottebohm as against Guatemala and therefore entitles it to seise the Court of a claim relating to him. In this connection, Counsel for Liechtenstein said : "the essential question is whether Mr. Nottebohm, having acquired the nationality of Liechtenstein, that acquisition of nationality is one which must be recognized by other States". This formulation is accurate, subject to the twofold reservation that, in the first place, what is involved is not recognition for al1 purposes but merely for the purposes of the admissibility of the Application, and, secondly, that what is involved is not recognition by al1 States but only by Guatemala.*
> […]
>
> *The Court does not propose to go beyond the limited scope of the question which it has to decide, namely whether the nationality conferred on Nottebohm can be relied upon as against Guatemala in justification of the proceedings instituted before the Court.*
> […]
>
> *In other words, it must be determined whether that unilateral act by Liechtenstein is one which can be relied upon against Guatemala in regard to the exercise of protection. The Court will deal with this question without considering that of the validity of Nottebohm's naturalization according to the law of Liechtenstein.* [84]

[84] ICJ, Nottebohm judgment (Lichtensten vs. Guatemala), 5 April 1955, Second Phase, Judgments [1955] ICJ 1, *ICJ Reports 1955*, p 4.

Even when seemingly theorizing nationality as something more than a legal link and including consideration of substance of state membership, the ICJ immediately put its conclusions in the context of the particular case at hand:

> *According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred […] is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it* only entitles that State to exercise protection vis-à-vis another State*, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.* [emphasis added]

Such formulations suggest the ICJ did not intend its findings about nationality to be generalizable to what nationality in fact is in the contexts outside diplomatic protection, or even outside this specific instance of diplomatic protection.

Most commentators who specifically analysed the *Nottebohm* judgment were highly critical of it, precisely because it is liable to be misinterpreted as defining nationality through the content of the relationship between the state and its nationals.[85] It makes little sense, and is arguably even impossible, to define nationality on the basis of some vague concept of a genuine link between a state and a person.[86] The genuine link criterion is not specified in the *Nottebohm* judgment. Although certain components of what constitutes a 'genuine link' are mentioned, it is unclear whether all of these components, or some of them, and to what extent, need to be fulfilled for the

[85] See R. Donner, '*The Regulation of Nationality in International Law*', 2nd edition, (Transnational Publishers 1994), p. 63-64, note 97; J. L. Kunz, 'The Nottebohm Judgment', *American Journal of International Law*, Vol. 54, No. 3, (1960), pp. 536-571; J. M. Jones, 'The Nottebohm case', *International and Comparative Law Quarterly*, Vol. 5, No. 2, (1956), pp. 234-235; R. D. Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality', *Harvard International Law Journal*, Vol. 50, No. 1, (2009), pp. 1-60.

[86] Originally, the genuine link criterion was used in the context of multiple nationalities, for determining the dominant nationality in the context of private international law disputes. See the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 12 April 1930, art. 5.

existence of the nationality to be established. For example, an individual may have weak family and cultural links and no residence link to a state, and the genuine link criterion does not help us to evaluate whether such person is a national. Interestingly, the risk of arbitrarily labelling individuals as 'stateless' because they might have only very loose links with their state of nationality was mentioned by the dissenting opinion of Judge Guggenheim in this case,[87] and echoed by scholarly critics.[88] Incidentally, the UNHCR also explicitly rejects the 'genuine link' criterion as a basis for a descriptive definition of nationality in its Handbook on the Protection of Stateless Persons for that reason.[89]

To sum up, the fact that the wording of the judgment very carefully avoids any kind of generalizations about what nationality under international law is, combined with the fact that the potential application of the genuine link criterion to establishing the existence of nationality makes little sense and has been heavily criticized by scholars, form the basis for concluding that the genuine link criterion does not define nationality under international law.

2.6 Concluding remarks

The concept of nationality is not explicitly defined in international conventions, but undoubtedly exists under international law, and plays a central role in the international legal order that consists of sovereign states. International law clearly has a way of distinguishing between nationals and non-nationals. In this chapter I argued that the most accurate way to formulate the international definition of a national is through the position of the state of nationality on whether a nationality bond with a specific individual exists. In sections 2.2-2.4 I established that nationality and statelessness are conceptually each other's binary opposites. I formulated the definitions for both, based on codification in international treaties to the extent such codification exists, and I rely on those definitions in the rest of this thesis. I submit that a national under international law is defined as a person considered as its national by at least one State under the

[87] Dissenting Opinion of Judge Guggenheim (ad-hoc), ICJ, Nottebohm judgment (Lichtensten vs. Guatemala), 5 April 1955, Second Phase, Judgments [1955] ICJ 1, *ICJ Reports 1955*, p. 60.
[88] J. L. Kunz, 'The Nottebohm Judgment', *American Journal of International Law*, Vol. 54, No. 3, (1960), pp. 543, 566; J. M. Jones, 'The Nottebohm case', *International and Comparative Law Quarterly*, Vol. 5, No. 2, (1956), pp. 234-235.
[89] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para. 54.

operation of that State's law. The existence of a nationality bond depends neither on what the bond entails in practice, nor on the way in which it was, or was not, created. Definitions of nationality through anything else than the perspective of the relevant state only confuse *normative ideas that regulate how nationality should be* with *descriptive definition of what nationality under international law actually is*. While normative perspectives on nationality are numerous, diverse and complex - some of them being discussed in more detail in chapters 3 and 4 below - the descriptive definitions of nationality and statelessness under international law are fairly simple and depend on one factor only – namely the decision of the relevant states on whether a specific person is their national.