

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.¹ In cases of birth, for example, de facto statelessness is sometimes due to poor birth-registration options.² 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;³ 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*.⁴ State practice involves the widespread and consistent acts

1. See HUGH MASSEY, UNITED NATIONS HIGH COMM'R FOR REFUGEES (UNHCR), UNHCR AND DE FACTO STATELESSNESS, at i, LPPR/2010/01 (2010), <https://www.unhcr.org/4bc2ddeb9.pdf>.

2. See G.A. Res. 67/149, ¶ 23 (Dec. 20, 2012); UNHCR, GLOBAL ACTION PLAN TO END STATELESSNESS: 2014 - 2024, at Action 7 (2014), <https://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>; Human Rights Council Res. 34/15, U.N. Doc. A/HRC/RES/34/15, at 1 (Mar. 24, 2017).

3. H.R.C. Res. 34/15, *supra* note 2, at 1.

4. See Statute of the International Court of Justice art. 38, ¶ 1(b); see Statute of the Permanent Court of International Justice art. 38, ¶ 2; see S.S. "Lotus" (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7); see Asylum (Colom./Peru), Judgment, 1950 I.C.J. 266, 276-77 (Nov. 20); North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, ¶¶ 77-78 (Feb. 20); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 207 (June 27); Int'l Law Comm'n, Rep. on the Work of Its Sixty-Eighth Session, ¶ 62, at 76, U.N. Doc. A/71/10 (2016) [hereinafter Rep. of the Int'l Law Comm'n Sixty-Eighth Session]; Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1 (2012); L. Oppenheim, *The Science of International Law: Its Task and Method*, 2 AM. J. INT'L L. 313, 315 (1908) ("The rules of the present international law are to a great extent not written rules, but based on custom.").

of legally relevant actors.⁵ *Opinio juris* is the subjective element that states are acting in this way because they are compelled to do so.⁶ The usual approach is to examine a sampling of state practice with *opinio juris*, and through inductive and deductive steps, reach a conclusion on the state of custom.⁷

However, in some instances, the proof of these two elements does not need to be especially rigorous. In the *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.”⁸ It is unlikely that this text is concluding that some norms are proved outside of the state

5. See Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, at 76; see generally IAN BROWNLIE, 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”).

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 *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.”

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.

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.

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 *Gulf of Maine Case*]; *Continental Shelf (Libya/Malta)*, Judgment, 1985 I.C.J. 13, ¶ 27 (June 3).

8. *Gulf of Maine Case*, *supra* note 7, at ¶ 111; see generally Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUSTL. Y.B. INT'L L. 82 (1989).

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 logical⁹ or serve an important value.¹⁰ In addition, some authorities have concluded that United Nations General Assembly (UNGA) resolutions on point¹¹ or concordant practice¹² can also create a presumption of

9. See, e.g., *Jurisdictional Immunities of the State* (Ger. v. It.), Judgment, 2012 I.C.J. 99, ¶ 57 (Feb. 3) (“The Court considers that the rule of State immunity occupies an important place in international law and international relations.”); *Fisheries Jurisdiction* (U.K. v. Ice.), 1974 I.C.J. 3 (July 25); *Fisheries Jurisdiction* (Ger. v. Ice.), 1974 I.C.J. 175 (July 25); S.S. “*Lotus*” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 25.

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.

Id.; *Jurisdictional Immunities of the State* (Ger. v. It.), Judgment, 2012 I.C.J. at ¶¶ 67–72; *Case C-162/96, Racke v. Hauptzollamt Mainz*, 1998 E.C.R. I-3705 (citing *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 104 (Sept. 25)).

10. See *Racke*, 1998 E.C.R. at I-3707; *Gulf of Maine Case*, *supra* note 7, at ¶ 113; *Prosecutor v. Ayyash*, Case No. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶ 86, ¶ 101 (Spec. Trib. for Leb. Feb. 16, 2011), https://www.stl-tsl.org/index.php?option=com_k2&id=2565_9f56caa0701334523deb63736a46b4c9&lang=en&task=download&view=item; see *Regina v. Bow St. Metro. Stipendiary Mag., ex parte Pinochet Ugarte* (No 3) [2000] AC 147 (HL) ¶¶ 56–58 (appeal taken from Eng.); see generally INT’L LAW ASS’N, *London Conference: Statement of Principles Applicable to the Formation of General Customary International Law* (2000), <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1107&StorageFileGuid=e6663317-c7ca-4fff-a6e8-1cc2423756bf> [hereinafter *Statement of Principles*].

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,

13. See, e.g., Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 16 (setting aside rules on particular customary international law).

14. See, e.g., Asylum (Colom./Peru), Judgment, 1950 I.C.J. 266, 276–77 (Nov. 20).

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).

16. See Fisheries (U.K. v. Nor.), Judgment, 1951 I.C.J. 116, 131 (Dec. 18); see also HERSCH LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 368 (1958).

17. See Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 8.

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.²⁰

States that are specially interested in a rule of customary international law are particularly important in this regard.²¹ In this way, the assessment of practice is seen as “qualitative rather than quantitative.”²² The next question is how to determine which states are specially interested. This determination will naturally vary according to the question being asked.²³ We are looking for practice that is representative of the practice of all of the states in the world.²⁴ It could be that a small number of states demonstrate practice that is representative.²⁵ It is important, however, to

20. See William Thomas Worster, *The Inductive and Deductive Methods in Customary International Law Analysis: Traditional and Modern Approaches*, 45 GEO. J. INT’L L. 445, 498 (2014).

21. North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. at 172, 176 (Tanaka, J., dissenting); *id.* at 219, 227 (Lachs, J., dissenting); Asylum (Colom./Peru), Judgment, 1950 I.C.J. at 276–77; Right of Passage over Indian Territory (Port. v. India), Judgment, 1960 I.C.J. 6, 42–43 (Apr. 12); S.S. “Wimbledon” (U.K., Fr., It., & Japan v. Ger.), 1923 P.C.I.J. (ser. A) No. 1, at 7 (Aug. 17); Tullio Treves, *Customary International Law*, MAX PLANCK ENCYC. PUB. INT’L L. ¶ 41 (2006), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1393?>; *Statement of Principles*, *supra* note 10, at 26, cmt. (e); Antonio Cassese, *Ex Iniuria Ius Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, 10 EUR. J. INT’L L. 23, 29 (1999); Jonathan I. Charney, *Anticipatory Humanitarian Intervention in Kosovo in Editorial Comments: NATO’s Kosovo Intervention*, 93 AM. J. INT’L L. 834, 835–37 (1999) [hereinafter Charney, *Anticipatory Humanitarian Intervention*].

22. JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I: RULES* xliiv (2005) [hereinafter ICRC, *CIHL STUDY*]; *Statement of Principles*, *supra* note 10, at 25–26, cmts. (d)–(e); see North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. at ¶ 74.

23. See ICRC, *CIHL STUDY*, *supra* note 22, at xliiv.

24. See *Military and Paramilitary Activities in and Against Nicaragua*, (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 185 (June 27); North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. at 42; *Nottebohm (Liech. v. Guat.)*, Judgment, 1955 I.C.J. 4, 22 (Apr. 6); *Fisheries (U.K. v. Nor.)*, Judgment, 1951 I.C.J. 116, 131, 138 (Dec. 18); Asylum (Colom./Peru), Judgment, 1950 I.C.J. at 277; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 I.C.J. 15, 25 (May 28); see generally S.S. “Wimbledon” (U.K., Fr., It., & Japan v. Ger.), 1923 P.C.I.J. (ser. A) No. 1 (Aug. 17); S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7).

25. See generally *Corfu Channel (U.K. v. Alb.)*, Judgment, 1949 I.C.J. 4 (Apr. 9); see generally S.S. “Wimbledon” (U.K., Fr., It., & Japan v. Ger.), 1923 P.C.I.J. (ser. A) No. 1, at ; Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT’L L. 529, 537 (1993); David P. Fidler, *Challenging the Classical Concept of Custom: Perspectives on*

observe that representativity entails geographic and cultural diversity.²⁶ 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.²⁷

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.²⁸ It is crucial that the evidence we select is probative of the norm at issue.²⁹ Generally, we look for physical or verbal³⁰ executive, legislative, and judicial acts³¹ 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;³² decisions of domestic and

the Future of Customary International Law, 39 GER. Y.B. INT'L L. 198, 203, 216–31 (1996).

26. See ICRC, CIHL STUDY, *supra* note 22, at li.

27. See S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 29; see also *Statement of Principles*, *supra* note 10, at 26, cmt. (e); Cassese, *supra* note 21, at 29; Charney, *Anticipatory Human Intervention*, *supra* note 21, at 835–37; J. Patrick Kelly, *The Twilight of Customary International Law*, 40 VA. J. INT'L L. 449, 520–21 (2000).

28. Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 3(1).

In assessing evidence for the purpose of ascertaining whether there is a general practice and whether that practice is accepted as law (*opinio juris*), regard must be had to the overall context, the nature of the rule, and the particular circumstances in which the evidence in question is to be found.

Id.

29. See Prosecutor v. Tadić, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 99 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Prosecutor v. Ayyash, Case No. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶ 91 (Spec. Trib. for Leb. Feb. 16, 2011), https://www.stl-tsl.org/index.php?option=com_k2&id=2565_9f56caa0701334523deb63736a46b4c9&lang=en&task=download&view=item; see generally Regina v. Bow St. Metro. Stipendiary Mag., *ex parte Pinochet Ugarte* (No 3) [2000] AC 147 (HL) (appeal taken from Eng.).

30. Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 10.

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;³³ domestic legislation;³⁴ diplomatic or other public acts; and statements on policies and claims on the law,³⁵ which could take the form of press releases³⁶ and might be made within the context of

I.C.J. 3, 38–39 (Feb. 20); *see, e.g.*, *Nottebohm (Liech. v. Guat.)*, Judgment, 1955 I.C.J. 4, 22–23 (Apr. 6); *see, e.g.*, *Asylum (Colom./Peru)*, Judgment, 1950 I.C.J. 266, 277 (Nov. 20); *see, e.g.*, S.S. “*Lotus*” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 25–26; *see, e.g.*, *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment, ¶ 168 (Int’l Crim. Trib. for Former Yugoslavia Dec. 10, 1998); *see, e.g.*, Case C-366/10, *Air Transp. Ass’n of Am. v. Sec’y of State Energy and Climate Change*, 2011 E.C.R. I-13755, I-13886; *see, e.g.*, Case C-162/96, *Racke v. Hauptzollamt Mainz*, 1998 E.C.R. I-3655, I-3706; *see, e.g.*, *Domingues v. United States*, Case 12.285, Inter-Am. Comm’n H.R., Report No. 62/02, OEA/Serv.L/V/II.117, doc. 1 rev. 1, ¶ 47 (2002); *see, e.g.*, *Kuwait v. Am. Indep. Oil Co. (Aminoil)*, Final Award, ¶¶ 11–79 (Ad hoc Arbitral Trib. Mar. 24, 1982), *reprinted in* 21 I.L.M. 976, 1001–17 (1982); Rep. of the Int’l Law Comm’n Sixty-Eighth Session, *supra* note 4, at 91, 99.

33. *See, e.g.*, *Jurisdictional Immunities of the State (Ger. v. It.)*, Judgment, 2012 I.C.J. at ¶¶ 72–77; *see, e.g.*, *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. at ¶ 212; *see, e.g.*, S.S. “*Lotus*” (Fr. v. Turk.) Judgment, 1927 P.C.I.J. at 28–30; *see, e.g.*, *Furundžija*, Case No. IT-95-17/1-T, ¶¶ 168–82; *see, e.g.*, *Air Transp. Ass’n of Am.*, 2011 E.C.R. at I-13886; *see, e.g.*, *Racke*, 1998 E.C.R. at I-3706; *see, e.g.*, *Domingues*, doc. 1 rev. 1, at ¶ 47; Rep. of the Int’l Law Comm’n Sixty-Eighth Session, *supra* note 4, at 91, 99.

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.

35. *See* *Jurisdictional Immunities of the State (Ger. v. It.)*, Judgment, 2012 I.C.J. at ¶ 55; *see, e.g.*, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶¶ 86–88 (July 8); *Continental Shelf (Tunis./Libya)*, Judgment, 1982 I.C.J. 18, ¶ 24 (Feb. 24); *Gabčíkovo-Nagymaros Project (Hung./Slovk.)*, Judgment, 1997 I.C.J. 7, ¶¶ 49–54 (Sept. 25); *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, ¶¶ 70–74 (May 24); *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. at ¶¶ 183–207; *North Sea Continental Shelf (Ger./Den.; Ger./Neth.)*, Judgment, 1969 I.C.J. at ¶¶ 25–26, ¶¶ 32–33; *Nottebohm (Liech. v. Guat.)*, Judgment, 1955 I.C.J. at 21; *Fisheries Jurisdiction (U.K. v. Ice.)*, 1974 I.C.J. 3, 24–26 (July 25); *Gulf of Maine case*, *supra* note 7, at ¶ 34; S.S. “*Lotus*” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 23, 26–30; *Domingues*, doc. 1 rev. 1, at ¶ 47; Rep. of the Int’l Law Comm’n, *supra* note 4, ¶ 62, at 91, 99; *Statement of Principles*, *supra* note 10, at 14, 40–41; MARK E. VILLIGER, *CUSTOMARY INTERNATIONAL LAW AND TREATIES* 219–20 (2d ed. 1997); BROWNLIE, *supra* note 5, at 6.

36. *See* *Domingues*, doc. 1 rev. 1, at ¶ 47.

an international organization or conference.³⁷ For some of these sources, doctrine demands that state practice must be focused on a question of customary international law in order to contribute,³⁸ but for others, doctrine does not impose such a specific requirement.³⁹ 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.⁴⁰ Sometimes courts refer to subsidiary sources of law as evidence for customary international law,⁴¹ such as the decisions of the ICJ⁴² and other courts,⁴³ the conclusions of the International Law Commission (ILC),⁴⁴ and “the teachings of publicists.”⁴⁵ Lastly, for consistency, minor deviations from practice do not diminish the rule, though the weight of practice might be diminished;⁴⁶ however, deviations will reaffirm the rule if those deviations are articulated by other international

37. Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, concls. 6(2), 12(2).

38. See Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. at ¶ 55; Military and Paramilitary Activities in and Against Nicaragua, (Nicar. v. U.S.), Judgment, 1986 I.C.J. at 212; Continental Shelf (Libya/Malta), Judgment, 1985 I.C.J. 13, 27, 34–45 (June 3); North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, 38–39 (Feb. 20); Barcelona Traction, Light & Power Co. (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶ 61 (Feb. 5); Nottebohm (Liech. v. Guat.), Judgment, 1955 I.C.J. at 22–23; Asylum (Colom./Peru), Judgment, 1950 I.C.J. 266, 277 (Nov. 20); S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 26; Kuwait v. Am. Indep. Oil Co. (Aminoil), Award in the Matter of an Arbitration, ¶¶ 11–79 (Ad hoc Arbitral Trib. Mar. 24, 1982), *reprinted in* 21 I.L.M. 976, 1001–17 (1982); *Furundžija*, Case No. IT-95-17/1-T, ¶ 168; *Air Transp. Ass'n of Am.*, 2011 E.C.R. at I-13886; *Racke*, 1998 E.C.R. at I-3706.

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

40. Rep. Of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 11(1).

41. See, e.g., S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 25; Van v. Public Prosecutor, (2004) SGCA 47, ¶ 91 (Sing.).

42. Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 13(1).

43. *Id.* ¶ 62, conc. 13(2).

44. See Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. 99, ¶ 55 (Feb. 3).

45. S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. at 25.

46. Rep. of the Int'l Law Comm'n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 7(2).

actors as violations.⁴⁷ Throughout this analysis, a holistic view is taken,⁴⁸ and no one type of source of practice is necessarily more important.⁴⁹

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,⁵⁰ are the subject of international concern (such as evidenced by UNGA resolutions⁵¹), express important values,⁵² or reflect concordant practice among states.⁵³ We can even apply this presumption when the existence of a rule of customary international law is otherwise logical.⁵⁴ 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

47. *See generally* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27).

48. Rep. of the Int’l Law Comm’n Sixty-Eighth Session, *supra* note 4, ¶ 62, conc. 7(1).

49. *Id.* ¶ 62, conc. 6(3).

50. *See Gulf of Maine* case, *supra* note 7, ¶ 111.

51. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶¶ 70–71 (July 8).

52. *See* Regina v. Bow St. Metro. Stipendiary Mag., *ex parte* Pinochet Ugarte (No 3) [2000] AC 147 (HL) ¶¶ 56–58 (appeal taken from Eng.).

53. *See* Prosecutor v. Ayyash, Case No. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶ 100 (Spec. Trib. for Leb. Feb. 16, 2011), https://www.stl-tsl.org/index.php?option=com_k2&id=2565_9f56caa0701334523deb63736a46b4c9&lang=en&task=download&view=item.

54. *See* Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. 99, ¶ 57 (Feb. 3); *see also* S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7).

norms of sovereignty and international co-existence. It goes without saying that every state has sovereign right to determine which individuals are its nationals.⁵⁵ However, states have an obligation to not infringe on the sovereignty of other states.⁵⁶ Statelessness may adversely impact the states of origin and of reception.⁵⁷ 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.⁵⁸ 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,⁵⁹ especially children,⁶⁰ 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.

56. See *Okonkwo v. Austria*, App. No. 35117/97 (Eur. Ct. H.R., 2001) (holding that the state cannot expel a (now) stateless person); see also *Slavov v. Swed.*, App. No. 44828/98 (Eur. Ct. H.R., 1999) (holding the same unless the state of former nationality agrees to accept the person back).

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.”).

58. See P. WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW* 54–55 (2d ed. 1979).

The doctrine of the survival of the duty of readmission after the loss of nationality follows . . . from the principle of territorial supremacy: this supremacy might be infringed by such unilateral action in so far as that action would deprive other States of the possibility of enforcing their recognised right to expel aliens supposing that no third State, acting in pursuance of its legitimate discretion, was prepared to receive them. . . . The good faith of a State which has admitted an alien on the assumption that the State of his nationality is under an obligation to receive him back would be deceived if by subsequent denationalisation this duty were to be extinguished.
Id.

59. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 6 (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights art. 16, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Org. of Am. States (OAS), American Declaration of the Rights and Duties of Man, art. XVII, OAS Res. XXX (1948) [hereinafter Am. Decl.]; American Convention on Human Rights: “Pact of San Jose, Costa Rica” art. 3, Nov. 22, 1969, 144 U.N.T.S. 123 [hereinafter AmCHR]; see also *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (“[T]he total destruction of the individual’s status in organized society.”).

60. ICCPR, *supra* note 59, art. 24(3); Convention on the Rights of the Child arts. 7–8, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; U.N. Secretary-General, *Human Rights and Arbitrary Deprivation of Nationality*, ¶ 27, U.N. Doc. A/HRC/25/28 (Dec. 19,

nationality is a necessary precondition for enjoying many civil and human rights and protections;⁶¹ for example, stateless persons have no diplomatic protection⁶²—it is “a right to have rights.”⁶³ It might even be that “the elementary considerations of humanity” dictate that all people should have a nationality.⁶⁴ 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.⁶⁵

2013) [hereinafter UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013]

61. See *Andrejeva v. Lat.*, 2009-II Eur. Ct. H.R. 71, 128 (“[N]ationality is a basis for a clear entitlement to a number of important rights.”); *Expelled Dominicans and Haitians v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 253 (Aug. 28, 2014) (“Nationality [is] a legal and political bond that links a person to a particular State, allows the individual to acquire and to exercise the rights and responsibilities inherent in membership in a political community. As such, nationality is a prerequisite for the exercise of certain rights.”) (citing *Girls Yean & Bosico v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 137 (Sept. 8, 2005)); Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (ser. A) No. 4, ¶¶ 32–33 (Jan. 19, 1984) [hereinafter *Proposed Amends Const. C. Rica Adv. Op.*]; Inst. for Human Rights & Dev. in Africa (IHRDA) v. Kenya, No. Com/002/2009, Decision, ¶46, ¶ 57 (African Union, Mar. 22, 2011); U.N. Secretary-General, *Human Rights and Arbitrary Deprivation of Nationality*, ¶ 4, U.N. Doc. A/HRC/19/43 (Dec. 19, 2011) [hereinafter HRC & UNSG, *Human rights and arbitrary deprivation of nationality* (Dec. 19, 2011)]; U.N. Secretary-General, *Impact of the Arbitrary Deprivation of Nationality on the Enjoyment of the rights of Children Concerned, and Existing Laws and Practices on Accessibility for Children to Acquire Nationality, inter alia, of the Country in Which They are Born, if They Otherwise Would be Stateless*, ¶ 3, U.N. Doc. A/HRC/31/29 (Dec. 16, 2015) [hereinafter *Impact of the Arbitrary Deprivation of Nationality*]; African Union, *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ¶ 83, ACERWC/GC/02 (Apr. 7–16, 2014).

62. See CHRISTINE EVANS, *THE RIGHT TO REPARATION IN INTERNATIONAL LAW FOR VICTIMS OF ARMED CONFLICT* 92–93 (2012) (“Stateless victims are left entirely without any recourse.”).

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.”).

64. See *Corfu Channel* (U.K. v. Albania), Judgment, 1949 I.C.J. 4, 22 (Apr. 9).

65. See U.N. High Comm’r for Refugees, *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*, at 1–3 (Nov. 11, 2010) (emphasis omitted), <https://www.unhcr.org/protection/basic/4cdd3fac6/brasilia-declaration-protection-refugees-stateless-persons-americas-brasilia.html>.

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*.⁶⁶ 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.

Id. The Brasilia Declaration has, in turn, been operationalized as law in, *inter alia*, Brazil. See Press Release, Org. of Am. States, IACHR Welcomes Approval of New Migration Law in Brazil (June 16, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/078.asp; see generally Law No. 13,445, de 24 de Maio de 2017, Diário Oficial da União [D.O.U.] de 25.05.2017, <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&data=25/05/2017&pagina=1>; see also U.N. High Commissioner for Refugees, Zagreb Declaration (Oct. 27, 2011), <https://www.unhcr.org/events/commemorations/4ec12d0d9/zagreb-declaration-conference-provision-civil-status-documentation-registration.html>.

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.

66. See, e.g., Prosecutor v. Ayyash, Case No. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶101 (Spec. Trib. for Leb. Feb. 16, 2011), https://www.stl-tsl.org/index.php?option=com_k2&id=2565_9f56caa0701334523deb63736a46b4c9&lang=en&task=download&view=item; S.S. “Wimbledon” (U.K., Fr., It., & Japan v. Ger.), Judgment, 1923 P.C.I.J. (ser. A) No. 1, ¶ 25 (Aug. 17); Nottebohm (Liech. v. Guat.), Judgment, 1955 I.C.J. 4, 22 (Apr. 6); North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, 231 (Feb. 20) (Lachs, J., dissenting); *id.* at 246-47 (Sørensen, J., dissenting); CLIVE PARRY, THE SOURCES AND EVIDENCES OF INTERNATIONAL LAW 62 (1965); LAUTERPACHT, *supra* note 16, at 380; C. WILFRED JENKS, THE PROSPECTS OF INTERNATIONAL ADJUDICATION 253–54 (1964); CHARLES DE VISSCHER, THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW 441 n.19 (P. E. Corbett

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.⁶⁷ At this point, it suffices to observe that this concordant practice, even without a strong showing of *opinio juris*, creates a presumption that granting nationality to children is required under customary international law.⁶⁸ However, notwithstanding the presumption, there is a strong showing of *opinio juris* on point.⁶⁹ These matters will be discussed in more detail in the section on state practice.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.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,⁷² the Institute of International Law,⁷³ the International Law Association,⁷⁴ and the Harvard Research in

trans., 1968); Richard Baxter, *Treaties and Customs*, in COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW, VOL. 129, at 25, 69 (1970).

67. See *infra* Section III.D.

68. See *infra* Section III.D.

69. See *infra* Section III.E.1.

70. See *infra* Section III.D.

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. *Id.* at 26.

72. See Roberto Cordova (Special Rapporteur on Nationality), *Report on the Elimination or Reduction of Statelessness*, at 172, U.N. Doc. A/CN.4/64 (Mar. 30, 1953) reprinted in [1953] 2 Y.B. Int'l L. Comm'n 172, U.N. Doc. A/CN.4/SER.A/1953/Add.1 (citing FRANCISCO DE VITTORIA, RELECTIONES THEOLOGICAE XII: DE INDIS ET DE IVRE BELLI RELECTIONES 152–53 (Ernest Nys, ed., 1917)) [hereinafter ILC, II YB 1953 Add. 1].

73. See *id.* (citing *Rapport Complémentaire et Projet de Résolutions Présentés par les Rapporteur*, 15 ANNUAIRE INSTITUT DE DROIT INTERNATIONAL (Inst. of Int'l L.) 127 (1896)).

74. See *id.* (citing *Report of the Nationality and Naturalisation Committee*, 33 INT'L L. ASS'N REP. CONF. 25, 29 (1924)).

International Law.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).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.⁷⁷ Specifically, the UNGA has on multiple occasions observed that there is a right to

75. See *id.* (citing Harvard Law Sch., *The Law of Nationality*, 23 SUPPLEMENT TO AM. J. INT'L L. (SPECIAL NUMBER) 13 (1929)).

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.").

77. See Case C-135/08, *Rottman v. Bayern*, 2010 E.C.R. I-1449, I-1476, I-1489; *Proposed Amends Const. C. Rica Adv. Op.*, *supra* note 61, ¶¶ 32–33; *Girls Yean & Bosico v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 136 (Sept. 8, 2005) (citing UDHR, *supra* note 59, art. 15); *Inst. for Human Rights & Dev. in Africa (IHRDA) v. Kenya*, No. Com/002/2009, Decision, ¶47 (African Union, Mar. 22, 2011) (citing UDHR, *supra* note 59); U.N. GAOR, 16th Sess., 1st plen. mtg. at 2, U.N. Doc. A/CONF.9/SR.1 (Apr. 24, 1961).

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.

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.⁷⁸ Of course, the UNGA adopted the Universal Declaration of Human Rights (UDHR), providing that “[e]veryone has a right to a nationality[,]”⁷⁹ but the Assembly has also adopted many other statements that argue that statelessness in general should be addressed⁸⁰ and that statelessness of children is an especially acute problem⁸¹ because everyone has a legal identity.⁸² Sometimes the focus of the UNGA’s concern over statelessness has been in the context of the succession of states,⁸³ though in those cases, the UNGA is careful to also specify that statelessness should not occur at birth following state succession.⁸⁴ In fact, the UNGA is so concerned about statelessness that it has specifically requested the ILC study the matter from a juridical perspective⁸⁵ and has added the issue to the portfolio of the UNHCR from a practice and advocacy perspective.⁸⁶

78. 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”).

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

80. 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).

81. 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).

82. See e.g., G.A. Res. 71/313, annex. Global Indicator Framework for the Sustainable Development Goals and Targets of the 2030 Agenda for Sustainable Development, ¶ 16.9 (July 6, 2017).

83. See generally G.A. Res. 55/153, *supra* note 80; see generally G.A. Res. 59/34 (Dec. 16, 2004).

84. G.A. Res. 55/153, *supra* note 80, annex, art. 13.

85. See James Crawford, *Second Report on State Responsibility*, [1999] 2 Y.B. Int’l L. Comm’n 24, U.N. Doc. A/CN.4/SER.A/1999/Add.1; *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries*, [1999] II (2) Y.B. Int’l L. Comm’n 24 (1999); *Summary Records of the 211th Meeting*, [1953] 1 Y.B. Int’l L. Comm’n 177–85, U.N. Doc. A/CN.4/SER.A/1953 (discussing the Draft Convention on the Elimination of Future Statelessness); *id.* ¶ 24, at 172 (“Mr. PAL . . . would only point out that the right of nationality was a basic human right, and that

However, the UNGA is not alone: the Economic and Social Council,⁸⁷ the Human Rights Council (HRC),⁸⁸ Commission on Human Rights,⁸⁹

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).

87. See Economic and Social Council Res. 18 (III) (Oct. 3, 1946); Economic and Social Council Res. 116(VI), § D (Mar. 1, 1948); Economic and Social Council Res. 248 (IX) (Aug. 6, 8, 1949); Economic and Social Council Res. 319 (XI) (Aug. 11, 16, 1950); ESCOR, Drafting Comm. on an Int’l Bill of Human Rights, Rep. of the Drafting Comm. to the Comm’n on Hum. Rts, art. 32, U.N. Doc. E/CN.4/21 (July 1, 1947); ESCOR, Rep. of the Working Party on an Int’l Convention on Hum. Rts, art.2, U.N. Doc. E/CN.4/56 (Dec. 11, 1947); A Study in Statelessness, *supra* note 57; ESCOR, Ad Hoc Comm. on Statelessness and Related Problems, First Session: Summary Record of the Third Meeting, U.N. Doc. E/AC.32/SR.2 (Jan. 17, 1950); ESCOR, Ad Hoc Comm. on Statelessness and Related Problems, Second Session: Summary Record of the Forty-Third Meeting, U.N. Doc. E/AC.32/SR.3 (Aug. 25, 1950); ESCOR, Rep. of Ad Hoc Comm. on Statelessness and Related Problems, U.N. Doc. E/1618 (Jan. 16 - Feb. 16, 1950).

88. See Human Rights Council Res. 32/5, U.N. Doc. A/HRC/RES/32/5 (Jul. 30, 2016); Human Rights Council Res. 26/14, U.N. Doc. A/HRC/RES/26/14 (June 26, 2014); Human Rights Council Res. 20/5, U.N. Doc. A/HRC/RES/20/5, ¶ 9 (Jul. 5, 2012); Human Rights Council Res. 13/2, U.N. Doc. A/HRC/RES/13/2 (Mar. 24, 2010); Human Rights Council Res. 10/13, U.N. Doc. A/HRC/RES/10/13 (Mar. 26, 2009); Human Rights Council Res. 7/10, U.N. Doc. A/HRC/RES/7/10 (Mar. 27, 2008); U.N. Secretary-General, *Arbitrary Deprivation of Nationality: Report of the Secretary-General*, ¶ 51, U.N. Doc. A/HRC/10/34 (Jan. 26, 2009) (“The avoidance of statelessness is a general principle of international law.”) [hereinafter SG Report on Arbitrary Deprivation of Nationality Jan. 2009]; Yanghee Lee (Special Rapporteur on Myanmar), Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, U.N. Doc. A/HRC/28/72 (Mar. 23, 2015); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60; HRC & UNSG, *Human rights and arbitrary deprivation of nationality* (Dec. 19, 2011), *supra* note 61.

89. See Comm’n on Human Rights Res. 2005/45, U.N. Doc. E/CN.4/RES/2005/45, at ¶ 5 (Apr. 19, 2005) (emphasis omitted) (“Further calls upon States that have not already done so to consider accession to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.”); Comm’n on Human Rights Res. 1998/28, U.N. Doc. E/CN.4/RES/1999/28 (Apr. 26, 1999); Comm’n on Human Rights Res. 1998/48, U.N. Doc.

and the Office of the High Commission for Human Rights⁹⁰ 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.⁹¹ In addition to UN bodies, the EU,⁹² Council of Europe,⁹³ African Union,⁹⁴ African

E/CN.4/RES/1998/48 (Apr. 17, 1998); Comm'n on Human Rights Res. 1997/36, U.N. Doc. E/CN.4/RES/1997/36 (Apr. 11, 1997).

90. See generally SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88.

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.

92. See EU Pledge Registration Form, *supra* note 77; UNHCR, Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Dec. 7-8, 2011), <https://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf> (joint statement from EU that “We are committed to support UNHCR efforts and to prevent and end statelessness in compliance with the principles of the 1961 Convention on the Reduction of Statelessness.”) [hereinafter UNHCR, *Pledges 2011*]; *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The Global Approach to Migration and Mobility*, at 17, COM (2011) 743 final (Nov. 18, 2011) (The EU should also encourage non-EU countries to address the issue of stateless persons, who are a particularly vulnerable group, by taking measures to reduce statelessness.); Press Release, Council of the European Union, Council Adopts Conclusions on Statelessness (Dec. 4, 2015, 4:25 PM), <https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/> (referencing the ICCPR and CRC); European Parliament Resolution of 13 June 2017 on Statelessness in South and South East Asia (2016/2220(INI)), 2018 O.J. (C 331) 17, 17-18 (referencing the UDHR, ICCPR, CRC, 1954 Statelessness Convention, 1961 Statelessness Convention); European Parliament Resolution of 25 October 2016 on Human Rights and Migration in Third Countries (2015/2316(INI)), 2018 O.J. (C215) 111, 111, 116 (referencing the CRC and also the need to produce legislation that prevents new cases of childhood statelessness); see generally European Parliament Resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union’s Policy on

the Matter (2014/2216(INI)), 2016 O.J. (C 316) 141; European Parliament Resolution of 8 September 2015 on the Situation of Fundamental Rights in the European Union (2013-2014) (2014/2254(INI)), 2017 O.J. (C 316) 2, 2 (referencing the CRC); *see generally* European Parliament Resolution of 12 December 2012 on the Situation of Fundamental Rights in the European Union (2010 — Situation of Fundamental Rights in the European Union 2004-2008 (2007/2145(INI)), 2010 O.J. (C 46 E) 48, 61 (referencing the rights of the child and best interests of the child); *see generally* European Parliament Resolution of 2 April 2009 on Problems and Prospects Concerning European Citizenship (2008/2234(INI)), 2010 O.J. (C 137 E) 14; Comm. on Civil Liberties, Justice and Home Affairs, *Hearings, 29-06-2017 — Statelessness*, EUR. PARLIAMENT, [http://www.europarl.europa.eu/committees/en/libe/events-hearings.html?id=20170626CHE02021&mc_cid=76eed6a4cf&mc_eid=bf682001b1_\(last visited Apr. 6, 2019\)](http://www.europarl.europa.eu/committees/en/libe/events-hearings.html?id=20170626CHE02021&mc_cid=76eed6a4cf&mc_eid=bf682001b1_(last%20visited%20Apr.%206,%202019)); *see generally* Comm. on Civil Liberties, Justice and Home Affairs, *Seminar on Prevention of Statelessness and Protection of Stateless Persons within the European Union*, EUR. PARLIAMENT (June 26, 2007), http://www.europarl.europa.eu/hearings/20070626/libe/programme_en.pdf.

93. *See* Eur. Parl. Ass., Recommendation 2042 (2014), *Access to Nationality and the Effective Implementation of the European Convention on Nationality* (Apr. 9, 2014), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20872&lang=en>; COUNCIL OF EUR., THE NATIONALITY OF CHILDREN: RECOMMENDATION CM/REC(2009)13 AND EXPLANATORY MEMORANDUM 5 (2010), <https://rm.coe.int/16807096bf>; Council of Eur., *Recommendation No. R (99) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness* (Sept. 15, 1999), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804e0d29>; Council of Eur., *Resolution (77) 13 on the Nationality of Children Born in Wedlock* (May 27, 1977), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804fdeed>; Eur. Parl. Ass., Resolution 2099 (2016), *The Need to Eradicate Statelessness of Children* (Mar. 4, 2016), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22556&lang=en>; Eur. Parl. Ass., Resolution 1989 (2014), *Access to Nationality and the Effective Implementation of the European Convention on Nationality* (Apr. 9, 2014) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20871&lang=en>; *see generally* Eur. Parl. Ass., Recommendation 87 (1955), *Statelessness* (Oct. 25, 1955), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14122&lang=en>; Council of Eur., *Recommendation CM/Rec(2009)13 of the Committee of Ministers to Member States on the Nationality of Children* (Dec. 9, 2009), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cff3b; Council of Eur., *Ministers' Deputies CM Documents: CM(2009)163* (Dec. 9, 2009), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d049c; ARNOLD PRONTO & MICHAEL WOOD, THE INTERNATIONAL LAW COMMISSION 1999-2009, VOL. 4: TREATIES, FINAL DRAFT ARTICLES, AND OTHER MATERIALS 88 (2010) (citing Council of Eur., Report of the Experts of the Council of Europe on the Citizenship Laws of the Czech Republic and Slovakia and Their Implementation, COE Doc. DIR/JUR(96)4, ¶ 54 (Apr. 2, 1996)) (“[T]here is an international obligation for the two States to avoid statelessness.”); Eur. Parl. Ass., *The Need to Eradicate Statelessness of*

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

Children, Doc. No. 13985, § B, ¶ 16 (Feb. 16, 2016), <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22496&lang=en> (citing Nils Muižnieks, Council of Eur., Comm'r for Human Rights, Keynote Address at the First Global Forum on Statelessness (Sept. 15-17, 2014), CommDH/Speech(2014)8) ("It is in the child's best interest to have a nationality.").

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.

95. See Afr. Comm'n on Human and People's Rights, 234: Resolution on the Right to Nationality (Apr. 23, 2013), <http://www.achpr.org/sessions/53rd/resolutions/234/>; Afr. Comm'n on Human and People's Rights, Decision on the Report of the Activities of the African Commission on Human and Peoples' Rights (ACHPR), Doc. EX.CL/968(XXIX), ¶ 5 (July 15, 2016), https://au.int/sites/default/files/decisions/31275-ex_cl_dec_919_-_925_and_928_-_938_xxix_e.pdf [hereinafter ACHPR, *Decision on the Report of the Activities*].

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),⁹⁷ Organization of American States,⁹⁸ Organization for Security and Co-operation in Europe,⁹⁹ and the Interparliamentary Union¹⁰⁰ have all expressed concern and taken action on statelessness within their mandates, especially regarding the problem of child statelessness.¹⁰¹ 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-0/99) (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).

99. See Org. Security & Co-operation in Eur., High Comm’r on Nat’l Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note*, at 42 (Nov. 7, 2012).

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.

101. See generally Inter-Parliamentary Union & United Nations High Comm’r for Refugees, *Nationality and Statelessness: A Handbook for Parliamentarians* (2005), <https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf> (providing

international law governing the prohibition of stateless,¹⁰² and sometimes they involved identifying the mechanisms that would lead to the practical realization of preventing stateless at birth,¹⁰³ such as accession to the Statelessness Conventions that would require states to grant nationality at birth to stateless children.¹⁰⁴ 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,¹⁰⁵ 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.

102. See, e.g., SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 64.

103. See H.R.C. Res. 32/5, *supra* note 88, ¶ 2; H.R.C. Res. 26/14, *supra* note 88, ¶ 10; H.R.C. Res. 20/5, *supra* note 88, ¶ 10; H.R.C. Res. 13/2, *supra* note 88, ¶ 9; H.R.C. Res. 10/13, *supra* note 88, ¶ 9; H.R.C. Res. 7/10, *supra* note 88, ¶ 3; Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Lebanon*, ¶ 5.215, U.N. Doc. A/HRC/WG.6/L.2 (Nov. 4, 2015) (“Improve the situation of refugees by facilitating their registration and by renewing residency permits; by setting up an effective mechanism for birth registration to avoid statelessness of newborn children; and by allowing refugees, including Palestinian refugees, access to segments of the official labour market (Germany).”); Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Mauritania*, U.N. Doc. A/HRC/WG.6/23/L.3 (Nov. 5, 2015); Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Georgia*, ¶ 117.33, U.N. Doc. A/HRC/WG.6/23/L.12 (Nov. 12, 2015) (“Ensure the issuance of birth certificates and citizenship documents to the Roma minority (Nigeria)”); Organization of American States [OAS], G.A. Res. AG/RES. 1693 (XXIX-O/99), *supra* note 98, ¶ 1; OAS, G.A. Res. AG/RES. 1762 (XXX-O/00), *supra* note 98, ¶ 1; OAS, G.A. Res. AG/RES. 1832 (XXXI-O/01), *supra* note 98; OAS, G.A. Res. AG/RES. 1892 (XXXII-O/02), *supra* note 98, ¶¶ 1–2; OAS, G.A. Res. AG/RES. 1971 (XXXIII-O/03), *supra* note 98, ¶ 2; OAS, G.A. Res. AG/RES. 2047 (XXXIV-O/04), *supra* note 98, ¶ 1; OAS, G.A. Res. AG/RES. 2511 (XXXIX-O/09), *supra* note 98, ¶ 2; OAS, G.A. Res. AG/RES. 2599 (XL-O/10), *supra* note 98; OAS, G.A. Res. AG/RES. 2665 (XLI-O/11), *supra* note 98; OAS, G.A. Res. AG/RES. 2787 (XLIII-O/13), *supra* note 98; OAS, G.A. Res. AG/RES. 2826 (XLIV-O/14), *supra* note 98.

104. See UN Economic and Social Council [ECOSOC], *Refugees and Stateless Persons Resolution of 11 and 16 August 1950*, G.A. Res. E/RES/319(XI) (Aug. 16, 1950); IPU, *Statement on Parliamentary Action in Support of the UNHCR*, *supra* note 100; EU *Pledge Registration Form*, *supra* note 76, sec. A, para. 4; UNHCR, *Pledges 2011*, *supra* note 92, at 38 (referring to the sample African Union pledge form); ACHPR, *Decision on the Report of the Activities*, *supra* note 95, para. 5.

105. See generally Council of Eur. [COE] Comm. of Ministers, Recommendation No. CM/Rec(2009)13, *supra* note 93; COE Comm. of Ministers, Recommendation No.

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 statelessness¹⁰⁹—including major efforts to prevent statelessness at birth in particular—

(1999)18, *supra* note 93; ECOWAS & UNHCR, *Conclusion and Recommendations*, *supra* text accompanying note 96, para. 7.

106. See U.S. Dep't of State, Cable No. 04RANGOON1577_a, para. 1 (Dec. 14, 2004):

The UN's refugee agency has essentially exhausted its mandate to oversee repatriation operations along the Bangladesh border in northern Rakhine State and settled into an uneasy but crucial role providing a wide umbrella of protection, and coordinating basic relief services, for the region's 800,000 stateless and repressed Rohingya Muslims.

Id.

107. See Convention on the Reduction of Statelessness, art. 11, Aug. 30, 1961, 989 U.N.T.S. 175 [hereinafter 1961 Statelessness Convention].

108. See *Pharm v. Sec'y of State for Home Dep't.*, [2015] UKSC 19, [¶¶ 22–24] (Eng.).

109. See generally G.A. Res. 3274 (XXIX), *supra* note 88, ¶ 1; G.A. Res. 31/36, *supra* note 86; G.A. Res. 50/152, *supra* note 78; G.A. Res. A/RES/61/137, ¶ 3 (Dec. 19, 2006); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 27; *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, *supra* note 86, Nos. 78 (XLVI), 106 (LVII); UNHCR, *A Campaign to End Statelessness Launched on the 60th Anniversary of the 1954 Convention relating to the Status of Stateless Persons* (Feb. 2014), <https://www.unhcr.org/53174df39.pdf>; U.N. Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee*, ¶ 54, U.N. Doc. A/HRC/28/72 (Mar. 23, 2015); Executive Comm. of the High Comm'r Programme, Update on Statelessness of the Standing Comm. 69th meeting, U.N. Doc. EC/68/SC/CRP.13 (June 7, 2017); UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

and is currently in the midst of global action plan to eradicate statelessness.¹¹⁰ This action plan explicitly advises states to provide nationality to stateless children born in their territory.¹¹¹ In addition to the action plan, the UNHCR Executive Committee has issued opinions on statelessness,¹¹² and has expressly recommended that states grant nationality to all children born in their territory where the child would otherwise be stateless.¹¹³ This conclusion has been endorsed by a number of states.¹¹⁴

Lastly, the ILC has also opined on several occasions that states should grant nationality to otherwise stateless children born in their territory.¹¹⁵ As noted above, the UNGA has authorized the ILC to study statelessness as a matter of concern.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 nationality¹¹⁷ and

110. See generally UNHCR, *Global Action Plan to End Statelessness* (Nov. 4, 2014), <https://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>; UNHCR, *The Campaign to End Statelessness: Update*, REFWORLD UNHCR (Apr. 2016), <http://www.refworld.org/docid/571e23fb7.html>.

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.”).

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).

113. See *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, *supra* note 86, No. 106 (LVII), ¶ (i); Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the independent expert on minority issues*, Gay McDougall, U.N. Doc. A/HRC/7/23, ¶ 85 (Feb. 28, 2008) [hereinafter McDougall].

114. See UNHCR, *Banjul Appeal on Statelessness*, REFWORLD 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).

115. See UNHCR, *Global Action Plan to End Statelessness*, *supra* note 110, at 18–20; McDougall, *supra* note 113, ¶¶ 28–35, 84–85, 89.

116. See G.A. Res. 50/152, *supra* note 78, ¶¶ 8, 14.

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.¹¹⁸ The ILC proposed two alternative conventions for either the elimination of statelessness or the mere reduction of statelessness.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.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.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.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.”¹²³ However, in the commentary, the ILC explained that “persons concerned” included not only nationals, but also resident stateless persons.¹²⁴ This obligation was linked to the larger duty to

(specifically referencing Chapter IV *Expulsion of Aliens*, Section E, *Text of the draft articles on the expulsion of aliens*, Article 8, *Rules relating to the expulsion of stateless persons*) [hereinafter ILC, *Draft Articles on the Expulsion of Aliens*].

118. *Report of the International Law Commission Covering the Work of its Sixth Session*, [1954] II Y.B. Int'l L. Comm'n ¶ 25, art. 1, U.N. Doc. A/CN.4/88 (Draft Convention on the Elimination of Future Statelessness) [hereinafter *1954 Report of the ILC*]; see also ILC, *Draft Articles on Nationality of Natural Person in relation to the Succession of States*, *supra* note 85, art. 13.

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).

120. See *Report of the International Law Commission on the Work of its Fourth Session*, [1952] II Y.B. Int'l L. Comm'n 67–68, U.N. Doc. A/CN.4/58 [hereinafter *1952 Report of the ILC*]; Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur, [1952] II Y.B. Int'l L. Comm'n 19, sec. V., U.N. Doc. A/CN.4/50.

121. See G.A. Rep. of the Int'l Law Comm'n, Rep. on the Work of Its Fifty-Eighth Session, U.N. Doc. A/61/10, art. 8 (2006) (specifically referencing Chapter IV, *Draft Articles on Diplomatic Protection*).

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

123. *Id.* art. 26.

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.¹²⁵ The ILC reached this conclusion because it found that states have a duty under international law to avoid statelessness.¹²⁶ The ILC understood the Stateless Conventions to express norms of customary international law.¹²⁷ 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.¹²⁸ 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.¹²⁹

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.¹³⁰ 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*, *Gabčíkovo-Nagymaros Project*, *Arrest Warrant*, and *Jurisdictional Immunities* cases.¹³¹ 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.

130. *See* *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Can. v. U.S.), Judgment, 1984 I.C.J. Rep. 246, ¶ 111 (Oct. 12); Simma & Alston, *supra* note 8, at 106.

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 values¹³² and addresses a matter of international concern.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 *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 *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.¹³⁴

so.”); Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. Rep. 3, 41–44 (July 25); Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. Rep. 3, 142, ¶ 10 (Feb. 14) (separate opinion by Van den Wyngaert, J. *ad hoc*); *Id.* at 143, ¶ 13 (also arguing that the *Lotus* principle plays a role in assessing the sufficiency of the evidence); Jurisdictional Immunities of the State (Ger. v. It.), Judgment, 2012 I.C.J. Rep. 99, ¶¶ 57, 67–72 (Feb. 3); Case C-162/96, Racke v. Hauptzollamt Mainz, 1998 E.C.R. I-3688, I-3705, ¶ 50 (citing Gabčíkovo-Nagymaros Project (Hung. v. Slov.), Judgment, 1997 I.C.J. Rep. 7, ¶ 104 (Sept. 25)). This consideration could, however, be the complementary assessment of principles of law, rather than the deduction of customary principles. In either event, the deductive reasoning process is being applied in the context of analyzing the rules of customary international law. *Id.*

132. See sources cited *supra* notes 59–65.

133. See Ayyash, Case No. STL-11-01/I/TC, ¶101.

134. See U.N., *A Study in Statelessness*, *supra* note 57, sec. V, para. 2.

One approach would be to consider which states have the largest stateless populations.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).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.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 Pakistan¹³⁸) or simply unknown (e.g. Bahrain, Bhutan, Haiti, and Kosovo¹³⁹), 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

135. See *Population Statistics*, UNHCR (June 19, 2017), http://popstats.unhcr.org/en/persons_of_concern; *Populations*, UNHCR (June 19, 2017), <http://reporting.unhcr.org/population>.

136. See *id.*

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.*

138. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports on Human Rights Practices (2015)* (reports on Benin; Cambodia; Libya; Pakistan).

139. See *id.* (reports on Bahrain; Bhutan; Haiti; Kosovo).

states that have effectively integrated their stateless populations¹⁴⁰ 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.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.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.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.¹⁴⁴ An alternative would be to look at

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).

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 Petré in the *Nuclear Tests* cases. See *Nuclear Tests* (Austl. v. Fr.), Judgment, 1974 I.C.J. Rep. 253, 306 (Dec. 20) (separate opinion by Petré, 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.*

142. See *Country Comparison: Population*, *supra* note 141.

143. See CIA World Factbook, *Country Comparison: Birth Rate*, U.S. CENT. INTELLIGENCE AGENCY (CIA) (2017), <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2054rank.html>.

144. See *id.*

states with the largest absolute number of births.¹⁴⁵ 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.¹⁴⁶ 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.¹⁴⁷ 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

145. *World Population Prospects Data Query*, U.N. DESA POPULATION DIV. (2017), <https://population.un.org/wpp/DataQuery/>.

146. *See Total International Migrant Stock*, U.N. DESA POPULATION DIV (Dec. 2015), <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>. *See also* CIA World Factbook: *Country Comparison: Net Migration Rate*, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2112rank.html>.

147. *See id.*

customary international humanitarian law.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,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.

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.

Id.

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.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 *opinio juris*. There are a variety of sources of evidence that contribute to proving customary international law. As mentioned above, practice and *opinio juris* can include, *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.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.¹⁵² We will proceed through each of these sources of evidence in turn.

150. *See infra* Section III.D.

151. *See infra* Section III.C.1, 2.

152. *See id.*

1. *International Treaties*

First, there are treaties that specifically govern statelessness. The most prominent of these treaties are the 1954¹⁵³ and 1961 Statelessness Conventions.¹⁵⁴ These treaties are aimed at eliminating or at least reducing stateless, especially at birth.¹⁵⁵ In particular, the 1954 convention obliges states to facilitate the naturalization of stateless persons in their territory,¹⁵⁶ affirming the special link between territory and nationality.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹ This obligation also covers the unusual case of “foundlings,” children discovered in a state whose parents are unknown.¹⁶⁰ The 1961 convention does permit states to opt out of the

153. See generally Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Stateless Convention]; *UN Conventions on Statelessness*, UNHCR (last visited Mar. 27, 2019), <https://www.unhcr.org/un-conventions-on-statelessness.html>.

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] “[n]otwithstanding 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.

155. See *Report of the International Law Commission Covering the Work of its Fifth Session*, [1953] II Y.B. Int’l L. Comm’n ¶ 134, U.N. Doc. A/CN.4/76 (Elimination and Reduction of Statelessness as the Result of Birth) [hereinafter *1953 Report of the ILC*] (discussing assignment of nationality to stateless children under the stateless conventions based on birth in the state’s territory).

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).

159. See *1953 Report of the ILC*, *supra* note 155, ¶ 135.

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*

Conference [OIC], *Covenant on the Rights of the Child in Islam*, art. 7, Doc. No. OIC/9-IGGE/HRI/2004/Rep.Final (June 2005), <https://www.refworld.org/docid/44eaf0e4a.html>; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 30.

161. See United Nations High Commissioner for Refugees [UNHCR], *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, ¶¶ 2, 4, U.N. Doc. HCR/GS/12/04 (Dec. 21, 2012) [hereinafter *Guidelines on Statelessness No. 4*].

162. See generally 1961 Statelessness Convention, *supra* note 107.

163. *Id.* arts. 1, 4.

164. See *Chapter V: Refugees and Stateless Persons, Section 4: Convention on the Reduction of Stateless (Signatories)*, U.N. TREATY COLLECTION (Mar. 30, 2019), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en (listing Albania, Austria, Belgium, Benin, Côte d'Ivoire, Croatia, Denmark, Dominican Republic, Finland, Germany, Israel, Latvia, Lithuania, Netherlands, Nigeria, Slovakia, Sweden, Turkmenistan, and Ukraine).

165. See 1961 Statelessness Convention, *supra* note 107.

166. See *id.*

has shifted, and affirming the norms within.¹⁶⁷ 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.¹⁶⁸ Furthermore, the EU* has pledged that all EU members ratify 1954 Statelessness Convention and consider ratifying the 1961 Convention.¹⁶⁹ In the meantime, Guinea-Bissau acceded on September 19, 2016, Luxembourg acceded on September 21, 2017, and Sierra Leone acceded on May 9, 2016.¹⁷⁰

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,¹⁷¹ and Slovenia refuses to adhere to the conventions due to concerns with article 12 of the 1961 Convention.¹⁷² Only Estonia refuses to adhere to the Statelessness Conventions for the reason that it would require *jus soli* in the case of stateless children.¹⁷³ However, Estonia does provide for naturalization of stateless children when they are born in Estonia, as

167. See UNHCR, *Banjul Appeal on Statelessness*, REF WORLD UNHCR (Dec. 6, 2013), <https://www.refworld.org/docid/52f9d6fe4.html> (encouraging the adherence to the Statelessness Conventions).

168. See, e.g., UNHCR, *Draft Overview of Implementation of Pledges* (Aug. 1, 2013), <https://www.unhcr.org/protection/statelessness/521379599/draft-overview-implementation-pledges-statelessness.html?query=pledge>; UNHCR, *Good Practices Paper – Action 9: Acceding to the UN Statelessness Conventions*, REF WORLD UNHCR (Apr. 28, 2015), <https://www.refworld.org/docid/553f617f4.html>.

169. European Union: Council of the European Union, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, REF WORLD UNHCR (Dec. 4, 2015), <https://www.refworld.org/docid/5829c53a4.html>.

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

171. See Eur. Migration Network [EMN], *Statelessness in the EU (ver. 4)*, EUR. COMM'N, at 4 (Nov. 11, 2016), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-informs/emn-informs-00_inform_statelessness_final.pdf.

172. *Id.*

173. *Id.*

opposed to nationality by birth.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ The Human Rights Committee also encourages states to adhere to the Statelessness Conventions.¹⁷⁷ 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.¹⁷⁸ All individuals have a human right

174. *Id.* at 12.

175. See Norwegian Nationality Act, ch. 1, § 1 (Jan. 1, 1951), available at <https://www.refworld.org/docid/3ae6b4f920.html>.

176. See Comm. on the Rights of the Child [CRC], *Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia*, ¶ 23, U.N. Doc. CRC/C/SAU/CO/3-4 (Oct. 25, 2016); Comm. on the Rights of the Child [CRC], *Concluding Observations on the Second Periodic Report of South Africa*, ¶ 32, U.N. Doc. CRC/C/ZAF/CO/2 (Oct. 27, 2016); Comm. on the Rights of the Child [CRC], *Concluding Observations on the Combined Third and Fourth Periodic Reports of Suriname*, ¶ 17, U.N. Doc. CRC/C/SUR/CO/3-4 (Nov. 9, 2016).

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. DIPL., 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 right¹⁷⁹) to a nationality.¹⁸⁰ The right to a nationality has been repeatedly asserted in almost every major human rights treaty, instrument, or declaration since 1945.¹⁸¹ These instruments include the 1957 Convention on the Nationality of Married Women,¹⁸² ICCPR,¹⁸³ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹⁸⁴ the Convention on the Elimination

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. *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, ¶ 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, ¶¶ 136–38 (Sept. 8, 2005);

Am. Decl., *supra* note 59, art. XIX; UDHR, *supra* note 59, art. 15(1); ICCPR, *supra* note 59, art. 24(3); CRC, *supra* note 60, art. 7(1); Migrant Workers Convention, *supra* note 178, art. 29; 1961 Statelessness Convention, *supra* note 107, art. 1(1).

180. *See* UDHR, *supra* note 59, art. 15; 1954 Stateless Convention, *supra* note 154, art. 1; 1961 Statelessness Convention, *supra* note 107; CONFERENCE FOR SECURITY AND CO-OPERATION IN EUROPE (CSCE), 1992 SUMMIT, HELSINKI DOCUMENT: THE CHALLENGES OF CHANGE, para. 5 (1992) [hereinafter Helsinki Document]; Johannes M. M. Chan, *The Right to a Nationality as a Human Right: The Current Trend Towards Recognition*, 12 HUM. RTS. L.J. 1, 4 (1991).

181. *See* Convention on Conflict of Nationality Laws, *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, *supra* note 60, ¶ 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, *CERD 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, *supra* note 178, art. 5(d)(iii); ICCPR, *supra* note 59, arts. 12(4), 23(4), 26; Borzov v. Estonia, Communication 1136/2002, Human Rights Committee [HRC], ¶ 5.4 (July 26, 2004) (Views of the HRC under the Optional Protocol to the International Covenant on Civil and Political Rights).

182. *See* Convention on the Nationality of Married Women arts. 1–3, Aug. 11, 1958, 309 U.N.T.S. 65.

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

184. *See* CERD, *supra* note 178, art. 5(d)(iii).

of All Forms of Discrimination against Women (CEDAW),¹⁸⁵ the International Convention on the Rights of All Migrant Workers (Migrant Workers Convention),¹⁸⁶ and the Convention on the Rights of Persons with Disabilities (Disabilities Convention).¹⁸⁷ The UDHR¹⁸⁸ and UN Declaration on the Rights of Indigenous Peoples¹⁸⁹ 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.¹⁹⁰ 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 nationality¹⁹¹ and further orders that every child's birth shall be registered.¹⁹² In addition, the Disabilities Convention,¹⁹³ Migrant Workers Convention,¹⁹⁴ and Enforced

185. See U.N. Comm. on the Elimination of Discrimination Against Women [CEDAW], *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, art. 9 (1994) [hereinafter CEDAW].

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

187. See G.A. Res. 61/106, art. 18(1) (Dec. 13, 2006) (Convention on the Rights of Persons with Disabilities) [hereinafter CRPD].

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

189. See G.A. Res. 61/295, art. 6 (Sept. 13, 2007) (United Nations Declaration on the Rights of Indigenous Peoples).

190. See U.N. Economic and Social Council, Commission on Human Rights Drafting Committee on an International Bill of Human Rights, U.N. Doc. E/CN.4/21, art. 32 (July 1, 1947) (later drafted as UDHR, *supra* note 59, art. 15).

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,¹⁹⁵ 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 identity¹⁹⁶ which, as noted above, has been interpreted to include nationality.¹⁹⁷ 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.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ 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

195. See International Convention for the Protection of All Persons from Enforced Disappearance art. 25(4), Feb. 6, 2007, 2716 U.N.T.S. 3.

196. See CRC, *supra* note 60, arts. 7, 8; CMW-CRC, *Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 21 of the Committee on the Rights of the Child on the Human Rights of Children in the Context of International Migration*, DRAFT, paras. 61–62 (Apr. 24, 2017), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_IN_F_8181_E.docx [hereinafter CMW-CRC Joint General Comment]; Sustainable Development Goals – Target 16.9: By 2030, provide legal identity for all, including birth registration, <https://unstats.un.org/sdgs/metadata/files/Metadata-16-09-01.pdf>.

197. See generally UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60.

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 “[any] 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

201. See *Expelled Dominicans & Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 258 (Aug. 28, 2014); ICCPR, *supra* note 59, art. 24; HRC Gen. Comm. No. 17, *supra* note 76, para. 8. This was also the interpretation followed by the African Committee of Experts on the Rights and Welfare of the Child. See *IHRDA Nubian Descent in Kenya*, Comm. No. Com/002/2009, Dec. on the Merits, para. 42 (Mar. 22, 2011) (“a purposive reading and interpretation of the relevant provision strongly suggests that, as much as possible, children should have a nationality beginning from birth”); Afr. Comm. Children, Gen. Comm. 2, *supra* note 61, art. 6; U.N. Human Rights Committee, Rep. on the Work of Its Fifty-Second Session, ¶ 306, U.N. Doc. A/52/40 (1997).

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).

205. See Off. of the High Comm’r for Human Rights, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, ¶ 20, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999) [hereinafter HRC Gen. Comm. No. 27].

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.”²⁰⁶

In short, the test for arbitrariness is whether an act is contrary to the rule of law,²⁰⁷ and it has both procedural²⁰⁸ and substantive aspects.²⁰⁹ 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,²¹⁰ but in terms of substance, the act must be reasonable.²¹¹ Substantive includes, for example, discrimination,²¹² but also “inappropriateness, injustice, illegitimacy [or] lack of predictability,”²¹³ or violating the principle of proportionality.²¹⁴ These protections specifically apply to the deprivation of nationality.²¹⁵ Thus,

206. ICCPR, *supra* note 59, art. 12.

207. *See* Elettronica Sicula S.p.A. (ELSI) (U.S. v. It.), Judgment, 1989 I.C.J. Rep. 15, 76, ¶ 128 (July 20).

208. *See* Bronstein v. Peru, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 95 (Feb. 6, 2001).

209. *See* SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶¶ 61–70; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 40.

210. *See* Eretria-Ethiopia Claims Comm’n, Partial Award: Civilian Claims (Eri. v. Eth.) 26 R.I.A.A. 195, 219–24 (Perm. Ct. Arb. 2004) [hereinafter Eri. Award]; Council of Eur., Explanatory Report to the European Convention on Nationality, art. 4(36), Nov. 6, 1997, E.T.S. No. 166 (providing that denaturalization “must in general be foreseeable, proportional and prescribed by law”) [hereinafter ECN Explanatory Report].

211. *See* HRC Gen. Comm. No. 27, *supra* note 205, ¶ 21; Stewart v. Canada, Communication No. 538/1993, Human Rights Committee: International Covenant on Civil and Political Rights [ICCPR], ¶ 8 (Nov. 1, 1996) (Evatt, E., Quiroga, C.M., and Aguilar Urbina, F.J., dissenting); ICCPR, *supra* note 59, art. 26.

212. CERD, *supra* note 178, art. 5(d)(iii); CEDAW, *supra* note 185, art. 9(1).

213. Van Alphen v. Netherlands, Communication No. 305/1988, U.H. Human Rights Committee ¶ 5.8 (July 23, 1990). *See also* A v. Australia, Communication No. 560/1993, Human Rights Committee: International Covenant on Civil and Political Rights [ICCPR], ¶ 9.2 (Apr. 30, 1997); HRC Gen. Comm. No. 27, *supra* note 205, ¶¶ 20–21.

214. *See* UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 40; Opinion on the Draft Constitutional Law on “Protection of the Nation” of France, No. 838/2016, European Commission for Democracy Through Law, ¶ 28 (Mar. 14, 2014).

215. *See* U.N. Secretary-General, *Human Rights and Arbitrary Deprivation of Nationality*, para. 25, U.N. Doc. A/HRC/13/34 (Dec. 14, 2009) [hereinafter Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009]

arbitrariness in nationality deprivation has also been interpreted to include the creation of statelessness.²¹⁶

In many cases, the creation or tolerance of situations of statelessness is based on discriminatory or arbitrary nationality law,²¹⁷ which is specifically prohibited,²¹⁸ especially discrimination applied to children.²¹⁹ Prohibitions on discrimination in nationality law have been provided in the CERD²²⁰ and the 1961 Statelessness Convention,²²¹ and the ICCPR has been interpreted to prohibit this kind of discrimination as well.²²²

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).

217. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Burma 32 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=25275>; U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Croatia 9 (2015), <https://www.state.gov/documents/organization/253045.pdf>; U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Dominican Republic 19–20 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=253009>; CRC, *supra* note 60, art. 2.

218. See Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009, *supra* note 215, art. 4; Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Myanmar*, ¶¶ 7.54, 7.55, 7.66, U.N. Doc. A/HRC/WG.6/23/L.9 (Nov. 10, 2015); IHRDA Nubian Descent in Kenya, Comm. No. Com/002/2009, Dec. on the Merits, paras. 53, 54 (Mar. 22, 2011); Yean & Bosico v. Dominican Republic, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶¶ 136, 139, 141 Sept. 8, 2005); Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Austria*, ¶¶ 5.4, 5.5, U.N. Doc. A/HRC/WG.6/23/L.10 (Nov. 11, 2015); UDHR, *supra* note 59, art. 15(2); CEDAW, *supra* note 185, art. 9; Karashev v. Finland, No. 31414/96, Eur. Ct. H.R. 11 (Jan. 12, 1999) (holding the interpretation of the disagreement between states over which nationality the applicant acquired under relevant domestic laws was not arbitrary); CERD, *supra* note 178, art. 5(d)(iii); CRPD, *supra* note 187, art. 18; Expelled Dominicans & Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 263 (Aug. 28, 2014).

219. CRC, *supra* note 60, art. 2(1); HRC Gen. Comm. No. 17, *supra* note 76, para. 8; Genovese v. Malta, No. 53124/09 Eur. Ct. H.R. paras. 7–8 (Oct. 11, 2011).

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

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 gender²²³ and disabilities.²²⁴ In fact, the norm of nondiscrimination has sometimes been viewed as being a norm *jus cogens*.²²⁵ Some distinctions are, however, permitted in terms of granting nationality.²²⁶ 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.²²⁷ 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.²²⁸ 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.²²⁹ 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).

225. See *Expelled Dominicans & Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 264 (Aug. 28, 2014); *Juridical Condition and the Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 101 (Sept. 17, 2003); *Yean & Bosico v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 141 (Sept. 8, 2005); *Genovese v. Malta*, No. 53124/09 Eur. Ct. H.R., paras. 30–33 (Oct. 11, 2011); 1961 Statelessness Convention, *supra* note 107, art. 9; CRC, *supra* note 60, arts. 2(2), 7, 8; Convention on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, ¶ 12, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005); Migrant Workers Convention, *supra* note 178, art. 29.

226. See SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 65.

227. See *id.* para. 62.

228. See *id.* para. 63; CEDAW, *supra* note 185, art. 10; See U.N. Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination against non-citizens*, ¶ 2, CERD/C/64/Misc.11/rev.3 (Mar. 12, 2004) [hereinafter CERD Gen. Rec. 30]; *Yean & Bosico*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 141; ICCPR, *supra* note 59, art. 24(3); CRC, *supra* note 60, arts. 7, 8; CEDAW, *supra* note 185, art. 9(1); CRPD, *supra* note 192, art. 18; 1961 Statelessness Convention, *supra* note 107, art. 9.

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.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.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,”²³² again, especially arbitrary nationality laws applied to children.²³² The Ethiopia-Eritrea Claims Commission held that a revocation of nationality would be arbitrary where the reasons for the denationalization were illegitimate.²³³ On this basis, the Commission held that persons who were a security risk presented a legitimate basis.²³⁴ In addition, the Commission held that a person could have their nationality revoked when they already held another nationality.²³⁵ By way of analogy, the European Convention on Nationality provides for certain examples of grounds for denationalization that are unreasonable.²³⁶ These include situations where an individual voluntarily 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.²³⁷

230. See HRC Gen. Comm. No. 27, *supra* note 205, ¶ 21; *Stewart v. Canada*, Communication No. 538/1993, Human Rights Committee: International Covenant on Civil and Political Rights [ICCPR], ¶ 8 (Nov. 1, 1996) (Evatt, E., Quiroga, C.M., and Aguilar Urbina, F.J., dissenting); ICCPR, *supra* note 59, art. 17.

231. See *Karassee v. Finland*, No. 31414/96, Eur. Ct. H.R. 11 (Jan. 12, 1999); Bundesverwaltungsgericht [BVERWG] [Grand Chamber] Mar. 2, 2010, 8 C 135 ¶¶ 59–64 (Ger.);

232. See Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009, *supra* note 215, para. 23; CERD Gen. Rec. 30, *supra* note 228, ¶¶ 2, 13–17; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 4.

233. See *Eri. Award*, *supra* note 210, ¶¶ 57–78.

234. See *id.*

235. See *id.*

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).

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.²³⁸ A common element in these scenarios that permit exceptions to the deprivation of nationality is a voluntary act²³⁹; 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.²⁴⁰ Moreover, if it is legitimate to revoke nationality when an individual has another nationality,²⁴¹ 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.²⁴² 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*

238. See Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009, *supra* note 215, para. 21. *But see* the case of EU law where the ECJ disguised loss of nationality from acquisition of nationality and held that loss implicated EU law and that acquisition did not. Case C-192/99, *The Queen v. Sec’y of State for the Home Dep’t, ex parte Kaur*, 2001 E.C.R. I-1237.

239. See Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009, *supra* note 215, para. 23.

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.

242. See, e.g., ICCPR, *supra* note 59, art. 2(1). See also *Estrella v. Uruguay*, Communication 74/1980, International Covenant on Civil and Political Rights [ICCPR], ¶ 4.1 (July 17, 1990); Int’l Covenant on Civil and Political Rights [ICCPR], *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004).

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.²⁴³ On this basis, the UNHCR Executive Committee encourages states to avoid arbitrary denial of nationality as well as deprivation of nationality,²⁴⁴ and several human rights treaties have been interpreted to cover arbitrary refusal to grant nationality.²⁴⁵ 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,²⁴⁶ perhaps even providing for nationality of the state of birth,²⁴⁷ as has the Inter-American Court of Human Rights (IACHR) in interpreting the American Convention on Human Rights (AmCHR).²⁴⁸

A similar analysis applies in the case of the CRC which has almost universal adherence²⁴⁹ and specifically provides that children have a

243. See *Yean & Bosico v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 137 (Sept. 8, 2005); Celso Pérez, *We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic*, HUM. RTS. WATCH (July 1, 2015), <https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic>. See also *Stewart v. Canada*, Communication No. 538/1993, Human Rights Committee: International Covenant on Civil and Political Rights [ICCPR], ¶ 10.1 (Nov. 1, 1996) (Evatt, E., Quiroga, C.M., and Aguilar Urbina, F.J., dissenting); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 27; SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 91, ¶ 61 (“States enjoy a degree of discretion with regard to the criteria governing acquisition of nationality but these criteria must not be arbitrary . . . international law has developed detailed standards governing denial of nationality, in particular where it is based on discriminatory grounds or where it results in statelessness.”).

244. See UNHCR, Exec. Comm. Concls. No. 106 (LVII), *supra* note 86, ¶¶ (h)(i).

245. See, e.g., SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 91, ¶ 48.

246. See HRC Gen. Comm. No. 17, *supra* note 76, para. 8.

247. See Impact of the arbitrary deprivation of nationality, Dec. 2015, *supra* note 61, para. 5.

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.²⁵⁰ Now, it is true that some states entered declarations or reservations to these provisions in the CRC. These states include: Kuwait,^{*251} Malaysia,²⁵² Monaco,²⁵³ and the UAE.²⁵⁴ A few other states, including Andorra,²⁵⁵ Oman,²⁵⁶ Poland,²⁵⁷ Switzerland,²⁵⁸ Thailand,²⁵⁹ and Tunisia,²⁶⁰ initially entered reservations to article 7, but subsequently withdrew those reservations. Liechtenstein also initially entered a reservation,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 *ius soli* to children born in the territory applies only to "foundlings."²⁶² Malaysia, Monaco, and the UAE entered reservations limiting the grant of nationality to the rules under their national laws.²⁶³ Strangely, only the UAE reservation received an objection to its reservation.²⁶⁴

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

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

251. See U.N. Treaty Collection, CRC, *supra* note 249, at Kuwait: *Declarations upon ratification*.

252. See *id.* at Malaysia: *Reservation*.

253. See *id.* at Monaco: *Declaration*.

254. See *id.* at UAE: *Reservations*.

255. *Id.* at n.21(b).

256. *Id.* at n.49.

257. *Id.* at n.50.

258. *Id.* at n.58.

259. *Id.* at n.22.

260. *Id.* at n.61(3).

261. *Id.* at n.12.

262. *Id.* at Kuwait.

263. *Id.* at Malaysia, Monaco, & n.62.

264. *Id.* at Netherlands;

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."

Id.

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.²⁶⁵ The CRC has further been interpreted to require states to grant their nationality to children born on their territory who would otherwise be stateless.²⁶⁶ 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).

266. See Committee on the Rights of the Child, *Concluding observations on the fourth periodic reports of the Netherlands*, ¶ 33, U.N. Doc. CRC/C/NDL/CO/4 (June 8, 2015); Committee on the Rights of the Child, *Concluding observations on the combined second to fourth periodic reports of Switzerland*, ¶ 31, U.N. Doc. CRC/C/CHE/CO/2-4 (Feb. 26, 2015); Committee on the Rights of the Child, *Concluding observations on the combined second to fourth periodic report of Turkmenistan*, ¶ 25, U.N. Doc. CRC/C/TKM/CO/2-4 (Mar. 10, 2015); Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention*, ¶ 38, U.N. Doc. CRC/C/CZE/CO/3-4 (Aug. 4, 2011); Committee on the Rights of the Child, *Concluding observations on the combined second to fourth periodic reports of Fiji*, ¶ 27, U.N. Doc. CRC/C/FJI/CO/2-4 (Oct. 13, 2014); Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Croatia*, ¶ 26, U.N. Doc. CRC/C/HRV/CO/3-4 (Oct. 13, 2015). See also Migrant Workers Convention, *supra* note 178, art. 29; Guidelines on Statelessness No. 4, *supra* note 161, ¶ 1; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 12; CRC, *supra* note 60, art. 7; *Yean & Bosico v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 140 (Sept. 8, 2005); 1961 Statelessness Convention, *supra* note 107, art. 1(1); ICCPR, *supra* note 59, art. 24(3); Human Rights and Arbitrary Deprivation of Nationality Rep. Dec. 2009, *supra* note 215, para. 7; CMW-CRC Joint General Comment No. 21, *supra* note 196, para. 66; Committee on the Rights of the Child, *Concluding observations on the second periodic report of South Africa*, ¶ 32(b), U.N. Doc. CRC/C/ZAF/CO/2 (Oct. 27, 2016); Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Suriname*, ¶ 17, U.N. Doc. CRC/C/SUR/CO/3-4 (Nov. 9, 2016); Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Pakistan*, ¶ 66(h), U.N. Doc. CRC/C/PAK/CO/5 (June 3, 2016); Committee on the Rights of the Child, *Concluding observations on the combined fourth and fifth periodic reports of Chile*, ¶¶ 30–33, U.N. Doc. CRC/C/CHI/CO/4-5 (Oct. 30, 2015); Committee on the Rights of the Child, *Concluding observations on the report submitted by Israel Under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography*, ¶ 25, U.N. Doc. CRC/C/OPS/ISR/CO/1 (July 13, 2015).

with the Committee on the Rights of the Child affirming it.²⁶⁷ 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.²⁶⁸

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.²⁶⁹ 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.²⁷⁰ 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.²⁷¹ 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.

268. See HRC Gen. Comm. No. 17, *supra* note 76, para. 3.

269. See CRC, *supra* note 60, art. 3. See also IHRDA Nubian Descent in Kenya, Comm. No. Com/002/2009, Dec. on the Merits, para. 57 (Mar. 22, 2011) (reaching the same conclusion when applying comparable provisions in the African Charter on the Rights and Welfare of the Child).

270. See CRC, *supra* note 60, art. 3.

271. See *id.*

the child.²⁷² Avoiding statelessness is clearly in the child's best interest.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.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

272. See Status of the Convention of the Rights of the Child, *supra* note **Error! bookmark not defined.**, at ¶¶ 57–77.

273. See CRC, *supra* note 60, art. 3; Convention on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, sec. IV(A)(1), U.N. Doc. CRC/C/GC/14 (May 29, 2013); HRC Gen. Comm. No. 17, *supra* note 76, para. 8; CRC, *Consideration of reports submitted by States parties under Article 44 of the Convention*, *supra* note 266, ¶¶ 32–33; Guidelines on Statelessness No. 4, *supra* note 161, ¶ 11; Afr. Comm. Children, Gen. Comm. 2, *supra* note 61, ¶ 86 (“being stateless as a child is generally an antithesis to the best interests of children”); IHRDA Nubian Descent in Kenya, Comm. No. Com/002/2009, para. 29; European Court of Human Rights Press Release ECHR 185 (2014), Totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was in breach of the Convention (June 26, 2014), <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4804617-5854908&filename=003-4804617-5854908.pdf> (referencing ECHR's judgment in *Mennesson v. France*, App. No. 65192/11, on Article 8); UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 16; OHCHR, Fact Sheet No.10 (Rev.1): The Rights of the Child, 2 (June 25, 1993); Comm. on the Rts. of the Child, Concluding Observations of the Committee on the Rights of the Child: Togo, at ¶ 14, U.N. Doc CRC/C/15/Add.83 (Oct. 21, 1997).

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).

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 1930,²⁷⁵ 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.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.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.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,²⁷⁹ and the great number of states still dominantly practicing *jus sanguinis* attests to the lawfulness of the *jus sanguinis* rule generally.²⁸⁰ This conclusion on the responsibility of

275. See generally Convention on Certain Questions Relating to the Conflict of Nationality Laws, *supra* note 55.

276. See *id.* arts. 14–15.

277. See Protocol Relating to a Certain Case of Statelessness, *supra* note 181, art. 1.

278. See Convention on Certain Questions relating to the Conflict of Nationality Laws, *supra* note 55, arts. 14–15.

279. See UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 10; CMW-CRC Joint General Comment, *supra* note 196, ¶¶ 65–66.

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,²⁸¹ especially concerning children.²⁸² Many of them specify that if a person would otherwise be stateless, the state of birth must extend its nationality.²⁸³

The European region of the world has a long list of treaties that offer some protections for a right to a nationality.²⁸⁴ 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,²⁸⁵ the European Convention on Nationality,²⁸⁶ and the Convention on the Avoidance of Statelessness in relation to State Succession.²⁸⁷ In addition, the Council of Ministers has adopted recommendations pertaining to the issue of child statelessness.²⁸⁸

The European Convention on Human Rights does not specifically address nationality.²⁸⁹ The one exception is article 3 of Protocol to the

281. See *Am. Decl.*, *supra* note 59, art. XIX; ECN Explanatory Report, *supra* note 210, art. 4; Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, art. 6 (1990).

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).

284. See Helsinki Document, *supra* note 180, para. 55; Organization for Security and Co-operation in Europe, *Istanbul Document 1999*, ¶ 19 (1999) [hereinafter *Istanbul Document*]; Council of Europe, Convention on the Avoidance of Statelessness in Relation to State Succession, arts. 2–3, May 19, 2006, C.E.T.S. No. 200.

285. See generally Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Nov. 4, 1950) [hereinafter ECHR].

286. See generally ECN Explanatory Report, *supra* note 210.

287. See generally Convention on the Avoidance of Statelessness, *supra* note 285.

288. See sources cited *supra* note 96.

289. See generally ECHR, *supra* note 285.

Convention,²⁹⁰ which prohibits denationalization with the purpose of expulsion.²⁹¹ 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.²⁹² A claim under article 6 (right to fair trial) for failure to provide a hearing for nationality revocation proceedings, for example, failed.²⁹³

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 8,²⁹⁴ right to private life. In general, the right to a private life does not necessarily protect any person’s right to acquire a nationality,²⁹⁵ although it can protect the right against loss of nationality.²⁹⁶ An arbitrary deprivation of nationality may implicate article 8 to the degree that it does intrude upon a person’s private life,²⁹⁷ specifically his or her identity.²⁹⁸ 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.

291. See Council of Europe, Explanatory Report to 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, ¶ 23, Sept. 16, 1963, E.T.S. No. 46.

292. See, e.g., *Family K. & W. v. Netherlands*, App. No. 11278/84, Eur. Comm’n H.R. Dec. 216, 221 (1985); *Kurić v. Slovenia*, No. 26828/06 Eur. Ct. H.R. para. 160 (2007).

293. See Laura van Waas, *Fighting statelessness and discriminatory nationality laws in Europe*, 14(3) EUR. J. MIGRATION & L. 243, 250 (2014); *X v. Austria*, App. No. 5212/71, Eur. Comm’n H.R. Dec. as to the Admissibility (1972).

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

295. See *Family K. & W.*, App. No. 11278/84, Eur. Comm’n H.R. Dec. at 220 (“[T]he right to acquire a particular nationality is neither covered by, nor sufficiently related to, [Article 8 in conjunction with Article 14] or any other provision of the Convention.”).

296. See *Kurić*, No. 26828/06 Eur. Ct. H.R. para. 160; *Karashev v. Finland*, No. 31414/96, Eur. Ct. H.R. 10 (1999).

297. See *Kurić*, No. 26828/06 Eur. Ct. H.R. para. 160; *Karashev*, No. 31414/96 Eur. Ct. H.R. 10.

298. See *S. & Marper v. United Kingdom*, Nos. 30562/04 and 30566/04 Eur. Ct. H.R. para. 66 (2008); *Ciubotaru v. Moldova*, No. 27138/04 Eur. Ct. H.R. para. 53 (2010); *Dadouch v. Malta*, No. 38816/07 Eur. Ct. H.R. para. 48 (2010); *Genovese v. Malta*, No. 53124/09 Eur. Ct. H.R. paras. 30–33 (2011).

creating situations of statelessness.²⁹⁹ Taken with article 14 on non-discrimination, discriminatory decisions regarding nationality are also violations of article 8.³⁰⁰ If this deprivation results in statelessness, it will impact identity.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 8.³⁰² This finding includes stateless persons refused local nationality upon state succession.³⁰³ Thus, refusal to grant nationality by unreasonably or discriminatorily asserting that the person acquired nationality from another state was a violation of Article 8.³⁰⁴ This series of cases suggests that the ECtHR has essentially found an implicit, partial right to a nationality in the ECHR.³⁰⁵ Because the ECHR protects against refusal of nationality in the same way as deprivation of nationality,³⁰⁶ and statelessness is a violation even without discrimination³⁰⁷, 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,³⁰⁸ and it has pointed to the state of residence to discharge its

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).

300. *See* Genovese, No. 53124/09 Eur. Ct. H.R. paras. 30–33.

301. *See* Kafkasli v. Turkey (Admissibility), App. No. 21106/92, Eur. Comm'n H.R. Dec. para. 31 (1995); *but see* Kafkasli v. Turkey (Merits), App. No. 21106/92, Eur. Comm'n H.R. Dec. para. 42(1995) (finding a violation on the merits); Kurić v. Slovenia, No. 26828/06 Eur. Ct. H.R. para. 361 (2010).

302. *See* Genovese, No. 53124/09 Eur. Ct. H.R. paras. 30–33; *Mennesson v. France*, No. 65192/11 Eur. Ct. H.R. para. 97 (2014); European Court of Human Rights Press Release ECHR 185 (2014), Totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was in breach of the Convention (June 26, 2014) (referencing *Labassee v. France*, No. 65941/11).

303. *See* Fedorova v. Latvia, No. 69405/01 Eur. Ct. H.R. 9–10 (2003).

304. *See* Karashev v. Finland, No. 31414/96 Eur. Ct. H.R. 9 (1999).

305. *But see* ECN Explanatory Report, *supra* note 210, para. 16.

306. *See* K2 v. United Kingdom, No. 42387/13 Eur. Ct. H.R. para. 49 (2017); Kurić, No. 26828/06 Eur. Ct. H.R. para. 361.

307. *See generally* K2, No. 42387/13 Eur. Ct. H.R. paras. 66-71; Kurić, No. 26828/06 Eur. Ct. H.R. para. 361.

308. *See infra* notes 317–20 and accompanying text.

positive human rights obligations.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 3.³¹⁰ In addition, article 4 of Protocol 4 to the ECHR prohibits denationalization for the purposes of expelling a national.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 *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.³¹² Similarly, the Court held in *Kurić and others v. Slovenia* that there was a customary international positive obligation to avoid statelessness.³¹³ Lastly, the Court has found in *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.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,³¹⁵ echoing

309. *See id.*

310. *See* *Slepčik v. Netherlands*, App. No. 30913/96 Eur. Comm'n H.R. Dec. & Rep. (1996); *Zeibek v Greece*, App. No. 34372/97 Eur. Comm'n H.R. Dec. & Rep. (1997) (discriminatory access to nationality on grounds of race amounts to degrading treatment under Article 3 of the ECHR).

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).

312. *See* 1961 Statelessness Convention, *supra* note 107, arts. 1, 2; 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); *Covenant on the Rights of the Child in Islam*, *supra* note 160, art. 7(3).

313. *See* *Kurić v. Slovenia*, No. 26828/06 Eur. Ct. H.R. (2010).

314. *See* *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).

315. *See* European Convention on Nationality, *supra* note 202, art. 3.

the terms of the UDHR.³¹⁶ In order to give effect to this right, the Convention specifically commands a particular application of *jus soli* and *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.³¹⁷ Thus, the Convention clearly contemplates the place of birth as the critical factor in determining which state bears the primary responsibility for ensuring nationality.³¹⁸ More importantly, the Convention expressly requires states to grant nationality to a child born in their territory where the child would be otherwise stateless,³¹⁹ although it is permissible to demand that the child make a (non-discretionary) application for nationality.³²⁰ 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.³²¹ In this way, this treaty serves as the *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.³²² This instrument provides for the right of nationality, though it is limited to the situation of state succession that produces statelessness.³²³ 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 [s]tate” that claimed the territory if the child would otherwise become stateless.³²⁴

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

317. See European Convention on Nationality, *supra* note 202, arts. 3, 6(1)–(2).

318. *Id.* Where the 1961 Convention only allows States to demand *habitual* residence from the stateless applicant, the ECN allows States to require both *lawful and habitual* residence. *Id.* art. 6(3).

319. *Id.* art. 6; UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 28.

320. See European Convention on Nationality, *supra* note 202, arts. 4, 7(1)–(3).

321. See ECN Explanatory Report, *supra* note 210, para. 14.

322. See generally Council of Eur., Convention on the Avoidance of Statelessness in relation to State Succession, E.T.S. No. 200 (2006) [hereinafter *Convention on Statelessness*]; European Commission for Democracy through Law at its 28th Plenary Meeting, *Venice Commission Declaration on the Consequences of State Succession for the Nationality of Natural Persons: Declaration on the consequences of state succession for the nationality of natural persons* (Sept. 1996).

323. Convention on Statelessness, *supra* note 322, art. 2.

324. *Id.* art. 10.

The protection in the convention is for states to “take all appropriate measures to prevent” statelessness.³²⁵ In addition, the convention reaffirms the right to nationality³²⁶ 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,³²⁷ 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,³²⁸ 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.³²⁹ Because this provision covers “[a]ny discrimination,”³³⁰ this protection presumably extends to nationality legislation. As noted above, discriminatory distinctions are sometimes applied in cases of acquisition of nationality,³³¹ and we might wonder whether “social origin” might include statelessness. Also, the Charter protects an individual’s private life.³³² 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,³³³ 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).

328. *See generally* Charter of Fundamental Rights of the European Union, *ratified* Dec. 7, 2000, 2000 O.J. (C 364) 1, *repealed by* Charter of Fundamental Rights of the European Union, *effected at* Dec. 1, 2009, 2007 O.J. (C 303) 1.

329. *See id.* art. 21.

330. *Id.*

331. *See, e.g.*, Decree No. 15 of 1959 (Nationality Law), *Qanun al-Jinsia*, art. 4(5) (Kuwait), *translated in Nationality Law, 1959*, REFWORLD, <https://www.refworld.org/docid/3ae6b4ef1c.html> (last visited Feb. 15, 2019) (providing for religious discrimination in nationality law).

332. Charter of Fundamental Rights of the European Union, *supra* note 328, art. 7.

333. *See, e.g.*, *Genovese v. Malta*, No. 53124/09 Eur. Ct. H.R. paras. 30–33 (2011); *Mennesson v. France*, No. 65192/11, 2014-III Eur. Ct. H.R. 255, 288; *Labassee v. France*, No. 65941/11 Eur. Ct. H.R. (2014), *translated in* European Court of Human Rights Registrar of the Court Press Release ECHR 185 (2014), *Totally prohibiting the establishment of a relationship between a father and his biological children born*

Aside from the Charter, the EU legal system following the Lisbon Treaty³³⁴ 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.³³⁵ The amended Treaties on European Union (TEU)³³⁶ command that — at least for the common policy on asylum, immigration, and external border control³³⁷ — the EU Member States will treat stateless persons as third-country nationals.³³⁸ While this protection obliges Member States to bring stateless persons into the legal order somewhat,³³⁹ 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.³⁴⁰ A person acquires EU citizenship when he or she holds the nationality of a Member State of the EU.³⁴¹ The Member States are largely independent of the EU legal order in determining which persons they will consider as their nationals,³⁴² and thus, who will receive access to EU citizenship.³⁴³

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

334. See Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Oct. 26, 2012, 2012 O.J. (C 326) 1, *amended by* Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter TEU].

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.

341. See TEU, *supra* note 334, art. 20(1); Case C-165/14, *Rendón Marín v. Administración del Estado*, 2016 E.C.R. para 69; Case C-304/14, *Sec’y State for the Home Dep’t v. CS*, 2016 E.C.R. para 17; Case C-34/09, *Ruiz Zambrano v. Office national de l’emploi*, 2011 E.C.R. I-1177, I-1251; Case C-413/99, *Baumbast v. Sec’y of State for the Home Dep’t*, 2002 E.C.R. I-7091, I-7165–66; Case C-224/98, *D’Hoop v. Office national de l’emploi*, 2002 E.C.R. I-6191, I-6222; Directive 2004/38/EC, of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 2004 O.J. (L 158) 77, 87; *Report from the Commission: Fourth Report on Citizenship of the Union*, COM (2004) 695 final (Oct. 26, 2004); *Report from the Commission on the Citizenship of the Union*, COM (1993) 702 final (Dec. 21, 1993).

342. Case C-192/99, *The Queen v. Sec’y of State for the Home Dep’t, ex parte Kaur*, 2001 E.C.R. I-1237, I-1265.

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.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.³⁴⁵ More importantly for this paper, when an EU Member States 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.³⁴⁶ Specifically, the deprivation must have a legitimate purpose,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.

345. See Case C-200/02, *Zhu v. Sec’y of State for the Home Dep’t*, 2004 E.C.R. I-9925, I-9964; *Micheletti*, 1992 E.C.R. at I-4258–64.

346. See Case C-221/17, *Tjebbes v. Minister van Buitenlandse Zaken*, 2019 E.C.R. ¶¶ 41, 48; *Rottmann*, 2010 E.C.R. at I-1488; *Republic v. Nimal Jayaweera*, App. No. 37/2010, [Supreme Court], July 10, 2014, (Cyprus), *in* RENÉ DE GROOT ET AL., *ROTTMANN IN THE COURT OF THE MEMBER STATES OF THE EUROPEAN UNION: A COLLECTION OF 18 JUDGEMENTS AND FOUR PENDING CASES WITH CASE NOTES* 42, 48 (accepting, but reaffirming that *Rottman* only applied to loss of nationality, not acquisition of nationality).

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.³⁵⁰ The ECJ, however, has refused to extend deprivation rules to cases of refusal to grant Member States' nationality and EU citizenship.³⁵¹ EU law generally concerns itself not with the acquisition of nationality, but with its loss.³⁵² Moreover, if the individual does not hold EU citizenship, the protections of citizenship within that legal order do not apply.³⁵³ However, it could be argued that the ECJ decision in *Rottman* did extend to acquisition of nationality because the *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.³⁵⁴ 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.³⁵⁵ Therefore, EU law is not contributing much to the discussion on preventing child statelessness, and these rules must be viewed as a *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

348. *Id.* at I-1488–90; Verfassungsgerichtshof [VwGH] [Administrative Court of Justice] June 29, 2013, 2011/01/0251 (Austria), in ROTTMANN IN THE COURTS OF THE MEMBER STATES OF THE EUROPEAN UNION: A COLLECTION OF 18 JUDGMENTS AND FOUR PENDING CASES WITH CASE NOTES 24, 29; Appell Civili Numru. 69/2011/1, Qorti Kostituzzjonali [Constitutional Court] Oct. 31, 2014 (Malta), in ROTTMANN IN THE COURTS OF THE MEMBER STATES OF THE EUROPEAN UNION: A COLLECTION OF 18 JUDGMENTS AND FOUR PENDING CASES WITH CASE NOTES 112, 131–32.

349. *Rottmann*, 2010 E.C.R. at I-1489.

350. *See* SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 61.

351. *See* Case C-192/99, *The Queen v. Sec'y State for the Home Dep't, ex parte Kaur*, 2001 E.C.R. I-1237, I-1267.

352. *See* *Rottmann*, 2010 E.C.R. at I-1490, ¶¶ 56, 59. *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).

353. *See* *The Queen*, 2001 E.C.R. at I-1267.

354. *See* *Rottmann*, 2010 E.C.R. at I-1489–90.

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.³⁵⁶ 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*,³⁵⁷ *Yean and Bosico Children*,³⁵⁸ and *Expelled Dominicans and Haitians*.³⁵⁹ 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.³⁶⁰ 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.³⁶¹ The IACHR held that states have an obligation under international law to avoid and reduce statelessness,³⁶² and that the right to a nationality provides a foundational link to a state for protection of human rights.³⁶³

356. AmCHR, *supra* note 59, art 20(2).

357. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, *supra* note 61, paras. 32–35.

358. *Yean & Bosico v. Dom. Rep.*, Preliminary Objections, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶¶ 140–42, 154–58 (Sept. 8, 2005).

359. See Castillo Petruzzi, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 52, ¶ 101 (May 30, 1999); Ivcher-Bronstein v. Peru, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. L) No. 95, ¶ 88 (Feb. 6, 2011).

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.”).

361. *Yean & Bosico*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶¶ 140–42, 154–58.

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.³⁶⁴ It might also be helpful here to note that the nationality law tradition in the Americas is predominantly one of *jus soli*.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.³⁶⁶ The African Charter on Human and Peoples' Rights does not expressly provide for a right to a nationality,³⁶⁷ although a protocol has already been drafted and approved that would grant this right expressly.³⁶⁸ That being said, the Charter contains many of the other rights mentioned in this study, such as the right against discrimination,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.³⁷⁰ In addition, articles 3(2)³⁷¹ and 5³⁷² protect the rights of individuals to equality and to live in dignity, and article 12 protects the individual's right to leave any state.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.³⁷⁴ Once again, if we understand the creation of statelessness

364. *See 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.").

365. *See infra* Sec. III.D.

366. *See infra* notes 371–386 and accompanying text.

367. *See* African Charter on Human and Peoples' Rights, *adopted by* the Eighteenth Assembly of Heads of State and Government in Nairobi, Kenya, art. 1, Oct. 21, 1986 [hereinafter African Charter H.P.R.]; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Nov. 25, 2005, art. 6(g)-(h).

368. *See* ACHPR, *Decision on the Report of the Activities*, *supra* note 95, para. 5.

369. *See* African Charter H.P.R., *supra* note 367, arts. 2–3.

370. *See id.* art. 13.

371. *See id.* art. 3.

372. *See id.* art. 5.

373. *See id.* art. 12.

374. *See* Ms Sarr Diop, Union interafricaine des droits de l'Homme and RADDHO, Collectif des veuves et ayants-Droit, Association mauritanienne des droits de l'homme v. Mauritania, Appl. Nos. 54/91, 61/91, 96/93, 164/97_196/97-210/98, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 126 (May 11,

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.³⁷⁵ 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.³⁷⁶

Looking specifically at children, the African region also has the African Charter on the Rights and Welfare of the Child.³⁷⁷ The Charter prohibits the arbitrary denial of nationality,³⁷⁸ which has been interpreted to mean the right of nationality from birth.³⁷⁹ 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,³⁸⁰ and if the other state failed or refused, then the birth state had the obligation to extend nationality.³⁸¹ Lastly, the Charter also protects the best interests of the child and, just like the CRC,

2000); *Modise v. Botswana*, No. 97/93, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 88 (Nov. 6, 2000).

375. See *Modise*, No. 97/93 Afr. Ct. H.P.R. ¶¶ 88–89.

376. See *id.*

377. See IHRDA *Nubian Descent in Kenya*, Comm. No. Com/002/2009, Dec. on the Merits, para. 46 (Mar. 22, 2011).

378. See African Charter on the Rights and Welfare of the Child, *supra* note 281, art. 6

379. See IHRDA *Nubian Descent in Kenya*, No. Com/002/2009 para. 42 (interpreting right to nationality to mean right to a nationality from birth).

380. See *id.* para. 51 (refusal of nationality at birth due to other nationality requires the territorial state to “ensure” that the other state provides nationality).

It may have been further argued (by the Government of Kenya), perhaps rather loosely, that the children of Nubian descent in Kenya may be entitled to the nationality of the Sudan, and, as a result, the Government does not have to provide them with Kenyan nationality. However, such a line of argument would be remiss of the fact that, implied in Article 6(4) is the obligation to implement the provision proactively in cooperation with other States, particularly when the child may be entitled to the nationality of another State. In the communication at hand, nothing has transpired that indicates that the Government, if it holds such view, has undertaken any meaningful efforts to ensure that these children acquire the nationality of any other state.

Id.

381. See *id.* para. 50 (interpreting a right to nationality to mean a right to nationality at birth of the territorial state if born stateless).

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.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.”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.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.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.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.

382. See generally Afr. Comm. Children, Gen. Comm. 2, *supra* note 61, para. 86; IHRDA Nubian Descent in Kenya, Comm. No. Com/002/2009, Dec. on the Merits, para. 46 (Mar. 22, 2011).

383. See Arab Charter on Human Rights, *supra* note 202, art. 29.

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.

385. See Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, *supra* note 202, art. 24(2).

386. See Organization for Security and Co-operation in Europe, Charter for European Security, art. 19 (Nov. 1999).

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 *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 *jus soli* for all children, some states that do not generally practice *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 *jus soli* for all stateless children,³⁹⁰ even though they may not usually grant nationality *jus soli*. Combining these three categories of practice shows a widespread practice of granting nationality to stateless children under domestic law.

1. *Jus soli*

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

387. See *Nottebohm Case (Liech. v. Guat.)*, Judgment (second phase), 1955 I.C.J. Rep. 4, 22 (Apr. 6).

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.

391. See UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶¶ 28–29.

392. See IHRDA *Nubian Descent in Kenya*, Comm. No. Com/002/2009, Dec. on the Merits, para. 50 (Mar. 22, 2011).

393. *Summary Records of the Fourth Session*, [1952] 1 Y.B. Int'l L. Comm'n 119, U.N. Doc. A/CN.4/50; *Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur*, [1952] II Y.B. Int'l L. Comm'n 17, U.N. Doc. A/CN.4/50.

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,³⁹⁴ Australia,³⁹⁵ Azerbaijan³⁹⁶ Barbados,³⁹⁷ Belize,³⁹⁸ Benin,³⁹⁹ Bolivia,⁴⁰⁰ Brazil,⁴⁰¹ Burkina Faso,⁴⁰² Canada,⁴⁰³ Central Africa Republic,⁴⁰⁴ Chile,⁴⁰⁵ Colombia,⁴⁰⁶ Congo,⁴⁰⁷ Costa Rica,⁴⁰⁸

394. *Argentina- Nationality and Citizenship*, CONTINUOUS REPORTING SYS. ON INT'L MIGRATION IN THE AMERICAS, <http://www.migracionoea.org/index.php/en/sicremi-en/reports/217-argentina-2-2-nacionalidad-y-ciudadania-2.html> (last visited Apr. 17, 2019).

395. Australian Citizenship Act 2007, Act No. 20/2007, pt. 2 div. 3 sec. 36 (Austl.).

396. SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 7 (“The Government of Azerbaijan stated that, according to its Constitution, persons born in Azerbaijan are considered citizens of Azerbaijan.”).

397. CONSTITUTION OF BARBADOS Nov. 30, 1996, ch. II, art. 4; Barbados Citizenship Act, Cap. 186, Nov. 30, 1966, *amended by* Act. Nos. 1971-31, 1975-25, 1982-5.

398. BELIZE CONSTITUTION Sept. 21, 1981, ch. 4, pt. III, art. 24; Belizean Nationality Act 1981, BLZ-130, Nov. 28, 1981.

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.).

402. INT'L BUS. PUBL'NS, BURKINA FASO CONSTITUTION AND CITIZENSHIP LAWS HANDBOOK: STRATEGIC INFORMATION AND DEVELOPMENTS 71 (2014).

403. Citizenship Act, R.S.C. 1985, c C-29 (Can.), *followed by* Bill C-37 (An Act to amend the Citizenship Act 2008) & Bill C-37 (Strengthening Canadian Citizenship Act 2014); Immigration and Refugee Protection Act, S.C. 2001, c. 27 (Can.) (referring to legal residents).

404. CENTRAL AFRICAN REPUBLIC'S CONSTITUTION, Mar. 20, 1990; Law No. 1961.212, Apr. 20, 1961, Central African Code of Nationality, arts. 24, 35, 68.

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

406. CONSTITUCIÓN POLÍTICA DE COLUMBIA [C.P.] tit. III; L. 43/93, Feb. 1, 1993, Official Gazette No. 40,735 (Colom.).

407. SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 17 (“The law establishes the right of persons born to foreign parents in Congolese territory to acquire Congolese nationality.”).

Cuba,⁴⁰⁹ Dominican Republic,^{*410} Ecuador,⁴¹¹ El Salvador,⁴¹² Equatorial Guinea,⁴¹³ France,^{*414} Gambia,⁴¹⁵ Germany,^{*416} Greece.⁴¹⁷ Grenada,⁴¹⁸ Guatemala,⁴¹⁹ Guinea,⁴²⁰ Guinea-Bissau,⁴²¹ Guyana,⁴²² Honduras,⁴²³ India,^{*424} Indonesia,⁴²⁵ Ireland,⁴²⁶ Italy,^{*427} Jamaica,⁴²⁸ Lesotho,⁴²⁹

408. CONSTITUCIÓN POLÍTICA REPÚBLICA DE COSTA RICA [CONSTITUTION] 1948, art. 13.; SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 18 (“Article 13 of the Constitution indicates that persons born on Costa Rican territory or to Costa Rican parents have Costa Rican citizenship.”).

409. CONSTITUTION OF CUBA 1976, ch. II, arts. 28, 29.

410. DOMINICAN REPUBLIC’S CONSTITUTION, Nov. 6, 1844, art. II; U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Dominican Republic (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=253009> [hereinafter DOMINICAN REPUBLIC HUMAN RIGHTS REPORT].

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

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

413. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Equatorial Guinea 72 (Mar. 2001).

414. Napoleonic Code [Civil Code], art. 19-3 (Fr.); Loi 2007-1631 20 novembre 2007 relative à la maîtrise de l’immigration, à l’intégration et à l’asile [Law 2007-1631 of November 20, 2007 on the control of immigration, integration and asylum], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Nov. 21, 2008, art. 24 (Fr).

415. CONSTITUTION OF THE REPUBLIC OF THE GAMBIA 1997, art. 29(1); Gambia Nationality and Citizenship Act, Cap 82, Feb. 18, 1965, pt. II, art. 4.

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.).

417. EPISEMOS EPHEMERIS TES HELLENIKES DEMOKRATIAS [EKED] [Greek Nationality Code], Law 3284/2004, Nov. 10, 2004, ch. A (Greece); EPISEMOS EPHEMERIS TES HELLENIKES DEMOKRATIAS [EKED] [Modern provisions on Greek citizenship and the political participation of expatriate and legally resident immigrants and other regulations] Law 3838/2010, Mar. 24, 2010, pt. A (Greece).

418. GRENADA CONSTITUTION OF 1973, Feb. 7, 1974, ch. VII, para. 96.

419. CONSTITUTION OF THE REPUBLIC OF GUATEMALA, May 31, 1985, tit. III, ch. II, art. 144.

420. CODE CIVIL DE LA RÉPUBLIQUE DE GUINÉE 1983 [CIVIL CODE OF THE REPUBLIC OF GUINEA] tit. III, ch. 2, art. 34, 37; tit. IV, ch. 1, sec. 3, art. 56.

421. LAW OF NATIONALITY [CONSTITUTION] 1973 (Guinea-Bissau).

422. CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA Act 1980 Feb. 20, 1980, ch. IV; Guyana Citizenship Act, May 26, 1966, cap. 14:01, sec. 4.

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

424. Citizenship Act, No. 57 of 1955, INDIA CODE (1993), sec. 3.

Liberia,⁴³⁰ Mali,⁴³¹ Mauritania,⁴³² Mauritius,⁴³³ Mexico,⁴³⁴ Moldova,⁴³⁵ Mozambique,⁴³⁶ Nepal,⁴³⁷ New Zealand,⁴³⁸ Nicaragua,⁴³⁹ Niger,⁴⁴⁰ Pakistan,⁴⁴¹ Panama,⁴⁴² Paraguay,⁴⁴³ Peru,⁴⁴⁴ Portugal⁴⁴⁵ St. Lucia,⁴⁴⁶ St.

425. Law on the Citizenship of the Republic of Indonesia, No. 62 of 1958, art. 1.

426. Irish Nationality and Citizenship Act, No. 26 of 1965, pt. 2, sec. 6 (Ir.).

427. Legge 5 February 1992, n. 91, art. 1, G.U. Feb. 15, 1992, n. 38 (It.).

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.

430. Aliens and Nationality Law of 1973, Liberian Codes Revised, Vol II, tit. 4, pt. III, ch. 20; LIBERIA CONSTITUTION Jan. 6, 1986, art. 28.

431. Code of Malian Nationality, No. 1962.18 AN.RM, Feb. 3, 1962 *amended* 1995, arts. 1, 14.

432. Loi No. 1961-112, Loi portant code de la nationalité mauritanienne [Law No. 1961-112, Law on the Mauritanian Nationality Code], June 13, 1961, arts. 8-11.

433. Mauritius 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.).

435. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Moldova (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252877>.

436. CONSTITUTION OF THE REPUBLIC OF MOZAMBIQUE Nov. 16, 2004, tit. II, ch. 1, arts. 23-24; Nationality Act [Republic of Mozambique], June 25, 1975, amended Nov. 1990, ch. 1, art. 1.

437. CONSTITUTION OF NEPAL Sept. 20, 2015, pt. 2, sec. 11; Nepal Citizenship Act, 1964.

438. British Nationality and New Zealand Citizenship Act 1948, s 6 (N.Z.).

439. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [CN.] tit. 3, LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 330, Jan. 18, 2000, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Jan. 19, 2000.

440. Ordonnance n° 84-33 du 23 août 1984 portant code de la nationalité nigérienne [Nigerian Nationality Code, Law No. 84-33], Aug. 23, 1984, art. 8 (Niger).

441. Pakistan Citizenship Act, No. II of 1951, sec. 4.

442. CONSTITUTION OF PANAMA 1972, tit. 2, arts. 8-9.

443. CONSTITUCIÓN POLÍTICA DE 1992, pt. II, ch. III, art. 146 (Para.).

444. CONSTITUCIÓN POLÍTICA DEL PERÚ Oct. 31, 1993, tit. II, ch. 1, art. 52; Nationality Law, No. 26574, Jan. 3, 1996.

445. Portuguese Nationality Act, Law 37/81, as amended by Organic Law 2/2006, tit. 1, ch. 1, art. 1.

446. CONSTITUTION OF SAINT LUCIA Dec. 20, 1978, ch. VII, sec. 100; Citizenship Act of St. Lucia, June 5, 1979.

Vincent and the Grenadines,⁴⁴⁷ Samoa,⁴⁴⁸ São Tomé and Príncipe,⁴⁴⁹ Senegal,⁴⁵⁰ South Africa,⁴⁵¹ Spain,*⁴⁵² Togo,⁴⁵³ Trinidad and Tobago,⁴⁵⁴ Tuvalu,⁴⁵⁵ UK,*⁴⁵⁶ Uruguay,⁴⁵⁷ US,*⁴⁵⁸ Vanuatu,⁴⁵⁹ Venezuela,⁴⁶⁰ Zambia,⁴⁶¹ and Zimbabwe.⁴⁶² 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,⁴⁶³ Portugal,⁴⁶⁴ Thailand,⁴⁶⁵ and Turkey.⁴⁶⁶

447. SAINT VINCENT CONSTITUTION Oct. 27, 1979, ch. VII, sec. 91; Citizenship Act of 1984 (St. Vincent).

448. Citizenship Act of 1972, Aug. 9, 1972 (Samoa).

449. Law of Nationality, Sept. 13, 1990 (Sao Tome and Principe).

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>.

451. South African Citizenship Act of 1995, Act No. 88 of 1995, ch. 2, sec. 2.

452. CÓDIGO CIVIL [Civil Code] (C.C) 1889, tit. I, art. 17.1 (Spain).

453. TOGO CONSTITUTION Oct. 14, 1992, art. 32

454. CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO, Act 4 of 1976, pt. V, ch. 2.

455. CONSTITUTION OF TUVALU ORDINANCE Sept. 15, 1986, pt. III, para. 45.

456. British Nationality Act 1981, c. 61, pt. 1, sec. 1 (Gr. Brit.).

457. CONSTITUTION OF THE ORIENTAL REPUBLIC OF URUGUAY 1996, reinstated in 1985, sec. III.

458. U.S. CONST. amend. XIV, § 1.

459. CONSTITUTION OF THE REPUBLIC OF VANUATU July 30, 1983, pt. II, ch. 3.

460. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA Dec. 1999, tit. II, ch. II, sec. 1.

461. CONST. OF ZAMBIA (2016) pt. IV, secs. 34–35(1).

462. CONSTITUTION OF ZIMBABWE 2003, ch. 3, sec. 35.

463. *Pledges 2011, Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)*, UNHCR 34, 105 (Oct. 2012), <http://www.unhcr.org/commemorations/Pledges2011-preview-compile-analysis.pdf>.

464. Portuguese Nationality Act, Law 37/81, as amended by Organic Law 2/2006.

465. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Thailand 29–30 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=252803>.

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.⁴⁶⁷ Some states require residency of the parents⁴⁶⁸ or a term of residency following the birth,⁴⁶⁹ 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.”⁴⁷⁰ Another condition that sometimes appears is burdensome procedural requirements such as birth registration or documentation⁴⁷¹ or the need to file an application for the nationality rather than receive it by right.⁴⁷²

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

467. UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 28.

468. *No Child Should Be Stateless*, EUR. NETWORK ON STATELESSNESS 16 (Sept. 2015), https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf.

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).

470. *See* UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 21; *No Child Should be Stateless*, *supra* note 468, at 15.

471. *See* UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶¶ 33–37.

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

473. *Yean & Boscio v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 150 (Sept. 8, 2005).

474. *Id.* ¶¶ 152, 153.

475. See generally Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/26/15 (Apr. 4, 2014).

476. Convention on Certain Questions Relating to the Conflict of Nationality Law, *supra* note 55, art. 14; 1961 Statelessness Convention, *supra* note 107, art. 2.

477. See Convention on Certain Questions Relating to the Conflict of Nationality Law, *supra* note 55, art. 14.

presumed, but its nationality is also presumed as the state of birth.⁴⁷⁸ International law has long guaranteed the acquisition of nationality by foundlings.⁴⁷⁹ 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.

There is yet another overwhelming list of states in the world that extend nationality *ius soli* to foundlings. These states include: Afghanistan,⁴⁸⁰ Albania,^{*481} Algeria,⁴⁸² Andorra,⁴⁸³ Angola,⁴⁸⁴ Antigua and Barbuda,⁴⁸⁵ Armenia,⁴⁸⁶ Austria,⁴⁸⁷ Bahrain,⁴⁸⁸ Bangladesh,⁴⁸⁹ Belarus,^{*490} Belgium,^{*491} Benin,^{*492} Bosnia and Herzegovina,⁴⁹³

478. *See id.*; 1961 Statelessness Convention, *supra* note 107, art. 2.

479. *See generally* Convention on Certain Questions Relating to the Conflict of Nationality Law, *supra* note 55, art. 14; 1961 Statelessness Convention, *supra* note 107, art. 2; Covenant on the Rights of the Child in Islam, *supra* note 160, art. 7(3).

480. Law of Citizenship in Afghanistan, National Legislative Bodies, Nov. 6, 1936, art. 3; Official Gazette of the Ministry of Justice for the Republic of Afghanistan, Mar. 19, 1992.

481. Albanian Citizenship, Law No. 8389, Mar. 8, 1998, ch. II, art. 7.

482. Nationality Law (Alg.), Law No. 1970-86, Dec. 15, 1970, art. 7(1); SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 3 (“Children born in Algeria from unknown parents are also considered as Algerian citizens.”).

483. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Andorra 16 (Mar. 2001).

484. Nationality Law (Angl.), Law No. 1/05, July 1, 2005, art. 14(b) & Law No. 13/1991, May 11, 1991, art. 14(b).

485. Antigua and Barbuda Citizenship Act, Cap. 22, pt. II, secs. 3(1), 5.

486. Law of the Republic of Armenia on the Citizenship of the Republic of Armenia, Nov. 6, 1995, art. 12.

487. 1985 Nationality Law (Austria) BUNDESGESETZBLATT [BGBl] No 37/2006, art 8(1).

488. Bahraini Citizenship Act, Sept. 16, 1963, art. 5(B).

489. *See* KO SWAN SIK, NATIONALITY AND INTERNATIONAL LAW IN ASIAN PERSPECTIVE 9 (1990); *see also* Pakistan Citizenship Act, 1951 (Bangladesh), art. 4 (Apr. 13, 1951).

490. Law of the Republic of Belarus on Citizenship of the Republic of Belarus, Oct. 18, 1991, art. 12; Law of the Republic of Belarus on Citizenship of the Republic of Belarus, No. 136-3, Aug. 1, 2002, art. 13.

491. Belgian Nationality Law, 1984-06-28/35, June 28, 1984, sec. 3, art. 10.

492. Benin: Code of Dahomean Nationality, Law No. 65-17, June 23, 1965, arts. 9–10.

493. Law on Citizenship of Bosnia and Herzegovina, Official Gazette BH No. 13/99, Aug. 26, 1999, art. 7.

Bulgaria,⁴⁹⁴ Burkina Faso,⁴⁹⁵ Cambodia,⁴⁹⁶ Cameroon,⁴⁹⁷ Canada,⁴⁹⁸ Cape Verde,⁴⁹⁹ Chad,⁵⁰⁰ PR China,⁵⁰¹ Congo,⁵⁰² Costa Rica,⁵⁰³ Côte d'Ivoire,⁵⁰⁴ Croatia,⁵⁰⁵ Czech Republic,⁵⁰⁶ Denmark,⁵⁰⁷ Djibouti,⁵⁰⁸ Egypt,⁵⁰⁹ Eritrea,⁵¹⁰ Estonia,⁵¹¹ Finland,⁵¹² France,⁵¹³ Gabon,⁵¹⁴

494. Law for the Bulgarian Citizenship, Nov. 1998, last amended, SG 16/19 Feb. 2013, sec. II, arts. 10–11.

495. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Burkina Faso 42 (Mar. 2001).

496. Law on Nationality (Cambodia), Oct. 9, 1996, ch. 2, art. 4(2)(b); U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Cambodia 44 (Mar. 2001).

497. Cameroon Nationality Code, Law No. 1968-LF-3, June 11, 1968, ch. II, secs. 9–10.

498. Citizenship Act, R.S.C. 1985, c C-29, pt. I, sec. 3 (Can.).

499. Cape Verdean Citizenship Law (listed under “Citizenship of origin by birth”).

500. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Chad 49 (Mar. 2001).

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 [Congolese Nationality Code, Law No. 35-61], tit. 1, art. 9 (1962); U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Congo Republic 56 (Mar. 2001).

503. CONSTITUTION OF COSTA RICA Nov. 7, 1949, tit. II, art. 13.

504. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Cote d’Ivoire 58 (Mar. 2001); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices: Cote d’Ivoire 15–16 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dld=252673> [hereinafter COTE D’IVOIRE HUMAN RIGHTS REPORT].

505. Law on Croatian Citizenship, June 26, 1991, last amended Oct. 28, 2011, art. 7.

506. Act on Citizenship of the Czech Republic, Law No. 186/2013, July 11, 2013, subpt. 5, sec. 10.

507. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Denmark 64 (Mar. 2001); Consolidated Act on Danish Nationality, No. 422, June 7, 2004, sec. 1(2).

508. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Djibouti 65 (Mar. 2001).

509. Law No. 26 of 2004 (Law Concerning Egyptian Nationality), *al-Jarīdah al-Rasmīyah*, vol. 22, 29 May 1975, art. 2(4).

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

511. Citizenship Act (Est.), RT I 1995, 12, 122, Apr. 1, 1995, last amended by RT I, 03.01.2017, 1 Jan. 18, 2017, ch. 2, § 5(2).

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

512. Nationality Act (Fin.), 359/2003, ch. 2, sec. 12.

513. CODE CIVIL [C. CIV] [CIVIL CODE] ch. II, art. 19 (Fr.).

514. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Gabon 79 (Mar. 2001).

515. Staatsangehörigkeitgesetz [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).

517. Nomos (2004:3284) Greek Nationality Code, EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] [Official Gazette of the Hellenic Republic] (2004), A:217, art. 1(2).

518. MANBY, *supra* note **Error! Bookmark not defined.**, at 18–19.

519. HONDURAS CONSTITUTION Jan. 1982, tit. II, art. 23(4).

520. 1993. évi LV. Törvény Magyar Nagykövetség (Act LV of 1993 on Hungarian Citizenship), sec. 3(3)(b).

521. Law on the Citizenship of the Republic of Indonesia, Law No. 62 of 1958, Aug. 1, 1958, art. 1(g).

522. Nationality Law, Sept. 21, 2006, art. 976, para. 3 (Iran).

523. Irish Nationality and Citizenship Act 1956 (Act No. 26/1956), art. 10.

524. Legge 5 febbraio 1992, n. 91, Legisl. ital. I Aug. 15, 1992, art. 1(2) (It.).

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

526. Law of the Republic of Kazakhstan, 1991 with amendments as of Mar. 27, 2012, art. 13, <https://www.refworld.org/pdfid/502caf112.pdf>.

527. KENYAN CONSTITUTION Aug. 27, 2010, ch. 3, sec. 14(4).

528. CONSTITUTION OF KIRIBATI 1980, ch. III, sec. 20 (the Kiribati Independence Order 1979 is part of the Constitution).

529. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Democratic People's Republic of North Korea 109 (Mar. 2001); Nationality Law of October 9, 1963.

530. Nationality Act (S. Kor.), Act No. 5431, Dec. 13, 1997, last amended by Act No. 10275, May 4, 2010, art. 2(3).

531. Republika e Kosovës [Republic of Kosovo], Law on Citizenship of Kosovo, Law No.04/L-215, art. 7.1.

532. Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic, Mar. 21, 2007, last amended by Law No. 23, Mar. 17, 2012, ch. 2, art. 12(5).

533. Citizenship Law (Lat.), ch. I, art. 2(3).

534. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Liberia 119 (Mar. 2001); Aliens and Nationality Law (Liber.), May 15, 1973, *amended in* 1974, pt. III, ch. 20, §20.1(a).

Madagascar,⁵³⁷ Malawi,⁵³⁸ Mali,⁵³⁹ Malta,⁵⁴⁰ Monaco,⁵⁴¹ Mongolia,⁵⁴²
 Morocco,⁵⁴³ Namibia,⁵⁴⁴ Nepal,⁵⁴⁵ the Netherlands,^{*546} Nicaragua,⁵⁴⁷
 Norway,⁵⁴⁸ Papua New Guinea,⁵⁴⁹ Peru,⁵⁵⁰ Poland,^{*551} Portugal,⁵⁵²
 Qatar,^{*553} Romania,⁵⁵⁴ Russia,^{*555} Rwanda,⁵⁵⁶ Serbia,⁵⁵⁷ St. Kitts,⁵⁵⁸

535. Republic of Lithuania Law on Citizenship, No. IX-1078, Sept. 17, 2002, as amended by No. IX-1456, Apr. 3, 2003, ch. II, art. 11; Republic of Lithuania Law on Citizenship, No. XI-1196, Dec. 2, 2010, ch. III, art. 16.

536. The Luxembourg Nationality Law, Oct. 23, 2008, ch. 1, art. 1(c).

537. Code de la nationalité malgache [Code of Malagasy Nationality] (Madagascar), Ordonnance No. 60-064, July 22, 1960, tit. II; U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Madagascar 124 (Mar. 2001).

538. Citizenship Act (Malawi), July 6, 1966, pt. IV, sec. 18; U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Malawi 125 (Mar. 2001).

539. Code of Malian Nationality, Act No. 1962.18 An.RM, Feb. 3, 1962, tit. I, art. 11.

540. Maltese Citizenship Act, Cap. 188, Sept. 21, 1964, pt. II, sec. 5(1).

541. *Monegasque Citizenship*, CONSULAT GÉNÉRAL DE MONACO, http://www.monaco-consulate.com/?page_id=885 (last visited Mar. 27, 2019).

542. Law of Mongolia on Citizenship, June 5, 1995, as amended on Dec. 7, 2000, ch. 2, art. 7(4).

543. Code de la Nationalité Marocaine [Code of Moroccan Nationality], ch. II, art. 7 (1958).

544. CONSTITUTION OF NAMIBIA Mar. 21, 1990, ch. 2, art. 4 (amended 1998).

545. Nepal Citizenship Act, art. 3.4 (1964).

546. Kingdom Act on Netherlands Nationality, art. 3(2) (amended 2013); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practice for 2015: The Netherlands 10 (2015).

547. Constitution of Nicaragua of 1987, tit. III, art. 16(4) (amended 2005).

548. Act on Norwegian Nationality, No. 51/2005, ch. 2, s 4 (2005) (amended 2006); *see generally* U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practice for 2015: Norway 8 (2015).

549. CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA Sept. 16, 1975, s 77; *see generally* Citizenship Act 1975 (1976) (Papua N.G.).

550. CONSTITUTION OF PERU Oct. 31, art. 52 (amended 2009); Ley de Nacionalidad [Nationality Law], No. 2674, art. 2.2 (1996) (Peru).

551. Law on Polish Citizenship, No. 161, ch. 2, art. 15 (amended 2012).

552. Sétima alteração à Lei n.º 37/81, de 3 de outubro (Lei da Nacionalidade) [Seventh Amendment to Law No. 37/81, of Oct. 3 (Nationality Law)], Lei Orgânica n.º 9/2015, art. 1 (1)(g)(2) (2015) (Port.).

553. SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 37. “Persons born in Qatar from unknown parents acquire Qatari citizenship.” *Id.*

Seychelles,⁵⁵⁹ Slovakia,⁵⁶⁰ Slovenia,⁵⁶¹ Spain,^{*562} Sri Lanka,⁵⁶³ Sudan,⁵⁶⁴ Sweden,^{*565} Switzerland,⁵⁶⁶ Syria,^{* Republic of China on Taiwan Island,⁵⁶⁷ Tunisia,⁵⁶⁸ Turkey,⁵⁶⁹ Tuvalu,⁵⁷⁰ Uganda,⁵⁷¹ Ukraine,^{*572} U.A.E.,^{*573} UK,^{*574} Uzbekistan,⁵⁷⁵ Vietnam,^{*576} and Yemen.⁵⁷⁷ Even}

554. Act on Romanian Citizenship, No. 21/1991, art. 5(3) (amended 2010); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practice for 2015: Romania 17–18 (2015).

555. FEDERAL'NYI ZAKON RF O GRAZHDANSTVE ROSSISKOI FEDEATSII [Federal Law of on Citizenship of the Russian Federation] SOBRANIE ZAKONODATEL'STVA ROSSISKOI FEDERATSII [SK RF] [Russian Federation Collection of Legislation] 2002, No. 62-FZ, art. 12(2).

556. Organic Law Relating to Rwandan Nationality, No. 30/2008, art. 9 (2008).

557. Law on Citizenship of the Republic of Serbia, No. 135/04, pt. 2 (2004), *amended by* Law on Amendments and Modifications of the Law on Citizenship of the Republic of Serbia, No. 90/07 (2007).

558. CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS 1983, ch. VIII, art. 95.5(c).

559. CONSTITUTION OF THE REPUBLIC OF SEYCHELLES June 21, 1993, arts. 7–8; *see generally* Citizenship Act (1996), *amended by* Seychelles Citizenship Act (2013) (Sey.).

560. Act on the Nationality of the Slovak Republic, No. 40/1993 Coll., sec. 5, subs. 2(b) (1993), *amended by* Act No. 70/1997 Coll. Art. II, Act No. 515/2003 Coll. (Art. XII), Act No. 36/2005 Coll. (Art. IV), Act No. 264/2005 Coll., Act No. 344/2007 Coll., Act No. 445/2008 Coll., Act No. 250/2010 Coll.

561. Citizenship Act of the Republic of Slovenia, No. 127/2006, art. 9 (2006).

562. Código Civil (civil code) bk. 1, tit. II, art. 17(1)(d) (2013) (Spain).

563. Citizenship Act, art. 7 (1948) (amended 1987) (Sri Lanka).

564. Sudanese Nationality Act, No. 22, art. 6 (1957), *amended by* No. 55 (1970), No. 47 (1972) (Sudan).

565. The Swedish Citizenship Act, No. SFS 2001:82, s 3 (2001), *amended by* No 2006:222 (2006); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practice for 2015: Sweden 8 (2015).

566. Federal Act on the Acquisition and Loss of the Swiss Nationality, art. 6 (2013).

567. Nationality Act, art. 2(3) (1929) (Taiwan).

568. Code de la Nationalité Tunisienne [Code of Tunisian Nationality], art. 8 (2011).

569. Turkish Citizenship Law, No. 5901, arts. 5–8 (2009).

570. CONSTITUTION OF TUVALU Oct. 1, 1978, pt. III, art. 43(2).

571. CONSTITUTION OF THE REPUBLIC OF UGANDA Dec. 31, 2000, ch. 3, art. 11.

572. Law of Ukraine on Citizenship of Ukraine, No. 2235-III (2235-14), art. 8 (2001), *amended by* No. 2663-IV (2663-15) (2005).

573. 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.).

574. British Nationality Act 1981, c. 61, pt. I, art. 2(2).

575. Law of the Republic of Uzbekistan on Citizenship of the Republic of Uzbekistan, art 14 (1992).

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

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.

580. Citizenship Law, s 2(1)(5)–(6) (1994)(amended 2013)(Lat.).

581. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Latvia 12 (2015).

582. See generally ILC, II YB 1953, Add. 1, *supra* note 72.

stateless children born in their territory.⁵⁸³ 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,⁵⁸⁴ Algeria,⁵⁸⁵ Angola,⁵⁸⁶ Antigua and Barbuda,⁵⁸⁷ Armenia,⁵⁸⁸ Austria,^{*589} Belarus,^{*590} Belgium,^{*591} Benin,^{*592} Bosnia,⁵⁹³ Bulgaria,⁵⁹⁴ Burkina Faso,⁵⁹⁵ Burkina Faso, Burundi,⁵⁹⁶ Cameroon,⁵⁹⁷

583. See *supra* notes 403–72, 491–588.

584. See U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Afghanistan 13 (2001); see Law of Citizenship in Afghanistan, 16 AQRAB 1315 (1992).

585. Nationality Law, No. 1970-86, art. 7.1 (1970) (Alg.).

586. Nationality Law, No. 13/1991, ch. 2, art. 9(2) (1991) (Angl.); Nationality Law, No. 1/05, ch. III, art. 14(b) (2005) (Angl.); See SG Report on Arbitrary Deprivation of Nationality Jan. 2009, *supra* note 88, ¶ 6. (noting that “[a]lso, persons born on Angolan territory are presumed to be Angolan nationals.”).

587. Citizenship Act, No. 17/1982, pt. II, art. (3)(1) (1982) (Ant. & Barb.).

588. Law of the Republic of Armenia on Citizenship of the Republic of Armenia, ch. 3, art. 20 (1995) (amended 2015); See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Armenia 25 (2015).

589. Federal Law concerning the Austrian Nationality, FLG No. 311/1985, arts. 8(2), 14 (1985), *amended by* FLG I No. 104/2014.

590. Law of the Republic of Belarus of 1 August 2002 No. 136-Z on Citizenship of the Republic of Belarus, No. 2/885, ch. 2, art. 13 (2002), *amended by* Law No. 129-3 (2006).

591. Code de la nationalité belge [Code of Belgian Nationality], ch. II, s 3, art. 10 (Belg.).

592. Code de la nationalité dahoméenne [Code of Dahomey Nationality], No. 65-17, arts. 2, 7–11, 24, 28 (1965) (Benin).

593. Law on Citizenship of Bosnia and Herzegovina, No. 13/99, ch. II, art. 7(1) (1999).

594. Law for the Bulgarian Citizenship, SG. 136/18, s II, art. 11 (1998), *amended by* SG. 16/19 (2013).

595. Code des personnes et de la famille au Burkina Faso [Code of People and Family in Burkina Faso], arts. 135, 141–144, 155–161 (1989) (Burk. Faso).

596. The Code of Nationality, No. 1/93 of Aug. 10, 1971, s II, art. 3(b) (1971) (Burundi).

597. Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code, s. 10 (1968).

Cape Verde,⁵⁹⁸ P.R. China,⁵⁹⁹ DR Congo,⁶⁰⁰ Côte d'Ivoire,^{*601} Croatia,^{*602} Czech Republic,⁶⁰³ Egypt,⁶⁰⁴ Finland,^{*605} France,^{*606} Germany,^{*607} Georgia,⁶⁰⁸ Greece,⁶⁰⁹ Hungary,⁶¹⁰ Iceland,⁶¹¹ Ireland,⁶¹² Italy,^{*613} Japan,⁶¹⁴ Kazakhstan,⁶¹⁵ Kiribati,⁶¹⁶ DPR Korea,⁶¹⁷ Kyrgyzstan,⁶¹⁸ Latvia,^{*619} Lebanon,⁶²⁰ Liechtenstein,⁶²¹ Lithuania,^{*622}

598. MANBY, *supra* note 472, at 18.

599. Nationality Law of the People's Republic of China. (promulgated by the Standing Comm. People's Cong., Sept. 10, 1980), Order No. 8, art. 6.

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

601. [Côte d'Ivoire Nationality Code], No. 2013-653, ch. 2 (2013).

602. Zakon o Hrvatskom Državljanstvu' [Croatian Citizenship Act], art. 7 (1991).

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.

605. Nationality Act, No. 359/2003, s 9, subs. 1(3), subs. 2, s 12, subs. 2 (2003) (Fin.), amended by No. 974, 2007 (2007).

606. Code civil, arts. 19, 19-1 (2015) (Fr.).

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

608. Organic Law of Georgia On Citizenship of Georgia No No. 5566-RS, art. 15 (2011).

609. Nomos (2004: 3284), [Greek Nationality Code] Ephemeris Tes Kyverneseos Tes Hellenikes Demokratias [E.K.E.D] 2004, A:217 (Greece).

610. 1993. évi LV. (Act LV of 1993 on Hungarian Citizenship), s 3(3)(a)–(b), 5a(1)(b) (1993).

611. Icelandic Nationality Act, No. 100/1952, art. 1(2) (1952), amended by Act No. 40/2012 (2012).

612. Irish Nationality and Citizenship Act 1956 (Act. No. 26 of 1956), amended by Irish Nationality and Citizenship Act 2004 (Act No. 38 of 2004).

613. Legge 5 febbraio 1992, n.91, art. 1(1)(b) (It.) amended by 15 luglio 2009, n.94 (2009).

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

615. The Law of the Republic of Kazakhstan on Citizenship for the Republic of Kazakhstan, No. 1017-XII, arts. 13–14 (1991).

616. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Kiribati 108 (2001); The Kiribati Independence Order, No. 719 of 1979 (1979).

617. Chin Kim, *North Korean Nationality Law*, 6 The Int'l Law. 324, 325 (1972).

618. U.S. OFF. PERSONNEL MGMT. INVESTIGATIONS SERV., CITIZENSHIP LAWS OF THE WORLD: Kyrgyz Republic 113 (2001); Law of the Kyrgyz Republic on the New Edition of the Constitution of the Kyrgyz Republic (1993).

619. See Citizenship Law, s. 3(2), 3(3), 3(5) (1995) (Lat.) (amended 2013).

Luxembourg,⁶²³ Macedonia,⁶²⁴ Mali,⁶²⁵ Malta,⁶²⁶ Marshall Islands,⁶²⁷ Moldova,⁶²⁸ Mongolia,⁶²⁹ Montenegro,⁶³⁰ Morocco,⁶³¹ Mozambique,⁶³² Nauru,⁶³³ the Netherlands,^{*634} Niger,⁶³⁵ Norway,⁶³⁶ Papua New Guinea,⁶³⁷ Poland,^{*638} Portugal,⁶³⁹ Romania, Rwanda,⁶⁴⁰ Serbia,⁶⁴¹

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

621. *See* Gesetz vom 4. Januar 1934 über den Erwerb und Verlust des Landesbürger-rechts [Act of 4 January 1934 on the Acquisition and Loss of Citizenship] No. 23, § 5b (1960) (Liech.).

622. *See* Republic of Lithuania Law on Citizenship, No. IX-1078, arts. 10, 11 (2002), *amended by* No. IX-1456 (2003); Law on Citizenship, No. XI-1196, arts. 15, 16 (2010) (Lith.).

623. The Luxembourg Nationality Law of 23 Oct. 2008, art. 1(3)–(4) (2008).

624. Act on Citizenship of the Former Yugoslav Republic of Macedonia, No. 67/92, art. 6 (1992), *amended by* Promulgation Declaring the Law for Amending and Supplementing the Law on Citizenship of the Republic of Macedonia, No. 08/04, art. 2 (2004).

625. Portant Code Des Personnes et de la Famille [Code for People and Family], Loi No. 2011–087, Art. 224–225 (2011) (Mali); Code of Malian Nationality, No. 1962.18 AN.RM, art. 11 (1962).

626. Maltese Citizenship Act, CAP. 188, pt. II, art. 5 (1964) (Malta), *amended by* No. X of 2007; Legal Notice 410 of 2007, para 14 (2007) (Malta).

627. CONSTITUTION OF THE MARSHALL ISLANDS Dec. 21, 1978, Art. XI, s 2.

628. Law on Citizenship of the Republic of Moldova, No. 1024-XIV, art. 6 (2000), *amended by* No. 232-XV (2003).

629. *See* CONSTITUTION OF MONGOLIA Jan. 13, 1992, ch. 2, art. 15.

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

631. Code de la Nationalité Marocaine [Code of Moroccan Nationality], Dahir No. 1-58-250 du 21 safar 1378, ch. II, art. 7⁶ (amended 2011).

632. CONSTITUTION OF THE REPUBLIC OF MOZAMBIQUE Nov. 16, 2004, tit. II, ch. I, art. 23(1)(b).

633. *See* NAURU'S CONSTITUTION OF 1968, pt. VIII, art. 73; Nauruan Community Ordinance 1956-1962, s 4(d) (1962).

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

635. Portant code de la nationalité nigérienne [Code of Nigerian Nationality], Ordonnance No. 84-33, art. 10 (1984) (Niger).

636. Act on Norwegian Nationality, No. 51/2005, ch. 2, s 4 (2005) (amended 2006).

637. CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA Sept. 16, 1975, s 77; *see generally* Citizenship Act 1975 (1976) (Papua N.G.).

638. Law on Polish Citizenship, No. 161, ch. 2, art. 15 (amended 2012).

639. Portuguese Nationality Act, No. 37/81, tit. I, ch. 1, art. 1(f) (1981), *amended by* Organic Law 2/2006 (2006).

640. Organic Law N. 29/2004 of 3/12/2004 on Rwandan Nationality Code, No. 29/2004, ch. II, art. 6 (2004).

Seychelles,⁶⁴² Slovakia,⁶⁴³ Slovenia,⁶⁴⁴ Spain,^{*645} Sri Lanka,⁶⁴⁶ Sweden,^{*647} Switzerland,⁶⁴⁸ Syria,^{649*} Republic of China on Taiwan Island,⁶⁵⁰ Tunisia,⁶⁵¹ Turkey,⁶⁵² Ukraine,^{*653} UK,^{*654} and Vietnam.^{*655} Additionally, some states do not yet extend nationality *jus soli*, but are planning to implement it shortly, such as Cyprus, Luxembourg,⁶⁵⁶ 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

641. Law on Citizenship of the Republic of Serbia, No. 135/04, art. 13 (2004) (amended 2007).

642. See Citizenship Act, No. 18 of 1994 (1994) (amended 1996) (Sey.).

643. Act on Nationality of the Slovak Republic, No. 502/2007, § 5(2) (2007).

644. Citizenship of the Republic of Slovenia Act, No. 127/2006, arts. 4,9 (2006).

645. Código Civil (civil code) bk. 1, tit. II, art. 17(1)(d) (2013) (Spain); Reglamento de Extranjería [Regulation of Foreigners], arts. 124.3.a, BOE (2011) (Spain).

646. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Sri Lanka 23 (2015).

647. [Act on Swedish Citizenship] (SFS 2001:82), amended by (SFS 2006:222).

648. Federal Act on the Acquisition and Loss of the Swiss Nationality, art. 6 (2013).

649. Nationality Law, No. 276, art. 3(C), 1969 (Syria); Comm. on the Elimination of Discrimination against Women, Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, at 43–47, U.N. Doc. CEDAW/C/SYR/1 (Aug. 29, 2005).

650. Nationality Act, art. 2(3) (1929) (Taiwan).

651. Code de la Nationalité Tunisienne [Code of Tunisian Nationality], art. 8 (2011).

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).

653. Law on the Citizenship, art. 7 (2001) (Ukr).

654. British Nationality Act 1981, c. 61, pt. I, art. 1(2).

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]

657. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Kenya 30 (2015).

658. See UNGA Annual Report on Arbitrary Deprivation of Nationality Dec. 2013, *supra* note 60, ¶ 28.

nationality. These states include: Cambodia,⁶⁵⁹ Czech Republic,⁶⁶⁰ Denmark,^{*661} Estonia,^{*662} Israel,^{*663} Latvia,⁶⁶⁴ Lithuania,⁶⁶⁵ the Netherlands,⁶⁶⁶ and Sweden.⁶⁶⁷ Those states that heavily condition the application of *jus soli*, such as Iran,^{*} by limiting it to cases where one parent is resident or also born in Iran,⁶⁶⁸ have been characterized as wrongful by other international actors.⁶⁶⁹ It might also be that the state has acknowledged that this limitation violates international human rights law, as is the case for Estonia^{*670} and Côte d'Ivoire.^{*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 Convention⁶⁷²) requiring them to do so.⁶⁷³ These states would include: Afghanistan, Algeria, Angola, Antigua and Barbuda, Belarus,^{*} Burundi, Cameroon, Cape Verde, PR China, Congo, France, Greece, Italy,^{*} Japan, Kazakhstan, Kyrgyzstan, Mali, Marshall Islands, Mongolia, Montenegro, Nauru, Poland,^{*} Seychelles, Slovenia, Spain,^{*} Republic of

659. See Cambodia Human Rights Report, *supra* note 138, at 16.

660. See STATELESSNESS IN THE EU, *supra* note 676, at 12.

661. Consolidated Act on Danish Nationality, No. 422 of 7 June 2004, s 6 (2004) (Den.).

662. See Citizenship Act, RT I 1995, 12, 122, § 13(4), 13(6) (1995) (Est.).

663. See Nationality Law, 5712-1952, art. 9 (1950), *amended by* Nationality (Amendment No. 4) Law, 5740-1980, art. 4A, (1980) (Isr.).

664. See Citizenship Law, s. 3(1) (1995) (Lat.) (amended 2013).

665. Republic of Lithuania Law on Citizenship, No. IX-1078, art. 10 (2002), *amended by* No. IX-1456 (2003); The Republic of Lithuania Law on Citizenship, No. XI-1196, art. 15 (2010).

666. Kingdom Act on Netherlands Nationality, ch. 3, art. 6(1) (amended 2013).

667. [Act on Swedish Citizenship] (SFS 2001:82), *amended by* (SFS 2006:222).

668. See Nationality Law of 11 Sept. 2006, art. 976 (Iran).

669. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Iran 26–27 (2015).

670. See Citizenship Act, RT I 1995, 12, 122, § 5 (1995) (Est.); STATELESSNESS IN THE EU, *supra* note 676, at 4.

671. See [Côte d'Ivoire Nationality Code], No. 2013-653 (2013).

672. See generally 1961 Statelessness Convention, *supra* note 107.

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

674. Cf. UN Treaty Collection, Status of Treaties: s. 4, Refugees and Stateless Persons (Aug. 30, 1961), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en [hereinafter Signatories to the Convention on the Reduction of Statelessness].

675. See, e.g., U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Georgia 29–30 (2015).

676. See *supra* notes 600–74.

677. Final Report Concerning the Questionnaire on Statelessness 2004, *supra* note 673, para. 39.

to at birth to stateless children. All of the communications discussed permissible rules on nationality deprivation.⁶⁷⁸ Also, recall the lengthy list of states that have pledged to adhere to the Statelessness Conventions,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.

1. *Opinio juris on Other States' Practice*

One form of statement by states expressing an *opinio juris* is when states (either unilaterally or within international organizations) criticize the actions of other states. States that do not practice *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,⁶⁸⁰ Andorra,⁶⁸¹ Armenia,⁶⁸² Azerbaijan,⁶⁸³ Bangladesh,⁶⁸⁴ Belgium,^{*685} Cyprus,⁶⁸⁶ Czech Republic,⁶⁸⁷

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).

679. See *supra* notes 171–72.

680. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Algeria*, ¶¶ 129.23–24, UN Doc. A/HRC/WG.6/27/L.11 (May 18, 2017) (citing recommendation by Côte d'Ivoire to adhere to the Convention on the Reduction of Statelessness) [hereinafter UPR Report: *Algeria*].

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]”).

682. See *id.*

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.

684. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Bangladesh 15, 26–27 (2015).

685. CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 12.1.1., 12.2.2.

Dominican Republic,^{*688} Estonia,^{*689} France,^{*690} Georgia,⁶⁹¹ Greece,⁶⁹² Hungary,⁶⁹³ India,⁶⁹⁴ Iran,^{*695} Iraq,^{*696} Italy,^{*697} Jordan,^{*698} Latvia,^{*699} Libya,⁷⁰⁰ Liechtenstein,⁷⁰¹ Lithuania,^{*702} Luxembourg,⁷⁰³ Macedonia,⁷⁰⁴

686. CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 8, 12.1.1., 12.2.2.

687. *Id.* para. 9

688. *Opponents Maneuver to Strip Dominican-Haitian Activist of her Citizenship*, PUB. LIBR. OF U.S. DIPL., para. 7 (Mar. 30, 2007).

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.

693. *Id.* para. 9; *see generally* Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Hungary*, UN Doc. A/HRC/WG.6/25/L.6 (May 19, 2016) [hereinafter UPR Report: *Hungary*]; 25TH SESSION OF THE UNIVERSAL PERIODIC REVIEW, INST. ON STATELESSNESS AND INCLUSION. (“*Right to nationality for every child*: The safeguard for automatic acquisition of nationality for otherwise stateless children born in the territory fails to adhere to Hungary’s obligations under international law by requiring the parents of the child to be stateless and have domicile at the time of birth.”).

694. Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: India*, ¶ 160.32, UN Doc. A/HRC/WG.6/27/L.8 (May 8, 2017) (noting the recommendation by Kenya to adhere to the 1954 and 1961 Statelessness Conventions and Article 7 of the CRC) [hereinafter UPR Report: *India*].

695. *See* U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Iran 26–27 (2015).

696. *See* U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Iraq 42 (2015).

697. *See* CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 12.1.1., 12.2.2.

698. *See* U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Jordan 22–23 (2015).

699. CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 9, 12.1.1., 12.2.2.; *see also* U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Latvia 11–12 (2015).

700. *See* U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Libya 20 (2015).

701. *See* CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, 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.*

707. *See* Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Morocco*, ¶ 144.242, UN Doc. A/HRC/WG.6/27/L.4 (May 4, 2017) (noting the recommendation by Kenya to adhere to the 1954 and 1961 Statelessness Conventions, specifically regarding granting nationality to stateless children born in its territory) [hereinafter UPR Report: *Morocco*].

708. *See* U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Burma 31–34 (2015) [hereinafter Burma Human Rights Report]; Resolution 2013/2669(RSP), of the European Parliament of 13 June 2013 on the situation of Rohingya Muslims I; Human Rights Council Res. 19/..., A/HRC/19/L.30, at para. 8 (Mar. 20 2012); Human Rights Council Res. 22/..., A/HRC/22/L.20, at 8 (Mar. 15, 2013); Human Rights Council Res. 25/..., A/HRC/25/L.21, at para. 10 (Mar. 24, 2014).

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.”)

710. *See generally* Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Papua New Guinea*, UN Doc. A.HRC/WG.6/25/L.7 (May 19, 2016).

711. Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Philippines*, ¶ 133.256, UN Doc. A/HRC/WG.6/27/L.10 (May 18, 2017) (noting the recommendation by Slovakia to adhere to the 1961 Statelessness Convention) [hereinafter UPR Report: *Philippines*].

712. *See* CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 9, 12.1.1.; Human Rights Council, *Draft report of the Working Group on the Universal periodic Review: Poland*, ¶¶ 120.20–120.22, UN Doc. A/HRC/WG.6/27/L.12 (May 18, 2017) (noting the recommendations by Bulgaria, Australia, Côte D’Ivoire, and Hungary to adhere to the 1954 and 1961 Statelessness Conventions) [hereinafter UPR Report: *Poland*].

713. *See* U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Qatar 12 (2015).

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.*

717. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Saudi Arabia 29–30 (2015)

Spain,^{*721} Sudan,⁷²² Suriname,⁷²³ Swaziland,⁷²⁴ Switzerland,⁷²⁵ Tajikistan,⁷²⁶ Tanzania,⁷²⁷ Thailand,⁷²⁸ Turkey,⁷²⁹ and UK.^{*730} These critiques have been issued in turn by, *inter alia*: Albania,⁷³¹ Australia,⁷³²

718. See CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, para. 12.1.1.

719. See *id.* paras. 9, 12.1.1.

720. Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: South Africa*, ¶¶ 6.22, 139.21–139.23, UN Doc. A/HRC/WG.6/27/L.14 (May 12, 2017) (noting the recommendations by Kenya, Belgium, Germany, and Australia to adhere to the 1954 and 1961 Statelessness Conventions) [hereinafter UPR Report: *South Africa*]; *id.* paras. 139.237–137.238 (noting the recommendation by Albania and Liechtenstein to revise legislation implementing granting nationality to stateless children born in the territory to comply with the Convention on the Rights of the Child).

721. See CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, para. 12.1.1.

722. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Sudan*, ¶ 2, UN Doc. A.HRC/WG.6/25/L.5 (May 19, 2016).

723. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Suriname*, ¶ 2, UN Doc. A.HRC/WG.6/25/L.1 (May 19, 2016).

724. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Swaziland*, ¶ 2, UN Doc. A.HRC/WG.6/25/L.11 (May 19, 2016) [hereinafter 2016, UPR Report: *Swaziland*].

725. See CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, paras. 8, 12.1.1.

726. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Tajikistan*, ¶ 2, UN Doc. A.HRC/WG.6/25/L.8 (May 20, 2016).

727. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Tanzania*, ¶¶ 2, 4, UN Doc. A.HRC/WG.6/25/L.9 (May 20, 2016).

728. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Thailand*, ¶¶ 6–7, 123, UN Doc. A/HRC/WG.6/25/L.13 (May 19, 2016).

729. See CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, para. 12.1.1.

730. See CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, para. 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 Universal Periodic Review: Seychelles*, ¶ 120.24, UN Doc. A/HRC/WG.6/24/L.10 (Feb. 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, 2016) [hereinafter UPR Report: *Estonia*]; CoE Parl. Assembly Res. 2099 (2016), *supra* 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).

746. See UPR Report: *Estonia*, *supra* note 741, ¶ 122.124.

747. See *id.* para. 123.16; UPR Report: *Latvia*, *supra* note 733, ¶ 120.78; CoE Parl. Assembly Res. 2099 (2016), *supra* note 93, para. 12.1.1.

Kyrgyzstan,⁷⁴⁹ Liechtenstein,⁷⁵⁰ Maldives,⁷⁵¹ Mexico,⁷⁵² Norway,⁷⁵³ Panama,⁷⁵⁴ Russia,^{*755} Slovakia,⁷⁵⁶ South Africa,⁷⁵⁷ Spain,^{*758} Ukraine,^{*759} Uganda,⁷⁶⁰ UK,^{*761} and Uruguay.⁷⁶² 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,⁷⁶³ Greece,⁷⁶⁴ St. Vincent and the Grenadines,⁷⁶⁵ Samoa,⁷⁶⁶ and

748. See UPR Report: *Latvia*, *supra* note 733, ¶ 120.45; UPR Report: *Namibia*, *supra* note 740, ¶ 137.56; Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Singapore*, ¶ 166.96, UN Doc. A/HRC/WG.6/24/L/14 (Feb. 4, 2016) [hereinafter UPR Report: *Singapore*]; UPR Report: *India*, *supra* note 694, ¶ 160.32; UPR Report: *South Africa*, *supra* note 720, ¶ 139.22 (recommendation by Kenya to adhere to the 1954 and 1961 Statelessness Conventions); UPR Report: *Morocco*, *supra* note 707, ¶ 144.242 (recommendation by Liechtenstein to revise legislation implementing granting nationality to stateless children born in the territory to comply with the CRC).

749. See UPR Report: *Latvia*, *supra* note 733, ¶ 118.55.

750. UPR Report: *South Africa*, *supra* note 720, ¶ 139.238.

751. See UPR Report: *Hungary*, *supra* note 693, para. 97.

752. See UPR Report: *Denmark*, *supra* note 739, ¶ 121.196; UPR Report: *Latvia*, *supra* note 733, ¶ 118.61.

753. See UPR Report: *Estonia*, *supra* note 741, ¶ 122.125.

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.

760. See UPR Report: *Algeria*, *supra* note 680, ¶ 129.24 (noting the recommendation by Uganda to adhere to the Convention on the Reduction of Statelessness).

761. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Palau*, ¶ 4, UN Doc. A/HRC/WG.6/24/L.8 (Feb. 4, 2016).

762. See UPR Report: *Estonia*, *supra* note 741, ¶ 96.

763. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, ¶¶ 56, 77.11, UN Doc. A.HRC/WG.6/25/L.10 (May 20, 2016) (noting the general recommendation to adhere to more human rights conventions, including the Statelessness Conventions).

764. See Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Greece*, ¶¶ 28, 134, 136.24, UN Doc. A.HRC/WG.6/25/L.4

Trinidad and Tobago.⁷⁶⁷ Aside from criticisms, positive steps to extend nationality have been praised.⁷⁶⁸ 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 law⁷⁶⁹ or otherwise implement statelessness reconciliation programs.⁷⁷⁰ Some of these announcements

(May 20, 2016) (noting the general recommendation to adhere to more human rights conventions, including the Statelessness Conventions).

765. See generally Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: St. Vincent and the Grenadines*, UN Doc. A.HRC/WG.6/25/L.2 (May 18, 2016) (noting the general recommendation to adhere to more human rights conventions, including the Statelessness Conventions).

766. See generally Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Samoa*, UN Doc. A.HRC/WG.6/25/L.3 (May 9, 2016) (general recommendation to adhere to more human rights conventions, including the Statelessness Conventions).

767. See generally Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: Trinidad and Tobago*, UN Doc. A.HRC/WG.6/25/L.12 (May 23, 2016) (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. DIPL., 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. DIPL., 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. DIPL., 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. DIPL., 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. DIPL., 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,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,⁷⁷² Czech Republic,⁷⁷³ Greece,⁷⁷⁴ Kenya,⁷⁷⁵ and U.A.E.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. DIPL., 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.

Id.; *Turkmenistan: 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.”)

771. E.g., U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Albania 20 (2015); e.g., U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: India 48 (2015).

772. See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Costa Rica 9, 14 (2015) [hereinafter *Costa Rica Human Rights Report*]; e.g., Cote D’Ivoire Human Rights Report, *supra* note 519, at 15–16 (2015); e.g., U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Syria 37, 46 (2015).

773. *Thematic Comment No. 3: The Protection of Minorities in the European Union*, at 21, CFR-CDF.ThemComm2005 (Apr. 25, 2005) (resolving nationality of persons of Roma origin).

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.⁷⁷⁷ Vietnam has completed a program of naturalizing all remaining stateless persons in order to come into compliance with its international obligations.⁷⁷⁸ 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 statelessness⁷⁷⁹ or simply getting a grasp on the

REPUBLIC GREEK NAT'L COMM'N FOR HUMAN RIGHTS (Oct. 30, 2003), http://www.nchr.gr/images/English_Site/ITHAGENEIA/Citizenship_Article_19%202003.pdf (restoring Greek nationality)

775. Wanja Lisa Munaita, *Kenya's stateless Makonde people finally obtain papers*, UNHCR (Oct. 27, 2016), <http://www.unhcr.org/news/latest/2016/10/5810c5414/kenyas-stateless-makonde-people-finally-obtain-papers.html> (establishing settling nationality of Kenyan Makonde people).

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.”).

777. See *e.g.*, Dominican Republic Human Rights Report, *supra* note 425, at 21; *e.g.*, U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Estonia 8 (2015); see generally U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Israel and the Occupied Territories (2015); *e.g.*, U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Kosovo 17–18 (2015); *e.g.*, U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Turkmenistan 14 (2015).

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.

id.; U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Vietnam 32–34 (2015).

779. *E.g.*, U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Nepal 19–20 (2015).

problem by identifying potentially stateless persons.⁷⁸⁰ 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 populations in their territories, but have failed to deliver.⁷⁸¹ It is quite significant to note that many of these states acknowledging non-compliance are actually not bound to the 1961 Statelessness Convention.⁷⁸²

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.⁷⁸³ One approach is to claim that

780. *E.g., Turkmenistan: 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.”)

781. *E.g., Kurds Dismiss Latest SARG Gestures on Stateless Issue*, PUB. LIBR. OF U.S. DIPL., para. 1 (Feb. 6, 2006)

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.

782. *Cf. Signatories to the Convention on the Reduction of Statelessness*, *supra* note 694.

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,⁷⁸⁴ such as the case in Jordan, Lithuania and Thailand.⁷⁸⁵ 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.⁷⁸⁶ Some states might deem a child to have nationality by applying, perhaps erroneously, the nationality laws of another state.⁷⁸⁷ Other states, such as Benin* and Pakistan* argue that they do not refuse nationality to children, but that nationality follows changes in territory.⁷⁸⁸ 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 transit⁷⁸⁹ is not correct.⁷⁹⁰ More often, these arguments are made diplomatically or through alternate fora, such as the Universal Periodic Review.⁷⁹¹

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

784. See, e.g., Bhutan Human Rights Report, *supra* note 139, at 9; e.g., Bahrain Human Rights Report, *supra* note 139, at 22–31; e.g., U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Bosnia and Herzegovina 15 (2015); e.g., Cambodia Human Rights Report, *supra* note 138, at 16; e.g., Dominican Republic Human Rights Report, *supra* note 425, at 19–20; e.g., Costa Rica Human Rights Report, *supra* note 795, at 9, 14; e.g., Haiti Human Rights Report, *supra* note 139, at 17; e.g., U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Kyrgyz Republic 19 (2015); e.g., U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Malaysia 17–18, 24 (2015).

785. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Lithuania 9–10 (2015); U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices 2015: Jordan 22–23 (2015).

786. Burma Human Rights Report, *supra* note 730, at 31–34.

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.

789. Dominican Republic Human Rights Report, *supra* note 425, 15–19.

790. See *id.*

791. See *Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 140 (Sept. 8, 2005).

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.⁷⁹² 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.⁷⁹³

However, moving on from the presumption, we find a number of international treaties that demand a right to nationality,⁷⁹⁴ which has been interpreted to include a prohibition on the arbitrary refusal of nationality.⁷⁹⁵ We also find regional treaties providing a similar right to a nationality.⁷⁹⁶ These international treaties are supplemented by numerous regional treaties most of which also provide for stateless children to

792. See, e.g., Int'l Law Comm'n, Rep. on the Work of Its Sixty-Eighth Session, UN Doc. A/71/10, at para. 62, conc. 15(2) (2016).

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.⁷⁹⁷ Where these treaties do not expressly provide for this protection, they generally nonetheless cover issues of nationality and/or legal identity.⁷⁹⁸

Looking at state practice apart from treaties, we find a widespread and consistent practice with *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.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.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.⁸⁰¹

Considering expressions of *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.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.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.⁸⁰⁴ However, the conclusion of this paper is that there is sufficient state practice with *opinio juris* to establish an obligation on states to secure nationality, by granting their own

797. See *supra* Section III.C.2.

798. See *supra* notes 298–336, 343–50.

799. See *supra* Section III.B.

800. See *supra* notes 394–582.

801. See *supra* notes 584–668.

802. See *supra* Section III.E.

803. See *supra* notes 670–78.

804. See *supra* note 288.

nationality if necessary, to otherwise stateless children born in their territory.