1961 CONVENTION ANNIVERSARY SYMPOSIUM

THE 1961 *CONVENTION ON THE REDUCTION OF STATELESSNESS*: HISTORY, EVOLUTION AND RELEVANCE

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TABLE OF CONTENTS

I A BRIEF HISTORY

At the conclusion of WWII, millions of people were displaced across Europe and many were stateless, that is, they were not recognised as nationals by any state.[1] This was largely due to explicit denationalisation policies that had been employed as a form of persecution both pre- and during WWII.[2]

Recognising the urgent need to respond to this situation, the UN Secretary-General undertook a study on statelessness, which was published in 1949[3] and, based on the findings of the study, established an Ad Hoc Committee to formulate a treaty that would *both* prevent statelessness and protect stateless persons.[4] Yet, it was not until 1954 that the *Convention on the Status of Stateless Persons* was formulated[5] — to protect stateless persons — and not until 1961 that the *Convention on the Reduction of Statelessness* ('*1961 Convention*') was concluded.[6]

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1 Michelle Foster and Hélène Lambert, *International Refugee Law and the Protection of Stateless Persons* (Oxford University Press 2019) 25–26.

2 ibid 18, 26.

3 *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1 (August 1949).

4 UN Economic and Social Council, *A Study of Statelessness*, UN Doc E/RES/248(IX) (8 December 1949, adopted 8 August 1949) 60.

5 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) ('*1954 Convention*').

6 *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) ('*1961 Convention*').

A *Why Was a Treaty Needed to Reduce Statelessness?*

International law recognises that states have the discretion to devise their own nationality laws — this is understood as central to state sovereignty.[7] However, the exercise of the discretion to confer and withdraw nationality can result in statelessness for a range of reasons, including discrimination, arbitrary deprivation of nationality, state succession or gaps in nationality laws.

Yet, statelessness was recognised as a problem for international order — it contravened the notion that every individual was allocated to a state — and, most significantly, it was beginning to be understood as a contravention of individual rights, in line with the emerging focus of the United Nations on human rights.

In 1948, the seminal *Universal Declaration of Human Rights* ('*UDHR*') proclaimed in art 15 that everyone has the right to a nationality.[8] Yet, determining which state has the obligation to deliver that right was not addressed in the *UDHR*. It was therefore necessary to translate this principle into binding form by setting out specific, legally binding standards that would impose an obligation on states to deliver the right to nationality in a particular case.

B *How was the* 1961 Convention *Negotiated?*

In 1953, the Special Rapporteur on the topic of nationality, including statelessness, presented a report containing two possible drafts of a treaty to the International Law Commission ('Commission') and then later in the same year, the Commission 'provisionally adopted' the two drafts: one on the elimination of statelessness and one on the reduction of statelessness.[9] The drafts were similar but, as one would expect, the *Draft Convention on the Elimination of Future Statelessness* provided less discretion for states and fewer exceptions.[10] At a 1959 conference to decide between the two drafts and finalise the text, the Acting President of the Committee noted that:

> to agree on a formulation of … principles [to reduce or eliminate future statelessness] … the nationality laws of various countries based on different conceptions of national allegiance and citizenship would have to be reconciled as far as possible in the interests of the international community as a whole.[11]

This statement nicely summarises the magnitude of the task of the conference participants.

The UK representative observed that the Committee was confronted with 'two dangers': '[f]irst, in its eagerness to eliminate statelessness altogether, it might draw up a convention which only a few States would be prepared to sign', or that a convention may attract large numbers of ratifications but 'improve the condition of stateless persons only in a very small degree'.[12]

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7 Foster and Lambert (n 1) 53.

8 *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (10 December 1948) art 15(1).

9 Roberto Córdova, Special Rapporteur, *Report on the Elimination or Reduction of Statelessness*, UN Doc A/CN.4/64 (30 March 1953).

10 See Laura van Waas, 'Nationality Matters: Statelessness under International Law' (PhD Thesis, University of Tilburg, 1981) 42–43.

11 UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the First Plenary Meeting*, UN Doc A/CONF.9/SR.1 (24 April 1961) 3.

12 UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Second Plenary Meeting*, UN Doc A/CONF.9/SR.2 (24 April 1961) 2.

He recommended that, therefore, '[t]he conference should attempt to steer a middle course by drafting a convention which would secure many ratifications and at the same time represent an appreciable improvement in the lot of stateless persons'.[13]

In other words, like all international treaties, the final version would be the result of compromise.

What were the sticking points? On the one hand, many state representatives proclaimed the importance of nationality. For example, Mr Sivan (Israel) 'believed that practical, moral and psychological importance attached to nationality not only in the case of adults but also in that of children and young people'.[14] The Argentinian representative, Mr Carasales, proclaimed it was 'of paramount importance that a child should have a nationality at birth'.[15] The Canadian representative, Mr Jay, 'expressed the hope that [the principle of state sovereignty] would not be given undue prominence'.[16]

Yet, there were tensions between those states that favoured *jus soli* (citizenship by birth) and those that favoured *jus sanguinis* (citizenship by descent).[17] The issue of deprivation of citizenship on security grounds also proved so contentious as to necessitate a second conference, which explains why it took until 1961 to settle on the final text of the *Convention*.[18]

Ultimately, the *Convention on the Reduction of Statelessness* (not Elimination) was adopted and opened for signature on 30 August 1961. In accordance with art 18, the *1961 Convention* did not enter into force until it received its sixth accession on 13 December 1975. To date, the treaty has attracted 78 ratifications.[19] This number is relatively modest in light of the importance of the treaty, yet, as Melanie Khanna and Marcella Rouweler note,[20] the treaty has, in recent years, enjoyed renewed momentum with a significant increase in ratification.

II OVERVIEW OF THE *1961 CONVENTION*

The *1961 Convention* is one of the earliest human rights treaties of the modern era. Yet, it remains essential in the quest to reduce and eliminate statelessness; of course, this quest continues with millions of people stateless today and new cases of statelessness arising.[21]

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13 ibid.

14 UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Fourth Plenary Meeting*, UN Doc A/CONF.9/SR.4 (24 April 1961) 2.

15 ibid 3.

16 UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Third Plenary Meeting*, UN Doc A/CONF.9/SR.3 (24 April 1961) 5.

17 See, eg, ibid 2–10; UN Doc A/CONF.9/SR.4 (n 14) 2–8; UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Sixth Plenary Meeting*, UN Doc A/CONF.9/SR.6 (24 April 1961) 2–7.

18 UN Conference on the Elimination or Reduction of Future Statelessness, *Summary Record of the Fifteenth Plenary Meeting*, UN Doc A/CONF.9/C.1SR.15 (11 October 1961) 2–3.

19 '4. Convention on the Reduction of Statelessness', *United Nations Treaty Collection* (Web Page) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en>.

20 Melanie Khanna and Marcella Rouweler, 'Taking Stock of the Relevance and Impact of the 1961 *Convention on the Reduction of Statelessness*' (2022) 4(1) *Statelessness & Citizenship Review* 194.

21 See UNHCR, *Global Trends: Forced Displacement in 2020* (Report, 18 June 2021) 50 <https://www.unhcr.org/60b638e37/unhcr-global-trends-2020>.

It is a relatively concise treaty, comprising just 10 operative articles in four parts. Articles 1–4 are concerned with the avoidance of statelessness at birth; arts 5–8 outline obligations designed to avoid statelessness through loss, renunciation or deprivation of nationality; art 9 prohibits discrimination in deprivation on grounds of race, ethnic, religious or political grounds; and art 10 is concerned with the avoidance of statelessness through transfer of territory.

How did it fare with addressing the middle course, as advocated by the UK representative? While a thorough analysis is beyond the scope of this commentary, I highlight three key features. First, art 1 is the central provision, stating that 'a Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless'.[22] This is a rare positive obligation, as it focuses on the state's obligation to deliver the right to nationality at birth for those who would otherwise be stateless. If fully complied with, this obligation would, in principle, eliminate statelessness in one generation.

However, as mentioned previously, the treaty that was ultimately adopted was the *reduction*, not *elimination*, version. The latter provided for no exceptions, whereas the adopted version does allow states to impose some, albeit limited, additional requirements, such as habitual residence in order to obtain nationality under art 1.[23] Yet, many states implement art 1 with no qualification and, in practice, it is a vital tool in the quest to reduce statelessness by seeking to ensure nationality at birth,[24] as outlined in Katie Robertson's contribution to this volume.[25]

The second noteworthy feature is art 8, which provides that 'a Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless'.[26] This provision has proven particularly important in recent years, as many states have adopted citizenship stripping as a method of addressing counter-terrorism concerns.[27]

While there is an exception in art 8(3), which permits deprivation that causes statelessness in several very limited circumstances, this can only be relied upon where a state made a relevant declaration at the time of ratification.[28] Fewer than 20% of state parties have made such a declaration; thus, art 8 has operated as a constraint, by ensuring that citizenship stripping powers apply only to dual nationals. Of course, whether or not a state should be permitted at all to deprive a person of nationality on security grounds remains a live issue, which may be

22 *1961 Convention* (n 6) art 1(1).

23 ibid art 1(2); cf *Report of the International Law Commission Covering the Work of its Sixth Session, 3 June–28 July 1954*, UN Doc A/2693 (1954) 143 [25].

24 See also the three other commentaries on the 60th anniversary of the *1961 Convention* in this volume: Benyam Dawit Mezmur, 'Making Their Days Count: The 1961 *Convention on the Reduction of Statelessness* and the *Convention on the Rights of the Child*' (2022) 4(1) *Statelessness & Citizenship Review* 198; Khanna and Rouweler (n 20); Katie Robertson, 'Practical Measures to Meaningfully Implement Article 1(1) of the 1961 *Convention on the Reduction of Statelessness* in Australian Law and Practice' (2022) 4(1) *Statelessness & Citizenship Review* 194.

25 Robertson (n 24).

26 *1961 Convention* (n 6) art 8(1).

27 See, eg, Sangeetha Pillai and George Williams, 'Twenty-First Century Banishment: Citizenship Stripping in Common Law Nations' (2017) 66(3) *International and Comparative Law Quarterly* 521, 522–23; ISI and GlobalCit, *Instrumentalising Citizenship in the Fight Against Terrorism* (Report, 29 March 2022) <https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf>.

28 *1961 Convention* (n 6) art 8(3).

answered by reference to other norms, such as the prohibition on arbitrary deprivation of nationality, as well as general anti-discrimination norms.[29]

The third provision worthy of specific attention is art 9, which provides that 'a Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds'.[30] As the Commission explained at the time, '[t]he obligation is an absolute one' as it does not depend on whether the prohibited discrimination would result in statelessness.[31] Such discrimination is prohibited absolutely with no qualifications or exceptions.

The Commission explained that it had 'considered whether in a convention the sole object of which is the elimination of statelessness it is proper to introduce an obligation of this kind'.[32] However, 'it came to the conclusion that any other formulation of this article would be open to serious objection'.[33] In the Commission's view, such discrimination could never be justified.

Compliance with this provision would go a long way to eliminating statelessness, given the prevalence of discrimination, especially on racial, ethnic and religious grounds, as a cause of statelessness.[34] It is also significant because some other international human rights treaties are not as absolute in their prohibition of discrimination in relation to nationality laws.[35]

However, it must be acknowledged that a significant omission from the list was gender as a prohibited ground of discrimination. The drafting history does not illuminate the reason for its omission as it was simply never discussed, although the absence of women amongst the drafters is no doubt an explanatory factor. Given the ongoing prevalence of gender discrimination in nationality laws today, this can be viewed as a serious gap.[36] Reliance on other treaties, especially the *Convention on the Elimination of All Forms of Discrimination against Women*, which provides that states parties shall grant women equal rights with men to acquire, change or retain their nationality, is thus an important supplement to the *1961 Convention*.[37]

III THE *1961 CONVENTION* AND INTERNATIONAL HUMAN RIGHTS LAW TODAY

Article 13 makes clear that the *1961 Convention* operates as a floor, rather than a ceiling. Indeed, I have already indicated some ways in which it is supplemented

29 See *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 9, 24(1), 26 ('*ICCPR*'); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(2).

30 *1961 Convention* (n 6) art 9.

31 *Report of the International Law Commission Covering the Work of its Fifth Session, 1 June–14 August 1953*, UN Doc A/2456 (1953) 226 [152].

32 ibid.

33 ibid.

34 See Michelle Foster and Timnah Rachel Baker, 'Racial Discrimination in Nationality Laws: A Doctrinal Blind Spot of International Law?' (2021) 11(1) *Columbia Journal of Race and Law* 83.

35 See ibid; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1(3).

36 See UNHCR, *Gender Equality, Nationality Laws and Statelessness 2020* (Background Note, 14 July 2020) 2.

37 *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9.

by other norms. However, it is noteworthy that it has had, and continues to have, an influence on both regional and international standards.

In terms of regional standards, art 1 of the *1961 Convention* has been taken up in the 1969 *American Convention on Human Rights*[38] and the 1997 *European Convention on Nationality*.[39]

In terms of international standards, it continues to provide the most robust protection against statelessness at birth and, as such, is increasingly being relied upon by other treaty bodies in their articulation of the content of right to nationality. Benyam Dawit Mezmur considers its relevance to and interaction with the *Convention on the Rights of the Child*;[40] I will thus conclude by reflecting on its recent invocation by the Human Rights Committee ('HRC').

In *Zhao v The Netherlands*, decided in January 2021, the HRC imposed, for the first time, positive duties on a state to grant nationality to a child born within its territory who would otherwise be stateless.[41] The case involved the interpretation of art 24(3) of the *International Covenant on Civil and Political Rights* ('*ICCPR*'), which provides that '[e]very child has the right to acquire a nationality'.[42]

The Netherlands had refused to determine whether or not the applicant was stateless, finding instead that he was of 'unknown nationality' and, therefore, not entitled to citizenship in the Netherlands, the country in which he was born.[43] In finding the Netherlands in breach of art 24(3), the HRC relied on the *1961 Convention* and, specifically, on UNHCR's detailed guidance on its interpretation to inform the HRC's articulation of what constitutes 'appropriate measure[s]' for ensuring that every child has the right to acquire a nationality pursuant to the *ICCPR*.[44]

In the Netherlands alone, it has been estimated that 13,000 children are of '"unknown" nationality', so the potential impact is highly significant in the specific context.[45] If this same reasoning is applied to the other 172 state parties to the *ICCPR*, its reach would be very broad indeed.

The *1961 Convention* is an imperfect but essential tool in the quest to reduce and, ultimately, eliminate statelessness. It uses antiquated language in parts and has clear gaps. Yet, it is remarkably robust in significant ways and, as the collection of commentaries on the occasion of its 60th anniversary reveals, it remains instrumental and highly relevant to the ongoing quest to reduce statelessness.

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38 *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) art 20(2).

39 *European Convention on Nationality*, opened for signature 6 November 1997, ETS No 166 (entered into force 1 March 2000).

40 See Mezmur (n 24).

41 Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No 2918/2016*, UN Doc CCPR/C/130/D/2918/2016 (20 January 2021) ('*Zhao v Netherlands*').

42 *ICCPR* (n 29) art 24(3).

43 *Zhao v Netherlands* (n 41) 2 [2.3], 3 [2.5].

44 ibid 7 [8.2]–[8.3].

45 ibid 2–3 [2.4].