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Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

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Introduction

A. The Issue of Statelessness

1. "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality." Such is the pronouncement of Article 15 of the 1948 Universal Declaration of Human Rights. The right to a nationality and the need to ensure realization of an effective nationality, of a nationality acting as a basis for the exercise of other rights, have been developed through the course of this century. This may be noted in 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, and the 1961 Convention on the Reduction of Statelessness promulgated under the auspices of the United Nations following World War II. The principles in these conventions have been elaborated upon and reinforced by other landmark conventions, court jurisprudence and State practice. The right to a nationality is a basic human right acting as a premise for resolution of any issues or questions pertaining to nationality.

2. 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 should, however, accord with general principles of international law and, in particular, with principles relating to the acquisition, loss, or denial of citizenship. The codification of principles relating to nationality in international instruments such as the Universal Declaration has been a major development in international law.

3. 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. The problem has arisen in connection with State succession and the adoption of nationality legislation by new or restored States, but is also seen in areas of the world which have had no recent change

in legislation and have undergone no transfer of territory. Those affected include life-long residents of a State, ethnic minorities, and in some cases women and children who are rendered stateless because their husband or father is stateless.

4. The emergence of conflicts involving ethnic groups, numerous sudden cases of State succession, and increased displacement have brought the nationality issue to the foreground. The international community is, as a consequence, turning to international instruments which reflect developments made in international law and were structured to resolve problems such as those which have arisen. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, developed under the auspices of the United Nations, serve as the reference points for international consensus on principles relating to the problem of statelessness.

5. Nationality, and the ability to exercise the rights inherent in nationality, act as stabilizing factors and aid in the prevention of involuntary movements between States. Hence, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have taken on new relevance and political significance. "Orphan" conventions which, until recently, have not been actively promoted due to the lack of a supervisory body or other mechanism which might disseminate them, the 1954 and 1961 Conventions are now tools by which the international community can seek to address emerging and weighty problems relating to nationality.

6. UNHCR has been approached by both individuals and Governments seeking advice and assistance in nationality matters, including in the drafting and implementation of nationality legislation. An essential step in strengthening efforts to reduce statelessness and the inability to establish nationality, is securing accession to international instruments which ensure, as a minimum: that persons will not arbitrarily be deprived of nationality; that they will be granted a nationality under certain circumstances in which they might otherwise be stateless; and that adequate protection will be available to those who, nonetheless, remain or become stateless.

7. Accession to the 1954 Convention relating to the Status of Stateless Persons is important because it provides stateless individuals with many of the rights necessary to live a stable life. Accession to the 1961 Convention on the Reduction of Statelessness would, moreover, serve to resolve many of the situations which result in statelessness. The 1961 Convention, embodying principles already generally accepted under international law, is a useful reference point for nationality legislation and can help resolve certain conflict of laws problems, thereby indicating the international community's resolve to reduce statelessness. An increase in accession to and ratification of these international instruments would act, therefore, as an impetus for all States to work toward the reduction, and eventual elimination, of statelessness.

8. Due to recent developments, 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 recognised. 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 principles embodied in these instruments, and the need

for States to adopt measures to avoid statelessness. 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 Accession Package in furtherance of these goals.

Issues Pertaining to Nationality and Statelessness

B. Underlying Causes

9. There are a variety of circumstances in which statelessness has been created. While the focus, of late, has been on nationality issues as they relate to State succession, statelessness as a phenomenon appears regularly in a variety of locations and settings.

10. Statelessness may occur as a result of several factors, notably including the following:

(1) Conflict of laws (for example, State A, in which the individual is born, grants nationality by descent (*jus sanguinis*) and State Bin which the parents hold nationality grants nationality by birth (*jus soli*) resulting in statelessness for the individual).

(2) Transfer of territory (including issues such as State independence, dissolution, succession, or restoration).

(3) Laws relating to marriage.

(4) Administrative practices.

(5) Discrimination.

(6) Laws relating to the registration of births.

(7) *Jus sanguinis* (nationality based solely on descent, often only of the father, which in some regions results in the inheritance of statelessness).

(8) Denationalization.

(9) Renunciation (without prior acquisition of another nationality).

(10) Automatic loss by operation of law (through loss of a genuine and effective link or connection with the State which the individual does not expressly indicate s/he wishes to maintain. May be associated with faulty administrative practices which fail to notify the individual of this obligation).

11. These factors illustrate the wide range of legal issues relating to nationality which may be relevant in cases of statelessness, from the conflict of laws or administrative gaps to denationalisation, discrimination and failure to acknowledge links an

individual has with a country. While the majority of States pay full regard to international law in the matter of nationality determination, there are conflict of laws issues which may result in statelessness despite a State's best efforts to avoid this. The 1954 Convention provides the tools for assisting those who are stateless to live a more stable life, while the 1961 Convention on the Reduction of Statelessness is the primary international legal instrument for avoiding and reducing, wherever possible, the existence of statelessness.

C. Developments in International Law

12. Nationality, or citizenship,[1] has been described as man's basic right, as, in fact, the right to have rights.[2] When viewed in this light, two aspects of citizenship become apparent, the first being that citizenship Is a right, and the second being that the realization of this right is a necessary precursor to access to other rights. Nationality provides the legal connection between an individual and a State which serves as a basis for certain rights, including the State's right to grant diplomatic protection and representation of the individual on the international level. The exercise of an effective nationality is, further, a stabilizing and connecting factor, decreasing the potential for population movement or displacement. General Assembly Resolution 50/152 of 9 February 1996, calls upon States "to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law".[3] While the extension of certain rights generally associated with nationality, such as voting, employment, or ownership of property, may be one means of normalising the status of non-citizens on a State's territory, there is no replacement for nationality itself.

13. 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".[4]

Thus, while nationality issues were in principle within domestic jurisdiction, the PCIJ pointed to restrictions, governed by rules of international law, made incumbent on State discretion by obligations undertaken towards other States.

14. This theme was woven into the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. Held under the auspices of the Assembly

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1 Some States use the term nationality to describe the legal bond between the individual and the State, while other States use the word citizenship. The words nationality and citizenship are used as synonyms in this document.

2 United States Supreme Court Chief Justice Earl Warren, 1958, quoted in Independent Commission on International Humanitarian Issues, Winning the Human Race?, 1988, p. 107.

3 The sources 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 sources of law. These sources have, as regards nationality, developed over time as new conventions, custom, case law and principles have emerged.

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

of the League of Nations and the first international attempt to ensure that all persons have a nationality, the Hague Convention picks up this theme and goes further. Article 1 states:

> "It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality".[5]

15. This reference to the three primary sources of international law, later encoded in Article 38 of the Statute of the International Court of Justice, is important. When a State takes action to determine who its nationals or citizens are, this determination should accord with the relevant provisions of international law. As international law develops over time, developments in the field of nationality and statelessness should be taken into consideration by States when they determine nationality status for persons under their jurisdiction. The term "genuine and effective link" was first enunciated in the Nottebohm Case as a means of defining the nature of nationality. The International Court of Justice (ICJ) 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, interest and sentiments, together with the existence of reciprocal rights and duties".[6]

16. The genuine and effective link, as extrapolated from the Nottebohm Case, has since been developed into a broader notion in the area of nationality, as based upon principles embodied in State practice, treaties and case law. For purposes of nationality determination, such factors as birth on a State's territory and/or descent from nationals have been determined to constitute a significant link in the avoidance of statelessness, as has long-term residency and other connecting factors between an individual and a State. These factors are reflected in the nationality legislation of many States.

17. Human rights principles are also relevant to the problem of statelessness and should be considered by States in assessment of nationality determination. Article 15 of the 1948 Universal Declaration of Human Rights declares:

> "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".[7]

18. It should, further, be recalled that the bulk of human rights law has developed in the years following the decisions of the PCIJ and ICJ, and the promulgation of the Hague Convention and the 1961 Convention itself. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination seeks, with respect to the right to nationality:

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5 179 League of Nations Treaty Series 89, 99.

6 ICJ Reports, 1955, p. 23.

7 UN General Assembly Resolution 217 A(III), 10 December 1948; text in Human Rights: A Compilation, p. 1.

> "To prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or nationality or ethnic origin, to equality before the law".[8]

19. In addition to the 1961 Convention on the Reduction of Statelessness, other international legal instruments dealing with the right to a nationality include the 1957 Convention on the Nationality of Married Women, the 1966 Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, and the 1989 Convention on the Rights of the Child. The 1957 and 1979 Conventions seek to grant women equal rights with men to acquire, change, or retain their nationality. The husband's nationality status should not automatically change the nationality of the wife, render her stateless, nor mandate acquisition by her of his nationality.

20. Under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, women should also have equal rights with men with respect to the nationality of their children, avoiding both discrimination against women and the inheritance, where applicable, of the father's statelessness. The 1989 Convention on the Rights of the Child stipulates that children should be registered immediately after birth, a crucial factor in establishing both place of birth and descent for purposes of acquiring nationality. Children have the right, from birth, to acquire nationality, as provided for in both the 1989 Convention and the 1966 International Covenant on Civil and Political Rights.

21. Reference may also be made to regional instruments, such as the 1969 American Convention on Human Rights, stating:

> "Every person has the right to a nationality. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality. No one shall be arbitrarily deprived of his nationality or of the right to change it".[9]

22. These principles have been supported by the jurisprudence of the Inter-American Court. Further, while it has confirmed that the conditions under which nationality will be conferred remain within the domestic jurisdiction of the State, the Court stated in an Advisory Opinion:

> "Despite the fact that it is traditionally accepted that the conferral and recognition of nationality are matters for each State to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the States in that area and that the manner in which States regulate matters bearing on nationality cannot today be deemed to be within their sole jurisdiction".[10]

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[8] General Assembly Resolution 2106 A(XX), 21 December 1965, text in Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons, Vol. I, p. 205.

[9] Article 20, American Convention on Human Rights "Pact of San José, Costa Rica", 22 November 1969; text in Collection of International Instruments and Other Legal Texts, Vol. II, p. 140.

[10] Inter-American Court on Human Rights, Advisory Opinion, "Amendments to the Naturalisation Provision of the Constitution of Costa Rica", paras. 32-34; text in 5 HRLJ 1984.

23. The 1997 European Convention on Nationality, promulgated under the auspices of the Council of Europe, is a valuable reference point for general consensus on nationality issues and developments for the forty member States participating in its elaboration.[11] The Convention stipulates that account should be taken of the legitimate interests of States and of individuals with reference to nationality. The avoidance of statelessness, the right to a nationality for all, and a prohibition concerning discriminatory distinctions are principles underlying all provisions of the Convention. Provisions of the 1961 Convention on the Reduction of Statelessness are incorporated into the 1997 European Convention as regards the grant of nationality to a child born on a State's territory or descended from a State's national in instances where statelessness would otherwise result.

24. With these developments in international law in the field of nationality, the 1961 Convention on the Reduction of Statelessness may be seen as consolidating principles of equality, non-discrimination, protection of ethnic minorities, rights of children, territorial integrity, the right to a nationality and the avoidance of statelessness. The 1961 Convention does not require a contracting State unconditionally to grant nationality to any stateless persons but seeks, rather, to balance factors of birth or descent in an effort to avoid the creation of statelessness. Procedural guarantees are also required to avoid the creation of statelessness through an inadvertent loss of nationality. This approach is developing as a principle in international law outside the context of the 1961 Convention on the Reduction of Statelessness.

D. Background of the Conventions

25. Historically, refugees and stateless persons were less differentiated, with both receiving protection and assistance from international refugee organisations. The 1954 Convention relating to the Status of Stateless Persons, originally drafted as a Protocol to the 1951 refugee 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 Organisation prevented detailed consideration of the statelessness issue at the 1951 Conference of Plenipotentiaries convened to consider both issues. The 1951 Convention was adopted, while the Statelessness Protocol was postponed for adoption at a later date. Under the 1951 Convention, stateless refugees receive protection as refugees, nationality status being one of many potentially relevant issues.

26. In 1954, the Protocol was made a Convention in its own right. A strictly legal definition of a stateless person 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 distinction between *de jure* and *de facto* stateless persons – those who might technically have a nationality but whose nationality is not effective – was necessary so as to avoid confusion concerning a person's actual legal status, the similarity in their positions was recognised.

[11] 1997 European Convention on Nationality, Council of Europe, European Treaty Series No. 166. Also of interest is the work of the International Law Commission in the area of nationality and State succession.

27. *De facto* stateless persons were, therefore, made the subject of a recommendation in the Final Act of the 1954 Convention relating to the Status of Stateless Persons, as it was assumed that they had voluntarily renounced their nationality and were, in any event, refugees. Hence, the Final Act

> "Recommends that each Contracting State, when it recognises 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". 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 1951 Convention.

28. The 1961 Convention on the Reduction of Statelessness seeks to reduce statelessness by requesting signatory States to adopt nationality legislation reflecting prescribed standards pertaining to the acquisition or loss of nationality. By incorporation into the Final Act, the 1961 Convention "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". Here again, the link between the lack of an effective nationality and the position of a *de jure* stateless person was recognised.

E. UNHCR and Statelessness

29. UNHCR has always had responsibilities for stateless refugees, under its statutory function of providing international protection as well as under the 1951 Convention relating to the Status of Refugees. In recent years, furthermore, the Office has been encouraged to seek preventive action by addressing the causes leading to involuntary displacement. Clearly, the realization of an effective nationality and the ability to realise the rights inherent in nationality act as stabilizing factors in the prevention of involuntary and coerced movements between States.

30. There is a 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. 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 stateless 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.

31. UNHCR has been entrusted by the General Assembly with fulfilling the functions foreseen under Article 11 of the 1961 Convention on the Reduction of Statelessness. When the 1961 Convention 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". As the agency designated to act as an intermediary between States and stateless persons under the 1961 Convention, it is incumbent upon UNHCR to provide expertise in the area of nationality legislation to States parties. The principles embodied in the 1961

Convention have served as a reference point for determination of international law and international consensus regarding nationality and have been incorporated into numerous treaties and international instruments, as well as into national legislation.

32. Thus, while there are a minimal number of States signatory to the 1961 Convention, the general principles embodied in the Convention are inherent in nationality legislation and practice in many States, and have served as a means of ascertaining consensus on legal standards to be applied in the area of nationality to problems of statelessness. These standards include the avoidance of statelessness and the grant of nationality to those who have an effective link or appropriate connection with the State.

33. 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, adopted by the High Commissioner's Executive Committee and endorsed by United Nations General Assembly Resolution 50/152 of 9 February 1996. The General Assembly encouraged 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, and now:

> "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 and the 1961 Convention on the Reduction of Statelessness, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States;

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, while at the same time recognising the right of States to establish laws governing the acquisition, renunciation or loss of nationality".

34. To this end, UNHCR has provided advice and assistance to governments and individuals in nationality matters, including in the drafting and implementation of nationality legislation. The Office will continue to provide technical and advisory services and to promote the statelessness Conventions as part of its responsibility under Article 11 of the 1961 Convention, as well as in response to the request of its Executive Committee to "provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation".

35. UNHCR is concerned with nationality legislation which could lead to displacement. In its Resolution of 1996, the General Assembly expressed its concern that "statelessness, including the inability to establish one's nationality, may result in displacement". Lack of an effective nationality including national protection is also relevant and there are numerous cases in which *de facto* statelessness has been shown to be connected to population displacement. While some refugees are *de jure*

stateless, many refugees are *de facto* stateless, making this category, or its potential creation, of great concern to the Office.

36. When the 1954 and 1961 Conventions were drafted, it was assumed that all *de facto* stateless persons were refugees and would, therefore, benefit from the 1951 Convention. It is now apparent that there are those who do not qualify as refugees but 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 also concerned with promotional and preventive measures on behalf of such individuals. UNHCR continues to explore promotional and preventive activities in this area to which the Office can contribute in collaboration with concerned States.

Main Provisions of the Conventions

F. Main Provisions of the 1954 Convention relating to the Status of Stateless Persons

37. The 1954 Convention relating to the Status of Stateless Persons is the primary international instrument adopted to date to regulate and improve the legal status of stateless persons and to ensure to stateless persons fundamental rights and freedoms without discrimination. The Convention was adopted to cover those stateless persons who are not refugees and who are not, therefore, covered by the 1951 Convention relating to the Status of Refugees. As noted above, the 1954 Convention was originally intended as a Protocol to the 1951 Convention.

38. The Convention's provisions are not a substitute for granting nationality to those born and habitually resident in a State's territory. There are, in fact, international legal principles in the area of nationality which elaborate on this. The improvement of the rights and status of stateless persons under the provisions of this Convention do not, therefore, diminish the necessity of acquiring nationality nor do they alter the fact that the individual is stateless. This is clearly exemplified in paragraphs 15 and 16 of the Schedule concerning the issuance of a Convention Travel Document, which state:

Par. 15. Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Par. 16. The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not *ipso facto* confer on these authorities a right of protection.

There is no equivalent, however extensive the rights granted to a stateless person may be, to the acquisition of nationality itself.

39. The main provisions of the 1954 Convention may be summarised as follows:

a. Definition of a Stateless Person

Article 1 states:

> For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

This is a strictly legal definition. It does not speak of the quality of nationality, of the manner in which nationality is ascribed, or of access to a nationality. The definition is one simply of legal fact, an operation of law, by which the State's nationality legislation defines *ex lege*, or automatically, who has nationality. There are, however, principles involved in the acquisition, bestowal, loss and renunciation of nationality which are important in the determination of who should have access to nationality even in cases where, by operation of law, they do not acquire it.

b. Persons Excluded from the 1954 Convention

The Convention does not apply to:

i. those who were, at the time the Convention came into force, receiving assistance from United Nations agencies with the exception of UNHCR;

ii. persons who already have the rights and obligations attached to the possession of nationality in the country in which they reside. In other words, where the individual has already attained the maximum legal status possible (status equivalent to that of nationals), the accession of that State to the Convention with provisions less extensive than those already granted to stateless persons under national law, will not jeopardise those rights. The importance of nationality itself must, however, be borne in mind;

iii. persons with respect to whom there is serious reason for considering that:

- they have committed a crime against peace, a war crime, or a crime against humanity;

- they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

- they have been guilty of acts contrary to the purpose and principles of the United Nations.

c. Eligibility

The decision as to whether a person is entitled to the benefits of this Convention is taken by each State party in accordance with its own established procedures and may be made subject to the grant of lawful residence. UNHCR is available to play an advisory role in these procedures if requested, in view of the Office's experience with issues relating to statelessness and nationality.

d. Provisions relating to the Status of Stateless Persons

The Convention contains provisions regarding the stateless person's rights and obligations pertaining to their legal status in the country of residence. These rights include access to courts, property rights and freedom to practice their religion. Obligations include conformity to the laws and regulations of the country. The Convention further addresses a variety of matters which have an important effect on day-to-day life such as gainful employment, public education, public relief, labour legislation and social security. Contracting States are encouraged to accord stateless persons lawfully resident on their territory a standard of treatment comparable, in some instances, to that accorded to nationals of the State and, in other instances, to that accorded to nationals of a foreign country or aliens generally in the same circumstances.

e. Identity and Travel Documents

The Convention stipulates that an individual recognised as a stateless person under the terms of the Convention should be issued an identity and travel document by the Contracting State. The issuance of a travel document does not imply a grant of nationality, does not alter the status of the individual, and does not grant a right to national protection or confer aright of protection on the authorities. The documents are, however, particularly important to stateless persons in facilitating travel to other countries for, *inter alia*, purposes of study, employment, health or immigration. In accordance with the Schedule to the Convention, each Contracting State undertakes to recognise the validity of travel documents issued by other States parties. UNHCR is ready to offer technical advice on the issuance of such documents.

f. Expulsion

Stateless persons are not to be expelled save on grounds of national security or public order. Expulsions are subject to due process of law unless there are compelling reasons of national security. The Final Act indicates that non-refoulement in relation to danger of persecution is a generally accepted principle. The drafters, therefore, did not feel it necessary to enshrine this is the articles of a Convention geared toward regulating the status of *de jure* stateless persons.

g. Naturalisation

The Contracting State shall as far as possible facilitate the assimilation and naturalisation of stateless persons. The State shall in particular make every effort to expedite naturalisation proceedings including reduction of charges and costs wherever possible.

h. Dispute Settlement

Disputes between States parties which cannot be settled by other means may be referred to the International Court of Justice at the request of a party to the dispute.

i. Reservations

In acknowledgement of special conditions prevailing in their respective States at the time of ratification or accession, the Convention allows Contracting States to make

reservations to certain of the provisions. Reservations may be made with respect to any of the Convention's provisions with the exception of those which the drafters of the Convention determined to be of a fundamental nature. No reservations may be made, therefore, in the case of Articles 1(definition/exclusion), 3 (non-discrimination), 4 (freedom of religion), 16(1)(free access to courts), and 33 to 42 (Final Clauses).

j. Final Act

The Final Act recommends that each Contracting State, when it recognises 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 the person the treatment which the Convention accords to stateless persons. This recommendation was included on behalf of *de facto* stateless persons who, technically, still held a nationality but did not receive any of the benefits generally associated with nationality, such as national protection.

G. Main Provisions of the 1961 Convention on the Reduction of Statelessness

40. The primary international legal instrument addressing the problem of statelessness is the 1961 Convention on the Reduction of Statelessness. The essential purpose of the Convention is both to provide for the acquisition of nationality by those who would otherwise be stateless and who have an appropriate link with the State through birth on the territory or through descent from nationals, and for the retention of nationality for those who will be made stateless should they inadvertently lose the State's nationality.

41. The basic provisions contained in the 1961 Convention may be summarised as follows:

a. Grant of Nationality (Articles 1-4).

Nationality shall be granted to those, who would otherwise be stateless, who have an effective link with the State through either birth or descent. The fact that the person concerned will otherwise be stateless is a precondition to all modes of acquisition of nationality under the terms of the 1961 Convention which is concerned not with nationality in general but specifically with the problem of statelessness. Nationality shall be granted:

i. at birth by operation of law to a person born in the State's territory;

ii. by operation of law at a fixed age, to a person born in the State's territory, subject to conditions of national law;

iii. upon application to a person born in the State's territory (may be made subject to one or more of the following: a fixed time-frame in which the application may be lodged, specified residency requirements, no criminal convictions of a prescribed nature, and that the person has always been stateless);

iv. at birth to a legitimate child whose mother has the nationality of the State in which the child is born;

v. by descent, should the individual be unable to acquire nationality of the Contracting State in whose territory s/he was born due to age or residency requirements (may be made subject to one or more of the following: a fixed time-frame in which the application may be lodged, specified residency requirements, and that the person has always been stateless);

vi. to foundlings found in the territory of a Contracting State;

vii. at birth, by operation of law, to a person born elsewhere if the nationality of one of the parents at the time of the birth was that of the Contracting State;

viii. upon application, as prescribed by national law, to a person born elsewhere if the nationality of one of the parents at the time of the birth was that of the Contracting State(may be made subject to one or more of the following: a fixed period in which the application may be lodged, specified residency requirements, no convictions of an offence against national security, and that the person has always been stateless).

b. Loss/Renunciation of Nationality (Articles 5-7).

Loss or renunciation of nationality should be conditional upon the prior possession or assurance of acquiring another nationality. An exception may be made in the case of naturalised persons who, despite notification of formalities and time-limits, reside abroad for a fixed number of years and fail to express an intention to retain nationality. In this specific context, a naturalised person refers only to a person who has acquired nationality upon an application which the Contracting State concerned, in its discretion, could have refused. Loss of nationality may take place only in accordance with law and accompanied by full procedural guarantees, such as the right to a fair hearing by a court or other independent body.

c. Deprivation of Nationality (Articles 8-9).

The basic principle is that no deprivation of nationality should take place if it will result in statelessness. The following exceptions are made:

i. nationality obtained by misrepresentation or fraud;

ii. acts inconsistent with a duty of loyalty either in violation of an express prohibition or by personal conduct seriously prejudicial to the vital interests of the State;

iii. oath or formal declaration of allegiance to another State or repudiation of allegiance to the Contracting State;

iv. loss of effective link by naturalised citizens who, despite notification, fail to express an intention to retain nationality (see b. above).

Deprivation must be in accordance with law and accompanied by full procedural guarantees, such as the right to a fair hearing. A Contracting State may not deprive

any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

d. Transfer of Territory (Article 10).

Treaties shall ensure that statelessness does not occur as a result of a transfer of territory. Where no treaty is signed, the State shall confer its nationality on those who would otherwise become stateless as a result of the transfer or acquisition of territory.

e. International Agency (Article 11).

Provision was made for the establishment, within the framework of the United Nations, of a body to which a person claiming the benefit of the Convention may apply for the examination of his/her claim and for assistance in presenting it to the appropriate authority. UNHCR has been requested, by the United Nations General Assembly, to fulfil this function.

f. Disputes (Article 14).

Disputes between Contracting States concerning the interpretation or application of the Convention, which have not been resolved by other means, may be submitted to the International Court of Justice at the request of anyone of the parties to the dispute.

g. Reservations (Article 17).

Reservation may be made, at the time of signature, ratification or accession, in respect only of Articles 11 (Agency), 14 (Referral of disputes to ICJ) or 15 (territories for which the Contracting State is responsible).

h. Final Act

Delineates definitions of words used in the Convention, as well as duties of the Contracting States. It 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.

Accession

H. The Importance of Accession

42. Accession to the 1954 Convention relating to the Status of Stateless Persons is important because it sets the framework for the standard of treatment of stateless persons. It provides the individual with stability and ensures certain basic rights and needs are met, such as access to courts and education. These stabilizing factors, in addition to improving the quality of life for those who remain stateless, also decrease the potential for future displacement.

43. Accession to the 1961 Convention on the Reduction of Statelessness is important for this is the primary international legal instrument adopted to date to deal with the means of avoiding statelessness. The essential purpose of the Convention is to provide for acquisition or retention of nationality for those who would otherwise be stateless and who have an appropriate link with the State.

44. Accession has, thus far, been rather low due, in no small part, to the fact that no international organisation has previously promoted it. However, developments in the area of human rights, State practice, case law and arbitral decisions relating to nationality have been extensive in the years since embodiment of the principles outlined above in the 1961 Convention. The Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and other international instruments regarding women, children and civil and political rights, indicate there is a right to a nationality. Case law of the Permanent Court of International Justice and of the International Court of Justice, treaties adopted in State succession, and State practice itself indicate a right to a nationality and guiding principles in the acquisition or loss of nationality.

45. Regional developments (Council of Europe 1997 European Convention on Nationality, American Convention on Human Rights) and developments at the universal level (International Law Commission's work in the area of State succession and nationality), indicate that the principles embodied in the 1961 Convention now represent a minimum standard for many States as well as for experts working in the field of nationality. Most States recognise the general principles embodied in the Convention and acknowledge the critical importance of a legal bond between an individual and the State. An increase in accessions to the statelessness Conventions would, moreover, act as an impetus for all States to recognise, where appropriate, a link between the individual and the State in the avoidance of statelessness.

46. The importance of accession to the 1954 and 1961 Conventions may be encapsulated as follows:

a. Internationally

(1) Cooperation with the international community in the reduction and elimination of statelessness.

(2) Strengthening of international prohibitions on individual or mass expulsions.

(3) Improvement of international relations and stability through the avoidance and resolution of disputes relating to nationality status.

(4) Application of human rights and humanitarian standards.

(5) Prevention of displacement and refugee flows by addressing a root cause.

(6) Development of international law relating to the acquisition of nationality and the maintenance of an effective nationality.

(7) Facilitation of UNHCR's task of mobilising international support for adherence to the principles contained in the Conventions.

(8) Effective resolution of disputes relating to nationality through harmonisation of laws and practice.

b. Nationally

(1) Enhancement of the protection of human rights.

(2) Provision of a basis for diplomatic protection and as well as for representation of the individual at the international level.

(3) Enhancement of national solidarity and stability.

(4) Formal recognition of a genuine and effective link, or appropriate connection, between the individual and the State.

47. An increase in accession to the 1961 Convention would act as an impetus for all States to recognise principles confirming an individual's link with a
State in avoidance of statelessness. It is through nationality that individuals are ensured access to many other rights and privileges. Nationality is the basis upon which a State exercises diplomatic protection or legal standing at the international level for individuals. An effective nationality may be, further, a key element in the reduction of unnecessary dislocation. Thus, while a State may accord to individuals many of the rights generally associated with nationality, there is no replacement for nationality itself.

48. Accession to the 1954 Convention relating to the Status of Stateless Persons is important because it provides stateless individuals with many of the rights necessary to live a stable life. Accession to the 1961 Convention on the Reduction of Statelessness would, additionally, serve to resolve many of the situations which lead to statelessness. Accession to the 1961 Convention, embodying principles already generally accepted under international law, would act as a reference point for nationality legislation, would resolve certain conflict of laws problems, and would indicate the international community's resolve to reduce statelessness.

49. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness provide valuable legal tools for the protection of stateless persons and for improved stability in relations between States. An increase in the number of signatory parties would, in addition to assisting those covered by the Conventions themselves, have the benefit of improving international relations through development of legal principles relating to the grant of nationality and the reduction of statelessness, thus strengthening the international regime of protection.

I. Legal/Practical Issues

50. As is the case for any other United Nations conventions, States may accede to the 1954 Convention relating to the Status of Stateless Persons and/or the 1961

Convention on the Reduction of Statelessness at any time by depositing an instrument of accession with the Secretary-General of the United Nations. The instrument of accession must, as usual, be signed by the Head of State or Government or Foreign Minister, and is then transmitted through the Representative of the acceding country to the United Nations Headquarters in New York. A model instrument of accession to the Conventions may be found in Annex 1.

51. In acknowledgement of special conditions prevailing in their respective States at the time of ratification or accession, the Conventions allow Contracting States to make reservations to certain of the provisions. Reservations may be made with respect to any of either of the Conventions' provisions with the exception of those which the drafters of the instruments determined to be of a fundamental nature. A limited number of reservations are, therefore, permitted in the case of both Conventions.

a. 1954 Convention relating to the Status of Stateless Persons: Reservations are permitted EXCEPT in the case of Articles 1 (definition/exclusion clauses), 3 (non-discrimination),4 (freedom of religion), 16 (1) (free access to courts), and 33 to 42 (Final Clauses).

b. 1961 Convention on the Reduction of Statelessness: Reservations may be made only in respect of Articles 11 (Agency), 14 (referral of disputes to the ICJ), or 15 (territories the Contracting State is responsible for).

J. Checklist of Procedures for Accession to the 1954 and 1961 Conventions

52. The following steps will need consideration;

a. Prepare and execute instruments of accession in accordance with the model instruments in the Annex. Ensure that any reservations made comply with those which are permissible and that the instruments have been duly signed and sealed.

b. In accordance with Article 16 of the 1961 Convention and Article 35 of the 1954 Convention, the instrument(s) of accession must be deposited with the Secretary-General of the United Nations in New York. The instrument(s) may be deposited in person by the Head of State, Head of Government or Foreign Minister, by the country's Permanent Mission to the United Nations in New York, or by mail.

c. Ensure compliance with any national processes including constitutional requirements concerning the accession to international instruments and the national implementation of the provisions of such instruments. The measures required to give national effect to the Conventions will very according to the national requirements. In some States, mere accession may be sufficient to bring the Conventions into force under national law. In other States, either the process of ratification or the incorporation of the provisions of the Convention into domestic legislation may be necessary.

53. States may have questions regarding review or modification of current nationality legislation. UNHCR will be pleased to extend technical and advisory services to interested States concerning current nationality legislation and potential changes required as a result of accession. UNHCR is available for consultation and assistance

required in relation to accession to the Conventions, including for further clarification of the implications of accession.

Annex

Model Instrument of Accession to the Convention relating to the Status of Stateless Persons of 1954

WHEREAS a Convention Relating to the Status of Stateless Persons was adopted by the General Assembly of the United Nations on the twenty-eighth day of September, one thousand nine hundred and fifth-four, and is open for accession pursuant to Article 35 thereof;

AND WHEREAS, it is provided in section 3 of the said Article 35 that accession thereto shall be affected by deposit of an instrument with the Secretary General of the United Nations;

NOW THEREFORE, the undersigned, [Title of Head of State, Head of Government or Foreign Minister] hereby notifies the accession of the [State concerned];

GIVEN under my hand in _____ this _____ day of_____ one thousand, nine hundred and _____.

[Public Seal and Signature of custodian if appropriate.]

[Signature of Head of State, Head of Government or Foreign Minister.]

Model Instrument of Accession to the Convention on the Reduction of Statelessness of 1961

WHEREAS a Convention on the Reduction of Statelessness was adopted by the Plenipotentiaries on the thirtieth day of August, one thousand nine hundred and sixty-one, and is open for accession pursuant to Article 16 thereof;

AND WHEREAS, it is provided in section 3 of the said Article 16 that accession thereto shall be affected by deposit of an instrument with the Secretary General of the United Nations;

NOW THEREFORE, the undersigned, [Title of Head of State, Head of Government or Foreign Minister] hereby notifies the accession of the [State concerned];

GIVEN under my hand in _____ this _____ day of_____ one thousand, nine hundred and _____.

[Public Seal and Signature of custodian if appropriate.]

[Signature of Head of State, Head of Government or Foreign Minister.]

1954 Convention relating to the Status of Stateless Persons

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1961 Convention on the Reduction of Statelessness

[text not reproduced here]

Lists of States Parties

[text not reproduced here]

UNGA Res. 3274 (XXIX), 10 Dec. 1974

[text not reproduced here]

UNGA Res. 31/36, 30 Nov. 1976

[text not reproduced here]

Executive Committee Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons

[text not reproduced here]

UNGA Res. 50/152, 9 Feb. 1996

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