

# Statelessness: A 21st Century Challenge for Europe

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On the 1st of May, 2009, Europe will reach another important milestone in its efforts to address statelessness. On that day, the recently drafted Council of Europe Convention on the avoidance of statelessness in relation to State succession will enter into force — the second Council of Europe convention to be devoted to questions of nationality attribution and to be guided by the ambition of the prevention and reduction of statelessness.<sup>1</sup> This development is just one sign of the increasing attention that statelessness is drawing, not just in Europe, but around the world. Indeed, a deepening understanding of the complexity and gravity of the problem of statelessness, as well as the growing realisation that the international legal framework relating to statelessness continues to exhibit numerous gaps and shortcomings, has made it clear that the issue of statelessness warrants further consideration and engagement by the international community.

This article looks more closely at statelessness as a fundamental challenge for Europe — and beyond — in the twenty-first century. In doing so, the article discusses why finding an appropriate response to statelessness can be deemed imperative, taking into account both human rights and human security considerations. Thereafter, it presents some of the strengths and limitations of the existing international legal framework relating to statelessness in order to provide an impression of current opportunities for addressing statelessness. Finally, the article closes with a discussion of a number of recent developments, in particular in Europe that may open new avenues for meeting the challenge of statelessness in the future.

### The stateless as a vulnerable population

Statelessness, the lack of a legal bond of nationality with any state, places an individual in a precarious position. Research has shown that the stateless are among the world's most vulnerable populations.<sup>2</sup> Their story is one of marginalisation and exclusion. Their situation is marked by the practical inability to enjoy a broad range of rights and facilities as well as by formal exclusion from certain privileges, such as voting rights. According to a publication by the United Nations High Commissioner for Refugees (UNHCR), entitled 'What would life be like if you had no nationality?' if you are stateless, you may not be able to 'go to university; get a job; get medical care; own property; travel; register the birth of your children; marry and found a family; enjoy legal protection; have a sense of identity and belonging; [or] participate fully in developments in a world composed of states, in which nationality is key to membership.'<sup>3</sup>

Moreover, where stateless persons have crossed an international border (either voluntarily or forcibly), they may be denied readmission to their country of residence. Unable to return to their country, stateless persons may find themselves detained for prolonged periods or even indefinitely. Exclusion and disempowerment taken to the extreme. First and foremost then, the very existence of statelessness raises significant human rights concerns.

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1 The first being the European Convention on Nationality that was adopted in 1997 and entered into force on the 1st of March, 2000.

2 See, for instance, Youth Advocate Program International, *Stateless Children - Youth Who are Without Citizenship*, Washington DC, 2002; UN Division for the Advancement of Women, *Women, Nationality and Citizenship*, New York, 2003; Advisory Board on Human Security (prepared by Constantin Sokoloff), *Denial of Citizenship: A Challenge to Human Security*, February 2005; M. Lynch, *Lives on hold: The human cost of statelessness*, Refugees International, Washington DC, 2005; D. Weissbrodt; C. Collins, 'The Human Rights of Stateless Persons', in *Human Rights Quarterly*, Vol. 28, 2006.

3 UNHCR, *What would life be like if you had no nationality?* Information booklet, Geneva, March 1999, page 3.

## The scale and reach of statelessness

This clear and troublesome human dimension of the plight of the stateless may be deemed, in and of itself, cause for some form of international response. Meanwhile, if account is taken, not just of the severity of the issue, but also of the scale of the statelessness phenomenon, then the necessity of an effective response becomes all the more apparent. Although reliable statistics are still hard to come by for a number of reasons, there is a broad consensus that the global population of stateless persons numbers in the millions. The latest estimate released by UNHCR, the UN agency with a mandate on statelessness, puts the figure in the region of 12 million stateless persons worldwide — a total population that is largely comparable in size to that of refugees.

Measuring alongside the imposing magnitude of the problem of statelessness is its equally striking geographical reach. Thanks to the wide array of underlying causes,<sup>4</sup> nationality disputes and statelessness have surfaced in every area of the world at one time or another. Moreover, the stateless can also often be found among the world's refugee, trafficked and other displaced populations, further expanding the geographical reach of the problem so that a majority of countries continue to grapple with this issue to this day. As a region, Europe has seen its fair share of statelessness issues. Indeed, according to the Council of Europe Commissioner for Human Rights,

‘Europe has a shameful history of producing and repressing stateless people [and] developments after 1989 created new problems of statelessness in Europe. The break-up of the Soviet Union, Yugoslavia and Czechoslovakia caused enormous difficulties for persons who were regarded by the new governments as belonging somewhere else — even if they had resided in their current location for many years.’<sup>5</sup>

In his statement, the Council of Europe Commissioner for Human Rights goes on to refer to the situation in a number of countries — including Latvia, Estonia, Bosnia and Herzegovina, Slovenia, Russia and even Greece — where the existence of statelessness and the vulnerability of stateless populations are enduring concerns. And beyond the examples touched upon by the Commissioner on this particular occasion, reports and what basic statistics that are available on statelessness in other European countries show that the issue has surfaced across the region. It has recently been estimated that Europe is home to some 640,000 stateless persons in all.<sup>6</sup> In this region then, as elsewhere, the avoidance of statelessness and the protection of stateless persons are issues that have evidently presented themselves in practice and thereby claimed a place on the agenda of the international community.

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4 For instance, statelessness can arise from a ‘simple’ conflict of laws situation whereby a person is left unclaimed under the nationality laws of the relevant states; statelessness can surface in the wake of state succession; factors such as deficient civil registration practices of international migration can contribute to a heightened risk of statelessness; and discrimination is a key underlying factor in many cases of statelessness.

5 T. Hammarberg, Council of Europe Commissioner for Human Rights, No one should have to be stateless in today's Europe, viewpoint dating 9 June 2008. Accessible via [www.coe.int/t/commissioner/Viewpoints/080609\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/080609_en.asp). Note that the ‘shameful history’ to which the Commissioner refers relates to, among other events, the denationalization campaigns employed by the Nazi regime in Germany as an instrument of persecution and a precursor to extermination.

6 Both Germany and Kyrgyzstan, for instance, are thought to host around 10,000 stateless persons. UNHCR, 2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, Geneva, June 2008, Table 7 on Stateless Persons.

## Statelessness as a human security concern

What has contributed greatly to the increasing recognition of the need for an appropriate response to statelessness around the world is the growing realisation that statelessness is not just a human rights concern. It may also have a human security dimension. As the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe (OSCE) has explained, ‘Citizenship is without a doubt a most delicate question both legally and politically, in general terms and with regard to its denial or deprivation. The refusal to grant citizenship to a large number of titular residents may severely affect the balanced integration of all groups in society. Thus, it may represent a security threat.’<sup>7</sup>

While research and discussion on the position of statelessness within the discourse on human security is still in its infancy, a number of reports have pointed to this link between statelessness and communal tensions, forced displacement and conflict.<sup>8</sup> UNHCR has also raised the importance of addressing statelessness in preventing displacement or conflict as well as in promoting the successful return of refugees and contributing to post-conflict peace-building.<sup>9</sup> With this deepening understanding of the potential human security impact of statelessness come new opportunities — as well as new risks — for motivating states to develop a suitable response.<sup>10</sup> Certainly, the need to tackle statelessness is now more widely acknowledged by the international community than ever before.

## The development of an international legal framework relating to statelessness

As mentioned in the introduction to this article, within the Council of Europe, the recognition of the need to address statelessness has led to the adoption of two specialised conventions: the European Convention on Nationality and the Council of Europe Convention on the avoidance of statelessness in relation to State succession. These instruments have been designed, among other things, to prevent and reduce statelessness. The protection of stateless persons, meanwhile, is being dealt with — at least to some extent — through the ‘regular’ human rights machinery, provided for everyone within the jurisdiction of a Council of Europe member state, through the European Convention on Human Rights.<sup>11</sup>

The Council of Europe is not the only forum in which attention has been paid to the problem of statelessness. Ever since the proclamation of the right to a nationality in 1948, in article 15 of the Universal Declaration

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7 Address by K. Vollebaek, OSCE High Commissioner on National Minorities, to the Expert Consultation on ‘Issues related to minorities and the denial or deprivation of citizenship’, convened by the UN Independent Expert on Minority Issues, G. McDougall, Geneva, 6 December 2007.

8 See, for instance, Advisory Board on Human Security (prepared by C. Sokoloff), *Denial of Citizenship: A Challenge to Human Security*, February 2005; G. McDougall, *Report of the independent expert on minority issues*, A/HRC/7/23, 28 February 2008, paragraphs 47-48.

9 UNHCR, ‘Statelessness and Citizenship’ in *The State of the World’s Refugees - A Humanitarian Agenda*, Oxford: Oxford University Press, 1997.

10 For more on the link between human security and statelessness, see M. Manly; L. van Waas, ‘The value of the human security framework in addressing statelessness’, in *Human Security and Non-Citizens: Law, Policy and International Affairs*, A. Edwards and C. Ferstman (eds.), Cambridge: Cambridge University Press, forthcoming 2009.

11 Over the past decade, the European Court of Human Rights has seen numerous complaints brought before it by stateless persons against different states. For example *Slavov v. Sweden*, Application No. 44828/98, 29 June 1999; *Okonkwo v. Austria*, Application No. 35117/97, 22 May 2001; *Al-Nashif v. Bulgaria*, Application No. 50963/99, 20 June 2002. In each case, the court opens the description of the facts by noting that the applicant is a stateless person, but this finding clearly has no direct impact on the admissibility of the claim since it is the jurisdiction of the state – not the nationality of the complainant – that is relevant.

on Human Rights, the avoidance of statelessness has featured on the agenda of virtually all universal and regional human rights mechanisms. Derived from this general norm are a variety of standards that are gaining ever more ground. These include the principle of the avoidance of statelessness at birth, the avoidance of denationalisation where it would result in statelessness and the promotion of (facilitated) naturalisation for stateless long-term residents. There are also international norms dealing with the right to birth registration and even some guidelines that may help to stave off statelessness in the circumstance of (forced) displacement. Moreover, the international community has developed two instruments that are dedicated in their entirety to the issue of statelessness: the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons. The former deals in much greater detail with the right to a nationality by identifying which state is actually responsible for conferring (or refraining from withdrawing) nationality in particular circumstances in order to prevent new cases of statelessness from arising. The latter provides for the legal status of 'stateless person' for individuals who find themselves without a nationality and guarantees a minimum standard of protection. And, in addition to these standards geared exclusively to the protection of stateless persons, the broader human rights framework reflects a tendency towards the 'denationalisation' of protection and offers a wide range of rights that are to be enjoyed by nationals and non-nationals, including stateless persons, without discrimination.

Therefore, between the statelessness-specific regime created by the 1961 and 1954 statelessness conventions and the multitude of relevant norms that can be traced within the broader human rights system, the second half of the 20th century witnessed the development of a vital international legal framework for responding to statelessness. Yet, the high incidence of statelessness and the continually poor treatment of stateless persons remain of serious concern into the new millennium, begging the question whether the current international legal framework does indeed provide an effective answer.

### **Weaknesses inherent in the existing international legal framework**

An immediate issue regarding the effectiveness of international law in addressing statelessness in practice is the actual level of acceptance of the relevant norms. Some human rights instruments enjoy near-universal ratification, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, both of which include important provisions for the prevention of statelessness<sup>12</sup> as well as a catalogue of rights to be enjoyed by 'everyone', including stateless persons. However, other documents among which are the two statelessness-specific conventions, have not attained such widespread acceptance. The 1954 Convention relating to the Status of Stateless Persons currently counts 64 state parties and the 1961 Convention on the Reduction of Statelessness just 35. Ratification of the two Council of Europe conventions referred to above can similarly be considered to have met with some resistance to date, although it is arguably early years yet for these two relatively recent additions to the international legal framework.<sup>13</sup> Furthermore, the impact of even those more widely-accepted instruments in addressing statelessness may be jeopardised in some cases by reservations and interpretative declarations adopted by state parties at the time of ratification. For instance, article 9 of the Convention on the Elimination of All Forms

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12 Articles 7 and 8 of the Convention on the Rights of the Child address the right of every child to acquire and retain a nationality; Article 9 of the *Convention on the Elimination of All Forms of Discrimination Against Women* provides for equality between men and women in the enjoyment of a nationality in the context of marriage and in the conferral of nationality upon their children.

13 The European Convention on Nationality has 18 state parties and the Council of Europe Convention on the avoidance of statelessness in relation to state succession has just achieved its 3rd ratification. This in contrast with the (admittedly far less recently adopted) European Convention on Human Rights which boasts the acceptance of all 47 member states of the Council of Europe.

of Discrimination Against Women that can contribute to the avoidance of statelessness among women and children has been the subject of more than twenty such reservations and declarations. It is, however, clear that the standards relating to statelessness have had an impact beyond their formal sphere of influence.<sup>14</sup> Nevertheless, the promotion of increased ratification of relevant instruments and of the lifting of obstructive reservations by current state parties would make a clear and direct contribution to the overall effectiveness of the international legal framework relating to statelessness.

A second area of concern with regard to the international legal framework is its actual normative content. There are several areas in which the standards relating to the avoidance of statelessness and the protection of statelessness are weak or ambiguous. The statelessness-specific conventions themselves exhibit a number of such flaws. The 1961 Convention on the Reduction of Statelessness limits its ambitions to just that: the reduction of cases of statelessness. It thereby fails to provide for the unequivocal bestowal or retention of nationality where statelessness threatens, allowing individuals to end up without any nationality regardless, in a variety of circumstances. Meanwhile, the 1954 Convention relating to the Status of Stateless Persons is let down by its own trademark technique of offering different rights at different levels of attachment — for instance, only to stateless persons who are lawfully present or lawfully staying in the state party — without providing for the opportunity for stateless persons to acquire such a status. In fact, the international legal framework, in its entirety, fails to unequivocally address problems relating to role of nationality in guaranteeing the holder a ‘home’, a state to which he or she can always return and from which he or she cannot be expelled.<sup>15</sup> In addition, even where a stateless person has achieved the status required to qualify for the protection of a particular provision of the 1954 convention, many of the rights elaborated are offered only to a weak, contingent standard — i.e. only to the same extent as enjoyed by non- nationals generally.

Turning to other components of the international legal framework relating to statelessness, it is evident, for example, that many relevant human rights standards lack the detail that is required to ensure their full, correct and harmonised application. Thus, although it is widely accepted that nationality should not be deprived on discriminatory grounds, it remains somewhat unclear precisely which grounds are considered to be discriminatory and which legitimate in the context of the refusal to grant nationality at birth or, even more ambiguously, by naturalisation — especially where (continued) statelessness threatens. Then, where the rights of stateless persons are concerned, while the denationalisation of protection is unarguably the overall trend that has been realised through the development of human rights law, the exact treatment that is owed to non- nationals generally — or stateless persons specifically — under the contemporary human rights regime remains hazy in many areas, such as with respect to economic, social and cultural rights.<sup>16</sup>

## **The added challenge of implementation and enforcement of norms relating to statelessness**

Finally, even in cases where the state concerned has agreed to be bound by the relevant international norms

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14 The 1961 Convention on the Reduction of Statelessness, for example, ‘served as a means of ascertaining consensus on legal standards to be applied in the area of nationality to problems of statelessness’, exerting influence beyond the borders of state parties. UNHCR, Information and accession package: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of Statelessness, Geneva, January 1999, page 9.

15 The Human Rights Committee has made a start in addressing this question in CCPR General Comment 27: Freedom of movement, Geneva, 2 November 1999, paragraph 20. These efforts could be further elaborated and consolidated.

16 Consider, for example, the question as to the impact of article 2, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights which dictates that ‘developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals’.

and in areas where these standards are clear and appropriate, problems can persist. The ongoing creation of statelessness, in some instances even in plain violation of accepted international standards such as the prohibition of racial discrimination, is illustrative of this phenomenon. A case in point is the nationality law that is still in force in Myanmar whereby eligibility for citizenship is based on membership of a particular ethnic group or 'national race'. Moreover, with regard to the issue of protection of stateless persons, 'there is, in fact, a clear gap between the rights that international human rights law provides and the realities facing non-citizens in practice. This is supported by the evidence of the HCNM in a number of OSCE participating States, where problems encountered by non-citizens, including stateless persons, persist.'<sup>17</sup>

These insights into the reality on the ground point to problems of both implementation and enforcement. Although these are both genuine concerns where international (human rights) law is concerned generally, several specific difficulties arise in the context of responding to statelessness.

In fact, there are two particularly troublesome matters that crop up when assessing the potential for implementation and enforcement of the international standards relating to statelessness. The first is the absence of any interpretative or implementing guidelines on the identification of individuals who would 'otherwise be stateless' or, indeed, stateless persons. So, even though international law provides for such measures as the conferral of nationality to a child who would 'otherwise be stateless' and the protection of certain rights owed specifically to stateless persons, the implementation of such norms may be incomplete due to a failure to successfully identify cases in which they are applicable. Some kind of guidelines or consensus on what constitutes proof of nationality or proof of statelessness, as well as what procedures and principles should be followed in making this assessment, is a necessary precursor to the application of international standards relating to statelessness. Yet, even the 1954 and 1961 statelessness-specific instruments fail to touch upon this question. Secondly then, where the full and correct implementation of international law on statelessness would plainly have benefited from the guidance of an overarching enforcement body, such a mechanism is lacking. Again, neither the 1954 nor the 1961 statelessness convention make such a provision.<sup>18</sup> Neither, interestingly, have the two Council of Europe conventions relating to statelessness provided for an enforcement mechanism - nor have they mandated the enforcement role to the European Court of Human Rights. Elsewhere in the international legal framework, the norms relating to statelessness are spread across a wide variety of universal and regional instruments, each with its own system for supervision and enforcement. As a result, although cases relating to the prevention of statelessness or the protection of stateless persons have been considered by such institutions as the UN Treaty Bodies and

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17 Note that HCNM is the accepted acronym for the High Commissioner on National Minorities. Address by Kurt Vollebaek, OSCE High Commissioner on National Minorities, to the Expert Consultation on 'Issues related to minorities and the denial or deprivation of citizenship', convened by the UN Independent Expert on Minority Issues, Gay McDougall, Geneva, 6 December 2007.

18 In its article 11, the 1961 Convention relating to the Status of Stateless Persons did call upon states to establish 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'. The UN General Assembly allocated this task to UNHCR, thereby establishing the agency's supervisory role in relation to the 1961 convention. In addition, UNHCR has been conferred a global mandate on statelessness, allowing the agency to engage in further activities for the prevention of statelessness and the protection of stateless persons anywhere in the world, including in non-state parties to the two statelessness-specific instruments. However, UNHCR's mandate stops far short of an 'enforcement' role.

regional human rights courts and committees,<sup>19</sup> this jurisprudence is scattered and in some instances very particular to the region or the issue at hand, so there is only limited opportunity for the further clarification or consolidation of the overall international legal framework specifically regarding statelessness situations.

Overall, it is fair to say that in the decades following the proclamation of the ‘right to a nationality’ in the Universal Declaration on Human Rights, the international community made an important and impressive start on the establishment of a normative framework for responding to statelessness — both through prevention and protection efforts. Certainly, this international legal framework would benefit greatly from a further strengthening and clarification of terms. And renewed thought is needed on how to ensure the full and correct application of existing norms, as well as their enforcement. Thus, with many of the necessary basic tools in place, the challenge for the 21st century remains the actual implementation of an appropriate and effective response to statelessness.

### **New avenues for addressing statelessness in the 21st century**

As discussed above, by the turn of the millennium, the international community had succeeded in elaborating a broad, if imperfect, catalogue of standards for the prevention of statelessness and the protection of stateless persons. With problems persisting in practice, the challenge now is to find ways to fill the gaps and promote the realisation of these standards. Fortunately, this is a challenge that is currently being taken very seriously, especially in Europe, as evidenced by a variety of efforts by a variety of actors. These range from the further clarification and elaboration of relevant international norms; to the advancement of the understanding of the mechanics of underlying issues through research into statelessness and related topics; and to the active engagement with states to improve existing laws and practices for responding to situations of statelessness. The potential of each of these developments to open new avenues for addressing statelessness will be discussed in turn before a few overall concluding observations are offered.

### **Clarifying and strengthening the international legal framework**

With the consideration of recent efforts to clarify and build upon international standards relating to statelessness, this article comes full circle, concentrating once again on the new Council of Europe Convention on the avoidance of statelessness in relation to State succession as well as its slightly older sister document, the European Convention on Nationality. Where the prevention and reduction of statelessness are concerned, these two instruments stand at the forefront of international legal developments. They include certain innovations that dramatically increase the potential for states to avoid and resolve cases of statelessness. To begin with, both instruments outline a series of critical procedural guarantees to be applied by states in the context of any decisions relating to the conferral or withdrawal of nationality. Under the terms of the conventions, states must: process relevant applications without delay; provide decisions, including reasons, in writing; provide an effective administrative or judicial review for decisions; and ensure that relevant fees

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19 Cases relating to the prevention of statelessness include Inter-American Court on Human Rights, Case of Yean and Bosico v. Dominican Republic, Series C, Case 130, 8 September 2005; European Court of Human Rights, Decision as to the admissibility of Karassev v. Finland, Application No. 31414/96, 12 January 1999 and Makuc and others v. Slovenia, Application No. 26808/06, pending; African Committee on Human and Peoples’ Rights, Case of John K. Modise v. Botswana, Comm. No. 97/93 as well as the two pending cases People v. Côte d’Ivoire and Yusuf Ali and others v. Kenya; UN Human Rights Committee, Stewart v. Canada, Comm. No. 538/1993, 1 November 1996, Capena v. Canada, Comm. No. 558/1993, 2 April 1997 and Borzov v. Estonia, Comm. No. 1136/2002, 25 August 2004. On cases relating to the protection of stateless persons, see supra note 11.

are reasonable and do not present an obstacle to the applicant. Such guarantees will help to prevent arbitrary decision making and promote the full and correct implementation of any legal safeguards for the avoidance of statelessness — such as the conferral of nationality *ius soli* to a child who would otherwise be stateless, as also prescribed by the two conventions.

Another important tool in avoiding statelessness, as well as ensuring that the outcome can be considered fair and appropriate in the individual case, is the introduction of the right of option. Both conventions determine that in the context of state succession, in dealing with the conferral of nationality and the prevention of statelessness, the will of the persons concerned should be taken into account. The notion of offering an individual with a genuine link to more than one state the right to opt for the nationality that he or she feels to be the most relevant is a tool that could be used very effectively — also outside of the context of state succession — to resolve cases of statelessness by averting a prolonged dispute between the states concerned on responsibility for the individual.

A final innovation of the two Council of Europe instruments that is worth mentioning here is the promotion of international consultation and cooperation. According to the Council of Europe Convention on avoidance of statelessness in relation to state succession, for instance, '[in order to avoid statelessness,] States concerned shall co-operate among themselves, including by providing information with regard to the operation of their relevant internal law.'<sup>20</sup>

Since statelessness often arises in an international context — not only when it originates from the succession of states, but also where it follows migration or surfaces in mixed-nationality families — the obligation to share information and to work together to resolve cases of statelessness can be invaluable in both efforts to prevent or resolve cases of statelessness and ensure the protection of stateless persons. Moreover, besides calling for cooperation between the states concerned, the two conventions discussed also prescribe cooperation with the Council of Europe and UNHCR as well as, where appropriate, with third states and other appropriate international organisations. The conventions thereby open a direct avenue for the international community to engage in vital collaboration to prevent and reduce statelessness.<sup>21</sup> With these and other insightful provisions, the conventions adopted within the Council of Europe are leading the way forward for the international legal framework relating to the avoidance of statelessness. If these instruments become widely ratified and implemented, Europe will be much better placed to deal with the threat of statelessness, now and in the future.

## Developing a greater understanding of statelessness and underlying issues

Feeding into, as well as from, the further development of the international legal framework relating to

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20 Article 14 of the Council of Europe Convention on avoidance of statelessness in relation to state succession. See also Chapter VIII on 'Co-operation between the States Parties' of the European Convention on Nationality.

21 There are a number of known cases in which international consultation and collaboration played a major part in the prevention or reduction of statelessness. For instance, in the context of nationality issues in Latvia and Estonia, the engagement of the European Union is reported to be one of the most influential factors in improving the situation of statelessness in the two countries. N. Gelazis, 'An Evaluation of International Instruments that Address the Condition of Statelessness: A Case Study of Estonia and Latvia', in R. Cholewinski (ed.), *International Migration Law*, The Hague: TMC Asser Press, 2007, pages 292-293. Another example is the successful negotiation of a bilateral agreement between the Ukraine and Uzbekistan, with the direct assistance of UNHCR, to simplify procedures for changing nationality and prevent statelessness from arising in the process. See UNHCR, 'UNHCR Support to the return of Crimean Tatars', in *Beyond Borders*, Information Bulletin of UNHCR in Ukraine, May 2005, page 10.

statelessness in Europe is a push by several actors — both governmental and non-governmental — to advance the understanding of the mechanics of the underlying issues. This is evidenced in a variety of reports and ongoing research projects, of which a small selection will be discussed in brief here. Firstly, it is worth recalling that the two Council of Europe conventions referred to above did not form isolated initiatives but rather part of an ongoing engagement by the Council of Europe in nationality matters, within the context of its legal cooperation programme. This means that the Council of Europe has been, and will continue to be, active in raising awareness in the region on nationality questions, promoting accession to and implementation of the two conventions and discussing related areas in which further legal development is desirable, with a particular focus on the avoidance of statelessness.<sup>22</sup> The Council's Group of Specialists on Nationality is, in fact, currently considering topics for a fourth European Conference on Nationality that would create another opportunity for scholars, government officials, staff of international (non-governmental) organisations and other interested parties to share research and discuss best practices relating to the regulation of nationality and the avoidance of statelessness.

Meanwhile, there is evidence of a parallel effort within the OSCE to shed more light on the underlying causes of statelessness as part of the overall work of the High Commissioner on National Minorities. For example, a report on the situation of Roma in the OSCE area examined in some detail the nationality legislation of three member states — the Czech Republic, the Former Yugoslav Republic of Macedonia and Croatia — in order to uncover how this law has contributed to statelessness among the Roma population.<sup>23</sup>

Furthermore, non-governmental research initiatives on statelessness and related issues are sprouting up across the region. Two current examples are offered by the work of the Hungarian Helsinki Committee and the Equal Rights Trust. The former has published a thorough and original report on the protection of non-refugee stateless persons in Central Europe — focussing particularly on Hungary, Poland, Slovakia and Slovenia — as part of ongoing research on the situation of stateless persons.<sup>24</sup> The latter, the Equal Rights Trust which is based in the United Kingdom, began a two-year project in May 2008 that is broader in scope geographically (the initiative has a global focus), but looks specifically at the problem of the detention of stateless persons. The documentation exercise currently underway is designed to expose the situation of stateless persons in detention as well as the details of the applicable international legal framework, in order to provide a better understanding of the links between statelessness and detention and the particular difficulties faced by stateless detainees. All of these research efforts, and others not mentioned here, provide essential input for new legal and practical initiatives to respond to statelessness.

## Engaging states on statelessness

Last on the list of existing developments that will contribute to a more effective response to statelessness in the future are activities involving the active engagement with states to improve existing laws and practices for responding to situations of statelessness. Many such efforts are closely related to the research projects discussed in the previous paragraph — following the illumination of the underlying issues, a series of concrete

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22 For a full overview of the Council of Europe's efforts on the subject of nationality, see [www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/foreigners\\_and\\_citizens/nationality/](http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/nationality/).

23 M. van der Stoep, OSCE High Commissioner on National Minorities, *Report on the situation of Roma and Sinti in the OSCE Area*, The Hague, 2000, pages 156 to 161.

24 Gábor Gyulai, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, Hungarian Helsinki Committee, June 2007. For more information, see <http://www.helsinki.hu/eng/indexm.html>.

recommendations and a variety of advocacy efforts are often envisaged to take things forward. For example, the Hungarian Helsinki Committee offers detailed recommendations on how to improve the protection of stateless persons to each of the Central European countries that were the subject of its recent study. Plus, it is now carrying out a survey on the implementation of the statelessness determination procedure that has been in place in Hungary since early July 2007 in order to direct detailed comments and recommendations, as needed, to optimise the state's approach to status determination. Such efforts could be replicated elsewhere and any transferable lessons learned promoted more widely. Similarly, the Equal Rights Trust project is expected to lead to the development of guidelines on the limits, length and conditions of detention in order to improve the protection of stateless persons and subsequently a number of advocacy activities with states and the international community as a whole. The Council of Europe Group of Specialists on Nationality is in the process of finalising a more general 'Recommendation on the Nationality of Children' that offers detailed and updated guidance in avoiding statelessness among children. At the time of this writing, the draft under consideration included the following recommendations to states:

'Do not apply restrictions on the acquisition of nationality *jure sanguinis*, if this would result in statelessness; provide that children born on its territory who otherwise would be stateless acquire the nationality of that State *ex lege* at birth; [and] provide that children found abandoned on their territory acquire their nationality if they would otherwise be stateless.'<sup>25</sup>

Meanwhile, within the OSCE, the aforementioned report on the situation of Roma concludes with certain observations on how OSCE states should approach the attribution of nationality.<sup>26</sup> This is just one example of how the organisation has become actively involved in responding to specific situations of statelessness. The OSCE High Commissioner on National Minorities has also pursued a solution to statelessness, most recently in countries such as Latvia and Georgia, by engaging with the respective authorities and supporting a range of governmental and non-governmental initiatives. In Latvia, for instance, where there are ongoing concerns relating to nationality and statelessness following the country's independence from the Soviet Union, the OSCE supported a conference on citizenship, organised in cooperation with the Latvian Naturalisation Board, to 'bring together officials from state institutions in Estonia, Lithuania and Latvia dealing with issues of citizenship and naturalization, as well as their counterparts from the Nordic countries of Denmark, Finland and Norway'.<sup>27</sup> In Georgia, concern has been directed towards stateless Meskhetians, 'a Turkic-speaking ethnic group [that] experienced some of the worst atrocities at the hands of the Soviet government. In 1944, Joseph Stalin decided to deport them from Georgia because of their alleged collaboration with the Nazis. Sadly, after 64 years in exile, the Meskhetian issue is still on the international agenda.'<sup>28</sup>

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25 From Chapter I of the *Draft Recommendation on the Nationality of Children*, that is devoted to reducing statelessness of children. See also chapter VI of the draft which deals with the registration of births, another tool in the prevention of statelessness. Group of Experts on Nationality, *Draft Recommendation on the Nationality of Children and Draft Explanatory Memorandum*, CJ-S-NAT (2008) rev. 1, Strasbourg, 2 December 2008.

26 The report states that 'in no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or to withhold citizenship from long-term inhabitants of the State. Further, OSCE participating States should ensure that laws relating to the registration of residency to not operate to disenfranchise their citizens or otherwise have a discriminatory effect'. *Supra* note 23.

27 K. Vollebaek, OSCE High Commissioner on National Minorities, *OSCE national minorities Commissioner, Latvian Naturalisation Board to hold conference on citizenship*, Press Statement, The Hague, 19 November 2008, accessible via [http://www.osce.org/hcnm/item\\_1\\_34977.html](http://www.osce.org/hcnm/item_1_34977.html).

28 K. Vollebaek, OSCE High Commissioner on National Minorities, *OSCE Minorities Commissioner seeks stable solution to plight of Meskhetians*, Press Statement, 18 November 2008, accessible via [http://www.osce.org/hcnm/item\\_2\\_34962.html](http://www.osce.org/hcnm/item_2_34962.html).


The OSCE High Commissioner on National Minorities has been working with the government as well as with other international bodies and third countries, in order to make sure that the Meskhetians do not remain stateless, for example, by calling on the government to extend its deadline for facilitated return of Meskhetians to Georgia.<sup>29</sup>

## Final observations

These are just some brief examples of how the international community, through a range of complimentary and mutually reinforcing initiatives by a range of actors, is pushing forward its response to statelessness in the 21st century perhaps in spite of the fact that the international legal framework does not (yet) offer foolproof tools for effectively addressing all cases of statelessness. By nevertheless utilising and building on the existing foundations of international law relating to statelessness, in particular the standards that have recently been developed within the forum of the Council of Europe, states can be guided and programmes can be established to address statelessness in an appropriate and effective manner. To carry this through, in Europe and beyond the region, will require a continued input of knowledge (gleaned from new and ongoing research projects), of resources (with the assistance of international organisations such as the Council of Europe and the OSCE) and political will (to which new insights relating to the link between statelessness and human security, for instance, may contribute). Statelessness is certainly one of the challenges faced by Europe in the new millennium, but it is one that has clearly been acknowledged and for which important efforts are already underway.

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29 See K. Vollebaek, OSCE High Commissioner on National Minorities, *Statement to the 742nd Plenary meeting of the OSCE Permanent Council*, 24 November 2008, page 3, accessible via [www.osce.org/documents/hcnm/2008/11/35140\\_en.pdf](http://www.osce.org/documents/hcnm/2008/11/35140_en.pdf). Note that the same statement contains details of some of the High Commissioner's other efforts relating to the prevention of statelessness and protection of stateless persons in the OSCE region.



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