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Nationality and Apartheid

Some reflections on the use of nationality law as a weapon against violation of fundamental rights

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NATURALISASIE

Waarskynlik word - maar vra nie wanneer - my
versoek om transmutasie toegestaan:
'n onnatuurlike proses, voltooi
deur naarstig langs 'n uitgestrekte ry
buro's, instansies, ampsdraers te gaan,
by halfjaartussenpose uitgenooi,
gekeur, gekontroleer - indien geskik
uiteindelik met die Koninklike knik
begenadig en tot burger(es) gesalf.

In my geboorteland is dit nie half
so ingewikkeld, duur dit nooit so lank.
Dààr kan 'n ondeurgrondelike dekreet
jou bowendien rangeer van Bruin tot Blank,
selfs tot Sjinees, van Asiaat tot Swart
en omgekeer of kruis en dwars, daar weet
jy minstens jy's nie doodgewoon 'n mens.
Of die omtowering voortvloei uit 'n wens
gekweek in 'n verwisselbare hart,
of dit jou lewe anders maak en hòe
is bysaak, maar ek wonder soms. En laat
geen landgenoot my aanfluit van verraad,
kom dit nog inderdaad eendag daartoe.

Elisabeth Eybers, Dryfsand,
Querido (1985), p. 41.

NATURALIZATION

Translated from the Afrikaans of Elisabeth Eybers,
Dryfsand [Quicksand], Querido (1985), p.41.

Probably - but don't ask when - they'll
grant my plea for transmutation:
an unnatural process, brought about
by diligently going through
a stretched-out line of offices, authorities, officials,
called in at six-month intervals,
tested, checked - and if you're fit
at long last comes the royal nod
to grant the accolade of citizenship.

In my home country that's not half
so complicated, doesn't take as long.
There, some inscrutable decree
can shunt you, what's more, from Brown to White,
even Chinese, from Asian to Black
and back and forth, crisscross and sideways: at least
you know you're not plain human.
Whether that conjuring comes from some wish
bred in the interchangeable heart
or whether it changes your life, and how,
is by the way - sometimes I wonder. And let
no countryman deride me for betrayal
if it comes down to that too some day.

1. Proposals to exercise pressure

The recent pamphlet Fighting for Apartheid: A Job for Life, published in September 1988 by the Dutch Anti-Apartheid Movement (AABN) and written by European Parliament member Alman Metten (Dutch Labour Party) and his assistant Dr. Paul Goodison is an excellent stimulus for doing some thinking again about nationality as the object of sanctions on the conduct of its bearer, and as a fulcrum to exert political pressure.[1]

The writers' line of thought, which may be presumed to be that of the Anti-Apartheid organizations that promoted the publication, is as follows. The white oligarchy in South Africa can maintain itself only by introducing a permanent state of siege or of emergency, in which the army is assigned an increasingly decisive role as internal oppressor of the non-White population groups: as occupier in its own country.

Military service is growing into a "job for life" whereby the whole of South African society is becoming steadily more militarized. This is necessary because apartheid is a bottomless pit into which increasing resources have to be thrown in order to stay at the same level. Almost all adult White males in South Africa are liable to service and must in fact serve actively, even after their initial conscription of two years. In the twelve years following the first period of service, a further two years or so are spent on active operational service, in instalments of one to three months. Then one

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1. For an older but still readable work on this subject, see: H. Lessing, Das Recht der Staatsangehörigkeit und die Aberkennung der Staatsangehörigkeit zu Straf- und Sicherungszwecken, Biblioteca Visseriana (1937).

goes into the reserve for five years, and can regularly be called on for active service. From then to the age of 55 men go into the Commandos, with a maximum of two weeks' service annually, from which they can be transferred to the national reserve and be called out whenever the need arises.

Since South Africa, not just at "home" but in Namibia too and with its further aspirations towards its neighbouring countries, was short of men, the Defence Amendment Act was adopted in 1982. This extended liability to service as just described and also closed a lacuna in former legislation concerning the range of those liable to service. It often happened that immigrants wisely did not have themselves naturalized till an age where they no longer needed to come forward for initial training. Retroactively, these newer South Africans were immediately called to arms, all told a new reservoir of as much as some 800,000 men.

In 1984 a new measure was adopted to put some more pressure on foreign residents and increase the potential for repression. Various groups of foreign residents were ex officio given South African nationality and thus immediately became liable for service. Once again the need for conscripts was the driving force behind flexible provisions on the acquisition of nationality. This automatic acquisition of South African nationality, called "naturalization", can be blocked only by an explicit declaration by the White foreigner that they do not wish to acquire South African nationality. The pamphlet states (p.61) that immediately after adoption of the amendment to the South African nationality legislation in 1984, 1,335 immigrants chose this opting out, 80% of them male, probably in connection with the unattractive prospect of life-long liability for service. Immigration to South Africa also fell, and emigration rose. The latter was connected with the fact that those who refused compulsory South African

nationality thereby also lost their residence permit and had thus to leave.

A sizeable proportion of South Africans either possess the nationality of a European Community Member State too, or are "entitled" to it. That large numbers are involved is apparent from a table (p.56). For nine of the twelve EEC countries (Spain, Denmark and Luxembourg are missing, but are probably also negligible) the figures (rounded off) say that in South Africa there are some 1,400,000 living with a nationality of one of the Community Member States; adding people that have South African nationality exclusively but are entitled to the nationality of a Member State, the figure rises, according to the pamphlet, to 2,140,000. There is some hedging about the figures; I shall return to this. At the end of 1984 the whole White population in South Africa (residents) consisted of 4,845,000 people, 10% of them exclusively foreigners; the rest have South African nationality, whether or not exclusively.

These figures imply that the European Community and/or its Member States can exercise great pressure on the behaviour of their citizens in South Africa, and also contemplate measures to take should people claim the citizenship of one of the Member States. A great blow can be dealt to South Africa's military potential, bringing a reduction of its power and shortening of the struggle: "Any pressure brought to bear on even apart[2] of this segment of the white population to prevent them fulfilling their military service can weaken the regime's military clout and jeopardise its struggle on any of the three fronts on which it wages its war" (p.70).

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2. Misprints, however appropriate, are still misprints: this one should of course read "a part".

What measures, then, are advocated? A whole congeries are offered. Individually, I count the following recommendations:

- "making enlistment in the South African armed forces incompatible with the retention of an E.C. citizenship." If I understand this rightly, this means voluntary enlistment, not doing military service;
- adoption of a liberal policy towards South African conscientious objectors;
- return of Community nationals who have served in the S.A. army should be made difficult or impossible "depending on the legal possibilities in the respective EC-countries";
- the latter means in the first place not exempting people from liability for service if they have served in South Africa;
- where legally possible (France, Italy, Greece) military service done in South Africa should result in loss of the (other) European nationality;
- the possibility of returning to Community Member States should be restricted or terminated for dual nationals living in South Africa or Namibia who have served in the SADF (South African Defence Forces) or in the SWADF (idem, Namibia);
- the right to return for those entitled to a Community Member State nationality should be reconsidered "in the framework of the completion of the internal market";
- finally, a very important point: the EEC should issue a ban on European firms with South African establishments against paying additional payments (on top of soldiers' pay) to their employees doing military service.

2. A couple of clarifications

a. The pamphlet does not go into technical details of South African nationality law, nor into nationality law of Community Member States. This is understandable, if only because of the size that would have made the booklet. Moreover, such a specialized field as nationality law makes heavy going for readers. Nevertheless, it is useful to go into important features of nationality law, to give a better picture of desirable measures. As far as the law of Community countries is concerned, I shall confine myself principally to the Dutch Nationality Act (RN) of 1985, though with regular references to the law of other Community Member States.

For the figures mentioned, it is not unimportant what is understood by South Africans "eligible" or "entitled" to the nationality of a Community Member State. These are not technical terms of nationality law, except for British law. In each case, a whole range of regulations must be understood by these terms, running from an unconditional right to claim the nationality of an EEC country by mere declaration and registration, to an extremely conditional potential naturalization. Formally, it may even be said that everyone in the world is in principle "eligible or entitled" to, for instance, Dutch nationality, by meeting the conditions of Dutch nationality law. This is obviously not what is meant by the statement that 40,000 Dutch people with dual nationality are living in South Africa, and that along with the "eligible or undetermined" (p.56) they total some 200,000. Does that mean 160,000 potential Dutch people? According to the pamphlet, this is an estimate from the Dutch authorities. But in answer to questions in the house, Foreign Minister van den Broek declared on 10 November 1988[3] that he "had no information confirming the figures referred

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3. Handelingen der Tweede Kamer, 1988-89, Aanhangsel no.105, p.211. Answer to question by Dutch M.P. Wallage (PvdA) 14 October 1988.

to. In this connection it may be noted that on 31 December 1987 34,646 Dutch citizens were registered at Dutch diplomatic and consular agencies in South Africa. However, such registration is not compulsory".

Ignoring the minor categories in this connection, such as those living in South Africa for whom an option for Dutch citizenship is reserved (Art.6 RN), that leaves only the group of ex-Dutch people who are probably entitled to simplified naturalization pursuant to Art.8(2) RN. How strong the entitlements are remains to be seen. Provisionally I think, considering the qualifying notes on the figures mentioned, that they are little more than guesswork.

I have reason to doubt the existence of 160,000 potential Dutch people in South Africa along with the 40,000 Whites of Dutch nationality, whether or not combined with South African nationality. The reason is that Dutch nationality is not lost when one acquires South African nationality on the basis of Art.11A of the South African Citizenship Act, no.44 of 1949, as amended.

There is a further point: p.21 gives a table with an "estimated" number of 34,875 South African/Dutch dual nationals. P.56 gives a figure of 40,000 Dutch people. Does this mean that there are a mere 5,000 non-South African Dutch people, or is it the same group that is meant? The basis and value of the figures is not clear to me, even though they seem fairly likely on the whole.

b) Let us look a bit more closely at the entitlements of former Dutch people who have become South African by naturalization or otherwise, numbering 160,000, who could get Dutch nationality back if the going gets too tough for them in South Africa.

The entitlements are weak. Ex-Dutch nationals must meet all conditions for naturalization, except for exemption from the provision of Art.8(1)(c)RN, that they should have had "domicile or de facto residence in the Netherlands for at least five years immediately preceding their request" (Art.8(2)). And the same grounds of refusal apply as to other aliens. Here Art.9(1)(b) RN is prohibitive: a naturalization application by an ex-Dutch person must be rejected if the person "lives in a country of which he is a citizen." This provision, although disputed by myself and others,[4] means that as long as ex-Dutch people remain in South Africa one condition for approval of their naturalization request is not met.[5]

This incorporation of a so-called rule of public international law to the effect that it is impermissible to naturalize citizens of a foreign State living in their own country into citizens of another country is however abruptly negated by Art.10 RN which allows Dutch nationality nevertheless to be granted "in special cases", "having consulted the Raad van State". After taking the opinion of the Raad van State, the Dutch Government can accordingly flout public international law, as it presents it, presenting a further fine opportunity for South African ex-Dutch people.

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4. See d'Oliveira, Nederlands Juristenblad 1984, p.1307; De Groot/Tratnik, Nationaliteitsrecht (1986) p.87.

5. In connection with a South African ex-Dutch person living in South Africa, see Raad van State/R2.329/88, 27 July 1988, Weekoverzicht RvSt. 1988, no.2160: "Since the appellant, as is evident from the above, lives in the country of which he is a citizen, the defendant (the State, d'O) rightly took the position that the provisions of Art.9(1), beginning, and (c) of the Nationality Act stand in the way of approval of the appellant's naturalization request." Nor did the Raad van State see the special features of the case as constituting grounds for applying Art.10 RN.

If no use is made of Art.10, something of which I am not so certain,[6] then the ex-Dutch person must first emigrate elsewhere from South Africa before having any possibility at all of naturalization as Dutch.

Those who manage to emigrate to a country other than the Netherlands remove the limitation of Art.9(1)(c) RN, but there is one further barrier: the naturalization request

> "shall nevertheless be rejected if on the basis of the applicant's behaviour there are serious suspicions that he presents a danger for public order, good morals, public health or the security of the kingdom." (Art.9(1)(a) RN).

Compliance with service obligation as a South African in the South African army indeed furnishes such "serious suspicion" regarding the person of the applicant of presenting a danger of the whole list of public goods,[7] except possibly for public health. Anyone who

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6. Cf. d'Oliveira, "Staatloosheid voor Z.A. sympathisanten?", Nederlands Juristenblad 1977, pp.1081-82: 'All those who served with the enemy during the Second World War and therefore lost Dutch nationality and became stateless have been able to regain it, under the Act of 30 July 1953, p.363, by simple declaration. Something similar will no doubt happen again with South Africa sympathizers.' In any case, my position has in the more than ten years since the article come rather closer to Siekmann's in Nederlands Juristenblad 1979, pp.490 and 655, as will be made clear below. See also my observation in Nederlands Juristenblad 1979, p.655.

7. There is of course a connection with aliens law, with the distinction that there a residence permit is refused only once someone has actually committed an infraction, whereas in the RN "serious suspicion" is already enough to close the door. See the explanatory memorandum on Art.9 RN.

has got so used to regarding Blacks as objects of repression by all means as to have accepted the military service that provides the practical tool for it is a danger to the Dutch multi-cultural and multi-racial society and thus to "public order and good morals".

Moreover, as a rule the condition that there be "no objection to residence for an indeterminate period in the Netherlands" (Art.8(1)(b)) is also not met. There are indeed objections to the residence for an indefinite period of South Africans, ex-Dutch people, who have performed their service obligation without a murmur. On this ground of aliens law too, an application for naturalization should be refused to ex-Dutch people who have taken safety in flight outside South Africa and outside the Netherlands. No dispensation from this condition is possible through the back door of Art.10 RN. For all these reasons I feel that the entitlements of South African ex-Dutch people are extremely limited, or at least ought to be: there is of course some political leeway in employing the abovementioned legal conditions on naturalization or reintegration.

c) The incorporation of foreign Whites into South African nationality and therefore into the South African army, then, has its subtleties. The provisions amount briefly to the following. Aliens not guilty of particular offences and having a "permit" for permanent residence of which they have made use for five years are a "South African citizen by naturalization", but not immediately. The operative dates are indicated in the amendments of 1984 and 1986 of the South African Citizenship Act 1949; ex officio naturalization will come in as early as possible thereafter, depending on differences between categories of persons.

Unless the person concerned or his responsible parent or guardian declares that they do not accept this South African citizenship

(Art.11(A)(1), end): this possibility of blocking the otherwise completely automatic securing of nationality still gives the provision the appearance of voluntariness, the cloak of naturalization, whereas in fact it displays the main characteristics of compulsion into a nationality, forced naturalization (Zwangseinbürgerung).

If this "no thank you" declaration is made, one can immediately leave: Art.11(A)(3) states that from the day of registration of the declaration one is deemed to be an alien and considered no longer to be in possession of a permit; nor is one entitled to acquire one ever again, and those making the declaration are deprived of the possibility of later acquiring South African nationality by any means whatever. Like a jilted maiden, the country is angry: you had better just hop it.

Except if you are too important to the South African economy. The Minister may as he sees fit exclude a person or category of persons, with the exceptions he may consider appropriate, from the provision of sub-Art. (1) or (1A) [Art.11A (S.2.)]. "In Autumn 1984 the South African Minister for Internal Affairs announced that people in key positions in multinationals were exempt from this provision. They could receive a permit for permanent residence for five years; this separate regulation excludes holders of this permit and their children from application of the nationality law".[8] Managers of vital multinationals thus enjoy immunity, as do diplomatic representatives, which shows how important to South Africa the presence of foreign investments is, and how political this nationality law is. It becomes clear that the right to refuse is a blind, so that "naturalization" is

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8. Cf. Adriaanse en Van der Weg, Nationaliteitswetgeving, Zuid-Afrika, p.30.

"naturalization" is a trap you cannot simply get out of scot-free. If "naturalization" were voluntary, there would be no need for exemption from it.

Moreover, South Africa can show mercy and allow the declaration to be withdrawn by the person concerned (Art.11A(3A)), on certain conditions of course. One then still receives South African nationality and may still join the army.

d) The question that immediately arises is whether the securing of South African nationality on the basis of the provision outlined is "voluntary" within the meaning of Art.15 RN, with the consequence of loss of Dutch nationality where the person concerned has reached majority. The same question applies to nationality legislation of other countries.

Minors retain Dutch nationality in every case; unless it is assumed that the case of Art.16(1)(d) RN arises. This is that the minor "independently acquires the same nationality as the father or mother", on the assumption that both parents in fact also possess or acquire South African nationality (cf. Art.16(2) RN). In any case I feel that loss of Dutch nationality comes into question only where the foreign nationality is acquired not only independently but additionally voluntarily, just as applies to those who have reached majority.

The Dutch Government, in agreement with the Parliament, regards the securing of South African nationality in accordance with Art.11A of the South African Nationality Act rightly as "involuntary", with the consequence that these "naturalized" persons retain their Dutch nationality. If this is the case, the implication is that a considerable proportion of the 160,000 people who are listed as ex-Dutch nationals are indeed regarded as having acquired South African nationality voluntarily, and therefore not through the concealed

forced naturalization of Art.11A that does not lead to loss of Dutch nationality. These must then be older groups, probably naturalized at their own request before the 1984 legislation.

3. Can the proposals pass muster under the prevailing law?

Before I discuss the question whether the various proposed measures are compatible with Dutch law (including the rules of international law) and whether Dutch law might perhaps be amended if there is conflict, a couple of other questions should first be dealt with.

a) I feel that the pamphlet falls between two stools. On the one hand it is emphasized that the point is to exercise pressure on the South African apartheid regime. The personal destinies, the individual moral and political positions, of South Africans liable to military service are made subordinate to this objective. The point is primarily to weaken the military grip with which Pretoria maintains the state of emergency in South Africa and the surrounding countries. The smaller the army, the less resources there are to maintain apartheid.

But on the other hand there are also elements of punishment in the proposal. Whoever lets himself be taken in for military service deserves to have life made unpleasant because he is personally taking part in the Apartheid regime even if he is obliged to do his 'national' service.

These are two different approaches, with different legitimations. When, for instance, it is proposed to deprive dual nationals who have already served of their European nationality, that is punishment. The misdeed of their contribution to the military maintenance of apartheid has already happened. It is only for those who still have to join the army and know that by turning up they will lose their European

nationality that this measure can be an argument to refuse service and thus thin the army down. To that extent, both approaches coincide: punishment as special prevention.

b) The pamphlet hammers on the idea that it is the EEC that ought to act on South Africa, partly with an eye to the creation of the internal market. There is systematic use of the terms Community citizens, Community subjects etc. As long as this is short for people with the nationality of one of the Community Member States, I have no objections. I do, however, if it is being suggested that something like a Community (supra-) nationality should exist, or that the EEC as such should take measures in respect of the nationality of Member State citizens. It would in my view be a dangerous development in a number of areas for the Community to take on itself powers in the area of nationality legislation. Given the authors' background, it is comprehensible for them to think in terms of the Community,[9] but combatting Apartheid via direct intervention in nationality or national service law is not an EEC matter. Where the EEC comes to deal with movement of people, there is little reason for rejoicing. The opening of internal frontiers to migration of Community citizens goes hand-in-hand with hermetic closure of Fortress Europe to people without the nationality of an EEC country, and refugees in particular become the victims of this coordination and harmonization at the lowest level. Implementation of the Schengen Agreement, the forerunner for inter alia Community policy towards citizens of non-EEC Countries,

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9. As does the Resolution of the Joint Assembly of African-Caribbean-Pacific and European Economic Community Countries, Barbados, January 26, 1989 (Doc. ACP-EEC 408/89), exhorting "the EEC Council of Ministers to urgently formulate policies aimed at making it prohibitive for European Community citizens to be involved in the South African Defence Force."

makes one fear the worst;[10] practices are rapidly changing even in various still more or less liberal countries and in the Southern European countries quite unaccustomed to strict border controls. In the area of nationality (an integral part of the sovereignty of Member States), the EEC has no powers, and even if the temptation is sometimes strong to give the EEC a role here, it would not be wise to give this organization, which would be delighted to operate in this area too, a foothold.[11] I can see EEC action using nationality law against South Africa forming an alibi for all sorts of interventions in nationality and aliens law where nothing good, I fear, is to be expected in terms of human rights. In my view, then, things must rest with measures by individual Member States, even if these copy from each other. But then there is no reason to confine measures to Community Member States. Scandinavia, Switzerland or Israel, in short countries of relevance in South Africa, should all be brought into consideration.

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10. See e.g. Migrantenrecht March 1988, pp.80-81; see also C.A. Groenendijk, "Migrantiecontrole in Europa: angsten, instrumenten en effecten", Migrantenrecht 1989, pp.235-241; H. Meijers, Vluchtelingen in West-Europa; Schengen raakt het hele vluchtelingenrecht, Nederlands Juristenblad (1989) pp.1297-1302 (also published in Migrantenrecht (1989) pp.263-268.

11. See Evans-d'Oliveira, Nationality and Citizenship, in: Human Rights and the European Community (forthcoming). I thus do not agree with de Groot, "Staatsangehörigkeitsrecht im Wandel" (1988) p.27, who takes it that the European Parliament was right to assume EEC powers in the area of nationality law on the basis of Art.235 EEC. I cannot see what "objective" of the Community could possibly call for appropriate measures by the Council in this area. Moreover, the Council will probably not take it into its unanimous head. Free movement of persons requires no unification of nationality law; and the subsidiarity principle too stands in the way of it.

What the EEC can do, with its legal order including the fundamental rights as rooted in the constitutions of Member States and in the Rome Treaty ratified by all Member States, is to take measures, particularly in the economic sphere, to combat South African race discrimination. Alas, in this connection the Community shows little willingness to pursue an active policy.

c) That there is a duty on the Netherlands too to combat Apartheid actively follows from many international instruments, of which the pamphlet mentions only the Lomé Conventions.[12]

There also exists, unmentioned, the International Convention on Elimination of all Forms of Racial Discrimination of 1965 (CERD),[13] whereby the well over a hundred Member States agree among other things to

> "pursue by all appropriate means and without delay a policy of eliminating discrimination in all its forms" (Art.2(1)),

a provision not confined to their own territory and covering apartheid too.

This important Convention, moreover, includes a provision worthy of note in the context of South African apartheid. As a consequence of the obligation just mentioned, the States undertake to guarantee a list of rights, including the following one, characterized as a "civil right":

> "right to a nationality" (Art.5(d)(iii).

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12. Lomé Convention, Annex I, Joint Declaration on Art.4 (brochure, p.49).

13. Trb. 1967, 48, in operation for the Netherlands since 9 January 1977. By 1 March 1988 124 States had ratified.

This provision refers among other things to Art.15(1) of the Universal Declaration of Human Rights:[14]

> "1. Everyone has the right to a nationality;
> 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

Finally, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973 should also be mentioned here. As some of the "inhuman acts" that constitute the "crime against humanity" of Apartheid are mentioned

> "any legislative measures ... to prevent a racial group or groups the right to leave and to return to their country, the right to a nationality ...".

What, moreover, is of great importance for our topic of sanctions against those taking part in the apartheid system are Arts.III and IV of the abovementioned Convention, since the Contracting States agree inter alia that

> "international criminal responsibility shall apply, irrespective of the motive involved, to individuals ... whenever they:
> (a) commit, participate in, directly incite or conspire in the commission of the acts mentioned in Art.II of the present Convention;
> (b) directly ... co-operate in the commission of the crime of apartheid."

Moreover, the Contracting States undertake (Art.IV) to

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14. See Lerner, "The U.N. Convention on the Elimination of All Forms of Racial Discrimination" (1980), p.58.

> "adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in Article II ... whether or not such persons ... are nationals of that state or of some other state or are stateless persons."

Article II contains an exhaustive list of acts, a large number of which are practised by the South African army.

This Convention has not been ratified by the Netherlands, which shelters behind joint action in the EEC, which in this case again means that there will be no Community action. Given the special, shameful, relations of the Netherlands with South Africa, there is every reason to ratify it "apart".[15]

There are also numbers of non-binding international declarations, resolutions etc. Among these is a series of resolutions of the UN General Assembly of 5 December 1988.[16] Among these, particular importance attaches to Resolution 43/50D on 'Imposition, coordination and

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15. By 1 March 1988 86 States had ratified it, though not a single Community Member State. This very much suggests that the Convention goes much too far for the Community Member States. What has become of the oft-claimed pioneering role of the Netherlands in combatting apartheid? "We hope that the Netherlands will take up its responsibility and go back among the van of countries fighting intensely and consistently to make an end of apartheid," stated Dr. Beijers Naudé, former General Secretary of the South African Council of Churches (Volkskrant, 30 August 1989).

16. 43rd Session, 20 September - 22 December 1988. See Press Release GA/7814 of 16 January 1989.

strict monitoring of measures against racist South Africa' which inter alia

> "urges ... (f) To prevent, through appropriate measures, their citizens, from serving in South Africa's armed forces and other sensitive sectors."[17]

Another resolution of the same date calls urgently for compliance with the arms embargo introduced by the Security Council.[18] It is inconsistent to bring in an arms embargo but continue to supply manpower (although the embargo is primarily aimed at stopping export of arms from South Africa).

At Community level too, many statements can be found advocating measures against service by men with a "European" nationality in the South African army. Thus, there is a resolution, dating back to 1986, which

> "asks for the immediate ending of the conscription of EEC citizens into the SADF.[19]

Also to be mentioned is the Stockholm Declaration on the Human Environment, which at the end of Principle I stated:

> "In this respect, policies promoting or perpetuating Apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand

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17. Adopted by 134 votes in favour to 4 against (FRG, Portugal, UK and US) and 14 abstentions (including, along with the majority of Community Member States, the Netherlands).

18. 43/50 B.

19. Doc. B2 1625/85, OJ C 68/168, of 24 March 1986.

condemned and must be eliminated.[20]

Nor were declarations on the elimination of apartheid, obviously, lacking at the ACP-EEC Joint Assembly either. Among these is, for instance, the Resolution on the situation in South and Southern Africa (24-28 January 1989, Barbados),[21] point 14 of which

> "Deplores the continued participation of EC Member States nationals in the South African Defence Force and exhorts the EEC Council of Ministers to urgently formulate policies aimed at making it prohibitive for European Community citizens to be involved in the South African Defence Force".

These examples can be multiplied by many others, leading to the conclusion that there is a broad basis in international law for action relating to citizens of other countries in South Africa. On the one hand, the linking of consequences in nationality law with actions of citizens comes under the "reserved domain" of sovereign States,[22] and on the other most European States, if not all, have committed themselves to measures to combat Apartheid.

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20. On the Stockholm Principles see Louis B. Sohn, "The Stockholm Declaration on the Human Environment", Harvard International Law Journal, vol.14 (1974) pp.423-515.

21. Adopted with 8 votes against and 6 abstentions. Earlier, on 22 September 1988, the Joint Assembly in Madrid had unanimously adopted a rather weaker resolution including, as point 11: "Deplores the continuous participation of European citizenship holders in the South African Defence Force, and calls on the Council of Ministers to formulate policies to reduce the level of EC-citizens' involvement in the South African Defence Force".

22. See Donner, "The Regulation of Nationality in International Law", (1983) p.32 ff.

d) We saw that South Africa sets up utterly politically opportunist and racist nationality-law provisions to force as many as possible unimportant Whites into being South African, while exempting people of importance to the South African economy. Additionally, an aggressive immigration and mercenary policy is pursued. But as well, nationality law is abused there to stamp the Black population as strangers in their own land, so as to conjure discrimination on grounds of race into distinction on the basis of different nationality, and transform the pass laws into passport laws.

4. South Africa and the "homelands"

South Africa is burdened by the composition of its population: too much black and too little white. What it attempts, therefore, is to change its nationality law so as to bring about the desired homogenization. Absorption of Whites on the one hand and expulsion of the Black population on the other. Three-quarters of the population has thus at least potentially become foreign, opening up the possibility for control, deportation and oppression, with an extremely thin veneer of legality.

The veneer is called the National States Citizen Act (1970). This Act, without using the word race, manages to make people into citizens of a number of "homelands" on the basis of such criteria as birth, language and culture; along with progeny of at least one parent nominated citizen of a homeland on the basis of one of these criteria, and anyone who has been domiciled (i.e. exiled) for at least five years in one of the homelands, etc. The South African laws that gave independence to the various homelands made use of the distinguishing criteria set out in the National States Citizen Act:

> "Everyone who falls in any of the categories of persons defined in schedule B shall be a citizen of (the homeland involved) and shall cease to be a South African citizen."[23]

As a manifestation of the apartheid system, this creation of so-called independent states on the (former) territory of South Africa has met with massive non-recognition, for which the political agencies of the UN have called.[24] South Africa is attempting by this system to replace discrimination on grounds of race by discrimination for nationality, and to crush black nationalism by going backwards to tribal distinctions. Non-recognition of the homelands implies non-recognition of the nationality of the homelands, in the Netherlands as elsewhere.[25] Though in principle nationality law is a "reserved domain" of sovereign States, there is nevertheless not a freedom to turn reservations into States for reasons that very transparently amount to race discrimination. In international law this de facto deprivation of South African nationality seems to me to be unlawful.

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23. See John Dugard, "The nationalization of Black South Africans, in Pursuance of Apartheid", in Lawyers for Human Rights Bulletin no.4 (1984); Geoffrey Bindman (ed.) "South Africa and the Rule of Law" (1988), ch.16: The Homelands (pp.130-140).

24. See Dugard, loc.cit., p.7. See also Georges Fischer, "La non-reconnaissance du Transkei", Annuaire Français de Droit International, 1987, pp.63-76. See also: Joe W.C. (Chip) Pitts III, "The Concept of Citizenship: Challenging South Africa's Policy", Vanderbilt Journal of Transnational Law, 19, Winter 1986, pp.553-584. See furthermore G.M. Budlender/D.M. Davis, Labour law, influx control and citizenship: the emerging policy conflict. Acta Juridica (1984) pp.141-172; G.M. Budlender, Incorporation and exclusion: recent developments in labour law and influx control, South Africa Journal of Human Rights 1985, pp.3-9; idem, A common citizenship?, South Africa Journal of Human Rights 1985, pp.210-217.

25. Adriaanse-van der Weg, op cit., do not mention this issue. Why not?

What consequences should be drawn from this unlawfulness cannot be said in a couple of words.[26]

However it may be, in due course the denationalizations will no doubt be undone again. East, West, homelands not best. The American Comprehensive Anti-Apartheid Act of 1986, adopted over Reagan's veto, contains a provision that would make the US and its most important allies encourage the S.A. Government to accept inter alia

> "the granting of universal citizenship to all South Africans, including the homeland residents".[27]

Necessity is the mother of invention. While in one context the slender alibi is created of alien-nationality (homelands) as a basis for differences in treatment and common nationality for equal treatment (military service), in other contexts it is the simple fact of residence in South Africa that is taken, regardless of nationality.

Hélène Passtoors was condemned to three years' imprisonment for high treason although she had only foreign nationalities: Dutch, and after marriage with a Belgian national, Belgian too. The judge took the view that possession of one (or more) foreign nationalities did

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26. During World War II Britain stuffed refugee German Jews who had in German law lost their nationality into internment camps as enemy aliens: for the Zwangsausbürgerung (forced deprivation of citizenship) on the basis of the 11th Durchführungsverordnung zum Reichsbürgergesetz of 2 November 1941 was, after all, unlawful in international law! Cf. Weis, Nationality and Statelessness in International Law (1979), pp.121-123.

27. 106(d). See Winston P. Nagan, "An Appraisal of the Comprehensive Anti-Apartheid Act of 1986, Journal of Law and Religion, vol.5 (1988) p.327 ff. (339).

not rule out the obligation of 'allegiance' to South Africa too,[28] so that treason could be committed. The allegiance was based on having residence in Johannesburg, not on nationality. It may be asked why in one case duties are bound up with being resident in South Africa, and in the other rights and duties are assigned through the linkage of (compulsory) nationality.

Can aliens be obliged to do military service in peace-time? Following an analysis of the literature and positive law, General Karamanoukian comes to the following conclusion:

> "Nous venons de constater que la doctrine et le droit positif, coutumier et conventionnel, prohibent l'imposition du service militaire aux étrangers. C'est là une attitude juste et logique. Aucune considération juridique ou morale ne peut, en effet, justifier l'assujettissement des étrangers aux charges militaires, auxquelles sont soumis les nationaux".[29]

Possibly to give the impression of remaining within the limits of international law, South Africa has opted for linking the service

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28. See Willem C. van Manen, "The Passtoors Trial, A report to the ICJ and the NCJM" (1986) pp.118-119, see also p.54. Judge Spoelstra gave leave to appeal on this point but it was not taken up because, no doubt for strategic reasons, the appeal submitted was withdrawn. See also Elizabeth Eybers' poem above.

29. Aram Karamanoukian, Les étrangers et le service militaire (1978) p.175. The practice of States is however not uniform. Cf. Brownlie, "Principles of International Law" (1984), pp.520-521, citing among others the Polites Case (1943). The case of voluntary service does not enter in here. Karamanoukian notes (pp.83-85) the presence of many foreign volunteers in the Royal Dutch Indies Army (KNIL) (1830-1950). This was in fact the reason why the Dutch General de Beer Poortugaal, at the 1907 Hague Conference, opposed the ban on foreigners in national armies.

obligation not with residence but with nationality. It is, nonetheless, the practice in some States, among them the U.S., to link military service obligations with forms of qualified residence. Be that as it may, the collective conversion of residence into nationality for Whites in South Africa has consequences not only in legitimizing service obligations but in other areas too. Among them is the expansion of South African numbers by descent. It should be borne in mind that the forced naturalization applies to women too, and has not solely the goal of increasing military potential in the short term.

5. Deprivation of nationality, continued

One of the questions that might be asked in assessing proposals to deprive Dutch people who through service in the South African army become guilty of upholding apartheid of their Dutch citizenship is whether nationality may be an object through which the State may seek to attain its objectives. This normative perspective is urgent because the right to a nationality is seen as a human right, a fundamental right or a civil right, and thus no longer a right like any other.[30] We condemn South African manipulation of nationality in the service of the apartheid system through incorporating White aliens and expelling Black citizens. Are we too, in combatting apartheid, to lay the

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30. De Groot, Staatsangehörigkeitsrecht im Wandel p.15, denies, even categorically, the human rights status of the right to a nationality. He regards it as "unlogisch dass die Staatsangehörigkeit in der Allgemeinen Erklärung der Mensenrechte vom 10. Dez. 1948 im Menschenrechtkatalog aufgenommen ist". I do not share his exaggeratedly positivistic view (see my Tendenzen in europees nationaliteitsrecht, a review of his work in Nederlands Juristenblad, 1989, pp.357-361) but cite it in order to indicate that there are differing ideas on the status of the right to a nationality.

nationality of our citizens on the line? I am not losing sight of the fact that in the one case the point is measures in the service of apartheid, and in the other against it. Nevertheless, the question remains open whether the latter comes under the "appropriate means" of Art.2 CERD.

For people who like the present writer have grown up with the idea that Zwangsein- und ausbürgerungen, as practised by the Nazi and Fascist regimes in the Third Reich and Italy, until recently in the Soviet Union and at present in South Africa are not valid, hesitation on this is a matter of course. It is precisely in view of these forced (de)nationalizations that many countries have repealed provisions of their legislation making loss of nationality a consequence of service with a foreign State or army, among them the Netherlands, where in 1985 the old Art.7(4) WN was eliminated.[31]

In this connection I would refer to the post-Fascist Italian Constitution, which explicitly states in Art.22 that:

> 'Nessuno può essere privato, per motivi politici, (...) della cittadinanza (...)'.

This provision, a reaction to Fascist deprivation of exiles and emigrés of their Italian nationality, is of broad scope, removing from the powers of the ordinary legislator the right to interfere with the status of citizenship, even where the political interests of the community are involved.[32] It is in connection with Art.22 of the Italian Constitution that Art.8(3) of the Italian Nationality Act of

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31. On this change see most recently: de Groot, "Staatsangehörigkeit im Wandel", pp.297-300.

32. See Branca (ed.) "Commentario della Costituzione, art.72" (Ugo de Siervo), p.13.

13 January 1912, no.55, is to be understood. The provision states that:

> "Nationality is lost: ...
> 2. by those who have accepted a post with a foreign State or entered foreign military service and remain in it although the Italian Government has given notice that this post or service is to be left within a given period."

Bariatti[33] says in connection with this provision: "Il semble que cette disposition n'ait jamais été appliquée par les juges. Selon R. Quadri (Cittadinanza p.330) elle n'est plus en vigueur, car elle est contraire à l'article 22 de la Constitution". Others are however less decided, or deny unconstitutionality.[34] In view of these differences in Italian legal opinion, it is going too far to simply state 'the fact that the legal basis exists in ... Italy for the ... Italian Government to take immediate action to prohibit their citizens from entering South African military service on pain of loss of citizenship.'[35] The point is the broader or narrower interpretation of the constitutional concept of "motivi politici". Is combating apartheid a "political ground" or not?

In Germany too there are constitutional obstacles to deprivation of German nationality. Art.16 of the Bonn Basic Law of 1948 is as follows:

> (1) " No-one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the

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33. Closset-Verwilghen (eds.) "Jurisclasseur Nationalité, Italie", no.86.

34. De Siervo, op.cit. (note 22) p.18.

35. The pamphlet, p.50, p.63.

will of the person affected only if such person does not thereby become stateless."

Though this provision is closely connected with Art.15 of the Universal Declaration, one authoritative commentary calls it not a human right but a (constitutional) fundamental right.[36] Unilateral individual deprivation of German nationality by governmental action is absolutely forbidden by the Constitution; loss of citizenship may arise only on particular conditions based on formal German statutory provisions, and this loss may not lead to statelessness. The provision "seeks to bring an end to the forced deprivation of citizenship (Zwangsausbürgerung) practised in the National Socialist period in Germany and still today in other totalitarian States, and avoid the emergence of new cases of statelessness, ... in harmony with more recent efforts praiseworthy from both humanitarian, constitutional and international-law viewpoints".[37]

A similar provision can moreover be found in the New York Convention on the Reduction of Statelessness (30 August 1961), of relevance for us in other respects too.[38] This Convention, which the Netherlands joined in connection with renewal of nationality law after 25 years (with a dozen or so other countries, making it rather a flop among UN conventions) prohibits, in Art.9, to "deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds". The main rule of the Convention is Art.8(1):

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36. Von Mangoldt-Klein, Das Bonner Grundgesetz Bd. I (1966) p.478 ff.

37. Ibidem, p.474.

38. Trb. 1967, 124. In force in the Netherlands since 11 August 1985 (assenting act 19 December 1984, Stb. 672). Among Community countries, the Federal Republic, Denmark, Britain and Ireland are also parties.

> "A Contracting State shall not deprive a person of its nationality if such deprivation would render them stateless".

A limited and conditional exception to this prohibition is possible under Art.8(2) in connection with a national who has in a defined manner acted "inconsistently with his duty of loyalty to the Contracting State," for instance where he has "(i) in disregard of an express prohibition by the Contracting State rendered or continued to render services (...) to another State or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State".

When a State wishes to make use of this possibility of deprivation of nationality, whether or not with statelessness as the consequence, this must be done by law, and the act must "provide for the person concerned the right to a fair hearing by a court or other independent body" (Art.8 s.4.).

It was to be able to ratify the Convention on the Reduction of Statelessness that the Netherlands repealed Art.7(4) of the old Act,[39] though without making use of the leeway the Treaty offers to make exceptions just mentioned. Since the Netherlands did not make any declaration on signature, ratification or accession, it may well have lost that leeway: see Art.8(4) of the Convention. I shall not here go into the question whether despite the wording of Art.8(3) it may nevertheless be permissible in international law to make such declarations later.

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39. See the explanatory statement, 16.947 (R 1181) no.3, pp.3-5.

Various other Contracting Parties have made a declaration pursuant to Art.8(3) of the Convention on the Reduction of Statelessness. Thus, France, which has signed the Convention but not ratified it,[40] has in general terms retained the right to make deprivations of nationality and to make a declaration to this effect on ratification.

Ireland did make the declaration and is thus free to effect denationalization pursuant to Art.19(1)(b) of the Irish Nationality and Citizen Act of 1956. This provision concerns the power of the Irish Minister of Justice to withdraw a nationalization decree in the event that

> 'the person to whom it was granted has, by any overt act, shown himself to have failed in his duty of fidelity to the nation and loyalty to the State ...'.

The United Kingdom made a similar declaration regarding naturalized persons, keeping its hands free

> 'to deprive a naturalised person of his nationality on the following grounds, being grounds existing in the United Kingdom law at the present time: that, inconsistently with his duty of loyalty to Her Britannic Majesty, the person
>
> (i) has, in disregard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another state, or,
>
> (ii) has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty.'

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40. As at 31 December 1987.

Since this declaration, which by the way follows verbatim the text of Art.8(3)(a)(i and ii), was made before the British Nationality Act 1981 there is a question what this declaration entails at present. For by Art.8, the declaration must refer to the grounds of deprivation in force in national law. The present legislation (S.40) refines the distinction among ways of acquiring British citizenship, thus broadening the group exposed to deprivation, and has also changed the grounds for it.[41]

The United Kingdom thus attributes to itself the right despite ratification of the 1961 Convention to deprive groups of citizens of their nationality with the consequence of statelessness, even beyond the limited grounds given in the declaration made on ratification.[42]

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41. S.40(3) gives as grounds:
"(a) that that citizen has shown himself by act or speech disloyal or disaffected towards Her Majesty; or
(b) has, during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy ...
(c) has, within a period of five years from the relevant date, been sentenced in any country to imprisonment for a term of not less than twelve months."
This deprivation may be applied (p.40(4)) to the groups referred to in S.40(2)(a) and (c): namely the naturalized and those "registered" as British citizens. See MacDonald-Blake, "The New Nationality Law" (1982) nos.88 ff., 133, who note: "Disloyalty or disaffection is a very nebulous phrase, which could readily be used against those who express political views hostile to the monarchy", and also against those who serve in South Africa, I would add.

42. S.40(5) British Nationality Act 1981 runs:
"(the Secretary of State) shall not deprive a person of British citizenship under subsection (3) on the ground mentioned in paragraph (c) of that subsection if it appears to him that that person would thereupon become stateless."

Following these excursus, there remains the thorny question of the acceptability of deprivation of nationality because of service in South Africa. I take it that active service in South Africa means active participation in upholding apartheid, even should one as an individual try to keep one's hands as clean as possible. Individual attempts not to let themselves be sucked into the prevailing collective atmosphere of terror and torture inherent in the military and police maintenance of apartheid if the system is to be effective are inevitably condemned to failure. Only conscientious objection is a real alternative in this connection: at present it results in jail sentences of around six years. A demonstrative conscientious objection movement is starting to take off. Conscientious objectors in the South African forces, of whatever nationality, should be treated in the Netherlands as political refugees; if they are Dutch, then they should be admitted to the Netherlands without further ado, if only pursuant to Art.1(1)(e) CERD, which states:

> "States ... undertake to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms ... and to this end:
> ... Each state party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of ... perpetuating racial discrimination <u>wherever it exists</u>".[43]

This provision provides great support to a Dutch refugee policy towards those fleeing from South Africa as victims and opponents of Apartheid, and in my view also has consequences for the Dutch position

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43. These three little words that mean so much are missing from the Dutch translation in the Ars Aequi Libri edition <u>Rechten van de Mens in verdragen, verklaringen, resoluties</u> (1979), p.94.

in the Schengen and Trevi negotiations aimed at sealing off the Community's external frontiers.

Anyone entering service as a South African, whether or not a fresh one, that also has Dutch nationality falls under the provisions of an old multilateral agreement to which both countries are parties: the Hague Protocol of 12 April 1930 relating to Military Obligations in certain cases of double nationality.[44] This agreement entails that anyone with more than one nationality habitually residing "in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country shall be exempt from all military obligations in the other country or countries" (Art.1).

But the following addition is made:

> "This exemption may involve the loss of nationality of the other country or countries".

In repealing Art.7(4) WN, the Netherlands have not taken any advantage of this possibility. Member States have the freedom at least to give content through their national legislation to the freedom offered by Art.1 to bind up loss of nationality with performance of military service in, say, South Africa.

6. Interim conclusions

It is becoming time to tie up a few loose ends, not to say cut through the odd knot. It seems to me to be useful here to distinguish

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44. See Stb. 1936, p.99, and Schuurman and Jordens, ed. 1a. Nederlandse nationaliteitswetgeving p.93 etc. Of the other Community Member States, Belgium and Britain are also parties to the Protocol.

among the various categories of persons with Dutch attachment. A few observations will be made on the position in other countries.

a. People exclusively Dutch

These have unambiguously been excluded so far from forced naturalization, and thus have no service obligations to meet. They are, however, of great importance to the South African economy. On that ground, there is perhaps still more reason to subject these VIPs to penal sanctions than relatively less important Dutch people that have to become South African and have to practise apartheid into the bargain.

The case of people exclusively Dutch voluntarily doing service will no doubt rarely occur. There are no hindrances in international law to deprive such volunteers/adventurers/mercenaries of their nationality. The RN would then have to be amended, since it does not allow loss of nationality where it leads to statelessness (Art.14(2) RN) and since it does not number service in South Africa among the grounds of loss of nationality.

Volunteers become guilty of the offence against humanity, not punishable in the Netherlands as such, of apartheid. A relatively lighter human right like that to nationality may not be able to stand up to voluntary acts against humanity practised by the perpetrator. The mercenary need not remain stateless long: after all, he has the requisite "adequate knowledge of the responsibilities and privileges of South African citizenship" (Art.10(1)(h) South African Citizenship Act) for naturalization. The room which the 1930 protocol allows has still to be made use of.

This is not "opportunist legislation", as Minister van den Broek thinks.[45] If endeavours to uphold human rights, to combat race discrimination in accordance with international agreements ratified by the Netherlands and to condemn crimes against humanity are pooh-poohed as "opportunist legislation", then there is something wrong with this Minister's powers of judgment. Rather less ad personam, for a representative of governments that regularly and shamelessly have recourse to opportunistic legislation when it comes to taking away fundamental rights from delinquents, aliens or other deviants, or set equality between the sexes on the lowest level possible, this is a hypocritical and ineffective governmental argument.[46] If only opportunistic legislation were all that came into it. A post-modern legislator doesn't bat an eyelid at that, that's his daily bread!

It should be borne in mind here that the old Act on Dutch nationality made the decision to take Dutch nationality away from people entering foreign civil or military service a purely political decision at Crown level which could be taken even many years after the event, and - who knows - maybe even yet. Those who went to work in the Soviet Union after the 1917 Revolution, or to fight in the International Brigade in Spain in the thirties, all lost their Dutch

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45. Handelingen der Tweede Kamer for 7 June 1988, on the subject of Dutch people with dual S.A.-Dutch nationality.

46. A recent example? The amendment to the Aliens Act rushed through the Lower House in two days in late December 1988, to allow confinement of refugees to Schiphol airport to be continued despite the ruling of the Hoge Raad. "Emergency situation", says the Minister: the alternative is in his view the transit lounge. The alternative is false. Parliament is indeed accessory to opportunistic legislation, the Lower House perhaps a trifle more than the Upper. See also J.M. Polak, "De wetgeving van het departement van Justitie", Nederlands Juristenblad 1989, p.1 with grave criticisms on the quality of the legislation.

nationality; Dutch Jews who helped set up the young State of Israel after 1948 did not, and Dutch SS volunteers got their nationality back pretty quickly.[47]

In the present Act too, it is a mainly political decision, in the event of naturalization as Dutch, to assume that the person concerned cannot be required to give up his original nationality. In short, not only is nationality law political law par excellence, in both the shorter and the longer term, but more: it is merely a technical question whether regulation comes about at a formally statutory level or through delegation to a lower level.

There is therefore no objection to structuring the regulations in such a way that they can also be employed against Dutch people who have become guilty elsewhere of collaboration with regimes systematically active in violating elementary human rights.

b. Dual nationals: Dutch South Africans

This means overwhelmingly - but not exclusively, since it also includes children of mixed marriages and children born in South Africa with a Dutch father (and now also mother), etc. - the group that acquired South African nationality through the 1984 legislation, which is regarded in the Netherlands as an involuntary acquisition. This

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47. Cf. note 6. See also the speech by Kozhevnikov, Member of the International Law Commission (ILC Yearbook 1952), vol.I, pp.110-111: "The question of the deprivation of nationality must be examined further, since it involved a number of philosophical questions. There were some States where moral and political identity between the individual and the State had been achieved and clearly sanctions must be brought to bear against individuals whose acts tended to destroy and undermine that identity").

view is in accord with former decisions in situations where, without him explicitly expressing a wish for it, a nationality has been foisted on one that could be got rid of only by explicit renunciation. Art.7(3) of the old Dutch Nationality Act, for instance, provided that

> "a Dutch woman shall not lose Dutch nationality on the ground that she does not take advantage of the possibility of repudiating another nationality she has by operation of law acquired by or in consequence of marriage."

Not being too fussy about something that happens to you is not the same as choosing voluntarily and on your own initiative. Anyone who by marriage or by living somewhere acquires a nationality without having lifted a finger is perhaps accepting that into the bargain, but it cannot be said that he was working towards this acquisition. Not using the right to say no does not amount to saying yes proprio motu.

In a fairly closely comparable situation, views differ. In some cases acquisition "by will" is equated with acquisition of a nationality that one has not rejected although one could have. This was the case with a Dutch Jew that had emigrated to Israel. When he applied for a residence permit in Israel without repudiating Israeli nationality he was considered to have acquired the nationality "by will". Adriaanse and van der Weg say this in the context of the 1892 Act.[48] In their commentary on the RN too, they hold this opinion, though with the important addition that an example of "voluntary" (Art.5(a)) acquisition is, for instance, the case of "a Dutch Jew having taken up residence in Israel and not rejecting Israeli nationality, though having had the opportunity, and not having lost the possibility of residence in Israel by rejecting Israeli

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48. Op.cit., F.56. This interpretation of Art.7(3) of the old WN can be regarded as reflecting departmental views.

nationality. Non-rejection can be equated with voluntary acquisition."[49] The opposite view, in my view more correct, is maintained by De Groot and Tratnik,[50] who also point to oral explanations by the Secretary of State for Justice regarding Art.15:

> "in our view, acquisition of foreign nationality by the will of the acquirer ... must be the consequence of a specific act of will by the person concerned directed towards that end if there is to be the voluntariness required to bring about loss of Dutch nationality."[51]

I feel this idea should be applied here to the South African situation too. In nationality law strict conditions must be placed on voluntariness, on pain of diluting the meaningful distinction between naturalization (option) on the one hand and acquisition ex lege on the other. This is also the meaning of the regulation of Art.9(1)(b) RN. This requires from those wishing voluntarily to acquire Dutch citizenship by naturalization to do "everything possible" to lose the other nationality "unless this cannot reasonably be required". If difficulties arise because of attempts to abandon one's original nationality, it is no longer required. It is already the case where "someone would by renouncing the other nationality suffer very considerable financial loss, for instance by loss of the pension or

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49. Op.cit. G.57. See ibid. on Israel, p.20, though with the condition I have emphasized. Adriaanse and van der Weg are however of the opinion in connection with South Africa, p.31, that "should a Dutch person acquire South African nationality by law in the way described above, they do not thereby (lose) Dutch nationality, since they cannot be presumed to have voluntarily acquired another nationality".

50. Loc.cit. pp.112-113.

51. Handelingen der Tweede Kamer 1984, Ucv (Uitgebreide commissievergadering) 45-3.

inheritance rights",[52] and with refugees, whether or not recognized. The need to oppose dual nationality yields very quickly to the idea that people ought not to be set between two stools, in other words be allowed be allowed to decide as freely as possible. Voluntariness is a subjective element in acquisition of a nationality, and it is best not to tamper with it, given the utterly heterogeneous nationality-law context the concept has to operate in. This is also the opinion of the Dutch Government "since in connection with the consequences that rejection of South African nationality may have, there can be no notion of voluntary acquisition within the meaning of the Dutch Nationality Act".[53]

Involuntary acquisition means according to the present law retention of Dutch nationality, and this applies equally to men and women. If one lives in South Africa one cannot get away from the apartheid system. But here too there are degrees of collaboration with the apartheid system. This collaboration may end up causing what began involuntarily to degenerate into such a basis of voluntariness or acceptation that the consequence of exclusion from Dutch citizenship may result.

If performance of military service is made to lead to the sanction of loss of Dutch nationality, this does mean for those concerned that they have a choice between conscientious objection possibly resulting in a jail sentence of six years at present) or (r)emigration to the Netherlands or elsewhere. That this choice is in fact being made is evident from the increasing number of conscientious objectors.

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52. Adriaanse - van der Weg, loc.cit. p. G-45.

53. Notitie Dienstplicht Nederlanders in Zuid-Afrika, in de Handelingen der Tweede Kamer 1988-1989, 21.165 no.2, p.1.

Military service is certainly not an unimportant form of (compulsory) collaboration with the apartheid system, but it is not the only one. Anyone living and working in South Africa makes his contribution, apart from the growing number who explicitly act against apartheid. In my view the best thing in relation to Dutch people in South Africa with dual nationality is to adopt a provision entailing that they lose Dutch nationality when they reach 25, or on initial training if they do that earlier. That gives them time and opportunity to think over their existence and what they want to do with it. If they commit themselves by remaining in South Africa with its Apartheid system, then they sever all ties with the Netherlands. This is not opportunist legislation, but a measure resulting from, and in any case connected with, international obligations that the Netherlands have assumed by acceding to the Discrimination Convention, (CERD) and I would repeat that this accession should be followed by ratification of the Anti-Apartheid Convention.

What is to be done about the favourable exceptions? They may, whether as refugees or as ex-Dutch, be eligible for easier naturalization, possibly by way of Art.10 RN. It would be better were they not lumped together with collaborators in loss of Dutch nationality, but I find it hard to devise a system that would work in such an individualizing way without being unwieldy. I invite suggestions.

Art.19 of the South African Citizenship Act states by the way that a South African may be deprived of his nationality on doing military service in another country of which he may possess the

nationality, while that country is at war with South Africa.[54] Without going so far as to regard the fight against apartheid as war in the technical legal sense, and in an awareness that it would certainly be unwise for South Africa to equate the two situations, a certain relationship between the two cannot be entirely argued away. The Dutch commitment to combat Apartheid is incompatible with service in the SADF.

c. South African ex-Dutch people

We have already dealt exhaustively above (2b) with the group with "entitlement" to Dutch nationality. These entitlements are extremely weak on paper, and ought to be ruled out in practice. This back door to Dutch nationality has to be closed. All refugees, in the old-fashioned liberal sense of the word, are eligible to admission to the Netherlands and rapid naturalization: alas, a very small group as yet.

"I cordially support the professors' position that the maintenance of the apartheid regime is a serious violation of international law and can indeed be regarded as a violation erga

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54. Art.15(3) states: "Subject to the provisions of this section, the Minister may by order deprive any South African citizen (...) of his South African citizenship if he is satisfied that such citizen (...)
(c) has, during any war in which the Union is or has been engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which was to his knowledge carried on in such a manner as to assist an enemy in that war." See the comments by Adriaanse and van der Weg op.cit. Zuid Afrika, p.33.

omnes, that is, against all States".[55] So says Minister van den Broek, boldly taking a position which in his view, however, offers no basis for one-sided bilateral reprisals such as an oil boycott - the point at issue - but nevertheless providing elbow room to exercise all sorts of "normal" legislative jurisdiction, such as that over one's own (ex) citizens. Not being too fussy about apartheid and waiting until it goes away "by itself" is not quite good enough, and rather too frivolous.

Human rights are violated in many parts of the world. It may therefore be asked whether one should direct oneself specifically against violations in particular countries. It is Dutch policy to answer this question in the affirmative, and concentrate on violations in countries with which there are special relationships. For that reason too, a plan to take particular measures, fully permitted and even encouraged by international law, against South Africa cannot be dismissed as opportunist legislation but should instead be regarded as directed action. Apartheid, as an injury to the Netherlands as one of the subjects of, and a constitutional supporter of, international law, gives the fullest right for this specific activity.

7. Recent developments

After the appearance of Metten and Goodison's pamphlet (Autumn 1988), the subject of feeding the South African repressive apparatus with conscripts of European origin has come onto the political agenda,

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55. Handelingen der Tweede Kamer, 1982-83, p.4730 (and 4757) dated 21 and 22 June 1983; see also N.Y.I.L. (1984) p.356, (361-2).

in part under the influence of pressure by the international Anti-Apartheid Movement. These developments will be briefly pointed out below.[56]

A. The Netherlands

Though quantitatively the Dutch contribution to the SADF is considerably less than Portugal's or the United Kingdom's, it is here that the political debate is furthest advanced, partly because of the old historical relationship with South Africa.

Since Parliament asked for a note from the Foreign Minister on the issue of Dutch dual nationals in South Africa,[57] this note was produced in Spring 1989.[58] It was debated in Parliament.[59] In the note, the Dutch Government rejects the taking of sanctions in nationality law. The arguments brought forward are:
(a) it would mean opportunistic legislation;
(b) it would hit the group of Dutch people concerned, mostly children of parents who have emigrated to South Africa, disproportionately hard, partly because those not liable for military service would escape the net.

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56. See also "Europeans and military service for Apartheid; report of a seminar on Europeans serving in the SADF", Amsterdam (February 1989).

57. Handelingen der Tweede Kamer, 28 February 1989, 54-5247, 5248, 5315, 5319.

58. Handelingen der Tweede Kamer, 1988-89, 25.265 no.2.

59. Handelingen der Tweede Kamer, 1988-89, 21.165 no.3, 28 June 1989.

(c) "The obligations imposed by the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 relate exclusively to the taking of measures to ban race discrimination and make violations punishable on one's own territory. No legal basis for ... the taking of sanctions in nationality law can be found in it."

In the debate on the note in Parliament, an important role in defining ideas was played by a model bill to amend the RN drawn up at the request of the Dutch Anti-Apartheid Movement by three jurists.[60] This draft adds a new ground of deprivation to the existing ones:

> "Dutch nationality shall for a person who has reached majority also be lost on compliance with military service obligations, or voluntary service, in or with the armed forces of countries to be designated by royal decree, under conditions to be specified for each country by royal decree.
>
> Only countries in which compliance with military service obligations and voluntary service in or with the armed forces may be regarded as support for race discrimination within the meaning of the International Convention on the Elimination of All Forms of Racial Discrimination may be designated".

It was evident from the debate in the House that there was fairly broad support for this proposal. It also played a part in the elections to the Lower House on 6 September 1989, and the topic was also included in most election programmes. One would expect that it should be included as an item in a government agreement, and that in the

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60. Prof.Dr. H. van den Brink, Dr. Th. de Roos, and the present writer.

forthcoming parliamentary term a majority can be found for inserting a ground of deprivation in the spirit of the Anti-Apartheid Movement's proposal.[61]

Allow me to make a few observations on the position of the previous government as presented by the Foreign Minister, who is here opposed to his own party (the Christian Democrats).
On a): that it would be opportunistic legislation to deprive the Dutch people in the SADF and South African police of the Dutch nationality is not strong as an argument used in a country that has regularly had recourse to it. Moreover, the proposed bill copes with the objection by referring in general terms to the 1965 Convention, so that the Dutch Government may also associate loss of nationality with service in other countries.[62] Nor should this be regarded as disguised opportunistic legislation; there are certainly a number of other countries eligible for designation as systematic practitioners of race discrimination within the meaning of the 1965 Convention, though South Africa is of course a flagrant example. Moreover, terming measures against a regime characterized by the UN as a perpetrator of systematic crimes against humanity "opportunistic legislation" is a specimen of brutal cynicism.

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61. In the agreement (Tw.K. 1989-1990, 21.132, no.9, p.54), however, no concrete measures are announced. Central is the statement on S.A. that "if no essential changes come about political, cultural and economic pressure must be increased".

62. It should be borne in mind that the old Act on Dutch nationality bound up loss of Dutch nationality in general terms with foreign civil or military service, except with permission from the Dutch authorities. This permission was granted extremely selectively (Art.7(4)).

On b): This objection hits home. Demarcating the group concerned as hard to do; this is the unfortunate thing about law, with its general regulations that are often too broad or too narrow. The limitation to service in the army or police is chosen in order to limit problems of proof. If the formula is made broader, along the lines of "action in conflict with central positions of Dutch political and legal culture", as the obligation to "allegiance" might be represented, then discretionary powers also open the door to arbitrariness. Hence the (too) narrow specific wording, which is to be preferred to a broad text constituting an invitation to arbitrariness. Injustice stemming from this state of affairs can be remedied by use of Art.10 RN (special naturalization).

On c): The arguments given here to reject the proposal are extremely weak. In the first place, not a word is breathed about the 1930 Protocol in force between the Netherlands and South Africa, which in so many words opens the possibility of linking service in South Africa with deprivation of Dutch nationality. It is of course not an obligation, but it is a political option, specifically allowed by the Protocol.

In the second place, it is highly disputable whether the 1965 Convention offers no legal basis for taking the measure, because it is said to refer solely to violations on the State concerned's "own territory". For Art.2, which is fundamental, states, as we saw, that the Member States:

> "shall take effective measures ... to amend ... any laws ... which have the effect of ... perpetuating racial discrimination wherever it exists."

This can mean nothing else than that measures are required against race discrimination being perpetrated not only on one's own territory, but elsewhere too. There is, for instance, nothing to prevent interpreting the obligation of Art.4(a) too ("shall declare an offence

punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination...)" as covering actions by Dutch people outside the Netherlands, on the basis of the personal jurisdiction that the Dutch State has over Dutch nationals.[63] And in any event, nothing in international law forbids a State from exercising personal jurisdictions by depriving its citizens abroad of their nationality, as long as it does not act arbitrarily.

In the third place, we saw that in many international instruments, the internationally permissible measure is, if not prescribed, then at least recommended. Does the Government wish to suggest that it would not even be permissible in international law to take this measure? What would its verdict then have to be on the old Dutch Nationality Act, which ex lege bound loss of Dutch nationality up with entry into foreign civil or military service? This loss mostly brings statelessness with it, and is of course bound up with activities by Dutch people outside Dutch territory.[64] In my view it is plain that the Netherlands is empowered in international law to take Dutch nationality away from dual nationals even if they have not been guilty of acts amounting to support for race discrimination. Generally, in accordance with Art.1 of the Convention on certain questions relating

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63. Art.137(a)-(c) of the Dutch Criminal Code, through which Art.4 of the Convention is implemented, has only territorial jurisdiction; with these media offences the ubiquity theory may yield more fruit if there is (also) an intention to exercise an effect in the Netherlands too, even though the ideas etc. are launched abroad. Here it is better to bring in an active personality principle vis-à-vis racist Dutch people.

64. Cf. the debate on withdrawal of the Decree of 22 July 1954, Stb. 262, which gave general permission to enter the civil service of, among others, South Africa, Rhodesia, Argentina, Brazil etc., in Nederlands Juristenblad 1977, p.1081. On this Decree see note 6.

to the Conflict of Nationality Law (the Hague 1930) "it is for each state to determine under its own law who are its nationals." There is no international rule that would forbid the proposed measure.[65] The idea that denationalization would imply universal or extraterritorial jurisdiction, prohibited in international law, is unfounded. States retain jurisdiction over their nationals, which includes the possibility of removing that nationality:

> "To sum up: the right of a state to make rules governing the loss of its nationality, is, in principle - with the possible exception of the prohibition of clearly discriminatory deprivation - not restricted by international law, unless a state has by treaty undertaken specific obligations imposing such restrictions."[66]

On the contrary, the Netherlands has with the 1930 Protocol explicitly established the possibility of binding up loss of nationality with service in South Africa.

There are, on the other hand, treaties aimed at combating multiple nationality, regarded as un undesirable state of affairs in itself. I do not share this view, but practice of States here makes it clear that States have the power to adopt rules to reduce multiple nationality as such. As long as no arbitrariness is involved in depriving the dual national of the nationality, nor collective deprivation, States have, even without a treaty, the power deriving from their sovereignty to deprive citizens of their nationality when certain facts occur. The 1930 Hague Protocol is confirmation of this

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65. See Weis, "Nationality and Statelessness in International Law" (1979) pp.88-91, p.125.

66. Weis, op.cit., p.126.

position in international law, as is the Strasbourg Convention of 1963.

The lengthiness of this discussion of the position of the (former) Dutch Government is hopefully justified by the fact that debate in other European countries is often dominated by the same issues.

B. Other European countries

In other European countries the official policy debate is less advanced than in the Netherlands. Mostly, governments are particularly reticent as regards proposals to put pressure on dual nationals and they are even sometimes chary about recognizing South African conscientious objectors - a handful of which manage to escape to Europe - as refugees and letting them in.

In Germany it has been stated in the Bundestag that there will be careful investigations of how legal questions entering in here are to be dealt with in the committees involved.[67]

As far as conscientious objectors are concerned, there was a debate on a proposal to take them into the Federal Republic through a so-called "Uebernahmeerklärung" [assimilatory declaration] within the

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67. Deutscher Bundestag 11. Wahlperiode, 149. Sitzung 15 June 1989.

meaning of para.22 of the Aliens Act.[68] According to the proposal for this, the relevant authorities are inclined towards the view that the linking of penal sentences with conscientious objection in South Africa can be a ground for asylum only where, because of special circumstances, it takes the form of persecution of the person liable to service. In any case, the level of the threatened penalty is not in conflict with rule-of-law considerations.[69]

In France a number of "Questions écrites" were put in the Assemblée Nationale, a number of them displaying a certain degree of misinformation, directed at the Minister for Defence. He replied:

> "Il résulte des renseignements qui m'ont été communiqué qu'il est possible que des jeunes gens d'origine française mais ayant acquis la nationalité sud-africaine, soient effectivement incorporés dans l'armée en Afrique du Sud. Mais ceci se fait uniquement en raison de leur nationalité actuelle; il ne me paraît pas possible d'intervenir en ce qui les concerne. Par contre, aucun ressortissant français

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68. Para.22 Ausländergesetz: "Assimilatory declaration. Foreigners may, where political, human or international-law grounds so require, be brought under the scope of this Act on the basis of an assimilatory declaration by the Federal Minister or an agency designated by him."

69. See Deutscher Bundestag, 11. Wahlperiode, Drucksache 11/4952 (Petition on South African conscientious objectors to military service in the FRG of 1 June 1989. A propos, the Dutch Government does accept South African conscientious objectors as refugees within the meaning of the Geneva Convention on Refugees (so-called 'A-status'), according to the Minister for Foreign Affairs, Handelingen der Tweede Kamer 1988-1989, 21.165 no.3, p.11 (28 June 1989).

n'est actuellement incorporé en Afrique du Sud."[70]
These half-truths border on deliberate ignorance. According to Art.87 of the present Code de la Nationalité, French nationality is not lost even ex lege through voluntary acquisition of the nationality of another country, where one's habitual residence is outside France. For French nationality to be lost on voluntary acquisition of another, an explicit declaration must be made, but cannot be made unless one has first complied with one's service obligations in France (Art.89).[71]

Similar questions from Deputy Montdargent to the Foreign Minister were answered by the latter as follows:

"Le Ministre d'Etat souhaite apporter à l'honorable parlementaire les précisions suivantes s'agissant des citoyens français ayant également la nationalité sud-africaine, au regard de leurs obligations militaires: en l'absence de convention entre la France et un autre Etat, ce qui est le cas en ce qui concerne l'Afrique du Sud, le code du service national prévoit, certaines conditions de résidence étant remplies, que les jeunes gens qui sont à la fois français et ressortissants de l'autre Etat sont dispensés des obligations du service actif en temps de paix s'ils

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70. Letter of 10 April 1984 to French Deputy Jean-Marie Bockel (Haut-Rhin), Chairman of the Study Group on questions of Apartheid and South Africa.

71. Art.87: Toute personne majeure de nationalité française, résidant habituellement à l'étranger, qui acquiert volontairement une nationalité étrangère ne perd la nationalité française que si elle le déclare expressément, dans les conditions prévues aux articles 101 et suivants du présent code.
Art.89: Les Français de sexe masculin de moins de trente-cinq ans ne peuvent souscrire la déclaration prévue aux articles 87 et 88 ci-dessus que s'ils ont satisfait aux obligations de service actif imposées par le code du service national ou s'ils en ont été dispensées ou exemptés.

sont en règle avec la loi de recrutement de cet Etat étranger. Dans ces conditions, il serait paradoxal que la législation française prévoie le retrait de la nationalité française aux jeunes gens faisant leur service national dans un autre pays. D'autre part, l'article du code de la nationalité française stipule, en son premier paragraphe, que: "Perd la nationalité le Français qui, occupant un emploi dans une armée ou un service public étranger ou dans une organisation internationale dont la France ne fait pas partie ou plus généralement leur apportant son concours, n'a pas résigné son emploi ou cessé son concours nonobstant l'injonction qui lui en aura été faite par le Gouvernement." Il s'agit là de dispositions qui se réfèrent à une situation ayant un caractère stable et continu qui ne saurait se comparer à celles des jeunes gens effectuant leur service national; elles ne sont d'ailleurs jamais utilisées. Quant au compléments de salaire versés par les entreprises sud-africaines et les filiales de sociétés étrangères à leurs employés convoqués pour des périodes de réserve, ils ne sont généralement pas versés aux appelés. Les entreprises recrutent, en effet, dans la plupart des cas, des personnes qui ont déjà effectué leur service militaire. Le Ministre d'Etat souhaite enfin rappeler à l'honorable parlementaire que le Gouvernement français applique, pour sa part, de la manière plus stricte les mesures restrictives décidées par le Conseil de Sécurité des Nations Unies (embargo sur les armes), la C.E.E. (interdiction des achats de fer, d'acier et des kruggerands (sic!), refus de toute nouvelle collaboration dans le domaine nucléaire, embargo sur les ventes de matériel destiné au maintien de l'ordre, interdiction des exportations de pétroles à titre bilatéral (interdiction des nouveaux

investissements, non-renouvellement des contrats charbonniers)".[72]

For the moment, then, it seems clear that France does not much favour any sharpening of sanctions in nationality law. The paradox pointed to by the French Minister exists in Dutch law where, in the context of the Strasbourg Convention of 6 May 1963,[73] compliance with service obligations in one Contracting State brings exemption in another, while at the same time the 1930 Hague Protocol gives the possibility of depriving anyone in that position of their nationality.

Portugal on the other hand is not much in favour of a great exodus from South Africa by this group, consisting mainly of ex-colonials who emigrated from Mozambique or Angola, with revanchist motives. Putting pressure on this group might result in considerable remigration to Portugal, where they are not exactly mad keen to take them in.

In Belgium the legal situation is complicated by a practice that has grown up, which leaves little of the "official" legal position intact. Belgium is, as already stated, a party to the 1930 Hague Protocol on military obligations in certain cases of dual nationality. Belgium has indeed made use of the possibility of binding up loss of Belgian nationality with exemption from Belgian military service obligations in connection with compliance with the obligation in South

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72. Journal Officiel, 31 July 1989.

73. Tractatenblad 1964, 4.

Africa.[74] This request for exemption from Belgian military service (with loss of Belgian nationality) is sporadically taken advantage of. What in fact happens is that South Africa and Belgium informally split the dual national conscript by taking each other's service into account (Belgian military service is for one year). This means no loss of nationality. A flexible arrangement for these Belgians and the SADF! In practice dual nationals fulfilling their national service in the SADF are exempted from duty in Belgium; Belgian military service reduces service in the SADF by one year.

In answer to questions from a Member of Parliament, Prime Minister Martens said among other things:

> "Compliance or not with the military service obligation in Belgium or South Africa is a purely individual and personal decision of the person concerned, on which the Belgian authorities have no influence".[75]

This seems dubious to me in the light of the 1930 Protocol. Though Belgium dropped compulsory loss of Belgian nationality on application for exemption from the Belgian service obligation in 1984, this does not alter the fact that Belgium still has the room in international law to (again) determine in its legislation that loss of Belgian

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74. Act of 20 January 1939, Moniteur belge 13 August 1939. This Act bound compulsory loss of Belgian nationality up with the request for exemption from the Belgian service obligation. This provision was abrogated by Title III, Art.21(4) of the New National Code of 28 June 1984. See also Verwilghen, "Le Code de la Nationalité belge" (1985) nos.734-740.

75. Answer to oral question by Senator Aelvoet (February 1989). Cf. Mrs. Aelvoet in "Europeans and military service for Apartheid" (1989) note 56, pp.10-11.

nationality will be a consequence of this exemption. A further-reaching measure could of course be a provision in the sense of the Dutch proposal.

Switzerland is keeping cool. It is not prepared to move a finger to induce its nationals to disengage from South African military service. This is clear from a written statement by the Swiss Federal Government in answer to an interpellation by the Deputy M. Rechsteiner.[76]

There is an interesting answer by the Minister concerned in Austria to written questions from a Member of Parliament on service in South Africa.[77] Having indicated that by para.32 of the Staatsbürgerschaftsgesetz 1985, anyone voluntarily in the service of another country loses Austrian nationality, which is not the case with doing military service because of another nationality, the Minister states his readiness to submit to the relevant provincial government "pursuant to para.35 StbG, a petition ... for deprivation of nationality pursuant to para.33 StbG" where "specific cases become known where Austrian citizens have voluntarily taken part in actions against international law or infringements of human rights". Para.33 StbG makes it possible to take Austrian nationality away where an Austrian's conduct seriously damages the interest or position of Austria. Much depends on the significance of the condition of "voluntariness", for this does clearly not coincide with voluntarily taking service. In my view there is also voluntariness in the case of

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76. See ASDI/SJIR 1988, p.222, written report of the Federal Government, 21 September 1987, concerning the Rechsteiner interpellation of June 17, 1987.

77. Minister Franz Löschnah in answer to questions of 29 March 1989 by Waltraud Horvath et al. (no.4 166/51-IV/3/89).

military service obligations; everything depends on individual actions during duty.

Not much is moving in Ireland. As regards "withdrawal or withholding" of Irish nationality for service in the SDAF, the Government's opinion is that this

> "almost certainly give(s) rise to difficulties of extra-territorial application".[78]

As noted above, these difficulties do not exist. There are numerous provisions in various nationality legislations linking loss of nationality with long stays elsewhere, or in a country whose nationality one also possesses. Again, deprivation or loss (lapse) of nationality does not raise any extra-territoriality issues, by contrast with award or acquisition of nationality.

When in 1984 the Irish Nationality and Citizenship Act was made more restrictive as regards securing Irish nationality specifically by "citizenship by descent", the Irish authorities were overwhelmed during the transitional period when the old rules still applied by applications from South Africa from people with Irish grandparents who thereby became dual nationals. The European back-door really exists

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78. Letter on behalf of the Minister of Foreign Affairs, Mr. Gerard Collins, July 25, 1989 to the Honorary Secretary of the Irish Anti-Apartheid Movement.

for many South Africans.[79] It is obviously not a difficulty of extra-territorial application to recognize South Africans living in South Africa as Irish citizens.

Finally, the United Kingdom, after Portugal the country that makes the strongest contribution to the South African Armed Forces. Not only dual nationals, but also many people with British citizenship only, work in vital sectors of South Africa's system of repression. The British anti-apartheid movement has, up till now, been extremely reluctant to take measures against dual nationals, and this is of course reflected in the absence of any Parliamentary activity of significance to date. The current Government is not dreaming of taking measures, and is not much in favour of treating conscientious objectors as political refugees either.[80] Since the United Kingdom is a party to the 1930 Hague Protocol, it would be fully entitled in international law to take measures of deprivation of nationality for non-performance of military service in the United Kingdom, were it not that this no longer exists, so that the conflict regulated by the

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79. See the Irish Times, 19 November 1986: "The greening of South Africa". See also for an earlier case Julian Riekert, Aliens and the South African Defence Force, The South African Law Journal, 1982, p.333 ff. Keeley v. Minister of Defence, 1981 (3) SA 904(A) concerned a White South African citizen by birth of

(Footnote continues on next page)

Protocol does not arise.[81]

C. A final remark

It is time to conclude this essay. At the time of writing (November 1989) two developments can be discerned. On the one hand a certain increase in the pressure being exerted on South Africa in order to bring apartheid down. One of the instruments being considered for use is the grip on the virtual or actual nationality of (new) white S.A. citizens. This tool would function in two ways: both on the individual level as an incitement to resist S.A. national service and eventually leave the country, and as a way to drain the SADF of a considerable part of its strength.

On the other hand, one cannot deny a slight wind of change within the S.A. Government with the arrival of Mr. de Klerk at the centre of the scene. Should Europe give him the benefit of the doubt and await real reforms without increasing pressure in the meantime? This, I would submit, would be a serious mistake. I am fully convicted that substantive changes in South Africa, putting an end to apartheid, can

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(Footnote continued from previous page)

Irish descent, who - after having fulfilled his primary training - obtained an Irish passport and was deprived of S.A. citizenship. The issue was whether Keeley was still liable to military service in the SADF.

80. See answers by Secretary of State Waddington, 30 June 1986, to written questions, Parliamentary Debates, section 1985-86, 373.

81. It is odd that Britain is also a party to the 1963 Strasbourg Convention, but only to Chapter II on double service obligations!

only be brought about by keeping the outside pressure up.[82] That is why endeavours in the countries which have contributed to the reservoir of new white S.A. nationals should be encouraged to develop the measures which formed the subject of these pages.*[83]

* Translation by Iain Fraser at the EUI.

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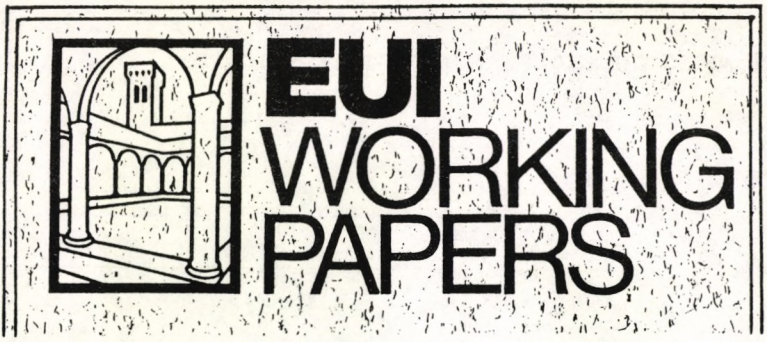
82. See for a thoughtful presentation of the perspective of change: Winston P. Nagan, Law and Post-apartheid South Africa, Fordham International Law Journal, 1989, pp.400-451.

83. The latest development in the endeavour of S.A. to increase the amount of new white citizens is the campaign in Western Germany to induce refugees (mostly skilled labourers and their families) from the GDR to emigrate to South Africa. See Volkskrant, 9 November 1989.



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