

Nationality Law in the Eastern Hemisphere

*Acquisition and Loss of Citizenship
in Asian Perspective*



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Olivier Vonk (editor-in-chief)

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Chapters in this book are the result of the expansion of the EUDO Citizenship Observatory to worldwide coverage of citizenship policies, its transformation into the Global Citizenship Observatory (GLOBALCIT), and synergies with the editor's Marie Curie project 'Towards Global Nationality Studies'. The funding for the reports that form the basis of the book has generously been provided by the European University Institute's Research Council (project: 'Global trends and diffusion processes in citizenship policies'), the Global Governance Programme at the Robert Schuman Centre for Advanced Studies, and the University of Liège and the European Union under the Marie Curie COFUND programme.

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Preface

This edited volume consists of chapters that have previously been published as individual Asian country reports by the GLOBALCIT Observatory, formerly called the EUDO CITIZENSHIP Observatory due to its original focus on Europe and neighbouring countries. GLOBALCIT is a free online research platform on matters of citizenship and the franchise and the new name reflects the Observatory's worldwide coverage after its geographic expansion first to the Americas and most recently to Asia and other continents. The papers collected in this book provide the first comprehensive overview of citizenship law in Asia since *Nationality and International Law in Asian Perspective*, published by Brill in 1990 and edited by Ko Swan Sik.

As a consortium member of the Observatory I express my enormous gratitude to the following country experts who contributed by writing country reports, collecting citizenship-related legislation and case law, and reviewing the Observatory's analysis of the grounds for acquisition and loss of citizenship in their respective countries. My thanks therefore go to Filomeno Aguilar (Philippines), José María Arraiza (Myanmar), Ashna Ashesh and Arun Thiruvengadam (India), Abdullah Athayi (Afghanistan), Luwie Ganeshathasan and Asanga Welikala (Sri Lanka), Susi Dwi Harijanti (Indonesia), Ridwanul Hoque (Bangladesh), Patrícia Jerónimo (East Timor), Atsushi Kondo (Japan), Chulwoo Lee (South Korea), Choo Chin Low (China/Taiwan and Malaysia/Singapore), Faryal Nazir (Pakistan), Lyma Nguyen (Vietnam), Sabin Shrestha (Nepal) and Christoph Sperfeldt (Cambodia). I also thank Jelena Dzankic and Ognjenka Manojlovic for excellent team work during the Observatory's rapid geographic expansion.

This volume appears three years after *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean* (Brill), which I wrote as a Marie Curie Fellow at Maastricht University/Georgetown University. The term Eastern Hemisphere is certainly less common and the territory to which it refers is less defined. However, its use by Robert D. Kaplan in *Asia's Cauldron* as well as the clear parallels between the two hemispheres – he refers to the 'glaringly obvious similarity' between the Caribbean and the South China Sea (the 'American' and 'Asian' Mediterranean respectively) – warranted using the term in the title of the book.

Some of the original country reports have been slightly revised to correct minor inconsistencies or to include recent developments. Readers are encouraged to consult the GLOBALCIT country profiles for additional information on the countries discussed in this book. Comparative nationality law has taken a great flight in recent years. My own introductory chapter was previously published as a GLOBALCIT comparative analysis and can be read in conjunction with similar analyses on the Americas by Diego Acosta, Central and Eastern Europe by Costica Dumbrava, Central Asia by Medet Tiulegenov, the Middle East and North Africa by Zahra Albarazi, and Bronwen Manby's PhD thesis from 2015 entitled *Citizenship and Statelessness in Africa: The Law and Politics of Belonging*.

I am again greatly indebted to the European Commission as well as the University of Liège for funding a follow-up project entitled 'Towards Global Nationality Studies' by

CITIZENSHIP LAW IN ASIA

means of a Marie Curie COFUND postdoctoral fellowship, which allowed me to devote time and budget to this undertaking. Funding was also generously provided by the European University Institute's Research Council and the Global Governance Programme at the Robert Schuman Centre for Advanced Studies.

Finally, my thanks go to Wolf Legal Publishers for adding yet another publication to their already impressive catalogue of books dealing with nationality law.

Comments are very welcome and can be sent to: olivierwvonk@gmail.com.

Olivier Vonk

Liège, 15 November 2017

Table of contents

Preface

iii

Citizenship Law in Asia

1. Introduction	1
2. Citizenship law in Asia: general aspects and the effects of (de)colonization	3
3. Comparative Analysis of citizenship laws	9
3.1 Acquisition of citizenship by birth	9
3.1.1 <i>Ius sanguinis</i>	10
3.1.2 <i>Ius soli</i>	12
3.1.3 <i>Special rules of acquisition of citizenship at birth</i>	16
3.2 Acquisition of citizenship after birth	17
3.2.1 <i>Ordinary naturalisation and special naturalisation for spouses</i>	17
3.3 Loss of citizenship	22
3.3.1 <i>Voluntary loss of citizenship</i>	23
3.3.2 <i>Involuntary loss of citizenship</i>	24
4. Bookends of the citizenship spectrum: multiplenationality and statelessness	25
5. Discrepancies between law and practice	28
6. Conclusion	29
References	31
Additional references for Thailand (not covered in this book)	34

Afghanistan

1. Introduction	35
2. Historical Background	36
2.1 Citizenship during the Nizamnama phase (1920 – 1929)	36
2.2 Citizenship during the Osolnama period (1932 – 1964)	38
2.3 Citizenship during the Qanoonnama phase (1964 – 2016)	40
3. The current citizenship regime	42
3.1 The main modes of acquisition and loss of nationality	42
3.1.1 <i>Acquisition of Afghanistan citizenship</i>	42
3.1.2 <i>Modes of loss of citizenship</i>	44
3.1.3 <i>Dual citizenship</i>	46
3.2 Specific rules and statuses for certain categories of persons	48
3.3 Special institutional arrangements	49
3.3.1 <i>The administrative procedure for acquiring citizenship by naturalisation</i>	49
4. Current political debates and reform plans	50
5. Conclusions	51
Bibliography	53

Bangladesh

1. Introduction	55
2. Historical Background	57
2.1 Initial determination of citizenship	59
2.2 Development and reform of citizenship law	60

2.3	Legacy of pre-independence legal regime, and the impact of bi-lateral relationships on <i>citizenship</i> law	62
3.	The current citizenship regime	67
3.1	Acquisition of Bangladesh Citizenship	67
3.1.1	<i>Citizenship by naturalisation (Foreigners' acquisition of citizenship)</i>	69
3.1.2	<i>Citizenship through marriage and gender-inequality</i>	72
3.1.3	<i>Citizenship of foundlings and adopted children: the legal gap</i>	73
3.2	Loss of Bangladesh Citizenship	73
3.2.1	<i>Loss of citizenship by birth for long absence</i>	74
3.2.2	<i>Dual citizenship and the loss of Bangladesh citizenship upon the acquisition of foreign citizenship)</i>	74
3.2.3	<i>Loss of citizenship acquired through naturalisation</i>	75
3.2.4	<i>Natural justice and the absence of arbitrariness vis-a-vis deprivation of citizenship</i>	76
3.3	Citizenship of Biharis in Bangladesh	77
4.	Current political debates and reform plans	80
5.	Conclusions	84
	Bibliography	87

Cambodia

1.	Introduction	91
2.	Historical Background	91
2.1	The French Protectorate (1863 – 1953)	92
2.2	Independent Cambodia and the Sihanouk Regime (1953 – 1970)	93
2.3	Times of War and Transition (1970 – 1993)	96
2.3.1	<i>Khmer Republic (1970 - 1975)</i>	96
2.3.2	<i>Democratic Kampuchea (1975 - 1979)</i>	96
2.3.3	<i>People's Republic of Kampuchea (1979 - 1989)</i>	97
2.3.4	<i>United Nations Transitional Authority in Cambodia (1992 - 1993)</i>	97
2.4	Kingdom of Cambodia (1993 – today)	98
2.4.1	<i>Citizenship in Cambodia's 1993 Constitution</i>	98
2.4.2	<i>The 1994 Immigration Law</i>	99
2.4.3	<i>1996 Nationality Law cambodgien</i>	100
3.	The current citizenship regime	101
3.1.1	<i>Acquisition of Nationality by Birth</i>	102
3.1.2	<i>Acquisition of Nationality by Marriage</i>	102
3.1.3	<i>Acquisition of Nationality by Naturalisation Sub-decree No. 287 on the Forms and Procedures for Acquisition of Citizenship through Naturalisation</i>	103
3.1.4	<i>Loss or renunciation of citizenship Sub-decree No. 288 on the Forms and Procedures for the Renunciation of Citizenship</i>	105
3.1.5	<i>Dual citizenship</i>	105
3.1.6	<i>Proof of citizenship: Cambodian identification documents Sub-decree No. 60 of 2007 on Cambodian Nationality Identity Cards Sub-decree No. 103 on Civil Status Sub-decree No. 17 on Amendment to Sub-Decree on Civil Registration</i>	105
3.2	Status of selected groups	107
3.2.1	<i>Cambodian diaspora</i>	107
3.2.2	<i>Khmer Krom: At home?</i>	108

TABLE OF CONTENTS

3.2.3 Long-term ethnic Vietnamese residents: At risk of statelessness	108
4. Current political debates and reform plans	110
5. Conclusion	111
Bibliography	

China and Taiwan

1. Introduction	117
2. Historical Background	118
2.1 Emigration and citizenship	118
2.2 State succession and the <i>ius sanguinis</i> citizenship regime	119
2.3 Dual nationality treaties and the socialist regime	120
2.4 Recovery of Chinese nationality and returned overseas Chinese	123
3. The Current Citizenship Regime	125
3.1 Modes of acquisition of citizenship	125
3.2 Non-recognition of dual nationality and naturalisation	127
3.3 Loss of nationality and dual nationality	128
3.4 Rights of citizens and 'one country, multiple citizenship systems'	131
4. Nationality in Taiwan	135
4.1 Historical development prior to the 2000 nationality reform	135
4.2 Nationality reform and the current nationality regime <i>ius soli</i>	136
4.3 Naturalisation	138
4.4 Rights of naturalised citizens	141
5. Reform Plans in Taiwan	142
5.1 Naturalisation and selective tolerance of dual nationality	142
6. Current Political Debates in China	145
6.1 Returned migrants and dual nationality	145
7. Conclusions	148
References	150

India

1. Introduction	153
2. Historical Background: Colonial and Post-colonial contexts	155
2.1 The colonial period	155
2.2 The moment of Independence, its aftermath and constitutional provisions relating to citizenship	157
3. Current Citizenship Regime: The Citizenship Act of 1955	161
3.1 Modes of Acquisition	162
3.2 Modes of Loss	169
3.3 Supplementary Provisions	170
4. Current Political Debates	171
4.1 A brief overview of the contemporary Indian political landscape	171
4.2 An overview of recent changes in citizenship law in India	172
5. Conclusion	173
References	175

Indonesia

1. Introduction	177
2. Citizenship Law in Historical Perspective	178
2.1 Law No. 3 of 1946: The First Indonesian Citizenship Act	178

CITIZENSHIP LAW IN ASIA

2.2	Citizenship Agreement between the Federal Republic of Indonesia and the Netherlands	180
2.3	Law No. 62 of 1958: The <i>ius sanguinis</i> citizenship regime	181
2.4	The Sino-Indonesia Dual Nationality Treaty	182
	2.4.1. <i>Background and its associated problems</i>	182
	2.4.2. <i>The Agreement and its implementation</i>	183
2.5	The issuance of Surat Bukti Kewarganegaraan Republik Indonesia	185
3.	The Current Citizenship Regime: Law No. 12 of 2006 and its implementing Regulations	186
3.1	Major background of changes	186
3.2	Some fundamental features of the 2006 Law	187
3.3	Modes of acquisition and loss of nationality	189
	3.3.1 <i>Acquisition of nationality</i>	189
	3.3.2 <i>Loss of nationality</i>	192
4.	Current political debates and reform plans	193
4.1	The dual citizenship issue	193
4.2	The weaknesses of the current citizenship regime	195
5.	Conclusions	195
	Bibliography	197

Japan

1.	Introduction	199
2.	Nationality Legislation in Historical Perspective	199
3.	Acquisition of Citizenship and Preventing Discrimination	202
3.1	The 1899 Nationality Act and the 1950 Citizenship Act	202
3.2	<i>Ius Sanguinis</i> and Gender Equality	203
3.3	Acknowledged Illegitimate Children	205
3.4	Naturalisation	205
3.5	Statelessness	208
4.	Loss of Citizenship and the Prohibition of Arbitrary Deprivation of Citizenship	209
4.1	Voluntary Renunciation	209
4.2	Involuntary Deprivation	209
4.3	The 'System of Reservation'	211
4.4	Multiple Citizenship	211
5.	Conclusion	213
	References	214

Malaysia and Singapore

1.	Introduction	219
2.	Historical Background	220
2.1	Federalism and Multilevel Citizenship	220
2.2	Immigration and birthright citizenship	222
2.3	Dual citizenship	225
2.4	Singapore and a common Malaysian nationality	228
3.	Singapore Citizenship History	229
3.1	Singapore citizenship before the merger	229
3.2	Singapore state citizenship and merger	231
4.	The Current Citizenship Regime in Malaysia	234

TABLE OF CONTENTS

4.1	Birthright citizenship	234
4.2	Registration and Naturalisation in Malaysia	236
4.3	Rights of native citizens	238
4.4	Loss of citizenship and dual citizenship	239
5.	The Current Citizenship Regime in Singapore	240
5.1	Birthright citizenship	240
5.2	Naturalisation in Singapore	242
5.3	Loss of citizenship and dual citizenship	243
6.	Current Debates in Singapore	245
6.1	Dual citizenship and expatriate citizens	245
7.	Current Political Debates in Malaysia	247
7.1	British Overseas Citizens (BOC) and statelessness	247
8.	Conclusions	250
	Bibliography	256

Myanmar

1.	Introduction	259
2.	Historical background	261
3.	Nationality Legislation in Historical Perspective	262
3.1	Pre-colonial Period	262
3.2	The British Colonial Era (1826 – 1947)	262
3.3	The Parliament Democracy Era (1948 – 1962)	263
3.4	The Revolutionary Council era (1962 – 1974)	264
3.5	The Myanmar Socialist Programme Party Era (1974 – 1988)	265
3.6	State Law and Order Restoration Council (or) State Peace and Development Council Era (1988 – 2001)	267
4.	Acquisition and loss of citizenship	268
4.1	General Ne Win's citizenship law	269
5.	Uneven application of the legal framework leading to statelessness	271
6.	The need for reform and compliance with the rule of law	272
7.	Conclusion	273
	References	275

Nepal

1.	Introduction	277
2.	Historical Background	277
3.	Current citizenship regime	281
3.1	Acquisition of Nepalese citizenship	281
3.1.1	<i>Citizenship by descent</i>	281
3.1.2	<i>Acquisition by naturalisation (through marriage, ordinary naturalisation etc.)</i>	283
3.1.3	<i>Other grounds for acquisition of citizenship</i>	284
3.1.4	<i>Procedures for obtaining citizenship according to the Citizenship Act</i>	285
3.1.5	<i>The procedures for obtaining citizenship in the Citizenship Rules</i>	286
3.2	Loss of Nepalese citizenship	288
3.2.1	<i>Voluntary renunciation</i>	288
3.2.2	<i>Resumption of Citizenship</i>	289
3.2.3	<i>Other grounds for loss</i>	289

3.2.4	<i>Procedures in the citizenship rules for renouncing citizenship</i>	289
4.	Correction of information on the citizenship certificate	290
4.1	Section 17 of the Nepal Citizenship Act	290
4.2	Rule No. 14 of Nepal Citizenship Rules	290
5.	Current political debates and reform plans	290
5.1	Lack of Citizenship Certificate	291
6.	Conclusion	293
	Bibliography	294

Pakistan

1.	Introduction: 1951 Act of Citizenship	295
2.	Citizenship and Partition	296
3.	The Current Citizenship Regime	298
3.1	Acquisition of citizenship	298
3.1.1	<i>Citizenship by Birth</i>	298
3.1.2	<i>Citizenship Claims by Afghan Refugees</i>	298
3.1.3	<i>Citizenship by Descent</i>	300
3.1.4	<i>Citizenship by Migration</i>	301
3.1.5	<i>Citizenship by Naturalisation</i>	301
3.1.6	<i>Citizenship, Commonwealth citizens and investment policy</i>	302
3.1.7	<i>The citizenship of Kashmiri Subjects</i>	302
3.1.8	<i>The Case of a Married Woman</i>	304
3.1.9	<i>The Separation of East Pakistan and Citizenship Claims</i>	305
3.1.10	<i>Citizenship by Incorporation of Territory</i>	307
3.2	Loss of citizenship	308
3.3	Dual Citizenship	310
4.	Conclusion	313
	Bibliography	315
	Table of cases	317

Philippines

1.	Introduction	319
2.	Historical Background	320
2.1	The Original Conception of Philippine Citizenship	320
2.2	Chinese Exclusion Law	322
2.3	Philippine Citizenship under US Colonial Auspices	322
2.4	The Principle of Ius Soli and Colonial Jurisprudence	324
2.5	The 1935 Constitution and the Ascendancy of Ius Sanguinis	327
2.6	The Definitive End of Ius Soli	328
3.	Current Citizenship Regime	330
3.1	Citizenship in the 1973 and 1987 Constitutions	330
3.2	Citizenship by Naturalisation	331
3.3	Loss and Reacquisition of Philippine Citizenship	334
4.	Current Debates and Reforms	338
4.1	The Citizenship of Foundlings	338
4.2	Citizenship of Stateless Persons	340
5.	Conclusion	341
	Bibliography	344

TABLE OF CONTENTS

South Korea

1. Introduction	347
2. Historical background	348
2.1 Historical overview	348
2.2 Nationality prior to the birth of the republic	351
2.3 Major changes after the enactment of the Nationality Act 1948	352
3. The system of citizenship law and administration	355
3.1 The system of national legislation on citizenship	355
3.2 International law	356
3.3 The organisational structure of citizenship administration	358
4. Acquisition of citizenship	359
4.1 Acquisition of citizenship by birth	359
4.2 Acquisition of citizenship by acknowledgment	360
4.3 Acquisition of citizenship by naturalisation	361
4.4 Acquisition of citizenship by reinstatement of nationality	369
4.5 Concurrent acquisition of citizenship	370
4.6 Reacquisition of citizenship	370
4.7 Nationality determination	371
4.8 Statistical overview of the acquisition of citizenship: Naturalisation and reinstatement of nationality	372
5. Loss of citizenship	377
5.1 Involuntary loss of citizenship	377
5.2 Voluntary Loss of Citizenship	381
5.3 Procedures and duties after the loss of citizenship	383
5.4 Statistical overview of the loss of citizenship	384
6. Controlling multiple citizenship and statelessness	385
6.1 Controlling multiple citizenship	385
6.2 Controlling statelessness	387
7. Agendas for future reform	388
7.1 Citizenship policies 1998 - 2016	388
7.2 Agendas for future reform	389
Bibliography	392

Sri Lanka

1. Introduction	395
2. Historical Background	396
2.1 Pre-Independence	396
2.2 Independence to Republic	396
2.3 The Republican Era	402
3. Current Citizenship Regime	406
4. Current Political Debates and Reforms	408
5. Conclusion	409
References	411

East Timor (Timor-Leste)

1. Introduction	413
2. Historical Background	415
2.1 Territory and membership criteria under Portuguese rule	415
2.2 Membership criteria under Indonesian rule	422

2.3	Membership criteria under UNTAET	428
2.4	Membership status(es) at the time of independence	433
3.	Current citizenship regime	435
3.1	Modes of attribution and acquisition of Timorese citizenship	440
3.2	Modes of loss of Timorese citizenship	451
3.3	Reacquisition of Timorese citizenship	455
3.4	Rights of citizens by birth and by acquisition	457
4.	Current political debates and reforms	458
	Bibliography	460

Vietnam

1.	Introduction	463
2.	Historical Background	466
2.1	The Colonial period	466
2.2	The Socialist Republic	467
2.2.1	<i>The 1988 Nationality Law</i>	467
2.2.2	<i>The 1998 Nationality Law</i>	468
3.	The current citizenship regime: 2008 Nationality Law	470
3.1	General characteristics	471
3.2	Acquisition of citizenship	472
3.2.1	<i>Acquisition of citizenship by birth</i>	472
3.2.2	<i>Acquisition of Citizenship by Naturalisation</i>	473
3.2.3	<i>Acquisition of Citizenship by Restoration</i>	475
3.3	Loss of Vietnamese Citizenship	476
3.3.1	<i>Loss of Citizenship by Renunciation</i>	476
3.3.2	<i>Loss of Citizenship by Deprivation</i>	477
3.4	Specific rules and status for certain (numerically and politically important) groups	477
3.4.1	<i>Vietnamese Women Marrying Foreign Nationals</i>	478
3.4.2	<i>Displaced Persons of Vietnamese Origin who Have Lived in Cambodia</i>	478
3.5	Acquisitions of citizenship after legislative reforms	479
4.	Current political debates and reform plans	480
	References	482

About the Authors

485

Citizenship Law in Asia

*Olivier Vonk*¹

1. Introduction

This comparative chapter analyses the contemporary citizenship laws of 22 countries in Asia, namely Afghanistan, Bangladesh, Cambodia, China, East Timor (Timor-Leste), India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam.² With the exception of Laos, Mongolia, North Korea and Thailand, the grounds for acquisition and loss of citizenship have been analysed in collaboration with a team of GLOBALCIT country experts.³ It was decided to exclude Bhutan,⁴ Brunei and Maldives, as no country experts have yet been identified and because all three have a particularly small population compared to the other states under examination.⁵

The analysis relies not only on the country experts' input regarding the modes of acquisition and loss of citizenship, but also on their respective country chapters which will be referred to here as Aguilar 2018 (Philippines), Arraiza and Vonk 2018 (Myanmar), Ashesh and Thiruvengadam 2018 (India), Athayi 2018 (Afghanistan), Ganeshathasan and Welikala 2018 (Sri Lanka), Harijanti 2018 (Indonesia), Hoque 2018 (Bangladesh), Jerónimo 2018 (East Timor), Kondo 2018 (Japan), Lee 2018 (South Korea), Low 2018a (China/Taiwan),⁶ Low 2018b (Malaysia/Singapore), Nazir 2018 (Pakistan), Nguyen 2018 (Vietnam), Shrestha 2018 (Nepal) and Sperfeldt 2018 (Cambodia).

The first part of the chapter provides a background to the region by highlighting some pertinent issues surrounding citizenship law and by discussing the subject in relation to the process of (de)colonisation. The second part presents a comparative overview of the main provisions of the citizenship laws of the selected countries. The analysis is

¹ A previous version of this chapter was published as a GLOBALCIT comparative report. See Vonk 2017a.

² The terms North and South Korea will be used instead of the Democratic People's Republic of Korea (DPRK) and the Republic of Korea (ROK), respectively.

³ <http://globalcit.eu/people/country-experts/>. See also the GLOBALCIT Databases on Grounds for Acquisition and Loss of Citizenship (<http://globalcit.eu/acquisition-citizenship/> and <http://globalcit.eu/loss-of-citizenship/>), where many more details are provided compared to the overview tables in this chapter.

⁴ On Bhutan, see Ferraro: 2012.

⁵ The countries in Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) will be covered in a separate GLOBALCIT comparative analysis by Medet Tiulegenov. Although countries such as Afghanistan and Mongolia are part of Central Asia according to some definitions, they differ from the 'Stans' in that the major citizenship issues of the latter derive from the break-up of the Soviet Union and are therefore of a very different nature compared to the countries covered in this chapter.

⁶ While the country chapter on China/Taiwan touches on Hong Kong, a British colony until 1997, more information on its nationality status can be found in White 1987, 1988, 1989. Similarly, the former Portuguese possession of Macau, returned to China in 1999, is discussed in the chapters on China/Taiwan and East Timor. Other Portuguese possessions in Asia included Damão, Diu, Dadrá, Goa and Nagar Aveli. Together these territories formed Portuguese India and were referred to in Portuguese as 'Antigo Estado da Índia'.

structured along three major dimensions: acquisition of citizenship at birth, acquisition of citizenship after birth,⁸ and loss of citizenship. The third part discusses dual citizenship and statelessness as well as the discrepancies between law and practice.

The Asian region is very vast and many of the sovereign states created in Asia after WWII were conspicuously multi-ethnic, multi-religious, and multi-lingual (Suryadintata 2015). The following quote may serve to set the scene:

In the 1930s, large empires – British, Dutch, French, American, and Japanese – controlled Asia. By 1950, Asia was divided into nation-states. Between 1945 and 1949, India, Pakistan, Burma [now Myanmar], Sri Lanka, Indonesia, and the Philippines became independent. The Communist revolution in China created two states – the People’s Republic of China and a de facto nationalist state in Taiwan – as did the partition of Korea into North and South Korea: both divisions last to this day. The breakup of empires and the drawing of new borders produced countless refugees [...] It also produced a patchwork of minority populations within each new set of borders. Each new state faced the historical legacy of the mass immigration of an earlier era [...], with the presence of large populations of what imperial administrators had once called ‘foreign Asians’: primarily people of Indian and Chinese origin (Amrith 2011: 117).

Despite these historical events during the twentieth century, Asia is a continent that has notoriously been neglected in comparative nationality studies.⁹ Indeed, research on nationality law has traditionally suffered from what may be called an ‘Atlantic’ (Vink and Bauböck 2013: 640) or ‘Global North’ (Sadiq 2017: 165) bias,¹⁰ which is partly related to the fact that data on nationality laws of countries outside Europe and the Western world remain relatively scarce, although there has been a notable improvement in this respect by recent scholarship on the Americas and Africa.¹¹ This lack of interest is to some extent understandable in that Asian countries have significantly lower accession rates to international treaties dealing with nationality law compared to other regions, and that no important citizenship-related judgments and decisions have been handed down by regional courts.¹² By contrast, important judgments have been delivered by the European Court of Human Rights and the Court

⁸ For the sake of convenience, acquisition *iure soli* after birth is discussed in the section on *ius soli* (section 3.1.2).

⁹ Monographs on the subject date back at least 27 years. See the publications by Hecker 1965, 1975 and 1978 and Ko Swan Sik 1990.

¹⁰ The lack of attention for Asia is also acknowledged by authors from the region itself. For example, it has been noted by Choe that since existing studies of citizenship mainly focus on European cases, his study of China and South Korea ‘will help expand scholarship on citizenship by evaluating both the achievements and the limitations of the [East Asian] area’ (Choe 2006: 84).

¹¹ See Vonk 2014, Manby 2015 as well as the different continent profiles at <http://globalcit.eu/country-profiles/>.

¹² See similarly the report ‘The World’s Stateless’ (59): ‘Unlike Africa, the Americas and Europe, the Asia and Pacific region does not have a regional human rights framework, with its own treaty, court and commission (or equivalent bodies). This lacuna means that there is a dearth of regional norms and jurisprudence which set out the rights of all persons including the stateless. In the absence of such a regional framework, the importance of the international UN framework is greater’. Available at <http://www.institutesi.org/worldsstateless17.pdf>.

of Justice of the European Union;¹³ the Inter-American Court of Human Rights;¹⁴ and the African Committee of Experts on the Rights and Welfare of the Child.¹⁵

2. Citizenship law in Asia: general aspects and the effects of (de)colonisation

With the exception of Thailand,¹⁶ all countries under discussion have a history of being colonised or of colonising other countries themselves. The majority of them only became independent around the middle of the twentieth century and we can still witness the citizenship consequences of this relatively recent independence today. For example,

The British colonial legacy is also visible in the current citizenship context in Malaysia. There are cases of Malaysian British Overseas Citizens (BOC) rendered stateless after failing to secure British nationality, having given up their Malaysian citizenship. As Malaysia strictly enforces a single nationality principle, any citizens exercising their right as a BOC and obtaining a British passport will lose their Malaysian citizenship (Low 2018b: 219).

Decolonisation not only had important consequences for the field of nationality law, but also for that of migration:

Until the middle of the twentieth century, the common distinction between internal and international migration meant little in the Asian context. Most migration took place within and across the boundaries of empires. In the twentieth century, internal migration within empires turned abruptly into international migration, as new states were formed and new borders drawn (Amrith 2011: 3).

The main European colonising powers were Britain, France, Portugal, the Netherlands and the United States. To start with French rule in Asia, Cambodia was a French protectorate between 1863-1953 and colonisation had a lasting impact in that Cambodia would henceforth adhere to the civil law system introduced by the French (Sperfeldt 2018: 92). In Vietnam, a French colony from the end of the nineteenth century until 1954,

[g]enerally speaking, French laws, including the French Civil Code [were applied], following practices of the French courts in Cochinchine with local

¹³ ECHR, *Genovese v. Malta*, 11 October 2011; Case C-135/08, *Rottmann* [2010], 2 March 2010.

¹⁴ Inter-American Court of Human Rights, *Case of the Girls Yean and Bosico v. Dominican Republic*, 8 September 2005.

¹⁵ African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Decision on the communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against the government of Kenya, 22 March 2011. See extensively on these cases De Groot and Vonk 2016 and, more concisely, Vonk 2016.

¹⁶ Schulte-Nordholt 2016: 190. This chapter does not touch on Papua New Guinea, previously a German colony and later part of Australia before acquiring independence in 1975. See Thwaites 2017: 11-13.

modifications. Most laws dealing with matters of citizenship were therefore concerned with naturalisation to French citizenship. As Vietnam held the status of a colony under French rule – unlike those living in French Protectorates such as Laos and Cambodia – Vietnamese colonial inhabitants were treated as ‘subjects’ and generally enjoyed more rights and privileges, including access to French citizenship (Nguyen 2018: 464–465).

Indonesia declared itself independent from the Netherlands in 1945, after having been dominated by this European power for almost 350 years. East Timor had been a Portuguese colony for several centuries until it was, in turn, invaded by Indonesia in 1975. The military occupation of East Timor lasted from 1975 until 1999 – during which time Indonesian citizenship law was applied (Harijanti 2018: 178) – and the country became an independent state in 2002. While the East Timor chapter notes that ‘the issue of whether the inhabitants of East Timor were Indonesian and/or Portuguese became highly topical in the early 1990s’ and addresses its legal intricacies in detail (Jerónimo 2018: 425), the Indonesian chapter pays less attention to the citizenship allocation treaty concluded in 1949 between Indonesia and the Netherlands, but instead focuses on Indonesian citizenship law after independence.¹⁷

India had technically been a colony only from 1858–1947, although Ashesh and Thiruvengadam (156) point out that one could argue that the period of colonial rule in India extended to nearly two full centuries. Pakistan, also formerly part of British India, seceded from India in 1947 and at that time still included what is currently Bangladesh (Nazir 2018: 305). The latter gained independence from Pakistan in 1971 (Hoque 2018: 55). These processes led to a massive displacement of people across borders on the Indian subcontinent. Burma, too, had been fully colonised by the British by 1885 and the laws enacted for British India were also applicable in what today constitutes Myanmar (Arraiza and Vonk 2018: 262).

Sri Lanka was a British colony from 1796 until 1948. As Ganeshathasan and Welikala (395–397) show, its citizenship legislation ‘has been predominantly shaped by the issue of citizenship for the Up Country Tamil Community’. Of great importance is the struggle for Sri Lankan citizenship by this stateless group originating from parts of South India and recruited to work in the plantation sector during the British colonial period.

While the Up Country Tamils take centre stage in the Sri Lankan chapter, other chapters pay attention to the citizenship status of ethnic groups based in their respective countries, e.g. the Urdu-speaking minority/Non-Bengali Biharis in Bangladesh (Hoque 2018: 77–80); the ethnic-Vietnamese in Cambodia (Sperfeldt 2018: 108); and the Rohingya, an ethnic religious-linguistic minority based primarily in Rakhine state in Myanmar, but who have spread over the entire South East Asian region as refugees. While the citizenship status of the Up Country Tamils and the Urdu-speaking minority has greatly improved,¹⁸ that of the Rohingya has not.¹⁹

¹⁷ For a more detailed discussion of the allocation treaty, see Vonk 2012: 212–215, and in particular De Haas-Engel 1993.

¹⁸ ‘An outstanding development in the citizenship law of Bangladesh is the unambiguous judicial recognition of the citizenship-eligibility of the [Urdu-speaking minority] in Bangladesh’ (Hoque 2018: 84) and ‘The issue of statelessness among the Up Country Tamil