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PROTECTING STATELESS PEOPLE IN A MIGRATORY CONTEXT: (UN)FAIRNESS OF INTERNATIONAL LAW 70 YEARS ON

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1. The 1954 Convention relating to the Status of Stateless Persons celebrated its 70th anniversary in 2024. Yet, statelessness under international law has not traditionally been in the forefront of scholarly attention. This round anniversary makes it timely to critically look at the state of play of the protection of stateless people in a migratory context under international law, shedding light onto the rather sporadic but noteworthy legal developments, both globally and regionally, following the adoption of the 1954 Statelessness Convention. This blog entry seeks to look back and assess to what extent international law has been fair to this group of (vulnerable) people over the past 70 years by briefly reviewing the achievements and deficiencies when it comes to including stateless people into the realm of internationally protected vulnerable people.

2. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that several millions of people still continue to be denied the right to a nationality, and the persistence of statelessness – despite UNHCR's global 10-year campaign 'IBelong' having ended in December 2024 to eradicate statelessness – is likely to be the case even in

the long-run. Statelessness can occur in the *migratory context* (e.g. in many European countries) and there are large *in situ* stateless populations worldwide, too (e.g. in Côte d'Ivoire, Myanmar, Thailand, Syria, and in the Baltics – see here. Because of their lack of nationality, stateless people are particularly vulnerable, often marginalised and legally invisible ('legal ghosts'). Given its specific nature, statelessness remains a largely 'hidden' phenomenon, especially without government recognition.

3. Once the international legal regime governing the protection of stateless persons came into being in the 1950s, this issue has been practically forgotten for decades, having been largely absent from the global human rights agenda, too. The international community originally formulated *two parallel approaches* to tackle this undesirable phenomenon. The first focuses on *preventing* future statelessness and *reducing* the existing number of stateless people as much as possible. This attempt is marked principally by the 1961 UN Convention on the Reduction of Statelessness; and, as a specific instrument with a limited scope, the 1957 UN Convention on the Nationality of Married Women.
Although neither the 1950 European Convention on Human Rights, nor the more recent Charter of Fundamental Rights of the EU enshrines the right to a nationality, some other, not so comprehensive treaties appeared on the regional (European) level – under the aegis of the *Council of Europe* (CoE) and the *Commission International de l'Etat Civil*. They were complemented by general international human rights instruments, which include the right to a nationality as a human right ('the right to have rights').
Nevertheless, despite all these efforts, the number of stateless persons will most likely never reach zero. Therefore, as another approach, a new, autonomous *legal (protection) status* has been created by the *1954 Statelessness Convention*, aiming at providing an appropriate standard of international protection, a status comparable to other forms of international protection such as refugee status. Although the text of the 1954 Convention in large parts mirrors that of the 1951 Geneva Refugee Convention (see e.g. the set of rights provided for), despite the common roots and needs to be fulfilled, the overall protection regime of the

stateless is much less developed compared to international refugee law. Today, it is still the 1954 Statelessness Convention alone, more than 70 years after its adoption, under which stateless people enjoy specific international legal protection, setting out basic rights determining their tailored legal status. Besides the 1954 Statelessness Convention, certain core human rights treaties are equally part of the legal safety net protecting stateless people. The rationale behind this logic is that 'the rights of the individual do not spring from the fact that he is a citizen of a given state, but from the fact that he is a member of the human family' (UN 1949).

4. The 1954 Statelessness Convention remains 'the primary international instrument adopted to date to regulate and improve the legal status of stateless persons and to ensure to stateless persons fundamental rights and freedoms without discrimination' (UNHCR 1999). Indeed, the 1954 Convention establishes a specific, autonomous legal status for stateless individuals, together with a set of civil, economic, cultural, and social rights for them – it is the only dedicated international legal instrument doing so.
The 1954 Convention applies to *non-refugee stateless persons* (stateless refugees are covered by the 1951 Refugee Convention) and its definition strictly covers the so-called *de jure stateless persons* – meaning an individual "who is not considered as a national by any State under the operation of its law" (Article 1(1)).
Although the set of rights provided for in the 1954 Convention is very similar to those in the 1951 Refugee Convention, the international protection regime of stateless persons *cannot be compared to international refugee law* where apart the 1951 Refugee Convention, the UNHCR Executive Committee and other bodies (non-judicial and judicial alike) have developed and detailed the conventional rules, regularly interpreted the meaning of key concepts such as the act of persecution; well-founded fear; the principle of *non-refoulement* etc; and created a vast body of soft law. Unlike international refugee law which has been constantly evolving since its creation, the sole (and fairly outdated) universal instrument on the protection of stateless people, the 1954 Convention remained intact – and one cannot witness a comparably rich and constantly expanding soft

law and jurisprudence in this field either. Further, no supervisory body has been set up for a long time to address statelessness and to monitor the situation of stateless persons under the jurisdiction of the contracting States (UNHCR got mandated with this global task only in the mid-90s). This is in contrast to the 1951 Refugee Convention, in relation to which UNHCR had always been playing a major monitoring and implementing role. Another weakness is that the 1954 Convention is *not*, by its substance, *a self-executing treaty*. Not only do its content and broad, not sufficiently precise formulation of the rights suggest so, but States need to adopt domestic implementing legislation to make it effective and they are obliged to communicate those domestic laws to the UN Secretary General (Article 33). Moreover, the 1954 Convention remains silent on the *procedure to determine statelessness*, i.e. it is up to the individual States to establish such legal avenues, which gap makes claiming those rights more difficult if one cannot officially obtain that status.

5. Despite having hitherto been forgotten, statelessness re-emerged on the mainstream international human rights agenda in the past 15 years or so (see e.g. here and here). The gradual growth in importance of this issue is evidenced, first, in the recurring appearance of the topic in the activities of various *international institutions* such as the UNHCR, the UN General Assembly, the UN Human Rights Council and multiple UN treaty bodies. Secondly, over the past the decades, the *number of accessions* to the 1954 Statelessness Convention has been constantly *increasing* (with 99 Contracting Parties at the time of writing), in particular as a result of pledges States made at high-level diplomatic events (see here and here). Thirdly, statelessness attracted greater *academic interest*, too, by reason of which there has been much wider academic research and more scholarly writings (legal, political, sociological, or interdisciplinary), policy-oriented study (e.g. by the Open Society Institute's initiative and the Institute on Statelessness and Inclusion) as well as institutionalised networking (see e.g. the creation of the European Network on Statelessness and the Americas Network on Nationality and Statelessness). On the international plane, all these positive developments and newly acquired attention culminated in the elaboration and adoption of a series of UNHCR

Guidelines interpreting and elucidating more in depth the key features, concepts, logic and provisions of the major international treaties on statelessness. Another significant development is the mushrooming of national statelessness determination procedures throughout the world (most of them have been introduced in Europe, but the Americas and Asia are also on the map). Thus, in spite of the silence of the 1954 Statelessness Convention on this matter, individual States, cooperating with each other and assisted by UNHCR, took positive steps on their own initiative to fill in this gap and to grant effective access to the rights offered via the 1954 Convention for the 'legal ghosts' by officially identifying them.

6. As regards *specific fields of law* relevant for the protection of the stateless, progress on various fronts have sporadically occurred. Developing the international legal framework protecting stateless people typically involves extending the rights and entitlements of this highly vulnerable group of people. Legal developments over the decades concern consular protection (see the 1967 CoE Convention on Consular Functions expanding its personal scope to stateless people); intellectual property rights (see Protocol No 1 to the 1971 Universal Copyright Convention adding stateless persons with habitual residence to its protection scheme); and social security matters (see ILO Equality of Treatment Convention No 118 and the 1972 European Convention on Social Security). These legal instruments can be regarded as building upon the corresponding provisions of the 1954 Statelessness Convention.
Noteworthy developments can also be witnessed in relation to the *facilitated naturalisation* of stateless people for whom acquisition of nationality is the ultimate durable solution to put an end of this legal anomaly. Besides subsequent *soft law* developments (mainly driven by UNHCR Executive Committee, trying to set global standards), certain *regional instruments* equally propelled the need for facilitated acquisition of nationality for the stateless. These include the 1997 European Convention on Nationality, the 2006 CoE Convention on the avoidance of statelessness in relation to State succession, as well as a 1999 CoE Committee of Ministers Recommendation on the Avoidance and

Reduction of Statelessness.
The question now arises whether there exists already a '*right to be considered for naturalisation*' for stateless persons as an emerging human right related to reducing existing statelessness? The emergence of such a human right, a form of *ius connectionis,* has been advocated by scholars in this field (van Waas 2008). Also, this concept is implicitly supported by the practice of certain UN treaty bodies, notably the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

7. When looking at prospective future progress, two codification projects carried out by the UN International Law Commisson (ILC) are worth flagging.
One is the ILC Draft Articles on diplomatic protection (2006) which open the door for stateless people, too. This is clearly an attempt for progressive development of international law, because traditionally the general rule was that a State might exercise diplomatic protection only on behalf of its nationals – albeit the requirement of both lawful and habitual residence in case of the stateless sets a high threshold (Crawford 2006).
Another one is the ILC Draft Articles on expulsion of aliens (2014) – echoing the protection of stateless persons against expulsion. It is, however, a bit disappointing given that this "without prejudice" clause does not go beyond what is already stated in the 1954 Convention (Article 31)).

8. To sum up, public international law created a new legal category, an autonomous *de jure* stateless status – with a view to establishing a coherent, tailor-made legal architecture and to offering a self-standing protection status for those having been denied the basic right of belonging to a State. This approach is embodied first and foremost in the 1954 Statelessness Convention, which is universal in its acclaim. This *lex specialis* treaty, together by various general human rights instruments and other specific conventions presented in the foregoing have been designed to ensure that those not enjoying the right to a nationality are not unreasonably disadvantaged by their plight – hence to boost the protection angle concerning stateless persons (van Waas 2008).
Over the past 70 years, one could observe some significant developments

and improvements in the international law 'safety net' offering them protection and attaching rights and entitlements to the stateless status. Nevertheless, there are still serious gaps and shortcomings in the relevant international legal frameworks, and the existing norms face limited effectiveness. These include the relatively low overall number of ratifications of the 1954 Convention and relevant regional (CoE) instruments; the challenges of identifying stateless populations; and the unclear customary law character of certain stateless-specific treaty rules. What is positive is the growing attention to the cause of statelessness from the international community and international institutions; alongside with the changing attitude of States – enough to mention here the noteworthy increase of new accessions to the 1954 Convention in the past 15 years and the number of statelessness-related pledges made by governments. Also, certain basic principles relating to statelessness now arguably form part of customary international law as stated by international (quasi)judicial bodies, the ILC, and academia, such as the definition of 'stateless person', the obligation of avoidance of statelessness, and the prohibition of arbitrary deprivation of nationality.
International statelessness law is still in transition into 'adulthood' (Foster and Lambert 2016); with richer, more robust and more sophisticated legal foundations, backed-up with soft and hard enforcement mechanisms. Protecting the stateless is a specific example of mainstreaming fairness in international law: creating a new legal category of (extremely vulnerable) rights-holders and making it operate in the fabric of international (human rights) law, which aspires to be fair and inclusive.
Now, after turning to 70, despite all the flaws and gaps, one cannot but wish: long live the 1954 Statelessness Convention – and the legal universe it has created. And stay tuned for what the newly kicked off, UNHCR-led 'Global Alliance to End Statelessness' will bring – to be revisited in 2030 at the latest.

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