

The legal status of natural persons in areas where there has been a succession of states

1. Sketching the problem

It is the right of every individual to be the naturalized citizen of his or her respective country. States reserve this right to its citizens on the merit of birth within its borders. Most states also allow persons to be naturalized and become its legal citizens after a due process. The problem arises when a state ceases to exist or when new states are formed. This topic will deal with the legality behind this issue and what should be the legal actions when persons are denied nationality by the predecessor or successor states.

According to Article 1 of the General Assembly Resolution 55/153, "Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles". However, this is not often followed by the states, as can be seen with the various refugee populations around the world. An example of this scenario can be seen in the Israel-Palestine conflict. When Israel was founded in 1947, the resident Palestinians of the area wanted to remain citizens of the predecessor state, Palestine. After the Arab-Israeli war of 1948, the inhabitants of the area lost their homes and their means of livelihood. They became refugees in the neighbouring countries Jordan, Lebanon and Syria, and as of 2005, this population account for 4.3 million persons. The purpose of this committee is to determine what legal actions can be taken when such complicated global scenarios occur. The committee should decide which state should be responsible for the dislodged persons and if it is within the legal committee's jurisdiction to enforce a state to support its natural persons.

It is important to ensure that persons do not become stateless and to establish their nationality in at least one of the preceding or succeeding states. Major areas to be looked at in relation to this are central Africa, the Middle East and Western Asia, where it is estimated that over 100,000 people face the fact of potential statelessness. There are also several areas where the number is 75,000 or 50,000, which is unacceptable.

In the recent resolution adopted regarding this subject, the General assembly invites governments to deal with the issue of the Nationality of Natural Persons in Relation to the Succession of States. The resolution also encourages states to consider the elaboration of legal instruments regarding the matter and invites governments to comment on the elaboration of legal instruments and striving to avoid statelessness as a result of the succession of states. Furthermore, the General Assembly has decided to include the agenda in its next session, to further examine the subject. This committee should aim at finding preventive measures to avoid statelessness and decide on consequences for states that refuse nationality to natural persons.

The causes of statelessness

States are responsible for regulating nationality matters and deciding who is a national and who is not. They base their decisions on a person's connection with the country through birth, ancestry or residence. All stateless people have such links with at least one country, but do not possess a nationality due to legal reasons or discrimination.

At independence, new states have to define their body of citizens. In the past, nationality criteria were often based on ethnicity, which led to large populations being excluded. Subsequent legislation often based nationality on descent, thus forcing parents to pass on statelessness like a genetic disease. In some countries, similar policies of exclusion were introduced well after independence. In practice, equality in legislation is not a guarantee for full nationality rights, when authorities refuse to issue nationality documentation to citizens based on ethnicity, language or religion.

In many states, women do not have the same nationality rights as men. When women cannot pass on their nationality, their children are at a heightened risk of statelessness if they cannot legally acquire the father's nationality, or if he is unable or unwilling to provide nationality for these offspring. Furthermore, in some countries a woman cannot pass on her nationality to her foreign husband.

Another problem is that nationality laws drafted when states are created, or when territory is transferred (state succession), are often limited in scope and have deadlines. As a result, many people are not registered and thus become stateless.

Incompatibilities in the application of two or more nationality laws can also lead to statelessness. Making the renunciation of a previous nationality a precondition for acquiring a new one also creates risks of statelessness. Meanwhile, legislation in some countries allows loss or deprivation of nationality even where this would render a person stateless.

For many people, inability to establish nationality has the same consequences as not having a nationality at all. Birth certificates are a key element for proof of nationality as they establish both descent and place of birth - as millions of births every year go unregistered, the risk of statelessness increases.

Problems faced by stateless people

It is difficult to imagine what life is like for people living in a kind of legal no-man's land. The hundreds of millions of us who have a nationality rarely think about the many instances in our daily lives where nationality plays a role.

Most obviously, without citizenship a person cannot vote in the country in which he or she is living. International travel becomes almost impossible if you cannot obtain a passport or travel document. Because of this, some stateless people are illegal immigrants wherever they go: they face prolonged or indefinite detention or being shuttled back and forth between states.

Many basic services are linked to nationality. Schooling, health care, social security and retirement schemes often require being a national of that country. And in many places, stateless people are not allowed to work. Problems can arise, too, when those without a nationality try to register a marriage or a birth. Abuse by the authorities is a constant risk. Many stateless people simply feel like outsiders who have been rejected by the state.

Discrimination is not only a root cause, but also a result of statelessness. Where large populations are marginalized, the consequence is despair and frustration. Tensions can lead to unrest, conflict, forced displacement and regional instability. To prevent the serious consequences of statelessness for individuals and societies, the international community has agreed that all human beings should hold the right to a nationality.

2. Definition of key terms

Legal Status

In law, legal status refers to the concept of individuals having a particular place in society they can appeal for at court.

Natural Person

A natural person is legally defined as a living human being. This definition is meant to set a natural person apart from a legal person, which is a group of people acting in a unified, often commercial enterprise but are considered by law to be acting as a single fictional or virtual individual. Legal persons are also known by the terms artificial and juristic persons. Companies, trusts, partnerships and similar entities are considered legal persons. The distinction between natural and legal persons is found in most systems of law.

The natural person and the legal person are entitled to many similar rights as well as duties. Both may sue, be sued and sign contracts. Certain rights apply only to natural persons, such as the United States' Fifth Amendment protection against self-incrimination. In many countries, citizens are guaranteed a set of basic rights, including life, liberty, equality before the law and the right to vote in elections. Obviously, only natural persons can marry, vote and hold public office. Most countries recognize an individual's full rights as a natural person when he or she reaches the age of 18.

In the U.S. and other countries, both natural and legal persons have the right to free speech. While free speech is a cherished right for natural persons, it is also important for legal persons. This allows legal entities such as newspapers to print stories and opinions that might not always be to the government's liking. Free expression has its limits for natural and legal persons; both can be sued for defamation and libel.

Under most national legal systems, both natural persons and legal persons are entitled to due process. A government cannot seize an individual's or company's property without due process, a right guaranteed in the U.S. by the 14th Amendment. This right was first established for legal entities in the 1886 Supreme Court case *Santa Clara County v. Southern Pacific Railroad*. Indeed, it was the powerful railroad tycoons of the 19th century who helped push for companies to be allowed some of the same rights as private citizens.

The rights of legal persons are limited in other ways. In many countries, legal persons are not extended the same range of human rights as natural persons. One reason for this is that corporations obviously have more resources and are often better equipped to defend their rights than private citizens. Indeed, critics say corporations have long used their status as legal persons to protect themselves from government regulation and accountability. The debate about which rights corporations and other legal persons can hold continues throughout the world.

Succession of States

Succession occurs when one state ceases existing or loses control over part of its territory, and another state comes into existence or assumes control over the territory lost by the first state.

Statelessness

To be stateless is to be without nationality or citizenship. The legal bond between a state and an individual has ceased to exist. Stateless people face numerous difficulties in their daily lives: they can lack access to health care, education, property rights and the ability to move freely. They are also vulnerable to arbitrary treatment and crimes like trafficking. Their marginalization can create tensions in society and lead to instability at an international level, including, in extreme cases, conflict and displacement.

There are two kinds of statelessness: *de jure* and *de facto*. *De jure* stateless people are not considered as nationals under the laws of any country. However, there are also cases where a person formally possesses a nationality, but the nationality is ineffective. This situation is called *de facto* statelessness. A good example of this is when a person is in practice denied rights which are enjoyed by all nationals, such as the right to return to the country and reside there. The line between *de jure* and *de facto* statelessness

may be hard to establish. Millions around the world are trapped in this legal limbo.

3. Background/general information

State succession is linked with questions of nationality and human rights, as the former may affect the legal status of people who have been nationals of a predecessor state but who want, or are entitled, to be nationals of a successor state.

The laws of both states regarding nationality are decisive to cope with confusion (this principle has been adopted e.g. in the 1977 European Convention on Nationality). In principle nationality will change with a change of sovereignty. If both states accept dual nationality, the issue may be less problematic.

However, when problems of laws and policies arise (see the Ethiopia-Eritrea as an example), international law's position has been that the parties (the two states) involved in the cession of territory should ensure that no person becomes stateless as a result of a change in sovereignty' (1961 Convention, Shaw).

Another problem is that whether the nationality of the people concerned should be decided by the states concerned (in particular the successor country) or by the people themselves (using their right to choose their nationality). There is a legal (or may be political) question in respect of the latter option, whether it can be seen in the context of the right to self-determination of peoples (e.g. ICCPR, Art 1).

The factors on which basis a person's nationality can be determined have been sources of controversy (genuine link, residence, origin, etc). The ILC draft Articles of 1999 may offer some solutions.

If you want to have a look at how these problems have been already solved, have a look at the following cases: Yugoslavia's dismemberment, Ethiopia-Eritrea, UK-China relating Hong Kong.

After World War One, the League of Nations created the **Office International Nansen pour les Réfugié**. This commission took responsibility for refugees in war areas from 1930 – 1939. This organization internationally created the Nansen passport for refugees. 52 governments around the world recognized the Nansen Passport. This passport was primarily created to aide those held in the camps of the Weimer Republic in Germany. In addition, it was given to certain natural persons who were displaced after the changing of German, French and Eastern European borders in 1945.

Statelessness after 1961

After the United Nation was created, it took over the task of nationalizing. To handle statelessness and other refugee situations and operations, the UNHCR, United Nations High Commissioner of Refugees was installed. This organ conducts special operations such as changing legislations in different countries to address the issue of statelessness and holding awareness missions

in different areas concerning refugees. We will return to the UNHCR in more detail later in the report.

De facto statelessness

De facto statelessness occurs due to the lack of laws. For example, natural persons holding a British passport, yet not having the "Rights to Abode" (living) in the United Kingdom are still considered stateless. This has occurred in many cases when passport holders of the British colonies lost nationalization. After some of the colonies gained their independence, the British left a few still carrying a British passport, yet they did not have the Rights to Abode, thus leaving them stateless.

Similar situations have occurred in Hong Kong. After the turnover of the People's Republic of China, people who were not of Chinese descent were not immediately given Chinese citizenship.

Being *de facto* stateless, though, is not common in the 21st century, as countries have made amendments to their law including these *de facto* stateless natural persons. The *Immigration and Asylum Act 2002* has solved Britain's issue of *de facto* statelessness.

Statelessness at Guantanamo Bay

Guantanamo Bay is an American detention facility in Cuba. Guantanamo houses some of Americas most high profile prisoners of different nationalities. After being released some are handed over to their respective countries, while other countries refuse to take back citizens once they have been at Guantanamo. Most likely, these natural persons are kept at Guantanamo because they have become stateless. Some prisoners refuse to go back to their country in fear of persecution or torture. But this means that in effect, they become stateless as well.

There are examples when countries involved have not followed the article stated earlier. During the Palestinian-Israeli conflict of 1947, Israel claimed various parts of land from Palestine, yet the native Palestinians were not ready to take Israeli citizenship. If they did not take the citizenship, they would lose their business and their home and travel back to Palestinian lands with an uncertain future. As this Palestinian-Israeli conflict continued till 2005, a number calculated at 4.3 million people have been displaced and have fled to neighbouring Arab states such as Jordan, Lebanon and Syria.

The issue of statelessness has become a pressing matter in areas of conflict and succession of states. Importance should be placed on establishing measures, which are both preventive and punitive for states that do not take responsibility for countries denying citizenship to such natural persons.

To display the immensity of the issues we must look at major areas from Africa, West Asia and the Middle East where there are approximately 100,000 who face absolute or potential statelessness. In other areas of the world there are close to 50,000 to 75,000 who face similar statelessness.

A difficulty arises at the dissolution of a larger territory into a number of independent states. Of course, each of those states will be subject to the international obligations that bound their predecessor. What may become a matter of contention, however, is a situation where one successor state seeks either to continue to be recognised under the same federal name or that of its predecessor or to assume the privileged position in international organisations held by the preceding federation.

International convention since the end of the Cold War has come to distinguish two distinct circumstances where such privileges are sought by such a successor state, only in the first of which may such successor states assume the name or privileged international position of their predecessor. The first set of circumstances arose at the dissolution of the Union of Soviet Socialist Republics (USSR) in 1991. One of this federation's constituent republics, the Russian Federation was declared the USSR's successor state on the grounds that it contained almost 60 % of the population of the USSR and a larger majority of its territory. In consequence, it acquired the USSR's seat as a permanent member of the United Nations Security Council. (See Russia and the United Nations.)

This resolution was in sharp contrast to the manner in which the United Nations dealt with the claim of the federation of Serbia and Montenegro to be recognised as the continuation of the state of Yugoslavia (albeit as the Federal Republic of Yugoslavia as opposed to the Socialist Federal Republic of Yugoslavia). In common these two republics shared less than half of the population and territory of the former federation, therefore the UN refused to allow the new federation to sit in the General Assembly of the United Nations under the name of 'Yugoslavia'. Over a decade followed where the state was uneasily referred to as the Former Federal Republic of Yugoslavia.

Following the end of the First World War the advent of statelessness has become a growing problem in all areas across the globe. Before this most of the stateless people had been either gypsies or wanderers. Since then there have been several conflicts including civil wars leaving people without any form of recognized nationality.

Since its inception the United Nations has concerned itself with the diverse issues of statelessness. The first action the UN made on this issue was the passage of both the UN Charter and the Universal Declaration of Human Rights (UDHR). Of importance article 15 in the UDHR states that "Everyone has the right to a nationality" and also "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". However, this was not clear/simple enough and further measures were undertaken in the years following the charter. The next measure was the introduction of the Convention Relation to the Status of Stateless Persons in 1954. In this action the UN provided a definition of a stateless person as a "person who is not considered as a national by any State under the operation of its law". By providing a definition the body was now able to investigate and determine the number of stateless people around the globe. The Convention also

provided rules that states should follow to help reduce the number of stateless people around the world. To further assist those who were stateless the United Nations also passed the convention on the reduction of statelessness in 1961. Major inclusions in this convention were the setting of a timetable giving the contracting state one year to help the person obtain a nationality.

One of the most covered and well-known cases of statelessness is the case of the Palestinians. This conflict began with the creation of the Israeli state after the Second World War. After the creation of the state an Israeli-Palestine war broke out and since 1948 Palestine has remained succeeded from the original state. For years an area inside of the Israeli state has been disputed. The Palestinians have claimed this area known as the Gaza Strip as a state and they have continually tried to gain international recognition as a state. But until this is granted the members of this area are considered stateless refugees under de facto statelessness. After innumerable at peace attempts Israel has not granted Palestine its land and has also not offered an Israeli citizenship to the Palestinians who live in Israel. This is a clear violation of the UDHR.

There have been many different interpretations of these issues and many different ideas suggested helping bring an end to it. The European Council adopted the Convention on the Avoidance of Statelessness in Relation to State Succession. In the document the Council places different responsibilities on each of the states involved in the succession. In the convention the Council says "a successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the predecessor state, and who have or would become stateless as a result of the State succession". In addition the convention also places rules on the predecessor state to ensure that a person has the ability to obtain some form of nationality as guaranteed by the UDHR.

Although there have been numerous attempts to ensure that everyone has an opportunity to obtain a nationality, there has never been drafted any effective convention or legal document. All of the conventions state that in theory everyone has the right to a nationality, however, the consideration of legal consequences for refusing to give someone the right to statehood has not been discussed or addressed.

In the convention on the reduction of statelessness "any dispute between Contracting States concerning the interpretation or application of this Convention, which cannot be settled by other means, shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute". This gives assistance to the state, however, it does not provide much judicial and legal help to a person who is refused nationality by a country. Improvement of this legal shortcoming is the next step in helping those who have to deal with the delinquent governments when attempting to apply for a nationality. Each of the cases of statelessness needs to be examined in order to assess whether or not the state plays a role in the deprivation of nationality.

Every person is guaranteed the legal right to a nationality and when this disputed it is important to establish legal measures to assist the fluidity of the

process. When a state succeeds another state many issues including the right of the state succeeded and the acceptance of the succession directly affects those living in the disputed territory. When persons lose their nationality they lose their voice in the international community, too.

As a committee we must guarantee legal rights to every person whose nationality is in question, and likewise guarantee the power of the nations involved.

4. Timeline of key events

- 1964: The UN begin exercising its mandate on member states to help solve the problem of statelessness.
- 1947: The UN General Assembly name the UNHCR responsible for the functions decided on at the Reduction Convention.
- 1975: Only 35 countries having ratifications the UN General Assembly demand more results.
- 1995: The UNHCR starts increasing its activities, gathering more information through fact finding missions and reporting this information to the General Assembly and member states
- 1998: The UNHCR are quite successful in nationalizing the few people of Armenian, Crimean Tatar, German, and Greek descent who have not been nationalized since WWI.
- 1999: There is more success to the UNHCR which included Tajik refugees to Kyrgyzstan, 300,000 East Tamils to Sri Lanka
- 2000: UNHCR help the stateless in the shifting of borders in the Czech – Slovakia conflict
- 2006: UNHCR officially states the existence of 2.4 million legally stateless persons and about 11 million in total worldwide.
- 2007: UNHCR claims that the major regions of worry concerning statelessness are the Dominican Republic, Côte d'Ivoire, the Democratic Republic of the Congo, Syria, Iraq, Latvia, Estonia, Nepal, Bangladesh, Myanmar, Thailand and Cambodia.

5. Relevant Treaties, UN resolutions and actions taken

Convention on the Reduction of Statelessness, 28 August 1961
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development,
Assistance to unaccompanied refugee minors, investigation into allegations of refugee smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees,
Fiftieth anniversary of the Office of the United Nations High Commissioner for Refugees and World Refugee Day,
UNHCR Brief on Statelessness and Detention Issues

In an attempt to codify the rules of succession of states the Vienna Convention on Succession of States in respect of Treaties was drafted in 1978. It entered into force on November 6, 1996.

The **Vienna Convention on Succession of States in respect of Treaties** is an international treaty promulgated in 1978 to set rules on succession of states. It was adopted partly in response to the "profound transformation of the international community brought about by the decolonization process".

Among its provisions it establishes that newly independent post-colonial states are subject to the "clean slate" rule, such that the new state does not inherit the treaty obligations of the colonial power (article 16).

This treaty has proven to be controversial largely because it distinguishes between "newly independent states" (a euphemism for former colonies) and "cases of separation of parts of a state" (a euphemism for all other new states).

Article 16 states that newly independent states receive a "clean slate", whereas article 34(1) states that all other new states remain bound by the treaty obligations of the state from which they separated. Moreover, article 17 states that newly independent states may join multilateral treaties to which their former colonizers were a party without the consent of the other parties in most circumstances, whereas article 9 states that all other new states may only join multilateral treaties to which their predecessor states were a part with the consent of the other parties.

It is the right of every individual to be the naturalized citizen of his or her respective country. States reserve this right to its citizens on the merit of birth within its borders. Most states also allow persons to be naturalized and become its legal citizens after a due process. The problem arises when a state ceases to exist or when new states are formed. This topic will deal with the legality behind this issue and what should be the legal actions when persons are denied nationality by the predecessor or successor states.

It is important to ensure that persons do not become stateless and to establish their nationality in at least one of the preceding or succeeding states. Major areas that are which need to be looked at closely in relation to this are central Africa the Middle East and Western Asia, where it is estimated that over on estimate more than 100,000 people face the fact of potential statelessness. There are also several other areas where that the number is 50,000 or 75,000, which is unacceptable.

In the recent resolution adopted regarding this subject, the General Assembly invites governments to deal with the issue of Nationality of Natural Persons in Relation to the Succession of States. The resolution also encourages states to consider enhancing the legal instruments and strive at preventing statelessness as a result of the succession of states. Furthermore, the General assembly has decided to include the agenda in its next session to further examine the subject. This committee should look to find preventive measures

to avoid statelessness and explore the consequences for states that refuse nationality to natural persons.

Positions of major countries involved

The United Nations High Commissioner of Refugees has taken over all issues in relation to refugees and statelessness since World War II. The UNHCR is an important force that takes up the responsibility of naturalization. With much effort, they encourage nations to change legislations and encourage member states to address the issue of statelessness in and around their region. The political instability of World War II means that there was an unprecedented number of people left stateless due to the shifting of borders in Europe and around the world.

In the Universal Declaration of Human Rights there are two clauses that aid those who are stateless and help catalyze the process of naturalization of the stateless:

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

Since then, the UNHCR has worked on UN treaties, laws and has got the signatures of 145 states to help solve the problem of statelessness.

Therefore, in respect of continuity, there are implied several, quite different possible connotations of successor states:

- The international law term implies legal links on rights and the recognition of legitimacy of claims, but also on continuing treaty obligations, and the status of citizens who otherwise may become stateless.
- Cultural continuity.

There are several recent examples where succession of states, as described above, has not been entirely adhered to.

- When the Democratic Kampuchea regime of Pol Pot was militarily displaced by the Vietnamese-backed People's Republic of Cambodia, the United Nations seat continued to be held by Democratic Kampuchea for many years.
- The Taliban state (the Islamic Emirate of Afghanistan) in Afghanistan became the *de facto* government of nearly all the country in the mid-1990s, but the Afghan Northern Alliance was still recognised by many nations and retained the UN seat.
- After four of the six constituent republics of the Socialist Federal Republic of Yugoslavia seceded in 1991 and 1992, the rump state, renamed the Federal Republic of Yugoslavia, claimed to be the legal successor, but was not recognised as such by the United States. Initially, the United Nations disagreed, and representatives from Belgrade

continued to hold the original Yugoslavian seat, but in 1992, under American influence, the Security Council on September 19 (Resolution 777) and the General Assembly on September 22, retired their recognition on the theory that the Socialist Federal Republic of Yugoslavia had dissolved. The Federal Republic of Yugoslavia (later renamed Serbia and Montenegro) was admitted to membership in the United Nations in 2000; recently, Montenegro declared independence and Serbia inherited the seat.

- The People's Republic of China (PRC) was proclaimed in 1949 claiming to be the successor state of the Republic of China (ROC). The ROC maintained a seat for China on the Security Council until the PRC was admitted to the United Nations and Security Council in 1971 in place of the ROC. To date, the PRC exercises sovereignty over mainland China, while the ROC exercises sovereignty over Taiwan and some minor islands, with each officially claiming to be the sole legitimate government for both mainland China and Taiwan. This is complicated by the traditional Confucian-inspired Chinese historiography, in contrast to modern diplomacy, that if a surviving regime still holds, no matter how tiny the area is, it is still the legitimate regime of China over the opposing regime[s] independent of foreign states' non-recognition

6. Useful sources and links

<<http://www2.ohchr.org/english/law/statelesnes.htm>>

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