**1961 CONVENTION ANNIVERSARY SYMPOSIUM**

# TAKING STOCK OF THE RELEVANCE AND IMPACT OF THE 1961 *CONVENTION ON THE REDUCTION OF STATELESSNESS*

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The 60th anniversary of the adoption of the 1961 *Convention on the Reduction of Statelessness* (‘*1961 Convention*’) calls for reflection on the influence of this important treaty over time, as well as the challenges that remain when it comes to realising the right of all persons to a nationality.[1] Sixty years is a relatively short period in human affairs; there are, after all, many people alive today who are much older than the *1961 Convention*. Yet, the past 60 years seems to have been a significant period if we consider how much evolution there has been in the basic acceptance of the notion that nationality matters constitute an appropriate area for multilateral regulation and cooperation (this is consistent with the contemporaneous shift in the international consensus concerning the right balance between the rights of the individual and those of the state). At the same time, significant and somewhat telling gaps remain in the full acceptance and appropriate application of the *1961 Convention*.

To begin with, it bears note that during the period when the *1961 Convention* was open for physical signature at the United Nations a paltry total of five states signed it.[2] Moreover, of these five, a full three — France, Israel and the Dominican Republic — decided not to become party to it after all. In fact, in the entire decade of the 1960s, only two states became party to the *1961 Convention* — the United Kingdom and Sweden. In the following two decades, the number of states parties increased only marginally: as of 1990, for example, there were some 15 parties to the treaty. Consequently, anyone taking the measure of the *1961 Convention* in the early 1990s would likely have concluded that the international community simply failed to devise a treaty that would attract many ratifications yet be robust enough to make a real difference — the balance a British delegate to the conference that adopted the treaty astutely described as the goal of the negotiations.[3] Halfway through its current lifespan, the treaty would have seemed virtually dead in the water as a result of it having been too far reaching and robust and, therefore, simply too controversial to attract more than a handful of states as adherents.

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

2 The Dominican Republic, France, Israel, the Netherlands, the United Kingdom of Britain and Northern Ireland. See ‘4. Convention on the Reduction of Statelessness’, *United Nations Treaty Collection* (Web Page, 19 April 2022) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5> (‘UNTC 1961 Convention Page’).

3 United Nations 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 (Mr Ross).

But international lawyers and other observers coming to such a conclusion would have counted the *1961 Convention* out too early, because a revitalisation has come relatively recently. The vast majority of states that are party to it today have joined since 2000, with some 40 states having joined since 2010.[4] What accounts for this impressive acceleration? A number of factors seem relevant. One is greater attention to statelessness issues in the 1990s due to the breakup of many former states, most notably the former Soviet Union. Relatedly, the United Nations High Commissioner for Refugees ('UNHCR') acquired, for the first time in the mid-1990s, a specific mandate to promote adherence to the *1961 Convention*, as well as a mandate to work on statelessness generally. Another is greater acceptance of international human rights law generally, including rights that limit state discretion in this field. It bears note that much of what we now think of as international human rights law was negotiated and gained acceptance later than 1961. This includes numerous treaties that specifically reference and seek to protect the right to a nationality, including the *International Covenant on Civil and Political Rights* ('*ICCPR*'),[5] the *Convention on the Rights of the Child* ('*CRC*'),[6] the *Convention on the Elimination of All Forms of Racial Discrimination*,[7] and the *Convention on the Elimination of All Forms of Discrimination against Women*.[8] Other developments that bear mention include the 2011 ministerial event that UNHCR held to mark the 60th anniversary of the 1951 *Convention Relating to the Status of Refugees* and the 50th anniversary of the *1961 Convention*, where an unprecedented number of states made pledges to become party to the *1961 Convention*.[9] Also critically important has been UNHCR's *#IBelong Campaign to End Statelessness* launched in 2014 ('*#IBelong* Campaign').[10] The *#IBelong* Campaign has bolstered advocacy efforts and strengthened partnerships with states, civil society and UN human rights mechanisms, among others.

Today the *1961 Convention* has 78 states parties.[11] While not yet a majority of states, the number will soon cross that important threshold. At the 2019 High-Level Segment on Statelessness and Global Refugee Forum, a further 22 states pledged to accede or consider acceding to the *1961 Convention* by 2024.[12] And so from today's vantage point, it becomes possible to conclude that the delegates at the conference may have struck the right balance after all. For had it been less ambitious, the differences the *Convention* has made would be less significant.

It is interesting in this regard to consider how many changes there have actually been in nationality law frameworks in recent years. The UNHCR has kept track of

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4 ibid.

5 *International Covenant on Civil and Political Rights*, adopted 6 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('*ICCPR*').

6 *Convention on the Rights of the Child*, opened for signature 20 November 1990, 1577 UNTS 3 (entered into force 2 September 1990) ('*CRC*').

7 *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

8 *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 11 August 1958).

9 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

10 More information on the *#IBelong* Campaign to End Statelessness can be found here: <https://www.unhcr.org/ibelong/>.

11 'UNTC 1961 Convention Page' (n 2).

12 ibid. Belarus, Cabo Verde, Cameroon, Central African Republic, Comoros, Republic of Congo, Democratic Republic of the Congo, Ghana, Kenya, Kyrgyzstan, Malawi, Mauritania, Mexico, Namibia, Philippines, Somalia, South Sudan, Tajikistan, Turkey, Uganda, Zambia and Zimbabwe.

such legislative improvements from the start of the *#IBelong* Campaign in 2014; since then, nine states have included provisions in their nationality law to grant nationality to children born in their territory who would otherwise be stateless;[13] two states have included provisions to grant nationality to children of unknown origin found on their territory;[14] and three states have included provisions to grant nationality to children born to nationals abroad who would otherwise be stateless.[15] These recent reforms have contributed to a legal landscape in which the majority of states globally do have at least some safeguards in their nationality laws against statelessness, and these are largely patterned on the ones found in the *1961 Convention*. States generally behave as if they believe that statelessness should be avoided where possible. There is no state that has vocally opposed UNHCR's *#IBelong* Campaign and, to the contrary, the Campaign has been endorsed by the UN General Assembly.[16]

This is progress, but there remains a long way to go before *all of* the safeguards in the *1961 Convention* are reflected in most states' nationality laws or recognised as customary norms. In this regard, the paucity of states parties in certain parts of the world (especially the Middle East, with zero states parties[17] and the Asia–Pacific, with four states parties)[18] is most striking and challenging. But additionally, and just as importantly, there are issues to tackle when it comes to faithful and full compliance with the *1961 Convention* by those who are parties.

Critically, the nationality laws and nationality acquisition procedures of a great number of states parties fail to meet the obligations contained in art 1 of the *1961 Convention*, which provides that parties are to grant nationality to children born on the territory who would otherwise be stateless, either automatically at birth or later upon application. If properly implemented, this provision would, in principle, virtually end statelessness within a generation. The importance of this safeguard is reinforced by provisions on the right of every child to acquire a nationality in the *CRC*[19] and the *ICCPR*.[20]

In terms of the flaws in its application, there are problems with respect to how some states interpret and apply the 'would otherwise be stateless' language, with some inappropriately looking at whether the person concerned has an *entitlement* to another nationality as opposed to *having* another nationality. There are also numerous problems when it comes to the conditions imposed by states in their implementation of the safeguard. While art 1 includes an exhaustive list of conditions and exceptions that may be imposed relating to age, habitual residence and conviction of certain criminal offenses, many states go further in limiting eligibility to the safeguard. Some states apply age limits that are too restrictive. The *1961 Convention* specifies that where nationality is granted upon application it needs to be open to applicants until they are at least 21.[21] However, numerous states prescribe an age limit of 18 years or younger upon those lodging an

13 Albania, Armenia, Chile, Cuba, Estonia, Iceland, Latvia, Luxembourg and Tajikistan. See 'UNTC 1961 Convention Page' (n 2).

14 ibid. Chile and Panama.

15 Ibid. Cuba, Mexico and Paraguay.

16 United Nations General Assembly, *Office of the United Nations High Commissioner for Refugees*, UN Doc A/RES/70/135 (17 December 2015).

17 Israel signed the *1961 Convention* (n 1) in 1961 but never ratified it.

18 Australia, Kiribati, New Zealand and Turkmenistan. See 'UNTC 1961 Convention Page' (n 2).

19 *CRC* (n 6) art 7.

20 *ICCPR* (n 5) art 24.

21 *1961 Convention* (n 1) art 2(a).

application. Some states also apply legal residence requirements, while only a habitual residence requirement is permissible.[22] Residency requirements are likewise imposed on the applicant's *parents* in some states, whereas the *1961 Convention* only considers the situation of the child.[23] Consideration of the status of parents in other respects is taken into account by some states, such as those imposing requirements that the parents themselves need to be stateless or be of unknown citizenship for the child to be eligible for nationality through the safeguard. Finally, some states impose conditions that simply bear no resemblance to those set out in the *1961 Convention*, such as a requirement that the applicant has not received economic assistance in the recent past or a requirement that the applicant has knowledge of a certain language.

All of the issues identified above may be found in certain states' legislative frameworks for implementation of the *1961 Convention*. In addition, there are issues in the application of some domestic legal frameworks that pose further challenges. For one thing, many states have no separate procedures dedicated to determining eligibility for the art 1 safeguard; in some of these, an assessment is made as part of civil registration procedures where facts relating to a person's 'otherwise stateless' status are manifest. Where they are not manifestly obvious, they may not be thoroughly assessed. For another, in states parties where nationality through the safeguard is granted only upon application, information about the availability of this pathway to nationality and the procedures to pursue it is not always readily available, requiring a high degree of initiative (and usually the retention of a lawyer) on the part of applicants. Finally, in countries where information on the nationality of parents and/or the newborn is reflected on birth certificates, the failure to accurately identify and register the nationality status of the child as stateless can result in states not applying the safeguard.

These issues with compliance, especially those that are clearly reflected in a flawed legislative framework, are ones a treaty body could help address if the *1961 Convention* had one, but of course it does not. In the absence of a dedicated treaty body, these problems in the application of the *1961 Convention* are an important area for future work by the UNHCR and others. Indeed, given the difference it has made that the General Assembly gave the UNHCR an explicit role to promote accessions to the statelessness conventions, it seems logical that a role monitoring and promoting compliance with it would further assist.

There is scope for many more improvements in the years ahead, both with respect to attracting more states parties and strengthening implementation of the treaty's safeguards against statelessness. The trajectory to date has been a positive one, with states now generally willing to accept that there are limits on discretion in this area and that statelessness should be avoided. Indeed, many states that are not party to the *1961 Convention* have laws that show its influence, while many that are party are presumably applying it imperfectly as a result of a lack of understanding or capacity rather than a wilful determination to do so. It can therefore be hoped that further investments in this area by the UNHCR and others in the years to come will bear additional fruit.

22 ibid art 2(b).
23 ibid arts 3–6.