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Citizenship in the Context of the Dissolution of Czechoslovakia

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The right to a nationality and the need to ensure realization of an effective nationality as a basis for the exercise of other rights, has undergone considerable development through the course of this century, motivated by an increased prominence of the rule of law and respect for human rights. Efforts by the international community to establish and promote this right led to the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, promulgated under the auspices of the League of Nations following World War I. The provisions of this Convention were enriched soon afterwards by Article 15 of the 1948 Universal Declaration of Human Rights which states: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality." The 1961 Convention on the Reduction of Statelessness, promulgated under the auspices of the United Nations following World War II, represented the next step. The principles embodied in these conventions have been elaborated upon and reinforced by other landmark conventions, court jurisprudence and State practice. The right to a nationality is, now, a basic human right, acting as a premise for resolution of any issues or questions pertaining to nationality.

Given that everyone has the right to a nationality, how is this right to be realized, how is nationality to be ascribed? International law stipulates that it is for each State to determine, by operation of internal law, who are its citizens. This determination must, however, accord with general principles of international law and, in particular, principles relating to the acquisition, loss, or denial of citizenship. The codification of principles relating to nationality in international instruments, and additional developments in international law in this century including State practice in ascribing nationality, have provided a foundation for determining the basis upon which nationality should be granted.

Despite significant developments in international law and practice relating to nationality, however, the international community currently faces numerous situations of statelessness and the inability to establish a nationality. Among other contexts, the problem has arisen in connection with State succession and the adoption of nationality legislation by new or restored States. The simultaneous emergence of conflicts involving ethnic groups, numerous sudden cases of State succession, and increased displacement have brought the nationality issue to the foreground.

Due to recent developments such as the dissolution of States, statelessness, although not a new phenomenon, has taken on new dimensions. Its potential as a source of regional tension and of involuntary displacement has come to be more widely recognized. The General Assembly of the United Nations and the Executive Committee of the High Commissioner's Programme have respectively adopted resolutions and conclusions stressing the importance of the right to a nationality, and of the need for States to adopt measures to avoid statelessness. Initiatives have been

taken by other international and regional organizations, notably the Council of Europe as well as the US Helsinki Commission and concerned non-governmental organizations. The ability to exercise an effective nationality and the prevention and reduction of statelessness are a contribution to the promotion of human rights and fundamental freedoms, to the security of peoples, and to stability in international relations. UNHCR is pleased to provide this publication in furtherance of these goals.

UNHCR has specific responsibilities in respect of statelessness and the realization of an effective nationality. At its 46th session in October 1995, UNHCR's Executive Committee adopted a Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons, later endorsed by General Assembly Resolution 50/152 of 9 February 1996. The Conclusion recalled the responsibilities concerning statelessness already entrusted to the High Commissioner's Office under the 1961 Convention on the Reduction of Statelessness, and as part of its statutory function of providing international protection and seeking preventive action. UNHCR was requested to undertake several additional steps in promotion of the prevention of statelessness and the exercise of an effective nationality, including the provision of relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States.

The Office of the High Commissioner for Refugees has been approached by Governments seeking advice and assistance in nationality matters, including in the drafting and implementation of nationality legislation. An essential element in strengthening efforts to reduce statelessness and the inability to establish nationality, is effective and active dialogue between organizations entrusted with the promotion of international legal principles concerning nationality, and States enacting legislation which will determine who shall be granted nationality and under what conditions. The dissolution of Czechoslovakia into two States, and the subsequent arrangements to ascribe citizenship, presented a valuable opportunity to engage in such dialogue.

UNHCR has appreciated the extensive cooperation with both the Czech and Slovak authorities. The newly emerged Czech and Slovak Republics faced significant time constraints in the drafting and adoption of legislation to determine the initial body of citizens, and mention should be made of the successful strides taken to meet this weighty challenge. At the invitation of both States, UNHCR undertook an analysis of remaining problems relating to nationality which had arisen as a result of the dissolution of the former Czechoslovakia. An initial mission took place in January of 1995 and was the precursor to several further missions, continued cooperation with UNHCR offices at Headquarters and in the region, and intensive dialogue with officials from Ministries and concerned government bodies. UNHCR

was cordially welcomed in both the Czech and the Slovak Republics. All parties have undertaken to work together toward a deeper appreciation of the problems involved and the most effective means of resolving any outstanding issues.

It is appropriate, therefore, for UNHCR to express appreciation to the Slovak authorities for adopting legislation which recognized not only the need to avoid statelessness, but also allowed former Czechoslovaks to acquire Slovak citizenship without rejection due to restrictive criteria. UNHCR would, similarly, like to acknowledge and congratulate the Czech authorities for the latest amendment of the Czech Citizenship Law No. 40/1993. This amendment will allow the Ministry of the Interior to exercise discretion in the application of the law and, thereby, to waive certain of the criteria which had previously precluded the acquisition of Czech citizenship by some of those who were resident at the dissolution. While these individuals were long-term residents and, in some cases, were born on the territory of what is now the Czech Republic, they were unable to obtain Czech citizenship. If vigorously exercised, the legislative amendment may act to resolve many of the hitherto outstanding cases relating to nationality which UNHCR has observed.

This process is an important step in UNHCR's efforts towards the reduction of *de jure* and *de facto* statelessness. The effective change in legislation, and the willingness of the Czech and Slovak Republics to engage the international community on the pressing problems concerning statelessness can serve as an important precedent for other States facing resolution of nationality problems, particularly in the context of State dissolution. UNHCR has, accordingly, undertaken this publication as an account of its position, efforts and experiences in the dialogue carried out over the past two years. Both the Czech and the Slovak authorities provided a response to UNHCR's paper and have agreed to the inclusion of their comments. Thus follows the fruitful culmination of a mutually cooperative effort, for which UNHCR expresses the highest appreciation.

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THE CZECH AND SLOVAK CITIZENSHIP LAWS AND THE PROBLEM OF STATELESSNESS

(Position Paper prepared by the United Nations High Commissioner for Refugees – Regional Bureau for Europe/Division of International Protection)

INTRODUCTION

In presenting this paper, UNHCR would first like to acknowledge the challenge the authorities faced, at the dissolution of the former Czechoslovakia, in drafting nationality legislation under pressure and time constraints. UNHCR would like to commend the Czech and Slovak authorities who, in a very short period of time, managed to craft a system for the peaceful division of the CSFR that has largely succeeded in sorting out the affairs of the former Federal state. Since January 1993, when the two states terminated their shared Federation, the Czech authorities have granted over 380,000 applications for citizenship, most of them to citizens of the former CSFR. UNHCR also welcomes several practical steps taken by the Czech authorities to eliminate or minimize problems of *de jure* and *de facto* statelessness on its territory. Finally, UNHCR would like to thank the Czech authorities for their willingness to discuss at length with UNHCR their position on the citizenship law and to take some cooperative steps with UNHCR in ascertaining the nature and scope of the difficulties arising from the operation and application of the law.

The law has, however, generated criticism. During the September 1994 Warsaw seminar on Roma, organized by the OSCE Office for Democratic Institutions and Human Rights, both the Deputy Secretary General of the Council of Europe and the OSCE High Commissioner on National Minorities expressed serious concern regarding the Czech citizenship law. The Deputy Secretary General of the Council of Europe stated:

> *"There is particular concern about the effects of the citizenship law of the Czech Republic and its implementation which seem to have left a considerable number of Roma stateless even though they have been living in that country for quite some time."* [1]

[1] Statement by Peter Leuprecht, Deputy Secretary General of the Council of Europe, at the Human Dimension Seminar on Roma in the OSCE Region, organized by the office for Democratic Institutions and Human Rights and the High Commissioner for National Minorities, in Cooperation with the Council of Europe, Warsaw, 20 – 23 September 1994.

The OSCE High Commissioner on National Minorities, voiced a similar opinion in stating:

> *"In no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or even to withhold citizenship from possibly tens of thousands of life-long and long-term inhabitants of the state, most of whom are Roma. As a result, the status of these persons is essentially that of foreigner' in their own country. This would greatly undermine what I would consider to be in the long-term interest of the state. I would strongly urge that the clearly negative impact of such legislation be considered, and that appropriate changes be made."* [2]

Similar concerns on the same matter were expressed by the USA, Germany on behalf of the European Union, and interested NGOs, during the OSCE Budapest Review Conference held in November of 1994. The situation in the Czech Republic has since been followed by concerned international organizations, including the Council of Europe, OSCE and the United Nations High Commissioner for Refugees (UNHCR), with demarches undertaken at the highest level regarding the citizenship law and its administration. The Council of Europe has undertaken fact-finding missions and a report is being prepared.

UNHCR was invited by the Czech and Slovak Ministries of Foreign Affairs to undertake fact-finding missions in an effort to acquire an overall picture of citizenship issues in the two countries. The Deputy Director of the Regional Bureau for Europe and the Senior Regional Legal Adviser for Central and Eastern Europe undertook these missions in December, 1994 and January, 1995. In March, 1995, a report containing UNHCR's preliminary observations was presented to the Czech and Slovak authorities.[3] Developments at the local level were followed throughout the course of 1995, during which UNHCR contracted a consultant to undertake field work as a means of gathering some indication of the extent of the problem. These endeavors culminated in two further UNHCR missions to the Czech Republic in December of 1995, the first undertaken by a team of legal technicians and the second by the Deputy Director of the Regional Bureau for Europe, the Regional Representative for Central Europe, the Head of Office in Prague, and UNHCR's consultant. This paper incorporates the information gathered during these missions and analyzes the issues of statelessness and realization of an effective nationality, as per UNHCR's mandate and the agreement reached mutually between UNHCR and the respective Ministries in Prague.

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[2] Statement by Max van der Stoel, OSCE High Commissioner on National Minorities, Human Dimension Seminar on Roma in the OSCE Region, *Ibid.*, Consolidated Summary, p. 12.

[3] A response was received from Czech officials in May, 1995 which has been considered in preparation of UNHCR's final report. As of yet, no response has been received from Slovak authorities.

UNHCR AND ISSUES PERTAINING TO NATIONALITY [4]

The Office of the United Nations High Commissioner for Refugees, recalling its mandate regarding statelessness, has participated actively in discussions with other organizations, and in consultation with both the Czech and Slovak authorities, regarding the citizenship legislation. The attention of the authorities has been drawn to the fact that certain provisions of the citizenship law are not in accordance with international legal standards and may lead to situations of *de jure* statelessness or the inability to realize an effective nationality. As stated by Madame Ogata, High Commissioner for Refugees, at the 51st session of the Commission for Human Rights in 1995:

> *"Stateless persons are another category in need of international protection, for whom UNHCR has a special responsibility. My Office has been designated as an intermediary between States and stateless persons under the 1961 Convention on the Reduction of Statelessness. Most recently, UNHCR has been requested by its Executive Committee to place the matter of statelessness on its agenda this year. We will explore promotional and preventive activities to which UNHCR can contribute in collaboration with concerned States. There is an obvious link between the loss or denial of national protection and the loss or denial of nationality. On the plane of rights, the prevention and reduction of statelessness is an important aspect of securing minority rights."* [5]

UNHCR has long had responsibilities for stateless refugees, both under the 1951 Convention relating to the Status of Refugees, [6] and in respect of the Office's statutory function of providing international protection, including prevention, wherever possible, of involuntary displacement. Indeed, the realization of an effective nationality is considered, under the 1951 Convention, one of the primary means of overcoming refugee situations.

Although UNHCR's functions under the 1961 Convention on the Reduction of Statelessness [7] are more focused, the Office is keenly aware of the obligation, entrusted by the General Assembly, [8] to fulfill the functions foreseen under Article 11 of the 1961 Convention. As these pertain to determination of nationality status, mediation between the individual and the State, and principles related to cases of

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[4] The terms citizenship and nationality are used throughout this paper as synonyms.

[5] Statement by Sadako Ogata, United Nations High Commissioner for Refugees, at the 51st session of the Commission for Human Rights, 1995.

[6] 189 *United Nations Treaty Series* 137, text in UNHCR, *Collection of International Instruments Concerning Refugees* (Geneva: UNHCR, 1988), p. 10.

[7] 989 *UNTS* 175; text in UNHCR, *Collection*, p. 82.

[8] UN General Assembly Resolutions 3274 (XXIX), 10 December 1974, and 31/36, 30 November 1976.

State succession, they are of particular significance in the current analysis. Beyond UNHCR's role, the principles embodied in the 1961 Convention have been used by the Council of Europe and other experts in the field of nationality as a reference point for determination of international law and international consensus regarding nationality. Indeed, the 1961 Convention serves as a backbone to both the Constitutional and the Human Rights Annexes of the recently concluded Dayton Peace Agreement for Bosnia and Herzegovina and will serve as a pivotal instrument around which citizenship issues must be resolved. While there are a minimal number of States signatory to the 1961 Convention,[9] the principles embodied in the Convention are adhered to by a majority of States in their nationality legislation and practice. As Czech officials have indicated a desire to review the provisions of the Convention on the Reduction of Statelessness in consideration of accession and, further, as the principles have been referred to as the international community's consensus on the minimum legal standards to be applied to questions of nationality, a brief outline of the basic provisions of the Convention on the issue of State succession is included in this paper.

Of further relevance to UNHCR's interactions with States on questions pertaining to nationality is the Conclusion on The Prevention and Reduction of Statelessness and the Protection of Stateless Persons,[10] recently adopted by the High Commissioner's Executive Committee and endorsed via Omnibus Resolution by the General Assembly of the United Nations. The Executive Committee, echoing Article 15 of the Universal Declaration of Human Rights, recognizes the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality, and:

> "Calls *upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality, and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality;*
>
> Requests *UNHCR ...to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;*
>
> Further requests *UNHCR actively to promote the prevention and reduction of statelessness through the dissemination of information, and the training of staff and government officials; and to enhance cooperation with other interested organizations.*" [11]

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[9] Currently 17 States are parties. For a historical perspective on the 1961 Convention see documents EC/1995/SCP/CRP.2 and EC/1995/SCP/CRP.6 attached in Annex, as well as Batchelor, C., *Stateless Persons: Some Gaps in International Protection*, International Journal of Refugee Law, Vol. 7, 1995.

[10] A/AC.96/860, 23 October 1995, para. 20, attached in Annex.

[11] *Ibid.*, para. 20.

It is also important to note the Executive Committee's concern regarding both *de jure* and *de facto* statelessness. It has been suggested that there are no, or at least very few, cases of *de jure* statelessness as a result of the dissolution of the former Czechoslovakia and, therefore, that there is no basis for the extent of UNHCR's concern. It is certainly true, that in the early stages of the dissolution, various organizations were concerned that large segments of the population would become stateless, which might lead to displacement.

Population displacement on a significant scale has not been observed. How-ever, there is no way to definitively analyze the potential for displacement because it cannot be categorically stated that there are not significant numbers of *de jure* stateless persons. One simple means of ascertaining numbers of *de jure* stateless persons, via comparison of the list of those who were released from Slovak nationality with the list of those who applied for Czech nationality, has been at the disposal of the Czech and Slovak Ministries for the last year. While comparison of these two categories would seem to be a relatively simple task, agreed to in principle by the authorities from both countries, either this comparison has not taken place or the information has not been made available. Rather, UNHCR has been asked itself to identify cases of *de jure* statelessness to show that the law and its administration had the potential of creating *de jure* statelessness. While the Office has identified some cases, it is the task of a government to actively cooperate in reviewing and releasing information at its disposal, as well as to prevent, identify and resolve cases of statelessness.

Of further concern is the suggestion that only factual cases of *de jure* statelessness should be of interest to UNHCR. As noted above, the Office is obliged to consider nationality legislation which could lead to displacement. In the Conclusion on The Prevention and Reduction of Statelessness and the Protection of Stateless Persons, the UNHCR Executive Committee expressed its concern that "statelessness, *including the inability to establish one's nationality,* may result in displacement."[12] There are numerous cases in which *de facto* statelessness has been shown to be related to population displacement. While some refugees are *de jure* stateless, the vast majority of refugees and displaced persons are *de facto* stateless, making this category *or the potential creation of such a category of persons* of great concern to the Office.

UNHCR is also responsible for reviewing legislation and administrative practice which is not "consistent with fundamental principles of international law" as part of its function of providing "relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States."[13] A fundamental tenet of law concerning nationality is that States are not free

[12] *Ibid.*, emphasis added.

[13] *Ibid.*

to bestow or revoke nationality randomly. The International Court of Justice in the pivotal *Nottebohm* case stated:

> "*[A] State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted in conformity with the general aim of making the legal bond of nationality accord with the individual's genuine connection with the State.*" [14]

The Czech and Slovak Citizenship Acts did not ascribe nationality to those who had no pre-existing connection with the former Czechoslovakia. Hence, the governments have themselves referred to some criteria in the initial grant of nationality, including birth, residency, descent and citizenship of the former State. Principles relating to nationality are, in the context of State succession, pertinent to an analysis of the effectiveness of a nationality. The 1961 Convention, by way of resolution in the Final Act:

> "Recommends *that persons who are stateless* de facto *should as far as possible be treated as stateless* de jure *to enable them to acquire an effective nationality.*" [15]

Hence, UNHCR, as part of its obligation to provide technical and advisory services pertaining to nationality legislation, to elaborate upon fundamental principles of international law and, in particular, as part of its function under Article 11 of the 1961 Convention to examine nationality status, must consider the problems associated with an inability to establish nationality or to realize an effective nationality. Indications are that there are significant numbers of *de facto* stateless persons in Czech Republic. Many individuals are assumed by the Czechs to be Slovak, for lack of information to the contrary. For this reason, it is important that consideration be given by both the Czech and the Slovak authorities to means of resolving remaining problems of *de facto* statelessness.

UNHCR's Executive Committee has, therefore, recently elaborated upon the responsibilities incumbent upon the Office in matters relating to nationality. With this basis, fundamental principles of international law will be of particular concern in the case at hand, as will arbitrary deprivation of nationality or release of nationality without concordant acquisition of an alternative nationality. The problem of *de facto* statelessness is inextricably part of these concerns.

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[14] ICJ *Reports*, 1955, p. 23.

[15] Above, note 7.

SOURCES OF LAW

"Citizenship is man's basic right for it is nothing less than the right to have rights."[16] When Chief Justice Earl Warren made this statement he was reflecting upon two aspects of citizenship: the first, citizenship *is* a right, the second, that the realization of this right is a necessary precursor to the realization of other rights. Citizenship, or nationality, provides the legal connection between an individual and a State which serves as a basis for certain rights, including diplomatic protection and representation of the individual on the international level. The realization of an effective nationality is a stabilizing and connecting factor, decreasing the potential for population movement or displacement. Thus, while the extension of civil rights generally associated with citizenship, such as voting, employment, or ownership of property, may be one means of normalizing the status of non-citizens on a State's territory, there is no replacement for citizenship itself.[17]

UNHCR's Executive Committee Conclusion, noted above, requires States "to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law."[18] The sources for fundamental principles of international law are delineated in Article 38 of the Statute of the International Court of Justice, established by the Charter of the United Nations. Article 38 of the Court cites international conventions (treaties), international custom (State practice), and general principles of law as the primary indicators of current law. International law is not a static entity. Codified provisions of treaties are themselves interpreted with reference to custom, general principles, and other treaties when necessary. Rather, international law develops and changes over time as new conventions are promulgated, new custom is formed, new cases and arbitral decisions clarify or override previous decisions, experts deliberate and expound upon principles of law, and international and regional organizations adopt new instruments and practice. For this reason, the law and the theory of law prior, in particular, to adoption of the United Nations Charter, the Universal Declaration of Human Rights, and other significant legal developments, can no longer be assumed to represent the current status of affairs unless it has remained unchallenged by any of the primary sources of law themselves.

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[16] Earl Warren, 1958, quoted in Independent Commission on International Humanitarian Issues, *Winning the Human Race?* (1988), p. 107.

[17] It is recognized that a number of measures have been taken by the Czech authorities to extend civil and social rights to those deemed to have Slovak nationality while resident on Czech territory at the dissolution. While all measures to improve the status of these individuals are welcome, as indicated, this cannot be perceived to redress a lack of Czech citizenship which, of itself, carries certain rights.

[18] Above, note 10.

In the case of international law pertaining to nationality, as early as 1923, the Permanent Court of International Justice (PCIJ), in its *Advisory Opinion on the Tunis and Morocco Nationality Decrees,* stated:

> *"The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations."* [19]

The 1930 Hague Convention on Nationality, held under the auspices of the Assembly of the League of Nations, and the first international attempt to provide everyone with a nationality, picks up this theme in Article 1:

> *"It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."* [20]

This reference to the three primary sources of international law, later encoded in Article 38 of the Statute of the International Court of Justice noted above, was made so as to qualify State sovereignty, an effort deliberately made throughout this century in all areas of international law in the attempt to promote stability and a cooperative spirit in international relations.

The State has the right and the obligation, therefore, to determine who are its citizens *provided* this determination does not conflict with contemporary principles of international law. While contemporary international law cannot be traced to one convenient source and does require some assembling, basic principles on nationality are contained in each of the three primary sources of law noted. Further, nationality legislation touches upon a number of areas of law, including human rights, conflicts of law, and State succession. While the purpose of this document is not to undertake a comprehensive analysis of international law on the question of nationality, at the request of the authorities some indicators of these principles have been cited in the following brief outline.

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[19] Permanent Court of International Justice, *Advisory Opinion on the Tunis and Morocco Nationality Decrees,* Ser.B, No. 4, 1923, p. 23.

[20] 179 *League of Nations Treaty Series* 89, p. 99.

INTERNATIONAL LEGAL PRINCIPLES PERTAINING TO NATIONALITY IN THE CONTEXT OF STATE SUCCESSION

Nationality principles are different in the context of State succession than they are under normal naturalization procedures. This is due, partly, to the fact that State practice and treaties concluded in transfer of territory have been consistent enough for particular principles to be extracted. The development of human rights has, in the past 50 years, further qualified the grant of nationality in the succession of States.

In the present context, State sovereignty in nationality matters must be analyzed in the light of State dissolution, focusing on the obligations of successor States. Legal opinion has developed over the years in this field. As indicated in the foregoing discussion on the evolution of international law, an opinion expressed earlier in this century must be reviewed in light of treaties, State practice, human rights and other relevant developments in the interim. In this regard, Ian Brownlie finds evidence overwhelmingly in support of the view that the population follows the territory in any change of sovereignty. In view of State practice as analyzed by Brownlie, there is a general presumption that persons "attached" to a territory will *ipso facto* lose their former citizenship and acquire that of the new State. Citizenship changes when sovereignty changes hands. Attachment is taken to mean a substantial connection with the territory concerned as evidenced by citizenship, residence, or familial relation to one with citizenship or residence. This link of people with the territory is, he argues, in accord with human and political realities.[21]

Paul Weis argued that while there was no rule of international law under which the national of the predecessor State acquired the citizenship of the successor State, there was a presumption in international law that the new State would confer its nationality on nationals of the predecessor State.[22] The Special Rapporteur for the International Law Commission on State Succession and its Impact on the Nationality of Natural and Legal Persons has, however, more recently stated:

> *"[I]t is no longer possible to maintain without any reservation the traditional opinion expressed by O'Connell, according to which,*
>
> > *[u]ndesirable as it may be that any persons become stateless as result of a change of sovereignty, it cannot be asserted with any measure of confidence that international law, at least in its present stage of development, imposes any duty on the successor State to grant nationality."* [23]

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[21] Brownlie, I., *Principles of Public International Law*, (4th ed., 1990), p. 560.

[22] Weis, *Nationality and Statelessness in International Law*, 2nd Rev. Ed., 1979, Sijthoff and Noordhoff.

[23] Mikulka, V., Special Rapporteur, *First Report on State Succession and its Impact on the Nationality of Natural and Legal Persons*, International Law Commission 47th session: UN doc.A/CN.4/467, 17 April 1995, p. 31.

Johannes Chan reasons that, upon a change of sovereignty, all persons who have a genuine effective link with the new State will automatically acquire the citizenship of the new State. It is within the competence of each State, within the parameters established by international law, to determine what constitutes a genuine effective link for purposes of granting of its citizenship, subject to the presumption of avoidance of statelessness and the duty not to apply any law on a discriminatory basis which would be in contradiction with Article 15 (2) of the Universal Declaration of Human Rights.[24]

Article 10 of the 1961 Convention states:

> *"1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.*
>
> *2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition."* [25]

This provision, reflective of the International Law Commission's and the Plenipotentiaries' assessment of the status of international law at that time, states the rule that, in principle, the population goes with the territory. Contemporary principles of international law indicate this position has been reinforced, that is, that the population follows the change of sovereignty for those domiciled on the territory in question. Again, according to Brownlie:

> *"[The] concept of territory is perhaps inherent in the rule that state succession results in automatic change of nationality. The population has a 'territorial' or local status, and sovereignty here involves clear responsibilities toward the people concerned."* [26]

The general principle is that there is a substantial connection with the territory concerned through residence itself, one aspect of the general principle of the genuine effective link. The doctrine of an effective nationality makes reference to the

[24] Chan, J.M., *The Right to a Nationality as a Human Right*, Human Rights Law Journal, Vol. 12.

[25] Above, note 7.

[26] Brownlie, above, note 21.

reliance of treaties and municipal laws on habitual residence or domicile, the underlying theme being that "a stable community is normally related to a particular territorial zone."[27] Incorporating a review of *State practice, treaties, general principles of law, and the opinions of experts*, Brownlie states:

> *"Sovereignty denotes responsibility, and a change of sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government. The population goes with the territory: ...it would be illegal for the successor to take any steps which involved attempts to avoid responsibility for conditions on the territory, for example by treating the population as* de facto *stateless or by failing to maintain order in the area. The position is that the population has a 'territorial' or local status, and this is unaffected whether there is a universal or partial successor and whether there is a cession, i.e. a 'transfer' of sovereignty, or a relinquishment by one state followed by a disposition by international authority."*[28]

This theme is taken up by the Special Rapporteur for the International Law Commission. In his preliminary report,[29] Mikulka interweaves the principles enunciated in the *Nottebohm* case in reference to factors relevant in establishing the genuine effective link. The Special Rapporteur notes that, in its decision, the Court indicated:

> *"International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. ...[T]he habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc."*[30]

This is particularly pertinent in the case of the dissolution of Czechoslovakia, for when two States emerged so did the question of which nationality was the most appropriate for the residents concerned. **The clear principles herein outlined by State practice, treaties, the 1961 Convention and expert opinion, all point to residence and the genuine effective link as the key factors for determination of nationality in the context of State succession.** In cases of dual nationality,

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[27] *Ibid.*, p. 560.

[28] Brownlie, *ibid.*, pp. 664-5. See text for reference to the sources Brownlie incorporates.

[29] Above, note 23.

[30] ICJ *Reports*, 1955, p. 22 *as quoted in* Mikulka, V., above, note 23.

international law refers to these factors to determine the real and effective nationality, the State with which the individual is associated in fact. Given the fact that both residence and the genuine effective link of those concerned point to the Czech Republic, reinforced by these individuals when they expressly opted for Czech nationality, it is difficult to conceive of the basis for the Czech government's determination that long-term residents, some of whom were born on Czech territory were, in fact, Slovaks who could exercise a right of option for the nationality of the State in which they reside *only* upon passing certain criteria.

Regard must be paid, moreover, to principles of human rights law. The criteria introduced by the Czech government for long-term and, in some cases, lifelong residents on the territory of the Czech Republic for acquisition of nationality affected, primarily, one distinct minority group, the Roma.[31] Of immediate concern is the impact of the legislation and its consistency with fundamental principles of international law. Article 15 of the Universal Declaration of Human Rights stipulates:

> "*1. Everyone has the right to a nationality.*
> *2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*" [32]

This right has been elaborated upon further in the many instruments adopted since the Universal Declaration which touch on the question of nationality.[33] The generally accepted means of determining nationality is via the genuine effective link, as promulgated by the International Court of Justice in the *Nottebohm* case. The Court stated:

> *"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, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State."* [34]

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[31] Reports of the Tolerance Foundation, a non-governmental organization active in the Czech Republic, confirmed by the UNHCR consultant's study.

[32] UN General Assembly Resolution 217 A(III), 10 December 1948, text in *Human Rights: A Compilation of International Instruments*, Vol. 1 (First Part), 1994, p. 1.

[33] As a preliminary study, see the 1957 Convention on the Nationality of Married Women, 1961 Convention on the Reduction of Statelessness, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights, 1979 Convention on the Elimination of All Forms of Discrimination Against Women, 1989 Convention on the Rights of the Child.

[34] Above, note 14.

There are connecting factors which indicate a tie with a particular State and, as everyone has the right to a nationality and shall not be deprived of nationality nor of the right to change it, clearly there are certain obligations incumbent upon States to ensure this right to those who are more closely connected with it than with any other State.

It is not evident, therefore, why these connecting factors have not been considered by the Czech authorities in adopting its citizenship laws. The fact that the failure to consider these factors has had a negative effect on one group in particular is of concern, even if there was no intention that this particular group be adversely impacted. In discussing human rights and nationality in State succession, the Special Rapporteur for the International Law Commission cites Article 8 of the Convention on the Reduction of Statelessness which provides that a Contracting State "shall not deprive a person of its nationality if such deprivation would render him stateless."[35] He goes on to note Article 9 of the same Convention which indicates:

> *"A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."*[36]

The Special Rapporteur sums up his preliminary considerations on human rights and nationality in the context of State succession with the following observation:

> *"As stated by one author,*
>
> > *"[E]thnic options based on the subjective test of 'race', for example, may be arbitrary in the sense that they are contrary to the prohibition of discrimination based on race, sex, language, or religion, as expressed in article 1, paragraph 3, of the Charter of the United Nations and subsequent international instruments."*[37]
>
> *Thus, the application of such criteria could be objected to on the basis of fundamental human rights standards."*[38]

In summary, it would seem that contemporary principles of international law indicate that the population follows the territory in any change of sovereignty *unless* there are factors to indicate a closer connection to another State. When the Czechs introduced the right of option accompanied by assessment conditions they were anticipating a certain amount of cooperation from the Slovaks, for the results would

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[35] Above, note 7.

[36] *Ibid.*, Article 9, *as quoted in* Mikulka, above, note 23, p. 31.

[37] Donner, R., *The Regulation of Nationality in International Law*, 2nd ed. (Irvington-on-Hudson, NY, Transitional Publishers, 1994), pp. 262-269 *as quoted in* Mikulka, above, note 23, p. 31.

[38] Mikulka, above, note 23, p. 31.

have been disastrous if the Slovaks had chosen to refer only to the normal criteria of residency and a genuine effective link. Had the Czechs introduced new criteria, finding residents to be Slovak, and the Slovaks referred to the standard criteria of residency and the genuine effective link, finding those in the Czech Republic to be Czech, the individuals concerned would have been caught in the middle with no nationality. The only reason the problem has not been more substantial is that both governments agreed on the criteria, an agreement which may not necessarily be forthcoming in all situations because the criteria accepted by both States in this case do not reflect accepted standards under international law. It is for this reason that the Czech nationality legislation, finding long-term and lifelong residents with a genuine effective link in the Czech Republic to be non-citizens, who may acquire citizenship where they reside only if they meet narrowly defined qualifying conditions (such as the clean criminal record), has received such sharp and unrelenting criticism.[39]

HISTORICAL FRAMEWORK

From 1918 until 1968, Czechoslovakia was a unitary State with a single citizenship. With the creation of the Czechoslovak Federation in 1968, two layers of citizenship were introduced: the citizenship of the Federation and the citizenship of the two constituent entities of the Federation. In the context of international law, only the citizenship of the Federation was of significance, conferred rights and duties which were internationally recognized and could be opposed by other States in the exercise of diplomatic protection. Citizenship in one of the two federal entities held only internal importance. No significant rights were attached to it and it served exclusively to maintain an historical and ethnic association with one of the two entities. The internal distinction was a legal construct without substantive impact on the lives of individuals.

Citizenship laws of the Czech and Slovak Socialist Republics, adopted in reflection of the constitution of the Federation, used as their basis the criterion of the place of birth as inherited through the internal citizenship law. Under Article 2, para. 1 of the law of the Czech National Council of 29 April 1969, a Czech national is a person:

> *"[W]ho enjoyed the nationality of the Czechoslovak Socialist Republic by 1 January 1969 ... provided he was born in the territory of the Republic."* [40]

[39] Some question has arisen as to the vital interests of a State, even in the context of State succession. While reference to vital interests is relevant in cases of naturalization, there is no contemporary legal basis for the suggestion that a State's vital interest would override the genuine effective link, human rights law, or international legal principles in the case of State succession.

[40] Provisions of the various laws quoted in the present paper have been excerpted from unofficial translations made by UNHCR.

Similarly, Article 2 para. 1 of Slovak National Council Law of 28 December 1968 states:

> *"He who claims the nationality of the Czechoslovak Socialist Republic prior to putting the law into effect is deemed the national of the Slovak Socialist Republic provided he is born in the territory of the Slovak Socialist Republic."*

Article 2 of both laws was intended to constitute the initial body of citizens of the two constituent entities of the Czechoslovak Federation.[41] Many people had, however, moved from one territory to the other and were well-settled in a Republic they were not born in. The question then arises as to why domicile was not the criterion used. It is important to note, that the internal citizenship law was used mainly for purposes of ensuring federal servants maintained a link with their place of origin. In this way, despite their registration as residents in the Czech Republic, they did not acquire the internal Czech citizenship. Civil, political and social rights were, however, linked to domicile. A Slovak citizen registered as a permanent resident in the Czech Socialist Republic had the right to vote only at his place of residence, and vice versa. A Czech residing in Slovakia would, for example, vote in the Slovak National Council. This was the case for all Czechs resident in the Slovak Socialist Republic, as it was for Slovaks resident in the Czech Socialist Republic, and held true not only for local, but also federal elections, as well as for those running for office. Most of the persons who were denied Czech citizenship after 1 January 1993 were, in fact, eligible to participate in the elections of the Czech National Council in which the 1992 Czech citizenship law was adopted.

The criterion of domicile, through the institution of permanent residence, played an important role prior to 1993. All citizens, regardless of their place of birth and internal nationality, were required to register with the authorities in the place of residence. They were then granted residence permits, indicated on their identity documents. This place of residence was used for purposes of granting social benefits which were delivered by local and regional authorities. Residency was also used for voting rights, determining housing, employment, access to education and health care.

Consequently, prior to the dissolution of the Czechoslovak Federation, the internal citizenship of the Federation and permanent residence were used within the Czechoslovak territory for separate purposes. At the dissolution of the Federation, the internal citizenship ceased to have any legal existence. It would have accurately reflected international law if permanent residency, or domicile, had been used, rather than the former internal law, for purposes of determining the initial body of citizens. Thus, the link between the territory and the population would have been the determining factor in forming the initial body of citizens in both Republics.

[41] It should be noted that in the case of children, the internal citizenship law was used only in the constitution of the initial body of citizens. Thereafter, the principle of *jus sanguinis*, nationality based upon descent, was to be applied. A child born in the Czech Republic to Slovak citizens would acquire the Slovak citizenship.

THE 1992 CITIZENSHIP LAW

Upon dissolution of the Czechoslovak Federation in December 1992, the Czech and Slovak Republics adopted new citizenship laws to define both the initial body of citizens and the process of acquisition of nationality through naturalization.[42] Three sets of provisions are pertinent to the analysis of whether or not these laws may directly or inadvertently create statelessness. They are:

1. Acquisition of Czech and Slovak citizenship by virtue of the law;

2. Acquisition of Czech citizenship by declaration;

3. Special provisions connected with dissolution of the Czechoslovak Federation: the right of option.

1. Acquisition of Czech and Slovak Citizenship

Article 1 para. 1 of the 1992 Czech citizenship law states:

"Natural persons, citizens of the Czech Republic as well as of the Czech and Slovak Federal Republic on December 31, 1992, become citizens of the Czech Republic as of January 1, 1993."

Similarly, Article 2 of the 1993 Slovak law states:

"A person, who was up to 31 December 1992 a citizen of the Slovak Republic under the law of Slovak Council No. 206/1968 of the code regarding the acquisition and loss of citizenship of the Slovak Socialist Republic according to law No. 88/1990 of the collection of laws, is a citizen of the Slovak Republic under this law."

The internal laws which became effective 1 January 1969 were, therefore, used as the basis for determining the initial body of citizens. One result, for example, was that Slovaks permanently resident in the Czech Republic were excluded from Czech citizenship and assumed to be Slovak citizens. This was the case even though some of those concerned had been resident in the Czech Republic for generations.

[42] The adoption of these laws is reflected in No. 40 in both the Czech (1993, as amended) and Slovak (1993) National Council Laws.

Under international law, the general rule is that a State's characterization of nationality may be unrecognized at the international level if the individual upon whom it is bestowed has no "genuine effective link" with the State. As stated by the International Court of Justice in the *Nottebohm* case:

> "*[A] State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State.*" [43]

This opinion must, however, be read in the context of State succession. In using the former internal law to determine the initial body of citizens, both the Czechs and the Slovaks extended citizenship to non-residents who were resident on the "other" territory. This did not reflect the generally accepted rule which presumes domicile and the genuine effective link to be the factors for citizenship in the context of State succession. Had domicile been used to determine the initial body of citizens for those actually resident within the Czech or Slovak Republics, a right of option could have been granted to individuals who believed their genuine link to be elsewhere. Domicile, however, should have been the presumption.

The use of the internal law did not absolutely decide the matter of citizenship, since a right of option was granted (the right to choose the citizenship of the place in which one was domiciled). The problem arose in that this option, in the case of the Czech law, was not available automatically. Those resident in the Czech Republic who were found to be Slovaks could opt for the Czech nationality *provided* they met certain conditions. These conditions prohibited the realization of the option for many who tried to "become" Czech.[44]

Conditions being placed upon the right of option are not, given residence and a genuine effective link, foreseen by international law. The internal concept of citizenship was of so little importance that, prior to dissolution, people did not pay any attention to it and did not endeavor to determine whether they held internal citizenship in the Czech or Slovak Republics. Many people were convinced that they had acquired the citizenship of their place of birth. This confusion was present amongst Slovaks settled in the Czech Republic, many of whom had children born on Czech territory.

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[43] Above, note 14, p. 23.

[44] The group most severely affected were the Roma. Some NGOs and IGOs have expressed concern regarding persons having difficulty in determining their former internal nationality and, consequently, their previous citizenship. These persons cannot establish their present citizenship and are another category of *de facto* stateless persons which are of concern.

It is worth recalling the definition of the concept of citizenship (nationality) as stated by the International Court of Justice in the *Nottebohm* case:

> *"According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."* [45]

It would be difficult to argue that the internal citizenship of either the Czech or Slovak Socialist Republics was indicative of "a genuine connection of existence, interests and sentiments" or of a "social fact of attachment." Hence, use of the former internal law in determining the initial body of citizens does not reflect the conditions laid down by the International Court. The more apparent genuine effective link or social attachment would have been domicile, which even in the former Czechoslovakia did reflect the existing "reciprocal rights and duties" between individuals and the two entities of the Czechoslovak Federation. In this sense, exclusion from the initial body of citizens of long-time permanent residents, who had a genuine effective link and who had indicated their social attachment through exercise of civil and social functions, contradicts international legal principles.

Nationality matters fall within the sovereign domain of each State and it is for each State to define the rules and principles governing the acquisition and loss of nationality *provided* these rules do not contradict international law. The Czech authorities, during the OSCE Budapest meeting held in November 1994, defended the law by suggesting it was in conformity with the draft European Convention on Nationality. They stated:

> *"[T]he much criticized Czech citizenship law fully corresponds to provisions concerning citizenship in the case of state succession contained in the draft European Convention on Nationality and Military Obligations in cases of Multiple Nationality. The draft had been discussed in Strasbourg by a Committee of Experts about a fortnight ago. I would like to quote Article 9, para. 1, sub-para. ii which stipulates: "A party shall grant its nationality either automatically, subject to the consent, refusal or rejection of the person concerned, or following an application which the person concerned shall have the right to make."* [46]

[45] Above, note 14, p. 23.

[46] The Czech Delegation to the Budapest Review Conference, Talking Points by H. E. Zdenìk Matìjka on the Czech Citizenship Law (Working Group III, 9 November 1994), p. 2.

It must be recalled that this draft Convention has not yet been finalized, is subject to modifications prior to approval by the Committee of Ministers of the Council of Europe and does not yet constitute principles of international law. More importantly, however, pursuant to Article 9, an individual may be granted the citizenship of a successor State through an application. The draft does not foresee any *conditions* being placed by the State on this application. The sole purpose of the application is to obtain the express consent of the individual concerned as regards the bestowal of citizenship of the successor State. Thus, upon receipt of the application, citizenship will be automatically granted.

Unfortunately, this is not incorporated into the Czech citizenship law in Article 18. Permanent residents of Slovak origin may opt for Czech citizenship only if they meet the conditions imposed by the law. The imposition of restrictive conditions upon persons who have a genuine and effective link with the Czech Republic and, it would seem, only with it, does not follow the accepted pattern established under general international legal principles.

There are certain established international legal standards which should be used in implementation of citizenship legislation. Thus, even if all residents on the territory of the new States had been granted either Czech or Slovak citizenship, this would not necessarily reflect the criteria stated by the International Court of Justice. For some of the individuals concerned, their genuine effective link would not be reflected in the nationality of a country in which they were not domiciled.

2. Acquisition of Czech Citizenship by Declaration

Article 6 of the 1992 Czech law states:

> *"A natural person who was, on December 31, 1992, the citizen of the Czech and Slovak Federal Republic, but not the citizen of the Czech or Slovak Republic, may opt for citizenship of the Czech Republic by declaration.*"

This provision pertains to Czechoslovak citizens born abroad who have no reported domicile in either the Czech or the Slovak Republics. Consequently, some individuals have not acquired the nationality of either one of the constituent elements of the former Federation. It is possible, nonetheless, for them to acquire Czech citizenship by declaration. The concern in relation to this group of individuals is that they, upon dissolution of the former Czechoslovakia, lost their former citizenship without automatically acquiring a new one until they made the appropriate declaration. In the case of those who had acquired no other nationality, they would in the interim be stateless.

In contrast to those resident in the Czech Republic who are deemed to be Slovaks and must, under the law, meet certain conditions in opting for the Czech nationality,

Czechoslovaks residing abroad with no internal nationality are not required to meet such conditions. They had only to make the appropriate declaration to the competent authorities. More significantly, there were those resident abroad with an internal nationality designation who exercised their right of option *without the need to pass certain conditions in order to obtain Czech citizenship.* It is inconsistent, then, that those resident in Czech Republic should not obtain citizenship when those resident abroad for several years, many of whom ran no risk of becoming stateless, could exercise an unconditional automatic right.

3. Special Provisions Connected with Dissolution: the Right of Option

The Czech law extended the right of option for Czech citizenship to Slovak citizens settled in the Czech Republic. The now expired Article 18 of the law stated:

> *"1. A citizen of the Slovak Republic may opt for citizenship of the Czech Republic by a declaration made no later than by 31 December 1993,*[47] *provided:*
>
> *a) he has had continual permanent residence on the territory of the Czech Republic for a period of at least two years;*
>
> *b) he submits a document proving he requested exemption from citizenship of the Slovak Republic and his application was not complied with within three months. At the same time he must declare before the district authority that he abandons citizenship of the Slovak Republic. This document shall not be required on the condition the option for citizenship of the Czech Republic annuls the citizenship of the Slovak Republic;*
>
> *c) he has not been sentenced on charges of an intentional crime in the past five years.*"

Article 18 presents the right of option extended to Slovak citizens settled in the Czech Republic who would, otherwise, become aliens in their place of residence. It should be borne in mind that the Czech citizenship legislation of 1992 does not permit Czechs to voluntarily acquire another nationality without concurrent loss of Czech nationality.

[47] The deadline was later extended to 30 June 1994 by Government Order 337/1993 Coll. on 15 December 1993, pursuant to amendments contained in Law No. 272/1993 Coll.

In order to acquire Czech citizenship via option, the three conditions listed above must be met. One of the requirements is to request release from Slovak citizenship. Hence, as this is prerequisite to the application receiving consideration, if the Slovak citizenship is released and the remaining two requirements are not met, the applicant will become stateless. Further, the only possibility of re-acquiring Slovak citizenship would be to attempt naturalization. In this case, it is unlikely that Slovak naturalization requirements, including permanent residence, would be met.

As discussed earlier in assessment of a genuine effective link, permanent residence is a relevant factor. The application should not, however, be subject to any other conditions.

IMPLEMENTATION OF THE LAW

In addition to the law itself, account must be taken of the manner in which provisions regulating the exercise of the right of option have been implemented. According to information provided by the Czech officials on 10 October 1995, as of 30 June 1994, 291,825 of approximately 314,000 registered permanently resident Slovaks had been granted Czech citizenship via option through application of Article 18.[48] Of this number, the Ministry indicates 150 applications have been rejected.[49] An unknown number of applications have been rejected due to a failure to meet the required 5-year clean criminal record. It is important to note that, following the publication of the 1992 Law, official instructions dealt only with the procedures to be followed and documents to be issued. No guidelines were adopted concerning interpretation of the provisions of the law.[50]

Administrative difficulties have since come to light regarding the option deadline itself. An unknown number of applications which the authorities did not assess prior to the deadline, were simply canceled and the applicants told to re-apply. Events such as these indicate that the number of unresolved cases of *de jure* and *de facto* statelessness are not insignificant.

[48] According to the Czech Ministry of Interior, as of 1 January 1993, 314,000 Slovaks were registered as permanent residents in the Czech Republic.

[49] This number is substantially lower than estimated figures from concerned NGOs.

[50] See Instructions Nos. 1 and 2 of the Ministry of the Interior of the Czech Republic to local administration authorities concerning the acquisition and loss of Czech citizenship.

1. Residency Requirement

There are indications that the implementation of the criterion relating to permanent residence has often been applied in an overly strictly legalistic way.[51] The result has been that those in vulnerable situations who have been resident in the Czech Republic for generations have been penalized. Those primarily affected are the Roma, the reason being that circumstances they are in preclude them from meeting this requirement. Given the size of the families and their inability to find appropriate housing due to lack of resources and employment, they often live in substandard housing. Habitation in substandard housing precludes registration as permanent residents. In some cases, the head of the family moved to the Czech Republic alone, was able to find proper accommodation, and was registered as a permanent resident. When joined by his family, accommodation was no longer sufficient to meet the residency criteria for all family members. Under these circumstances, many of the Roma are not able to meet the condition of the law requiring permanent residency, despite the fact that they have been resident in the Czech Republic and their children born on Czech territory. Thus, a wider interpretation and application of the residency requirement should have been adopted. The Czech Constitutional Court, in its judgment of 13 September 1994, stated:

> *"[I]n the view of the Constitutional Court, the concept of permanent residency means actual residency and not one that is reflected only in official files, an application for permanent residence at the competent office, but in a real sense. In this sense, permanent residency must be understood to mean that the person lives at his place of continuous residence, is generally at the place where he has his family, parents, apartment or employment and also the place where he lives with the intention of staying there permanently..."* [52]

Thus, those denied Czech citizenship as a result of a failure to meet the permanent residency requirement due to faulty interpretation of the provision should, under the above interpretation, have been granted citizenship. Such cases should be revisited. As a point of comparison with Article 6 of the law, it is contradictory that those resident in third countries with *less* of an apparent genuine effective link should have readier access to citizenship.[53]

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[51] Reports of the Tolerance Foundation, a non-governmental organization active in the Czech Republic, confirmed by the UNHCR consultant's study.

[52] Constitutional Court Decision 207/1994 Coll. (13 September 1994).

[53] The response that the authorities could impose criteria for acquisition of citizenship for those resident outside of the Czech Republic so as not to prejudice those resident in the Czech Republic does not reflect an appreciation of two key elements of international law: the first, that statelessness shall not occur as a result of State succession and the second, the rule that the resident population follows the territory unless there are clear indicators of stronger links elsewhere. One of these indicators is the expressed will of the individual.

2. Release from Slovak Citizenship Requirement

The law states that an applicant should provide, upon application for Czech citizenship, "a document on exemption from citizenship of the Slovak Republic." This provision clearly established a rule and an exception. Every applicant, prior to submitting an application for Czech citizenship, should request release from Slovak citizenship. He/she must also request a document to prove that the release has taken place. It is conceivable that when the applicant, having been issued the release document, submits his/her application to the Czech authorities, one of the remaining two conditions of a clean criminal record and permanent residency will not be met. The individual's application will, accordingly, be rejected. Having lost Slovak citizenship and failing to receive Czech citizenship, he/she becomes *de jure* stateless.

Under the Slovak citizenship law, certain provisions have been introduced as safeguards in relation to loss of Slovak nationality. Article 9 of the 1993 law states:

> "*(1) The citizenship of the Slovak Republic can be lost only at the person's request for release from the State bond.*"

Conditions for release include the prior acquisition of another citizenship or the promise to acquire such a citizenship upon release of the Slovak citizenship or:

> "*[I]f it can be reasonably assumed that upon a release of the person from the State bond the person will be granted the citizenship of another country.*"

If the release certificate is issued prior to the acquisition of another citizenship, statelessness may occur. It would be difficult for a Slovak official to determine whether or not an individual will actually meet the Czech conditions and be granted citizenship. According to the Slovak Ministry of the Interior, no administrative instructions have been prepared for officials, their expertise limited to oral instructions presented at a one-day training session held in Bratislava. Nonetheless, Slovak authorities indicated that, in the case of Slovak citizens opting for Czech citizenship, release of the State bond was permitted only when a promise, in the form of a certificate, that Czech citizenship would be granted was produced by the applicant. Further, the applicant who wished to renounce Slovak citizenship had also to produce a birth certificate, a certificate of marriage if applicable, a certificate that no debts are outstanding, and a copy of a clean criminal record. Upon receipt of these documents, the release certificate was either handed to the applicant, forwarded by mail, or transmitted directly to the competent Czech authorities.

According to the Slovak Ministry of the Interior, around 300,000 Slovak citizens have applied for release from Slovak citizenship. This process was refined in mutual cooperation between the Czech and Slovak officials once the potential for creation of *de jure* statelessness was clearly established. The release from Slovak citizenship and acquisition of the promised Czech citizenship are now said to occur simultaneously.

Unfortunately, the bulk of applications for release from Slovak citizenship would have occurred prior to the deadline for application to opt for Czech citizenship. As mentioned earlier, there are comparative lists at the disposal of the Czech and Slovak authorities which would identify those persons who applied for release from Slovak citizenship but failed to acquire Czech citizenship. While the authorities from both governments have agreed to cooperate in identifying these cases, no action has been taken over the past year. It is difficult to appreciate the delays incurred in making the comparison, which should be undertaken without undue delay. Until this exercise is completed, there will be no means of accurately determining the scale of *de jure* statelessness.

In a recent study, conducted by the Tolerance Foundation, including 99 cases of Slovak citizens who applied for Czech citizenship in four different districts, it was noted that:

> *"In the group we studied, there were 8 cases of people who were formally stateless. They have a certificate of exemption from Slovak citizenship, but they did not acquire Czech citizenship. The local authorities do not recognize their stateless status; they continue to be treated as Slovaks without Czech citizenship and without any residency permit."* [54]

This group represents only a selection. It seems essential, therefore, to assess how many persons might be in a similar situation and, in particular, why they have not been granted Czech citizenship when they were given the requisite "promise" prior to their application for release from Slovak citizenship. A systematic analysis should be made of all the cases in which Slovak citizens have been denied Czech citizenship after having been released from Slovak citizenship. Such an analysis is an essential element for formulation of possible solutions to be implemented in an effort to reduce existing, and to curtail further, cases of *de jure* statelessness in the Czech Republic.

3. Clean Criminal Record Requirement

The implementation of the criterion of a clean criminal record raises concern. It must be stressed that while a clean criminal record is often an element of consideration in the naturalization process, treaties, State practice, the 1961 Convention, and general principles of law such as the genuine effective link *do not foresee such a condition being placed upon resident nationals of the predecessor State in the context of State succession.* Brownlie, as noted above, states:

[54] *A Need for Change: The Czech Citizenship Law, Analysis of 99 Individual Cases*, Report by the Tolerance Foundation, 21 November 1991, p. 17.

> *"Sovereignty denotes responsibility, and a change of sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government. The population goes with the territory... it would be illegal for the successor to take any steps which involved attempts to avoid responsibility for conditions on the territory."* [55]

The placement of this condition upon granting of citizenship in the context of State succession is not justified. Further, it would appear discriminatory *vis-à-vis* a sector of the population which has a genuine and effective link with the Czech Republic.[56]

In addition to this core problem of non-compliance with international standards in cases of State succession, there is the added complication of how the term "intentional crime" has been interpreted and, in turn, implemented. Given the absence of specific guidelines and the failure to register applications, implementation of these provisions by the local authorities led to possible discrepancies and misinterpretations. Similarly, the right to appeal was not effective. For example, when an individual presented an extract of the criminal record to the authorities who processed applications for citizenship, the authorities may not, without further reference to the judgment, have been in a position to ascertain whether the conviction was indeed for an intentional crime.[57] According to information collected by non-governmental organizations and interviews conducted by the UNHCR consultant, local and regional authorities, lacking a clear understanding, have wrongly rejected some applications on grounds of the criminal record.[58] For example, persons arrested but never prosecuted were told they did not meet the requirement of a clean record. For others, who were amnestied, the authorities refused to take this into account. Individuals sentenced more than five years ago have been told they did not meet the requirement. Calculation of the 5-year period has also proven problematic, as some local authorities have used release from prison as the definitive date. It should, rather, have been the date of entry into force of the final decision.

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[55] Brownlie, above, note 21, pp. 664-5.

[56] Compare, particularly, Articles 6 and 18.

[57] It is worth noting that those who registered for Czech citizenship prior to the dissolution did not have to meet any conditions regarding a clean criminal record. There are some problems with the reasoning used by the Constitutional Court in explaining this practice, for it would also have been possible, technically, to request from former Czechoslovak citizens residing abroad for more than five years a copy of their criminal record. The real point to bear in mind, however, is that the provision is not in compliance with international legal standards in the context of State succession.

[58] See reports of the Tolerance Foundation.

Further, complications have arisen in that cases where an individual was released from Slovak nationality with the promise of receiving Czech citizenship have been reversed due to commission of a crime *after* completion of the administrative process. Once the guarantee of citizenship has been extended and relied upon, it should not be arbitrarily revoked. The guarantee was relied upon by both the individual and the Slovak authorities, the latter in consideration of their obligation to eliminate provisions which permit the renunciation of nationality without the prior possession or acquisition of another nationality.

In addition to administrative problems, there is a lack of foreseeability and proportionality in adoption of this condition for residents on a successor State. Foreseeability and proportionality are key elements in the legitimacy of criminal law; hence, the provision may be criticized on this ground alone.

The requirement of a clean criminal record, conditional for receipt of citizenship where one resides is not, in the context of State succession, an acceptable provision. While Article 18 imposing this condition on Slovaks resident in Czech Republic upon the dissolution is no longer in effect and cannot, therefore, be modified, there is an alternative route.

In UNHCR's opinion, the naturalization requirement of a clean criminal record of Article 7 (1)(c) should be included in Article 11, thus providing for exemption of the application of the clean criminal record requirement in the context of State succession. This should be applied in the cases of those who were resident on Czech territory at the dissolution, had a genuine effective link with the Czech Republic, and who expressed or express a desire to opt for Czech citizenship. In this regard it must be stressed that amendment of the law has no meaning and will not bring the previous acts on the part of the Czech Republic into compliance with international law *unless it is actively and vigorously applied to appropriate cases.*

4. Administrative Difficulties

In a very short period of time the Czech and Slovak authorities crafted a system for a peaceful division of the CSFR that has largely succeeded in sorting out the affairs of the former Federation. When compared to the State successions that are taking place today, the efforts of the Czech and Slovak authorities have been extraordinarily successful.

Nevertheless, significant numbers of individuals were unable to obtain Czech citizenship by reason of a thicket of administrative obstacles. These include lack of clear guidance and information, high administrative fees, burdensome paperwork, arbitrary interpretation of definitions, and misapplied rules.

A significant number of *de facto* statelessness have resulted from the fact that certain groups and individuals were physically and/or legally not able to take the

necessary steps to exercise Czech or Slovak citizenship. Prisoners were incarcerated one day as Czechoslovak citizens, and on 1 January 1993 found themselves without identification documents, and without effective citizenship. Orphans and foster children, whose parents abandoned them, may become adults and discover themselves without effective citizenship. In the absence of legalized residence, these unsuspecting persons can be subject to expulsion. The failure or the inability of the individuals to opt for citizenship should not be at issue.

The deadline for the option period under Article 18 was interpreted unnecessarily strictly, resulting in cases of statelessness. Clerks rendered informal oral determinations whenever applications did not conform in all respects with the requirements of the law. Officials made administrative errors on this basis, misinterpreting the clean criminal requirement, and failing to include children on the application of their parents. Czech citizenship has at times been improperly issued and then, following a period of reliance, canceled or revoked. Many of the people affected may well have been in possession of their release from Slovak citizenship, rendering them at the time of cancellation of Czech citizenship formally and legally stateless.

The above situations and difficulties should be minimized or ameliorated and special assistance and proper guidance provided for fulfilling the law's requirements. The State should take steps to assure that all individuals with domicile on its territory are able to exercise effective citizenship. Moreover, if the individuals would have been eligible for Czech citizenship under the terms and during the period of option, but were unable for reasons of physical or legal incapacitation, they should be given another opportunity to exercise the option that they were effectively denied.

CONCLUSION

It is argued that those who were permanently resident in the Czech Republic should not, in January of 1993, have been classified as Slovak citizens. The individuals with whom this paper is concerned were not resident in Slovakia and had a genuine effective link with Czech territory. This attribution of Slovak citizenship to non-residents who have no effective link and have indicated, in fact, their link to be elsewhere does not conform with generally accepted rules of international law.

There are at least two categories of persons which deserve review: those who were obliged to seek release from Slovak citizenship but were later unable to acquire Czech citizenship, and those who were attributed Slovak nationality when all factors pointed to them being Czech. As many factors indicate that there are cases of statelessness which have arisen as a result of the laws outlined above, urgent solutions are called for.

Of critical importance is an estimation of the size of the problem. Mechanisms should be established in order to identify the actual number involved, including

categories of *de jure* stateless and those who, following the dissolution, cannot establish their nationality. Although it is for the Czech authorities to undertake this project UNHCR has, recalling its mandate as outlined above, offered assistance, including legal assistance for purposes of seeking solutions for the persons concerned. An appropriate special arrangement to this effect could be agreed upon. It also seems important to strengthen cooperation between the competent authorities and non-governmental organizations which have been active in this area. Extensive documentation has been collected which could prove useful in defining the problem and developing solutions. Both the Czech and the Slovak authorities have expressed their willingness to cooperate in this process; however, in over one year basic steps available to the authorities have not been taken. As indicated, a comparison should be made immediately of the lists at the disposal of the Czech and Slovak authorities, identifying those persons who were released from Slovak citizenship yet failed to acquire Czech citizenship. This comparison is critical to an accurate assessment of the problem of *de jure* statelessness.

UNHCR has also encountered serious obstacles in gaining access to individuals and records. The authorities have, on several occasions, committed themselves to providing the Office with access to data as well as to individuals. Despite reminders, significant obstacles remain. With the cooperation of the authorities, these issues could be resolved.

Upon identification, the situation of the individuals concerned should be reviewed and they should be granted a nationality in accordance with the principles outlined above. The possibility of granting Czech citizenship through legal mechanisms should be explored. This could include both revision and active implementation of a revised Article 11 on behalf of those resident on Czech territory at the dissolution. The clean criminal record requirement should, through amendment and active application of Article 11, be waived for those resident on Czech territory at the dissolution who were found to be Slovak. Similarly, if it appears that some stateless persons were provided release certificates by the Slovak authorities without the prerequisite certificate of promise to acquire Czech citizenship, the said certificates could be withdrawn and the individuals concerned reinstated with Slovak citizenship.

Those whose genuine effective link was clearly in the Czech Republic, under the definition discussed above, who were nonetheless classed as Slovak citizens and consequently denied Czech citizenship, should have their classification reviewed. It is important to note that these individuals, when applying for Czech citizenship under Article 18 of the Czech law, clearly expressed the fact that they did not consider themselves to be Slovak citizens. In review of their cases, if they meet the requirement of permanent residence as defined by the Czech Constitutional Court, they should be granted Czech citizenship. As mentioned earlier, the requirement of a clean criminal record should be waived under the conditions proposed in Article 11 of the Czech Citizenship Law which deal with the naturalization procedure.

Assistance should also be provided to individuals who face difficulty in establishing their former internal citizenship and, consequently, are unable to begin the process of determining their nationality. A special commission should be established between the Czech and Slovak authorities in order to provide the required assistance, to issue necessary documents and to assess current citizenship. In this context, UNHCR may also provide assistance to the authorities, particularly in defining the most appropriate procedure to adopt in handling these cases. These matters need to be considered with urgency. Practical solutions should be found in order to avoid the inevitable difficulties which will follow for those who do not have a proper legal status at their place of residence.

Emphasis must be placed on practical solutions to assist those adversely impacted by these laws. The Czech authorities have indicated their willingness to consider ways of improving conditions for the Roma community in particular, acknowledging the fact that the Roma have, in the past, been subjected to unequal treatment.

In conclusion, it seems clear that some provisions of the Czech and Slovak citizenship laws, as well as their manner of implementation, have created situations where statelessness has arisen. The problem has, thus far, been minimized because both governments agreed to refer to the same criteria in establishing the initial body of citizens in the Czech Republic. However, the qualifications for receipt of citizenship for residents on Czech territory at the time of dissolution and the willingness of the Slovak authorities to recognize these criteria do not make these provisions acceptable under international law. While emphasis has necessarily been placed on the effects of the legislation on Czech territory, the Slovak authorities have a significant role to play in assuring *their* citizens have an effective nationality, that release from nationality is not granted without actual acquisition of an alternative nationality, that documents and information are readily accessible to individuals, and that information at their disposal concerning release from nationality or return of "Slovaks" from Czech territory is made available. With the good will and support of the authorities from both countries, solutions may be found which will resolve resulting problems relating to nationality.

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NOTE ON UNHCR AND STATELESS PERSONS

I. INTRODUCTION

1. In 1994, the Executive Committee of the High Commissioner's Programme noted the persistent problems of stateless persons, and called upon UNHCR to "strengthen its efforts in this domain, including promoting accession to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, training for UNHCR staff and government officials, and a systematic gathering of information on the dimension of the problem, and to keep the Executive Committee informed of these activities." (A/AC.96/839, para. 19 (ee)).

2. From initial efforts in these areas, it is clear that certain steps necessarily precede others in assuring a systematic approach to the problem which appears, with variations, in different parts of the world. As a preliminary step, UNHCR seeks to clarify the foundation for its concern and involvement with stateless persons, and for those with no effective nationality.

II. UNHCR'S CONCERN AND INVOLVEMENT

3. While the basic human rights of stateless persons are, in principle, to be respected in their country of habitual residence, statelessness itself creates vulnerability. Stateless persons hold an unequal status in their society which, particularly when aggravated by political changes, may result in complications, including displacement and flight. As part of its humanitarian role, UNHCR seeks to prevent and mitigate as far as possible such involuntary dislocation and movement.

4. Their lack of national protection places stateless persons in a position analogous to that of refugees. Indeed, one means of overcoming refugee status is the realization of an effective nationality. In previous years, UNHCR has promoted accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention

on the Reduction of Statelessness on behalf of stateless refugees. Technical advice has also been given to Governments seeking to assist refugees who may be stateless. Moreover, since statelessness can be one element in the creation of refugees, UNHCR is concerned with statelessness as a function of its mandate under the 1951 Convention relating to the Status of Refugees.

5. UNHCR has historical reasons for an interest in the 1954 Convention relating to the Status of Stateless Persons. In the past, refugees and stateless persons were less differentiated, with both receiving assistance from international refugee organizations. The 1954 Statelessness Convention, originally drafted as a Protocol to the 1951 Convention, was intended to reflect this link. The pressing needs of refugees in the wake of the Second World War and the impending dissolution of the International Refugee Organization prohibited detailed consideration of the statelessness issue at the 1951 Conference of Plenipotentiaries called to consider both issues. The Refugee Convention was adopted, while the Statelessness Protocol, with articles mirroring those of the refugee convention, was postponed for adoption at a later date.

6. In 1954, this Protocol was made a Convention in its own right. A narrow definition of stateless persons was adopted, covering only "a person who is not considered as a national by any State under the operation of its law" (*de jure* stateless). While it was felt that a legal distinction between *de jure* and *de facto* stateless persons – those with an ineffective nationality or those who cannot prove they are legally stateless – was necessary, the similarity in their positions was, nonetheless, recognized. *De facto* stateless persons were the subject of a recommendation in the Final Act of the Convention, it being assumed that they had voluntarily renounced their citizenship and were, in any event, refugees.[1]

7. Although no supervisory body was provided for in the 1954 Convention, there is every indication that this was due largely to time constraints and to the intended association with the Refugee Convention.

8. When the 1961 Convention on the Reduction of Statelessness was to enter into force, UNHCR was asked provisionally to assume the responsibilities foreseen under Article 11, "of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority." The Convention, in seeking to reduce statelessness, requires

[1] The Final Act of the 1954 Convention relating to the Status of Stateless Persons [extract]: "*Recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons...*"

signatory States to take positive steps to modify their domestic legislation pertaining to nationality and naturalization. As the agency to which those seeking assistance with their nationality status may turn, it is incumbent upon UNHCR to provide expertise in the area of nationality legislation to States parties. This expertise includes the ability to assist the claimant as well as the concerned State in determining whether the individual is, in fact, *de jure* stateless, and remaining means of redress.

9. The Final Act of the 1961 Convention, like the 1954 Convention, includes a recommendation that the provisions be extended to *de facto* stateless persons wherever possible. The Conference "*Recommend[ed] that persons who are stateless* de facto *should as far as possible be treated as stateless* de jure *to enable them to acquire an effective nationality.*" Here again, the link between lack of nationality, lack of national protection and *de facto* stateless persons was recognized by the delegates who included the recommendation on behalf of stateless refugees.

III. STATELESSNESS TODAY

10. Recently, issues of statelessness, particularly linked to matters of nationality legislation, have surfaced in several areas of the world including Asia, the Middle East, Eastern Europe, newly formed and restored States of the former Soviet Bloc, and the former Yugoslavia. While it is the right of a State to determine who are its citizens, this determination should accord with the relevant provisions of international law. Certain human rights principles and the existence of a link between the individual and the State act as a basis for citizenship under international law. The genuine effective link, broadly derived from a presumed link between the individual and the State based upon factors of birth, residency and descent, is reflected in a majority of domestic nationality legislation.

11. While initially it was assumed that all *de facto* stateless persons were refugees and would, therefore, benefit from the Refugee Convention, it is now apparent that there are those who do not qualify for assistance under either category; that is, there are individuals who do not qualify as refugees and whose nationality status is unclear. The situation of such a person in terms of a lack of national protection may be identical to that of a *de jure* stateless person. Since lack of protection may result in involuntary displacement, UNHCR is concerned with preventive measures on behalf of such individuals. A request for assistance, based on the non-binding recommendations of the Final Acts, may more easily be made by an international organization on behalf of the person concerned than by the individual himself.

12. UNHCR has been approached by both individuals and Governments seeking advice and assistance in nationality matters, including the drafting and implementation of nationality legislation. In a number of instances, the failure to acknowledge the genuine effective link has left long-term habitual residents who lack genuine ties elsewhere without citizenship. In some cases, the resulting instability, in

conjunction with other factors, has led to internal displacement or to flight across borders. This may be particularly so with the transfer of territory and the creation of new States which adopt nationality and naturalization legislation.

13. Another source of statelessness can be the strict adherence to *jus sanguinis*, or nationality based upon descent. *Jus sanguinis*, when applied without modifications based on residency or other factors, confers on children the status of their parents. This may mean that statelessness is inherited, passed from generation to generation, regardless of place of birth, residency, or other factors reflecting the genuine effective link.

IV. UNHCR INITIATIVES

14. UNHCR is undertaking the difficult process of determining the approximate numbers of *de jure* and *de facto* stateless persons, as well as the range of potentially stateless persons. To obtain a clearer picture of the magnitude of the problem, UNHCR will require the active cooperation of States which have stateless persons within their borders.

15. Other initiatives have included collection and analysis of current and proposed nationality legislation. These materials, along with the expertise developed by the Office, will provide the basis for training and technical advice guidelines for UNHCR staff and government officials, in accordance with the Executive Committee's above-mentioned request. UNHCR may develop an accession "package" or guidelines for Governments considering accession to one of the relevant conventions and the adoption of commensurate nationality legislation.

16. Further consultations are planned with those Governments already signatory to one or both of the statelessness conventions with a view to adopting a more coordinated effort in promotion of accessions, as requested by the Executive Committee and in line with the High Commissioner's concern with protection and prevention.

17. Under the 1961 Convention, the scope of UNHCR's activities pursuant to its appointment under Article 11 is restricted owing to the low number of signatories. Nonetheless, the Office is developing its ability to assist non-refugee *de jure* stateless persons. This expertise has already been of use to individuals who have had difficulty proving their nationality status.

18. In view of the obvious human rights aspects of this issue, discussion on collaboration with human rights organizations, such as the Centre for Human Rights, has also been initiated. UNHCR is also cooperating in this area with the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the International Law Commission, parliamentary commissions and other interested governmental and non-governmental organizations.

19. As noted, the basic human rights of stateless persons are, in principle, to be respected in the country of habitual residence. Such persons are not, therefore, assumed to be in acute need of international protection unless they are also refugees. However, statelessness brings an added element of vulnerability and, in some instances, stateless persons are also in need of protection. The Convention relating to the Status of Stateless Persons and the Convention for the Reduction of Statelessness provide valuable legal tools for the protection of stateless persons, although the scope is limited owing to the restricted number of parties. The prevention and reduction of statelessness, and the protection of stateless persons are important for the prevention of potential refugee situations. Promoting accession to the relevant conventions and the enactment of appropriate national legislation are aspects of prevention-related activities.

20. UNHCR will continue to keep the Executive Committee informed regularly of activities undertaken on behalf of stateless persons. The High Commissioner would welcome the Executive Committee's further advice on additional activities, including guidance to Governments on relevant nationality legislation, prevention and promotion activities, training, and dissemination of information on the magnitude and dimensions of the current problem of statelessness.

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CURRENT UNHCR ACTIVITIES ON BEHALF OF STATELESS PERSONS

I. INTRODUCTION

1. Statelessness, although not a new phenomenon, has taken on new dimensions, particularly in the aftermath of the Cold War, and its potential as a cause of involuntary displacement and as a source of regional tension has come to be more widely recognized. This is reflected in the increasing interest of the Executive Committee which, in 1994, noted the persistent problems of stateless persons, and called upon UNHCR to "strengthen its efforts in this domain, including promoting accession to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, training for UNHCR staff and government officials, and a systematic gathering of information on the dimension of the problem, and to keep the Executive Committee informed of these activities" (A/AC.96/839, para. 19 (ee)). Following this call, an Information Note on UNHCR and Stateless Persons was presented to the Sub-Committee of the Whole on International Protection in June 1995 (EC/1995/SCP/CRP.2). This Note described UNHCR's mandate and concern for stateless persons, the historical background to the two Conventions on statelessness and the current status of accessions to them, as well as the determination of citizenship in international law.

2. At the 21 June 1995 meeting of the Sub-Committee of the Whole on International Protection, a number of delegates welcomed UNHCR's efforts, and noted the preventive potential of providing technical advice on citizenship and nationality legislation before problems arise. UNHCR was invited to report back on the progress of initiatives to strengthen its efforts in this domain. This Note is intended as a status report on subsequent developments, and may be supplemented by similar reports on a regular basis.

II. BACKGROUND

3. As outlined in the June 1995 Information Note, a lack of national protection places stateless persons in a position analogous to that of refugees. An essential step in strengthening efforts in this regard is securing accession to international instruments which ensure that persons will not arbitrarily be deprived of nationality; will be granted a nationality under certain circumstances in which they might otherwise be stateless; and which ensure adequate protections to those who, nonetheless, remain stateless. Although the 1954 Convention relating to the Status of Stateless Persons contains a narrow definition of stateless persons as being those who are not considered as nationals by any State under the operation of its law, and accessions are low in relation to both Conventions relating to statelessness, these instruments are, nonetheless, valuable tools in the protection of stateless persons. The Final Act of the 1954 Convention acknowledges the similarity of de facto statelessness to statelessness *de jure* in cases where a person has, for valid reasons, renounced the protection of the State of which he is a national, and recommends that such persons receive the same protection.

4. Unlike the Refugee Convention, the statelessness Conventions have not enjoyed the benefit of a supervisory body structured to assure their promotion. In the case of the 1954 Convention, there is every indication that this was due largely to time constraints and to the originally intended association of this Convention with the Refugee Convention. With regard to the 1961 Convention on the Reduction of Statelessness, which requires signatory States to take positive steps to modify domestic legislation pertaining to nationality and naturalization, UNHCR has been entrusted with the functions of a body to which persons claiming the benefit of this Convention may apply for the examination of their claim and for assistance in presenting it to the appropriate authority. This Convention contains in appendix the Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness, including a resolution by which the Conference recommended that persons who are stateless de facto should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality. It is incumbent on UNHCR to provide expertise in this regard in order to assist claimants as well as concerned States in determining whether the individual is stateless and in recommending appropriate action.

5. UNHCR is faced with situations of statelessness and inability to establish nationality in connection with state succession and the adoption of nationality legislation by new States, as well as in areas of the world which have had no recent change in legislation and have undergone no transfer of territory, including situations involving former colonial territory, life-long residents of a State who have failed to acquire citizenship, ethnic minorities and those for whom the question of nationality has become an issue only upon their departure from their former State of habitual residence.

6. While the basic human rights of stateless persons are, in principle, to be respected in the country of habitual residence, it is clear that there are a number of categories of persons who may not receive the national protection necessary for a stable life. The prevention and reduction of statelessness and the protection of stateless persons are important for the prevention of potential refugee situations.

III. CURRENT EFFORTS

7. UNHCR continues to promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These efforts remain limited: work has just begun on an accession information package, intended to inform Governments and staff alike. The target date for completion of the package is mid-1996. The adoption of the 1961 Convention on the Reduction of Statelessness will normally require some analysis of the concerned State's current nationality legislation. In this connection, UNHCR has funded the compilation of a global compendium of nationality legislation by the Independent Bureau for Humanitarian Issues, of which one part, the relevant nationality and related legislation of States having signed and ratified the 1961 Convention, is now completed. UNHCR anticipates that this will be a useful reference tool for States reviewing or drafting new nationality legislation.

8. UNHCR has undertaken considerable work at the regional level, notably in Central and Eastern Europe and in the former Yugoslavia, including an analysis of new or proposed nationality legislation, and of its implementation, and has entered into constructive dialogue with concerned Governments seeking to avoid or redress cases of statelessness. Close working relationships have been established with regional governmental and non-governmental organizations (NGOs) concerned with the issue. The information gathered from these analyses will be instrumental in the further development of the Office's approach to the problem of statelessness. In particular, UNHCR welcomes work undertaken by the Committee of Experts on Nationality of the Council of Europe relating to nationality and the reduction of statelessness. Recent statements, such as the Ottawa Declaration, by the OSCE, as well as work done by the Special Rapporteur on State Succession in the International Law Commission, are also welcome developments towards the establishment of principles under which nationality may be ascribed. UNHCR continues its active dialogue with these bodies in support of their efforts.

9. UNHCR commissioned and has now published a study of historical and legal developments in respect of UNHCR and statelessness. This is being distributed to all UNHCR offices, and will be made available to Governments; it will also be available to the interested public through on-line access to the CDR (UNHCR' s Centre for Documentation and Research) databases. The Autumn issue of Refugee Studies Quarterly will focus on the subject of statelessness.

10. UNHCR has also funded a study on the causes and magnitude of the global problem of statelessness. Determining the approximate numbers of *de jure* and de facto stateless persons, as well as the range of potentially stateless persons, is extremely difficult; however, some concept of the magnitude of the problem would be extremely useful. To facilitate this, UNHCR will require the active cooperation of States which have stateless persons within their borders.

11. In addition to providing technical advice to Governments, the Division has, to an increasing degree, been called on to respond to requests and queries from Field Offices in respect of stateless persons. While the Office has developed this capacity already in response to specific requests, it is important that technical advice guidelines be developed to ensure consistent and universal positions which reflect current legal developments. The heightened attention that UNHCR has given to the issue has secured a degree of general awareness among colleagues; however, resources have not yet enabled UNHCR to undertake formal training, externally and internally, on the issue. These functions, as well as maintaining the desirable level of consultation and cooperation with other interested institutions and organizations, and ensuring a consistent strategy for the protection of stateless persons and the reduction of statelessness which builds on the current momentum, will require a strengthening of existing resources. The Division of International Protection is seeking the creation of one post which would be dedicated to commitments in this regard.

IV. CONCLUSION

12. The Office remains able and willing to devote attention to this core issue, as evidenced by its developing expertise and heightened activity. A more proactive role by UNHCR in respect of the protection of stateless persons and, in particular, the prevention and reduction of future statelessness is an important element of UNHCR's prevention-related activities. The Office will continue steadily to increase its protection activities in this regard. It will continue to seek the support of the Executive Committee for these activities, and for the particular resource requirements which are an essential component of this exercise. UNHCR will continue to keep the Executive Committee informed regularly of activities undertaken on behalf of stateless persons and welcomes the views of States on how UNHCR can best contribute to the elimination of statelessness.

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME
Forty-sixth Session

EXECUTIVE COMMITTEE CONCLUSION
No. 78 (XLVI) – 1995

CONCLUSION ON THE PREVENTION AND REDUCTION OF STATELESSNESS AND THE PROTECTION OF STATELESS PERSONS

The Executive Committee,

Recognizing the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality,

Concerned that statelessness, including the inability to establish one's nationality, may result in displacement,

Stressing that the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations,

(a) Acknowledges the responsibilities already entrusted to the High Commissioner for stateless refugees and, with respect to the reduction of statelessness, encourages UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action, as well as its responsibility entrusted by the General Assembly to undertake the functions foreseen under Article 11 of the 1961 Convention on the Reduction of Statelessness;

(b) Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality, and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality;

(c) Requests UNHCR actively to promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, in view of the limited number of States parties to these instruments, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;

(d) Further requests UNHCR actively to promote the prevention and reduction of statelessness through the dissemination of information, and the training of staff and government officials; and to enhance cooperation with other interested organizations;

(e) Invites UNHCR to provide it biennially, beginning at the forty-seventh session of the Executive Committee, with information on activities undertaken on behalf of stateless persons, particularly with regard to the implementation of international instruments and international principles relating to statelessness, and including the magnitude of the problem of statelessness.

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NATIONS A

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A/RES/50/152
9 February 1996

Fiftieth session
Agenda item 109

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
[on the report of the Third Committee (A/50/632)]
50/152. Office of the United Nations High Commissioner for Refugees

The General Assembly,

Having considered the report of the United Nations High Commissioner for Refugees on the activities of her Office 1(1) and the report of the Executive Committee of the Programme of the High Commissioner on the work of its forty-sixth session, 2(2)

Recalling its resolution 49/169 of 23 December 1994,

Reaffirming the importance of the 1951 Convention 3(3) and the 1967 Protocol 4(4) relating to the Status of Refugees as the cornerstone of the international system for the protection of refugees, and noting with satisfaction that one hundred and thirty States are now parties to one or both instruments,

Reaffirming also the purely humanitarian and non-political character of the activities of the Office of the High Commissioner, as well as the crucial importance of the High Commissioner's functions of providing international protection to refugees and seeking solutions to refugee problems,

Commending the High Commissioner and her staff for the competent, courageous and dedicated manner in which they discharge their responsibilities, paying tribute to those staff members who have endangered or lost their lives in the course of their duties, and emphasizing the urgent need for effective measures to ensure the security of staff engaged in humanitarian operations,

Distressed at the continued suffering of refugees, for whom a solution has yet to be found, and noting with deep concern that refugee protection continues to be jeopardized in many situations as a result of denial of admission, unlawful expulsion, refoulement, unjustified detention, other threats to their physical security, dignity and well-being and failure to respect and ensure their fundamental freedoms and human rights,

Welcoming the continuing strong commitment of States to providing protection and assistance to refugees and the valuable support extended by Governments to the High Commissioner in carrying out her humanitarian tasks, and commending those States, particularly the least developed and those hosting millions of refugees over long periods of time, which, despite severe economic, development and environmental challenges of their own, continue to admit large numbers of refugees into their territories,

Recognizing that, in certain regions, misuse by individuals of asylum procedures jeopardizes the institution of asylum and adversely affects the prompt and effective protection of refugees,

Concerned that statelessness, including the inability to establish one's nationality, may result in displacement, and stressing, in this regard, that the prevention and reduction of statelessness and the protection of stateless persons are important also in the prevention of potential refugee situations,

1. Strongly reaffirms the fundamental importance and the purely humanitarian and non-political character of the function of the Office of the United Nations High Commissioner for Refugees of providing international protection to refugees and seeking solutions to refugee problems, and the need for States to cooperate fully with the Office in order to facilitate the effective exercise of that function;

2. Calls upon all States which have not yet done so to accede to and implement fully the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and relevant regional refugee instruments, as applicable, for the protection of refugees;

3. Also calls upon all States to uphold asylum as an indispensable instrument for the protection of refugees, to ensure respect for the principles of refugee protection, including the fundamental principle of non-refoulement, as well as the humane treatment of asylum-seekers and refugees in accordance with internationally recognized human rights and humanitarian norms;

4. Reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and enjoy in other countries asylum from persecution;

5. Reiterates the importance of ensuring access, for all persons seeking international protection, to fair and efficient procedures for the determination of refugee status

or, as appropriate, to other mechanisms to ensure that persons in need of international protection are identified and granted such protection, while not diminishing the protection afforded to refugees under the terms of the 1951 Convention, the 1967 Protocol and relevant regional instruments;

6. Reaffirms the continued importance of resettlement as an instrument of protection;

7. Reiterates its support for the role of the Office of the High Commissioner in exploring further measures to ensure international protection to all who need it, consistent with fundamental protection principles reflected in international instruments, and looks forward to the informal consultations of the Office of the High Commissioner on the subject;

8. Calls for a more concerted response by the international community to the needs of internally displaced persons and, in accordance with its resolution 49/169, reaffirms its support for the High Commissioner's efforts, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the State concerned, and taking into account the complementarities of the mandates and expertise of other relevant organizations, to provide humanitarian assistance and protection to such persons, emphasizing that activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution;

9. Reiterates the relationship between safeguarding human rights and preventing refugee situations, recognizes that the effective promotion and protection of human rights and fundamental freedoms, including through institutions that sustain the rule of law, justice and accountability, are essential for States to address some of the causes of refugee movements and for States to fulfil their humanitarian responsibilities in reintegrating returning refugees and, in this connection, calls upon the Office of the United Nations High Commissioner for Refugees, within its mandate and at the request of the Government concerned, to strengthen its support of national efforts at legal and judicial capacity-building, where necessary, in cooperation with the United Nations High Commissioner for Human Rights;

10. Also reiterates that development and rehabilitation assistance is essential in addressing some of the causes of refugee situations, as well as in the context of the development of prevention strategies;

11. Condemns all forms of ethnic violence and intolerance, which are among the major causes of forced displacements, as well as an impediment to durable solutions to refugee problems, and appeals to States to combat intolerance, racism and xenophobia and to foster empathy and understanding through public

statements, appropriate legislation and social policies, especially with regard to the special situation of refugees and asylum-seekers;

12. Welcomes the Platform for Action adopted at the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995, 5(5) particularly the strong commitment made by States in the Platform to refugee women and other displaced women in need of international protection, and calls upon the United Nations High Commissioner for Refugees to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution, including persecution through sexual violence or other gender-related persecution, specifically aimed at women for reasons enumerated in the 1951 Convention and 1967 Protocol, by sharing information on States' initiatives to develop such criteria and guidelines and by monitoring to ensure their fair and consistent application by the States concerned;

13. Reiterates that, the grant of asylum or refuge being a peaceful and humanitarian act, refugee camps and settlements must maintain their exclusively civilian and humanitarian character and all parties are obliged to abstain from any activity likely to undermine this, condemns all acts which pose a threat to the personal security of refugees and asylum-seekers, and also those that may endanger the safety and stability of States, calls upon States of refuge to take all necessary measures to ensure that the civilian and humanitarian character of refugee camps and settlements is maintained, and further calls upon States of refuge to take effective measures to prevent the infiltration of armed elements, to provide effective physical protection to refugees and asylum-seekers and to afford the Office of the High Commissioner and other appropriate humanitarian organizations prompt and unhindered access to them;

14. Encourages the High Commissioner to continue her activities on behalf of stateless persons, as part of her statutory function of providing international protection and of seeking preventive action, as well as her responsibilities under General Assembly resolutions 3274 (XXIV) of 10 December 1974 and 31/36 of 30 November 1976;

15. Requests the Office of the High Commissioner, in view of the limited number of States party to these instruments, actively to promote accession to the 1954 Convention relating to the Status of Stateless Persons 6(6) and the 1961 Convention on the reduction of statelessness, 7(7) as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;

16. Calls upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions that permit the renunciation of a nationality without the prior

possession or acquisition of another nationality, while at the same time recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality;

17. Reaffirms that voluntary repatriation, when it is feasible, is the ideal solution to refugee problems, and calls upon countries of origin, countries of asylum, the Office of the High Commissioner and the international community as a whole to do everything possible to enable refugees to exercise their right to return home in safety and dignity;

18. Reiterates the right of all persons to return to their country, and emphasizes in this regard the prime responsibility of countries of origin for establishing conditions that allow voluntary repatriation of refugees in safety and with dignity and, in recognition of the obligation of all States to accept the return of their nationals, calls upon all States to facilitate the return of their nationals who are not recognized as refugees;

19. Calls upon all States to promote conditions conducive to the return of refugees and to support their sustainable reintegration by providing countries of origin with necessary rehabilitation and development assistance in conjunction, as appropriate, with the Office of the High Commissioner and relevant development agencies;

20. Recalls Economic and Social Council resolution 1995/56 of 29 July 1995 on the strengthening of the coordination of emergency humanitarian assistance of the United Nations, and welcomes the decision of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees to review, in the course of 1996, aspects of that resolution relevant to the work of the Office of the High Commissioner;

21. Notes with appreciation the programme policies established by the Executive Committee of the Programme of the High Commissioner, and underscores the importance of their implementation by the Office of the High Commissioner, implementing partners and other relevant organizations in order to ensure the provision of effective protection and humanitarian assistance to refugees;

22. Reaffirms the importance of incorporating environmental considerations into the programmes of the Office of the High Commissioner, especially in the least developed and developing countries which have hosted refugees over long periods of time, welcomes efforts by the Office of the High Commissioner to make a more focused contribution to resolving refugee-related environmental problems, and calls upon the High Commissioner to promote and enhance coordination and collaboration with host Governments, donors, relevant United Nations organizations, intergovernmental organizations, non-governmental organizations and other actors concerned to address refugee-related environmental problems in a more integrated and effective manner;

23. Recognizes the importance of the introduction of Russian as an official language of the Executive Committee of the Programme of the High Commissioner in facilitating the work of the High Commissioner and the implementation of the provisions of the 1951 Convention relating to the Status of Refugees, notably in the countries of the Commonwealth of Independent States;

24. Calls upon all Governments and other donors to demonstrate their international solidarity and burden-sharing with countries of asylum through efforts aimed at continuing to alleviate the burden borne by States which have received large numbers of refugees, in particular those with limited resources, and to contribute to the programmes of the Office of the High Commissioner and, taking into account the effect on countries of asylum of the increasing requirements of large refugee populations and the need to widen the donor base and to achieve greater burden-sharing among donors, to assist the High Commissioner in securing additional and timely income from traditional governmental sources, other Governments and the private sector in order to ensure that the needs of refugees, returnees and other displaced persons of concern to the Office of the High Commissioner are met.

97th plenary meeting

21 December 1995

RESPONSE OF THE CZECH REPUBLIC TO UNHCR'S POSITION PAPER

I. INTRODUCTION

Czechoslovakia was a federal state consisting of two parts, the Czech Republic and the Slovak Republic, and its citizens consequently had double citizenship – either Czechoslovak and Czech, or Czechoslovak and Slovak. The Czechoslovak citizenship automatically ceased to exist upon dissolution of Czechoslovakia. This federal citizenship derived from the citizenship of the two constituent republics, i.e. from the Czech or Slovak citizenship. The citizenship of the two constituent republics did not cease to exist upon the dissolution of the federation because they were linked with the existence of the two republics, successor States to the dissolved federation. Upon establishment of the Czech Republic as a new subject in international law, it became necessary to define its citizenship by law. The new Citizenship Law determined that persons who had been holders of Czech citizenship prior to the dissolution of the federation should become citizens of the Czech Republic. Similar transformation took place in the Slovak Republic; as a result, former Czechoslovak citizens automatically became citizens of either of the successor States. The above legislation therefore could not have caused situations of statelessness.

The Czech and Slovak Federal Republic (CSFR) ceased to exist on 31 December 1992 on the basis of Constitutional Law No. 542/1992 Coll., adopted by the Federal Assembly of the CSFR on 25 November 1992. Together with the federal State, its basic attributes, i.a. its citizenship, ceased to exist as well.

Two sovereign and independent States – Czech Republic and Slovak Republic – were established on 1 January 1993 as successors to the dissolved federation. The above States originally existed as constituent parts of the federal State without international subjectivity. Upon their establishment, both States faced the task to define their fundamental attributes as the conditio sine qua non of their existence and international personality. In the interest of the political stability of the entire region, lucidity and legal security in both States, succession had to be effected in the most natural manner, i.e. by taking over the institutes of the dissolved federation.

The Government and Parliament of the original Czech Republic (constituent part of the federation) became the Government and Parliament of the new, independent Czech Republic. In like manner, the citizenship of the original Czech Republic was transformed into citizenship of the new Czech Republic by virtue of the new Citizenship Law. The legal standard effecting the transformation was Law

No. 40/1993 Coll. of 29 December 1992 on acquisition and loss of citizenship of the Czech Republic. The objective was:

• to determine the initial body of citizens of the new State. Citizens of the predecessor State, i.e. citizens of the original Czech Republic (constituent part of the federation) were automatically included in the initial body of citizens. The procedure respected the general rules of international law such as the genuine and effective link or the *ius sanguinis* and *ius soli* principles;

• to determine conditions under which other persons may acquire Czech citizenship. Special, more lenient conditions were devised for citizens of the Slovak Republic.

In like manner, the newly established Slovak Republic took over the attributes of its own statehood. The citizenship of the original Slovak Republic (constituent part of the federation) was transformed into the citizenship of the new, sovereign and independent Slovak Republic by virtue of the new Citizenship Law.

While the Czechoslovak citizenship ceased to exist upon the dissolution of the federation, the Czech and Slovak citizenship were transformed in citizenship of the successor States, the Czech Republic and the Slovak Republic, in the manner described above. Under the new Czech Citizenship Law, persons who at the moment of dissolution of the federation were holders of Czech citizenship became citizens of the Czech Republic. Analogously, persons who were holders of Slovak citizenship became citizens of the Slovak Republic under the corresponding Slovak legislation. When analysing the Czech Citizenship Law, it is necessary to keep in mind that former Czechoslovak citizens having permanent residence in the territory of the former Czech and Slovak Federal Republic became either citizens of the Czech Republic or citizens of the Slovak Republic as a result of the citizenship legislation which existed already under the federation and was taken over by the successor States. The possibility that they could be rendered stateless by virtue of the Citizenship Law was therefore ruled out.

As a result of ignorance or lack of understanding of these fundamental elements at the international level, certain organizations, above all NGOs, have pointed out that adoption of the Citizenship Law leads to mass denaturalization and mass statelessness.

The Czech Republic provided basic information as well as more detailed explanations regarding its citizenship legislation at the Warsaw seminar of the OSCE in September 1994 and above all at the OSCE Review Conference in Budapest in November 1994. Nonetheless, the information seems to have been misunderstood or, judging from certain recent statements regarding the Citizenship Law, even completely ignored. The complexity of citizenship arrangements in the context of State succession is likely to foster recurring misinterpretations and incorrect analyses of the legislation and its effects.

Representatives of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as "the UNHCR") who expressed their concern about Czech citizenship legislation and about the situations of statelessness it allegedly entailed, met with a positive attitude on the part of the Czech Republic and were assured that the Czech Republic fully respected the UNHCR mandate regarding statelessness, determined by the UN General Assembly resolution 3274 (XXIX) of 1974.

In order to study the alleged situations of statelessness caused by adoption of Czech Citizenship Law, the UNHCR representatives carried out two fact-finding missions in December 1994 and 1995, during which they met representatives of the Ministry of Interior, Ministry of Justice and Ministry of Foreign Affairs, visited the District Office in Jablonec nad Nisou and talked to representatives of NGOs.

During the above meetings as well as in their correspondence, the Ministry of Interior and the Ministry of Foreign Affairs requested the UNHCR to focus on identification of the alleged situations of statelessness, to prepare a list of stateless persons residing in the territory of the Czech Republic and seek ways how to resolve the concrete cases in cooperation with the appropriate Czech authorities, i.e. the UNHCR representatives were asked to concentrate on practical issues/measures in accordance with their mandate instead of expending considerable effort on theoretical analysis of development of international law and theories concerning citizenship in the context of State succession.

During the meetings, during consultations regarding the preliminary UNHCR report prepared in March 1995 and in the related documents, the UNHCR experts were repeatedly informed about the significance and effect of Czech Citizenship Law and about the meaning of the term "intentional criminal offence" and explained that it would have been unfeasible to "attribute" Slovak citizenship in cases when, in their opinion, "all factors pointed to [the individuals] being Czech" (i.e. citizens of the Czech Republic) due to the fact that the citizenship status of natural persons was determined by Czech and Slovak legislation. Nonetheless, certain inaccuracies and misconceptions regarding the institutes have reappeared in the UNHCR document submitted to the Czech Republic early in February 1996.

II. COMMENTS ON THE DOCUMENT

The above facts as well as the information contained in the following sections indicate that the warnings regarding the existence of a significant number of *de jure* and *de facto* stateless persons in the Czech Republic are unacceptable. Consequently, the unfounded allegations regarding the expulsions of such persons are likewise inadmissible.

As for the possibility to compare the list of individuals released from Slovak citizenship with the list of those who applied for Czech citizenship, it should be pointed out that such comparison can be made by the Slovak side.

Only the Slovak side has at its disposal lists of individuals released from Slovak citizenship and lists of individuals who acquired Czech citizenship, and consequently is able to identify the individuals who were released from Slovak citizenship and failed to acquire citizenship of the Czech Republic.

The criterion selected by the Czech and Slovak Republics to determine their respective initial bodies of citizens took into account the Czech and Slovak reality. Strict application of the principle "the population follows the territory" would in the concrete situation of dissolution of the Czech and Slovak Federal Republic have a destabilizing impact, which could be avoided only by safeguarding the continuity of citizenship. Such continuity was achieved by reference to the previous legislation based on the *ius soli* and *ius sanguinis* principles, a measure which cannot be perceived as implying non-observance of international standards.

When formulating the principle which should govern the determination of citizenship in the context of State succession, the UNHCR document tends to overemphasize the criterion of permanent residence. At the international level, this criterion does not enjoy a privileged or prioritized status. Non-application of such criterion is irrelevant and neutral from the point of view of international law.

By incorporating habitual residence in its citizenship legislation, the Czech Republic would create factual as well as juridical problems. Czech citizenship legislation has for a long time been based on the symbiosis of the institutes of temporary and permanent residence, institutes which were for the most part formal and served only for registration of population. This arrangement does not fully correspond with the concept of permanent (habitual) residence in international law. The criterion of permanent (habitual) residence, based on genuine link with a certain place, has been approved by the reasoning in support of the decision of the Constitutional Court only recently (13 September 1994). Consequently, domestic legislation operative within the period concerned did not provide legal grounds for applying the criterion of habitual residence (which would correspond with the international standard). Application of such criterion, involving the necessity to actually prove the existence of the genuine link, lacked grounds in domestic legislation would lead to the legal insecurity at the moment of State succession.

Non-application of the criterion of permanent (habitual) residence therefore cannot be classified as inconsistent with international law, and moreover is not inferior to any other solution. Under the national legal standards operative at the time, the application of such criterion was not feasible, it would give rise to general legal insecurity and naturally provoke international criticism.

International law does not normally link the issue of citizenship to State succession. The Vienna Conventions on individual aspects of State succession do not refer to citizenship. The Special Rapporteur of the International Law Commission responsible for State succession in the extracontractual sphere Bedjaoui stated in 1968 that "in all classical and modern cases of succession, succession or continuity do not as a rule apply to the sphere of citizenship". The current effort of the International Law Commission to mutually link succession and citizenship is the first systematic attempt of this kind. The initial report by Rapporteur Mikulka shows that the aim is to progressively develop international law rather than to codify the issue, seeing that individual specific rules have only just started to take shape. Current positive state of law, characterized by the discontinuity principle, one may draw the only possible conclusion: from the viewpoint of the successor State, the definition of its initial body of citizens represents the act of collective naturalization. The decision of the successor State is the determining factor in the process, because in matters of citizenship the State is not bound by the legislation of its predecessor.

As has already been said above, the Czech Republic is a successor State to the Czech and Slovak Federal Republic which ceased to exist as a subject of international law due to its own decision. Upon dissolution of the federation, Czechoslovak citizenship ceased to exist as well. The Czech Republic cannot therefore be made responsible for a mass "denaturalization". On the contrary, the Czech Citizenship Law provides for collective naturalization, for *en masse* granting, not loss, of citizenship and therefore it cannot be seen as a source of statelessness.

By using an identical, unequivocal criterion to determine the initial body of citizens, the Czech Republic and the Slovak Republic took the optimum course to avoid situations of statelessness, their respective citizenship legislations clearly divided the mass of Czechoslovak citizens into citizens of the Czech Republic and citizens of the Slovak Republic. The Czech Citizenship Law governs collective naturalization of some categories of persons who have lost Czechoslovak citizenship upon the dissolution of the federation. Therefore is cannot cause situations of statelessness.

The hints at the discriminatory effect of the criterion or at its inconsistency with human rights law principles in paragraphs 32-36 of the document are therefore unfounded. The adopted Czech citizenship legislation and the chosen criterion do not deny the right to citizenship determined in Article 15 of the Universal Declaration of Human Rights, nor do they deprive anybody of his citizenship or deny him the right to change it.

While speculating what would have happened had the Czech and Slovak Republics selected different criteria for determination of their respective initial bodies of citizens, the authors tend to overlook the fact that both States did not decide to use the previous legislation as a basis for their citizenship arrangements at haphazard, that each of them was aware of the intentions of the other side. These intentions were manifested in the process of drafting the bilateral agreement which was originally expected to settle the matter. The rejection of the draft agreement by the Slovak Government in December 1992 does not alter the fact that the subsequent steps – adoption of specific citizenship legislation in both States – were *de facto* a result of a concerted action.

The clear-cut division of the body of citizens of the federation into the respective bodies of citizens of the newly established Czech and Slovak Republic is illustrated by the cited introductory provisions of the Czech and Slovak Citizenship Laws adopted in 1992 and 1993 respectively. The Czech Citizenship Law, referring to the 1969 Law of the Czech National Council in fact only incorporates the criterion of birth in the territory of the Czech Republic, which is crucial to the 1969 Law. According to international law and to the consistent practice of states, birth in the territory of a State establishes a valid title to citizenship of that State pursuant to the *ius soli* principle (the complementing criterion applicable to children, based on the *ius sanguinis* principle, has never been questioned in practice as well). Acquisition of citizenship according to place of birth, together with the criterion of habitual residence, represent the most usual solutions in the context of State succession.

The fact that the Czech and Slovak citizenship did not have any significance in internal law and were not tied to any major exercise of rights prior to January 1, 1993 is irrelevant under the present conditions. On the other hand, a relevant fact is that in the context of international law, both criteria set by the 1969 Law and incorporated in the 1992 Law sufficiently prove the existence of a genuine and effective link between a citizen and the State. The criteria of birth (for adults) and citizenship of parents (for children), incorporated in the Czech Citizenship Law after the dissolution of the federation, reflected the reality of the Czechoslovak binational space much better that the criterion of habitual residence.

The Czech and Slovak citizenship had never any special legal significance under the federation. Nonetheless, the Czech-Slovak border existing under the federation was equally insignificant and, at the international level, had the status of a mere internal dividing line. Despite that, the Avis of R. Badiner's Arbitration Commission No. 3 of 11 January 1992 formulated, in connection with the former Yugoslavia, the rule according to which internal borders of a federal state enjoy international protection upon dissolution of the federation (application of the *uti possidetis* principle in the context of dissolution of a federal state). This rule was observed also by the Czech and Slovak Republics in the context of dissolution of the Czechoslovak federation. The aforesaid principle is generally recognized by the international community.

Apart from territory, another significant element constituting the State is its body of citizens. International community, while attaching legal relevance to a territory with borders determined by the internal legislation of a federal state and protecting such territory upon dissolution of the federation, can hardly deny similar relevance and protection to internal regulations governing the citizenship of each of the constituent states of the federation. In case the *uti possidetis* principle is supposed to serve as a stabilizing factor and instrument for prevention of territorial disputes arising from dissolution of federal States, an analogous approach to determination of bodies of citizens in the context of dissolution of a federal State cannot be condemned as a destabilizing factor, moreover when both successor States have taken similar, nonconflicting and complementary courses.

The criterion chosen with respect to the 1969 Citizenship Law is not inconsistent with international law, it respects the requirement of a genuine and effective link between a State and its citizens based on the *ius soli* and *ius sanguinis* principles and corresponds with the stabilizing approach of the international community to states established upon the dissolution of other European federations. In fact, a principle analogical to the *"uti possidetis"* is applied to the link between a new State and its citizens.

As for the criticism regarding the practice associated with the application of the requirement contained in the Czech Citizenship Law, under which former Slovak citizens applying for Czech citizenship must submit a release document from the state bond of the Slovak republic, it should be pointed out that such statutory condition is fully consistent with international law. It is aimed at elimination of double citizenship, a phenomenon which many States regard as negative. Countries such as Germany, Austria and many other States protect themselves against double citizenship. Given the nonexistence of international standards barring double and multiple citizenship, each state is free to take measures to ensure such prevention.

Typically, the steps taken by the Czech and Slovak authorities in connection with the requirement of release from Slovak citizenship were mutually complementing: denaturalization (losing citizenship) on the Slovak part, followed by naturalization (acquiring citizenship) on the Czech part. Consequently, the subject liable to violate the prohibition of statelessness was primarily the Slovak Republic, not the Czech Republic. The release from citizenship on the Slovak part should have been synchronized with the naturalization on the Czech part. The Czech Republic should not be held responsible for the potential shortcomings in Slovak legislation and its implementation. Such responsibility (with the above reservations) may come into question only in cases when a Czech authority arbitrarily issues a document on an unconditional promise of Czech citizenship, thereby misleading the Slovak Republic. Above all in case the Czech authority was aware or should have been aware of the existence of other obstacles barring the acquisition of Czech citizenship (e.g. the applicant was sentenced for an intentional criminal offence). In such case one could speak about an "arbitrary" act the Czech Republic which in causality condition

rendered in individual stateless. No cases of this type have been registered so far. There are some very controversial cases in which a Czech authority issued the unconditional promise of citizenship before the obstacle was disclosed. Such promise may mislead the Slovak side, nonetheless it is not an "arbitrary" act in respect of the individual (the "arbitrary act" relates to an individual, not to an other State – cf. Article 15 of the Universal Declaration of Human Rights). Such situations may arise when an applicant has in the meantime been sentenced for an intentional criminal offence. Situations of this type have occurred in practice, the Ministry of Interior has to date registered five cases. Seeing that the act on the Czech part was not "arbitrary" and that the Czech Republic is not subject to any absolute ban on statelessness in individual cases, the Czech Republic does not have international responsibility in the above cases. In addition, it does not have responsibility *a fortiori* also in cases when the citizenship was not granted due to the fact that an individual released from Slovak citizenship chose not to apply for Czech citizenship although he was free to do so.

The possibility to opt for Czech citizenship pursuant to Section 6 of the Citizenship Law concerns persons born in a foreign country, who have never lived in the Czech Republic or Slovak Republic and whose parents have never lived in the former CSFR. The Section reflects the corresponding provision of the 1969 Citizenship Law. The number of persons concerned is very low (up to 10 cases per year). With regard to the fact that the persons as well as their ancestors have lived in foreign countries, they are usually holders of citizenship of another state. No cases of statelessness have been registered within this group of persons.

Acquisition of citizenship by option in such cases was determined already by the legal regulations existing before the dissolution of CSFR. The dissolution did not affect the status of such persons.

In order to prevent situations of statelessness, such persons have been offered the possibility to opt for the citizenship of the Czech Republic by declaration. The principle of automatic acquisition of Czech citizenship was not applied in order to give the persons concerned the opportunity to opt for either Czech or Slovak citizenship. It would be difficult to determine a criterion on the basis of which they could automatically acquire citizenship of the Czech Republic (neither the persons concerned nor their parents have ever lived in the Czech Republic). No deadline has been set for such cases, the option may therefore be made at any time.

The document criticizes the requirement of "clean criminal record", which is acceptable for the authors in the naturalization process but not in the context of State succession; the requirement is regarded as inconsistent with international standards governing State succession.

Given the nonexistence of a provision in international law saying that naturalization must not be subject to other requirements, the requirement of clean criminal record (the applicant was not sentenced for an intentional criminal offence)

in the context of determination of the initial body of citizens by a successor State upon *dismembratio* is consistent with international law.

As regards the interpretation of the term "intentional criminal offence", which has been repeatedly explained to the UNHCR representatives in great detail, the document persists in criticizing the absence of specific guidelines for the implementation of the respective provisions of the law. Interpretation of the law cannot be determined by means of guidelines or any other internal administrative act. The criminal record specifies the criminal offence for which the applicant was sentenced and the Criminal Code determines whether this particular criminal offence is intentional or negligent, irrespective of the duration of the term of punishment. Czech criminal law distinguishes between intentional and negligent criminal offence on the basis of the degree of guilt. The Czech Ministry of Interior informed all district registrars how to interpret the provisions requiring that the applicant must not be "sentenced for an intentional criminal offence". During the meeting with the staff of District Offices on 19 October 1995, the Ministry of Interior of the Czech Republic repeatedly explained the concepts of intentional criminal offence and negligent criminal offence and how to distinguish them.

The statements that a considerable number of individuals were unable to acquire Czech citizenship due to "a thicket of administrative obstacles", which include "lack of clear guidance and information, high administrative fees, burdensome paperwork, arbitrary interpretation of definitions, and misapplied rules" lack sufficient grounds and are in any case unacceptable.

Implementation of Citizenship Law is governed by Instruction of the Ministry of Interior of the Czech Republic No. 1/1993 on steps to be taken by the organs of local administration in the context of implementation of the said law, published in the Official Journal for District Offices and Municipal Authorities. Additional instructions are issued in response to new developments and to changes of legislation governing administrative fees and criminal records. Problems arising from the law and its application are repeatedly discussed at the meetings of district registrars which are convened twice a year. Initial consultations were held on 4 January 1993 in order to keep the registrars informed from the very beginning. The Ministry will naturally continue to issue instructions in response to any future legislative changes.

A bulletin with instructions how to apply for citizenship has been published on the basis of Resolution of the Government of the Czech Republic No. 595 of 25 October 1995; manuals of this type have already been distributed by some District Offices. In addition, each applicant receives a letter from the Ministry of Interior of the Czech Republic containing information about the procedure. However, many applicants tend to ignore such manuals.

Applications for Czech citizenship (for permanent residence permits as well) are filed with the local District Office (district department of the Aliens Police) in the

district where the applicant resides. There is no need to travel far and in case an applicant is unable to visit the office e.g. due to illness, a member of its staff may bring the necessary papers to his home. The applicant must be personally present in order to prove his identity.

All District Offices must provide maximum assistance to applicants when completing forms, obtaining documents and dispatching them to Slovakia, especially to the elderly and to persons of limited capacity. This approach is normal at all District Offices.

Adequate attention is devoted to the Roma community: all Heads of District Offices were instructed to:

- provide guidance for Romas applying for Czech citizenship;
- provide guidance for Romas in connection with social security arrangements;
- establish contacts with representatives of Roma initiatives in their respective districts;
- continuously follow developments relating to the Roma community and identify any potential problems as soon as possible.

The District Offices have received clear instructions as to the reduction or waiver of the fees. The fee was reduced from CZK 5.000 to CZK 500 in respect of all applicants and, in cases of difficult financial situation, the Czech Ministry of Interior may further reduce or waive it. The issue of waiving of the administrative fee is resolved as the appropriate citizenship application comes up, no additional paperwork is required. With regard to the fact that the possibility to apply for reduction or waiver of the administrative fee is used, it can be said that difficult financial situation apparently does not represent an obstacle in the process of obtaining Czech citizenship.

The allegation that a considerable number of situations of statelessness *de facto* were caused by the legal and/or physical inability of certain individuals, e.g. prisoners, orphans, and foster children, to exercise their Czech and Slovak citizenship is unfounded. Such cases are subject to the following arrangements.

Determination of citizenship of children in orphanages and of prisoners is carried out on a continuous basis by the local District Offices in the districts where the orphanages or prisons are situated. The procedure was explained to prison governors and heads of orphanages and the consultations may continue if necessary.

The situation of minor children in orphanages or in foster care is governed by the provisions of the Family Law on representation of minors. Under the law, a head of an orphanage may request the court to take the appropriate measures. Pursuant to the Family Law the court appoints a guardian to represent the minor in connection with

application for citizenship. The same steps may be taken by the head of the orphanage through the mediation of a child welfare authority.

As regards prisoners and detainees, the Czech Ministry of Justice, Czech Ministry of Interior and Prison Service Directorate have established procedure to determine citizenship of detainees and prisoners already in 1993. The General Directorate of the Prison Service has issued an instruction to that effect. The appropriate documents are obtained through official channels. Prisons and detention centres send applications for citizenship certificates to the local District Offices on behalf of all prisoners and detainees of undetermined citizenship. The results of the subsequent verification procedure are notified to prison governors and to the prisoners concerned. The process continues as prison inmates come and go; the District Offices verify the citizenship of every new prisoner of undetermined citizenship. Due to the fact that such persons are undocumented, the process is time-consuming (documents have to be obtained from Slovakia, applicants tend to state incorrect data and several registries must often be checked). District Offices in the territory of the Czech Republic provide citizenship certificates free of charge, because such documents are intended for official use. District Offices in the territory of the Slovak Republic transmit citizenship certificates through the Slovak Embassy in Prague. The procedure is obligatory in respect of each new prisoner whose personal documents do not clearly show whether he is Czech or Slovak citizen.

The requirements governing the option or conferment of Czech citizenship do not represent an unsurmountable obstacle for Slovak citizens, as demonstrated by the number of applicants who acquired Czech citizenship to date:

• conferments under Law No. 39/1969 Coll. in respect of applications filed in December 1992 and processed in 1993	65,000
• options made before 30 June 1994	292,000
• conferments under Law No. 40/1993 Coll., as amended by subsequent regulations	19,000
Slovak citizens who acquired Czech citizenship, total	376,000

Applications rejected to date, i.e. from 1 January 1993 till 31 December 1995, total approximately 200, which is a negligible figure *vis-à-vis* the number of persons able to comply with the requirements and acquire Czech citizenship. The rejected applicants may acquire citizenship upon compliance with the statutory requirements. In the meanwhile, they are free to live in the Czech Republic; the requirements governing permanent residence have been simplified in respect of persons who resided in the territory of the Czech Republic before 31 December 1992.

As for the statement in the document that an undetermined number of applications have been rejected on grounds of non-compliance with the requirement of "5-year clean criminal record", it would be appreciated if the UNHCR could advise

as to the source of the information. The Czech side has raised similar question already in its comments on the UNHCR preliminary document submitted in March 1995.

The statutory period for options under Section 18 of the Czech Citizenship Law was preclusive and failure to observe it cannot be excused. The deadline for options was 30 June 1994 and all the related requirements had to be fulfilled before that date. The only possible interpretation of the preclusive period did not entail situations of statelessness. Likewise, situations of statelessness could not be caused by cancellations of certificate of option for citizenship (not cancellation of citizenship, as the document mistakenly states) in cases of illegally issued certificates, mostly involving bribery. Acquisition of an illegally issued certificate is not equal to acquisition of citizenship. Holders of such certificates do not acquire, and therefore cannot lose, Czech citizenship.

The Ministry of Interior of the Czech Republic keeps the problems relating to citizenship status of the persons whose certificates of option have been cancelled (this applies exclusively to some certificates issued by one District Office) under constant review and provides adequate assistance.

Persons who wished to opt or apply for Czech citizenship and omitted to use the opportunity before 30 June 1994 are free to submit their applications in the ordinary procedure and many of them have already done so. The fact that they did not acquire citizenship before 30 June 1994 does not imply that they are barred from it. The Ministry of Interior of the Czech Republic together with the District Offices are making every effort to simplify the procedure in respect of Slovak citizens.

The Ministry of Interior of the Czech Republic has repeatedly expressed its readiness to cooperate with governmental and non-governmental organizations. Closer contact was established with the Tolerance Foundation. Nonetheless, individual cases of statelessness are seldom pointed out and examination often proves that the person concerned has already acquired Czech citizenship or that the procedure is under way. Nonetheless, the Ministry of Interior of the Czech Republic will continue seeking ways how to improve cooperation with NGOs.

In connection with the complaints regarding obstacles encountered by the UNHCR during the missions, the UNHCR was asked to specify which the authorities were not willing to fully cooperate with its representatives.

III. CONCLUSION

The law determining the initial body of citizens of the newly established Czech Republic was designed so as not to cause situations of statelessness. The document does not prove the existence of the "significant numbers" of stateless persons.

The Czech Republic cannot be held responsible for the individual cases of former Slovak citizens rendered stateless in the procedure of changing citizenship (and not as a result of the adoption of the Citizenship Law).

Determination of the initial body of citizens of a new State with regard to the previous legislation is not inconsistent with international law and respects the requirement of genuine and effective link between a state and citizens based on the *ius soli* and *ius sanguinis* principles. Such approach ensured the maximum clarity, legal security and stability which the international community normally advocates in cases of states established upon the dissolution of other federal entities in Europe. The criterion chosen by the Czech Republic is not less significant or less valuable than the criterion of habitual residence.

The above facts show that Law No. 40/1993 Coll. on acquisition and loss of the citizenship of the Czech Republic was not found to be in breach of international law – i.e. of the international treaty commitments of the Czech Republic and of international customary law and that the unfounded warnings about situations of statelessness resulting from Czech citizenship legislation and about inadmissibility of the criteria determining the initial body of citizens *vis-à-vis* international law cannot be accepted.

The Czech Republic obviously complies with its international commitments and any legislative changes should be understood from this point of view.

Nonetheless, the Czech Republic will continue to make every effort to simplify the processing of applications for citizenship more than necessary under its international obligations. The aim of such measures is to alleviate the impact of the law application in especially justified cases.

Apart from the above measures, the Government of the Czech Republic has considered the possibility to accord more favourable treatment to Slovak citizens who resided in the territory of the Czech Republic before the dissolution of Czechoslovakia and, on 6 February 1996, approved the respective draft amendment to the Citizenship Law. If adopted by the Parliament, the amendment will facilitate more lenient approach to the requirement of clean criminal record, which is sometimes viewed as being rather strict.

By way of conclusion it should be pointed out that the steps taken by the Government within the sphere of its exclusive jurisdiction may achieve the desired

effect only if they meet with the interest and cooperation of applicants and non-governmental organizations. The appropriate State authorities are ready to cooperate with them.

The Czech Republic has repeatedly expressed its willingness to solve, on a case-by-case basis, the problems connected with the citizenship status of persons residing in its territory.

The Czech Republic, appreciating close cooperation with the UNHCR and interested in the development of mutual relations, adopted a positive attitude to the UNHCR fact-finding missions in December 1994 and 1995 concerning the problems of statelessness in the Czech Republic allegedly associated with the adoption of the law on acquisition and loss of citizenship of the Czech Republic, and continues to cooperate with the UNHCR in this sphere. The Czech Republic respects the mandate of the UNHCR to monitor the problems of stateless, based on the UN General Assembly resolution 3274 (XXIX) of 1974.

In the event that the above comments of the Czech Republic are not to a sufficient extent included in the document and the unfounded observations and conclusions are not reviewed, the Czech Republic requests that the UNHCR document be published together with the present Position.

THE SLOVAK MINISTRY OF INTERIOR

PUBLIC ADMINISTRATION SECTION

The Slovak Ministry of Foreign Affairs

Consular Department
Grösslingova 35
Bratislava

Your Ref:
Our Ref: 203-95/05215
Appointed person: JUDr. Fischerová
Bratislava, 12.10.1995

SUBJECT: Czech and Slovak nationality laws and issues on statelessness – the standpoint

On 24 January 1995 a few officers of the Office of the United Nations High Commissioner for Refugees visited the Slovak Ministry of Interior and the District Office Bratislava-vidiek on the basis of an invitation of the Slovak Ministry of Foreign Affairs (Consular Department). They were the following officers: Mr. Iogna-Prat, the UNHCR senior regional legal advisor for Central and Eastern Europe and Mr. Oldrich Andrysek, the deputy of the head of the UNHCR Regional Office in Vienna and the UNHCR representatives in the Slovak Republic. The visit was organized on the occasion of a seminar on gypsies organized by the CSCE (the Office for Democratic Institutions and Human Rights) which was held in Vienna in September 1994. On that seminar the Deputy of the Secretary General of the Council of Europe, as well as the CSCE High Commissioner for Ethnic Minorities expressed their anxiety about the nationality law of the Czech Republic.

That visit was motivated by fears that the splitting of the Czech and Slovak Federative Republic would lead to the statelessness and especially by critical attitudes from the side of representatives of international organizations towards the nationality law of the Czech Republic which discriminated a part of Slovak nationals permanently resident in the Czech Republic that did not fulfil conditions for granting Czech nationality.

On request of the Slovak Ministry of Foreign Affairs, the Slovak Ministry of Interior has drown up a standpoint to the report on the visit of Mr. Iogna-Prat.

After the above-mentioned visit, from 6 to 8 March 1995, four experts of the Council of Europe, from Switzerland, Netherlands, Great Britain and Denmark, under the guidance of the Director of the International Civil Law Section of the Legal Matters Directorate of the Council of Europe, Mr. Hans G. Nilsson visited the Slovak Republic. The purpose of the expertise which was carried out was to perform a survey about the access of both republics to the solution of the issue related with nationality of citizens of the former Czech and Slovak Federative Repubic, aimed especially on the status of Slovak nationals permanently resident in the Czech Republic after the splitting of the former Czech and Slovak Federative Republic.

The experts received detail answers to their questions concerning the nationality law of the Slovak Republic and they were acquainted with the direct performance of the District Office Bratislava at the decision making concerning the release persons from the original body of citizens of the Slovak Republic. They had opportunity to acquaint themselves that the release persons from the original body of citizens of the Slovak Republic comes only if the written promise for granting Czech nationality is submitted. They were explained reasons why as a criterion, included in the nationality laws of both republics at the time of origin of the federation, the place of birth was used. On the basis of that criterion the citizenship of the federative republic was granted. We have not been acquainted with results of the expertise which was carried out.

Concerning conclusions introduced in the report of Mr. Iogna-Prat concerning legal regulations on Slovak nationality (the citizenship of the Slovak Republic), they were based only on the information gained during the survey carried out in 24 January 1995. The survey did not cover the issue on the whole. It did not look at the deeper sense of the institute “nationality” in our law taking into account also its historical development.

According to our law, under the term “nationality” we do not understand purely a legal relationship between a citizen and the state, while an exclusive factor of the so called real and effective relationship is his domicile, but pursuant to the origin of the understanding that such a kind of relationship covers also other important factors especially ethnic and moral factors, the principle of famity unity, etc. Except of the above-mentioned, at adaptation of regulations on nationality at the time of origin of the Czech and Slovak federation on 1 January 1969, as well as after the splitting of the federation into two independent countries/states on 1 January 1993 our legislation was based on the fact that in case of citizens who left the territory of the Slovak Republic at the time of existence of the former Czech and Slovak Republic as a unified state mainly due to the economic reasons and they stayed in the Czech Republic, they were not considered as migrants in the classical sense of that term. They did not go, in most cases with an intention to settle there (even though from the administrative point of view they registered with the police as permanently resident in the Czech Republic) but in a number of cases their families were left in the Slovak Republic and/or the family relationship between them and their close relatives living

in the Slovak Republic was very close. They have left their property in the Slovak Republic and their relationship to the Slovak Republic was very close and sincere. They lived with their awareness of their return in the Slovak Republic. Such thinking led the lawmakers who prepared the bill on nationality at the time of origin of the federation (Act No. 206/1968 Coll.), as well as at the time of origin of the Slovak Republic (Art No. 40/1993 Coll. of Laws) to introduce the place of birth as a criterion for granting nationality. Such a criterion, on the basis of above-mentioned reasons, suited the best, in most cases, with ethnic, moral and family relations of citizens and with their places of birth.

The other reason why the place of birth was set as a criterion for granting nationality was consideration that the place of birth was a stable data which could be found quite easy whenever in the future especially in registers of births (in the Slovak Republic the registers of births have been kept since 1895). This is very important fact from the point of view of granting nationality in the future. The information on permanent residence at the date which would be decisive for granting nationality in the future is not recorded permanently. The place of birth is given on all personal documents of citizens (identify cards, travel documents, etc.) and this is the reason why it can be easily found from the practical point of view.

We do not agree with the opinion that setting the place of birth as a criterion instead of the domicile (the place of permanent residence) is in contrary to the international law or to its fundamental principles. In this relation (the decision of the International Court on the case of NOTTEBOHM mentioned in the document) it is not suitable to interpret it so wide that the conclusions expressed in the decision taken on the above-mentioned concrete case are valid absolutely. Those conclusions were based on the concrete circumstances of that case when the granting the citizenship of Liechtenstein was explicitly purposeful, because of speculative reasons of the named applicant who had no relations to the above-mentioned country.

Finally, we would like to draw attention to the fact that the place of birth as a criterion for granting nationality was really important for a particular group of people also in the past within the Czechoslovak law in relation with the institute “the right of domicile” as an important institute in the field of citizenship.

In cases when the criterion of the place of birth would not be used for determination of nationality of persons who emigrated (most of them for political reasons) and who would not acquire nationality of the state of their residence, such persons would become stateless.

The conclusions concerning to the citizenship of the former Czech and Slovak federation are inadequate. The citizenship of the federative republic was important in appointing some persons to carry out some important functions in federal and state (country’s) bodies and institutions as well as in parliamentary elections. The statement that the citizenship of a republic was not given in any official document

(an entry in registers of citizens, the statement on the chosen citizenship in identity cards) does not correspond with reality.

Legal succession and nationality – Art. 2 of Act No. 40/1993 Coll. of Laws on Slovak nationality

The legal succession is based on Art. I of constitutional Act No. 542/1992 Coll. on the dissolution of the Czech and Slovak Federative Republic pursuant to Par. 2 of which: "The successors of the Czech and Slovak Federative Republic are the Czech Republic and the Slovak Republic".

From the legal succession it results directly that together with territory as a territorial substratum of the new state also the original body of citizens of the former Slovak Republic was transferred into the initial body of citizens of the new state.

In this relation we agree with the opinion of Mr. Johannes Chan cited on this topic in the reviewed document.

In the document some conclusions on reasons leading to statelessness according to Czech legal regulations are applied also to Slovak legal regulations which is in contrary with reality. It also misrepresents negative consequences of Slovak legal regulations.

The legal regulations on Slovak nationality do not result in statelessness and there is no reason to evaluate them equaly with Czech legal regulations.

It is necessary to stress the fact that Slovak legal regulations on the choice of nationality (the citizenship of a republic) (Art. 3 of Act No. 40/1993 Coll. of Laws) did not set any criteria conditional for granting nationality and in case of a choice it did not result in statelessness. The document did not stress that positive feature of the Slovak legal regulations.

The conclusion which limits its statement only to the "Slovak bodies" is not correct because that conclusion would correspond to Czech bodies as well.

The Slovak legal regulations by its concept of naturalization (Art. 7) provides possible solutions how to avoid statelessness, for example the reduction of statelessness within the territory of the Slovak Republic also in such cases when basic conditions stipulated in Art. 7 Par. 1 of the Act (it is under the competence of the Slovak Ministry of Interior) would not be fulfilled. Existing cases of statelessness within the territory of the Slovak Republic (which do not relate with the nationality of citizens of the former Czech and Slovak Federative Republic) do not represent such a problem which would require the amendment of the existing legal regulations.

Statelessness represents an actual problem in the Czech Republic. In order to solve that problem as well as some other practical problems of stateless persons in the Czech Republic and/or to solve the problem with expulsion of Slovak nationals permanently resident in the Czech Republic it would be suitable to cooperate with the UNHCR.

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