

The Great Divide: Citizenship And Statelessness

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THE GREAT DIVIDE: CITIZENSHIP AND STATELESSNESS

by

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ABSTRACT

This thesis investigates the implications of State control of citizenship upon the individual's ability to choose membership in a given State polity. It briefly examines how States gained absolute control over the granting, denying and revoking of citizenship and demonstrates how the acquisition of citizenship and statelessness are both State-determined statuses. The repercussions of statelessness at the individual, regional and global levels are presented to demonstrate the severity of being unable to choose a citizenship. Efforts made by States and the international community to prevent and reduce statelessness are examined in order to illustrate the lack of prioritization given to the subject of statelessness, and possible courses of action for States and the United Nations to undertake in order to better address this topic are introduced. The thesis concludes that citizenship is a human right and that States need to consider individual choice concerning citizenship matters. If such choice is not taken into account with regard to State membership, States will be performing a disservice to citizens, the stateless, and the system of States.

This thesis is dedicated to all those individuals who work tirelessly to make the world a safer and less hostile place for the stateless.

ACKNOWLEDGMENTS

As always, I must thank my support group of family, friends and teachers that encourages me to realize my goals. I owe special thanks to my husband, Jevon Knowles, who keeps me grounded and shows me that nothing is insurmountable.

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LIST OF ACRONYMS/ABBREVIATIONS

- GA General Assembly: this is the main deliberative organ of the United Nations. All Member States are represented in this body and have one vote.
- OHCHR Office of the United Nations High Commissioner for Human Rights: this organ is charged with promoting human rights and alerting the international community to violations of these rights.
- UN United Nations: the only international governmental organization that exists which promotes peace and seeks resolutions to global humanitarian problems. There are currently 191 States that are members.
- UNHCR United Nations High Commissioner for Refugees: this agency is charged with assisting refugees, internally displaced persons, the stateless and “others of concern.”

CHAPTER ONE: INTRODUCTION

Every second of every day individuals are born who automatically acquire citizenship through the accepted practices of *jus soli* (citizenship obtained via birth on a territory) and *jus sanguinis* (citizenship obtained via descent). Most of these people will probably never question how they obtained their citizenship because they will not have to struggle to acquire one. They are born, registered, given a passport if necessary, and told that they are a citizen of this or that State. Consent, at least of the explicit kind, is not required. Citizenship in such instances is an assumed status and not a participatory role wherein one gets to decide to which State she would like to be a member. John Locke's assertion that a person is "born a subject of no country or government" is therefore no longer true.

There are persons, however, who are citizens of nowhere. They do not automatically acquire a citizenship at birth or, if they do, they lose this citizenship involuntarily later on. These are the stateless. These people are non-entities in the legal realm of the State system; they live on the fringes of society in most States and do not enjoy basic rights or the same life opportunities that citizens do. There is one similarity between the status of citizens and that of the stateless, however, and it is that both conditions are a result of State decision-making. States confer citizenship and States deny and revoke citizenship. Individual choice is not applicable.

This thesis investigates the implications of State control of citizenship upon individuals and briefly examines the effects of such control at the regional and global levels. It endeavours to challenge the assumptions that citizenship should denote a relationship of tacit consent to the State and that only the State should have the legitimate authority to control citizenship. It demonstrates that the State is doing a disservice to citizens, the stateless, and the system of States by refusing to acknowledge individual choice in matters pertaining to citizenship.

This subject is of crucial import for several reasons: 1) citizenship is an assumed status that circumscribes every aspect of an individual's life (from regulations and laws, to travel, daily opportunities and decisions) without the individual's deliberately expressed consent to be constrained by such a status; 2) the citizen-State relationship is the basis of the international system of States; 3) citizenship is currently the legally recognized manner in which a person is deemed to be a member of given State; and 4) individual rights and freedoms are conditioned by membership in a State. Those who bear no citizenship are effectively denied such rights and freedoms.

In order to discuss the implications of State control of citizenship, and the State's non-recognition of individual choice, the thesis proceeds on the following grounds:

Chapter Two presents a review of the citizenship literature. It examines citizenship's historical evolution, the three principal theoretical traditions on citizenship within a bounded State framework, and the literature on "thick versus thin" citizenship, belonging, globalization and human rights. This chapter illustrates that citizenship is not a static concept and lays the foundation for the arguments made in the ensuing chapters that citizenship-as-legal status is necessary and that citizenship is a human right. It also demonstrates how the acquisition of citizenship is assumed (unquestioned) in much of the literature.

Chapter Three describes the two main ways in which citizenship is acquired around the globe – via *jus soli* and *jus sanguinis*. It provides examples of the restrictions that States place upon citizenship acquisition through these two means and illustrations of State restrictions upon the voluntary renunciation of citizenship. It thereby demonstrates the lack of control that individuals have in deciding their relationship to a State polity.

Chapter Four analyses how States obtained exclusive control over membership through an examination of the social contract literature. It points out some of the flaws of social contract theory and introduces the topic of implicit consent. This chapter shows how the citizen-State relationship is inequitable as a result of the use of tacit consent by States and their thorough monopoly of membership considerations.

Chapter Five differentiates between those who have voluntarily renounced their citizenship and those who have been rendered stateless through no choice of their own. It examines the main ways in which a person becomes involuntarily stateless and introduces the instrumental use of citizenship by some States that wish to denationalize or prohibit citizenship to groups they do not accept (typically on ethnic or racial grounds).

Chapter Six investigates the consequences of statelessness. It demonstrates that the non-recognition of the stateless as members of a State is associated with problems at the individual, regional and global levels. It illustrates how States are unable to provide citizenship to all persons equally even though they are the only entities charged with this duty.

Chapter Seven explores some of the ways in which States and the United Nations have tried to address the problem of statelessness. It considers whether such efforts have been successful in preventing and reducing statelessness through criticism of the actions (or inaction as the case may be) of these entities.

Chapter Eight follows up on the criticism made in the preceding chapter by presenting suggestions that States, the United Nations and the conventions produced by these bodies, could implement or incorporate in order to decrease the presence of statelessness globally and thereby improve the lot of those who are currently stateless. It emphasizes the importance of State action in this regard.

Chapter Nine examines more thoroughly the suggestion made in the previous chapter that States should consider individual choice in matters pertaining to citizenship. It argues that the recognition of individual choice with regard to citizenship can make for better citizen-State relations and decrease statelessness. It concludes by stressing the responsibility of all participants in the international system of States to prevent and reduce statelessness everywhere.

It is important to note that this thesis assumes that the international system of States will continue to exist in the near future, and that States will remain the principal entities that control the rules of membership. For this reason, the thesis focuses on the individual-State relationship regarding citizenship matters because no other entity exists that can grant, revoke and deny citizenship. Consequently, postnational claims that citizenship does not need to be bound to the State, while plausible, are not considered because the thesis is concerned with the current plight of the stateless and the present inability of citizens to actively choose their State membership.

Similarly, this thesis does not examine the degree of choice that a person who becomes a naturalized citizen of another State has. It only notes that one does not “decide” she wants to become a member of another State and simply become one of her own volition. She must first receive the permission of the State to which she wishes to naturalize and, in most cases, cannot acquire another citizenship without first fulfilling the obligations of the State of her current citizenship. Choice is hardly the appropriate word to use in such instances.

The literature review that follows demonstrates that this thesis is examining an understudied area of the citizen-State relationship (citizenship-as-choice) and an undervalued subject of human and international relations (statelessness). It lays the foundation for the arguments presented in the following chapters. These arguments are: 1) citizenship is a human right and citizenship is consequently the right to have rights; 2) States are unable to equitably

provide membership to all human beings; 3) those persons who are party to the citizen-State relationship (citizens) are in an inferior position to the State in determining the characteristics of their association to the State; and 4) the acknowledgement of individual choice concerning matters of citizenship is necessary in order to decrease statelessness and to create a more equitable citizen-State relationship. Finally, the thesis illustrates that although there is a great divide between the rights, freedoms and opportunities that citizens and the involuntary stateless may legally enjoy, there is a world of similarity in that neither status is explicitly chosen but is State imposed.

CHAPTER TWO: LITERATURE REVIEW

Citizenship has been a very popular topic for scholars, policy experts and politicians alike over the past few years. Lamentations concerning the “democratic deficit,” the influx of illegal aliens onto “national” soil and the discrepancy between the pronouncement of minority rights and their application have pervaded the literature alongside works that analyse and challenge the notion that the State should be the preeminent location for citizenship. From notions of cosmopolitan and postnational citizenship to claims of citizenship as a human right, the literature on citizenship is as broad and as varied as the term itself. Some general tendencies may be discerned in these texts, however:

- 1) the trend to historicize (citizenship’s evolution and use)
- 2) the tendency to theorize and,
- 3) the focus upon citizenship’s location (whether it should be centered in the domestic realm of rights, responsibilities and civic participation, or in the international arena of transnational citizenship, human rights and globalization).

What follows is a brief overview of the literature in each of these areas.¹

Historical Literature

Although the basic definition of citizenship is “membership in a polity,” the historical literature demonstrates that citizenship is a contested term whose meaning has differed depending on time and space.² Initially, in ancient Athens (from whence the term originated), citizenship referred to exclusively male participation in the public realm. Man was deemed a “political animal” and it was his highest duty to partake in the city-state’s activities and “rule and be ruled” in turn. Virtue was determined by fulfilling one’s obligations to the community of

citizens, and territorial sovereignty did not delimit legitimate membership. Allegiance to the “imperial center” and “active sharing in the constitution” did instead.³

The Roman Empire took this political and participatory notion of citizenship and transformed it into a passive, legal status. While citizenship was originally exclusive (as in the city-states of ancient Greece), as the Empire expanded, Roman citizenship became a much more inclusive order as the rulers realized that it was a sensible way to readily accommodate and control conquered peoples (and thereby secure much needed revenues from taxation). It is with the institution of the legal aspect of Roman citizenship that the idea of the right to protection under the law was first granted.⁴

During the Middle Ages, the participatory notion of citizenship largely faded (except for those few property-owing individuals in the Italian city-republics of Florence and Venice), succumbing to the pressures of feudalism, subjecthood and guild membership. Capitalism had begun to flourish in many European cities and political membership could often be bought if one had enough money.⁵ In many places, the idea of allegiance to an imperial center or State was practically non-existent as cities were the important economic hubs and guild membership conditioned who did or did not acquire citizenship.⁶ According to Maarten Prak, “[t]o end these cities’ privileged status was the mission of the emerging modern state” (18), and it was to the newly emerged French Republic that this mission first presented itself.⁷

The idea of the “nation-State” and allegiance to it instead of the city-state or noblemen was born during the French Revolution. The revolutionaries were frustrated with the exigencies and excesses of the royalty, nobility and religious establishment and consequently desired a polity that would be governed by, and respect, “the people.” These people constituted a “nation” not by heritage or common ties of language and race, but by being “[a] body of associates living

under *common* laws and represented by the same *legislative assembly*” (Heater What Is Citizenship? 106).⁸

It was this universal and legalistic notion of what it meant to be a citizen of the French State that permitted the polity to be (what would be considered today) very liberal in granting citizenship. For instance, mere supporters of the Revolution, such as Thomas Paine, were made honorary citizens, and the only individuals considered non-citizens (or “foreigners”) at the time were those who were judged “bad citizens” (Faulks 33). Allegiance to the “nation-State” as exclusive protector of the laws and the people that abided by these laws became customary after the French Revolution throughout much of Europe. It was not until the end of the 20th century that the coupling of the “nation” with the State would be seriously challenged by scholars of globalization and transnational citizenship.⁹

The establishment of the welfare State in liberal polities during the last century also tested the traditional notions of citizenship. As disparities within State populations in terms of education, health and standards of living became exacerbated, individuals began to claim their entitlement to basic social rights. Many pointed out that one could not ensure that her civil citizenship status was protected, or that her political citizenship status could be enacted, without her minimum social needs being met (adequate food and shelter, access to health care, etc.). That is, the fulfillment of social rights was prior to the realization of civil and political rights.¹⁰

In sum, the literature on the history of citizenship is concerned with the changing meaning of citizenship in different locales and epochs. It demonstrates the movement of citizenship as a legal status toward inclusion of more peoples as time progresses and toward the extension of varied types of rights to citizens. It shows how citizenship was transformed from voluntary allegiance and constitutional participation in ancient Greece to a status tied to the

territory of the “nation-State.” The historical literature provides evidence that the term “citizenship” is evolving and alludes to the possibility that new forms of citizenship may arise in the future.

Theoretical Literature

The literature that examines citizenship theory is closely related to the historical literature in that these theories are often based upon analysis of a given time period or constituted by events occurring while the theories were being formed. Civic republicanism, for instance, is a theory whose roots are tied to the political participation of citizens during the time of the Greek city-states. The liberal theory of citizenship was influenced by Enlightenment thought (especially natural rights theory) and market enterprise. Communitarianism, on the other hand, grew out of a reaction to what communitarians considered to be the pitfalls of the liberal notions of citizenship. This section examines how these three theories differ with regard to the description of citizenship participation in the polity and the relationship between the individual and the State.¹¹

As previously mentioned, civic republicanism has its ties to the ancient Greek city-states. It is a theory of citizenship that emphasizes formal political participation as a duty of all citizens. It is a “communally based conception of citizenship; individuals are only citizens as members of a community” (Oldfield 178). It stresses the ideals promulgated by the citizens of the ancient city-states – such as military discipline and civic bonds – and values obedience to laws and constitutional arrangements. Virtue is extolled and finds its expression when someone places the public’s interests above self-interest. While the individual may “mark [her] place in history by serving the public community” (van Gunsteren 21), the civic republican tradition of citizenship does not place much emphasis upon the individual entitled to certain rights.

Critics of civic republicanism denounce this theory's lack of individual rights protection, its non-recognition of the private sphere as an important political domain and its emphasis upon seemingly masculine traits.¹² Herman van Gunsteren criticizes civic republicanism on the grounds that it "makes one community absolute and shows too little appreciation for the characteristic values and diversity of other communities" (21); while Derek Heater states that civic republicanism's basis upon the Greek city-state has made for a "narrow definition of public participation" and made citizenship "an elite activity" (What Is Citizenship? 73).

In contrast to the lack of focus upon the individual and her rights in civic republicanism, liberal citizenship theory centers almost strictly upon such concepts. The individual reigns paramount in this literature, utilizing the State to protect her from others while at the same time using it as guarantor of certain rights and services. Whereas in the civic republican tradition the emphasis is upon fulfilling one's civic obligations (both to the State and to others), in the liberal conception of citizenship the performance of such duties is not required. The citizen is an autonomous being who demands as little State interference in her life as possible. Adrian Oldfield notes that in this tradition, "[t]he status of citizen imposes no 'duties' on individuals, [sic] beyond the minimally civic and that of respecting other individuals as sovereign and autonomous citizens" (179).

While liberal theory does not progress very far from civic republicanism's emphasis upon the public sphere over the private one, it does provide for certain rights and protections regardless of ascriptive characteristics such as race, sex and age. Its emphasis is upon the equality of all individuals regardless of their relationship to the State and its goals are twofold: 1) to make citizenship "universal" in that all who bear the status should be treated equally and, 2) to provide the status of citizenship to as many individuals as possible. As Heater points out, "The

status of citizen was in origin and indeed for by far the greatest portion of its history essentially the mark of an elite. The implication of the liberal revolution in the concept is that none should be excluded” (A Brief History of Citizenship 143).

Despite these positive attributes, the liberal theory of citizenship is criticized on two main counts. Firstly, several scholars point out that no person exists in a vacuum and that the liberal conception negates the importance and influence of the community in which one lives or grows up. It denies the reality that “[c]itizenship cannot be purely an individual status because citizenship only has meaning to the individual in the wider cultural context of the group” (Faulks 90). Mary Dietz laments that the liberal view renders citizenship “less a collective, political activity” and more “an individual economic activity” (382),¹³ while Larry Preston criticizes liberalism’s “unfettered autonomy and value pluralism [which] erroneously claims that autonomous individuals need not respect any collective criteria in making free decisions” (669).

Secondly, the liberal conception of equality in the juridical-political realm is faulted with masking genuine inequalities in the real world. Karl Marx was one of the first to challenge the “false universalism” of the liberal notion of citizenship (Faulks 62), while others such as Keith Faulks condemn the manner in which liberalism “represents not equality between different individuals but the domination of the ideal of equality *over* difference” (85). He proceeds to assert that “[b]y focusing upon individuals and ignoring the structural aspects of power, liberals tend to overlook or misunderstand how citizenship fails to serve all persons equally” (86). Citizenship, therefore, is not as universal in its provision of rights and protections as liberal theory postulates.

It would appear that the final theory of citizenship examined here, communitarianism, addresses the first criticism directed against the liberal conception of citizenship. That is,

liberalism's failure to acknowledge that people are shaped by given contexts. Sometimes viewed as a conservative reaction to the dominant individualism of liberal theory, communitarianism is centered upon group cohesion and activity. Responsibility toward one's fellow group members is paramount, and the wishes and interests of the collective are privileged above those of the individual. Communitarians argue that group solidarity and cultural cohesion are the best ways to create a polity wherein members will be able to participate in decision-making and that such communities should be protected from disintegration (whether due to internal or external factors).

The critics of communitarianism state that this theory is too static and exclusive. The community is so centered on self-preservation that it fights anything deemed threatening to its existence. Since it is the collective that reigns supreme, newcomers to the community must accept the vision imposed by the group or face rejection and expulsion. Change is not readily forthcoming in the communitarian version of citizenship. This steadfastness in the face of change is quite serious when some groups within the community are not treated as equals and have yet to achieve their full citizenship rights. Faulks simply asserts that those communitarians who denounce "liberals' assertion of an abstract individualism," posit "an equally abstract view of community" (72).

In sum, the theoretical literature on citizenship depicts varying degrees of participation in political activity (from the practically required duty of participation in civic republicanism to the minimalist civic activity of liberalism), and differs in its description of the relationship between the individual and the State (the State being the figure around which everything revolves in civic republicanism, the protector of rights and the distributor of justice in liberalism, and the guardian

of the community in communitarianism). These theories thus differ in what it means to be a citizen and how a citizen should act.¹⁴

Location Literature

The term “location” literature refers to whether authors situate their respective citizenship topic in the realm of domestic or international politics. Domestic themes include those that examine civic participation, voting, rights versus responsibilities, patriotism, belonging and immigration among others. International themes consist of those that refer to issues of globalization, human rights, the role of the State and alternatives to State-bound citizenship. Since the literature in this area is vast, only a brief sketch will be made of those texts that most closely relate to the premise of this thesis.

Thus, with regard to the domestic literature, belonging and citizenship-as-status and as-activity are specifically examined because the former sets the stage for how State membership is acquired and it presents one of the questions raised in this thesis – whether the State should solely be determining who belongs to the polity. The citizenship-as status or -as-activity topic pertains specifically to the argument being put forth that citizenship-as-status is central to obtaining other rights.¹⁵ As concerns the International Location literature, globalization and human rights are studied because globalization is modifying the State’s traditional control over membership rules and thereby introducing the possibility that current rules of citizenship acquisition may be changing. The literature on human rights is examined because it provides the background for the argument made in this thesis that citizenship should be a human right.

Domestic Location Literature

Thick vs. Thin Citizenship

Many scholars tend to differentiate between “thick” and “thin” conceptions of citizenship in their work – “thick” citizenship referring to active participation in the polity and “thin” citizenship referring to a passive, legal status concerned with rights acquisition. There is a tendency in this literature to denigrate the “thin” conception of citizenship while elevating the “thick” conception. Some scholars believe that those who focus on the “thin” conception ignore matters concerning group decision-making and responsibility which leads to an “What am I entitled to?” attitude that ignores the needs and goals of the larger community. Two authors who disagree with the position that “good citizenship is ‘thick’ citizenship while poor citizenship is ‘thin’ citizenship” are Will Kymlicka and Wayne Norman.

Kymlicka and Norman argue that the two conceptions of citizenship should be kept distinct from each other since “we should expect a theory of the good citizen to be relatively independent of the legal question of what it is to be citizen, just as a theory of the good person is distinct from the metaphysical (or legal) question of what it is to be a person” (353). They note that:

“[w]hile most theorists respect this distinction in developing their own theories...[there is] a fairly widespread tendency to ignore it when criticizing others’ theories of citizenship—for example, by contrasting their own ‘thick’ conception of citizenship-as-activity with an opponent’s ‘thin’ conception of citizenship-as-status” (353-4).

They therefore contend that the two forms of citizenship should not be compared since they involve two different aspects of citizenship.

To add to Kymlicka and Norman’s critique, it could be argued that the “thin” conception of citizenship is prior to the “thick” notion since political activity and participation cannot take

place (legally) if one does not have the right to realize these activities due to her non-legal status. “Thin” citizenship therefore must be effectively in place before “thick” citizenship can be enjoyed.¹⁶ In fact, one of the main premises of this thesis is to contend that the so-called “thin” conception of citizenship should not be a merely “passive” status. It ought to be an “active” status in that individuals deliberately consent to, or choose, the citizenship they desire. It should not simply be a matter of passively acquiring the status via descent or birth on a given territory.¹⁷

Belonging

One of the most important questions posed in the citizenship literature is “Who belongs?” Some scholars favour the protection of the closed political community (guarded borders, strict requirements for membership) while others argue for open borders or at least a weakening of membership requirements.¹⁸ The closed ethnic community has had many supporters in recent years who claim the right of ethnic groups to “self-determination.” The detractors of this position believe that combining ethnicity and citizenship in this manner is dangerous as it makes for xenophobic relations and can lead to conflict between groups. Faulks and Antje Wiener are two scholars who have argued for the separation of ethnically-imbued “nationality” from citizenship when considering who should be members of the citizenry.¹⁹

At the other extreme to the blood-ties of belonging are States and scholars that either advocate or examine the marketization of citizenship.²⁰ Ulrich Haltern, for instance, investigates constitutionalism in the context of the European Union and advocates the idea of “consumerism” as a means of uniting the diverse peoples of Europe instead of some imagined demos.²¹ Antonín Wagner discusses how the extension of social rights to non-citizens has caused citizenship to become “an economic good” (280). This extension of social rights to non-citizens has created a proliferation of criticism, policy creation and scholarly work on the rights of those who belong to

a community without the official status of citizenship. A few scholars, such as Etienne Tassin, advocate the right of foreign residents to vote in local elections so that belonging to the political community will be premised only on political choice and not on birth or descent.²² The majority of authors who write about globalization (more on this topic in the “International Location” section below) suggest that belonging should not solely be a State consideration as multiple identities, associations and allegiances now exist. They argue that citizenship-as-status should reflect these new realities.

Manley Hudson and Joseph Carens argue that citizenship should be granted based upon genuine and effective connections (through residence, work and family ties). That is, instead of citizenship being granted based upon *jus soli* (place of birth) or *jus sanguinis* (via descent),²³ Hudson and Carens think that individuals should be entitled to citizenship in the State in which they have the strongest ties.²⁴ Thus for these two authors, ethnicity and happen-chance birth in a State do not suffice regardless of kinship ties; factual criteria obtain only.²⁵

International Location Literature

In the legal and policy literature emanating from international organizations and treaties, “nationality” does not refer to ethnic origin or classification, but to the legal status of “citizenship” instead.²⁶ Even in the domestic literature the terms nationality and citizenship are often used interchangeably.²⁷ Thus, unless otherwise noted, where the term “nationality” is used in this thesis it refers strictly to its usage as “citizenship” according to international legal practice. The problems associated with using these terms interchangeably in the literature are addressed in Chapter Eight.

Globalization

Those authors who study globalization²⁸ and its effects speak of how this phenomenon “speeds up the world,” makes great distances appear smaller and increases human interdependence (Held et al.). Numerous scholars examine how globalization has affected the State’s ability to order its domestic affairs in a sovereign manner. For instance, some cite the loss of State sovereignty to financial organizations such as the International Monetary Fund, the State’s inability to control the evolution of the internet, its incapacity to control its borders at all times everywhere, and the need to consider harmful activities that take place in other parts of the world (pollution, for example) because of its effect on the home State.

Globalization’s alleged effect upon the citizen-State relationship resides in its ability to weaken the citizen’s sole allegiance to the State. According to those that investigate this area of the literature, globalization permits multiple identities and allegiances to form around the globe. Suzanne Shanahan, for example, purports that individual identities are no longer the sole purview of the State (83).²⁹ Along these same lines, Richard Ford and Evelyn Glenn discuss migration, race, gender and culture as transnational factors that have the ability to elicit greater allegiance and stronger identities than that which is generated by the State.³⁰ Samuel Clark even notes that the multiple connections engendered by globalization have changed the scope of citizenship to the degree such that “[t]he importance of national citizenship in the twenty-first century will be mainly global not domestic” (385).

Not all analysts of globalization believe that the role of the State is being diminished to the point that it may become inconsequential in terms of controlling citizenship. Gertrude Himmelfarb and many others believe that “the term citizenship has ‘little meaning except in the context of a state’” (qtd. in Bosniak 448), and numerous analysts cite how the State is still

“master” in terms of immigration laws (which are generally becoming more stringent globally) and continues to be the only entity that decides who may become a member of its polity. As Jost Halfmann remarks, “While the educational...scientific...and the economic...system have become more and more global, the political system (of world society) is still dominated by the ambition of nation-states to control the ‘national’ segments of these systems” (521). Mathew Horsman and Andrew Marshall note that there are currently “no substitute structures that can perform all the functions traditionally associated with the nation-state” (264). That said, State control over citizenship is being “modified,” if not lessened, by international laws and treaties on human rights.

Human Rights

The literature on human rights and citizenship perhaps rivals in extent the literature on citizenship as activity (civic participation). With the internationalization of so many aspects of life, due in part to the advent of globalization, individual rights have not escaped the effects of global trends and influences. It is generally known that what occurs in one State is no longer confined to the geographical boundaries of that State. News now travels extremely quickly and issues concerning human rights (and violations of these rights) are often projected around the world in a short period of time. This section explores the debate concerning whether or not citizenship is a human right.

Much of this literature recognizes that the international body of human rights law has developed to the extent such that “nationality is today perceived as involving the jurisdiction of the State as well as human rights issues” (Batchelor 167). Of the many legal documents that pertain to human rights, the Universal Declaration of Human Rights is perhaps the most renowned.³¹ This document delineates the rights (civil, political and social) to which all

individuals around the globe are entitled regardless of race, ethnicity, class, gender or religious preference. Other texts that deal with individual rights include the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989). Of the organizations that investigate matters pertaining to human rights on an international scale, the office of the United Nations High Commission for Human Rights (OHCHR) and the Economic and Social Council are governmental bodies that do so,³² while Amnesty International and Human Rights Watch are among the more prominent non-governmental organizations.

According to the Universal Declaration, each person is entitled to a “nationality” (Article 15). The office of the United Nations High Commissioner for Refugees (UNHCR) considers this to be a “fundamental right” as “many other rights may depend, in practical terms, on nationality status” (Department of International Protection 16). Hannah Arendt’s 1966 work on totalitarianism expresses the close association between being a bearer of citizenship-as-status and basic rights in her study of the citizen-State relationship after World War II. She examines the situation of those who were displaced because of the conflict, and who consequently lost their citizenship, and notes that “[n]ot only did loss of national rights in all instances entail the loss of human rights, the restoration of human rights...has been achieved so far only through the restoration or the establishment of national rights” (299).

In a more contemporary setting, Jelka Zorn analyses the denationalization of individuals in Slovenia after the breakup of the former Yugoslavia. Through interviews with denationalized persons and analysis of Slovenian laws (such as the Law on Foreigners which was applied to all those persons who could not prove they were Slovenian residents despite being born and having lived on the territory for years), Zorn is able to demonstrate that “there is a high co[r]relation

between human rights and citizenship (rights)” (1). The Youth Advocate Program International, citing Chief Justice Earl Warren, affirms in its 2002 publication on the situation of stateless children that “citizenship is a fundamental building block to other human rights—it is ‘the right to have rights’” (Aird, Harnett and Shah 1).

The assertion that citizenship is a human right to which everyone should be entitled is not shared by everyone. Clark Hanjian adamantly rejects such a right arguing that it should never be State-imposed without individual consent. Against the aforementioned Chief Justice’s argument that citizenship is “the right to have rights,” Hanjian doubts that Warren would “have denied that every human being possesses certain fundamental rights which exist regardless of whether or not one participates in a citizen-state relationship” (47). Thus, in his book The Sovrien,³³ he proceeds to examine the fundamental human right to be stateless by setting up hypotheses against this assertion and then refuting them. That is, no argument based upon utilitarian, territorial, social order or “State’s rights” conceptions will hold. Instead, Hanjian argues that the bestowal of citizenship without explicit consent violates an individual’s fundamental human rights of free association, self-determination and freedom of movement, thought and conscience (58-9).

The contention that universal human rights exist at all (whether it be the right to have citizenship or to not have citizenship) is one of the questions that arises in this literature. Although it is argued in Chapter Six that the right to citizenship should be a fundamental human right (in contradistinction to Hanjian), several scholars have critiqued the idea that there can be any universal human rights since cultural conceptions of these rights differ. Thus, whereas Hanjian insists that the existence of fundamental human rights is “is widely accepted” (148) and that such rights are “inalienable” (149), one just need read authors such as Peter Malanczuk and Michael Akehurst to understand that this “acceptance” is largely among Western scholars.³⁴

The existence of a human rights legal framework and of human rights organizations does not apparently substitute for State support of rights either. Although some claim that international bodies and laws are now able to protect “individuals irrespective of nationality” (“Embracing Dual Nationality”), Faulks believes that citizenship-as-status cannot be replaced by the human rights regime.³⁵ Arendt makes a similar observation in Totalitarianism when she notes that those rights considered “inalienable” are not, in fact, separate from the State, for “it turned out that the moment human beings lacked their own government and had to fall back upon the minimum rights, no authority was left to protect them and no institution was willing to guarantee them” (291-2). Thus, whether one claims that citizenship rights are distinct from, or the same as, human rights, it appears that the State is needed to protect these rights until such time that some other entity arises to defend them.³⁶ For now, suffice it to note that some scholars believe that “rights can be enforced by bodies other than the nation-state” (Horsman and Marshall 232).

Conclusion

In the majority of these works citizenship as a legal status is generally assumed. Few authors question how or why an individual gains her citizenship. It is simply taken for granted that one should have a citizenship and studies (with the exception of many texts examining the human rights aspect of citizenship) subsequently incorporate this assumption. Even fewer authors question the “tacit consent” nature of citizenship acquisition or challenge the assumption that State supremacy in controlling citizenship should give way to individual choice and control.³⁷ That is, serious examination of the individual’s right to elect (explicitly consent to) her citizenship is rather neglected. The question of why a person, who has the right to a “nationality,” is unable to choose this very “nationality” is not adequately addressed. The danger of this omission is made clear in the ensuing chapters.

NOTES

¹ Please note that the literature on social contract theory is addressed separately in Chapter Four.

² The works of Derek Heater ([A Brief History of Citizenship](#)), Keith Faulks and Douglas Klusmeyer provide a thorough examination of the term citizenship in a historical perspective.

³ See Richard Ford and Klusmeyer for the non-territorially based conception of ancient Athenian citizenship.

⁴ See Andrew Linklater, p. 184.

⁵ Heater states that in the Italian city-states “[a]n inhabitant of the *contadino* or even a foreigner could enter the ranks of the citizens by purchasing a house in the city” or by simply reducing the city’s debt ([A Brief History of Citizenship](#) 51 and 54).

⁶ Maarten Prak’s article is helpful in elucidating the power of the guilds in bestowing citizenship in the medieval Dutch town of Bois-le-Duc.

⁷ Jost Halfmann notes that “[t]he thrust of the French Revolution was to eliminate any claims to loyalty outside of the state[...]. With the establishment of the nation-state the political independence of the landed gentry and the cities came to an end” (519).

⁸ This quote is attributed to Abbé Sieyès.

⁹ See the “International” section of the “Location Literature” for more information on how globalization is challenging the traditional powers of States over membership, and refer to Chapter Eight for information on transnational citizenship.

¹⁰ T. H. Marshall was the first scholar to analyse the evolution of rights from civil to political and then social rights (within the British context).

¹¹ These three theories represent the conventional ideas on citizenship within a bounded State framework. The theoretical tradition of cosmopolitanism and the new literature on post- and transnational citizenship examine citizenship from outside the confines of the State. As noted in Chapter One, this thesis considers citizenship primarily within a bounded State framework.

¹² For instance, the stress upon military activity as a civic duty (something which many women across the globe are still barred from participating in) is considered a masculine trait. See also the “Masculine Conceptions” section of Chapter Four.

¹³ Refer to p. 48 for the feminist perspective on, and critique of, the citizen-State relationship in terms of relationships and contexts.

¹⁴ For an in-depth analysis of these citizenship theories, see Heater ([A Brief History of Citizenship](#)), van Gunsteren and Faulks.

¹⁵ See pp. 19-20 below and Chapter Six for an elaboration of the necessity of citizenship-as-status to gain other rights.

¹⁶ Halfmann expresses the same concept when he states that “[c]itizenship as a status comes prior to citizenship as a role” (522).

¹⁷ This argument is presented in Chapter Nine.

¹⁸ Joseph Carens’ work is particularly important in this regard.

¹⁹ One of the main premises of Faulk’s work is to show that the “nation” ought to be separated from the State (8). Similarly, in her study on the European Union, Wiener argues for the separation of the “nation” from citizenship (197).

²⁰ See “Citizenship-By-Investment” for States that grant citizenship based upon investment criteria, and Heater, [What Is Citizenship?](#), p. 10, for information on the use of “customer” and “client” when referring to citizens in the British Citizens’ Charter.

²¹ Consult especially pp. 30-44.

²² See Angus Stewart p. 75 for more details on Tassin’s thought on the right of foreigners to vote.

²³ Chapter Three provides more details on citizenship acquisition.

²⁴ Hudson refers to this form of citizenship acquisition as *jus connectionis* (qtd. in Batchelor 179), while Carens terms it “ascriptive citizenship” (429).

²⁵ While agreeing with the importance of taking into consideration where people’s ties are strongest with regard to residence and work in bestowing citizenship, the caveat must be made that if an individual would otherwise be stateless, such effective ties and ascriptive characteristics should be set aside until the time when the individual is able to acquire the citizenship where she has such ties.

²⁶ Refer to Kim Rubenstein and Daniel Adler’s work on “International Citizenship” for this usage (specifically p. 521).

²⁷ Consult the information on “The Renunciation of U.S. Citizenship” from Bureau of Consular Affairs of the U.S. Department of State to see how the terms are used interchangeably in their work.

²⁸ David Held et. al define globalization as “a process (or set of processes) that embodies a transformation in the spatial organization of social relations and transactions, generating transcontinental or interregional flows and networks of activity, interaction, and power” (462).

²⁹ It is important to note that such identities have probably never been under the sole control and consideration of States. Religion, sexuality and sub-State group identities (such as being a unionist or environmentalist) are not necessarily under the direct purview of the State.

³⁰ See specifically Glenn, p. 10, and Ford, p. 12, for the effects these other factors have upon one’s identity.

³¹ The Universal Declaration of Human Rights is reproduced in Appendix A.

³² According to Article 62 of the Economic and Social Council’s Charter, this body “can make recommendations on human rights, draft conventions, and convene international human rights conferences” (Malanczuk & Akehurst 213).

³³ The ‘sovrien’ is a word coined by Hanjian from the terms sovereign and alien that means “an intentionally stateless person” (15).

³⁴ For example, in their book, Malanczuk and Akehurst state that “Islamic countries have their own views on the meaning of the freedom of religion and the rights of women. The universality of Western human rights values, allegedly associated with excessive individualism and decadence, has been most vigorously challenged recently in certain parts of Asia” (210-11).

³⁵ Faulks states that “governance requires the exercise of political participation and responsibilities as well as the preservation of rights” (133) and that the human rights regime lacks “the idea of political community and...effective mechanisms through which [human rights] can be fulfilled” (146).

³⁶ It should be noted that the State does not always protect the rights of its citizens. As Hanjian points out, “even within the allegedly safe confines of the citizen-state relationship, human rights violations of all proportions still happen with regularity. Citizenship provides no reliable guarantee that one’s human rights will be protected” (151). However, the following chapters demonstrate that citizenship is a more assured method of acquiring rights than having no citizenship.

³⁷ Hanjian, of course, would be a major exception. Also, the literature on postnationalism often challenges the assumption that citizenship should solely be State-based.

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CHAPTER THREE: CITIZENSHIP ACQUISITION

The acquisition of citizenship is governed by domestic laws enacted by States, and international law recognizes the State as the only legitimate granter of such citizenship.¹ Although the Universal Declaration of Human Rights asserts the rights of every individual to a “nationality,”² to freedom from arbitrary deprivation of such nationality and the right to change nationality when so desired,³ there is no international institution that exists which acts as guarantor of these rights for the individual. Thus, despite the freedom-imbued language of the right to change one’s citizenship presented in the Universal Declaration, citizenship is not an elective status that one can simply maintain, change or renounce without the permission of some relevant State power.

Individual choice is rarely exercised in citizenship acquisition (except for those cases wherein a person decides to become a naturalized citizen and even then authorizations from the State to which one seeks citizenship and renounces citizenship must first be received). This chapter examines the primary methods of citizenship acquisition, the incidence of dual (or multiple) citizenship possession, and the State’s ability to revoke formerly bestowed citizenship. These three issues are examined in tandem because it is important to understand the rules for acquiring State membership and how such membership may be lost in order to better address the problems associated with statelessness presented in this thesis.

Primary Means and Trends in Acquisition

The majority of individuals around the globe obtain their citizenship automatically upon birth registration via two primary means: *jus soli* (citizenship bestowed because of birth on a given territory) and *jus sanguinis* (citizenship granted due to descent from an individual of a

given territory).⁴ Citizenship may also be obtained via naturalization, adoption, or marriage, or because of exceptional circumstances such as serving in the army of a State in which one is not a citizen or because one has simply invested a certain amount of money in a State.⁵ The most common form of citizenship acquisition, however, is *jus sanguinis*. Of the States whose citizenship laws were coded from data acquired from the 2001 Citizenship Laws of the World study, 100 percent of those States bestowed citizenship upon individuals via *jus sanguinis* while only a third permitted citizenship acquisition via birth upon State territory.⁶

Of those 58 States that generally permit the acquisition of citizenship via *jus soli*, there are several that place stipulations upon this form of acquisition such as: one of the parents must first be a citizen (Armenia, Australia, Fiji, Kenya, Slovenia, the Russian Federation and the United Kingdom), or the father must be citizen (Bahrain), or one of the parents must be a long-term resident (Germany). In India and Vanuatu, although citizenship may be obtained via *jus soli*, it must be actively sought as it is not automatically given. Most of the States, however, including those 114 that do not generally permit citizenship acquisition via *jus soli*, make an exception in their law (if not necessarily always in practice) for stateless children. That is, if a child is born on their territory who would not otherwise obtain citizenship via *jus sanguinis* and would therefore be stateless, the State in question grants the child its respective citizenship.⁷

Just as there are often additional requirements to be met before citizenship via *jus soli* may be obtained, citizenship acquisition via *jus sanguinis* must often fulfill certain requirements as well. Thus, while all the States from which data were obtained permit some form of *jus sanguinis*, only three quarters of them allow for automatic citizenship acquisition via descent from the mother. The only exception to this rule in these States is if a child is born out of wedlock and the father is either unknown or stateless. It is only in those instances that the mother

may pass on her citizenship status to her child. Thus, a child born to an Egyptian mother and a foreign father may not acquire Egyptian citizenship. In a similar vein, according to the citizenship laws of the Bahamas, Uganda and Mozambique, only the father can legitimately pass on his citizenship status if his child is born abroad. Thus, despite the widespread campaign for the rights of women in the Convention on the Elimination of All Forms of Discrimination Against Women (wherein Article 9 stipulates that a mother has the right to pass on her citizenship to her child), women are far from being on equal footing with men in this regard.⁸

Some States require that both parents be citizens in order for citizenship to be passed on to their child (Argentina, Armenia, Bhutan, Chad, Mongolia and Swaziland, for example); while others demand that either one or both parents be of a certain race (negroes of African descent in Sierra Leone, Liberia and Malawi), or express their preference for citizens of a particular ethnicity (Arabs in Jordan) in order to bestow citizenship via *jus sanguinis*. Other States require that citizenship obtained via descent be confirmed by a given age or else such citizenship may be lost (Canada and Venezuela for instance); still other States open their arms to potential citizens long past the first generation has left the State and acquired citizenship elsewhere (up to the second generation of descendants for Ireland and Libya and up to the third generation in the case of Peru).

Citizenship acquisition via the two principal means of *jus soli* and *jus sanguinis* thus differs from State to State and each State may or may not use a mixture of the two systems when conferring citizenship. According to the literature on the granting of citizenship, States that employ *jus soli* in order to organize their membership are typically more open than are States which center upon citizenship bestowal via descent. The latter are described as embedding an “ethnic character” that is minimally inclusive of newcomers (Bertocchi and Strozzi). The United

States and Canada, territories that have traditionally attracted immigrants, are examples of States that have rather liberal *jus soli* principles for granting citizenship whereas States that are of recent formation (many African ones, for example) are generally centers of *jus sanguinis* citizenship acquisition as these States seek to disassociate themselves from their former colonial overlords and maintain a “native” polity.

Despite the differences in citizenship law, some scholars assert that the global trend is toward convergence. In his analysis of the citizenship laws of 25 States, Patrick Weil found that those States that are known for their *jus soli* practices became more restrictive in granting citizenship over the past years (especially to the spouses of citizens from other States), while those States whose membership was primarily based upon *jus sanguinis* practices gradually accommodated themselves to *jus soli* citizenship laws (19). Graziella Bertocchi and Chiara Strozzi, who also examined the Citizenship Laws of the World report, support Weil’s hypothesis of citizenship law convergence. Based upon their time-series analysis of the varying State citizenship laws (from 1974 to 2001), they found that mixed regimes were on the increase by 16%, while States that implemented solely *jus soli* practices decreased by 8% and those that utilized only *jus sanguinis* principles decreased by 7% (15).

Although the decrease in the percentage of States who practice only *jus soli* or *jus sanguinis* citizenship granting practices in Bertocchi and Strozzi’s study is not large, any movement toward convergence in legal practices in this arena is significant as different citizenship granting practices is one of the primary cause of statelessness globally.⁹ For instance, a child who is born to parents from State X on the soil of State Y may not acquire citizenship if State Y only recognizes the right to citizenship via *jus sanguinis* and the child is unable to attain the citizenship of her parents from State X because her parents have been absent from that State

for a given number of years and therefore are no longer able to confer their citizenship status via descent to their daughter. Such differences in citizenship acquisition laws result in the potential for thousands of individuals to be born without this legal status every year.

Dual (or Multiple) Citizenship

These same differences in citizenship acquisition laws and practices often translate into the reverse scenario, however, whereby a person may become the bearer of more than one citizenship. For example, an individual born in a State that bestows citizenship via *jus soli* to parents from two different States that recognize citizenship via descent to children born abroad has the potential to hold three citizenships. Many States do not require that their citizens renounce membership to their State when the latter marry an individual from another State and acquire the spouse's citizenship status (although there are exceptions to this practice).

Of the 174 States for which dual citizenship acquisition information is available from the Citizenship Laws of the World report, 47 of them (approximately 27%) recognize dual citizenship.¹⁰ Several of these States limit this acquisition to non-naturalized citizens, however (such as Uruguay, Mauritius, Paraguay and Trinidad & Tobago), and many States that do not generally recognize dual citizenship make exceptions for certain States with which they have historic ties (such as that which exists between Spain and some of its former South American colonies). Some States, such as Sri Lanka, blatantly declare that exceptions to the non-allowance of dual citizenship will be made if "it is felt to be of benefit" to the State concerned (United States 185).

Despite the rather small percentage of States that explicitly recognize dual citizenship in their laws, many States simply turn a blind eye to such multiple status acquisition and do not necessarily revoke their respective citizenship status from persons who acquire more than one.

This is evidenced by the growing number of dual citizens around the globe¹¹ and the policy changes in some States, such as Mexico, when it is recognized that dual citizenship is a pertinent political tool which can permit State X's interests to be heard in the State of immigration (Y) (the United States [Y] in the case of Mexico [X], for example).

Thus, whereas dual nationality used to be viewed as an "evil" that could arouse disloyalty¹² and the 1963 Convention on the Reduction of Cases of Multiple Nationality was convened simply to decrease its presence internationally, dual or multiple citizenship is now increasingly accepted among States (especially those with large émigré populations such as Mexico). In fact, some scholars assert that such multiple citizenship statuses may potentially pave the way for increased democratic principles to be shared among the world's populace ("Embracing Dual Nationality") or may even promote peaceful interactions among States (Aleinikoff and Klusmeyer 85).¹³

State Revocation and Control

States do not always turn a blind eye to what they consider to be offenses worthy of citizenship revocation committed by their citizens, however. The majority of States in the Citizenship Laws of the World report maintain the right to revoke the citizenship status of their members for various reasons (this is involuntary citizenship loss since it is not the individual that decides to renounce her citizenship). Only a handful of States (Cote d'Ivoire, Croatia, the Czech Republic, North Korea, Kuwait, Mongolia, New Zealand, Oman, Poland, Romania and Togo) do not recognize the involuntary loss of citizenship. That is, these States stipulate that there is no reason for one of their citizens to lose her citizenship status against her will; she may only lose her citizenship if she renounces it voluntarily.

While a minority of States, such as Costa Rica, do not recognize citizenship loss in any form (whether voluntary or involuntary), the majority of States provide for voluntary relinquishment of citizenship. International law requires that a person must already have another citizenship available before she can voluntarily relinquish her original citizenship.¹⁴ Several States do not abide by this ruling, however, and individuals have been rendered stateless when their State has revoked their citizenship without finding out whether those individuals have acquired the citizenship of another State first. Some of the reasons for involuntary loss of citizenship in the Citizenship Laws of the World report range from failure to renew one's passport (Myanmar), inability to "adapt to the country's custom" (Sao Tome & Principe), residing more than three years abroad without government permission (Lithuania) and converting to a religion other than Islam (Libya).¹⁵

Although the provision exists for changing one's "nationality," many States do not make citizenship renunciation and acquisition of a new one an easy procedure. In Bhutan, the Democratic Republic of Congo, Egypt, Jordan and the Maldives, to name just a few, special permission must be sought from the respective Head of State or multiple government entities in order to renounce one's citizenship. In States such as Austria, Iran and Latvia, the State can potentially refuse a renunciation request if it decides that military obligations have not been fulfilled. In all cases, however, an individual cannot simply choose to renounce her citizenship and be done with it, for the State (whether via a court decision or the approval of an ambassador at an Embassy) generally must authorize this decision.¹⁶

Conclusion

Thus citizenship, whether pertaining to its renunciation or acquisition, is rarely about choice or the desires and needs of individuals. It is almost entirely about State control and State

power to decide who will obtain membership within its polity and how this membership may be acquired. The following chapter explains how the State acquired the absolute authority to control individual choice in this regard.

NOTES

¹ Article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws asserts that “[i]t is for each State to determine under its own law who are its nationals” (qtd. in Geske).

² This is stated in Article 15.

³ This is taken from Article 16.

⁴ Acquisition by descent typically only goes as far back as one’s parents, although some States allow such acquisition to extend to the third generation (see p. 29).

⁵ Known as “citizenship-by-investment,” Dominica, Grenada and St. Kitts and Nevis are the only States to grant citizenship to those individuals who invest a given quantity of money into their respective economies while a few other States, such as Australia, Canada, Great Britain, Switzerland and the United States offer residence to such investors. See Henley & Partners for further information.

⁶ See Appendix B for an explanation of how the Citizenship Laws of the World report was coded and the table containing the data on citizenship acquisition.

⁷ However, it should be noted that in some States, like Mongolia, the granting of citizenship to stateless children is not automatic and the children must apply to the specific authorities (such as the President in the case of Mongolia) in order to obtain it.

⁸ Algeria, the Bahamas, Bahrain, the Democratic People’s Republic of Korea, Egypt, Iraq, Jordan, Kuwait, Lebanon, Malaysia, Morocco, the Republic of Korea, Saudi Arabia, the Syrian Arab Republic and Tunisia have reservations concerning Article 9 of this Convention. These reservations typically state that citizenship may only be passed on via the father (exceptions noted on pp. 28-29 of this chapter) or that this article of the Convention does not trump that State’s own nationality code (Division for the Advancement of Women).

⁹ Various UNHCR publications such as Guidelines and the “Information and Accession Package” concerning the 1954 Convention cite conflicting citizenship laws as a main source of statelessness globally. Other scholars such as Sarah Aird and her colleagues mention this in their text as well. One only need read the examples presented in Chapter Five to understand how varying citizenship laws leave individuals in legal limbo.

¹⁰ Many States permit dual citizenship until a person reaches a given age (21 or 22 in the majority of cases) and then require that the individual chooses which citizenship she wants to keep. Such States were not coded as permitting dual citizenship simply because once the age of maturity is reached only one citizenship is allowed. Bertocchi and Strozzi also found that 27% of the States “fully recognized” dual citizenship (16).

¹¹ See “Plural Nationality” by T. Alexander Aleinikoff and Douglas Klusmeyer, and “Embracing Dual Nationality” by the Carnegie Endowment for International Peace for more information on this trend.

¹² Refer to Aleinikoff and Klusmeyer, especially pp. 70-76, for an overview of the traditional (often negative) perspective regarding dual citizenship. Also, in A Brief History of Citizenship Heater relates how as far back as imperial Rome dual citizenship was seen as a source of disloyalty. He notes that Cicero argued that “a man had to choose” one citizenship because it placed too much of a strain on a person’s loyalty otherwise (35).

¹³ Karen Knop notes, however, that studies that point to the increase in dual citizenship around the globe rarely include non-Western States in their sample (91).

¹⁴ This is according to Article 5.1 of the 1961 Convention on the Reduction of Statelessness. It should be noted that this article only refers to the involuntarily stateless (those who did not choose to renounce their citizenship but had it revoked anyway).

¹⁵ Chapter Six investigates in more detail the involuntary loss of citizenship and its implications for individuals and regions.

¹⁶ Hanjian argues, however, that state permission is never necessary in order to relinquish one’s citizenship status. He discusses the right to be voluntarily stateless in The Sovrien.

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CHAPTER FOUR: CONSENT, CONTROL AND CITIZENSHIP

In the previous chapter it was noted that citizenship acquisition is largely controlled by the laws and policies of States, sanctioned by international law. Aside from those persons who naturalize and the rare individual that renounces her citizenship and voluntarily chooses to be stateless, people are not typically free to decide to which polity they may belong. This has not always been the case, however. For example, during and immediately after the American and French revolutions, citizenship was an explicitly elective matter, and members of the polity were expected to either reject or accept consensual allegiance to the newly formed State.¹

It might be ventured that such a direct expression of consent to citizenship on the part of the individual during that epoch was merely a product of revolutionary fervor and for that reason it no longer forms part of the activity of the citizenry in these States.² However, consent to citizenship was not merely a fad of revolutionary republics in the 1700s. Even in the city-states of ancient Greece, although these were highly exclusionary bodies, citizenship was not automatically granted to males simply because they lived on the territory of, or were descendants of citizens from, these city-states. Citizenship was based on the ideal that a (qualified) male would want and choose to take part in the “highest form of human association” possible (Klusmeyer 13).

By examining the social contract literature and its proponents, this chapter investigates how the notion of individual free will was subsumed under the will of the State. It discusses some of the criticism directed toward the social contract ideal, such as lack of individual choice and the imbalanced nature of the citizen-State relationship, and examines the implications of the use of the social contract for relations between individuals and States.

The Social Contract

The social contract is presented as the basis for the citizen-State relationship in most of the literature on citizenship.³ This contract provides for the legitimization of State authority over people (subjects or citizens), and generally discloses the rights and duties of each party to the contract (each “party” being the State and every respective citizen or subject).⁴ The social contract has invariably been described as a set of promises, an account of political obligation, and the source of lawful government among other things. It basically requires that individuals cede certain rights to the State in order to receive benefits from and protection (of their selves and their goods) by the State. Patrice Canivez summarizes the function of the contract as “solv[ing] a fundamental problem: the reconciliation of security and liberty” (396).

Although many scholars and policy analysts write of the social contract as if it were a concrete document that existed at some point in time (especially at the founding of a State), this is not the case. The social contract is a heuristic device employed by some scholars to aid them in their study of the citizen-State relationship and the allocation of power between these two parties. Thus, when individuals speak of the breaking of the social contract, illusions may be dashed, but a formal, tangible contract is never broken. As Robert Ginsberg remarks, “The Contract is *a priori*, not empirical” (115).

Classical Theorists

The notion of the social contract has existed in some form at least since the time of Socrates,⁵ but it is with the advent of Thomas Hobbes’ writings that it really gained currency in political thought. Hobbes developed the idea of the social contract in order to explain how government (or the sovereign as he termed it) originated, and also to provide an account of the

legitimacy of government. He utilized the description of the “state of nature” (wherein life was brief and cruel, and the potential for a war of all against all always existed) to justify the rise of a sovereign power and its concomitant authority to demand obedience from its subjects in exchange for protection from “brutish” acts. According to Hobbes, individuals transfer any rights that they might have had in the state of nature to the sovereign (except for the right to self-preservation).⁶ The sovereign thereby commands absolute authority and demands absolute obedience in return for maintaining social and political order.

In Hobbes’ version of the social contract, the sovereign is supreme judge as well as ruler. Rightness is equated with the judgment of the sovereign, and expressed consent is not a necessary condition for instituting a citizen-State relationship.⁷ A movement away from such a restrictive and State-focused relationship is presented in the work of John Locke. One of Locke’s primary concerns is to secure the rights of people in the face of the growing power of the State. Thus Locke introduces a more volitional conceptualization of the citizen-State relationship wherein individuals voluntarily surrender themselves to the will of the sovereign and maintain rights that they would have previously held in the “state of nature.”⁸ Should the sovereign be unable to protect these rights, the people are permitted to rebel against it.

As opposed to Hobbes, Locke does not believe that any social contract based upon slavery or force is valid, and he also rejects birthright citizenship as a means of entering the citizen-State relationship precisely because political choice is a null issue in such instances.⁹ Even though Locke introduces the notion of people as rational beings who enter citizen-State relationships of their own volition, he does not permit allegiances to change once a person has committed herself to a given State: “He maintained that anyone who gave *express* consent to a commonwealth was perpetually and indispensably obliged to be and remain unalterably a

Subject to it” (Schuck and Smith 32).¹⁰ Thus, although the individual may retain certain rights against the State in Lockean social contract theory, she is not always as free to contest State authority as Locke would have it be believed.

It is with Jean-Jacques Rousseau that the idea of a State’s political legitimacy being challenged is most forthrightly asserted. In Rousseau’s writings there is a more collectivist as opposed to individualist understanding of the relationship of citizens to the State. Rousseau introduces the concept of the “general will” which is comprised of each individual subordinating her will and rights to constitute a collective will which is consequently able to “judge and rejudge” the actions of the sovereign.¹¹ Rousseau states, “only the general will can direct the powers of the State in such a way that the purpose for which it has been instituted, which is the good of all, will be achieved” (Social Contract 190).

The authority of the general will to direct actions has a more sinister aspect, however, in that the general will is permitted to coerce people to be “free.” Rousseau asserts that,

“In order, then, that the social compact may not be but a vain formula, it must contain, though unexpressed, the single undertaking which can alone give force to the whole, namely, that whoever shall refuse to obey the general will must be constrained by the whole body of his fellow citizens to do so; which is no more than to say that it may be necessary to compel a man to be free” (Social Contract 184).

Individual volition therefore is dangerously subsumed under what is deemed to be the “real” will of all.¹² Thus, despite the introduction of the equality of all under the social contract (or Compact as Rousseau calls it), and the idea that citizens not only have a relationship (and obligations) to the State but to their fellow citizens as well,¹³ Rousseau’s writings on the social contract demonstrate that individual rights, while provided for in civil society, do not find adequate protection against the supreme “general will.” Absolute State control therefore appears to have been replaced by the absolute control of the amorphous “general will.”

Immanuel Kant believed that a republican form of government could constitute the most appropriate balance between the sovereign's power, the general will, and the rights of the people that lived under the sovereign's jurisdiction. He felt that the division of sovereign powers into executive, judiciary and legislative sectors could best prevent any State excess and render the State more accountable to the citizens. Although Kant agreed with Hobbes that the State (or sovereign as the case may be) was the absolute judge in all matters concerning the citizen-State relationship, his version of the contract permitted citizens to voice their concerns via public criticism against any presumed injustice on the part of the State.¹⁴ In contrast to Hobbes, Kant "refurbished the Contract to account for the practical power of moral principles in politics, whereas Hobbes' Contract equates rightness with whatever is practiced by the absolute political power of the sovereign" (Ginsberg 118).

Despite this last theorist's inclusion of moral principles into the political realm and his support of citizen rights, the social contract that he promulgated was not that much different at the core than that promulgated by Hobbes and the other earlier theorists. The State is still the ultimate ruler (justified in different ways by the varied theorists) and the social contract still lays down the rules of relations between the citizen and the State (mostly in favour of the State). It is with David Hume that the tradition of social contract criticism begins. To such criticism this investigation now turns.

Criticism of the Social Contract

Hume considered invalid the use of the social contract to explain why citizens generally follow the laws of the State and work in tandem with their co-citizens to achieve common goals. According to Hume, such activity is not due to some hypothetical social contract, but to that which comes prior to the contract and upon which such a contract must be based – convention. A

convention, as described by Hume, is “the artifice or mechanism enabling social and political order to become established” (Lawrence 138). It is the performance of an action due to simple interest or utility (and not because of a promise to realize such an action stipulated in a contract). Dario Castiglione states that Hume wants to demonstrate “the essentially non-legal idea that there are forms and principles of coordination which human beings hit upon in the course of pursuing their own interests” (99). Social contracts do not arise naturally whereas cooperation and coordination toward a common goal do. Thus, it is simply convention and not the social contract that really drives people to work together in civil society and to adhere to the State’s injunctions.

Hume also pointed out another fallacy with regard to the social contract thesis – some authors who supported this tradition wrote of the contract as if individuals could readily manoeuvre in and out of contract-based alliances with the State (as if people’s political allegiances were really a choice). Hume was quick to point out that one could not simply decide that the State to which she was a citizen no longer satisfied her political interests and move to another State that better suited her beliefs for there were “practical constraints” such as “a basic freedom to move” that readily deterred such a possibility from actualizing.¹⁵ This lack of choice concerning to which State one could give her political allegiance was to become one of the major criticisms of the social contract literature.

Lack of Choice

Aside from the inability to just pick up and move to another State due to practical concerns such as a lack of transportation and money, one’s ability to relocate is also circumscribed by the laws and actions of States themselves. As noted in Chapter Three, States control who will be members of their polity and how individuals will gain entrance via

naturalization and ascription laws (*jus soli* and *jus sanguinis*). Hanjian feels that such laws amount to dictating where an individual's political allegiance should be placed and "unabashedly deny individual liberty, self-determination, and freedom of association" (46). Johannes Chan agrees, adding that "[t]o perpetuate human bondage by anchoring people in a particular territory through nationality is offensive and inhuman, and is usually accompanied by a violation of freedom of movement" (13).

Hanjian notes that although myriad laws exist that demarcate the boundaries of who may become a citizen, no laws exist that permit an individual to choose to become a citizen of nowhere (stateless). Thus, one has no right not to belong to the club of States according to international law even though the Universal Declaration of Human Rights asserts that "[n]o one may be compelled to belong to an association" (Article 20.2).¹⁶ This degree of compulsion by States to make individuals citizens without their direct acquiescence is a result of the State's largely unquestioned use of "tacit" consent.

Consent

For the purposes of this thesis, implicit consent refers to assent given to the State via indirect methods (such as residency in a State and non-renunciation of citizenship acquired through birth or descent). In comparison, explicit consent requires that a member of the State directly express her assent to be a citizen (as when an oath to that effect is taken at a given age, for example). Hobbes was a stalwart supporter of the doctrine of implicit consent to bestow citizenship¹⁷ and other social contract theorists, such as Rousseau, readily ascribed to citizenship acquisition via implicit consent as well. According to Rousseau, residence in a State acts as acquiescence to the social contract since the resident will receive benefits from the State (such as

property protection and the use of roads and utilities maintained by the State). In return, the resident must oblige to the State's laws and offer the State her support in times of need (or else face expulsion).¹⁸

That the social contract is taken as binding upon individuals born to citizens of a given State or born on the State's territory is also criticized. Adam Smith vehemently rejected the notion that descendants of people who initially agreed to a given social contract should be bound by that contract. In a similar vein to Hume's argument that one cannot simply leave a State due to "practical constraints," Smith believed that "[n]o inference of tacit consent could be drawn from the mere fact that the subjects remain living in the land of their birth, because they had no choice in where their birth occurred and rare prospects of resettling in a different country" (Klusmeyer 35).¹⁹

As concerns the granting of citizenship to those who happen to be born in a territory under the jurisdiction of a State (whether of citizen parents or not), Locke held that "[a] Child is born a Subject of no country or government. He is under his Father's Tuition and Authority, till he come to Age of Discretion; and then he is a Free-man, at liberty what Government he will put himself under; what Body Politick he will unite himself to" (Klusmeyer 32). Locke is therefore advocating that a person choose her political membership once she has come of age to recognize the import of such a decision. This precept is largely disregarded today, however, since no State requires that a person who acquires citizenship via *jus soli* or *jus sanguinis* take an oath or "choose" to remain a citizen of that State at a given age or after a set time period.²⁰

There are several consequences of the use of tacit consent for citizenship acquisition. Firstly, the use of tacit consent may result in a body politic that is unaware of the policies and obligations of the State institution that it supposedly supports or its own responsibilities to that

State.²¹ Secondly, citizenship acquisition via tacit consent could lead to an apathetic citizenry that may demonstrate a lack of commitment to the State. Finally, such involuntary consent could cause the body politic to become openly hostile toward the State because the former has not agreed to the premises or policies of the latter.²² As Hanjian points out, without the explicit consent on the part of individual (and not just the State) to the citizen-State relationship, “one is more likely to: feel no commitment to making the relationship work, reject responsibilities that one allegedly bears as party to the relationship, make no effort to perpetuate the relationship, and make every effort to dissolve the relationship” (76).

Regardless of whether one holds to the premise that individuals may attempt to dissolve the citizen-State relationship as Hanjian posits, it is clear that any relationship that is patently one-sided in terms of deciding who may or may not enter and leave, and the “when and how” of the relationship, is likely to produce less than optimal outcomes, especially for the party that is left in a non-decision-making capacity due to assumed tacit consent. What follows are some examples of the imbalanced nature of the citizen-State relationship.

Imbalance in the Citizen-State Relationship

State Monopoly

As noted previously, Hobbes’ version of the social contract was tilted decidedly in favour of total obedience to the State. Although absolute obedience to a State, no matter how good or bad at governance, is not readily promulgated today, the citizen-State relationship is still biased toward fulfilling the needs and interests of the State before the citizen. In the Citizenship Acquisition chapter it was noted that the State is the preeminent legal entity in international law with the capacity to determine membership via domestic laws. The State’s rights and privileges trump any rights that an individual might have in human rights treaties as well. For example,

even though Article 15 of the Universal Declaration of Human Rights states that everyone has the right to a “nationality,” it no where delineates how this right will be obtained (that is, which State will grant it and how).²³ Thus, any rights that might be attained through the bearing of citizenship (such as the right to work, to speech, to protection from bodily harm, etc.) depend entirely on whether the State grants an individual the basic status of citizenship or not.

Even in terms of the definition of what a citizen is or is not, international law is described as being slanted in favour of States. Says Hanjian, “the UN definition presumes that an individual’s citizenship status depends solely on whether or not some state considers that individual as one of its own. The will and consent of the individual are irrelevant. Only the will of the state is recognized” (4).²⁴ He adds that,

“A state believes that it has the prerogative to dissolve a citizen-state relationship under whatever conditions it sees fit (via denationalization laws) and the prerogative to impose on individuals the conditions under which they may dissolve a citizen-state relationship (via expatriation laws). Of course, states deny that individuals have any reciprocal prerogatives: individuals are denied the freedom to opt out of the citizen-state relationship as they see fit and individuals cannot impose on states conditions for denationalization. This contrived inequity, which disproportionately affords one party more freedom than the other in the dissolution of their relationship, is patently dismissed in the context of other human relations” (199).

The “contrived inequity” of which Hanjian speaks has been a part of the citizen-State relationship since Hobbes justified the absolute power of the sovereign and made it the judge and executor in its relations with citizens. One of the greatest inequalities in this relationship according to Sanford Wood is perhaps the fact that the State can rid itself of the citizen in Hobbes’ social contract theory, but the citizen cannot rid itself of the State. Says Wood, “Hobbes...arg[ues] that subjects can never ‘cast off’ the sovereignty that they once instituted” (197). Aside from absolute control in determining membership, Williamson Evers comments that any citizen-State relationship built upon the social contract “entail[s] in practice a contract of at

least partial self-enslavement to Socrates' Athenian regime, to Hobbes' sovereign, to Locke's majority, [and] to Rousseau's popular law-making assembly and administrative government" (193). Thus, a citizen may never be truly free in a relationship that is based upon the traditional notion of the social contract.

Masculine Conceptualizations

Other scholars have pointed out that the imbalance in this relationship exists because of a decidedly masculine conceptualization of the terms "citizen" and "State." These masculine conceptions in turn render the interpretation of the citizen-State relationship masculine in expression (acknowledging "rational and public considerations" as the appropriate citizenship domain, for instance, at the expense of the private realm or what are deemed "women's" considerations).

Several feminist authors, such as Nira Yuval Davis and Iris Marion Young, have challenged readers to move beyond this interpretation of the citizen-State relationship. A few of the suggestions that they have made to rectify the imbalance in the citizen-State relationship are the incorporation of a politics of difference (which recognizes group and individual diversity without trying to subsume everyone's identity under a "universal," typically masculine-defined, citizenship)²⁵ and "maternal thinking" (which stresses an ethic of care and responsibility, as opposed to strict individualism and a rights-focus).²⁶

Castiglione, examining Hume's arguments against the social contract, observes that contract theorists ignore the importance of the feminine and how many relationships evolve from, and are bound by, the private sphere: "By excluding the simple proposition that social and political relationships are the outgrowth of natural, mainly familial, relationships and patterns of

behaviour, contract theories clearly implied an *artificial* conception of the forces which hold the social fabric together and which establish and reinforce political obligation” (96).

Communitarians, briefly discussed in Chapter Two, also criticize the social contractarian notion that individuals are rational beings who make political decisions outside of a given historical and socio-cultural context. That social contract theorists speak of the citizenry as if they only make up a coherent and functional body when under the jurisdiction of the State ignores the fact that humans are social beings who have united in groups in different social contexts for thousands of years. The State has not been, is not, and will not be the only association to which they belong.

Conclusion

Citizen-State relations are decidedly inequitable in terms of the ability of both parties to opt in and out of the citizen-State relationship on the same grounds or to create the rules of polity membership. Social contract theory is largely responsible for justifying the State’s dominance in this regard with its claims of State protection in exchange for a given degree of obedience by the people. This literature ignores that other forms of political membership are possible that can generate social order without the threat of force that inheres in the citizen-State relationship²⁷ and it also ignores the implications of this imbalanced relationship upon citizens. As is illustrated in the following chapters, the dominance of State membership decision-making over that of individuals has even more dire consequences for those who are unable to acquire any citizenship at all.

NOTES

¹ Apparently nationality was not a concern in France as honorary citizenship was granted to individuals like the American Thomas Paine who supported the revolutionary movement. Faulks states, “Tallien’s comment in 1795 that ‘the only foreigners in France are bad citizens’ [i]s an example of how the rights declared in the revolution were intended to reach beyond boundaries of states and to apply to all men regardless of nationality” (33). See also Klusmeyer pp. 51-56 for a description of the volitional character of these two republics and the civic oath that had to be expressed in France before citizenship could be acquired.

² France has apparently been considering the reinstatement of the revolutionary notion of citizenship as choice. According to van Gunsteren, the French government would like citizenship to be acquired through “explicit choice rather than quasi-automatically” (9).

³ What follows is an extreme simplification of the social contract literature. For a more detailed examination of the different types of social contracts that have existed (moral, civil and constitutional) see the overview presented by David Boucher and Paul Kelly in The Social Contract from Hobbes to Rawls.

⁴ Although Williamson Evers holds that “[t]he sovereign is really a beneficiary rather than a party to the Hobbesian social contract” (187).

⁵ See Evers, pp. 185-187, and David Boucher and Paul Kelly p. 2 (specifically concerning Socrates’ *Crito*).

⁶ See Jeremy Jennings, p. 117, for more on Hobbes stance on rights transferal.

⁷ Evers notes that “[i]n cases of conquest, kidnapping, or capture, Hobbes contends that contracts made under such conditions are entirely valid” (188).

⁸ Refer to Evers p. 188 and Patrick Pharo p. 345 for further explanation.

⁹ See Evers p.188 and Peter Schuck and Rogers Smith p. 11 for Locke’s beliefs concerning birth-right citizenship.

¹⁰ Pharo concurs stating that “[i]n Locke, the unique moment of the initial compact creates legal conditions of political legitimacy that are valid for ever” (346).

¹¹ This information is obtained from Pharo, p. 346.

¹² For a critique of Rousseau’s “general will” see Canivez, especially pp. 403-406, and Evers p. 191.

¹³ Rousseau states, for example, that citizens are “all equal by reason of the Social Contract” (Social Contract 263) and denotes in Book II of his work how the contract is an equalizing force. With regard to each citizen’s duties to her co-citizen, consult chapter VII of Book I (especially p. 181 of Social Contract).

¹⁴ Refer to Ginsberg, p. 117.

¹⁵ See note seven of Douglas Klusmeyer, p.32.

¹⁶ Hanjian argues that the State is an association and that “if it is not reasonable for some association (with the best utilitarian intentions and the most democratic means) to impose membership and corresponding responsibilities on an individual, then how can it be reasonable for a state (with the best utilitarian intentions and the most democratic means) to impose citizenship and corresponding obligations on an individual [?]” (69).

¹⁷ This is stated in Evers, p. 188.

¹⁸ Hanjian is particularly adverse to the notion that residence infers consent to a State’s policies and rules. “By any reasonable standard, the fact that one intentionally maintains close connections to a certain people and to a certain place on the earth has nothing to do with whether or not one consents to participate in a citizen-state relationship with a state that attempts to rule over that particular people and that particular place[...].one’s habitual residence within a certain territory may well be motivated by concerns other than one’s political interests or affiliations” (115).

¹⁹ In another place Smith asserted, “Such is the case with every subject of the state. They came into the world without having the place of their birth of their own choosing, so that we may say they came asleep into the country; nor is it in the power of the greater part to leave the country without the greatest inconveniences. So that there is here no tacit consent of the subjects. They have no idea of it, so that it can not be the foundation of their obedience” (qtd. in Lemmens 8).

²⁰ The topic of electing one’s citizenship (“citizenship-as-choice”) is addressed in the final chapter.

²¹ Castiglione and Jeremy Waldron make this argument in their respective works.

²² Hanjian makes both the second and third arguments in The Sovrien.

²³ Johannes Chan states that as long as this Article does not delineate such rules of procedure and acquisition, “the right to a nationality is largely meaningless” (3).

²⁴ Hanjian is referring to Article 1 of the 1954 Convention relating to the Status of Stateless Persons which defines a stateless person as one “who is not considered as a national by any State under the operation of its law.” This renders membership explicitly a State, as opposed to individual, consideration.

²⁵ See specifically Young's article, "Polity and Group Difference," for more on this subject.

²⁶ Consult Elshtain's work "Antigone's Daughters" for a review of maternal thinking in the context of citizenship practices.

²⁷ John Hoffman, for instance, notes that "[s]tateless societies maintain order through non-statist sanctions, economics and moral pressures, ostracism, etc." (5). Evers points out that while Socrates argued for the necessity of rules for social order he did not say that the rules "have to be political in the narrow sense of being authorized and imposed by a government" for "rules may be accepted as a matter of custom, habit or rational insight" (185).

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CHAPTER FIVE: THE ACQUISITION OF STATELESSNESS

A stateless person is an individual who is not recognized as a citizen “by any State under the operation of its law” (Article 1, “Convention Relating to the Status of Stateless Persons”).

This definition has been criticized because: 1) it is State-based and does not consider individual choice or preference in determining membership¹ and, 2) it does not take into account persons who are not *de jure* but are *de facto* stateless (that is, persons who nominally hold a citizenship but are not able to exercise all the rights to which that citizenship should entitle them).²

For the purposes of this thesis, the definition articulated by the United Nations (UN) in the Convention Relating to the Status of Stateless Persons is maintained while referring to stateless persons for simplicity (several references are made to UN documents and scholars using this definition) and because *de jure* citizenship is currently the first step toward acquiring other rights. That is, for those who hold no citizenship, it is not a question of whether they are enjoying all the rights to which they are entitled, but whether they have any rights at all. Once one at least bears a citizenship, and is therefore legally recognized by a State, one is then in a better position to make a stand for other rights. In this regard, *de jure* citizenship is essential.

Voluntary versus Involuntary Statelessness

While statelessness is statelessness in the eyes of the law, there is a major distinction between those who are voluntarily stateless and those who are not. A voluntary stateless person refers to someone who has chosen to renounce her citizenship, while an involuntary stateless person is one who either lost or never obtained citizenship through no choice of her own. Individuals may choose to give up their citizenship for a variety of reasons, some of which are: they do not agree with the policies of the State to which they are citizens;³ they do not want to be

part of the State system;⁴ they are trying to escape citizenship obligations (whether financial, penal or military);⁵ or they want to become citizens of another State. Involuntary statelessness, on the other hand, is not a choice. It is a result of factors beyond an individual's control such as birth to a stateless person, lack of birth registration, conflicting citizenship laws, denationalization or holding citizenship to a State that no longer exists.

Causes of Involuntary Statelessness

Birth to a Stateless Person

Birth to a stateless person may render a person automatically stateless unless the State on whose territory the individual was born either practices *jus soli* procedures regardless of the legal status of the child's parent(s), or adheres to the 1961 Convention on the Reduction of Statelessness which explicitly states that “[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless” (Article 1). Many States do not grant citizenship to stateless children if the citizenship status of their parents is unknown or in “legal limbo,” however. In the first global study on State practices concerning statelessness, the UNHCR surveyed 74 of the 191 Member States⁶ and found that 20.3% of the States do not grant citizenship to children born in their State even if failing to do so would render them stateless (Department of International Protection 14).

Birth Not Registered

Absence of birth registration is another important source of statelessness; for without registration, a child does not typically have the opportunity to acquire a citizenship. As Carol Batchelor points out, “Registration of birth is a critical factor in establishing the right to a nationality in all legal systems, for the birth certificate will indicate where the child is born,

making acquisition of nationality by *jus soli* possible, and to whom the child is born, making acquisition of nationality by *jus sanguinis* possible” (166).

Although Article 7 of the Convention on the Rights of the Child stipulates that a child “shall be registered immediately after birth” and have “the right to acquire a nationality,”⁷ birth registration does not automatically confer citizenship to children in all States. The UNHCR observes, for instance, that in most of Asia, “registration at birth does not give a child a right to citizenship in their country of birth if the parents are not nationals of that state” (“Statelessness and Citizenship”).⁸ They also note that in Russia “non-Russian or stateless parents are unable to register the births of their children if they are not themselves legally resident in the country.”

It is estimated that some 50 million births each year go unregistered, with the highest percentage of unregistered births occurring in sub-Saharan Africa and South Asia (Aird, Harnett and Shah 4). Reasons for not registering the birth of a child include: absence of a mandatory birth registration system in a State;⁹ fear of discrimination, persecution or expulsion;¹⁰ ignorance of State registration requirements; inability to access registration centers;¹¹ and cost.¹² Even when a group does not fear persecution, race and ethnicity often hinder birth registration in some States when the ruling party refuses to register the birth of groups that it does not “deem fit” for citizenship by ignoring its own citizenship laws.¹³ For instance, in 2002 the Thai Ministry of the Interior specifically directed district officials not to register the births of children born to undocumented parents (Physicians for Human Rights 29).

Conflict in Laws

Statelessness may also be the inadvertent result of the application of different State citizenship laws to a person. As noted in Chapter Three, sometimes an individual is born in a State which grants citizenship based upon *jus sanguinis* practices to parents who were not born

in that State. Thus, unless the State that the parents were born in readily provides citizenship to children of their citizens born abroad, statelessness may result. For instance, if a child is born to a Bahamian or Ugandan mother while in another State, unless she is able to acquire the citizenship of the State of her father (which may be tempered by residency and marital requirements), she will become stateless. Also, a child born out of wedlock to an Austrian father and a non-Austrian mother whose State does not recognize citizenship acquisition via the maternal line will be rendered stateless. There are myriad other ways in which individuals may be rendered stateless through such differences in State citizenship laws.¹⁴

Denationalization

Statelessness can also occur when a State revokes the citizenship of one of its members (denationalization). Although the Convention on the Reduction of Statelessness calls on all States to refrain from revoking a person's citizenship until she has obtained another one (Articles 5 and 7), the UNHCR observes that some States "will not grant [their] nationality *until* the individual has first renounced nationality" of the State to which she currently holds membership (Guidelines 6). For instance, prior to changes in Ukrainian citizenship laws, the Crimean Tatars¹⁵ had to first "renounce the citizenship of their country of previous forced residency" without any guarantee of receiving Ukrainian citizenship in return (European Commission & the UNHCR 9). Other States, such as Bhutan, allow for the loss of citizenship without first making the loss contingent upon the acquisition of another citizenship (Heffernan 4).

Reasons for denationalization include acquisition of another citizenship, political activity in another State (voting, holding office, and serving in the military), failure to renew one's passport, residency abroad, obtaining citizenship via fraudulent means, divorce, being deemed a "security threat" or failing to adapt to a State's "customs," among others.¹⁶ Women are often

particularly susceptible to statelessness because of laws that permit revocation of citizenship due to changes in marital status. Thus, despite the Conventions on the Nationality of Married Women (1957), on the Elimination of All Forms of Discrimination Against Women (1979) and on the Reduction of Statelessness (1961) which all “seek to ensure a woman’s nationality will not be detrimentally affected by a change in her civil status” (UNHCR Guidelines 5), statelessness continues to result precisely because of changes in marital status. For example, some States (like Mali) revoke citizenship upon a woman’s marriage to a foreigner because they assume that she will obtain the citizenship of her husband’s State. Other States revoke citizenship from naturalized women when they become divorced from their husbands without first ensuring that she will regain her original citizenship (South Korea and Swaziland, for instance).

Sometimes citizens are denationalized for purely political reasons or because of a fear that they might threaten a State’s customs or a governing regime’s privileges. The UNHCR observes that “[g]overnments may amend their citizenship laws and denationalize whole sections of society in order to punish or marginalize them or to facilitate their exclusion from the state’s territory” (“Statelessness and Citizenship”). The Biharis are one such group that has been rendered stateless as a form of punishment. Descendants of people who sided with West Pakistan when East Pakistan (now Bangladesh) attempted to secede from the Union and form its own State, the Biharis have been consistently denied citizenship from both Bangladesh and Pakistan. Despite their predecessors’ siding with Western Pakistan during the secessionist movement, the Biharis are not considered citizens of Pakistan because they are born in Bangladesh. Bangladesh, however, will not grant the Biharis citizenship because “elements within the government and the people still hold them accountable for 1971 abuses perpetuated by the Pakistani regime” (Khan 15). Thus, some 230,000 Biharis remain stateless in camps in Bangladesh (Khan 14).

The Kurds and ethnic Russians are two groups that are oftentimes refused citizenship in their States of residence for purposes of marginalization. Some Kurdish groups are situated in areas that are resource rich (such as those who live around Kirkuk, Iraq), while others are considered a threat to State sovereignty because of their desire to form their own State. Thus, the State utilizes the denial of citizenship to render them legally impotent against any incursions it may make upon them or upon their land for resources. Under Saddam Hussein's regime, for example, more than one million Faili Kurds were stripped of their citizenship and deported to Iran because they were Shia, Kurd and deemed "Iranian" (by Hussein).¹⁷ Syria has also denationalized some of its Kurdish peoples,¹⁸ while Turkey, Azerbaijan, Armenia and Iran, along with Iraq and Syria, refuse to recognize the right of the Kurdish people to an independent Kurdistan, rendering them the largest stateless population in the world.¹⁹

Many ethnic Russians in the diaspora, while nominally possessing a motherland to which they could belong (Russia), are instead kept in a condition of statelessness due to their birth in territories that no longer form part of what was then the Soviet Union. These ethnic Russians were considered illegitimate residents or "occupiers" and consequently denied citizenship in many of the newly formed or liberated Eastern European and Central Asian States. Estonia and Latvia were particularly criticized for their citizenship laws that effectively excluded from citizenship any one who was not a descendant of a citizen prior to Soviet occupation.²⁰ Since the late 1990s both States have relaxed their citizenship laws to grant citizenship to legally resident Russians, although a sizeable number of stateless people remain.²¹

Fear of "foreign elements" sometimes plays its role in State decisions to denationalize as well. The Estate Tamils in Sri Lanka, a group that was brought over by the British from India during colonial rule to work on the tea plantations,²² have until recently been denied Sri Lankan

citizenship. While India opened its arms to many of these ethnic Indians in the early days after the end of the British Empire, Sri Lanka was not as receptive. Gerrard Khan notes, “The Nehru-Kotelawala Pact in 1954 provided that India would accept the repatriation of those Indian Tamils who wanted Indian citizenship but did not accept the Sri Lankan position that those who did not meet criteria for Sri Lankan citizenship would be automatically given Indian citizenship. This left over 900,000 Tamils still stateless in Sri Lanka” (9).

That is, many Estate Tamils, born and raised in Sri Lanka, their families having tilled the land for generations, did not consider themselves Indian and wished to become citizens of Sri Lanka instead. Sri Lanka, however, felt that the Estate Tamils represented a threat to Sinhalese identity (they were lower caste and a remnant of the colonial past that it wished to ignore) and refused them citizenship. It was not until 2004, driven by fear of further civil unrest should the Estate Tamils join the Tamil Tigers in the secessionist movement, that Sri Lanka began to admit some Estate Tamils to State membership.²³ Khan notes, however, that many Estate Tamils continue to be barred from Sri Lankan citizenship because of applications for Indian citizenship that their parents or grandparents sent in years ago (12).

The ethnic Nepalis (also known as Lhotshampas) are another stateless group whose condition is a result of ethnically motivated fear. Once welcomed to settle in Bhutan when it was suffering labour shortages, and having been migrating to Bhutan for generations, the Lhotshampas are now the object of retroactive citizenship laws that denationalize them because of elite fear that they are a threat to Ngalong cultural identity.²⁴ Certain members of the Russian Duma have also been toying with the idea of denationalization as a means of protecting “the gene pool of [the] nation” (“Russians Who Wed Foreigners Should Be Exiled?”). In June, for example, a bill was drafted by conservative elements of the Duma that stipulated that Russians

who married foreigners would be denationalized and “forced to live in the country where their spouses were from” in order to protect Russia from “an invasion of alien elements” (“Russians Who Wed Foreigners Should Be Exiled?”).

Thus denationalization may occur in a number of ways – from laws that assume a woman will take on the citizenship of her husband to purposeful group action against a perceived threat from another ethnic group. Except for the few States that were mentioned in Chapter Three that do not involuntarily denationalize on any grounds,²⁵ most States retain the right to revoke citizenship from their members without their consent.

State Dissolution

Finally, a person may lose her citizenship when the State of which she is a member ceases to exist and she does not obtain the new citizenship of the successor State. This happened to many people who were citizens of the former Soviet Union, Yugoslavia and Czechoslovakia during the 1990s. These States, of which they held membership, simply ceased to exist and new States formed to take their place that did not necessarily grant their membership to all previous Soviet, Yugoslav or Czechoslovakian citizens.

The stateless condition of many ethnic Russians in the diaspora was briefly addressed above, and the UNHCR provides a concise example of the issues that former Czechoslovakian and Yugoslav citizens faced upon their States’ dissolution: “Was a former Czechoslovak citizen now Czech or Slovak? Was someone born in Belgrade, raised in Sarajevo, now married to someone from Zagreb and living in Ljubliana, a Yugoslav, Bosnian, Croat or Slovene citizen?” (“Displacement in the Former Soviet Union” 189). Despite having been born and having lived in a territory their entire lives, many of these people were not guaranteed membership in the new

States where they resided because of their ethnicity. Others faced administrative battles in proving their birth or demonstrating that they were not citizens of a neighbouring State.²⁶

Conclusion

Statelessness is a condition of legal invisibility. Without a citizenship, stateless people are not entitled to legal standing within a State and all the concomitant rights and protections that this bestows. While some people voluntarily renounce their citizenship, the majority of stateless individuals around the globe have acquired this status involuntarily. They were either rendered stateless because of conditions they were born into (birth to a stateless parent, birth in a State whose laws do not cover the individual) or because of manipulation of citizenship laws by those that govern States (citizenship as an instrument of State policy). The sources of statelessness are as varied as the groups that suffer from this lack of standing. The following chapter examines the myriad implications of statelessness at the individual, regional and global levels.

NOTES

¹ As mentioned previously Hanjian states that “the UN definition presumes that an individual’s citizenship status depends solely on whether or not some state considers that individual as one of its own. The will and consent of the individual are irrelevant. Only the will of the state is recognized” (4).

² Both Batchelor and Francis Deng argue for including the *de facto* stateless in the UN definition. As noted by the UNHCR in their 1998 report, “[t]he Final Acts of both the 1954 and 1961 Conventions recommend to Contracting States that persons who are stateless *de facto* (who have a nationality in name which is not effective) should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality” (Guidelines 3), but this is not forthrightly stated in an Article of either of the statelessness conventions.

³ For example, several hundred Israeli Jews renounced their Israeli citizenship because they did not condone Israel’s policies toward Palestine (“Jews Renounce Legal Right to Israeli Citizenship”).

⁴ One of the authors discussed in this work, Clark Hanjian, gave up his United States citizenship because he does not agree with the State system.

⁵ Bobby Fischer, the famous U.S. chess player who violated international sanctions in 1992 when he played a match in the former Yugoslavia, is an example of someone who renounced his citizenship because he did not want to face possible criminal charges in his home State (see “Chess Legend Renounces U.S. Status”).

⁶ UNHCR sent the questionnaire to all Member States of the United Nations, but only 74 responded.

⁷ Kuwait, Liechtenstein, Malaysia and Monaco had reservations to this article stating that it would not override the prescriptions of any citizenship laws already in place (see “Convention on the Rights of the Child”).

⁸ This quote and the one that follows come from Box 6.4 of the cited text.

⁹ Aird et. al note that Afghanistan, Cambodia, Eritrea, Namibia and Oman do not have such birth registration systems installed (5).

¹⁰ For example, women of Korean descent who live in Japan often do not register their children for fear of repatriation (Lynch 36). The Roma of Europe are severely discriminated against and fear that registration will set them up for further persecution. Thus, of the 60,000 to 100,000 Roma that live in Croatia, approximately 7,000 are registered (Aird, Harnett and Shah 11). Also, due to apartheid era policies, in 1993 only 13% of black South Africans were registered (Aird, Harnett and Shah 11).

¹¹ Some States have specific requirements for registration such as returning to the mother’s birthplace within a specific time period in order to register a child (China, for instance). As Aird et. al note, “This poses a significant problem for families who migrate great distances for work” (17). In addition, many indigenous peoples are often unable to access registration centers due to transport and terrain difficulties.

¹² Aird et. al discuss the effect of poverty on birth registration in “Stateless Children.” They observe that “in at least 50 countries, families must pay for either the registration or the birth certificate” and this greatly reduces the likelihood of birth registration (16).

¹³ Both Gerald Neuman and Deng discuss the case of the Banyamulenge who are being denied citizenship in the majority of cases by the Democratic Republic of the Congo on ethnic grounds. Neuman describes how Congolese citizenship is “the subject of ongoing dispute and political manipulation” (515), and Deng provides the historical context and implications for the region of this ethnically-based citizenship manipulation.

¹⁴ For a more in-depth examination of conflicts of citizenship laws and their role in rendering individuals stateless, see The Regulation of Statelessness Under International and National Law by A. Peter Muthraika (specifically pp. 106-129a).

¹⁵ The Crimean Tatars are a group who were expelled from Crimea in Ukraine by the Communist regime of the former Union of Soviet Socialist Republics (USSR). They have been trying to return to Ukraine for decades.

¹⁶ These reasons for denationalization may be found in the Citizenship Laws of the World report.

¹⁷ Refer to Dr. Amin Malak’s work “The Forgotten Fate of the Faili Kurds of Iraq,” and the report on the Faili Kurds from Refugees Magazine (“The Road Home: The Faili Kurds”) for more information on this stateless Kurdish group’s plight.

¹⁸ In 1962 Syria denationalized 200,000 Syrian-born Kurds and has yet to reinstate their citizenship (Zoepf).

¹⁹ This is according to the Kurdish Human Rights Project.

²⁰ There are 160,000 stateless ethnic Russians in Estonia (Lynch 17), while they make up approximately 22% of the population of Latvia (“EU Enlargement Chief”).

²¹ Quite a few ethnic Russians have not sought Estonian or Latvian citizenship because they feel that they will remain socially excluded by society regardless of whether or not they become citizens. Many of them refuse to learn

the language of these States, and this bars them from citizenship since part of acquiring citizenship consists of passing an exam demonstrating proficiency in the State language.

²² The Estate Tamils are a different group to the Sri Lankan Tamils (the “Tamil Tigers”) who have been engaging in separatist activity from Sri Lanka for decades.

²³ 190,000 Estate Tamils were granted citizenship that year (Executive Committee of the High Commissioner’s Programme 7). See John Heffernan for Sri Lanka’s “change of heart” toward granting the Estate Tamils citizenship.

²⁴ See Khan and Heffernan for a detailed analysis of the situation of the Lhotshampas in Bhutan as well as the stateless in other South Asian States.

²⁵ See p. 32 of this text.

²⁶ Refer to Michael Geske’s work “State Building, Citizenship and Statelessness” (specifically the section on “Situations of Statelessness”) for the problems that former citizens of dissolved States encounter.

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CHAPTER SIX: THE REPERCUSSIONS OF STATELESSNESS

In the previous chapter several groups were mentioned in examples of how statelessness results; these included the Biharis, Roma, Kurds, Lhotshampas, Estate Tamils, Crimean Tatars and Banyamulenge. This list does not include the Palestinians, ethnic Chinese in Indonesia, Rohingyas, Tibetan nationals in Nepal, Bidoon, Thailand's Hill Tribes, and various other peoples who make up some of the more than nine million stateless people around the globe.¹ From this catalog of stateless groups it is clear that statelessness is not a problem confined to one or two groups living in a certain area of the world; as the Acting Chief of UNHCR's Mission in New Delhi, Carol Batchelor, succinctly states, "No region hasn't faced it" (Refugees International "Fifty Years in Limbo").²

But what does it mean to be stateless? How does a lack of citizenship affect a person's life, and are the problems associated with statelessness only confined to the individual level or are the repercussions even greater? This chapter examines these questions by analyzing statelessness from an individual, regional and global standpoint.

The Individual

While Hanjian argues that rights must exist outside of a citizen-State relationship,³ any analysis of the situation of the stateless reveals that rights are not readily obtained outside of this forum. Despite international conventions and declarations that provide for civil and economic rights, rights to a "nationality," and freedom to leave and return to one's State, it is up to the States concerned, and no other entity, to ensure that these rights are effectively extended to the people within their territorial confines. The office of the United Nations High Commissioner for Refugees, while the international body mandated to prevent and reduce statelessness,⁴ has no

authority to ensure that people are acquiring the citizenship to which they have a right under Article 15 of the Universal Declaration. As the UNHCR points out, it “does not have either the authority or the expertise to make declarations on nationality status or independently to issue documentations attesting to nationality status. States alone determine who are their citizens” (Guidelines 8).

Thus it would appear, much to the chagrin of Hanjian, that citizenship is indeed the “right to have rights” (at least as long as the State system exists in its current format). For the absence of citizenship renders a person nearly invisible in terms of her legal standing domestically (as will be seen below) and internationally (diplomatic protection is generally only extended by a State to its own citizens, and typically no other State will move to protect the rights of a non-citizen in another State).⁵ A person without citizenship faces limited access to State protection and services, often confronts discrimination in the socioeconomic sphere, is strictly limited in terms of movement and yet must live with the possibility of forced expulsion at any time. A stateless person, while not necessarily experiencing all of the following areas as problematic, will have to deal with issues in any number of them.

Recognition

Most of the problems that stateless people encounter stem from the lack of legal standing that they have in the State in which they reside. If they had citizenship they would not have to worry about not being able to own property, accessing public health benefits, the courts, or education. They would be able to leave and return freely to the State without fear of being denied reentry for lack of proper documentation. They would also be able to reside legally on the land they consider home and participate in events that shape their lives politically. Legal recognition would permit some of the stateless to bury their loved ones officially,⁶ prevent their property

from being seized,⁷ and put a stop to the abuse they suffer in detention centers.⁸ In effect, citizenship would legitimize their presence and render their claims politically and legally consequential; they could no longer be considered non-entities formally.

Work

Due to their illegal standing in the State, those who have no citizenship (and have not received some sort of documentation from the government permitting them to work and reside) are not likely to find jobs in the formal sector. Since this is the sector that usually provides better pay and job security, many stateless people find themselves working in jobs that do not allow them to escape poverty. Many of the Estate Tamils still toil on the tea plantations that their ancestors were brought over to work on and their pay is “among the lowest in any sector of the Sri Lankan economy” (Subramanian). Biharis make up the rickshaw-pullers, peddlers and garment factory workers in Bangladesh;⁹ while many Rohingyas are paid with food¹⁰ and Roma are denied jobs because of their ethnicity.¹¹ Unemployment is generally high among the stateless, especially those who are confined to camps. Less than 40% of the Crimean Tatars who have been able to return to Ukraine are employed,¹² and the Kurdish regions of Turkey and Iran suffer extremely high unemployment rates compared to other regions in those States.¹³

Employment is often hard to come by because proper documentation is first needed (such as a passport, residence permit or birth certificate) and many of the stateless never had, cannot afford, or lost this documentation (reports of the discriminatory destruction of their documents by others is not unheard of either). Thus, a “catch-22” cycle originates: without adequate documentation many stateless persons cannot get jobs, and without jobs they cannot afford the services necessary to obtain the documentation that will allow them to work and rise from

poverty.¹⁴ The lack of education that stateless people often suffer from is another hindrance to obtaining decent employment.

Education

Despite the provision of Article 22 of the Convention relating to the Status of Stateless Persons that stateless individuals should receive the “same treatment as is accorded to nationals with respect to elementary education,” education, especially for those who live in camps, is not easily attained. Most of the case reports on the stateless published by the UNHCR describe the aspirations of stateless parents for their children to receive an education and perhaps enhance their prospects at a better life. The States where these stateless individuals reside do not always extend their public education to stateless children, however. In Egypt, for example, there are a minimum of 400,000 children who “cannot attend public schools or state universities, [and] are barred from certain professional schools” because they are stateless (Lynch Lives on Hold 28)

Education for the stateless is almost everywhere limited. The stateless Nubians, who have been living in Kenya for decades, have few educational opportunities¹⁵ and in Bangladesh the Rohingyas are banned from attending university in the state of Rakhine.¹⁶ The Roma face discrimination in access to education in most States. Those who reside in Macedonia, for example, receive an education inferior to that given to Macedonian citizens and face uphill obstacles in learning because they are not taught in their own language.¹⁷ Illiteracy is high among the Roma of the Russian Federation,¹⁸ the Rohingyas of Rakhine state,¹⁹ and the Estate Tamils among other groups. Thus, these stateless groups are not only ignored in the legal sense, but they are rendered invisible in the realm of learning as well. It appears that one must be a citizen or a legally resident alien in order to have the opportunity to receive an equal education or any education at all.

Health

Without the proper documentation, stateless people can be effectively denied access to public health services, and without sufficient money, they cannot afford non-public health services. They must therefore rely on the generosity of local health organizations and charities to assist them with their health-related problems. These problems run the gamut of exposure to contaminated water in unsanitary and overcrowded camps, susceptibility to sexually transmitted diseases (especially as concerns the vulnerability of stateless children and women to trafficking),²⁰ lack of pre- and post-natal care,²¹ malnutrition,²² drug addiction²³ and a host of chronic ailments such as diarrhea and asthma.

Specifically, skin diseases, respiratory infections and gastro-intestinal problems have been observed among the Biharis in Bangladesh.²⁴ Beriberi, AIDS, heart disease and kidney failure were among the causes of death of more than ninety Rohingya living in camps in Malaysia,²⁵ and reports of untreated tuberculosis, high-blood pressure, mental illness and bronchitis have been noted among the Romani women in Macedonia.²⁶ Sarah Aird and her colleagues observe in addition that “[i]n at least 20 countries, stateless children cannot be legally vaccinated...In many other countries, children without citizenship documents cannot receive treatment in health centers or participate in food programs” (6).²⁷ The status of statelessness therefore affects people of all ages and conditions whether individuals may obtain food, clean water, vaccinations, hospitalization, or medicine.

Movement

Stateless people do not necessarily have the ability to move within States at will. Many are circumscribed to camps or shanty towns on the fringes of society and must seek special

permission from the relevant local authorities to leave these areas. Such authorities often seek “on-the-side” monetary recompense for providing travel documentation, and even though Article 27 of the Convention on the Status of Stateless Persons stipulates that Contracting States “shall issue identity papers to any stateless person in their territory who does not possess a valid travel document,” such documentation is not always provided.²⁸ The possibility of deportation or forced removal from one’s residence are also potential threats to the freedom of movement of stateless people, and no stateless person has the right to protection from any State whether traveling within the State where they reside or outside of it.²⁹

Other

Aside from discrimination in terms of accessing health services, education, and opportunities to find work, stateless people may not be able to own property (even if the land has been in the family line for generations), open a bank account, or get married to a citizen without facing the possibility that children born from such a union will be stateless.³⁰ Thus, daily activities that may be taken for granted by citizens in many parts of the world (such as enrolling a child in school, visiting family in another area, living securely in one’s home and seeking legal advice when one’s rights have been infringed upon) may not even be possible when one is stateless.

The Region

The issues generated by statelessness are rarely confined to the individual level. Stateless peoples often attempt to move into another State (whether they feel this State to be their true homeland or whether they think their prospects of obtaining citizenship there might be better) and this generates a host of regional questions and conflicts since more than one State becomes

embroiled in their condition. The Rohingya, for example, have dispersed among Bangladesh, Thailand, Saudi Arabia, Pakistan and the Gulf States; the Roma are scattered across Europe; and the Bidoon are spread throughout Kuwait, the United Arab Emirates and other States of the Arabian Peninsula.³¹ John Heffernan observes that,

“the denial of citizenship has played a major role in the constant flows of people throughout South Asia. In a period of 15 years, over 500,000 stateless Rohingyas of Myanmar twice fled back and forth between Bangladesh and Myanmar. In a forty-year period, over 500,000 stateless Estate Tamils in Sri Lanka were repatriated to India and an estimated 100,000 Lhotshampas fled to Nepal from Bhutan” (iii).

Sustenance, Shelter and Membership

Such continuous movement across borders forces States to enter into relations with one another, especially when resources are scarce within one or both States. Tensions may arise between such States as regards to which State should be providing food, water and shelter. Nepal is already feeling the strain of having to provide for the Lhotshampas, for instance, as it is placing pressure on Bhutan to sort out this stateless group’s predicament (G. Khan 24-5). Bangladesh, which had been providing food aid to the Bihari camps for years, ceased such aid (and cut financial assistance) in 2004 in order to focus upon its own impoverished citizens. Bangladesh has not yet asked Pakistan to aid the Biharis who now face a lessened food supply, and Pakistan has not attempted to fill the shoes of Bangladesh. Tensions may arise between these two States, however, should the Biharis seek provisions from individuals and organizations within both States while agitating for their citizenship rights.

Opportunities for conflict arise when States must decide which State should be granting citizenship to the stateless. In Eastern Europe, after the break-up of the Soviet Union, the Roma encountered difficulties in obtaining citizenship in many of the successor States because those States would try to pass them off as being resident of a neighbouring State at the time of

dissolution. The case of the Lhotshampas in Bhutan is an example of the regional complexity of granting citizenship to the stateless since India has the clout to negotiate an agreement between Nepal and Bhutan concerning this stateless group but will not do so because of the huge number of ethnic Nepalis within its own borders. As Gerrard Khan points out, “India is no longer particularly anxious to be associated with Nepali minority rights movements in third countries for fear of its own vulnerability on the matter” (21). India also has a large ethnic Tamil population within its borders which forces Sri Lanka to carefully consider how it treats the stateless Estate Tamils. Thus, statelessness in one State affects neighbouring States who often harbour their own minorities who are of the same ethnicity as the stateless in the other State.

Disease and Human Trafficking

Aside from questions of which State will provide sustenance, shelter and citizenship to the stateless group concerned, neighbouring States must realize that whereas they may distinguish between citizens and non-citizens, disease does not. As noted in the individual repercussions section, many of the stateless live in overcrowded and unsanitary camps with no access to health care or health education. Such an environment is conducive to the incubation and spread of disease. One of the greatest scourges of this century and the last one is the AIDS epidemic and the stateless have not been spared this affliction.

Refugees International notes that stateless mothers, who often acquire the HIV virus from being raped, cannot obtain the necessary medication to prevent the transmission of this virus to their children while breast-feeding. It states that “within stateless communities, screening and surveillance measures to track the spread of disease remain woefully inadequate. Lacking access to even the most fundamental of prevention tools – such as insecticide treated bed nets and

condoms – disease continues to spread within these vulnerable populations” (“Combating HIV/AIDS, Malaria & Other Diseases”).

The Karen, one of the stateless Thai Hill Tribes, suffers from a high rate of HIV infection; eighty percent of those infected with HIV in Estonia are ethnic Russians,³² and the UN Committee on Economic, Social and Cultural Rights “is deeply concerned that the HIV/AIDS epidemic in [Nepal] is spreading at an alarming rate due to commercial sex and trafficking of women and children, and sex tourism.”

Stateless women and children are vulnerable to human trafficking because of their abject poverty and the lack of legal standing that they possess in their State of residence. The sexual trafficking of these stateless persons who may become infected with the HIV virus is a serious concern for those individuals and for neighbouring States. The trafficked are rarely kept within the territorial confines of their State of residence. Instead, they are moved across international borders and this consequently embroils many States in negotiations of how to prevent trafficking and reduce the human security ills that this practice generates.

Physical Conflict

Apart from the regional insecurity that statelessness may generate in terms of assisting in the spread of infectious disease, States must deal with the risk that prolonged periods of statelessness may lead to physical conflict that will not necessarily contain itself within one State’s borders. The possibility of violence spilling over into another State due to statelessness is not without precedent. Whereas Lynch predicts that long-term stateless individuals and families “may seek to enter another country illegally or in time, may resort to the use of violent means” (“Statelessness”), one study demonstrates that some Rohingyas have already traveled to

Afghanistan and sought military training from the Taliban in order to seek redress in their State of residence (Ahmed 12).

A recent report on Nationality and Statelessness by the UNHCR and the Inter-Parliamentary Union contains an example of the frustration and sense of worthlessness that statelessness may generate:

“Lara, a formerly stateless woman, describes the corrosive effect of statelessness on the morale of the individual: ‘Being said ‘No’ to by the country where I live; being said ‘No’ to by the country where I was born; being said ‘No’ to by the country where my parents are from; hearing ‘you do not belong to us’ continuously! I feel I am nobody and don’t even know why I’m living. Being stateless, you are always surrounded by a sense of worthlessness” (6).

It is often precisely these sentiments of worthlessness or feelings of “having-nothing-else-to-lose” that make individuals susceptible to taking part in militant activities. The stateless have no rights and freedoms to lose, or any State obligations to fulfill. They fall under the jurisdiction of no State and are considered members of no State polity. It could therefore be argued that some of the stateless are vulnerable to recruitment by militants to take part in activities aimed at generating intra- and inter-State conflict.

Thus, whereas Dr. Amy Sands, Deputy Director of the Center for Nonproliferation Studies, recognizes that U.S. counterterrorism strategy must “include investing in states that are in danger of collapse in order to prevent the spiral into statelessness that creates a haven for terrorism,” States would do well to focus upon the plight of stateless groups and not merely States “in danger of collapse.” It would not be far-fetched to envision a situation wherein prolonged periods of statelessness drive some individuals or groups to seek redress against the State polity that refuses them citizenship.

Muthraika observes that “[w]here political enemies have been expelled and denationalized, they may continue to engage in activities aimed at overthrowing the ruling elite” (17). Such was the case of the Rwandan Patriotic Front, a group composed of largely disenfranchised Tutsis who sought Rwandan citizenship under a non-Hutu controlled government. They utilized the States surrounding Rwanda to recruit members and to stage their re-entry into Rwanda to gain power.³³ That neighbouring States may “even be drawn into attempts by some stateless persons to subvert the state of origin” (Muthraika 19) is not unprecedented either. Uganda played an important role in overthrowing the Hutu controlled government in Rwanda. In addition, States should not forget that what is deemed to be the greatest conflict of the last century – World War II – was a result of the denationalization of German citizens. As Arendt observes, “the Nazis started their extermination of the Jews by first depriving them of all legal status” (296).

Statelessness may therefore generate problems that surpass the territorial confines of one State. History has demonstrated that the spread of disease and physical conflict recognizes no State-imposed boundaries, and many of the stateless, due to their inadequate health care, standard of living, and lack of basic rights and protections, are vulnerable to contracting contagious diseases. The stateless may also be at risk of recruitment into militant groups as they are effectively non-entities in their State of residence and generally possess no rights or freedoms to lose.

In a keynote address this year commemorating the tenth anniversary of the United Nations’ Fourth World Conference on Women, senator Hillary Clinton noted that “[t]oday, we face new and daunting enemies – from stateless terrorism to the global pandemic of HIV/AIDS to the scourge of human trafficking.” That some stateless groups and individuals have taken part

in militant activities, that some of them suffer disproportionate rates of HIV infection, and that stateless women and children are particularly vulnerable to human trafficking, all demonstrate the seriousness of addressing these people's plight. The problems that result from statelessness are not only a matter of individual insecurity, but in a multitude of different ways they are matters of regional insecurity as well.

The Globe

As the section on globalization in Chapter Two discussed, the reverberations of what occurs in one State or area is often felt in another because of the way the world is now interconnected through advances in telecommunications and technology. The plight of some stateless groups, such as the Palestinians and the Kurds, has an international ear and various scholars, organizations and governments are concerned with the outcome of these people's citizenship status. Other groups, such as the Rohingyas and the Faili Kurds, have yet to capture such an audience, but with the rising preeminence of human rights regimes they will probably soon gain such attention.

The legal structure of the international system is built upon the present State system. In order to be classified as a State, each State must maintain a permanent population.³⁴ This permanent population is generally referred to as citizens, although they may also be subjects depending on the State of concern. These citizen-subjects form part of a determined legal order that permits States to control membership, "protect," and provide services and certain rights to citizens in exchange for a given amount of allegiance and the performance of certain duties. Anything that exists outside of this legal order is a potential threat to the citizen-State relationship and to the entire international regime that is based upon legal relations between States and between States and their citizens.

Stateless people exist outside the realm of any citizen-State relationship and are thereby a potential disturbance to the apparently legitimate order of the State system. That the international system is made up of States composed of citizens, and that it is through the citizen-State relationship that an individual's rights are currently enforced, the presence of stateless persons leads one to question whether the current State system is adequate and/or beneficial for all members of the human race. One of the main repercussions of statelessness on a global level, therefore, is to bring to light the inadequacy of the current system to benefit all human beings equally.

Conclusion

The status of statelessness severely circumscribes an individual's ability to enjoy basic rights and freedoms. It poses a human security dilemma and risks drawing neighbouring States into conflict with each other. The threat that statelessness presents to State system credibility, in addition to its effects upon human beings, has not gone unnoticed by States and the United Nations. The following chapter examines the different attempts that have been made to reduce statelessness globally and whether such efforts have been successful.

NOTES

- ¹ This number is an estimate. The UNHCR cites nine million stateless persons (“Statelessness: Nine Million Ghosts”), while Maureen Lynch and Refugees International place the figure at 11 million ([Lives on Hold](#) 7).
- ² To demonstrate how widespread statelessness is, Lynch’s study [Lives on Hold](#) describes the situation of the stateless in 70 States.
- ³ See Chapter Two, p. 20.
- ⁴ The General Assembly gave the agency this mandate in its 29th session on December 10th, 1974 (G. A. United Nations).
- ⁵ As Arendt observes, “government protection” and the recognition of one’s legal status is not only lost in one’s own State of residence when one is stateless: “Treaties of reciprocity and international agreements have woven a web around the earth that makes it possible for the citizen of every country to take his legal status with him no matter where he goes[...]. Yet, whoever is no longer caught in it finds himself out of legality altogether” (294).
- ⁶ This has been documented as a problem for some of the Crimean Tatars (UNHCR “The Problem of Statelessness”).
- ⁷ Stateless Indians residing in Burma witnessed the “nationalization” of their property (G. Khan 10), and tribal hill people in Thailand have had their land converted into forest preserves by the State (Ritchie).
- ⁸ The UNHCR is aware of stateless people who are held “in detention in a number of countries whose release is virtually precluded by having been made conditional on identification of a country which will accept responsibility for the individual in question” (Executive Committee of the High Commissioner’s Programme 7). Such individuals have been known to be held for decades because no State will recognize them as citizens (UNHCR [Guidelines](#) 11).
- ⁹ Refer to “Pakistanis in Bangladesh” (S. Khan) for a report on the situation of the Biharis in Dhaka, Bangladesh.
- ¹⁰ Medecins Sans Frontiers reports, “For many, food is the only source of income, as employment is prohibited. In the absence of cash, rice, for instance, might be bartered or sold to obtain green vegetables or clothes, or other items that are not included in the ration package” (14).
- ¹¹ For a report on the treatment of the Roma, consult “Report on The Council of Europe Project ‘Roma Access to Employment in SEE’” by Ina Zoon and Judith Kiers (specifically section 5.3).
- ¹² Information found in “Repatriation and Integration of the Tatars of Crimea” by Lord Ponsonby.
- ¹³ The Southeast area of Turkey where the majority of the Kurds are found has an unemployment rate close to 60% (Schleifer) and in Iran, “Kurdish cities are among the least developed in the country with the highest levels of unemployment” (Fathi).
- ¹⁴ The European Commission and the UNHCR, for example, reports that Crimean Tatars faced such a conundrum. “To receive temporary certificates, find jobs and earn money, they needed passports. At the same time they could not get passports, because of their dearth of cash” (27).
- ¹⁵ For a report on the stateless condition of the Nubians, consult “Nubians in Kenya” by the Open Society Justice Initiative.
- ¹⁶ Chris Lewa notes that “Sittwe has the only university in Rakhine State. Since a travel ban to Sittwe has been enforced on the Rohingya population in February 2001, Rohingya students are not allowed to join university on a full-time basis. They can only study university level courses through distance education and they have been facing serious difficulties in obtaining permission to pass their examination in Sittwe” (4).
- ¹⁷ For a report presented to the Committee on the Elimination of All Forms of Discrimination Against Women on the status of Romani women in Macedonia, consult [Critical Issues for Romani Women in Macedonia](#) by the Women’s Network Program, the Roma Center of Skopje and the European Roma Rights Center.
- ¹⁸ Consult [Lives on Hold](#), specifically p. 43.
- ¹⁹ Refer to Lewa’s work for more on the situation of the Rohingya in this state.
- ²⁰ The plight of stateless Thai Hill Tribe and Rohingya women is examined with regard to trafficking in “No Status: Migration, Trafficking & Exploitation of Women in Thailand” (Physicians for Human Rights) and “Migration & Trafficking of Women & Girls” (Belak). Also, consult [Lives on Hold](#), p. 38, for the trafficking of stateless Vietnamese women in Cambodia and stateless North Korean women in China.
- ²¹ Refugees International remarks on the high morbidity rate of stateless mothers in “Maternal Health”.
- ²² Rohingya children, for instance, suffer from a 60% rate of chronic malnutrition (Lewa 4).
- ²³ In Estonia the prevalence of drug use is much higher among the ethnic Russians than non-Russians (Refugees International “Left Behind”).
- ²⁴ See [Lives on Hold](#), p. 15.

²⁵ Refer to chapter four of Human Rights Watch’s report “Living in Limbo: Burmese Rohingya in Malaysia.”

²⁶ This information was obtained from “Action on Romani Women’s Rights in Macedonia” by the European Roma Rights Centre.

²⁷ Plan International similarly observes that “[e]very year, millions of children die of preventable diseases before reaching the age of five. Ineffective systems of birth registration play a role in this crisis since some countries do not give unregistered children access to health care services or insist that they pay more than the registered child. In countries such as Kenya and Thailand, a child without proof of identity is also denied access to free or subsidised vaccination programs” (“Universal birth registration” 3).

²⁸ Finland for example, one of the signatories to this Convention, openly states that it will not provide any travel documents to stateless people (United Nations 3).

²⁹ Citizenship bestows diplomatic protection to members of a State, without it stateless people are not entitled to such protection (Rubenstein and Adler 525).

³⁰ Children born of the marital union of a Haitian and a Dominican in the Dominican Republic have been refused birth registration and are consequently “deprived of any official recognition” (UNHCR “Statelessness: Nine Million Ghosts”).

³¹ The word Bidoon literally means “stateless person” in Arabic; it refers to groups of Arabs who hold no citizenship.

³² This statistic is taken from Lynch and Thatcher Cook’s article.

³³ For an account of the Rwandan genocide, the consequent organization of the Rwandan Patriotic Front and its subsequent rise to power, refer to When Victims Become Killers by Mamood Mamdani.

³⁴ See Malanczuk and Akehurst for the four criteria that define a territory as a State (75).

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CHAPTER SEVEN: THE PREVENTION AND REDUCTION OF STATELESSNESS

The post-Westphalian international system is made up of States that govern given territories and peoples. Aside from the open seas, there are relatively few places in which a person can reside that do not form a part of some State's territory and wherein an individual is not subject to some State's laws. All forms of membership in the State system (such as citizen, subject, permanent resident, temporary alien and illegal alien) are determined by an individual's relationship to the State. In the case of citizens, for example, there is full legal membership based upon the laws of citizenship acquisition. At the other end of the spectrum, illegal aliens, membership is extremely limited because one has not formally garnered permission from State X for one's presence and activities within it (although one maintains citizenship from State Y).

The presence of stateless persons, however, is an anomaly for the State system because these individuals exist outside of the State-member relationship altogether and cannot be located along the citizen-illegal alien continuum. Even though no State wants to claim these individuals as members (citizens), efforts to prevent and reduce statelessness have been made because the repercussions of statelessness (both at an individual, regional and global level) are great and have costly implications in terms of human life, the possibility for inter-State tension, and the legitimacy threat that statelessness poses to the State system.

As the previous chapter illustrated, repercussions for individuals include lack of legal recognition in the State of residence; inability to find work, access an equal education or health care; and limited freedom of movement. At the regional level, repercussions consist of trying to provide food and shelter to the stateless; deciding which State should provide the stateless membership; the possibility for conflict between States when the stateless or the State of sojourn

tries to manipulate political activity in the State of former residence; and the problem of human trafficking. At the global level, the repercussions of statelessness center mainly on the challenge that this group poses to the State system as the stateless fall outside of its legal confines. This chapter examines the two statelessness conventions and the actions taken by States and international organizations to prevent and reduce statelessness to determine whether their efforts have been successful.

Conventions

The two conventions whose subject is statelessness are the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). The 1954 convention was born out of the events of World War II when thousands of people lost the right to live as citizens in the territories that they had once considered home. The purpose of this first convention, therefore, was to increase international awareness of the plight of stateless people who were not refugees and to provide for the rights of these people in the absence of formal State affiliation. Such rights included freedom to practice religion (Article 4), freedom of association akin to that given to aliens (Article 13), free access to the courts (Article 16) and freedom of movement (Article 26), among others. The obligations of the stateless toward their State of residence and the standards of treatment that the stateless were due by that State were also delineated in this convention.

The second convention aimed to fulfill the goals of its title – to prevent and reduce statelessness – by outlining measures to diminish the incidence of statelessness at birth and by demarcating the boundaries within which statelessness could occur.¹ This convention was controversial because some committee members thought the text of the convention should center on the elimination of statelessness, while others sought only to reduce it. In the end, it was

decided that the convention would focus on the prevention and reduction of statelessness, and even fewer people signed on to this convention in comparison to the 1954 one. Thus, whereas the 1954 convention initially had 23 signatories, the Convention on the Reduction of Statelessness only had 5, and whereas 65 States are now party to the 1954 convention, only 32 States have acceded to the 1961 convention.² In both cases, the number of States agreeing to accede to these conventions pales in comparison to the number of States that are party to the 1951 Convention Relating to the Status of Refugees (145 as of July 1st 2003).³

The Refugee-Stateless Person Distinction

The 1954 Convention on the Status of Stateless Persons was originally intended to be a protocol to the Convention Relating to the Status of Refugees. Due to time limits and other extenuating circumstances, however, the 1951 Conference of Plenipotentiaries that met to discuss the conditions of both stateless persons and refugees decided to postpone considerations of the stateless until a later date. In 1954 the Conference reconvened and decided that the issue of statelessness deserved a convention in its own right and should not be limited to an addendum to the Convention Relating to the Status of Refugees.

While the refugee convention and the 1954 statelessness convention are quite similar in language due to their historical connection, the 1954 convention makes the important legal distinction between a refugee and a stateless person. Aside from the fact that a refugee may bear a citizenship (and a stateless person has none),⁴ the element of persecution and displacement outside of one's State of membership are crucial in obtaining recognition as a refugee.⁵ Both refugees and the stateless may lose many of the rights associated with citizenship, but it is the refugee who crosses into another State while the stateless person continues to reside in the same State. A further distinction was later made for those individuals who reside and are persecuted

within their State of membership but who are consequently forced to move around within that State as a result of this persecution – they are known as “internally displaced persons.”⁶

Criticism

Despite the legal recognition given to the stateless in the creation of the 1954 and 1961 conventions, stateless persons are not afforded the same opportunities and aid as refugees. This is partly due to the fact that although the UNHCR’s second mandate is considered to be the prevention and reduction of statelessness,⁷ nowhere in these conventions is the UNHCR officially charged with this role. Article 11 of the 1961 convention only states that “[t]he Contracting States shall promote the establishment within the framework of the United Nations[...]of a 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.” It was the General Assembly (GA) in resolution 3274 that asked the UNHCR to “provisionally[...]undertake the functions foreseen under the Convention on the Reduction of Statelessness in accordance with article 11” (G. A. United Nations 93).

Thus, the UNHCR mandate over the stateless was initially an interim measure put forth by the GA several years after the ratification of the statelessness conventions because no other body had been formed to which the stateless could turn. The UNHCR’s provisional mandate therefore turned into a *de facto* mandate which is not always recognized by the agency. The Executive Committee of the UNHCR, for example, once stated that there was an “absense [sic] of an international body with a general mandate for these [stateless] persons,” and therefore had to call “upon the High Commissioner to continue her efforts generally on behalf of stateless individuals” (A Thematic Compilation 383).

Whereas refugees are directly appointed the assistance of the UNHCR in Article 35 of the Convention Relating to the Status of Refugees, the stateless are not afforded any such body in either of the conventions concerning statelessness. This difference has resulted in the stateless being treated differently to refugees by the agency. The Executive Committee notes, for example, that refugees “benefit, in general, from a specific infrastructure guaranteeing protection and assistance, while the situation of the [stateless] remains vulnerable in that no specific provisions have been made for protection or assistance for this group. States which have not acceded to the international instruments generally tend to consider and to treat non-refugee stateless persons as illegal aliens” (Stateless Persons 9).

That is, in comparison to refugees who cannot be formally penalized for unlawfully entering a State,⁸ the rights of the stateless are often predicated upon legal entry or lawful residence: from the rights of association and freedom of movement, to securing a residence, working and receiving public assistance, identity and travel documents, a stateless person must be “lawfully staying in [the State of concern’s] territory” in order to obtain such rights.⁹ Thus, many of the stateless who cannot obtain permanent or lawful residence from the State where they reside (precisely because many States recognize legal residence as one of the principal steps on the path to a citizenship that they do not wish to grant) are unable to obtain the basic rights that international conventions grant them.

Whereas the granting of refugee status is not conditioned by circumstances of birth, prior refugee status, age or place of habitual residence, the granting of citizenship to a stateless person is conditioned by such factors. Article 1 of the 1961 convention makes clear that time and age limits, State residence requirements, laws pertaining to *jus soli* and *jus sanguinis* as well as the stipulation “[t]hat the person concerned has always been stateless” may restrict whether a

stateless person obtains the “nationality” to which she has a right under the Universal Declaration of Human Rights.¹⁰ That a State may deny citizenship to a person because she has not “always been stateless” is an unfortunate requirement that should not be included in a convention that aims to reduce statelessness.

Regardless of whether one was born stateless or rendered stateless later on due to State dissolution, regime change, incompatible citizenship laws and the myriad other ways that statelessness is acquired apart from birth, citizenship should always be a right to which a person is entitled and not based upon conditional factors beyond an individual’s control. A refugee is not required to “always have been a refugee” in order to acquire this status and the concomitant protections that are attached to it. It is therefore unfair that the granting of citizenship to the stateless, who lack the same legal protections and opportunities as refugees, be made conditional upon bearing the status of “stateless” their entire lives.

If the goal of the 1961 convention is indeed to prevent and reduce statelessness, the acquisition of statelessness should not be made less serious because it is not acquired at birth. Statelessness at any age is a denial of a person’s legal being and her ability to enjoy given rights and protections. The stipulation that an individual must always have been stateless, therefore, needs to be removed and the authors of the convention would do well to remember that children born to stateless parents often become stateless themselves.¹¹ Thus, allowing the acquisition of citizenship regardless of how long one has been stateless will prevent many children from being born into statelessness.

Also, even though the 1961 convention stipulates that a person shall not be deprived of her “nationality if such deprivation would render [her] stateless” (Article 8), it also lists several exceptions to this rule that may unreasonably perpetuate statelessness. For instance, a naturalized

citizen may lose her citizenship if she resides abroad for more than seven consecutive years without specifying to the relevant authorities that she does not wish to lose her citizenship (Article 7). This is problematic if such citizens are unaware of the rules and regulations that govern citizenship in their State of naturalization and decide to reside abroad for work purposes or to join their spouses overseas without notifying the appropriate authorities.¹² These individuals may not possess the citizenship of the State of their current residence and yet still face the possibility of being rendered stateless because they failed to assert that they wanted to keep their citizenship in their State of naturalization. Denationalization in such circumstances should only occur if it can be proven that the individual left the State of citizenship knowing full well that she could potentially lose such citizenship (the “knowledge principle”). Denationalization should never occur on the presumption that prolonged absence from a State equals renunciation.

That this exception to citizenship loss should only apply to “naturalized” citizens is also unfair. How does one measure which member of a State is more “citizenly” than another in order to revoke her citizenship because of residence abroad? Consider the following example: Emily is born in State X to parents from State X and becomes a “naturalized” citizen of State Y, along with her family, at the age of two and resides in State X the rest of her life. Kara, a citizen of State Y because of descent through her parents resides in State Z until she is 18 and heads to State Y for college and work. What makes Kara that much more of a “citizen” that she cannot be denationalized on the same grounds of residence abroad as Emily? Distinctions between naturalized and non-naturalized citizens should not be made for the residence abroad exception. This exception should either be removed from the convention, or it should be amended so that the “knowledge” principle applies equally to all citizens.

Finally, these conventions are the products of the discussion and ideas of member States to the United Nations. As these conventions' wording makes clear, these States do not recognize an individual's desires or will with regard to State membership: "a Contracting State may retain the right..." "A Contracting State shall grant..." "The Contracting States shall accord to stateless persons..." The omission of a person's will in making citizenship choices in these conventions is rather illogical when other UN documents give individuals the rights to freedom of association, movement, thought and conscience (all actions involving the free use of one's will and ability to make choices). These conventions, therefore, while a step in the positive direction toward addressing the problem of statelessness, still lack some fundamental features that could make them both more equitable and likely to achieve their goal of preventing and reducing statelessness.

States

States are in charge of granting, denying and revoking citizenship. While some States have made laudable attempts to reduce statelessness within their own borders¹³ and have signed on to the statelessness conventions, a large percentage of States (several of which contain stateless persons on their territory who need assistance) has not ratified either of these documents. Only 27 States out of 191 (14.1%) have signed both the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. Thirteen of these States are in Europe, while six are in Africa. Thus, of the 65 States that acceded to the 1954 convention, less than half backed up their recognition of the status of the stateless by acceding to the convention that aims to prevent and reduce the presence of statelessness globally. In both cases, many of the States made reservations to the conventions.

Reservations and Declarations

As regards the declarations and reservations to the 1954 convention, several States had reservations to Articles 24 and 25. Article 24 stipulates that the stateless should be treated the same as citizens concerning labour laws and social security, while Article 25 asks that Contracting States provide assistance to the stateless and waive any fees that might be attached to providing administrative aid. The majority of the States asserted that they would only give travel documents to those who are lawfully on their territory,¹⁴ and many States stipulated that certain articles would apply only “so far as the law allows” (that is, their domestic law). As the Executive Committee observed in its 1992 report, such “law” is not very amenable to the Articles of these conventions as several Contracting States have “not introduced corresponding municipal legislation or administrative measures for the implementation of these instruments within their territories” (Stateless Persons 8).

Concerning the reservations of some specific States, Germany held that it would not issue identity papers to the stateless despite Article 27’s stipulation that the State should do so, and it also refused to provide public assistance to the stateless on par with its own citizens as delineated in Article 23 unless the stateless were also refugees. In response to Article 32, Mexico forthrightly declared that “it does not consider itself obliged to guarantee stateless persons greater facilities for their naturalization than those accorded to aliens in general” (United Nations 7); and Zambia stated that it would not provide elementary education to the stateless on par with its citizens (Article 22).

With regard to the declarations and reservations made to the 1961 convention, France and Tunisia declared that they were not bound by whatever body would originate from Article 11 of the convention.¹⁵ Tunisia also stated that it was not bound by Article 14 “which provides for the

competence of the International Court of Justice to rule on disputes concerning the interpretation or application of the Convention” (Declarations and Reservations to the 1961 Convention 2). A few States declared that their domestic law provided reasons for the denationalization of naturalized citizens that were not found in the conventions (the United Kingdom and Ireland, for instance). Finally, Article 8, which asserts that “[a] Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless” was the object of several reservations.

Non-Accession

The reasons for the fewer number of State accessions to the two statelessness conventions in comparison to the 1951 refugee one are unknown, although Hanjian speculates it is because of the breaches into State sovereignty that the former conventions make. He notes how statelessness has not been prohibited by international law because “States realize that any effort to legislate the policies necessary to eliminate statelessness would inevitably result in mutual infringement of each other’s sovereignty” (121). He also observes that there is no international body to standardize the various State citizenship laws which are the source of so many cases of statelessness (122). It has also been posited that since refugees are only seeking temporary asylum until they are able to return to their State of citizenship, and not permanent membership like the stateless, they are less of a threat to the State that they have entered.

Regardless of the exact reasons for the non-accession of the other 86% of States to both statelessness conventions, it seems evident that general apathy regarding statelessness and its solution is prevalent among States. In 2003 the UNHCR realized the first global study on statelessness to gauge what States have been doing to prevent it and reduce its presence internationally. Only 74 (38.7%) of the States to which the survey was sent responded, and

nearly half of these States (43.2%) acknowledged that there was no mechanism in place for them to identify stateless persons on their territory (Department of International Protection 3). Even more alarming, 21.9% of this group that stated they had no mechanism in place were “Contracting States” to the 1954 convention (Department of International Protection 26). Complete ignorance of State accession or non-accession to these instruments was apparent (Department of International Protection 12), as was the denial of some States that they had ever encountered problems of statelessness when the UNHCR had explicitly provided subject expertise to over half of such States (Department of International Protection 11).

On a more positive note, even though a little over a third of the States responded to the survey and not all of these States are Contracting Parties to the conventions, almost 80% of them said that they granted citizenship to children born within the State who would otherwise be stateless (Department of International Protection 14); 78.4% provide identification and travel documents to “lawfully resident” stateless persons (Department of International Protection 5), and 59.5% facilitate the naturalization process of the stateless in accordance with the articles of the 1961 convention (Department of International Protection 4).

Criticism

Notwithstanding the efforts of these States in this regard, the general lack of accession to the statelessness conventions by Member States of the United Nations is not conducive to resolving the issue of statelessness. Albeit some States claim that they have already signed on to other instruments that address the problem of statelessness,¹⁶ this should not preclude accession to the only two international conventions that exist concerning the subject. As discussed previously, the repercussions that result from a lack of citizenship are not confined to the individual level. Statelessness is a global phenomenon and therefore requires a concerted

international effort to address it. Thus, acceding to local instruments, while a commendable step, is not enough. States should sign on to the international conventions because to do otherwise would be to assert that statelessness is limited to parochial concerns and that individual States should deal with it in the manner they deem fit.

While acknowledging that statelessness arises in various contexts in States and that the means (and the remedies suggested) to address statelessness may therefore differ depending on the State, there should still be a concerted effort by all States to officially recognize that the stateless are human beings who are entitled to certain rights (as illustrated in the 1954 convention) and to adhere to a standard for preventing and reducing statelessness (this standard being embodied in the 1961 convention). If States do not sign on to these conventions, particularly the one produced in 1961, the problem of statelessness will not be readily resolved.

That is, global recognition of the problem (accession to the convention[s]) is necessary to acquire sufficient international funding and manpower to realize projects geared toward the prevention and reduction of statelessness. It is also needed to “minimize” the opportunities that individuals have to become stateless (the convention, while not flawless as noted above, delimits the ways in which a person may be rendered stateless involuntarily). Thus, if most States adhered to the Articles in this convention upon accession, the acquisition of statelessness could be greatly reduced on a global scale.

Of course, States do not necessarily adhere to the regulations put forth by the treaties, conventions and other international legal documents to which they accede or are signatories. Zimbabwe, for example, a Contracting State to the 1954 convention (it acceded in 1998), has actively sought to denationalize entire portions of its population because of their ethnicity despite this convention’s admonition of discrimination on such grounds.¹⁷ The United Kingdom admits

that no arrangements have been made “for the administrative assistance for which provision is made in Article 25” concerning the stateless (United Nations 9), and, as previously noted, Contracting States are often slow in implementing the necessary changes at the domestic level to accommodate the Articles of these conventions.

According to Akehurst’s Modern Introduction to International Law, “If a state violates a rule of customary international law or ignores an obligation of a treaty it has concluded, it commits a breach of international law and thereby a so-called ‘internationally wrongful act’” (254). Although accession to conventions and the subsequent disregard of the obligations set forth in their Articles is not specifically included as an “internationally wrongful act,” it does appear unjust that citizens of States are held accountable for ignoring the rules and laws of the States to which they are members, yet States are not held accountable for acceding to conventions and then failing to adhere to the conventions’ mandates (especially when such conventions grant individuals the right to citizenship).

There is no entity other than the State to which an individual may turn if denied citizenship: “States have the sovereign right to determine the procedures and conditions for acquisition and termination of citizenship, but statelessness and disputed nationality can only be addressed by the very governments that regularly breach protection and citizenship norms” (Lynch Lives on Hold 1). Thus States, which sometimes deny citizenship to people based upon ethnicity or out of political motivation, are the sole judges of citizenship applications and the sole executors of citizenship laws. Chapter Nine investigates how State acknowledgement of individual choice could ameliorate this current inequity in the structure of the citizen-State relationship.

The UNHCR

The office of the United Nations High Commissioner for Refugees has assumed the responsibility for overseeing the situation of the stateless and providing assistance where necessary. Duties include technical and legal aid to States, agencies and individuals, and the supply of Surge Protection Officers to crisis areas.¹⁸ Another one of the functions of the UNHCR is to disseminate information concerning the 1954 and 1961 conventions and to promote accession to them. The Executive Committee of the UNHCR first issued a conclusion (No. 78 [XLVI]) in 1995 to formally request that the UNHCR actively promote accession and provide advice to States to modify their citizenship laws in accordance with the conventions, and in 1999 it reiterated its request due to the “persistence of statelessness problems” (No. 87 [L]).

Since the issuance of that 1995 conclusion, the UNHCR has provided assistance in more than 141 States and “cooperated directly with more than 60 States in reforming national laws to prevent and reduce cases of statelessness” (Department of International Protection 33). In Sri Lanka, Ukraine and Kyrgyzstan alone, several hundred thousand stateless people were able to obtain citizenship through the assistance of the UNHCR.¹⁹ With regard to following the Executive Committee’s suggestion of promoting awareness of the conventions and the issue of statelessness, the agency produced a questionnaire in 2003 (the “Final Report,” the findings of which were published in 2004) to determine where best to focus their future activities and to analyse how States are dealing with statelessness in their respective territories.

Criticism

Despite the UNHCR’s progress in assisting certain States to grant citizenship to the stateless and its activity in the promotion of the statelessness conventions and of awareness of

statelessness in general, the UNHCR has been slow to fulfill the obligations of its second mandate. It recognizes that for the first fifteen years after receiving responsibility to assist stateless persons, “the organization devoted relatively little time, effort or resources to this element of its mandate” and that it has been unable to provide the same services to the stateless as it does to refugees (“Statelessness and Citizenship”). While the questionnaire that it produced and sent to all States concerning statelessness is a positive step toward increasing the agency’s ability to target problematic areas in fulfilling this area of its mandate, other areas in which the UNHCR needs to improve include: public information and outreach, the treatment of statelessness as an addendum to the situation of refugees, and the lack of personnel it dedicates to preventing and reducing statelessness.

The UNHCR does not provide teaching materials on stateless persons as it does on refugees. If one visits the “Teaching Tools” section of the official UNHCR website, for instance, no lesson plans, videos, books, education kits or other materials will be found on statelessness – it is all geared toward learning about refugees. This is disappointing since preventing and reducing statelessness is part of the UNHCR’s mandate and the “Teacher’s Corner” specifically states that “[e]ducation is one of the four pillars of UNHCR’s Public Awareness work” and yet there are no teaching tools on this subject.²⁰ It is especially disconcerting when one considers that refugees and stateless persons are defined in two different manners by the United Nations and are covered by different conventions (thus demonstrating the need for materials [“teaching tools”] specifically geared toward the stateless).

The “Teaching Tools” portion of the website is not the only area in which the subject of statelessness is not given its full due. Even the Executive Committee subsumes the problems associated with statelessness under the rubric of refugees. For example, in its “Final Report

Concerning the Questionnaire on Statelessness” the committee concludes “that the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations” (Department of International Protection).²¹ It does not state that the prevention and reduction of statelessness is essential in itself so that stateless people may enjoy the legal status of citizenship and concomitant rights. Also, prior to the publication of the most recent Statistical Yearbook (2004), all statistics concerning the stateless were incorporated under the heading “Others of concern” while refugees had their own category.

The dedication of a table to stateless populations in the 2004 Statistical Yearbook is a definite improvement over prior publications, but the UNHCR failed to uphold this new standard in its budget report for 2006. The stateless are merely placed in a category called “Various” along with other “persons not coming within the ordinary mandate of UNHCR, but to whom the Office extends protection and/or assistance pursuant to a special request by a competent organ of the United Nations” (UNHCR Annual Programme Budget 2006 10). This statement seems to belie the seriousness of the UNHCR in fulfilling the mandate given to it by the General Assembly in 1974 concerning statelessness. That the stateless are mentioned in a footnote in Annex II and in a comment concerning “possible” new sites of engagement in the Asia-Pacific region in a 113 page budget report also raises questions of the attention that statelessness will garner in the UNHCR’s coming year’s activities. The fact that issues pertaining to statelessness do not figure among the agency’s “Policy Priorities” for 2006 is also illustrative of this point (UNHCR Annual Programme Budget 2006 78).²²

An examination of Table 14 in the 2004 Statistical Yearbook (reproduced in Appendix C as Table 2) illustrates that the UNHCR has been unable to assist many of the stateless. According to the UNHCR there are 42 known States that have stateless persons living on their territory

(Population and Geographical Data Section 7).²³ Of these States, the table demonstrates that the UNHCR was able to provide full assistance to stateless persons in eight of them (Bangladesh, Egypt, Kuwait, Lithuania, Malaysia, Nicaragua, Serbia and Montenegro, and Slovenia) and partial assistance to stateless persons in six others (Ukraine, the Russian Federation, Belarus, Estonia, Germany and Nepal). The other 28 States that contain stateless persons were not assisted. More disquieting still, of the 13,892 stateless persons that the UNHCR included in its “begin year” population for 2004, only three of these individuals obtained citizenship.²⁴

The UNHCR acknowledges that the statistics provided on the stateless in its reports are often incomplete and estimates. This lack of accuracy may be partially due to the lack of resources (both monetary and in terms of number of personnel) that is available to the agency to collect the necessary information.²⁵ As of April 2005, for instance, there were only two full time employees at the UNHCR headquarters assigned to address the subject of statelessness (Lynch “Statelessness: A Forgotten Human Rights Crisis”). It is difficult to imagine how the UNHCR is able to compile information on all the cases of statelessness around the globe with only two full-time employees, let alone provide technical and legal assistance to States and to the stateless as advised by the Executive Committee in its numerous Conclusions.²⁶

Although the UNHCR needs to improve in the areas of public information and awareness concerning the stateless (providing materials on statelessness for educators and the public, maintaining statistics that separate the stateless from “others of concern,” etc.), and employ more staff, it is currently the only international agency that has the mandate to prevent and reduce statelessness. Thus, present weaknesses should not be taken to mean that the UNHCR is failing in addressing this portion of its mandate – as noted above, it has aided hundreds of thousands of people gain their citizenship in particular States, advised States and other entities regarding

technical matters, and generated its first global survey on the subject – but it does mean that the agency could be doing more to promote the problem of statelessness and to seek responses to resolve it.

Criticism of the United Nations

In order for the UNHCR to focus more attention on its second mandate, it needs the support of the United Nations as the latter is the body made up of States that produce and enforce citizenship laws. According to Lynch, however, “Statelessness is a very low priority on the agenda of the United Nations” (“Statelessness: A Forgotten Human Rights Crisis”). This low priority is evidenced by the minimal funding that the UN provides to the UNHCR, what it considers to be “global issues” and worthy of discussion at the World Summit, and its non-prioritization of citizenship (or “nationality”) as a human right within the UN body or within its 2005 Treaty Series focus.

Administration

As concerns funding, approximately 3% of the UNHCR’s total resources in 2005 came from the United Nations Regular Budget (UNHCR Annual Programme Budget 2006 16). The rest of the funds were obtained from outside voluntary contributions such as corporations, individuals, governments and other organizations. The funding received from the United Nations is strictly delegated toward “administrative costs” which are considered “expenses other than operational expenses and related management costs” (UNHCR Annual Programme Budget 2006 16-17). Thus, UN funding does not cover the agency’s general programs such as protection of and assistance to refugees, internally displaced persons or the stateless; nor does it cover any

special programs that may arise in crisis situations such as mass refugee movements during civil war.

Budget cuts and shortages have been a problem for the UNHCR over the past few years. In 2002 the General Assembly's Third Committee stressed the "chronic UNHCR budget shortages" at its 47th and 48th meetings ("Burden of Hosting Refugees"), and numerous texts cite the diminished funding that various UNHCR programs have endured in the past decade.²⁷ Although the agency's Annual Budget Programme for 2006 does not state how much of the UNHCR's budget is typically dedicated toward programs to assist the stateless, the "Strengthening Asylum in Ukraine" report illustrates that budget shortages are affecting stateless programs in Crimea. For instance, the UNHCR had "tried to move from relief to more sustainable assistance measures" for the stateless Tatars but budget cuts in 2001 prevented them from doing so (European Commission & the UNHCR 17).

Acknowledgment

In addition to the small percentage that the UN contributes to the UNHCR from its Regular Budget, it does little to promote the issue of statelessness in its addresses to the public. For instance, it does not list the problem of statelessness among its pressing "Global Issues" (but it does mention "refugees"),²⁸ and the prevention and reduction of statelessness are not mentioned as a facet of the Millennium Development Goals.²⁹ At the World Summit this year statelessness did not find itself on the agenda for discussion, either on the official schedule³⁰ or within the Secretary General's remarks to the Executive Committee of the UNHCR.

In fact, Kofi Annan commended the Summit for taking "a step forward on the question of internally displaced persons...some of the world's most vulnerable people," but did not mention the vulnerability of millions of stateless persons around the globe (Department of Public

Information). He praised the UNHCR's humanitarian efforts concerning refugees and the internally displaced, and spoke of the "intellectual breakthrough" that occurred at the Summit "as the Member States accepted, or acknowledged, for the first time the indivisible links between security and the development of human rights" (Department of Public Information). He continued, "It was clear that security cannot be enjoyed without development, that development cannot be enjoyed without human rights, and neither can be enjoyed without respect for human rights" (Department of Public Information).

While commending the Member States' realization that security and human rights are fundamentally connected (security is jeopardized whenever human rights are violated), neither they nor the Secretary-General should be applauded for failing to recognize the import of statelessness in this regard. Annan specifically states in his address to the Executive Committee that "[t]hough the number of refugees has declined, the number of people of concern to UNHCR has increased" (Department of Public Information). As seen above, and as section III of the UNHCR Annual Programme Budget 2006 makes clear, "people of concern" include the stateless (10-11). It is therefore unfortunate that this group is not mentioned in the Secretary-General's remarks to the committee, especially in light of the fact that the stateless generally do not enjoy any rights and have been blatantly denied "respect" when it comes to their human right to a "nationality."

The lack of consideration given to citizenship as a human right within the United Nations is also evidenced by the lack of authority that the Office of the United Nations Commission for Human Rights (OHCHR) has in this arena (the entire mandate concerning statelessness belonging to the UNHCR). The office of the OHCHR does not even list statelessness as a topic on its "Human Rights Issues" page³¹ despite the myriad human rights concerns the stateless

confront daily, and it does not have a representative for the stateless as it does for internally displaced persons (IDPs) either.³² Even the “Focus 2005 – Responding to Global Challenges” of the United Nations Treaty Series does not list the statelessness conventions among the nine human rights conventions presented (although the 1951 Convention on the Status Refugees and its related protocol are included within their own “Focus” category).³³

Conclusion

The subject of statelessness is not high on the list of priorities for States, the United Nations or the international community in general. The topic of statelessness is often subsumed under refugee concerns and consequently does not receive the same support as refugee considerations. The separation of these two issues is essential because: 1) not all refugees are stateless and not all stateless peoples are refugees (the stateless continue to live within the borders of their State of residence); 2) refugee conventions and laws do not protect the stateless unless they are also refugees; 3) statelessness sometimes generates the movement of people across borders where they become refugees (thus making statelessness in this instance a source of refugeehood and not a consequence, or “sub-theme,” of it).

The UN and its Members States have failed to follow in the footsteps of the 1954 Conference of Plenipotentiaries by recognizing that statelessness should not be an addendum to (or “protocol” of) the subject of refugees. Publications, addresses, general information, and web pages within the UN body (with the exception of the UNHCR) rarely mention statelessness, and it is not considered a “Global Issue” despite the millions afflicted by this status. The UNHCR has a difficult road ahead in terms of increasing awareness if it has been unable to impact even the Secretary-General with the plight of these peoples (as demonstrated in his address to the Executive Committee). It is extremely important, however, that this agency be given all the

support it needs in order to help the stateless and to prevent and reduce statelessness globally.

The majority of these individuals are already rendered legally invisible within the States in which they live; the United Nations should not perpetuate this invisibility. The following chapter presents some suggestions for reducing statelessness.

NOTES

¹ Initially the 1954 Conference of Plenipotentiaries had intended to produce a binding document that would eliminate statelessness, but “this was felt too radical a step” (Batchelor “Stateless Persons” 257).

² See Appendix D for a table of the Contracting States to the 1954 and 1961 conventions.

³ Data collected from “The 1951 Refugee Convention” (UNHCR 17).

⁴ The UNHCR observes that “[i]n the majority of cases, refugees retain the nationality of their country of origin” (Handbook on Procedures and Criteria 15).

⁵ The UNHCR makes clear that “[t]he refugee may have a nationality or may be stateless, but the element of persecution must be present” and, “it is also possible for persons to be stateless *without* facing persecution...Some countries have legislation which allows individuals to renounce their ‘established legal bond’ or ‘nationality’ without a guarantee of acquiring an alternative nationality” (UNHCR Guidelines 4). Finally, the UNHCR states that “not all stateless persons are refugees. [T]hey must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee” (Handbook on Procedures and Criteria 17).

⁶ According to the United Nations Office for the Coordination of Humanitarian Affairs, “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (“Guiding Principles on Internal Displacement” 3).

⁷ Refer to the UNHCR publication “Statelessness and Citizenship” and Lynch’s work Lives on Hold, p. 11.

⁸ Article 31 of the Convention Relating to the Status of Refugees states that “[t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence” (“Convention and Protocol Relating to the Status of Refugees” 31).

⁹ These rights are delineated in Articles 13, 17-19, 21, 23-24, 26 and 28 of the 1954 convention.

¹⁰ In addition to the reasons why a refugee may be denied her refugee status – she has “committed a crime against peace, a war crime, or a crime against humanity...a serious non-political crime outside the country of refuge prior to [her] admission to that country as a refugee” or she has “been guilty of acts contrary to the purposes and principles of the United Nations” (“Convention and Protocol Relating to the Status of Refugees” 18) – a stateless person may also be denied her right to a citizenship if she has been imprisoned for more than five years on a “criminal charge” (Article 1 of the 1961 convention).

¹¹ As Chapter Three pointed out, one of the main ways in which people become stateless is through being born to a stateless person.

¹² This could be especially problematic for women naturalized in States that automatically assume that the wife will obtain the citizenship of her spouse’s State.

¹³ Promising examples include those of Sri Lanka and the Estate Tamils, Lithuania and the ethnic Russians, and Lebanon with regard to the Palestinians.

¹⁴ As mentioned in Chapter Six, Finland openly remarked that it would not provide travel documents at all.

¹⁵ That is, the establishment of a 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.”

¹⁶ Some regional bodies, such as the Organisation of American States, the Organisation for Security and Cooperation in Europe and the Council of Europe, have made concerted efforts to address statelessness in their regional instruments (Batchelor “Statelessness and the Problem of Resolving Nationality Status” 158).

¹⁷ Prior to the 2002 presidential elections Zimbabwe created the “Citizenship Act” which “threatened specific ethnic groups such as white farmers who often held European as well as Zimbabwean citizenship, and farmworkers with ‘non-Zimbabwean’ surnames. Some of these individuals are now stateless, having been deprived of Zimbabwean nationality without having the right to any other” (Open Society Justice Initiative 5).

¹⁸ The “Protection Surge Capacity Project,” also known as the “Surge Project,” is an agreement between the UNHCR and the International Rescue Committee to provide “crucial staff support to UNHCR during crises requiring protection services” (International Rescue Committee). These protective services are extended to refugees, internally displaced persons and the stateless.

¹⁹ Consult Lynch's testimony to the Congressional Human Rights Caucus in "Statelessness: A Forgotten Human Rights Crisis"; the European Commission and the UNHCR's report "Strengthening Asylum in Ukraine" and the UNHCR Executive Committee's 2005 Progress Report (specifically p. 7).

²⁰ As a side note, a letter was written to the email address provided for at the bottom of the page on the UNHCR's website (hqpa00@unhcr.ch) in order to inquire whether the agency has teaching material on statelessness that was not placed on the website (see letter in Appendix E), but no response was ever received.

²¹ This quotation is taken from Annex D of the cited report.

²² It is of note that under the title "Role of the UNHCR" no mention is made of the "second mandate" given to the agency by the General Assembly through resolution 3274.

²³ This number is nearly 30 States less than the one provided by Refugees International in their report Lives on Hold.

²⁴ Refer to Table 3 of the 2004 report (Population and Geographical Data Section 25).

²⁵ It may also be partially due to the fact that statistical data is simply not available from all States on the stateless contained within their borders.

²⁶ These conclusions include Nos. 78 (XLVI), 81 (XLVIII), 90 (LII), 95 (LIV) and 99 (LV) (UNHCR "Executive Committee Conclusions").

²⁷ Amnesty International has suggested that the United Nations needs to increase the percentage that it gives to the UNHCR to 6% of its regular budget (11).

²⁸ Refer to <http://www.un.org/issues/> for the list of issues of particular concern to the UN.

²⁹ The Millennium Development Goals may be accessed at <http://www.un.org/millenniumgoals/>.

³⁰ Consult http://www.un.org/summit2005/events_schedule.pdf to view the schedule of panels and discussions at this year's World Summit.

³¹ See this webpage at <http://www.ohchr.org/english/issues/index.htm>.

³² The current representative for the internally displaced is Walter Kälin (UNCHR "Representative").

³³ Consult <http://untreaty.un.org/English/TreatyEvent2005/List.asp> for the listing of the UN's 2005 Global Challenges "Focus."

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CHAPTER EIGHT: RECOMMENDATIONS

As demonstrated in the previous chapter, much still needs to be done by both States and the United Nations to address the concerns of the stateless. The statelessness conventions do not officially charge the UNHCR with the mandate of the prevention and reduction of statelessness; they permit the stateless to be penalized for not being stateless their entire lives; they allow naturalized citizens to face statelessness for residence abroad, and nowhere do they consider the will of the individual in citizenship matters. The United Nations underfunds the UNHCR, does not publicize the subject of statelessness, or include stateless peoples among those who need the aid of its human rights agency (the OHCHR). The UNHCR does not accord much attention to its second mandate in terms of human resources, increasing public awareness of the plight of the stateless or fully separating the subject from refugee concerns. The majority of Member States of the United Nations simply do not accede to the statelessness conventions and those that have acceded generally fail to accommodate their domestic laws to the Articles of those conventions.

Based upon the criticism presented in Chapter Seven, this chapter proceeds to make some general recommendations that could potentially assist in the resolution of the problem of statelessness. The chapter progresses from changes to the language of the statelessness conventions and the Universal Declaration of Human Rights to concrete steps that the United Nations and Member States can take to alleviate the problems associated with statelessness.

Conventions and Declarations

Terminology

The use of the term “nationality” and “national” (as in everyone has the right to a “nationality”) in the statelessness conventions and the Universal Declaration of Human Rights is

problematic for two reasons. Firstly, membership in a State is governed by domestic laws that typically refer to members as “citizens.”¹ As noted in Chapter Two, once the discussion of citizenship leaves the domestic realm and enters the domain of international relations the terminology changes – citizens become nationals and citizenship becomes nationality. This change in vocabulary is not particularly helpful when one considers that a “national” may refer to a person that is a member of a particular State or someone who belongs to a certain ethnic group. For instance, an individual may be of Arab nationality (in terms of being a member of that ethnic group), but not hold the citizenship of States such as Kuwait, Iraq or Saudi Arabia. Nationality does not clearly translate into citizenship in such instances.

In order to dispel any confusion with regard to the use of the terms “national” and “nationality” they should be replaced with (or written in tandem with the words) “citizenship” and “citizens.” Thus, Article 15 of the Universal Declaration of Human Rights should either read, “Everyone has the right to a citizenship” or “Everyone has the right to a nationality and a citizenship.” The incorporation of such explicit language in these pertinent documents would clarify exactly what it is that the stateless lack – citizenship – and not necessarily a “nationality.”²

Secondly, the use of the terms “citizenship” and “citizen” instead of “nationality” and “national” removes State membership away from any basis upon ethnic criteria. As noted in Chapter Five, it is not uncommon for States to use citizenship laws and policies in an instrumental fashion to denationalize portions of their population because such persons do not “fit” the ethnically derived conception of what a member of that State should be.³ The use of “citizen” and “citizenship” in these conventions and the Declaration would aid in the reduction of statelessness by making it clear that citizenship is a legally-derived (as opposed to ethnically-

derived) status. That is, the change in terminology would stress citizenship-as-legal-status and eradicate the notion that citizenship means belonging to a particular “national” group.⁴

Article Stipulations and/or Exceptions

To reiterate the point from the previous chapter, statelessness is not always acquired at birth. People may be rendered stateless at any age and the stipulation that States may require individuals to have “always been stateless” in order to obtain assistance should be removed. If the purpose of the 1961 convention is truly to reduce and prevent statelessness then the convention should not only be forward-looking in the sense of reducing future statelessness at birth,⁵ but it should consider the present situation of the stateless around the globe. Likewise, the conventions should not provide States the option to denationalize naturalized citizens because of residence abroad without first requiring that States inform their citizens of this possibility (the “knowledge principle”).

With regard to the exceptions placed on extending rights to the stateless, the 1954 convention emphasizes that States may require the stateless to be “legally resident” in order to secure the rights given to them under this convention (Articles 13, 17, 19, 21, 23-24, 26, 28 and 30). Since the stateless are almost entirely outside of the realm of “legality” it is most unfortunate that their ability to secure such basic rights are predicated upon their legal standing in the State of residence. Such exceptions in the 1954 convention should be reconsidered, especially in view of the fact that States may deny “legal” residency precisely on ethnic, racial and “place of origin” grounds.

The United Nations

It would be beneficial for the United Nations to make an amendment to the 1961 convention that states that the office of the United Nations High Commissioner for Refugees is formally charged with the prevention and reduction of statelessness. As illustrated in Chapter Seven, the UNHCR has not always realized actions to carry out the mandate granted to it by General Assembly resolution 3274. The declaration that the UNHCR is the body charged by Article 11 of this convention with the mandate of the prevention and reduction of statelessness would facilitate the prevention and reduction of statelessness in two main ways: 1) it would cause the UNHCR to treat the subject of statelessness as seriously as that of its mandate pertaining to refugees,⁶ and 2) it would guide Contracting States (and potential new signatories) directly to the aid of this agency. Such a formal declaration would raise awareness of the fact that there is a body charged to assist States in the mission of preventing and reducing statelessness.

As observed in the previous chapter, the UN needs to better publicize the subject of statelessness. Statelessness is not simply an issue because it may lead to refugee movements. It is a problem because individuals are denied basic rights. It is a concern because disease and physical conflict do not respect territorial boundaries and because tensions may be generated between States. It is an issue because the international system of States is denying millions of people the right to be members of this system. The UN, therefore, should consider making statelessness the subject of one of its “International Years” or incorporate the theme in a decade-long campaign on human rights. If the number of stateless people is expected to increase,⁷ and this year microcredit and sports education were the 2005 “International Year” topics, then a subject as serious as statelessness should be accorded the same publicity.⁸ There should be an “International Year of Statelessness” or an “International Year of the Right to Citizenship.”

The UN should also take a more proactive step in the creation of birth registration programs within States. By the estimates of the United Nations Children’s Fund (UNICEF), over 48 million births are unregistered every year (The ‘Rights’ Start to Life 3). This is particularly serious when one recalls that birth registration is the essential first step in acquiring citizenship. Although UNICEF has taken commendable steps to try and aid States with their birth registration process, this agency cannot be expected to promulgate free birth registration and free birth certification “for every child in every country” (“Factsheet: Birth Registration” 2) without more UN-wide involvement.⁹

As Nicola Sharp, a policy researcher at Plan International,¹⁰ points out, much more needs to be done in this regard: “the issue of birth registration is rarely incorporated into international programs and policies, nor is it commonly made a condition of international aid and partnerships” (32). Sharp recommends that international bodies like the United Nations make birth registration reporting a requirement for Member States that seek financial assistance. She also argues for the creation of an International Birth Registration Day and the recognition that lack of birth registration is a child’s rights issue.

The United Nations should wholeheartedly incorporate birth registration requirements in its policies at all levels. Since only two States did not sign on to the Convention on the Rights of the Child, the promulgation of birth registration should not meet with resistance. The UN needs to garner more monetary support to aid those States that have low rates of birth registration (especially those in Asia and Africa). It also needs to seek the necessary support from States that have high rates of birth registration to lend their technical expertise to those States that need assistance. Thus far it appears that it is the action of non-governmental organizations, like Plan International, that have had the greatest success in placing birth registration on the global

agenda.¹¹ The UN, therefore, needs to increase its support of UNICEF in its endeavour to reduce the incidence of births that are unregistered.

It goes without saying after the criticism presented in Chapter Seven that the United Nations needs to increase its support of the UNHCR's General Assembly-assigned mandate to prevent and reduce statelessness. The promotion of State accession to the statelessness conventions is crucial in this regard, for "non-ratification of the Statelessness Conventions results in situations where stateless individuals are not protected or recognized" (Department of International Protection 35). The stateless exist and they are accorded specific rights by the 1954 and 1961 conventions. When the majority of the UN Member States refuse to recognize statelessness as a global problem in need of an international solution (via their non-accession to these conventions) they are effectively abrogating the rights of the stateless and rendering the stateless legally invisible.

Other than supporting the UNHCR in its bid to garner more State accessions to the statelessness conventions, the United Nations should consider the creation of a body either within, or separate from, the UNHCR that is charged solely with judging citizenship disputes put forth by individuals against States. The stateless rarely have access to local judicial forums despite the 1961 convention's stipulation that such access be freely granted (Article 16). Thus the "local remedies rule" which requires that "aliens[...]exhaust local judicial and administrative remedies before they[...]invoke the protection of their own government or institute international proceedings" (Greiper 442-3) is not always applicable to the stateless. They need an extra-State forum wherein they can press their citizenship claims.

The institution of such an agency to hear the claims of individuals (in this case the stateless) is not without precedent within the UN body. There is a Human Rights Committee whose sole purpose is to monitor Contracting States' implementation of the International Covenant on Civil and Political Rights (1966). According to the OHCHR, all Contracting States must submit reports on the progress of their implementation of the Covenant to the Human Rights Committee which then makes recommendations and observations to the Contracting States. In addition to examining the mandatory State reports, the Committee may hear individual complaints concerning Contracting State violations of the articles of this Covenant.¹²

An Optional Protocol to the 1961 Convention could institute a Citizenship Review Committee with much the same functions as that of the Human Rights Committee: the examination of Contracting States' obligatory reports on the progress of accommodating their domestic law to the Articles of the statelessness conventions, and the hearing of the stateless' claims for a given citizenship. At best, such an organ could dramatically reduce cases of statelessness as it would aid in the naturalization of the stateless; at a minimum it could drive Contracting Parties to alter their citizenship laws to better accommodate the needs of the stateless because they do not want extra-State assistance in their domestic affairs.

States

If the Universal Declaration of Human Rights is indeed a "United Nations priority,"¹³ and if it is to be expected that Member States share in this priority since they freely joined the association of the UN (and can freely leave the organization if they do not agree with its priorities and principles), then Member States should not balk at the idea of protecting the individual rights stipulated in this document. They ought not only to respect that everyone is entitled to a citizenship, as articulated in Article 15, but they should accede to the statelessness

conventions and accommodate their laws to take this group into account. If the current international system is composed of States made up of permanent populations of “citizens” (and States determine these populations), and if being a citizen is currently the only way to secure basic human rights and protections, then it appears that to deny citizenship to millions of people is a human rights violation.

The Universal Declaration persuades States to bestow the individual rights articulated within its Articles to everyone regardless of race, ethnicity, sex, or other birth factors (Article 2). It stipulates that everyone has the right to freedom and security (Article 3), to recognition as a legal being before the law (Article 6), to freedom of movement within the borders of every State (Article 13), to own property (Article 17), to work and freely choose one’s employment (Article 23), to food, housing and medical care (Article 25) and to free elementary education (Article 26). As Chapter Six illustrated, the stateless are deprived of these rights every day. There is no such thing as freedom of movement or the ability to freely choose one’s employment. Medical care, food and education are not always easy to obtain, and property may be arbitrarily seized. The majority of the stateless live in acute insecurity and their recognition as legal entities before the law is largely ignored by the States in which they reside. Many of these rights are violated precisely because of race or ethnicity, or distinctions made on political, national, or “social origin” grounds.

Article 28 of the Declaration sets forth the right of every person “to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” Yet the present State system does not provide such an order. There are some nine million or more stateless persons eking out their existence around the world. How are States forming an order that permits the realization of these peoples’ “rights and freedoms” as

articulated in the Declaration? Some States will not even provide the stateless membership much less protect them or grant them basic rights. One-hundred and sixty-four States have not even acceded to the two conventions that provide legal recognition to the stateless and guarantee them rights and freedoms before the law.

In order for States to maintain legitimate control of membership decisions, they need to show that they are at least willing to make an effort in the direction of ameliorating the condition of the stateless by acceding to the statelessness conventions. Otherwise, they will not be fulfilling the duty for which they are charged. Take the following analogy as an example: in a Human Resources Department of Company P, Dorothy is the sole person charged with creating job applications, reviewing such applications when they have been filled by potential employees, and authorizing the employment of such people if they meet the criteria set forth by her in the job application. If Dorothy does not perform these functions adequately, several outcomes may result: potential employees may be denied the opportunity to find a job at company P; Dorothy may be given a warning for not realizing the role for which she is the sole person charged; she may be given an assistant to aid her fulfill her responsibilities; or she may be fired and replaced.

Although the analogy may not be perfect, like Dorothy, States are the sole entities charged with the creation of membership criteria (via domestic laws), the review of applications for citizenship filled by potential members, and the acceptance or rejection of such individual petitions for citizenship. What happens when States do not adequately fulfill these duties when they are the sole entities authorized to do so? Obviously, like the potential employees that are denied a job because Dorothy is not performing her functions, some individuals will be denied citizenship (as occurs in the case of the stateless).

Whereas Dorothy may be given a warning that she will lose her job if she does not fulfill her duties in the Human Resource Department, there is no entity in the State system that may enforce such a warning if pronounced to States. However, it is possible that a group of concerned States comes together and creates a body (such as was suggested earlier with the Citizenship Review Committee) that issues remarks denouncing a State that violates the rights of the stateless. This Committee could be viewed as the “assistant” that aids Contracting States (or State bodies like the UNHCR) to prevent and reduce statelessness.

While Dorothy may be fired from the Human Resource Department if she does not perform her job, States obviously cannot be fired. One cannot simply say that the State system is failing to provide for all peoples equally and is therefore discharged of its duties and functions. The system has been hundreds of years in the making and will not likely be replaced by something else in a period any shorter than its creation. It is possible, however, that the authority of States in determining membership decreases as the years progress. As was asserted by the Permanent Court of International Justice in 1923, “The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations” (17). International relations may develop to the degree such that citizenship is no longer tied to the idea of the sovereign State. Citizenship, after all, is membership in a polity and nowhere does it specify that this polity must be a State. As Heater points out, citizenship “can be associated with any geographical unit from a small town to the whole globe itself” (qtd. in Stewart 64). The next section briefly examines two alternatives to State-based citizenship that are presented in the literature.

Cosmopolitanism and Transnational Citizenship

Cosmopolitan and transnational scholars typically argue for the separation of citizenship from the confines of the “nation-State.” Such a proposition is not altogether radical when one considers that citizenship’s ties to the present State system are of recent origin. Chapter Two noted that men were citizens of city-republics in Ancient Greece and citizenship was conditioned by guild membership in the powerful towns and cities during the Middle Ages. It was not until the French Revolution that citizenship became tied to the “State” as it is currently known. While some cosmopolitans argue for the creation of a global State to which all people could belong regardless of political and affiliative ties or biological characteristics, the majority of cosmopolitans simply seek to foster a world community wherein justice is granted equally to all and human rights are universally respected. In fact, the three basic tenets of cosmopolitanism are: individualism (people are the units of concern), universality (all people are equal) and generality (everyone is of concern to each person regardless of personal ties) (Pogge 48-9).

Individuals in this cosmopolitan view are “world citizens” in that they recognize the interdependence of all peoples and do not necessarily look more favourably upon their ‘co-State’ citizens than individuals who live in another State. For instance, Andrew Linklater asserts that “[t]he cosmopolitan belief in the moral equality of persons holds that sound reasons have to be offered for treating individuals differently[...]On this premise, there are no prima facie reasons for privileging the interests of another person just because she or he is a fellow-citizen – conversely, there are no obviously compelling reasons for disregarding the interests of outsiders simply because they happen to have been born in or belong to another society” (57).

Many cosmopolitans (and scholars who seek to remove the State from its position of unqualified preeminence) argue for the dispersion of sovereignty along vertical and horizontal

lines. Thomas Pogge advocates a multi-layered version of sovereignty wherein “persons could be citizens of, and govern themselves through, a number of political units of various sizes, without any one political unit being dominant and thus occupying the traditional role of [the] [S]tate” (58). Horsman and Marshall similarly discuss the development of an international system “where states, regions, international organizations and transnational companies vie more equally for power” (166). According to these authors, such a system would be “redolent of the pre-modern, where spheres of responsibility overlapped and overrode according to the occasion” (166).

Almost all cosmopolitans seek a citizenship that is not bound by the current notion of the State (either territorially or normatively). They want to “to counteract the parochialism of national citizenship by introducing a new set of rights and obligations, applicable to the whole human race and not just to individual nation-states” and “replace at the global level authority and coercion – the defining characteristics of nation states – with dialogue and consent” (Wagner 284). Such a cosmopolitan view readily lends itself to the protection of stateless peoples, especially as concerns the equal promulgation, and respect, of everyone’s human rights.

One of the suggestions made by some authors is to strengthen the human rights regime in order to ameliorate the condition of the stateless and to remove the determination of their status from States. Yasemin Soysal argues, for example, that “the logic of personhood supersedes the logic of national citizenship” (qtd. in Bosniak 460) and that human rights regimes should take precedence over State norms for this reason. Similarly, Bryan Turner believes that the human rights regime is a more appropriate venue for securing rights than State-based citizenship for it can “meet the needs of transnational migrants and indigenous people who do not wish to be incorporated [in the State] at the cost of loss of language and culture” (Glenn 14).

As demonstrated by the previous chapters, however, legal “personhood” is decided by States. That a stateless person is a human being does not always mean that they will be treated according to the human rights postulated in international laws and conventions. States are often more concerned with the rights and protection of “their” citizens than non-citizens that reside within their borders.¹⁴ Thus, strengthening the human rights regime without seeking the concomitant aid of States in this endeavour is largely futile at present.

While cosmopolitan scholars typically move in the realm of “what ought to be” and focus upon globally-minded individuals who treat all peoples the same and respect everyone’s human rights, transnational authors generally focus on the “here and now” effects of globalization upon citizenship.¹⁵ Such scholars note the weakening of the State’s capacity to maintain an individual’s sole allegiance in this regard, but they do not resign States to the scrapheap of history. As Wagner points out, “transnational citizenship recognizes that the nation-state is a reality and that in the international arena a majority of citizens will continue to claim a national affiliation” (285). Transnational citizens include the global business elite¹⁶ and migrants who labour and reside temporarily in one State while maintaining ties in another. Transnationalists argue for the creation of an institution that will take into account the mobility and multiple allegiances of such peoples and that will grant “them rights in all the countries with which they identify” (Wagner 285).¹⁷

As pertains to statelessness, the idea that transnational institutions could arise that grant individuals their rights no matter their State of origin is appealing. However, do such transnational institutions only grant rights to people who are “legally resident” or who have a legal identity? If so, then such transnational institutions are of no help to the stateless. Two conventions and a Universal Declaration of Human Rights already provide the stateless their

rights. Provision is not the problem; the protection of such rights is. Thus, again, until such a time that the State system is modified to the degree that States no longer determine membership or guarantee rights to individuals, the States of this system are the entities to which the concerns of the stateless must be primarily addressed.¹⁸

Possible State-Based Courses of Action

While it is important for the language of the statelessness conventions and the Universal Declaration of Human Rights to explicitly refer to citizenship and clearly separate ethnicity from citizenship-as-legal status, and even though it is necessary for the United Nations to make certain administrative and institutional changes to better address statelessness, States are currently the key players in deciding who will or will not become a citizen of their territory. States have the primary responsibility in preventing and reducing statelessness. Thus, it is recommended that States:

- 1) actively seek information and advice from the UNHCR on the meaning and implications of ratification of the statelessness conventions
- 2) accede to the conventions where it is deemed feasible and modify their domestic citizenship law accordingly
- 3) accommodate all those articles stipulated within the conventions that they can implement in domestic law until such time that they can accede if accession is not currently possible
- 4) create a national birth registration unit or department, if they have not already done so, that is charged with the maintenance of a birth registry and the promotion of birth registration awareness campaigns while providing registration at little to no cost

- 5) permit citizenship to be acquired via maternal descent if they do not already allow for this form of acquisition
- 6) ensure that every individual, regardless of legal standing, has access to the Courts and a fair hearing when they are charged with a specific act or if they wish to bring a charge against someone or some entity
- 7) make certain that any individual who may be denationalized on the grounds of residence abroad, marriage or other cause, is duly notified in writing of the possibility of such a loss of citizenship before such denationalization occurs (the “knowledge principle”), and provide solutions to remedy the situation that do not infringe upon her basic rights as stipulated in international law
- 8) delineate before a domestic tribunal the reasons for denationalization of a person on the grounds of “national interest” and provide the person who may lose her citizenship upon such grounds legal assistance to make her counter case
- 9) make less cumbersome and expedite the naturalization process for the stateless as compared to aliens
- 10) create a special legal status for the stateless when naturalization is not deemed feasible that allows them to reside and work legally within the State and grants them certain protections
- 11) convene an international forum wherein States may share their successful birth registration programs and naturalization campaigns with interested States and governmental and non-governmental organizations
- 12) consider the creation of an Optional Protocol to the 1961 convention that allows for the creation of an international Committee (“Citizenship Review Committee) that

will hear citizenship disputes and provide evidence concerning the State to which an individual has effective ties so that the individual may become naturalized

- 13) allow an already constituted international court to hear and judge individual claims to citizenship if the suggestion presented in recommendation 11 is not deemed possible
- 14) permit individuals to deliberately choose their citizenship.

This latter recommendation is considered in more detail in the final chapter as it forms the crux of the argument that involuntarily statelessness could be reduced if individuals were permitted to choose their State membership. It is also the basis for a more equitable citizen-State relationship wherein both parties have rights to determine the extent of their political and legal association to each other.

NOTES

¹ The term “national” may sometimes be used in lieu of “citizen” in domestic law, however, as seen in the case of the United States (refer to footnote 27 on p. 23).

² The stateless Bidoon of Kuwait, for example, are Arab nationals, but are citizens of no State. Refer to the Bidoon section in “A Human Rights Approach in the Middle East” (Doebbler 542-44).

³ Hanjian notes how race and ethnicity were used in the “mass denationalizations of Jews under Nazi Germany, Armenians under Kemalist Turkey, Koreans in post-war Japan, and blacks under white-ruled South Africa” (10). Bertocchi and Strozzi also comment on the use of ethnically-based denationalizations in Africa, as does the “Report of the African Citizenship and Discrimination Audit” by the Open Society Justice Initiative.

⁴ As noted in the Literature Review chapter, Faulks and Wiener argue for the separation of the ethnically-based “nation” from the State because of the conflict that their combination generates.

⁵ Ellen Griepner criticizes the 1961 convention for its inability to address the plight of those who are currently stateless. She states that Article 4 of this convention (which stipulates that a State may request that one of the stateless individual’s parents first be a citizen before granting citizenship) currently “limits the number of stateless persons who can benefit from its application” (449-50).

⁶ As noted in Chapter Seven, the UNHCR is formally charged with assisting and protecting refugees in Article 35 of the 1951 Convention Relating to the Status of Refugees.

⁷ The UNHCR states that “the number of stateless persons appears bound to continue growing for the foreseeable future” (“The Problem of Statelessness”).

⁸ Consult <http://www.un.org/events/microcredit/> and <http://www.un.org/sport2005/index.html> for information on these 2005 “International Year” subjects.

⁹ The Committee on the Rights of the Child (CRC), a branch of the Office of the High Commissioner for Human Rights, is another UN body that advocates birth registration. The convention produced by the CRC is the Convention on the Rights of the Child (1989). Contracting States (only the United States and Somalia are not Contracting Parties) are expected to ensure that all children are registered as soon as possible after birth (Article 7).

¹⁰ Plan International is a non-governmental organization dedicated to spreading awareness about the importance of birth registration. See Plan International’s website at <http://www.writemedown.org/>.

¹¹ Plan International notes that “[s]uccessful lobbying by Plan and other NGOs resulted in birth registration receiving priority in the Action Plan from the 2002 UN General Assembly Special Session on Children (UNGASS) – a remarkable achievement as this issue was not even mentioned in the 1990 World Summit for Children” (7).

¹² Consult <http://www.ohchr.org/english/bodies/hrc/index.htm> for more information on the Human Rights Committee and its functions.

¹³ This quote was taken from the title (“A United Nations Priority”) of the webpage at <http://www.un.org/rights/HRToday/declar.htm>.

¹⁴ For example, the Thai Deputy Minister of Agriculture and Cooperatives, Newin Chidchob commented the following about the stateless Thai Hill Tribe people: “I feel for the Thai who have no place to sleep, no land to till, nothing to eat. However, the state should take care of the Thai citizens first and the other groups later” (qtd. in Ritchie).

¹⁵ See the “Globalization” portion of the “International Location Literature” of Chapter Two for more information.

¹⁶ Some States actively seek to draw in the capital of this class of people. Canada, for example, grants permanent residency to anyone that invests \$300,000 in the State. The United States created an “investor” in 1990 that permitted persons who invested a million dollars in the State (and created 10 jobs in the process) to obtain a Green Card (Glenn 11).

¹⁷ Wagner cites the European Union as one such transnational institution.

¹⁸ Linklater points out that “[t]he achievements of transnational citizenship are strictly regional or continental, and there is always a possibility that the new polity will become closed in on itself” (206). Transnational institutions, therefore, will not necessarily be open to those individuals who do not fall within the regional boundaries of their institutional jurisdiction.

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CHAPTER NINE: INDIVIDUAL CHOICE

Citizenship-as-choice is not a novel idea. John Locke pronounced that a child was born a subject of nowhere and that only when “he c[a]me to Age of Discretion” could he freely choose to which State he wished to be a citizen. The participants of the American and French Revolutions held steadfastly to the idea of volitional citizenship, although once these republics were formed this notion was largely discarded. Citizenship-as-choice, instead of automatically conferred status or absence of choice (as in the case of the stateless), requires the recognition that individuals may both opt out of and opt into a particular citizen-State relationship.

Limited Choice

The opting out of citizenship is largely accepted (expatriation) with the exception of States like Costa Rica that do not recognize voluntary renunciation of citizenship. As noted previously, however, many States place restrictions upon individuals who wish to renounce their citizenship (military requirements must first be fulfilled, debts must be paid and other obligations must be carried out). State permission is often needed in the majority of cases when one seeks to leave a particular citizen-State relationship since approval by the relevant State authority is required in order for one’s renunciation to be “recognized.” In addition, international law does not permit the opting out of the citizen-State relationship entirely since citizenship may only be renounced if an individual is going to obtain another one.¹ Thus, individual choice in renouncing citizenship is often severely circumscribed by States and international law.

The ability to opt into a particular citizen-State relationship is just as restricted as the ability to leave a given citizen-State relationship. Individuals, while having the “right” to a nationality do not have the “right” to choose whichever citizenship they desire. One cannot

simply decide that she no longer wants to be a citizen of State X and become a citizen of State Y without first going through the relevant expatriation process of the former State and the necessary naturalization procedure of the latter one. At the end of such a process there is still the possibility that her application for membership will be denied. A person does not decide her citizenship without State permission.

Although State consent (or at least “recognition” in the case of renunciation) is required to enter and leave the citizen-State relationship, “citizen” consent is not needed when the State wishes to leave the citizen-State relationship with a given individual (denationalization). Chapter Four illustrated that States may denationalize their citizens on several grounds.² That a particular person may not want to lose her citizenship in a given State is of no importance if that State has decided otherwise. The person’s choice in the matter is irrelevant.

Thus, except for those rare individuals who are able voluntarily to abjure citizenship entirely (the voluntarily stateless), people are either citizens of some State or they are stateless. In both instances the status is acquired and not deliberately chosen.³ While many people may be quite content with the State membership they were born with and not question their automatic acquisition of such citizenship (especially those from wealthy democratic States that generally respect human rights), not all citizenships are equal. Persons holding citizenship from impoverished States, for example, will generally not have the same standard of living or life opportunities as those who hold citizenship from wealthier States.

The Need for Choice

That a person is tied to a given State because of birth on the territory or because of descent from individuals born on that State’s territory is reminiscent of feudalism and does not sit well with the principles of freedom of association, movement and conscience promulgated in

human rights treaties and the Universal Declaration of Human Rights. People appear to have a right to citizenship; they just do not have the right to any citizenship they want. While this thesis does not analyse the case for open (or closed) borders in terms of State membership,⁴ it does examine the effects of lack of citizenship choice (statelessness) upon the lives of millions of people around the globe. As seen in Chapter Six, these effects are very serious and citizenship-as-choice should therefore be an option for this group of people. That is, they should be allowed to choose to have the citizenship of the State with which they have the strongest effective ties.⁵ In this manner they will be afforded some security and extended certain rights and protections.

Permitting the stateless to choose to hold the citizenship of the State where their ties are strongest (in terms of birth, residency, family relations and other factors) will not only reduce statelessness globally, but it may reduce inter-State tensions in those instances when one more than one State is involved in a stateless group's condition.⁶ It may even strengthen the stateless' commitment to the State of residence. The argument that granting the stateless citizenship might increase ethnic tensions within certain States is not entirely valid since such tensions already exist within many of these States (as individuals were denationalized or denied membership within these States precisely on ethnic grounds). Instead, it is possible that the granting of citizenship to the stateless in these States might actually decrease inter-ethnic tensions as avenues for political participation and judicial action become open to everyone equally.

The Practicality of Choice

While citizenship-as-choice is not currently feasible for everyone on the planet in terms of choosing membership to any State they would like,⁷ it is possible within a particular citizen-State relationship. That is, citizens could choose whether they wish to maintain the citizenship that they acquired at birth or opt out of it at a given age. This would remove the citizen-State

relationship from the realm of assumed (tacit) consent to that of deliberate and explicit consent. Such an act would restore some balance to the citizen-State relationship in that both parties must expressly consent to their association with the other. It could also counter the possible negative effects of tacit consent that were presented in Chapter Four (ignorance, apathy and hostility on the part of the citizenry).

Schuck, Smith and Hanjian believe that it is entirely possible to establish an agency whose function is to notify citizens at a given age of their right to decline or maintain citizenship within a particular State.⁸ In fact, Hanjian argues that individuals should sign contractual agreements when they wish to maintain citizenship. These agreements are then deposited in registries “[b]ecause government without consent is unacceptable, proof of express consent is necessary in order to clearly define the limits of a state’s authority” (248).

The implementation of an oath system for all citizens (not just those who are naturalized) could be used to the same effect. At age 21, for instance, after being informed of the rights and responsibilities of membership in a particular State, an individual could be summoned to a “Bureau of Citizen Affairs” where they simply make known their desire to maintain the citizenship they acquired at birth or not (much like the current naturalization process that an individual undergoes in order to become a citizen of the United States).

The requirement that individuals go to an agency to renounce or maintain their citizenship at a given age could also alleviate the cases of statelessness that result when individuals reside abroad without informing the relevant State authority. As noted in Chapter Seven, naturalized citizens may be rendered stateless because they are unaware of the need to claim that they wish to maintain their citizenship while residing abroad. A State-wide

requirement that all citizens take an oath, or assert their desire to keep their citizenship, at a stipulated age can prevent such citizenship loss.

The act of taking such an oath, or formally signing a contract as Hanjian suggests, to maintain citizenship should not be cumbersome, but it could be very meaningful. It would remove the legal status of citizenship from the realm of passivity (passive status) to that of activity (active status). It would place some sort of control over political and legal membership into the hands of the individual as she could either maintain that State's membership or abstain from that particular citizenship (and consequently be rendered stateless if no other State naturalizes her). It is unlikely that individuals would renounce their right to the citizenship they acquired at birth for two principal reasons: 1) people do not at present voluntarily denationalize on a mass scale even though most States allow for the voluntary renunciation of citizenship (albeit with several restrictions) and, 2) statelessness is generally unappealing to people as rights and protections are not properly extended to individuals outside of the State forum.

Thus, citizenship-as-choice could be beneficial for the stateless, for those who hold a citizenship and for States. The stateless would be permitted to elect the status of citizenship to the State where they hold the strongest effective ties⁹ and secure the associated rights and protection. Citizens would be able to partake in the citizen-State relationship on a more equitable basis and perhaps learn more about what their particular citizenship means. States would achieve a more informed (and possibly committed) citizenry and perhaps forestall future intra- and inter-State tensions with regard to the membership and resource rights of the stateless. The provision of citizenship to the stateless, and ensuring that their basic rights are protected, could also decrease the possibility of the spread of contagious disease and physical conflict.¹⁰ Globally there could be benefits for humankind as the rights and the will of individuals are taken into

account in a matter as consequential as that of choosing one's citizenship (the traditional domain of States). Declarations, conventions and treaties pronouncing individuals' rights to freedoms of thought, movement and association would actually exist in deed instead of just word.

Conclusion

Statelessness and citizenship are two statuses of crucial import in the lives of people. Each status circumscribes the rights that a person may secure, the opportunities she may have, the protection she may be granted and the dreams she may realize. The one status is more favourable to providing these rights and opportunities (citizenship), while the other is far less amenable to such provision (statelessness). Regardless of these significant differences, both conditions are State-determined. The State creates the criteria for membership, judges who meets these criteria, and decides whether or not an individual will be granted citizenship. Citizenship is not a choice. If it were, there would be no involuntary stateless people.

It can be ventured that citizenship is the right to have rights. One may claim that she has the right to liberty, security, protection of the law, movement, work, and freedom of speech and religion, and freedom from degrading punishment and arbitrary arrest.¹¹ These rights and freedoms are merely claims, however, when there is no State to endorse, extend and ensure such rights and freedoms to the individual. Citizenship at least gives a person the opportunity to legally lay claim to the rights and freedoms proclaimed in the laws of the varied States. The stateless may make no such claim if they are not recognized by their State of residence. Citizenship, therefore, is a human right.¹²

That States are failing to provide membership to all persons equally is evidenced by the examples of stateless peoples presented in this thesis. Not only do States sometimes refuse naturalization to the stateless and ignore the stipulations of their own citizenship laws, but some

States even go so far as to manipulate such laws in order to denationalize certain portions of their population. Such behaviour is threatening to both people and the State system. As the repercussions chapter demonstrated, the stateless live in perpetual insecurity and States must confront the reality that stateless groups exist outside of the jurisdiction of the international system and the citizen-State relationship upon which this system is based.¹³

It is not only States engaged in the refusal of naturalization of the stateless or the discriminatory denationalization of peoples that are implicated in the perpetuation of statelessness. Those States that do not act to prevent and reduce its occurrence are involved as well. That is, all States belong to the State system that was instituted in the wake of the Treaty of Westphalia. This institution is composed of laws, shared practices and norms that condition relations between States. According to Pogge, members of an institution share the indirect responsibility “not to participate in an unjust institutional scheme (one that violates human rights) without making reasonable efforts to aid its victims and to promote institutional reform” (50).

Pogge provides the example of the human right not to be enslaved. While those who enslave are directly responsible for violating the aforementioned right, those who do not enslave, yet who are part of the social institution that allows slavery to take place, are just as responsible for violating this right. “We are asked to be concerned about human rights violations not simply insofar as they exist at all,” he says, “but only insofar as they are produced by social institutions in which we are significant participants” (52). Since States are all participants in the institution of the post-Westphalian international system, all States are indirectly implicated in the perpetuation of statelessness if they do not make efforts to prevent and reduce it. Thus, simply because the problem of statelessness does not touch a particular State’s territorial borders, does not mean that

the State is not responsible for helping to resolve the problems statelessness generates elsewhere. For this reason accession to the two statelessness conventions is essential.

While State accession to the 1954 and 1961 statelessness conventions is important, accession is not the only manner in which States can help to prevent and reduce statelessness. Chapter Eight demonstrated that assistance in this endeavour can take many forms: from increasing birth registrations, creating a special legal status for the stateless, providing the stateless judicial recourse and sharing successful campaigns to prevent and reduce statelessness with other States and interested parties. Statelessness is not a condition that should be ignored as its repercussions are far-reaching. The responsibility of improving the lot of these peoples lies primarily with the States, but non-stateless persons, the United Nations and humanitarian organizations also have the duty to ameliorate the status of the stateless where they can, for all are participants in the international system of States.

The stateless may be legally invisible and outside the realm of the citizen-State relationship, but they need not be invisible to the human conscience and they should never fall outside the reach of humanity. This thesis ends with the hope that involuntary statelessness will one day be resolved and that by highlighting this theme, consciousness of the plight of the stateless will be raised and renewed efforts will be made to provide them the right to which they are already entitled, but to which they are currently restricted from enjoying – citizenship.

NOTES

¹ Article 7 of the 1961 convention states that denationalization is permitted only when the person is able to obtain another citizenship in its place. David Maxey notes that “[t]he crystallization of a rule in international law which provides for expatriation only on the acquisition or election of another nationality might lead to injustice, particularly in those cases where, because of oppression, an individual would prefer to be stateless rather than to preserve his present nationality” (157).

² Refer to pp. 57 to 61.

³ Again, this work does not refer to naturalized citizens who freely choose to elect membership in another State (State consent, of course, still being necessary to naturalize).

⁴ See “The Civil Right We Are Not Ready For” by Roger Nett and “Reconsidering Open Borders” by Carens for arguments for the opening of State borders.

⁵ A “Citizenship Review Committee,” described briefly in the preceding chapter, could aid the stateless precisely in their endeavour to prove the existence of effective ties with a particular State.

⁶ Consult pp. 72 to 78 for the regional implications of statelessness.

⁷ Such an act would raise serious questions that could be examined in future research. Questions include: What would prevent people from flocking to one particular State? How would States regulate membership so as not to expend vital resources? What would the implications be for wealthy States? Would this infringe upon the rights of groups to self-determination? etc.

⁸ See Schuck and Smith p. 124 and Hanjian p. 248.

⁹ It is well-documented that stateless groups have citizenships of choice: the Lhotshampas want Bhutanese citizenship, the Crimean Tatars want to be Ukrainian, the majority of Biharis want membership in Bangladesh and the list goes on.

¹⁰ Chapter Four discusses the regional implications of statelessness in terms of disease, physical conflict, human trafficking and the possibility of stateless individuals taking part in militant activities. These are all serious consequences that could be abated, if not entirely eradicated, by providing stateless persons membership in the State polity with which they have the strongest effective ties. Chapter Four also provided examples of how tensions between States are generated because of their involvement with stateless groups. For example, Nepal is pressuring Bhutan to solve the status of the stateless Lhotshampas, and Sri Lanka must take into account its treatment of the Estate Tamils because of India’s Tamil minority.

¹¹ These are all freedoms and rights proclaimed in the Universal Declaration of Human Rights.

¹² This does not mean that individuals do not have the right to renounce membership in the State system completely (as Hanjian argues). It simply means that all people should have the right to a citizenship if they want one.

¹³ As Belgium observed at the 1930 Hague Codification Conference, “nationality is the very basis of the formation and preservation of the state” (Muthraika 38).

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APPENDIX A: UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.

Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

SOURCE: <http://www.unhchr.ch/udhr/lang/eng.htm>

APPENDIX B: CITIZENSHIP LAWS OF THE WORLD

This appendix consists of an explanation of the rules used to code the Citizenship Laws of the World report followed by a table with the coded data.

Rules

The textual information provided in this report is coded according to the following rules:

a) *Jus soli*

- a. A State that currently permits citizenship acquisition via *jus soli* is coded 1 while a State that does not permit *jus soli* is coded 0.
 - i. States like Cyprus, Indonesia and Malta that previously permitted *jus soli* but stopped this practice prior to the publication of the Citizenship Laws of the World Report are coded 0.
- b. A State that permits *jus soli* regardless of the restrictions posited below are coded 1 because they do not prohibit such citizenship acquisition.
 - i. Restrictions
 1. One parent must be a citizen
 2. Residency requirements
 3. Must be sought at a stipulated age

b) *Jus sanguinis*

- a. A State that permits citizenship acquisition via *jus sanguinis* is coded 1 while a State that does not permit *jus sanguinis* is coded 0.
 - i. No State prohibits citizenship acquisition via this method
- b. A State that permits *jus sanguinis* regardless of the restrictions posited below are coded 1 because they do not prohibit such citizenship acquisition.
 - i. Restrictions
 1. One parent must be a citizen
 2. Residency requirements
 3. Racial requirements
 4. Must be sought at a stipulated age
 5. Must be a descendant of a non-naturalized citizen
 6. May only be acquired through the paternal line
 - a. Citizenship acquisition through the maternal line is coded 0 if the principal means of citizenship acquisition is through the father and the State only permits citizenship acquisition through the mother when the child is born out of wedlock or the father is unknown or stateless

TABLE 1: Citizenship Laws of the World Coded Data

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Afghanistan	0	1	1	0	1	1	0	1
Algeria	0	1	1	0	1	1	0	1
Andorra	0	1	1	0	1	1	0	1
Angola	0	1	1	0	1	1	0	1
Antigua & Barbuda	1	0	1	0	1	1	0	1
Argentina	1	0	1	0	1	1	1	0
Armenia	1	0	1	0	1	1	1	0
Australia	1	0	1	0	1	1	0	1
Austria	1	0	1	0	1	1	0	1
Azerbaijan	0	1	1	0	1	1	0	1
Bahamas	0	1	1	0	1	1	0	1
Bahrain	1	0	1	0	1	0	0	1
Bangladesh	0	1	1	0	1	1	0	1
Barbados	1	0	1	0	1	1	0	1
Belarus	0	1	1	0	1	1	0	1
Belgium	0	1	1	0	1	1	0	1
Belize	1	0	1	0	1	1	0	1
Benin	0	1	1	0	1	1	0	1
Bhutan	0	1	1	0	1	1	1	0
Bolivia	1	0	1	0	1	1	0	1
Botswana	0	1	1	0	1	0	0	1
Brazil	1	0	1	0	1	1	0	1
Brunei Darussalam	0	1	1	0	1	0	0	1
Bulgaria	0	1	1	0	1	1	0	1
Burkina Faso	0	1	1	0	1	1	0	1
Burundi	0	1	1	0	1	1	0	1
Cambodia	0	1	1	0	1	1	0	1
Cameroon	0	1	1	0	1	1	0	1

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Canada	1	0	1	0	1	1	0	1
Cape Verde	0	1	1	0	1	1	0	1
Central African Republic	1	0	1	0	1	1	0	1
Chile	1	0	1	0	1	1	0	1
China	0	1	1	0	1	1	0	1
Colombia	0	1	1	0	1	1	0	1
Congo	0	1	1	0	1	1	0	1
Congo Republic	0	1	1	0	1	1	0	1
Costa Rica	1	0	1	0	1	1	0	1
Cote d'Ivoire	0	1	1	0	1	1	0	1
Croatia	0	1	1	0	1	1	1	0
Cuba	1	0	1	0	1	1	0	1
Cyprus	1	0	1	0	1	0	0	1
Czech Republic	0	1	1	0	1	1	0	1
Denmark	0	1	1	0	1	1	0	1
Djibouti	0	1	1	0	1	1	0	1
Dominican Republic	1	0	1	0	1	1	0	1
Ecuador	1	0	1	0	1	1	0	1
Egypt	1	0	1	0	1	0	0	1
El Salvador	1	0	1	0	1	1	0	1
Equatorial Guinea	1	0	1	0	1	1	0	1
Eritrea	0	1	1	0	1	1	0	1
Estonia	0	1	1	0	1	1	0	1
Fiji	1	0	1	0	1	0	0	1
Finland	0	1	1	0	1	1	0	1
France	1	0	1	0	1	1	0	1
Gabon	0	1	1	0	1	1	0	1
Gambia	1	0	1	0	1	0	0	1
Germany	1	0	1	0	1	1	0	1
Ghana	0	1	1	0	1	1	0	1
Greece	0	1	1	0	1	0	0	1

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Grenada	1	0	1	0	1	1	0	1
Guatemala	1	0	1	0	1	1	0	1
Guinea	0	1	1	0	1	1	0	1
Guyana	1	0	1	0	1	1	0	1
Haiti	0	1	1	0	1	1	0	1
Honduras	1	0	1	0	1	1	0	1
Hungary	0	1	1	0	1	1	0	1
Iceland			1	0	1	0	0	1
India	1	0	1	0	1	1	0	1
Indonesia	0	1	1	0	1	1	0	1
Iran	0	1	1	0	1	0	0	1
Ireland	1	0	1	0	1	1	0	1
Israel	0	1	1	0	1	1	0	1
Italy	0	1	1	0	1	1	0	1
Jamaica	1	0	1	0	1	1	0	1
Japan	0	1	1	0	1	1	0	1
Jordan	0	1	1	0	1	0	0	1
Kazakhstan	0	1	1	0	1	1	0	1
Kenya	1	0	1	0	1	0	0	1
Kiribati	0	1	1	0	1	0	0	1
North Korea	0	1	1	0	1	1	1	0
South Korea	0	1	1	0	1	1	0	1
Kuwait	0	1	1	0	1	0	0	1
Kyrgyz Republic	0	1	1	0	1	1	1	0
Laos	0	1	1	0	1	1	0	1
Latvia			1	0	1	1	0	1
Lebanon	0	1	1	0	1	0	0	1
Lesotho	1	0	1	0	1	0	0	1
Liberia	0	1	1	0	1	1	0	1
Libya	0	1	1	0	1	1	0	1
Lithuania	0	1	1	0	1	1	0	1

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Luxembourg	0	1	1	0	1	1	0	1
Madagascar	0	1	1	0	1	0	0	1
Malawi	0	1	1	0	1	1	0	1
Maldives	0	1	1	0	1	1	0	1
Mali	0	1	1	0	1	1	0	1
Malta	0	1	1	0	1	1	0	1
Marshall Islands	0	1	1	0	1	1	0	1
Mauritania	0	1	1	0	1	1	0	1
Mauritius	1	0	1	0	1	0	0	1
Mexico	1	0	1	0	1	1	1	0
Micronesia	0	1	1	0	1	1	0	1
Moldova	0	1	1	0	1	1	0	1
Monaco	0	1	1	0	1	0	0	1
Mongolia	0	1	1	0	1	1	1	0
Morocco	0	1	1	0	1	0	0	1
Mozambique	0	1	1	0	1	1	0	1
Myanmar	0	1	1	0	1	1	0	1
Namibia	0	1	1	0	1	1	0	1
Nauru	0	1	1	0	1	1	0	1
Nepal	1	0	1	0	1	0	0	1
Netherlands	0	1	1	0	1	1	0	1
New Zealand	1	0	1	0	1	1	0	1
Nicaragua	1	0	1	0	1	1	0	1
Niger	1	0	1	0	1	1	0	1
Nigeria	0	1	1	0	1	1	0	1
Norway	0	1	1	0	1	0	0	1
Oman	0	1	1	0	1	0	0	1
Pakistan	1	0	1	0	1	0	0	1
Palau			1	0	1	1	0	1
Panama	1	0	1	0	1	1	0	1
Papua New Guinea	0	1	1	0	1	1	0	1

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Paraguay	1	0	1	0	1	1	0	1
Peru	1	0	1	0	1	1	0	1
Philippines	0	1	1	0	1	1	0	1
Portugal	0	1	1	0	1	1	0	1
Qatar	0	1	1	0	1	0	0	1
Romania	0	1	1	0	1	1	0	1
Russian Federation	1	0	1	0	1	1	0	1
Rwanda	0	1	1	0	1	0	0	1
St. Kitts & Nevis	1	0	1	0	1	1	0	1
St. Lucia	1	0	1	0	1	1	0	1
St. Vincent & the Grenadines	1	0	1	0	1	1	0	1
Samoa	1	0	1	0	1	0	0	1
Sao Tome & Principe	0	1	1	0	1	1	0	1
Saudi Arabia	0	1	1	0	1	0	0	1
Senegal	0	1	1	0	1	1	0	1
Seychelles	0	1	1	0	1	0	0	1
Sierra Leone	0	1	1	0	1	0	0	1
Singapore	0	1	1	0	1	1	0	1
Slovak Republic	0	1	1	0	1	1	0	1
Slovenia	1	0	1	0	1	1	1	0
Solomon Islands	0	1	1	0	1	1	0	1
South Africa	0	1	1	0	1	1	0	1
Spain	0	1	1	0	1	1	0	1
Sri Lanka	0	1	1	0	1	0	0	1
Sudan	0	1	1	0	1	0	0	1
Swaziland	0	1	1	0	1	1	1	0
Sweden	0	1	1	0	1	0	0	1
Switzerland	0	1	1	0	1	0	0	1
Syria	0	1	1	0	1	0	0	1
Taiwan	0	1	1	0	1	0	0	1

STATE	JUS SOLIS	JUS SOLIS	JUS SANGUINIS	JUS SANGUINIS	FATHER	MOTHER	BOTH PARENTS CITIZENS	BOTH PARENTS CITIZENS
	Y	N	Y	N	Y	Y	Y	N
Tanzania	0	1	1	0	1	1	0	1
Thailand	0	1	1	0	1	1	0	1
Togo	0	1	1	0	1	0	0	1
Trinidad & Tobago	1	0	1	0	1	1	0	1
Tunisia	0	1	1	0	1	0	0	1
Turkey	0	1	1	0	1	1	0	1
Tuvalu			1	0	1	1	0	1
Uganda	0	1	1	0	1	0	0	1
Ukraine	0	1	1	0	1	1	0	1
United Arab Emirates	0	1	1	0	1	0	0	1
United Kingdom	1	0	1	0	1	1	0	1
United States	1	0	1	0	1	1	0	1
Uruguay	1	0	1	0	1	1	0	1
Uzbekistan	0	1	1	0	1	1	1	0
Vanuatu	1	0	1	0	1	1	1	0
Venezuela	1	0	1	0	1	1	0	1
Vietnam	0	1	1	0	1	1	1	0
Yemen	0	1	1	0	1	0	0	1
Zambia	1	0	1	0	1	1	0	1
Zimbabwe	0	1	1	0	1	0	0	1
TOTAL	58	114	176	0	176	133	15	161
Percent	33.72	66.28	100	0	100	75.57	8.52	91.48

SOURCE: Citizenship Laws of the World Report (United States, Office of Personnel Management)

APPENDIX C: 2004 GLOBAL REFUGEE TRENDS

TABLE 2: Others of Concern to the UNHCR

Country of Residence	Description/origin	Pop. begin year *		Pop. end-year		Change (%)	
		Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted
Armenia	Persons holding temporary asylum status	29	29	125	125	331%	331%
Austria	Stateless	*	-	524	-	..	..
Azerbaijan	Stateless	*	-	30,000	-	..	..
Azerbaijan	Uzbekistan	430	-	430	-	0%	..
Bangladesh	Stateless	250,000	-	250,000	-	0%	..
Belarus	Asylum seekers of concern to UNHCR	2,536	-	2,458	-	-3%	..
Belarus	Stateless	13,836	-	10,465	-	-24%	..
Belgium	Stateless	*	-	93	-	..	..
Cambodia	Stateless	*	-	*	-	..	..
Croatia	Stateless	-	-	14	-	..	..
Democratic Rep. of the Congo	Stateless	*	-	*	-	..	..
Egypt	Stateless	125	125	113	113	-10%	-10%
Eritrea	Stateless	-	-	7	7	..	..
Estonia	Stateless	162,075	-	150,536	-	-7%	..
Ethiopia	Stateless	*	-	*	-	..	..
France	Stateless	*	-	708	-	..	..
Georgia	Stateless	*	-	32	-	..	..
Germany	Stateless	13,951	-	10,619	-	-24%	..
Greece	Iraqi Christians	3,000	-	3,000	-	0%	..
Indonesia	Afghanistan	-	-	62	-	..	..
Indonesia	Iraq	136	-	139	-	2%	..
Indonesia	Myanmar	-	-	8	-	..	..
Indonesia	Somalia	-	-	10	-	..	..
Indonesia	Thailand	-	-	2	-	..	..
Indonesia	Timor Leste	16,176	-	16,176	-	0%	..

Country of Residence	Description/origin	Pop. begin year *		Pop. end-year		Change (%)	
		Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted
Indonesia	Timor Leste (separated children)	385	-	-	-	-100%	..
Iraq	Stateless	*	-	*	-	..	..
Italy	Stateless	*	-	886	-	..	..
Kazakhstan	Ethnic Kazakh stateless persons	18,594	-	58,291	58,291	213%	..
Kuwait	Iraq	13,000	13,000	13,000	13,000	0%	0%
Kuwait	Palestinians	6,000	6,000	6,000	6,000	0%	0%
Kuwait	Somalia	2,000	2,000	2,000	2,000	0%	0%
Kuwait	Stateless (Bedoons)	80,000	80,000	80,000	80,000	0%	0%
Latvia	Non Citizens	*	-	452,003	-	..	..
Latvia	Stateless	*	-	173	-	..	..
Liberia	Third Country Nationals	15,000	15,000	35	35	-100%	-100%
Lithuania	Stateless	*	-	9,028	-	..	..
Malaysia	Myanmar	4,856	4,856	997	-	-79%	-100%
Malaysia	Philippines (Muslims)	57,197	57,197	61,314	61,314	7%	7%
Mauritania	Mali	3,500	-	3,500	-	0%	..
Mauritania	Western Sahara	26,000	-	26,000	-	0%	..
Mongolia	Stateless Kazakhs	*	-	*	-	..	..
Morocco	Stateless	*	-	4	-	..	..
Myanmar	Stateless returnees	*	-	*	-	..	..
Nepal	Bhutan	10,000	-	10,000	-	0%	..
Nepal	Tibetans (recent arrivals)	704	704	737	737	5%	5%
Nicaragua	Guatemala/Nicaragua	2	2	-	-	-100%	-100%
Norway	Stateless	*	-	923	-	..	..
Pakistan	Stateless	*	-	*	-	..	..
Papua New Guinea	Daru (West Papua New Guinea)	135	-	135	-	0%	..
Philippines	Vietnam (rejected cases)	1,691	-	1,829	-	8%	..
Qatar	Stateless	*	-	6,000	-	..	..
Romania	Stateless Roma	*	-	400	-	..	..
Russian Federation	Afghans in a refugee-like situation	100,000	-	100,000	-	0%	..

Country of Residence	Description/origin	Pop. begin year *		Pop. end-year		Change (%)	
		Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted	Total	of which: UNHCR-assisted
Russian Federation	IRPs (forced migrants) excluding IDPs	290,689	97,935	192,584	73,004	-34%	-25%
Russian Federation	Meskhethians	11,000	11,000	10,755	10,755	-2%	-2%
Russian Federation	Non-CIS asylum-seekers	5,793	5,793	5,177	5,177	-11%	-11%
Saudi Arabia	Stateless	*	-	*	-	..	..
Serbia and Montenegro	Local residents at risk	85,000	85,000	85,000	85,000	0%	0%
Slovakia	Stateless	13	-	7	-	-46%	..
Slovenia	Citizens of former Yugoslavia	779	779	584	584	-25%	-25%
Spain	Stateless	10	-	14	-	40%	..
Sri Lanka	Stateless	170,000	-	-	-	-100%	..
Sudan	Former Eritrean Refugees	22,024	-	37,416	-	70%	..
Switzerland	Stateless	*	-	25	-	..	..
Syrian Arab Rep.	Stateless	300,000	-	300,000	-	0%	..
TfYR Macedonia	Long-term habitual residents without effective citizenship de facto stateless	761	761	761	761	0%	0%
TfYR Macedonia	Rejected asylum-seekers	-	-	6	6	..	..
TfYR Macedonia	Stateless	*	-	5,000	-	..	..
Thailand	Laos (Prison or Detention Centre)	5	5	5	5	0%	0%
Thailand	Stateless	*	-	*	-	..	..
Ukraine	Abkhazia	2,926	300	2,809	273	-4%	-9%
Ukraine	Crimean Tatars (formerly deported persons)	2,987	935	6,500	3,107	118%	232%
Ukraine	Stateless	79,353	505	71,260	97	-10%	-81%
United Arab Emirates	Stateless	*	-	*	-	..	..
Venezuela	Colombia	26,192	-	26,350	-	1%	..
Vietnam	Stateless	*	-	*	-	..	..
Total		1,798,890	381,926	2,053,029	400,391	..	..

* The population beginning 2004 includes new groups of stateless persons which were not included in the statistics end-2003; therefore, the total does not equal the total from UNHCR statistics end-2003 (912,000).

Important note:

When comparing data in this table with previous years, it should be noted that data collection on stateless persons has been improved which makes direct comparison difficult.

Data is not complete and includes estimates. Countries where UNHCR has information about stateless persons but no reliable data has been included in the table with an asterisk (*).

SOURCE: Table 14, 2004 Global Refugee Trends (Population and Geographical Data Section, Division of Operational Support)

**APPENDIX D: STATE SIGNATORIES TO THE 1954 AND 1961
STATELESSNESS CONVENTIONS**

Table 3: Convention Signatories

Convention Relating to the Status of Stateless Persons (1954)			Convention on the Reduction of Statelessness (1961)		
Participant	Signature	Ratification, Accession (a), Succession (d)	Participant	Signature	Ratification, Accession (a), Succession (d)
Albania		23 Jun 2003 a	Albania		9 Jul 2003 a
Algeria		15 Jul 1964 a			
Antigua and Barbuda		25 Oct 1988 d			
Argentina		1 Jun 1972 a			
Armenia		18 May 1994 a	Armenia		18 May 1994 a
Australia		13 Dec 1973 a	Australia		13 Dec 1973 a
Azerbaijan		16 Aug 1996 a	Austria		22 Sep 1972 a
Barbados		6 Mar 1972 d	Azerbaijan		16 Aug 1996 a
Belgium	28 Sep 1954	27 May 1960			
Bolivia		6 Oct 1983 a	Bolivia		6 Oct 1983 a
Bosnia and Herzegovina		Sep 1993 d	Bosnia and Herzegovina		13 Dec 1996 a
Botswana		25 Feb 1969 d			
Brazil	28 Sep 1954	13 Aug 1996			
Chad		12 Aug 1999 a	Canada		17 Jul 1978 a
Colombia	12 Dec 1954		Chad		12 Aug 1999 a
Costa Rica	28 Sep 1954	2 Nov 1977	Costa Rica		2 Nov 1977 a
Croatia		12 Oct 1992 d			
Czech Republic		19 Jul 2004 a	Czech Republic		19 Dec 2001 a

Convention Relating to the Status of Stateless Persons (1954)		
Participant	Signature	Ratification, Accession (a), Succession (d)
Denmark	28 Sep 1954	17 Jan 1956
Ecuador	28 Sep 1954	2 Oct 1970
El Salvador	28 Sep 1954	
Fiji		12 Jun 1972 d
Finland		10 Oct 1968 a
France	12 Jan 1955	8 Mar 1960
Germany	28 Sep 1954	26 Oct 1976
Greece		4 Nov 1975 a
Guatemala	28 Sep 1954	28 Nov 2000
Guinea		21 Mar 1962 a
Holy See	Sep 28 1954	
Honduras	Sep 28 1954	
Hungary		21 Nov 2001 a
Ireland		17 Dec 1962 a
Israel	Oct 1 1954	23 Dec 1958
Italy	Oct 20 1954	3 Dec 1962
Kiribati		29 Nov 1983 d
Latvia		5 Nov 1999 a
Lesotho		4 Nov 1974 d
Liberia		11 Sep 1964 a
Libyan Arab Jamahiriya		18 May 1989 a
Liechtenstein	Sep 28 1954	
Lithuania		7 Feb 2000 a
Madagascar		[20 Feb 1962 a]
Mexico		7 Jun 2000 a

Convention on the Reduction of Statelessness (1961)		
Participant	Signature	Ratification, Accession (a), Succession (d)
Denmark		11 Jul 1977 a
France	31 May 1962	
Germany		31 Aug 1977 a
Guatemala		
Ireland		18 Jan 1973 a
Israel	30 Aug 1961	
Kiribati		29 Nov 1983 d
Latvia		14 Apr 1992 a
Lesotho		24 Sep 2004 a
Liberia		22 Sep 2004 a
Libyan Arab Jamahiriya		16 May 1989 a

Convention Relating to the Status of Stateless Persons (1954)		
Participant	Signature	Ratification, Accession (a), Succession (d)
Netherlands	Sep 28 1954	12 Apr 1962
Norway	Sep 28 1954	19 Nov 1956
Philippines	Jun 22 1955	
Republic of Korea	22 Aug 1962 a	
St. Vincent & the Grenadines		27 Apr 1999 d
Senegal		21 Sep 2005 a
Serbia and Montenegro		12 Mar 2001 d
Slovakia		3 Apr 2000 a
Slovenia		6 Jul 1992 d
Spain		12 May 1997 a
Swaziland		16 Nov 1999 a
Sweden	Sep 28 1954	2 Apr 1965
Switzerland	Sep 28 1954	3 Jul 1972
Fmr. Yugoslav Rep. of Macedonia		18 Jan 1994 d
Trinidad and Tobago		11 Apr 1966 d
Tunisia		29 Jul 1969 a
Uganda		15 Apr 1965 a
U.K. of Great Britain & Northern Ireland	Sep 28 1954	16 Apr 1959
Uruguay		2 Apr 2004 a
Zambia		1 Nov 1974 d
Zimbabwe		1 Dec 1998 d

Convention on the Reduction of Statelessness (1961)		
Participant	Signature	Ratification, Accession (a), Succession (d)
Netherlands	30 Aug 1961	13 May 1985
Niger		17 Jun 1985 a
Norway		11 Aug 1971 a
Slovakia		3 Apr 2000 a
Swaziland		16 Nov 1999 a
Sweden		19 Feb 1969 a
Tunisia		12 May 2000 a
U.K. of Great Britain and Northern Ireland	30 Aug 1961	29 Mar 1966
Uruguay		21 Sep 2001 a

Source: Data received via email from [UNTreaty.org](http://untreaty.org) pertaining to the status of the conventions since 13 Sep. 2005. Data on Senegal obtained from <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterV/treaty3.asp>.

APPENDIX E: PERSONAL CORRESPONDENCE

This is the letter sent to the UNHCR (hqpa00@unhcr.ch) inquiring whether there were any publications on the stateless. No answer was ever received.

October 2, 2005

Hello, my name is Kristy Belton. I am currently writing my thesis at the University of Central Florida (focusing on citizenship and the lack thereof - statelessness) and have been asked to chair a Young Professionals for International Cooperation event in December on the subject (via the Greater Orlando chapter of UNA-USA). I was looking in the "Teacher's Tools" section of the UNHCR website and noticed that all the materials seem to be geared toward teaching people about refugees. I know that the prevention and reduction of statelessness is part of the UNHCR's mandate and was wondering if there were any teacher's kits/books/games that teach people specifically about statelessness and stateless persons who are not refugees?

Thank you kindly.

Sincerely,

Kristy Belton