

## Kim Rubenstein

### Shifting Membership: Rethinking Nationality In International Law

Issues of identity and membership are fundamental building blocks of the international order. At an ever-quickening pace they involve urgent recalibrations of their social and legal content. There is ample evidence of an interconnected world where individuals are less constrained by the boundaries of the nation-state. Yet, at the same time, we are witnessing the fragmentation of nation-states into further nation-states. In between there are moves to regional groupings and other varying forms of identity. With each tug and pull of these contrary forces, pressures emerge to the way law regulates membership in the international framework.

This paper re-examines the centrality of nationality in international law. It does so by looking at how the legal status of nationality currently affects significant aspects of the international legal system and it will question nationality's continuing legal importance. International law has traditionally been concerned with nation-states. The fundamental link between the individual and the state is the legal status of nationality or citizenship.<sup>1</sup>

The evolution of international law has been a cross-weave of pressures placed upon the nation-state and membership of the nation-state. While the state is still central to international law, it is not the only site of practical importance or meaning when it comes to identity and membership. There are, in fact, and arguably have always been, multiple and shifting forms of identity and membership.<sup>2</sup> Today, though, there are clear developments requiring us to rethink of the centrality of nationality to international law. For instance, the growth of non-government organizations (such as Green Peace or Amnesty International) is just one example of alternative sites of importance in the international legal system.<sup>3</sup> While globalization is a contested term, the current international law system is fundamentally affected by technological advances, a world economy, supra national organizations and regional organizations; all used to describe globalization. At the same time as we witness these expressions of globalization there is also the occurrence of fragmentation, as with the breaking up of nation-states such as the former Yugoslavia. It is timely to re-examine nationality and membership in international law in light of these realities.

Kim Rubenstein BA, LLB (Hons)(Melb), LLM (Harv) is a Senior Lecturer in Law at the University of Melbourne. She teaches Constitutional and Administrative law, Migration law and Advanced Administrative law. Her research concentrates on citizenship law. She is a Barrister and Solicitor of the Supreme Court of Victoria, and the High Court of Australia. She undertook her Masters at Harvard University with the support of a Fulbright scholarship and the Sir Robert Menzies Scholarship to Harvard. Kim edited the collection: "Individual, Community, Nation: 50 years of Australian Citizenship" (Australian Scholarly Publishing, 2000) and is the author of "Australian Citizenship Law

---

<sup>1</sup> These terms are generally used interchangeably to describe that link, but the word nationality is used more in the international context (and will be used through the description of this paper), and citizenship is the term used in the domestic context.

<sup>2</sup> Feminist scholarship and critical legal scholarship reflect methodologies that encourage such a conclusion.

<sup>3</sup> The 2001-2002 edition of the Yearbook of International Organizations records 6743 intergovernmental organizations and 47098 nongovernmental organizations for a total of well over 50,000 international organizations beyond the nation-state.

in Context" (2002, Lawbook Company). Kim was awarded a Fulbright Senior Scholar Award in 2002 and was a Visiting Scholar at Georgetown University Law Center in Washington DC from August 2002 through February 2003.