KU LEUVEN

FACULTY OF LAW

2017 – 2018

‘ALL FRONTIERS CLOSED, ALL TERRITORIES FORBIDDEN’

THE EMERGENCE OF STATELESSNESS ON THE INTERNATIONAL LEGAL STAGE (1918-1961)

R. LESAFFER (supervisor)

Master thesis, submitted by

Camille VAN PETEGHEM

as part of the final examination

for the degree of

MASTER IN LAW

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SUMMARY

Today, an estimated group of 15 million people are stateless, meaning that they do not possess an (effective) nationality resulting in considerable detriment. Much research has been done on solutions for statelessness in international law but a comprehensive historical account of the doctrinal evolution of statelessness on the international level is still lacking. Yet, a historic analysis could provide necessary insights into the current international solutions as well as inspiration for future solutions.

This thesis therefore aims to set out how and why statelessness appeared on the international legal stage in the crucial period between 1918 and 1961. This question was approached in several steps, in line with the structure of the thesis. First, a theoretical typology was estalished for the concepts, causes, consequences and remedies for statelessness on the basis of an elaborate literature review. In a second step the described period was split up into the interwar period and the post World War II period. For each period the emergence or evolution of the statelessness problem was researched followed by the international remedies on the basis of literature a literature search as well as an analysis of the relevant conventions and travaux préparatoires using the established typology.

During the described period statelessness emerged and evolved as a problem due to changes in the concept of and sovereignty over nationality. After the Great War, statelessness resulted from nationalist ideologies combined with unfettered sovereignty in the field of nationality law. Two ‘tracks’ of international legal solutions emerged, one dealing with the causes of statelessness and one with the consequences suffered by stateless individuals. However, the state-centred approach of the interwar years led to only narrow limitations on nationality legislation on the ‘causal track’ and only protection of specific groups that particularly burdened other states on the ‘consequence track’.

After World War II, statelessness regained international attention in a nationality framework now strongly influenced by the newly established human rights doctrine. Human rights decreased the need for nationality, at least in theory, and the specific human right to a nationality carved out the broad state sovereignty over nationality which had prevailed during the interwar years. As a result, the remedies on both the consequence and causal track now took a more universal approach. However, sovereignty still constituted the starting point, resulting in a continuous weighing of human rights (including the human right to nationality) against sovereignty.

The story of statelessness is thus a tale of nationalism and sovereignty slowly being challenged by universalism and human rights, resulting in a balancing act which continues until today.

'The expulsion of a stateless person is a shameful thing. There is no such thing as 'no man's land' between States; it is impossible to leave one without entering another. But to the expelled (refugee) all frontiers are closed, all territories forbidden; he is confronted by two sovereign wills, that of the State that says 'go' and that of the State that says 'stay out.'

- Rubinstein, 1936[1]

[1] J. L. Rubinstein, 'The Refugee Problem', International Affairs (Royal Institute of International Affairs 1931-1939) 15, no. 5 (1936): 723.

I: PREFACE

The master thesis in front of you constitutes the final work of my five year long law study at the KULeuven and the culmination of all the knowledge and skills acquired therein. In particular, it constitutes the expression of the research and writing competences gained via the Research Master during the last two years.

In the Research Master program, we have always been given the liberty to explore topics of our choice and through that process, I have been able to discover some of my core interests, two of which I have tried to combine in this thesis. On the one hand, I became captivated by the role of nationalism in law, how it's strong ideological force has shaped and continues to shape our most fundamental understandings of law. On the other hand, I realized my passion lies with history. In particular, I have always been fascinated by the interwar period, a period of a world in a sudden accelerated transition. With regard to nationalism and nationality especially, the interwar years constitute a most interesting time frame as the rising nationalism of this period reshaped various legal concepts, leaving traces in our very thinking about nationality and international law today. On a similar line, the post-World War II period, triggering more universalist approaches, makes up a rich period of information.

When searching for a thesis topic along these lines, I was pleasantly surprised to stumble upon the 'Nansen passport', the first international instrument to assist people without a nationality. From there, I move on to discover the path statelessness has taken on the international forum, resulting in the work in front of you.

Whereas the work sometimes felt like a Sisyphean task, I discovered the truth in Einstein's quote that 'in the middle of difficulty lies opportunity'. No matter how I wrestled with the limited time and enormous amount of reading, it provided me with the opportunity to not only learn but become truly passionate about something new. This difficulty would not have transformed itself into an opportunity, if it was not for a number of people to whom I am deeply grateful.

On an academic level, I would first of all like to thank my supervisor, professor R. Lesaffer. Not only was professor Lesaffer immediately prepared to become my supervisor relatively late during the year, he also provided me with very motivating feedback at an impressive speed. I also want to thank the KULeuven for providing access to the necessary library collection and the professors of the Research master in particular for helping me gain the necessary writing

and research skills to complete this thesis. Finally, my gratitude goes to the University of Melbourne and more specifically to professor Marti Koskeniemmi, Dr. Fabia Veçoso and Dr. Ntina Tzouvala who taught me the course 'history of international law', triggering my initial interest in this field.

On a more personal level, I firstly want to thank my father for being an inspiring sparring partner, critically proofreading my work and taking excellent care of me at any time. Secondly, my gratitude goes to my boyfriend and best friend, Niels, because he constantly supports me in my studies and keeps me happy in the process. Thirdly, I am indebted to all of my friends who were willing to proofread parts of my thesis in their spare time. And last but definitely not least, I want to thank my friends and family for always reminding me that there is so much more to life than University.

Finally, when writing a thesis on a topic such as statelessness, a special acknowledgement seems appropriate. More in particular, I would like to acknowledge just how lucky I am (just as most of those who will read this) to be born in the place and circumstances in which I was born, as a national of a country, a person that not only exists physically, but has a legal and protected place in this world as well.

I sincerely hope you will enjoy the read.

Camille Van Peteghem

June, 7th 2018

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II: LIST OF ABBREVIATIONS

- **UDHR:** Universal Declaration of Human Rights;
- **WWI:** World War I;
- **HCRR:** High Commissioner for Russian Refugees;
- **HCR:** High Commissioner's Office for Nansen Refugees and Refugees Coming from Germany;
- **WWII**: World War II;
- **IGCR**: Intergovernmental Committee for Refugees;
- **UNRRA**: United Nations Relief and Rehabilitation Administration;
- **UN**: United Nations (Organisation);
- **ECOSOC**: UN Economic and Social Council;
- **IRO**: International Refugee organization;
- **UNHCR**: UN High Commissioner's Office for Refugees;
- **ILC**: International Law Commission;
- **CSW**: Committee on the Status of Women.

III: LIST OF ANNEXES

1. Online database search overview;
2. Library shelf check overview;
3. Research travaux préparatoires overview.

IV: INTRODUCTION

4. A NEW, OLD AND TIMELESS PROBLEM – About a hundred years ago, over one and a half million Russians lost their nationality and scattered throughout the European continent, to be followed by their Armenian and German counterparts, sparking international interest in the problem of statelessness. Today still, reports of thousands of people without a national home reach our newspapers, with the cruel story of the Rohingya in Myanmar recently shocking the world. And even though international action has been taken, the problem is far from being eradicated, nor do its victims receive proper international protection. As van Waas posits 'statelessness is at once an old, new and timeless problem.'[2] This thesis focuses on the 'old' aspects in an attempt to trace the emergence of statelessness as an international legal issue in the first half of the 20th century and at the same time seeks to inform accounts of the new and timeless aspects of the issue.

5. EMERGENCE OF STATELESSNESS ON THE INTERNATIONAL LEGAL STAGE – This work aims to reveal the emergence and character of the statelessness issue in international law during the crucial period ranging from 1918 to 1961. In this time frame statelessness emerged and evolved as a problem due to changes in the concept of and sovereignty over nationality. After the Great War, statelessness arose as the unfortunate consequence of nationalist ideologies combined with unfettered sovereignty in the field of nationality law. Two 'tracks' of international legal solutions emerged, one dealing with the causes of statelessness and one with the consequences suffered by stateless individuals. However, the state-centred approach of the interwar years led to only narrow limitations on nationality legislation on the 'causal track' and only protection of specific groups that particularly burdened other states on the 'consequence track'.

   After World War II, statelessness was again put on the international agenda in a nationality framework now strongly influenced by the newly established human rights doctrine. Human rights decreased the need for nationality, at least in theory, and the specific human right to a nationality carved out the broad state sovereignty over nationality which had prevailed during the interwar years. As a result, the remedies on both the consequence and causal track now took a more universal approach.

[2] Laura Van Waas, 'Are We There Yet - The Emergence of Statelessness on the International Human Rights Agenda', Netherlands Quarterly of Human Rights 32 (2014): 342.

In this thesis the process of how and why the problem of statelessness and its solutions emerged and evolved during that critical period will be set out in detail.

V: OUTLINE OF STUDY

CHAPTER I. RESEARCH PROBLEM AND ORIGINALITY

6. FORGOTTEN CRISIS - Statelessness is generally defined as 'the condition of having no legal or effective citizenship'. Its victims are often labelled as apatride, apolide, heimatlos or legal ghosts.[3] Receiving considerably less attention than its refugee-counterpart, the problem of statelessness is considered to be a 'forgotten crisis'.[4] Yet, statelessness is a problem of global proportions in today's world. An estimated group of up to 15 million people are currently thought to be affected by this state of legal limbo. However, it is highly difficult to give exact numbers because of the absence of concrete and reliable information.[5] Statelessness does not only affect large communities, unrelated individuals throughout the world can also fall through the cracks of nationality laws. Statelessness has a dramatic impact on a person's existence as it leads to marginalization, discrimination and the deprivation of a whole array of basic rights. Up to this date, however, the international community has not been able to fully prevent statelessness, nor protect stateless persons.[6]

7. LITERATURE ON STATELESSNESS - Even though some authors claim that statelessness is underresearched, international institutions and academics have already grappled with this problem in various ways. The main research focus has naturally been a legal one. Initially the issue was conceived as part of a study of nationality laws at the domestic level. Later,

[3] T. R. Subramanya, 'Problem of Statelessness in International Law', *International Studies* 26, no. 4 (1989): 337; Tamas Molnar, 'Stateless Persons under International Law and EU Law: A Comparative Analysis Concerning Their Legal Status, with Particular Attention to the Added Value of the EU Legal Order', *Acta Juridica Hungarica* 51 (2010): 293.

[4] Mira Siegelberg, 'Without a Country', *Dissent* 63, no. 4 (13 October 2016): 154.

[5] UNHCR, 'The World's Stateless People', *Refugees Magazine* 147, no. 3 (2007); Also see Tang Lay Lee, 'Denationalization and Statelessness in the Modern World', *ISIL Year Book of International Humanitarian and Refugee Law* 6 (2006): 17; Laura Van Waas, *Nationality Matters: Statelessness Under International Law* (Intersentia, 2008), 10; Indira Goris, Julia Harrington, and Sebastian Köhn, 'Statelessness: What It Is and Why It Matters', *Forced Migration Review; Oxford*, no. 32 (2009): 4; Jay Milbrandt, 'Stateless', *Cardozo Journal of International and Comparative Law* 20 (2011): 76; David C. Baluarte, 'The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality', *Yale Human Rights and Development Law Journal* 19 (2017): 48–49; For examples of stateless communities, see David Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons', *Human Rights Quarterly; Baltimore* 28, no. 1 (February 2006): 270; Southwick and Lynch, 'Nationality Rights for All: A Progress Report and Global Survey on Statelessness', Refworld, 2009, http://www.refworld.org/docid/49be193f2.html.

[6] Waas, Nationality Matters, 15.

the international dimension came into play. Internationally, statelessness was framed specifically in terms of state obligations with regard to avoidance of statelessness and protection of its victims. In this context a human rights approach gained popularity. Extensive attention has been paid to the right to nationality and the right to non-discrimination. Whereas some scholars have focused on the human rights of stateless persons in general, others have concentrated on specific human rights instruments. Academic work has also been done on the difference of treatment of refugees and stateless persons. In addition to these more general international law studies on the subject, various academics have taken a closer look at regional arrangements. Finally, scholars have tried to link statelessness to more recent phenomena such as the war on terror. In addition to these purely legal approaches, statelessness has increasingly become the subject of more interdisciplinary research such as philosophical, sociological and historical work.[7]

8. GAP IN THE BODY OF LITERATURE - Even though today's international legal framework evidently constitutes the launching pad for any solution and thus deserves the received attention, less attention has been paid to how statelessness actually emerged and how and why its regulation was to be situated on the international forum. With regard to historical accounts, Mira Siegelberg has created a comprehensive account of the history of statelessness including a discussion of international law.[8] This work constitutes an intellectual history of statelessness in international law. From a doctrinal perspective, however, the historical terrain remains largely uncharted. Although many authors briefly touch upon doctrinal historical evolutions of statelessness in international law, they tend to cover different moments, documents and organisations leaving behind a confused readership. The project of bringing order in this mishmash of historical accounts and providing a clear and contextualised doctrinal history of the emergence of statelessness on the international legal stage would thus fill a significant gap in the body of literature, which I attempt to deal with in this thesis. The aim is to provide a historical overview of how and why statelessness emerged as an international legal issue in the first half of the 20th century.

[7] This review of the literature is based on comprehensive reviews found in Brad K. Blitz, *Statelessness, Protection and Equality* (Refugee Studies Centre, 2009), 37–43 and Mark Manly and Laura van Waas, 'The State of Statelessness Research', *Tilburg Law Review* 19, no. 1–2 (1 January 2014): 3–6.

[8] Unfortunately I had no access to her work during my research.

CHAPTER II. RELEVANCE

9. THEORETICAL RELEVANCE – As the described history would fill a significant gap in the body of literature, it could contribute to the scientific accounts of statelessness. The analysis could indeed prove beneficial for a more thorough understanding of the statelessness problem itself as well as the roots of the current international legal framework in place. In addition, such research would answer to calls for more research on statelessness in general[9] and the history of statelessness in particular.[10]

10. PRACTICAL RELEVANCE - From a more practical perspective, statelessness still remains a problem without a definite solution. Today, millions of people suffer from this legal pathology affecting them in almost every aspect of their lives. Yet, international actors are struggling to provide adequate relief.[11] A thorough historical analysis could provide an insight into the different possible solutions suggested throughout history as well as their sticking points. This is especially interesting as current authors are appealing to old solutions to solve the problem.[12]

CHAPTER III. SCOPE

11. IN GENERAL - This thesis deals with statelessness in international law during the period 1918-1961. Consequently, there are three aspects that have to be carefully delineated in a motivated manner: (1) statelessness, (2) international law and (3) the covered period. The delineation set out below comes forth from considerations of relevance and feasibility considering the limited means and time available.

12. EMERGENCE OF STATELESSNESS… - Statelessness itself is understood in a broad sense in this thesis, covering both de facto and de jure statelessness as well as statelessness as part of larger categories. Both this definition, as well as relevant aspects of the statelessness issue will be further discussed in section VI.

13. … IN INTERNATIONAL LAW … - This thesis examines the emergence of statelessness in international law. However, the examination of all 'international law' possibly linked to the topic would take us too far. The concept of international law will thus be limited in two

[9] Blitz, *Statelessness, Protection and Equality*, 7.
[10] Will Hanley, 'Statelessness: An Invisible Theme in the History of International Law', *European Journal of International Law* 25, no. 1 (2014): 321–27.
[11] Waas, Nationality Matters, 15.
[12] See Otto Hieronymi, 'The Nansen Passport: A Tool of Freedom of Movement and of Protection', *Refugee Survey Quarterly* 22, no. 1 (2003): 46.

ways: both formally and substantively. Formally, the focus will be on so-called international 'hard law': international conventions, customary international law and general principles of law recognized by states.[13] 'Soft-law' will not be fully absent from the discussion but is used to inform rather than make up the substance of the research. Furthermore, the focus will be on multilateral, not bilateral instruments and on universal, not regional arrangements. However, it should be borne in mind that the 'international law' of the described period bears heavy marks of Eurocentrism and the discussed events thus largely unfold on the European continent.[14]

Substantively, two main fields will be included in the study. First, because statelessness basically constitutes the side-effect of nationality, the international law related to nationality constitutes an essential framework. This refers to general rules of how nationality is to be determined. Second, specific international law on the issue of statelessness as such will be included, referring to the rules on how to deal with stateless persons and how to remedy the specific causes of statelessness. International law on nationality in general and statelessness in particular can be found in the same instruments. Instruments addressing very specific sub topics of statelessness will not be included. [15]

Two other fields of international law will be touched upon. Firstly, the evolution and emergence of statelessness regulation was very much intertwined with international refugee law, especially in the interwar period.[16] Secondly, as the inclusion of the human right to nationality in the Universal Declaration of Human Rights in 1948 (hereafter 'UDHR') constitutes an important step in the international battle against statelessness, human rights law will be discussed. Yet, in the period covered, human rights had not yet reached full formalization in international law and the UDHR was only a soft law declaration. However, the conventions on statelessness developed during the period following the declaration were influenced by the new framework. Further developments in the field of human rights law are not included in the study as their development largely took place after the defined time frame.[17]

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[13] Cf. Article 38 ICJ Statute.
[14] See John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge Studies in Law and Society (Cambridge: Cambridge University press, 2000), 2–3.
[15] See Waas, Nationality Matters, 15.
[16] Carol A. Batchelor, 'Stateless Persons: Some Gaps in International Protection', *International Journal of Refugee Law* 7 (1995): 239.
[17] See Waas, Nationality Matters.

14. … DURING THE PERIOD 1918-1961. - The period under scrutiny in this study ranges from 1918-1961. The reasons for historical research have been set out above. The exact time frame, however, is not chosen randomly. In general, the 20th century marks a period of rapid increase of nation-states in which these increasingly made use of their ability to define their national membership, leaving stateless persons in their tracks.[18] The studied period starts with the end of the Great War because – due to mass denationalization schemes - this was the first time that statelessness became an issue of global proportions, catching the attention of the international community.[19] The end of the relevant period is marked by the conclusion of the 1961 Convention on the Reduction of Statelessness. Even though many other measures came about that touched upon the issue later on, this convention together with the older 1954 Convention Relating to the Status of Stateless Persons (hereafter 'the statelessness conventions') remain the main point of reference in discussions of statelessness. Furthermore, the later measures were different in nature. On the one hand, they were not specifically about statelessness but merely mentioned it shortly or could be interpreted to have implications for stateless persons. On the other hand, measures that did mention it specifically were of a regional instead of global nature. As a result, 1961 constitutes a logical end mark. The period covered can roughly be divided into two main sub periods of evolutions relating to statelessness, being the interwar period and the post WWII period.

CHAPTER IV. RESEARCH QUESTIONS

15. CENTRAL RESEARCH QUESTION - The central research question for this thesis is 'How and why did the issue of statelessness appear on the international legal stage between 1918 and 1961?'

16. FIRST SUB QUESTION (DESCRIPTIVE) – In order to tackle this central question, four main sub questions are to be answered. The first sub question is descriptive in nature[20] and is aimed at establishing a theoretical framework and typology of statelessness to structure further discussion.

[18] Baluarte, 'The Risk of Statelessness', 54–55.
[19] Alice Edwards and Laura van Waas, Nationality and Statelessness under International Law (Cambridge University Press, 2014), 93.
[20] 'A descriptive research objective aims to analyse legal phenomena or arrangements in all their components systematically.'(Lina Kestemont, 'A Meta-Methodological Study of Dutch and Belgian PHDs in Social Security Law: Devising a Typology of Research Objectives as a Supporting Tool', *European Journal of Social Security* 17, no. 3 (2015): 365).

SQ1: What are the different concepts, causes, consequences and remedies for statelessness?

17. SECOND SUB QUESTION (HOW-PART: DESCRIPTIVE) - The second sub question is both descriptive and defining[21] and is aimed at providing a chronological and structured overview of the emergence of statelessness in international law. First, the general emergence of statelessness as a problem has to be described (descriptive). Second, the most important international legal solutions have to be summed up and analysed in a structured manner (descriptive and defining).

SQ2: How did statelessness appear as an issue in international law between 1918-1961?

- *a. SSQ1: How did statelessness emerge and evolve as an international legal problem?*
- *b. SSQ2: What were the international legal solutions used for this problem? And for each solution:*
  - *i. How was statelessness conceptualized?*
  - *ii. What causes or consequences of statelessness were addressed?*
  - *iii. What type of remedies were included/ not included?*

18. THIRD SUB QUESTION (WHY-PART: EXPLANATORY) - The third sub question is explanatory in nature[22] and aims to clarify why international legal solutions were sought for the statelessness issue. To this end, the specific context and considerations of internationalization of statelessness have to be considered.

SQ3: Why were international legal remedies for statelessness adopted? Which considerations and what context drove or held back internationalization of statelessness?

19. SUB QUESTION 4 (DESCRIPTIVE) - The fourth and final sub question is again descriptive in nature and aims to describe the legal character of statelessness in this period by combining answers to the previous sub questions.

SQ4: What do the answers to SQ2 and SQ3 tell us about the (evolution of the) legal character of statelessness in the relevant period (1918-1961)?

[21] 'A legal scholar with a defining research objective in mind will try to order the existing legal system (or a part of it) by grouping legal phenomena into categories.' (Kestemont, 366).
[22] 'An explanatory research objective aims to find out why a specific legal rule or phenomenon exists (…).' (Kestemont, 372).

CHAPTER V. METHODOLOGY

PART I. GENERAL METHOD

20. IN GENERAL - The two methods employed in this research are literature study and analysis of travaux préparatoires and conventions. The work proceeded in three steps: after setting up a theoretical framework as a response to SQ1, the described period was split in two: the interwar and the post WWII period. For each period separately, the emergence of the problem and solutions was researched as a response to SQ2 and SQ3 respectively. Finally, these answers were combined to answer SQ4.

21. STEP 1: ESTABLISH THEORETICAL FRAMEWORK – The first step in the research consisted of answering SQ1, which deals with a general framework on typology on statelessness. This descriptive research question is aimed at establishing a general theoretical framework to structure further study as well as typologies that can be used to analyse the conventions and travaux préparatoires. This was done by researching existing literature on the matter.

22. STEP 2: INTERWAR PERIOD (EMERGENCE AND SOLUTIONS) – As a second step in the research, the issue of statelessness in the interwar period was examined in three parts to deal with SQ2 and SQ3. To start, SQ2 was dealt with in its two parts, corresponding to the two sub sub questions. SSQ1, dealing with the emergence of the statelessness problem, is descriptive in nature and was answered by researching existing literature. SSQ2, dealing with the international legal solutions to the statelessness problem, is both descriptive in nature as well as defining. After the legal solutions and their formation have been described, they have to be defined using the typology set out under the previous step. According to the main typology the examination was split into a 'consequence-track' and a 'causal-track'. The question was answered by a combination of the methods of literature search on the one hand and analysis of the legal instruments and travaux préparatoires on the other hand. Finally, SQ3, dealing with the explanation for the internationalization of the solutions, is explanatory in nature and was answered by researching the literature as well as analysing the travaux and legal instruments.

23. STEP 3: POST WWII PERIOD (EMERGENCE AND SOLUTIONS) - The third step of the research consisted in repeating the research under step 2 for the post WWII period with all the same methods.

24. STEP 4: CHARACTER OF STATELESSNESS – Finally, SQ4 aims to draw a more general conclusion about statelessness in the described periods by combining the more technical findings under SQ2 (which is structured according to the findings under SQ1), with the more contextual and motivational factors found under SQ3. These findings count as a general conclusion on the subject under research.

PART II. SOURCES

25. COLLECTION – The sources used to answer the set of research questions were gathered through a variety of methods. While the conventions and other legal instruments were generally easily accessible via the internet, the literature as well the *travaux préparatoires* required more elaborate methods. To start, general handbooks were consulted to get a preliminary overview of the issues involved.[23] Subsequently, sources were gathered using three different methods allowing for a certain degree of 'data triangulation'.[24]

The first method consisted of searching online databases.[25] Three databases were chosen for this research based on their relevance for the topic as well as their accessibility: Google Scholar,[26] HeinOnline and the KULeuven database Limo. Keywords and their synonyms were determined on a rolling basis throughout the research. The details of the database search are set out under annex 1.

The second method consisted of a library 'shelf check'. Using general key words determined on the basis of the consulted literature under the first method, the indexes of international law journals for the relevant periods were scanned manually to detect relevant articles and *travaux préparatoires*. The lists of keywords for each period and the examined time frames are found in annex 2.

As a third method, other sources were gathered via the 'snowballing method': exploring the footnotes of the literature found through the first two methods.[27]

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[23] See Leonhard Den Hertog, 'Draft Chapter 5: The Literature Review', in *Handbook Legal Methodology (Draft)*, 2014, 8.
[24] Accessing the same information through various channels allows for verification of that information.
[25] See Den Hertog, 'Draft Chapter 5: The Literature Review', 7–8.
[26] For more about searching with Google Scholar, see Gijs Van Dijck, 'How to Conduct Legal Academic Research When Relying on Internet Sources?', *Research Group for Methods of Law and Legal Research and Department of Private Law* (2015): 10–11.
[27] Den Hertog, 'Draft Chapter 5: The Literature Review', 8; Van Dijck, 'How to Conduct Legal Academic Research When Relying on Internet Sources?', 8.

Finally, since all these methods did not result in sufficient *travaux préparatoires* to examine, several League of Nations and UN related databases were consulted to fill the gaps. An overview of where which *travaux préparatoires* were found is set out under annex 3.

26. SELECTION – The sources found through these methods were selected on the basis of relevance, in line with the careful delineation of the subject set out above. The determination was made on the basis of the title of the work as well as a quick read of the table of contents. Furthermore, literature was given priority if it was more frequently referred to, was written by an identified expert in the field and/or was published in a peer-reviewed journal.[28]

27. PROCESSING – To process all these selected sources, I made systematic summary notes of each source and then organised (parts of) them thematically according to the main structure of my research. In this process of note-taking, I considered both the qualities and short-comings of each source and distilled the main message as well as the particular contribution to my research.[29] After having consulted, summarized and categorized all the relevant sources, the thematically gathered information was synthesised in order to answer the research questions.[30]

PART III. LIMITATIONS

28. ACCESS TO TRAVAUX PRÉPARATOIRES – The research has three limitations. First, even after having consulted the League and UN databases, there were still some *travaux préparatoires* missing from the analysis. Specifically, with regard to the 'consequence-track' neither the records of the meetings establishing the Nansen and related agreements, nor the records of the 1954 conference were found. However, several other *travaux* related to these instruments were found allowing for an analysis.

29. ACCESS TO OTHER SOURCES – Second, besides the limitations for the *travaux préparatoires*, it should also be mentioned that not all the literature gathered through the methods set out above, could be accessed. In particular a few sources found via the 'snowballing'-technique were not available in the KULeuven Law Library. However, this limitation only concerned

[28] See Den Hertog, 'Draft Chapter 5: The Literature Review', 8; Van Dijck, 'How to Conduct Legal Academic Research When Relying on Internet Sources?', 6, 14–18.
[29] See Den Hertog, 'Draft Chapter 5: The Literature Review', 8–9.
[30] Den Hertog, 10–11.

a very small section of the collected sources and is therefore not considered to significantly affect the research.

30. LANGUAGE – A third limitation is the fact that, for reasons of feasibility, the research was predominantly carried out in one language. English was chosen primarily because of the abundance of English literature on the subject, but also due to the language of the thesis itself and my own experience with writing in English.

CHAPTER VI. ROADMAP

31. A LOGICAL AND CHRONOLOGICAL APPROACH – A logical and chronological structure will be followed in this thesis. First, logically, the theoretical framework (section VI) necessary to answer the questions will be set out, consisting of the concepts, causes, consequences and remedies for statelessness. Second, the international history of statelessness (section VII) will be structured chronologically by firstly dealing with the interwar period (chapter I) and secondly with the period after WWII (chapter II). For each of these periods the emergence and/or evolution of the problem of statelessness will be dealt with first, followed by a description of the international remedies established (how-part) and the reasons and motivations for their establishment (why-part). In line with what will be set out in the theoretical framework, the discussion of remedies is divided into two tracks, depending on whether they deal with the causes ('causal track') or the consequences ('consequence track') of statelessness. Finally, by means of conclusion, the character of statelessness in the described period will be evaluated (section VIII). This will be done by first providing a concise final overview followed by a general conclusion. This concise overview can also serve as a guideline if the reader wishes to get a general idea of the thesis.

VI: THEORETICAL FRAMEWORK: UNDERSTANDING STATELESSNESS

CHAPTER I. CONCEPT OF STATELESSNESS

32. DE JURE VS. DE FACTO - In the literature, defining statelessness seems to be the subject of ongoing contention and debate.[31] As an overarching definition it can be said that statelessness is 'the condition of having no legal or effective citizenship.'[32] This overarching definition avoids the much-discussed choice between de jure and de facto statelessness.

A stateless person is defined de jure as 'a person who is not considered as a national by any state under the operation of its law'.[33] Although it is often defined differently,[34] the most common and comprehensive account of de facto statelessness includes 'people who might technically have a certain nationality, yet are unable to effectively enjoy the benefits and protection that normally accompany such nationality for a variety of reasons such as state oppression or the inability to prove nationality.'[35]

In the current international legal regime, proponents of a de jure definition have gained the upper hand as the statelessness conventions only cover this category. In the past, however, this choice for de jure statelessness was not made yet and distinctions were not all that clear. Therefore, part of this study examines which exact concept of statelessness was used in the analysed instruments.

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[31] Waas, Nationality Matters, 20.
[32] Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 245–46; Waas, *Nationality Matters*, 22–23.
[33] Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.
[34] 'Unprotected people who suffer sever and sustained rights deprivation but cannot demonstrate the negative proposition that no country's laws operate to provide them with nationality.' (Baluarte, 'The Risk of Statelessness', 60.); 'When a person possesses a legally meritorious claim for citizenship, but is precluded from asserting it because of practical considerations such as cost, circumstances of civil disorder or fear of persecution' (Milbrandt, 'Stateless', 82.); 'Those who although they do retain the formal bond of nationality, they are unable to rely on their country of nationality for protection'(Waas, Nationality Matters, 20.); 'People who are unable to obtain proof of their nationality, residency or other means of qualifying for citizenship and may be excluded form the formal state as a result' (Blitz, Statelessness, Protection and Equality, 1.); 'Include internationally displaced persons who are in conflict with the state and therefore unable to avail themselves of basic services or protection (Jo Boyden and Jason Hart, 'The Statelessness of the World's Children: Statelessness of the World's Children', *Children & Society* 21, no. 4 (2007): 238).
[35] Deducted from Carol A. Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', *International Journal of Refugee Law* 10, no. 1–2 (1998): 172; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 251; Waas, *Nationality Matters*, 24; Goris, Harrington, and Köhn, 'Statelessness', 4; Milbrandt, 'Stateless', 82.

33. OTHER CATEGORIZATIONS – There are four other ways in which particular conceptions of statelessness can differ in international instruments. First, a distinction can be made between original statelessness (at birth) and subsequent statelessness (occurring later in life).[36] Second, statelessness can be conceptualised as only stemming from certain causes (e.g. statelessness as a result of discriminatory measures or as a result of territorial measures). Third, it can be dealt with in a particular (only concerning certain groups of people) or universal manner (all stateless persons). Fourth, an element of displacement can be required. Due to their stigmatised and discriminated position, it is estimated that one out of every three stateless persons in the world has been forcibly displaced.[37] Even though displacement is not an inherent aspect of statelessness, certain international instruments provide relief for stateless persons only if they are internationally displaced.

CHAPTER II. CAUSES OF STATELESSNESS

PART I. IN GENERAL: FLIPSIDE OF NATIONALITY LAW

34. DEFINING NATIONALITY[38] - Since statelessness is essentially the flipside of the 'nationality-coin', a brief outline of nationality law is in order. In general, nationality can be described as a 'special relationship between the individual and the state (…) the primary means by which an individual becomes participant rather than impotent observer in the apparatus of the state and the bearer of duties and obligations'.[39] From an international legal angle, the International Court of Justice defines nationality as 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments.' [40]

35. SOVEREIGNTY OVER NATIONALITY - Determining the membership of a political community in terms of nationality is an expression of a country's identity and a citizen's loyalty. This implies the mechanisms inclusion and exclusion. Because of these sensitivities, nationality constitutes an essential element of a state's sovereignty. Consequently, international law

[36] Paul Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', *The International and Comparative Law Quarterly* 11, no. 4 (1962): 1074; Subramanya, 'Problem of Statelessness in International Law', 337.
[37] Zahra Albarazi and Laura Van Waas, 'Statelessness and Displacement' (Norwegian Refugee Council and Tilburg University, 2016), 7 and 11–15.
[38] Nationality and citizenship are used interchangeably throughout this study. Although there are some differences in meaning, both are categories states use to define membership (see Paul Weis, Nationality and Statelessness in International Law (BRILL, 1979), 4).
[39] Batchelor, 'Stateless Persons', 234–35.
[40] Nottebohm (Liechtenstein vs. Guatemala) (ICJ 6 April 1955); Waas, *Nationality Matters*, 32; For more on the Nottebohm case, see Ian Brownlie, 'The Relations of Nationality in Public International Law', *British Year Book of International Law* 39 (1963): 349–65.

cannot actually grant nationality or make it effective. However, there are certain principles in international law that the exercise of this competence must comply with.[41]

36. ATTRIBUTION OF NATIONALITY – States can thus withdraw and attribute nationality. Attribution of nationality generally occurs on the basis of a genuine connection or link.[42] 'Original attribution' is the attribution of nationality at birth. Hereby two systems are paramount: *jus soli* and *jus sanguinis*. Whereas the first refers to nationality acquisition by virtue of being born on the territory of a state,[43] the latter represents cases in which a state grants nationality to a child if one or both parents are nationals of that state.[44] Today, most countries apply a mix.[45] In the case of 'derivative attribution' or naturalization, a person acquires nationality later in life, based on a more recently established genuine link. Derivative attribution can occur upon application after fulfilling certain criteria of attachment such as a significant period of habitual or permanent residence (jus domicilii)[46] or by means of dependency. In cases of 'dependent nationality', nationality laws link the nationality of wives to their husbands and the nationality of children to their parents (usually the father). If a national (usually a man) marries a foreign person or adopts or legitimates a foreign child, the wife and child respectively will become nationals in country adopting such a system. Likewise, if a husband or parent (usually the father) are naturalized in such a country, the wife and child respectively will be granted nationality. In case of divorce, when the marriage link is thus broken, the formerly foreign wife may sometimes lose the newly acquired nationality. This type of nationality system is opposite to 'independent nationality' systems whereby the nationality of the wife or child is not affected by the change in personal status or the change in nationality of the husband or parent.[47]

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[41] Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 158–59; Also see Waas, *Nationality Matters*, 35; Southwick and Lynch, 'Refworld, Nationality Rights for All', 1.

[42] E.g. place of birth, descent, residence, family ties, language or ethnicity (Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 157.).

[43] Assuming that, because a child will live in that territory it will assimilate to the customs and habits and thus have a more close links therewith.

[44] Assuming among others that they are of a shared race or culture and are thus more closely linked.

[45] Weis, *Nationality and Statelessness in International Law*, 95–115; Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 157; Waas, *Nationality Matters*, 32–33; Goris, Harrington, and Köhn, 'Statelessness', 4–5.

[46] Sometimes combined with requirements related to knowledge of language and self-support (See Weis, Nationality and Statelessness in International Law, 95–115).

[47] See Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 18, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Lung-chu Chen, 'The Equal Protection of Women in Reference to Nationality and Freedom of Movement', *Proceedings of the Annual Meeting (American Society of International Law)* 69 (1975): 19.

Finally, territorial changes of one's country of nationality can lead to the acquisition of a different nationality later in life.[48]

37. WITHDRAWAL OF NATIONALITY - Concerning the withdrawal of nationality two main categories can be distinguished. A national can usually opt for voluntary renunciation of his or her nationality (which is often linked to the acquisition of a new nationality by naturalisation) or the state can deprive a national of nationality ('denationalization'). Denationalization is dealt with under causes of statelessness.

38. PASSPORT AS A NECESSARY ATTRIBUTE OF NATIONALITY – For the modern nation state, a necessary attribute of nationality is the passport. As distinctions between citizens and non-citizens cannot be made without documents, the passport necessarily identifies people as citizens of a country and regulates their movement in and out of states.[49]

PART II. TYPOLOGY

39. IN GENERAL - These different mechanisms of nationality attribution and withdrawal and the basic autonomy of states constitute the essential conditions under which statelessness can flourish. We will consider how exactly statelessness can emerge from this framework. Various authors have created their own, often similar lists of causes of statelessness from which I have deducted the following typology.[50] Due to their different nature, we have to differentiate between the causes of de jure and de facto statelessness.

40. DE JURE: TECHNICAL CAUSES - De jure statelessness can occur because of three different categories of causes: (1) technical, (2) discriminatory and (3) territorial causes. The first refers to technical nationality laws which can result in statelessness. A clear divide can be made between the causes for original and subsequent statelessness. [51]

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[48] Waas, *Nationality Matters*, 33–34; Weis, *Nationality and Statelessness in International Law*, 95–115.
[49] Isaac Kornfeld, 'The Tragedy of People without Nationality', *Contemporary Jewish Record; New York, N.Y.* 2, no. 3 (1939): 42; Torpey, *The Invention of the Passport*, 121.
[50] This typology mainly follows the structure of causes laid out by Van Waas, supplemented with insights from other scholarly work (Dorothy Jean Walker, 'Statelessness: Violation or Conduit for Violation of Human Rights', *Human Rights Quarterly* 3 (1981): 110–14; Batchelor, 'Statelessness and the Problem of Resolving Nationality Status'; Blitz, *Statelessness, Protection and Equality*, 1).
[51] See Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 18-19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Miriam Rürup, *Lives in Limbo: Statelessness after Two World Wars* (na, 2000), 118–21; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 253–63; Waas, *Nationality Matters*, 49.

Original statelessness either emerges from a conflict of laws between specific nationality regimes[52] or when children are abandoned or orphaned.[53] An example of the first case is when parents from a jus soli state give birth to their child in a jus sanguinis state.

Sources of subsequent technical statelessness take four forms: expatriation, conflicts of laws due to dependent nationality, unilateral denationalization as a punitive measure and denationalization because nationality was obtained by fraud.[54] While the first case is more or less voluntary, the latter two are involuntary cases of losing one's nationality.

First, subsequent statelessness can be the result of a conscious decision of the person concerned. A national can deliberately renounce his or her nationality (expatriation) without obtaining another one.[55] This is often because many countries condition naturalization upon renunciation of original nationality. If that country does not (yet) naturalize this individual, statelessness will be the result. Some acts are sometimes taken to be an expression of the will to expatriate, such as long-term residence abroad or failure to comply with registration conditions or formalities when abroad. [56]

Second, statelessness can be the result of a conflict of laws when a country applying a system of 'dependent nationality' assumes that the country whose nationality the spouse or parent has or has taken (or had in case of divorce) is also a country of 'dependent nationality'. Consequently, it is assumed that the wife or child would also gain the foreign nationality (or regain the original one in case of divorce). If the foreign country adopts a system of 'independent nationality', however, the wife or child in question ends up stateless.[57]

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[52] With regard to the problems emerging from nationality regimes, the first problem consists of the discrepancy between jus soli and jus sanguinis regimes when borders are crossed. A second problem relates specifically to jus sanguinis. On the one hand, in some countries jus sanguinis only allows paternal transfer of nationality, thus discriminating against children born out of wedlock. On the other hand, jus sanguinis has a significant role in the perpetuation and inheritance of statelessness in the case of stateless parents in a jus sanguinis country.

[53] U.N. Secretary-General, *A Study of Statelessness,* at 116-119, U.N. Doc. E/1112 (Aug., 1949); Walker, 'Statelessness', 110–12; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 254–63.

[54] These result only in stateless provided the person has no second nationality.

[55] Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 253–63.

[56] Often this correlates with the fact that after a long-term residence the individual should be able to obtain naturalization. Sometimes denationalizaton by long-term residence abroad can be prevented by registration of intention to remain a national at the embassy of the country of residence (Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 18-19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Waas, *Nationality Matters*, 78–81).

[57] For a classification of conflicts of nationality laws issues related to marriage, see U.N. Secretary-General, *Nationality of Married Women: Report Submitted by the Secretary General*, U.N. Doc. E/CN.6/254 (April 28, 1955); also see U.N. Secretary-General, *A Study of Statelessness,* at 119-121, U.N. Doc. E/1112 (Aug., 1949); Walker, 'Statelessness', 112–14; Rürup, *Lives in Limbo*, 118–21; Weissbrodt and Collins, 'The Human Rights of

Third, technical subsequent statelessness can result from unilateral denationalization by the state as a punitive measure against an act which can be interpreted as breaking some sort of a loyalty link to the country. Cases in point are denationalization because of acts considered disloyal to the interests of the state, the entry into foreign military service or acceptance of foreign distinctions, certain crimes or political attitudes and activities.[58]

Finally, technical subsequent denationalization can occur because the nationality was acquired through fraudulent means.[59]

41. DE JURE: DISCRIMINATORY CAUSES - The second category, discriminatory causes of statelessness, is the most complex and sensitive origin of statelessness.[60] It is not only what originally put statelessness on the international agenda, it even has been said to be the greatest cause of statelessness worldwide, making the issue significantly broader than a mere technical problem.[61] In this case, deliberate denationalization occurs on racial, ethnic, religious or political grounds, even though the victims may have never set foot on another state's territory, had relations with foreigners or acted against the state's interests.[62] Citizenship is hereby used to gain a political advantage and/or exclude and marginalize unpopular population groups, often inspired by exclusive nationalist ideologies.[63] Discriminatory statelessness can result from discriminatory conditions laid down in citizenship laws or arbitrary action by the government.[64] This can be either direct (the criterion as such is mentioned in the law) or indirect (the criterion itself may be neutral at face value but it can nonetheless significantly disadvantage people of a certain religion, race, ethnicity or political opinion).[65] An example of the latter is denationalization of those

Stateless Persons', 253–63; Lay Lee, 'Denationalization and Statelessness in the Modern World', 24–25; Goris, Harrington, and Köhn, 'Statelessness', 4.

[58] U.N. Secretary-General, *A Study of Statelessness,* at 123-124, U.N. Doc. E/1112 (Aug., 1949).

[59] Waas, Nationality Matters, 78–81.

[60] Waas, 93–95.

[61] Batchelor, 'Stateless Persons', 256.

[62] Goris, Harrington, and Köhn, 'Statelessness', 4; Siegelberg, 'Without a Country', 155.

[63] James A. Goldston, 'Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens', *Ethics & International Affairs* 20, no. 3 (2006): 326–27; Blitz, *Statelessness, Protection and Equality*, 10; Milbrandt, 'Stateless', 80.

[64] In this case, discriminatory causes of statelessness can be seen as a collective case of subsequent technical statelessness through unilateral denationalization by the state. The crucial difference, however, is that, the grounds for discriminatory denationalizaiton are such that the person in question is not guilty of or, at least, should not be required to change. Admittedly, especially with regard to political opinion, there is sometimes a fine line between denationalization as a penalty and discriminatory denaitonaliation. (also see Goldston, 'Holes in the Rights Framework', 332–37; Waas, *Nationality Matters*, 93–95.)

[65] Goldston, 'Holes in the Rights Framework', 332–37.

that fled the country after a change in a state's political or social regime.[66] Finally, discriminatory statelessness can be both original and subsequent. The first case is labelled 'denial of citizenship' and is used mainly to denote the cases whereby people who have always lived in a certain state cannot obtain the nationality because of discriminatory practices, while the latter often takes the shape of (mass) denationalizations after regional ethnic or political turmoil.

42. DE JURE: TERRITORIAL CAUSES - The third category consists of 'territorial causes', which is statelessness resulting from state succession, including transfer of territory.[67] State succession is defined as the replacement of one state by another in the responsibility for the international relations of a territory.[68] As there is no firm customary law in this regard,[69] nationality is usually arranged by treaty provisions. In the past, nationality of the successor state was mostly granted to former nationals of the predecessor who have habitual residence in the new state's territory. However, this changed as new states increasingly felt the need to define themselves and create an identity through the delineation of its population.[70] Arrangements could include a right of option for the inhabitants of a territory to belong to the predecessor or (one of) the successor state(s). Cases of state succession often result in statelessness because the nationals of the predecessor state are unable to obtain the nationality of the successor state due to lacunae, wrong implementation or interpretation or simply by lack of any treaty regulations.[71]

43. DE FACTO - Since the literature is much vaguer when it comes to causes of de facto statelessness, I will limit the categorization to the two causes mentioned in the definition. First, the inability to obtain the benefits of nationality may stem from state oppression.

[66] In the Study of Statelessness 'denationalization after mass emigration caused by changes in political or social system' is seen as a separate cause. However, the denationalization is based on the fact that they have fled the changed system and they fled mostly because they disagree with the political elite. It therefore constitutes indirect discriminatory denationalization on the basis of political opinion. (U.N. Secretary-General, *A Study of Statelessness,* at 132, U.N. Doc. E/1112 (Aug., 1949)).
[67] Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 254–63.
[68] Vienna Convention on Succession of States in Respect of Treaties, art. 2, Aug. 23, 1978, 1946 U.N.T.S. 3; Lay Lee, 'Denationalization and Statelessness in the Modern World', 26–27.
[69] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 8, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).
[70] See Section VII, Chapter II, part I, below; Waas, Nationality Matters, 121–30.
[71] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 8, 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Goris, Harrington, and Köhn, 'Statelessness', 4.

Second, it may result from the lack of proof of nationality, either because the registration at birth was deficient or because the documentation got lost.[72]

44. OVERVIEW –

<table>
<tr><th colspan="4">De jure: no legal nationality</th></tr>
<tr><td></td><td>Original</td><td colspan="2">Subsequent</td></tr>
<tr><td rowspan="2">Technical</td><td rowspan="2">- Conflict of laws: Jus soli vs. jus sanguinis
- Abandoned and orphaned children</td><td>Voluntary</td><td>Involuntary</td></tr>
<tr><td>- Renunciation without getting another nationality (expatriation)
- Act considered to be an expression of the will to expatriate</td><td>- Conflict of laws: dependent: marriage/adoption/ legitimation
- Punishment of act ⇔ loyalty link
- Fraud</td></tr>
<tr><td>Discriminatory</td><td>Denial of citizenship</td><td colspan="2">(mass) discriminatory denationalization</td></tr>
<tr><td>Territorial</td><td>/</td><td colspan="2">State Succession, incl. territorial transfer
- No treaty provision regulation nationality
- If treaty: lacunae, interpretation problems</td></tr>
<tr><th colspan="4">De facto: legal nationality, but not the benefits and protection</th></tr>
<tr><td></td><td>Original</td><td colspan="2">Subsequent</td></tr>
<tr><td>Discriminatory</td><td colspan="3">Laws depriving a national of the substance of nationality rights</td></tr>
<tr><td>Lack of proof</td><td>Deficient registration of birth</td><td colspan="2">Lack or loss of documentation</td></tr>
</table>

CHAPTER III. CONSEQUENCES OF STATELESSNESS

PART I. IN GENERAL

45. IN GENERAL - Statelessness generally entails consequences for the international community, the states and – most prominently - the stateless individual.[73] The individual is the actual victim of statelessness, while states and the international community experience side-effects. Due to the centrality of individuals in remedies, the consequences discussed under 'remedies for consequences' further down will concern the consequences for individuals.

[72] Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 263–64; Goris, Harrington, and Köhn, 'Statelessness', 4; Southwick and Lynch, 'Refworld, Nationality Rights for All', 3.
[73] See Walker, 'Statelessness'.

46. THE INTERNATIONAL COMMUNITY – If stateless persons flee their original countries, this has consequences for the international community. Statelessness frequently causes interstate friction for two reasons. First, friction is caused by denationalization policies of states as they often deliberately 'dump' or force denationalized people into neighbouring states, while those neighbouring states cannot simply deport them as they have no nationality.[74] Second, friction can be the result of the unequal sharing of the burden of stateless people. Furthermore, statelessness disturbs the international legal order. It is important for the order of international relations that every individual is attributed to some state which has rights and obligations concerning this individual under international law.[75] A stateless person thus constitutes an anomaly.

47. INDIVIDUAL STATES – States having to receive stateless persons on their territory also suffer consequences. First, (large numbers of) stateless persons compose a burden on the state, in general due to the scale, but it can also be a specific burden because their presence goes against political or economic state interests. Second, just as in international law, stateless people constitute a legal anomaly disturbing the national legal order.[76]

48. STATELESS INDIVIDUAL: IN GENERAL - The most significantly affected actors, however, are the stateless individuals themselves, whether they are in or outside their original country. Statelessness generally has a dramatic impact on the lives of stateless persons worldwide as it constitutes a severe deprivation of individual power.[77] This negative impact can take two main forms: the lack of rights or proper access thereto and certain special (legal) needs created by being stateless. The main substance of nationality is rights and duties. Nationality has therefore often been coined as 'the rights to have rights'. Consequently, to be deprived of nationality means the inability to enjoy a wide array of rights.[78] The typology set out below elaborates on the important consequences for individuals.

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[74] Walker, 107.
[75] E.g. duty of diplomatic protection, duty to readmit a national on the territory (Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson)).
[76] U.N. Secretary-General, *A Study of Statelessness,* at 9, U.N. Doc. E/1112 (Aug., 1949).
[77] Walker, 'Statelessness', 114–15; Ellen H. Greiper, 'Stateless Persons and Their Lack of Access to Judicial Forums Comment', *Brooklyn Journal of International Law* 11 (1985): 439.
[78] Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 159–60; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 248; Waas, *Nationality Matters*, 12, 217–20.

PART II. TYPOLOGY OF CONSEQUENCES FOR THE INDIVIDUAL

49. LEGAL STATUS AND RIGHTS PERSONAL STATUS - The first group of consequences consists of the lack of legal status and rights. A first set of rights a stateless person might be lacking are those related to personal status.[79] In some countries the rules of private international law stipulate that these matters are governed by the country of domicile or residence,[80] while in other countries they are determined by the national law of the person concerned.[81] In the latter case, there is no law governing the personal status of a stateless person. The same goes for the treatment of some rights acquired under the previous nationality, which are sometimes governed by an individual's national law.[82]

50. LEGAL STATUS AND RIGHTS: OTHER RIGHTS – Traditionally, when a national goes abroad, rights are granted through bilateral and multilateral agreements whereby states can ensure the protection of their nationals' rights abroad. The recognition of foreigners' rights often also depends on the condition of reciprocity, according to which states basically say 'we will recognise rights of your subjects while they are with us, on the condition that you accord the same treatment to our nationals while they are with you.'[83]

Stateless people naturally do not have a state to make agreements or provide the necessary reciprocity.[84] As will be further discussed in Section VII, Chapter II, in the wake of the Second World War international human rights law replaced nationality by humanity as a basis to enjoy certain fundamental rights.[85] However, the human rights framework was not yet fully established in the described period. Furthermore, even up to today, with an established international human rights framework in place, stateless persons often face barriers in reality that prevent them from accessing those rights.[86]

Rights can be split into two main groups (1) the rights that are now considered as human rights and (2) the rights that, even today, remain reserved for nationals. Stateless people are,

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[79] Status, competence, family relations, inheritance etc.
[80] Some South-American and the Anglosaxon states.
[81] Continental Europe and Japan.
[82] See *Legal Position of the Russian Refugees. Memorandum by André Mandelstam with an Introductory Note by the Legal Section of the Secretatiat, 16 August 1921*, 3-4, League of Nations Doc. C.R.R.3 (1921); U.N. Secretary-General, *A Study of Statelessness,* at 18-19, U.N. Doc. E/1112 (Aug., 1949).
[83] Rubinstein, 'The Refugee Problem', 726.
[84] Walker, 'Statelessness', 108; Rubinstein, 'The Refugee Problem', 726.
[85] See Section VII, Chapter II, Part I, below.
[86] Also see Goldston, 'Holes in the Rights Framework', 328–31, 341; Mirna Adjami and Julia Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', *Refugee Survey Quarterly* 27, no. 3 (1 January 2008): 93–94; Blitz, *Statelessness, Protection and Equality*, 1.

for obvious reasons, usually deprived of the rights in the second category. With regard to the first group, there are two classes of human rights that stateless persons are generally or often deprived of or lack access to. First, the lack of nationality can result in situations that could qualify as deficient protection of so-called 'civil and political rights'. Stateless people often experience difficulties with access to courts, freedom of religion, obtaining to property, freedom of opinion, expression and political assembly etc.[87] Furthermore, stateless persons often face a significant risk of arbitrary detention. As they are often unable to re-enter their state of habitual residence and the obtaining state does not know how to deport them, it often results in lock-up.[88] Second, being stateless prevents access to what would now be called 'economic, social and cultural rights'. These difficulties include labour-related rights, the struggle to get social security, an adequate standard of living, education, intellectual property and healthcare.[89]

This classification is somewhat anachronistic as these distinctions were not yet fully made in the described period. However, for reasons of clarity this one was chosen.

51. SPECIAL NEEDS - The second group of consequences consists of special needs that arise from being stateless. Even when stateless persons are not actually deprived of rights, they cannot exercise them as they are dependent on fulfilment of certain formalities, documents or intervention of authorities for which they are not in position to comply with.[90]

First, the ultimate need of stateless persons is the need to obtain nationality. A second much experienced special need by stateless persons is the need for documentation, both for identification as for travel, the latter consisting mainly of passports and visas. On the one hand, establishing one's identity internally is very important for internal free movement and various aspects of daily life such as registration of births, deaths and marriages, obtaining employment etc. On the other hand, identity and travel documentation is extremely important for international freedom of movement.[91]

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[87] Waas, *Nationality Matters*, 235–38; Walker, 'Statelessness', 108–9; Greiper, 'Stateless Persons and Their Lack of Access to Judicial Forums Comment', 242–46.
[88] Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 267–68; Baluarte, 'The Risk of Statelessness', 49.
[89] Walker, 'Statelessness', 108–9; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 266–68; Waas, *Nationality Matters*, 353–55; Milbrandt, 'Stateless', 92; Baluarte, 'The Risk of Statelessness', 49.
[90] U.N. Secretary-General, *A Study of Statelessness,* at 14, U.N. Doc. E/1112 (Aug., 1949).
[91] For the different types of identity and travel documents, See Torpey, *The Invention of the Passport*, 158–67.

Thirdly, there is the need for security of residence. As stateless persons frequently reside in state territory illegally, they are often at risk of expulsion.

A third need consists of the need for diplomatic protection. This refers to 'the right on part of the state to seek redress for any injury committed against one of its nationals if local remedies in the injuring state have not provided adequate redress'. Diplomatic protection constitutes an important mechanism in ensuring fair and proper treatment of nationals abroad.[92] Long-standing doctrine dictated that states can only exercise diplomatic protection with respect to their own nationals. In the past it was thus claimed that 'A state (…) does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently, no state is empowered to intervene or complain on his behalf either before or after the injury'.[93] As a result, stateless persons are unable to be protected and have their claim presented internationally.[94] Whereas today exceptions to this rule are possible and the whole body of human rights law and related courts have reduced the need for international protection, this was not yet fully the case in the described period.[95] A final need is the need for consular services, for acts such as certification of important documents.[96]

CHAPTER IV. REMEDIES FOR STATELESSNESS

52. IN GENERAL - For all these causes and consequences there are possible international remedies. The core challenge of addressing statelessness is of course the tradition of state control. Statelessness must therefore always ultimately be resolved by national governments.[97] The authority of states can be limited, though.

Many different distinctions and typologies for remedies for statelessness can be found.[98] I have made up a typology of remedies based on the typologies for causes and consequences: remedies aimed at eliminating or reducing the causes of statelessness and remedies aimed at eradicating or minimizing the consequences thereof.

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[92] Weis, Nationality and Statelessness in International Law, 32–33; Waas, Nationality Matters, 380.
[93] Dickson Car Wheel Company (U.S.A.) v. United Mexican States (General Claims Commission, United States and Mexico July 1931).
[94] Walker, 'Statelessness', 109; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 248.
[95] Waas, Nationality Matters, 380.
[96] See *Legal Position of the Russian Refugees. Memorandum by André Mandelstam with an Introductory Note by the Legal Section of the Secretatiat, 16 August 1921*, 6-7, League of Nations Doc. C.R.R.3 (1921).
[97] Southwick and Lynch, 'Refworld, Nationality Rights for All', i; Baluarte, 'The Risk of Statelessness', 49.
[98] E.g. Walker, 'Statelessness', 106; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 271–72; Anna Dolidze, 'Lampedusa and Beyond: Recognition, Implementation, and Justiciability of Stateless Persons' Rights under International Law', *Interdisciplinary Journal of Human Rights Law* 6 (2011): 192.

53. REMEDY THE CAUSES - The remedies for causes are aimed at preventing statelessness before it develops.[99] In case of de jure statelessness, they constitute state obligations to adjust nationality attribution and withdrawal in a way to combat statelessness. On the one hand, these measures can concern all causes of statelessness but mostly they are limited to one of the causes. In case of technical causes, the remedies can be limited to one specific troublesome area, such as stateless children or women. On the other hand, there are two types of measures: substantive and procedural measures. In the first category, measure can either be negative in nature and aimed at preventing loss of nationality, entailing obligations on states not to withdraw nationality (arbitrarily)[100] or they can be positive and aimed at providing everyone with nationality, entailing the obligation on states to grant nationality to people that would otherwise lack it. The second category, procedural remedies, are accessory to the substantive measures and include a right to due process (including right to be represented and informed), a supervisory body assuring national implementation of the measures as well as possible settlement by court or arbitration in case of disagreement or unclarity of a nationality claim.[101]

In case of de facto statelessness, the causes can be remedied by installing an anti-discrimination norm with regard to access to rights and protection or by improving the registration and documentation system.

54. REMEDY THE CONSEQUENCES - The remedies that address the consequences of statelessness are twofold: radical solutions and legal status. Both categories contain possible substantive and procedural remedies. The 'radical solutions' are aimed at remedying the need for nationality altogether, by either obtaining the original nationality (repatriation), the nationality of the receiving state (naturalization) or the nationality of a third, state willing to naturalize them (naturalization after settlement). Procedural remedies in this case can include arbitration for the settlement of potential disputes of nationality ensuring that the disputed person acquires a nationality.

The 'minimizing' remedies, on the other hand, are not aimed at altering the status of stateless persons but seek to lessen their difficulties. If statelessness cannot be fully eliminated, those that continue to fall through the cracks of nationality laws should be given

[99] See Lay Lee, 'Denationalization and Statelessness in the Modern World', 34–37.
[100] Lay Lee, 32–34; als see Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1074.
[101] See Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 23, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).

an autonomous legal status providing them with an appropriate standard of international protection.[102] First in this category are the remedies offering legal status and rights to stateless persons. If needed, personal status can be determined by the law of the country of domicile or residence or by the previous national law. Regarding the other rights, the condition of reciprocity can be lifted, or the rights can be granted. The second group are remedies providing for special needs. Concerning the need for documentation, the stateless person can be provided with specific identity and/or travel documents.[103] Remedies for the need of security of residence include the principle of non-refoulement and the non-expulsion of stateless persons if they cannot legally enter another country. Remedies for the need for diplomatic protection include letting the receiving country, a third country or an international organisation or agency take up this task.[104] The need for consular services, finally, can be remedied by leaving the task to former representatives, an international institution or agency or a third country. [105]

The granting of all these rights and benefits is categorised in two dimensions. It can take place on several levels of protection and it can concern stateless individuals with different levels of attachment to the state. With regard to the first, rights can be granted (1) absolutely, or on par with (2) nationals, (3) foreigners or (4) most favoured foreigners.[106] With regard to the levels of attachment, rights can be granted to a stateless person connected to the granting state in one of the following ways: (1) within jurisdiction, (2) physical presence on the territory, (3) lawfully present, (4) lawfully staying, (5) durable residence. [107]

Procedural remedies in this category are similar to the procedural remedies for causes. It includes first rights of due process in case a stateless person is denied a certain right. Furthermore, a supervisory body controlling whether states actually implement these rights effectively could be useful as well as a court or arbitration in case of disputes.

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[102] Molnar, 'Stateless Persons under International Law and EU Law', 294.
[103] Also see Walker, 'Statelessness', 108–9.
[104] For the suggestion of letting the UN take up this task, see Walker, 121–22.
[105] See *Legal Position of the Russian Refugees. Memorandum by André Mandelstam with an Introductory Note by the Legal Section of the Secretatiat, 16 August 1921*, 6-7, League of Nations Doc. C.R.R.3 (1921).
[106] Human rights are granted to all individuals on the basis of their humanity. However, as set out above, this framework was not yet fully established in the described period (See Molnar, 'Stateless Persons under International Law and EU Law', 295–96).
[107] Waas, *Nationality Matters*, 230–31; Tamas Molnar, 'Remembering the Forgotten: International Legal Regime Protecting the Stateless Persons - Stocktaking and New Tendencies', *US-China Law Review* 11 (2014): 832–33.

55. OVERVIEW –

⇔ CAUSES (prevention/avoidance of statelessness)	
De jure	

In general: for all causes
Technical causes
- General
- Specific: expatriation, dependent, punishment
Territorial causes
Discriminatory causes
	- Substantive remedies
	  o Negative obligations of states
	  o Positive obligations of states
	- Procedural remedies
	  o Due process
	  o Supervisory body
	  o Court/arbitration

De facto	
Discriminatory causes	Anti-discrimination norms
Lack of proof	Improvements in documentation and administration
⇔ CONSEQUENCES (remedies once someone is stateless)	
Radical solution: eliminate problem	

Grant status of national
= elimination of existing statelessness
	- Substantive
	  o Naturalization in receiving country
	  o Repatriation in original country
	  o Settlement tin third country
	- Procedural: court/arbitration

Minimizing measures: deal with the consequences without eliminating the problem	
Substantive	
Lack of status and rights	
Grant status as stateless person (incl. certain rights) = institutionalisation of existing statelessness	Personal status: grant personal status - Cf. law of country of domicile/residence - Cf. former national law

	Protection and Rights:
	- Exemption from reciprocity
	- Grant rights at certain protection level (absolute, on part with foreigners generally/nationals or most favoured foreigner)
	  o Civil and political rights
	  o Social and cultural rights

(Grant human rights = universal status of human beings)	
Special needs	
Documentation	- Travel and/or identity documents
Security of residence	- No/limited expulsion
Diplomatic protection / consular services	- By international organisation / agency - By other country
Procedural	
- Due process - Supervisory body - Court/arbitration	

CHAPTER V. LEGAL FRAMEWORK TODAY

56. LEGAL FRAMEWORK - Before discussing the international legal history of statelessness, a short overview of today's international legal framework could be insightful. The current international regime is governed by an amalgam of sources. Firstly, there are treaties,[108] the main reference point being the statelessness conventions of 1954 and 1961. Whereas the first focuses more on providing stateless persons with a status and rights, the latter contains remedies for the causes. Specific documents containing remedies concerning causes and consequences exist as well. With regard to the former, the 1957 Convention on Nationality of Married Women constitutes an example. With regard to consequences, several documents grant protection and rights to stateless persons through human rights rather than by giving them a status.[109] Furthermore, specific aspects are dealt with in specialised instruments.[110] Treaties related to statelessness can be found on a regional level as well. In Europe, the EU and the Council of Europe have taken measures.[111] In the Americas action has been taken as well,[112] and in a more limited fashion, Africa followed suit.[113] In the Islamic world, finally, measures have been taken for stateless children alone.[114]

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[108] For overviews, see Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 165–66; Weissbrodt and Collins, 'The Human Rights of Stateless Persons', 246–47; Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', 98; Southwick and Lynch, 'Refworld, Nationality Rights for All', 4–6; Dolidze, 'Lampedusa and Beyond', 131–32; Baluarte, 'The Risk of Statelessness', 57–58.

[109] See ICCPR, CESCR, CRC, ICERD, CEDAW (Douglas Hodgson, 'The International Legal Protection of the Child's Right to a Legal Identity and the Problem of Statelessness', *International Journal of Law and the Family* 7 (1993): 255–70; Jaap E. Doek, 'The CRC and the Right to Acquire and to Preserve a Nationality', *Refugee Survey Quarterly* 25, no. 3 (1 January 2006): 26–32; Boyden and Hart, 'The Statelessness of the World's Children'.

[110] See Convention 118 Concerning Equality of Treatment of Nationals and Non-nationals in Social Security, June 28, 1962, available at *http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C118* (accessed May 27, 2018); Protocol 1 Annexed to the Universal Copyright Convention, July 24, 1971, available at *http://portal.unesco.org/en/ev.phpURL_ID=17446&URL_DO=DO_TOPIC&URL_SECTION=201.html* (accessed May 27, 2018); Molnar, 'Stateless Persons under International Law and EU Law', 298–99.

[111] European Convention on Nationality, Nov. 6, 1997, ETS 166; Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, March 15, 2006, CETS 200; Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', 99–100; Molnar, 'Stateless Persons under International Law and EU Law', 300–304; Dolidze, 'Lampedusa and Beyond', 133–43.

[112] The 1969 American Convention on Human Rights contains a right to nationality (American Convention on Human Rights, Nov. 22, 1969, available at http://www.refworld.org/docid/3ae6b36510.html (accessed 27 May, 2018); Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 167; Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', 99.

[113] The 1981 African charter on Human and People's rights does not mention nationality explicitly, but several articles have the potential to restrict conditions under which nationality can be denied (African Charter on Human and People's Rights, June 1, 1981, available at https://au.int/en/treaties/african-charter-human-and-peoples-rights (accessed May 27, 2018)) and the 1990 African Union Charter on the Rights and Welfare of the Child explicitly attributes a right to nationality (African Union Charter on the Rights and Welfare of the Child, July 1, 1990, available at https://au.int/en/treaties/african-charter-rights-and-welfare-child (May 27, 2018)); Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights'; Blitz, *Statelessness, Protection and Equality*, 22–23.

[114] The 2005 Covenant on the Rights of the Child in Islam ensures nationality rights for children and obliges states to 'make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory (Covenant of the Rights of the Child in Islam, June 28-30, 2005, available at OIC/9-

It is sometimes claimed that aspects of stateless persons' protection derive from customary international law. Chan argues that a stateless child has a customary right to citizenship, while Weis argues that the prohibition against denationalization on racial or ethnic grounds has become jus cogens.[115] Finally, several sources of soft law on statelessness can be distinguished.[116]

VII: STATELESSNESS ON THE INTERNATIONAL LEGAL STAGE

57. OVERVIEW - For the Interwar and post-World War II period respectively, two aspects of statelessness as an international legal phenomenon will be considered. On the one hand, the emergence and evolution of statelessness as an international problem will be described. On the other hand, the emergence and evolution of international remedies to this problem are set out. Although different ways of describing the remedies have been used in the past,[117] the following chapters will – for each period – make a distinction between remedies for the consequences ('consequence track') and remedies for the causes ('causal track') because, especially in the beginning, these tracks evolved separately. For each track three elements will be discussed: (1) an overview of the formation of the relevant legal documents, (2) the categorization of concepts and remedies (why-part) and (3) the reasons and motivations for internationalization (how-part).

CHAPTER I. INTERWAR PERIOD

PART I. EMERGENCE OF THE STATELESSNESS PROBLEM IN WAR TORN EUROPE

§1. Nationality in general

58. THE IMPORTANCE OF NATIONALITY IN THE INTERWAR PERIOD – In the interwar period the traditional rule that states are subjects of international law while individuals are only

IGGE/HRI/2004/Rep.Final (accessed May 27, 2018)); Southwick and Lynch, 'Refworld, Nationality Rights for All', 6.

[115] Lay Lee, 'Denationalization and Statelessness in the Modern World', 29–31.

[116] Examples include the Draft Articles Concerning Nationality Attribution Following a Succession of States and the Draft Articles on Diplomatic Protection (See Molnar, 'Stateless Persons under International Law and EU Law', 297).

[117] See Rürup, *Lives in Limbo*, 121–24; Lay Lee, 'Denationalization and Statelessness in the Modern World', 26–29.

indirectly objects, still stood strong.[118] Consequently, an individual was only recognized by international law insofar as he was a national of a sovereign state. The first manifestations of international relevance of the individual are therefore deeply connected with state actions (e.g. diplomatic protection, immunities etc.). There was no autonomous protection of the individual on the international level compared to today's human rights. Rights could only be granted to two categories of persons: a national or a foreigner. The national received rights through citizenship. Rights were created by only positive law for the members of independent political communities. Foreigners only received rights through their nationality, via their status as foreigner combined with conditions of reciprocity and the facility of diplomatic protection. In sum, the state and therefore nationality was the necessary vehicle for an individual to access rights. Outside of nationality, people constituted an anomaly in international and national law and their rights were guaranteed by none.[119]

59. FRAMEWORK NATIONALITY AS SELF-DETERMINATION – For a long time in history problems of statelessness were not commonplace because the principle of domicile was mainly assumed to establish an sufficient and effective link between an individual and a state.[120] From the late 19th century onward, the first statements that municipal law governs nationality appear in the literature, but the significance is limited since nationality conflicts including statelessness, were still an exception.[121] After the Great War, rising nationalist ideas changed the concept of nationality. Nationality law became a tool for 'national self-determination,' used to delineate national identities. To this end ethnic, racial, religious or other socio-cultural criteria were used besides residence to determine nationality according to each nation's conception of their identity.[122] As a result, states started using and fully exploiting their sovereign freedom to regulate nationality. In the beginning there was

[118] Stephen B. Young, 'Between Sovereigns: A Reexamination of Refugee's Status Transnational Legal Problems of Refugees: Part 5: Entering the Country of Refuge: International Perspectives', *Michigan Yearbook of International Legal Studies* 3 (1982): 341–42; Gonçalo Matias, *Citizenship as a Human Right* (London: Palgrave Macmillan UK, 2016), 41, 91–95.
[119] Erwin Loewenfeld, 'Status of Stateless Persons', *Transactions of the Grotius Society* 27 (1941): 59; Elizabeth White, 'The Legal Status of Russian Refugees, 1921-1936', *Comparativ. Zeitschrift Fur Globalgeschichte Und Vergleichende Gesellshaftsforschung*, 2017, 6–7.
[120] Yasuaki Onuma, 'Nationality and Territorial Change: In Search of the State of the Law', *Yale Journal of World Public Order* 8 (1982 1981): 4; Batchelor, 'Stateless Persons', 239.
[121] Brownlie, 'The Relations of Nationality in Public International Law', 286.
[122] Loewenfeld, 'Status of Stateless Persons', 67; Walker, 'Statelessness', 116–17; Onuma, 'Nationality and Territorial Change', 3; Batchelor, 'Stateless Persons', 239; Peter J. Spiro, 'A New International Law of Citizenship', *American Journal of International Law* 105, no. 4 (2011): 695–96; Matias, *Citizenship as a Human Right*, 42.

virtually unfettered sovereignty because independence and autonomy were considered necessary to build and consolidate the nation states. The system centred around principles of sovereignty and equality, as well as non-intervention in internal affairs.[123] As a result, citizenship laws could freely contain racial, social or similar criteria without violating any international norms. Furthermore, there was no prohibition to deprive (certain classes of) citizens of their nationality. As a consequence of this unfettered freedom, nationality increasingly became the subject of dispute.[124]

However, early limitations slowed down the unlimited sovereignty over nationality determination. First there was a 'principle limitation' in the PCIJ Advisory Opinion on Tunis and Morocco Nationality Decrees in which it was decided that nationality falls under domestic jurisdiction, but that this can change with the development of international relations so that it can change in the future. By stating this, the PCIJ basically opened the door to possible international regulation of nationality.[125]

The first set of actual limitations was embodied in the 1930 Hague Convention of Certain Questions Relating to the Conflict of Nationality Laws.[126] This convention was the first attempt to come up with some basic rules regarding nationality to solve conflict of laws issues spurring from the states' unfettered freedom. In the general article 1, the states recognized sovereignty over nationality issues but only if in line with the treaties, custom and principles of law generally recognised with regard to nationality.[127] Hereby the convention, in line with the aforementioned PCIJ case, emphasizes that even though nationality is conferred through national law, common international standards are possible. The convention is therefore the beginning of a trend to accepting limits to the exclusive

[123] Waas, *Nationality Matters*, 35–36; Lay Lee, 'Denationalization and Statelessness in the Modern World', 23–25.
[124] See Lay Lee, 'Denationalization and Statelessness in the Modern World', 23–25; Matias, *Citizenship as a Human Right*, 41.
[125] This was a dispute over a provision in identical French decrees enacted in Tunis and the French zone of Morocco on November 8, 1921 which were challenged by the British government because it imposed French nationality on certain british subjects. The question under scrutiny was whether the disputes over the decrees were purely domestic and thus beyond the advisory competences of the League of Nations; 'Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921, Advisory Opinion, 7 February 1923, Permanent Court of International Justice (PCIJ)', accessed 20 February 2018, http://www.worldcourts.com/pcij/eng/decisions/1923.02.07_morocco.htm; For a further discussion of the case, see Charles Noble Gregory, 'An Important Decision by the Permanent Court of International Justice' 17 (1923): 298–307; For other cases confirming the sovereign right to nationality determination in this period, see Weis, *Nationality and Statelessness in International Law*, 71–82; Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 160; Lay Lee, 'Denationalization and Statelessness in the Modern World', 26–27.
[126] See Section VII, Chapter I, Part III, below; Waas, *Nationality Matters*, 37–38; Baluarte, 'The Risk of Statelessness', 236.
[127] Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 160.

competence of states in nationality matters. The measures against statelessness contained in the convention will be further discussed below.[128]

§2. Statelessness in particular

60. CAUSES OF STATELESSNESS – The changed concept of nationality, especially before the aforementioned limitations occurred and in combination with other contextual changes, significantly worsened the statelessness problem after the Great War.[129] Concerning technical causes of statelessness, the problem had already occurred before World War I (hereafter 'WWI'). Nationality laws affecting women and children had proven problematic for example.[130] On the other hand, denationalization as a penalty was rather rare.[131] However, the number of technical cases of statelessness increased greatly after the War. First, cross-border movement of populations increased due to better travel and communication facilities. As a result, an increased number of births took place outside the original country and families were composed of different nationalities, leading to technical difficulties. Second, barriers to acquire new nationalities through naturalization lowered, resulting in a more fluid, individualised use of nationality. Third, in the nationalist post-war spirit, states started enacting more nationality laws withdrawing nationality as a punishment for disloyal behaviour, such as collaboration. At first these measures were justified as exceptional war-measures but, supported by the rising nationalism, a number of states retained the measures and even enacted new ones.[132] As a result of all these changes the conflicting claims, and therefore statelessness, increased.[133]

Discriminatory causes of statelessness were burgeoning after WWI as the renewed concept of nationality spurred deliberate mass denationalization by totalitarian states such as Soviet Russia and Germany. They deprived entire sections of their population of their nationality because of either their racial, ethnic, religious identity or because of their political

[128] See Chapter II, Part III, §2, B, below.
[129] Loewenfeld, 'Status of Stateless Persons', 65–67.
[130] U.N. Secretary-General, *A Study of Statelessness,* at 4, U.N. Doc. E/1112 (Aug., 1949).
[131] Lawrence Preuss, 'International Law and Deprivation of Nationality', *Georgetown Law Journal* 23 (1935): 257.
[132] Preuss, 259–61; Weis, *Nationality and Statelessness in International Law*, 45.
[133] Richard W. Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', *American Journal of International Law* 24, no. 3 (1930): 467.

opposition in order to end up with a 'purified national society'.[134] These measures will be further discussed below under 'context and formation'.

Finally, there was a significant rise in territorial causes. Before WWI, territorial transfers usually implied an automatic change of nationality whereby the nationals of the first state with continued habitual residence became nationals of the successor state.[135] Some change towards self-determination was already taking place in the period right before WWI, resulting in an increased number of cases where nationality could be opted for or plebiscites were organised.[136] The influence of self-determination and the subsequent statelessness intensified with the collapse of the Austro-Hungarian, Ottoman and Russian Empires after WWI. The dissolution of these empires led to the creation of new nation-states under the peace treaties of Paris of 1919 and 1920. Fully in line with the newly established concept of national self-determination, these states were understood as ethnically homogeneous.[137] Even though the provision of the Treaty stated that the former nationals that were habitually resident in the new state would have citizenship without having to comply with formalities, the new states troubled racial, linguistic or religious minorities with burdensome requirements and formalities to this end. As a result of these new state boundaries, over 60 million people changed nationality and many others lost theirs.[138]

61. CONSEQUENCES FOR THE STATELESS INDIVIDUAL: MORE DEMAND FOR PROTECTION AND INCREASED NEED FOR DOCUMENTATION –The altered concept of nationality and the changes in its implementation set out above not only generated more statelessness, but those that ended up stateless also found themselves in a more precarious situation than before the war.

First, there was a bigger demand for rights protection. Even in the limited cases of statelessness that occurred before the war, the victims did not suffer very harsh consequences as they were subject to only a minimum of rights deprivation.[139] As nationalist feelings had risen after the Great War, populations were turned against non-nationals.

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[134] Kornfeld, 'The Tragedy of People without Nationality', 45.
[135] This is the so-called règle de Pothier: 'When a province is united to the union of the state and when a province is severed form the state… the domination of the inahbitants changes' (see Onuma, 'Nationality and Territorial Change', 4).
[136] Onuma, 5.
[137] Due to the factual ethnic diversity of these new nation-states, however, minority treaties had to be set up to protect those being outside of the 'homogeneous crowd'.
[138] Kornfeld, 'The Tragedy of People without Nationality', 43–44; Waas, *Nationality Matters*, 121–23.
[139] Kornfeld, 'The Tragedy of People without Nationality', 42.

Second, there was a significant increased need for documentation as the passport system had grown in importance.[140] Before WWI the need for documentation in order to move and travel freely was not that big. Whereas passports were in general use during the first half of the 19th century, the rest of the 19th century was marked by a trend towards less impediments to cross-border movement of people. Passports became generally superfluous for movement between states, unless for diplomats who claimed special treatment. [141] This uncontrolled migration was underpinned by the rise of liberalism.[142] In the period from the late 19th century until the beginning of WWI, the importance of documentation began to increase slowly as more and more distinctions were made between citizens and non-citizens for various ends and the only way to distinguish between them was through documentation. However, liberalism continued to underpin a generally relaxed passport policy until the Great War hit the globe. During the war this relaxed system was replaced by tight restrictions.[143] Strict passport controls were seen as the only way to control aliens and assure the military and economic protection of the states at war. The return to peace ought to have signalled the end of these measures but the restrictions remained in place.[144] The reasons for this were twofold. On the one hand, the principle of self-determination and the nationalist ideology demanded control over the means of movement across borders to create and control the nation-state idea as a homogeneous ethnocultural unit. The passport was the ultimate tool to control the movements and function as a symbol of inclusion and exclusion.[145] On the other hand, the pre-war economic liberalism had been dramatically reversed into protectionism, aimed at keeping out foreign workers.[146] This process of increased importance of documentation was facilitated by the general institutionalisation of the use of identity papers.[147] The process heavily hindered the now increased group of stateless individuals in their movement (especially the stateless refugees), since no passport could be obtained without a nationality and without a passport no country could be

[140] Rürup, Lives in Limbo, 113.
[141] For a full history of the passport, see Torpey, *The Invention of the Passport*; Also see Egidio Reale, 'The Passport Question.', *Foreign Affairs* 9, no. 1 (1930): 506; Hieronymi, 'The Nansen Passport', 43; Karl E. Meyer, 'The Curious Life of the Lowly Passport', *World Policy Journal* 26, no. 1 (2009): 71–77.
[142] James C. Hathaway, 'The Evolution of Refugee Status in International Law: 1920-1950', International and Comparative Law Quarterly 33 (1984): 348.
[143] John Hope Simpson, 'The Refugee Problem', *International Affairs (Royal Institute of International Affairs 1931-1939)* 17, no. 5 (1938): 607; Torpey, *The Invention of the Passport*, 111.
[144] Reale, 'The Passport Question.', 106; White, 'The Legal Status of Russian Refugees, 1921-1936', 6.
[145] Torpey, *The Invention of the Passport*, 1.
[146] Torpey, 129.
[147] Waas, Nationality Matters, 165.

entered.[148] Furthermore, due to increased regulations governing all aspects of social life, stateless persons were constantly brought into contact with the authorities revealing their (non)status.[149]

62. CONSEQUENCES FOR THE STATES AND INTERNATIONAL COMMUNITY - The increased mobility, (mass) denationalizations and redrawing of international borders after the Great War generated a large-scale group of stateless persons.[150] Before the war, the few stateless persons in search of a new home did not make up a big problem as there were always 'physical and intellectual spaces to be filled' in the various countries. In general, states were happy to receive an addition to their population as they would contribute to the development of the state.[151] After the war, however, states were less able and willing to absorb these people when they fled. First, the increased scale of the problem, leading up to millions of stateless refugees after the war, made it practically impossible for some states to receive all stateless refugees. Secondly, the national circumstances of the receiving countries had changed both economically and ideologically. The economic crisis in the aftermath of the war and the protectionism that accompanied it, impeded states from receiving non-nationals economically.[152] The post-war political nationalism constituted an ideological stumbling block. In line with this rationale several states adopted immigration restrictions.[153] As a result, states were unwilling to naturalize all the newcomers but at the same time they could not treat them like foreigners due to their lack of nationality.[154] In sum, states were confronted with a large emerging group of denationalized people (many refugees) in an economic and political context, as well as a legal framework, that impeded states from hosting them. This constellation of facts inevitable led to increased friction between various states.

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[148] Even international lawyers opposed the restrictions desribing it as a 'medieval instrument that offers only drawbacks for civlized states' (Rürup, *Lives in Limbo*, 133; Hieronymi, 'The Nansen Passport', 44).
[149] U.N. Secretary-General, *A Study of Statelessness,* at 9-10, U.N. Doc. E/1112 (Aug., 1949).
[150] See Kornfeld, 'The Tragedy of People without Nationality', 48; Lay Lee, 'Denationalization and Statelessness in the Modern World', 27–28; Milbrandt, 'Stateless', 83.
[151] Norman Bentwich, 'The League of Nations and Refugees', *British Year Book of International Law* 16 (1935): 115.
[152] Also see Alessandra Roversi, 'The Evolution of the Refugee Regime and Institutional Responses: Legacies from the Nansen Period', *Refugee Survey Quarterly* 22, no. 1 (2003): 21.
[153] Bentwich, 'The League of Nations and Refugees', 15; Hathaway, 'The Evolution of Refugee Status in International Law', 348; Claudena M. Skran, 'Historical Development of International Refugee Law', in *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary* (OUP Oxford, 2011), 6.
[154] Louise W. Holborn, 'The Legal Status of Political Refugees, 1920-1938', *American Journal of International Law* 32, no. 4 (1938): 382.

63. RESULT: STATELESSNESS ON THE INTERNATIONAL AGENDA – Even though, before the war, international lawyers already regarded statelessness as a 'blemish in municipal and international law', statelessness was not a major legal problem and by consequence little effort was invested to address it, unless by some private associations and societies.[155] This radically changed after WWI. The rising nationalism, racism and totalitarianism increased the number of stateless persons, worsened their position and, due to the fact that many of them were on refuge, put pressure on the nation-state community. An international solution was needed, but the problem of statelessness had not yet been considered in international law and statelessness constituted a legal anomaly in a system of nation-states.[156] Many states worked out their own solutions to the problem, but soon the scale of the problem proved too large for one state to handle. If the statelessness problem was not going to be solved by the states, then a supranational structure had to take care of it. The new framework of supranational organizations of the League of Nations and the committees of ICRC thus assumed responsibility for the problems of statelessness and tried to work out solutions.[157]

PART II. CONSEQUENCE-TRACK: STATELESS REFUGEES

64. THE 'REFUGEE REGIME' - The consequences of statelessness in the interwar period were not addressed as a statelessness issue *sensu stricto*. Instead, the statelessness problem was very much intertwined with certain stateless persons' flight from their countries of origin and was thus regulated in what became known as the 'Interwar refugee regime'. The term refugee should not be understood in its current meaning, however, but mainly denominated a category of persons who lacked national protection and statelessness was an important source of this type of situation.[158] In fact, the largest 'refugee' groups in the interwar period,

[155] The first time statelessness is mentioned in the literature is with regard to the 1866 cession of Schleswig-Holstein from Denmark to Prussia after the German-Danish war of 1864. Persons who were given a right of option between Danish and Prussian naitonality because they did not acquire Prussian citizenship automatically, but who neglected to exercise this, ended up stateless. The second mentioning of statelessness is after the Franco-Prussian war of 1871 where France solved the statelessness problem by allowing inhabitants of Alsace-Lorraine who did not want to become German, te obtain the French nationality (U.N. Secretary-General, *A Study of Statelessness,* at 4, U.N. Doc. E/1112 (Aug., 1949)); Walker, 'Statelessness', 116–17; Lay Lee, 'Denationalization and Statelessness in the Modern World', 26–27; L. Oppenheim, 'International Law: A Treatise. Vol. 1 - Peace', 1905; see also the work of Bluntschli (1872) and Hall (1880) as referred to in Waas, 'Are We There Yet - The Emergence of Statelessness on the International Human Rights Agenda'.

[156] See White, 'The Legal Status of Russian Refugees, 1921-1936', 6–7.

[157] Also see Torpey, The Invention of the Passport, 127.

[158] For the evolution of the refugee concept, also see Holborn, 'The Legal Status of Political Refugees, 1920-1938', 680; Robert Y. Jennings, 'The Progressive Development of International Law and Its Codification', *British Year Book of International Law* 24 (1947): 99; Hathaway, 'The Evolution of Refugee Status in International Law'; Guy S. Goodwin-Gill, *Convention Relating to the Status of Stateless Persons* (United Nations Audiovisual Library of International Law, 2010), 1, http://untreaty. un. org/cod/avl/pdf/ha/cssp/cssp_e. pdf.

consisting of Russians and Armenians, were for the most part denationalized.[159] That statelessness was an important element in the interwar refugee regime is furthermore illustrated by its inclusion in various studies on the matter[160] and by the fact that many considered it a dominant factor in the entire regime.[161] It is therefore justified to discuss this regime as a first step in remedying the consequences of statelessness.

§1. Context and formation of remedies

A. Nansen refugees[162]

65. IDENTITY CERTIFICATES FOR RUSSIAN REFUGEES – The first large group to be considered 'refugees' that emerged in the interwar period was Russian and mainly consisted of stateless persons.[163] Through a combination of the 1917 Bolshevik Revolution, the subsequent civil war and the 1921 famine, many Russians fled from their home country. Starting from 1921 the Russians issued a series of denationalization decrees, rendering stateless all those who had fled as well as the political opposition (who, by consequence, also left the country).[164] In total in between 1.5 and 2 million former Russians ended up without a nationality.[165] Various solutions were sought after. Some states pursued bilateral peace treaties with the newly established Soviet Union to obtain Soviet nationality for certain Russians,[166] while

[159] Robert Y. Jennings, 'Some International Law Aspects of the Refugee Question', *British Year Book of International Law* 20 (1939): 99; Budislav Vukas, 'International Instruments Dealing with the Status of Stateless Persons and of Refugees Studies', *Belgian Review of International Law* 8 (1972): 168.
[160] U.N. Secretary-General, *A Study of Statelessness,* at 18-19, U.N. Doc. E/1112 (Aug., 1949); Loewenfeld, 'Status of Stateless Persons'.
[161] See *Report by the Secretary-General on the Future Organisation of Refugee Work*, at 3, League of Nations Doc. 1930.XIII.2 (1930); Rubinstein, 'The Refugee Problem', 721; Loewenfeld, 'Status of Stateless Persons', 120.
[162] Categorization according to Jennings, 'Some International Law Aspects of the Refugee Question', 99–100.
[163] Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 22; Hathaway, 'The Evolution of Refugee Status in International Law', 350–51.
[164] In sum, according to the denationalization decrees of December 15th, 1921, October 29th, 1924 and November 13th,1925, the USSR nationality was lost by (1) persons who left the country after 7.1.1917 without consent of Soviet authorities; (2) persons who lived abroad for more than five years without applying for a passport by a certain date; (3) persons living abroad who fail to register with representatives of the USSR in the country in which they reside; (4) all persons who had taken part in counter-revolutionary organisation (Loewenfeld, 'Status of Stateless Persons', 67; Hathaway, 'The Evolution of Refugee Status in International Law', 351; Also see Rürup, *Lives in Limbo*; Ivor C. Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', *Refugee Survey Quarterly* 22, no. 1 (2003): 7; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 350–51).
[165] Estimated number of 1.5 million Russians, mainly to France, Turkey, Yugoslavia, Czechoslovakia, Greece, Bulgaria and Rumania (see Jane Perry Clark Carey, 'Some Aspects of Statelessness Since World War I', *The American Political Science Review* 40, no. 1 (1946): 114–15; General report of the League Council by Dr. Nansen, League of Nations Doc. C.124 M.74 (1922), quoted in Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 7).
[166] E.g. the Treaty of Riga, signed March 18th, 1921, arranging peace between the Soviet Union and Poland, provided that all Russians in Poland could retain Russian nationality, their interests being officially placed under the diplomatic and consular protection of the Moscow Government (Treaty of Peace, signed at Riga, Poland-

other national governments decided to give identity papers and alien status or even naturalize some of the Russian refugees.[167] However, the issued documents were not accepted by all countries and settlement of refugees proved problematic, forcing the affected countries to consider a more general and collective protection scheme.[168]

After an appeal from the International Committee of the Red Cross to help the refugees,[169] the League of Nations Secretary General asked the governments for suggestions and the most favoured solution appeared to be the appointment of a High Commissioner.[170] Through a creative interpretation of the Covenant, the League of Nations thus appointed as first High Commissioner for Russian Refugees (hereafter 'HCRR') in June 1921, Fridtjof Nansen, a Norwegian explorer, scientist and statesman. [171] His mandate consisted of the following tasks: (1) find legal status for refugees as well as their repatriation, (2) find work for refugees or help them emigrate to other countries and (3) coordinate relief efforts.[172] At the time, repatriation was considered a feasible solution as in 1920 Nansen had successfully repatriated prisoners of war. However, for Russian refugees, there was only limited success.[173] As most countries did not want to naturalize them either, alleviating measures became important. Especially the need for documentation was seen as very urgent due to the increased use and requirement of passports hindering the movement of Russians.[174]

A first Conference on the Question of the Russian Refugees was convened in 1921 and adopted a series of resolutions which considered the issue of juridical status in the law of

Ukraine-Russia, March 18, 1921, available at http://www.forost.ungarisches-institut.de/pdf/19210318-1.pdf (accessed May 27, 2018)); Loewenfeld, 'Status of Stateless Persons', 68.

[167] See Skran, 'Historical Development of International Refugee Law', 7.

[168] Loewenfeld, 'Status of Stateless Persons', 68.

[169] Hathaway, 'The Evolution of Refugee Status in International Law', 35; Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 7; White, 'The Legal Status of Russian Refugees, 1921-1936', 1.

[170] Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 7–8.

[171] Bentwich, 'The League of Nations and Refugees', 114; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 23–24; Shauna Labman, 'Looking Back, Moving Forward: The History and Future of Refugee Protection', *Chicago-Kent Journal of International and Comparative Law* 10, no. 1 (2010): 3; White, 'The Legal Status of Russian Refugees, 1921-1936', 1.

[172] Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 24; White, 'The Legal Status of Russian Refugees, 1921-1936', 1.

[173] Official schemes were negotiated for only 6000 Cossacks, but most Russian refugees did not want to return under the Bolsjevik regime and ultimately the Soviet Union did not want the international community to interfere with its sovereignty (*Fifth Assembly of the League of Nations. Report to the Fifth Committee on Refugee Questions,* League of Nations Doc. A. V/6/1924 (1924); White, 'The Legal Status of Russian Refugees, 1921-1936', 2).

[174] Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 24; Skran, 'Historical Development of International Refugee Law', 7.

the receiving countries. However, no specific recommendations or plans were set out and the basic idea was that each state should deal with the problem individually.[175]

Yet, the problems continued. In a context of economic depression (and its effect on the labour market), there was only little engagement from governments. The main reason for this reluctance was that 'no matter how badly a country wanted workers, it would not admit people without passports because that meant that they would not be able to get rid of them.'[176] The need for documentation thus became urgent.

Eventually a new conference was gathered in 1922 to solve this issue. The resulting Arrangement with regard to the Issue of certificates of Identity to Russian Refugees provided for a 'Nansen Passport' for Russian refugees.[177] This was not a proper passport but an identity certificate for individual refugees, allowing them to travel to places that would provide work and at the same time allowing the League to count and monitor refugee populations. All 52 states of the League ratified the arrangement and started issuing Nansen passports.[178]

66. IDENTITY CERTIFICATES FOR ARMENIAN REFUGEES – The Armenians were the second group of stateless refugees under international scrutiny. These people, originally from North-East Turkey and Asia minor, had already known a history of persecution, violence and subsequent flight since the late 19th century, when the new Turkish government issued a denationalization law in 1927 rendering most of the already existing refugees stateless.[179] Already before the mass denationalization in 1924, the League provided that Armenians

[175] Conference on the Question of the Russian Refugees, *Resolutions adopted by the Conference on August 24th, 1921*, 30 L.N.O.J. 899 (1921); White, 'The Legal Status of Russian Refugees, 1921-1936', 6–7.
[176] Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 9–10; Meyer, 'The Curious Life of the Lowly Passport', 75; White, 'The Legal Status of Russian Refugees, 1921-1936', 7–8.
[177] Arrangement with regard to the Issue of Certificates of Identity to Russian Refugees, July 5, 1922, 30 L.N.T.S. 238.
[178] Skran, 'Historical Development of International Refugee Law', 7; White, 'The Legal Status of Russian Refugees, 1921-1936', 8.
[179] They had been systematically persecuted and massacred by the Turkish government because of their different religion and culture since the late 19th century. In 1915 Turkey deported Armenians en masse and carried out indiscriminate killings. When in 1921 the French troops withdrew, the massacre began again resulting in an exodus of Armenians. In 1923, the government confiscated all goods of Armenians living abroad (Carey, 'Some Aspects of Statelessness Since World War I', 114–15; Hathaway, 'The Evolution of Refugee Status in International Law', 352).

became eligible for Nansen passports. Thirty-nine governments adhered to the Arrangement.[180]

67. UPDATE IDENTITY CERTIFICATE SYSTEM – The Nansen passport system was not without its flaws.[181] First, there were difficulties in the administration of the arrangement since there was no clear definition of the protected persons. Second, the passport might have enabled refugees to travel to another country, it did not imply a right of return to the issuing state. As a result, some states were reluctant to accept refugees even with Nansen passports as they could not be deported. Finally, all the cooperation with the HCRR was voluntary and many states were still finding ways to avoid or moderate the 1922 arrangement.[182] In May 1926 another Inter-Governmental Conference was held in Geneva with the participation of twenty-four states resulting in the improvements to the identity system concerning these aspects, ratified this time by only twenty-two states.[183]

68. LEGAL STATUS RUSSIAN AND ARMENIAN REFUGEES – The Nansen passport, even the improved version, did not provide full relief for stateless refugees as they were still faced with considerable problems. Firstly, the stateless refugees did not enjoy any particular rights as they were neither nationals nor foreigners. At the same time, rising xenophobia made those rights all the more necessary.[184] Secondly, stateless persons suffered a severe risk of expulsion. In June 1928 another intergovernmental conference was convened to solve these issues. This resulted in the New Arrangement Relating to the Legal Status of Russian and Armenian Refugees.[185] The arrangement contained several measures to facilitate life for

[180] Plan for the Issue of a Certificate of Identity to Armenian Refugees, Sep. 28, 1923, L.N.O.J. 1924, 969; Skran, 'Historical Development of International Refugee Law', 8; White, 'The Legal Status of Russian Refugees, 1921-1936', 9.
[181] See Hathaway, 'The Evolution of Refugee Status in International Law', 353; White, 'The Legal Status of Russian Refugees, 1921-1936', 9, 11–12.
[182] Some states would (1) deny the Nansen passport to certain categories of refugees; those who had arrived in the state after a fixed date (usually connected with the state's recognition of the Soviet Union) or those coming from areas of the former Russian Empire not currently within the border of the Soviet Union or even the Russian Federative Socialist Republic; (2) only give Nansen passports to those who had promised to leave the state; (3) demand expensive notarised documents or even statements from the Soviet embassy that the refugee was not a citizen of the USSR; (4) threaten those without Nansen passports with forced repatriation; (5) strictly limit the number of Nansen passports it was handing out or even (6) refuse to accept the Nansen passport at all.
[183] Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, May 12, 1926, 89 L.N.T.S. 48 (1929); Hathaway, 'The Evolution of Refugee Status in International Law', 354; Skran, 'Historical Development of International Refugee Law', 8–10; White, 'The Legal Status of Russian Refugees, 1921-1936', 13–14.
[184] By the late 1920s states, including Poland, Czechoslovakia and France, were introducing restrictive labour legislation to protect national labour markets.
[185] Arrangement Relating to the Legal Status of Russian and Armenian Refugees, June 30, 1928, 89 L.N.T.S. 55 (1929); White, 'The Legal Status of Russian Refugees, 1921-1936', 15–17.

refugees, such as providing consular care for refugees, personal status and other rights. Finally, it contained provisions for the avoidance of expulsion.[186] This arrangement was an important step towards a protective status but could only attract signatures from thirteen states.[187]

69. EXTENSION OF IDENTITY CERTIFICATE TO OTHER CATEGORIES- In December 1928, the Council asked the High Commissioner to consider new categories of refugees, but only those that 'as a consequence of the war and of events directly connected with the war, are living under analogous conditions.'[188] In 1928, the Nansen passport system was expanded to include other groups that became victims of violent displacement.[189] In particular, the Assyrians and Assyro-Chaldeans who had been displaced largely to Syria and Iraq during the Turkish War of Independence and several hundred Turks who had worked for the Allied occupation of Turkey ('friends of the allies').[190]

70. CONVENTION RELATING TO THE INTERNATIONAL STATUS OF REFUGEES – In 1930, there were still around 500 000 Russian refugees in Europe. The ad hoc structures set up in the years before were starting to crumble as several factors undermined the arrangements.[191] Not only was there a lack of uniformity in treatment, the League of Nations was also in a difficult position. Besides the decreasing moral authority of the League in general, refugee efforts were now hindered by the new membership of the Soviet Union who refused cooperation related to Russian refugees. While the implementation was thus worsening, the living conditions of the refugees deteriorated, and their vulnerability increased. As it was the onset of the Depression in Europe the funding of humanitarian organisations was affected, and widespread unemployment resulted in restriction in labour for foreign workers. At the same

[186] See Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 15–17; White, 'The Legal Status of Russian Refugees, 1921-1936', 16–17.
[187] Germany, Austria, Belgium, Bulgaria, France and Lithuania signed it in full; Poland, Romania, Yugoslavia and Switzerland did not accept the role of the HCR; Greece and Estonia accepted it with considerable reservations; Egypt, Finland and Czechoslovakia refused to sign it; White, 'The Legal Status of Russian Refugees, 1921-1936', 17–18.
[188] League of Nations, Extension to Other Analogous Categories of Refugees of the Measures Taken to Assist Russian and Armenian Refugees. Resolution Adopted by the Assembly during its Seventh Ordinary Session, 8 L.N.O.J. 155 (1927).
[189] Arrangement Concerning the Extension to Other Categories of Refugees of Certain Measures Taken in Favour of Russian and Armenian Refugees, June 30, 1928, 89 L.N.T.S. 65 (1929).
[190] Also see Carey, 'Some Aspects of Statelessness Since World War I', 114–15; White, 'The Legal Status of Russian Refugees, 1921-1936', 9.
[191] See *Report of the Inter-Governmental Advisory Commission for Refugees on the Work of its Fifth Session and Communication from the International Nansen Office for Refugees, May 18, 1933, at* 4, League of Nations Doc. C.266 M.136 (1933).

time, popular xenophobia rose, leading to increased expulsions. States grew more nationalistic and protective of their own citizens, turning their backs to refugees.[192]

Furthermore, after Nansen's sudden death in 1930, an autonomous Nansen International Office for Refugees was set up, but it was scheduled to be dismantled by 1938. Russian (refugee) lawyers were advocating for a binding convention to protect the refugees in light of this future closure. In August 1931, an Intergovernmental Advisory Commission on Refugees endorsed the idea of a convention to assure stability for refugees after the liquidation of the office. It set up a committee of Experts to gather more information about the legal status. However, states seemed to lack interest as only thirteen states responded to the draft in late 1931. This lack of interest allowed the Russian lawyers who were co-writing the convention more freedom to incorporate their own liberal ideas.[193] In October 1933, fifteen states participated in the intergovernmental Conference on Refugees, resulting in the 1933 Convention relating to the International Status of Refugees.[194] This was the first binding multilateral instrument for protection and rights for refugees (and of stateless persons). It contained several provisions related to the personal status and rights, limitations to expulsion and provided for travel and identity documents. It was ratified by only eight countries and came into force in 1935.[195]

Even though the 1933 Convention had the potential to significantly improve the legal situation of the categories of refugees, the various reservations and differences in implementation limited its effect in the signing countries.[196]

71. IDENTITY CERTIFICATE FOR SAAR REFUGEES – After the Nansen passport had already been extended to Armenians and the assimilated groups, a last extension took place in 1935. In a plebiscite in 1935 a majority of the population of the Saar voted to unite with Germany instead of joining France or retaining the international administration by the League of

[192] Rubinstein, 'The Refugee Problem', 734; Holborn, 'The Legal Status of Political Refugees, 1920-1938', 689; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 27; White, 'The Legal Status of Russian Refugees, 1921-1936', 19.
[193] White, 'The Legal Status of Russian Refugees, 1921-1936', 20.
[194] Convention Relating to the International Status of Refugees, Oct. 28, 1933, 159 L.N.T.S 201 (1933).
[195] Belgium, Bulgaria, Czechoslovakia, Denmark, France, Italy, Norway and the UK ratified it. Italy, Czechoslovakia and the UK made reservations about the principle of admission at the frontier. Estonia, Finland, Iraq, Greece, Latvia, Sweden, Switzerland and the United States did not sign it, but applied it in practice. Egypt signed it but did not ratify it. (See Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 27; Skran, 'Historical Development of International Refugee Law', 24–26; White, 'The Legal Status of Russian Refugees, 1921-1936', 25).
[196] White, 'The Legal Status of Russian Refugees, 1921-1936', 25.

Nations which was then in place. As a result, about 2 200 inhabitants of the Saar that opposed the German government or feared for their religious freedoms under the new regime fled from the territory. The League, out of a feeling of responsibility for the Saarlanders, decided to provide them with Nansen passports in the 1935 Plan for the issue of a Certificate of Identity to Refugees form the Saar.[197]

B. German refugees[198]

72. CONTEXT – A second set of 'refugee' measures taken in the interwar period, concerns people fleeing from Germany. Instead of bringing them under the Nansen umbrella, they were handled in a separate legal regime.[199] In Germany the 1930s signalled the beginning of National Socialism implying a racial conception of citizenship.[200] This ideological orientation led to a massive refugee problem as racially supressed groups and political dissidents fled the country.[201] For the rest of (former) Germans several denationalization laws were enacted to purify the German population from 'non-German blood' and political dissidents. First, there was a 1933 law revoking naturalisations granted between the establishment of the German Republic and the Third Reich as well as cancelling citizenship of disloyal residents abroad.[202] In a decree concerning the execution of this law, a test of desirability was installed concerning racial, political and cultural viewpoints, providing that the law was especially applicable to Eastern Jews. Second, the 1935 Nuremberg Law of Nationality provided that only subjects of German or allied blood who prove they can loyally serve the German people and Reich are citizens. The 'unwanted' that did not qualify formally retained German nationality, but only as an empty shell because they were deprived of all the concomitant rights and protection.[203]

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[197] Plan for the issue of a Certificate of Identity to Refugees from the Saar, July 20, 1935, L.N.O.J. 1681 (1935); Hathaway, 'The Evolution of Refugee Status in International Law', 361–62.
[198] Categorization according to Jennings, 'Some International Law Aspects of the Refugee Question', 99–100.
[199] Skran, 'Historical Development of International Refugee Law', 26.
[200] 'None but the members of the nation may be citizens of the state. None but those of German blood, whatever their creed, may be members of the nation. No Jew, therefore, may be a member of the nation.' (see Hathaway, 'The Evolution of Refugee Status in International Law', 362).
[201] Preuss, 'International Law and Deprivation of Nationality', 250–52; Loewenfeld, 'Status of Stateless Persons', 81; Hathaway, 'The Evolution of Refugee Status in International Law', 362.
[202] The German law concerning the revocation of naturalisation and the cancellation of German citizenship of July 14, 1933 empowered the Minister of the Interior to cancel naturalisation granted between date of the establishment of the German Republic and Proclamation of the Third Reich. It also gave the power to denationalize residents abroad, 'so far as they through conduct which offended against their duties of loyalty to the Reich and people had injured German prestige.'
[203] Loewenfeld, 'Status of Stateless Persons', 81–82; Carey, 'Some Aspects of Statelessness Since World War I', 116–17.

73. ARRANGEMENT FOR LEGAL STATUS GERMAN REFUGEES - In 1933 the Netherlands brought the German refugee problem to the attention of the League. Subsequently, the assembly remarked that indeed the German refugees had become an economic, financial and social burden and the extension of the Nansen Passport to them was discussed frequently. However, Germany heavily opposed any League involvement and France and Britain were hesitant to provoke Germany. The League was inventive in circumventing this position by appointing an independent High Commissioner for Refugees Coming from Germany outside the League with its own governing body and financed by private contributions, burdened with the task to provide them with a similar arrangement as the one for Russian, Armenian and assimilated refugees. The first High Commissioner, American James G. McDonald, resigned after concluding that the lack of government support constituted an insurmountable obstacle. His successor, British Sir Neill Malcolm, received more support from the League, both administratively and financially, making his function similar to that of Nansen a small decade before. In 1936 Malcolm convened a Conference to establish an international protection system for German refugees, resulting in the Provisional arrangement Concerning the Status of Refugees coming from Germany, in which 15 countries participated.[204] This arrangement determined that governments were authorised to issue travel documents to both Germans and stateless persons coming from Germany, regulated personal status granted certain rights. It was governed by a system of partial acceptance and many reservations were made.[205]

74. CONVENTION ON THE STATUS OF GERMAN REFUGEES AND ADDITIONAL PROTOCOL – In March 1937 the League invited governments to participate in a conference to draft a more permanent and comprehensive plan to protect German refugees, leading to the binding Convention concerning the Status of Refugees Coming from Germany.[206] The convention took over most of the provisions of the 1936 Arrangement and was signed by eight countries, but ratified by only two.[207] However, certain states applied it in practice in so far

[204] Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, July 4, 1936, 171 L.N.T.S. 77 (1936-1937); Hathaway, 'The Evolution of Refugee Status in International Law', 363–64; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 28; Labman, 'Looking Back, Moving Forward', 6–7; Skran, 'Historical Development of International Refugee Law', 26–27.
[205] Loewenfeld, 'Status of Stateless Persons', 86.
[206] Convention Concerning the Status of Refugees Coming from Germany, with Annex, Feb. 10, 1938, 192 L.N.T.S. 59.
[207] Belgium and the United Kingdom.

as possible.[208] The German annexation of Sudetenland and Austria led to a significant new influx of refugees. As a result, the Council of the league extended the mandate of the High Commissioner to both population groups, but the 1938 Convention was amended to include only Austrian, not Sudeten, refugees in 1939.[209] The 1938 Convention was less influential than its 1933 counterpart. Both conventions did not contain a right of asylum for the refugees, but whereas most Nansen refugees were already given asylum when the regulations came about, the main problem for German refugees was the difficulty of finding a country of asylum.[210]

§2. How

A. Concept of statelessness

75. STRUCTURE - To examine the concept in which statelessness reached the international legal forum in the interwar period, an overview of both Nansen and German refugee definitions will be set out, followed by a categorization according to the typology set out above.

76. OVERVIEW OF DEFINITIONS: NANSEN REFUGEES – Although the 1922 and 1923 arrangements regarding identity certificates for Russians and Armenians did not contain a clear definition of a (Nansen) refugee, it was determined on the certificates that it concerned either a person 'of Russian origin, not having acquired another nationality'[211] or 'any person of Armenian origin, formerly a subject of the Ottoman Empire, who does not enjoy the protection of the Turkish Republic and who has not acquired any other nationality.'[212] The 1933 Convention incorporated the definitions laid down in the 1926 Arrangement for Russian and Armenian refugees and those in the 1928 extension arrangement.[213] The 1926 Arrangement contained

[208] E.g. for German refugees, see *Refugees coming from Germany. Report submitted to the Nineteenth Ordinary Session of the Assembly of the League of Nations by Sir Neill Malcolm, High Commissioner, Aug. 22nd, 1938,* at 3, League of Nations Doc. A.25 1938. XII, 3 (1938).
[209] Additional Protocol to the Provisional Arrangement and to the Convention, signed at Geneva on July 4th, 1936, and February 10th, 1938, respectively, Concerning the Status of Refugees Coming from Germany, Sept. 14, 1939, 197 L.N.T.S. 142; Hathaway, 'The Evolution of Refugee Status in International Law', 366–67.
[210] Skran, 'Historical Development of International Refugee Law', 34.
[211] Arrangement with regard to the Issue of Certificates of Identity to Russian Refugees, July 5, 1922, 30 L.N.T.S. 238 (1922).
[212] Plan for the Issue of a Certificate of Identity to Armenian Refugees, Sep. 28, 1923, L.N.O.J., 969 (1924).
[213] Convention Relating to the International Status of Refugees, art. 1, Oct. 28, 1933, 159 L.N.T.S 201 (1933).

the first definition of a 'refugee' after difficulties in administration occurred because of a lack of clarity.[214] It contained the following provisions:[215]

> *Russian refugee:* 'any person of Russian origin who does not enjoy the protection of the government of the union of soviet socialist republics and who has not acquired any other nationality'[216]
>
> *Armenian refugee:* 'any person of Armenian origin, formerly a subject of the ottoman empire who does not enjoy the protection of the government of the Turkish Republic and who has not acquired any other nationality'[217]

The 1928 Arrangement extended the groups of beneficiaries to the following categories:[218]

> *Assyrian, Assyro-Chaldaean and assimilated refugee: '*Any person of Assyrian or Assyro-Chaldaean origin, and also by assimilation any other person of Syrian or Kurdish origin, who does not enjoy the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality.'[219]

Finally, when the identity certificates were extended to *refugees from the Saar*, the beneficiaries were described as:

> 'All persons who, having previously had the status of inhabitant of the Saar, have left the Territory on the occasion of the plebiscite and are not in possession of national passports.'[220]

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[214] Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, art. 2, May 12, 1926, 89 L.N.T.S. 48 (1929).

[215] Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 2, June 30, 1928, 89 L.N.T.S. 55 (1929).

[216] 'Russian' referred to an old legal national identity and country of origin and not ethnicity, and also meant from the entire territory of the former Russian Empire (Skran, 'Historical Development of International Refugee Law', 10; White, 'The Legal Status of Russian Refugees, 1921-1936', 13–14).

[217] Ethnic Armenians whose homes were part of Armenia, which belonged to the Russian Empire, were Russian refugees in the sense of the 1926 arrangement. (Skran, 'Historical Development of International Refugee Law', 10).

[218] Arrangement Concerning the Extension to Other Categories of Refugees of Certain Measures Taken in Favour of Russian and Armenian Refugees, art. 2, June 30, 1928, 89 L.N.T.S. 65 (1929).

[219] Here this referred to ethnic identity rather than territorial (Skran, 'Historical Development of International Refugee Law', 11).

[220] Plan for the issue of a Certificate of Identity to Refugees from the Saar, July 20, 1935, L.N.O.J. 1681 (1935).

77. OVERVIEW OF DEFINITIONS: GERMAN REFUGEES – The 1936 Provisional Arrangement defined German refugees as: [221]

> 'Any person who was settled in that country, who does not possess any nationality other than German nationality, and in respect of whom it is established that in law or in fact he or she does not enjoy the protection of the government of the Reich.'

This definition actually excluded Germans without nationality and required the refugees to have been settled in Germany before their refuge.[222] The binding 1938 Convention, however, did take both Germans residing outside Germany and stateless persons that had been settled in Germany into account in the following definition of *German refugees*:[223]

> 'Persons possessing or having possessed German nationality and not possessing any other nationality, who are proved not to enjoy, in law or in fact, the protection of the Government of the Reich; [and]
>
> Stateless persons not covered by previous conventions or agreements who have left the territory of the Reich after being established therein and who are proved not to enjoy, in law or in fact, the protection of the Germany Government.
>
> Persons who leave Germany for reasons of purely personal convenience are not included in this definition'

The 1939 Protocol included Austrians in this definition.[224]

78. THE LACK OF NATIONAL PROTECTION: DE JURE AND DE FACTO STATELESSNESS – The first central element in the 'refugee' definition is the lack of national protection. This includes both de jure and de facto statelessness since a loss of national protection can come forth

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[221] Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 1, July 4, 1936, 171 L.N.T.S. 77 (1936-1937).

[222] *Refugees Coming from Germany. Report Submitted to the Nineteenth Ordinary Session of the Assembly of the League of Nations by Sir Neill Malcolm, High Commissioner, Aug. 22, 1938*, League of Nations Doc. A.25 1938. XII (1938); Holborn, 'The Legal Status of Political Refugees, 1920-1938', 680, 695; Hathaway, 'The Evolution of Refugee Status in International Law', 365; Skran, 'Historical Development of International Refugee Law', 27.

[223] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 1, Feb. 10, 1938, 192 L.N.T.S. 59.
Loewenfeld, 'Status of Stateless Persons', 86.

[224] (a) Persons, having possessed Austrian nationality and not possessing any nationality other than German nationality, who are proved not to enjoy, in law or in fact, the protection of the German Government; and (b) stateless persons not covered by any previous convention or arrangement and having left the territory which formerly constituted Austria after being established therein, who are proved not to enjoy, in law or in fact, the protection of the German Government. Persons who leave the territories which formerly constituted Austria for reasons of purely personal convenience are not included in this definition. (Additional Protocol to the Provisional Arrangement and to the Convention, signed at Geneva on July 4th, 1936, and February 10th, 1938, respectively, Concerning the Status of Refugees Coming from Germany, Sept. 14, 1939, 197 L.N.T.S. 142).

from denationalization (de jure statelessness) or as such (de facto statelessness). While the Nansen refugees (except for the Saar) were conceptualized in a more de jure manner, the German ones clearly indicated a more de facto concept. Both concepts were a consequence of the situation the international community was confronted with. While Nansen refugees were often victims of de jure denationalization, Germans suffered mostly the de facto variant.

79. NANSEN REFUGEES: MAINLY DE JURE, SOME DE FACTO - The Nansen refugees were identified by what Hathaway calls a 'juridical definition' of a refugee, which consists of the de jure denial of state protection without obtaining a new nationality.[225] The most fundamental (and most common in that period) form of de jure denial of state protection is denationalization (de jure statelessness), but it can also be accomplished by for example formally withholding documentation that serves as proof of nationality, such as a passport (de facto statelessness).[226] This juridical refugee definition, of which both de jure and de facto statelessness form part, came about to correct the legal anomaly of people without national protection as states had denationalized their populations on a massive scale.[227] Without a nationality, there was no state assuming responsibility for the individual, nor did the receiving state know how to deal with these people.[228] As a consequence, in the measures taken, this juridical aspect was determinant.

80. GERMAN REFUGEES: MAINLY DE FACTO, SOME DE JURE – With regard to Germany and the Saar, formal denationalization was not the main issue. Germans often remained national citizens but were deprived by the Nazi's of the concomitant rights and benefits, including the possession of a passport, and were therefore mainly de facto stateless.[229] Hathaway classifies this German refugee concept as 'social', which points to the 'helpless casualties of broad-based social or political occurrences which separate them from their home society'.[230] However, the 1938 definition, which is the only binding one, also explicitly includes de jure stateless persons who were settled in Germany.

[225] Hathaway, 'The Evolution of Refugee Status in International Law', 358–61.
[226] Hathaway, 359.
[227] Hathaway, 379–80.
[228] See U.N. Secretary-General, *A Study of Statelessness,* at 8, U.N. Doc. E/1112 (Aug., 1949); Hathaway, 379–80.
[229] Holborn, 'The Legal Status of Political Refugees, 1920-1938', 692; Loewenfeld, 'Status of Stateless Persons', 82.
[230] Hathaway, 'The Evolution of Refugee Status in International Law', 349.

The unclarity of whether the refugee concept included de jure or de facto statelessness is reflected in debates of legal scholars at the time.[231] R.Y. Jennings and Sir John Hope Simpson, as well as the Brussels conference of the Institute of International Law in 1936 understood statelessness as the formal lack of nationality and considered refugeehood (as the lack of national protection) and statelessness to be two separate but possibly overlapping concepts.[232] Rubinstein and Holborn, on the other hand, considered all refugees to be stateless whether de jure or de facto because though their legal positions are not strictly similar, in practice it was identical. [233]

81. PARTICULAR: SPECIFIC GROUPS – A second categorization of Interwar regulation of statelessness, is that there were no universal regulations, but only regulations for specific groups, considered 'emergency situations', being Russians, Armenians Assyrians, Assyro-Chaldeaens, Turkish 'friends of the allies and Saar, German and Austrian refugees.[234] Several other population groups, suffering similar conditions were ignored[235] and attempts to make the 'Nansen passport' available for all stateless persons and refugees failed.[236]

82. ORIGINAL VS. SUBSEQUENT – Since the 1933 Convention refers to 'former subjects' or 'previous belonging' and the 1935 Saar Arrangement refers to 'previously inhabited', the Nansen refugees only include cases of subsequent statelessness. Conversely, the definition of German refugees possibly also includes original statelessness.

83. ONLY VICTIMS OF DISCRIMINATORY CAUSES – The interwar refugee regime only addresses cases of statelessness resulting from discriminatory causes. Although these causes are clearer in the case of German refugees, the Russian and Armenian denationalizations essentially also took place on the basis of political opinion and possibly race.

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[231] Skran, 'Historical Development of International Refugee Law', 10.
[232] Simpson, 'The Refugee Problem', 609; Loewenfeld, 'Status of Stateless Persons', 82–83; Jennings, 'The Progressive Development of International Law and Its Codification', 99; Skran, 'Historical Development of International Refugee Law', 10.
[233] Rubinstein, 'The Refugee Problem', 721; Holborn, 'The Legal Status of Political Refugees, 1920-1938', 680.
[234] Loewenfeld, 'Status of Stateless Persons', 70; Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 19; Milbrandt, 'Stateless', 86.
[235] E.g. Spanish, Italian, Portuguese, Chinese refugees (Simpson, 'The Refugee Problem', 618–19; Loewenfeld, 'Status of Stateless Persons', 94).
[236] The question of an identity and travel document for other refugees and stateless persons had been negotiated at the Passport Conference in May, 1926, and had been discussed at the Third General Conference on Communications and Transit, held from August 23 to September 2, 1927, in Geneva; A proposal to adopt a general charter for refugee and stateless persons in 1935 failed (Holborn, 'The Legal Status of Political Refugees, 1920-1938', 686; Bentwich, 'The League of Nations and Refugees', 121; Reale, 'The Passport Question.', 508; Loewenfeld, 'Status of Stateless Persons', 70).

84. DISPLACED – Finally, only internationally displaced (stateless) people were dealt with. Even though this is not literally stated in the arrangements or conventions, it is implied by its character.[237]

B. Consequences and their remedies

1. RADICAL SOLUTIONS

85. NATURALIZATION - First of all, attempts were made to simply eradicate the stateless situation by having the 'refugees' regain a nationality. Granting of nationality can of course only be done by the countries themselves, but negotiations to that end were initiated. First, mass naturalization by the country where the refugees were resident was unsuccessfully considered. It was blocked because naturalisation was seen as 'a privilege which cannot be granted without distinction' and it was thought to run counter to individual liberty since it would force people into a nationality. Furthermore, only few refugees actively sought naturalisation in the hope of returning to their home countries when conditions changed. However, it was recommended that states should develop special provisions to facilitate naturalization of refugees.[238]

86. REPATRIATION - Repatriation was also contemplated as a 'final solution', but it was considered not suitable because the reasons of original flight were still present, and the regimes were not prone to agree to the conditions set out by the High Commissioner. As a result, these schemes had only limited success.[239]

87. SETTLEMENT - Third, mass resettlement of refugees was considered an option. As the traditional migration states (U.S. and Canada) to absorb Europe's 'surplus populations' were closing their doors, new terrain had to be found.[240] In 1926 a plan was concocted to settle some refugees in South American countries, but it failed.[241] Not only was there a lack of funds, but particularly Russian refugees exerted pressure to gain protection in their place of settlement instead of being resettled. Officials even claimed they were sabotaging the

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[237] Skran, 'Historical Development of International Refugee Law', 9,30.
[238] *Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees. Report of the Advisory Commission to the High Commissioner for Refugees, submitted to the Council on June 12th, 1929*, 7 L.N.O.J. 1078 (1929); U.N. Secretary-General, *A Study of Statelessness,* at 114, U.N. Doc. E/1112 (Aug., 1949).
[239] See note 173, above; *Russian refugees. General Report on the Work Accomplished up to March 15, 1922 by Dr. Fridtjof Nansen, High Commissioner of the League*, 11, League of Nations Doc. C.124M.74 (1922); *Fifth Assembly of the League of Nations. Report to the Fifth Committee on Refugee Questions,* 5, League of Nations Doc. A. V/6/1924 (1924); Rubinstein, 'The Refugee Problem', 718–19.
[240] White, 'The Legal Status of Russian Refugees, 1921-1936', 12–13.
[241] White, 26–28.

plans.[242] However, some Armenians were successfully settled in Syria and Lebanon, and there was also a plan for settlement in Erivan.[243] Regardless of the discouraging results for Nansen refugees, the idea of settlement was put on the table again in 1934-1935 when the economic crisis and waves of xenophobia had aggravated conditions of refugees in Europe. However, it turned out to be too expensive.[244] In the end all these attempts failed to eradicate the problem and thus the consequences had to be minimized.

2. Minimizing solutions (substantive)

88. IN GENERAL – The general technique of the conventions (not of the legal instruments providing merely for documentation) is to grant individuals deserving protection a status, which entails minimum standards concerning the enjoyment of measures providing relief for special needs and the enjoyment of a catalogue of rights and benefits. The legal instruments providing documentation is a more isolated technique than the granting of a status.

a. Special needs

89. NEED FOR DOCUMENTATION AND INTERNATIONAL MOVEMENT – The need for documentation necessary for cross-border travel was alleviated by so-called 'Nansen passports' and similar functioning certificates for German refugees. This was the first legal document that gave refugees and stateless persons legal identity, allowed them to travel and prevented their deportation.[245] It was a certificate issued by the government of the state in which the stateless individual resided, valid for one year and renewed by the issuing state as long as the person was in its territory. It ceased to be valid if the person entered the territory of its former nationality. This identity certificate was necessary for several reasons. The main objective was the facilitation of refugee emigration to countries where they could find

[242] Russian lawyers formed various organisations and pressure groups (e.g. Verband der Staatenlozen in Germany) (White, 26–28).
[243] Today called 'Yerevan' (*Russian, Armenian, Assyrian, Assyro-Chaldean and Turkish Refugees. Report of the Advisory Commission to the High Commissioner for Refugees, Submitted to the Council on June 12th, 1929*, 7 L.N.O.J. 1078 (1929); *Report of the Governing Body of The Nansen International Office*, *Aug. 29, 1935*, at 9-10, League of Nations Doc. A.22. 1935, XII (1935)).
[244] Rubinstein, 'The Refugee Problem', 717–18.
[245] Arrangement with regard to the Issue of Certificates of Identity to Russian Refugees, art. 5, July 5, 1922, 30 L.N.T.S. 238 (1922); Milbrandt, 'Stateless', 83–86.

productive employment.[246] However, states were not willing to admit people they could not send away again so without documentation entry was hard.[247]

The 1922 and 1923 Arrangement, as well as the 1938 Convention also contained provisions stating that transit visas should be granted if regulations are complied with and if the visa of final destination is obtained.[248] However, states were reluctant to grant visas unless they were able to return refugees from where they came.[249] As a result, the 1926 and 1928 arrangements, as well as the 1933 Convention contained a right to return for Nansen refugees.[250] The German refugees also had a right to return, but the period during which could be limited.[251] Whereas the original 1922 and 1924 arrangements only covered the person in question, the 1926 arrangement stated that children under 15 should be included on their parents' passport.[252] The 1933 convention did not mention it, however. German refugees had a similar rule, with the age limit at 16.[253] Concerning the cost of the documentation, it was stipulated for Nansen refugees that the certificate fee should be similar to that charged to a national, that visas had to enjoy the lowest tariff applicable to foreign passports and that both charges were excluded for destitute people.[254] The 1926 arrangement introduced the Nansen stamp. The latter was a 5 gold francs contribution to a

[246] *Russian refugees. General Report on the Work Accomplished up to March 15, 1922 by Dr. Fridtjof Nansen, High Commissioner of the League*, at 3-4, League of Nations Doc. C.124M.74 (1922); *Conference on Russian and Armenian Refugee Questions. Report by the High Commissioner and Report by the Belgian Representative presented to the Council*, at 1-3, League of Nations Doc. A.29 1926 VIII (C/327) (1926).

[247] *Russian refugees. General Report on the Work Accomplished up to March 15, 1922 by Dr. Fridtjof Nansen, High Commissioner of the League*, 8, League of Nations Doc. C.124M.74 (1922); U.N. Secretary-General, *A Study of Statelessness,* at 15, U.N. Doc. E/1112 (Aug., 1949).

[248] Arrangement with regard to the Issue of Certificates of Identity to Russian Refugees, art. 6, July 5, 1922, 30 L.N.T.S. 238 (1922); Plan for the Issue of a Certificate of Identity to Armenian Refugees, art. 6, Sep. 28, 1923, L.N.O.J., 969 (1924); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 4, Feb. 10, 1938, 192 L.N.T.S. 59.

[249] Rubinstein, 'The Refugee Problem', 722.

[250] Convention Relating to the International Status of Refugees, art. 2, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, art. 3, May 12, 1926, 89 L.N.T.S. 48 (1929); Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 9, June 30, 1928, 89 L.N.T.S. 55 (1929).

[251] Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 3, July 4, 1936, 171 L.N.T.S. 77 (1936-1937); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 4, Feb. 10, 1938, 192 L.N.T.S. 59.

[252] Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, art. 4, May 12, 1926, 89 L.N.T.S. 48 (1929).

[253] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 3, Feb. 10, 1938, 192 L.N.T.S. 59.

[254] Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, art. 6-7, May 12, 1926, 89 L.N.T.S. 48 (1929); Only with regard to the cost of visa's, see Convention Relating to the International Status of Refugees, art. 2, Oct. 28, 1933, 159 L.N.T.S 201 (1933).

revolving fund, except for those without means.[255] German refugees did not have a stamp system, the lowest scale of charges for national passports and visas were applied and it was free for indigent people.[256]

90. SECURITY OF RESIDENCE AND INTERNAL MOVEMENT – Concerning the need of security of residence, refugees who had been authorised to reside regularly in a state could not be expelled or be refused admittance at the frontier unless for reasons of national security or public order.'[257] Furthermore, the 1933 Convention also determined that refugees could not be refused at the frontiers of their country of origin and that, if they are not able to legally enter another state, internal measures should replace the option of expulsion.[258] In addition, the German measures included that an expelled person should be granted a suitable period to make the necessary arrangements for departure and that refugees cannot be sent back to the Reich, unless they have refused to depart 'without just cause.' [259] Finally, German refugees could move freely within their country of residence , but without prejudice to the power of any High Contracting Party to regulate their right of sojourn and residence.[260] These provisions were very liberal. However, they were subject to considerable reservations.[261]

91. INTERNATIONAL PROTECTION – No binding provisions were made to alleviate the need for international protection, but the 1928 convention did imply that refugees could benefit from actions taken on their behalf by the League of Nations.[262]

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[255] Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, Supplementing and Amending the Previous Arrangements dated July 5, 1922 and May 31, 1924, art. 9-12, May 12, 1926, 89 L.N.T.S. 48 (1929).
[256] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 3-4, Feb. 10, 1938, 192 L.N.T.S. 59; Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 2-3, July 4, 1936, 171 L.N.T.S. 77 (1936-1937).
[257] See Convention Relating to the International Status of Refugees, art. 3, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 5, Feb. 10, 1938, 192 L.N.T.S. 59; Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 4, July 4, 1936, 171 L.N.T.S. 77 (1936-1937).
[258] Convention Relating to the International Status of Refugees, art. 3, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Also see Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 7, June 30, 1928, 89 L.N.T.S. 55 (1929).
[259] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 5, Feb. 10, 1938, 192 L.N.T.S. 59; Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 4, July 4, 1936, 171 L.N.T.S. 77 (1936-1937).
[260] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 2, Feb. 10, 1938, 192 L.N.T.S. 59;
[261] Skran, 'Historical Development of International Refugee Law', 24–26.
[262] White, 'The Legal Status of Russian Refugees, 1921-1936', 17.

92. CONSULAR SERVICES – The 1928 arrangement introduced the idea of granting the High Commissioner a quasi-consular function, by giving the Nansen Office representatives the authority to perform consular functions in individual countries.[263] This was a very innovative step, but it was only applied by France and Belgium, although Bulgaria and Yugoslavia adopted it informally.[264] The 1933 Convention created a committee for refugees which could be entrusted with similar powers, but this was subject to many reservations.[265]

b. Legal status and rights

93. PERSONAL STATUS AND ACQUIRED RIGHTS – For Nansen refugees, no distinction was made between de jure stateless and de facto stateless refugees as it was assumed that most of them would be de jure stateless. Consequently, personal status was mainly determined by law of domicile or usual residence. Furthermore, rights acquired under the former national law had to be respected, potentially subject to compliance with certain formalities.[266] The 1938 Convention took another approach.[267] Because most German refugees were not de jure stateless, it was provided that, if a refugee retained his de jure nationality, his personal status would be governed by the rules applicable to foreigners possessing that nationality. If the refugee was de jure stateless, however, the Nansen rule applied.

94. EXEMPTION FROM RECIPROCITY – Both the Nansen and the German refugees enjoyed an exemption from the condition of reciprocity. The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity would not be refused to

[263] E.g. certifying their identity and civil status; their former family position and status based on documents issued in their country of origin; the regularity, validity and conformity of their documents with the previous law of their country of origin issued in that country; the signature of refugees; attesting to their character, and recommending them to government and educational authorities (Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 1, June 30, 1928, 89 L.N.T.S. 55 (1929)).
[264] Rubinstein, 'The Refugee Problem', 724; Skran, 'Historical Development of International Refugee Law', 13.
[265] Convention Relating to the International Status of Refugees, art. 15, Oct. 28, 1933, 159 L.N.T.S 201 (1933).
[266] Or, failing such, by the law of the country in which the stateless person resides. If recognised by the country of residence/ domicile, personal status can also be determined by religious authorities (Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 2, June 30, 1928, 89 L.N.T.S. 55 (1929); Convention Relating to the International Status of Refugees, art. 4, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Divorce rules were determined similar to personal status (Convention Relating to the International Status of Refugees, art. 4, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 2-3, June 30, 1928, 89 L.N.T.S. 55 (1929); The 1936 Arrangement contained similar provisions for German refugees (Provisional Arrangement Concerning the Status of Refugees Coming from Germany and Annex, art. 5-6, July 4, 1936, 171 L.N.T.S. 77 (1936-1937)).
[267] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 4-5, Feb. 10, 1938, 192 L.N.T.S. 59.

refugees in the absence of such reciprocity.' However, many reservations were made in this regard.[268]

95. RIGHTS – A few rights were explicitly granted on several levels of protection. Concerning civil and political rights, both the Nansen and the German refugees firstly had an absolute right of free access to court if they were physically present in the territory of the state. Both types of refugees, resident in the state, had the right to be treated on par with nationals with regard to legal assistance, the exemption from the payment of a security in court cases[269] and the payment of fiscal charges.[270]

In the category of social, cultural and economic rights there were three kinds of measures taken. Firstly, labour was severely restricted in the interwar period. To enable refugees to become productive, the Conventions for both Nansen and German refugees stipulated that these restricting laws should not be applied in all their severity to these groups of refugees that were domiciled or regularly resident and that they should even be automatically suspended for domiciled residents who (1) had lived in the state for at least three years; (2) were married to a national; (3) had children who were nationals, or (4) who had been a combatant in the Great War.[271] Secondly, both Nansen and German refugees enjoyed most favourable treatment accorded to foreigners in a series of social matters including (1) industrial accidents if the refugee is a victim in the state's territory; (2) relief and assistance for refugees residing in the territory[272]; (3) social insurance laws, (4) the setting up of associations for mutual relief and assistance in the territory of the state and (5) education.[273]

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[268] Convention Relating to the International Status of Refugees, art. 14, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 17, Feb. 10, 1938, 192 L.N.T.S. 59; Also see Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 4, June 30, 1928, 89 L.N.T.S. 55 (1929); Skran, 'Historical Development of International Refugee Law', 24–26.

[269] Convention Relating to the International Status of Refugees, art. 6, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 8, Feb. 10, 1938, 192 L.N.T.S. 59; Also see Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 5, June 30, 1928, 89 L.N.T.S. 55.

[270] Convention Relating to the International Status of Refugees, art. 13, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 16, Feb. 10, 1938, 192 L.N.T.S. 59; Also see Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 8, June 30, 1928, 89 L.N.T.S. 55.

[271] Convention Relating to the International Status of Refugees, art. 7, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 9, Feb. 10, 1938, 192 L.N.T.S. 59; Also see Arrangement Relating to the Legal Status of Russian and Armenian Refugees, art. 6, June 30, 1928, 89 L.N.T.S. 55.

[272] For the unemployed, diseased, aged, infirmed incapable of earning a living, children with no upkeep by families or other parties, women who are pregnant, in childbed or nursing mothers.

[273] Convention Relating to the International Status of Refugees, art. 8-12, Oct. 28, 1933, 159 L.N.T.S 201 (1933); Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 10-14, Feb. 10, 1938, 192 L.N.T.S. 59.

These were very generous provisions. However, many reservations were made.[274] Finally, German refugees could also receive training with a view to emigration.[275]

§3. Why internationalization

A. Pro internationalization

96. INTERNATIONAL COMMUNITY INTERESTS – There were three factors related to the international community that spurred internationalization. The first and, according to Hathaway, the most important factor when it comes to Nansen refugees was the fact that the international legal order was disturbed. The main reason for regulating (stateless) refugees was that their existence without national protection was an anomaly in a system where protection and rights were tied up to the sovereignty of states.[276] This constituted somewhat of a paradox. The increased nationalism, in name of self-determination, caused increased statelessness. However, the growing presence of stateless persons on the globe, as a category outside the state system, undermined the legitimacy of that very state system thus leading to the intervention of international actors. In sum, increased nationalism thus indirectly led to increased internationalization.[277] The second factor was that regulation was necessary to avoid interstate friction. Some states were particularly burdened with a great number of refugees. It was therefore emphasized that an international solution to the refugee problem was not to be left as a burden to a few states, but that it concerned all states as an interest of mankind.[278] The third factor, especially as to issuing of travel documentation, was the motivation safeguard joint economic interests of the international community by ensuring proper flows of labourers between the countries in an equitable manner.

97. STATE INTERESTS– For a number of reasons states agreed to enter the Interwar Refugee regime. The first two reasons concern the consequences suffered by states due to statelessness. First, especially with regard to travel documentation, some countries were burdened by many refugees and they were very willing to grant them documentation in the

[274] Skran, 'Historical Development of International Refugee Law', 24–26.
[275] Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 15, Feb. 10, 1938, 192 L.N.T.S. 59.
[276] White, 'The Legal Status of Russian Refugees, 1921-1936', 31.
[277] Another example of this paradox can be found in the Interwar protection of minorities. For an overview, see Peter Hilpold, 'League of Nations and the Protection of Minorities - Rediscovering a Great Experiment, The', *Max Planck Yearbook of United Nations Law (Brill)* 17 (2013): 87–124.
[278] Conference on the Question of the Russian Refugees, *Resolutions adopted by the Conference on August 24th, 1921*, at 902, 30 L.N.O.J. 899 (1921); Jackson, 'Dr. Fridtjof Nansen a Pioneer in the International Protection of Refugees', 8–9; White, 'The Legal Status of Russian Refugees, 1921-1936', 6–7.

hope that they would move on. Furthermore, documentation would also allow them to ascertain the exact number of refugees on their territory in order to assess their burden. Further, in line with the international interest, the flow of labour made possible by the documentation would facilitate employing refugees in certain states. Second, granting status with rights would solve the legal anomaly individual states were presented with. Furthermore, there were a number of specific reasons for certain states to agree to several Interwar measures. First, in case of the Russian refugees, it politically helped states who had recognised the Soviet Union because the state could recognise the refugees through the intermediary of the League.[279] Second, some states agreed to international regulation because they wanted to confirm their ideological image of liberal states.[280] Third, with regard to Russian refugees, some states including Czechoslovakia, Bulgaria, Yugoslavia and France had built up close relations with Russian émigrés since the civil war.[281] Finally, granting travel documents only constituted a limited impact on a state's sovereignty ensuring wider acceptance.

98. HUMANITARIAN CONCERNS – Internationalization was also influenced by humanitarian concerns for the consequences suffered by stateless persons. The concerns were mainly expressed by international representatives and pressure groups. Pressure groups, mainly consisting of Russians, pushed for the establishment of refugee protection because of the precarious situation they were in.[282] Furthermore, several commissioners and committees emphasized the hardships suffered by the refugees to convince states to regulate the matter.[283] Finally, the 1933 and 1938 Conventions themselves, as well as the legal

[279] White, 'The Legal Status of Russian Refugees, 1921-1936', 10.
[280] Czechoslovakia, Belgium, France and the United Kingdom therefore agreed to limit their own sovereignty for those refugees already residing in their territory. For an analysis of this reason for Britain, see Robert J. Beck, 'Britain and the 1933 Refugee Convention: National or State Sovereignty', *International Journal of Refugee Law* 11 (1999): 597–624; White, 'The Legal Status of Russian Refugees, 1921-1936', 23.
[281] 'The Czechoslovak government resisted Soviet pressure to cut official ties with Russian refugee groups despite their increasing need for a rapprochement with the Soviet Union. The elites constructed an idea of new national identity that was caught up with exile and flight, from religious refugees fleeing Catholic restoration in the early 17th century, to the exile experiences of Masaryk and Beneš and others fighting for an independent Czechoslovak state and they wanted to play a leading role in the new international order and to be seen as a leading liberal democratic state at the heart of the new world order. Yugoslavia was influenced by pan-Slavism and personal links with the pre-revolutionary Russian elites, as well as a desire to be seen to be part of the new international community. France had a large and relatively stable Russian refugee population.' (White, 'The Legal Status of Russian Refugees, 1921-1936', 23–24.)
[282] White, 26–28.
[283] E.g. see preambles Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 15, Feb. 10, 1938, 192 L.N.T.S. 59; *Fifth Assembly of the League of Nations. Report to the Fifth Committee on Refugee Questions,* at 3, League of Nations Doc. A. V/6/1924 (1924); *Conference on Russian and Armenian Refugee Questions. Report by the High Commissioner and Report by the Belgian Representative presented to the Council*, at 1, League of Nations Doc. A.29 1926 VIII C/327 (1926); *Report of the Inter-Governmental Advisory*

instruments preceding them, emphasize the importance of 'human conditions of labour', the limitations on movement and the hope of what these conventions could do for refugees, including '(t)hat refugees shall be ensured enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in exercise of professions, industry and commerce, and in regard to movement of persons, admission to schools and universities.'[284]

B. Contra (further) internationalization

99. INTERNATIONAL COMMUNITY – Elements related to the international community that prevented further internationalization were threefold. First, measures of a more universal nature were impeded because the international community only felt responsible for refugees that resulted from the political struggles around WWI and other refugee groups in proximity of European powers.[285] This approach was inspired by the eurocentrism in a predominantly European League of Nations.[286] Second, the international community saw the problem as a temporary issue, not willing to lay out a more general scheme of protection. Third, in the international legal system of the time, state sovereignty still strongly overshadowed rights of individuals. The more limited the obligations, the more limited the impact on state sovereignty.[287]

Commission for Refguees on the Work of its Seventh Session, March 29, 1935, at 2, League of Nations Doc. C.137M.71, 1935. XII (1935); *Refugees Coming from Germany. Report Submitted to the Nineteenth Ordinary Session of the Assembly of the League of Nations by Sir Neill Malcolm, High Commissioner, August 22, 1938*, at 5-6, League of Nations Doc. A.25 1938. XII, 2 (1938).

[284] See Convention Relating to the International Status of Refugees, art. 8-12, Oct. 28, 1933, 159 L.N.T.S 201 (1933) and Convention Concerning the Status of Refugees Coming from Germany, with Annex, art. 15, Feb. 10, 1938, 192 L.N.T.S. 59; also see Conference on the Question of the Russian Refugees, *Resolutions adopted by the Conference on August 24th, 1921*, at 900-901, 30 L.N.O.J. 899 (1921); *Conference on Russian and Armenian Refugee Questions. Report by the High Commissioner and Report by the Belgian Representative presented to the Council*, at 3, League of Nations Doc. A.29 1926 VIII C/327 (1926).

[285] 150 Assyrians forced to abandon their homeland in 1922; 19 000 assyrochaldaeans fled to Caucasus and Greece; 9000 Ruthenians fled Galicia during or since WWI and gone to Austria and Czechoslovacia; Uncertain number of Montenegrins living in France reported to be unable to return to the Kingdom of Serbs, Croats and Slovenes; 16 000 Jews living in Bukowina, Bessarabia and Transylviania claimed to be unable to obtain Rumanian citizenship; 150 Turks ('friend of the allies') living in Greece and Near East: barred from returning to their homeland by a protocol of 1923 declaration of amnesty signed at Lausanne; 110 000 refugees dispersed throughout Central Europe (especially former Hungarians) many of whom desirous of emigrating but unable because they lacked a passport (League of Nations, Extension to Other Analogous Categories of Refugees of the Measures Taken to Assist Russian and Armenian Refugees. Resolution Adopted by the Assembly during its Seventh Ordinary Session, at 155, 8 L.N.O.J. 155 (1927); Hathaway, 'The Evolution of Refugee Status in International Law', 355–56.)

[286] Gilad Ben-Nun, 'From Ad Hoc to Universal: The International Refugee Regime from Fragmentation to Unity 1922-1954', *Refugee Survey Quarterly* 34, no. 2 (2015): 4.

[287] Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 33; Skran, 'Historical Development of International Refugee Law', 36.

100. STATES – Several factors at state level hindered (further) internationalization as well in general and with regard to specific measures. In general, firstly, and most importantly, national political, social and economic circumstances kept states from entering (fully) in the documentation and protection schemes. Political and economic nationalism reigned on the European continents, resulting in an increase in popular xenophobia and severe restrictions on immigration.[288] Furthermore, the upcoming trade unions did not appreciate the presence of foreign workers. These circumstances only worsened with the economic depression in the 1930s as widespread employment and lack of funds led states to turn their backs on refugees even more. Secondly, states were not willing to take a risk of protecting the refugees without a guarantee that other states would follow. Indeed, as not many states participated, they were afraid of becoming the dumping ground for refugees.[289] Thirdly, several governments refused to participate in regulation as they believed that only states burdened with refugees should have an interest therein.[290] Furthermore, non-displaced stateless persons were not included in any regulation as they did not bother other countries. There were also state-centred concerns which blocked specific aspects. First, as nationality was seen as a privilege to be granted by the state, mass naturalization was not agreed upon. Second, with regard to the German refugees specifically, France and Britain were hesitant to provoke Germany by accepting the scheme for German refugees.[291]

101. INDIVIDUAL – Finally, as oddly as it may seem, there were also reasons focussing on the individual which held back internationalization. With regard to the Nansen passports, a universal approach was contested by its holders themselves because they did not want to lose their distinctiveness.[292] With regard to the more radical solutions, there were also individual concerns. Mass naturalization was opposed on the ground that it would be contrary to an individual's liberty. Several refugees did not want to be naturalized in the hope of once returning to their homeland. Settlement in a third country was opposed by the refugees because they preferred to stay in their country of residence.

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[288] Holborn, 'The Legal Status of Political Refugees, 1920-1938', 681.
[289] Rubinstein, 'The Refugee Problem', 727–28.
[290] White, 'The Legal Status of Russian Refugees, 1921-1936', 17–18.
[291] Labman, 'Looking Back, Moving Forward', 6–7.
[292] See *Legal Position of the Russian Refugees. Memorandum by André Mandelstam with an Introductory Note by the Legal Section of the Secretatiat, 16 August 1921*, at 1-7, League of Nations Doc. C.R.R.3 (1921); Jennings, 'The Progressive Development of International Law and Its Codification', 103; Torpey, *The Invention of the Passport*, 128.

PART III. CAUSAL-TRACK

§1. Context and formation of remedies

102. THREE CAUSES, THREE TRACKS – While the aforementioned Hague Convention on certain questions relating to nationality laws and its protocols mainly deals with the technical causes of statelessness, it also touched upon nationality and statelessness in a general way thus including territorial and discriminatory causes. For the latter two, specific arrangements were sought, but these turned out to be either not universal or not fully binding. Nevertheless, they will be briefly dealt with.

A. Hague Codification Conference

103. CODIFICATION OF INTERNATIONAL LAW– The main remedy for statelessness and mainly the reduction of technical causes of statelessness in the interwar period are the convention and protocols resulting from the Hague Conference of 1930. This conference was established with the aim of codifying some important fields of international law in line with conscious efforts that had been taken for the development and codification of international law since the beginning of the 19th century. The most recent predecessors were the Hague conferences for the codification of the law of war held in 1899 and 1907.[293]

The process of setting up the Hague Conference started with a recommendation by the League of Nations Advisory Committee of Jurists on the continuation of the work begun by the 1899 and 1907 Hague Conferences to promote the development of international law. After the Council of the League adopted a report on October 27th, 1920 and transmitted the recommendation to the Assembly, the third committee of the First Assembly considered it unnecessary to establish an additional organisation for codification and thought it too ambitious to carry out such work in a rapid and systemic manner in the near future. In 1924, however, a delegate for Sweden in the Fifth Assembly of the League, again touched upon the issue of codification and outlined a procedure to this end. Subsequently, the Council followed the Swedish proposal by appointing a Committee of Experts on the Progressive Codification of International Law to 'prepare a provisional list of the subjects of

[293] See Conference of Vienna 1814-1815, Conference at Aix-la-Chapelle 1818, Declaration of Paris 1856 and some hundred other international conferences or congresses held between 1864 and 1914 resulting in over 250 international instruments as referred to in UN Documents on the Development and Codification of International Law, at 32, 41 American Journal of International Law Suppl. 29 (1947); Manley O. Hudson, 'The First Conference for the Codification of International Law', *American Journal of International Law* 24, no. 3 (1930): 447; James Brown Scott, 'Nationality', *American Journal of International Law* 24, no. 3 (1930): 556.

international law, the regulation of which by international agreement would seem to be most desirable and realizable at the present moment.'[294] At its first meeting in April 1925, the Committee of Experts appointed eleven sub-committees on various issues, including on conflict of laws relating to nationality. During the next two meetings in January 1926 and April 1927, the committee made up questionnaires on the topic and considered the government's replies respectively. The majority of countries was in favour of codification.[295] In June 1927, the Council of the League adopted a report containing a list of subjects ripe for codification, including the problems arising out of conflict of nationality laws.[296] On September 27th, 1927 the League's Assembly adopted a resolution to convene a conference at The Hague for the codification of the three topics deemed most suitable for codification at the time: nationality, territorial waters and the responsibility of states. It also instructed the Council to appoint a preparatory committee to this end.[297]

104. HAGUE CODIFICATION CONFERENCE – During three meetings the preparatory committee it made up and circulated questionnaires to governments and considered their responses.[298] On the basis thereof 'bases for discussion' were drawn up, being 'statements upon which agreement appears to exist or which do not give rise to divergencies of view so serious as to make it impossible to anticipate that an agreement may be reached after consideration.'[299]

The conference itself finally took place between March, 13th and April, 12th 1930. All the members of the League and twelve non-member governments, resulting in the presence of

[294] UN Documents on the Development and Codification of International Law, at 67-68, 41 American Journal of International Law Suppl. 29 (1947).
[295] Nine in favour, some raised objections, two opposed, two paritally opposed, one with a preference for bilateral solutions and one which suggested postponing (UN Documents on the Development and Codification of International Law, at 70, 41 American Journal of International Law Suppl. 29 (1947)).
[296] *Report to the Council of the League of Nations on the Questions which Appear Ripe for International Regulation. Adopted by the Committee at its Third Session, Committee of Experts, March-April, 1927*, at 4-5, 22 American Journal of International Law Special Suppl. on the Codification of International Law (1928).
[297] *Resolutions and Recommendation Adopted by the Assembly, September 27, 1927,* at 231-232, 22 American Journal of International Law, Special Suppl. on the Codification of International Law (1928); UN Documents on the Development and Codification of International Law, at 66-67, 41 American Journal of International Law Suppl. 29 (1947); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 5, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Hunter Miller, 'The Hague Codification Conference', *American Journal of International Law* 24, no. 4 (1930): 674.
[298] 6-15 February 1928 (making up the questionnaires); 28 January – 27 February 1929 (examining the replies of the governments and making up provisional bases of discussion); May 1929 (consider more government replies and draw up the basis of discussion in their final form) (UN Documents on the Development and Codification of International Law, at 78-79, 41 American Journal of International Law Suppl. 29 (1947)).
[299] *Bases of Discussion Drawn up for the Conference by the Preparatory Committee, Nationality,* at 9-24, League of Nations Doc. C.73.M.38.1929.V (1930); Also see *First Report Submitted to the Council by the Preparatory Committee for the Codification Conference*, at 1, League of Nations Doc. C.73.M.38.1929.V (1930); *Second Report Submitted to the Council by the Preparatory Committee for the Codification Conference*, at 3-5, League of Nations Doc. C.73.M.38.1929.V (1930).

a total 48 countries, as well as observers of the Union of Soviet Socialist Republics were represented.[300] The committee on Nationality, presided by M. Politis of Greece, handled various international issues involved in nationality laws and had as its main object the reduction of cases of statelessness and multiple nationality.[301] In the committee, various women's groups were also represented to influence the debate on the nationality of married women.[302] At the end of the aforementioned Conference the Convention on Certain Questions Relating to the Conflict of Nationality Laws (hereafter 'Hague convention') and three protocols, two of which concern statelessness (The Protocol Relating to a certain Case of Statelessness and the Special Protocol Concerning Statelessness)[303] were adopted, as well as eight recommendations. This made up the first set of international instruments to enshrine general rules on avoidance and reduction of statelessness.[304] The convention was ratified by 13 states[305] and the Protocol Relating to a Certain Case of Statelessness by 10 states. [306] Both entered into force on 1 July 1937. The Special Protocol Concerning Statelessness was only ratified by 7 states[307] during the interwar period and did not enter into force until 2004.[308]

105. ADDRESSING STATELESSNESS - The convention and protocols did not miss their goal of addressing the problem of statelessness, both in general and specifically with regard to the

[300] UN Documents on the Development and Codification of International Law, at 80, 41 American Journal of International Law Suppl. 29 (1947); Miller, 'The Hague Codification Conference', 676.
[301] U.N. Secretary-General, *A Study of Statelessness,* at 129, U.N. Doc. E/1112 (Aug., 1949); Miller, 'The Hague Codification Conference', 676; Arthur K. Kuhn, 'Internatioanl Measures for the Relief of Stateless Persons', *American Journal of International Law* 30 (1936): 476.
[302] E.g. National Woman's Party, Inter-American Commission of Women (Hudson, 'The First Conference for the Codification of International Law', 451; Robert S. Miller, 'Recent Developments in the Law Controlling Nationality of Married Women', *George Washington Law Review* 1 (1933): 352; Blanche Crozier, 'The Changing Basis of Women's Nationality', *Boston University Law Review* 14 (1934): 141.)
[303] Protocol Relating to a Certain Case of Statelessness, Apr. 12, 1930, 179 L.N.T.S. 115; Special Protocol Concerning Statelessness, Apr. 12, 1930, available at http://www.refworld.org/docid /3ae6b36f1f.html (accessed May 27, 2018).
[304] See e.g. discussion in *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 40-44, 96, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 5, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Gerard-René de Groot and Centre for European Policy Studies, *Survey on Rules on Loss of Nationality in International Treaties and Case Law*, 2013, 3.
[305] Belgium, Brazil, Great Britain and Northern Ireland, Canada, Australia, India, China, Monaco, the Netherlands, Norway, Poland, Sweden.
[306] Brazil, GB and Northern ireland, India, Poland, China, Chile, Australia, Salvador, South Africa, The Netherlands.
[307] Brazil, Great Britain and Northern Ireland, Australia, South Africa, India, China, El Salvador.
[308] Hudson, 'The First Conference for the Codification of International Law', 5; Dolidze, 'Lampedusa and Beyond', 129.

technical causes. Firstly, the Hague Convention contained several rules to specifically combat the technical causes of statelessness.

Secondly, as set out under part I, article 1 confirmed the wide sovereignty of states in the area of nationality, limited, however, by international conventions, international custom, and the principles of law generally recognised with regard to nationality.[309] This limitation allowed for the use of general international legal remedies in the fight against statelessness. The main doctrine used in the discussion of article 1 of the Convention was 'the abuse of rights (to determine nationality)' doctrine. According to this doctrine, a state has a right to determine nationality and expel undesirable aliens, but that right is abused when it is exercised in such a way that it burdens other states and limits their rights. If a state employs its nationality laws with the purpose of 'saddling other states with the unwanted sections of its population', this constitutes a clear abuse of rights, because the state of sojourn's right to expel the undesirable alien is made quasi inoperative.[310] Or to put it in Philonenko's visual phrase: 'by what right one treats a foreign state as a sort of sewer into which one is entitled to discharge his social detritus?'[311]

At the Hague Conference states pleaded unsuccessfully for a clear delineation of which kind of cases would amount to an abuse of rights under article 1, leaving it to the creativity of international lawyers.[312] The Protocol Concerning Statelessness, however, does contain an -albeit limited- obligation for states to re-admit denationalized citizens on its territory. The acceptance of such a measure could prevent an abuse of rights situation as in that case the denationalized people can indeed be sent back to their state of origin.[313]

Besides the abuse of rights doctrine, several other general limitations under article 1 were discussed in the interwar period. First, somewhat in line with the above interpretation of abuse of rights, denationalization could constitute an evasion of the international legal duty

[309] cf. Nationality Decrees Issued in Tunis and Morocco on Nov. 8th, 1921, Advisory Opinion (P.C.I.J. 7 February 1923).
[310] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 10, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Preuss, 'International Law and Deprivation of Nationality', 270–71; Jennings, 'The Progressive Development of International Law and Its Codification', 110–13.
[311] Maximmien Philonenko, 'Expulsion des Heimatlos,' Journal de droit international (1933), LX, 1177 as referred to in Preuss, 'International Law and Deprivation of Nationality', 273.
[312] The Netherlands (Kosters) in *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 20, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[313] See paragraph 122, below; Preuss, 'International Law and Deprivation of Nationality', 274.

of a state to receive back its nationals. Some more vague limitations were conceptualized as well. Some claimed that denationalization violated the 'principles of justice and humanity recognized by civilized nations', while others were of the opinion that states 'cannot arbitrarily disregard from pure motives of national political interest, the natural ties by virtue of which an individual is attached to a determined society within the framework of the international community'.[314] In the end, however, these lines of thinking drew less support than the more general abuse of rights doctrine.

106. AN INEFFECTIVE MILESTONE? - The conference can be evaluated both positively and negatively. On the one hand the results were discredited as not rigorous enough to seriously impact the statelessness problem and its effectiveness was undermined by numerous territorial reservations.[315] On the other hand, it was considered quite an accomplishment to reach some agreement in such a politically sensitive field where sovereignty claims were particularly strong.[316] Furthermore, it was the first time that the duty to prevent statelessness was laid down and the convention and protocols showed that this multilateral approach could be the way forward for the fight against statelessness.[317] In addition, the convention had considerable indirect significance as subsequent nationality legislation (even of non-parties to the convention) as well as regional measures were clearly influenced by the principles of the convention.[318] The most significant set of regional measures taken in the aftermath was the 1933 International Conference of American States in Montevideo. This conference led to the adoption of a Convention on the Nationality of women and a Convention on Nationality in December 1933.[319] Although some of these measures were more aimed at achieving sex equality than reducing statelessness, they could be used in some cases to further the latter goal.[320]

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[314] 'Genuine link'-theory; Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 10, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Preuss, 253; Jennings, 'Some International Law Aspects of the Refugee Question', 110–13.
[315] Hudson, 'The First Conference for the Codification of International Law', 447; Waas, *Nationality Matters*, 40.
[316] Edwin Borchard, 'Three Hague Conventions on Nationality', *American Journal of International Law* 32, no. 1 (1938): 126.
[317] Lay Lee, 'Denationalization and Statelessness in the Modern World', 34–37.
[318] Weis, *Nationality and Statelessness in International Law*, 27–28; Walker, 'Statelessness', 117; Waas, *Nationality Matters*, 41.
[319] Convention on the Nationality of Women, Dec. 26, 1933, 28 American Journal of International Law Suppl. 61 (1934); Convention on Nationality, Dec. 26, 1933, 28 American Journal of International Law Suppl. 63 (1934);William Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', *American Journal of International Law* 45 (1951): 491.
[320] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 6, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Samore, 491.

B. Redrawing of territories

107. BROAD POST WWI TERRITORIAL CHANGES – As mentioned before, in the aftermath of WWI, the national boundaries were profoundly redrawn according to the principle of self-determination. In this strong spirit of nationalism an effort was made to unite on the same territory and under national governments individuals of the same race, language and civilization.[321] The Treaty of Versailles and associated treaties maintained, as a general rule, a criterium of habitual residence on the territory to define the new nationalities and contained a right of option within a certain time limit.[322] For the region of Alsace-Lorraine, however, a 'lien national' was required with the purpose of excluding German immigrés and their descendants.[323] The Treaties of Saint-Germain[324] and Trianon[325] that regulated the dissolution of the Austro-Hungarian empire also maintained a general criterium of habitual residence, but introduced a novelty called 'heimatrecht' regarding the right of option. A person which differed in race and language form the majority of the population of the state of residence, could opt, within six months, for the nationality of another state if the majority of the population of that state was of the same race and language.[326] The interpretation and state practice with regard to all these provisions was not uniform. The main difficulty was that the nationality provisions of these treaties were not under any League guarantee. As a result, many people ended up stateless, mostly former nationals of the Austro-Hungarian Empire.[327]

108. NO UNIVERSAL SOLUTIONS – The inclusion of universal remedies for territorial causes of statelessness was considered during the discussions of the Hague Conference. However, not

[321] C. Luella Gettys, 'The Effect of Changes of Sovereignty on Nationality', *American Journal of International Law* 21, no. 2 (1927): 269–72.
[322] The territory of Alsace-Lorraine constituted an exception.
[323] Gettys, 'The Effect of Changes of Sovereignty on Nationality', 269.
[324] Treaty of Peace signed at Saint-Germain-en Laye, Allied and Associated Powers- Austria, Sept. 10, 1919, American Journal of International Law Suppl. 14, 1 (1921).
[325] Treaty of Peace signed at Trianon, Allied and Associated Powers - Hungary, June 4, 1920. American Journal of International Law Suppl. 15, 1 (1921).
[326] Treaty of Peace signed at Trianon, Allied and Associated Powers - Hungary, art. 64, June 4, 1920. American Journal of International Law Suppl. 15, 1 (1921); Treaty of Peace signed at Saint-Germain-en Laye, Allied and Associated Powers- Austria, art. 80, Sept. 10, 1919, American Journal of International Law Suppl. 14, 1 (1921); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 8, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Gettys, 'The Effect of Changes of Sovereignty on Nationality', 270; Brownlie, 'The Relations of Nationality in Public International Law', 320.
[327] U.N. Secretary-General, *A Study of Statelessness,* at 126-127, U.N. Doc. E/1112 (Aug., 1949); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Gettys, 'The Effect of Changes of Sovereignty on Nationality', 277; Loewenfeld, 'Status of Stateless Persons', 65–67.

much time was spent on the subject and no 'territorial provision' made it to the final version.[328]

The solutions that were actually devised for the statelessness arising from redrawn boundaries were either limited to certain countries or regional in nature. As an example of the former, several successor states concluded treaties establishing arbitration commissions to deal with any contestation of nationality claims on the basis of the treaties. The resulting decisions counted as a definitive solution on nationality. Examples include the Treaty of Rome concluded by 7 successor states of the Austro-Hungarian Empire in April 1922, as well as a treaty between Germany and Poland concerning Upper Silesia in May 1922 and Czechoslovakia and Austria in June 1920.[329]

A regional, Interamerican solution, on the other hand, was constructed in the aforementioned 1933 American Convention on Nationality. Article 4 stated that the transfer of territory of one country to another shall not affect the allegiance of the inhabitants of the transferred territory unless they expressly opt to change their original nationality.[330] As neither of these solutions are truly universal in character, the territorial causes of statelessness will not be further discussed in this section.

C. Nansen and German refugees

109. RUSSIAN, ARMENIANS, ASSIMILATED AND GERMAN REFUGEES- In part II the main cases of discriminatory statelessness that drew international attention, namely those concerning Russians, Armenians, assimilated as well as German refugees, were extensively discussed. Part II only dealt with the consequences for those stateless individuals. However, in the same period, some foundations were also being laid to combat the cause: the discriminatory nationality practices of states.

110. NO HARD LAW, BUT LAW IN STATU NASCENDI? – Even though the specific question of avoiding or reducing discriminatory statelessness was not dealt with at the Hague, the topic was not without discussion both during the Hague Conference and outside of that. On the

[328] The Netherlands (Kosters), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 20, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[329] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).
[330] Convention on Nationality, art. 4, Dec. 26, 1933, 28 American Journal of International Law Suppl. 63 (1934); James Brown Scott, 'The Seventh International Conference of American States', *American Journal of International Law* 28 (1934): 222.

one hand, there were scholars that thought discriminatory nationality practices were a political matter, not within the province of international law. Rubinstein, for example, noted that 'nothing but the force of public opinion in the totalitarian states themselves can induce change', observing, however, that 'general disapprobation of the methods of dictatorship and the pressure of world opinion do certainly accelerate the return to sanity; but it's a long and laborious process'.[331]

On the other hand, the intellectual basis was being laid for some embryonic non-discrimination norm prohibiting mass denationalization for mainly racial (but not so much political) reasons. The Institut de Droit International expressly denounced the right of a state to revoke citizenship for reasons of race, language, or religion.[332] Jennings claimed that an, admittedly vague, norm of respect for minorities was emerging from the whole of minority treaties.[333] Finally, many of the representatives at the Hague Conference expressed their opposition to nationality discrimination based on race and religion.[334]

However, opponents of this line of thinking claimed this type of denationalization to be within the wide competence of states and any such non-discrimination norm to be 'unscientific and indiscriminate mingling of political, sociological and legal arguments.'[335]

It cannot be said that there was any firm basis in international law against discriminatory causes for statelessness. Consequently, it will not be further discussed. As a solution to discriminatory causes, however, many authors employed the aforementioned general provision of the Hague Conference and the doctrine of abuse of rights as a fall-back option.

§2. How: Hague Convention and protocols

111. WHAT IS INCLUDED? – Since the discussed measures against territorial causes of statelessness were geographically limited and the measures against discriminatory causes proved too weak, it follows that the only universal, hard international law measures concerning the causes of statelessness in the Interwar period are those set out in the Hague Conference. The only measures thus consist of a general rule as well as rules specifically

[331] Rubinstein, 'The Refugee Problem', 716–17.
[332] Loewenfeld, 'Status of Stateless Persons', 80.
[333] Jennings, 'The Progressive Development of International Law and Its Codification', 110–13.
[334] India (Basanta Mullick), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 168, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[335] Preuss, 'International Law and Deprivation of Nationality', 253.

aimed at reducing technical statelessness. With regard to the general rule and limitations, the discussion will be limited to the limitation of the abuse of rights doctrine, as this was the most widely accepted limit.

A. Concept of statelessness

112. DE JURE STATELESSNESS - Though it does not define statelessness as such, the concept of statelessness contained in the Hague Convention and protocols concerns a de jure concept. The whole convention is focused on the rights of states to determine nationality in a legal sense. The general article 1 concerns the general right of states to grant legal nationality, while the several technical remedies assure possession of a legal nationality. Furthermore, the discussions at the Hague showed a tendency to turn away from questions not directly linked to nationality de jure.

113. UNIVERSAL - Whereas the remedies for the consequences of statelessness in the interwar period concerned mainly specific groups of people, the Hague Convention takes a more universal approach. Besides the general provision, the convention is, however, confined to certain specific categories of victims of statelessness: those resulting from expatriation, children and married women.[336] No specific provision is present on the deprivation of nationality as a penalty.[337]

114. MAINLY SUBSEQUENT, SOME ORIGINAL – While the measures against technical causes of statelessness in the Hague Convention are aimed at both original and subsequent statelessness (though mainly subsequent), as will be shown below, the abuse of rights doctrine under article 1 mainly focuses on the act of withdrawing nationality and thus subsequent statelessness.

115. MAINLY TECHNICAL BUT POTENTIALLY TERRITORIAL AND DISCRIMINATORY CAUSES – The concept of statelessness adopted in the Hague Convention and its protocols concerns mainly, though not solely, statelessness evolving from technical causes. The many specific rules of the convention aimed at reducing statelessness clearly address the technical causes. However, the general article 1 and the accompanying doctrine of abuse of rights can also cover discriminatory and potentially territorial causes. While there was no explicit

[336] See Loewenfeld, 'Status of Stateless Persons', 63–65; Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1074; Greiper, 'Stateless Persons and Their Lack of Access to Judicial Forums Comment', 447.
[337] U.N. Secretary-General, *A Study of Statelessness,* at 132, U.N. Doc. E/1112 (Aug., 1949).

discussion of using this general provision to combat territorial causes, the discussion at the Hague did show that this article was very much aimed at cases of discriminatory statelessness. In any case, there is a fine line between discriminatory statelessness and technical causes. Indeed, discriminatory measures can be shaped as technical ones with a discriminatory outcome.

116. MOSTLY NO DISPLACEMENT - Most of the cases envisaged in the Hague Convention do not necessarily involve displacement but concern internal nationality practices of the state concerned. However, the abuse of rights doctrine, requires that the rights of another state are violated and this usually, if not always, occurs when the stateless person is on another state's territory.

B. Causes and remedies

1. General: abuse of rights

117. ABUSE OF RIGHTS: NEGATIVE OBLIGATION - The first and general remedy in the interwar period flows from the rule contained in the Hague Convention (and in case law) that wide state discretion with regard to nationality was limited by international conventions, international custom, and the principles of law generally recognised with regard to nationality. The main limiting doctrine – and thus remedy - was the aforementioned doctrine of abuse of rights. The duty for states resulting from this doctrine constitutes a negative obligation. Indeed, states are not allowed to withdraw nationality if it excessively burdens another state or makes that state's rights inoperative.

2. Technical: 1930 Hague Convention and protocols

118. GENERAL – The other remedies contained in the Hague Convention are remedies specifically aimed at reducing technical causes of statelessness. They address both original and subsequent statelessness.

119. REMEDIES AGAINST ORIGINAL STATELESSNESS: POSITIVE OBLIGATION – With regard to original statelessness three remedies can be distinguished. Firstly, foundlings should get the nationality of their place of birth. If the parentage is established, however, the nationality shall be determined by the normal rules.[338] Secondly, children of stateless parents ('parents

[338] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 14, Apr. 13, 1930, 179 L.N.T.S. 89.

of no nationality or unknown nationality') should get the nationality of their place of birth unless the state otherwise provides. However, the state is allowed to lay down conditions to this end, such as a required time of residence. Due to the wide discretion states have in this area, this provision does not really constitute a solution for children of stateless persons.[339] Thirdly, and finally, the Protocol Relating to a Case of Statelessness contains the provisions that in jus sanguinis countries which only allow the father to pass on nationality, a person born of a mother who is a citizen and a stateless father ('without nationality or of unknown nationality') will have the nationality of the mother.[340] However, there are no provisions for the case where the child of parents from a strictly jus soli country is born in a strictly jus sanguinis state.[341]

All of these remedies constitute positive obligations as they oblige the state to grant, rather than refrain from withdrawing, nationality to children born on its territory if it would otherwise be stateless.

120. REMEDIES AGAINST SUBSEQUENT STATELESSNESS: NEGATIVE AND POSITIVE OBLIGATIONS – With regard to subsequent statelessness, two classes of remedies are set out in the Hague Convention and its protocols. A first remedy relates to statelessness after expatriation (or voluntary denationalization), containing the rule that if the state issued permits for their citizens to denationalize themselves ('expatriation permits') this could only lead to their loss of nationality if the person to whom it was issued possessed another nationality or when he acquired another nationality.[342]

A second set of remedies relates to the cases of statelessness resulting from dependent nationality. First, there are remedies for statelessness resulting from marriage. If a wife loses her nationality on marriage, this should be made conditional on her acquiring her husband's nationality.[343] If the wife loses her nationality during marriage due to a change in the

[339] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 15, Apr. 13, 1930, 179 L.N.T.S. 89; See *Bases of Discussion Drawn up for the Conference by the Preparatory Committee, Nationality,* at 18, League of Nations Doc. C.73.M.38.1929.V (1930); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 479; Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', 480–81.
[340] Protocol Relating to a Certain Case of Statelessness, art. 1, Apr. 12, 1930, 179 L.N.T.S. 115.
[341] Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', 481.
[342] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 7, Apr. 13, 1930, 179 L.N.T.S. 89; Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 473.
[343] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 8, Apr. 13, 1930, 179 L.N.T.S. 89.

husband's nationality, that loss should be made conditional on her acquiring her husband's new nationality.[344] If, finally, the marriage is dissolved, the wife should be able to recover her original nationality if she makes an application in line with the laws of the country.[345]

Second, remedies relate to subsequent statelessness of children. On the one hand, the legitimation or adoption of a national child by a foreigner only leads to the loss of nationality if the child acquires the nationality of the legitimating or adopting parent.[346] On the other hand, minor children are naturalized through the naturalization of their parents.[347]

Most of the remedies against subsequent statelessness are negative in nature as they work according to the formula: 'you cannot withdraw nationality, unless …'. Yet, two remedies are positive. The remedy that a woman can recover her original nationality after dissolution of marriage and the naturalization of children through their parents constitute obligations to grant nationality for the states concerned.

3. Other provision: the odd ones out

121. CONSEQUENTIAL SIDE-TRACK – Although the Hague Convention and protocols are aimed at regulating nationality laws and thus at reducing the causes of statelessness, some consequential remedies have crept into the provisions creating a 'consequential side-track' from the main aim of the conference. First of all, the Protocol Concerning Statelessness sets out a duty for states to receive back its former nationals who are or have become stateless in a limited number of cases: when the stateless person has become permanently indigent, or has been convicted of a crime and served a sentence of minimum one month imprisonment or have such a sentence remitted.[348] The conference also adopted a recommendation to encourage states to take up this duty even outside this limited set of circumstances.[349] As was made clear at the conference, this obligation does not change

[344] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 9, Apr. 13, 1930, 179 L.N.T.S. 89.
[345] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 11, Apr. 13, 1930, 179 L.N.T.S. 89.
[346] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 16-17, Apr. 13, 1930, 179 L.N.T.S. 89.
[347] Convention on Certain Questions Relating to the Conflict of Nationality Law, art. 13, Apr. 13, 1930, 179 L.N.T.S. 89.
[348] Special Protocol Concerning Statelessness, art. 1, Apr. 12, 1930, available at http://www.refworld.org/docid/3ae6b36f1f.html (accessed May 27, 2018); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 481; Hudson, 'The First Conference for the Codification of International Law', 453.
[349] Final Act for the Conference of Codification of International Law Held at The Hague in March-April 1930, Recommendation II at 182, 24 American Journal of International Law Suppl. 169 (1930).

anything about the person's de jure situation as a stateless person, but remedies the consequence of the need to move and sojourn.

A second consequential side-track can be found in recommendation VII that stipulates that a woman who, in consequence of her marriage, has lost her previous nationality without acquiring that of her husband, should be able to obtain a passport from the State of which her husband is a national.[350] This obviously deals with the consequence of the need for documentation, rather than with the causes.

122. DE FACTO – In Recommendation VIII another 'odd one out' can be identified. As the recommendation deals with the future examination of questions connected with the proof of nationality,[351] it is connected to problems of de facto nationality, instead of the de jure concept that has been used throughout the rest of the convention.

§3. Why

A. Pro internationalization

123. INTERNATIONAL COMMUNITY INTERESTS - Remedies for causes were partly driven by international community interests in line with the consequences suffered. First, an argument of legal order was stated in the preamble of the Hague Convention, namely that it was in the general interest of the international community to secure that every person should have a nationality. Second, international regulation was incited by the wish to avoid friction and diplomatic disputes due to conflicts between nationality laws when for example another state is obliged to receive the stateless person.[352] If states were to exercise their sovereign

[350] Final Act for the Conference of Codification of International Law Held at The Hague in March-April 1930, Recommendation VII at 183, 24 American Journal of International Law Suppl. 169 (1930).
[351] Final Act for the Conference of Codification of International Law Held at The Hague in March-April 1930, Recommendation VIII at 183, 24 American Journal of International Law Suppl. 169 (1930); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 481.
[352] *Nationality, Text with Comment*, at 25, 23 American Journal of International Law Special Suppl.on Codification of International Law 25 (1929); *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 13 and 101, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); J.W. Garner, 'Uniformity of Law in Respect to Nationality', *American Journal of International Law* 19 (1925): 548; Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 467; Miller, 'The Hague Codification Conference', 675; Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', 95; Matias, *Citizenship as a Human Right*, 42.

right over nationality in an absolute manner, resulting in statelessness, it was even argued that eventually international peace could be endangered.[353]

Furthermore, the urgency to regulate these matters was heightened during the interwar period.[354] Garner even claimed that it 'may be doubted whether there is any matter upon which uniformity of legislation and practice among the different states of the world is more needed at present time.'[355]

124. INDIVIDUAL INTERESTS - On the other hand, remedying the causes is motivated by various advantageous consequences for the individual. First, it would lead to the elimination of doubt in personal relations between the nationals of various states.[356] Secondly, the lack of protection and rights was considered on the basis of humanitarian and justice principles.[357] It was thought unjust that innocent people should suffer hardship for which they were, mostly, in no way responsible and it was generally considered 'unworthy of a community of civilized states that there should exist a condition in which, by the play of laws, certain individuals should possess more than one nationality and others be left without any at all.'[358]

With regard to the nationality of married women, specific individual reasons came into play. There were economic arguments, claiming that since a person without nationality is often not allowed to work, many stateless women are not able to earn any money.[359] The most significant considerations regarding women's nationality, however, came forth from the feminist movement and the pressure of various women's organisations for sex equality.[360] Most Western countries were experiencing a trend towards emancipation of women and were increasingly recognizing cases of sex inequality as a social injustice.[361] Even though

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[353] M. Nagaoka (Japan), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 19, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[354] *Nationality, Text with Comment,* at 21, 23 American Journal of International Law Special Suppl.on Codification of International Law 25 (1929); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 467.
[355] Garner, 'Uniformity of Law in Respect to Nationality', 547.
[356] Chairman, *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 13, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[357] Jennings, 'The Progressive Development of International Law and Its Codification', 110–13.
[358] See Garner, 'Uniformity of Law in Respect to Nationality', 548, 552.
[359] Great Britain (Ivy Williams), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 152, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[360] Hudson, 'The First Conference for the Codification of International Law', 451, 454.
[361] Great Britain (Dowson), Chile (Alvarez) and Belgium (Renson), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II,*

the feminist movement did help the plight of stateless women, their main goal was not to eliminate statelessness, but to ensure sex equality in nationality legislation even if this could lead to statelessness.[362] The results achieved at The Hague were therefore, in their eyes, insufficient as they merely ameliorated 'the effects of discrimination against the women under a system that accepts inequality of treatment as the point of departure.'[363]

125. STATES – The benefit for states in internationalization related first to the consequences they suffered from statelessness, namely being burdened with denationalized and other stateless people resulting from foreign policy and second to the wish to solve the legal anomaly of a stateless person in their national legal order in a general manner.

B. Contra internationalization

126. STATE INTERESTS AND IDEOLOGIES: IN GENERAL- Three sets of reasons can be distinguished which blocked (further) internationalization: (1) state interests and ideologies, (2) practical issues and (3) general contextual reasons.

First of all, state interests played an immense role in holding back the internationalization of remedies for the causes of statelessness. Nationality is one of the areas in which sovereignty had the strongest force.[364] In the various countries of the world different systems of nationality, which are part of each country's identity, prevailed.[365] Nationality is essentially political, and the political interests of the various states often turned out to be too divergent to reach agreement. Nationality laws are determined in accordance with the social, political, military and economic needs of a country and no state was willing to fully surrender this prerogative. As a result, clashes between different systems took place where no party was willing to make full way for the other.[366] The political character of nationality

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Minutes of the First Committee (Nationality), at 147 and 151-52, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[362] E.g. if the law provides for loss of nationality for both sexes; Joint Conference of the International Council of women and the International Alliance of Women for Suffrage and Equal Citizenship; (Chrystal MacMillan), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 178, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', 492.

[363] Crozier, 'The Changing Basis of Women's Nationality', 146.

[364] Miller, 'The Hague Codification Conference', 678.

[365] For an overview of nationality laws at the time see Durward V. Sandifer, 'A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality', *American Journal of International Law* 29 (1935): 248–79.

[366] *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 13, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); League of Nations Codification Conference, *Report of the First*

laws was even intensified after the Great War. On the one hand many states desired to have firm allegiance and increased manpower. On the other hand, active nationalism led to more exclusionary nationality practices.[367] The drafters of the Hague Convention were well aware of this troublesome environment as a preamble reads: '(b)eing of opinion that, under the economic and social conditions which at present exist in the various countries, it is not possible to reach immediately a uniform solution of all the above-mentioned problems, (..)'.

A lack of uniform usage of nationality laws thus hindered codification due to the politically charged character thereof. As a consequence, sharp conflicts arose between jus soli and jus sanguinis countries, but also between emigration and immigration states, which had some fundamentally different ideas about nationality.[368]

Codification of nationality laws was not only slowed down by the political character of nationality, but also by the fact that nationality was seen as an absolute privilege to be granted by the mercy of the state. This became very clear in the discussion resulting in the rejection of a possible provision limiting the number cases in which nationality could be withdrawn after naturalisation.[369]

Given these elements, drafters of the convention had to limit themselves to what was feasible given the circumstances and they did not attempt the full elimination of statelessness, but merely its reduction.[370]

127. STATE INTERESTS AND IDEOLOGIES: SPECIFICS – Some specific (political) controversies surrounding statelessness were dealt with in the convention. Firstly, with regard to the expatriation there was a difference of opinion between traditional countries of emigration

Committee (Nationality), at 216, 24 American Journal of International Law Suppl. 215 (1930); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 467; Miller, 'The Hague Codification Conference', 678.

[367] Hudson, 'The First Conference for the Codification of International Law', 454.

[368] *Nationality, Text with Comment,* at 21, 23 American Journal of International Law Special Suppl.on Codification of International Law 25 (1929); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 483; Miller, 'The Hague Codification Conference', 354.

[369] Italy (Giannini), Chile (Alvarez), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 97 and 100, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[370] See '(so regulating) those questions relating to the conflict of nationality laws on which it is possible at the present time to reach international agreement' (Convention on Certain Questions Relating to the Conflict of Nationality Law, preamble, Apr. 13, 1930, 179 L.N.T.S. 89); League of Nations Codification Conference, *Report of the First Committee (Nationality),* at 216, 24 American Journal of International Law Suppl. 215 (1930); *UN Documents on the Development and Codification of International Law*, at 72, 41 American Journal of International Law Suppl. 29 (1947).

and those of immigration. While the former group wanted to prevent nationals from renouncing their nationality to avoid obligations, such as fulfilling their military duty,[371] the latter group defended the right of every person to change his or her allegiance freely.[372]

Secondly, there were deep-seated and irreconcilable differences in views on the effect that marriage should have on nationality.[373] There was essentially an opposition between countries that preferred dependency of the wife's nationality on that of the husband in light of family unity and countries that favoured independence in light of sex equality.[374] During the conference the arguments of sex equality were undermined by arguments that the interests of the family, and mainly the children, would be affected by parents of divergent nationalities and that it would lead to difficulties in the application of rules of private law.[375] As a compromise, the adopted provisions only moderated cases of statelessness without adhering to sex equality but recommendation VI was adopted which promoted the principle of sex equality in nationality legislation.[376] Yet, even with the moderated provisions, many reservations were made.[377]

Thirdly, with regard to original statelessness, various states wanted to refrain from assuming obligations towards stateless children for economic reasons in the interwar period.[378]

Fourthly, no remedies were adopted against the withdrawal of nationality as a punishment. During the conference a proposal was discussed of determining some acceptable cases in

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[371] U.S.A. (Flournoy), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 70, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[372] Chile (Alvarez) and U.S.A. (Flournoy), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 69 and 215, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); Miller, 'The Hague Codification Conference', 678–80.

[373] Miller, 678; For examples, see J. S. Reeves, 'Nationality of Married Women', *American Journal of International Law* 17, no. 1 (1923): 97–100; Cyril D. Hill, 'Citizenship of Married Women', *American Journal of International Law* 18 (1924): 720–36; Miller, 'Recent Developments in the Law Controlling Nationality of Married Women'; Crozier, 'The Changing Basis of Women's Nationality'.

[374] See League of Nations Codification Conference, *Report of the First Committee (Nationality),* at 228, 24 American Journal of International Law Suppl. 215 (1930).

[375] Netherlands (Schönfeld-Polano) and Italy (Giannini), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 148-149 and 153-154, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); Hill, 'Citizenship of Married Women', 723.

[376] Final Act for the Conference of Codification of International Law Held at The Hague in March-April 1930, Recommendation VI at 183, 24 American Journal of International Law Suppl. 169 (1930); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 477.

[377] Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', 490.

[378] League of Nations Codification Conference, *Report of the First Committee (Nationality),* at 225, 24 American Journal of International Law Suppl. 215 (1930).

which nationality could be withdrawn after naturalisation, but some countries were of the opinion that this would be interpreted as enlarging rather than limiting the freedom of withdrawal thus giving rise to more statelessness instead of less.[379]

128. PRACTICAL – A second set of reasons thwarting internationalization was of a practical nature. Firstly, and most importantly, the time period for the conference was far too limited to deal with a problem of this scope.[380] Secondly, some claimed that the structure of the conference could have been better. Instead of representatives who are rigidly bound by the instructions to secure consecration of their own nationality laws, direct negotiations between heads of foreign offices with greater authority could have been more beneficial.[381] A third practical problem relates to too much transparency in the period preceding the conference. Many nations had already publicly taken position on the various issues, making it hard for them to change their minds during the discussions.[382]

129. CONTEXTUAL – A final barrier to further internationalization was the context in which the codification took place. Many authors claim that the topic in general was not yet ripe for an attempt at codification and that it would have been beneficial to await further convergence.[383] With regard to nationality of married women it was especially remarked that it was a time of transition towards sex equality and that the transition first had to be completed before codification could occur.[384]

C. Consequential side-track

130. IN OR OUT OF THE CONVENTION? - On the consequential side-track, most of the discussion took place around the issue of readmitting stateless persons on the territory of the original

[379] See discussion, *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 167-74, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).
[380] *UN Documents on the Development and Codification of International Law*, at 84, 41 American Journal of International Law Suppl. 29 (1947); Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 482; Hudson, 'The First Conference for the Codification of International Law', 450; Miller, 'The Hague Codification Conference', 693.
[381] Flournoy, 'Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law', 483; Hudson, 'The First Conference for the Codification of International Law', 454.
[382] Scott, 'Nationality', 556.
[383] *UN Documents on the Development and Codification of International Law*, at 73, 85, 41 American Journal of International Law Suppl. 29 (1947); Hudson, 'The First Conference for the Codification of International Law', 455.
[384] Hudson, 451.

state and for the issuing of passports for married women, similar arguments were made.[385] The committee was generally divided into two groups. While everyone took note of the humanitarian need to help stateless persons, only a few considered it necessary to include remedies for consequences in an instrument mainly concerned with the causes of statelessness. A first group was convinced that the consequences of statelessness could be dealt with in the convention as it is so closely tied up with nationality laws.[386] They mainly put forth humanitarian reasons and the removal of sources of friction between states,[387] in line with the arguments made in the general 'consequence track' in the interwar period. A second group, however, thought such remedies for consequences constituted a matter of international police and thus outside of the system of rules to define nationality.[388] Furthermore, they considered it a too significant interference with a state's freedom to refuse or admit foreigners.[389] Finally, a compromise was reached by putting the obligation of readmission in a special protocol and the passport issue in a recommendation.[390]

CHAPTER II. POST WWII PERIOD

PART I. EVOLUTION OF THE STATELESSNESS PROBLEM

§1. Nationality in general

131. THE IMPORTANCE OF NATIONALITY: EMERGENCE OF HUMAN RIGHTS – After World War II (hereafter 'WWII'), a paradigm change took place that diminished the importance of nationality, at least in theory. Before, an individual was not considered a subject of international law as nationality was the sole key mechanism through which a person could

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[385] Uruguay (Buero), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 190, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[386] Switzerland (Merz), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 39-40, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[387] See *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 40-41, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[388] Union of Soviet Socialist Republics (Kourski), Portugal (de Matta) and Chile (Alvarez), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 38-39, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[389] France (de Navailles) and Italy (Diena), *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 37 and 42, League of Nations Doc. C.351(a).M.145(a).1930.V (1930).

[390] *Acts of the Conference for the Codification of International Law Held at The Hague from March 13th to April 12th, 1930, Meetings of the Committees, Vol. II, Minutes of the First Committee (Nationality)*, at 37 and 242-245, League of Nations Doc. C.351(a).M.145(a).1930.V (1930); also see League of Nations Codification Conference, *Report of the First Committee (Nationality),* at 218, 24 American Journal of International Law Suppl. 215 (1930).

enjoy rights, either by status as national or by status as foreigner.[391] The well-known atrocities of WWII spurred concern for the protection of the individual against arbitrary action by the government as national protection had proven inadequate and prone to government abuse. As Hannah Arendt would later write, the Nazi's had had the competence to deprive many Jews of the very 'right to have rights' enabling them to commit their barbarian crimes on an entire population group.[392] From this perspective, the conception of states as sole subjects of international law was criticized as it allowed the state to have a value of its own right, apart from its population, which had proven to be a 'false and dangerous abstraction'.[393] It was clear that, if international peace and stability was to be found, a new approach was needed.

The change came in the shape of human rights. In December 1948 the UDHR was adopted in Paris. Even though, in the described period, this declaration contained only a program of principles not yet transformed to actual legal norms, it did provide a fundamental paradigm change.[394] In particular, states were obliged to grant an enumerated set of fundamental rights to individuals within its jurisdiction on the basis of international instead of national law. The basis for the enjoyment of rights had shifted from being a national to being an individual human being. Consequently, the importance of nationality for the enjoyment for the most basic rights was lessened and protection was 'denationalized'. The paradigm change was in line with the doctrine of constitutionalism whereby governments are limited in the use of their authority.[395] In the described period it can be said that the standing of the individual in international law was not yet fully recognized,[396:] but at least theoretically emerging.

However, nationality had not lost its *raison d'être* altogether. Firstly, certain 'human rights' remained reserved for nationals of a certain country.[397] Secondly, however major the theoretical changes, in practice nationality was still paramount. After all, human rights were to be accessed through the vehicle of the state. If a national did not have a certain status in

[391] See paragraph 59, above.
[392] Tendayi Bloom, 'Problematizing the Conventions on Statelessness', 2013, 13–14.
[393] W.R. Bisschop, 'Nationality in International Law', *American Journal of International Law*, 1943, 322–23.
[394] Josef L. Kunz, 'The United Nations Declaration of Human Rights', *American Journal of International Law* 43 (1949): 316–18; Manley O. Hudson, 'The Universal Declaration of Human Rights', *American Journal of International Law* 44 (1950): 346.
[395] Young, 'Between Sovereigns', 351–56.
[396] Matias, *Citizenship as a Human Right*, 58, 93–95.
[397] The right to partake in government, the right to equal access to public service and the right to return to one's country (G.A. Res. 217 A (III), art 13 and 21, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (Universal Declaration of Human Rights); Young, 'Between Sovereigns', 339–41, 351–56; Matias, *Citizenship as a Human Right*, 91–92.

a state, such as national, foreigner or anything else, it was still hard to access fundamental rights.[398]

132. THE NATIONALITY FRAMEWORK: PARTIAL SHIFT TOWARDS NATIONALITY AS A RIGHT- The new human rights doctrine did not only reduce the (theoretical) importance of nationality, it also changed the concept itself. At least a partial shift took place from nationality as a tool to delineate and secure national identity to nationality as a right of the individual.[399] Before, nationality was considered to be the mechanism by which states could self-determine (and often 'cleanse') their populations, a right only to be truly limited if it conflicted with rights of other states as illustrated by the early limitations in the Hague Convention. Under the human rights paradigm, a more individual and human dignity focused approach coloured the nationality concept and the limitations thereof in particular. The state itself, by consequence, became conceptualized as less of a self-selected community of citizens and more a custodian of the territory and the people therein.[400] This partial shift came to pass because of the introduction of article 15 UDHR containing the right to nationality itself (as well as the right to change one's nationality) and the prohibition of arbitrary deprivation thereof.[401] After turbulent negotiations whereby classical views of national sovereignty and considerations of implementation difficulties blocked the road to acceptance, it became included in the UDHR in a context marked by the rising influence of supranational institutions and the need to respond to (inter)war denationalizations and subsequent population movements.[402] Article 15 is rather limited and often coined as a 'right without a remedy' as it does not indicate who is to grant that nationality to which an individual has a right and thus has little practical value, but it has strongly influenced the drafting of instruments concerning nationality.[403]

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[398] Young, 'Between Sovereigns', 341–42; Kate Darling, 'Protection of Stateless Persons in International Asylum and Refugee Law', *International Journal of Refugee Law* 21 (2009): 743; Bloom, 'Problematizing the Conventions on Statelessness', 13–14; Matias, *Citizenship as a Human Right*, 96.

[399] Lay Lee, 'Denationalization and Statelessness in the Modern World', 20; Spiro, 'A New International Law of Citizenship', 695–96; Matias, *Citizenship as a Human Right*, 96.

[400] Young, 'Between Sovereigns', 351–56.

[401] Arbitariness refers to practices that do not respect procedural fairness and due process as well as substantive standards (necessity, proportionality, reasonableness); Batchelor, 'Stateless Persons', 237–38; Adjami and Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights', 100–101; Monika Ganczer, 'The Right to Nationality as a Human Right Part I Thematic Part: Identity, Nationality and Citizenship', *Hungarian Yearbook of International Law and European Law* 2014 (2014): 18.

[402] Ganczer, 'The Right to Nationality as a Human Right Part I Thematic Part', 15–17; Matias, *Citizenship as a Human Right*, 48–49.

[403] Greiper, 'Stateless Persons and Their Lack of Access to Judicial Forums Comment', 448; Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', 165; Goldston, 'Holes in the Rights Framework', 339; Goris, Harrington, and Köhn, 'Statelessness', 5; Groot and Centre for European Policy Studies, *Survey on*

133. THE NATIONALITY FRAMEWORK: LIMITS ON THE FREEDOM OF STATES - The nationality concept had only shifted partially, however, and self-determination concerns about national identity remained strongly present.[404] Freedom of states became more limited, but nationality determination ultimately remained part of state sovereignty.[405] As a result, international regulation of nationality became a constant balancing act between the individual's right to nationality and the state's sovereignty resulting in various limits. These limitations took the shape of both negative and positive limits. Whereas the first roughly speaking requires a state not to claim 'too much nationals', the latter requires the state not to claim 'too little'.

The first limit that emerged was negative in nature. It concerns the 'effective link'-requirement as set out by the ICJ in the famous Nottebohm case.[406] The doctrine says that despite the fact that nationality is ultimately a domestic competence, a state can disregard attribution of citizenship by another state if there is no effective link between the citizen and the state. This limitation on nationality legislation was inspired by the need to facilitate interstate relations and the duty not to harm the international community of states as a whole.[407]

A following set of limitations was positive in nature. It concerned measures predominantly aimed at reducing statelessness, namely the 1957 Convention on Nationality of Married Women and the 1961 Convention on the Reduction of Statelessness. These limitations were not only inspired by the need to facilitate interstate relations, but also by the individual's right to nationality as will be further discussed below.[408]

In sum, the state of international law with regard to nationality was changing with limitations increasingly carving out the initial broad state sovereignty in order to ensure an orderly and peaceful international society in which individuals could live in dignity.

Rules on Loss of Nationality in International Treaties and Case Law, 4; Ganczer, 'The Right to Nationality as a Human Right Part I Thematic Part', 18.

[404] For an elaborate overview of the history of the citizenship concept, see Spiro, 'A New International Law of Citizenship', 695–96; Matias, *Citizenship as a Human Right*, 9–36.

[405] Waas, *Nationality Matters*, 35.

[406] Nottebohm (Liechtenstein vs. Guatemala).

[407] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1087–89; Batchelor, 'Stateless Persons', 236–37; Matias, *Citizenship as a Human Right*, 52–53, 55.

[408] Baluarte, 'The Risk of Statelessness', 55.

§2. Statelessness in particular

134. IN GENERAL – The reconceptualization of citizenship naturally had consequences for the concept of statelessness as this was partially reconceptualised from a state-centric 'legal-technical glitch' in national citizenship regimes to the denial of an individual's fundamental right.[409]

135. CAUSES OF STATELESSNESS – After WWII, technical causes of statelessness did not increase as much as after WWI, but the previous problems still remained. Original technical statelessness was still considered one of the main sources of statelessness. Furthermore, cross-border movement only increased after WWII resulting in yet another rise of births outside the original country as well as the number of mixed families and their related nationality problems. Denationalization was also deemed to be one of the most important sources after WWII, especially denationalization on the basis of loyalty or disaffection with the country of origin. The former especially had been important during the war.[410]

The main source of statelessness in the period after WWII were discriminatory causes.[411] The policy of mass de facto or de jure denationalizations to 'purify' the population of unwanted elements had taken on new followers during and right after the war resulting once more in mass statelessness. On the one hand, many of the masses denationalized before WWII began, remained in legal limbo.[412] The Nansen and German (and Austrian) refugees were, of course, soothed by the solutions set out in the previous chapter, but there were other groups that were not so 'lucky', such as the Jews denationalized by German satellite states and the Spanish Republican refugees that had lost the struggle against the partisans of Franco in 1939 and lost the protection of the Spanish government.[413]

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[409] Waas, 'Are We There Yet - The Emergence of Statelessness on the International Human Rights Agenda', 343.
[410] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).
[411] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).
[412] Rürup, *Lives in Limbo*, 118–21; also see Blitz, *Statelessness, Protection and Equality*, 10.
[413] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 17, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Carey, 'Some Aspects of Statelessness Since World War I', 115–18; Patrick Murphy Malin, 'The Refugee: A Problem for International Organization', *International Organization* 1, no. 3 (1947): 446; Rene Ristelhueber, 'The International Refugee Organization Document No. 470', *International Conciliation* 29 (1952 1951): 170–72, 185–89; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 30.

On the other hand, the number of this type of denationalized people increased during and right after WWII.[414] Large groups of these people became displaced during the war or fled after the end of the hostilities. Some of them were de jure denationalized, but many only de facto did not enjoy the protection of any government.[415] On an ethnic level, Jews had continued to be denationalized in new satellite states, many Poles were deported from their home country and millions of ethnic Germans had been expelled from Eastern European states causing considerable confusion as to their nationalities and protection. On a political level, the (further) instalment of communist regimes forced dissidents to flee their country and subsequently lose its protection. First, there was the (further) imposition of Soviet rule in Central and Eastern Europe. Dissidents fled from the recently absorbed Baltic states and millions of Poles, Ukrainians, Byelorussians and other minorities of the Soviet Union fled or were forcibly expelled. In Yugoslavia the instalment of communist rule led to similar refugee flows. Finally, political changes caused Chinese and Arab refugee flows, the latter from Palestine. Not all of the total number of refugees were of course stateless. However, some fled because of their de jure or de facto denationalization and others became stateless because of their flight. Only few of them were de jure stateless, but the majority was at least de facto stateless.[416] It is hard to find out the exact proportions of de jure, de facto and non-stateless refugees as right after the war statelessness was still used as a catch-all for displaced persons.[417]

As for territorial causes of statelessness, they were not as major as after WWI, but there was still some transfer of territory with potential nationality problems. Not all the peace treaties after the war contained provisions relating to the nationality of the inhabitants of transferred territories.[418] Furthermore, several bilateral treaties for transfer of territory after the war

[414] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 17, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Carey, 'Some Aspects of Statelessness Since World War I', 190–120; Malin, 'The Refugee', 446; Ristelhueber, 'The International Refugee Organization Document No. 470', 185–89; Blitz, *Statelessness, Protection and Equality*, 10; Goris, Harrington, and Köhn, 'Statelessness', 4.

[415] Foreing-born naturalized citizens denationalized by France, Belgium, Turkey and Soviet-Union. Also denationalization measures in Baltic Countries and Poland (Carey, 'Some Aspects of Statelessness Since World War I', 118–20.)

[416] Malin, 'The Refugee', 444.

[417] Siegelberg, 'Without a Country', 154.

[418] U.N. Secretary-General, *A Study of Statelessness,* at 134-136, U.N. Doc. E/1112 (Aug., 1949); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).

contained either no clauses with regard to nationality or ethnically determined rights of options with potential for statelessness.[419]

136. CONSEQUENCES FOR THE STATELESS INDIVIDUAL – The consequences of being a stateless individual were somewhat less harsh than in the interwar period. Whereas the world had fallen into fierce nationalism after WI, WII led to the establishment of a more universal, human rights approach aimed at the protection of rights for individuals. However, the human rights discourse was only just emerging and was definitely not fully developed during the described period. And, as set out above, states were still the necessary vehicles to access rights.[420] Consequently, stateless persons were still in a very precarious situation with regard to rights protection. To enjoy rights, they needed either a nationality or some status through which a state could grant these human rights. Furthermore, the special needs, such as documentation, were still paramount as the passport system had not been relaxed and these needs were not provided for by human rights.

137. CONSEQUENCES FOR STATES AND THE INTERNATIONAL COMMUNITY – The unstable equilibrium between states that had been reached after WWI was completely disrupted by Nazi violence, WWII and the pressure of Soviet imperialism. The pressure on states and consequently on the international community was increasing as a larger number of refugees and deportees were spreading, estimated at 50 million.[421] As mentioned above, not all of these refugees were of course stateless, but a great number indeed were.

On a state level, certain states were particularly burdened by the scale of the (stateless) masses on their territory. Many refugees of the war as well as Soviet fugitives fled to the Western Zones of Germany, many Yugoslav refugees turned to Italy and Austria and France were particularly burdened, the first one due to its proximity to countries of Eastern Europe and the latter because of its location and tradition of hospitality towards refugees. As a result, these countries dealt with excessive numbers of (stateless) refugees among their populations, burdening their state structure. Furthermore, although nationalism was not as strong as during the interwar period, economic difficulties after the war still made it difficult to accept that many people into state territory.[422]

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[419] See e.g. Treaty Concerning the Transcarpathian Ukraine, Czechoslovak Republic – USSR, June 29, 1945, available at http://www.forost.ungarisches-institut.de/pdf/19450629-1.pdf (accessed May 27, 2018).
[420] See paragraph 59, above; Darling, 'Protection of Stateless Persons in International Asylum and Refugee Law', 743.
[421] Siegelberg, 'Without a Country', 154.
[422] Ristelhueber, 'The International Refugee Organization Document No. 470', 192–98.

On an international level the presence of these masses and the unequal carrying of their burden had the potential of causing interstate friction. Furthermore, regardless of the human rights paradigm, and as already set out before, stateless persons still constituted a legal anomaly both nationally and internationally.

138. RESULT: STATELESSNESS AS PRIORITY ON INTERNATIONAL AGENDA- In sum, the few territorial causes, increased effect of existing technical causes and especially the nationality problems of the stateless displaced persons and refugees after WII resulted in a problem of unexpected magnitude, causing statelessness to be a major and very urgent concern for the newly established UN in the aftermath of the war.[423]

PART II. CONSEQUENCE-TRACK

§1. Context and formation of remedies

A. International institutions dealing with refugees, stateless and displaced persons

1. Right before and during WWII

139. HCR – Various changes of institutions concerned with the remedies for consequences for displaced persons and refugees, some including stateless persons, were established right before, during and after WWII. Right before the war, by a League of Nations resolution in September 1938, the functions of the High Commissioner for Refugees coming from Germany and that for Nansen refugees were merged in the function of High Commissioner's Office for Nansen Refugees and Refugees Coming from Germany, (hereafter 'HCR') which existed from 1938 to December 1946. Its mandate was later extended to cover Czechoslovak refugees from Sudetenland.[424]

140. IGCR – From July 4 to 15, 1938 32 governments were convened at the Evian Conference on proposal of the U.S. to discuss political and economic questions arising from the refugee exodus from Germany and former Austria. They established the Intergovernmental Committee for Refugees (hereafter 'IGCR') based in London to continue and develop the work of the meeting at Evian. The goal was to facilitate the involuntary emigration from

[423] U.N. Secretary-General, *A Study of Statelessness,* at 114, U.N. Doc. E/1112 (Aug., 1949); A.H. Robertson, 'Some Legal Problems of the U.N.R.R.A.', *The British Yearbook of International Law* XXIII (1946): 161; Ristelhueber, 'The International Refugee Organization Document No. 470', 186; Walker, 'Statelessness', 117; Hieronymi, 'The Nansen Passport', 41; Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 1; Molnar, 'Remembering the Forgotten', 827–28; Siegelberg, 'Without a Country', 154.
[424] See U.N. Secretary-General, *A Study of Statelessness,* at 27-28, U.N. Doc. E/1112 (Aug., 1949).

Germany and Austria for persons fleeing Nazi persecution, but the covered group was subsequently extended.[425]

Recognizing the important role of Nansen passports, the IGCR issued a similar document prior to the end of the war. In September 1944 the IGCR adopted a resolution asking for the development of such an internationally recognised identity and travel document for stateless persons or persons not enjoying the protection of any government, which was subsequently recommended. Many displaced persons who did not want to go home after WWII benefitted from this travel document. By the end of 1946 the HCR responsibilities were assumed by the IGCR.[426]

141. UNRRA - The United Nations Relief and Rehabilitation Administration (hereafter 'UNRRA') was established by an international agreement concluded in Washington in November 1943, signed by representatives of 44 'United and Associated Nations'.[427] It was designed to be a temporary organisation of which the main task was to repatriate the displaced persons of Europe after the War. Initially protection thereof was not part of their tasks as those issues were referred to the IGCR, but in 1945 the UNRRA task also included legal protection. In total the UNRRA repatriated about 7 million people but growing East-West tensions eventually caused more people to seek refuge rather than return home.[428]

2. After WWII

142. UN AND IRO - Immediately after the War, on 24 October 1945, the United Nations Organisation (hereafter 'UN') was established and shortly thereafter its predecessor the League of Nations was liquidated.[429] In February 1946, the UN referred the urgent refugee problem to the Economic and Social Council (hereafter 'ECOSOC') which recommended the establishment of a special committee. As a result, the constitution of the International

[425] U.N. Secretary-General, *A Study of Statelessness,* at 29-30, U.N. Doc. E/1112 (Aug., 1949); Jennings, 'Some International Law Aspects of the Refugee Question', 109; Hathaway, 'The Evolution of Refugee Status in International Law', 370–72; Hieronymi, 'The Nansen Passport', 40.
[426] Vukas, 'International Instruments Dealing with the Status of Stateless Persons and of Refugees Studies', 156–57; Hieronymi, 'The Nansen Passport', 40–41.
[427] Four countries were subsequently added.
[428] Robertson, 'Some Legal Problems of the U.N.R.R.A.', 142–43; Hathaway, 'The Evolution of Refugee Status in International Law', 372; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 30; Labman, 'Looking Back, Moving Forward', 8.
[429] See Denys P. Myers, 'Liquidiation of League of Nations Functions', *American Journal of International Law* 42 (1948): 320–54.

Refugee organization (hereafter 'IRO') was approved in December 1946.[430] In mid 1947 the IRO assumed the responsibilities of UNRRA and IGCR (and thus indirectly of the HCR). On the one hand the IRO oversaw the resettlement of displaced Europeans. The IRO achieved to resettled close to 1 million refugees between 1947 and 1951.[431] On the other hand, they were concerned with the legal and political protection of those who could not be repatriated or had valid objections to returning to their country of origin. To this end the IRO concluded several agreements with national governments to improve the status of refugees.[432] Towards the end, however, the organisation became crippled by East-West tensions and in 1951 it concluded its mandate.[433]

143. UNHCR – By a resolution of the UN General Assembly in December 1949 a UN High Commissioner's Office for Refugees (hereafter 'UNHCR') took over responsibility over refugees. It was originally intended as an ad hoc and temporary office. Due to various crises that needed its assistance, the usefulness of this non-political humanitarian international agency was evident, and it eventually became more permanent.[434]

B. Conventions

1. Refugees and stateless persons: parting ways

144. REFUGEES AND STATELESS PERSONS - Within the framework of the new UN and against the background of all these institutions and measures, action was being taken on refugees and stateless persons. At the beginning of this period, the interwar intertwinement of refugee and statelessness concepts was still in place thus ensuring the joint treatment of both at the beginning. However, during the preparations for conventions on the matter both concepts parted ways.

145. A STUDY ON STATELESSNESS –In July 1947 the new UN Commission on Human Rights adopted a resolution on stateless persons making recommendations to the UN along the

[430] For constitution and working method, see Ristelhueber, 'The International Refugee Organization Document No. 470', 180–85.
[431] Including 329,000 in the US, 182,000 in Australia, 132,000 in Israel, 123,000 in Canada and 170,000 in various European states.
[432] E.g. France, American zone of occupation of Germany, Australia, Brazil, Great Britain, Netherlands, Turkey (U.N. Secretary-General, *A Study of Statelessness,* at 40-53, U.N. Doc. E/1112 (Aug., 1949)).
[433] U.N. Secretary-General, *A Study of Statelessness,* at 30-32, U.N. Doc. E/1112 (Aug., 1949); Ristelhueber, 'The International Refugee Organization Document No. 470', 180; Dennis Gallagher, 'The Evolution of the International Refugee System', *The International Migration Review* 23, no. 3 (1989): 579; Roversi, 'The Evolution of the Refugee Regime and Institutional Responses', 30.
[434] Gallagher, 'The Evolution of the International Refugee System', 580–82; Darling, 'Protection of Stateless Persons in International Asylum and Refugee Law', 754; Labman, 'Looking Back, Moving Forward', 10.

causal and consequence tracks. On the one hand, the commission recommended the member states to conclude a convention on nationality, referring to the causes of statelessness. On the other hand, it recommended that early consideration should be given to the legal status of those who do not enjoy the protection of any government, in particular pending the acquisition of nationality, referring to the consequences of statelessness.[435]

In 1948 the ECOSOC requested the Secretary General of the UN to make a study on the subject of statelessness followed by recommendations.[436] In 1949 'A Study on Statelessness' was completed by the Secretary General in consultation with the IRO.[437] The study took the interwar intertwined concept of refugee/stateless person as a starting point and thus concerned both de jure and de facto stateless persons.[438] The study included information on both the consequence and the causal track. The two tracks developed separately. The latter will be discussed here and the former in part III. As will be elaborately discussed below, the newly established International Law Commission of the UN also included 'nationality, included statelessness' in a list of topics for possible international legal codification, and appointed Manley Hudson and later Roberto Cordova as special Rapporteurs on the matter.[439]

146. AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS [440] - In August 1949 the ECOSOC appointed an Ad Hoc Committee on Refugees and Stateless Persons as a response to the study on statelessness.[441] Several states were represented[442] in the Committee and its task was to prepare a convention on the international status of refugees and stateless persons on the one hand (consequence track) and consider means of eliminating statelessness on the other hand (causal track). Two sessions were held, one in January-February 1950[443] and the

[435] Paul Weis, 'The Convention Relating to the Status of Stateless Persons', *International and Comparative Law Quarterly* 10 (1961): 255; Weis, *Nationality and Statelessness in International Law*, 255; Subramanya, 'Problem of Statelessness in International Law', 339; Batchelor, 'Stateless Persons', 241, 249–50; Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 1; Milbrandt, 'Stateless', 87–88.
[436] ECOSOC Res. 116 D (VI), U.N. Doc. E/RES/116(VI) (March 2, 1948).
[437] U.N. Secretary-General, *A Study of Statelessness,* at 30-32, U.N. Doc. E/1112 (Aug., 1949).
[438] Weis, 'The Convention Relating to the Status of Stateless Persons', 256; Subramanya, 'Problem of Statelessness in International Law', 340; Batchelor, 'Stateless Persons', 241–42; Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 2.
[439] See paragraph 182, below.
[440] Weis, 'The Convention Relating to the Status of Stateless Persons', 256; Batchelor, 'Stateless Persons', 242.
[441] ECOSOC Res. 248 B (IX), U.N. Doc. E/RES/248(IX) (Aug. 8, 1949).
[442] Belgium, Brazil, Canada, China, Denmark, France, Israel, Poland, Turkey, Union of Soviet Socialist Republics, the United Kingdom, the United States and Venezuela. The representatives of Poland and the USSR did not take part in the meeting. The Committee elected Mr. Leslie Chance of Canada as Chairman, Mr. Knud Larsen (Denmark) as Vice-Chairman and Mr. Ramiro Sanaiva Guerreiro as Rapporteur.
[443] See Report of the Ad Hoc Committee on Statelessness and Related Problems, Jan. 16- Feb. 16, 1950, U.N. Doc. E/1618/E/AC.32/5 (Feb. 17, 1950).

other in August 1950.[444] The Ad Hoc Committee decided not to take up the issue of 'elimination of statelessness' due to a lack of time and the complexity of the issue but referred it to the International Law Commission.[445] With regard to the issue of status, the Ad Hoc Committee made a crucial decision to split the treatment of refugees and non-refugee stateless persons. The justification given in the committee was that the situation of refugees was much more urgent, whereas non-refugee statelessness was rather a long-term concern of the international community.[446] As a result the formerly intertwined categories of 'refugee' and 'stateless person' split up. The Committee adopted a draft Convention Relating to the Status of Refugees accompanied by a draft Protocol Relating to the Status of Stateless Persons, with the intention of having most of the articles of the former apply mutatis mutandis to the later and recommended that a diplomatic conference for the convention and protocol be convened.[447] The ECOSOC submitted the Ad Hoc Committee's report to the UN General Assembly.[448]

2. The 1951 Refugee Convention

147. UN CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS - After receiving the report, the UN General Assembly decided to convene a Conference of Plenipotentiaries to finish the drafting and assure the conclusion of both a convention concerning the status of refugees and the protocol on stateless persons.[449] The conference took place between July 2 and 25, 1951 in Geneva where 26 states were represented. [450] The conference resulted in the 1951 Convention Relating to the Status of

[444] See Report of the Ad Hoc Committee on Refugees and Stateless Persons, 2nd session, Aug. 14 – 25, 1950, U.N. Doc. E/1850/E/AC.32/8 (Aug. 25, 1950).
[445] See paragraph 182, below; Report of the Ad Hoc Committee on Statelessness and Related Problems, Jan. 16-Feb. 16, 1950, at 8, U.N. Doc. E/1618/E/AC.32/5 (Feb. 17, 1950); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 15, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Batchelor, 'Stateless Persons', 249–50.
[446] Report of the Ad Hoc Committee on Statelessness and Related Problems, Jan. 16- Feb. 16, 1950, at 5-6, U.N. Doc. E/1618/E/AC.32/5 (Feb. 17, 1950); Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 2–3.
[447] Report of the Ad Hoc Committee on Statelessness and Related Problems, Jan. 16- Feb. 16, 1950, at 7 and 63, U.N. Doc. E/1618/E/AC.32/5 (Feb. 17, 1950).
[448] ECOSOC Res. 319 B II, III (XI), U.N. Doc. E/RES/319(XI) (Aug. 11, 1950): Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 15, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson);Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 3.
[449] G.A. Res. 429 (V), U.N. Doc. A/RES/429(V) (Dec. 14, 1950).
[450] Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Federal Republic of Germany, Greece, Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, Netherlands, Norway, Sweden, Switzerland (the Swiss delegation also represented Liechtenstein), Turkey, United Kingdom of Great Britain & Northern, Ireland (UK), United States of America (US), Venezuela, Yugoslavia. The Governments of Cuba and Iran were represented by observers.

Refugees without the adoption of the protocol, completing the split between refugees and stateless persons initiated by the Ad Hoc Committee.[451] Although the protocol was not adopted, the convention did adopt a resolution referring the question of statelessness back to the appropriate organs of the UN for further study. [452][453]

3. The 1954 Statelessness Persons Convention

148. FURTHER DEVELOPMENTS ON STATUS OF STATELESS PERSONS - In 1952 the General Assembly requested the Secretary General to circulate the draft protocol to governments for their comments and requested the ECOSOC to study the comments.[454] In the meantime the Special Rapporteur for nationality matters in the International Law Commission, when working on remedies to eliminate present statelessness, also confirmed that stateless persons ought to be given a special status of protected person in their countries of residence. He also suggested that naturalization should be made easier for stateless persons.[455]

149. SECOND CONFERENCE OF PLENIPOTENTIARIES – After studying the government comments on the draft protocol the ECOSOC convened a second conference of plenipotentiaries in April 1954.[456] The conference took place in New York and was attended by 27 states, representatives of the UNHCR, the ILO and certain NGO's.[457] Instead of adopting the proposed mutatis mutandis protocol, the conference ended up making a separate convention because it allowed them more flexibility. The resulting 1954 Convention Relating to the Status of Stateless Persons was adopted on 28th of September 1954 and came into force on the 6th of June 1960.[458] The Conventions provides an international law definition of statelessness and grants stateless persons an autonomous legal status with rights, largely

[451] Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.
[452] See Final Act of the U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, U.N. Doc. A/CONF.2/108 (Jul. 25, 1951); U.N. Secretary-General, *Draft Protocol Relating to the Status of Stateless Persons, Memorandum*, at 1, U.N. Doc. A/1913 (Oct. 15, 1951).
[453] Weis, 'The Convention Relating to the Status of Stateless Persons', 256; Batchelor, 'Stateless Persons', 243–44; Waas, *Nationality Matters*, 227.
[454] G.A. Res. 629 (VII), U.N. Doc. A/RES/629(VII) (Nov. 6, 1952); For the government comments, see U.N. Secretary-General, *Memorandum of the Secretary-General on the Draft Protocol of the Convention Relating to the Status of Stateless Persons*, at 11-33, U.N. Doc. E/CONF.17/3 (Aug. 6, 1954).
[455] See U.N. Secretary-General, *Memorandum of the Secretary-General on the Draft Protocol of the Convention Relating to the Status of Stateless Persons*, U.N. Doc. E/CONF.17/3 (Aug. 6, 1954); Weis, 'The Convention Relating to the Status of Stateless Persons', 257; Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 4.
[456] ECOSOC Res. 526 A (XVII), U.N. Doc. E/RES/526(XVII) (Apr. 25, 1954).
[457] See Final Act of the U.N. Conference on the Status of Stateless Persons, 1960 U.N.T.S. 117 (Sept. 28, 1954).
[458] Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.

consisting of an adjustment to the Refugee Convention. This remains the primary international instrument to regulate the status of stateless persons, until today. [459]

§2. How

A. Concept

1. Individualisation of the refugee concept, away from statelessness[460]

150. NARROWING DOWN AND INDIVIDUALISATION – Since the intertwined refugee/stateless concept of the interwar years, the concepts of refugee and stateless person have slowly diverged resulting in separate legal concepts. This can be illustrated by roughly analysing the evolution of the refugee concept.

151. OVERVIEW OF REFUGEE DEFINITIONS - The IGCR was the first organisation to launch an individualised approach. Under its mandate, conditional to various extensions and nuances, refugees were essentially individual persons who had fled or had to flee their country of origin because of their political opinion, religious beliefs or racial origin.[461] The travel document set up by the IGCR was applicable to those of that category who were without protection of any government, lawfully staying in the territory of a contracting government and did not fall under any other arrangement providing a refugee with documentation.[462]

Whereas the IGCR had narrowed down the refugee concept in an individualised way, the UNRRA took on a very broad definition, namely 'every person who had been obliged to leave their country or place of origin or of former residence'. This also applied to political dissidents and the UNRRA protection could be triggered by mere internal displacement.[463] This broad approach met with criticism given the individualisation tendency.

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[459] Nehemiah Robinson, 'Convention Relating to the Status of Stateless Persons: Its History and Interpretation', in *Institute of Jewish Affairs, World Jewish Congress*, 1955, 3; Weis, 'The Convention Relating to the Status of Stateless Persons', 255; Batchelor, 'Stateless Persons', 245; Waas, *Nationality Matters*, 227; Goris, Harrington, and Köhn, 'Statelessness', 5; Groot and Centre for European Policy Studies, *Survey on Rules on Loss of Nationality in International Treaties and Case Law*, 4; Molnar, 'Remembering the Forgotten', 830; Baluarte, 'The Risk of Statelessness', 60–61.

[460] For an extensive overview of refugee definitions, see Vukas, 'International Instruments Dealing with the Status of Stateless Persons and of Refugees Studies', 146–50; Hathaway, 'The Evolution of Refugee Status in International Law'.

[461] Hathaway, 'The Evolution of Refugee Status in International Law', 370–72.

[462] See Agreement Relating to the Issue of a Travel Document to Refugees Who Are the Concern of the IGCR, (Oct. 15, 1946) in U.N. Secretary-General, *A Study of Statelessness,* at 107-112, U.N. Doc. E/1112 (Aug., 1949)

[463] Hathaway, 'The Evolution of Refugee Status in International Law', 372–74.

The IRO accomplished to reconcile various divergent views in its definition of a refugee after a long drafting process. A refugee would be someone outside his country of origin who either (1) could not be repatriated or (2) had valid objections against such repatriation. Objections were considered valid under a number of conditions,[464] but essentially it concerned individuals who could be described as genuine political dissidents or victims of recognised state intolerance until they did not need protection anymore or were deemed unworthy to that end. [465]

The refugee definition applied by the UNHCR was that of an individual outside original country with a well-founded fear of persecution by reason of his race, religion, nationality or political opinion who is, because of such a fear, unwilling or unable to return to or assure the protection of his country of nationality or habitual residence.[466]

Finally, article 1 of the 1951 Refugee Convention consists of two parts. First, it defines a refugee as someone who is already a recognized refugee (Nansen and German refugees, as well as those recognised by the IRO).[467] Secondly, quasi-similar to the UNHCR definition, it defines a refugee as someone who is outside their original country with a fear of prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and who is unable or unwilling to get protection from their government of nationality or habitual residence, provided that the reason for leaving their country predates 1st January 1951. There are a few exclusions[468] and parties can decide whether they want to limit their responsibility to Europe.

[464] Certain categories of persons (E.g. Prewar refugees; victims of nazism, fascim, similar regimes; war orphans; displaced persons); exlusions (e.g. acquired new nationality, firmly established, unreasonably refusing repatriation or resettlement, failing to make substantial efforts to earn a living, otherwise exploiting the IRO); ineligible cases (E.g. war criminals and traitors, enemy collaborators, ordinary criminals, persons of German ethnic origin having gone to or left Germany, individuals in receipt of financial assistance from their country of origin, persons in military or civil service of a state, leaders of movmeent against a UN government).

[465] Vukas, 'International Instruments Dealing with the Status of Stateless Persons and of Refugees Studies', 145; Hathaway, 'The Evolution of Refugee Status in International Law', 374–76.

[466] Vukas, 'International Instruments Dealing with the Status of Stateless Persons and of Refugees Studies', 146; Darling, 'Protection of Stateless Persons in International Asylum and Refugee Law', 754.

[467] Paul Weis, 'Legal Aspects of the Convneiton of 25 July 1951 Relating to the Status of Refugees', *British Year Book of International Law* XXX (1953): 479–80.

[468] (1) persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance; (2) cognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; (3) to any person with respect to whom there are serious reasons for considering that he committed certain crimes or acts contrary to principles of the UN.

152. EVOLUTION – With the exception of the UNRRA, which still seemed to hang on to an old refugee concept, all these definitions show how the broad interwar refugee concept which was defined by a 'lack of national protection' (as well as displacement) and therefore equated largely with de facto and de jure statelessness, has been slowly carved out to become a narrower and more individualised concept. Admittedly, the lack of national protection (and thus de jure or de facto statelessness) is still important, but it is no longer the essential defining characteristic. A refugee has to lack such protection for certain specified individual reasons. The formerly intertwined concepts have thus drifted apart, a process culminating in the 1951 Convention, the discussions of which show the deliberate split of both. Hathaway characterizes this process as the 'individualisation' of the refugee concept away from the group-approach and juridical approach of the interwar period. It no longer concerns particular groups that have been deprived of protection, but individuals who flee a specified injustice or incompatibility with their home state.[469]

153. REFUGEES VS. STATELESS PERSONS – So whereas during the interwar years refugees and stateless persons walked hand in hand as part of the larger category of persons lacking national protection, they are now separated into two different concepts, a decision initiated by the Ad hoc Committee and confirmed by the 1951 and 1954 conventions.[470] It is, however, possible that both concepts overlap in the same person, in which case the more favourable refugee convention should be applied.[471]

Even though stateless persons may thus be covered by the refugee convention in certain situations, the discussion in the following sections will only concern the 1954 Convention Relating to the Status of Stateless Persons. This will be done because the concept in the 1954 Convention is what is considered to be a 'stateless person' in international law since that period. The 1954 concept of stateless person even became the customary international law definition of the concept. It is an independent new legal category separate from refugees with its own dogmatic.[472]

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[469] Hathaway, 'The Evolution of Refugee Status in International Law', 370, 376–79.
[470] Pierre-Michel Fontaine, 'The 1951 Convention and the 1967 Protocol Relating to the Status of Refugees: Evolution and Relevance for Today', *Intercultural Human Rights Law Review* 2 (2007): 157–58.
[471] Robinson, 'Convention Relating to the Status of Stateless Persons', 6; Weis, 'The Convention Relating to the Status of Stateless Persons', 262–63.
[472] Groot and Centre for European Policy Studies, *Survey on Rules on Loss of Nationality in International Treaties and Case Law*, 5; Molnar, 'Remembering the Forgotten', 831, 847.

2. Categorizations

154. DE JURE, NOT DE FACTO – After the adoption of the 1951 convention stateless persons were only given status if they were also refugees as opposed to more 'general' de jure and de facto stateless persons that had not crossed borders and/or did not have a well-founded fear of persecution for a limited set of reasons. The idea was launched to make a status for all de jure and de facto non-refugee stateless persons and it occupied a lot of discussion time during the conference, but was ultimately rejected, limiting the definition of 'a stateless person' to de jure statelessness ('not considered national by any state under the operation of its law')[473] subject to the same exclusions as the refugee convention.[474] As a compromise a non-binding recommendation was adopted to address cases of de facto statelessness in the final Act. However, even the recommendation was incomplete as to de facto stateless persons since it only referred to persons who had renounced the protection of their state of nationality but did not mention persons who had been refused protection.[475]

As a result, de jure stateless persons were covered in general, whereas de facto stateless persons were only covered insofar as they qualified as a refugee. Non-refugee de facto stateless persons were not granted a status.

155. UNIVERSAL – The ad hoc approach applied in the interwar period, whereby only specified groups enjoyed protection, had been subject to much criticism.[476] Whereas the Refugee Convention initially still bore traces of the ad hoc approach as it was limited to refugees 'as

[473] Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.
[474] Persons receiving from UN agencies other than the UNHCR protection or assistance so long as they are receiving it (aimed at Palestine Arab and Korean refugees); persons recognized by competent authorities of the country of residence as having the rights and obligations attached to possession of nationality of that country (aimed at German expellees, living in West Germany); persons having committed a crime against peace, war crime or crime against humanity or serious non-political crime outside of the country of their residence prior to their admission to that ocuntry or having been guilty of acts contrary to the purposes and principles of the UN (Weis, 'The Convention Relating to the Status of Stateless Persons', 260–61; Molnar, 'Stateless Persons under International Law and EU Law', 293, 295).
[475] **'**Recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons; and **'**Recommends further that, in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention.'(Final Act of the U.N. Conference on the Status of Stateless Persons, Recommendation III, 1960 U.N.T.S. 117 (Sept. 28, 1954)).
[476] Holborn, 'The Legal Status of Political Refugees, 1920-1938'; Skran, 'Historical Development of International Refugee Law', 35.

a result of events occurring in Europe or elsewhere' 'before January 1, 1951',[477] the 1954 convention was universal without national, geographical or temporal limitations.

156. OTHER CATEGORIZATIONS – The other categorizations can be discussed very quickly. The statelessness concept is not limited to any specific cause (as opposed to the refugee concept which seems more focused on discriminatory-like causes). Displacement is not a condition (as opposed to the refugee concept) and it covers both subsequent and original statelessness (whereas the refugee concepts seems limited to subsequent cases).

B. CONSEQUENCES AND REMEDIES

1. Radical

157. SETTLEMENT AND REPATRIATION – As mentioned above, by the end of WWII Europe was flooded with refugees. It was essential to disperse these masses by either bringing them home or settling them elsewhere.[478] As these remedies have mostly taken place in years right after the war, the concepts of stateless persons and refugees had not yet been fully distinguished. Yet, it is clear that among the vast crowds of refugees, there were various stateless persons (both de jure and de facto).

Firstly, there were various efforts of settlement after WWII. The IGCR and the IRO as well as national governments made various efforts for settlement of refugees, including stateless persons.[479] Some were settled in Europe,[480] but the saturation point was reached by 1949. Outside Europe, large scale emigration took place towards Latin-America, the U.S., Canada, Australia and Israel.[481] However, various persons did not qualify for settlement. Firstly, preference usually went to young persons with professional qualifications appreciated by the country of immigration. Secondly, most stateless persons could not afford emigration overseas. Consequently, settlement was not a cure-all for the statelessness problem.[482]

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[477] The 1967 Protocol Relating to the Status of Refugees universalised the Convention's temporal and geographic coverage; For more on the universalisation of the refugee concept, see Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; Labman, 'Looking Back, Moving Forward', 10.
[478] Ristelhueber, 'The International Refugee Organization Document No. 470', 208.
[479] U.N. Secretary-General, *A Study of Statelessness,* at 146-148, U.N. Doc. E/1112 (Aug., 1949).
[480] Mainly in France, United Kingdom, Belgium and the Netherlands.
[481] Ristelhueber, 'The International Refugee Organization Document No. 470', 208–13.
[482] U.N. Secretary-General, *A Study of Statelessness,* at 146-148, U.N. Doc. E/1112 (Aug., 1949).

Secondly, large repatriations took place right after WWII. Many displaced persons were physically brought back to their country of origin by the allied armies and UNRRA and later the IRO. The former two accomplished repatriation of 7 million persons, while the IRO repatriated over 70 000 people. Not all repatriated displaced people were stateless, of course, but some of them were and many of them were at great risk of becoming so if they had refused to be repatriated or if their original country had refused to take them back.[483] After territorial repatriation, legal repatriation also took place through national measures of the country of origin. Various national laws were repealed or changed so that the returning people could restore their nationality after having been denationalized before or during the war.[484]

158. NATURALIZATION – The issue of naturalization reached the international agenda later on. Several proposals concerning naturalization were made. First, George Scelle proposed to grant stateless persons an 'international nationality' linked to the international community represented by the UN. However, this was rejected as 'international nationals' would find themselves in inferior positions compared to nationals of a country for various reasons.[485] Second, Special Rapporteur Hudson advised merely that naturalization in the country of residence should be facilitated for stateless persons.[486] Third, Special Rapporteur Cordova went a step further in proposing to introduce a convention to eliminate or reduce present statelessness, which basically came down to a retroactive application of the draft Conventions on the Elimination or Reduction of Statelessness, which will be discussed in part III. However, this was rejected.[487] Finally, the article 32 was adopted in the 1954 Convention stipulating that states should as far as possible facilitate the assimilation and naturalization of stateless persons, in particular by making an effort to expedite the proceedings and reduce the charges and costs. However, article 32 does not grant the individual stateless person a right to naturalization. The addressee of the norm is the

[483] U.N. Secretary-General, *A Study of Statelessness,* at 207-208, U.N. Doc. E/1112 (Aug., 1949); Ristelhueber, 'The International Refugee Organization Document No. 470', 207–8.
[484] U.N. Secretary-General, *A Study of Statelessness,* at 144-146, U.N. Doc. E/1112 (Aug., 1949); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 22, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Carey, 'Some Aspects of Statelessness Since World War I', 118.
[485] Special Rapporteur on Nationality, Including Statelessness, *Third Report*, ILC, at 29, U.N. Doc. A/CN.4/81 (March 11, 1954) (by Mr. Roberto Córdova).
[486] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 22, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson).
[487] Report of the International Law Commission Covering the Work of its Sixth Session, June 3-July 8, 1954, U.N. Doc. A/CN.4/88 (1954).

contracting state and ultimately naturalization remains in the state's discretion. Furthermore, the article is cast in vague and soft terms.[488]

2. Minimizing solutions

159. IN GENERAL – In line with the interwar conventions providing remedies for the consequences of statelessness, the general technique of the 1954 convention is to grant individuals deserving protection the status of 'stateless person', which entails minimum standards concerning the enjoyment of a catalogue of rights and benefits to be enjoyed.[489] To balance the document out, article 2 stipulates that stateless persons not only have rights and benefits, but also owe duties to the country in which they find themselves, meaning that they are to act in conformity to the laws and regulations, as well as the measures for the maintenance of public order.[490] States are allowed to go further than what the convention provides and grant more rights.[491] Furthermore, all the rights are to be granted without discrimination on the basis of race, religion or country of origin.[492] This only refers to differences of treatment within the class of stateless persons, not to any difference of treatment between stateless persons and other kinds of aliens.[493]

a. Substantive remedies

i. Special needs

160. DOCUMENTATION AND MOVEMENT – With regard to the special need of documentation, the IGCR, as mentioned before, issued a travel document in 1946 very similar to the Nansen certificate for refugees under its concern other than those already enjoying such a benefit.[494] This document served as the basis for article 28 in the Refugee and Stateless persons

[488] Molnar, 'Remembering the Forgotten', 839–40.
[489] Waas, *Nationality Matters*, 16, 228.
[490] Convention Relating to the Status of Stateless Persons, art. 2, Sept. 28, 1954, 360 U.N.T.S. 117.
[491] Convention Relating to the Status of Stateless Persons, art. 5, Sept. 28, 1954, 360 U.N.T.S. 117.
[492] Convention Relating to the Status of Stateless Persons, art. 3, Sept. 28, 1954, 360 U.N.T.S. 117.
[493] Robinson, 'Convention Relating to the Status of Stateless Persons', 15–17; Subramanya, 'Problem of Statelessness in International Law', 342.
[494] Including the following conditions: Children may be included on travel document of adult (article 4); fees may not exceed lowest scale of charges for naitonal passports (article 5); valid for the largest possible nr of coutnries (article 6); validity of one or two years (article 7); Renewal by the issuing authority so long as the holder lawfully resides in its territory (article 8); diplomatic or consular authoritieis empowered ot extend for max 6 month validity of travel documents issued by their gmvnt (article 8); transit visas for refugees with visa for final destination (article 11); fees for issue exit, entry or transit visa may not exceed lowest scale of charges for visas on foreign passports (article 12); right of return (article 15) (see Agreement Relating to the Issue of a Travel Document to Refugees who are the Concern of the IGCR, signed in London 15 October 1946 in U.N. Secretary-General, *A Study of Statelessness,* at 107-112, U.N. Doc. E/1112 (Aug., 1949); Hieronymi, 'The Nansen Passport', 38, 40–41).

conventions regarding a similar document.[495] The 1954 Convention grants stateless persons rights to documentation. Firstly, as an absolute right, if any stateless person does not possess a valid travel document, they should be given identity papers for internal use.[496] Secondly, stateless persons who are lawfully staying in the territory of a contracting state can obtain a travel document, unless there is a compelling reason of national security or public order.[497]Any other stateless person should be given sympathetic consideration, in particular if they are unable to obtain a document in their country of lawful residence. The conditions for this travel document are very similar to the Nansen passport and IGCR travel document.[498]

161. NO DIPLOMATIC PROTECTION – Belgium put forward a proposal that 'Each contracting state shall be entitled to ensure the protection of both the property and the person of stateless persons domiciled or resident in its territory'. This received a mixed review and was eventually rejected by vote.[499]

162. SECURITY OF RESIDENCE, INTERNAL MOVEMENT AND RELATED NEEDS – With regard to security of residence, article 31 prohibits expulsion of a stateless person lawfully in its territory, unless for reasons of national security or public order.[500] As opposed to the 1951 Refugee Convention, the 1954 Convention does not contain a non-refoulement provision. However, in the final act recommendation IV stated that non-refoulement was taken as a general principle.[501] The legal force of this recommendation is unclear.

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[495] Hieronymi, 41.
[496] Convention Relating to the Status of Stateless Persons, art. 27, Sept. 28, 1954, 360 U.N.T.S. 117.
[497] Convention Relating to the Status of Stateless Persons, art. 28, Sept. 28, 1954, 360 U.N.T.S. 117; Molnar, 'Stateless Persons under International Law and EU Law', 295–96.
[498] Must be in two languages, on of which must be English or French; Children may be included (no age limit mentioned); Fees may not exceed the lowest scale for charges for national passports; it has to be valid in the largest possible number of countries; it is valid for not less than 3 months and not more than 2 years; it is to be renewed or extended by the issuing authority so long as the holder is not lawfully resident in another country; diplomatic or consular authorities are authorised to extend it to maximum 6 months validity; a visa must be affixed if a state is prepared to admit the person; transit visa must be affixed if there is a visa for the final destination; fees for exit/entry/transit visas may not exceed the lowest scale of charges for visas on foreign passports; if the person is lawfully resident in another country, he falls under the competence of that territory; right of return, but may be conditional to a time limit not less than 3 months and possible formalities
[499] Waas, *Nationality Matters*, 382.
[500] Convention Relating to the Status of Stateless Persons, art. 31, Sept. 28, 1954, 360 U.N.T.S. 117; Robinson, 'Convention Relating to the Status of Stateless Persons', 61–63.
[501] 'The principle that no State should expell or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,'; They did not find it necessary to include in the Convention Relating to the Status of Stateless Persons an article equivalent to Article 33 of the Convention Relating to the Status of Refugees of 1951.' (Final Act of the U.N. Conference on the Status of Stateless Persons, Recommendation IV, 1960 U.N.T.S. 117 (Sept. 28, 1954)).

With regard to the need for internal movement, the convention grants all stateless persons lawfully residing in its territory the same freedom as generally applicable to aliens to choose a place of residence and move freely.[502] However, pending the determination by the state that a person is in fact stateless, the state may take provisional measures essential to national security.[503]

Furthermore, article 8 exempts stateless persons from exceptional measures against his person, property or interests solely on account of the stateless person being a former national of the targeted state. The type of measures concerned are those taken in time of war or threat thereof, severance of diplomatic relations or other measures taken between states to curb the rights of citizens of a state against whom these measures are directed.[504]

163. CONSULAR SERVICES – As regards consular services, stateless persons in state of residence should receive administrative assistance which is normally done by the authorities of a foreign country relating to the delivery of documents and certifications. These documents are given credence in the absence of proof to the contrary and the fees should be moderate and commensurate to nationals unless the stateless person is indigent.[505]

164. STATELESS SEAMEN – Finally, special attention is raised for the special needs of stateless seamen sailing under the flag of a certain state as states are encouraged to sympathetically consider both their establishment on their territory and the issue of travel documents.[506]

ii. Rights

165. PERSONAL STATUS AND ACQUIRED RIGHTS - In line with the interwar conventions the personal status of a stateless person should be determined by the law of the country of domicile or, if the person has no country of domicile, by the country of residence (article 12). Rights that were previously acquired and dependent on personal status (especially those attached to marriage)[507] should be respected by the contracting state subject to the compliance with formalities possibly required by that state.[508]

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[502] Convention Relating to the Status of Stateless Persons, art. 26, Sept. 28, 1954, 360 U.N.T.S. 117.
[503]Convention Relating to the Status of Stateless Persons, art. 28, Sept. 28, 1954, 360 U.N.T.S. 117; Robinson, 'Convention Relating to the Status of Stateless Persons', 28.
[504] Robinson, 24–26.
[505] Convention Relating to the Status of Stateless Persons, art. 25, Sept. 28, 1954, 360 U.N.T.S. 117.
[506] Convention Relating to the Status of Stateless Persons, art. 11, Sept. 28, 1954, 360 U.N.T.S. 117.
[507] Matrimonial regime, legal capacity of married women and right of succession.
[508] Robinson, 'Convention Relating to the Status of Stateless Persons', 31–32.

166. EXEMPTION FROM RECIPROCITY - Unlike the interwar conventions, the 1954 convention does not simply wave legislative reciprocity for stateless persons. Instead, a condition of three years of lawful residence has to be fulfilled before the reciprocity requirement can be waived. If, before the entry into force of the 1954 convention, stateless persons were already entitled to certain rights and benefits without reciprocity, they should be continued to be given. Furthermore, the convention encourages states to consider the possibility of according this exemption beyond these conditions.[509]

167. CIVIL AND POLITICAL RIGHTS- Several civil and political rights are granted to stateless persons in the 1954 convention.[510] First, the only absolute right is the right to free access to court for all stateless persons in the territory of a state.[511] Second, for several rights stateless persons are granted the same protection as is accorded to nationals. This counts for legal assistance and the exemption of the duty to pay a security in a court case in a stateless person's state of habitual residence. Outside that state the person should be treated as a national of his country of habitual residence.[512] The national treatment also counts for all stateless persons in the territory of a state with regard to freedom of religion,[513] and fiscal charges.[514]

Third, some rights are granted on a standard at least as favourable as accorded to aliens generally. This counts for all stateless persons in the territory of a state regarding the acquisition of movable and immovable property.[515] As mentioned above, the right to free movement is also granted on par with other foreigners for all those lawfully in the territory. With regard to artistic rights and industrial property, the state of habitual residence of a stateless person should grant this level of protection and any other state should treat the stateless person as a national of his state of habitual residence.[516]

[509] Convention Relating to the Status of Stateless Persons, art. 7, Sept. 28, 1954, 360 U.N.T.S. 117.
[510] Robinson, 'Convention Relating to the Status of Stateless Persons', 33; Molnar, 'Stateless Persons under International Law and EU Law', 295–96.
[511] Convention Relating to the Status of Stateless Persons, art. 16(1), Sept. 28, 1954, 360 U.N.T.S. 117.
[512] Convention Relating to the Status of Stateless Persons, art. 16(2), Sept. 28, 1954, 360 U.N.T.S. 117.
[513] Convention Relating to the Status of Stateless Persons, art. 4, Sept. 28, 1954, 360 U.N.T.S. 117.
[514] Convention Relating to the Status of Stateless Persons, art. 29(1), Sept. 28, 1954, 360 U.N.T.S. 117.
[515] Acquisition and other rights, lease and other contracts (Convention Relating to the Status of Stateless Persons, art. 13, Sept. 28, 1954, 360 U.N.T.S. 117).
[516] Convention Relating to the Status of Stateless Persons, art. 14, Sept. 28, 1954, 360 U.N.T.S. 117.

Finally, every stateless person in the territory of a state should be enabled to transfer assets into the territory of another country in which he has been admitted to resettle. Sympathetic consideration should be given to a similar transfer of assets in another country.[517]

168. SOCIAL, CULTURAL AND ECONOMIC RIGHTS – Social, cultural and economic rights have been granted as well. Stateless persons should be given the same protection as that accorded to nationals with regard to the following rights.[518] First, all those on the territory of the state should have access to elementary education.[519] Second, all those lawfully in the territory should get access to public relief and assistance[520] as well as specific social advantages[521] and social security.[522] With regard to compensation for death resulting from an employment injury or an occupational disease, presence in the territory is not even required.[523] Furthermore, states are encouraged to sympathetically consider extending the benefits further. Fourth, all stateless persons lawfully in the territory of a state should be treated as nationals with regard to potential rationing rules.[524]

Certain rights are granted on a basis of 'at least as favourable as accorded to aliens generally'.[525] All stateless persons on the territory of a state are granted this level of protection with regard to the right to non-elementary education.[526] All stateless persons lawfully in the territory of the state are granted this level of protection with regard to the

[517] Convention Relating to the Status of Stateless Persons, art. 30, Sept. 28, 1954, 360 U.N.T.S. 117.
[518] Robinson, 'Convention Relating to the Status of Stateless Persons', 45; Molnar, 'Stateless Persons under International Law and EU Law', 295–96.
[519] Convention Relating to the Status of Stateless Persons, art. 22(2), Sept. 28, 1954, 360 U.N.T.S. 117.
[520] Convention Relating to the Status of Stateless Persons, art. 23, Sept. 28, 1954, 360 U.N.T.S. 117.
[521] Social advantages (remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining) only if they are governed by laws or regulations or under control of adminsitraitve authorities.
[522] Legal provisions in respect of employment, injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme. Limitations: (1) there may be made appropriate arrangements for rights acquired or in course of acquisition stateless persons should be treated as nationals and (2) there may be special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension (Convention Relating to the Status of Stateless Persons, art. 24(1), Sept. 28, 1954, 360 U.N.T.S. 117).
[523] Convention Relating to the Status of Stateless Persons, art. 24(2), Sept. 28, 1954, 360 U.N.T.S. 117.
[524] Convention Relating to the Status of Stateless Persons, art. 20, Sept. 28, 1954, 360 U.N.T.S. 117.
[525] Robinson, 'Convention Relating to the Status of Stateless Persons', 35, 40; Molnar, 'Stateless Persons under International Law and EU Law', 295–96.
[526] Convention Relating to the Status of Stateless Persons, art. 22(2), Sept. 28, 1954, 360 U.N.T.S. 117.

right of association in non-political, non-profit making associations,[527] the right to engage in wage-earning employment,[528] self-employment[529] and the right to housing.[530]

b. Procedural remedies

169. DUE PROCESS AND REASONABLE PERIOD IN CASE OF EXPULSION – If a stateless person is expelled due to reasons of national security or public order the decision has to be taken according to due process of law.[531] If the person is eventually expelled, he or she should be allowed a reasonable period within which they can seek legal admission in another country. During that period, internal measures are allowed.

170. NO SUPERVISORY BODY - The 1954 Convention is not secured by a supervisory body like the UNHCR. The idea was presented because it was thought that such a body could compensate the absence of national protection and render certain services which authorities of a country of origin usually render to nationals abroad. However, time pressure and concerns regarding the powers of such a body led to the rejection of a supervisory body. [532]

171. INTERPRETATION/ APPLICATION DISPUTE – Any dispute concerning the interpretation or application of the treaty should be referred to the International Court of Justice.[533]

C. Remaining problems

172. REMAINING PROBLEMS - Despite its comprehensive account of solutions, the 1954 convention still has a few crucial flaws which significantly limit its ability to remedy the consequences of statelessness. First of all, it is not a self-executing treaty and thus requires the implementation of domestic legislation. Yet, as mentioned above, there is no real supervisory or enforcement mechanism to this end. The interstate dispute settlement of the ICJ does exist, but it has never been utilised. Secondly, many rights can easily be limited for reasons of national security or public order. Thirdly, statelessness is a negative concept which is hard to prove. Yet, the convention does not contain any provision as to a

[527] Convention Relating to the Status of Stateless Persons, art. 15, Sept. 28, 1954, 360 U.N.T.S. 117.
[528] Convention Relating to the Status of Stateless Persons, art. 17, Sept. 28, 1954, 360 U.N.T.S. 117.
[529] Convention Relating to the Status of Stateless Persons, art. 18, Sept. 28, 1954, 360 U.N.T.S. 117.
[530] Convention Relating to the Status of Stateless Persons, art. 21, Sept. 28, 1954, 360 U.N.T.S. 117.
[531] Convention Relating to the Status of Stateless Persons, art. 31(2) , Sept. 28, 1954, 360 U.N.T.S. 117.
[532] U.N. Secretary-General, *A Study of Statelessness,* at 56, U.N. Doc. E/1112 (Aug., 1949); Batchelor, 'Stateless Persons', 245–46.
[533] Convention Relating to the Status of Stateless Persons, art. 34 , Sept. 28, 1954, 360 U.N.T.S. 117.

statelessness determination procedure. Finally, the convention was only ratified by a few states, half of which made significant reservations.[534]

§3. Why

A. Pro internationalization

173. INTERNATIONAL COMMUNITY – The international community concerns that supported internationalization were partly similar as those in the interwar period. They consisted of the avoidance of friction and the maintenance of the international legal order. First, statelessness still complicated international relations as it created special difficulties for the receiving countries.[535] This concern increased as the number of stateless persons rose. Second, as to the international legal order, the human rights framework was being put into place and provided bright perspectives for stateless persons on the long-term. However, the international community was second-guessing the effectiveness of human rights in dealing with this massive humanitarian tragedy. There was a strong realization that human rights were not going to truly change anything soon and that nationality, or at least a status, was still key to protection, all the more because the very implementation of human rights was dependent on the nation-state system.[536] Introducing a status for stateless people hereby aimed at establishing a coherent logically closed legal structure with protection for those falling through the cracks of the nation-state system. It was to ensure a sort of international legal safety net.

174. STATES INTERESTS – There were three types of reasons why states agreed to internationalization. First, economic reasons and reasons of public order motivated states particularly burdened with stateless persons.[537] Second, there was a legal reason as, just as on the international level, a stateless person was still a legal anomaly within a state as well.[538] Third, there were technical and psychological reasons why international action was needed. No government would be willing to take the first step in improving the status because of a possible 'flood effect' of refugees on its territory. Furthermore, if a single

[534] Robinson, 'Convention Relating to the Status of Stateless Persons', 7; Waas, *Nationality Matters*, 228–29, 231–33; Molnar, 'Stateless Persons under International Law and EU Law', 296; Molnar, 'Remembering the Forgotten', 833–34.
[535] U.N. Secretary-General, *A Study of Statelessness,* at 58, U.N. Doc. E/1112 (Aug., 1949).
[536] U.N. Secretary-General, *A Study of Statelessness,* at 58, U.N. Doc. E/1112 (Aug., 1949); Waas, above n 5, 225–226.
[537] E.g. see U.N. Secretary-General, *A Study of Statelessness,* at 100-102, U.N. Doc. E/1112 (Aug., 1949).
[538] Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 2.

government took steps alone it could be seen as a political step with the potential of provocation.[539]

175. INDIVIDUAL INTERESTS –The massive scale of the statelessness (and the linked refugee) problem after WWII and the harsh conditions in which its victims had to live, again spurred humanitarian concerns for the lack of protection of the stateless individual. The UN study of statelessness emphasized that the abnormal conditions of life reduce the social value and destroyed the self-confidence of stateless persons in the organizing world of the late 1940's.[540] Furthermore, special needs, such as the issuing of travel documents, still required international solutions.[541]

176. GENERAL POLITICAL CONTEXT – A final element that pushed for internationalization of remedies for consequences of statelessness after WWII was the realization that political conditions causing statelessness were not likely to change soon. In the meantime, it was felt that measures of protection should be taken.[542]

B. Contra (further) internationalization

177. IN GENERAL: STATE INTERESTS – The main force opposing (further) internationalization were state interests. On the one hand states were concerned with their own national interests. On the other hand, they were keens to safeguard the national interests of other states to ensure their signature.[543]

178. NON-REFUGEE DE FACTO STATELESS? – As set out above, after the acceptance of the 1951 Refugee Convention and the 1954 Stateless Persons Convention, de jure stateless persons were protected both in general and insofar as they were refugees (lex specialis). De facto stateless persons, however, were only covered insofar as they were refugees. This situation came into being by first splitting of refugeehood from statelessness and subsequently not addressing de facto statelessness in the protected group of stateless persons.

Governments were not prepared to make too wide binding commitments for de facto stateless persons. Several states did have concerns for human suffering and cared for their

[539] U.N. Secretary-General, *A Study of Statelessness,* at 51-52, U.N. Doc. E/1112 (Aug., 1949).
[540] U.N. Secretary-General, *A Study of Statelessness,* at 51-52, U.N. Doc. E/1112 (Aug., 1949); Special Rapporteur on Nationality, Including Statelessness, *Second Report*, ILC, at 196-197, U.N. Doc. A/CN.4/75 (Aug. 8, 1953) (by Mr. Roberto Córdova).
[541] Goodwin-Gill, *Convention Relating to the Status of Stateless Persons*, 2.
[542] U.N. Secretary-General, *A Study of Statelessness,* at 58, U.N. Doc. E/1112 (Aug., 1949).
[543] U.N. Secretary-General, *A Study of Statelessness,* at 52-55, U.N. Doc. E/1112 (Aug., 1949).

liberal principles, but to 'sign a blanc cheque' to protect all de facto stateless persons existing at present as well as those to come in the future would run counter to political and economic interests.[544] Instead, the 1951 convention was designed so that only individuals (not whole groups) deserving special attention and protection were eventually included. By consequence the lack of de facto national protection was only deemed problematic if it is caused by a recognized set of discriminatory measures or political controversies that install a fear of prosecution.[545] Other de facto stateless persons were not covered.

Subsequently, the 1954 convention only covered de jure stateless persons in a general way, leaving out the de facto variant. This was actually the result of a flawed understanding of de facto statelessness. It was wrongly thought that the entire group of de facto stateless persons that existed in reality would always be covered by the refugee definition. The combination of the 1951 Refugee Convention and the 1954 Stateless Persons Convention would thus provide – so it was thought – coverage of both de facto and de jure stateless persons.[546] Yet, non-refugee de facto stateless persons, such as those that are denied any protection or rights, yet never leave their country of origin, were not covered by the 1951 convention. In the end, internationalization of the statelessness problem thus only took place partially.

179. DIFFICULTY WITH RADICAL SOLUTIONS – In general, national interests of the states involved often proved to be a significant obstacle for the establishment of the 'radical solutions'. Especially with regard to naturalization, it was often said that it should be decided on ground of national, demographic policy in the interest of the state so that international regulation would be difficult.[547] Furthermore, due to the large masses of stateless persons present in various states, states were more likely to accept measures to avoid statelessness in the future than to absorb those already present.[548]

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[544] Weis, 'Legal Aspects of the Convneiton of 25 July 1951 Relating to the Status of Refugees', 479–80; Robinson, 'Convention Relating to the Status of Stateless Persons', 8; Hathaway, 'The Evolution of Refugee Status in International Law', 349, 372–74; Gallagher, 'The Evolution of the International Refugee System', 594; Siegelberg, 'Without a Country'.

[545] Also see Skran, 'Historical Development of International Refugee Law', 35.

[546] Batchelor, 'Stateless Persons', 247–49; Waas, *Nationality Matters*, 20–21.

[547] Report of the International Law Commission Covering the Work of its Sixth Session, June 3-July 8, 1954, at 13-15, U.N. Doc. A/CN.4/88 (1954); Myres S. McDougal, Harold D. Lasswell, and Lung-chu Chen, 'Nationality and Human Rights: The Protection of the Individual in External Arenas', *Yale Law Journal* 83 (1974): 972.

[548] Special Rapporteur on Nationality, Including Statelessness, *Second Report*, ILC, at 196-197, U.N. Doc. A/CN.4/75 (Aug. 8, 1953) (by Mr. Roberto Córdova).

PART III. CAUSAL-TRACK

§1. Context and formation of remedies

A. The 1961 Convention on Reduction of Statelessness

180. STUDY OF STATELESSNESS AND THE AD HOC COMMITTEE – As set out under part II, in 1949 a study of statelessness, conducted under the Secretary General, which included the study of causes of statelessness and the Ad Hoc Committee on Refugees and Stateless Persons was appointed by the ECOSCOC which also had the task of dealing with the issue of elimination (of causes) of statelessness.[549] Yet, as mentioned, they did not take up this task for reasons of time and the complexity of the matter but decided to refer the matter to the ILC.[550]

181. ILC WORK ON NATIONALITY, INCLUDING STATELESSNESS – In 1947, the International Law Commission (hereafter 'ILC') was established in the UN framework to take care of the progressive development and codification of international law.[551] In 1949 The ILC included 'nationality, including statelessness' in a list of topics for codification.[552] One of the goals hereby was to give 'teeth' to the human right to nationality.[553] IN 1951 the ECOSOC requested the ILC to prepare a draft convention for the elimination of statelessness and requested the UN Secretary General to seek information from states in that regard.[554] The ILC appointed special rapporteur Manley Hudson followed by special rapporteur Roberto Cordova. They also received assistance from UNHCR's Paul Weis.[555] Various ILC sessions

[549] See paragraph 147, above.
[550] Report of the Ad Hoc Committee on Statelessness and Related Problems, Jan. 16 - Feb. 16, 1950, at 8, U.N. Doc. E/1618/E/AC.32/5 (Feb. 17, 1950); Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 15, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Batchelor, 'Stateless Persons', 249–50.
[551] Report of the Committee on the Progressive Development of International Law and its Codification on the Methods for Encouraging the Progressive Development of International Law and its Eventual Codification, at 18-19, U.N. Doc. A/AC.10/51 (June 17, 1947); Progressive Development of International Law and its Codification: Report of the Committee on the Progressive Development of International Law and its Codification, Report of the Sixth Committee, at 1-8, U.N. Doc. A/504 (Nov. 20, 1947); Yuen-Li Liang, 'The General Assembly and the Prgoressive Development and Codification of International Law', *American Journal of International Law* 42 (1948): 69–70, 77.
[552] UN Report of the International Law Commission Covering the Work of its Fourth Session, June 4-Aug. 8, 1952, U.N. Doc. A/CN.4/59 (1952).
[553] Groot and Centre for European Policy Studies, *Survey on Rules on Loss of Nationality in International Treaties and Case Law*, 6.
[554] ECOSOC Res. 319 B II, III (XI), U.N. Doc. E/RES/319(XI) (Aug. 11, 1950); UN Report of the International Law Commission, Third Session, May 16-July 27, 1951, at 138, U.N. Doc. A/CN.4/48 (1951); History of the Two Draft Conventions, One Dealing with the Elimination of Future Statelessness and the Other with the Reduction of Future Statelessness, Prepared by the International Law Commission, at 2, U.N. Doc. A/CONF.9/6 (March 25, 1959); Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1075; Batchelor, 'Stateless Persons', 249–50.
[555] UN Report of the International Law Commission, Third Session, May 16-July 27, 1951, at 138, U.N. Doc.

were devoted to the problem.[556] In 1953 Cordova presented the ILC with two alternative documents: one for the elimination and another for the reduction of future statelessness. This was done because complete elimination could possibly scare off several states in the sensitive field of nationality.[557] As already set out in part II, Cordova also insisted on making a draft convention for the elimination or reduction of present statelessness. However, this was not thought acceptable. It was thought better to grant stateless persons a protected status in their country of residence (see part II).[558] After having redrafted the conventions on the elimination/ reduction of future statelessness in light of government comments, the ILC adopted the draft texts of the convention.[559]

182. 1959 CONFERENCE OF PLENIPOTENTIARIES – After having considered the work of the ILC on statelessness, the General Assembly decided to convene an international conference of plenipotentiaries.[560] The conference convened in Geneva from 24 March to 18 April 1959 attended by representatives of 35 states. They decided to take the ILC draft convention on the reduction of future statelessness as a basis. The conference adopted provisions to reduce statelessness at birth but did not manage to reach agreement about the limits on state freedom to denationalize their citizens. It was recommended that the conference should be reconvened. [561]

183. 1961 CONFERENCE OF PLENIPOTENTIARIES – The conference reconvened in New York from 15 to 28 August 1961, attended by representatives of 30 states. This time they did reach a compromise on the crucial issue of denationalization and the 1961 Convention on the Reduction of Statelessness was adopted. The convention constitutes a framework to combat

A/CN.4/48 (1951); UN Report of the International Law Commission Covering the Work of its Fourth Session, June 4-Aug. 8, 1952, at 25, U.N. Doc. A/CN.4/59 (1952); History of the Two Draft Conventions, One Dealing with the Elimination of Future Statelessness and the Other with the Reduction of Future Statelessness, Prepared by the International Law Commission, at 2, U.N. Doc. A/CONF.9/6 (March 25, 1959); Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1075.

[556] 4th, 5th and 6th in 1952, 1953, 1954 (History of the Two Draft Conventions, One Dealing with the Elimination of Future Statelessness and the Other with the Reduction of Future Statelessness, Prepared by the International Law Commission, at 3, U.N. Doc. A/CONF.9/6 (March 25, 1959); Weis, 1075).

[557] Waas, *Nationality Matters*, 42.

[558] UN Report of the International Law Commission Covering the Work of tis Fifth Session, June 1-August 14, 1953, at 47-48, U.N. Doc. A/CN.4/76 (1953).

[559] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1076.

[560] G.A. Res. 896 (IX), U.N. Doc. A/RES/896(IX) (Dec. 4, 1954); History of the Two Draft Conventions, One Dealing with the Elimination of Future Statelessness and the Other with the Reduction of Future Statelessness, Prepared by the International Law Commission, at 3, U.N. Doc. A/CONF.9/6 (March 25, 1959); Weis, 1077–78.

[561] U.N. Conference on the Elimination or Reduction of Future Statelessness, Resolution adopted by its 14th Plenary Meeting on 18 April 1959, A/CONF.9/L.77 (Apr. 18, 1959); Weis, 1078–80.

future statelessness. Consequently, it constitutes an operationalization of the right to nationality. The convention suffered a slow process of ratifications and it only entered into force in December 1975.[562]

B. 1957 Convention on the Nationality of Married Women

184. INSTITUTIONAL FRAMEWORK – After the Hague Convention of 1930 work for the advancement of women in the field of nationality continued under pressure of women's organisations.[563] Within the framework of the UN, in 1946, the Committee on the Status of Women (hereafter 'CSW') was set up by the ECOSOC under the Commission on Human Rights. Its function was to prepare recommendations and reports for the ECOSOC to promote women's rights in political, economic, civil, social and educational fields.[564]

185. WORK ON THE NATIONALITY OF MARRIED WOMEN – In 1946 the ECOSOC had already requested the UN Secretary General to undertake a study of the legislation concerning the nationality status of women. Meanwhile, the CSW had listed a woman's right to retain her own nationality as one of its aims. By September 1947 the Secretary General completed a preliminary report which was considered by the CSW in January 1948. In August 1948 the ECOSOC requested the Secretary General to prepare another report, this time on conflicts of nationality laws in general. In 1949 the CSW examined the various reports and recommended to the ECOSOC to draft legislation to give women equal rights concerning the right to nationality in article 15 UDHR. In response, the ECOSOC stated that a convention on the nationality of married women should be prepared as soon as possible to assure equality with men and specially to prevent women from becoming stateless.[565]

In 1950, the CSW requested the ECOSOC to take appropriate measures for the drafting of such a convention. In response the ECOSOC proposed the ILC to undertake the drafting of the convention.[566] In 1951, the ILC put it on their agenda for 1952, but in 1953 they decided

[562] Weis, 1080; Goris, Harrington, and Köhn, 'Statelessness', 5; Baluarte, 'The Risk of Statelessness', 61.
[563] Manley O. Hudson, 'The Hague Convention of 1930 and the Nationality of Women', *American Journal of International Law* 27, no. 1 (1933): 117–22.
[564] ECOSOC Res. 11(II), U.N. Doc. E/RES/11(II) (June 21, 1946); Margaret E. Galey, 'Promoting Nondiscrimination against Women: The UN Commission on the Status of Women', *International Studies Quarterly* 23, no. 2 (1979): 275.
[565] ECOSOC Res. 242 C (IX), U.N. Doc. E/RES/242(IX) (Aug. 1, 1949); U.N. Secretary-General, *Note*, at 1, U.N. Doc. A/2944 (Sept. 15, 1955); Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws', 492–93.
[566] U.N. Secretary-General, *Note*, at 1, U.N. Doc. A/2944 (Sept. 15, 1955).

against complying with the request of the ECOSOC and did not draft the convention.[567] The ECOSOC subsequently decided to consider a draft convention made up by the CSW and requested the Secretary General to circulate the text of the draft to governments for their comments.[568] After considering the government comments the CSW redrafted the convention and the ECOSOC requested to circulate this new version to the governments once again.[569] In 1955 the CSW revised the draft a final time in light of those comments and this draft was submitted by the ECOSOC to the General Assembly for consideration.[570]

186. THE CONVENTION ON THE NATIONALITY OF MARRIED WOMEN - After discussion in the General Assembly of the draft the Convention on the Nationality of Married Women was adopted in the General assembly and opened up for signature. [571] The convention entered into force on 11 August 1958. In general the convention took an intermediate position between the Montevideo Convention of 1933, which advocated complete equality between women and men, and the Hague Convention of 1930 which was predominantly aimed at avoiding statelessness for married women, and was not necessarily concerned with equality.[572] The convention essentially eliminated the automatic effect of marriage on a wife's nationality, its dissolution or the change of the husband's nationality during marriage, but also introduced privileged naturalization procedures for wives.[573]

§2. How

A. Concept

187. DE JURE CONCEPT – The causal track again adopted a de jure concept of statelessness, both in the 1961 Convention on the Reduction of Statelessness and the 1957 Convention on Married Women. The 1961 Convention does not contain a definition of statelessness, but it

[567] UN Report of the International Law Commission Covering the Work of its Second Session, June 5-July 29, 1950, at 108-110, U.N. Doc. A/CN.4/34; UN Report of the International Law Commission Covering the Work of its Fourth Session, June 4-Aug. 8, 1952, at 23, U.N. Doc. A/CN.4/59 (1952); U.N. Secretary-General, *Note*, at 2, U.N. Doc. A/2944 (Sept. 15, 1955).
[568] ECOSOC Res 504 (XVI) of July 23, 1953; U.N. Secretary General, *Note*, at 2, U.N. Doc. A/2944 (Sept. 15, 1955).
[569] ECOSOC Res. 547 (XVIII), U.N. Doc. E/RES/547(XVIII) (Aug. 15, 1954); U.N. Secretary-General, *Note*, at 2, U.N. Doc. A/2944 (Sept. 15, 1955).
[570] ECOSOC Res. 587 (XX), U.N. Doc. E/RES/587(XX) (Aug. 3, 1955); U.N. Secretary-General, *Note*, at 2, U.N. Doc. A/2944 (Sept. 15, 1955).
[571] G.A. Res. 1040 (XI), U.N. Doc. A/RES/1040(XI) (Jan. 29, 1957).
[572] See Convention on the Nationality of Married Women, art. 1-2, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018); Groot and Centre for European Policy Studies, *Survey on Rules on Loss of Nationality in International Treaties and Case Law*, 5.
[573] See Convention on the Nationality of Married Women, art. 3, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018); Chen, 'The Equal Protection of Women in Reference to Nationality and Freedom of Movement', 23.

is generally accepted that the de jure definition of the 1954 Convention is applicable here.[574] Not only has it become the customary international definition of the term 'stateless', but the measures contained in the convention are also clearly aimed at the de jure variant. Attempts to include the elimination or reduction of de facto statelessness did take place. Both Cordova and the UNHCR's representative held unsuccessful pleas for the inclusion of de facto statelessness.[575] However, by means of compromise and to express their sympathy with its victims, they included a recommendation in the final act that 'persons who are de facto stateless should as far as possible be treated as stateless de jure to enable them to acquire effective nationality.' [576]

The 1957 Convention does not contain any definition of statelessness either, but a de jure concept is implied in the purely legal rules on married women's nationality.

188. TECHNICAL, TERRITORIAL AND DISCRIMINATORY CAUSES – The 1961 Convention is not limited to a certain type of cause but contains provisions to reduce all three types of causes for statelessness. The majority of provisions are aimed at tackling technical causes, but there is an article both for territorial (article 10) and discriminatory (article 9) causes as well.[577] The 1957 Convention is concerned with the technical cause of married women's dependent nationality.

189. OTHER CATEGORIZATIONS – Furthermore, remedies for the causes of both subsequent and original statelessness are covered in the period after WWII. Remedies for statelessness at birth are contained in the 1961 convention, while the remedies for subsequent statelessness are contained in the 1961 convention as well as the 1957 convention. The 1961 and the 1957 conventions also take a universal approach to the problem, not limiting the remedies for causes to any specific group, location or time[578] and no displacement is required under either convention.

[574] Waas, *Nationality Matters*, 44–45.
[575]Special Rapporteur on Nationality, Including Statelessness, *Third Report*, ILC, at 30, U.N. Doc. A/CN.4/81 (March 11, 1954) (by Mr. Roberto Córdova); Batchelor, 'Stateless Persons', 251–52.
[576] Final Act of the U.N. Conference on the Elimination or Reduction of Future Statelessness, U.N. Doc. A/CONF.9/14 (Aug. 29, 1961).
[577] Waas, *Nationality Matters*, 44, 88–91.
[578] Provided, of course, that the convention only applies to cases after its entry into force.

B. Remedies

1. Substantive

190. IN GENERAL – Unlike the 1930 Hague Convention, the 1961, nor the 1957 convention contain the basic rule that it is for each state to determine who is considered a national.[579] Yet, as mentioned before it is still considered that nationality is predominantly within the domestic jurisdiction of a state, limited by the limits set out under part I and, of course, the general prohibition of abuse of rights.

191. TECHNICAL CAUSES: ORIGINAL (POSITIVE OBLIGATION) – Original statelessness on the basis of technical causes is prevented or at least reduced by the rules contained in article 1 and 4 of the 1961 convention.[580] The general idea is to confer nationality on persons who would otherwise be stateless in a way that balances interests of jus soli and jus sanguinis countries. The starting point to avoid original statelessness is a jus soli remedy. A child born in the territory of a state should be granted the nationality of that state if it would otherwise be stateless.[581] This can be granted either automatically at birth (by operation of law) or later in life by application of the child or its representative. In the latter case, a 'filter' was installed to please jus sanguinis countries: that the state may make the acquisition dependent on certain conditions of age and period of application, [582] habitual residence, [583] good behaviour[584] and the person having always been stateless. Subsidiary to this main rule, the convention contains jus sanguinis rules. First, notwithstanding the general rule, if a child would be stateless if it is born in wedlock to a mother having the nationality of a state, it should in any case get that nationality at birth by operation of law.[585] Second, if a person who has a parent national of a contracting state is not granted nationality jus soli because he does not fulfil the conditions, he should be granted the nationality of that parent.[586] In that case the granting of nationality may also be subjected to enumerated, but different,

[579] Waas, *Nationality Matters*, 44.
[580] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1080–82.
[581] Convention on the Reduction of Statelessness, art. 1(1-2), Aug. 30, 1961, 989 U.N.T.S. 175.
[582] The person must be between 18 and 21 years old, the application period should be at least one year.
[583] The required period can be not less than 5 years immediately preceding the lodging of the application and not more than 10 years in total.
[584] The person may not have been convicted of a certain crime or offence: offences against the national security of the state or crime for which punishment is imprisonment of at least 5 years.
[585] This can refer to the kind of case where a jus sanguinis country only allows the father to pass on nationality (Convention on the Reduction of Statelessness, art. 1(3), Aug. 30, 1961, 989 U.N.T.S. 175).
[586] If the nationality of both parent diverge, it is up to the national law to determine which nationality the child should get (Convention on the Reduction of Statelessness, art. 1(4-5), Aug. 30, 1961, 989 U.N.T.S. 175).

conditions of age, [587] habitual residence[588] or having always been stateless. Third, a person who is born outside the territory of a contracting state, but whose parent at the time of birth was a national of a contracting state, should get the nationality of that parent, either at birth or later upon application potentially subject again to conditions of age,[589] habitual residence,[590] good behaviour[591] and having always been stateless.[592]

Furthermore, there are two special provisions to avoid statelessness at birth.[593] Firstly, in line with the Hague Convention, foundlings acquire the nationality of the state in which they are found, unless it is shown that they are entitled to another nationality.[594] Secondly, a child born on a ship or aircraft is granted the nationality of the country under which flag the ship is sailing or where the aircraft is registered.[595]

All these obligations are positive in nature as they require states to grant a nationality to people that would otherwise be stateless.

192. TECHNICAL: SUBSEQUENT (MAINLY NEGATIVE OBLIGATIONS)– Several provisions deal with the reduction of technical causes of subsequent statelessness. Remedies can be found on three levels: remedies against statelessness in case of (1) expatriation by voluntary acts of the individual, (2) change in civil status (dependent nationality) or (3) deprivation because of an act considered to undermine the necessary link with the state.

With regard to expatriation, the general idea was to establish a compromise between the desire to prevent statelessness and the wish not to bind an individual to a state while he does not wish so.[596] The general rule is therefore that expatriation is only permitted if it does not lead to statelessness, unless that would be inconsistent with article 13 and 14 UDHR.[597]

[587] Not less than 23 years.
[588] At least 3 years preceding the lodge of the application.
[589] At least 23 years old.
[590] At least 3 years preceding the lodge of the application.
[591] Not having been convicted of an offence against national security.
[592] If the nationality of both parents diverges, it is up to the national law to determine which nationality the child should get (Convention on the Reduction of Statelessness, art. 5, Aug. 30, 1961, 989 U.N.T.S. 175).
[593] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1082.
[594] Convention on the Reduction of Statelessness, art. 2, Aug. 30, 1961, 989 U.N.T.S. 175.
[595] Convention on the Reduction of Statelessness, art. 3, Aug. 30, 1961, 989 U.N.T.S. 175.
[596] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1083–1082.
[597] Article 13 UDHR: (1) Everyone has the right to freedom of movement and residence within the borders of each state, (2) Everyone has the right to leave any country, including his own, and to return to his country; Article 14 UDHR: (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution, (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations (Convention on the Reduction of Statelessness, art. 7(1), Aug. 30, 1961, 989 U.N.T.S. 175).

Certain acts are considered under the convention to be an expression of the will to expatriate: naturalization in a foreign country[598] and departure or residence abroad.[599] For the latter group 2 exceptions exist whereby specific types of persons residing abroad may be denationalized by operation of law. First, a naturalized citizen who has resided abroad for more than 7 years may be denationalized.[600] Second, a person who was born outside the territory of the state may lose its nationality if he does not reside in the country within one year after reaching the age of majority or at least makes a declaration to state his wish to retain that nationality.[601]

Concerning the dependent nationality, both the 1957 convention and the 1961 convention contain remedies. The 1957 convention states first, that a wife's nationality may not automatically be affected by the celebration or dissolution of a marriage to a foreigner, nor by the change of a husband's nationality during such marriage.[602] Secondly, the wife should also be able to retain her nationality if her husband voluntarily acquires the nationality of another state or renounces his own.[603] These provisions do not impose the condition of 'otherwise being stateless', but automatic loss is often a cause of statelessness. The 1961 Convention goes further in the reduction of statelessness due to dependent nationality. Firstly, a person may not lose his nationality as a consequence of change in personal status in general, including marriage, legitimation, recognition and adoption, if this would lead to their statelessness. Secondly, neither the spouse, nor the children may be affected by the loss or deprivation of nationality of a national if this would lead to their statelessness. And if a child born out of wedlock loses nationality as a result of recognition or establishment of affiliation he should be given the opportunity to recover that nationality by written application under certain conditions.[604] Unlike the 1957 convention, the 1961 convention

[598] Convention on the Reduction of Statelessness, art. 7(2), Aug. 30, 1961, 989 U.N.T.S. 175.
[599] Convention on the Reduction of Statelessness, art. 7(3), Aug. 30, 1961, 989 U.N.T.S. 175.
[600] Convention on the Reduction of Statelessness, art. 7(4), Aug. 30, 1961, 989 U.N.T.S. 175.
[601] Convention on the Reduction of Statelessness, art. 7(5), Aug. 30, 1961, 989 U.N.T.S. 175; Waas, *Nationality Matters*, 81–85; Luca Bücken and René de Groot, 'Deprivation of Nationality under Article 8 (3) of the 1961 Convention on the Reduction of Statelessness', *Maastricht Journal of European and Comparative Law*, (2018): 4.
[602] Convention on the Nationality of Married Women, art. 1, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018).
[603] Convention on the Nationality of Married Women, art. 2, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018).
[604] Conditions cf. Article 1 (Convention on the Reduction of Statelessness, art. 5, Aug. 30, 1961, 989 U.N.T.S. 175).

does not judge the lawfulness of these deprivations as such, but only when they lead to statelessness.[605]

Concerning the deprivation of nationality as a penalty, the general idea is that deprivation is prohibited in principle if it leads to statelessness, but -as a compromise- certain exceptions are allowed.[606] The exceptions concern grounds of deprivation as a penalty[607] that already exist in the municipal legislations of states provided that those states make a declaration to that effect when they become a party to the convention.[608][609]

Finally, nationality can be deprived leading to statelessness if the nationality was obtained by misrepresentation or fraud.[610]

These obligations to reduce subsequent statelessness are mainly negative in nature as they oblige states not to deprive someone of his or her nationality, if, with the exception of the 1957 convention, they would become stateless. The only exception is the obligation to allow a recognised child the opportunity to recover their former nationality by written application under certain conditions. This one is positive and not conditional upon otherwise being stateless.

193. TERRITORIAL: POSITIVE OBLIGATION - The 1961 convention also deals with territorial causes as it includes an obligation for states to include provisions in treaties concerning territorial transfers ensuring that no person shall become stateless as a result of the transfer. If there are no such provisions present, as a fall-back rule, the successor state is obliged to confer its nationality on persons that would otherwise become stateless.[611]

The obligation to reduce territorial causes of statelessness is a positive obligation for all states to include provisions, but only for the successor state to grant nationality if no provision is present.

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[605] Waas, *Nationality Matters*, 73–74.
[606] Convention on the Reduction of Statelessness, art. 8(1), Aug. 30, 1961, 989 U.N.T.S. 175; Waas, 81–85.
[607] An act against a duty of loyalty; an oath or formal declaration of allegiance to another state or definite evidence of termination of allegiance to the contracting state; disregard of express prohibition to render services/receive emoluments from another state; conduct seriously prejudicial to the vital interests of the state. This list is exhaustive, but vital interests are a relatively open norm.
[608] Article 8(3).
[609] Convention on the Reduction of Statelessness, art. 8(3), Aug. 30, 1961, 989 U.N.T.S. 175; For analysis and critical reflection of declarations of ratifying states of 1961 convention under article 8(3), see Bücken and de Groot, 'Deprivation of Nationality under Article 8 (3) of the 1961 Convention on the Reduction of Statelessness'.
[610] Convention on the Reduction of Statelessness, art. 8(2), Aug. 30, 1961, 989 U.N.T.S. 175.
[611] Convention on the Reduction of Statelessness, art. 10, Aug. 30, 1961, 989 U.N.T.S. 175; Waas, *Nationality Matters*, 130–34.

194. DISCRIMINATORY: NEGATIVE OBLIGATION – Finally, the 1961 Convention also provides remedies for certain discriminatory causes of statelessness as deprivation of nationality is forbidden on racial, ethnical, religious or political grounds.[612] This constitutes an operationalization of the prohibition of arbitrary deprivation of nationality in article 15 UDHR. It is a real game-changer considering the history of mass denationalizations in light of self-determination.[613] The prohibition is the only one that is not dependent on 'otherwise being stateless' as this was thought to be a dangerous suggestion.[614] However, the provision does not constitute a general prohibition of discrimination but is limited to the grounds mentioned and it only applies to withdrawal.[615]

The obligation to avoid discriminatory causes of statelessness is negative in nature.

2. Procedural

195. DUE PROCESS – The 1961 Convention also offers procedural remedies for the case of subsequent technical statelessness by any kind of deprivation set out above. States are obliged to grant the deprived person a fair hearing by a court or independent body.[616] Furthermore, recommendation III in the 1961 final act encourages states to take on information duties by recommending them to take all possible steps to inform persons in time of any required formalities or time limits to retain their nationality when they are abroad.[617]

196. SUPERVISORY BODY – The 1961 Convention also provides that states should promote the establishment (after the sixth ratification) of a supervisory body to which persons claiming the benefit of the convention may apply to have their claim examined and receive assistance to present that claim before the appropriate authority.[618] A separate tribunal for nationality claims based on the convention was also provided for in the draft, but this was rejected at the 1959 conference. The provision on a supervisory body was adopted by a split vote and

[612] Convention on the Reduction of Statelessness, art. 9, Aug. 30, 1961, 989 U.N.T.S. 175.
[613] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1084; Waas, *Nationality Matters*, 81–85.
[614] UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 59, U.N. Doc. A/CN.4/76 (1953).
[615] Waas, *Nationality Matters*, 119.
[616] Convention on the Reduction of Statelessness, art. 8(4), Aug. 30, 1961, 989 U.N.T.S. 175; Waas, 114.
[617] Final Act of the U.N. Conference on the Elimination or Reduction of Future Statelessness, U.N. Doc. A/CONF.9/14 (Aug. 29, 1961).
[618] Convention on the Reduction of Statelessness, art. 1, Aug. 30, 1961, 989 U.N.T.S. 175; Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1084–85.

consequently, reservations to its establishment were allowed. When the time for establishment came, in 1974, the UNHCR was charged with the responsibility.[619]

197. APPLICATION OR INTERPRETATION DISPUTES – Any disputes about the interpretation or application of the 1961 Convention should be settled the International Court of Justice.[620]

C. Remaining problems

198. REMAINING PROBLEMS - Although the 1961 convention (and the 1957 convention) managed to cover a wide array of potential causes of statelessness, a few problems remained. Firstly, just as for the 1954 convention, the convention did not contain any indication on how to determine statelessness, such as any indications on the type of evidence or the burden of proof. Leaving this entirely up to individual states can seriously affect the effectiveness of the convention.[621] Secondly, all the added conditions and exceptions seriously water down the strength of the rules, leaving many cracks in the system.[622] Finally, there was a significant lack of ratifications.[623] These shortcomings spurred the search for alternative obligations under international human rights law after the described period.[624]

§3. Why

A. Pro internationalization

199. GENERAL REMARK – The interwar experience of the Hague Convention had shown that multilateral agreement could provide a way forward in the fight against causes of statelessness. Somewhat oddly, the 1961 Convention does not contain many idealistic preambles and general principles, which were very much in fashion for similar multilateral texts at the time, but merely stated that it was 'desirable to reduce statelessness by international agreement.'[625] However, the travaux préparatoires reveal the motivations.

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[619] Batchelor, 'Stateless Persons', 254–56.
[620] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1085; Waas, *Nationality Matters*, 46.
[621] Waas, *Nationality Matters*, 45–46, 88–91.
[622] Waas, 88–91; Blitz, *Statelessness, Protection and Equality*, 6.
[623] Greiper, 'Stateless Persons and Their Lack of Access to Judicial Forums Comment', 452.
[624] Waas, *Nationality Matters*, 88–91.;
[625] Waas, 41–42.

200. INTERNATIONAL COMMUNITY - In line with previous arrangements, it was considered that a reduction of causes of statelessness would reduce interstate friction.[626] As this friction was the result of the interplay of laws transcending mere national boundaries, an international approach was required. Furthermore, the avoidance of such friction was considered a duty of states as they should refrain from exercising their rights in a way that would be detrimental to the international community as a whole.[627]

Furthermore, avoidance of statelessness was still considered necessary for the international legal order. As set out above, states still doubted the effectiveness of the human rights system and thus considered it still necessary that every individual should be attributed to some state to (at least effectively) enjoy rights and obligations under international law.[628]

201. INDIVIDUAL – In general, again in line with previous conventions, the humanitarian concerns for the lack of rights and protection of stateless persons resulting in suffering and hardships 'offensive to the dignity of man' was a motivation for internationalization.[629] With regard to women specifically, the discussions surrounding the 1957 Convention provide insight into the concerns that spurred internationalization. First, past injustice and suffering of women in general and with regard to nationality in particular motivated the adoption of remedies.[630] Second, and in response thereto, internationalization was driven by a push to ensure independence, equality and human dignity for women. [631][632][633] The position of

[626] Special Rapporteur on Nationality, Including Statelessness, *Report on the Elimination or Reduction of Statelessness,* ILC, at 170, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova); UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 49, U.N. Doc. A/CN.4/76 (1953).
[627] Batchelor, 'Stateless Persons', 236.
[628] See Section VII, Chapter II, part I, §1; Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Guy S Goodwin-Gill, 'Convention on the Reduction of Statelessness', n.d., 2.
[629] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 19, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Special Rapporteur on Nationality, Including Statelessness, *Report* on the Elimination or Reduction of Statelessness, ILC, at 170, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova); UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 49, U.N. Doc. A/CN.4/76 (1953); Goodwin-Gill, 2.
[630] G.A., 10th Session, 3rd Committee, 662nd Meeeting, at 193, U.N. Doc. A/C.3/SR.662 (Nov. 16, 1955); Chile (Montero) and Sweden (Rössel) (G.A., 11th Session, 647th Plenary Meeting, at 1009 and 1012, U.N. Doc. A/PV.647 (Jan. 19, 1957)).
[631] ECOSOC Res. 587 (XX), U.N. Doc. E/RES/587(XX) (Aug. 3, 1955); Australia (Mr. McClure-Smith) (G.A., 10th Session, 3rd Committee, 663rd Meeting, at 197, U.N. Doc. A/C.3/SR.663 (Nov. 17, 1955)).
[632] Belgium (Ciselet) (G.A., 10th Session, 3rd Committee, 663rd Meeting, at 197, U.N. Doc. A/C.3/SR.663 (Nov. 17, 1955)).
[633] It was considered in the interest of 'mankind as a whole, for human dignity became a reality only in so far as it was granted to women.', see Indonesia (miss Kusumo Oetojo) (G.A., 10th Session, 3rd Committee, 663rd Meeting, at 201, U.N. Doc. A/C.3/SR.663 (Nov. 17, 1955)); Yugoslavia (Vukotic) (G.A., 10th Session, 3rd Committee, 664th

women in society had changed.[634] This was illustrated by the fact that several countries had already safeguarded the rights of married women on their own.[635] Even countries having a strong tradition of family unity, started to show support for women's rights. [636]

The issue became even more pressing as cross-border movement had only increased resulting in a growing number of marriages among persons of different nationalities.[637]

202. INTERNATIONAL COMMUNITY MEETS INDIVIDUAL: HUMAN RIGHT TO NATIONALITY – Internationalization was also incited by the new human right to nationality and the prohibition of arbitrary deprivation thereof. The wish to operationalize this human right into concrete standards strongly influenced the establishment of the 1961 convention.[638] However, some states objected that the provisions, constituting a mere reduction, instead of an elimination of statelessness, did not in fact live up to the requirements of article 15.[639]

203. STATE INTERESTS – Finally, individual state interests in internationalization were also similar to previous arrangements. The socio-economic burden caused by the presence of stateless persons in certain countries acted as a strain on the social cohesion and political stability of the state, undermining its legitimacy.[640] Furthermore, just like on the international level, stateless individuals still constituted a national legal anomaly.

Meeting, at 204, U.N. Doc. A/C.3/SR.664 (Nov. 17, 1955)); Chile (Montero) and Cuba (Mañas) (G.A., 11th Session, 647th Plenary Meeting, at 1009-1011, U.N. Doc. A/PV.647 (Jan. 29, 1957)).

[634] As the Chilean representative so eloquently phrased: 'Out of the obscurantism and prejudice of the past, women have merged in this century as a most important factor in progress in every respect (…) rights (…) do not detract from their grace, but rather embellish it and give full expression to their dignity'(Chile (Montero) (G.A., 11th Session, 647th Plenary Meeting, at 1009, U.N. Doc. A/PV.647 (Jan. 29, 1957))).

[635] E.g. South Africa, India, China, Soviet Union, Turkey (Galey, 'Promoting Nondiscrimination against Women', 273).

[636] See NL (Zeelenberg) (G.A., 10th Session, 3rd Committee, 662nd Meeeting, at 193-194, U.N. Doc. A/C.3/SR.662 (Nov. 16, 1955)).

[637] See Yugoslavia (Vukotic) (G.A., 10th Session, 3rd Committee, 664th Meeting, at 204, U.N. Doc. A/C.3/SR.664 (Nov. 17, 1955)).

[638] See Convention on the Nationality of Married Women, preambles, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018); Special Rapporteur on Nationality, Including Statelessness, *Report on the Elimination or Reduction of Statelessness,* ILC, at 173, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova); UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 49-50, U.N. Doc. A/CN.4/76 (1953); Elena Fiddian-Qasmiyeh et al., 'Statelessness', in *The Oxford Handbook of Refugee and Forced Migration Studies*, 1st ed. (Oxford University Press, 2014), 293.

[639] Spain (Addendum to Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its Sixth Session, at 3-4, U.N. Doc. A/CONF.9/5/Add.1 (March 12, 1959)).

[640] Lay Lee, 'Denationalization and Statelessness in the Modern World', 28.

B. Contra internationalization

204. LEGAL: ONLY DE FACTO – Further internationalization in the sense of including also measures for de facto statelessness, was considered during the preparations. Cordova pleaded for the inclusion of de facto statelessness since a right was meaningless if there was no guarantee that it was effective. Furthermore, he considered de facto statelessness to be even worse than the de jure version as a much larger group of people is effected and, as they are not legally deprived of their nationality, they are incapable of obtaining protection through the status of stateless person.[641] Weis, representing the UNHCR, agreed claiming that the crucial question was one of protection and that 'statelessness should be interpreted in its widest and most liberal sense.'[642] Hudson as well as the majority of states at the conference, however, opposed inclusion of de facto statelessness as they did not see, from a legal technical perspective, how persons in the de facto group could be treated as though they were de jure stateless. Yet, out of sympathy on humanitarian grounds, they adopted the aforementioned recommendation encouraging states to treat de facto stateless persons as if they were de jure stateless.[643]

205. STATE INTERESTS AND IDEOLOGIES – The major factor holding back internationalization of remedies for the causes of statelessness were sovereignty concerns over nationality laws, in line with the same factors which held back internationalization at the Hague Conference in 1930. The use of nationality as a tool of self-determination might well have been tempered by the human right to nationality, it had not lost its political character and nationality determination in essence continued to be applied according to the social, political, military and economic needs of a country.[644] One of the most common protests in the debate was that certain provisions ran counter to national[645] or regional rules.[646] Yet, statelessness is precisely largely caused by these divergent provisions.[647] The differences between

[641] Special Rapporteur on Nationality, Including Statelessness, *Third Report*, ILC, at 30, U.N. Doc. A/CN.4/81 (March 11, 1954) (by Mr. Roberto Córdova).
[642] Batchelor, 'Stateless Persons', 251–52.
[643] Weis, 'The United Nations Convention on the Reduction of Statelessness, 1961', 1085–86.
[644] See U.N. Secretary-General, T*he Problem of Statelessness – Consolidated Report,* U.N. Doc. A/CN.4/56 (May 26, 1952).
[645] E.g. see France, Switzerland (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 7 and 15, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)).
[646] E.g. see Norway, Sweden (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 13-14, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)).
[647] E.g. see Report of the International Law Commission Covering the Work of its Sixth Session, June 3-July 8, 1954, at 3, U.N. Doc. A/CN.4/88 (1954).

nationality rules, however, were often great and therefore various far-reaching compromises had to be sought. Some contended that this indicated that, despite all the pretty talk of a human right to nationality, these compromises indicated that its main goal 'seems no wider than that in 1930, the suppression of friction between states'.[648]

206. SPECIFIC STATE INTERESTS: JUS SOLI VS. JUS SANGUINS – The first big battle was fought between jus soli and jus sanguinis countries.[649] To the dismay of about half the countries at the conference, the draft took mainly the principle of jus soli as its basis. In theory this made logical sense as a default position since it would allow the nationality in situ and would also provide relief in case of stateless parents.[650] However, jus sanguinis countries argued that such a system would put more pressure on them. As jus soli states were typically immigration countries, a person born there was likely to stay. Jus sanguinis countries, on the other hand, generally had no previous selection of aliens and experienced more regular intercountry movement. The main objection was that the jus soli solution would entail that people could become their nationals without any real connection to the country.[651] Furthermore, jus sanguinis countries were among those with the largest groups of refugees (including stateless) on their territory. Overpopulated as they already were, they were not willing to indiscriminately absorb anyone accidentally born on their territory into their population.[652] As a result, jus sanguinis countries thought it necessary to include certain conditions (e.g. age, habitual residence) to ensure some connection and minimum assimilation to the national society.[653] Furthermore, some lacunae left by the general jus soli approach were filled with jus sanguinis-styled solutions. As a consequence, both types

[648] See Spain (Addendum to Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its Sixth Session, at 5, U.N. Doc. A/CONF.9/5/Add.1 (March 12, 1959)).
[649] UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 53, U.N. Doc. A/CN.4/76 (1953); Waas, *Nationality Matters*, 54–55.
[650] Bloom, 'Problematizing the Conventions on Statelessness', 19.
[651] Special Rapporteur on Nationality, Including statelessness, *Report on the Elimination or Reduction of Statelessness,* ILC, at 174-175, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova); Denmark: Memorandum with Draft Convention on the Reduction of Statelessness, at 3-6, U.N. Doc. A/CONF.9/4 (Jan. 15, 1959); Switzerland (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 13 and 16-17, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)); Bloom, 17–18.
[652] Switzerland (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 13 and 16-17, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)).
[653] Special Rapporteur on Nationality, Including Statelessness, *Report on the Elimination or Reduction of Statelessness,* ILC, at 189, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova).

of countries had to make legislative amendments. Full elimination could, because of this compromise, not be achieved.[654]

207. SPECIFIC STATE INTERESTS: DENATIONALIZATION – The second major stumbling block was the matter of denationalization resulting in statelessness. Although a blank prohibition thereof was needed to eliminate statelessness, some states were not willing to give up their right to denationalize persons who had put themselves outside the national society.[655] The draft convention only contained an exception for the service to an enemy government or enrolment in its armed forces,[656] considering that states should find other ways of punishment in other cases.[657] With limited exceptions, various states found the limitations set out in article 8 unacceptable, either because it limited them in the 'selection' of nationals according to national identity or because it left them powerless against certain criminals when they were not under their jurisdiction.[658] In 1959 the disagreement ran so deep that the conference was adjourned. Finally, in 1961 the compromise of allowing declarations concerning existing national legislation on grounds of disloyalty was reached.[659]

208. SPECIFIC STATE INTERESTS: EXPATRIATION – A comparatively small disagreement concerned expatriation. In line with discussions in 1930, some states were more concerned about minimizing statelessness while others objected the notion of an individual being tied to a state witch which he felt no connection or loyalty against his will. Finally, a compromise

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[654] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 20, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Waas, *Nationality Matters*, 55–56.

[655] Special Rapporteur on Nationality, Including Statelessness, *Report on Nationality, Including Statelessness*, ILC, at 21, U.N. Doc. A/CN.4/50 (Feb 21, 1952) (By Mr. Manley. O. Hudson); Goodwin-Gill, 'Convention on the Reduction of Statelessness', 2.

[656] UN Report of the International Law Commission Covering the Work of its Fifth Session, June 1-Aug. 14, 1953, at 57, U.N. Doc. A/CN.4/76 (1953).

[657] Special Rapporteur on Nationality, Including Statelessness, *Report on the Elimination or Reduction of Statelessness,* ILC, at 186, U.N. Doc. A/CN.4/64 (March 30, 1953) (by Mr. Roberto Córdova).

[658] Italy, Turkey (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 10 and 19-22, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)); Spain (Addendum to Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its Sixth Session, at 9, U.N. Doc. A/CONF.9/5/Add.1 (March 12, 1959)); For an overview of national legislation on grounds for deprivation of nationality, see International Law Commission Expert, *Nationality, Including Statelessness – National Legislation Concerning Grounds for the Deprivation of Nationality – Memorandum*, U.N. Doc. A/CN.4/66 (Apr. 6, 1953) (by Mr. Ivan S. Kerno); For discussion by states of their grounds of deprivation, see U.N. Secretary-General*, Note with Annex Containing Observations by Governments on Deprivation of Nationality*, at 1-19, U.N. Doc. A/CONF.9/10 (June 9, 1961); A. Harvey, 'Deprivation of Nationality: Implications for the Fight Against Statelessness. Questions of International Law', *QIL Zoom In* 31 (2016): 24.

[659] Harvey, 24.

was reached as the prohibition of expatriation resulting in statelessness was mitigated by article 13-14 UDHR. [660]

209. SPECIFIC STATE INTERESTS: MARRIED WOMEN – Some states objected that the 1957 convention did not exactly promote full equality of women, which was supposed to be the goal. [661] Whereas the original draft had provided for sex neutrality, the adopted provision talked about 'married women' instead of neutral spouses.[662] However, this was not considered to be a major obstacle. [663] Furthermore, although the vision on women's rights had significantly evolved, some opposition between ideas of family unity and equality remained. Whereas some countries claimed that independence of a woman's nationality was no threat to family unity,[664] some states still thought such a system to be fundamentally contrary to such a value. [665] Other countries, such as the Netherlands, were willing to accept greater equality between the sexes but considered unity of family still very important. By consequence, the Netherlands was prepared to accept limits on automatic change of nationality but thought it necessary to provide for ways so that the wife could, if so wished, obtain the nationality of her husband.[666]

210. OTHER: SUPERVISORY BODY – Finally, some states objected to the establishment of a supervisory body. On the one hand, some thought such an agency would run the risk that the potential of a claim scared of states to be hospitable to stateless persons or even participate in the convention at all.[667] Others thought the issues should be handled by

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[660] See Belgium (Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness Prepared by the International Law Commission at its Sixth Session, at 4, U.N. Doc. A/CONF.9/5 (Feb. 24, 1959)); McDougal, Lasswell, and Chen, 'Nationality and Human Rights', 970.

[661] Convention on the Nationality of Married Women, preambles, Jan. 29, 1957, available at http://www.refworld.org/docid/3ae6b3708.html (accessed May 27 2018); ECOSOC Res. 504 (XVI), U.N. Doc. E/RES/504(XVI) (July 23, 1953); ECOSOC Res. 587 (XX), U.N. Doc. E/RES/587(XX) (Aug. 3, 1955).

[662] Guatemala (Mrs. Quan) (G.A., 10th Session, 3rd Committee, 663rd Meeting, at 199, U.N. Doc. A/C.3/SR.663 (Nov. 17, 1955)).

[663] Norway (Aabrek), Dominican Republic (miss Bernardino) and Costa Rica (Vargas) (G.A., 10th Session, 3rd Committee, 667th Meeting, at 217-219, U.N. Doc. A/C.3/SR.667 (Nov. 21, 1955)).

[664] Belgium (Ciselet) (G.A., 10th Session, 3rd Committee, 663rd Meeting, at 198, U.N. Doc. A/C.3/SR.663 (Nov. 17, 1955)); Argentina (Fernandez escalante), New Zealand (Questin-Baxter) (G.A., 10th Session, 3rd Committee, 664th Meeting, at 203-204, U.N. Doc. A/C.3/SR.664 (Nov. 17, 1955)); Chile (Montero) (G.A., 10th Session, 3rd Committee, 667th Meeting, at 1008, U.N. Doc. A/C.3/SR.667 (Nov. 21, 1955)).

[665] Czechoslovakia (Pavlik) (G.A., 10th Session, 3rd Committee, 664th Meeting, at 204, U.N. Doc. A/C.3/SR.664 (Nov. 17, 1955)); Iran (Massoud-Ansari) (G.A., 10th Session, 3rd Committee, 665th Meeting, at 2010, U.N. Doc. A/C.3/SR.665 (Nov. 18, 1955)).

[666] See NL (Zeelenberg): G.A., 10th Session, 3rd Committee, 662nd Meeeting, at 193-194, U.N. Doc. A/C.3/SR.662 (Nov. 16, 1955).

[667] See Spain (Addendum to Comments by Governments on the Revised Draft Convention on the Elimination of Future Statelessness and the Revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its Sixth Session, at 11, U.N. Doc. A/CONF.9/5/Add.1 (March 12, 1959)).

domestic institutions instead of by an international body.[668] On the other hand, a supervisory body was considered important as it could represent stateless persons who might lack the financial resources or expertise to engage the authority of a state and it avoids the question of the individual as subject of international law. Furthermore, the body could make recommendations about implementation and enforcement. In the end, article 11 introduced a supervisory body, but reservations were possible.

VIII: CONCLUSION: THE CHARACTER OF STATELESSNESS

CHAPTER I. AN OVERVIEW

211. THE PROBLEM ON THE INTERNATIONAL LEGAL STAGE – Throughout the described years statelessness first emerged and further evolved as an international legal issue. In the interwar period nationality was of capital importance both internationally and nationality. In the eyes of international law an individual simply did not exist, while in national law rights were only granted through nationality. At the time, nationality was framed as a tool for national-self-determination in line with the reigning nationalist ideology. States enjoyed virtually unlimited freedom to employ this tool. The minimal exceptions present were aimed mainly at soothing interstate relations.

This conceptualisation, taken together with the consequences of WWI, prompted statelessness to soar. Technical causes rose as interstate movement intensified and the creation of denationalizing rules increased. The collapse of the empires and subsequent drawing up of 'national' states induced territorial statelessness while political and ethnically inspired mass-denationalization schemes affected Russian, Armenian, assimilated and German refugees. These unfortunate people lacked legal protection, a situation all the more precarious in a growing nationalist environment, and they could not easily move away from the trouble as the international passport system had severely restricted interstate movement since the War. During these years, the caused refugee flows put pressure on specifically burdened states and caused interstate friction. Furthermore, confusion reigned as the stateless individual constituted a fundamental anomaly both in the international and national

[668] See Japan (Addendum to Comments by Governments on the revised Draft Convention on the Elimination of Future Statelessness and the revised Draft Convention on the Reduction of Future Statelessness, prepared by the International Law Commission at its Sixth Session, ILC, at 3, U.N. Doc. A/CONF.9/5/Add.2 (March 24, 1959)).

legal systems. The problem, being too complex and comprehensive for one state to handle, was finally embraced by the new supranational structure, the League of Nations.

In the period after WWII, a fundamental paradigm change with regard to nationality occurred as the human rights framework was being set into place. Under the human rights regime, the seed of the concept of an individual as a subject was planted in international law. Human rights replaced state-focused nationality with humanity as a basis for the enjoyment of certain fundamental rights. However, in reality nationality remained of importance as this framework was only beginning to emerge and, in any case, these rights could only be protected through the vehicle of the state. Besides affecting the importance of nationality, human rights influenced the concept of nationality itself. By introducing a human right to nationality in the UDHR, the nationality idea partially shifted from a tool of national self-determination to nationality as an individual right. However, the shift was only partial and international nationality regulation became a constant balancing act between state sovereignty and the individual right.

This framework, combined with the aftermath of WII gave a new impulse to the question of statelessness. Technical rules leading to statelessness had not particularly changed since the end of WWI, but more interstate movement increased technical causes of statelessness. Furthermore, territorial treaties concluded after WWII contained lacunae with regard to nationality. The most important source of statelessness after WWII, however, was of a discriminatory nature. New mass-denationalizations were added to the still existing pre-WWII groups. Although nationalism was not as fierce as in the interwar period and although human rights contained universal protection ideas, stateless people stilled lived in precarious circumstances. Furthermore, the refugee flows generated by the problem again put pressure on states and the international community and presented them with a legal problem. Consequently, the issue was taken up by the newly established UN.

212. CONSEQUENCE TRACK: THE SOLUTIONS – The solutions to remedy the problem, in both periods, evolved on two separate tracks which slowly grow closer: a consequential and a causal track.

On the consequence track, the interwar international community devised instruments providing relief for so-called Nansen and German refugees. At the time, the concept of a stateless person was heavily intertwined with the refugee concept, covering both de facto

and de jure statelessness. Furthermore, the instruments were limited to specific displaced groups (Nansen and German refugees) considered 'emergency situations' whose statelessness resulted from mainly discriminatory causes. Radical solutions of naturalization, resettlement and repatriation proved impossible or insufficient, but minimizing regulations turned out more successful. Several special needs were provided for, such as documentation in the shape of a 'Nansen passport', security of residence and (limited) consular services. The lack of rights was remedied by granting a status which regulated personal status and entailed civil and political, as well as social, economic and cultural rights. Furthermore, the 1930 Hague Convention, which actually focused on the causes of statelessness also contained two remedies for the consequences, one related to the duty of the state to receive back stateless nationals and another related to documentation for stateless wives.

In the period right after WWII, several instruments again dealt with refugees in general, including stateless persons, but in the 1950's the concepts of statelessness and refugeehood parted ways, a split formalised in the 1951 Refugee Convention and the 1954 Stateless Persons Convention. The statelessness concept, included in the 1954 Convention, now covered only de jure stateless persons in a universal manner, including both original and subsequent statelessness, not limited by any specific cause and not requiring displacement and was thus significantly wider than the interwar concept. Again, radical solutions were not sufficient and the 1954 convention sought solace in minimizing measures. Similar special needs as in the interwar period were being provided as well as a status with rights. Furthermore, the 1954 convention now also contained procedural remedies, such as provisions of due process.

213. CONSEQUENCE TRACK: THE MOTIVATIONS – There were certain reasons for internationalization of these consequence-remedies that were constant over both periods. In general, remedies for the consequences of statelessness were supported by the idea that the causes could not be fully eliminated. On the level of the international community, remedies for consequences helped to soothe interstate friction and provided a solution for the need to solve the international legal anomaly of statelessness, a need which persisted even after the introduction of human rights in the post WWII era. The wish for internationalization also came from individual states as they also suffered consequences of statelessness, namely heavy economic and public burdens as well as the need to solve the legal anomaly in their national legal system. Furthermore, there was a psychological factor. After all, states were

only willing to help the stateless persons if they were assured that other states would do the same. Otherwise, they risked being flooded with stateless people. Finally, the hardships suffered by stateless persons, of course, also incited action.

Besides constant factors, there were issues specific to each period. In the interwar period, specifically with regard to documentation, internationalization was supported by a joint economic benefit that would result from the facilitated flow of labourers. However, there were also factors within the international community that withheld more permanent and comprehensive internationalization of the remedies, such as the prevailing eurocentrism, the centrality of state sovereignty and the misconception present in the international community that statelessness was merely a temporary issue. On the level of individual states, certain states had ideological reasons for agreeing to the remedies as they wanted to confirm their profile as liberal states. Some states also had political reasons as a neutral international convention is less easily seen as a provoking political action than national measures. Specific state interests also held back internationalization. Internal circumstances in certain states, such as economic and political nationalism, demotivated states from participating. Finally, some groups of stateless people prevented more universal measures as they did not want to lose their own distinctiveness.

In the post WWII period, state sovereignty had become less central than before and the eurocentrism as well as misconception that statelessness was just temporary had somewhat faded. Additionally, nationalist tendencies had decreased paving the way for more comprehensive remedies. However, sovereignty concerns withheld further internationalization. Furthermore, national economic difficulties after the war as well as misconceptions around the concept of de facto statelessness still prevented a fully comprehensive remedy for consequences of statelessness.

214. CAUSAL TRACK: THE SOLUTIONS – The remedies against the causes of statelessness in the interwar period were mainly contained in the Hague Convention and its protocols, covering primarily technical causes of statelessness but also, through its general rule, touching upon territorial and discriminatory causes. The concept of statelessness was a universal de jure concept, including predominantly subsequent but also original statelessness, not requiring displacement and, as mentioned, not limited to a specific cause. The Hague Convention contained a general rule, which implied a prohibition of abuse of rights. Specifically, with regard to technical causes the Hague Convention contained positive obligations to remedy

original statelessness in a rather limited manner and mainly negative obligations to remedy subsequent statelessness resulting from expatriation and dependent nationality of women and children.

In the period after WWII, the 1957 Convention on the Nationality of Married Women and the 1961 Convention on the Reduction of Statelessness were the instruments which remedied the causes of statelessness. The general rules, such as the prohibition of abuse of rights, remained in place. The conventions implied a universal de jure concept of statelessness, covering all three causes (more explicitly than in 1930), including both original and subsequent statelessness and did not require displacement. Concerning technical causes, the 1961 convention contained positive obligations for states to remedy original statelessness in a much more comprehensive manner than the Hague Convention. The conventions also provided positive and negative obligations against subsequent statelessness resulting from expatriation, dependent nationality and this time also covering denationalization as a penalty or because of fraud. With regard to territorial causes, positive obligations were included for all states and for successor states in particular. Finally, an absolute negative obligation for states not to denationalize anyone on the basis of race, religion, ethnicity or political opinion was now included. Furthermore, just like the post WWII remedies for consequences, the 1961 convention also contained certain procedural remedies.

215. CAUSAL TRACK: THE MOTIVATIONS – Just as for the consequence track, certain reasons to internationalize remedies against the causes of statelessness were constant over both periods. Again, the avoidance of interstate friction and the need for a solution for the international legal anomaly of statelessness provided motivations within the international legal community. Individual states were again driven by the need to relieve the burden they carried and solve the legal anomaly in their national system as well as the hardships suffered by the stateless individuals.

Both in the interwar and post WWII period, however, internationalization was impeded by sovereignty concerns embedded in the nationality concept. Discussions between jus soli and jus sanguinis countries as well as the limits of a right to denationalize citizens as a punishment proved to be the hardest nuts to crack. In addition, disagreement about the consequences of expatriation and fundamental differences with regard to effects of marriage on nationality (family unity vs. sex equality) complicated the discussions.

Specifically, in the interwar period, considerations of a contextual and practical nature further held back regulation. On a contextual level, the subject was thought to be unripe for codification by some, while on a practical level time and infrastructure constraints restrained the process.

In the post WWII period then, the recent human rights framework constituted a new crucial element mitigating the emphasis on sovereignty. The newly introduced human right to nationality now had to be balanced with the sovereignty concerns, unlike in the interwar period when nationality was considered a tool of national self-determination central to national sovereignty. Even though discussions were still difficult after WWII, states were more willing to accept limitations on their sovereignty in light of the individual right to nationality.

Furthermore, human rights also influenced the evolution that took place with regard to nationality of married women. Whereas in the interwar period the feminist movement set a process of change in motion, public and international opinion, partly under the influence of the UDHR, had taken quite a turn in favour of women's rights in the post WWII period.

CHAPTER II. CONCLUSION

216. THE EVOLVING CHARACTER OF 'CONSEQUENTIAL STATELESSNESS' – It is difficult to evaluate thé character of statelessness. Statelessness has not evolved as a homogeneous concept but has travelled over separate tracks, tracks that somewhat converged towards the end. There are thus two characters of statelessness that have to be evaluated. The consequential track basically deals with what the international community has done for persons who ended up stateless. In the interwar period nationality was paramount ('the right to have rights') so being stateless constituted a serious problem, both in theory and in practice. The concept employed was intertwined with refugees embracing both de facto and de jure statelessness but limited to particular displaced groups suffering discriminatory causes. These groups were granted remedies for special needs and rights. After WII the need for nationality diminished in theory but remained very important in practice. The concept employed then was de jure and more universal and the remedies were similar to its interwar counterparts, be it under sometimes more stringent conditions.

217. THE CHARACTER OF 'CAUSAL STATELESSNESS': The causal track basically dealt with how to make sure no one ends up without a nationality. In the interwar period, quasi-unlimited state

freedom led to rather limited acceptance of remedies. The concept of statelessness was a universal de jure concept and the remedies constituted a general rule implying a prohibition of abuse of rights (thus indirectly touching upon technical, territorial and discriminatory causes) and rather narrow limitations on technical causes. In the post WWII period, sovereignty over nationality was partially carved out by the individual human right to nationality allowing more comprehensive agreement. The concept remained the same (de jure and universal), but the remedies were broadened as the limitations on technical causes ran more deeply and the territorial and discriminatory causes were now explicitly dealt with.

218. THÉ CHARACTER OF STATELESSNESS? – In the interwar period it was not possible to deduce a singular character of statelessness because the causal and consequence tracks did not overlap. Causal remedies focused on technical causes of statelessness and consequence remedies focused on remedies resulting from discriminatory statelessness. This is in line with the state-centred approach in the interwar period. On the one hand, remedies to technical causes are well within each state's own sovereign capacity and did not conflict with the reigning ideas on nationality. On the other hand, victims of discriminatory denationalizations constituted the largest burden on states justifying their regulation in a state-centred framework.

In the post WWII period both concepts converged as both the consequence and causal remedies now concerned a de jure universal concept and both entailed more universal remedies. This illustrates the shift from mere limited state-centric obligations to the influence of human rights in general and the human right to nationality in particular.

219. AFTERMATH – The eventually devised remedies against statelessness still contained flaws, however. Not only did they lack nationality-identification procedures and included too many conditions and exceptions, most importantly, they lacked state support. These significant defects encouraged scholars and practitioners to search for alternative remedies under the human rights regime throughout the past decades. However beneficial these approaches may be, they do not provide a complete solution as there are still 15 million stateless persons worldwide and, as the Rohingya crisis painfully illustrates, these people still live in precarious circumstances.

Yet, half a century after the discussed period, renewed attention has put statelessness back on the international agenda. To end on a positive note, we may therefore, in a spirit of hope,

quote the person who started the entire regulation, Fridtjof Nansen: *'when a thing was difficult it took time, when it was said to be impossible it took longer, that was all.'*[669]

[669] Nansen quoted in Robert W. Ditchburn, 'The Refugee Problem', *An Irish Quarterly Review* 28, no. 110 (1939): 292.

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X: ANNEXES

1. ONLINE DATABASE SEARCH OVERVIEW

Online database search	
Database	Search terms
In general	
Limo	Statelessness → limitation: books
	Statelessness AND “internatioanl law” → limitation: articles, up to p. 20
	Statelessness AND “internatioanl law” → limitation: dissertation
Google scholar	Statelessness AND “international law” → limitation: up to p. 20
	Statelessness AND “international law” → limitation: from 2010 onwards, up to p. 20
HeinOnline	Statelessness AND “international law” (2000-2018) → limitation: articles, up to p. 20
History of statelessness	
Limo	"history of statelessness" AND "international law"
Limo	"history of" AND statelessness AND "international law"
Google scholar	"history of statelessness" AND "international law"
	"history of" AND statelessness AND "international law" → limitation: up to p. 10
Specifics	
Limo	“Nansen passport”
Google scholar	“Nansen passport” → limitation: up to p. 15
Convention relating to the status of stateless persons	
Limo	“Convention relating to the status of stateless persons”
Google scholar	“Convention relating to the status of stateless persons”
HeinOnline	“Convention relating to the status of stateless persons”
Limo	“Convention on the reduction of statelessness” → limitation: peer reviewed journals only
Google Scholar	“Convention on the reduction of statelessness”
	“Convention on the reduction of statelessness” → limitation: time period 1950-1970
	“Convention on the reduction of statelessness” → limitation: time period 1970-1980
	“Convention on the reduction of statelessness” → limitation: time period 2010-2018, up to p. 20
HeinOnline	“Convention on the reduction of statelessness”
Convention on the Nationality of Married Women	

Limo	"Convention on the nationality of married women" → limitation: only books, time period from 1957 onwards
	"Convention on the nationality of married women" AND United Nations AND commission → limitation: time period 1950-1970
	"Convention on the nationality of married women" AND United Nations AND commission → limitation: time period 1970-1990
	"Convention on the nationality of married women" AND United Nations AND "commission on the status of women"
Google Scholar	"Convention on the nationality of married women" AND United Nations AND "commission on the status of women"
HeinOnline	"Convention on the nationality of married women" AND United Nations AND "commission on the status of women"
Extra search on IGCR	
Google Scholar	"intergovernmental committee on refugees" AND "identity document"
Limo	"intergovernmental committee on refugees" AND "identity document"
HeinOnline	"intergovernmental committee on refugees" AND "identity document"
Hague Convention	
Google Scholar	"Hague convention on certain questions relating to the conflict of nationality laws" → limitation: up to p. 25
	"Hague convention on certain questions relating to the conflict of nationality laws" → limitation: time period from 2014 onwards
	"Hague convention on certain questions relating to the conflict of nationality laws" → limitation: time period between 1930-1950
HeinOnline	"Hague convention on certain questions relating to the conflict of nationality laws"
Limo	"Hague convention on certain questions relating to the conflict of nationality laws"
	"The Hague codification conference"
Google Scholar	"The Hague codification conference" → limitation: time period 1930-1950
	"The Hague codification conference" AND nationality → limitation: time period 1950-2018
HeinOnline	"The Hague codification conference" AND nationality → limitation: time period 1930-1950
	"The Hague codification conference" AND nationality → limitation: time period 1950-2018
Limo	"American journal of international law" AND statelessness
	"American journal of international law" AND nationality
	"history of nationality"
Google Scholar	"travaux preparatoires" AND "1933 refugee convention"
Territorial causes interwar period	

HeinOnline	"Rome convention" AND 1922

2. LIBRARY SHELF CHECK OVERVIEW

Library shelf check	
Interwar period (check journals 1918-1939)	Search index for: - Apatride - Hague - Heimatlose - Naitonality - Refugee - Stateless(ness)
Post WWII period (check journals 1940-1965)	Search index for: - Human rights - Intergovernmental Committee for Refugees - IRO - Natioanlity - Refugee - Statelessness - UDHR - UNRRA - (Married) women

3. RESEARCH TRAVAUX PRÉPARATOIRES OVERVIEW

Period	Source
Interwar consequence track	Publication of series of Nansen-related documents, also covering German Refugee documents (Refugee Survey Quarterly, volume 22, nr. 1, 2003)
Interwar causal track	- American Journal of International Law Supplements - UN catalogue (*http://biblio-archive.unog.ch/suchinfo.aspx*)
Post WWII consequence track	- UN digital library - UN catalogue (*http://biblio-archive.unog.ch/suchinfo.aspx*) - UN Audiovisual library for list of important documents (http://legal.un.org/avl/) - Refworld (*www.refworld.org*)
Post WWII causal track	- UN digital library - Website on UN diplomatic conferences related to ILC (www. legal.un.org/ Diplomaticconferences)