
RESEARCH ARTICLE

The Obligation to Grant Nationality to Stateless Children Under Treaty Law

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Through a multi-layered, overlapping collection of international and regional treaties, one solution for child statelessness is emerging: the obligation of the birth state to grant nationality to otherwise stateless children. The 1961 Statelessness Convention imposes this obligation partly, but has limited adherence. The International Covenant on Civil and Political Rights provides for a right to a nationality, but does not expressly identify which state is responsible. In addition, treaties in Europe and Africa only cover the right implicitly and partially, though treaties in the Americas cover the right expressly. The interpretation of these disparate treaty obligations is now coalescing into a coherent obligation. In combination with the obligation to take all decisions in a child's best interests under the Convention on the Rights of the Child, we can now identify the birth state as the state responsible for ensuring that every child is born with a nationality.

Keywords: Statelessness; De Jure; Treaty; Right to a Nationality; Best Interests

1 Introduction

The statelessness of children is a particularly concerning phenomenon, yet it does have at least one partial solution, nationality of the birth state, arising from a patchwork of human rights treaties. The Office of the United Nations High Commissioner for Refugees (UNCHR) is currently in the middle of an aggressive promotion of the 1954 and 1961 Statelessness Conventions,¹ attempting to convince states to adhere to them. This goal is admirable and will add to the legal protection of a great number of stateless persons. In particular, it should have the result of bringing countless numbers of children into a legal bond with a state, and in the case of the 1961 Statelessness Convention, states will be obliged to grant their nationality to children born in their territory who would otherwise be stateless. Unfortunately, the Statelessness Conventions, as of yet, still have far from universal participation. This low participation means that some states do not have an obligation under the terms of the Statelessness Conventions to grant nationality to stateless children born in the state. However, there are a large number of other human rights treaties that are relevant for the legal protection of stateless persons, especially for the particular case of children who are stateless. It is through the overlapping application of these treaties, in addition to the two Statelessness Conventions, that children born otherwise stateless must receive the nationality of the state in which they are born.

Statelessness touches every region in the world, with many of the largest stateless populations being composed of individuals born in a state without nationality. In Asia, Myanmar hosts almost 1 million stateless persons. Thailand has almost 500,000 people who are stateless. The central Asian nation of Uzbekistan has almost 100,000. In Africa, Côte d'Ivoire has a population of approximately 700,000 stateless persons, and in the Americas, the Dominican Republic has approximately 200,000. Europe's stateless population is concentrated in Eastern Europe, with 250,000 stateless in Latvia and almost 100,000 stateless in both Estonia and Russia. Ukraine has a significant population of 35,000 stateless. Western Europe as well hosts

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¹ See Convention relating to the Status of Stateless Persons (Sep. 28 1954) 360 UNTS 117 (1954 Statelessness Convention); Convention on the Reduction of Statelessness (Aug. 30 1961) 989 UNTS 175 (1961 Statelessness Convention).

large numbers of stateless, with, for example, Sweden, having a stateless population of 36,000. The Middle East is also home to large numbers of stateless persons. Syria has approximately 160,000, while Kuwait has 93,000, Saudi Arabia has 70,000, and Iraq has almost 50,000. While the migration of individuals in *de jure* and *de facto* stateless situations is a significant problem, this paper will focus on cases throughout the world where children are being born without a nationality.

Most of these situations of statelessness at birth come about from a variety of causes, ranging from the application of exclusive *jus sanguinis* laws to issues of state succession, and can be cured with a multi-pronged approach. This paper will only address solutions for child statelessness at birth by extending the application of nationality law, not other solutions such as expanded birth registration or regularization of older individuals. This paper will also examine the legal obligations on states only, and will not address methods for ensuring violations of legal obligations are remedied.² Specifically, it will locate in various treaties the obligation to grant nationality to a child born in a state and will examine whether it is possible, under current treaty law, to identify the state that bears the obligation to extend its nationality to the stateless child. If every state with a stateless population, bearing this duty, extended its nationality in this manner, a significant amount of stateless situations would begin to be resolved. This paper will survey the field of treaties that govern statelessness or protect the right to a nationality, and determine how, through the various instruments, identifiable states have this obligation. It will consider both universal treaties, such as the International Covenant on Civil and Political Rights (ICCPR),³ and the Convention on the Rights of the Child,⁴ as well as regional treaties. Based on this survey, it will demonstrate that through multiple overlapping treaties, most states must grant nationality to children born in their territory if they would be otherwise stateless.

2 International Treaties

This study will begin with treaties of a universal character governing statelessness, before secondly considering regional treaties.

Universal treaties concerning statelessness are relevant for several reasons. Some treaties directly pertain to statelessness. Others provide for a right to nationality, yet it is often difficult to identify the state that is responsible for granting nationality. Also, there are treaties that specially provide protections for children, including protections for either statelessness or nationality. These universal instruments already cover a significant number of the states in the world.

The first class of treaties is those that specifically concern statelessness, the 1954 and 1961 Statelessness Conventions.⁵ The objective of these treaties was to reduce cases of statelessness,⁶ for example, the 1951 Convention requires states to facilitate naturalization of stateless persons.⁷ More important for this article is the 1961 Convention that requires states to grant their nationality to children born in their territory who would otherwise be stateless.⁸ Unfortunately, this convention does not have universal adherence, whether by signature and ratification, accession or succession to the treaty.⁹ A number of states have recently adhered

² Admittedly, even with rules in place, states may violate those rules. There are numerous studies documenting state violations of international law regarding statelessness. See, e.g., Gerard-René de Groot, Katja Swider, Olivier Vonk, 'Practices and Approaches in EU Member States to Prevent and End Statelessness' (Study for the LIBE Committee, Eur. Parl. Doc. PE 536.47628-29,2015) <[http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2015\)536476](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2015)536476)> accessed 7 May 2019; Also see Carol Batchelor, 'Statelessness And The Problem Of Resolving Nationality Status' (1998) 10 International Journal of Refugee Law, ("International instruments, of course, cannot actually grant the nationality to which a given individual may have a claim, or make nationality effective.")

³ See International Covenant on Civil and Political Rights (Dec 19 1966) 999 UNTS 171 (ICCPR).

⁴ See Convention on the Rights of the Child (Nov 20 1989) 1577 UNTS 3 (CRC).

⁵ See 1954 Statelessness Convention; 1961 Statelessness Convention.

⁶ See ILC, 'Report of the International Law Commission Covering the Work of its Fifth Session' (1 June – 14 August 1953) UN Doc A/2456, para 134 (discussing assignment of nationality to stateless children under the stateless conventions based on birth in the state's territory).

⁷ See 1954 Stateless Convention, art 32.

⁸ See 1961 Statelessness Convention at art 1(1) ("A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."); UN Human Rights Council, 'Report of the Secretary-General on Human rights and arbitrary deprivation of nationality' (2011) UN Doc A/HRC/19/43, para. 4; However, the 1961 Statelessness Convention does permit a state to require an application in order to grant nationality in this scenario, rather than simply receiving nationality by operation of law, see 1961 Statelessness Convention, art 1(1)(b).

⁹ See Convention on the Reduction of Statelessness (30 August 1961) 989 UNTS 175 (documenting 73 states party to the Convention).

to it, and there are a large number of pledges to adhere to it in the near future,¹⁰ which means its impact will likely grow. For the time being, it is only those states that are party to the 1961 Convention that have a treaty obligation to grant nationality to stateless children born in their territory.¹¹

In addition, the 1961 Statelessness Convention has several exceptions and conditions to its requirement that states grant nationality to stateless children born in the state. The first condition is that a state may require an application during a particular time frame for nationality rather than grant nationality *ex lege*.¹² The second exception is that a state may require the child's family to have a habitual residence in the state in order for nationality to be extended.¹³ Also, the state need not extend its nationality to a child who has not "always been stateless".¹⁴ The last limitation, though not generally relevant for children, is that states may withhold their nationality from individuals with serious criminal records.¹⁵ All of these provisions limit the application, and thus the utility, of the 1961 Statelessness Convention for stateless children born in a state. However, other treaties can partially address these shortcomings.

In addition to the statelessness conventions, there are number of other universal treaties that provide for a right to a nationality.¹⁶ The right to nationality has been included in most major international human rights treaties,¹⁷ and some authorities believe that the right to nationality is even a non-derogable right.¹⁸ Specifically, those treaties include the 1957 Convention on the Nationality of Married Women,¹⁹ the ICCPR,²⁰ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²¹ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²² the International

¹⁰ See e.g. EU, 'Note Verbale to the United Nations containing Pledge Registration Form' (UN 2012) §A, para 4 <<https://www.un.org/ruleoflaw/files/Pledges%20by%20the%20European%20Union.pdf>> accessed 7 May 2019 (EU Member States pledged at the UN High Level Rule of Law Meeting in New York in September 2012 to address the issue of statelessness by ratifying the 1954 UN Convention relating to the status of stateless persons and considering the ratification of the 1961 UN Convention on the reduction of statelessness).

¹¹ See 1961 Statelessness Convention at art 1(1). Note that of the states mentioned in the introduction, several have become parties to the Convention, specifically, Sweden since Apr 2 1965, Latvia since Nov 5, 1999, Ukraine since Mar 25, 2013 and Côte d'Ivoire as of Oct 3, 2013.

¹² See *id* at art 1(1)(b), (2)(a).

¹³ See *id* at art 1(2)(b).

¹⁴ See *id* at art 1(2)(d).

¹⁵ See *id* at art 1(2)(c).

¹⁶ See Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 15(1); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 24(3); Convention on the Rights of the Child (adopted 20 November 1989) 1577 UNTS 3 (CRC) art 7; 1954 Stateless Convention, art 1; 1961 Statelessness Convention, art 1(1); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) 660 UNTS 195 (CERD) art. 5(d)(iii); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990) 2220 UNTS 3 (Migrant Workers Convention) art 29.

¹⁷ See Convention on Conflict of Nationality Laws (adopted 12 April 1930) 179 LNTS 89, art 1; Protocol relating to a Certain Case of Statelessness (adopted 12 April 1930) 179 LNTS 115; in some of these instruments, the protection is for the right to legal identity, which includes nationality; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28; International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006) 2716 UNTS 3, art 25(4); UN Committee on the Elimination of Racial Discrimination, 'CERD General Recommendation XXX on Discrimination Against Non Citizens' (adopted 1 October 2002) paras 13–14; other general provisions pertaining to the right to equal protection of the law, the right to the recognition of one's own legal status, the right to freedom of movement and residence within the borders of the State and the right to enter one's own country: CERD, art 5(d)(iii); ICCPR, arts 12(4), 23(4), 26; *Borzov v. Estonia* (2004) 12 IHRR 122.s.

¹⁸ See *Case of Expelled Dominicans & Haitians v Dominican Republic*, Inter-American Court of Human Rights (IACHR) Series C No 282 (28 August 2014) para 253; *Yean & Bosico Children v. Dominican Republic*, IACHR Series C No 130 (8 September 2005) paras 136–8; Inter-American Commission on Human Rights, 'American Declaration of the Rights and Duties of Man' (1948); UDHR, art 15(1); ICCPR, art 24(3); CRC, art 7(1); Migrant Workers Convention, art 29; 1961 Statelessness Convention, art 1(1).

¹⁹ Convention on the Nationality of Married Women, 1957, arts 1–3.

²⁰ See ICCPR, art 24(3); UN Human Rights Council Decision 2/111 (27 November 2006); UN Human Rights Council Resolution 13/2, 'Human rights and Arbitrary Deprivation of Nationality' (14 April 2010) UN Doc A/HRC/RES/13/2; UN Human Rights Council Res 10/13, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/10/13; UN Human Rights Council Res 7/10, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/7/10; UN Commission on Human Rights Res 1998/48 (17 April 1998) UN Doc E/CN.4/RES/1998/48; UN Commission on Human Rights Res 1999/28 (26 April 1999) UN Doc E/CN.4/RES/1999/28; UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) paras 7–8; UN Commission on Human Rights Res 2005/45 (19 April 2005) UN Doc E/CN.4/RES/2005/45.

²¹ See CERD, art 5(d)(iii).

²² See CEDAW at art 9; CEDAW, 'CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations' (1994) art 9.

Convention on the Rights of All Migrant Workers (CRMW),²³ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁴ While these conventions all protect the right to nationality for everyone, some of these treaties have additional provisions protecting the rights of children to a nationality,²⁵ the most important of these probably being the Convention on the Rights of the Child (CRC).²⁶ The CRC is even more significant for the purposes of this article because it has virtually universal adherence and almost no reservations to the child's right to nationality.²⁷ Thus, for purposes of child statelessness, essentially every state in the world must protect the child's right to nationality.

That being said, what remains difficult about the right to nationality is identifying the state that must ensure this right, perhaps including granting nationality.²⁸ All of the above treaties simply say that the person and/or child has a right to 'a' nationality.²⁹ Upon encountering a stateless child born in its territory, a state might say that the child rightly deserves the nationality of his or her parents, who came from another state, and then the problem arises of which state must ensure the child's nationality.

Some authorities have concluded that the obligation to ensure 'a' nationality does not oblige a state to grant its nationality to a child born in the state. Gerard-René de Groot and Jaap Doek have argued that the provisions in the ICCPR regarding the child's right to a nationality do not require the birth state to extend its nationality to stateless children.³⁰ This view is also reflected in the views of the Human Rights Committee³¹ which has concluded that states need only ensure nationality 'in cooperation with other States'.³²

However, these views may not be entirely accurate. We can begin to find some way to identify the responsible state following from the general principles of how these treaties are applied. Human rights treaties,

²³ See UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28; Migrant Workers Convention art 29.

²⁴ See CRPD, art 18(1)–(1).

²⁵ See ICCPR, art 24(3); CRPD art 18(2); CRMW, art 29; International Convention for the Protection of All Persons from Enforced Disappearance art 25(4); UNGA Res 50/152, 'Office of the UN High Commissioner for Refugees' (February 9 1996) UN Doc A/RES/50/152; UN Human Rights Council Res 26/14, 'Human rights and arbitrary deprivation of nationality' (July 11 2014) UN Doc A/HRC/RES/26/14; UN Human Rights Council Res 20/5, 'Human rights and arbitrary deprivation of nationality' (July 16 2012) UN Doc A/HRC/RES/20/5; UN Human Rights Council Res 13/2, 'Human rights and arbitrary deprivation of nationality' (14 April 2010) UN Doc A/HRC/RES/13/2; UN Human Rights Council Res 10/13, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/10/13; UN Human Rights Council Res 7/10, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/7/10; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28.

²⁶ See Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'DRAFT: Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration' (April 24 2017) UN Doc. INT/CRC/INF/81/E paras 61–62 <http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_INF_8181_E.docx> accessed 7 May 2019; Sustainable Development Goals – Target 16.9: 'By 2030, provide legal identity for all, including birth registration' <<https://sustainabledevelopment.un.org/sdg16>> accessed 7 May 2019.

²⁷ See CRC (Nov 20 1989) 1577 UNTS 3 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en> accessed 7 May 2019, at Kuwait: *Declarations upon ratification*; Monaco: *Declaration*; UAE: *Reservations*.

²⁸ See Carol Batchelor, 'Statelessness And The Problem Of Resolving Nationality Status' (1998) 10 International Journal of Refugee Law 156, 168–9, ('While human rights law states clearly in several international instruments that everyone has the right to a nationality, little direction is given in these instruments as to *which* nationality.' (emphasis in the original).

²⁹ See UDHR, art 15(1).

³⁰ See Gerard-René de Groot, 'Children, their right to a nationality and child statelessness' in ALICE EDWARDS & LAURA VAN WAAS (EDS), *NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW* (Cambridge University Press, 2014) 146–7; Jaap Doek, 'The CRC and the Right to Acquire and to Preserve a Nationality' (2006) 25 Refugee Survey Quarterly 26.

³¹ See UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8, ('While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory.').

³² See ICCPR, art 24; *Case of Expelled Dominicans & Haitians v Dominican Republic*, Inter-American Court of Human Rights (IACHR) Series C No 282 (28 August 2014) para 258; UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8; also see *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya* (22 March 2011) Decision No 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child, para 42, ('a purposive reading and interpretation of the relevant provision strongly suggests that, as much as possible, children should have a nationality beginning from birth.'). African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 2 on Article 6 of the ACRWC: "The Right to a Name, Registration at Birth, and to Acquire a Nationality"' (16 April 2014) AU Doc ACERWC/GC/02; UN Human Rights Committee, 'Concluding Observations: Colombia' (21 September 1997) UN Doc A/52/40 para 306.

including the ones discussed above are generally applicable to a state's territory under its jurisdiction,³³ a view affirmed by the Human Rights Committee,³⁴ among others. Provided no other state asserts its jurisdiction by providing for the nationality of a child born abroad, then the child holds the right to 'a' nationality in regards to only one state, the state of birth. In this way, the state of birth accrues the responsibility to ensure the child has a nationality.³⁵ Unless the state can secure the child's nationality from another state, for example the state of parent's nationality, then the state must take the only other measure it can to ensure the child has a nationality.

Some authors, such as Carol Batchelor, understand that when there is more than one state that is potentially responsible, it may become impossible to identify which state must ensure nationality. Indeed, states have obligations to persons within their jurisdiction, and that the right to a nationality accrues to children born in their jurisdiction.³⁶ Following from that conclusion, Batchelor would excuse the state from ensuring nationality if another state exercised jurisdiction over the child's nationality *jus sanguinis*.³⁷ This view is correct, but only partially, because it considers whether another state has exercised jurisdiction over the child's nationality as an easily determined fact, and quickly displacing the obligations on the birth state. The truly problematic situation resulting in statelessness is when the state of birth asserts that another state has exercised its jurisdiction, yet that other state refutes that assertion. The irreconcilable disagreement between the states over which bears responsibility must be resolved for the birth state to bear responsibility.

The meaning of 'secure' in this context is fairly demanding, requiring the state to make all efforts,³⁸ and should not be discharged by a hypothetical application of the understanding of another state's nationality laws. When a child is born in a state, it has only ever existed within one state's territory. The burden is on the birth state to show that another state has definitively exercised jurisdiction, for example, by acquiring a passport in hand. The African Committee of Experts on the Rights and Welfare of the Child, in applying comparable terms in the African Charter on the Rights and Welfare of the Child, concluded that the birth state bears the primary responsibility for ensuring the right to a nationality, meaning that it must grant its nationality unless it can effectively secure another nationality.³⁹ The Committee noted that a speculative determination that the child should acquire nationality from another state on the basis of that state's nationality laws was not sufficient to discharge this obligation to ensure nationality.⁴⁰ This conclusion accords with the views of De Groot and the Human Rights Committee above, that the state need not necessarily extend its nationality. However, those views implied that the state could abandon the child should it choose to do so, and it would not violate the ICCPR. The better conclusion for the ICCPR is that the default application is that the state must grant its nationality, unless it discharges its duty by definitively securing another nationality for the child.

In addition, while the above treaties provide for a right to nationality, this right is given more content by prohibiting the arbitrary deprivation of nationality.⁴¹ For example, the Universal Declaration of Human Rights (UDHR) specifically states that, '[n]o one shall be *arbitrarily* deprived of his nationality nor denied the

³³ See ICCPR, art 2(1); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 1; American Convention on Human Rights 1144 UNTS 123, OASTS No 36, art 1(1).

³⁴ See UN Human Rights Committee, 'General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 11.

³⁵ See UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8.

³⁶ See Carol Batchelor, 'Statelessness And The Problem Of Resolving Nationality Status' (1998) 10 International Journal of Refugee Law 156, 168–9, ('Naturally, when States become party to treaties, they take on obligations for their own internal structure and in relation to persons subject to their jurisdiction. Thus, for example ... States parties have made the commitment to ensure that children under *their* jurisdiction ... have the right to acquire a nationality.') (emphasis in the original).

³⁷ See *id.* ('It could be argued that the right to acquire a nationality has no meaning unless all States, even those with legislation based upon the principle of *jus sanguinis*, grant their nationality to children born on their territory who would otherwise be stateless. Nonetheless, ... the two systems for granting nationality based on *jus soli* and *jus sanguinis* are both fully developed and equally legitimate ...').

³⁸ See UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8.

³⁹ See *Nubian Children case* para 42 (interpreting right to nationality to mean right to a nationality from birth); *id.* paras 50–51.

⁴⁰ See *Nubian Children case* para 42 (interpreting right to nationality to mean right to a nationality from birth); *id.* paras 50–51.

⁴¹ See UN Human Rights Council, 'Arbitrary deprivation of nationality: report of the Secretary-General' (26 January 2009) UN Doc A/HRC/10/34; CRC art 8(1); 1997 European Convention of Nationality art 4(c); American Convention on Human Rights 1144 UNTS 123, OASTS No 36 (AmCHR); 2004 Revised Arab Charter on Human Rights art 29; 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms art 24(2); ILC, 'Draft Articles Nationality in relation to the Succession of States' at art 16.

right to change his nationality.⁴² Also, in interpreting the right to leave and return to one's own country, the Human Rights Committee concluded that some aliens must be permitted to enter a state when they have been unlawfully deprived of their nationality in that state.⁴³ Although the state may have effectively denied their nationality, it cannot make them aliens unlawfully or deny their special connection to their home country.⁴⁴ In fact, the right against unlawful deprivation of nationality is understood to also include the right to acquire a nationality when there are sufficient connections between the child and the state.⁴⁵ Therefore the right to a nationality includes the right to acquire a nationality in certain situations.

Whether the refusal of nationality is arbitrary is tested both procedurally⁴⁶ and substantively.⁴⁷ Certainly when a state acts without legal provision or refuses to comply with its own laws, then the state has acted arbitrarily in a procedural sense.⁴⁸ However, the state can also act arbitrarily in a substantive sense by applying measures that are gravely unreasonable.⁴⁹ A clear example of an unreasonable measure would be nationality laws that discriminate on the basis of race, gender, disability, or other protected ground.⁵⁰ Unreasonable measures could also include nationality laws that violate legal predictability⁵¹ or proportionality.⁵² Following from these requirements, the prohibition on arbitrary refusal of nationality is understood to include acts that create situations of statelessness.⁵³

⁴² See *UDHR*, art 13 (providing that "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").

⁴³ See UN Human Rights Committee, 'CCPR General Comment No. 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9.

⁴⁴ See *id.*

⁴⁵ See UN Human Rights Council, 'Arbitrary deprivation of nationality: report of the Secretary-General' (26 January 2009) UN Doc A/HRC/10/34, para 60 ("In the context of the avoidance of statelessness, arbitrary denial of nationality is just as grave as arbitrary deprivation of nationality."); UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: report of the Secretary-General' (14 December 2009) UN Doc A/HRC/13/34 para 21; UNHCR Executive Committee of the High Commissioner's Programme, 'Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII)' (2006) para (i); *but cf.* Case C-192/99 *R v Secretary of State for the Home Department, ex parte: Manjit Kaur, interveners: Justice* [2001] ECR I-01237; Case C-135/08 *Rottmann v Bayern* [2010] ECR I-01449, para 49 (applying different standards to loss of nationality from acquisition of nationality).

⁴⁶ See *Ivcher Bronstein v Peru*, Inter-American Court of Human Rights Series C No 74 para 95 (February 6 2001).

⁴⁷ See UN Human Rights Council, 'Arbitrary deprivation of nationality: report of the Secretary-General' (26 January 2009) UN Doc A/HRC/10/34, para 61 *et seq.*; UNGA, 'Annual Report. Human rights and arbitrary deprivation of nationality: Report of Secretary-General' (2009) UN Doc A/HRC/13/34, para 40.

⁴⁸ See *Eritrea v Ethiopia* [2004] 44 ILM 601 (Permanent Court of Arbitration) paras 57–78; Explanatory Report to the European Convention on Nationality, CETS No 166, para 36 <<http://conventions.coe.int/Treaty/en/Reports/Html/166.htm>> (providing that denaturalization "must in general be foreseeable, proportional and prescribed by law").

⁴⁹ See UN Human Rights Committee, 'CCPR General Comment No. 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9., para 21; UN Human Rights Committee, 'Communication No 538/1993. Stewart v Canada' (Individual Opinion of Evatt & Medina Quiroga, Dissent, Aguilar Urbina, 1996) UN Doc CCPR/C/58/D/538/1993, para 8; ICCPR art 26.

⁵⁰ See *UDHR*, art 15(2); CERD, art 5(d)(iii); CEDAW, art 9, para 1; CRC, art 2(1); CRPD, art 18(1)(a); *Karashev v Finland* App no 31414/96 (ECtHR, 12 January 1999); *Nubian Children case* paras 57, 263; *Expelled Dominicans & Haitians v Dominican Republic*, para 263; *Yean & Bosico v Dominican Republic*, paras 136, 139, 141; *Eritrea v Ethiopia*, paras 57–78; UNGA Third Committee (3rd Session) UN Doc A/C.3/SR.123 (5 November 1948) 352; ILC, 'Draft Articles Nationality in relation to the Succession of States' art 15 (prohibiting discrimination "on any ground"); UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989); UN Human Rights Council Res 10/13, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/10/13, paras 2–3; UN Human Rights Council Res 20/5, 'Human rights and arbitrary deprivation of nationality' (July 16 2012) UN Doc A/HRC/RES/20/5, paras 2–4; UN Human Rights Council Res 7/10, 'Human rights and arbitrary deprivation of nationality' (Mar 26 2009) UN Doc A/HRC/RES/7/10, paras 2–3; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28; UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: report of the Secretary-General' (14 December 2009) UN Doc A/HRC/13/34, art 4; Human Rights Council, Draft report of the Working Group on the Universal Periodic Review: Austria UN Doc. A/HRC/WG.6/23/L.10 (11 November 2015) paras. 5.4, 5.5; Human Rights Council, 'Draft report of the Working Group on the Universal Periodic Review: Myanmar' UN Doc. A/HRC/WG.6/23/L.9 (10 November 2015) paras. 7.54, 7.55, 7.66.

⁵¹ See UN Human Rights Committee, 'van Alphen v. the Netherlands (Communication No. 305/1988)' (1990) UN Doc CCPR/C/39/D/305/1988, 5(8); UN Human Rights Committee, 'A v Australia (Comm. No 560/1993)' (1997) UN Doc CCPR/C/59/D/560/1993, 9(2); UN Human Rights Committee, 'CCPR General Comment No. 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9.

⁵² See UNGA, 'Annual Report. Human rights and arbitrary deprivation of nationality: Report of Secretary-General' (2009) UN Doc A/HRC/13/34, para 4; European Commission for Democracy through Law (Venice Commission), 'Opinion on the Draft Constitutional Law on "Protection of the Nation" adopted at its 106th Plenary Session (Venice 11–12 March 2016) CDL-AD (2016)006 para 25.

⁵³ See 1961 Statelessness Convention arts 8, 9; European Convention on Nationality art 7(3); UN Doc A/HRC/13/34 (14 December 2009) para 25; UN Human Rights Council, 'Arbitrary deprivation of nationality: report of the Secretary-General' (26 January 2009) UN Doc A/HRC/10/34.

In summary, if a child who would otherwise be stateless is born in the state, then the human right to a nationality would require the birth state to extend its nationality. The birth state is the only state that asserts jurisdiction over the child, so it is the only state that has the obligation to secure the child's right to a nationality. The refusal to permit the child to acquire nationality is potentially a violation of the right of the child to a nationality. If the child would be otherwise stateless, then it would be an arbitrary denial of nationality to block the acquisition of nationality of the birth state.⁵⁴

In addition to the Statelessness Conventions and the treaties providing for the right to a nationality, otherwise stateless children are also protected by the CRC, which has near universal applicability. In terms of nationality at birth, the CRC protects the child's right to 'a' nationality and obliges states to register children at birth, as a means to facilitate the acquisition of nationality.⁵⁵ The right to a nationality has already been discussed above and the application of this provision will largely reflect that of other treaties with similar language. The obligation to register does not directly pertain to nationality, though it can, especially where the child should receive nationality of the birth state.

One provision that makes the CRC distinct for the protection of otherwise stateless children is that the Convention requires all states to adopt the child's best interests as the guiding principle for all decisions concerning children, including prescribing and applying nationality laws.⁵⁶ Other treaty bodies interpreting similar language have concluded that becoming stateless is never in the child's best interests,⁵⁷ so states should never prescribe or apply legislation concerning children within their territory that would result in making a child stateless. It is still open for a state to argue that a child might be better off stateless, though such a situation is perhaps very difficult to imagine, and, in any event, the state would need to specifically conclude that the child would be better stateless than to have that very same state's nationality. It is perhaps even more difficult to imagine any state concluding that its own nationality would impose that level of disadvantage on a child. A more likely scenario is for the birth state to conclude that a child's interest is to have the nationality of its family, and to secure nationality that way.⁵⁸ But, should that effort fail, the child would likely be in a better situation with the nationality of the birth state.

The Committee on the Rights of the Child has concluded that the CRC is best interpreted in line with the argument of this article, that states must take all steps to ensure children born in the state acquire a nationality.⁵⁹ Furthermore, the Committee has concluded that, where the state cannot secure the child's nationality through state cooperation elsewhere,⁶⁰ then the state must grant its nationality.⁶¹ This conclusion

⁵⁴ See 1961 Statelessness Convention art 1(1); ICCPR art 24(3); CRMW art 29; CRC art 7(1); *Yean & Bosico v. Dominican Republic*, para 140; UN Human Rights Council, 'Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless: Report of the Secretary-General' (December 16 2015) UN Doc A/HRC/31/29.

⁵⁵ See CRC, art 7.

⁵⁶ See CRC, art 3; UNGA, 'Status of the Convention of the Rights of the Child: Report of Secretary-General' (2 August 2013) UN Doc. A/68/257, para 57 et seq.

⁵⁷ See CRC, art 3; Committee on the Rights of the Child, 'General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)' (2013) UN Doc CRC /C/GC/14; UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8; Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention. Concluding Observations: Czech Republic' UN Doc CRC/C/CZE/CO/3-4; UNHCR, 'Guidelines on Statelessness No. 4' (2012) UN Doc HCR/GS/12/04, para 11; African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 2 on Article 6 of the ACRWC: "The Right to a Name, Registration at Birth, and to Acquire a Nationality"' (2014) AU Doc ACERWC/GC/02 (2014), ("being stateless as a child is generally an antithesis to the best interests of children"); *Nubian Children case; Mennesson v. Fr.*; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28; OHCHR 'Fact Sheet No.10 (Rev.1), The Rights of the Child' (1997).

⁵⁸ See UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8; *Cf. Mennesson v France* App no 65192/11 (ECtHR, June 24 2014) (holding that the refusal to record a child's birth, and thus acquire French nationality from the parents, when the child was created through the banned IVF procedure, was a violation of the right to private life, not family life, because the child was not deprived of a family relationship).

⁵⁹ See UN Commission on Human Rights, 'CCPR General Comment No. 17: Article 24 (Rights of the Child)' (7 April 1989) para 8; CRC, art 7(2).

⁶⁰ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families & Committee on the Rights of the Child, 'Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return' (16 November 2017) UN Docs CMW/C/GC/4, CRC/C/GC/23, para 24 (arguing that jus soli application would discharge the obligation, but so would international cooperation: "... States ... are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless.").

⁶¹ See Committee on the Rights of the Child, UN Docs CRC/C/NL/CO/4, CRC/C/CHE/CO/2-4, CRC/C/TKM/CO/2-4, CRC/C/CZE/CO/3-4. Also see Committee on the Rights of the Child, UN Docs CRC/C/FJI/CO/2-4, CRC/C/HRV/CO/3-4; Migrant Workers Con-

was identical to the one reached by the Committee on the Rights of Migrant Workers, so both Committees produced a joint general conclusion on the matter.⁶² Similar to the conclusion above, under the CRC, the efforts required to secure nationality cannot be merely hypothetical, but must include 'every appropriate measure'.⁶³

The conclusion for the ICCPR and the CRC is the same: that it is the obligation of the birth state to grant its nationality, unless it excuses itself from this duty by definitively acquiring another nationality for the child. The CRC adds the requirement that the acquisition of nationality must be in the child's best interests and in accordance with the child's identity.⁶⁴ These requirements will further limit the ability of the state to freely choose whether to grant or otherwise secure a different nationality. For example, the acquisition of a nationality from a state with which the child has no ties or identity, or a nationality that would risk separation of the child from family against its best interests, would not be lawful options. These considerations further support the conclusion that, for children, the default must be the nationality of the birth state.

From all of the foregoing, we see that under international treaties, all states in the world have agreed that children have a very strong right to a nationality, protected multiple times over. This multiple protection requires states to act on the best interests of the child by adopting all possible measures to secure a nationality for the child. These measures could naturally include cooperating with other states to find a nationality for the child that benefits from a genuine connection with the state, or simply providing the child who would otherwise be stateless, the nationality of the state where he or she was born.

3 Regional Treaties

Having discussed international treaties, we then turn to regional treaties. Europe, the Americas and Africa all have human rights treaties protecting the right to a nationality,⁶⁵ in particular the right to a nationality for children.⁶⁶

First, we will consider the European region. There are several regional treaties that are relevant,⁶⁷ but this article will only consider the two major clusters of treaties centered on the Council of Europe and the European Union. The Council of Europe system provides three treaties that are relevant for statelessness: the European Convention on Human Rights (ECHR), the European Convention on Nationality (ECN), and the Convention on the Avoidance of Statelessness in relation to State Succession.

vention art 29; UNHCR 'Guidelines on Statelessness No. 4' (2012) UN Doc HCR/GS/12/04; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28; CRC art 7; *Yean & Bosico v Dominican Republic* para 140; 1961 Statelessness Convention, art 1(1); Migrant Workers Convention, art 29; ICCPR, art 24(3); UNGA, 'Annual Report. Human rights and arbitrary deprivation of nationality: Report of Secretary-General' (2009) UN Doc A/HRC/13/34; Committee on the Rights of the Child, 'Joint General Comment [Draft] No. 21 Human Rights of Children in the Context of International Migration' (April 24 2017) UN Doc INT/CRC/INF/81/E, para 66; Committee on the Rights of the Child, 'Concluding observations on the second periodic report of South Africa' (27 October 2016) UN Doc CRC/C/ZAF/CO/2 para 32(b); Committee on the Rights of the Child, 'Concluding observations on the combined third and fourth periodic reports of Suriname' (9 November 2016) UN Doc CRC/C/SUR/CO/3-4, para 17; Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of Pakistan' (11 July 2016) UN Doc CRC/C/PAK/CO/5 paras 65–66; Committee on the Rights of the Child, 'Concluding observations on the combined fourth and fifth periodic reports of Chile' (30 October 2015) UN Doc CRC/C/CHL/CO/4-5 paras 30–33; Committee on the Rights of the Child, 'Concluding observations on the report submitted by Israel under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (13 July 2015) UN Doc CRC/C/OPSC/ISR/CO/1, paras 24–25.

⁶² See Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'DRAFT: Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration' (April 24 2017) UN Doc INT/CRC/INF/81/E para 66.

⁶³ See UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families & Committee on the Rights of the Child, 'Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return' (16 November 2017) UN Docs CMW/C/GC/4, CRC/C/GC/23, para 24 ('... States ... are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born.').

⁶⁴ See CRC, arts 3, 8.

⁶⁵ See US Constitution, art 19; European Convention on Nationality, art. 4; African Charter on the Rights and Welfare of the Child (adopted on July 11 1990) OAU Doc CAB/LEG/24.9/49, art 6.

⁶⁶ See AmCHR, art 20; African Charter on the Rights and Welfare of the Child, art 6; Covenant on the Rights of the Child in Islam, art 7.

⁶⁷ See Concluding document of Helsinki, Conference for Security and Cooperation in Europe, 1992, ch. VI para. 55; Charter for European security, Organization for Security and Cooperation in Europe, 1999, para. 19.

Starting with the ECHR, this instrument does not specifically address matters of nationality; nonetheless, it is increasingly important for protecting against statelessness because denationalization can touch on other rights in the Convention. The text of the ECHR does not mention rights to nationality, although article 3 of Protocol 4 prohibits denationalization as a means for expulsion.⁶⁸

Aside from this one example, claims for protection of nationality have largely failed.⁶⁹ Claims over loss of nationality have begun to show some promise, however, where the denationalization affects other Convention rights.

This evolution in the jurisprudence does not mean that all rights in the convention will protect nationality, for example, claims under article 6, the right to a fair trial, have not been successful,⁷⁰ but there has been some limited success in protecting nationality under other rights. The first right that asked to protect nationality is article 8, the right to private life. While this right is not understood to protect the acquisition of nationality by naturalization,⁷¹ it can protect the acquisition of nationality at birth⁷² and in cases of state succession.⁷³ The right to private life includes the right to one's identity,⁷⁴ and arbitrary deprivation of nationality can impact one's sense of identity.⁷⁵ This impact is all the more significant when it results in statelessness.⁷⁶ In addition to article 8, the ECHR can also protect a person from statelessness due to state succession or discriminatory laws that would result in degrading treatment, a violation of article 3.⁷⁷ The Court has also held in *Kurić v Slovenia* that there is generally a customary international law obligation on states to avoid statelessness,⁷⁸ and at least one judge, Judge Pinto de Albuquerque in dissenting opinion in *Ramadan v Malta*, understands the ECHR to require states to grant their nationality to children born in their territory who would otherwise be stateless.⁷⁹ While this last view only appears in dissent, the overall progression of cases suggests that there is building jurisprudence for an implicit right to a nationality in the ECHR.⁸⁰

The second relevant instrument within the Council of Europe is the European Convention on Nationality, which addresses nationality issues more directly than the ECHR. The ECN provides that all persons have a right to a nationality,⁸¹ suggesting a similar scope and content as the right to nationality in other international instruments. That being said, the ECN goes further than other human rights treaties in that it specifically

⁶⁸ See Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) (September 16 1963) ETS No 46, art 3(1); *Slivenko v. Latvia* App no 48321/99 (ECtHR, 9 October 2003); Also see Explanatory Report to Protocol No 4, § 23.

⁶⁹ See *Family K. and W. v. The Netherlands* App no 11278/84 (Commission Decision, 1 July 1985); *Poenaru v. Romania* App no 51864/99 (ECtHR, November 13 2001); *Makuc v Slovenia* App no 26828/06 (ECtHR, May 31 2007) para 160.

⁷⁰ See Laura van Waas, 'Fighting Statelessness And Discriminatory Nationality Laws In Europe' (2012) 14 European Journal of Migration and Law; *X v Austria* App no 5212/71 (Commission Decision, October 5 1972) 69.

⁷¹ See *Family K. and W. v. The Netherlands* App no 11278/84 (Commission Decision, 1 July 1985) ("the right to acquire particular nationality is neither covered by, nor sufficiently relate to, [article 8 in conjunction with article 14] or any other provision of the convention").

⁷² See *Genovese v. Malta* App no 53124/09 (ECtHR, Oct 11 2011) paras 30–33, para 33; *Sylvie Mennesson v. France* App no 65192/11 (ECtHR, 26 June 2014); *Francis Labassee v. France* App no 65941/11 (ECtHR, 26 June 2014).

⁷³ See *Fjodorova v. Latvia* App no 69405/01 (ECtHR, 6 April 2006).

⁷⁴ See *S. & Marper v UK* App nos 30562/04 & 30566/04 (ECtHR, 2008) para 66; *Ciubotaru v Moldova* App no 27138/04 (ECtHR, 27 April 2010) para 53; *Dadouch v. Malta* App no 38816/07 (ECtHR, 2010) para 48; *Genovese v. Malta* App no 53124/09 (ECtHR, October 11 2011) paras 30–33.

⁷⁵ See *Makuc v Slovenia* App no 26828/06 (ECtHR, May 31 2007) para 160; *X v Austria* App no 5212/71 (ECtHR, Oct 5 1972) 69; and *Karashev v. Finland* App no 31414/96 ECHR 1999-II (ECtHR).

⁷⁶ See *K2 v UK* App no 42387/13 (ECtHR March 9 2017) (holding that deprivation of nationality was not a violation of Article 8 of the ECHR, right to family and private life, because the individual was not left stateless, suggesting that if the child were left stateless, then it might be a violation); *Kuric v Slovenia*, App no 26828/06 (ECtHR, July 13 2010) para 361; *Slovov v Sweden* App no 44828/98 (ECtHR, 1999) (removal of nationality of dual national acceptable); *Kafklasi v Turkey* App no 21106/92 (admissibility, Commission Decision, May 22 1995) but see *Kafklasi v Turkey* App no 21106/92 (merits, commission decision, May 22 1995) (finding a violation on the merits).

⁷⁷ See *Slepčik v Netherlands & Czech Republic* App no 30913/96 (Commission Decision, September 2 1996) (referring to *East African Asians versus United Kingdom* App Nos 4403–19/70, 4422–23/70, 4434/70, 4443/70, 4476–78/70, 4486/70, 4501/70, 4526–30/70 (Commission Decisions, December 14 1973) (holding that the refusal of residence to a particular group on the grounds of race was discrimination amounting to degrading treatment, and thus a violation of article 3 of the ECHR); *Zeibek v Greece*, App no 34372/97 (Commission Decision, May 21 1997) (discriminatory access to nationality on grounds of race amounts to degrading treatment under article 3 of the ECHR).

⁷⁸ See *Kuric and Others v. Slovenia* App no 26828/06 (ECtHR, 13 July 2010).

⁷⁹ See 1961 Statelessness Convention, arts 1–2; AmCHR, art 20(2); African Charter on the Rights and Welfare of the Child, art 6(4); CRC, art 7; European Convention on Nationality, arts 6(1)(b)–(2); Covenant on the Rights of the Child in Islam, art 7(3).

⁸⁰ But see Council of Europe 'European Convention on Nationality: explanatory report' (1997) para 16.

⁸¹ See European Convention on Nationality, art 3.

requires the state of birth to grant nationality to a child, if the child would be otherwise stateless.⁸² The ECN does not require that the grant of nationality be operationalized purely by operation of law; it does allow states to require an application for the grant of nationality, although the state does not retain the discretion to refuse the application as long as the child qualifies.⁸³ It is important to observe, however, that the ECN does not benefit from widespread adherence.

The final convention within the Council of Europe that is relevant is the Convention on the Avoidance of Statelessness in relation to State Succession.⁸⁴ This treaty also protects the right to a nationality,⁸⁵ but its scope of application is only situations of state succession, where habitual residents now discover that they no longer have nationality in the territory in which they live.⁸⁶ States that achieve their independence must grant nationality to any otherwise stateless child who was born in the territory of the state or whose parents had the nationality of the prior state that had sovereignty over the territory of their habitual residence.⁸⁷

In addition to the Council of Europe, the European region is also home to the European Union. EU law is more focused on EU citizenship and its rights, not the right to a nationality in its Member States.⁸⁸ A person acquires Member State nationality also acquires EU citizenship,⁸⁹ but the rules for acquisition of Member State nationality is almost exclusively governed by the nationality laws of the Member States.⁹⁰

However, the protections against loss of Member State nationality can have implications for EU law insofar as the loss of nationality results in the loss of EU citizenship. The Court of Justice of the EU (CJEU) has concluded that revocations of Member State nationality oblige the Member State to take the impact on EU citizenship into account.⁹¹ While this requirement places some protections from loss of nationality, EU law does not contain protections for the acquisition of nationality.⁹² After all, until a person holds EU citizenship, EU law does not apply to their status.⁹³ For children who are born otherwise stateless within the EU, these provisions do not provide much assistance.

One source of law that may be helpful, however, is the Charter of Fundamental Rights. The Charter has been adopted within the EU legal system as a binding obligation.⁹⁴ Similar to the ECHR, the Charter does not expressly provide a right to a nationality, though it does provide for a variety of other rights that may be affected by the refusal of nationality, for example rights against discrimination,⁹⁵ and rights protecting

⁸² See European Convention on Nationality, art 6; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28.

⁸³ See European Convention on Nationality, arts 4, 7(1)–(3).

⁸⁴ See Convention on the Avoidance of Statelessness in relation to State Succession (19 May 2006) CETS No 200; Declaration on the Consequences of State Succession for the Nationality of Natural Persons, adopted by the European Commission for Democracy through Law (Venice Commission) at its 28th plenary meeting, Venice (13–14 September 1996).

⁸⁵ See *id.* at art 2.

⁸⁶ See Convention on the Avoidance of Statelessness in relation to State Succession, Explanatory Report, art 2 <<http://www.conventions.coe.int/Treaty/EN/Reports/Html/200.htm>>.

⁸⁷ See Convention on the Avoidance of Statelessness in relation to State Succession, arts 5, 10.

⁸⁸ See Treaty of the European Union (consol. ver.) (TEU) (October 26 2012) OJ EU C 326/13 *as amended by the Treaty of Lisbon* (December 17 2007) OJEU C 306 1.

⁸⁹ See *id.* at art 20(1) (ex art 17 TEC); Joined cases Case C165/14 *Marín v Admin del Estado* [2016] & Case C304/14 *Secretary of State for the Home Department v CS* [2016] ECLI:EU:C:2016:75, Opinion of Advocate General Szpunar, para 107; Case C-34/09 *Ruiz Zambrano v Office national de l'emploi* [2011] ECR I-01177, para 40; Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-07091, paras 82–4; Case C-224/98 *D'Hoop v Office national de l'emploi* [2002] ECR I-06191, para 27; Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ EU L 158/77, art 2(1); Report from the Commission, 'Fourth Report on Citizenship of the Union' [2004] EU Doc COM(2004)695; Report from the Commission, 'Report on the Citizenship of the Union' [1993] EU Doc COM(93)702.

⁹⁰ See Case C-192/99 *R v Secretary of State for the Home Department, ex parte: Manjit Kaur, intervener: Justice* [2001] ECR I-01237; European Council Decision concerning certain problems raised by Denmark on the Treaty of European Union, (December 31 1992) OJ C 348 1, Annex 3 §A "Citizenship"; Report from the Commission, 'Report on the Citizenship of the Union' (December 21 1993) EU Doc COM(93)702; Report from the Commission, 'Third Report from the Commission on Citizenship of the Union' 506 (September 7 2001) EU Doc COM(2001); Report from the Commission, 'Fourth Report on Citizenship of the Union' 695 (October 26 2004) EU Doc COM(2004); Report from the Commission, 'Fifth Report on Citizenship of the Union' (February 15 2008) EU Doc COM(2008)85.

⁹¹ See Case C-135/08, *Rottmann v. Bayern*, para 48; Republic v. Nimal Jayaweera App No 37/2010 (Supreme Court of Cyprus, July 10 2014) (accepting, but reaffirming that *Rottman* only applied to loss of nationality, not acquisition of nationality).

⁹² See Case C-135/08, *Rottmann v. Bayern*.

⁹³ See Case C-192/99 *R v Secretary of State for the Home Department, ex parte: Manjit Kaur, intervener: Justice* [2001] ECR I-01237.

⁹⁴ See Charter of Fundamental Rights of the European Union, (December 18 2000) OJEU C 364 1.

⁹⁵ See *id.* at art 21.

private life.⁹⁶ Using the same logic as the ECHR, some of these rights may be interpreted to offer some protections for nationality.

Moving away from Europe to the Americas, the situation in treaty law changes significantly. The American Convention on Human Rights (AmCHR) expressly provides for the right to a nationality, and goes so far as to also expressly require states to grant their nationality to children born in their territories, if they would be otherwise stateless.⁹⁷ This obligation has been litigated before the Inter-American Court of Human Rights and consistently affirmed.⁹⁸ For example, in the *Yean and Bosico* case, the Court found that the Dominican Republic had failed to extend its nationality to stateless children born in its territory. In fact, the Court went beyond the narrow requirements of the AmCHR and concluded that states have an obligation under international law generally to avoid and reduce cases of statelessness,⁹⁹ and that the right to a nationality operated as a critical right for the protection of many other human rights.¹⁰⁰ In the *Expelled Dominicans and Haitians* case, the court concluded similarly, and affirmed the reasoning discussed above for the ICCPR and other human rights instruments, that the right to a nationality was acquired at the time of birth and that the birth state was responsible for ensuring that right.¹⁰¹

Shifting to the African context, again the right to a nationality is well protected in treaty law. The African Charter on Human and Peoples' Rights (AfCHPR) does not expressly provide a right to nationality,¹⁰² although it has been interpreted to implicitly protect the right through the collective force of other provisions in the Charter, such as the right against discrimination,¹⁰³ and the rights to equality and dignity.¹⁰⁴ The African Commission on Human and Peoples' Rights has applied all of these rights to collectively protect the right to nationality.¹⁰⁵ Currently, there is a draft protocol to the Charter that would articulate the right to nationality expressly.¹⁰⁶

In addition to the AfCHPR, the African region also has the African Charter on the Rights and Welfare of the Child.¹⁰⁷ This treaty expressly protects the right to nationality for children,¹⁰⁸ and has been interpreted to protect the acquisition of nationality at birth.¹⁰⁹ In addition, this Charter also requires states to apply the best interests of the child analysis to any decision, and has been interpreted to say that statelessness is never in the best interest of the child.¹¹⁰ The Committee monitoring this treaty in the *Nubian Children* case concluded that the birth state accrues the obligation to ensure nationality and can only discharge this obligation by either securing nationality from a different country or granting its own nationality.¹¹¹

Having discussed the European, African and American regions, the remaining regions would be Asia and the Pacific. Currently, those regions do not have any binding regional treaty obligations directly on point.

⁹⁶ See *id.* at art 7.

⁹⁷ See AmCHR, art 20(2). Also see US Constitution, art XIX.

⁹⁸ See *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, Inter-American Court of Human Rights Series A No 4 (19 January 1984) at paras 32–5; *Yean & Bosico v. Dominican Republic*, paras 140–142, 154–158; *Castillo Petruzzi et al v Peru*, Inter-American Court of Human Rights Series C No 52 (30 May 1999) § 101; *Baruch Ivcher Bronstein vs. Peru*, Inter-American Court of Human Rights Series C No 74 (6 February 2001) para 88.

⁹⁹ See *Expelled Dominicans & Haitians v. Dominican Republic*, paras 253–64; *Yean & Bosico v. Dominican Republic*, para 140.

¹⁰⁰ See *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, Inter-American Court of Human Rights Series A No 4 (19 January 1984) paras 32–5 ('the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question...').

¹⁰¹ See *Expelled Dominicans & Haitians v. Dominican Republic*, para. 258 ('Regarding the moment at which the State's obligation to respect the right to nationality and to prevent statelessness can be required, pursuant to the relevant international law, this is at the time of an individual's birth').

¹⁰² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) art 6(g)–(h).

¹⁰³ See African Charter, arts 2–3.

¹⁰⁴ See *id.* at arts 3, 5, 12.

¹⁰⁵ See *Malawi African Association, Amnesty International, Ms Sarr Diop, Collectif des Veuves et Ayant-droit et Association Mauritanienne des droits de l'homme v. Mauritania*, App Nos 54/91, 61/91, 98/93, 164-196/97, 210/98 (African Commission on Human and Peoples' Rights, 11 May 2000) para 126; *John K. Modise v. Botswana*, App No 97/93 (African Commission on Human and Peoples' Rights, 6 November 2000) para 88.

¹⁰⁶ See ACHPR, 'Decision on the Report of the Activities' at para 5.

¹⁰⁷ See *Nubian Children case*, para 46.

¹⁰⁸ See African Charter on the Rights and Welfare of the Child, art 6.

¹⁰⁹ See *Nubian Children case*, para 42 (interpreting right to nationality to mean right to a nationality from birth).

¹¹⁰ See African Committee of Experts on the Rights and Welfare of the Child, 'General Comment No. 2 on Article 6 of the ACRWC: "The Right to a Name, Registration at Birth, and to Acquire a Nationality"' (2014) AU Doc ACERWC/GC/02 (2014).

¹¹¹ See *Nubian Children case*, para 42 (interpreting right to nationality to mean right to a nationality from birth); *id.* paras 50–51.

That being said, there are many initiatives to consult and develop new norms, for example, the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration provides for a right to a nationality¹¹² and the ASEAN Charter also reaffirms human rights.¹¹³ Both the ASEAN Intergovernmental Commission on Human Rights¹¹⁴ and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children¹¹⁵ have placed statelessness on their agendas for consultations, and ASEAN in generally has liaised with the UNHCR on the topic.¹¹⁶

The regions featured above are the most significant in terms of the breadth and application of these treaty obligations, but they are not alone. Other regions of the world have adopted treaties with similar obligations, although perhaps with less application and jurisprudence. For example, the Charter for European Security of the Organization for Security and Co-operation in Europe provides that everyone has a right to a nationality,¹¹⁷ the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms protects the right to a nationality, and against arbitrary deprivation of nationality,¹¹⁸ and the 2004 Revised Arab Charter on Human Rights prohibits deprivation of nationality 'without a legally valid reason'.¹¹⁹ If all of these treaty terms are interpreted consistently with the right to a nationality in other instruments, then they may very well also protect an otherwise stateless child born in a state from arbitrary refusal of nationality. Also, the Covenant on the Rights of the Child in Islam requires states to actively seek solutions for stateless children and provides for nationality for foundlings (children born in state whose parents are unknown).¹²⁰ This instrument therefore requires that certain stateless children receive nationality unless the state of birth can secure their nationality elsewhere, much like the interpretation of the African Charter on the Rights and Welfare of the Child above. Therefore, a variety of other instruments create additional obligations for other regions in the world.

The conclusion from this survey of regional treaties shows that a significant number of states are covered by some binding regional instrument in addition to potentially also being covered by the ICCPR, CRC and other international instruments mentioned in the previous section. Many of these treaties also provide for a right to a nationality with similar language as the ICCPR and CRC. These overlapping instruments mean that most states are covered by a combination of international and regional treaty obligations to extend nationality to an otherwise stateless child born in their territory.

4 Conclusion

In conclusion, international and regional treaties covering statelessness and the right to a nationality combine and overlap, along with special protections for children, to provide significant protections for child statelessness. Firstly, a number of international treaties either expressly provide or can be understood to provide for nationality for stateless children born in a state. Where states are not party to one of these conventions, they are party to others. Secondly, a supplementary range of regional treaties also cover the same and can be interpreted to require states to grant nationality to stateless children born in their territory. Between these various instruments with largely consistent requirements, the great bulk of states in the world are covered by some instrument that requires the state to grant nationality to an otherwise stateless child born in its territory.

Competing Interests

The author has no competing interests to declare.

¹¹² See ASEAN 'Human Rights Declaration' (November 18 2012) art 18, <<https://aichr.org/wp-content/uploads/2018/10/ASEAN-Human-Rights-Declaration.pdf>> accessed 7 May 2019.

¹¹³ See Charter of the Association of Southeast Asian Nations, (November 20 2007) 2624 UNTS 223, arts 1(7), 2(2)(i)–(j), 14.

¹¹⁴ See e.g. ASEAN Intergovernmental Commission on Human Rights, 'A Consultation on 'the AIHR's Thematic Study on Migration' (November 28 2013) <<https://aichr.org/news/a-consultation-on-the-aichrs-thematic-study-on-migration>> accessed 7 May 2019.

¹¹⁵ See e.g. ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children* (2016) 127 <<http://asean.org/storage/2016/09/ACWC-Regional-Review.pdf>> accessed 7 May 2019.

¹¹⁶ See UNHCR, 'UNHCR holds panel discussion on "The right to a nationality and ending statelessness in ASEAN"' (unhcr.org, November 14 2016) <<https://www.unhcr.org/id/en/10475-unhcr-holds-panel-discussion-on-the-right-to-a-nationality-and-ending-statelessness-in-asean.html>> accessed 7 May 2019.

¹¹⁷ See Charter for European Security of the Organization for Security and Co-operation in Europe, art 19.

¹¹⁸ See Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (26 May 1995), art 24(2).

¹¹⁹ See Arab Charter on Human Rights (22 May 2004), art 29.

¹²⁰ See Covenant on the Rights of the Child in Islam (2005) art. 7(2) 2; UN Human Rights Council, 'Report of the Secretary-General. Human Rights and Arbitrary Deprivation of Nationality' (December 19 2013) UN Doc A/HRC/25/28.

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