Meeting Summary: International Law Programme

The 50th Anniversary of the Convention on the Reduction of Statelessness: What Progress?

International Law Discussion Group

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INTRODUCTION

The event was organised to mark the 50th anniversary of the Convention on the Reduction of Statelessness, and to assess the progress made in addressing the issue of statelessness worldwide.

The participants included representatives of embassies, NGOs, academics and personnel from the Office of the United Nations High Commissioner for Refugees (UNHCR).
SUMMARY OF TALK AND DISCUSSION

Statelessness is an anomaly in international law in view of the fact that every person has the right to a nationality. However, it continues to occur. States which refuse to acknowledge its occurrence often assert that people they do not regard as citizens are in fact citizens of another state.

There are two treaties that deal specifically with the problem of statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 1974, the United Nations gave the UNHCR the mandate to provide limited legal assistance in respect of statelessness and in 1994 extended this mandate to include promoting the avoidance and reduction of statelessness globally. Accordingly, the UNHCR’s mandate can be seen as comprising four components: identification, prevention, reduction and protection.

The initial reluctance on the part of states to become parties to the two conventions has slowly dissipated over the years not least as a result of UNHCR’s efforts to promote accession. There are currently 66 states party to the 1954 Convention and 38 states party to the 1961 Convention; in recognition of the 50th anniversary of the latter convention, there are signs that more states are looking to accede by the end of the year. The UNHCR is currently also engaged in work to remedy the lack of authoritative guidance in respect of the above two conventions.

Who is a stateless person?

Article 1 of the 1954 Convention provides that a stateless person is “a person who is not considered as a national by any state under the operation of its law.” The International Law Commission considers this definition to have crystallised as a norm of customary international law. Although it does not substantiate this conclusion, its determination carries some weight. The definition has been disputed and, in many cases, a far more restrictive interpretation has been applied by states.

In some situations stateless persons may concurrently be protected by the 1951 Refugee Convention. This is so if they have crossed an international border as a consequence of a well-founded fear of persecution as defined

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under that Convention. Many of the large refugee populations around the world are also stateless; examples include the Rohingya refugees in Bangladesh and in Southeast Asia, and those expelled from Mauritania to Mali and Senegal.

Stateless persons and refugees can be distinguished in two important ways. Unlike refugees, the majority of people who are stateless have not migrated and continue to live in the country where they and their parents were born, or in a successor state. In other words, they are stateless because they lack the necessary documentations to show that they are nationals of the state in which they have always resided, or have become stateless as a consequence of failing to satisfy the conditions of nationality following the emergence of a successor state. Second, unlike refugees, who want to make themselves known, stateless persons frequently develop coping strategies to fit into the population, and are therefore difficult to identify. This necessarily means that ascertaining the number of stateless persons globally has proved difficult. This problem is compounded by other factors including, for example, the confusion that often arises in Western Europe between the concept of ‘the country of origin’ and ‘the country of nationality’. As a result, statistics are often unreliable. For UNHCR an intractable tension exists between the desire to protect a stateless person while ensuring that a person who possesses a nationality is not labelled as ‘stateless’. Moreover, if an entire group is labelled as being stateless, there is a risk that the government in question may reject responsibility for these people.

Statelessness can be caused by a number of overlapping factors. State succession, as mentioned above, is one such cause. Major migratory movements that have occurred prior to and at the time of state succession have often resulted in large numbers of people becoming stateless. In Côte d'Ivoire, 25 percent of the population are of a foreign origin, having come from Mali, Guinea and Burkina Faso. However, they are not considered nationals of the Côte d'Ivoire even though they do not show a link to any of the latter states.

The adoption of domestic legislation which arbitrarily deprives certain groups and/or individuals of their nationality is another cause of statelessness. Successor states may, for example, introduce legislation that has the effect of depriving those within the territory the right of nationality.
Meeting Summary: The 50th Anniversary of the Convention on the Reduction of Statelessness: What Progress?

Domestic legislation that discriminates against women has also functioned to contribute to statelessness. Despite the adoption of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the progressive trend to grant both men and women the same rights with respect to nationality, nearly thirty countries worldwide still do not grant women the same rights as men with regard to nationality of their children. In situations where a father is unable to prove his state of nationality, or is unwilling to take the necessary steps to register the birth of his child with the relevant authorities, the child effectively becomes stateless.

Another contributor to statelessness concerns the absence of domestic legislation in respect of the right to nationality at birth. In other words, in many states there are no safeguards to ensure that a child acquires a nationality at birth. In addition to the 1961 Convention, three regional treaties – the African Charter on the Rights and Welfare of the Child, the American Convention on Human Rights and the European Convention on Nationality – require states to have in their nationality laws a provision which obligates them to ensure that a child born in their territory who does not acquire another nationality at birth acquires the nationality of the state in question, either automatically or following an application. The absence of domestic legislation is particularly troubling in respect of foundlings and abandoned children who are commonly found in situations of armed conflict, forced displacement or migration. There are a number of states which do not have provisions in their nationality laws relating to such children and many are left without a nationality and the protections that such status offers.

The voluntary renunciation of nationality has been another contributor to statelessness in recent years. In the late 1980s and early 1990s, thousands of Romanian nationals renounced their nationality and claimed protection as stateless persons or refugees in states such as Germany and Sweden. This also occurred in Mongolia, where many individuals renounced their Mongolian nationality to become nationals of Kazakhstan but did not successfully obtain Kazakh nationality under the state’s repatriation scheme. Upon return, Mongolia refused to accord them nationality, rendering them stateless.

**International legal standards**

Governments claim that states have unfettered discretion in matters pertaining to nationality. However, this claim is difficult to sustain in light of developments in international law, particularly in the field of international human rights law. Firstly, the prohibition on discrimination applies with respect...
Meeting Summary: The 50th Anniversary of the Convention on the Reduction of Statelessness: What Progress?

to nationality. In its codified form, the prohibition is provided in Article 26 of the International Covenant on Civil and Political Rights which is regarded as binding on states in customary international law. Furthermore, numerous treaty prohibitions provide for a right to nationality.

While everyone has a right to nationality, in many cases it is unclear which state has an obligation to provide it. Thus, the 1961 Convention becomes relevant as it outlines specific obligations for states in order to prevent statelessness from occurring at birth or later in life. For example, the Convention prohibits the deprivation of nationality on arbitrary grounds. Furthermore, it prevents the voluntary renunciation of nationality unless the individual has acquired, or has assurances that he or she is about to acquire, another nationality. The Convention also limits state discretion with respect to loss or deprivation of nationality due to residence abroad or disloyalty to his or her state of nationality. It does this through introducing a high threshold that must be met before the state can remove an individual’s nationality. While there are currently no authoritative guidelines on the content of the 1961 Convention, the UNHCR is working on producing guidelines specifically pertaining to the nationality of children.

The 1954 Convention continues to remain relevant as statelessness is still a contemporary problem, and accordingly, stateless people require protection so they can enjoy security and dignity of person as well as a minimum of human rights. The Convention is potentially powerful because it outlines who a stateless person is and accords a status in international law and certain rights to stateless individuals.

Both the 1954 and 1961 Conventions have been criticized on the ground that developments in international human rights law have made them largely irrelevant. However, they both contain specific provisions on statelessness which are not found in any international human rights treaty. For example, there is no concrete provision in any general human rights treaty which prevents statelessness among children. UN treaty bodies like the Human Rights Committee and the Committee on the Rights of the Child outline that states must take or make every effort to ensure that every child born in its jurisdiction acquires a nationality at birth. In contrast, the 1961 Convention explicitly establishes a binding obligation on states. A further example is the fact that states are not prevented in human rights law from disallowing a person from denouncing his nationality unless he or she has acquired another, but this is established as a binding obligation on signatories to the 1961 Convention. While most of the rights in the 1954 Convention have been
superseded by higher standards in human rights law, the Convention contains a number of provisions not currently found in international human rights law. Article 28 of the Convention establishes an obligation on states parties to issue internationally recognised travel documents to stateless individuals, as well as an obligation to provide administrative assistance to them.

With respect to the relationship between the two conventions and human rights law when treaty provisions from the two different bodies of law apply simultaneously in the same situation, the provision which will be applied is the one which provides the greatest degree of protection to the individual in question. Furthermore, states cannot invoke their domestic legislation as a reason for refusing to uphold their human rights obligations. An example of a situation in which international human rights law is applied in preference to specific convention provisions is with respect to discrimination against women. A number of provisions in the 1961 Convention acknowledge that states discriminate against women with respect to their nationality when it comes to the nationality of their children or their nationality at the time of marriage or divorce. Thus, the Convention contains rules to ensure that this does not result in statelessness. However, CEDAW adopts a different approach by strictly forbidding discrimination against women. Thus, provisions of the 1961 Convention which attempt to manage statelessness become irrelevant except where states have entered reservations and are simultaneously parties to the 1961 Convention. Only Libya and Tunisia fall into this category.

With respect to the loss or deprivation of nationality, a naturalised citizen can automatically lose his or her nationality after seven years of residence abroad under the 1961 Convention. However, the European Convention on Nationality does not allow this to occur except when nationality is acquired by fraud. In such cases, the latter convention will be applied in preference to the 1961 Convention.

In conclusion, the two conventions are part of a broader network of international standards, and accordingly need to be read together with human rights law. This produces a workable set of standards which are likely to prevent and reduce statelessness.

State succession is one area in which the rules are not absolutely clear. Only a short provision in the 1961 Convention and one international treaty – the Council of Europe Convention on the avoidance of statelessness in relation to state succession, which has five states Parties – refer to the transfer of territory. If these provisions are not interpreted flexibly, there is a risk that in
cases of state succession, many will not be afforded the Convention's protection. Although in 1999 the International Law Commission adopted non-binding standards in this area in the form of the Draft Articles on the Nationality of Natural Persons in relation to the Succession of States, this matter has been left pending by the General Assembly. Nevertheless, as many of the problems generated by state succession involve an element of discrimination, the application of non-discrimination standards together with the right to nationality offer guidance to states as to their obligations in such situations.

Two major challenges confront UNHCR. Firstly very few states are parties to the 1954 and 1961 Conventions despite the gradual trend upwards in the number of states party to both Conventions. With the growing recognition that statelessness poses a major problem, it is possible that there will be a significant uptake in the number of states party to both Conventions before the end of 2011. The second challenge concerns implementation. In practice, the implementation of the 1961 Convention by states has been better than implementation of the 1954 Convention. Furthermore, at the regional level, states party to regional treaties have frequently not taken the required legislative action to ensure, for example, that every child has the right to nationality.

In spite of these challenges, there are reasons to be optimistic about progress in this area. There is clearly an increasing awareness of and interest in the issue of statelessness generally. The fact that there are international legal standards which apply in this area means that it has become difficult for governments to turn a blind eye to the problem. There is also more media coverage and better qualitative data because of the work done by NGOs, academics and UN agencies in the field. Finally, the sheer number of actors involved in this area has helped to raise awareness among a global audience. Last, but not least, the number of UNHCR offices working on this issue has doubled while the office’s budget has quintupled.
DISCUSSION

Do you think that state succession is going to require a global instrument?

The UNHCR consistently advocates for the application of standards set out in the ILC Draft Articles. Even though they are not binding standards, the ILC has based these draft articles on the practice of many states. Thus, some of the rules arguably reflect general principles of international law.

The Draft Articles address nationality in the context of state succession. The default rule applied is that the population goes with the territory; as this is the most common approach, there are good grounds to believe that this reflects a general principle of international law. In Sudan, the Nationality Bill was passed by Parliament at the beginning of July and will be signed by the President shortly after the independence of South Sudan. The Bill utilises a combined approach, establishing four readily verifiable criteria for citizenship. Provided rules of proof are reasonable and take into account the realities in the state, they would cover the majority of the population. However, in Sudan, both parties want to base nationality on ethnicity, thus creating problems for children from mixed marriages as well as ethnic groups from beyond the borders of the state, where it would be difficult for them to prove they have ties to South Sudan. Individuals who fall into this category include orphaned or abandoned children in the north and border communities. If the traditional approach involving territory outlined above is taken in this situation, many problems would be solved. This problem could be overcome if habitual residence is used as a criteria of nationality, with an option to allow individuals who have ties to the other territory to use this as proof.

In conclusion, the Draft Articles are useful and the UNHCR advocates their adoption in the form of a legally binding treaty. In the meantime, their application by states and consistent reference to them as a benchmark would allow them to possess greater significance.

De facto statelessness

This term has been used in a wide variety of situations causing it to lose all real meaning. However, a recent paper reviewing the way in which the term ‘de facto statelessness’ has been used, concludes that it is generally understood to refer to those persons who are situated outside their state of nationality and who do not benefit from its protection. These individuals are
generally viewed as being refugees, even though they do not have a well-founded fear of persecution. While there is consensus that a protection gap exists in relation to individuals who are *de facto* stateless, differing approaches in the use of the label are discernible.

Many individuals referred to in the literature as being *de facto* stateless are in fact simply stateless. For example, statements by state officials and their non-inclusion on a list annexed to their nationality laws provide weighty evidence that the Rohingya are not considered nationals of Myanmar. In practice, Myanmar does not issue them identity cards but nor are the Rohingya considered the nationals of any other state. The Baharis, the Urdu speakers of Bangladesh, also shared a comparable fate and were denied nationality since the time of Bangladesh’s independence in 1971. Following a High Court decision in 2008, the entire Bahari population were recognised as being entitled to citizenship, prompting a subsequent change in state policy whereby all Baharis were issued with identity cards and allowed to vote in the elections in the same year.

A further example is one where individuals renounce one nationality with the view of obtaining another, but do not acquire the second nationality. Such persons cannot be considered *de facto* stateless. The term has also been applied to people who have no proof of nationality and have made no attempt to acquire such proof, but who would probably be recognised as nationals were they to seek such status.

**Test cases: an avenue for the future?**

In 2010, the European Court of Human Rights decided a case concerning the Roma population in Slovenia. Many people were taken off the residence registry in 1992 without any due process and were unable to acquire Slovenian nationality, leaving a small minority not possessing the nationality of any successor states. The people most affected were the Roma because of overwhelming discrimination and because they did not possess birth registration or identity documents. The Grand Chamber heard the case the day before this meeting.

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3 *Kuric and others v. Slovenia*, Application no 26828/06, Council of Europe: European Court of Human Rights
Legal aid programmes have been established by the UNHCR in states like Nepal, Iraq, and the Russian Federation. Grassroots work has resulted in litigation in Nepal, where an individual who was denied proof of citizenship has obtained a judgment from the Supreme Court ordering the issuance of such a certificate.

The Open Society, together with others, has litigated a case concerning the Nubians in Kenya. Originally appearing before the African Commission, they brought their case to the African Committee of Experts on the Rights and Welfare of the Child in 2009. In April, they received a summary decision in which the Committee found that Kenya had breached some of its obligations under the Convention.

A case was brought in the Inter-American Court of Human Rights in 2005 against the Dominican Republic. This concerned two girls who were denied birth registration and nationality, and thus education, based on their ethnicity. This is the most high-profile case from an international tribunal which deals with statelessness.

**Can the Convention play a role in the context of disappearing small island states?**

Kiribati is a state Party to the 1961 Convention. It is difficult to argue that a state can exist without territory, although there is also a presumption of continuity of statehood. Furthermore, many low-lying island states would first become uninhabitable – for example, because of periodic flooding – thus preventing its population from living there. Thus, there is a need to consider multilateral solutions for these populations, which would take into the account the need to preserve the culture and identity of the people. Furthermore, it is will become necessary to consider the issue of relocating these populations and their eventual nationality.

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5 *Case of the Yean and Bosico Children v. The Dominican Republic, Inter-American Court of Human Rights*