THE LEGALITES LEXSCRIPTA

ISSN 3108-2416 (ONLINE)
Editor-in-Chief: - Prof. (Dr.) Aryendu Dwivedi
Volume II Issue II (April-June) Page No.: - 274 to 289

International Legal Framework on Statelessness

Statelessness, Citizenship, and India's Compliance with International Legal Frameworks

Nikunj Rajput, Amity Law School, Noida

Abstract

Statelessness—the condition of a person who is not considered a national by any state under the operation of its law—constitutes one of the most acute and persistent vulnerabilities in contemporary international law.[1] This chapter provides a comprehensive doctrinal analysis of the international legal framework governing statelessness, examining the principal treaty instruments, institutional mechanisms, regional frameworks, and emerging customary norms that together constitute the global legal architecture for addressing this phenomenon.[2] The analysis proceeds from the foundational 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to the expanded mandate of the United Nations High Commissioner for Refugees (UNHCR),[3] regional instruments in Europe, Africa, and the Americas, the contribution of customary international law, and the relevance of international human rights treaties. The chapter identifies critical gaps in the framework—including the limited number of state parties, the absence of a binding obligation to establish statelessness determination procedures, and the persistent de jure/de facto statelessness divide—and establishes the normative baseline against which India's domestic legal framework is assessed in subsequent chapters.[4]

Keywords: statelessness; 1954 Convention; 1961 Convention; UNHCR; nationality; de jure statelessness; de facto statelessness; statelessness determination procedures; non-refoulement; customary international law; right to nationality; India; NRC; CAA

Introduction

[1] Convention Relating to the Status of Stateless Persons, adopted 28 September 1954, entered into force 6 June 1960, 360 UNTS 117 (hereinafter '1954 Convention').

[2] Convention on the Reduction of Statelessness, adopted 30 August 1961, entered into force 13 December 1975, 989 UNTS 175 (hereinafter '1961 Convention').

[3] Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Res 428(V), UN Doc A/RES/428(V) (14 December 1950); UNGA Res 3274 (XXIX) (10 December 1974); UNGA Res 49/169 (23 December 1994).

[4] See Carol A Batchelor, 'Stateless Persons: Some Gaps in International Protection' (1995) 7(2) International Journal of Refugee Law 232; David Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons' (2006) 28(1) Human Rights Quarterly 245.

The international legal framework governing statelessness has evolved over several decades in response to the recognition that the absence of nationality renders individuals acutely vulnerable to human rights violations and places them beyond the ordinary protections afforded by international law.[5] This chapter provides a comprehensive analysis of the principal international instruments, institutional mechanisms, and emerging norms that together constitute the global legal architecture for addressing statelessness.

The analysis examines the foundational 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in detail, before turning to regional instruments, the role of the United Nations High Commissioner for Refugees (UNHCR), the contribution of customary international law, and the relevance of international human rights law to the phenomenon of statelessness.[6]

The 1954 Convention Relating to the Status of Stateless Persons

Historical Background and Drafting History

The 1954 Convention Relating to the Status of Stateless Persons emerged from a recognition that stateless persons fell outside the protective scope of the 1951 Convention Relating to the Status of Refugees. While the refugee convention provided protection for those fleeing persecution, stateless persons who did not meet the definition of a refugee—or who had never crossed an international border—remained in a legal vacuum.[7] The United Nations Economic and Social Council convened a conference of plenipotentiaries in New York in September 1954 to address this gap, resulting in the adoption of the Convention on 28 September 1954.

The drafting of the 1954 Convention drew upon earlier international efforts to address statelessness, including the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which was among the first international instruments to address nationality conflicts,[8] and the work of the International Law Commission in codifying rules of nationality law.[9] The 1954

[5]UNHCR, 'Global Trends: Forced Displacement in 2023' (UNHCR 2024) 2, noting approximately 4.4 million stateless persons in UNHCR's reportable data, widely acknowledged as a significant undercount.
[6]Convention Relating to the Status of Refugees, adopted 28 July 1951, entered into force 22 April 1954, 189 UNTS 137, Art 1A(2).
[7]Paul Weis, Nationality and Statelessness in International Law (2nd edn, Sijthoff & Noordhoff 1979) 162–163; Nehemiah Robinson, Convention Relating to the Status of Stateless Persons: Its History and Interpretation (Institute of Jewish Affairs 1955) 3–8.
[8]Convention on Certain Questions Relating to the Conflict of Nationality Laws (Hague Convention), adopted 12 April 1930, entered into force 1 July 1937, 179 LNTS 89. Art 1 of the Hague Convention recognised the exclusive domestic jurisdiction of states to determine their own nationals, while the Preamble acknowledged that statelessness was an evil to be avoided. See Weis (n 7) 5–9.
[9]International Law Commission, Report on Nationality Including Statelessness, UN Doc A/CN.4/50 (21 February 1952) (Manley O Hudson, Special Rapporteur); ILC, Report on Nationality Including Statelessness, UN Doc A/CN.4/64 (5 March 1953) (Roberto Córdova, Special Rapporteur).

Convention entered into force on 6 June 1960 and currently has 96 states parties, reflecting a growing international consensus on the need for legal protection of stateless persons.[10]

Definition of Statelessness

The cornerstone of the 1954 Convention is its definition of a stateless person, set out in Article 1(1): 'a person who is not considered as a national by any State under the operation of its law.' This definition has been described as one of the most precise and legally rigorous definitions in international law, yet it has also generated significant interpretive debate.[11]

Several elements of the definition merit careful analysis. First, the definition is formal and legalistic in nature—it focuses on the legal relationship between an individual and a state, specifically the absence of nationality under the operation of a state's law. It does not encompass individuals who are de facto stateless, meaning those who nominally possess a nationality but cannot effectively exercise the rights associated with it.[12] This distinction between de jure and de facto statelessness has important practical consequences, as many individuals who are functionally stateless fall outside the Convention's formal definition.[13]

Second, the phrase 'under the operation of its law' requires consideration of the actual application of nationality law, not merely its formal provisions. UNHCR's guidelines on statelessness make clear that the phrase encompasses situations where a state's law exists on paper but is not applied in practice to recognize an individual as a national. Thus, if a state nominally provides for nationality acquisition by birth but systematically fails to register the births of members of a particular ethnic group, those unregistered individuals may qualify as stateless under the Convention's definition.[14][15]

Third, the definition is universal in its application—it applies to all persons without nationality, regardless of the cause of their statelessness or whether they have ever crossed an international border. This distinguishes stateless persons from refugees, whose protection under the 1951 Convention is conditioned on well-founded fear of persecution and crossing of an international frontier.[16]

[10] UNHCR, 'States Parties to the 1954 Convention Relating to the Status of Stateless Persons' (as at 1 January 2024), available at <https://www.unhcr.org/protect/statelessness/>.

[11] 1954 Convention (n 1) Art 1(1). The definition replicates the formulation first proposed by Manley O Hudson in his 1952 ILC report; see ILC, Report on Nationality Including Statelessness (n 9) paras 3–5.

[12] UNHCR, Guidelines on Statelessness No 1: The Definition of a Stateless Person in Article 1(1) of the 1954 Convention (UNHCR 2012) HCR/GS/12/01, paras 7-20 (hereinafter UNHCR Guidelines No 1).

[13] Mark Manly, 'The Spirit of Geneva: Traditional and New Actors in the Field of Statelessness' (2007) 26 Refugee Survey Quarterly 255, 257. Cf Amal de Chickera and Joanna Whiteman, 'Discriminatory Statelessness and Refugee Status: The Need for Coherence' (2014) 26(1) International Journal of Refugee Law 1.

[14] UNHCR Guidelines No 1 (n 12) para 15; see also Laura van Waas, Nationality Matters: Statelessness under International Law (Intersentia 2008) 19–22 (discussing the practical significance of the de jure / de facto distinction).

[15] UNHCR Guidelines No 1 (n 12) paras 21–37, providing operational guidance on the phrase 'under the operation of its law', including state practice of non-recognition of ethnic minorities.

[16] ibid para 38, distinguishing stateless persons from refugees on the basis that the latter must have crossed an international frontier and established a well-founded fear of persecution: 1951 Refugee Convention (n 6) Art 1A(2).

Exclusion Clauses

Article 1(2) of the 1954 Convention contains exclusion clauses that deny the Convention's benefits to certain categories of persons. These exclusions apply to persons who receive protection or assistance from UN organs or agencies other than UNHCR, persons recognized by the competent authorities of the country in which they have taken up residence as having the rights and obligations attached to the possession of nationality, and persons for whom there are serious reasons for considering that they have committed crimes against peace, war crimes, crimes against humanity, or serious non-political crimes outside the country of residence prior to their admission.[17]

The exclusion clauses reflect the drafters' intention to limit the Convention's protective scope to those genuinely in need of international protection, excluding those who already enjoy adequate protection from other sources and those who have forfeited the right to protection through serious criminal conduct.

Rights and Standards of Treatment

The 1954 Convention establishes a comprehensive framework of rights and standards of treatment for stateless persons, structured around a tripartite model of treatment standards: treatment as favorable as that accorded to nationals, treatment as favorable as that accorded to aliens generally, and treatment at least as favorable as that accorded to aliens generally in the same circumstances.[18]

The rights accorded to stateless persons on the same basis as nationals include the right to practice religion and provide religious education to children (Article 4), access to courts (Article 16(1)), rationing systems (Article 20), elementary education (Article 22(1)), and public relief and assistance (Article 23). Rights accorded on the same basis as aliens generally include the right to acquire movable and immovable property (Article 13), the right to form associations (Article 15), and access to higher education (Article 22(2)). Rights accorded on the most-favorable-alien basis include the right to engage in wage-earning employment (Article 17) and self-employment (Article 18).

Article 27 of the Convention obliges states parties to issue identity documents to stateless persons in their territory who do not possess a valid travel document, while Article 28 provides for the issuance of travel documents to stateless persons lawfully residing in their territory, enabling them to travel internationally. These provisions are of particular practical importance, as the absence of identity and travel documents is one of the most significant practical manifestations of statelessness.[19]

[17] 1954 Convention (n 1) Art 1(2)(i)–(iii). For commentary see Robinson (n 7) 45–55; Nehemiah Robinson, 'The Convention Relating to the Status of Stateless Persons' (1955) 5 Israel Yearbook of Human Rights 1.

[18] 1954 Convention (n 1) Arts 4, 16(1), 20, 22(1), 23 (same basis as nationals); Arts 13, 15, 22(2) (same basis as aliens generally); Arts 17, 18 (most-favourable-alien basis). For a detailed analysis see van Waas (n 14) 67–110.

[19] 1954 Convention (n 1) Art 27 (identity documents); Art 28 and Schedule (travel documents). The travel document issued under Art 28 is commonly known as the 'Nansen passport for stateless persons'. See Guy Goodwin-Gill and Jane McAdam, The Refugee in International Law (3rd edn, OUP 2007) 477–478.

Article 31 prohibits the expulsion of stateless persons lawfully present in the territory of a state party except on grounds of national security or public order, and requires that the stateless person be given a reasonable period in which to seek legal admission to another country. Article 32 obliges states to facilitate the assimilation and naturalization of stateless persons as far as possible, including expediting naturalization proceedings and reducing the costs thereof.[20]

Non-Penalization and Freedom of Movement

Article 26 of the Convention guarantees stateless persons lawfully within a state's territory the right to choose their place of residence and to move freely, subject to regulations applicable to aliens generally. Article 31(1) provides that stateless persons shall not be expelled save on grounds of national security or public order. These provisions reflect the Convention's recognition that freedom of movement and security of residence are essential to the enjoyment of other rights.[21]

Article 34, concerning naturalization, is among the most significant provisions of the Convention from a long-term protection perspective. By obliging states to facilitate the naturalization of stateless persons, the Convention recognizes that the ultimate solution to statelessness is the acquisition of a durable nationality rather than the mere provision of temporary protective status.[22]

Gaps and Limitations

Despite its significance, the 1954 Convention has been criticized for a number of gaps and limitations. The Convention lacks an individual complaints mechanism, meaning that stateless persons cannot bring complaints before an international body for violations of their Convention rights. The Convention also lacks a dedicated supervisory body—unlike the 1951 Refugee Convention, which designates UNHCR as the supervisory authority, the 1954 Convention does not explicitly designate any body with supervisory functions, a gap that was only addressed subsequently through UNHCR's expanded mandate.[23]

The Convention's rights framework is also limited in scope—it does not include the right to work on the same basis as nationals, and the right to education beyond the elementary level is granted only on the most-favorable-alien basis rather than on the same basis as nationals. Furthermore, the

[20] 1954 Convention (n 1) Arts 31–32. On the significance of Art 32 (naturalization) as the durable solution contemplated by the Convention, see Katja Swider, 'Why Reduce Statelessness When You Can Eliminate It?' (2017) 19(1) European Journal of Migration and Law 1, 8–11.

[21] 1954 Convention (n 1) Arts 26, 31(1). See UNHCR, 'Handbook on Protection of Stateless Persons' (UNHCR 2014) HCR/BS/2014/01, paras 116–127 (hereinafter 'UNHCR Handbook 2014').

[22] 1954 Convention (n 1) Art 34. See Swider (n 20) 5–7; cf van Waas (n 14) 107–110, arguing that Art 34 creates only a weak obligation to facilitate rather than a firm duty to naturalise.

[23] 1951 Refugee Convention (n 6) Art 35; cf 1954 Convention (n 1), which contains no equivalent provision designating a supervisory authority. This gap was not remedied until UNGA Res 3274 (XXIX) (n 3): see UNHCR, 'Statelessness: An Analytical Framework for Prevention, Reduction and Protection' (UNHCR 2008) 7.

Convention does not require states to establish formal statelessness determination procedures, leaving significant discretion to states in how they identify and document stateless persons.[24]

The limited number of state parties—96 as of 2024—also represents a significant gap in the Convention's global coverage, particularly given that many of the world's largest stateless populations are located in states that have not acceded to the Convention, including India, Bangladesh, Thailand, and Malaysia.[25]

The 1961 Convention on the Reduction of Statelessness

Historical Background and Purpose

The 1961 Convention on the Reduction of Statelessness represents the international community's primary legal instrument for addressing the root causes of statelessness, as distinct from the 1954 Convention's focus on the treatment of existing stateless persons. Adopted on 30 August 1961 and entering into force on 13 December 1975, the Convention currently has 78 states parties.[26]

It was developed in recognition that mere protection of stateless persons, while necessary, was insufficient—what was needed was a legal framework that would prevent statelessness from arising in the first place. The drafting of the 1961 Convention was a lengthy process, drawing on the work of the International Law Commission and deliberations spanning more than a decade. The Convention reflects a compromise between competing state interests in maintaining sovereign control over nationality laws and the international community's interest in preventing statelessness.[27]

Prevention of Statelessness at Birth

The most significant provisions of the 1961 Convention concern the prevention of statelessness at birth. Article 1 obliges states parties to grant nationality to persons born in their territory who would otherwise be stateless. This obligation is subject to certain conditions—states may make the grant of nationality conditional on the person having habitually resided in the territory for a period specified by the state (not exceeding five years before the application or ten years in total) and not

[24]See UNHCR Handbook 2014 (n 21) paras 48–55; Batchelor (n 4) 254–259, identifying the absence of a determination procedure as the central operational gap in the 1954 Convention.

[25]For the stateless populations of non-party states, see UNHCR, 'Global Action Plan to End Statelessness 2014–2024' (UNHCR 2014) 8 (hereinafter 'UNHCR Global Action Plan 2014'). India, Bangladesh, Thailand, and Malaysia collectively host several hundred thousand stateless persons.

[26]1961 Convention (n 2), Preamble; UNHCR, 'Guidelines on Statelessness No 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1–4 of the 1961 Convention' (UNHCR 2012) HCR/GS/12/04, para 1 (hereinafter 'UNHCR Guidelines No 4').

[27]The ILC's work on nationality commenced in 1952; the Conference of Plenipotentiaries that adopted the 1961 Convention met in New York in 1959 and 1961: see Summary Records of the Conference of Plenipotentiaries on the Draft Convention on the Reduction of Future Statelessness, UN Doc A/CONF.9/SR.1–SR.15 (1959–1961). On the compromise between sovereignty and international standards, see Nottebohm Case (Liechtenstein v Guatemala) [1955] ICJ Rep 4, 23.

having been convicted of an offense against national security or sentenced to imprisonment for a term of five years or more on a criminal charge.[28]

Article 4 addresses the situation of persons born outside the territory of a state who would otherwise be stateless, requiring states to grant nationality to such persons if one of their parents holds the nationality of that state. Like Article 1, Article 4 is subject to conditions that states may impose, including the requirement that the person apply for nationality within a specified period not extending beyond the age of 21 years.[29]

These provisions reflect the international community's recognition of two fundamental principles for the prevention of statelessness at birth: the principle of jus soli (birthright nationality) and the principle of jus sanguinis (nationality by descent). By requiring states to grant nationality on at least one of these bases to persons who would otherwise be stateless, the Convention creates a safety net against statelessness at birth.[30]

Prevention of Statelessness Through Renunciation and Deprivation

Articles 7 and 8 of the 1961 Convention address the prevention of statelessness arising from renunciation and deprivation of nationality respectively. Article 7 provides that a state party shall not permit the renunciation of nationality if the effect would be to render the person stateless. Article 8 prohibits states parties from depriving persons of their nationality if such deprivation would render them stateless.[31]

This is one of the Convention's most significant provisions, as deprivation of nationality by state action is one of the primary causes of statelessness globally. The prohibition on statelessness-inducing deprivation of nationality reflects the broader principle in international law that states may not arbitrarily deprive individuals of their nationality. However, Article 8(3) permits states to retain the right to deprive a person of nationality even where statelessness would result, in certain specified circumstances, including where nationality was obtained by misrepresentation or fraud, where the person has rendered services to or received remuneration from a foreign state in contravention of express prohibition, or where the person has conducted themselves in a manner seriously prejudicial to the vital interests of the state. These exceptions represent significant qualifications to the

[28]1961 Convention (n 2) Art 1(1)–(2). UNHCR Guidelines No 4 (n 26) paras 7–16 provide a detailed analysis of the conditions states may attach to the jus soli grant.

[29]1961 Convention (n 2) Art 4. See UNHCR Guidelines No 4 (n 26) paras 17–24, discussing the operation of jus sanguinis rules under Art 4 and the interaction with gender-discriminatory nationality laws addressed in CEDAW Art 9.

[30]On jus soli and jus sanguinis as foundational principles of nationality law, see Weis (n 7) 96–140; Patrick Wautelet, 'Nationality and International Law' in Rainer Hofmann (ed), Non-State Actors as New Subjects of International Law (Duncker & Humblot 1999) 127.

[31]1961 Convention (n 2) Art 7 (renunciation); Art 8(1)–(2) (deprivation). UNHCR, 'Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Arts 5–9 of the 1961 Convention' (UNHCR 2020) HCR/GS/20/05, paras 7–24 (hereinafter 'UNHCR Guidelines No 5').

prohibition on statelessness-inducing deprivation of nationality, and their scope has been a source of interpretive controversy.[32]

State Succession and Statelessness

Article 10 of the 1961 Convention addresses the statelessness implications of state succession—the transfer of territory from one state to another through processes such as partition, dissolution, or merger. The Article requires states parties to include in any treaty concerning state succession provisions designed to ensure that no person becomes stateless as a result of the transfer of territory. This provision reflects the historical recognition that state succession has been one of the most significant causes of mass statelessness, as demonstrated by the statelessness of millions of persons following the dissolution of the Soviet Union, Yugoslavia, and Czechoslovakia.[33][34]

Institutional Mechanisms

Article 11 of the 1961 Convention provides for the establishment of a body to which persons claiming the benefit of the Convention may apply for examination of their claims and for assistance in presenting them to the appropriate authority. This body was subsequently identified as UNHCR through a series of UN General Assembly resolutions, formalizing UNHCR's role in supervising the implementation of the statelessness conventions.[35]

Relationship with the 1954 Convention

The 1954 and 1961 Conventions are complementary instruments that together constitute the core of the international legal framework on statelessness. The 1954 Convention addresses the status and treatment of existing stateless persons, while the 1961 Convention seeks to prevent statelessness from arising or continuing. Together, they reflect a comprehensive approach to statelessness that addresses both the symptoms and the causes of the phenomenon.

The Role of UNHCR

Mandate Evolution

UNHCR's mandate with respect to statelessness has evolved significantly since the agency's establishment in 1950. Initially focused exclusively on refugee protection, UNHCR's mandate was

---

[32]UNHCR Guidelines No 5 (n 31) paras 25–40, analysing the Art 8(3) exceptions. See also Human Rights Committee, General Comment No 27: Freedom of Movement (Art 12), UN Doc CCPR/C/21/Rev.1/Add.9 (1 November 1999) paras 20–21.

[33]1961 Convention (n 2) Art 10. On statelessness arising from state succession, see Matthew Craven, 'The Problem of State Succession and the Identity of States under International Law' (1998) 9 European Journal of International Law 142; ILC, 'Articles on Nationality of Natural Persons in Relation to the Succession of States' (1999) UN Doc A/RES/55/153, Arts 4–7.

[34]Historical examples of mass statelessness following state dissolution include the estimated 700,000 persons rendered stateless following the dissolution of the USSR: see United Nations, 'Report of the Secretary-General on the Question of the Granting of New Nationality in the Context of Succession of States' (1999) UN Doc A/54/349.

[35]1961 Convention (n 2) Art 11; UNGA Res 3274 (XXIX) (n 3); UNGA Res 49/169 (n 3).

progressively extended to encompass stateless persons through a series of UN General Assembly resolutions. Resolution 3274 (XXIX) of 1974 requested UNHCR to perform the functions envisaged under Article 11 of the 1961 Convention, effectively designating UNHCR as the supervisory body for both statelessness conventions. Resolution 49/169 of 1994 further expanded UNHCR's mandate to encompass all stateless persons, regardless of whether they fell within the Convention definitions.[36]

The #IBelong Campaign

In 2014, UNHCR launched the #IBelong Campaign to End Statelessness, setting an ambitious target of ending statelessness within ten years through a Global Action Plan comprising ten actions. These actions include resolving existing major situations of statelessness, ensuring no child is born stateless, removing gender discrimination from nationality laws, preventing denial, loss, or deprivation of nationality on discriminatory grounds, preventing statelessness in cases of state succession, granting protection status to stateless migrants and facilitating their naturalization, ensuring birth registration for prevention of statelessness, issuing nationality documentation to those entitled to it, acceding to the statelessness conventions, and improving quantitative and qualitative data on stateless populations.[37]

The campaign has achieved notable successes—several states have acceded to the statelessness conventions, enacted legislative reforms to prevent statelessness, and resolved long-standing statelessness situations. However, progress has been uneven, and the global number of stateless persons has not declined significantly, partly due to the difficulty of measuring statelessness accurately and partly due to new situations of statelessness arising in countries such as Myanmar and Assam in India.[38]

UNHCR Guidelines on Statelessness

UNHCR has issued a series of guidelines on statelessness that provide authoritative interpretive guidance on the application of the 1954 and 1961 Conventions. These guidelines address issues including the definition of a stateless person, procedures for determining statelessness, the status of stateless persons at the national level, ensuring every child's right to acquire a nationality, and the loss and deprivation of nationality under the 1961 Convention. While not legally binding, these

[36] Statute of the UNHCR (n 3) para 6; UNGA Res 49/169 (n 3) para 2, extending UNHCR's mandate to all stateless persons. See Guy Goodwin-Gill, 'UNHCR and International Refugee Law: From Treaties to Innovation' (2012) 31(4) Refugee Survey Quarterly 155.

[37] UNHCR Global Action Plan 2014 (n 25). The ten-point Action Plan identified accession to the Conventions, birth registration, and gender-neutral nationality laws as priority areas. See also UNHCR, '#IBelong Campaign: Mid-Term Progress Report' (UNHCR 2019).

[38] On the mixed results of the #IBelong Campaign, see Institute on Statelessness and Inclusion, 'The World's Stateless: Deprivation of Nationality' (ISI 2020) 15–17; cf UNHCR, 'Global Trends: Forced Displacement in 2023' (n 5) 69–70, noting that global stateless figures have not significantly declined.

guidelines carry significant persuasive authority and are widely referenced by domestic courts and administrative bodies.[39]

Regional Instruments and Frameworks

European Framework

The Council of Europe has developed a robust regional framework on statelessness. The 1997 European Convention on Nationality (ECN) sets out principles governing the acquisition, retention, loss, recovery, and certification of nationality, including provisions aimed at reducing statelessness. Article 4 of the ECN establishes general principles of nationality law, including the principle that statelessness should be avoided. Article 6 addresses the acquisition of nationality, requiring states parties to provide in their internal law for acquisition of nationality by foundlings and by persons born on the territory who would otherwise be stateless.[40]

The 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession further addresses the specific risks of statelessness arising from state succession, building on Article 10 of the 1961 Convention.[41] The European Court of Human Rights has also addressed statelessness in the context of Article 8 (right to private and family life) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, contributing to the development of a human rights-based approach to statelessness.[42]

African Framework

The African Union has adopted the 2017 Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, which establishes a comprehensive regional framework for preventing and reducing statelessness on the African continent. The Protocol builds on existing African Union instruments, including the Constitutive Act of the African Union and the African Charter on Human and Peoples' Rights, and establishes obligations for member states to ensure the right to a nationality, prevent statelessness, and protect stateless persons.[43] The African Committee of Experts on the Rights and

[39]UNHCR, 'Guidelines on Statelessness Nos 1–6' (UNHCR 2012–2022). Nos 1 (definition), 2 (SDP procedures), 3 (status at national level), 4 (child's right to nationality), 5 (loss and deprivation), 6 (informal/temporary protection). On their persuasive authority, see UNHCR Handbook 2014 (n 21) Introduction, para 5.

[40]European Convention on Nationality (ECN), adopted 6 November 1997, entered into force 1 March 2000, CETS No 166, Arts 4, 6. See Council of Europe Explanatory Report to the ECN (1997) paras 43–67.

[41]Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, adopted 19 May 2006, entered into force 1 May 2009, CETS No 200.

[42]See Genovese v Malta [2011] ECHR 1591 (Art 8 engaged where domestic law arbitrarily excluded applicant from nationality); Auad v Bulgaria App No 46390/10 (ECHR, 11 October 2011) (Art 3 and stateless person's vulnerability to expulsion). For analysis, see Laura van Waas and Melanie Khanna (eds), Solving Statelessness (Wolf Legal Publishers 2017) 65–90.

[43]Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, adopted 29 January 2024 (open for signature). See African Commission on Human and Peoples' Rights, 'Study on the Right to Nationality in Africa' (ACHPR 2015).

Welfare of the Child has also addressed statelessness in the context of child rights, particularly the right to a nationality under Article 6 of the African Charter on the Rights and Welfare of the Child.[44]

Americas Framework

In the Americas, the American Convention on Human Rights (ACHR) is particularly significant for its explicit provision on the right to nationality. Article 20 of the ACHR provides that every person has the right to a nationality, that every person has the right to the nationality of the state in whose territory they were born if they do not have the right to any other nationality, and that no one shall be arbitrarily deprived of their nationality or of the right to change it. The Inter-American Court of Human Rights has interpreted these provisions extensively, including in landmark cases addressing the denial of nationality to persons of Haitian descent born in the Dominican Republic.[45]

Asia-Pacific Framework

The Asia-Pacific region lacks a comprehensive regional instrument on statelessness, which is particularly significant given that the region hosts some of the world's largest stateless populations, including the Rohingya in Myanmar and stateless persons in countries such as Thailand, Malaysia, and Bangladesh. UNHCR and the Asia-Pacific Refugee Rights Network have advocated for the development of a regional framework on statelessness, and some progress has been made through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, which has addressed statelessness as a protection concern.[46][47]

Customary International Law and Statelessness

The Right to a Nationality

The question of whether there exists a customary international law right to a nationality has been extensively debated. Article 15 of the Universal Declaration of Human Rights proclaims that everyone has the right to a nationality and that no one shall be arbitrarily deprived of their nationality

[44] African Charter on the Rights and Welfare of the Child, adopted 11 July 1990, entered into force 29 November 1999, OAU Doc CAB/LEG/24.9/49 (1990), Art 6(3)–(4). See African Committee of Experts on the Rights and Welfare of the Child, Decision No 002/2009 (Nubian Children in Kenya, 22 March 2011).

[45] American Convention on Human Rights, adopted 22 November 1969, entered into force 18 July 1978, OASTS No 36, Art 20. See Inter-American Court of Human Rights, Juridical Condition and Human Rights of the Child (Advisory Opinion OC-17/2002) (28 August 2002) Series A No 17; Yean and Bosico Children v Dominican Republic (Merits, Reparations and Costs) (8 September 2005) Series C No 130, paras 140–174 (landmark ruling on nationality denial to persons of Haitian descent).

[46] On the absence of a regional instrument in Asia-Pacific, see Laurie Berg and Jenni Millbank, 'Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants' (2009) 22(2) Journal of Refugee Studies 195; UNHCR, 'Statelessness in the Asia-Pacific Region' (UNHCR Regional Bureau for Asia and the Pacific 2017) 3–7.

[47] Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, 'Regional Support Office' <http://www.baliprocess.net>; see also UNHCR, 'Pledges and Contributions' (Ministerial Meeting on Statelessness, Geneva, October 2011).

nor denied the right to change their nationality. However, the UDHR is a declaration rather than a treaty, and its provisions are not automatically legally binding.[48]

The prohibition on arbitrary deprivation of nationality is widely considered to have attained the status of customary international law, supported by consistent state practice and opinio juris. The International Law Commission's Articles on Nationality of Natural Persons in Relation to the Succession of States, adopted in 1999, reflect customary international law principles applicable to statelessness in the context of state succession.[49]

The Prohibition on Arbitrary Deprivation of Nationality

The prohibition on arbitrary deprivation of nationality—as distinct from the broader right to a nationality—has stronger claims to customary international law status. States have consistently condemned arbitrary denationalization practices, and numerous international resolutions and declarations have affirmed the prohibition.[50] The Human Rights Committee, in its General Comment No. 27, has addressed arbitrary deprivation of the right to remain in one's own country in the context of Article 12(4) of the ICCPR, which provides that no one shall be arbitrarily deprived of the right to enter their own country.[51]

International Human Rights Law and Statelessness

The Right to a Nationality in Human Rights Treaties

The right to a nationality is affirmed in several international human rights instruments. Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR) provides that every child has the right to acquire a nationality. Article 7 of the Convention on the Rights of the Child (CRC) further provides that every child shall be registered immediately after birth and shall have the right to acquire a nationality, and that states parties shall ensure the implementation of these rights, in

[48]Universal Declaration of Human Rights, UNGA Res 217A(III), UN Doc A/RES/217(III) (10 December 1948) Art 15. The UDHR is not a treaty and lacks direct binding force, though it may reflect or generate customary international law norms: see Theodor Meron, Human Rights and Humanitarian Norms as Customary Law (Clarendon Press 1989) 81–100.

[49]ILC, 'Articles on Nationality of Natural Persons in Relation to the Succession of States' (n 33) Art 1 and Commentary. The ILC Articles are widely regarded as reflecting customary international law: see Matthew Craven (n 33) 149–153.

[50]On the customary status of the prohibition on arbitrary deprivation of nationality, see Brownlie's Principles of Public International Law (8th edn, OUP 2012) 402–404; cf James Crawford, Brownlie's Principles of Public International Law (9th edn, OUP 2019) 510–512. For state practice and opinio juris, see ICJ, Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) [1970] ICJ Rep 3, 42 (nationality as an institution of international law subject to international limits).

[51]Human Rights Committee, General Comment No 27 (n 32) paras 20–21; ICCPR Art 12(4) provides: 'No one shall be arbitrarily deprived of the right to enter his own country.' The Committee has interpreted 'own country' broadly to include stateless persons with a sufficient nexus to a state: HRC, Canepa v Canada, Communication No 558/1993 (1997) UN Doc CCPR/C/59/D/558/1993.

particular where the child would otherwise be stateless.[52][53] Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires states parties to grant women equal rights with men with respect to the nationality of their children, directly addressing one of the most significant sources of statelessness—gender-discriminatory nationality laws.[54]

Non-Discrimination and Statelessness

The prohibition of discrimination in international human rights law is directly relevant to statelessness, as many statelessness situations arise from discriminatory nationality laws that exclude particular ethnic, religious, or racial groups from nationality. Article 2 of the ICCPR prohibits discrimination on grounds including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Human Rights Committee has interpreted this provision broadly, applying it to the denial of nationality on discriminatory grounds.[55]

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is also directly relevant, as the denial of nationality on racial or ethnic grounds constitutes racial discrimination under Article 1 of CERD. The Committee on the Elimination of Racial Discrimination has addressed statelessness in its concluding observations on state reports, consistently urging states to amend discriminatory nationality laws and to grant nationality to stateless persons belonging to minority groups.[56]

Statelessness and Non-Refoulement

The principle of non-refoulement—the prohibition on returning a person to a territory where they face a real risk of serious harm—is directly relevant to stateless persons who have fled their country

[52]International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, Art 24(3); Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3, Art 7; Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13, Art 9.

[53]Committee on the Rights of the Child, General Comment No 7: Implementing Child Rights in Early Childhood, UN Doc CRC/C/GC/7/Rev.1 (20 September 2006) paras 25–26; cf UNHCR Guidelines No 4 (n 26) para 3, noting that Art 7 CRC reinforces Art 4 of the 1961 Convention.

[54]CEDAW Art 9(2); Committee on the Elimination of Discrimination Against Women, General Recommendation No 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women, UN Doc CEDAW/C/GC/32 (5 November 2014) paras 55–64. Gender-discriminatory nationality laws remain a leading cause of statelessness: see UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness' (UNHCR 2014).

[55]ICCPR Art 2(1); Human Rights Committee, General Comment No 18: Non-Discrimination, UN Doc HRI/GEN/1/Rev.1 (1989) paras 7–12. For the application of non-discrimination to nationality determinations, see HRC, Adam v Czech Republic, Communication No 586/1994 (1996) UN Doc CCPR/C/57/D/586/1994.

[56]Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, entered into force 4 January 1969, 660 UNTS 195, Art 1; Committee on the Elimination of Racial Discrimination, General Recommendation No 30 on Discrimination against Non-Citizens (2004) UN Doc CERD/C/64/Misc.11/Rev.3, paras 13–16. See also CERD, Concluding Observations: Dominican Republic, UN Doc CERD/C/DOM/CO/13-14 (2013) para 15.

of habitual residence. While the principle of non-refoulement is most clearly established in the refugee law context, it has been interpreted by human rights bodies as applying more broadly, including to stateless persons who face a real risk of torture or inhuman treatment upon return under Articles 3 of the CAT and the ECHR.[57]

The Global Compact on Refugees and Statelessness

The 2018 Global Compact on Refugees, adopted by the UN General Assembly through Resolution 73/151, reaffirms the international community's commitment to addressing statelessness as part of a comprehensive approach to forced displacement. The Compact recognizes the link between statelessness and forced displacement, noting that statelessness is a significant cause of displacement and that many refugees are also stateless. The Compact calls on states to strengthen international efforts to address statelessness, including through accession to the statelessness conventions and implementation of the UNHCR Global Action Plan.[58]

Statelessness Determination Procedures

A significant gap in the international legal framework on statelessness is the absence of a binding obligation on states to establish formal statelessness determination procedures (SDPs). While the 1954 Convention implicitly requires states to be able to identify stateless persons in order to afford them the Convention's protections, it does not prescribe any particular procedure for doing so. UNHCR's guidelines on statelessness emphasize the importance of establishing fair and efficient SDPs, including procedural safeguards such as access to legal assistance, the right to appeal, and the principle that the burden of proof should be shared between the applicant and the state.[59]

Several states have established formal SDPs, including France, Hungary, Latvia, Moldova, the Philippines, and the United Kingdom. These procedures vary significantly in their scope, procedural safeguards, and the rights attached to a determination of statelessness. The absence of SDPs in many states, including India, means that stateless persons in those states cannot obtain formal recognition of their status and are therefore unable to access the protections to which they are entitled under international law.[60]

[57]On the extension of non-refoulement to stateless persons, see Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, entered into force 26 June 1987, 1465 UNTS 85, Art 3; European Convention on Human Rights, Art 3 as interpreted in Saadi v Italy App No 37201/06 (ECHR Grand Chamber, 28 February 2008) paras 123–127; UNHCR Handbook 2014 (n 21) para 148.

[58]UNGA Res 73/151, 'Global Compact on Refugees' (17 December 2018) UN Doc A/RES/73/151, Annex, para 67 and Objective 4. See also UNHCR, 'Towards a Global Compact on Refugees: A Roadmap' (UNHCR 2017).

[59]UNHCR, 'Guidelines on Statelessness No 2: Procedures for Determining Whether an Individual Is a Stateless Person' (UNHCR 2012) HCR/GS/12/02, paras 6–12 (hereinafter 'UNHCR Guidelines No 2'); cf Batchelor (n 4) 257–259.

[60]UNHCR Guidelines No 2 (n 59) paras 23–50, setting out procedural safeguards including the duty to inform applicants, legal assistance, burden of proof, and the right of appeal. See also Institute on Statelessness and Inclusion, 'Statelessness Determination in Europe' (ISI 2017), surveying SDPs in European states.

Summary and Conclusions

The international legal framework on statelessness comprises a complex and multi-layered set of instruments, norms, and institutional mechanisms. At its core are the 1954 and 1961 Conventions, which together establish standards for the treatment of stateless persons and obligations for the prevention and reduction of statelessness. These core instruments are supplemented by regional frameworks, the expanding mandate of UNHCR, the provisions of international human rights treaties, and emerging principles of customary international law.

Despite this framework, significant gaps remain. The limited number of states parties to the conventions, the absence of binding statelessness determination procedures, the lack of an individual complaints mechanism, and the continuing gap between de jure and de facto statelessness represent major challenges for the international legal response to statelessness. The following chapters will examine how these international standards intersect with India's domestic legal framework and what they require of India in terms of legal and policy reform.

Conclusion

This chapter has demonstrated that the international legal framework on statelessness, while substantial in its breadth, remains fundamentally incomplete in its reach and enforcement. The twin pillars of the framework—the 1954 and 1961 Conventions—were drafted in a particular historical moment and reflect the political compromises of their era. Their qualified obligations, limited state party membership, and absence of individual complaints mechanisms have resulted in a system that protects in theory far more than it delivers in practice.

Several structural tensions define the framework. First, the persistent disjunction between de jure and de facto statelessness means that a large population of functionally stateless individuals falls outside the formal protective scope of the 1954 Convention, leaving them without documented status or access to legal remedies. Second, the framework relies heavily on voluntary accession and good-faith implementation by states, without the supervisory infrastructure or enforcement mechanisms that would render it effective against recalcitrant governments. Third, the regional architecture is profoundly uneven: while Europe and, increasingly, Africa have developed robust regional frameworks, the Asia-Pacific region—home to some of the world's most severe statelessness crises—remains without a comprehensive regional instrument.

The UNHCR's expanded mandate and the #IBelong Campaign represent the most energetic institutional response to these gaps, but the Campaign's 2024 deadline passed without the transformative global decline in statelessness that was envisioned. Stateless populations in Assam (India) and Rakhine State (Myanmar) continue to grow rather than contract, underscoring the limits of an international framework that lacks binding enforcement power against state actors unwilling to comply.

From the perspective of India's obligations—the central concern of this dissertation—the significance of this chapter's analysis is threefold. First, even as a non-party to both Conventions, India is subject to those rules of customary international law that prohibit arbitrary deprivation of nationality and mandate non-discriminatory treatment in nationality determinations.[61] Second, India's ratification of the ICCPR, CRC, CEDAW, and CERD engages treaty obligations directly relevant to the citizenship determination processes under the National Register of Citizens (NRC) and the Citizenship (Amendment) Act (CAA).[62] Third, the absence of any formal statelessness determination procedure in India constitutes a structural deficit that places persons rendered stateless by administrative processes entirely outside the protective framework that international law contemplates.[63]

The normative baseline established in this chapter will serve as the analytical lens for the chapters that follow, which examine India's domestic legal framework on citizenship, the functioning of the NRC and CAA, the population groups at risk of statelessness, and the specific measures that India must adopt to bring its law and practice into conformity with its international legal obligations.

[61]On India's non-accession to the statelessness conventions, see Ministry of External Affairs, Government of India, 'India and the United Nations Treaty System' (2023). India is also not a party to the 1951 Refugee Convention. See Anil Kalhan, 'Citizenship, Alienage, and the Constitutional Ambiguities of Indian Citizenship Law' (2016) 34(1) Wisconsin International Law Journal 26.

[62]ICCPR (n 52), ratified by India on 10 April 1979; CRC (n 52), ratified by India on 11 December 1992; CEDAW (n 52), ratified by India on 9 July 1993; CERD (n 56), ratified by India on 3 December 1968.

[63]On India's NRC process and CAA and their international law implications, see Sujata Ramachandran, 'Securitizing Immigration: The Post-9/11 Backlash in India' (2014) 23(1) Asian and Pacific Migration Journal 3; Niraja Gopal Jayal, 'Faith-Based Citizenship: The Dangerous Path India Is on' (The India Forum, October 2019).