

## From Statelessness to Global Citizenship

### I. INTRODUCTION

### II. CURRENT EFFORTS TO COMBAT STATELESSNESS

#### a. Existing Conventions

The issue of statelessness was first addressed by the United Nations in a landmark report titled *A Study of Statelessness*. The study forms the foundation for two international conventions that attempt to address the issue of statelessness: the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. The UN study and the two conventions form the bulk of the framework designed to reduce the prevalence of statelessness and to ensure those who remain stateless are afforded a measure of basic rights. Additionally and more recently, the 1997 European Convention on Nationality and the 2006 European Convention on the Avoidance of Statelessness in Relation to State Succession provide a regionally focused understanding of the issue, within the context of the European Union. The 1954 and 1961 Conventions, though, remain the only assertions of an international legal framework to “prevent statelessness from occurring and to protect people who are already stateless.”<sup>1</sup> However, neither convention has been widely adopted. Only 65 states are parties to the 1954 Convention and only 37 are parties to the 1961 Convention.<sup>2</sup>

Under Article 11 of the 1961 Convention, the United Nations High Commissioner for Refugees has been designated a mediating agency, “a role entailing the provision of assistance to individuals and States in resolving existing and potential cases of statelessness.”<sup>3</sup> In 1996, as a result of a still insufficient rate of accession, the UN General Assembly assigned the UNHCR the role of actively promoting the two conventions to the international community.<sup>4</sup> In 2004, marking the 50th Anniversary of the 1954 Convention, the UNHCR hosted a panel discussion with the objective of “highlighting the possibilities for solutions to situations of statelessness.”<sup>5</sup> Likewise, in light of the coming 50th Anniversary of the 1961 Convention, the UNHCR has recently launched the *Statelessness Conventions Campaign*, with a view to increasing the accession rate for both conventions.<sup>6</sup> Additionally, in recognition of its own 60th Anniversary, UNHCR has stated it will be organizing a major effort to push for faster progress on the issue of statelessness in 2011.<sup>7</sup>

The UNHCR’s primary means of realizing a substantial reduction in statelessness and of achieving any concrete measures of protection for stateless persons is by way of increased accession to the existing international conventions. However, certain weaknesses inherent to the conventions must be considered when evaluating the existing framework. So too must the role of the UNHCR as an appropriate “mediation agency” be questioned.

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<sup>1</sup> <http://www.unhcr.org/refworld/pdfid/4cb6b2052.pdf>

<sup>2</sup> <http://www.unhcr.org/pages/4a2535c3d.html>

<sup>3</sup> <http://www.unhcr.org/415825134.pdf>

[http://untreaty.un.org/ilc/texts/instruments/english/conventions/6\\_1\\_1961.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf)

<sup>4</sup> <http://www.unhcr.org/4caae0e39.html>

<sup>5</sup> <http://www.unhcr.org/415825134.pdf>

<sup>6</sup> <http://www.unhcr.org/refworld/pdfid/4cb6b2052.pdf>

<sup>7</sup> <http://www.unhcr.org/4cac34d99.html>

i. United Nations A Study of Statelessness 1949

In 1948, the UN Secretary-General undertook a study to examine the level of protection for stateless persons that already existed and to assess the existing “national legislation and international agreement and conventions relevant to statelessness.” Additionally, the Secretary-General was instructed to make recommendations regarding the “desirability of concluding a further convention on this subject.”<sup>8</sup> Thus, in August 1949, *A Study of Statelessness* was published.

The study broadly illustrates the difficulties faced by the stateless and the unique problems it poses to the international community. It develops key definitions pertaining to statelessness and attempts to distinguish between refugees and stateless persons. It was the first comprehensive analysis of a growing concern of the time. To be sure, *A Study of Statelessness* is a landmark report which informed much of the function and form of the two Conventions which would follow.

However, the study fails to adequately define statelessness and misconstrues certain instances of statelessness as a refugee problem. As a result, it does not properly consider non-refugee stateless persons. This could be due to the environment in which the study was born, that being shortly after the end of the Second World War when the issue of refugees was paramount.<sup>9</sup> Carol Batchelor argues that the study makes “no particular distinction...between the stateless and refugees,”<sup>10</sup> and that the study “expended little energy on non-refugee stateless, focusing rather on de jure and de facto definitions in relation to refugees.”<sup>11</sup>

Indeed, the study delineates the difference between stateless persons de jure and stateless persons de facto. De jure stateless persons are defined as,

Persons who are not nationals of any state, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one.<sup>12</sup>

In contrast, de facto stateless persons, as defined by the study, are persons who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.<sup>13</sup>

Importantly, this definition of de facto stateless persons only considers those who have left their country of domicile. It therefore excludes a category of persons who remain in their country of habitual residence, but do not “enjoy the protection and assistance of their national authorities.”

Weissbrodt and Collins define de facto statelessness as occurring when the protections, benefits and assistance typically associated with having a nationality are withheld by the government.<sup>14</sup> Though a state may legally consider an individual to be a citizen, it may not afford that individual the requisite rights and protections afforded to other citizens; the individual’s citizenship is therefore useless in practice. Consider, for example, a man who is unable to obtain a proper identity card – for reasons of racial, ethnic, religious or other forms of state sponsored oppression – will be unable to affirm his nationality. In this instance, though he is legally considered to be a national of the state – and

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<sup>8</sup> A Study of Statelessness

<sup>9</sup> cite a source?

<sup>10</sup> Batchelor 240

<sup>11</sup> Batchelor 241

<sup>12</sup> A Study of Statelessness

<sup>13</sup> A Study of Statelessness

<sup>14</sup> Weissbrodt and Collins 252

therefore not considered de jure stateless – he is unable to realize the benefits and protections of that status for he cannot prove it. He is *effectively* stateless and he has not left his country of habitual residence, where he is legally entitled to be considered a national; he is, therefore, a de facto stateless person.

Additionally, the study incorrectly establishes as a point of reference the issue of refugees and pays “comparatively little attention to non-refugee stateless persons.”<sup>15</sup> Though there are considerable circumstances where a refugee may indeed be stateless, today, that individual is appropriately looked after by a much stronger and far more advanced body of international jurisprudence and law formed by the 1951 Convention Relating to the Status of Refugees and the subsequent 1967 Protocol. Additionally, there are circumstances where an individual needn’t be considered a refugee to be stateless, as exemplified by both the technical de jure stateless definition and by the broader de facto stateless understanding above. The study does consider the position of stateless persons who are not refugees, but only in a somewhat incidental fashion. It states that it will consider the non-refugee stateless, “even though this group is much less numerous than that of refugees who are stateless and even though its position is in certain respects more favourable than that of stateless refugees.”<sup>16</sup> This contradicts an early statement that, “although in law the status of stateless persons de facto differs appreciably from that of stateless persons de jure, in practice it is similar.”

The study’s failed assumption – the incorrect assertion that stateless persons de facto would be outside of their country of habitual residence and therefore primarily a refugee issue – unfortunately tainted the development of much of the effort to combat statelessness that followed. The more inclusive understanding of de facto statelessness offered above is not reflected in either of the two conventions that flowed from *A Study of Statelessness*. Rather, the study’s definition incorrectly framed the understanding of de facto statelessness as a refugee problem rather than a statelessness issue.<sup>17</sup> Indeed, it is the technical and legal definition of de jure statelessness that forms the basis of understanding for the current statelessness regime,<sup>18</sup> leaving significant gaps in the overall treatment of the issue.

## ii. 1954 Convention on the Status of Stateless Persons

This Study of Statelessness and subsequent discussion eventually culminated in the *1954 Convention on the Status of the Stateless Persons*, but not before passing through several stages which further defined the framework that we see today. The Convention, in fact, was originally drafted as a Protocol to the *1951 Convention on the Status of Refugees*, further illustrating the strong – and arguably flawed – association of the two issues.

At the time, the international community was primarily concerned with the refugee crisis produced by the Second World War. Statelessness was an ancillary concern. Indeed, it was held that the issue of refugees was a humanitarian concern, whereas statelessness was primarily a legal status issue.<sup>19</sup> It was said that convention on refugees was an urgent matter but that the issue of statelessness was “a continuing concern of the world community [rather] than an acute situation which required immediate remedial measures.”<sup>20</sup> Furthermore, a hierarchy of stateless persons was identified: those who were also refugees and thus deserving greater attention and protection, and those who were not. This

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<sup>15</sup> [http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf)

<sup>16</sup> *A Study of Statelessness*

<sup>17</sup> [http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf)

<sup>18</sup> “Persons who are not nationals of any state, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one.”

<sup>19</sup> [http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf)

<sup>20</sup> [http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf)

distinction reflects the earlier discussion in the *Study of Statelessness*, where the plight of the non-refugee stateless was largely under-investigated.

In 1951 the General Assembly adopted the *Convention Relating to the Status of Refugees*, but the statelessness protocol was not considered. It was not until 1954 when a separate *Convention Relating to the Status of Stateless Persons* was opened for signature. The 1954 Convention focuses solely on the issue of statelessness, leaving the issue of refugees – stateless or not – to the 1951 Convention. Thus, it is the only international convention which seeks to secure a measure of basic rights to stateless persons.<sup>21</sup> According to the UN the core principle of the Convention is that, no stateless person should be treated worse than any foreigner who possesses a nationality. In addition the Convention acknowledges that stateless persons are more vulnerable than other foreigners. It therefore provides for a series of special measures for stateless persons.<sup>22</sup>

The Convention establishes an international standard for the treatment of stateless persons, recognizing that though the ultimate goal is the elimination of the issue altogether, the existence of statelessness persists and so those individuals deserve protection.

The 1954 Convention seeks to stipulate an actionable set of guidelines for the application of human rights that are espoused in other international conventions. It provides a method by which an agreed upon set of standards can be applied to stateless persons. However, for reasons originating from a basic understanding established in the *Study of Statelessness*, the 1954 Convention does not recognize the issue of de facto stateless persons and so leaves those individuals lacking the guarantees specifically afforded to other stateless individuals.

The individual who has a nationality 'by operation of law' and who does not qualify under today's definition of refugee, is not covered by any of these conventions, whether or not the nationality ascribed to him or her carries with it the usual attributes of an effective nationality.<sup>23</sup>

The position of the de facto stateless was likened to that of a refugee because the definition presumed that those individuals who do not enjoy the rights and protections afforded by citizenship must have left their country of residence. As a result, de facto statelessness was deemed an issue already dealt with by the 1951 refugee convention and that such an overlap was unwanted. Thus, the 1954 Convention deals exclusively with the technical and legal category of de jure stateless persons, leaving significant gaps.

Additionally, the Convention fails to establish a concrete procedure for the identification of stateless persons. Instead, individuals are faced with a negative burden of proof, where they must prove that there is no state in this world where they are considered a citizen.<sup>24</sup> Likewise, the Convention did not establish a supranational body responsible for assessing statelessness claims, rather the process was relegated to the judicial proceedings of the individual states. However, it is clear that such a supervisory body was, at least by some, deemed necessary. The International Law Commission, a body tasked with preparing the articles of the convention (?) stated the need for the "creation of an agency to act on behalf of persons claiming to have been wrongfully denied nationality."<sup>25</sup> But the implementation of such a body is not enshrined by the Convention.<sup>26</sup>

The Convention fails to properly protect stateless individuals on two fronts: it does not enshrine an effective procedure or supervisory body to hear the pleas of the stateless and deal with those pleas in

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<sup>21</sup> The 1961 Convention on the Reduction of Statelessness focuses on eliminating the issue, as opposed to rights for the stateless

<sup>22</sup> Protecting the Rights of the Stateless

<sup>23</sup> Batchelor, 242

<sup>24</sup> ERT 46-47

<sup>25</sup> Batchelor 247, Report of the International Law Commission A/CN.4/88, item 34, 1954??, <http://www.unhcr.org/4ca5941c9.html>

<sup>26</sup> In 1976 UNGA Resolution 31/36, 30 Nov. 1976. asked that the UNHCR take on "temporarily" the role and then later indefinitely

an effective manner; and it does not adequately define who a stateless person is, focussing on a narrow scope of stateless individuals and overlooking a second, equally important category of statelessness de facto. It is, however, the only international instrument aimed at ensuring stateless individuals are protected and afforded basic human rights and should not be forsaken.

### iii. 1961 Convention on the Reduction of Statelessness

While the 1954 Convention established the international standard definition of who a stateless person is (flawed as it is) and applied a measure of basic human rights to that status, the *1961 Convention on the Reduction of Statelessness* seeks to limit the root causes of the issue. It provides a framework of safeguards against instances of statelessness that can be implemented through individual state's immigration and citizenship laws. The Convention seeks to fill some of the gaps in international law that needlessly create instances of statelessness and to guide states in their own legislation to limit those instances. UNHCR states,

Accession to the 1961 Convention equips states to avoid and resolve nationality-related disputes and mobilize international support to adequately deal with the prevention and reduction of statelessness.<sup>27</sup>

Furthermore, states parties to the 1961 Convention must not perform any action that would render one of its inhabitants stateless. The Convention contains measures aimed at avoiding and reducing statelessness in four main categories: among children,<sup>28</sup> due to loss or reunification of nationality,<sup>29</sup> due to deprivation of nationality,<sup>30</sup> and in the context of state succession.<sup>31</sup>

However, the gaps in definitions and inclusion (?) which diminish the capacity of the 1954 Convention prevail in the 1961 Convention. It too fails to differentiate between de jure and de facto statelessness and relies heavily on the legal definition of the former.<sup>32</sup> Though the ultimate goal of the 1961 Convention is for the application of citizenship to stateless persons is a commendable one, it suffers from an even lower rate of accession than the 1954 Convention, with only 37 states parties to-date.

### iv. The Role of the UNHCR

One lasting and important legacy of the Convention is the establishment of a supervisory UN body. Article 11 of the Convention calls for the creation of "a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority."<sup>33</sup> This is precisely the type of supervisory body initially called for by the International Law Commission during the drafting of the 1954 Convention. This role, as noted above, has been attributed to the UNHCR by UN General Assembly resolution. More recently, UNHCR has taken on a greater role in the promotion of both conventions and actively seeks increased accession.

However, it is not clear that the UNHCR is indeed the appropriate body to deal with claims of statelessness and to assist those individuals in securing their basic human rights and ultimately in achieving citizenship. The UNHCR, it must be noted, is primarily a refugee-focused body and therefore it can be argued that their approach to the issue of statelessness is through this lens. Though the UNHCR increasingly recognizes the differences between stateless persons de facto and

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<sup>27</sup> Preventing and Reducing Statelessness

<sup>28</sup> Articles 1-4

<sup>29</sup> Articles 5-7

<sup>30</sup> Articles 8 and 9

<sup>31</sup> Article 10

<sup>32</sup> Batchelor 251

<sup>33</sup> Article 11, 1961 Convention

refugees, it continues to paint the two with the same brush, so to speak. Consider, for example, the most recent working definition of de facto statelessness offered by the UNHCR:

de facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.<sup>34</sup>

The wording of this definition is strikingly similar to that which was originally offered by the Study on Statelessness, drafted more than 60 years ago and responsible for much of the confusion woven into both the 1954 and 1961 Conventions.

#### v. Other International Conventions Relating to Citizenship

Several other international treaties espouse the basic right to a nationality. The *UN International Covenant on Civil and Political Rights*, 1966, states “every child has the right to acquire nationality.”<sup>35</sup> The *UN Convention on the Elimination of All Forms of Racial Discrimination*, 1965, stipulates that states parties must guarantee, without discrimination of race, colour, or national or ethnic origin, the right to nationality.<sup>36</sup> The *UN Convention on the Elimination of All Forms of Discrimination against Women*, 1979, requires that states parties grant women equal rights with men with respect to changing their nationality and regarding the nationality of their children.<sup>37</sup> And so, the right to citizenship is well espoused by these numerous international treaties, yet statelessness persists.

The 1961 Convention, through a common framework, seeks to operationalize the well-founded right to citizenship espoused by these numerous conventions. However, the 1954 Convention echos a different trend in other international human rights focused instruments: the movement away from the nation state as the vehicle of human rights and towards the individual. It is increasingly recognized that the only prerequisite for one to be deserved of basic human rights is that one is in fact human.<sup>38</sup> As Weisbrodt and Collins argue,

Because being human is the sole requirement entitling one to human rights, whether or not one possess a nationality should have no bearing on whether one enjoys all of her or his human rights.<sup>39</sup>

The authority of the state as the only acceptable actor on the international stage is diminishing. Through the development and entrenchment of universal human rights, the rights of the individual have become paramount, and the protection of those rights now supersedes the authority of the state. The UN Compensation Commission’s treatment of Palestinian claimants is one example of this evolution....

A substantial body of international conventions contain articles pertaining to the right to citizenship but an even greater number assert the predominancy of human rights as applicable to all people irrespective of their citizenship status.<sup>40</sup> The 1954 Convention reflects this mentality by its assertion that though some may be lacking citizenship, this does not preclude them from the enjoyment of basic human rights. It is however interesting to note that the 1954 Convention establishes a type of status where one is lacking. That is, those who are not considered a citizen by any state are nationals of nowhere, but, under the articles of this convention, they have a unique status of being stateless and, therefore, can be considered simply ‘citizens of the world.’ Therein, though, lies a particular challenge,

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<sup>34</sup> <http://www.unhcr.org/refworld/pdfid/4ca1ae002.pdf>

<sup>35</sup> article 24

<sup>36</sup> article 5

<sup>37</sup> article 9

<sup>38</sup> Convention on the rights of the child, Universal declaration of human rights, etc.

<sup>39</sup> Weissbrodt and Collins, 249

<sup>40</sup> ERT, 22

that of “promoting the right of everyone to a nationality, while ensuring that the lack of a nationality does not result in vulnerability, exploitation and the violation of human rights.”<sup>41</sup>

### **III. CANADIAN EFFORTS**

#### **a. Canada's International Obligations**

Canada is signatory to the 1961 Convention but has not signed the 1954 Convention.

In a 1954 note from the Secretary of State for External Affairs, Canada agreed that “the reduction of statelessness is a commendable goal”, but outlined a number of key objections to the 1954 Convention.<sup>42</sup> Primarily, Canada noted that “there exist cases in which deprivation of citizenship is not unwarranted or unjustified.” Cases said to be justified at that time and that are still applicable under modern legislation include fraud, misrepresentation, or knowing concealment of material circumstances. Canada further contested that the 1954 Convention would inappropriately extend citizenship rights to children born outside of the country to Canadian parents in states not party to the convention. Canada reasoned that there would be few countries where “jus soli would not apply to offspring of foreigners,” and that “statelessness in such countries would result from indifference or negligence on the part of the parents.”

Canada's 1954 policy-based argument is deficient in three respects. First, Canada's concern that the 1954 Convention would bar its ability to manage its own citizenship laws is unsubstantiated. The 1954 Convention is principally important and effective not because it demands that countries accord citizenship to stateless persons, as is suggested by Canada's reservations, but rather a measure of basic rights that ensure stateless persons can meaningfully participate in society. The 1961 Convention affirms the right of countries to deprive persons of citizenship under specific circumstances. Second, and contrary to Canada's reasoning, many countries have legislation that does not automatically recognize citizenship on the basis of jus soli. Some rely on stipulations designed to regulate the application of jus soli citizenship, while others confer no rights to citizenship based on jus sanguinis. It is reckless to maintain that foreign parents who have children in these countries – which include Japan, Germany, the United Kingdom, Sweden and others – should be considered indifferent or negligent.<sup>43</sup> Third, and perhaps most importantly, states are entitled to make reservations regarding articles of the 1954 Convention that they consider to be problematic.<sup>44</sup>

In a paper prepared for the UNHCR in 2003, Canada's continued reservations toward the 1954 Convention were said to be that<sup>45</sup>:

- The 1954 Statelessness Convention duplicates much of the 1951 Convention relating to the Status of Refugees (which Canada has ratified), rendering the 1954 treaty unnecessary;
- Canadian legislation already covers adequately the situation of stateless persons; and,
- Acceding to the Convention would encourage stateless persons to flock to Canada, and encourage others to renounce their home citizenship on gaining entrance to Canada.

None of the above is a salient policy or legal concern. First, the 1951 treaty does not respond in any way to the specific needs and circumstances of non-refugee stateless persons, a group currently

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<sup>41</sup> Equal Rights Trust

<sup>42</sup> Report of the International Law Commission to the General Assembly (p165), Comments by Governments on the Draft Convention on the Elimination of Future Statelessness and on the Draft Convention on the Reduction of Future Statelessness, Yearbook of the International Law Commission: 1954 , vol. II [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_82\\_add-1-8.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_82_add-1-8.pdf)

<sup>43</sup> <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/bp445-e.htm>

<sup>44</sup> Excluding articles 1, 3, 4, 16 (1) and 33 to 42.

<sup>45</sup> (pg 17) Statelessness in Canadian Context, A Discussion Paper, Copyright: UNHCR, July 2003. Andrew Brouwer <http://www.ccrweb.ca/statelessness.PDF>

estimated by the UN to be in the order of 12 million persons worldwide. Second, assuming that Canada does already adequately account for the needs of stateless persons within its borders, the mere signing of the 1954 treaty would presumably lead to no substantial changes. Indeed, Canada does provide for basic rights (must be confirmed) as articulated by the treaty. Third, Canada's fear that stateless persons would flood to Canada to avail themselves of the country's newly announced support for the stateless is irrational. Stateless persons have not overrun signatory countries that include, for example, Denmark, Luxembourg, the Netherlands, Switzerland, Australia, and the Republic of Korea. The fact that Canada would state such a concern alludes again to the persisting, fallacious belief that stateless persons are refugees under a different name. It is a problematic comparison that is examined elsewhere in this paper.

## b. Domestic Efforts

### i. Bill C-37

Canada has not signed the 1954 Convention, but has been measurably active in attempting to amend areas of its own legislation that regularly produce stateless persons. In 2008, Bill C-37, *An Act to amend the Citizenship Act*, nationalized "lost Canadians" who had become so as a result of a number of primary historic legal loopholes. Bill C-37 resolved the cases of an estimated x people by addressing what Parliament considered the most deserving categories of stateless persons. Specifically, it retroactively deemed Canadian anyone who<sup>46</sup>:

- Lost citizenship for any reason apart from renouncing their citizenship, having it revoked for fraud or similar acts, or failing to retain it if by age 28 if they are a second (or later) generation Canadian born since 1977.
- Was born abroad before 1977 to a Canadian parent but was never naturalized as a Canadian.

However, the Bill did not resolve all historical instances of lost Canadians. This was acknowledged from the outset by Citizenship Minister Diane Finley, who noted in 2007 at the Standing Committee on Citizenship and Immigration that the bill would "resolve most but not all the situations that have arisen," and that the Minister will need to continue to rely on his or her ability to make a special determination on a case-by-case basis for those persons not covered by the changes to the Citizenship Act.<sup>47</sup> In 2008, Minister Finley stated at the Standing Committee on Social Affairs, Science and Technology that<sup>48</sup>:

We took action on a problem that has been around for decades. Now we are trying to resolve the situation for as many as possible. Our estimate is that it will cover over 95 per cent of the cases. I think that is good news. I would like to resolve the situation for over 95 per cent rather than do nothing for the sake of the 5 per cent who will not be covered.

The so-called five per cent who will not be covered include:

- People born in Canada prior to 1947 and who had lost British subject status;
- People born outside of Canada prior to 1947 whose father was not Canadian if born in wedlock or mother was not Canadian if born out of wedlock; and
- People born outside of Canada prior to 1947 who were not admitted to Canada for permanent residence before 1947 and were an adult by that date, and whose parents were Canadian.

Perhaps more surprising than the fact the Bill failed to close all historical categories of lost Canadians, the Bill actually created a brand new category of stateless persons that will be produced as a result of

<sup>46</sup> <http://www2.parl.gc.ca/Content/LOP/LegislativeSummaries/39/2/c37-e.pdf>

<sup>47</sup> Speaking Notes: Notes for an Address by The Honourable Diane Finley, P.C., M.P., Standing Committee on Citizenship and Immigration, "Main Estimates and Loss of Citizenship", Ottawa, Ontario, May 29, 2007, <http://www.cic.gc.ca/english/department/media/speeches/2007/2007-05-29.asp>

<sup>48</sup> Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, Meeting of April 10, 2008, <http://www.parl.gc.ca/39/2/parbus/commbus/senate/Com-e/soci-e/05eva-e.htm>

Canadian law. Specifically, children who are born outside of Canada to Canadians who were themselves born outside the country (including adopted, naturalized Canadians) will not automatically be entitled to Canadian citizenship. This category will be referred to as the second-generation cutoff.

The second-generation cutoff has drawn criticism for its treatment of Canadian citizens born outside of Canada as second-class citizens.<sup>49</sup> Specifically, these Canadians would not have the right, as other citizens would, to give birth to a Canadian child outside of the country, regardless of the surrounding circumstances. This is a situation that some Members of Parliament are looking to change.

ii. Bills C-467 and C-443

Private Member's Bill C-467, *An Act to amend the Citizenship Act*, is an attempt to provide a measure of structure to the second-generation cutoff. According to Ujjal Dosanjh, the Member who introduced the bill, it "would amend the Citizenship Act to provide that a child born abroad to, or adopted abroad by, a citizen employed outside Canada in or with the Canadian armed forces, the federal public administration or the public service of a province be considered like a child born in Canada". At the time of this paper, Bill C-467 had reached Second Reading in the House of Commons and was referred to the Standing Committee on Citizenship and Immigration.

Private Member's Bill C-443, *An Act to amend the Citizenship Act*, attempts to modify this second-generation cutoff even further. According to introducing Member Mauril Belanger, the bill would see "Canadian citizens engaged in international organizations such as the United Nations, the World Bank, the World Trade Organization" and other similar agencies exempted from the cutoff. Bill C-443 was introduced for First Reading in September 2010.

Regardless of whether these Private Member actions succeed or fail, Canadian law will continue to produce stateless persons. This is unconscionable.

#### **IV. RECOMMENDATIONS**

##### **Recommendation One:**

*That all countries accede to the existing conventions relating to statelessness.*

As argued above, the 1954 and 1961 Conventions are deeply flawed insofar as they failed to recognize de facto stateless persons. Despite this failure, the treaties do bring some measure of security to at least some categories of stateless persons, and seek to avoid future instances of de jure stateless persons. Importantly, the treaties state a fundamental principle that is in keeping with widely recognized international human rights principles: that no person deserves to live without basic human rights.

2011 is the 50th anniversary of the 1961 Convention and the 60th anniversary of the creation of the UNHCR. In recognition of this milestone, the UNHCR has initiated a campaign urging non-signatory states to reconsider their positions and accede to both statelessness treaties.

There is a range of reasons that should compel states to accede to the treaties. Barring any sweeping international changes in concepts of citizenship, de jure stateless persons will continue to be produced indefinitely. Citizenship laws are complex, and it is currently impossible for persons to consistently avoid legislative gaps within or between countries to ensure their offspring will not be stateless. This in mind, the 1961 treaty sets international standards that countries can rely on to avoid, as much as possible, creating de jure stateless persons. Where the treaty fails to prevent statelessness, the 1954

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<sup>49</sup> House of Commons Standing Committee on Citizenship and Immigration, Review of the Subject-Matter of Bill C-37, An Act To Amend The Citizenship Act, Enacted In Second Session Of The 39th Parliament, June 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3989008&Language=E&Mode=1&Parl=40&Ses=2&File=5>

treaty provides standards to deal with it. Alone, the conventions are insufficient; together and in conjunction with domestic legislation, they provide a comprehensive strategy on de jure statelessness. The treaties are continually strengthened as additional states accede.

There are also geo-political reasons that should compel states to adopt the treaties. The existence of stateless populations can inflame or even prompt intrastate and interstate conflict. The conventions, if widely adopted, would contribute to international peace and security by minimizing the size of these populations. Further, reducing statelessness allows greater portions of a given society to meaningfully contribute to its social and economic development.

“The Asian Development Bank, the Inter-American Development Bank, and the European Commission have undertaken various studies that confirm the link between citizenship, providing legal identity, and social and economic development.”<sup>50</sup>

Finally, international human rights treaties bind states<sup>51</sup> to take action to protect the rights of all humans within their borders, not only those who are citizens. Stateless persons cannot be considered as distinct from other humans. To cite Article 28 of the Universal Declaration of Human Rights:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### **Recommendation Two:**

*That Canada sign the 1954 Convention as a step toward regaining its fading reputation as a protector of human rights.*

There do not appear to be any salient policy concerns preventing Canada from signing the 1954 Convention, and if there were, Canada would have the option of making reservations to the problematic articles. Signing the treaty would not affect Canada's ability to manage its own laws respecting citizenship, and as even the Canadian government has stated, the Convention would only enunciate protections that currently exist for stateless persons living in the country (?). On a human rights basis, the convention is principally in keeping with other international treaties to which Canada is signatory.

Signing the 1954 Convention would likely have greater ramifications beyond the borders of Canada than within. Canada has a history of leading human rights issues internationally. It was a key player in instituting international peacekeeping and was instrumental in the creation of the Ottawa Treaty, which was intended to end the manufacture and use of landmines. Despite these accomplishments, there is much discussion of late that the image of Canada as a leader in international human rights is quickly fading.<sup>52</sup> A great deal of this discussion centers around Canada's contentious role in Afghanistan, its reduced engagement in international peacekeeping, and its recent refusal to sign the UN Declaration on the Rights of Indigenous Peoples.<sup>53</sup> Canada's failure in 2010 to gain a seat at the United Nations Security Council is powerful evidence of its declining international image.

Canada must work toward regaining its reputation as a leader in international human rights. This can be achieved through consistent decisions and efforts that support human rights as an international

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<sup>50</sup> The Statelessness Conventions Campaign: Why States Should Accede to the 1954 and 1961 Statelessness Conventions, UNHCR

<sup>51</sup> Depending on domestic legislation, some countries are legally bound to treaties which they are signatory to, while others are only bound in principle...?

<sup>52</sup> <http://www.nupge.ca/content/canadas-influence-fading-world-poll-finds>, <http://www.nytimes.com/2005/05/25/international/americas/25lett.html>

<sup>53</sup> United Nations Association in Canada, UN Peacekeeping Project, Backgrounder for Journalists. <http://www.unac.org/peacekeeping/en/un-peacekeeping/fact-sheets/una-canada-backgrounder-for-journalists/>

priority. Signing the 1954 Convention would be a signal to the international community that Canada is again prepared to meaningfully engage in international human rights discourse and action. It would be a meaningful statement that Canada does not believe any person deserves to live without basic rights, and a small step toward regaining its reputation as an agent of positive change.

### **Recommendation Three:**

*That a Commission on Statelessness be established and tasked with specific activities intended to augment ongoing international efforts.*

The United Nations has estimated there are 12 million stateless persons worldwide.<sup>54</sup> As noted, the United Nations definition of stateless persons includes only de jure stateless to the exclusion of de facto stateless.<sup>55</sup>

As argued elsewhere in this paper, the existing conventions on statelessness are deficient for their failure to properly identify and consider all forms of statelessness. While de jure stateless persons are protected by the existing conventions on statelessness, and de facto stateless persons who are refugees are well protected by the convention on refugees, de facto stateless persons who live in their country of habitual residence, are not sufficiently protected.

The historical tendency for states to blend the distinct issues of refugees and stateless persons resulted in the appointment of the UNHCR as the body responsible for overseeing the statelessness conventions. However, because the UNHCR's primary mandate is responsibility for refugees, the issue of statelessness may be considered ancillary. The issues of refugees and statelessness are distinct and require dedicated strategies and organizations.

Distinct from its core activities in support of refugees, its responsibility for stateless persons comes in addition to two other secondary responsibilities that include former refugees who have returned home and internally displaced persons.<sup>56</sup> In effect, the decision to tack the responsibility for stateless persons onto an otherwise focused international body means that (at least) 12 million people worldwide have no local or national government to which they can turn, and there is not a single international governing body with the sole mandate of advocating on their behalves. Statelessness is a large enough and important enough issue to warrant a dedicated international organization.

The current UNHCR mandate respecting stateless persons, which includes identification, protection, prevention and reduction, is a strong basis, but requires an expansion of scope and purpose. It is therefore recommended that the United Nations General Assembly establish a Commission on Statelessness, tasked with a number of activities intended to augment ongoing efforts. The commission would:

1. Identify, quantify and study the unique circumstances that render stateless, all populations that are not recognized – *legally or effectively* – by any state.
2. Prepare a new definition of statelessness for the consideration of the international community, which would broaden the current definition of statelessness to take into account persons who are de facto stateless. It is a more problematic and case-specific form of statelessness, but it is one that cannot continue to be ignored.
3. Investigate historical and ongoing discriminatory policies that have or continue to produce statelessness. Where discriminatory national policies are identified, refer cases to the UN

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<sup>54</sup> In comparison, there are an estimated 42 million refugees. Both figures: UNHCR. <http://www.unhcr.org/pages/49c3646c155.html> and <http://www.unhcr.org/4a2fd52412d.html>

<sup>55</sup> which can only mean that its own figure understates the true scale of statelessness

<sup>56</sup> UNHCR Mission Statement, <http://www.unhcr.org/pages/49ed83046.html>

Commission on Human Rights.

4. Review and assess the scope and efficacy of existing conventions given both a) the new definition of statelessness as adopted by the international community, or b) the practical reality of statelessness.
5. If the existing Conventions are found to be insufficient, advocate for the development of an amending protocol on statelessness that will adequately address the identified deficiencies.