

The Prominence of Statelessness in the Work of United Nations: From Framing International Regime to Mandating Special Agency

Safinaz Jadali*

Assistant Professor at Islamic Azad University, Central Tehran Branch, Iran

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Abstract

The statelessness has marked significantly the agenda of the United Nations from early days of its inception in 1945. Its series of activities focused largely on the development of international legal framework in the post-World War II until 1960s. However, despite growing statelessness and the negative impact on fundamental rights of people around the world, the issue remained off the global agenda for almost three decades. Not only states, but even scholars and practitioners had until recently ignored the scope and nature of the statelessness. It was only in the mid-1990s, the issue regained international attention, with the UN General Assembly expanding the mandate of the Office of the UN High Commissioner for Refugees to also encompass the plight of stateless people. The current paper discusses the content and scope of the statelessness regime which gave birth to two universal instruments. It also explores the mandate and global actions of the UNHCR on statelessness. Conceiving the statelessness as a human rights issue, this article seeks to understand whether the endeavors within UN adequately respond to the magnitude of the problem.

Keywords: Nationality, Human Rights, Discrimination, State Succession, Displacement.

I. Introduction

A large-scale displacement and political re-ordering that accompanied World War II caused a surge in population, with no State providing

* Corresponding author's e-mail: safinaz.jadali@gmail.com, The views expressed in this paper are those of the author and do not necessarily reflect the views of any organization.

them protection because of the absence of nationality. Due to the dimension of the issue, the United Nations (UN), from its early years, acknowledged the problem of statelessness. It should be mentioned that nationality problems including loss of nationality were also a matter of concern to states and League of Nations. This led to the adoption of certain measures to reduce the problem.¹

In March 1948, at its sixth session, the UN Economic and Social Council (ECOSOC) adopted a resolution requesting the Secretary General to undertake a study on statelessness.² For this purpose, the UN chief was tasked to focus on “the existing situation in regard to the protection of stateless persons”³. The resolution also required the Secretary General to explore through the study the need for concluding further convention and standard setting on the subject. Accordingly, the two main problems that had to be considered were: “the improvement of the status of stateless persons and the elimination of statelessness”.⁴

The findings of the study led to the inclusion of statelessness in the early work of the UN by *inter alia* adopting three instruments: the Convention Relating to the Status of Refugees (1951 Convention), the Convention Relating to the Status of Stateless Persons (1954 Convention), and the Convention on the Reduction of Statelessness (1961 Convention).

In 1996, the UN General Assembly broadened the mandate of the UN High Commissioner for Refugees (UNHCR) in order to address the statelessness.⁵ In fact, the UNHCR was initially mandated to address the situation of stateless persons who were refugees in accordance with Paragraph 6 (A) (II) of its Statute and pursuant to Article 1(A) (2) of

1 Guy S. GOODWIN-GILL, Convention Relating to the Status of Stateless Persons, available at United Nations Audio-visual Library of International Law, available at: http://legal.un.org/avl/pdf/ha/cssp/cssp_e.pdf, accessed 04/02/2014,

2 Resolution 116 (VI)D, dated 1 and 2 March 1948

3 A Study of Statelessness, United Nations, August 1949, E/1112;E/1112/Add.1

4 *Ibid.*, 10

5 A/RES/50/152, 9/02/1996

the 1951 Convention.⁶ However, as a separate category of persons to be protected, the statelessness was included in the UNHCR mandate in 1995 by its Executive Committee (ExCom)⁷. This expansion of the mandate followed mass statelessness linked to the dissolution of the Soviet Union, Czechoslovakia, and the Socialist Federal Republic of Yugoslavia.

Statelessness often arises from discrimination, arbitrary laws and regulations, excessive bureaucracy, complex and lengthy administrative procedures or practices. Persons in statelessness situation cannot often enjoy full fundamental rights. Questions around nationality and statelessness are on the rise in international and national debates. The UN actions to address the cause and consequences of statelessness are an essential component of both conflict prevention efforts as well as social, economic, and legal development agendas.⁸ Despite efforts undertaken at UN level and international community in general, there is still an estimated ten million people around the world who are denied nationality.⁹

The objective of this paper is to provide an overview and analysis of the measures undertaken within the UN to address statelessness. To this aim, it starts with a discussion on the content and scope of the international statelessness regime which mainly gave birth to two universal instruments. Then the paper explores the mandate and global actions of the UNHCR on statelessness. Since the activities and actions of the UN to counter statelessness as an “anomaly” are based on its root cause and consequences, therefore they will be briefly analyzed in this paper. Conceiving the statelessness as a human rights issue, the article

6 Mark MANLY, “UNHCR’s Mandate and Activities to Address Statelessness” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 89

7Executive Committee of the UN High Commissioner for Refugee’s Program, “Prevention and Reduction of Statelessness and the Protection of Stateless Persons”, Conclusion No. 78(XLVI) 1995

8Guiding Note of the Secretary General, *The United Nations and Statelessness*, June 2011

9UNHCR estimates that today at least 10 million around the world are stateless, <http://www.unhcr.org/stateless-people.html>, accessed 04/02/2018

seeks to understand whether the endeavors within the UN adequately respond to the magnitude of the problem.

II. Plight of Statelessness and Quest For Solution: Emergence of a Distinct International Legal Regime

In very descriptive terms, the statelessness means absence of nationality of any State. Therefore, exploring the statelessness and its legal regime requires understanding the concept of nationality. In principle, the question of nationality¹⁰ falls within the reserved domain of states. However, as indicated by the Permanent Court of International Justice (PCIJ) in its 1923 Advisory Opinion, the exclusive jurisdiction of states could be limited by international obligations of states towards each other's in this area.¹¹ In effect, according to the PCIJ, despite the fact that nationality is governed by the domestic framework, states must honour their obligations under the rules of international law.¹²

The approach of the PCIJ with regard to nationality was also reiterated in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Laws. This convention can be considered as the first attempt to include the issue of nationality within the framework of international law. The Article 1 of the Convention states: "It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality".

It is worth to mention that both the PCIJ and the International Court of Justice (ICJ) contributed to the concept of nationality and regarded

10 For the purpose of this Article, the two terms of citizenship and nationality are used interchangeably although some scholars may argue for the distinction between nationality and citizenship.

11 Nationality Decrees Issued in Tunis and Morocco on Nov. 8th, Advisory Opinion, 1923, P.C.I.J (ser.B) No. 4 (Feb.7)

12 Ibid. Also, the International Law Commission affirmed that the right of States to decide who their nationals are is not absolute and that, States must comply with their human rights obligations concerning the granting of nationality, Yearbook of International Law Commission, 1997, Vol. II (1), 20

it as a matter affecting international relations. The ICJ defines the nationality in *Nottebohm* case as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiment, together with the existence of reciprocal rights and duties”.¹³ This passage has been frequently cited to the meaning of nationality.¹⁴

With the massive population displacement and denationalization which followed World War II, hundreds of thousands of people were left without the protection of any State. Because of concerns over the protection of these “unprotected persons”, the statelessness featured the UN agenda and as the first step the *study* was recommended to be undertaken. In fact, this *study* can be conceived as the first real step towards the formation of an international legal regime on statelessness.

The Secretary General in the 1949 *study* recommended the Economic and Social Council to *inter alia* to invite “all member states not yet parties to the following conventions to take necessary steps to become as soon as possible parties¹⁵”: The Convention Relating to the International Status of Refugees of 28 October 1933, the Convention concerning the Status of Refugees coming from Germany of 10 February 1938 and the Additional Protocol to the Convention of 14 September 1939.

Although the *study* recognized that *de facto*¹⁶ statelessness is closely aligned with the situation of refugees, it also acknowledged the

13 *Nottebohm Case (Liechtenstein v. Guatemala)*; Second Phase, International Court of Justice (ICJ), 6 April 1955, at 23.

14 Alice EDWARDS, “UNHCR’s Mandate and Activities to Address Statelessness” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 12.

15 *Supra* note 3,59

16 The *Study* identified two categories of stateless persons, namely the *de jure* stateless “who are not national of any State, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one” and the *de facto* stateless “who having left their country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they

distinction between the refugee status and the statelessness. The Secretary General also recommended the necessity of a convention determining the legal status of stateless persons.¹⁷ To this end, an *ad hoc* committee was appointed by the ECOSOC to prepare a draft convention to establish a legal regime for all stateless persons. In fact, some stateless persons (*de facto* categories) in some countries had the benefit as refugees to a legal status and of international protection. However, there was a need to also include other categories of stateless persons (*de jure*) in the international legal regime.

The *ad hoc* committee, taking account of the distinction between displaced persons, refugees and stateless persons, was tasked to consider the desirability of a revised and consolidated convention relating to the international status of refugees and stateless persons. The committee was also assigned to consider how to eliminate the problem of statelessness, including the way of asking the International Law Commission (ILC) to take up the matter.¹⁸ While the committee acknowledged the distinction between refugees and stateless persons, it rather focused, due to the urgency of the matter, upon refugees. The *ad hoc* committee thus offered the ECOSOC the draft text of refugee and proposed an additional protocol on stateless persons. Measures to eliminate statelessness received even less attention.¹⁹

In 1951, the Refugee Convention was adopted. In 1954, during the second conference of plenipotentiaries dedicated to drafting a new instrument, the refugee convention and the draft protocol were taken as point of departure to consider the rights to be extended to non-refugee stateless persons. The Convention Related to the Status of Stateless Persons was adopted in 1954 as a distinct one (not a protocol) with yet much similarities with the 1951 Convention.

The 1954 Convention is the core international instrument that regulates the standards of treatment for stateless persons and aims to ensure that they enjoy from their fundamental rights and freedoms. It

themselves renounce the assistance and protection of the countries they are nationals.”, *Ibid*, at 7. However, there is no reference to these terms in any international instrument.

17 *Ibid.*, 59

18 *Supra* note 2

19 *Ibid.*

does not establish a right for stateless persons to acquire the nationality of a specific state. Because stateless persons have no state to protect them, the convention requires state parties to facilitate their integration and naturalisation as far as possible.

The 1954 Convention also sets the universal definition of “stateless persons”. The Article 1 (1) deems a person to be stateless when he or she “is not considered as a national by any state under the operation of its law”. In the view of the ILC in the 2006 Draft Articles on Diplomatic Protection (2006 Draft Articles), this definition had gained the customary nature.²⁰ This, *inter alia* means that in terms of identification of statelessness status of individuals, states must comply with this definition regardless of being a member party to the 1954 Convention or not. In other words, determining whether a person is considered a national by a state should be conducted according to this article and especially under “operation of its law” which requires a careful analysis of how a state applies its nationality law in practice in each individual case.²¹

The reference to “law” should be read broadly to encompass legislation in general sense as well as practices in a given country. The context, object and purpose of this convention demonstrate that the “operation of law” includes not just legislation, but also ministerial decrees, regulations, orders, judicial case law, administrative as well as customary practices.²² Therefore, when adjudicators attempt to determine the statelessness status of an individual they should not do so

20Yearbook of International Law Commission, 2006, Vol. II (II)

21 In fact, “it is the position under domestic law that is relevant”, UNHCR, Compilation of Summary Conclusions From UNHCR’s Expert Meetings (May 2012), at 16, <http://www.unhcr.org/4fe31cff9.pdf>, accessed 01/04/2018. Michelle Foster and Helene Lambert refer to the UK Supreme Court support’s to this interpretation :“*in concreto*, ie, a government’s statement that a person is not a national does not override his or her position under domestic law: *Pham v Secretary of State for the Home Department* [2015] UKSC 19, [2015] 1 WLR 1591 in Michelle FOSTER and Hélène LAMBERT, eds., *Statelessness as a Human Rights Issue: A Concept Whose Time Has Come*, (2016), *International Journal of International Law*, Vol. 28, No. 4, at 566.

22 Handbook on Protection of Stateless Persons, UNHCR, Geneva, 2014, 12, <http://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>, accessed 05/02/2018. A similar approach is taken in Article 2(d) of the 1997 European Convention on Nationality

with sole reference to the nationality law of the applicant's country of origin. Other legal provisions as well as state practice need to be taken into account. Since the statelessness is often associated with refugees, the customary nature of the definition also requires that the statelessness be regarded as a distinct category under international law.

In the 2006 Draft Articles, in addition to considering the customary nature of the statelessness definition, the ILC extended the diplomatic protection to stateless persons. An individual abroad is reliant on nationality in order to have access to one of the most important benefits in international law, namely the diplomatic and consular protection of his or her state. With regard to stateless persons, because the genuine bond between them and a state is absent, as a result there is no eligible state to exercise diplomatic protection over them.

The move to accord the diplomatic protection to stateless persons reflects the approach of current international law inspired by human rights law. By way of progressive development of international law, the ILC brought an exception to the general rule²³ that only nationals can benefit from the diplomatic protection of their states. In the 1955 Oppenheim stated that stateless persons "may be compared to vessels on the open sea not sailing under the flag of a state, which likewise do not enjoy any protection".²⁴ With the inclusion of stateless person in the 2006 Draft Articles, this dictum seems to be gradually losing accuracy.²⁵

According to the Article 8 of the Draft Articles, a state may exercise the diplomatic protection in respect of stateless person, regardless of the

23 In *Dickson Car Wheel Company (USA) v. United Mexican States*, the Commission stated that "A State...does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently, no State is empowered to intervene or complain on his behalf either before or after the injury", Report of International Arbitral Awards, Vol. IV, 678, http://legal.un.org/riaa/cases/vol_IV/669-691.pdf, accessed 29/03/2018

24 Citation appeared in Martin STILLER, "Statelessness in International Law: A Historic Review" (2012), DAJV Newsletter, at 95.

25 While a human rights approach clearly inspired the draft Article 8, an English court held that this provision was to be considered *lex ferenda* and "not yet part of international law". See, *R (Al Rawi) v Foreign Secretary* [2006] EWHC 976 (Admin), para 63

reasons leading to the statelessness provided that the person was “lawfully” and “habitually” residing in that state at the time of injury and presentation of the claim. The combination of habitual and lawful residence sets, however, a high threshold and can lead to lack of effective protection. In reality, many stateless persons live illegally as states are often reluctant to issue documentation to those they do not deem their nationals.

In terms of the avoidance of statelessness, as mentioned earlier, the *ad hoc* committee reached the conclusion that it was not practicable for it at that stage to examine the issue in great detail and to draft a convention on the subject.²⁶ However, by including the discussions around the causes of statelessness in its report, the committee provided the groundwork for drafting a convention on the elimination of statelessness.²⁷ In August 1950, the ECOSOC urged the ILC to prepare a draft international convention or conventions for the elimination of statelessness.²⁸

The ILC prepared two proposals: the draft convention on the elimination of future statelessness and the draft convention on the reduction of future statelessness. Both drafts addressed the problem of statelessness resulting from conflicts of law.²⁹ The first one contained provisions that went much further than those included in the second. In 1959, when the representatives of governments met to discuss the texts, they were of the view that provisions included in the first draft were radical and therefore discarded it. They opted to work with the second draft on the reduction of the future statelessness. The instrument that was finally adopted is the 1961 Convention on the Reduction of Statelessness.

The 1961 Convention sets out rules for the conferral of nationality and safeguards on the withdrawal of nationality where the person in

26 International Law Commission, Elimination of Statelessness, Yearbook (Vol. II), 1951, 121, http://legal.un.org/docs/?path=../ilc/publications/yearbooks/english/ilc_1951_v2.pdf&lang=E , accessed 07/02/2018

27 Ibid.

28 Ibid., 122

29 Nationality and Statelessness, A Handbook for Parliamentarians, Inter-Parliamentary Union, http://archive.ipu.org/PDF/publications/nationality_en.pdf, accessed 07/02/2018

question would be otherwise stateless. This convention offers safeguards against statelessness that should be implemented in the domestic legal framework, without specifying any further parameters of the law. Overall, the provisions of the 1961 Convention ensures the avoidance of statelessness in three areas: childhood statelessness; loss, renunciation and deprivation of nationality; and state succession.

The 1961 Convention imposes a positive obligation on states to grant nationality in some situations (on the basis of *jus soli*). Although, this instrument does not recognize the right of an individual to a nationality, it attempts to reduce particular instances of statelessness, and imposes obligations on states to grant nationality to stateless persons in certain circumstances. The right to a nationality is proclaimed in Article 15 of the 1948 Universal Declaration of Human Rights (UDHR).³⁰

The 1954 and 1961 Conventions lay the foundation of the international legal framework to address statelessness. Although, they are of critical importance in ensuring the protection of stateless persons and prevention of statelessness, but they did not draw immediate interest for states' adhesion. After some decades of neglect, the statelessness has re-gained attention of international community at the turn of century and accession to the two conventions was given boost since 2011. The reason for slow attraction of states to these two instruments can be explained by the very fact that nationality is a sensitive topic as it is directly linked to the sovereignty. Accessing to the 1954 and 1961 Conventions would be translated as the states' commitments to human rights and humanitarian standards, including the right to nationality.

III.Statelessness: Multidimensional Causes and Consequences

The nationality is a form of membership, a sense of identity that links an individual to a society and results in rights and duties. The UDHR by affirming the right of everyone to nationality acknowledged the legal and practical importance of nationality for an individual.

30 Article 15 of UDHR stipulates:

- 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.

The statelessness may arise from different circumstances which can broadly be categorized under legal, procedural, political and cultural factors. The conflict of laws, administrative oversights and procedural complexities, discriminatory policies, customary or traditional practices and migratory movements are the common causes of statelessness.

With regard to the technical legal root cause of statelessness, conflict of laws can result in this phenomenon. Problem may arise when nationality laws in one state conflict with that of another, leaving an individual without the nationality of either ones. A typical situation is for instance, when a child is born in a country that grants nationality by decent only (*jus sanguinis*) from parents who are nationals of another country which grants nationality only by birth on the territory (*jus soli*). To overcome such technical causes, states are invited to implement an updated series of nationality laws encompassing fundamental principles of nationality law, including those related to renunciation, loss and revocation of nationality.

The state succession and reconfiguration of sovereignty have long been a cause of statelessness because in such situations, laws and regulations pertaining to nationality will inevitably altered. Any form of state succession can trigger the adoption of new nationality laws or new administrative procedures under which, some individuals would fail to acquire nationality of the predecessor or successor states

The problem of the state succession with respect to inhabitants of the territory is mainly a problem of nationality. The challenge is often how to attribute the nationality of predecessor and successor states among people who must live through the tumultuous changes of sovereignty. In the context of the state succession, the traditional view holds that the nationality of individuals affected by a change in sovereignty must be determined by the domestic law of the states concerned.³¹ The wave of state succession that took place in 1990s, especially in Europe, caused

31 Jeffrey L. BLACKMAN, "State Succession and Statelessness: The Emerging Right to an Effective Nationality Under International Law" (1998), Michigan Journal of International Law, Vol. 19, at 1152.

concerns for the international community as to the resolution of nationality problems in these situations. The UN General Assembly placed on the agenda of the ILC the issue of “state succession and its impact on the nationality of natural and legal persons”.³² The Draft Articles on Nationality of Natural Persons in Relation to the Succession of States were prepared by the ILC.³³ The efforts of the ILC to direct positive obligations on states as well as human rights approach adopted in this area are notable. These articles were considered as helpful supplement to the Vienna Conventions.³⁴

Administrative or procedural problems such as unreasonable fees, unrealistic deadlines, restrictive interpretation of laws and excessive national security considerations can also render individuals stateless.

While the statelessness may be attributed to conflict of law or state succession, in reality, the discrimination against ethnic, national, religious or particular social groups plays a crucial role in the creation of statelessness. The stateless Muslim minorities in Myanmar, commonly known as Rohingya are one of the world’s most oppressed groups who are not only denied nationality but face persecution for decades. Racial discriminatory legislations in Myanmar since 1948 greatly deprive the ethnic minority from being recognised as nationals of the country.³⁵ In some cases, nationality laws are overtly racist or discriminatory towards particular group of individuals or minorities. In other situations, nationality laws may be implemented in discriminatory ways by administrators, registrars and officials, especially if they have discretionary powers in naturalisation or registration procedures. Women, irregular migrants and children are among groups of individuals who may be targeted by discriminatory laws or practices.

32 A/RES/48/31 (1993)

33 Yearbook of International Law Commission, 1999, Vol. II (II),

34 1978 Vienna Convention on succession of States in respect of treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts

35 Rohingya crisis European Civil Protection and Humanitarian Aid Operations, http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya_en.pdf, accessed 04/04/2018, Constitution, 1948 and 1982 Nationality Acts are respectively available on: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/79573/85699/F1436085708/MMR79573.pdf>; http://www.ibiblio.org/obl/docs/UNION_CITIZENSHIP_ACT-1948.htm; <http://www.refworld.org/docid/3ae6b4f71b.html>

The gender inequality towards women can take the form of preventing mothers to confer their nationality to their children on an equal basis as fathers. Discriminatory treatment of women may also prevent them to acquire, change or retain their nationality on an equal basis as men. The gender inequality can create statelessness where children cannot acquire nationality from their fathers in instances where for example the father is stateless or unknown. Around six decades ago, in majority of countries, women did not have equal rights as men in nationality matters. This has radically changed in a positive way since the adoption of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁶ As of March 2017, according to a survey by the UNHCR, the equality between women and men in terms of conferral of nationality upon children on an equal basis has not yet been attained in 26 countries³⁷ where majority of them are found in the Middle East and North Africa.³⁸

The immediate birth registration is the right of all children according to the 1989 Convention on the Rights of the Child (CRC).³⁹ Lack of birth registration and birth documentation does not necessarily result in statelessness but it can create a risk of statelessness. The birth registration ensures that the place of birth and to whom the child was born are recorded. These are key pieces of information needed to establish which country or countries nationality should be acquired by

36 UNHCR Background Note on Gender Equality, Nationality Laws and Statelessness, 2017, <http://www.refworld.org/docid/58aff4d94.html>, accessed 11/02/2018; The Convention on the Elimination of All Forms of Discrimination against Women provides in its article 9(1) that States “shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” Article 9 (2) requires States to “grant women equal rights with men with respect to the nationality of their children”.

37 UNHCR Background Note, *Ibid*.

38 United Arab Emirates, Saudi Arabia, Syrian Arab Republic, Islamic Republic of Iran, Kuwait, Somalia, Sudan, Nepal, Malaysia are among these countries

39 Article 7(1)

the child. In fact, “the pivotal juncture in guaranteeing a person’s right to a nationality is the moment of birth”.⁴⁰

However, some children may be deprived of the right to immediate registration after their birth. Among children, foundlings are particularly at risk since the key facts about their origin are unknown to governments. In such circumstances, governments may be reluctant to issue the birth registration for these children. The irregular migratory status of parents is another factor that may prevent a new born to be issued with a birth certificate. Some states refuse to issue birth certificate to children born to irregular migrants or to those who do not possess any identity documentations including stateless persons. Birth out of wedlock is another risk that can render a child stateless.

Traditional and cultural biases in some communities may be also a cause of statelessness. To illustrate this situation, one can refer to tribal and religious attitudes among the *Balouch* population in Sistan and Blouchestan province of Iran. In the past, because of cultural barriers, they refrained from providing photos of their women to civil registration officers for the purpose of issuing *Shenasnameh* (Iranian Identity Booklet).⁴¹ Being reluctant to follow administrative formalities had placed some people in the statelessness situation. Also due to the nomadic life style (people on the move), for many people and not only *Balouch* in this region, *Shenasnameh* did not mean anything but just a piece of paper with not much of substantial value. Therefore, several successive generations did not apply for *Shenasnameh* and inter-generational statelessness remains among these communities.⁴²

The cross-border movement of people can prevent them from obtaining the relevant identity documents in any country they move to,

40 Gérard-René DE GROOT, “Children, Their Right to a Nationality and Child Statelessness” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 144.

41 Documentary movie called “Without *Shenasnameh*”, <https://www.aparat.com/v/KRFeb/>, accessed 11/02/2018

42 Hamshahri online Newspaper, Article titled “Without *Shenasnameh*”, <http://www.hamshahrionline.ir/details/391142>, accessed 11/02/2018

and therefore, may lead to statelessness. On the population movement, it is important to note that there is a nexus between forced migration and statelessness. In fact, “the patterns of migration contribute to the creation and prolongation of cases of statelessness while statelessness has a role in driving migration”.⁴³

Regardless of the root cause of statelessness, the lack of any nationality places people in a situation of extreme vulnerability. Since the nationality often acts as a key for the access to basic rights, the statelessness adversely affects the enjoyment of fundamental rights and freedoms by people. With statelessness being a consequence of discriminatory laws, policies and practices, it frequently results in discrimination in terms of accessing rights including education, work, and healthcare. Stateless persons also often face challenges in registering their civil status events and they are restricted in property rights and movements within their country of origin or habitual residence.

Stateless population can also be invisible in population data and other tools that help governments plan for development work and the delivery of services, such that they may be left out of policy planning.⁴⁴ Moreover, barriers to accessing justice prevent them from seeking legal recourse against such discriminatory exclusion. The aforementioned difficulties are only few stateless persons may face in their daily lives and the list can go beyond.

IV. Entrusting UNHCR to Address Statelessness

43Sophie NONNENMACHER and Ryszard CHOLEWINSKI, “The Nexus Between Statelessness and Migration” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 247.

44 Statelessness, Human Rights and the Sustainable Development Agenda, A working Paper, 2017, Institute on Statelessness and Inclusion, www.institutesi.org/SDG-working-paper2017.pdf, accessed on 06/04/2018

Since problems related to refugee and statelessness sometimes overlap; the UNHCR was assigned by the General Assembly⁴⁵ to effectively become the overseer and guardian of the world's stateless persons and ongoing efforts to assist them. Prior to the expansion of its mandate, the UN refugee agency has had some responsibility for stateless persons since its establishment in 1950. However, it was only in the mid-1990s that its mandate broadened.⁴⁶ The UNHCR was originally mandated in its 1950 Statute⁴⁷ to address the situation of stateless persons who were at the same time refugees in accordance with Article 6(A)(II) of the UNHCR Status of Refugees.⁴⁸ Therefore, there had to be a nexus between refugee and statelessness so that the UNHCR could extend its competence.

Following the emergence of a large scale statelessness situation in Eastern Europe as result of the dissolution of the Soviet Union, Czechoslovakia and the Socialist Federal Republic of Yugoslavia, the international community paid greater attention to the problem of statelessness. In 1995, the UNHCR's Executive Committee adopted a conclusion on the "Prevention and Reduction of Statelessness and the Protection of Stateless Persons".⁴⁹ Following this conclusion, the General Assembly in its resolution of February 1996 acknowledged the

45 UN General Assembly Resolution A/RES/50/152 on "Office of the United Nations High Commissioner for Refugees", 09/02/1996

46 Mark MANLY, "UNHCR's Mandate and Activities to Address Statelessness" in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 88.

47 The Statute of UNHCR was adopted by the General Assembly on 14 December 1950 as Annex to Resolution 428 (v).

48 This provision states: "Any person who, as result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it".

49 Executive Committee of the UN High Commissioner for Refugee's Program, "Prevention and Reduction of Statelessness and the Protection of Stateless Persons". Conclusion No. 78 (XLVI)1995

close connection between statelessness and displacement. At the same time, it noted that the prevention and reduction of statelessness and the protection of stateless persons are important also in the prevention of potential refugee situations.⁵⁰

In the early 1990s, a shift from the potential role of states in addressing statelessness, to the potential role of the UNHCR began to be considered by the Executive Committee⁵¹ through directing “the High Commissioner to continue her efforts generally on behalf of stateless individuals and to work actively to promote adherence to and implementation of international instruments relating to statelessness”.⁵² The role of the UNHCR vis-à-vis statelessness is composed of four pillars namely Identification; Prevention; Reduction and Protection for which the Executive Committee has had adopted a detailed conclusion in 2006. The latter comprises of twenty-four operative paragraphs with the aim of providing a more comprehensive guidance on how the UNHCR was to implement its mandate.⁵³

Statistics regarding the number of stateless persons and gathering more information on their profiles come under the Identification pillar. In fact, solving a problem would not be possible unless it is understood comprehensively and from different angles. With respect to the Prevention pillar, the UNHCR has a responsibility to take preventive measures which can include promotion of accession to the 1961 Convention and the reform of nationality laws.⁵⁴ Reducing statelessness translates into one solution which is the acquisition of nationality preferably of the country with which, stateless persons have strong ties. Until stateless persons acquire a nationality, the fourth pillar requires

50 Supra Note 46

51 Matthew SEET, “The Origins of UNHCR’s Global Mandate on Statelessness” (2016) *International Journal of Refugee Law*, Vol. 28, No.1, at 19.

52 ExCom, “General Conclusion on International Protection”, Conclusion No. 68 (XLIII), 1992

53 ExCom, “Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons”, Conclusion No. 106 (LVII), 2006

54 Supra Note 47, 103

the UNHCR to ensure in accordance with the 1954 Convention and human rights that they exercise their fundamental rights.

Under Article 11 of the 1961 Convention, the UNHCR is the designated body “to which a person claiming the benefit of this convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority”.⁵⁵ Also, on behalf of the Secretary General, the UNHCR assumes the supervisory role over the 1954 Convention. Article 33 of this convention states that “[t]he Contracting States shall communicate to the Secretary General of the United Nations the laws and regulation which they may adopt to ensure the application of this convention”. Contrary to the 1954 Convention, the supervisory role of the 1951 Convention is directly conferred to the UNHCR under Article 35.

UNHCR’s activities concerning statelessness have been evolved over time and become a crucial part of its mandate around the world. A call for greater commitment was launched in 2013 by the UN High Commissioner for Refugees. Subsequent to that the Global Action Plan to End Statelessness within a decade (2014-2024) was developed in consultation with states, civil society and international organizations.⁵⁶ This plan, which is in line with the four pillars of UNHCR’s role, establishes a guiding framework of 10 actions to be undertaken by states, with the support of the UNHCR and other stakeholders. These actions aim to resolve current major situations of the statelessness.

Reducing the number of stateless around the world by resolving the current major situations of statelessness is one of the aims of these actions. Under the auspices of the UNHCR, regional and national initiatives continue to contribute to reduction in the number of stateless persons. As an illustration, in central Asia, from 2014 to the end of July 2017, 29,871 stateless people had their statelessness situation resolved.⁵⁷ The Rohingya crisis is one of the major problems the world faces today and, therefore, it deserves to be resolved urgently.

55 UN General Assembly Resolution 3274 (XXIV), 25/01/2006

56 UNHCR Global Action Plan to End Statelessness, 2014-2024, <http://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-20142024.html>, accessed 13/02/2018

57 UNHCR #IBelong Campaign to End Statelessness, October 2017

The Global Action Plan intends also to prevent new cases of statelessness from emerging by targeting the common cause of this problem namely, different forms of discrimination and state succession. The importance of preventing childhood statelessness has led the UNHCR to devote two actions to this issue (Actions 2 and 7). Better identification and protection of stateless people by ensuring the enjoyment of basic human rights is another area where the efforts of the Global Action Plan are focuses.

V.Statelessness As A Human Rights Issue: Does More Need to Be Done?

Nationality and statelessness are closely interrelated. The duty to reduce and prevent statelessness may be conceived as an obligation “arising from the right to nationality”.⁵⁸ There is an evolving approach towards recognizing the right to nationality as a human right and not only as a state’s right. As recalled by the ILC and reiterated by the Secretary General “as a result of this evolution in the field of human rights, the traditional approach based on the preponderance of the interests of States over the interests of individuals has subsided”.⁵⁹

Contrary to the traditional view that regards the statelessness as a “technical legal problem”⁶⁰, it is, in reality, a human right challenge. In most cases, it occurs as a result of violation of the fundamental human rights principal of non-discrimination. The arbitrary deprivation of

58 Supra note 32, 1176

59 Human Rights Council, Human Rights and Arbitrary Deprivation of Nationality, Report of Secretary General, 2009, A/HRC/13/34. The Inter-American Court on Human Rights has also recognised that contemporary developments indicate that international law impose certain limits on the broad powers enjoyed by the States in that area and that the manner in which States regulate matters bearing on nationality cannot today be deemed to be within their sole jurisdiction: those powers of the State are also circumscribed by their obligations to ensure the full protection of human rights”. Inter-America Court of Human Rights, *Proposed Amendments to the Naturalization Provision of the Political Constitution of Costa Rica*, Advisory Opinion, OC-4/84, 1984, Series A No.4, para 32, referred to by Alice EDWARDS, “The Meaning of Nationality in International Law in an Era of Human Rights” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), 24

60 Supra not, 22, 567

nationality on the basis of racial, religious and gender discrimination is the common cause of statelessness. Since nationality is often a prerequisite for exercising other rights, the statelessness frequently results in discrimination in terms of accessing basic rights.

The right to retain nationality- a corollary to the right to a nationality- corresponds to the prohibition of arbitrary deprivation of nationality.⁶¹ The arbitrary deprivation of nationality may take the form of failure to accord nationality, preclude a person from retaining a nationality or of withdrawal of nationality on arbitrary or discriminatory grounds.⁶²

The principles governing withdrawal of nationality are set out in Articles 5 to 9 of the 1961 Convention. This convention distinguishes between two types of such withdrawal: the loss of nationality, which is when nationality is withdrawn automatically by the operation of law, and deprivation of nationality, as a discretionary act at the initiative of a State authority.⁶³ The low rate of accession and implementation of the 1961 Convention makes other human rights treaties important in terms of recognition of right to nationality and prohibition of arbitrary deprivation of nationality. The following international instruments guarantee this right and general prohibition:

The UDHR (Article 15), the CRC (Article 7) and the CEDAW (Article 9) referred to earlier in this paper, the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the International Covenant on Civil and Political Rights (Article 24), the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities (18) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 29).

A series of regional instruments also recognize the right to nationality and prohibition of arbitrary deprivation of nationality, including the African Charter on the Rights and Welfare of the Child (Article 6), the

61 *Supra* note 60

62 *Ibid*

63 Journn BRANDVOLL, "Deprivation of Nationality: Limitations on Rendering Persons Stateless Under International Law" in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014), at 199.

American Convention on Human Rights (Article 20), the revised Arab Charter on Human Rights (Article 29), the Covenant on the Rights of the Child in Islam (Article 7), the European Convention on Nationality (Article 4), and the Commonwealth of Independent States Convention (Article 24).

Unless states fulfil their obligations under international law, the right to nationality of individuals cannot be materialised. The United Nations human rights conventions provide a solid legal framework imposing obligations on states to guarantee the right to nationality and limit the situations which may result in statelessness. Also, a wide range of soft law instruments, including resolutions from the UN Human Rights Council and the General Assembly, reports from the Secretary General, the UNHCR Executive Committee's conclusions contribute to the development of new standards of international human rights law.⁶⁴ The two draft articles prepared by the International Law Commission on diplomatic protection⁶⁵ and state succession⁶⁶ shed light on international legal principles dealing with the protection of stateless persons. Despite this background, some aspects related to nationality and statelessness require further legal debate at global level. The impact of climate change on the extinction of territory of island states and potential future forms of statelessness deserves further reflection and analysis. Or, against the current security environment, the question as to whether any deprivation of nationality (and not only arbitrary) resulting in statelessness should be prohibited needs to be elucidated.⁶⁷In other words, is it possible to claim that *de lege ferenda*,

64 For example, Supra note 60, "Annual Report of The United Nations High Commissioner For Human Rights And Reports of the Office Of The High Commissioner And The Secretary General", 2009, A/HRC/10/34

65 Supra note 21

66 Supra note 34

67 The 1961 Convention permits the withdrawal of nationality in certain situations even if it results in statelessness when: nationality is acquired on the basis of misrepresentation or fraud *Article 8 (2)(b); nationals carry out acts contrary to the duty of loyalty to the state. This includes rendering services to or receiving emoluments from another state in disregard of an express prohibition by the country of nationality (Article 8(3)(a)(i)) and conduct which is

unless a new nationality is acquired; the withdrawal of nationality is invalid?

The statelessness needs to be further voiced through international diplomacy and human rights advocacy. The Universal Periodic Review of the United Nations Human Rights Council offers the opportunity for states to assess the issue of statelessness. Some progress has been made during this process. The number of recommendations relating to nationality and statelessness made by states has risen considerably since the first session in 2008.⁶⁸ The UNHCR Executive Committee is another forum where statelessness concerns can be highlighted.

States need to be convinced that accomplishing relevant actions (within UNHCR's Global Action Plan) is one of the ways towards ending statelessness and disenfranchisement. Progress has been made through the support of the UNHCR which is one of the series of stakeholders that can assist States to implement these actions. Other UN agencies and regional organizations have also played a role in this area.

Much has been done by the UN to guarantee the right to nationality and counter statelessness. However, a further global movement is required since "there is nothing even closely resembling an international movement of the kind which currently exists to address child soldiers, landmines, or even refugee rights".⁶⁹

seriously prejudicial to the vital interest of the state (Article 8(3)(a)(ii)); and an oath or formal declaration of allegiance or definitive evidence of determination to repudiate the allegiance to the state of nationality is given to another state (Article 8(3)(b)). Compared to the 1961 Convention, The 1997 European Convention on Nationality (ECN) reduces the situations where "loss of nationality *ex lege* or at the initiative of the State party may render a person stateless to just one: "acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any fact attributable to the applicant" (Article 7(1)(b)). The question is "whether it can be said that the ECN is a reflection of state practice and whether such practice extends beyond Europe to the global level", *Supra* note 64, 202

68 During the 29th session in January 2018, significant attention was paid to issues relating to nationality and statelessness with a total of 64 relevant recommendations made. The topics addressed in recommendations during the review mainly focused on issues related to gender discrimination, discrimination on the basis of nationality, treaty accession, children's right to a nationality and birth registration, Institute on Statelessness and Inclusion, "Universal Period Review-29th Session: Overview and Analysis of Recommendations Made on Nationality and Statelessness", http://www.institutesi.org/UPR29_stateless.pdf, accessed 14/04/2018

69 *Supra* note 6, 114

References:

Book

1. Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014)

Articles:

2. Journn BRANDVOLL, “Deprivation of Nationality: Limitations on Rendering Persons Stateless Under International Law” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014)
3. Gérard-René DE GROOT, “Children, Their Right to a Nationality and Child Statelessness” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014)
4. Guy S. GOODWIN-GILL, *Convention Relating to the Status of Stateless Persons*, available at United Nations Audio-visual Library of International Law
5. Michelle FOSTER and Hélène LAMBERT, eds., *Statelessness as a Human Rights Issue: A Concept Whose Time Has Come*, (2016), *International Journal of International Law*, Vol. 28, No.4
6. Jeffrey L. BLACKMAN, “State Succession and Statelessness: The Emerging Right to an Effective Nationality Under International Law” (1998), *Michigan Journal of International Law*, Vol. 19
7. Mark MANLY, “UNHCR’s Mandate and Activities to Address Statelessness” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014)
8. Sophie NONNENMACHER and Ryszard CHOLEWINSKI, “The Nexus Between Statelessness and Migration” in Alice EDWARDS and Laura VAN WAAS, eds., *Nationality and Statelessness*, (Cambridge University Press, 2014)
9. Matthew SEET, “The Origins of UNHCR’s Global Mandate on Statelessness” (2016) *International Journal of Refugee Law*, Vol. 28, No.1
10. Martin STILLER, “Statelessness in International Law: A Historic Review” (2012), *DAJV Newsletter*

UN Documents:

11. UN General Assembly Resolution 3274 (XXIV), 25/01/2006
12. Guiding Note of the Secretary General, The United Nations and Statelessness, June 2011
13. A Study of Statelessness, United Nations, August 1949, E/1112;E/1112/Add.1
14. Handbook On Protection Of Stateless Persons, UNHCR, Geneva, 2014, 12,
15. Nationality and Statelessness, A Handbook for Parliamentarians, Inter-Parliamentary Union,
16. International Law Commission, Elimination of Statelessness, Yearbook (Vol. II), 1951, 121
17. UNHCR Background Note on Gender Equality, Nationality Laws and Statelessness, 2017
18. UN General Assembly Resolution A/RES/50/152 on “Office of the United Nations High Commissioner for Refugees”, 09/02/1996
19. Executive Committee, “General Conclusion on International Protection”, Conclusion No. 68 (XLIII), 1992
20. Executive Committee of the UN High Commissioner for Refugee’s Program, “Prevention and Reduction of Statelessness and the Protection of Stateless Persons”, Conclusion No. 78(XLVI) 1995
21. Executive Committee of the UN High Commissioner for Refugee’s Program, “Prevention and Reduction of Statelessness and the Protection of Stateless Persons”. Conclusion No. 78 (XLVI)1995
22. Executive Committee, “Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons”, Conclusion No. 106 (LVII), 2006
23. UNHCR Global Action Plan to End Statelessness, 2014
24. UNHCR #IBelong Campaign to End Statelessness, October 2017
25. Human Rights Council, Human Rights and Arbitrary Deprivation of Nationality, Report of Secretary General, 2009, A/HRC/13/34
26. Universal Period Review-29th Session: Overview and Analysis of Recommendations Made on Nationality and Statelessness

27. Annual Report of The United Nations High Commissioner For Human Rights And Reports of the Office Of The High Commissioner And The Secretary General”, 2009, A/HRC/10/34
28. Universal Period Review-29th Session: Overview and Analysis of Recommendations Made on Nationality and Statelessness”.

Cases:

29. Nationality Decrees Issued in Tunis and Morocco on Nov. 8th, Advisory Opinion, 1923, P.C.I.J (ser.B) No. 4 (Feb.7)
30. Nottebohm Case (Liechtenstein v. Guatemala); Second Phase, International Court of Justice (ICJ), 6 April 1955
31. *Pham v Secretary of State* for the Home Department [2015] UKSC 19, [2015] 1 WLR 1591
32. *Dickson Car Wheel Company (USA) v. United Mexican States*, Report of International Arbitral Awards, Vol. IV, 678, http://legal.un.org/riaa/cases/vol_IV/669-691.pdf, accessed 29/03/2018
33. *R (Al Rawi) v Foreign Secretary* [2006] EWHC 976 (Admin)
34. Inter-America Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Political.
35. Constitution of Costa Rica, Advisory Opinion, OC-4/84, 1984, Series A No.4.

