THE OBLIGATION TO GRANT NATIONALITY TO STATELESS CHILDREN UNDER CUSTOMARY INTERNATIONAL LAW

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I. INTRODUCTION

The problem of children being born stateless without being able to identify a state that must grant them nationality continues to be a problem that begs for legal clarity. Children are some of society’s most vulnerable people, needing care, education, health developmental services, and so on. Yet, when they are born into situations of statelessness, it is often difficult, if not impossible, for them to access any of these services and meet their basic developmental needs. The international community has taken many steps to eradicate child statelessness, but it still persists. This result stands despite the desperate needs for children and widespread acknowledgment that international law protects every person’s, especially child’s, right to a nationality. Thus, there is a need to establish the current law on identifying the state that bears responsibility to either secure or grant nationality to such a child.

This paper will reconsider the question of whether we can point to a state that bears the responsibility for granting nationality to a child born stateless. In examining this question, this paper considers whether customary international law might have evolved to offer an answer to the question of which state is responsible. First, the paper looks at the most contemporary understanding of customary international law to develop a methodology. The method for determining the customary international law has been changing, and the time is ripe to apply our new understanding to this problem. Second, the paper applies this methodology to emerging practice on child statelessness. Partly due to the increased focus on the question as a result of the current United Nations High Commissioner for Refugees (UNHCR) campaign to end child statelessness, state practice and opinio juris have been shifting rapidly. In this analysis, the author considers that evolving understanding of customary international law and the changes in practice have shifted, so that we can now identify the state that has the obligation to grant nationality to stateless children. Specifically, customary international law requires the state where the child was born to grant nationality to the child if he or she would be otherwise stateless, and no state has granted the child nationality.

One important observation at the outset is that this paper will not examine the question of de facto statelessness. De facto statelessness can be distinguished from de jure statelessness in that in the former, the
individual has a nationality (and is thus not legally stateless), though the state of nationality refuses to treat the person as if he had nationality. In cases of birth, for example, de facto statelessness is sometimes due to poor birth-registration options. Many efforts to reduce de facto statelessness at birth (for example, birth-registration initiatives) necessarily presuppose that there is an obligation to grant nationality at birth to stateless children; otherwise, birth registration as a means to reduce statelessness would be meaningless. For this reason, while the paper will not focus on de facto statelessness, its conclusions to settle the question of the norm have the potential to help buttress claims of de facto stateless persons to have their de jure nationality acknowledged and respected.

II. CUSTOMARY INTERNATIONAL LAW ANALYSIS METHODOLOGY

First, we begin our analysis of the customary international law status of the prohibition on statelessness at birth by briefly examining the most current practice for identifying customary international law. Contemporary practice maintains the two element rule: state practice and opinio juris. State practice involves the widespread and consistent acts

3. H.R.C. Res. 34/15, supra note 2, at 1.
of legally relevant actors.\textsuperscript{5} \textit{Opinio juris} is the subjective element that states are acting in this way because they are compelled to do so.\textsuperscript{6} The usual approach is to examine a sampling of state practice with \textit{opinio juris}, and through inductive and deductive steps, reach a conclusion on the state of custom.\textsuperscript{7}

However, in some instances, the proof of these two elements does not need to be especially rigorous. In the \textit{Gulf of Maine} case, the International Court of Justice (ICJ) held that there was “a limited set of norms for ensuring the co-existence and vital co-operation of the members of the international community.”\textsuperscript{8} It is unlikely that this text is concluding that some norms are proved outside of the state

\begin{itemize}
\item \textsuperscript{5} See Rep. of the Int’l Law Comm’n Sixty-Eighth Session, supra note 4, ¶ 62, at 76; see generally IAN BROWNlie, \textsc{PRINCIPLES OF PUBLIC INTERNATIONAL LAW} 4–11 (5th ed. 1998); see also Asylum (Colom./Peru), Judgment, 1950 I.C.J. at 276 (“The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question.”); id. at 276–78 (holding that state practices were lacking in the consistency and certainty required to constitute “constant and uniform usage”).
\item \textsuperscript{6} Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. at ¶ 207. [F]or a new customary rule to be formed, not only must the acts concerned ‘amount to a settled practice[,]’ but they must be accompanied by the \textit{opinio juris sive necessitatis}. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is “evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.” \textit{Id.} (internal citation omitted); North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. at ¶74. [A]n indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked;—and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved. \textit{Id.}; see Right of Passage over Indian Territory (Port. v. India), Judgment, 1960 I.C.J. 6, 42–43 (Apr. 12); see Asylum (Colom./Peru), Judgment, 1950 I.C.J. at 276–77; see S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at ¶ 76 (“[O]nly if such abstention were based on [states] being conscious of having a duty to abstain would it be possible to speak of an international custom.”); Rep. of the Int’l Law Comm’n Sixty-Eighth Session, supra note 4, ¶ 62, at 77.
\item \textsuperscript{7} See Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), Judgment, 1984 I.C.J. 246, ¶ 111 (Oct. 12) [hereinafter \textit{Gulf of Maine Case}]; Continental Shelf (Libya/Malta), Judgment, 1985 I.C.J. 13, ¶ 27 (June 3).
\item \textsuperscript{8} \textit{Gulf of Maine Case}, supra note 7, at ¶ 111; see generally Bruno Simma & Philip Alston, \textsc{The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles}, 12 \textsc{Austl. Y.B. Int’l L.} 82 (1989).
\end{itemize}
practice/opinio juris paradigm and should be understood to lower the threshold of evidence of a norm when the norm would be essential for international coexistence. These norms could include those that are logical or serve an important value. In addition, some authorities have concluded that United Nations General Assembly (UNGA) resolutions on point or concordant practice can also create a presumption of


A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority upon it, and no other State may do so.


11. See Legality of the Threat or Use of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. 227, ¶¶ 70–71 (July 8) (“[UNGA resolutions] can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an [opinio juris].”); JORGE CASTAÑEDA & ALBA AMOIA, LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS 192–93 (Leland M. Goodrich & William T. R. Fox eds., 1969) (“[T]he resolutions are binding, not in the sense that they have created new obligations, but in the sense that they are the expression and the legally irrefutable proof of general principles of law that are obligatory.”) (emphasis omitted); Statement of Principles, supra note 10, at 57 (“Resolutions of the General Assembly expressly or impliedly asserting that a customary rule exists constitute rebuttable evidence that such is the case.”); but see Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa, Advisory Opinion, 1955 I.C.J. 67, 84 (June 7) (separate opinion by Klaestad, J.); id. at 90 (separate opinion by Lauterpacht, J.); but see Rep. of the Int’l Law Comm’n Sixty-Eighth Session, supra note 4, ¶ 62, conc. 12 (not applying the same presumption).

12. See Ayyash, Case No. STL-11-01/I at ¶ 101.
customary international law. Between a presumption and lower evidentiary threshold, these questions are critical for helping us understand when a norm is sufficiently established.

Moving from presumptions and evidentiary concerns within the assessment of customary international law to the types of evidence, the usual approach is to sample state practice and *opinio juris*, then determine if there is sufficiently widespread practice to establish the norm. However, the international community has never required any particular threshold number of states to engage in the practice before it becomes a norm.13

When the question is a matter of specific or regional custom,14 the practice of the relevant states is required, but as is the case with this study, when the practice is general customary international law, we look to the general practice of states.15 Some authors have opined that this practice must be unanimous or a majority (or qualified majority) of states,16 but the prevailing view is that this type of voting mechanism is not required.17 Instead, the practice must be widespread and consistent,18 with a particular emphasis on specially interested states.19 In determining which states to sample, we do not require a random selection of states,

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15. *See, e.g.*, S.S. “Wimbledon” (U.K., Fr., It., & Japan v. Ger.), Judgment, 1923 P.C.I.J. (ser. A) No. 1, ¶ 25 (Aug. 17); Right of Passage over Indian Territory (Port. v. India), Judgment, 1960 I.C.J. 6, 40 (Apr. 12) (discussing where India was held to customary international law when it was a “new state” that did not participate in its formation).


18. *Id.*

19. North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, ¶ 73 (Feb. 20); Asylum (Colom./Peru), Judgment, 1950 I.C.J. at 276 (requiring “constant and uniform usage.”).
but rather a modified sampling that ensures that our study is globally representative.  

States that are specially interested in a rule of customary international law are particularly important in this regard. In this way, the assessment of practice is seen as “qualitative rather than quantitative.” The next question is how to determine which states are specially interested. This determination will naturally vary according to the question being asked. We are looking for practice that is representative of the practice of all of the states in the world. It could be that a small number of states demonstrate practice that is representative. It is important, however, to


23. See ICRC, CIHL STUDY, supra note 22, at xlv.


observe that representativity entails geographic and cultural diversity. In addition, we want to avoid the problem that the specially-interested-states analysis can skew the results in favor of the practice of the more powerful states, usually Western and Global North, in the world.

Further considerations are the types and forms of evidence and the consistency of practice for customary international law, as well as the weight attributed to those aspects, which will necessarily vary from case to case. It is crucial that the evidence we select is probative of the norm at issue. Generally, we look for physical or verbal executive, legislative, and judicial acts that span a variety of forms. The precise types of practice by states could include patterns of treaties or other international agreements on the topic, decisions of domestic and


26. See ICRC, CIHL STUDY, supra note 22, at ii.


31. Id. ¶ 62, conc. 5.

32. See, e.g., Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. 99, ¶ 55 (Feb. 3); see, e.g., Military and Paramilitary Activities in and Against Nicaragua, (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 212 (June 27); see, e.g., Continental Shelf (Libya/Malta), Judgment, 1985 I.C.J. 13, ¶ 27, ¶ 34 (June 3); see, e.g., Barcelona Traction, Light & Power Co. (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶ 61 (Feb. 5); see, e.g., North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969
international courts; domestic legislation, diplomatic or other public acts; and statements on policies and claims on the law, which could take the form of press releases and might be made within the context of


34. See, e.g., Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. at ¶¶ 70–71; see, e.g., North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. at 104–06 (separate opinion by Ammoun, J.); see, e.g., Nottebohm (Liech. v. Guat.), Judgment, 1955 I.C.J. at 22–23; see, e.g., Fisheries (U.K. v. Nor.), Judgment, 1951 I.C.J. 116, 134-36 (Dec. 18); see, e.g., Furundžija, Case No. IT-95-17/1-T, ¶ 168; see, e.g., Domingues, doc. 1 rev. 1, at ¶ 47; see, e.g., Rep. of the Int’l Law Comm’n, supra note 4, at 91, 99; see, e.g., Statement of Principles, supra note 10, at 6.


36. See Domingues, doc. 1 rev. 1, at ¶ 47.
an international organization or conference. For some of these sources, doctrine demands that state practice must be focused on a question of customary international law in order to contribute, but for others, doctrine does not impose such a specific requirement. Rules expressed in treaties are particularly expressive of customary international law when the rule codifies or crystallizes a rule of customary international law or generates widespread and consistent practice accepted as law. Sometimes courts refer to subsidiary sources of law as evidence for customary international law, such as the decisions of the ICJ and other courts, the conclusions of the International Law Commission (ILC), and “the teachings of publicists.” Lastly, for consistency, minor deviations from practice do not diminish the rule, though the weight of practice might be diminished; however, deviations will reaffirm the rule if those deviations are articulated by other international


39. See Domingues, doc. 1 rev. 1, at ¶ 47.


43. Id. ¶ 62, conc. 13(2).


actors as violations. Throughout this analysis, a holistic view is taken, and no one type of source of practice is necessarily more important.

III. APPLICATION TO STATELESSNESS AT BIRTH

Before we begin a sampling of state practice and opinio juris, we will first want to consider evidentiary obligations in proving that there is a customary norm prohibiting statelessness at birth.

A. Presumption of Customary International Law

As mentioned above, in the Gulf of Maine case and others, the ICJ held that there can be a lower evidentiary threshold for establishing certain customary international norms. We can apply a presumption of customary international law when we are considering the existence of norms that are “vital” for international cooperation, are the subject of international concern (such as evidenced by UNGA resolutions), express important values, or reflect concordant practice among states. We can even apply this presumption when the existence of a rule of customary international law is otherwise logical. In these cases, we will shift to a presumption in favor of the existence of the rule.

The prohibition on statelessness is certainly important for international cooperation and a logical conclusion deriving from the
norms of sovereignty and international co-existence. It goes without saying that every state has sovereign right to determine which individuals are its nationals. However, states have an obligation to not infringe on the sovereignty of other states. Statelessness may adversely impact the states of origin and of reception. Statelessness places undue burdens on states to deal with individuals who are not their nationals because of the choices of other states in international community. Thus, international cooperation is crucial and logical for the prohibition of statelessness to avoid unfairly burdening other states in the international community.

In addition, the prohibition on statelessness implicates important values, i.e., human rights. All persons have a right to be recognized as a person before the law, especially children, and the holding of a

55. Convention on Certain Questions Relating to the Conflict of Nationality Laws art. 1, Apr. 12, 1930, 179 L.N.T.S. 89.
57. See U.N. Secretary-General, A Study in Statelessness, § 5, U.N. Doc. E/1112/E/1112/Add.1 (1949) (“Statelessness is a source of difficulties for the reception country, the country of origin and the stateless person himself.”).
nationality is a necessary precondition for enjoying many civil and human rights and protections; it is "a right to have rights." It might even be that "the elementary considerations of humanity" dictate that all people should have a nationality. In line with these concerns, states have adopted several multilateral declarations at conferences that reaffirm the prohibition on statelessness and urge states to adopt certain measures to combat it, including adhering to the rule that a stateless child must receive the nationality of the state of birth.


63. Hannah Arendt, The Origins of Totalitarianism 296 (2nd ed. 1958); Trop v. Dulles, 356 U.S. 86, 102 (1958) (opining that a person deprived of nationality "has lost the right to have rights.").


Another way where a presumption in favor of customary international law exists is when there is concordant state practice. In a few cases, courts have held rules exist under customary international law where the concordant practice leads to presumption of *opinio juris*. As will be

The Governments of the participating countries from the Americas: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and the Bolivarian Republic of Venezuela . . . Underscoring the fundamental contribution made by States, with the support of UNHCR, the donor community, national institutions for the promotion and protection of human rights and civil society organizations, among others, to care for, protect and seek durable solutions for refugees, stateless persons and internally displaced persons; . . . Resolves: . . . 7. To urge countries in the Americas to consider acceding to the international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and strengthening national mechanisms for comprehensive birth registration.


We, the participants of the Conference on the Provision of Civil Documentation and Registration in South Eastern Europe (Zagreb, 26–27 October 2011) taking into account fundamental human rights obligations and relevant international instruments on statelessness, as well as aspirations towards European integration, propose and recommend to consider the following principles: . . . 4. Carry out concrete efforts to identify and assist all persons at risk of statelessness, especially those who need to be registered and who lack documentation. . . . 6. Develop awareness campaigns to sensitize on the need to be registered at birth and explaining the procedures.

Id. ¶¶ 4, 6.

discussed in more detail in the section on state practice, there is a wide convergence of practice resolving statelessness by granting nationality to children born in the state’s territory.\textsuperscript{57} At this point, it suffices to observe that this concordant practice, even without a strong showing of \textit{opinio juris}, creates a presumption that granting nationality to children is required under customary international law.\textsuperscript{68} However, notwithstanding the presumption, there is a strong showing of \textit{opinio juris} on point.\textsuperscript{69} These matters will be discussed in more detail in the section on state practice.\textsuperscript{70}

In addition, many important studies of nationality have concluded that the state where a child was born is the natural entity to grant nationality to the child. The ICJ has confirmed that birth in a territory is one of the more important connections underlying the genuine link test for nationality.\textsuperscript{71} Historically, many great scholars of public international law easily concluded that general (customary) international law secured the right to a nationality and prohibited the creation of statelessness, and many concluded that a person who is not otherwise a national of any state must be considered a national of the state in which he was born. This was the conclusion of Vitoria,\textsuperscript{72} the Institute of International Law,\textsuperscript{73} the International Law Association,\textsuperscript{74} and the Harvard Research in

\begin{thebibliography}{99}
\bibitem{67} See infra Section III.D.
\bibitem{68} See infra Section III.D.
\bibitem{69} See infra Section III.E.1.
\bibitem{70} See infra Section III.D.
\bibitem{71} See Nottebohm (Liech. v. Guat.), Judgment, 1955 I.C.J. at 22. In refusing to require Guatemala to give effect to an individual’s naturalization in Liechtenstein, the Court held that nationality need only be recognized where there is a genuine link between the individual and the state. \textit{Id.} at 26.
\bibitem{73} See \textit{id.} (citing Rapport Complémentaire et Projet de Résolutions Présentés par les Rapporteur, 15 \textsc{Annuaire Institut de Droit International} (Inst. of Int’l L.) 127 (1896)).
\bibitem{74} See \textit{id.} (citing \textit{Report of the Nationality and Naturalisation Committee}, 33 \textsc{Int’l L. Ass’n Rep. Conf.} 25, 29 (1924)).
\end{thebibliography}
International Law.\textsuperscript{75} The Human Rights Committee (HRC) has similarly found that birth in a territory is an important factor in considering whether a person has a sufficient connection to justify the right to return to that territory under the International Covenant on Civil and Political Rights (ICCPR).\textsuperscript{76} All of these views opine that statelessness at birth is highly problematic, if not prohibited, and that it is the link between birth and territory that is paramount, second only to perhaps parentage, in assessing a person’s link to a state.

In addition to being a logical conclusion derived from the state right of sovereignty, the prohibition of statelessness also qualifies for this presumption in favor of customary international law because it has been consistently viewed as a matter of concern for the international community, as expressed in UNGA resolutions.\textsuperscript{77} Specifically, the UNGA has on multiple occasions observed that there is a right to

\begin{enumerate}
\item\textsuperscript{75} See id. (citing Harvard Law Sch., The Law of Nationality, 23 SUPPLEMENT TO AM. J. INT’L L. (SPECIAL NUMBER) 13 (1929)).
\item\textsuperscript{76} See Office of the U.N. High Comm’r for Human Rights, CCPR General Comment No. 17: Article 24 (Rights of the Child), ¶ 8 (Apr. 7, 1989) [hereinafter HRC Gen. Comm. 17] (emphasis added) (“States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.”).
\end{enumerate}
A person without a nationality was deprived not only of the rights of citizenship within any State, but also, in international relations, of the diplomatic protection which a State extended to its nationals. From the point of view of international law itself, statelessness was an anomaly, as had been recognized by the International Law Commission . . . Both from the humanitarian and from the juridical points of view there were, therefore, strong reasons for eliminating statelessness or reducing it as much as possible.\textsuperscript{Id.}; Delegation of the Eur. Union to the U.N., High-Level Meeting on the Rule of Law at National and International Levels Pledge Registration Form, § A, ¶ 4 (Sep. 19, 2012), https://www.un.org/ruleoflaw/files/Pledges%20by%20the%20European%20Union.pdf [hereinafter EU Pledge Registration Form] (stating that EU Member States pledged at the UN High-Level Rule of Law Meeting in New York in September 2012 “to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness.”).
nationality.\textsuperscript{78} Of course, the UNGA adopted the Universal Declaration of Human Rights (UDHR), providing that “[e]veryone has a right to a nationality\textsuperscript{79} but the Assembly has also adopted many other statements that argue that statelessness in general should be addressed\textsuperscript{80} and that statelessness of children is an especially acute problem\textsuperscript{81} because everyone has a legal identity.\textsuperscript{82} Sometimes the focus of the UNGA’s concern over statelessness has been in the context of the succession of states,\textsuperscript{83} though in those cases, the UNGA is careful to also specify that statelessness should not occur at birth following state succession.\textsuperscript{84} In fact, the UNGA is so concerned about statelessness that it has specifically requested the ILC study the matter from a juridical perspective\textsuperscript{85} and has added the issue to the portfolio of the UNHCR from a practice and advocacy perspective.\textsuperscript{86}

\begin{footnotesize}
\begin{enumerate}
\item See, e.g., G.A. Res. 50/152, ¶ 16 (Feb. 9, 1996) (specifically recognizing the fundamental nature of the prohibition of “arbitrary deprivation of nationality”).
\item See UDHR, supra note 59, art. 15(1).
\item See id. (“Everyone has the right to a nationality.”); id. at art. 15(2) (“No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”); G.A. Res. 8 (I) (Feb. 12, 1946); G.A. Res. 538 (VI) (Feb. 2, 1952); G.A. Res. 896 (IX), Elimination or Reduction of Future Statelessness (Dec. 4, 1954); G.A. Res. 50/152, supra note 78; G.A. Res. 55/153 (Jan. 30, 2001); G.A. Res. 64/127, ¶¶ 4, 7–8 (Dec. 18, 2009).
\item See G.A. Res. 67/149, supra note 2, ¶ 23 (“Recognizes that birth registration provides an official record of a child’s legal identity and is crucial to preventing and reducing statelessness, and welcomes pledges by States to ensure the birth registration of all children.”); see also, e.g., G.A. Res. 67/150, ¶ 9 (Dec. 20, 2012); e.g., G.A. Res. 66/135, ¶¶ 4, 7, 10 (Dec. 19, 2011); e.g., G.A. Res. 65/193, ¶¶ 3, 5, 10 (Dec. 21, 2010); e.g., G.A. Res. 64/129, ¶¶ 4, 5, 10 (Dec. 18, 2009); e.g., G.A. Res. 63/149, ¶¶ 3–4, 9 (Dec. 18, 2008); e.g., G.A. Res. 62/125, ¶¶ 3–4, 9 (Dec. 18, 2007); e.g., G.A. Res. 51/75, ¶ 18 (Dec. 12, 1996).
\item See generally G.A. Res. 55/153, supra note 80; see generally G.A. Res. 59/34 (Dec. 16, 2004).
\item G.A. Res. 55/153, supra note 80, annex, art. 13.
However, the UNGA is not alone: the Economic and Social Council, the Human Rights Council (HRC), Commission on Human Rights, every case of statelessness was proof that that right had been violated.”); id. ¶ 41 (“Statelessness was an evil in international relations; it was an evil alike for individuals and for national administrations which were called upon to solve individual cases. It was generally postulated that statelessness was due to action by governments.”).

86. See G.A. Res. 50/152, supra note 78, ¶¶ 14–15; see also G.A. Res. 63/148, ¶ 5 (Dec. 18, 2008); see also G.A. Res. 31/36 (Nov. 30, 1976); see also G.A. Res. 3274 (XXIX), ¶¶ 1–2 (Dec. 10, 1974); see also U.N. High Comm’r for Refugees [UNHCR], Conclusions Adopted by the Executive Committee on the International Protection of Refugees, No. 106 ¶ (s), No. 106 ¶ (x), at 189 (Dec. 2009); id. No. 90 ¶ (o)–(q), at 140; id. No. 78 ¶ (c), at 113 (requesting UNHCR to advocate for accession to the 1954 and 1961 Statelessness Conventions).


and the Office of the High Commission for Human Rights have all expressed concern over this global problem. When looking for the kind of link to a state that should give rise to a nationality, birth in the state is just as relevant as the nationality of the parent. In addition to UN bodies, the EU, Council of Europe, African Union, African


91. See Id. ¶ 64.

In this context, birth on the territory of a State and birth to a national are the most important criteria used to establish the legal bond of nationality. Where there is only a link with the State on whose territory the child was born, this State must grant nationality as the person can rely on no other State to ensure his or her right to acquire a nationality and would otherwise be stateless. Indeed, if nationality is not granted in such circumstances then article 24, paragraph 3, of the International Covenant as well as article 7 of the Convention on the Rights of the Child would otherwise be meaningless. In concrete terms, the circumstance referred to above may arise, for example, where a child is born on the territory of a State to stateless parents or with respect to foundlings. Given the consequences to the children concerned, denial of nationality in such instances must be deemed arbitrary.

Id.


The Obligation to Grant Nationality to Stateless Children

The Commission on Human and People’s Rights,95 Economic Community of West African States (ECOWAS),96 Association of Southeast Asian


94. See UNHCR, Pledges 2001, supra note 92, at 44–45.

The African Union Commission therefore pledges . . . to urge the remaining African states that are yet to sign and or ratify the Convention to do so at the earliest opportunity. In this regard, the Africa[n] Union Commission will bring the issue of statelessness and the determination of nationality to the attention of the AU member states, with a view to adopting a common position on the two issues as well as adopt continental guidelines on elements for the determination of nationality.

Id. at 36.


96. See Joint Press Release, ECOWAS & UNHCR, West Africa on Path to Become the First Region in the World to Adopt a Plan of Action to End Statelessness (May 10, 2017), http://www.ecowas.int/west-africa-on-path-to-become-the-first-region-in-the-world-to-adopt-a-plan-of-action-to-end-statelessness/; ECOWAS & UNHCR, Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness (Feb. 25, 2015), https://www.unhcr.org/ecowas2015/ENG-Declaration.pdf. We undertake to prevent and reduce statelessness . . . in particular to ensure that every child acquires a nationality at birth and that all foundlings are considered nationals of the State in which they are found . . . We invite the Member States who have not yet done so to accede as soon as possible to the 1961 Convention on the Reduction of Statelessness and call upon all Member States, with the support of UNHCR, to review their nationality laws and related legislation to bring them in line with the Convention.

Id. ¶¶ 2, 4; ECOWAS & UNHCR, Conclusion and Recommendations of the Ministerial Conference on Statelessness in the ECOWAS Region, ¶ 7 (Feb. 23-24, 2015), https://www.unhcr.org/ecowas2015/E-Conclusions.pdf. [W]e recommend that ECOWAS, in collaboration with UNHCR and the competent institutions of the African Union, adopt common standards that will guide the reform of nationality legislation of West African States. It is essential that these standards include the following: . . . Every child has the right to a nationality, his/her nationality must be confirmed no later than when the age of majority is reached, including through provisions guaranteeing that any person born in the country and who stays there during his/her childhood is entitled to obtain the nationality of that country either automatically or by his/her own choice.

Id.
Nations (ASEAN), Organization of American States, Organization for Security and Co-operation in Europe, and the Interparliamentary Union have all expressed concern and taken action on statelessness within their mandates, especially regarding the problem of child statelessness. Sometimes these actions involved identifying

97. See Ass’n of Se. Asian Nations (ASEAN), Declaration of Human Rights, art. 18 (Nov. 19, 2012), https://asean.org/asean-human-rights-declaration/ (“Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.”).

98. These resolutions confirm the tradition in the Americas of granting nationality jus soli to children born in the territory of the state. See Org. of Am. States [OAS], G.A. Res. 1693, AG/RES. 1693 (XXIX-O/99) (June 8, 1999); OAS, G.A. Res. 1762, AG/RES. 1762 (XXIX-O/00) (June 6, 2000); OAS, G.A. Res. 1832, AG/RES. 1832 (XXXI-O/01) (June 5, 2001); OAS, G.A. Res. 1892, AG/RES. 1892 (XXXII-O/02) (June 4, 2002); OAS, G.A. Res. 1971, AG/RES. 1971 (XXXIII-O/03) (June 10, 2003); OAS, G.A. Res. 2047, AG/RES. 2047 (XXXIV-O/04) (June 8, 2004); OAS, G.A. Res. 2511, AG/RES. 2511 (XXXIX-O/09) (June 4, 2009); OAS, G.A. Res. 2599, AG/RES. 2599 (XL-O/10) (June 8, 2010); OAS, G.A. Res. 2665, AG/RES. 2665 (XLI-O/11) (June 7, 2011); OAS, G.A. Res. 2787, AG/RES. 2787 (XLIII-O/13) (June 5, 2013) (“Emphasizing the tradition in the countries of the Americas to prevent and reduce statelessness by granting nationality through the combined application of the principles of ius soli, for children born in their territories, and of ius sanguinis, for those born in other countries.”); OAS, G.A. Res. 2826, AG/RES. 2826 (XLIV-O/14) (June 4, 2014) (also emphasizing the Americas tradition of reducing statelessness through the granting of nationality to stateless children born in their territories).


100. See Inter-Parliamentary Union [IPU], Statement on Parliamentary Action in Support of the United Nations High Commissioner for Refugees (UNHCR) and Refugee Protection, 188th sess. (Apr. 20, 2011);

[W]e reaffirm that the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons are the principal international instruments for addressing statelessness. We encourage all States that have not yet done so to accede to or ratify these instruments and lift any reservations lodged at the time of accession. We greatly welcome the efforts of UNHCR and propose to work with it in seeking to enact the necessary legal framework and introduce safeguards to avoid situations of statelessness, including through ensuring that every child acquires a nationality at birth and promoting gender equality to enable women to confer nationality on their children.

Id.

international law governing the prohibition of stateless, and sometimes they involved identifying the mechanisms that would lead to the practical realization of preventing stateless at birth, such as accession to the Statelessness Conventions that would require states to grant nationality at birth to stateless children. With statelessness at birth considered a problem, the solution is almost always the same: when a child is born stateless, the state of birth should grant nationality. It is true that some of these expressions of concern condition the grant of nationality to stateless children on continued residence in the state of birth, but the

an overview of various guiding documents that apply to the nationalization of stateless persons. See ICCPR, supra note 59, art. 24; CRC, supra note 60, art. 7; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60.


fundamental underlying norm remains constant: the state of birth bears
the responsibility for nationality. Admittedly, it is not clear under
international law whether the resolutions and statements of organizations
other than the UN can create a presumption of customary international
law, but the combined effect of the views of these organizations, in
addition to that of the UN, certainly argues in favor of a presumption.

Of all of these organizations expressing views, the UNHCR in
particular has a special role in addressing statelessness.106 The UNHCR
has been specially appointed as the authority to manage these issues
under the Convention on the Reduction of Statelessness.107 The
UNHCR’s special role addressing statelessness has been acknowledged
by domestic courts, and its handbook on the subject is considered
persuasive.108 With statelessness now within its mandate, the UNHCR
has been very active in attempting to eradicate statelessness—
including major efforts to prevent statelessness at birth in particular—
and is currently in the midst of global action plan to eradicate statelessness.\textsuperscript{110} This action plan explicitly advises states to provide nationality to stateless children born in their territory.\textsuperscript{111} In addition to the action plan, the UNHCR Executive Committee has issued opinions on statelessness,\textsuperscript{112} and has expressly recommended that states grant nationality to all children born in their territory where the child would otherwise be stateless.\textsuperscript{113} This conclusion has been endorsed by a number of states.\textsuperscript{114}

Lastly, the ILC has also opined on several occasions that states should grant nationality to otherwise stateless children born in their territory.\textsuperscript{115} As noted above, the UNGA has authorized the ILC to study statelessness as a matter of concern.\textsuperscript{116} In pursuing its studies of customary international law, the ILC has concluded on several instances that international law provides for a right to a nationality\textsuperscript{117} and

\begin{itemize}
\item \textsuperscript{111} See UNHCR, Global Action Plan to End Statelessness, supra note 110, at 2, 9–11 (Under Action 2, one of the goals, to be achieved by 2024, is that “[a]ll States have a provision in their nationality laws to grant nationality to stateless children born in their territory.”).
\item \textsuperscript{112} See Conclusions Adopted by the Executive Committee on the International Protection of Refugees, supra note 86, No. 106 (LVII); UNHCR, Conclusion of the Executive Committee on International Cooperation from a Protection and Solutions Perspective, No. 112 (LXVII), ¶ 16 (Oct. 6, 2016); UNHCR, Conclusions of the Executive Committee on Youth, No. 113 (LXVII), ¶ 8 (Oct. 6, 2016).
\item \textsuperscript{114} See UNHCR, Banjul Appeal on Statelessness, REF WORLD UNHCR (Dec. 6, 2013), https://www.refworld.org/docid/52f9d6fe4.html (specifically recommending that states provide nationality to stateless children born in their territories notwithstanding accession status to the Statelessness Conventions).
\item \textsuperscript{115} See UNHCR, Global Action Plan to End Statelessness, supra note 110, at 18–20; McDougall, supra note 113, ¶¶ 28–35, 84–85, 89.
\item \textsuperscript{116} See G.A. Res. 50/152, supra note 78, ¶ 8, 14.
\item \textsuperscript{117} See e.g. ILC, Draft Articles on Nationality of Natural Person in relation to the Succession of States, supra note 85, art. 15, ¶ 2; G.A. Rep. of the Int’l Law Comm’n, Rep. on the Work of its Sixty-Sixth Session, U.N. Doc. A/69/10, at 32 n.66 (2014).
recommended that children born stateless should receive the nationality of the birth state.\textsuperscript{118} The ILC proposed two alternative conventions for either the elimination of statelessness or the mere reduction of statelessness.\textsuperscript{119} The ILC wisely concluded that statelessness was “undesirable,” but was not confident to conclude in the early 1950s that customary international law yet provided for nationality of the territorial state at birth.\textsuperscript{120} However, in other areas, the ILC has acknowledged that stateless persons can be regarded as having a special link to the state where they are habitually resident.\textsuperscript{121} The ILC also proposed draft articles on the nationality of natural persons in relation to the succession of states based on its analysis of customary international law.\textsuperscript{122} In that study, the ILC concluded that states must give a right of option to acquire the successor nationality to all current nationals as “persons concerned.”\textsuperscript{123} However, in the commentary, the ILC explained that “persons concerned” included not only nationals, but also resident stateless persons.\textsuperscript{124} This obligation was linked to the larger duty to


\textsuperscript{119} See 1954 Report of the ILC, supra note 118, at 143, art. 1; see also id. at 143–47 (Draft Convention on the Reduction of Future Statelessness).


\textsuperscript{122} See generally ILC, Draft Articles on Nationality of Natural Person in relation to the Succession of States, supra note 85.

\textsuperscript{123} Id. art. 26.

\textsuperscript{124} See id. art. 2(f), cmt. 5; Subparagraph (f) provides the definition of the term “person concerned”. The Commission considers it necessary to include such a definition, since the inhabitants of the territory affected by the succession of States may include, in addition to the nationals
prevent cases of statelessness during state succession. The ILC reached this conclusion because it found that states have a duty under international law to avoid statelessness. The ILC understood the Stateless Conventions to express norms of customary international law. In fact, the concern over the creation of situations of statelessness motivated the ILC’s conclusions in the draft articles on the succession of states. However, the conclusions of the ILC are not always easily distinguished between the codification of customary international law and the progressive development of the law; the prohibition of statelessness may be the latter.

In applying the rules for determining customary international law as they slowly emerge through practice, we find that we may have a presumption that a norm against statelessness has crystallized in international law. Statelessness is intimately linked with sovereignty, which is indisputably one of the very few critical norms that ensure “the coexistence and vital co-operation of the members of international community,” following the reasoning of the ICJ in the Gulf of Maine case. Secondly, the prohibition on statelessness is also a logical deduction from the well-established rule of sovereignty, here following the deductive reasoning of the ICJ in Lotus, Fisheries Jurisdiction, Gabčikovo-Nagymaros Project, Arrest Warrant, and Jurisdictional Immunities cases. Surely, the prohibition of statelessness serves of the predecessor State, nationals of third States and stateless persons residing in that territory on the date of the succession.

Id.

125. Id. art. 4 (“States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.”).

126. See id. art. 4, cmts. 1–2.

127. See id. art. 4, cmt. 2.

128. See id. art. 4, cmts. 1–2.

129. But see sources cited supra notes 125–127, where the studies of the ILC on the topic included surveys of the practice of states and were therefore more likely to be codification exercises. See ILC, II YB 1953 Add. 1, supra note 72.


131. See S.S. “Lotus” (Fr. v. Turk.) Judgment, 1927 P.C.I.J. (ser. A) No. 10, ¶ 25 (Sept. 7) (“A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority upon it, and no other State may do
important values\textsuperscript{132} and addresses a matter of international concern.\textsuperscript{133} Therefore, we begin our analysis of customary international law with a presumption that there is a rule prohibiting the creation of statelessness, and specifically, that the remedy is for states to grant their nationality to children born in their territory who would otherwise be stateless.

B. Specially Interested States

Having established that there is widespread concern at the international level on the issue of child statelessness and that a prescribed solution in principle is to grant nationality to children born in the state who would otherwise be stateless, we can conclude that there is a presumption in favor of this rule under customary international law. Now, we will turn to a survey of evidence of state practice and \textit{opinio juris} on point. This practice also points in the direction of a norm requiring states to grant nationality to stateless children born on their territory, and along with the presumption in favor of the rule, should surely prove that there is customary international law on point. It certainly does not rebut any presumption.

In designing our sample survey of state practice and \textit{opinio juris}, we begin by considering whether there are any specially interested states that might have representative practice. There are various ways we could assess which states are specially interested in the prohibition of statelessness at birth. After all, statelessness is problematic for not only the person concerned, but also for the state of origin of the family and the state where the child is born.\textsuperscript{134}

\begin{itemize}
\item \textsuperscript{132} See sources cited supra notes 59–65.
\item \textsuperscript{133} See Ayyash, Case No. STL-11-01/ITC, \textit{¶}101.
\item \textsuperscript{134} See U.N., \textit{A Study in Statelessness, supra note 57, sec. V, para. 2.}
One approach would be to consider which states have the largest stateless populations.\textsuperscript{135} In this consideration, the states with the largest stateless populations would be, in rough order: Iran, Myanmar, Côte d’Ivoire, Thailand, Latvia, Dominican Republic, Russia, Syria, Iraq, Egypt, Kuwait, Estonia, Saudi Arabia, India, Ukraine, Malaysia, United Arab Emirates (UAE), and Israel (including occupied territories).\textsuperscript{136} At this point in the ranking, the numbers drop off to individual populations of less than 1% of the global total of stateless persons.\textsuperscript{137} A few additional states have numbers of stateless persons that have been contested so that they are very difficult to quantify (e.g. Benin, Libya, Cambodia, and Pakistan\textsuperscript{138}) or simply unknown (e.g. Bahrain, Bhutan, Haiti, and Kosovo\textsuperscript{139}), making those states difficult to rank. In addition, in many of these cases, whether the persons counted as stateless are de jure or de facto stateless still remains unclear. Given the problematic nature of the statistics, an accurate ranking of which states might be specially interested is difficult.

In any event, this approach to specially interested states cannot be correct because it would only include states that had failed to address stateless situations as being specially interested. States that have applied policies to effectively reduce their stateless populations would be excluded and their contribution to any rule of customary international law ignored. Ranking states on the size of the stateless population to determine specially interested status might be granting outsized influence to states that continue to have a problem of statelessness and disregard

\textsuperscript{136} See id.
\textsuperscript{137} Id. The list continues with Sweden, Kenya, Korea, Brunei, Germany, Kyrgyzstan, Poland, Vietnam, Turkmenistan, Albania, Jordan, Kazakhstan, Belarus, Tajikistan, Philippines, Denmark, Serbia, Lithuania, Azerbaijan, Croatia, Belgium, Finland, Qatar, Norway, Netherlands, Burundi, France, Lebanon, Georgia, Turkey, Macedonia, Austria, Romania, Armenia, and Bosnia. Id.
\textsuperscript{139} See id. (reports on Bahrain; Bhutan; Haiti; Kosovo).
states that have effectively integrated their stateless populations\textsuperscript{140} when both need to be studied.

Another approach to determining which states are specially interested might be to simply consider which states have the largest populations and assume that statelessness is a common issue for all states in proportion to their overall population.\textsuperscript{141} Thus, we would rank China, India, United States (US), Indonesia, Brazil, Pakistan, Nigeria, Bangladesh, Russia, Japan, Mexico, Philippines, Vietnam, Ethiopia, Egypt, Germany, Iran, Turkey, the Democratic Republic of the Congo (DR Congo), France, Thailand, United Kingdom (UK), Italy, South Africa, Myanmar, Tanzania, and so forth.\textsuperscript{142} In such a ranking, we could consider inserting the EU as having the third largest population in the world. However, relying on population size only as a proxy for statelessness is an assumption that statelessness is directly correlated with population size.

Yet, another approach would be to focus on the particular issue of status at birth and measure birth rates per capita in various states.\textsuperscript{143} Ranking would proceed as follows: Niger, Mali, Uganda, Zambia, Burkina Faso, Burundi, Malawi, Somalia, Angola, Mozambique, Afghanistan, Nigeria, Ethiopia, Sierra Leone, South Sudan, Chad, Tanzania, Cameroon, Benin, Congo, Guinea, Central African Republic, DR Congo, Senegal, and Gabon.\textsuperscript{144} An alternative would be to look at

\textsuperscript{140} That analysis would be akin to identifying the states of the world with the largest numbers of slaves as evidence of customary international law on slavery. Niall McCarthy, The Countries With The Most People Living In Slavery, FORBES (May 31, 2016), http://www.forbes.com/sites/niallmccarthy/2016/05/31/the-countries-with-the-most-people-living-in-slavery-infographic/#7cd2c573d415 (observing that five states account for 58% of the 45.8 million persons in slavery worldwide).

\textsuperscript{141} See, e.g., CIA World Factbook, Country Comparison: Population, U.S. CENT. INTELLIGENCE AGENCY (CIA) (July 2017), https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html. This approach would be more in line with the view of Petrén in the Nuclear Tests cases. See Nuclear Tests (Austl. v. Fr.), Judgment, 1974 I.C.J Rep. 253, 306 (Dec. 20) (separate opinion by Petrén, J.). “It would be unrealistic to close one’s eyes to the attitude, in that respect, of the State with the largest population in the world.” Id.

\textsuperscript{142} See Country Comparison: Population, supra note 141.


\textsuperscript{144} See id.
states with the largest absolute number of births. However, these approaches also hide large assumptions that birth rate is an accurate proxy for frequency of statelessness questions or the burden of the statelessness issue. An alternative approach would be to look at which states have the largest number of cases where birth in the state is the only source of nationality. Unfortunately, data on this point is quite difficult to locate.

Perhaps a final approach would be to consider the size of each state’s immigrant population. From the size of this population, we would presume that the percentage of stateless cases relative to any immigrant population is constant, meaning that states with larger immigrant populations are more likely to have larger issues of statelessness. This ranking would start with the US and proceed to Russia, Germany, Saudi Arabia, UAE, UK, France, Canada, Australia, Spain, Italy, India, Ukraine, Pakistan, Thailand, Kazakhstan, Kuwait, Jordan, Hong Kong, Iran, Malaysia, Côte d’Ivoire, and Japan. Another way to view this information would be by percentage of the population that has an immigrant origin: UAE, Qatar, Kuwait, Singapore, Jordan, Hong Kong, Saudi Arabia, Oman, Switzerland, Austria, Israel, New Zealand, Kazakhstan, Canada, Sweden, Australia, US, Spain, UK, Côte d’Ivoire, Germany, Netherlands, France, Belarus, Ukraine, Belgium, and Malaysia. However, the weakness with this measure is again the presumption that statelessness at birth neatly correlates to the metric being examined. Immigrant communities vary widely and some that come from certain countries might be more prone to statelessness than others. This fact makes this measure also not ideal.

In addition to the weaknesses mentioned above, most of these measures suffer from the common issue of identifying which states are affected by or interested in statelessness. Surely, it is an issue for the entire global community, following the similar reasoning of the International Committee of the Red Cross (ICRC) in its study of

147. See id.
customary international humanitarian law.\textsuperscript{148} Of course the ICRC actually applied its methodology by still taking a sampling of states. For this reason, this paper will select a sample of states. It will not mechanically assess degree of interest using just one of these various metrics, but will view these various rankings as helpful indicators of states that could potentially be specially interested, using the different measures together to offset their individual shortcomings. Because of the need for global diversity in representative states, and the global interest in statelessness in general,\textsuperscript{149} the sampling of states will also ensure that the most representative states from different regions will be included.

Looking across these various considerations and their various weaknesses, we do find several states featured prominently on one or more of the lists proposed above. Because there are multiple consistent indicators that they might be specially interested under different measures, these states will be tentatively identified, and their practice will be examined in particular. Other states will also be considered where information on their practice is readily available, but their practice may be less persuasive. Those states that are potentially specially interested are, in alphabetical order: Albania, Austria, Belgium, Belarus, Benin, Brunei, Burundi, Côte d’Ivoire, Croatia, Denmark, the Dominican Republic, Egypt, Estonia, Finland, France, Germany, India, Indonesia, Iran, Iraq, Israel, Italy, Jordan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Lithuania, Malaysia, Myanmar, the Netherlands, Nigeria, Pakistan, Philippines, Poland, Qatar, Russia, Saudi Arabia, Spain, Sweden, Syria, Thailand, Turkmenistan, Ukraine, UAE, UK, US, and Vietnam. In addition to all of these states, the practice of the EU will also be included, especially where the Union exercises certain competences delegated to it from some of the EU Member States mentioned above.

\textsuperscript{148} See ICRC, CIHL STUDY, supra note 22, at xlv; Notwithstanding the fact that there are specially affected States in certain areas of international humanitarian law, it is also true that all States have a legal interest in requiring respect for international humanitarian law . . . whether or not they are “specially affected” in the strict sense of that term.

\textsuperscript{149} See id. at li; [N]early 50 countries were selected (9 in Africa, 15 in Asia, 11 in Europe, 11 in the Americas and 1 in Australasia) . . . The Steering Committee selected the countries on the basis of geographic representation, as well as recent experience of different kinds of armed conflicts in which a variety of methods of warfare had been used.

Id.
While there is a somewhat heavier concentration of states from Europe and Africa, given that those states frequently appear in multiple lists and the fact that they host large migrant populations, they appear to have a more significant and representative role. Despite this observation, within this group of states, we happen to find a distribution across geography and legal systems, and the sample group includes states that have stateless difficulties as well as those that have effective stateless solutions.\footnote{150} This outcome confirms that the tentative list is globally representative and does not need to be adjusted any further to assure global representation. For the remainder of this paper, those states that have been identified as potentially specially interested will be marked with an asterix.

C. Adherence to Treaties

Having concluded that there are quite a number of states that would have representative practice, and that many more states might still be interested notwithstanding whether or not they are specially interested, we continue to sample the practice of states, with special emphasis on those representative states.

In identifying the actions and statements that will be sampled, this study will draw on the widely accepted forms of evidence of state practice and \textit{opinio juris}. There are a variety of sources of evidence that contribute to proving customary international law. As mentioned above, practice and \textit{opinio juris} can include, \textit{inter alia}, multilateral conventions, decisions of courts, domestic legislation, and public acts and statements (including statements articulating certain acts as violations of international law). There are also a wide variety of treaties that touch on child statelessness, both at the international/multilateral level and regional level.\footnote{151} Some treaties specifically apply to statelessness and others either provide for a right to a nationality or protect other rights that are impacted by statelessness.\footnote{152} We will proceed through each of these sources of evidence in turn.

\footnote{150. See infra Section III.D.}
\footnote{151. See infra Section III.C.1, 2.}
\footnote{152. See id.}
1. International Treaties

First, there are treaties that specifically govern statelessness. The most prominent of these treaties are the 1954 and 1961 Statelessness Conventions. These treaties are aimed at eliminating or at least reducing stateless, especially at birth. In particular, the 1954 convention obliges states to facilitate the naturalization of stateless persons in their territory, affirming the special link between territory and nationality. The 1961 treaty, on the other hand, explicitly requires states to grant their nationality to children born in their territory if they would otherwise be stateless. In preparing these conventions, the ILC was clearly aware that this practice was not the current norm in many countries in 1961, but made a convincing argument for treating this as a special case. This obligation also covers the unusual case of “foundlings,” children discovered in a state whose parents are unknown. The 1961 convention does permit states to opt out of the


154. See 1961 Statelessness Convention, supra note 107, art. 8; [States] shall not deprive a person of its nationality if such deprivation would render him stateless . . . . [But adds] “notwithstanding th[at] provision[.] . . . a Contracting State may retain the right to deprive a person of his nationality, if . . . being grounds existing in its national law at that time . . . (a) the person . . . (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State.

Id.


156. 1954 Stateless Convention, supra note 153, art. 32.

157. Id. art. 1.

158. Id. art. 1(1); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60, ¶ 4. But see 1961 Statelessness Convention, supra note 107, art. 1. The 1961 Statelessness Convention does permit a state to require an application in order to grant nationality in this scenario, rather than simply receiving nationality by operation of law. Id. at art. 1(1)(b).


160. See 1961 Statelessness Convention, supra note 107, art. 2; Convention on Conflict of Nationality Laws, supra note 55, art. 14; Organization of the Islamic
automatic nationality grant to stateless children born in their territory, but they must still provide a means for naturalizing those children, and such naturalization must be non-discretionary.\(^{161}\) Yet, it is significant that no states parties have entered a reservation to this obligation.\(^{162}\) In both of these conventions, the solution for statelessness is to look to the state where the individual has a link with the territory.\(^{163}\)

Unfortunately, the Statelessness Conventions do not have universal adherence. The 1961 Convention has sixty-six states parties, many within the most recent decade.\(^{164}\) On the positive side, they do have parties from all of the continents of the world, and many of the states parties are states that could be considered especially interested. Of the states that were identified as specially interested, the following have adhered to the 1961 Statelessness Convention: Albania, Austria, Belgium, Benin, Côte d’Ivoire, Croatia, Denmark, Finland, Germany, Italy, Latvia, Lithuania, Netherlands, Nigeria, Sweden, Turkmenistan, Ukraine, and UK.\(^{165}\) In addition, Dominican Republic, France and Israel had signed, but not yet ratified the Convention.\(^{166}\)

In addition, the reverse argument of recent adherence is also influential: the number of new parties has increased dramatically in the recent few years due to the UNHCR’s statelessness eradication program, and a great number of states have pledged to adhere to one or both of the conventions in the near future, showing that practice and/or opinio juris


\(^{162}\) See generally 1961 Statelessness Convention, *supra* note 107.

\(^{163}\) Id. arts. 1, 4.


\(^{165}\) See 1961 Statelessness Convention, *supra* note 107.

\(^{166}\) See id.
has shifted, and affirming the norms within. The states pledging to adhere to the 1961 Statelessness Convention include Belarus, Burundi, the Central African Republic, Chile, Cyprus, the DR Congo, France (signed but not ratified), Guinea-Bissau, Haiti, Kyrgyzstan, Luxembourg, Madagascar, Myanmar, Namibia, The Philippines, Russia, Sierra Leone, South Africa, South Sudan, Spain, Sudan, Tanzania, Thailand, Togo, Turkey, Uganda, US, Yemen, and Zambia. Furthermore, the EU has pledged that all EU members ratify 1954 Statelessness Convention and consider ratifying the 1961 Convention. In the meantime, Guinea-Bissau acceded on September 19, 2016, Luxembourg acceded on September 21, 2017, and Sierra Leone acceded on May 9, 2016.

It is perhaps interesting to note the reasons states give for failing to adhere to the Statelessness Conventions, and their behavior when they are not parties. For example, Poland does not wish to discriminate in favor of stateless persons and against other foreign nationals, and Slovenia refuses to adhere to the conventions due to concerns with article 12 of the 1961 Convention. Only Estonia refuses to adhere to the Statelessness Conventions for the reason that it would require jus soli in the case of stateless children. However, Estonia does provide for naturalization of stateless children when they are born in Estonia, as


170. See Chapter V: Refugees and Stateless Persons, Section 4: Convention on the Reduction of Stateless (Signatories), supra note 164.


172. Id.

173. Id.
opposed to nationality by birth. Similarly, some other states have not adhered and have not expressed a pledge to adhere, but have nonetheless brought their domestic legislation on nationality for children into alignment with the Statelessness Conventions terms on nationality at birth. Interestingly enough, during Universal Period Review by the Committee on the Rights of the Child, states that are not party to the Statelessness Conventions are routinely advised to adhere to those conventions to ensure the full enjoyment of human rights in their territory. The Human Rights Committee also encourages states to adhere to the Statelessness Conventions. This convergence of adherence and commitments to adhere presents a very persuasive block of global opinio juris on the value of the Statelessness Conventions, including the requirement to grant nationality to stateless children born in the state.

In addition to the treaties dedicated exclusively to governing statelessness, a wide number of international instruments provide for the right to a nationality and other protections against statelessness, especially in the case of children. All individuals have a human right

174. Id. at 12.
177. H.R.C. Res. 2005/45, supra note 89, ¶¶ 1, 5.
178. See UDHR, supra note 59, art. 15(1); ICCPR, supra note 59, art. 24(3); CRC, supra note 60, art. 7; 1961 Statelessness Convention, supra note 107, art. 1(1); International Convention on the Elimination of All Forms of Racial Discrimination art. 5(d)(iii), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 29, Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter Migrant Workers Convention]; Serena Forlati, Nationality as a human right, in THE CHANGING ROLE OF NATIONALITY IN INTERNATIONAL LAW 22 (Alessandra Annoni & Serena Forlati eds., 2013); Turkmenistan: Statelessness More of a Problem than Numbers Suggest, PUB. LIBR. OF U.S. DIPLO., para. 1, (Dec. 14, 2009); None of the Central Asian countries [Turkmenistan, Tajikistan, Kazakhstan, and Kyrgyzstan] are signatories to either of the UN Conventions on statelessness, but they are bound to protect stateless people under other UN treaty obligations. [Such as] the
(perhaps a non-derogable right\textsuperscript{179}) to a nationality.\textsuperscript{180} The right to a nationality has been repeatedly asserted in almost every major human rights treaty, instrument, or declaration since 1945.\textsuperscript{181} These instruments include the 1957 Convention on the Nationality of Married Women,\textsuperscript{182} ICCPR,\textsuperscript{183} the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),\textsuperscript{184} the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Covenant on Civil and Political Rights.

\textit{Id.} paras. 1, 3.

179. See Expelled Dominicans & Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, \textit{\textsuperscript{¶} 253} (Aug. 28, 2014); Yean & Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, \textit{\textsuperscript{¶}¶ 136–38} (Sept. 8, 2005); Am. Decl., \textit{\textsuperscript{supra}} note 59, art. XIX; UDHR, \textit{\textsuperscript{supra}} note 59, art. 15(1); ICCPR, \textit{\textsuperscript{supra}} note 59, art. 24(3); CRC, \textit{\textsuperscript{supra}} note 60, art. 7(1); Migrant Workers Convention, \textit{\textsuperscript{supra}} note 178, art. 29; 1961 Statelessness Convention, \textit{\textsuperscript{supra}} note 107, art. 1(1).


181. See Convention on Conflict of Nationality Laws, \textit{\textsuperscript{supra}} note 55, art. 1; Protocol Relating to a Certain Case of Statelessness art. 1, Apr. 12, 1930, 179 L.N.T.S. 115. Some of these instruments protect the right to a legal identity, which includes nationality. See UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, \textit{\textsuperscript{supra}} note 60, \textit{\textsuperscript{¶} 2}; International Convention for the Protection of all Persons from Enforced Disappearance art. 25(4), Dec. 20, 2006, 2716 U.N.T.S. 3; UNCHR, \textit{CED General Recommendation XXX on Discrimination Against Non-Citizens}, paras. 13–14 (Oct. 1, 2002). For provisions pertaining to the right to equal protection of the law, the right to the recognition of one’s own legal status, the right to freedom of movement and residence within the borders of the State, and the right to enter one’s own country. See generally CERD, \textit{\textsuperscript{supra}} note 178, art. 5(d)(iii); ICCPR, \textit{\textsuperscript{supra}} note 59, arts. 12(4), 23(4), 26; Borzov v. Estonia, Communication 1136/2002, Human Rights Committee [HRC]. \textit{\textsuperscript{¶} 5.4} (July 26, 2004) (Views of the HRC under the Optional Protocol to the International Covenant on Civil and Political Rights).


183. See ICCPR, \textit{\textsuperscript{supra}} note 59, art. 24(3); HRC Gen. Comm. 17, \textit{\textsuperscript{supra}} note 76, \textit{\textsuperscript{¶}¶ 7–8}. See generally Human Rights Council Dec. 2/111 (Nov. 27, 2006); H.R.C. Res. 13/2, \textit{\textsuperscript{supra}} note 88; H.R.C. Res. 10/13, \textit{\textsuperscript{supra}} note 88; H.R.C. Res. 7/10 \textit{\textsuperscript{supra}} note 88; H.R.C. Res. 1998/48, \textit{\textsuperscript{supra}} note 89; H.R.C. Res. 1999/28, \textit{\textsuperscript{supra}} note 89; H.R.C. Res. 2005/45, \textit{\textsuperscript{supra}} note 89.

184. See CERD, \textit{\textsuperscript{supra}} note 178, art. 5(d)(iii).
of All Forms of Discrimination against Women (CEDAW), the International Convention on the Rights of All Migrant Workers (Migrant Workers Convention), and the Convention on the Rights of Persons with Disabilities (Disabilities Convention). The UDHR and UN Declaration on the Rights of Indigenous Peoples also reaffirm the rule. The very first session of the Commission on Human Rights in 1947, in considering the drafting of the International Bill of Human Rights, which was later to become the UDHR, determined that every person has a right to a nationality. There is therefore a clear obligation to ensure that everyone has a nationality.

In addition to these treaties that provide for a right to nationality, there are a variety of other treaties that expressly focus on the special protection of the nationality of children. The ICCPR states that every child has the right to acquire a nationality and further orders that every child’s birth shall be registered. In addition, the Disabilities Convention, Migrant Workers Convention, and Enforced

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186. See Migrant Workers Convention, supra note 178, art. 29.


188. See UDHR, supra note 59, art. 15(1).


191. See UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60, ¶ 26; ICCPR, supra note 59, art. 24(3); G.A. Res. 50/152, supra note 81, art. 22; H.R.C. Res. 26/14, supra note 88, art. 8; H.R.C. Res. 20/5, supra note 88, art. 8; H.R.C. Res. 13/2, supra note 88, art. 8; H.R.C. Res. 10/13, supra note 88, art. 8; H.R.C. Res. 7/10, supra note 88, art. 8.

192. ICCPR, supra note 59, art. 24 (“Every child shall be registered immediately after birth and shall have a name. [] Every child has the right to acquire a nationality.”).

193. See CRPD, supra note 187, art. 18(2); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60, ¶ 22.

194. See Migrant Workers Convention, supra note 178, art. 29; HRC & UNSG, Human rights and arbitrary deprivation of nationality (Dec. 19, 2011), supra note 61, ¶ 28.
Disappearances Convention, cover this right for children. Furthermore, this obligation is also included in the most important treaty for children’s rights: the Convention on the Rights of the Child (CRC). The CRC protects the right of every child to acquire a nationality and stipulates that every child has a right to preserve his or her identity which, as noted above, has been interpreted to include nationality. The UNSG, the HRC, and the High Commissioner for Human Rights have all expressed the view that nationality plays a particularly important role in the child’s development, as it helps form an identity and that deprivation of nationality will also infringe the right to identity.

While the right to a nationality as a human right is not particularly controversial, the difficulty is identifying the state whose nationality the individual has a right to have. Unfortunately, the UDHR and other instruments do not provide us any guidance on this question in their text, other than to say that a person has a right to “a” nationality. However, we can glean some direction from the application of the right to a nationality under these various treaties. In considering the right to a nationality, the Human Rights Committee concluded that all “[s]tates are


198. See SG Report on Arbitrary Deprivation of Nationality Jan. 2009, supra note 88, ¶ 59 (Art. 8, para. 2 of the CRC expressly stipulates: “Where a child is illegally deprived of some or all of the elements of his or her identity [including nationality], States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”); HRC Res. 32/5, supra note 88, ¶ 11 (“Reiterates that the right to identity is intimately linked to the right of nationality”). Also see Yean & Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 137 (Sept. 8, 2005).

199. See ICCPR, supra note 59, art. 24(3) (“Every child has the right to acquire a nationality.”).

200. See UDHR, supra note 59, art. 15(1).
required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.201 Where states are not granting nationality to children born in their territory, there is arguably an obligation for those states, in good faith cooperation with other states, to locate a de jure nationality for the child.

We can find even more compelling arguments. One aspect of the right to a nationality is the prohibition against the arbitrary removal of nationality.202 The UDHR declares: “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”203 The ICCPR also guarantees the rights to leave and re-enter one’s “own country.”204 Although the broad language of the ICCPR has been clarified by a General Comment as applying to nationals, aliens, and “[a]ny individual who . . . [has] special ties to or claims in relation to a given country,” including nationals who have been stripped of their nationality in violation of international law, the broad understanding of persons to whom the ICCPR protection may apply is capped by national security caveats.205 The right to enter one’s own country must not be


202. See HRC Res. 10/13, supra note 88; CRC, supra note 60, art. 8(1); Council of Eur., European Convention on Nationality, art. 4(c), Nov. 6, 1997, E.T.S. No. 166; AmCHR, supra note 59, art. 20(3); Arab Charter on Human Rights, art. 29 (May 22, 2004); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, art. 24(2) (1995); ILC, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, supra note 85, art. 16.

203. See UDHR, supra note 59, art. 15(1) (emphasis added). See also id. art. 13(1)–(2) (providing that “(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.”).

204. See ICCPR, supra note 59, art. 12(2), (4).

deprived “arbitrarily,” and the right to leave one’s own country may be subject to restrictions “necessary to protect national security, public order . . . or the rights and freedoms of others.”

In short, the test for arbitrariness is whether an act is contrary to the rule of law, and it has both procedural and substantive aspects. The concept of arbitrary deprivation does not, however, coincide with discriminatory deprivation, but is broader. In terms of procedure, the act must be provided by law, but in terms of substance, the act must be reasonable. Substantive includes, for example, discrimination, but also “inappropriateness, injustice, illegitimacy [or] lack of predictability,” or violating the principle of proportionality. These protections specifically apply to the deprivation of nationality.

206. ICCPR, supra note 59, art. 12.
212. CERD, supra note 178, art. 5(d)(ii); CEDAW, supra note 185, art. 9(1).
arbitrariness in nationality deprivation has also been interpreted to include the creation of statelessness.  

In many cases, the creation or tolerance of situations of statelessness is based on discriminatory or arbitrary nationality law, which is specifically prohibited, especially discrimination applied to children. Prohibitions on discrimination in nationality law have been provided in the CERD and the 1961 Statelessness Convention, and the ICCPR has been interpreted to prohibit this kind of discrimination as well.

216.  See 1961 Statelessness Convention, supra note 107, art. 8; SG Report on Arbitrary Deprivation of Nationality Jan. 2009, supra note 88, ¶ 65; ECN Explanatory Report, supra note 210, art. 7(3).


220.  See CERD, supra note 178, art. 5(d)(ii).

221.  See 1961 Statelessness Convention, supra note 107, art. 8.

222.  See HRC Res. 10/13, supra note 88, ¶¶ 2–3; HRC Res. 20/5, supra note 88, ¶¶ 2–4; HRC Res. 7/10, supra note 88, ¶¶ 2–3; ILC, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, supra note 85, art. 15 (prohibiting discrimination “on any ground”).
Additional prohibitions on discrimination in nationality law exist for gender  and disabilities. In fact, the norm of nondiscrimination has sometimes been viewed as being a norm *jus cogens*. Some distinctions are, however, permitted in terms of granting nationality. Essentially, a person should have some form of link to the state to serve as the basis for the nationality bond. “Birth on the territory, descent, residence or marriage to a national” are all commonly accepted criteria. However, the link to a state cannot be based on impermissible discriminatory criteria, for example, on grounds of race, color, gender, religion, political opinion, or national or ethnic origin. Indeed, sometimes the motivation behind refusing nationality to stateless children born in the territory is to preserve an ethnic notion of nationality, which will violate norms against discrimination in the field of nationality. Not every application of *jus sanguinis* implies this discriminatory motive where, for example, persons of a minority ethnicity nonetheless pass on their nationality to their children; but where it can be discerned, the adoption of *jus sanguinis* may be a symptom of a discriminatory nationality policy. Thus, before we even consider whether there is a norm mandating nationality for

223. See CEDAW, *supra* note 185, art. 9(1).
224. See CRPD, *supra* note 187, art. 18(1)(a).
227. See id. para. 62.
229. See CERD, *supra* note 178, art. 5(d)(iii).
stateless children, we might first consider whether the state is applying a discriminatory nationality law, which can easily be viewed as a violation.

Beyond discrimination, other practices of nationality loss may also be arbitrary.\textsuperscript{230} The full scope of the test for substantive arbitrariness is whether the measure serves a legitimate purpose, whether it is the least intrusive instrument to achieve the desired result, and whether it is proportional to the interest to be protected.\textsuperscript{231} “[L]oss or deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality,” again, especially arbitrary nationality laws applied to children.\textsuperscript{232} The Ethiopia-Eritrea Claims Commission held that a revocation of nationality would be arbitrary where the reasons for the denationalization were illegitimate.\textsuperscript{233} On this basis, the Commission held that persons who were a security risk presented a legitimate basis.\textsuperscript{234} In addition, the Commission held that a person could have their nationality revoked when they already held another nationality.\textsuperscript{235} By way of analogy, the European Convention on Nationality provides for certain examples of grounds for denationalization that are unreasonable.\textsuperscript{236} These include situations where an individual voluntary acquires another nationality, habitually resides abroad, serves a foreign military force, conducts acts seriously prejudicial to the vital interests of the State Party, fails to fulfill nationality preconditions established by law, or initially acquired the nationality by fraud or deception.\textsuperscript{237}


\textsuperscript{233} See Eri. Award, supra note 210, ¶¶ 57–78.

\textsuperscript{234} See id.

\textsuperscript{235} See id.

\textsuperscript{236} See ECN Explanatory Report, supra note 210, art. 5(1), 7(3) (describing limitations on loss of nationality, and providing grounds which are per se procedurally or substantively arbitrary).

\textsuperscript{237} Id. art. 7.
All of the foregoing discussed arbitrary revocation of nationality, but to be relevant to the situation of statelessness at birth, the same reasoning would need to apply to arbitrary refusal to grant nationality. A common element in these scenarios that permit exceptions to the deprivation of nationality is a voluntary act; yet in cases of child statelessness, the child commits no voluntary act that results in statelessness. In addition, the HRC has held that denial of nationality is “just as grave” as a deprivation of nationality. Moreover, if it is legitimate to revoke nationality when an individual has another nationality, it may be illegitimate and arbitrary to refuse nationality when the individual has none.

Perhaps even more compelling is the underlying logic of the rules on jurisdiction and application in the various human rights treaties. Consider that when a child is born in a state’s territory, the state acquires jurisdiction over that new person and must ensure his or her human rights. Because the child was born in that state, there is potentially no other state that acquires jurisdiction to ensure those rights. The territorial state thus accrues the obligation to provide that the child have “a” nationality. This obligation could be discharged in one of two ways: either the territorial state extends its nationality to the child, or the territorial state otherwise secures de jure nationality for the child. The result is that the child then has “a” nationality. Certainly, this cannot be merely asserting an opinion that the child should have the nationality of some other state, because unless the child acquires the nationality de


240. SG Report on Arbitrary Deprivation of Nationality Jan. 2009, supra note 91, ¶ 60 (“In the context of the avoidance of statelessness, arbitrary denial of nationality is just as grave as arbitrary deprivation of nationality.”).

241. See Eri. Award, supra note 210, ¶¶ 57, 59.

The Obligation to Grant Nationality to Stateless Children

jure, the child then does not have “a” nationality. If the territorial state cannot secure a nationality for the child, then, in order for the child to have “a” nationality, the territorial state must extend its own nationality to that child. Thus, in this case, refusal to grant nationality would amount to an arbitrary denial of nationality. On this basis, the UNHCR Executive Committee encourages states to avoid arbitrary denial of nationality and several human rights treaties have been interpreted to cover arbitrary refusal to grant nationality. In interpreting the ICCPR, the HRC has come to a similar conclusion that all efforts must be made to ensure each child born has a nationality, perhaps even providing for nationality of the state of birth, as has the Inter-American Court of Human Rights (IACHR) in interpreting the American Convention on Human Rights (AmCHR).

A similar analysis applies in the case of the CRC which has almost universal adherence and specifically provides that children have a

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248. See Yean & Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 3; 1961 Statelessness Convention, supra note 107, art. 1(1)(a); Migrant Workers Convention, supra note 178, art. 29; CRC, supra note 60, art. 7(1); ICCPR, supra note 59, art. 24(3).

249. See generally U.N. Treaty Collection, Convention on the Rights of the Child, ch. IV, no. 11, UNITED NATIONS https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (last visited Apr. 20, 2019) [hereinafter U.N. Treaty Collection, CRC] (noting that the one state that has failed to adhere to the CRC is the
right to a nationality from birth, and that the birth must be registered.\textsuperscript{250} Now, it is true that some states entered declarations or reservations to these provisions in the CRC. These states include: Kuwait, *\textsuperscript{251} Malaysia,\textsuperscript{252} Monaco,\textsuperscript{253} and the UAE\textsuperscript{254} A few other states, including Andorra,\textsuperscript{255} Oman,\textsuperscript{256} Poland,\textsuperscript{257} Switzerland,\textsuperscript{258} Thailand,\textsuperscript{259} and Tunisia,\textsuperscript{260} initially entered reservations to article 7, but subsequently withdrew those reservations. Liechtenstein also initially entered a reservation,\textsuperscript{261} though that reservation longer appears on the UN Secretary-General’s database, and is apparently also withdrawn. Kuwait’s reservation simply clarifies that the grant of nationality \textit{jus soli} to children born in the territory applies only to “foundlings.”\textsuperscript{262} Malaysia, Monaco, and the UAE entered reservations limiting the grant of nationality to the rules under their national laws.\textsuperscript{263} Strangely, only the UAE reservation received an objection to its reservation.\textsuperscript{264}

United States). However, the US practices \textit{jus soli}, so children born in the state, regardless of immigration status, receive US nationality. See U.S. CONST. amend. XIV, §1.

\textsuperscript{250} See CRC, supra note 60, art. 7; RUTH DONNER, THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW 217–18 (2nd ed. 1994).

\textsuperscript{251} See U.N. Treaty Collection, CRC, supra note 249, at Kuwait: Declarations upon ratification.

\textsuperscript{252} See id. at Malaysia: Reservation.

\textsuperscript{253} See id. at Monaco: Declaration.

\textsuperscript{254} See id at UAE: Reservations.

\textsuperscript{255} Id. at n.21(b).

\textsuperscript{256} Id. at n.49.

\textsuperscript{257} Id. at n.50.

\textsuperscript{258} Id. at n.58.

\textsuperscript{259} Id. at n.22.

\textsuperscript{260} Id. at n.61(3).

\textsuperscript{261} Id. at n.12.

\textsuperscript{262} Id. at Kuwait.

\textsuperscript{263} Id. at Malaysia, Monaco, & n.62.

\textsuperscript{264} Id.

\textsuperscript{262} Id.

\textsuperscript{263} Id.

Government of the Netherlands made the following declaration with regard to the reservation made by the Government of the United Arab Emirates with respect to article 7: “The Government of the Kingdom of the Netherlands assumes that the United Arab Emirates shall ensure the implementation of the rights mentioned in article 7, first paragraph, of [the Convention] not only in accordance with its national law but also with its obligations under the relevant international instrument in this field.”
The Committee on the Rights of the Child reads the obligations in the CRC to oblige states to take steps to ensure each child born in their territory has a nationality. The CRC has further been interpreted to require states to grant their nationality to children born on their territory who would otherwise be stateless. The reasoning of the Committee largely follows the arguments made in this Article regarding the interpretation of the ICCPR and other human rights treaties requiring birth states to ensure the child acquires a nationality. In fact, the same conclusion was also reached by the Committee on the Rights of Migrant Workers, and that Committee has adopted a joint General Conclusion.

265. See HRC Gen. Comm. No. 17, supra note 76, para. 8; CRC, supra note 60, art. 7(2).

with the Committee on the Rights of the Child affirming it. As the only state with jurisdiction over the child at birth, the territorial birth state must immediately provide for the child’s needs under the CRC.

This obligation could potentially be discharged by securing a different nationality for the child, for example, by liaising with the state of the parent(s)’s nationality and confirming the child’s nationality. However, the birth state could not simply presume that the child would receive nationality upon examining the other states’ nationality laws. The birth state must secure the nationality in order to discharge the duty to grant nationality. This cannot be satisfied with a hypothetical nationality. Could the birth state instead secure the nationality of a third state? Potentially yes. This outcome would depend on a third state being willing and having the legal means to grant nationality to the child, of course. Most likely, states with no genuine link would not have prescribed nationality in that case, but we can imagine a state with a particularly generous nationality law. However, the birth state must continue to pursue the child’s best interests in securing this nationality. If the state were to secure nationality that had no genuine link and perhaps require the child to be removed to a new state far away, perhaps without the right of the parent(s) to accompany the child to the state, we can easily conclude that this outcome would not be in the child’s best interests. While the best interests analysis does not necessarily result in the same outcome as a genuine link, the outcomes are likely to be comparable.

The consideration of the child’s best interests is not merely an afterthought, but is a mandatory guiding rule. The CRC demands that all decisions concerning children be taken with their best interests in mind. Article 3 requires that the best interest analysis apply to all of the issues in the Convention, including nationality, as well as any other measures impacting the child. Thus, decisions on nationality, and any matter that implicates identity, must be motivated by the best interests of

267. See CMW-CRC Joint General Comment, supra note 196, paras. 64–66.
270. See CRC, supra note 60, art. 3.
271. See id.
the child.\textsuperscript{272} Avoiding statelessness is clearly in the child’s best interest.\textsuperscript{273} It would take a rather extreme situation of mistreatment or nationality of serious inutility to find that a child is better off without nationality at all, rather than have the nationality of his or her state of birth. On this basis, if there were any doubt about the foregoing arguments, it should be conclusive that any doubt would be resolved in favor of an outcome that provides for a child’s nationality.

From this foregoing practice, we can see that essentially all states in the world have agreed that children in particular have a right to a nationality and have a right to an identity that includes their nationality.\textsuperscript{274} The fact that the protection of a nationality, which already accrues to all persons regardless of age, is repeated, especially for children, might give us pause. There must be a reason for protecting a child’s nationality again in an additional treaty. Perhaps that double protection is not meant to merely repeat the same protection because that interpretation would mean that one provision is superfluous. It may mean that the additional protection for children increases the rigor of the

\begin{footnotes}
\item[274] See CRC, supra note 60, art. 8; SG Report on Arbitrary Deprivation of Nationality Jan. 2009, supra note 91, ¶ 59; HRC Res. 32/5, supra note 88, ¶ 11; Yean & Bosico v. Dominican Republic, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 137 (Sept. 8, 2005).\end{footnotes}
protection for this vulnerable group. While it has not been widely understood to be a norm of *jus cogens*, there are other ways in which the protection might be stronger. For example, the protection could be to make the test for arbitrariness more demanding, or it could be to emphasize the addition of the “best interests of the child” analysis.

The conclusion above is that we can understand the terms on arbitrary revocation of nationality in human rights treaties to also cover the arbitrary refusal to grant nationality to stateless children, but there are some treaties that also provide for this obligation expressly. The Statelessness Conventions were already mentioned. Another convention includes the Convention on Certain Questions Relating to the Conflict of Nationality Laws from 1930,\textsuperscript{275} which specifically provides that the children of unknown persons, or persons known to be stateless, must be granted the nationality of the state in which they are born or discovered.\textsuperscript{276} Also, a protocol to this Convention specifically aimed at certain cases of statelessness obliges states to grant nationality to a child when the mother has the state’s nationality, but for other reasons, the child would be stateless.\textsuperscript{277} Unfortunately, while there are states party from all the continents of the world, this treaty does not attract the adherence of a large number of states.\textsuperscript{278}

Reviewing all of these international instruments as evidence of state practice and *opinio juris*, we find that there is strong evidence that there is a right to a nationality under customary international law, but more specifically, that there is a right for children to receive the nationality of their place of birth, if they would otherwise be stateless. This statement does not demand that all children born in the territory of the state receive nationality of the territorial birth state,\textsuperscript{279} and the great number of states still dominantly practicing *jus sanguinis* attests to the lawfulness of the *jus sanguinis* rule generally.\textsuperscript{280} This conclusion on the responsibility of

\textsuperscript{275}. See generally Convention on Certain Questions Relating to the Conflict of Nationality Laws, *supra* note 55.
\textsuperscript{276}. See id. arts. 14–15.
\textsuperscript{277}. See Protocol Relating to a Certain Case of Statelessness, *supra* note 181, art. 1.
\textsuperscript{280}. See infra Section III.D.
the birth state only requires that otherwise stateless children, for whom the state of birth cannot secure another nationality, must receive local nationality upon birth.

2. Regional Treaties

In the above section, we only considered treaties that were open for all states. However, in addition to these global treaties, at least three of the major world regions (Europe, the Americas, and Africa), have adopted human rights treaties that provide for the right to nationality, especially concerning children. Many of them specify that if a person would otherwise be stateless, the state of birth must extend its nationality.

The European region of the world has a long list of treaties that offer some protections for a right to a nationality. These instruments include those adopted within the Council of Europe and European Union. Within the Council of Europe, there are three major instruments that are relevant: the European Convention on Human Rights, the European Convention on Nationality, and the Convention on the Avoidance of Statelessness in relation to State Succession. In addition, the Council of Ministers has adopted recommendations pertaining to the issue of child statelessness.

The European Convention on Human Rights does not specifically address nationality. The one exception is article 3 of Protocol to the

282. See AmCHR, supra note 59, art. 20; African Charter on the Rights and Welfare of the Child, supra note 281, art. 6; Covenant on the Rights of the Child in Islam, supra note 160, art. 7.
283. See AmCHR, supra note 59, art. 20(2).
288. See sources cited supra note 96.
289. See generally ECHR, supra note 285.
Convention, which prohibits denationalization with the purpose of expulsion. For many cases, applicants have attempted to invite the European Court of Human Rights ("ECtHR") and the European Commission of Human Rights to protect their nationality, and have failed because there is no explicit right to a nationality under the ECHR. A claim under article 6 (right to fair trial) for failure to provide a hearing for nationality revocation proceedings, for example, failed.

However, there are three bases where claims on issues of nationality under the ECHR have had some success. The first and most important is article 8, right to private life. In general, the right to a private life does not necessarily protect any person’s right to acquire a nationality, although it can protect the right against loss of nationality. An arbitrary deprivation of nationality may implicate article 8 to the degree that it does intrude upon a person’s private life, specifically his or her identity. Article 8 is also interpreted to mean a protection from

290. See Council of Europe, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, as amended by Protocol No. 11, art. 3, Sept. 16, 1963, E.T.S. No. 46.


294. See ECHR, supra note 285, art. 8.


creating situations of statelessness.\textsuperscript{299} Taken with article 14 on non-discrimination, discriminatory decisions regarding nationality are also violations of article 8.\textsuperscript{300} If this deprivation results in statelessness, it will impact identity.\textsuperscript{301} In addition, the ECtHR has held that refusal of acquisition of nationality could also affect a person’s social identity, and thus his rights under article 8.\textsuperscript{302} This finding includes stateless persons refused local nationality upon state succession.\textsuperscript{303} Thus, refusal to grant nationality by unreasonably or discriminatorily asserting that the person acquired nationality from another state was a violation of Article 8.\textsuperscript{304} This series of cases suggests that the ECtHR has essentially found an implicit, partial right to a nationality in the ECHR.\textsuperscript{305} Because the ECHR protects against refusal of nationality in the same way as deprivation of nationality,\textsuperscript{306} and statelessness is a violation even without discrimination\textsuperscript{307}, the refusal of nationality to an otherwise stateless child must be a violation of the ECHR, article 8.

In addition to article 8, the ECtHR has also considered that other parts of the ECHR, as well as international law generally, will also protect nationality,\textsuperscript{308} and it has pointed to the state of residence to discharge its

\textsuperscript{299} See K2 v. United Kingdom, No. 42387/13 Eur. Ct. H.R. paras. 66–67 (2017) (holding that deprivation of nationality was not a violation of Article 8 of the ECHR, right to family and private life, because the individual was not left stateless); see generally Slavov v. Sweden, No. 44828/98 Eur. Ct. H.R. (1999) (removal of nationality of dual national acceptable).

\textsuperscript{300} See Genovese, No. 53124/09 Eur. Ct. H.R. paras. 30–33.


\textsuperscript{305} But see ECN Explanatory Report, supra note 210, para. 16.


\textsuperscript{308} See infra notes 317–20 and accompanying text.
positive human rights obligations.\textsuperscript{309} The ECtHR has held (although refusing the application for failure to exhaust local remedies) that denial of nationality due to state succession or discriminatory laws could result in degrading treatment, contrary to article 3.\textsuperscript{310} In addition, article 4 of Protocol 4 to the ECHR prohibits denationalization for the purposes of expelling a national.\textsuperscript{311} Again, if we consider refusal of nationality to an otherwise stateless child born in a state to be the equivalent to deprivation of nationality, then refusal of nationality for purposes of expulsion would be a violation, even absent discrimination. In a dissenting opinion in \textit{Ramadan v Malta}, Judge Pinto de Albuquerque observed, interestingly, that states who are parties to the ECHR have a positive obligation to grant nationality to children born in their territories who would otherwise be stateless and that this protection is not limited to foundlings.\textsuperscript{312} Similarly, the Court held in \textit{Kurić and others v. Slovenia} that there was a customary international positive obligation to avoid statelessness.\textsuperscript{313} Lastly, the Court has found in \textit{Andrejeva v. Latvia}, that, in making a proportionality analysis, the burden falls on the person’s state of residence to discharge its obligations under the Convention towards the relevant individual.\textsuperscript{314}

In addition to the ECHR, and partly to address the lack of express nationality protections in that treaty, the Council of Europe has also adopted the European Convention on Nationality (ECN). In this instrument, all persons are guaranteed a right to a nationality,\textsuperscript{315} echoing

\begin{itemize}
\item[309.] See id.
\item[311.] See Council of Eur., Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, E.T.S. No. 46, art. 3(1) (1963).
\item[312.] See \textit{1961 Statelessness Convention}, supra note 107, arts. 1, 2; \textit{AmCHR}, supra note 59, art. 20(2); African Charter on the Rights and Welfare of the Child, supra note 281, art. 6(4); CRC, supra note 60, art. 7; European Convention on Nationality, supra note 202, arts. 6(1)(b)-(2); \textit{Covenant on the Rights of the Child in Islam}, supra note 160, art. 7(3).
\item[314.] See \textit{Andrejeva v. Latvia}, No. 55707/00 Eur. Ct. H.R. paras. 81–89 (2009) (looking to state of residence on which to place proportionality analysis).
\item[315.] See European Convention on Nationality, supra note 202, art. 3.
\end{itemize}
the terms of the UDHR. In order to give effect to this right, the Convention specifically commands a particular application of \textit{jus soli} and \textit{jus sanguinis}: states must grant nationality to a child at birth when either parent is a national and a child is born in the state. Thus, the Convention clearly contemplates the place of birth as the critical factor in determining which state bears the primary responsibility for ensuring nationality. More importantly, the Convention expressly requires states to grant nationality to a child born in their territory where the child would be otherwise stateless, although it is permissible to demand that the child make a (non-discretionary) application for nationality. Here, it is important to note that part of the intention in drafting the ECN was to serve as guidance for former communist states in Europe that were joining the Council of Europe. In this way, this treaty serves as the \textit{opinio juris} of at least the existing states of the Council of Europe and their expectations from new members.

Lastly, the Council of Europe has also adopted the Convention on the Avoidance of Statelessness in relation to State Succession. This instrument provides for the right of nationality, though it is limited to the situation of state succession that produces statelessness. While the focus of this treaty is on maintaining nationality and avoiding stateless when statehood or territory changes, the Convention obliges successor states to grant nationality to persons born in the territory of the new state whose parents also “had nationality of the predecessor state” that claimed the territory if the child would otherwise become stateless.

316. \textit{See UDHR, supra note 59, art. 15(1).}
317. \textit{See European Convention on Nationality, supra note 202, arts. 3, 6(1)–(2).}
318. \textit{Id.} Where the 1961 Convention only allows States to demand \textit{habitual} residence from the stateless applicant, the ECN allows States to require both \textit{lawful and habitual} residence. \textit{Id.} art. 6(3).
320. \textit{See European Convention on Nationality, supra note 202, arts. 4, 7(1)–(3).}
321. \textit{See ECN Explanatory Report, supra note 210, para. 14.}
323. Convention on Statelessness, \textit{supra} note 322, art. 2.
324. \textit{Id.} art. 10.
The protection in the convention is for states to “take all appropriate measures to prevent” statelessness. In addition, the convention reaffirms the right to nationality and orders successor states to grant nationality to persons who would otherwise become stateless who were habitually resident in the territory and had been born in the territory, again reaffirming the special importance of place of birth for avoiding statelessness.

Of course, the other major regional legal regime on the European continent is the European Union. The EU has adopted the Charter of Fundamental Rights as a binding obligation, but the Charter does not expressly protect the right to nationality. It does, however, protect the right against “[a]ny discrimination” on grounds of race, ethnicity, social origin, genetic features, and so on. Because this provision covers “[a]ny discrimination,” this protection presumably extends to nationality legislation. As noted above, discriminatory distinctions are sometimes applied in cases of acquisition of nationality, and we might wonder whether “social origin” might include statelessness. Also, the Charter protects an individual’s private life. Again, following the discussion above, the human right to private life in the context of the ECHR and other instruments includes the right to acquire a nationality of some state, and the state of birth is generally understood to be the default when the person would be otherwise stateless.

325. *Id.* art. 3.
326. *Id.* art. 2.
327. *Id.* art. 5 (providing at least two other ways, besides birth on the territory, to gain nationalities).
329. *See id.* art. 21.
330. *Id.*
Aside from the Charter, the EU legal system following the Lisbon Treaty does not protect a right to a nationality, although it does protect EU citizenship, and through that protection, it does contain some rights against statelessness. The amended Treaties on European Union (TEU) command that — at least for the common policy on asylum, immigration, and external border control — the EU Member States will treat stateless persons as third-country nationals. While this protection obliges Member States to bring stateless persons into the legal order somewhat, its application is limited and does not cure stateless situations fully by ensuring nationality. Looking at EU citizenship, EU law does have some protections against loss of nationality. A person acquires EU citizenship when he or she holds the nationality of a Member State of the EU. The Member States are largely independent of the EU legal order in determining which persons they will consider as their nationals, and thus, who will receive access to EU citizenship.

following surrogacy arrangements abroad was in breach of the Convention (June 26, 2014).


335. See sources cited infra notes 339–358.

336. TEU, supra note 334.

337. Id. art. 3.

338. Id. art. 3.

339. See id. art. 61.

340. See sources cited infra notes 344–358.


However, the Court of Justice of the EU (ECJ) has reached a few cautious conclusions that Member State’s determinations on nationality are not completely free from EU law.\(^\text{344}\) One example is that an EU Member State cannot apply its domestic law on how it assesses the dominant nationality of dual nationals to reach the result that an EU citizenship is not recognized by a Member State.\(^\text{345}\) More importantly for this paper, when an EU Member State proposes to revoke the nationality of an individual, and consequently revoke EU citizenship, it must take into consideration the individualized impact on the person under EU law.\(^\text{346}\) Specifically, the deprivation must have a legitimate purpose,\(^\text{347}\) be

\(^{343}\) See Council Conclusions, Denmark on the Treaty of European Union, annex. 1, 1992 O.J. (C 348) 1, 2 (Citizenship); Case C-369/90, Micheletti v. Delegación del Gobierno en Cantabria, 1992 E.C.R I-4239; Report from the Commission on the Citizenship of the Union, supra note 341, at 2 (“[W]herever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.”) (internal quotations omitted); Report from the Commission: Third Report from the Commission on Citizenship of the Union, at 7, COM (2001) 506 final (Sept. 7, 2001) (“It is therefore worth pointing out that: – it is for each Member State to lay down the conditions for acquiring and losing the nationality of that state.”); Report from the Commission: Fourth Report on Citizenship of the Union, supra note 341, at 5 (“Without prejudice to the fact that the Member States alone remain competent in the area of nationality laws, the Commission has presented its views on naturalisation of legal migrants in the Communication on immigration, employment and integration in 2003.”); Report from the Commission: Fifth Report on Citizenship of the Union, at 3, COM (2008) 85 finals (Feb. 15, 2008); Note from the Government of the United Kingdom of the Great Britain and Northern Ireland to the Government of the Italian Republic concerning a Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland replacing the Declaration on the Definition of the term “Nationals” made at the time of signature of the Treaty of Accession of 22 January 1972 by the United Kingdom of Great Britain and Northern Ireland to the European Communities, Dec. 31, 1982, Gr. Brit.–It., Gr. BRIT. T.S. No. 67 (1983) (Cd. 9062).

\(^{344}\) E.g., Case C-135/08, Rottmann v. Bayern, 2010 E.C.R. I-1449, I-1448.


\(^{347}\) See Rottmann, 2010 E.C.R. at I-1488–89.
proportionate,\(^{348}\) and not be arbitrary.\(^ {349}\) As noted above, deprivation resulting in statelessness could be considered arbitrary. The ECJ, however, has refused to extend deprivation rules to cases of refusal to grant Member States’ nationality and EU citizenship.\(^ {350}\) EU law generally concerns itself not with the acquisition of nationality, but with its loss.\(^ {351}\) Moreover, if the individual does not hold EU citizenship, the protections of citizenship within that legal order do not apply.\(^ {352}\) However, it could be argued that the ECJ decision in \textit{Rottman} did extend to acquisition of nationality because the \textit{Rottman} deprivation order at issue was, in fact, an order to reverse and refuse the naturalization application of the individual on the grounds that he had committed fraud in the naturalization process.\(^ {353}\) What has not been discussed in detail is whether deprivation of nationality and EU citizenship impacts the identity of the person, and then implicates EU law protections on identity.\(^ {354}\) Therefore, EU law is not contributing much to the discussion on preventing child statelessness, and these rules must be viewed as a \textit{lex specialis} for EU citizenship rules.

Turning to the Americas, the AmCHR expressly provides for the right to a nationality, specifically that states must extend nationality to


\(^{352}\) \textit{See Rottmann}, 2010 E.C.R. at I-1490, ¶¶ 56, 59. \textit{Also see} Case C-221/17, Tjebbes v. Minister van Buitenlandse Zaken, 2019 E.C.R. ¶ 28 (suggesting, without deciding, that deprivation of nationality as the direct result of the exercise of EU rights by an EU citizen would be an unlawful deprivation or nationality).


\(^{355}\) Case C-62/14, Gauweiler v. Bundestag (Opinion of Advocate General Cruz Villalón) 2015 E.C.R. para. 61 (arguing that “a clearly understood, open, attitude to EU law should in the medium and long term give rise, as a principle, to basic convergence between the constitutional identity of the Union and that of each of the Member States.”).
children born in their territories that would be otherwise stateless. This provision was the center of three of the most important cases on the right to nationality for stateless children: Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Yean and Bosico Children, and Expelled Dominicans and Haitians. In Expelled Dominicans and Haitians, the Inter-American Court of Human Rights (IACHR) observed that the state owed the children certain human rights, including the right to a nationality, and that this right was acquired at the time of birth. In Yean and Bosico, the Court went further and ruled that the state of birth had to grant nationality due to its binding obligation to avoid statelessness. In that case, the Dominican Republic refused to extend nationality to children born in their territory if the children were regarded as being “in transit”, despite their parents residing in the Dominican Republic for years. The IACHR held that states have an obligation under international law to avoid and reduce statelessness, and that the right to a nationality provides a foundational link to a state for protection of human rights.

356. AmCHR, supra note 59, art 20(2).
360. Expelled Dominicans & Haitians v. Dom. Rep., Preliminary objections, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 258 (Aug. 28, 2014) (“Regarding the moment at which the State’s obligation to respect the right to nationality and to prevent statelessness can be required, pursuant to the relevant international law, this is at the time of an individual’s birth.”).
362. See id. ¶ 140 (obligation to avoid and reduce statelessness); see also Expelled Dominicans & Haitians, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 258; 1961 Statelessness Convention, supra note 107, art. 1(1); Migrant Workers Convention, supra note 178, art. 29; CRC, supra note 60, art. 7(1); ICCPR, supra note 59, art. 24(3).
363. See Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, supra note 61, paras. 32–35 (“the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question”).
In addition to the AmCHR, the Americas also have a regional instrument that again provides for a right to nationality and, specifically, the right to nationality of the state in which a child is born if he or she would otherwise be stateless.\textsuperscript{364} It might also be helpful here to note that the nationality law tradition in the Americas is predominantly one of \textit{jus soli}.\textsuperscript{365}

Moving to Africa, we again find the right to a nationality and the obligation to grant nationality at birth is established in regional law.\textsuperscript{366} The African Charter on Human and Peoples’ Rights does not expressly provide for a right to a nationality,\textsuperscript{367} although a protocol has already been drafted and approved that would grant this right expressly.\textsuperscript{368} That being said, the Charter contains many of the other rights mentioned in this study, such as the right against discrimination,\textsuperscript{369} which must be applied to nationality laws. Article 13 adds additional rights for citizens of the member states, so it is clear that the rights against discrimination, including in the application of nationality laws, apply to non-citizens.\textsuperscript{370} In addition, articles 3(2)\textsuperscript{371} and 5\textsuperscript{372} protect the rights of individuals to equality and to live in dignity, and article 12 protects the individual’s right to leave any state.\textsuperscript{373} The African Commission on Human and Peoples’ Rights has interpreted the combined effect of these articles as protecting a right to a nationality and a right against arbitrary refusal of nationality.\textsuperscript{374} Once again, if we understand the creation of statelessness

\begin{footnotesize}
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\item 364. See \textit{Am. Decl.}, supra note 59, art. XIX (“Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.”).
\item 365. See infra Sec. III.D.
\item 366. See infra notes 371–386 and accompanying text.
\item 368. See ACHPR, \textit{Decision on the Report of the Activities, supra} note 95, para. 5.
\item 369. See African Charter H.P.R., \textit{supra} note 367, arts. 2–3.
\item 370. See \textit{id.} art. 13.
\item 371. See \textit{id.} art. 3.
\item 372. See \textit{id.} art. 5.
\item 373. See \textit{id.} art. 12
\end{itemize}
\end{footnotesize}
as the arbitrary exercise of nationality regulation, and we also understand refusal to grant nationality as a deprivation of nationality, then the refusal to grant nationality at birth leading to statelessness would be a violation of the right to a nationality. This is even more significant when the individual lived in the state in infancy after birth. When a person has no nationality, he does not have a state against which to oppose his right to leave, nor can he, at least in the Modies case facts, live with dignity and equality.

Looking specifically at children, the African region also has the African Charter on the Rights and Welfare of the Child. The Charter prohibits the arbitrary denial of nationality, which has been interpreted to mean the right of nationality from birth. In the Nubian Children case, the Committee monitoring compliance with the Child Welfare Charter held that the state of birth has the primary obligation to ensure nationality and can discharge this obligation by securing nationality for the child from another state, and if the other state failed or refused, then the birth state had the obligation to extend nationality. Lastly, the Charter also protects the best interests of the child and, just like the CRC,
has been interpreted to prohibit the creation of statelessness, which, in the view of the Committee, is never in the best interests of a child.\textsuperscript{382}

The European, American, and African regions have some of the more developed regional law prohibiting statelessness, granting a right to nationality, and even ordering the extension of nationality to children born in the territory who would otherwise be stateless. There are a few miscellaneous regional, traditional, or similarly closed treaties that add to the regional and international instruments mentioned above. A similar rule is contained in the 2004 Revised Arab Charter on Human Rights, which does not prohibit arbitrary deprivation, but rather deprivation “without a legally valid reason.”\textsuperscript{383} To this convention, we should add a treaty that is aimed at predominantly Muslim states, the Covenant on the Rights of the Child in Islam, which obliges states to actively seek solutions for stateless children and provides for nationality for foundlings.\textsuperscript{384} The Commonwealth of Independent States has its own human rights treaty that expressly provides for a right to nationality and against arbitrary deprivation of the nationality.\textsuperscript{385} In addition, article 19 of the Charter for European Security of the Organization for Security and Co-operation in Europe provides that everyone has a right to a nationality.\textsuperscript{386} Also, the Asia and Pacific regions have a number of initiatives working towards better statelessness reduction mechanisms, especially through ASEAN, though not yet a binding treaty. Thus, not only are the member states of the Council of Europe, the EU, the Organization of American States, and the African Union bound to some form of a prohibition on child statelessness at birth, but so are states party to these additional agreements.

Having assessed the practice of states under treaty regimes combatting child statelessness, we will next turn to actions by individual states.


\textsuperscript{383} See Arab Charter on Human Rights, supra note 202, art. 29.

\textsuperscript{384} See Covenant on the Rights of the Child in Islam, supra note 160, art. 7(2); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60, ¶¶ 28, 30.


D. Domestic legislation

This section will look at the unilateral acts of states to determine if there is widespread and consistent practice in addressing child statelessness. Practice has shown that nationality and national links are usually measured by looking to the place of birth as among the most important factors.\(^{387}\) These factors are not determinative but show that under international law the default measure for status is to primarily look at place of birth. First, a large number of states in the world practice \textit{jus soli}, so the statelessness problem is solved more easily in those states.\(^{388}\) There is obviously some variety in state actions on this topic, but the norm that children should enjoy the default nationality of the place of birth is affirmed. Second, in addition to \textit{jus soli} for all children, some states that do not generally practice \textit{jus soli} do grant nationality to foundlings,\(^{389}\) expanding the practice for that group of stateless children. Third, there is even a further group of states that practice \textit{jus soli} for all stateless children,\(^{390}\) even though they may not usually grant nationality \textit{jus soli}. Combining these three categories of practice shows a widespread practice of granting nationality to stateless children under domestic law.

1. \textit{Jus soli}

\textit{Jus soli} is a widely acceptable method to avoid statelessness at birth.\(^{391}\) Clearly, there is no international \textit{opinio juris} that \textit{jus soli} must be applied to all children born in a state’s territory. \textit{Jus soli} is not itself required by international law,\(^{392}\) and \textit{jus sanguinis} is a legally permissible alternative.\(^{393}\) However, one way that statelessness in children is solved

\(^{388}\) See infra Sec. III.D.1., notes 394–469.
\(^{389}\) See infra Sec. III.D.2., notes 483–580.
\(^{390}\) See infra Sec. III.D.3., notes 587–678.
is by granting nationality to children born in the territory by simply granting nationality *jus soli*.

The states that practice *jus soli* in one form or another generally fall into three camps: common law tradition states, states in the Americas, and states following a French republican conception of citizenship. Specifically, states that extend *jus soli* to children born in their territory include: Argentina, Australia, Azerbaijan, Barbados, Belize, Benin, Bolivia, Brazil, Burkina Faso, Canada, Central Africa Republic, Chile, Colombia, Congo, Costa Rica,

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399. Code of Dahomean Nationality [Benin], Law. No. 65-17, arts. 7-10 (June 23, 1965), available at https://www.refworld.org/country,...,BEN,,3ae6b5b14,0.html.

400. Bolivia: Citizenship law, including methods by which a person may obtain citizenship; whether dual citizenship is recognized, ch. 1, art. 141, UNHCR REF WORLD, https://www.refworld.org/docid/4b7cee773c.html.

401. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 12 (Braz.).


405. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P] ch. II.


411. REPUBLIC OF ECUADOR CONSTITUTION 1998, art. 7(1).

412. CONSTITUTION OF EL SALVADOR Dec. 20, 1983, tit. IV.


416. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, FEDERAL LAW GAZETTE III 102-1, last amended by art. 3 of the First Act to amend the Federal Act on Registration and other legislation of Oct. 11, 2016, sec. 4(2)-(3) (Ger.); Aufenthaltsgesetz [AufenthG] [Residence Act], Feb. 25, 2008 FEDERAL LAW GAZETTE I p. 162, last amended Article 10(4) of the Act of Oct. 30, 2017, sec. 33 (Ger.).


423. HONDURAN CONSTITUTION Jan. 20, 1982, tit. II.

Liberia, Mali, Mauritania, Mauritius, Mexico, Moldova, Mozambique, Nepal, New Zealand, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Portugal, St. Lucia, St.

426. Irish Nationality and Citizenship Act, No. 26 of 1965, pt. 2, sec. 6 (Ir.).
428. Jamaican Nationality Act, Aug. 6, 1962, secs. 3-5; CONSTITUTION OF JAMAICA 1962, ch. II, sec. 3.
429. CONSTITUTION OF LESOTHO Apr. 1, 1993, ch. IV; Lesotho Citizenship Order, No. 16 of 1971, pt. II.
433. Mauritian Independence Order, No. 54 of 1968, ch. III.
434. Constitución Política de los Estados Unidos Mexicanos [CP], ch. 2, art. 30, Diario Oficial de la Federación [DOF] 03-20-1998, últimas reformas DOF 10-02-2014 (Mex.).
441. Pakistan Citizenship Act, No. II of 1951, sec. 4.
442. CONSTITUTION OF PANAMA 1972, tit. 2, arts. 8–9.
Vincent and the Grenadines, Samoa, São Tomé and Príncipe, Senegal, South Africa, Spain*, Togo, Trinidad and Tobago, Tuvalu, UK*, Uruguay, US*, Vanuatu, Venezuela, Zambia, and Zimbabwe. This practice cited above involves a considerable number of states in the world. It may also be important here to note once again that a number of states have provided for *jus soli* nationality for stateless children under their domestic law even though the state is not a party to the 1961 Statelessness Convention, for example, Philippines, Portugal, Thailand, and Turkey.

450. Senegal: Citizenship laws, including methods by which a person may obtain citizenship; whether dual citizenship is recognized and, if so, how it is acquired; process for renouncing citizenship and related documents; grounds for withdrawing an individual’s citizenship, art. 1, UNHCR REF WORLD (Apr. 27, 2007), https://www.refworld.org/docid/469cd69a8.html.
452. CÓDIGO CIVIL [Civil Code] (C.C) 1889, tit. I, art. 17.1 (Spain).
453. TOGO CONSTITUTION Oct. 14, 1992, art. 32
462. CONSTITUTION OF ZIMBABWE 2003, ch. 3, sec. 35.
466. Turkish Citizenship Law, Law No. 5901 (May 29, 2009), Off. Gazette 27256 (June 12, 2009), art. 8.
Admittedly, there is some variety in the precise application of the rule in each state, with some of these laws prescribing supplemental conditions that must be met for the otherwise stateless child to acquire nationality. Some states require residency of the parents or a term of residency following the birth, before nationality can be granted. Other states provide for nationality for otherwise stateless children, but “some laws only provide for the acquisition of nationality for children born on the territory to stateless parents, failing to recognize that a child may also be left stateless by a conflict of nationality laws even when his or her parents possess a nationality.” Another condition that sometimes appears is burdensome procedural requirements such as birth registration or documentation or the need to file an application for the nationality rather than receive it by right.

However, these minor deviations from the practice of granting nationality to stateless children born in the state reaffirm the core rule that the nationality of a stateless child is linked to the place where a child is born. Even if we were to take a very conservative and narrow reading of the practice of *jus soli*, we must still come away with the impression that there is a considerable expression of opinion that a child should acquire nationality where he or she is born. This author believes we should take a more liberal view of the practice given its diversity and affirmation of the underlying norm, but for sake of this argument, is willing to accept a conservative view that international opinion might only require nationality for those with residence or willingness to complete a minor and non-discretionary procedure, unless they acquire

469. *See, e.g.,* Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, FEDERAL LAW GAZETTE III 102-1 at § 4(3)(1), last amended by art. 1 of the Second Act amending the Nationality Act of Nov. 13, 2014 (Ger.); Nationality Act (Mozam.), MOZ-11-, June 25, 1975, tit. II, ch. 1, art. 23, para. 1(c).
472. *See, e.g.,* British Nationality Act 1981, c. 61, sched. 2, sec. 3(1) (Gr. Brit.).
another nationality prior to reaching the age of majority. However, these requirements cannot work against the best interests of the child or be otherwise discriminatory or arbitrary. For example, as noted in the Yean and Boscio case above, the Constitution of the Dominican Republic provides for *jus soli* nationality with the exception of persons “in transit.”\(^{473}\) However, the transit exception has been applied to persons presumed to be of Haitian descent to justify exempting their children from the *jus soli* rule. The IACHR has criticized this interpretation of the law.\(^{474}\) This view was echoed by other states during the Dominican Republic’s Universal Periodic Review.\(^{475}\) Thus, in general, non-burdensome, non-discretionary procedural requirements appear to be acceptable, but residence and a term of residence after birth are far more problematic.

When it comes to establishing practice and *opinio juris* granting nationality to children born in the territory who would be otherwise stateless, we already have half of the states in the world for which the solution is being applied simply by the application of *jus soli*. This leaves us to examine the practice and *opinio juris* of the remaining other half of the states in the world.

2. *Jus Soli* for Foundlings

Following from the above, another category of practice to examine is the treatment of foundlings. This issue has already been mentioned above, but it is significant again here. A foundling is a child that is found in a state and whose parentage is unknown.\(^{476}\) Under the Hague Convention of 1930, such a child is presumed to have been born in the “State in which it was found.”\(^{477}\) In addition, not only is its place of birth

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\(^{474}\) Id. ¶¶ 152, 153.


presumed, but its nationality is also presumed as the state of birth.\footnote{See id.; 1961 Statelessness Convention, \textit{supra} note 107, art. 2.} International law has long guaranteed the acquisition of nationality by foundlings.\footnote{See \textit{generally} Convention on Certain Questions Relating to the Conflict of Nationality Law, \textit{supra} note 55, art. 14; 1961 Statelessness Convention, \textit{supra} note 107, art. 2; Covenant on the Rights of the Child in Islam, \textit{supra} note 160, art. 7(3).} Lacking any reason to apply a default rule of any other state, the state of birth is the most important, perhaps only, connection the child has to any state and so place of birth becomes the rule for determining nationality.

Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Chad, PR China, Congo, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Djibouti, Egypt, Eritrea, Estonia, Finland, France, Gabon.


501. Nationality Law of the People’s Republic of China (promulgated by Order No. 8 of the Chairman of the Quanguo Renmin Diabiao Dahui Changwu Weiyuanhui Gongbao [STANDING COMM. NAT’L PEOPLE’S CONG. GAZ.], effective Sept. 10, 1980), art. 6.

502. Code de la nationalité congolaise, Loi 35-61 [Congoles Nationality Code, Law No. 35-61], tit. 1, art. 9 (1962);


510. Eritrean Nationality Proclamation, No. 21/1992, sec. 2(3).

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Germany,* 515 Ghana,* 516 Greece,* 517 Guinea,* 518 Honduras,* 519 Hungary,* 520 Indonesia,* 521 Iran,* 522 Ireland,* 523 Italy,* 524 Japan,* 525 Kazakh,* 526 Kenya,* 527 Kiribati,* 528 DPR Korea,* 529 Korea,* 530 Kosovo,* 531 Kyrgyzstan,* 532 Latvia,* 533 Liberia,* 534 Lithuania,* 535 Luxembourg,* 536

513. CODE CIVIL [C. CIV] [CIVIL CODE] ch. II, art. 19 (Fr.).
515. Staatsangehörigkeitsgesetz [StAG] [Nationality Act], July 22, 1913, FEDERAL LAW GAZETTE III 102-1 at § 4(2), last amended by art. 1 of the Second Act amending the Nationality Act of Nov. 13, 2014 (Ger.).
516. CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, ch. 3, sec. 6(3).
518. MANBY, supra note Error! Bookmark not defined., at 18–19.
522. Nationality Law, Sept. 21, 2006, art. 976, para. 3 (Iran).
525. Kokuseki-hō kisoku [Nationality Law], Law No. 147 of 1950, art. 2(3) (Japan).
528. CONSTITUTION OF KIRIBATI 1980, ch. III, sec. 20 (the Kiribati Independence Order 1979 is part of the Constitution).
531. Republika e Kosevës [Republic of Kosovo], Law on Citizenship of Kosovo, Law No.04/L-215, art. 7.1.
533. Citizenship Law (Lat.), ch. I, art. 2(3).
Madagascar, Malawi, Mali, Malta, Monaco, Mongolia, Morocco, Namibia, Nepal, the Netherlands, Nicaragua, Norway, Papua New Guinea, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Serbia, St. Kitts.
Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Republic of China on Taiwan Island, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, U.A.E., UK, Uzbekistan, Vietnam, and Yemen. Even
more states have such a policy, yet otherwise have highly exclusive *jus sanguinis* regimes, so foundlings represent a significant divergence from their usual nationality policy.\(^ {578}\) Even more important for foundlings, neither residence nor majority age are required.\(^ {579}\) At least one state that could potentially be a specially interested state, Latvia,\(^ {580}\) initially refused nationality to foundlings, but changed its legislation to grant nationality after this practice was strongly criticized as a violation of international human rights norms.\(^ {581}\) Also, since an ILC study in 1953, all states with foundling laws have retained them except Guatemala, Iceland, Mexico, and Uruguay, and seventy-two states have added legislation on foundlings.\(^ {582}\) This widespread and expanding practice with a consistent pattern of *opinio juris* shows that a certain class of de facto or de jure stateless children who need their identity to be settled are granted nationality of the state of birth. This practice again reaffirms the underlying norm that the link between the child and his or her state of birth must be the default nationality in cases of uncertainty or gaps in the law.

### 3. *Jus soli* for All Stateless Children Born in the Territory

The last survey of legislation will specifically examine states that provide nationality *jus soli* to otherwise stateless children born in their territory. Based on the prior list of states that practice universal *jus soli*, at least in some form (conditional upon majority, based on residence, etc.), we find that a great number of states already grant nationality to

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576. Nationality Law, art. 6(5) (1988) (Viet.).
577. Law No. 6 of 1990 on Yemeni Nationality, art. 3(d) (1990).
578. See, e.g., Bahraini Citizenship Act, art. 5(B) (1963); e.g., Kokuseki-hō kisoku [Nationality Law], Law No. 147 of 1950, art. 2(3) (1950) (Japan); e.g., Nationality Law of Madagascar, 1960, Title II; Ordinance No.60-064 (1960); e.g., *Monegasque Citizenship, supra* note 541; e.g., Act on Norwegian Nationality, No. 51/2005, ch. 2, s 4 (2005) (amended 2006); e.g., Act on Romanian Citizenship, No. 21/1991, art. 5(3) (amended 2010); e.g., Federal Law No (10) for 1975 Concerning Amendment of Certain Articles of the Nationality and Passports Law No (17) for 1972, art. 2 (e) (1975) (U.A.E.).
579. See *supra* notes 498–595.
582. See generally ILC, II YB 1953, Add. 1, *supra* note 72.
stateless children born in their territory. We add to that list states that grant nationality to children who are discovered in their territory, born to unknown parents, and are accordingly at risk of statelessness. Between these two lists of practice, most of the world has a consistent approach to stateless children.

In addition, we also have a number of states that do not normally practice *jus soli*, but will do so only for the narrow category of children who are born in the state but do not have a nationality. These states include: Afghanistan, Algeria, Angola, Antigua and Barbuda, Armenia, Austria, Belarus, Belgium, Benin, Bosnia, Bulgaria, Burkina Faso, Burkundi, Cameroon,
Cape Verde, P.R. China, DR Congo, Côte d’Ivoire, Croatia, Czech Republic, Egypt, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kiribati, DPR Korea, Kyrgyzstan, Latvia, Lebanon, Liechtenstein, Lithuania,

598. MANBY, supra note 472, at 18.


600. Code de la nationalité congolaise, Loi 35-61 [Congolese Nationality Code, Law No. 35-61], tit. 1, art. 9 (1962).


603. Act on Citizenship of the Czech Republic and on the Amendment of selected other laws, No. 186/2013, s. 10 (2014).

604. ILC, II YB 1953, Add. 1, supra note 72, at 171.


607. Staatsangehörigkeitsgesetz [Nationality Act], RGBL at 583, §§ 4 (2), 8 (amended 1999) (Ger.).


614. Kokuseki-hō kisoku [Nationality Law], Law No. 147 of 1950, art. 2(3) (Japan).


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Luxembourg, Macedonia, Mali, Malta, Marshall Islands, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Nauru, the Netherlands, Niger, Norway, Papua New Guinea, Poland, Portugal, Romania, Rwanda, Serbia,

620. See Decree No. 15 on Lebanese Nationality, No. 2825, art. 1(2), amended by No. 11/1/1960.


630. See Montenegrin Citizenship Act, Nr. 13/08, s 2, art. 7 (2008) (Montenegro).


634. Kingdom Act on Netherlands Nationality, art. 3(2) (amended 2013).


Seychelles, Seychelles, Seychelles, Seychelles, Seychelles, Seychelles, "642 Slovakia, Slovakia, Slovakia, Slovakia, Slovakia, Spain, Spain, Spain, Spain, Spain, Spain, Spain, Sweden, Sweden, Sweden, Sweden, Switzerland, Switzerland, Switzerland, Switzerland, Syria, Syria, Syria, Syria, Republic of China on Taiwan Island, Republic of China on Taiwan Island, Republic of China on Taiwan Island, Tunisia, Tunisia, Tunisia, Turkey, Turkey, Turkey, Tunisia, Tunisia, Tunisia, Ukraine, Ukraine, Ukraine, Ukraine, UK, UK, UK, UK, UK, and Vietnam, and Vietnam, "655 Additionally, some states do not yet extend nationality jus soli, but are planning to implement it shortly, such as Cyprus, Luxembourg, Cyprus, Luxembourg, and Kenya, Cyprus, Luxembourg, and Kenya. *657 Again, some of these states do not generally practice jus soli, and this practice might be their sole exception. In some cases, the state imposes a residency requirement or requires the parents to also be stateless, *658 in these cases, the grant of nationality might be characterized as a naturalization instead of jus soli, but the fact that there is naturalization application might not contemplate a right to refuse

645. Código Civil (civil code) bk. 1, tit. II, art. 17(1)(d) (2013) (Spain); Reglamento de Extranjeria [Regulation of Foreigners], arts. 124.3.a, BOE (2011) (Spain).
648. Federal Act on the Acquisition and Loss of the Swiss Nationality, art. 6 (2013).
650. Nationality Act, art. 2(3) (1929) (Taiwan).
652. See THE CONSTITUTION OF THE REPUBLIC OF TURKEY July 23, 1995, art. 66; Turkish Citizenship Law, No. 403, s 2 (1964); Turkish Citizenship Law, No. 5901, art. 8 (2009).
655. Nationality Law, art. 6 (1988) (Viet.).
656. See EUROPEAN COMM’N, EUROPEAN MIGRATION NETWORK, STATELESSNESS IN THE EU 2 (2016) [hereinafter STATELESSNESS IN THE EU]
nationality. These states include: Cambodia,\textsuperscript{659} Czech Republic,\textsuperscript{660} Denmark,\textsuperscript{661} Estonia,\textsuperscript{662} Israel,\textsuperscript{663} Latvia,\textsuperscript{664} Lithuania,\textsuperscript{665} the Netherlands,\textsuperscript{666} and Sweden.\textsuperscript{667} Those states that heavily condition the application of \emph{jus soli}, such as Iran,\textsuperscript{*} by limiting it to cases where one parent is resident or also born in Iran,\textsuperscript{668} have been characterized as wrongful by other international actors.\textsuperscript{669} It might also be that the state has acknowledged that this limitation violates international human rights law, as is the case for Estonia\textsuperscript{670} and Côte d’Ivoire.\textsuperscript{671} In addition, there are even more states with this policy, yet they are deliberately not bound by an international treaty obligation (such as the 1961 Statelessness Convention\textsuperscript{672}) requiring them to do so.\textsuperscript{673} These states would include: Afghanistan, Algeria, Angola, Antigua and Barbuda, Belarus,\textsuperscript{*} Burundi, Cameroon, Cape Verde, PR China, Congo, France, Greece, Italy,\textsuperscript{*} Japan, Kazakhstan, Kyrgyzstan, Mali, Marshall Islands, Mongolia, Montenegro, Nauru, Poland,\textsuperscript{*} Seychelles, Slovenia, Spain,\textsuperscript{*} Republic of

\textsuperscript{660}. See \textit{STATELESSNESS IN THE EU}, \textit{supra} note 676, at 12.
\textsuperscript{661}. Consolidated Act on Danish Nationality, No. 422 of 7 June 2004, s 6 (2004) (Den.).
\textsuperscript{663}. See Nationality Law, 5712-1952, art. 9 (1950), \textit{amended by} Nationality (Amendment No. 4) Law, 5740-1980, art. 4A, (1980) (Isr.).
\textsuperscript{664}. See Citizenship Law, s. 3(1) (1995) (Lat.) (amended 2013).
\textsuperscript{666}. Kingdom Act on Netherlands Nationality, ch. 3, art. 6(1) (amended 2013).
\textsuperscript{668}. See Nationality Law of 11 Sept. 2006, art. 976 (Iran).
\textsuperscript{671}. See [Côte d’Ivoire Nationality Code], No. 2013-653 (2013).
\textsuperscript{672}. See generally 1961 Statelessness Convention, \textit{supra} note 107.
\textsuperscript{673}. See U.N. Office of the High Comm’r for Refugees, Dep’t of Int’l Prot., Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection: Steps Taken by States to Reduce Statelessness and to Meet the Protection Needs of Stateless Persons, paras. 5, 10, 36 (Mar. 2004) [hereinafter Final Report Concerning the Questionnaire on Statelessness 2004].
China on Taiwan Island, and Turkey.674 Some states simply reserve a wide degree of discretion to grant nationality in any humanitarian case and do so for cases of statelessness.675 Yet, in all of these cases, each state does indeed have laws on the books that provide for nationality *jus soli* for stateless children.676 In these cases, it could be argued that the debate, adoption, and promulgation of a law providing for nationality is practice, albeit practice that might be somewhat inconsistent when contrasted with implementation. In any event, adopting such a rule is certainly an expression of legal opinion, even if practice does not fully realize the opinion.

At the end of this study, it is difficult to find a state that either does not practice *jus soli* or does not at least practice *jus soli* for stateless children (and/or foundlings). In all of these cases, despite certain conditions on the grant of nationality, the states are confirming an *opinio juris* that statelessness in children must be avoided and that the state of birth is the responsible state for granting nationality.

E. Public Acts and Statements

Having surveyed state practice with *opinio juris* on the question of granting nationality to stateless children born in the territory, this analysis will next proceed to consider other statements expressing an *opinio juris* that *jus soli* for stateless children is required by international law. In reaction to inquiries by the UNHCR, a clear majority of states have expressed *opinio juris* that stateless must be avoided at birth specifically.677

Looking at statements in connection with the 1961 Stateless Convention, none of the reservations or objections filed with the UNSG in connection that treaty expressed any concern over nationality granted

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676. See supra notes 600–74.

to at birth to stateless children. All of the communications discussed permissible rules on nationality deprivation.\textsuperscript{678} Also, recall the lengthy list of states that have pledged to adhere to the Statelessness Conventions,\textsuperscript{679} and that many of those states are also identified by this study as specially interested.

Having made those observations, we turn to the various statements on state practice.

\textit{1. Opinio juris on Other States’ Practice}

One form of statement by states expressing an \textit{opinio juris} is when states (either unilaterally or within international organizations) criticize the actions of other states. States that do not practice \textit{jus soli} for otherwise stateless children have been strongly criticized by other states for not doing so, and some states that do, have been criticized for the restrictive interpretative (or outright disregard) of their own laws. Specifically, these states include: Algeria,\textsuperscript{680} Andorra,\textsuperscript{681} Armenia,\textsuperscript{682} Azerbaijan,\textsuperscript{683} Bangladesh,\textsuperscript{684} Belgium,\textsuperscript{685} Cyprus,\textsuperscript{686} Czech Republic,\textsuperscript{687}

\begin{itemize}
\item \textsuperscript{678} See UN Treaty Collection, Status of Treaties: s. 11, Convention on the Rights of the Child (Nov. 20, 1989), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (noting the reservations of Andorra, Cook Islands, Kuwait, Liechtenstein, Monaco, Oman, Switzerland, Tunisia, and United Arab Emirates).
\item \textsuperscript{679} See supra notes 171–72.
\item \textsuperscript{681} CoE Parl. Assembly Res. 2099 (2016), supra note 93, paras. 12.1.1., 12.2.2. (“calls on [member states] to sign and ratify the Council of Europe Convention on Nationality [which includes obligation on territorial state to grant nationality at birth if a child is otherwise stateless]”).
\item \textsuperscript{682} See id.
\item \textsuperscript{683} CoE Parl. Assembly Res. 2099 (2016), supra note 93, para. 9 (“do not provide full protection against statelessness of children, as they only function if a child’s parents are stateless or of unknown citizenship and do not function in circumstances in which parents who have a nationality cannot pass on their nationality to their children.”); id. para. 12.1.1.
\item \textsuperscript{685} CoE Parl. Assembly Res. 2099 (2016), supra note 93, para. 12.1.1., 12.2.2.
Dominican Republic, Estonia, France, Georgia, Greece, Hungary, India, Iran, Iraq, Italy, Jordan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia,

686. CoE Parl. Assembly Res. 2099 (2016), supra note 93, paras. 8, 12.1.1., 12.2.2.
687. Id. para. 9
The ‘in transit’ reference in para 5 refers to the Dominican constitution, which guarantees Dominican citizenship to all children born in Dominican territory except those born to diplomats or to persons who are ‘in transit.’ For years the Dominican government declined to define the ‘in transit’ exception. As a matter of policy, it issued birth certificates to all Dominican-born children, although administrative hurdles were erected to prevent many children born to Haitians from being registered.
Id.
689. CoE Parl. Assembly Res. 2099 (2016), supra note 93, paras. 9, 12.1.1., 12.2.2.
690. Id. para. 12.1.1.
691. Id. at para. 9.
692. Id. at para. 12.1.1.
Malta, °705 Monaco, °706 Morocco, °707 Myanmar, °708 Norway, °709 Papua New Guinea, °710 Philippines, °711 Poland, °712 Qatar, °713 Romania, °714 Russia, °715 San Marino, °716 Saudi Arabia, °717 Serbia, °718 Slovenia, °719 South Africa, °720

702. Id. at paras. 9, 12.1.1.
703. See id. para. 12.1.1.
704. Id. para. 9.
705. See id. para. 12.1.1.
706. See id.
709. CoE Parl. Assembly Res. 2099 (2016), supra note 93, para. 8 (“The relevant legislation . . . contain insufficient or no safeguards against childhood statelessness, in breach of regional and international obligations.”)
714. See CoE Parl. Assembly Res. 2099 (2016), supra note 93, para. 8 (“The relevant legislation . . . contain insufficient or no safeguards against childhood statelessness, in breach of regional and international obligations.”).
715. See id. para. 12.1.1.
716. See id.

719. See id. paras. 9, 12.1.1.
725. See CoE Parl. Assembly Res. 2099 (2016), supra note 93, paras. 8, 12.1.1.
731. See UPC Report: South Africa, supra note 720, ¶ 139.237 (noting the recommendation by Albania to revise legislation implementing granting nationality to stateless children born in the territory to comply with the CRC).
732. See UPC Report: Poland, supra note 712, ¶ 120.21 (noting the recommendation by Australia to adhere to the 1954 and 1961 Statelessness Conventions); see also UPR Report: South Africa, supra note 720, ¶ 139.23 (recommendation by Australia to adhere to the 1954 and 1961 Statelessness Conventions); see also 2016 UPR Report: Swaziland, supra note 724, ¶ 31.
Belarus,* 733  Belgium, 734  Brazil, 735  Bulgaria, 736  Chile, 737  PR China, 738
Colombia, 739  Cote d’Ivoire, 740  Croatia,* 741  Ecuador, 742  Finland,* 743
Germany,* 744  Hungary, 745  Iceland, 746  Ireland, 747  Kenya,* 748

733.  See Human Rights Council, Draft report of the Working Group on the
Universal Periodic Review: Latvia, ¶ 120.80, UN Doc. A/HRC/WG.6/24/L.12 (Feb. 5,
2016) [hereafter UPR Report: Latvia].

734.  See HRC, UPR Report: South Africa, supra note 720, ¶ 139.21 (noting the
recommendation by Belgium to adhere to the 1954 and 1961 Statelessness Conventions).

735.  See UPR Report: Latvia, supra note 733, ¶ 120.82.

736.  See id. ¶ 120.85; see also UPR Report: Poland, supra note 712, ¶ 120.20
(noting the recommendation by Bulgaria to adhere to the 1954 and 1961 Statelessness
Conventions).

737.  See Human Rights Council, Draft report of the Working Group on the
5, 2016) [hereinafter UPR Report: Seychelles].

738.  See UPR Report: Latvia, supra note 733, ¶ 120.37.

739.  See Human Rights Council, Draft report of the Working Group on the
Universal Periodic Review: Denmark, ¶ 121.193, UN Doc. A/HRC/WG.6/24/L.7 (Feb. 1,
2016) [hereinafter UPR Report: Denmark].

740.  See Human Rights Council, Draft report of the Working Group on the
Universal Periodic Review: Namibia, ¶ 137.45, UN Doc. A/HRC/WG.6/24/L.1 (Feb. 1,
2016) [hereinafter UPR Report: Namibia]; HRC, UPR Report: Algeria, supra note 680, ¶
129.23 (noting the recommendation by Côte d’Ivoire to adhere to the Convention on the
Reduction of Statelessness); UPR Report: Poland, supra note 712, ¶ 120.21 (noting the
recommendation by Côte d’Ivoire to adhere to the 1954 and 1961 Statelessness
Conventions).

741.  See Human Rights Council, Draft report of the Working Group on the
Universal Periodic Review: Estonia, ¶ 123.19, UN Doc. A/HRC/WG.6/24/L.4 (Jan. 21,
note 93, para. 9 (“do not provide full protection against the statelessness of children, as
they only function if a child’s parents are stateless or of unknown citizenship and do not
function in circumstances in which parents who have a nationality cannot pass on their
nationality to their children.”); id. para. 12.1.1.

742.  See UPR Report: Estonia, supra note 741, ¶ 123.13; UPR Report: Latvia,
supra note 733, ¶ 120.38.

743.  See UPR Report: Denmark, supra note 739, ¶ 121.194.

744.  See UPR Report: Latvia, supra note 733, ¶ 120.84; UPR Report: South
Africa, supra note 720, ¶ 139.21 (noting the recommendation by Germany to adhere to
the 1954 and 1961 Statelessness Conventions).

745.  See UPR Report: Poland, supra note 712, ¶ 120.22 (noting the
recommendation by Hungary to adhere to the 1954 and 1961 Statelessness Conventions).


747.  See id. para. 123.16; UPR Report: Latvia, supra note 733, ¶ 120.78; CoE
Kyrgyzstan,® Liechtenstein,® Maldives,® Mexico,® Norway,®
Panama,® Russia,* Slovakia,® South Africa,® Spain,*
Ukraine,*® Uganda,® UK,*® and Uruguay.® The astute reader will
notice that the same states appear on both lists, which may be curious
evidence of diverging practice and opinio juris. In addition, states that
have not adhered to the 1961 Stateless Convention,
nor pledged to adhere
to the conventions that specifically provide for
jus soli
for stateless
children, have been strongly urged to do so, such as Antigua and
Barbuda,® Greece,® St. Vincent and the Grenadines,® Samoa,® and


749. See UPR Report: Latvia, supra note 733, ¶ 118.55.
750. UPR Report: South Africa, supra note 720, ¶ 139.238.
752. See UPR Report: Denmark, supra note 739, ¶ 121.196; UPR Report: Latvia, supra note 733, ¶ 118.61.
754. See id. para. 123.17; UPR Report: Singapore, supra note 748, ¶ 166.234.
755. See UPR Report: Latvia, supra note 733, ¶ 120.77.
756. See UPR Report: Philippines, supra note 711, ¶ 133.256 (noting the recommendation by Slovakia to adhere to the 1961 Statelessness Convention).
757. See UPR Report: Denmark, supra note 739, ¶ 121.195.
758. See UPR Report: Estonia, supra note 741, ¶ 123.18; UPR Report: Latvia, supra note 733, ¶ 120.79.
759. See UPR Report: Seychelles, supra note 737, ¶ 120.100.

Trinidad and Tobago. Aside from criticisms, positive steps to extend nationality have been praised. This practice constitutes an expression of opinio juris that states must apply jus soli for stateless birth situations.

2. States Acknowledge Violations

Some states have acknowledged that they are not in compliance with their international obligations regarding statelessness at birth and have agreed to make changes in their law or otherwise implement statelessness reconciliation programs. Some of these announcements (May 20, 2016) (noting the general recommendation to adhere to more human rights conventions, including the Statelessness Conventions).


768. UNHCR Claims “Big Step Forward;” Plan of Action with GVN on Stateless Khmers, PUB. LIBR. OF U.S. DIPLO., para. 1 (Sept. 14, 2007) (“UNHCR has asked Post to ‘encourage’ the process, including the use of its public diplomacy resources.”) [hereinafter UNHCR Claims Big Step Forward].

769. E.g., STATELESSNESS IN THE EU, supra note 676, at 4 (“Estonia points out that their Citizenship Law is partially in conflict with the Convention”); e.g., Minority Hill Tribes Still Plagued by Statelessness, Though Trends are Encouraging: Chiang Mai, PUB. LIBR. OF U.S. DIPLO., para. 1 (Dec. 19, 2008) (“Roughly half of Thailand’s estimated 900,000 hill tribe minorities lack citizenship . . . . In recent years the Royal Thai Government (RTG) has made strides to improve citizenship eligibility for highlanders, including passing two significant new laws in 2008.”); e.g., Citizenship Manual Outlines Legal Maze Stateless Hill Tribes: Chiang Mai, PUB. LIBR. OF U.S. DIPLO., para. 2 (Jan. 6, 2009) (“Thai citizenship law continues to evolve in a positive direction, as the RTG [Royal Thai Government] collaborates with UN agencies and NGOs”).

770. E.g., Dominicans Begin Work on Implementing Their 2004 Immigration Law, PUB. LIBR. OF U.S. DIPLO., para. 1 (Feb. 24, 2009) (“The Dominican government recently held a summit on migration issues that resulted in recommendations for regularizing the large undocumented population in the country.”); e.g., UAEG Seeks to End Uncertain Status of Stateless Residents, PUB. LIBR. OF U.S. DIPLO., para. 2 (Nov. 2, 2006) (“Children of qualifying bidoun, even if born after December 2, 1971, gain derivative status if they
have been on technical issues such as birth registration, rather than specifically on legal compliance,\textsuperscript{771} but refusal to register lawfully qualifying individuals is a problem. Other states have directly admitted problems with their laws and practices on qualifying for nationality being in compliance with international law, such as Costa Rica,\textsuperscript{772} Czech Republic,\textsuperscript{773} Greece,\textsuperscript{774} Kenya,\textsuperscript{775} and U.A.E.\textsuperscript{776} A further group of states

meet the other criteria.”) [hereinafter UAEG Seeks to End Uncertain Status]; e.g., Estonia Offers Free Citizenship Courses: 06TALLINN988, para. 1 (Nov. 3, 2006) (“The number of stateless people living in Estonia has declined significantly since 1992. A new program to provide citizenship training to non-citizens is being jointly funded by the GOE and the EU. It will help up to 10,000 more stateless people meet [t]he qualifications for citizenship.”); id. para. 2, (“Since 1992, Estonian citizenship by naturalization has been granted to about 140,000 people. Last November, the number of those naturalized surpassed that of stateless people, so-called ‘gray passport holders,’ who currently make up approximately 9 percent of Estonia’s population, or about 131,000 individuals.”); e.g., Parliament Establishes Committee to Address the Condition of Stateless Arabs, PUB. LIBR. OF U.S. DIPLOM., para. 1 (July 12, 2006) (“In its inaugural session on July 12, Kuwait’s new Parliament voted unanimously to establish a committee for dealing with the over 100,000 ‘Bidoon’ -- Arabs with no legal documentation proving their citizenship -- living in Kuwait.”); The Problem of Statelessness in the Kyrgyz Republic: 09BISHKEK1080, para. 1 (Oct. 1, 2009). On September 22, UNHCR and the Kyrgyz government co-hosted a high-level steering meeting to highlight the problem of statelessness in Kyrgyzstan and adopted a concluding statement with concrete objectives. UNHCR also released a report detailing the results of a survey conducted in the southern oblasts of Osh, Jalalabad, and Batken that identified over 11,000 stateless persons.

\textit{Id.; Turkenistan: Statelessness More of A Problem Than Numbers Suggest}, supra note 178, para. 1 (“The Turkmen Government is working with UNHCR to discover whether these people are citizens of other former Soviet countries, who got caught between bureaucracies at the fall of the Soviet Union, or whether these people can be categorized officially as stateless.”)


\textsuperscript{774} See Decision on the Loss of Greek Nationality by Virtue of Former Article 19 of the Greek Nationality Code and the Procedure for its Reacquisition, HELLENIC
have amended their nationality legislation to address statelessness. Vietnam has completed a program of naturalizing all remaining stateless persons in order to come into compliance with its international obligations. The key is that whether the practice is one of ensuring universal birth registration or modifying the law, these cases focus on the specific problem of child statelessness or simply getting a grasp on the


776. *See UAEG Seeks to End Uncertain Status*, supra note 793, para. 2 (“On October 25, the official Emirates News Agency (WAM) reported that President Sheikh Khalifa had issued directives for federal ministries to seek a comprehensive and permanent solution to the problem of the country’s ‘bidoun,’ or stateless people.”).


778. *UNHCR on Central Highlands, Stateless Khmers*, PUB. LIBR. OF U.S. DIPL., para. 1 (Aug. 14, 2007) (“UNHCR Chief of Mission Vu Anh Son said the GVN has taken many positive steps to improve the situation of ethnic minorities in the CH, but greater engagement and monitoring by the international donor community is still needed.”); *UNHCR Claims Big Step Forward, supra* note 768 (“In a new development, the United Nations High Commission on Refugees (UNHCR) has claimed a “big step forward” toward resolution of the 30-year old cases of more than 9,000 stateless Khmer persons in Southern Vietnam.”); According to UNHCR, in August, the Cambodian Government (GOC) informed the Government of Vietnam (GVN) that it is unable to provide any records or information about the citizenship of said individuals. With this development, the GVN has changed these individuals’ legal status from “foreign nationals” to “stateless persons,” providing them a path to naturalization under the GVN’s Nationality Law.

problem by identifying potentially stateless persons. This acknowledgement also supports a finding of *opinio juris* that the states are under an obligation to provide nationality at birth to stateless children. Some governments have promised extensions of nationality to certain stateless stateless populations in their territories, but have failed to deliver. It is quite significant to note that many of these states acknowledging non-compliance are actually not bound to the 1961 Statelessness Convention.

3. **States Attempt to Justify Violations as Factual/Evidentiary Matters, Not Legal Issues**

One way states react to observations that they have large populations of stateless children born in their territories is denial that there is any problem with the law. These states do not attempt to obscure or deny that the law is not in conformity with international standards; in fact, quite the opposite, they often affirm that their laws are in compliance with international norms. Instead, they argue that the persons who are alleged to be stateless are either not really stateless or are refusing to cooperate with the nationality registration process. One approach is to claim that

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780. *E.g.*, Turkenistan: Statelessness More of A Problem Than Numbers Suggest, *supra* note 178, at para. 1 (“At a recent conference on statelessness in Central Asia, participants from Turkmenistan, Tajikistan, Kazakhstan, and Kyrgyzstan exchanged ideas on best practices for identifying people without citizenship documentation and for preventing future cases of statelessness.”)


According to recent media reports, a delegation of 43 Kurdish tribal leaders recently met with high-ranking Syrian officials to discuss the restoration of citizenship for Syria’s 300,000 stateless Kurds. While the SARG publicly touted the meeting as a further step towards resolving the issue, Kurdish political activists dismiss the claim, noting the absence of Kurdish political figures from the meeting and that this promise had already been made twice before in 2005 by President Bashar al-Asad. Id.


783. *See, e.g.*, Statelessness in Cote d’Ivoire, *PUB. LIBR. OF U.S. DIPL.*, para. 1 (Sept. 25, 2007) (“The lesson learned from this first assessment is that the problem of statelessness seems to result more from low awareness and interest in identification and naturalization procedures than from actual denial of citizenship by the government of Cote d’Ivoire.”).
there is insufficient documentary evidence of the birth in the state’s territory, such as the case in Jordan, Lithuania and Thailand. Another argument made by Myanmar is that it does not refuse nationality to children; instead, it argues that the children already have another nationality that has not yet been documented or confirmed by the other state of nationality. Some states might deem a child to have nationality by applying, perhaps erroneously, the nationality laws of another state. Other states, such as Benin* and Pakistan* argue that they do not refuse nationality to children, but that nationality follows changes in territory. These views are not often reviewed by courts or tribunals, but in at least the case of the Dominican Republic,* the IACHR has found the argument that the persons are irregular migrants in transit is not correct. More often, these arguments are made diplomatically or through alternate fora, such as the Universal Periodic Review.

By making these types of arguments and following the North Sea Continental Shelf cases holding that deviations in practice can confirm the rule when the deviations are characterized as wrongful, the states are


787. See ENE, No child, supra note 468, at 17; see also UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, supra note 60, ¶ 25.

788. See Benin Human Rights Report, supra note 138, at 17; Pakistan Human Rights Report, supra note 138, at 34, 47.


790. See id.

actually reaffirming their *opinio juris* that there is an obligation to provide nationality but that it does not apply to their situation. While we may argue with the veracity of these claims, the point of observing this practice is to demonstrate that states do not claim that there is no norm of international law obliging them to grant nationality to stateless children born in their territory when that argument would dispose of the situation far more easily. Instead, they make efforts to argue why the norm does not apply in the case. By arguing that these children were not really stateless or were refusing to participate in securing their nationality, the states involved are implicitly arguing that if the children were truly stateless, then the territorial state would have an obligation to grant nationality.

**IV. Conclusion**

Following this lengthy survey of state practice and *opinio juris*, the conclusion we can draw is that states are under a customary international legal obligation to grant nationality to children born in their territory if the child would be otherwise stateless. As an initial matter, we can presume that there is a rule on point because statelessness, especially in children, implicates issues of coexistence and cooperation, features largely concordant practice, is a matter of international concern (the subject of multiple UNGA and other resolutions), and is simply logical as a matter of human rights. In many cases, courts and other bodies have routinely drawn the link between nationality and state of birth as being the most logical link, perhaps only short of the nationality of the parent.

However, moving on from the presumption, we find a number of international treaties that demand a right to nationality, which has been interpreted to include a prohibition on the arbitrary refusal of nationality. We also find regional treaties providing a similar right to a nationality. These international treaties are supplemented by numerous regional treaties most of which also provide for stateless children to

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793. See supra notes 61, 65.
794. See supra Section III.C.1.
795. See supra notes 204–50.
796. See supra notes 165–92.
receive nationality of the state of birth.\textsuperscript{797} Where these treaties do not expressly provide for this protection, they generally nonetheless cover issues of nationality and/or legal identity.\textsuperscript{798}

Looking at state practice apart from treaties, we find a widespread and consistent practice with \textit{opinio juris} that states must grant nationality to stateless children born in the state. All of these statements and practices reaffirm the norm, and a large number of them are practiced by states that are specially interested and thus globally representative.\textsuperscript{799} Many are not party to the 1961 Statelessness Convention.

Practice is widespread. A large number of states already grant nationality to most children, stateless or not, that are born in their territory.\textsuperscript{800} Of those states that do not, a large number of them make an exception to grant nationality to the specific category of stateless children born in the territory.\textsuperscript{801}

Considering expressions of \textit{opinio juris}, a significant number of states have asserted that there is an obligation to grant nationality in these cases. States routinely criticize the acts of other states when they fail to grant nationality to stateless children. They also defend themselves when they refuse to grant nationality by explaining that the obligation does not apply for some other reason, not that there is no obligation.\textsuperscript{802}

In sum, we can find that states must grant nationality to stateless children born in their territory, though two exceptions might still be permissible under the law. The first is when a state requires some kind of non-burdensome, non-discretionary nationality application, as this practice is evidenced in many cases.\textsuperscript{803} The second is a situation where the state of birth can definitively secure de jure nationality for the child from another state, as this option has been affirmed as compliance with the human right to a nationality.\textsuperscript{804} However, the conclusion of this paper is that there is sufficient state practice with \textit{opinio juris} to establish an obligation on states to secure nationality, by granting their own

\textsuperscript{797} See supra Section III.C.2.
\textsuperscript{798} See supra notes 298–336, 343–50.
\textsuperscript{799} See supra Section III.B.
\textsuperscript{800} See supra notes 394–582.
\textsuperscript{801} See supra notes 584–668.
\textsuperscript{802} See supra Section III.E.
\textsuperscript{803} See supra notes 670–78.
\textsuperscript{804} See supra note 288.
nationality if necessary, to otherwise stateless children born in their territory.