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The State of Statelessness Research

A Human Rights Imperative

Mark Manly

Statelessness Unit, Division of International Protection, UNHCR

Manly@unhcr.org

Laura van Waas

Senior Lecturer and Founder and Manager, Statelessness Programme,
Tilburg University

Laura.vanWaas@tilburguniversity.edu

Abstract

After a long and difficult journey, statelessness has now ‘arrived’ as a recognised focus of both academic and policy-oriented study. This article discusses how the issue has come to demand and increasingly receive attention from researchers around the world. It looks at how scholarly interest in statelessness first manifested itself as the analysis and interpretation of the application of international legal standards on nationality and statelessness, but has since witnessed a transition towards an interdisciplinary field of study. The article comments on the rich and diverse research partnerships that have emerged and how statelessness research is significantly enhanced by opportunities to engage directly with UN institutions, government policy-makers and civil society organisations, in order to better understand the fundamental challenges they face. Finally, the article reflects on what more needs to be done to develop a truly comprehensive, common research agenda for statelessness – one that can contribute to a more effective response, by all stakeholders concerned, to this significant human rights challenge.

Keywords

statelessness – human rights – nationality – research – UNHCR

The lack of attention to and research on statelessness has long been bemoaned by scholars working on statelessness. Yet, the number of scholars and the

volume of literature on statelessness has grown significantly in recent years. It no longer seems to make sense to waste energy or space discussing the scarcity of statelessness research. Reports, papers and articles on statelessness are being published at a pace not seen previously. While they are hardly coming ‘fast and furious’, there is enough activity to conclude that statelessness has ‘arrived’ as a recognised focus of both academic and policy-oriented study. Thus, while many gaps in our understanding of statelessness remain, due to the long period of neglect, it is time to shake off this difficult history, take stock of the state of research on statelessness and develop a research agenda and fora to exchange and discuss findings. Statelessness is now a legitimate area of research in its own right.¹ The dedication of this special edition of the *Tilburg Law Review* to statelessness is therefore timely: its publication coinciding with this watershed in academic engagement on the issue. To help introduce and contextualise the further articles in this special edition, the present piece provides an overview of and commentary on the current state of statelessness research.

An Evolving Area of Research

Statelessness is a legal anomaly. The term describes the absence of the *legal* bond of nationality. International *law* provides us with the definition of a ‘stateless person’.² Individual states’ nationality *law* determines the conditions under which nationality is acquired or lost, holding the key to both the creation and the resolution of statelessness. The right to a nationality is a fundamental right, espoused by human rights *law*³ and given concrete expression in the safeguards against statelessness prescribed in international *legal* instruments.⁴ And international *law* elaborates the minimum standard of treatment that is to be enjoyed by stateless persons.⁵

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- 1 In the past, much of the work that was done on statelessness stemmed from research that focused on a related phenomenon – be it nationality, forced displacement, minority rights or otherwise. Today, an increasing body of work has statelessness as a starting point.
 - 2 A person ‘who is not considered as a national by any state under the operation of its law’. Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 189 UNTS 117, art 1.
 - 3 For instance, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 15 and Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS, art 7.
 - 4 Including in the 1961 Convention on the Reduction of Statelessness (adopted 30 Augustus 1961, entered into force 13 December 1975) 989 UNTS 175.
 - 5 Including in the 1954 Convention relating to the Status of Stateless Persons (n 2), as well as in the broad body of human rights law that protects the rights of everyone within a state’s jurisdiction, regardless of nationality or statelessness.

It comes as little surprise, then, that the study of statelessness initially emerged as the study of nationality law, leading over time to the exploration, interpretation and annotation of international standards and of domestic norms relevant to statelessness. Scholars have been seeking, for instance, to better understand the obligations held by states with regard to the avoidance of statelessness and the protection of the rights of stateless persons.⁶ Research has also been undertaken to elucidate the underlying causes of existing situations of statelessness, pinpoint gaps in nationality law that may be creating or perpetuating this condition, identify stateless populations and discuss the treatment received by stateless people.⁷ Indeed, statelessness has been discovered as the ultimate human rights case study, involving as it does the situation of ‘a man who is nothing but a man’⁸ and allowing for the study of the challenges inherent in the realisation of rights, separate from nationality.

However, although undeniably a legal anomaly, at its heart statelessness is also a human condition. It affects people – often in devastating ways. Not only does it have an impact on their legal status and ability to exercise rights, it also has an effect on the way they are perceived and how they perceive themselves.⁹ It can impact their life choices and life chances, trapping people in poverty or, together with fear of other rights violations, forcing them to flee their homes

6 For instance, P Weis, *Nationality and Statelessness in International Law* (Kluwer Academic Publishers Group 1979); J Chan, ‘The Right to a Nationality as a Human Rights – The Current Trend Towards Recognition’ (1991) 12 *Human Rights Law Journal* 1; various articles by written by Carol Batchelor written between 1995 and 2004, starting with Batchelor, ‘Stateless Persons: Some Gaps in International Protection’ (1995) 7 *International Journal of Refugee Law* 232; J Doek, ‘The CRC and the Right to Acquire and to Preserve a Nationality’ (2006) *Refugee Survey Quarterly* 25; L van Waas, *Nationality Matters. Statelessness Under International Law* (Intersentia 2008); P Spiro, ‘A New International Law of Citizenship’ (2011) 105 *American Journal of International Law* 694; A Edwards and L van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014) (forthcoming).

7 For instance, K Groenendijk, ‘Nationality, Minorities and Statelessness. The Case of the Baltic States’ (1993) 3 *Helsinki Monitor* 13; C. Batchelor, ‘Transforming International Legal Principles into National Law: The Right to a Nationality and the Avoidance of Statelessness’ (2006) *Refugee Survey Quarterly* 25; T Lee, *Statelessness, Human Rights and Gender: Irregular Migrant Workers from Burma in Thailand* (Martinus Nijhoff Publishers 2005); D Weissbrodt and C Collins, ‘The Human Rights of Stateless Persons’ (2006) 28 *Human Rights Quarterly* 245; and numerous articles in a special edition of the *Forced Migration Review* on statelessness in 2009 (issue 32).

8 H Arendt, *The Origins of Totalitarianism* (Harcourt Inc 1951).

9 As one stateless person described it in a special edition of *Refugees* magazine ‘Being stateless, you are always surrounded by a sense of worthlessness’. K McKinsey, ‘The Biharis of Bangladesh 147 *Refugees* 1, 13.

and their countries. It can strain relations between family and community members, but also between states, as individuals and governments struggle to deal with the consequences of statelessness.

Increasingly then, there is an awareness that the study of statelessness must evolve beyond the study of statelessness law. There is an evident need to explore statelessness from an interdisciplinary perspective, to better understand why this extreme form of exclusion is allowed to happen – and why it can so stubbornly persist – and what its true impact is on the lives of individuals, the fabric of communities and the integrity of the modern nation-state system. The growing discovery of statelessness as a subject of study by anthropologists, social scientists, historians, philosophers, political scientists, psychologists and economists presents incredible opportunities for broadening the statelessness research agenda.¹⁰ In many instances, academic work which relates to statelessness has not been labelled as such and has therefore gone unperceived by others working on similar issues and populations but in different disciplines.¹¹

At the same time, new and complex challenges are also coming to light with respect to research methodology,¹² which must be addressed if statelessness is to become fully established as an interdisciplinary research field. A persistent challenge remains the question of definition: who is stateless? A better understanding of ‘who is stateless’, according to international law, will help ensure increased comparability of research findings and development of a common basis for discussion.

10 As also evidenced by the variety of contributions to this special edition *Tilburg Law Review*, a number of which have been prepared by scholars from other disciplines.

11 For example, research by human rights organisations on migrant labour in South East Asia has almost universally overlooked the fact that very large numbers of former Indonesian nationals lost their nationality under the nationality law in force from 1958 until 2006 on account of residence abroad for more than five years. Similarly, until recently, most research on the situation of migrants and refugees from Zimbabwe did not address the high incidence of statelessness, which resulted from the country's 2001 Citizenship Amendment Act.

12 These research challenges include: low levels of general awareness or knowledge of statelessness globally; difficulties inherent in identifying research subjects in countries where stateless people are a hidden population; efficiently and accurately establishing statelessness in the field research (e.g. survey) context; political sensitivities surrounding some stateless populations or use of particular terminology; and the absence of baseline data in many countries, including a lack of historic data for stateless populations to enable comparisons over time.

Research Partnerships

Beyond the world of academia, statelessness has also been an area of burgeoning research interest for UN, government and civil society actors. In this context, the focus has largely been threefold: to clarify and develop the content of relevant international standards, to discuss national policy and to identify the size, composition and situation of stateless populations in specific countries. With regard to the first of these, a prime example is the research and consultation process initiated by the Office of the United Nations High Commissioner for Refugees (UNHCR) with a view to elaborating guidelines on the interpretation of the core international norms contained in the UN statelessness conventions.¹³ Other examples include the reports compiled at the request of the UN Human Rights Council, addressing various topics relating to the arbitrary deprivation of nationality and with a particular focus on statelessness,¹⁴ as well as research conducted by civil society organisations in order to help further the understanding of human rights norms or contribute to the development of jurisprudence in this field.¹⁵ In respect of studies of national

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- 13 The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. This research and consultation process underlying the issuance of UNHCR guidelines on these standards was conducted as follows: a background paper was prepared, drawing together existing literature and policy documentation on the relevant questions; an expert meeting was convened where academic scholars, government and UN experts and key civil society stakeholders discussed the research findings and deliberated the interpretation of the relevant international norms; conclusions were issued from the expert meeting and used to subsequently elaborate UNHCR guidelines on the requisite questions. For instance, with regard to the concept of a stateless person under international law, the May 2010 expert meeting led to the adoption of Conclusions on The Concept of Stateless Persons under International Law ('Prato Conclusions'), (<http://refworld.org/docid/4ca1ae002.html>) and thereafter the issuance of UNHCR Guidelines on Statelessness No. 1 in February 2012 (<http://refworld.org/docid/4ca1ae002.html>).
 - 14 These include A/HRC/13/34 of December 2009, detailing the international legal framework relating to the right to a nationality; A/HRC/19/43 of December 2011, exploring the impact of arbitrary deprivation of nationality on the enjoyment of other human rights; and A/HRC/C/23/23 of March 2013, looking at legislative and administrative measures that discriminate against women in nationality-related matters.
 - 15 A good example is work by the Open Society Justice Initiative, such as its submission to the UN Committee on the Elimination of Racial Discrimination on 'Racial Discrimination and the Rights of Non-Citizens' (February 2004); the 'Written Comments on the Case of Dilcea Yean and Violeta Bosico v. Dominican Republic' (April 2005); and the 'Arguments on the Merits of the Communication on the Case of Nubian Children in Kenya v. Republic of Kenya' (17 May 2010).

policy – these have tended to either focus on a single country situation¹⁶ or compare issues across a number of countries¹⁷ or region.¹⁸ Some projects can be described as human rights monitoring or advocacy-oriented research, whereby the aim is to identify problems and suggest possible solutions;¹⁹ others are geared towards the discussion and dissemination of good practices in the field of policy or practice.²⁰

Related to the focus on national policy, there has been a major push by UNHCR and an array of partners to ‘map’ the size of stateless populations and their demographic profile, as well as causes, potential solutions and human rights situation.²¹ In addition to legal analysis and desk reviews, research methods have included inclusion of additional questions and analysis of data from national population census in a number of countries, tailored surveys, as well as qualitative approaches such as focus group discussions and chain referral.²²

This major uptick in research followed the recognition in 2006 by UNHCR’s governing body that there were major gaps in global knowledge of statelessness and that better baseline data would ‘serve as a basis for crafting strategies to addressing the problem.’²³ It therefore requested the agency ‘to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts.’²⁴ Interestingly, the central role played by UNHCR in a number of countries with large stateless populations has helped address the disjuncture between the growing level of research and technical expertise at the global level and the hands-on

16 For instance, UNHCR and Asylum Aid, *Mapping Statelessness in the United Kingdom*, (November 2011).

17 For instance, Hungarian Helsinki Committee, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe* (June 2007).

18 For instance, UNHCR, *The Situation of Stateless Persons in the Middle East and North Africa*, (October 2010).

19 For instance, Refugees International and Open Society Justice Initiative, *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait* (11 May 2011); Women’s Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa* (7 June 2013).

20 For instance, UNHCR, *Good Practices: Addressing Statelessness in South East Asia* (5 February 2011).

21 See for example, the overview provided in Chapter 4 of UNHCR, *The State of the World’s Refugees: In Search of Solidarity*, Oxford University Press, 2012, in particular the section “The challenge of counting stateless people”.

22 Most of the recent research published by UNHCR (www.refworld.org/statelessness).

23 UNHCR, ‘Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons’ (Executive Committee, 6 October 2006) No 106, para c.

24 Ibid.

experience and deep understanding possessed by local community leaders, authorities, NGOs and academics, many of whom have been working on the issues for years but without significant discussion with outside actors.

Statelessness is therefore not the sole domain of academics. Nor are scholars working in isolation: a wide diversity of actors are conducting research and there is often active dialogue and even collaboration between these actors. This is key, for it has meant that a close and mutually beneficial relationship has evolved between research, policy and advocacy. Statelessness research is significantly enhanced by the opportunities, which scholars have to engage directly with UN institutions, government policy-makers or civil society organisations, in order to better understand the fundamental challenges they face. At the same time, the legitimacy and potential for impact of studies on statelessness is strengthened by this same engagement.

An Agenda for Statelessness Research

While research on statelessness is improving by leaps and bounds, far more needs to be done to disseminate findings, ensure discussion in and across disciplines and to identify issues that require further work. In short, what is needed is a common research agenda.

Several initiatives currently underway go some way towards establishing this agenda. Most concretely, the first Global Forum on Statelessness to be held in September 2014 at the Peace Palace in The Hague will offer an opportunity for 300 researchers, government officials, NGO practitioners and stateless people to discuss the current state of research and policy responses to statelessness.²⁵ The agenda of the Global Forum seeks to ensure a range of disciplines are represented and that a broad set of research is presented and debated, ranging from child rights, to the full citizenship and participation of women, and international peace and security. Yet we need to look beyond 2014. One objective of the Global Forum is therefore to build a network of academics that will facilitate greater exchange of research methodologies and findings, as well as promote cooperative research projects that span countries, regions and disciplines.²⁶ Initial expressions of interest in the Global Forum are encouraging.

25 For more information about the Global Forum on Statelessness and to register for the event, please visit the website at <http://www.tilburguniversity.edu/statelessness2014>.

26 Scholars who are interested in finding out more about opportunities for information exchange on research in the field of statelessness can get in touch with the Statelessness Programme at Tilburg Law School via Statelessness.Programme@tilburguniversity.edu.

Based on feedback thus far we believe that, first, it will not be a one-off event but one of a series of annual or biennial international conferences, and second, that a number of papers presented will be subsequently published.

This special edition of the *Tilburg Law Review* is also a step toward better dissemination of existing research. Like the Global Forum, it includes contributions from government, civil society, UN and stateless persons' perspectives on the issues at hand. With a view to promoting future work on statelessness, this edition of the *Journal* provides a space for reflection on statelessness research by both established scholars and early-career researchers. An enthusiastic reception of this edition of the TLR would suggest that a dedicated academic journal on statelessness may be warranted.

Another initiative to foster a rich and rewarding research environment, characterised by partnership, is the UNHCR Award for Statelessness Research. Administered by the Statelessness Programme of Tilburg University, the Award was granted for the first time in September 2013 to three young researchers following an extensive review by a jury composed of eight professors drawn from universities around the world.²⁷ After only a year, it is already clear that the Award has promoted new research on statelessness and, perhaps more importantly, brought existing research to a wider audience. Short versions of all three winning papers are published in this volume.²⁸

The need for more, and better, research is clear. But so too is the need for more dissemination and debate of existing research. Given the global impact of statelessness and the destruction it wreaks on people's lives, an agenda for statelessness research is not an option but an imperative. The results will be of more than academic interest.

27 See UNHCR, 'UNHCR Announces Winners of Statelessness Research Award' (27 September 2013).

28 See the articles by A. Cheong, C. McInerney and E. Mrekajova.