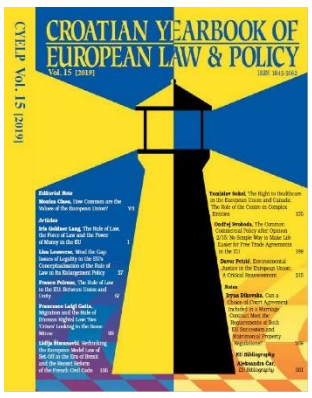

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STATELESSNESS IN THE CONTEXT OF THE MIGRATION CRISIS IN EUROPE: A GROWING CHALLENGE FOR THE INTERNATIONAL COMMUNITY

Agata Szwed *

Abstract: Statelessness remains a secondary topic in the debate on the migration crisis that has been raging across Europe since 2015, but it will certainly come to the fore in the near future. This paper draws attention to the issue of limited social and scholarly interest in statelessness in the context of the present migration crisis. The research explores how Syrian, Iraqi and Afghan nationality laws (as the majority of protection seekers come from these countries) regulate the issue of acquiring citizenship and why this gives rise to the problem of statelessness. The paper concludes that the lack of interest in the issue of statelessness is a growing challenge for the international community and requires systemic action. A 'stateless generation' may never become part of any society, which may in turn give rise to social conflicts in the countries of current residence. The author concludes by putting forward some suggestions for solving this problem from global, regional, state and civil society perspectives.

Keywords: statelessness, migration crisis, refugee crisis, asylum, international law.

1 Introduction

The migration crisis – which started in 2015 and is still going on – caused by a massive influx of refugees and immigrants to Europe, mainly from the Middle East and Africa, has shown the weakness of existing legal regulations with regard to the status of refugees and migrants. It has also shown the frailty of the idea of supranational solidarity in the face of a problem of such magnitude as the recent influx of refugees from conflict areas. The situation is further complicated by the fact that not all of the arrivals in Europe since 2015 are able to or want to prove their national origin.

The purpose of this article is to draw attention to the fact that the refugee crisis has created an entire 'stateless generation' of children growing up in limbo. This remains a problem unresolved by international law and currently no significant attempts to deal with this urgent

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issue at the international arena are being made. It is not sufficiently noted, both in practice and in literature, that this is a problem that is escalating and will have to be tackled in the near future. Statelessness as a phenomenon should be considered from three perspectives: from that of states, of stateless people, and of the host society. People without nationality are often relegated to the peripheries or margins of society, but they should not remain ignored in the international area. What adds to the gravity of the issue is that these people may never become part of any society, which may in turn give rise to social conflicts in the countries of current residence.

Statelessness is therefore a challenge for the international community and calls for systemic actions in which all sides involved participate: host countries, host societies, and stateless persons themselves. In an endeavour to find possible solutions to the research problem of understudied and under-theorised statelessness in the context of the migration crisis, the following questions must be asked: what is statelessness and what are its causes? What values and factors lead to an increase in statelessness? What normative solutions have been taken at the universal and regional level to effectively counteract this phenomenon? What is the impact of the growing numbers of stateless persons on Europe? What are the consequences of statelessness for the international community, for EU citizens, for the communities of host countries, and, finally, for stateless persons themselves?

First, the concept of 'stateless person' will be defined, the reasons for the emergence of stateless people will be explored, and international legal acts addressing the problem of statelessness will be recalled. Attention will be given to the concept of 'the right to have rights' coined by Hannah Arendt. Referring to modern nation-states, the notable political theorist distinguishes between the concept of the state and nation denoting a nationally defined community. Consequently, Arendt argues that human rights are essentially the rights of those considered members of an organised political community, whereas stateless people are in fact rightless, denied 'the right to have rights' and to belong to a political community. This fact of not belonging to any political community results in constant discrimination and a lack of resources to oppose it. The paper will go on to present the current situation of non-nationals in Europe and will then consider the national laws governing the acquisition of citizenship in Syria, Iraq and Afghanistan (as the countries from where the largest number of protection seekers originate). Finally, some suggestions will be made on to how to resolve the issue of statelessness in Europe and worldwide.

Two basic research methods in the field of legal sciences will be used in the article. The first is the doctrinal research methodology, consisting

of an analysis of legal texts (an examination of applicable law). The area of doctrinal and legal analysis will involve national and international regulations related to the subject of the paper. The basic technique of the intended analysis will involve universally accepted methods of interpretation of legal texts and legal inference rules. The second methodology to be used is that of comparative law research whose aim is to demonstrate the similarities and differences in the legal regulations in the field of the discussed issues.

2 Defining statelessness

The definition of statelessness can be found in Article 1 of the 1954 Convention relating to the Status of Stateless Persons (CRSSP): it is a state of not having any nationality – not being considered a national by any state under the operation of its law. Articles 1-10 CRSSP regulate the basic principles of treating and protecting stateless persons (including the national clause in the case of freedom of religious practice and the religious education of children), Articles 12-32 define their legal status and individual rights (in terms of employment, social security, freedom of movement), while Articles 33-42 are the final provisions. International statelessness regulations are supplemented by the 1961 Convention on the Reduction of Statelessness (CRS), which primarily adopts safeguards to prevent statelessness (Articles 1-10), sets out general rules for the prevention and limitation of statelessness (Articles 11-13), followed by final provisions (Articles 14-21). Both of these conventions constitute a basic international legal framework regarding statelessness and are aimed at preventing its incidence by providing standards on the acquisition and loss of nationality. Failure in the application of these conventions lies in the fact that they have been ratified by few states (around several dozen countries), and therefore there is no uniform universal standard of treatment of stateless persons.[1] The biggest controversy among states that have not ratified the CRSSP and CRS is the fact that they grant citizen rights to stateless persons, whilst other foreigners acquire such rights only after years of tiresome procedures. The provisions relating to statelessness have been established in many international conventions, especially those under international human rights law.[2]

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[1] Only the rules of customary international law on child statelessness can be treated as part of a universal system. See William Thomas Worster, 'The Presumption of Customary International Law: A Case Study of Child Statelessness' (2017) available at <https://ssrn.com/abstract=3091912> accessed 22 May 2020. See also Article 29 of the 2004 Arab Charter on Human Rights and Article 7 of the 2005 Covenant on the Rights of the Child in Islam.

[2] See the 1965 Convention on the Elimination of All Forms of Racial Discrimination (art 5); the 1966 International Covenant on Civil and Political Rights (arts 13, 16 and 24); the 1979 Convention on the Elimination of all forms of Discrimination against Women (art 9); the

In practice, the status of statelessness developed by the above-mentioned conventions has proven to be insufficient, which is why the literature[3] divides *de iure* stateless persons – persons who formally do not have the citizenship of any country because they have lost or have never acquired it (in accordance with Article 1 CRSSP), and *de facto* stateless persons – persons who formally have national citizenship but cannot effectively exercise their rights (they are without legal residence, but cannot be deported or they lack access to some basic rights).[4]

As can be seen, the concept of statelessness is strictly defined in opposition to the concept of citizenship. Although it has not been defined *expressis verbis* in international documents, the general understanding of it, formulated in the case of the International Court of Justice in the *Nottebohm* case, has gained general acceptance:

> According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.[5]

The right to citizenship is ensured in Article 15 of the 1948 Universal Declaration of Human Rights ('everyone has the right to a nationality'), as well as in regional acts of human rights protection.[6] The international community recognises two main ways of acquiring citizenship: *ius soli* (law of the land – the acquisition of citizenship by the mere fact of being born on the territory of a given country) or *ius sanguinis* (law of the blood – inheritance of citizenship from parents). Statelessness occurs when a person falls between the cracks in the operation of these different laws, failing to obtain any nationality or losing his or her only nationa-

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1989 Convention on the Rights of the Child (arts 7 and 8); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art 29); the 2006 Convention on the Rights of Persons with Disabilities (art 18); the 1997 European Convention on Nationality; the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.

[3] See United Nations High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No 1: The Definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012, HCR/GS/12/01.

[4] See Katja Swider and Maarten Den Heijer, 'Why Union Law Can and Should Protect Stateless Persons' (2017) 19 European Journal of Migration and Law 108 and the literature cited there.

[5] ICJ 1955/25 *Nottebohm* case (Liechtenstein v Guatemala) [ICJ 1955].

[6] This right is provided in regional human rights acts: the 1948 American Declaration of the Rights and Duties of Man (art 19); the 1969 American Convention on Human Rights (art 20); the 1990 African Charter on the Rights and Welfare of the Child (art 6); the 2004 Arab Charter on Human Rights (art 29); the 2005 Covenant on the Rights of the Child in Islam (art 7); the 2012 ASEAN Human Rights Declaration (art 18).

lity.[7] Statelessness is caused especially through: a conflict of nationality laws, state succession (also the rise and fall of states, the legacy of colonisation), arbitrary deprivation of nationality (denationalisation), discrimination (especially against woman in marriage law and through the paternal model of *ius sanguinis*), the inheritance of statelessness,[8] and even the physical disappearance of state territory due to climate change (eg Tuvalu, Kiribati).[9] There are also some administrative barriers to civil registration in the host country such as problems with documents, ie the lack of required documentation (including a birth certificate, marriage certification) or the lack of a residence permit.

It is necessary to emphasise that statelessness can appear in both migratory and non-migratory contexts. Two differences must be pointed out here. Firstly, there is a distinction between migrants and refugees who are considered to be stateless persons and those whose citizenship is not established. The latter are usually referred to as persons 'without citizenship' or 'undefined citizens',[10] which does not automatically mean that they are stateless but derives on many occasions from the fact that they do not want to reveal their identity or citizenship. In such a case, the position of persons with undetermined citizenship – who do not want to officially disclose their citizenship – becomes similar to that of *de facto* stateless persons because, although they have a nationality, they do not effectively exercise the rights arising from it. Secondly, a distinction between migrants and refugees should be made clear, because persons coming to Europe from Syria, Iraq or Afghanistan during the migration crisis are often granted refugee status.[11] The main difference between refugees and migrants is that migrants are people who made their decision to migrate freely, without pressure from external circumstances beyond

[7] The Institute on Statelessness and Inclusion, The Norwegian Refugee Council and The Netherlands Organisation for Scientific Research, 'What Is Statelessness? Toolkit: Understanding Statelessness in the Syria Refugee' available at <www.syrianationality.org/index.php?id=14> accessed 22 May 2020.

[8] Institute on Statelessness and Inclusion, *The World's Stateless* (Wolf Legal Publishers 2014) 23-27.

[9] See Jane Steffens, 'Climate Change Refugees in the Time of Sinking Islands' (2019) 52 Vanderbilt Journal of Transnational Law 727; Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012).

[10] Estonian law in particular regulates this form of residence. It treats migrants from former Soviet republics and their children who, after the collapse of the Soviet Union, could not or did not want to apply for citizenship of any country as undefined citizens. For differences in national practices that are assessed in the light of the relevant international and EU standards, see Gerard-René De Groot, Katja Swider and Oliver Vonk, *Practices and Approaches in EU Member States to Prevent and End Statelessness* (European Parliament 2015).

[11] An individual can share protection under CRSSP as well as protection under the 1951 Convention relating to the Status of Refugees (CRSR) (and this convention generally ensures more rights than the CRSSP). See UNHCR, *Handbook on Protection of Stateless Persons* (UNHCR 2014) 31-32.

their control (most often in order to improve their economic wellbeing), while refugees are *sensu stricto* understood as victims of persecution and *sensu largo* as victims of armed conflicts and other events that seriously disrupt public order.[12] Refugees usually have preconditions for obtaining citizenship in a destination country that are different from those of regular migrants, and these two groups can make use of different sources of legal protection.[13]

Although the development of the international system for the protection of human rights is moving away from the principle that granting citizenship is the prerogative of states, not the right of the individual, stateless persons can be found in almost every country. They are exposed to danger and forced to live in conditions of constant discrimination and inequality in comparison with the citizens of the country in which they are located – they often face numerous difficulties, such as access to healthcare, to social assistance, the right to education or to legal employment, the right to acquire property, the right to marry and acquire a birth certificate for children. Their situation is also called 'living in legal limbo'.[14]

There is an obvious contradiction between the mechanism of protecting human rights and ensuring equality resulting from human nature on the one hand, and the formalisation of national procedures for granting the right to citizenship on the other hand, discriminating the social position of persons without such citizenship. Hannah Arendt was among the first philosophers to observe that the terms 'citizen' and 'human' do not mean the same. Timeless human rights appear to be without protection at a time when it becomes impossible to define them as the rights of a citizen of a given country. Arendt, starting from the state paradigm

[12] The legal definition of a refugee (as a victim of persecution) is contained in Article 1 CRSR and all EU states are signatories to that convention. The extended definition is included especially in non-European acts of regional law and in the positions of international organisations specialising in helping refugees, such as UNHCR or UNRWA. See *Glossary on Migration* (International Organization for Migration 2019); Adrian Edwards, UNHCR viewpoint: 'Refugee' or 'Migrant' – Which Is Right? (UNHCR 2015) available at <https://www.unhcr.org/55df0e556.htm> accessed 8 August 2020.

[13] Practically every national law regulates the granting of citizenship to refugees and migrants residing in the country in a different way, although some common standards of treatment for the two groups have been developed under the Common European Asylum System. See Sergio Carrera and Zvezda Vankova, *Human Rights Aspects of Immigrant and Refugee Integration Policies* (Council of Europe 2019); Inter-Parliamentary Union and UNHCR, *Nationality and Statelessness. Handbook for Parliamentarians Nº 22* (Inter-Parliamentary Union with the UNHCR 2010); Rainer Bauböck and others, *Access to Citizenship and Its Impact on Immigrant Integration* (European University Institute, Robert Schuman Centre for Advanced Studies 2013)

[14] See Michael Leach and Fethi Mansouri, *Lives in Limbo: Voices of Refugees Under Temporary Protection* (University of New South Wales Press 2004).

('nation, territory and state'), defined the concept of 'the right to have rights', which indeed means the right to membership of a political community.[15] People deprived of citizenship are not able to exercise the list of human rights because only members of society organised in a state have the means of practically exercising them.[16] This concept remains relevant today. Stateless persons, despite the fact that they remain subjects of natural rights (such as the right to life, the right to freedom, the right to property, etc), have a limited right to political participation in the country of residence, and thus limited protection of human rights. That is why it must not be forgotten that they should have the effective right to become citizens.

3 Statelessness in Europe in the context of the migration crisis

The problem of statelessness became more important with the widespread implementation of citizenship by states in the nineteenth century. It diffused in Europe after World War I, and intensified after World War II, as a result of a new division of borders and the creation of new states.[17] Currently, the problem has been exacerbated by the influx of several million people since 2015, mainly from the Middle East and Africa, caused by armed conflicts and human rights violations as a result of civil and international wars during the so-called Arab Spring which took place nearly 10 years ago. The reason for the outbreak of these wars was the dissatisfaction of societies with living conditions, unemployment, rising food prices, longstanding authoritarian rule, the corruption and nepotism of the authorities, and widespread violation of human rights by regimes. As a result, civilians began to seek refuge *en masse*, first in neighbouring countries, and then in countries that were not their first countries of refuge – in wealthier Europe. From 2015 to 2017, over two-thirds of asylum seekers were taken in by Germany (almost 1.5 million people), Italy (over 330,000 people) and France (over 250,000 peo-

[15] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Books 1994) 297.

[16] See Alison Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law* (OUP 2012); Peg Birmingham, *Hannah Arendt and Human Rights: The Predicament of Common Responsibility* (Indiana University Press 2006); Giorgio Agamben, 'We Refugees' (1995) 49(2) Symposium: A Quarterly Journal in Modern Literatures 114; Nanda Oudejans, 'The Right to Have Rights as the Right to Asylum' (2014) 43(1) Netherlands Journal of Legal Philosophy 7; David Owen, 'On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights' (2018) 65(3) Netherlands International Law Review 299; Andrew Schaap, 'Enacting the Right to Have Rights: Jacques Rancière's Critique of Hannah Arendt' (2011) 10(1) European Journal of Political Theory 22.

[17] See Paul Weis and Rudolf Graupner, *The Problem of Statelessness* (British Section of the World Jewish Congress 1944); Gerard Daniel Cohen, *In War's Wake: Europe's Displaced Persons in the Postwar Order* (OUP 2011).

ple).[18] Countries with the most beneficial economic conditions seem to be the focus of these large-scale asylum flows. Over the last two years, the number of applications for international protection in EU countries has ranged from around 600,000 to 700,000 annually – more than a half fewer than at the beginning of the migration crisis. The lower number of people seeking refuge is mainly due to the fact that the wars have been continuing for several years and most of the victims have already left the territory of their own countries. In some countries, including Syria, Libya, Yemen, Iraq, Lebanon, the situation is still very unstable (often even worse than from 2010 to 2015) and does not seem likely to improve in the coming years. The large variety of migration routes, countries of origin and underlying motives for migration make the current migration crisis particularly difficult to address.[19] Besides, a significant number of unaccompanied minors (children without a responsible adult to care for them) have been coming as part of the migration crisis since 2015. These facts characterise the specific position of refugees who have come to Europe during the migration flows. Even though most of them intend to return to their home countries, the vast majority cannot imagine doing so in the near future.[20] This is why they prefer to stay in centres for foreigners in Europe, where they hope someday to have relatively better conditions and future prospects than in their ruined homelands and neighbouring places. The vision of a future in Europe is even stronger than the thought of being on the margins of the host society as a result of statelessness.

It is difficult to find statistics indicating the exact number of stateless persons in Europe, but it is estimated that there are at least 600,000.[21] This is official data, but if *de facto* stateless persons are added to them, as well as those who, due to differences in national procedures, were not qualified as stateless persons, but whose origin is in fact not known,[22] Europe will have to face in the next several years over a million people on the margins of society. Legal steps should be taken to minimise the instance of statelessness and contribute to the social integration of sta-

[18] Asylum statistics, available at <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Citizenship_of_first-time_applicants:_largest_numbers_from_Syria.2C_Afghanistan_and_Venezuela> accessed 8 August 2020.

[19] OECD, 'Is this Humanitarian Migration Crisis Different?' (2015) 7 Migration Policy Debates 6.

[20] Nasser Yassin, *101 Facts & Figures on the Syrian Refugee Crisis*, vol 2 (Issam Fares Institute for Public Policy and International Affairs American University of Beirut 2019) 126. For more on characterising asylum seekers arriving in the EU, see European Commission, 'An Economic Take on the Refugee Crisis. A Macroeconomic Assessment for the EU' (2016) 33 European Economy Institutional Paper 9.

[21] See European Network on Statelessness, available at <www.statelessness.eu> accessed 23 May 2020.

[22] Those persons are treated under specific regimes for 'non-citizens' or 'undefined citizens'.

teless persons, which will in turn bring economic, political and social benefits to both EU Member States and third countries.

At present, statelessness in Europe can be characterised as follows: firstly, it has its source in the geopolitical situation resulting from the collapse of the USSR and Yugoslavia – national laws regarding citizenship in the newly created countries did not allow this nationality to be determined for some national groups such as the Roma or Tatars; secondly, not all countries have adopted international conventions on statelessness, and therefore a conflict of laws or gaps in nationality legislation continue to create statelessness at birth and later in life; thirdly, most stateless people in Europe were born in the region and are stateless in the only country they have ever known; fourthly, since citizenship can only be granted by officially recognised state authorities, there are still non-state territories in Europe from which persons without internationally recognised citizenship come – such as Palestinians or Kurds; fifthly, since 2015, as a result of the influx of migrants and refugees to Europe, there has been a large group of people who were stateless before leaving their country of origin, or have since become stateless because of the national procedures of the country of origin, whose international situation remains unstable and who are unable or unwilling to return to their country of origin to obtain relevant documents.[23]

EU legislation does not deal effectively with the issue of statelessness which has emerged on such a massive scale. The only treaty provision regarding stateless persons is Article 67(2) of the Treaty on the Functioning of the European Union,[24] according to which stateless persons are treated as third-country nationals. There is also no uniform, harmonised legislation on nationality and citizenship at the EU level, which is mainly considered in the context of the common European asylum policy. There is no common directive establishing a mechanism for treating stateless persons, unlike a number of legal acts regarding refugees.[25] Even the Charter of Fundamental Rights of the European Union[26] does

[23] UNHCR, 'Stateless in Europe: Ordinary People in Extraordinary Circumstances' (2018) 8 available at <www.refworld.org/docid/5aa79f9d4.html> accessed 23 May 2020.

[24] Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47.

[25] EU legislation that sets common criteria for the qualification of people in need of international protection is included in Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337 and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180.

[26] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

not contain any statelessness-specific provision, so it can be concluded that at present the EU does not have an explicit entitlement to adopt legislation or common measures on statelessness as a specific issue.[27] Twenty-four Member States are States Parties to the CRSSP and 19 Member States are States Parties to the CSP – so there is still a problem to achieve uniformity within procedures determining the statelessness status, especially including specific administrative determination procedures for stateless persons. Most Member States still lack such procedures. What is more, national laws often do not provide a direct link between the determination of statelessness and the issuing of specific residence permits, which generates a huge problem for legal stay in the country of residence.[28]

4 Right to nationality in the nationality laws of Syria, Iraq and Afghanistan

To understand why statelessness is a growing problem for the European and international community, it is important to understand the nationality laws of the countries of origin of the largest influx of migrants coming to Europe since 2015. Although most of these people can prove their identity, there is still an essential number of those for whom this is difficult. In the era of refugee crisis, the largest numbers of applications for international protection in the EU have been made by citizens of Syria, Afghanistan and Iraq – a total of over a million people.[29] As people of these nationalities represent the overwhelming majority of migrants, in the context of the right to citizenship, the examination of national law in this paper will focus exclusively on these three national legal systems.

The Syrian nationality law regulates the right to nationality through the 1969 Legislative Decree 276.[30] The situations where a person is treated as a Syrian *ipso facto* are given in Article 3 of this decree: first of all, Syrian national law relies on paternal *ius sanguinis* (only a Syrian man has the right to automatically pass on his nationality to children); secondly, in the case of an unknown father (or both parents), Syrian citizenship can be established only for those children who were born inside the country. The following articles deal with aspects of naturalisation

[27] Gabor Gyulai, 'Statelessness in the EU Framework for International Protection' (2012) 14 European Journal of Migration and Law 284.

[28] European Commission, 'European Migration Network Inform – Statelessness in the EU' (2016) 2-3 available at <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_inform_statelessness_final_en.pdf> accessed 22 May 2020.

[29] European Parliament, 'Migration and Asylum' available at <www.europarl.europa.eu/thinktank/infographics/migration/public/index.html?page=intro> accessed 22 May 2020.

[30] Legislative Decree 276 – Nationality Law, 24 November 1969 (Syrian Nationality Law) available at <www.refworld.org/docid/4d81e7b12.html> accessed 22 May 2020.

(Articles 4-7, linked to several conditions, such as having legal residence inside the country, knowing the Arabic language) and the acquisition of nationality through marriage (Articles 8-9).

Following these rules, of those Syrians who change their host country during migration (not only those travelling to Europe, but everywhere else – a few millions of them went to Jordan, Lebanon, Turkey and Egypt), every child born outside Syria who does not know his or her Syrian father or cannot prove that he or she was born of a Syrian father is automatically a stateless person. Even if the child's mother knows that the father is Syrian, but he had stayed at home in Syria and is now lost or dead, she cannot pass Syrian citizenship on to her child.

Iraqi national law regulates the right to nationality in a different way. Pursuant to Article 3 of the 2006 Law 26 – Iraqi Nationality Law (INL),[31] a person is considered Iraqi if (a) he or she was born to an Iraqi father or mother or (b) he or she was born in Iraq to unknown parents. Proving Iraqi identity becomes complicated when the child is born outside Iraq. Article 4 provides that the Minister of the Interior may consider an application from any person born outside Iraq to an Iraqi mother and an unknown or stateless father if he chooses Iraqi nationality, within one year from coming of age, unless he fails to do so due to difficult circumstances, provided that he is residing within Iraq at the time of application for Iraqi nationality. Therefore, in Iraqi national law, there is also discriminatory treatment of women in the administrative procedure (the act is silent on situations where a child is born outside Iraq to an Iraqi father and a mother with an unknown nationality – perhaps, in the light of Article 3, such a child acquires citizenship automatically?). Subsequent articles of the INL determine conditions whereby nationality can be passed on through nationalisation, which also requires the taking of an oath to adhere to Islam (Article 8).

Finally, unlike the Syrian and Iraqi grounds for the acquisition and loss of citizenship, the Afghan nationality law is codified mostly with international standards, especially with human rights. The 2000 Law on Citizenship of the Islamic Emirate of Afghanistan[32] provides that citizenship is equal and similar for all citizens (Article 2). Traditionally, *ius sanguinis* is the primary pathway to citizenship, besides naturalisation and the obligations imposed by international treaties in the case of conflict of laws. However, the persistent, unstable political situation in the country since the 1980s has resulted in millions of Afghans fleeing to other co-

[31] Law 26 of 2006 – Iraqi Nationality Law, 7 March 2006 available at <www.refworld.org/docid/4b1e364c2.html> accessed 22 May 2020.

[32] Law on Citizenship of the Islamic Emirate of Afghanistan, 24 June 2000, available at <www.refworld.org/docid/404c988d4.html> accessed 22 May 2020.

untries. Today, the number of citizens who lose their Afghan citizenship is higher than those who acquire Afghan citizenship,[33] although Afghan law attempts to prevent statelessness and recognises even *ius soli* established to prevent the emigration of its native citizens.

As mentioned above, Syrian and Iraq provide a national law which discriminates against women in passing on nationality to their children (as is the case under Lebanese and Jordanian law, too).[34] In contrast, Afghan nationality law – although similar to international standards of acquiring citizenship – faces the problem of its own citizens not wanting to stay in Afghanistan and preferring to disclaim citizenship. Even though most Syrians, Iraqis and Afghans who emigrated to Europe after 2015 can prove their identity, their children born in exile face the big risk of statelessness if their parents cannot fulfil the conditions for nationality of the country of origin or if the host country does not accord nationality to stateless children born there. Special attention should be given to them as long as the unstable situation in their home countries persists and fuels migration, thereby greatly increasing the numbers of stateless people.

It is hard to give the exact numbers of stateless persons as a result of the migration crisis, but some statistics show that in 2016 alone over 142,000 Syrian children were born in exile. Over 90% of Syrian families cannot complete the birth registration of children born in Lebanon,[35] so the situation cannot be very different in Europe. This gives rise to an enormous problem that will need to be faced in the near future.

5 Propositions to resolve the problems

5.1 Global actions

First and foremost, there is no universal definition of statelessness accepted by all countries. This is the source of all the differences in the understanding of and in the approach to this problem. Therefore, a greater role should be played by the UN and the United Nations High Commissioner for Refugees (UNHCR) as initiators and coordinators of activities aimed at developing such a definition, primarily through ratification of the CRSSP and CSP. Efforts should also be made to achieve

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[33] Abdullah Athayi, *Report on Citizenship Law: Afghanistan* (European University Institute 2017) 1 and 17 available at <https://cadmus.eui.eu/bitstream/handle/1814/45933/GLOBALCIT_CR_2017_09.pdf> accessed 22 March 2020.

[34] See Decree No 15 on Lebanese Nationality including Amendments, 19 January 1925 and Law No 6 of 1954 on Nationality (last amended 1987) 1 January 1954.

[35] Institute on Statelessness and Inclusion, project 'Addressing Statelessness in the Syria Crisis Context' available at <www.nwo.nl/en/research-and-results/research-projects/i/49/26549.html> accessed on 22 May 2020.

consensus on the acceptance of dual citizenship in national legal orders – without having to surrender or possess one of them.

Another task would be to conduct reliable statistical research in cooperation with the governments of all countries (as in the case of refugees) to gain real knowledge of the scale of the problem, which today – with about 10 million stateless persons in the world – seems not to match reality, because countries with probably significant numbers of stateless persons (such as India or China) do not provide official statistics on this group of people.[36] Only a reliable, trustworthy assessment of the scale of statelessness will allow legal regulations to be redefined at the international level, which will have a direct and indirect impact on the situation of stateless persons.

In addition, the procedural framework for *de facto* stateless persons should be harmonised. To protect them, if in their country of origin they fear that their security may be threatened (including the rule of *non-refoulement* in customary international law), then a uniform standard of treatment should be introduced, eg in the form of a residence permit (in accordance with the provisions of the CRSSP). Obtaining an appropriate status would be a prerequisite for being granted adequate legal protection. However, if there are no concerns about the threat to the security of *de facto* stateless person, then, on account of the citizenship possessed, it would be desirable to regulate legal return to the country of origin, because in this way the person would gain the protection of his or her own government and would cease to be treated as someone on the margins of the host society.

The latest activities of the international community aimed at reducing statelessness include a campaign launched by UNHCR in 2014 to eradicate statelessness by 2024. It sets out a guiding framework made up of 10 Actions that need to be taken to end statelessness within 10 years.[37] The activities focus especially on preventing statelessness among children, preventing discrimination in nationality laws, and accession to the CRSSP and CSP. Although not all the Actions are required in all countries, probably at the moment of preparing the Action Plan, no mass migration amounting to millions was expected from Middle Eastern and African countries. The Global Action Plan to End Statelessness in 10 years may prove impossible in the current situation; nonetheless, countries should strive to achieve as many of the planned targets as possible.

[36] Lily Chen, Petra Nahmias and Sebastian Steinmueller, 'Statistical Reporting on Statelessness' (2019) 1 UNHCR Statistics Technical Series 1.

[37] UNHCR, Global Action Plan to End Statelessness: 2014-2024 available at <www.unhcr.org/ibelong/global-action-plan-2014-2024/> accessed 23 May 2020.

5.2 Regional actions

Regional organisations should first of all promote the acquisition of nationality as the primary solution. Having faster and more diverse direct measures (such as EU directives[38]) to influence Member States than the UN and its agencies, regional organisations should strive for harmonisation procedures to determine statelessness in as advanced a manner as was done in the refugee case. This should be done especially to ensure that no child is born stateless and all children are registered – which is ensured in all regional human rights law. The decisive factor in determining a child's nationality should first and foremost be the child's interest. All the more so in Europe, where most stateless persons were born in the region and are stateless in the only country they have ever known. To this end, adequate resources should be provided for local administrative offices to enable the systematic registration of births, and consideration should be given to introducing uniform international adoption procedures.

Regional organisations should also establish close cooperation with UNHCR to exchange information and good practices on statelessness; they should regularly report on human rights issues concerning stateless persons in the Member States.

5.3 State actions

Although statelessness touches upon international relations and international law in general, it is typically cast as a problem to be solved by nationality law.[39] Statelessness is an unfortunate consequence of the errors of public international law,[40] but can be remedied under national citizenship law.

Firstly, state authorities should remember that the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status. It would be desirable to prohibit discrimination in the constitutions of all countries. There should be an

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[38] There is an interesting concept for a statelessness directive in Swider and Den Heijer (n 4) 102: 'The key elements of an EU directive on statelessness would consist of common criteria for i) a fair procedure for determining whether a person is stateless; ii) the standard of treatment to be accorded to stateless persons; and iii) the conditions of residence for stateless persons'.

[39] Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff and Noordhoff 1979) quoted after Will Hanley, 'Statelessness: An Invisible Theme in the History of International Law' (2014) 25(1) European Journal of International Law 322.

[40] Francesco Costamagna, 'Statelessness in the Context of State Succession: An Appraisal under International Law' in Serena Forlati and Alessandra Annoni (eds), *The Changing Role of Nationality in International Law* (Routledge 2013) 39, quoted after Hanley (n 39).

equal model of giving nationality by *ius sanguinis* – not only the paternal model (which is present in the national legal orders of countries of the Middle East). The abolition of discrimination in the law of granting citizenship will eliminate the vast majority of cases that Europe and the world face in times of migration crisis.

It should be remembered that even the application of the CRSSP and CSP do not replace or in any way affect the citizenship of an individual. Therefore, in order to eliminate the incidence of statelessness, states should facilitate the path to naturalisation or repatriation. Naturalisation should be possible also for those who have actually lived in a country for several years and have set up their living centre there (they have started a family, have a permanent job), although they currently do not have an administrative residence permit due to their unknown origin – because they are integrated in society and could be a part of that society.

5.4 Civil society actions

All these global, regional and state actions should raise the level of understanding of statelessness among civil society, as well as promote and support actions preventing statelessness.[41] Only local integration will facilitate naturalisation and the inclusion of stateless persons in the active life of society. It is the duty of NGOs in particular – since they are the closest to people – to provide real help to stateless persons, such as by monitoring government activity in the field of legislation, offering free legal aid assistance, promoting awareness of human rights and European law rights (even litigating cases before the European Court of Human Rights), carrying out educational (language, professional work) projects and psychotherapeutic programmes, fighting discrimination, as well as meeting basic needs – food or clothing.

A good example here is the European Network on Statelessness, created in 2012, and committed to providing assistance to stateless persons and their integration into society. This network is formed by NGOs, academic initiatives and individual experts from almost 40 countries.[42] They often focus their activities on refugees (providing social aid and legal advice) and work in more than one country. The most important of those who cooperate include the Churches' Commission for Migrants in Europe (19 European countries), Asylkoordination (Austria), NANSEN (Belgium), the Information Legal Centre (Croatia), the Danish Refugee

[41] Cf UN, *Guidance Note of Secretary-General. The United Nations and Statelessness* (2011).

[42] More information on the structure and membership of the European Network on Statelessness is available at <https://www.statelessness.eu/about-us/structure-and-membership> accessed 7 October 2020.

Council (Denmark), France terre d'asile (France), Informationsverbund Asyl und Migration (Germany), the Greek Council for Refugees (Greece), the Hungarian Helsinki Committee (Hungary), Consiglio Italiano per i Rifugiati (Italy), ASKV Refugee Support (Netherlands), the Norwegian Refugee Council (Norway), the Helsinki Foundation for Human Rights (Poland), Accem (Spain), the Swedish Organization Against Statelessness (Sweden), Humanrights.ch (Switzerland), Refugee Rights Turkey (Turkey), and the Refugee Council (UK). Civil society organisations can be found in all European countries. Their commitment, also supported by reliable knowledge,[43] helps to include people from the margins of society into active civic life.

6 Conclusion

Statelessness is a global issue, and also both a legal and a human problem that cries out for real solutions. The lack of ties in the form of nationality between the individual and the state poses a threat to human security, as well as to national and international security. The condition of 'rightlessness', the denial of human rights to which stateless persons are condemned, is a worldwide phenomenon which demands our attention. Despite the development of the international human rights protection system after World War II, no solution has been found to eliminate the problem of the lack of the 'right to have rights' formulated by Hannah Arendt.

Statelessness remains a side issue in the debate on the migration crisis, which is a *signum temporis* of modern times, but this is a growing problem that must be tackled. In the near future, it will start to weigh more and more heavily on the European and international community. The current migration crisis in Europe has some specific features: the origins of asylum seekers are more diverse than in previous waves, many come from farther away than neighbouring EU countries and the situation in their homelands during the last 10 years has been unstable, without signs of any quick positive solutions in the near future. As mentioned, there is a new stateless generation growing up in Europe consisting of children of Syrians, Iraqis and Afghans who came as migrants or as refugees (and often even as children without an adult guardian or carer, which is why no one can prove their identity), and whose status is so vulnerable due, most often, to the paternal *ius sanguinis*, the discrimination of women in nationality law, or internal conflict. Not all

[43] Reliable information on statelessness and citizenship is provided, eg, by the Institute on Statelessness and Inclusion (see <www.institutesi.org> accessed 7 October 2020) and GLOBALCIT - an observatory within the Robert Schuman Centre of the European University Institute in Florence (see <globalcit.eu> accessed 7 October 2020).

immigrants can prove their identity and they also cannot go back to their home countries to obtain the required identity documents. Children are at risk of becoming stateless in host countries if their parents cannot produce the required identity documents from the country of origin, or, simply, just because they were born in exile, and their parents' country of origin denies citizenship rights to be passed on to them. They, in turn, will give birth to stateless children and the problem will only worsen. Therefore, one of the desirable solutions is to facilitate naturalisation, because inclusion in society and legalisation of stay will bring economic, political and social benefits to countries, societies and stateless persons themselves.

The concept of 'world citizen identity' might be too farfetched, but perhaps there is a chance, paradoxically, that due to the huge 2015 influx of new migrants, the sense of European identity will become stronger among the stateless generation. EU legislation already knows the concept of 'EU citizenship', which shapes EU integration, so perhaps in the future the motto 'I am European' will take on a new meaning.

Eradicating statelessness requires the coordination and cooperation of international, regional, national and civil society actions. In the current situation – as consensus has already been developed internationally – the priority should be to grant citizenship to children who do not have documents and were born in the host country. This will contribute to their inclusion in society without making them prey to the destructive effects of statelessness. The principle of equality and non-discrimination which is the foundation of human rights, and the UN's motto to promote peace, democracy and the rule of law, should not just be a conceptual declaration in the international human rights system, but, rather, an everyday reality experienced by stateless persons.

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