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Statelessness in International Law: A Historic Overview

To this day, a tremendous number of people across the globe remain stateless. According to estimates, up to twelve million people today may be considered to be stateless, a condition which largely denies them protection under international law. According to Article 15 of the Universal Declaration of Human Rights, having a nationality should be the regular status. Most of the world's people can, in fact, claim nationality from one or another sovereign state and are, therefore, entitled to that state's protection. Different authors have thus rightly described stateless persons and multiple nationals as legal anomalies. This article will give a dogmatic survey on the topic of statelessness, an exemplary summary of past and present causes of statelessness, as well as an abstract on what has been done at the international level to ameliorate the situation of stateless persons in past decades.

I. Dogmatic introduction

The phenomenon of statelessness exists in two forms: de iure and de facto statelessness. Whereas de facto stateless persons do share certain similarities with refugees, de iure stateless persons are to be distinguished completely. One consequence of this distinction can be found in the scope of help rendered to stateless persons, as only de iure stateless persons are granted a legal status by international conventions. Furthermore, these conventions have only taken action to prevent future de iure statelessness[1].

1. De iure stateless persons

Following the 1954 UN-Convention relating to the Status of Stateless Persons, a "stateless person" is defined as "a person who is not considered as a national by any State under the operation of its law."[2] In fact, this definition only encompasses de iure statelessness, and its failure to treat de facto statelessness is implicitly detrimental to de facto stateless persons. Situations in which no state deems itself bound by its national legislation to grant nationality to an individual are made possible by the admitted right of every state to determine, under its own laws, to which persons it shall grant its nationality. This is because the matter of nationality lies in the so-called domaine reservé of a state, i.e. in each state's national sovereignty. This right was formed by legal custom and first held in 1923 by the Permanent Court of International Justice: "It is for each State to determine under its own law who are its nationals"[3]. Nonetheless, state sovereignty in this respect does not apply boundlessly: the nationality law of a state only applies "in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."[4] This provision also implies, that no state is allowed to interfere with the national legislation of another state[5]. Absent, however, is any entitlement to nationality on the part of individual persons.

2. De facto stateless persons

De facto stateless persons "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"[6]. In cases of de facto statelessness, a nationality formally exists, but the sending state's protection and assistance are – at the international level – no longer granted to the persons in question. Colanéri has described the actions of Italy which left Italian nationals de facto stateless: "On n'a pas dénationalisé les Italiens émigrés qui ne sont pas fascistes, mais, d'ordre du Gouvernement, on leur refuse toute assistance. Les Ambassades et Consulats italiens les ignorent volontairement, quoique ressortissants de ce pays. On refuse de leur donner des pièces d'identité ou d'état civil et en particulier pour leur permettre de se marier. On ne leur délivre pas de passeport et le visa ne leur est pas accordé dans les consulats. Ils n'ont donc aucune protection de leur pays. Ce sont des heimatlos de fait."[7] In contrast to refugee status, well-founded fear is not a necessary criterion of de facto statelessness. There is therefore an important distinction between refugees and (de facto) stateless persons[8].

3. Criticism and consequences of this distinction

The distinction between those two groups has been criticized by different authors. It has been argued, for instance, that the designation of de facto statelessness is illogical, since nationality is after all a legal concept. Thus, instances of statelessness must always be de iure[9]. It has therefore been suggested that the international community speak instead of de facto unprotected persons (i.e. refugees) and de iure unprotected persons (i.e. stateless persons)[10], so that a proper distinction can be made.

II. The need for a nationality

1. International order

Different authors and even the convention of 1930[11] have expressed that statelessness is inconsistent with "good international order"[12]. Therefore every person should belong to a state[13],

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1 Cf. UN-Convention relating to the Status of Stateless Persons 1954 and UN-Convention on the Reduction of Statelessness 1961. See below, IV.3.

2 Cf. Article 1 of the Convention relating to the Status of Stateless Persons.

3 Cf. Article 1 of the Convention on certain Questions relating to the Conflict of Nationality Laws 1930.

4 Cf. Article 1 of the Convention on certain Questions relating to the Conflict of Nationality Laws 1930.

5 *Kiminich/Hobe*, Einführung in das Völkerrecht, Tübingen, 7th edition, 2000, p. 90, as well as *Makarov* Allgemeine Lehren des Staatsangehörigkeitsrechts, Stuttgart, 2nd edition, 1962, p. 58 et seq.

6 *United Nations*, A Study of Statelessness, New York, 1949, p. 7.

7 *Colanéri*, De la condition des „sans-patrie", Paris, 1932, p. 32, describing that although Italian emigrants were not denaturalized, they were nevertheless refused any assistance by the state: the authorities abroad ignored them deliberately, did not provide them with identity cards and refused the state's protection.

8 *Ginsburgs*, AJIL, 1957, 327.

9 http://www.unhcr.org/refworld/docid/4785f03d2.html (June 19, 2012).

10 *Weis*, BYIL, 1953, 480.

11 See below, IV.1.

12 Cf. *Rauchberg*, ZöR, 1931, 500.

13 In order to guarantee international order, it is considered essential that every individual be related to a certain state. Cf. *Rauchberg* (12), 500.

have a nationality, and one nationality only[14]. Stateless persons and multiple nationals have thus been described as "anomalies juridiques"[15]. At the international level, the concept of nationality is the only important criterion constituting an international affiliation between individual and state. It should be noted that the question of citizenship does not bear on the issue, as citizenship is only a qualified status of nationality, a status designed to confer rights – mostly political – to the citizen. The granting of such rights lies within the scope of respective national legislations[16]. Therefore Weis expressed correctly: "Every citizen is a national, but not every national is necessarily a citizen of the State concerned."[17]

2. Diplomatic protection

But nationality is not only an instrument to establish good international order, it is also – more importantly – "the principal link between individuals and the benefits of the Law of Nations"[18]. Since individuals are only recognized as subjects of international law insofar as they are subject to rights and duties imposed on them by international legislation, they are reliant on nationality in order to appear on the international stage. Through this so-called mediatisation[19], a national abroad has access to one of the most important benefits in international law: the diplomatic and consular protection[20] of its state. A state's right to protect its nationals becomes relevant at this point, as the receiving state is bound to treat aliens on its territory according to the standards set forth in international law. In addition, the receiving state's harming of a foreign national is not only deemed injury to the individual him or herself, but also injury to the sending state, since a part of the "state's assets" is harmed. Based on the mutual allegiance between the sending state and its national[21], the sending state has the right to exercise its diplomatic protection – protection, essentially, "to intervene on behalf of its own nationals, if their rights are violated by another state, in order to obtain redress."[22] In accordance with the aforementioned mediatisation, nationality is required of any individual who would receive state protection and assistance. This requirement was also adopted in the respective conventions – the Vienna Convention on Diplomatic Relations from 1961, for instance, as well as the Vienna Convention on Consular Relations from 1963[23] – that identify "nationals" as the protected group of persons. But for a stateless person, fulfilling even this basic condition is impossible. Furthermore, a genuine link[24] between the sending state and the individual needs to be established. This genuine link is the legal basis for a state's exercise of its protection. Since the Liechtenstein v. Guatemala decision in 1955, it is clear that without this genuine link – i.e. a de facto existing close social and existential binding between state and individual – a state is not eligible to exercise its diplomatic protection[25].

3. Meaning for stateless persons

The difficulties for stateless persons are readily identifiable: without nationality no genuine link can be established; without a genuine link there is no state eligible to exercise its diplomatic protection. Oppenheim therefore stated correctly that stateless persons "may be compared to vessels on the open sea not sailing under the flag of a State, which likewise do not enjoy any protection."[26] In regard to de facto statelessness, states of course have no interest in exercising protection or assistance, even when all requirements are met. Although it seems appropriate that there should be no obligation[27] for a state to exercise its protection[28], this principle has led to the detriment of de facto stateless persons, since de facto stateless persons still formally fulfill the requirement of possessing a nationality, but do not enjoy the protection of any state. In 1967 the Council of Europe tried to mitigate the adverse consequences for stateless persons in Europe by adopting the European Con-

14 Preamble of the Convention on certain Questions relating to the Conflict of Nationality Laws 1930.

15 *Loisel*, Population, 1951, 260.

16 *Weis*, Nationality and Statelessness in International Law, London, 1956, p. 5. The distinction is only relevant if both groups do not enjoy the same rights or duties. An example for the ongoing distinction between nationality and citizenship is the U.S.: If the parents are unknown or only U.S. nationals and the child was found in one of the outlying possessions of the U.S., the child – upon meeting other requirements – only acquires nationality (Section 308, Immigration and Nationality Act 1952). As a consequence of this distinction, only U.S. citizens have the right to vote in federal elections. Cf. http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fb853a4107083210VgnVCM100000082ca60aRCRD&vgnextchannel=fb853a4107083210VgnVCM100000082ca60aRCRD (June 19, 2012).

17 *Weis* (16), p. 6. Cf. also *Slominski*, who defines nationality as a conditio sine qua non for citizenship. Cf. S*lominski*, Staatsangehörigkeit und Staatsbürgerschaft, 2001, p. 29.

18 *Oppenheim*, International law: a treatise, London, 8th edition 1955, p. 645.

19 *Fischer/Köck*, Völkerrecht. Das Recht der universellen Staatengemeinschaft, 6th edition, 2004, p. 246.

20 Consular protection is distinguished from diplomatic protection by its legal scope and it is rendered by the state's representations abroad.

21 A minimum of rights is set forth by international law itself. Every state is entitled, for example, that its national's physical integrity is protected by the receiving state or that expropriation of assets, applied by the receiving state, is consistent with international law. Cf. *Jürgens*, Diplomatischer Schutz und Staatenlose, Berlin, 1987, p. 25, 26 and http://www.eda.admin.ch/eda/de/home/topics/intla/cintla/dicopr/dipr.html (June 19, 2012). *Borchard* therefore expressed that the individual, upon crossing the border, enters *„a new sphere of mutual rights and obligations between himself as a resident alien and the state of his residence"*. Cf. *Borchard*, AJIL, 1913, 516.

22 *Weis* (16), p. 35 and *Neuhold*, Österreichisches Handbuch des Völkerrechts. Band 1: Textteil, 2nd edition, 1991, p. 134. The breaching of an alien's rights which have been granted by international law is deemed to cause injury to the sending state, since the sending state is entitled that its nationals be treated according to the standards set forth in international law. In case of such an injury, the state is allowed to exercise its diplomatic protection. This exercise is not necessarily based on the state's care for the individual, but on the state's interest to obtain redress for its own injury. Cf. *Jürgens* (21), p. 22, 26, 27, 41. An injury to the state is therefore a necessary condition for that state to exercise its right to diplomatic protection.

23 Cf. Article 3/1b of the Vienna Convention on Diplomatic Relations 1961 and article 5a and 5e of the Vienna Convention on Consular Relations 1963.

24 Cf. *Neuhold* (22), p. 12.

25 Friedrich Nottebohm was a German national who lived in Guatemala from 1905 through 1943. In order to not be considered an enemy alien, and with the intent to protect his assets from being expropriated he acquired – shortly after the outbreak of World War II – the Liechtenstein nationality, which led to the loss of his German nationality. Nonetheless he was treated as an enemy alien in Guatemala and his assets were expropriated, whereupon Liechtenstein tried to execute its diplomatic protection. In 1955 the International Court stated that no effective nationality between Liechtenstein and *Nottebohm* had existed and that such effective nationality is only considered to exist if an actual bond between the state and the individual has been established. Cf. *Makarov* (5), p. 18 and *Grawert*, Staat und Staatsangehörigkeit, Berlin, 1973, p. 245, as well as http://www.icj-cij.org/docket/files/18/2674.pdf (June 19, 2012). Cf. *Joseph*, Nationality and diplomatic protection, Leyden, 1969, p. 7 and *Leigh* ICLQ, 1971, p. 453.

26 *Oppenheim* (18), p. 668.

27 It is, however, a duty for those states that have implemented and granted an entitlement to their nationals.

28 Leaving to the state's discretion the decision whether or not it wants to exercise its right seems appropriate, since a conflict of interests between the sending state and the individual could arise. The sending state, however, has not only to consider the individual's interests but also its own interests as a whole state. Cf. *Weis* (16), p. 36 et seq., *Bertschy,* Die Schutzmacht im Völkerrecht. Ihre rechtliche und praktische Bedeutung, Freiburg in der Schweiz, 1952, p. 45 as well as *Leigh* (25), 455. If, in such a situation, a state does not exercise its diplomatic or consular protection, this will not necessarily mean that the person is stateless.

vention on Consular Functions. But thus far, the convention has only been ratified by five states[29], and has therefore a rather limited power. At a global level, the mitigation attempts have led to the development of the UN-Draft Articles on Diplomatic Protection[30] in 2006. To this day, these Draft Articles have not yet been transferred into a binding document[31].

III. Case studies on statelessness

Throughout history, a multiplicity of reasons – some of which still occur today – has contributed to the "armée de sans-patrie"[32]. While a detailed description would go beyond the scope of this article, it will be worthwhile to review a few of the pertinent reasons.

1. Conflict of laws

It has been frequent in the past for a conflict of national laws regarding the granting of nationality to result in de iure statelessness. Since the legislation concerning nationality lies in the domaine reservé[33] of each state, a situation may arise in which no state will deem itself competent to grant its nationality; in such cases, a negative conflict of laws occurs[34]. The negative conflict does not necessarily occur because of the bad will of states, but simply because each state involved has assumed that the obligation to grant nationality lies with another state, and has therefore formulated its own national laws accordingly: in the mid-19th century, for example, the United States and Great Britain stipulated in their nationality laws that a woman marrying an alien man should receive the husband's nationality. Given the limitation of a state's legislation, neither the United States nor Great Britain could effectively grant another state's nationality. Other states, of course, were not bound by this U.S.-American or British provision (as the case may be), and it was still at the discretion of the husband's state whether or not to grant its nationality to the (alien) woman[35]. If the husband's state did not grant nationality, the wife was – due to the legally allotted deprivation of her nationality – stateless. Another conflict of laws could arise from the clash of ius sanguinis and ius soli. Since granting nationality falls within the domaine reservé of each state, there are theoretically as many different modes of acquisition of nationality as there are states[36]. In practice, ius soli and ius sanguinis are "undoubtedly the predominant modes of acquisition of nationality by municipal law"[37]. Ius soli requires that the birth of the child take place in the territory of the state whose nationality is to be granted. Ius sanguinis, on the other hand, is tied to the nationality of the child's parents, irrespective of the territory in which the child is born. Historically, the two modes evolved according to whether the state in question was one primarily of emigration or immigration[38]. In countries of immigration – such as the U.S. – ius soli would predominate and become the single requirement of granting nationality. In cases of emigration states – such as Austria –, ius sanguinis tried to establish a tie between state and its former residents and their possible offspring[39]. Problems leading to statelessness arose, however, when these modes were mixed: in the 1920s, for example, statelessness could result from the birth of a child to U.S.-American parents in Germany. Children in such cases would be left stateless, since ius soli was decisive for U.S.-American nationality, whereas Germany followed ius sanguinis. That is, neither the U.S.-American nor the German nationality was granted to these children, as they were neither born in U.S. territories nor by German parents, and neither state considered itself responsible for granting nationality[40]. As late as 1961, different national legislations maintained related – and potentially dangerous – provisions in their nationality laws. In the UN-Convention on the Reduction of Statelessness, those provisions were clarified and harmonized. The UN-convention stipulates that birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the state whose flag the ship flies or in the territory of the state in which the aircraft is registered[41]. Before that convention, the U.S., for example, granted nationality to children born on alien ships within U.S.-American waters, but not to children born on U.S.-American ships in international waters[42]. The convention eliminated the distinction concerning whether the plane or ship is in international or state's territories. Then as now, missing documents have contributed to those situations in which statelessness is caused by a conflict of laws, as without registration of the childbirth, there is no link to the parents of the child or to the state in whose territory the child was born. As a consequence, neither ius soli nor ius sanguinis takes effect, and the child is at risk of being stateless[43]. Therefore birth registration is considered "a basic human right"[44].

2. Geopolitical changes

Political and geopolitical changes – especially in Europe – have made up for a great number of stateless persons throughout history. The list of examples, such as the Russian revolution in 1917, the collapse of the Austrian Empire in 1918, or the expatriation of Jews by the Third Reich in the 1930s, can be almost endlessly extended. During and after the Russian Revolution of 1917, countless numbers of persons who declined the new government left the country, thereby forfeiting the protection of the newly founded Soviet Union. In fact, in 1921 the Soviet Union even enacted a law depriving those individuals of their nationality who had left the country out of disapproval of the new government[45]. The persons affected by this law were left (de iure) stateless. The situation after the collapse of the Austrian Empire in 1918 was slightly different. U.S.-president Woodrow Wilson's Fourteen Points demanded and later implemented the separation of the former Empire into national states reflecting the different peoples therein[46]. Seven succes-

29 http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?CL=ENG&CM=&NT=061&DF=&VL= (June 19, 2012).
30 Cf. UN-Document A/RES/62/67.
31 Cf. Article 46, http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=061&CM=1&DF=&CL=GER (June 19, 2012).
32 *Colanéri* (7), p. 64. Cf. also *Arendt*, Elemente und Ursprünge totaler Herrschaft, Munich, 2nd edition, 1991, p. 444.
33 Cf. *Weis*, Staatsangehörigkeit und Staatenlosigkeit im gegenwärtigen Völkerrecht, Berlin, 1962, p. 4. Cf. also *Makarov* (5), p. 57.
34 A positive conflict of laws occurs if two or more states deem themselves competent. The result is multiple nationality.
35 Cf. *Umbricht*, Die privatrechtlichen Folgen der Staatslosigkeit, Aarau, 1940, p. 19.
36 Cf. *Weis* (16), p. 31, 98.
37 Cf. *Weis* (16), p. 98.
38 *Neuhold* (22), p. 132.
39 Cf. *Lipovano,* L'Apatridie, Paris, 1935, p. 45.
40 Cf. *Samore*, AJIL, 1951, 476.
41 Cf. Article 3 of the UN-Convention 1961.
42 Cf. *Samore* (40), 478.
43 Furthermore, there is much else that is conditional upon this registration, including schooling and the prevention of drafting children into armed conflicts. Cf. http://www.unhcr.org/4b960ae99.html (June 19, 2012), p. 11 and *Blitz/Lynch*, in: *Blitz/Lynch*, Statelessness and the Benefits of Citizenship. A Comparative Study, Geneva, 2009, p. 10.
44 http://www.unhcr.org/4b960ae99.html, p. 11 (June 19, 2012).
45 Among other things, this law stipulated that those persons who had left the country after November 7, 1917 without permission of the government would lose their nationality. Cf. *Umbricht* (35), p. 20.
46 http://avalon.law.yale.edu/20th_century/wilson14.asp (June 19, 2012).

sion states[47] followed the Austrian Empire, all claiming parts of the former Empire's territory. The succession states' interest lay only in creating ethnically homogeneous nations; each state sought therefore to grant nationality only to persons who actually belonged to its respective people[48], and was unwilling to grant nationality to those who didn't. The subsequent potential for a conflict of laws was tremendous, not least because the Treaty of Saint-Germain-en-Laye, which administered the nationality of former Austrian Empire nationals, only entered into force in July 1920 – almost two years after the end of World War I. This treaty was one of the treaties signed in the Parisian suburbs that ended the war with the Central Powers. The drafters intended to avoid any statelessness that might arise from the treaty. On completion, they were convinced that every national of the former Empire would be granted the nationality of one of the succession states: statelessness would therefore not occur[49]. As a consequence of their assumption, no separate section devoted to the explicate avoidance of statelessness was adopted in the treaty, and the ostensible attempts to avoid it ended in failure[50]. These treaties became a never running dry spring of statelessness[51].

3. Marriage

In some states and under certain circumstances, a woman's nationality was at stake when she decided to marry a foreign national. Since ancient times, a woman's nationality has been contingent upon that of a man; first on the nationality of her father, then on the nationality of her husband[52]. The concept was first formally established in France by the Code Civil[53], later to spread throughout the world by the French Revolution, which made it a widely admitted principle[54]. The resulting consequences for women could be severe: in the mid-19th century national legislation in the U.S. and Great Britain granted nationality to an alien woman automatically upon marriage with a national man[55], under the assumption the she "might be lawfully naturalized"[56], which meant that she was not of African or Asian descent[57]. Following this legislation, a woman was not independent in regards to nationality, but at least she was not at risk of winding up stateless – provided, of course, that her husband himself was not stateless. In the 1920s it was even possible that a woman who might have lived her whole life in the United States as a faithful national[58] could lose her nationality upon marriage: enacted in 1922, the U.S.-American Cable Act stipulated that a U.S.-American woman marrying an alien of African or Asian descent lost her nationality[59].

IV. International measures in support of stateless persons

Although regarded as a misery – especially in light of missing diplomatic and consular protection – statelessness does not actually contravene international law[60], since international actions have dealt merely with reducing and avoiding statelessness, never with forbidding it[61].

1. League of Nations

After the end of World War I, the entire world called for a way to secure world peace. In 1918, U.S.-president Wilson formulated in his Fourteen Points that it would be necessary to create a general association which would guarantee the political independence and territorial integrity of great and small states alike[62]. This organization was realized: it would become the League of Nations, and its by-laws were a part of the peace treaties following World War I. The League of Nations was a novel precedent[63], constituting the first attempt to promote peaceful collaboration between states, as well as to create effective arrangements in order to preserve collective security[64]. Although the United States advocated the creation of the League of Nations, it would never become a member. The required 2/3 approval could not be reached in Senate[65]. Due to the abstention of the United States, the League of Nations lacked both universality and guidance[66]. The outbreak of World War II made it clear that the League of Nations had failed in its peacekeeping goals. Nevertheless, the humanitarian, economic and technical achievements of the League of Nations were unique for the time[67]. In fact, it was the League of Nations that first took responsibility for refugees and stateless persons, the latter of whom were not separately recognized at that time. In response to the situation in the eastern Mediterranean, the Balkan wars, the Russian Revolution, the collapse of the Ottoman Empire, the end of World War I – and influenced by initiatives and recommendations of the International Commit-

47 These were: Poland, Hungary, Romania, Czechoslovakia, Yugoslavia, Italy, Austria. Cf. *Schier*, Atlas zur allgemeinen und österreichischen Geschichte, Vienna, 1966, p. 50 and *Kunz*, Die völkerrechtliche Option. Staatsangehörigkeit und Option im deutschen Friedensvertrag von Versailles (Nachtrag) und im österreichischen Friedensvertrag von St. Germain, Wrocław, 1928, p. 214.

48 For example, Czechoslovakia was interested in granting Czechoslovakian nationality to those persons who actually were of Czechoslovakian descent, while trying to exclude all others. This approach was applied by all seven succession states. Cf. *Reiter*, in: *Hahn*, Sylvia/*Komlosy*, Andrea/*Reiter*, Ilse, Ausweisung-Abschiebung-Vertreibung in Europa: 16.-20. Jahrhundert, 2006, p. 197.

49 Cf. *Arendt* (32), p. 425.

50 Cf. *Umbricht* (35), p. 35.

51 *Engländer*, Die Staatenlosen, 1932, p. 12. Especially the contracts of Trianon and St. Germain-en-Laye in connection with certain contracts to protect minorities were seen as causes contributing to the statelessness of hundreds of thousands of people. Cf. *Colanéri* (7), p. 61 and *Borger*, Staatenlosigkeit und mehrfache Staatsangehörigkeit. Eine völkerrechtliche Studie, Würzburg, 1933, p. 3.

52 http://www.un.org/womenwatch/daw/public/jun03e.pdf, p. 5 (June 19, 2012).

53 Cf. *Llewellyn-Jones*, Transactions of the Grotius Society, 1929, 122.

54 *Schwartz*, Das Recht der Staatsangehörigkeit in Deutschland und im Ausland seit 1914, Berlin, 1925, p. 33.

55 Cf. *Samore* (40), 483 and *Seckler-Hudson*, Statelessness: with special reference to the United States, Washington D.C., 1934, p. 28.

56 *Schwartz* (54), p. 99.

57 Following former diction, the terms black race and yellow race were often used. Cf. *Schwartz* (54), p. 99.

58 http://www.digitalhistory.uh.edu/asian_voices/asian_timeline.cfm (June 19, 2012). The Cable Act was revoked in 1936.

59 Cf. *Schwartz* (54), p. 102, as well as *Seckler-Hudson*, (55), p. 60 et seq.

60 *Hailbronner*, Staatsangehörigkeitsrecht: Kommentar, Munich, 1991, p. 87 and *Weis* (16), p. 162. This view is correct, since no international instrument banned statelessness. For the opposing view cf. *Blitz*/*Lynch* (43), p. 4.

61 A ban of statelessness would have obliged states to grant their nationality under certain circumstances. An agreement on such an intrusion in the domaine reservé was never reached in the past and reaching it in the future seems highly unlikely.

62 http://avalon.law.yale.edu/20th_century/wilson14.asp (June 19, 2012).

63 *Pfeil*, Der Völkerbund: Literaturberichte und kritische Darstellung seiner Geschichte, Darmstadt, 1976, p. 1.

64 *Pfeil* (63), p. 1. Cf. *Neuhold* (22), p. 157.

65 Wilson's political opponent was able to win the ballot in the Senate. Therefore, the contracts of the Parisian suburbs that also contained the League of Nation's by-laws were not ratified. Cf. *Pfeil* (63), p. 65 et seq. as well as *Düllfer*, in: *Volger*, Lexikon der Vereinten Nationen, Munich, 2000, p. 610. Since the treaty of St. Germain-en-Laye was not ratified either, a separate peace treaty between Austria and the U.S. needed to be signed in 1921. For Austria cf. StGBl. 643/1921, for the situation in Germany cf. *Ziegler*, Völkerrechtsgeschichte, Munich, 1994, p. 246.

66 Cf. *Neuhold* (22), p. 158 and *Pfeil* (63), p. 62 et seq.

67 *Kinder/Hilgemann*, dtv-Atlas Weltgeschichte, 34th edition, Munich, 1964, p. 415.

tee of the Red Cross and other NGOs[68] – the League of Nations began its work on refugees (and stateless persons) in 1921. The Norwegian Dr. Fridtjof Nansen was the first appointed High Commissioner for Russian and later Armenian refugees, and is therefore directly connected with the League's effort to help these persons. Evidence that refugees and stateless persons were not regarded as separate groups can be discerned in the fact that even after the Soviet law of 1921[69], the League of Nations did not change the name or scope of its aid program, but continued with its work, regardless of the classification of stateless persons. Dr. Nansen's concern to provide refugees and stateless persons with passports (the so called Nansen-passport), as well as his concern to grant them at least a minimum of freedom of movement, did indeed become reality, but only in a very limited way: governments feared that those persons might stay in the country after being granted a visa[70], so most governments did not issue visas for refugees or stateless persons. After Nansen's death in May 1930, the activities of the High Commissioner were transferred to the Organs of the League of Nations and to other institutions within the League of Nations, such as the International Nansen Office. But until the dissolution of the League of Nations in 1946, no further steps were taken to extend the scope of its practical aid program. Irrespective of this, the League also became active in initiating an international conference in The Hague in 1930. Although the Convention on Certain Questions relating to the Conflict of Nationality Laws was adopted, only the smaller part of the 31 articles actually dealt with statelessness[71]. These articles were mostly formulated negatively, and the primary goal was to prevent statelessness – not to grant nationality. The 1930 convention therefore had little to no influence on statelessness[72], and contributed relatively little to the ideal that had been recognized in "the abolition of all cases both of statelessness and of double nationality"[73]. The nationality of women was also discussed at the conference, but the foreseen notion of their independent nationality[74] was not integrated into the convention. The independent nationality of women was not adopted at this time, nor would it be adopted within the lifetime of the League of Nations, since states were of the opinion that the 1930 convention "went as far as was to be expected"[75]. Because of all these failures, the Austrian plenipotentiary to the conference even stated that the conference had more or less shipwrecked[76].

2. The Inter-Governmental Committee on Political Refugees

In March 1938 the United States tried to initiate a practical aid program in order to help Jewish refugees[77] leaving Germany. To this end, the U.S. government invited Western governments to a conference in Evian-les-Bains in order to discuss the simplification of immigration for the persons concerned[78]. But the invitation itself struck a conciliatory tone, assuring those invited that the acceptance of more refugees was neither expected nor asked for[79]. The states involved therefore advised their plenipotentiaries to refrain from all commitments[80]. The results were predictably poor: representatives congratulated one another on how much they had already done for refugees[81], but failed to reach a resolution or to formulate a new goal. The Jewish media showed their disappointment by expressing that anyone who thought the conference a real success must have read the Name Evian backwards (i.e., Naive)[82]. Even the United States as initiators of the committee did not assume control of it, nor did they open their doors any further for German emigrants[83]. Altogether the Inter-Governmental Committee on Political Refugees had no success in facilitating immigration, and ended its activities in 1947[84].

3. United Nations

After World War II and the creation of the United Nations in 1945, the UN stated in resolution 8 (1) of the General Assembly on February 12, 1946 that "the problem of refugees and displaced persons of all categories is one of immediate urgency."[85] Following the example of the League of Nations, it was the UN's intention to take care of refugees and stateless persons as one group. Therefore, in 1951, the UN Convention relating to the Status of Refugees was adopted and UNHCR[86] created. This convention was also intended to determine the legal status of stateless persons by including provisions via a protocol into the refugee convention. As it turned out, due to the proceedings of the 1951 conference[87] the status of stateless persons was instead set forth in a separate convention in 1954. Regulating the status of stateless persons in an additional protocol to the refugee convention was no longer an option, since this would have forced states to first become members of the refugee convention. Hence a separate convention would have to be adopted, since the UN did not want to force any state to become a member of the 1951 convention[88]. But outer shape

68 Cf. League of Nations Archives, Council Sessions. Minutes of the 13th Session, Geneva. Russian Refugees. Letter from the International Red Cross Committee dated 15 June 1921, Annex 224a, p. 246 and *Schmieden*, in: Schätzel, Handbuch des internationalen Flüchtlingsrechts, 1960, p. 219 et seq.

69 See above III.2.

70 Cf. *United Nations* (6), p. 33.

71 Cf. *Rauchberg* (12), 499.

72 Cf. *Weis*, ICLQ, 1962, 1074 and *Hudson*, AJIL, 1930, 450.

73 Cf. the preamble of the Convention on certain Questions relating to the Conflict of Nationality Laws 1930.

74 See above III.3.

75 *Samore* (40), 491. Only in 1957 the UN-Convention on the Nationality of Married Women was adopted and thus the independence of a married woman's nationality established. Cf. *Makarov*, HJIL, 1973, 122.

76 Austrian State Archives/AdR, BMfA/15VR, BKA/AA, Internationales Recht: GZ. 13750/1925, 1930-1935, box 149, fol. 37. He was not the only one to hold this opinion. Cf. for example *Rauchberg* (12), 481.

77 These refugees – as well as all German Jews – became de iure stateless after the eleventh executive order of November 25, 1941 concerning the Reichsbürgergesetz of 1935.

78 Cf. *Weingarten*, Die Hilfeleistung der westlichen Welt bei der Endlösung der deutschen Judenfrage: das „Intergovernmental Committee on Political Refugees" (IGC) 1938-1939, Bern, 1981, p. 13 et seq.

79 *Kieffer*, Judenverfolgung in Deutschland – eine interne Angelegenheit?, Stuttgart, 2002, p. 226.

80 *Vogel*, Ein Stempel hat gefehlt. Dokumente zur Emigration deutscher Juden, Munich, 1977, p. 69.

81 *Marrus*, Die Unerwünschten. Europäische Flüchtlinge im 20. Jahrhundert, Berlin, 1999, p. 195. In addition, the U.S. did not raise its quota for immigrating Jews and did not regard them as a special group of immigrants. The quota had been reduced continually since 1922, the last year of free immigration, and comprised 10 000 to 11 000 persons per annum as of 1924. Cf. *Adler-Rudel*, Ostjuden in Deutschland 1880-1940, Tübingen, 1959, p. 112 as well as *Haumann*, Geschichte der Ostjuden, Munich, 1998, p. 164. Cf. also *Kieffer* (79), p. 237 and *Estoricki*, Annals of the American Academy of Political and Social Science, 1939, 137.

82 *Kieffer* (79), p. 237.

83 *Weingarten* (78), p. 202 et seq.

84 *Gutman*, Enzyklopädie des Holocaust. Band 2, H-P, Munich, 2nd edition, 1998, p. 637 and *Türk*, Das Flüchtlingshochkommissariat der Vereinten Nationen (UNHCR), Berlin, 1992, p. 13.

85 Cf. General Assembly's Resolution 8 (1).

86 The United Nations High Commissioner for Refugees.

87 After adopting the refugee convention, there was not enough time left to deal also with the statelessness protocol. Officially, however, it was expressed that further and more detailed studies were necessary. Cf. *Weis*, ICLQ, 1961, 256.

88 Cf. *Weis* (87), p. 256.

and name notwithstanding[89], both conventions were rather similar in scope. In most cases the word "refugee" was simply exchanged for the words "stateless person"[90].

a) Convention Relating to the Status of Stateless Persons 1954

One of the most important articles of this 1954 convention is Article 28 and § 13 of the annex. These oblige states to issue travel documents to those stateless persons who are lawfully staying in the territory of the state concerned. These travel documents must provide the holder with entitlement to re-entry in the territory of the issuing state. Another important provision is Article 16, granting free access to courts of law. Article 29 should also be mentioned: it maintains that states shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations. However, the principle of non-refoulement, stipulated in Article 33 of the refugee convention of 1951, was not adopted in the 1954 convention. The Final Act held that the conference was of the opinion that Article 33 established "an expression of the generally accepted principle that no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Therefore the Conference did not find it necessary to include in the Convention Relating to the Status of Stateless Persons an article equivalent to Article 33 of the Convention Relating to the Status of Refugees[91].

b) Convention on the Reduction of Statelessness 1961

In 1961, the UN adopted the Convention on the Reduction of Statelessness. In contrast to the League of Nations' approach, the 1961 convention also contains rules on granting nationality to persons that would otherwise be stateless. With its respective provisions, the convention interfered in the domaine reservé of each state to regulate its own nationality laws. It was therefore described as an "interesting evolution", since states were willing to bind themselves to an agreement which could interfere with the very "jealously regarded"[92] issue of nationality. Article 1 determines under which circumstances a member state shall grant its nationality to an individual. Nevertheless, Article 8 entitles states to deprive a national of his/her nationality, albeit within certain boundaries[93]. Article 7 section 1a stipulates under which criteria an individual may renounce his/her nationality[94], and was therefore seen as "an interesting compromise between the desire to prevent statelessness and not to tie the individual [to a certain state.]"[95] In 1974, UNHCR was also assigned the responsibility for stateless persons[96] (a result of the prior convention in 1961). Initially the UN shared the League of Nation's opinion that the problem of refugees was only a temporary one, and the UN therefore limited UNHCR's mandate. The mandate was subsequently prolonged every five years, and only in 2004 renewed without any time limits[97].

c) Evaluation of the conventions

The League of Nations' attempts, regulations and conventions were aimed only at avoiding or reducing future statelessness – never at reducing that statelessness which was already present. Similarly, today's UN conventions concerning statelessness only cover future cases: admittedly there are drafts, but drafts only, and with no binding instruments to apply to present scenarios. Furthermore, the UN conventions are only applicable to de iure stateless persons and have therefore been criticized. Attempts to include de facto stateless persons have not been pursued. In the Final Act of the conference of 1954, a recommendation was formulated that is by its nature "only a suggestion and an appeal to the states to extend the benefits of the Convention to de facto stateless persons"[98]: "The Conference Recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons; and Recommends further that, in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention."[99]

V. Concluding remark

Statelessness is not yet considered merely a phenomenon of the past. Although actions designed to ameliorate the problem were already being taken in the beginning of the 20th century, statelessness continues to concern millions of persons. Only a modest number of states have declared to observe the provisions of the conventions regarding statelessness: 45 states have ratified the UN Convention on Reduction of Statelessness and 74 states have ratified the UN Convention on the Status of Stateless Persons. These are small numbers compared to the current 193 state membership of the UN. It is therefore desirable that all states recognize the negative consequences of this problem and start contributing to avoid and finally abolish (at least de iure) statelessness.

89 The essential achievement was the regulation of the legal status of stateless persons. Cf. also Http://Www.Unhcr.Org/Refworld/Docid/4785F03D2.Html (June 19, 2012).

90 But there were also slight changes: compare, for example, article 17 of the respective UN-conventions.

91 Http://Www.Unhcr.Org/Refworld/Docid/4785F03D2.Html (June 19, 2012).

92 *Weis* (72), 1088.

93 A state is entitled, for example, to deprive a national of its nationality if the person has taken an oath of allegiance to another State.

94 It was especially regulated that renunciation of nationality shall not result in the loss of nationality, unless the person concerned possesses or acquires another nationality.

95 *Weis* (72), 1083. The UN-Universal Declaration of Human Rights states: *"Article 13.*
(1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.
Article 14.
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations." Cf. http://www.un.org/en/documents/udhr/index.shtml#a13 (June 19, 2012). By quoting the UN-Universal Declaration of Human Rights this document became legally binding. Cf. *Weis* (72), 1088.

96 General Assembly's Resolution 3274 XXIX and 31/36 in conjunction with article 1 and 20 of the UN-Convention 1961.

97 http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=y&docid=48ce6aaf2 (June 19, 2012).

98 http://Www.Unhcr.Org/Refworld/Docid/4785F03D2.Html (June 19, 2012).

99 Cf. Http://Www.Unhcr.Org/Refworld/Docid/4785F03D2.Html (June 19, 2012). This recommendation is not complete, as only persons who renounced themselves are comprised. Those persons that are not protected because of a state's choice are not encompassed by this recommendation. Cf. *Weis* (87), 262.