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STATELESS

*Jay Milbrandt**

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I. INTRODUCTION

Statelessness is an often-overlooked struggle.¹ We take for granted that we have a legal identity and officially belong to a nation. Nonetheless, this is not true for an astounding twelve million stateless individuals around the globe. They battle with their lack of legal identity on a daily basis. It is often the most important matter to them—the key to the door of basic human rights, such as education, health care, employment, and equality.² The stateless are the most vulnerable people in our world—they are the trafficked, the oppressed, and the neglected.

Despite the growing problem of statelessness and the severe vulnerability of those affected, international response has been minimal.³ Yet, statelessness is a problem with a solution, and a problem that the world has solved before.

¹ Indira Goris, Julia Harrington & Sebastian Köhn, *Statelessness: What It Is and Why It Matters*, FORCED MIGRATION REVIEW, April 2009, at 4, available at <http://www.fmreview.org/FMRpdfs/FMR32/04-06.pdf>. As described in an appeal for why statelessness matters, an article by Goris, Harrington, and Köhn quipped:

For many of us, citizenship only really matters when we travel abroad, when the Olympic Games are on, or when we vote in national elections. We do not think about our citizenship on a daily basis. For others, citizenship is an ever-present issue, and often an obstacle. Because recognition of nationality serves as a key to a host of other rights, such as education, health care, employment, and equality before the law, people without citizenship—those who are ‘stateless’—are some of the most vulnerable in the world.

Id.

² *Id.*

³ Thawdar, *Bleak Future for Burmese Stateless Children*, IRRAWADDY, July 11, 2009, http://www.irrawaddy.org/article.php?art_id=16310&page=1 [hereinafter *Bleak Future*]. The *Irrawaddy* is a Southeast Asian newspaper based in Northern Thailand which reports on regional matters with an eye particularly toward political matters and current events in Burma (Myanmar). In *Bleak Future*, the newspaper reported on the migration of street children from Burma to Thailand. The *Irrawaddy* profiled the issue and its international response:

“Shockingly little is being done to protect the basic rights of millions of stateless children around the world,” said Maureen Lynch of Refugees International’s Senior Advocate for Stateless Initiatives, and author of *Futures Denied*.

“These children are stigmatized and blocked from such basic services as health care and education because a government won’t recognize them as citizens,” she said.

Lynch also said, “Although the Universal Declaration of Human Rights states that everyone has the right to a nationality, these children are forced into an underclass with little hope for the future through no fault of their own.”

Id.

This Article will show that, despite the existence of international laws to prevent and protect stateless people, statelessness is a severe, overlooked, and growing issue.⁴ The Article will argue that for reasons of enforcement, international law is ineffective as to this matter. Finally, this Article will revisit and recommend a once-utilized international network to identify stateless individuals and to alleviate this crisis.

II. WITNESSING STATELESSNESS FOR THE FIRST TIME

Sitting on a stoop in one of Thailand's largest red light districts, I watch girls as young as three walk in and out of brothels soliciting customers. "Why are they out here?" I inquire with my translator. Their product, to my surprise: flowers. It is late and these children will be out almost all night. Parents are non-existent or loom in the distance to make sure their children are working.

The brothels go by names like "Juicy" or "Delicious," with the thumping music and flashing lights to match. Scantly clad women sit on stools in front of the bar—their siren calls seek to lure in the men walking past. Serving as a sharp contrast, the children make their customary rounds through the streets in front of these brothels, clutching small bouquets of flowers. The children enter the brothels, walking past the women to solicit the very same men. Sometimes the men buy, sometimes they ignore. Yet I learn that these children eventually end up on the other side of this equation—taking their place at one of the stools near the entrance when they are no longer the cute little children selling flowers.

My translator works with children along this street and has been doing so for a few years now. She explains that children are the primary source of income for their families—a few dollars per day at most.⁵ Their parents cannot find legitimate work. My

⁴ For illustration, and based on the author's significant fieldwork, this Article will largely address stateless issues arising in Burma (Myanmar) and along the Thai-Burma border.

⁵ Video Interview with Abba of the Akha Hill Tribe, in Chiang Mai, Thailand (Nov. 30, 2009). Author conducted firsthand interviews with families of stateless children. Abba explained that is difficult to make money selling flowers and depends on whether tourists come to Chiang Mai. She and her two daughters sell flowers. The daughters began selling when they turned three. In total, they must earn 100-200 baht each day to feed their family (approximately \$3-6). Some days they sell no flowers. On a very good day during tourist season, they can make a total of \$10.

curiosity is piqued, so I ask more questions.

I learn that most of the kids do not go to school.⁶ Not because they do not want to, but because they cannot. They do not have a Thai identification card—nearly a prerequisite for formal education.⁷

I learn that the kids are “stateless”—they effectively do not exist in any nation whatsoever. They possess no official nationality, and no country wants to claim them. I am both shocked and appalled. Until this night, I had no idea that people in our world fell so far through the cracks that their very existence was left in limbo. So began my quest to understand the situation. I got to know many of the kids on this street and began working to assist them over the course of many trips.

The statelessness problem, at least in this region of Asia, is widespread. These children are stateless because their migrant mothers either brought them into Thailand at the time they themselves crossed illegally, or their mothers gave birth to them after illegally entering Thai borders.⁸ Interviewing many of the

⁶ *Bleak Future*, *supra* note 3 (“The Thai government, which ratified the 1989 Convention on the Rights of the Child (CRC), has instructed all state-hospitals to issue birth registration documents to any baby born to any parents, regardless of their backgrounds. However, in practice, many hospital staff reportedly fail to do so in the case of migrants.” Additionally, “a migrant child can only be educated if a teacher is willing to accept the child, and the family can afford it.”).

⁷ *Bleak Future* reported:

Stateless children are not given equal rights in the education system.

According to the Peace Way Foundation in Thailand, a migrant child can only be educated if a teacher is willing to accept the child, and the family can afford it. In some areas, children can attend classes, but with little hope of obtaining a Thai certificate of education, which is essential for further study.

In 2005, the government adopted a policy entitled “Education for All”, which was intended to give all children in Thailand equal access to schooling. Practice does not reflect this policy, however.

Even Thailand’s Deputy Education Minister, Chaiwut Bannawat, admitted that there remains a large number of children who fail to receive education, even though the Kingdom has strived to provide educational opportunities for all children.

Bleak Future, *supra* note 3.

⁸ *Bleak Future* reported:

Most Burmese women who are not registered migrants dare not go to state-hospitals to give birth, as they fear arrest and deportation if the hospital notices they are unregistered. As a result, they deliver their children at their work sites using local midwives.

Burmese migrant parents do not realize the importance of birth certificates for their children, nor do they know where and how to get them for their children.

mothers, I learn that they often gave birth to their children in small villages on the Thai side of the Thai-Burma border. The births sometimes took place in hospitals, but were often in village huts. Born in a hospital, the children did not receive Thai citizenship, birth certificates, or other identification papers.⁹

The lack of identification left them “stateless”—no official nationality, no belonging. They couldn’t call themselves Thai, but lacked a meaningful connection to Burma (Myanmar).¹⁰ They usually spoke Thai as well as their native, tribal language. In the cases of the children I met, it was the Akha language, a tongue spoken regionally across Thailand, Laos, China, and Burma.

Aside from lacking access to the educational system, the children also lack access to the healthcare system. Even if they can afford a hospital, their legal status frequently leaves these children without effective advice from a doctor. They often receive no attention, are prescribed medicines they cannot afford, or are simply turned away.

These children face additional forms of discrimination and harassment. On more than one occasion, the Thai police drove down the road where the children sold flowers and arrested those not carrying documentation. The children were jailed and, in many cases, deported to Burma, where their living situation grew much worse.¹¹

Making matters worse is the possibility of arbitrary arrest and deportation facing unregistered migrants. This discourages parents from taking their children to local health-care facilities, risking their children missing basic inoculations against crippling diseases such as polio.

Id.

⁹ *See id.*

¹⁰ *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (last updated Sept. 27, 2011). Since 1989, the military authorities in Burma have promoted the use of the name Myanmar as the conventional name for their state. The U.S. Government did not adopt the use of this name. The name Myanmar is a derivative of the local short form, Myanma Naingngandaw.

¹¹ See Min Lwin, *Children’s Day Nothing to Celebrate in Burma*, IRRAWADDY, Feb. 13, 2008, http://www.irrawaddy.org/article.php?art_id=10369, explaining that:

Whether celebrating Children’s Day is symbolic or not, the fact is that life expectancy and health conditions for Burmese children are increasingly worse since the military government took power in 1988.

In 2007, Burma’s child mortality rate was the fourth highest in the world, eclipsed in Asia only by Afghanistan, according to a UNICEF report in January.

According to Dr Osamu Kunii, a nutrition expert in Burma, between 100,000 to 150,000 children under five years of age die every year in Burma.

Conducting a series of interviews with families, I asked the parents what these children needed most. The consensus was that their greatest need is identification—the possession of some form of nationality and belonging. In other words, they need to escape statelessness.

III. DEFINING STATELESSNESS

In 2006, James A. Goldston described how nations were wielding citizenship as a political weapon:

Across broad swaths of the globe, the treatment of noncitizens—so-called foreigners and aliens, migrants, refugees, asylum seekers, stateless persons, . . . is worsening precisely as states are increasingly bestowing, denying, or retracting citizenship as a political weapon.¹²

Statelessness is the condition of not possessing recognized citizenship in a state or nation. “People are stateless because they did not acquire a nationality at birth, their state of origin no longer exists, or no state will accept them as citizens”¹³ The United Nations High Commission for Refugees (UNHCR) estimated in 2009 that twelve million people worldwide are stateless—“they are not considered as nationals by any State under the operation of its law.”¹⁴ According to the U.S. State Department, data on

That’s between 270 and 400 daily—and many are dying from preventable diseases.

Poverty, the economic crisis and instability in Burma drives more and more children in search of jobs. Some work from 5 a.m. until late at night in tea shops, bars and factories, often earning just 7,000 kyat (\$ US5.72) per month.

A resident in Rangoon told *The Irrawaddy* recently that the amount of street children in the former capital is now increasing. “Many children aged between 4 and 13 are begging on the streets. Some young children are carrying babies and begging. Some street children look for plastic in the rubbish bins and dumps and some go fishing every day for their daily survival,” she said.

¹² James A. Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens*, 20 ETHICS & INT’L AFF. 321, 322 (2006). Goldston estimates that “as many as 175 million worldwide—are not citizens of the countries in which they reside.” *Id.*

¹³ GOVERNMENTS OF THE WORLD: A GLOBAL GUIDE TO CITIZENS’ RIGHTS AND RESPONSIBILITIES 128 (C. Neal Tate ed. 2006).

¹⁴ UNHCR *Action to Address Statelessness – A Strategy Note*, UNHCR DIVISION OF INTERNATIONAL PROTECTION, 4 (March 2010), <http://www.unhcr.org/refworld/pdfid/4b9e0c3d.pdf>. See also Goris et al., *supra* note 1, at 4 (“Estimates of the number of stateless persons in the world range from 11 to 15 million. There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on

statelessness is so limited that the international community does not even know if the numbers are growing or shrinking.¹⁵

Statelessness is a condition caused by governments, rather than the actions of individuals.¹⁶ Gaps in international law and the sovereignty of nation-states allow the phenomenon of statelessness to not only exist, but to continue relatively unfettered. “International law traditionally affords states broad discretion to define the contours of, and delimit access to, citizenship.”¹⁷ “People are vulnerable to statelessness when governments determine citizenship based on descent, race, ethnicity, or the whim of those in power.”¹⁸ The risk of state sovereignty is that states may define citizenship for the purpose of discriminating against particular classes of people.

People arrive at the condition of statelessness through one of two different measures: 1) “*de jure* statelessness”; and 2) “*de facto* statelessness.”

A. *De Jure* Statelessness

De jure statelessness occurs when there is no recognized state to which a person may claim nationality and citizenship.¹⁹ For instance, when an individual’s state ceases to exist and there is no successor state.²⁰ Under the purview of the UNHCR, the *de jure*

whom to include when counting stateless people.”); UNHCR: THE UN REFUGEE AGENCY, <http://www.unhcr.org> (last visited Sept. 15, 2011).

¹⁵ See *Imagine This: You Have No Country, No Country Will Claim You*, DIPNOTE – U.S. DEPARTMENT OF STATE OFFICIAL BLOG (Sept. 16, 2008, 8:30 AM), http://blogs.state.gov/index.php/entries/no_country [hereinafter *No Country*]. See also BRAD K. BLITZ, STATELESSNESS, PROTECTION AND EQUALITY 9 (Refugee Studies Centre, Sept. 2009), available at http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:5157 (“Some of the most widely cited cases of statelessness include minority groups that have been formally excluded from the right to nationality such as the Rohingyas in Myanmar (+ 1 million), Pygmy Banyarwanda in the Democratic Republic of Congo (1.5 million), Biharis in Bangladesh (300,000), ethnic Ethiopians and Eritreans in the Horn of Africa (500,000), and other groups such as the Meskhetian Turks in Southern Russia (15,000).”).

¹⁶ See BLITZ, *supra* note 15, at 1.

¹⁷ Goldston, *supra* note 12, at 323.

¹⁸ GOVERNMENTS OF THE WORLD: A GLOBAL GUIDE TO CITIZENS’ RIGHTS AND RESPONSIBILITIES, *supra* note 13, at 129.

¹⁹ See Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117 (defining a stateless individual as “a person not considered as a national by any State under the operation of its law.”).

²⁰ *De jure* statelessness received pop culture attention through the 2004 movie *The Terminal*, where Tom Hanks plays a man who, while in transit through the United States,

situation is recognized by both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.²¹

B. *De Facto* Statelessness

De facto statelessness occurs when a person possesses a legally meritorious claim for citizenship, but is precluded from asserting it because of practical considerations such as cost, circumstances of civil disorder, or fear of persecution.²² In *de facto* situations, the state is often in existence, but the individual lacks protection of the laws by a mechanical failure of the state. In other words, *de facto* persons lack an effective nationality.²³ *De facto* statelessness may include those inside the state of their nationality. Categories of persons fitting into *de facto* statelessness are:

1. Persons who do not enjoy the rights attached to their nationality;
2. Persons who are unable to establish their nationality, or who are of undetermined nationality;
3. Persons who, in the context of State succession, are attributed the nationality of a State other than the State of their habitual residence.²⁴

learns that his home country's government is overthrown and that the new government is not recognized by the United States. See *THE TERMINAL* (DreamWorks Pictures 2004).

²¹ Hugh Massey, *Legal and Protection Policy Research Series: UNHCR and De Facto Statelessness*, LEGAL AND PROTECTION POLICY RESEARCH SERIES (UNHCR, April 2010) (Massey was Senior Legal Advisor to the UNHCR). *UNHCR Action to Address Statelessness – A Strategy Note*, *supra* note 14, at 4 (“UNHCR’s responsibilities for stateless persons began with refugees who are stateless under paragraph 6(A) (II) of its Statute and article 1(A) (2) of the 1951 Convention relating to the Status of Refugees (1951 Convention), both of which refer to stateless persons who meet the criteria of the refugee definition. UNHCR’s mandate responsibilities concerning statelessness were expanded following the adoption of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), and the 1961 Convention on the Reduction of Statelessness (1961 Convention). General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body mandated to examine the cases of persons who claim the benefit of the 1961 Convention and to assist such persons in presenting their claims to the appropriate national authorities.”).

²² See Massey, *supra* note 21, at ii (“[T]he Office has never clearly defined what *de facto* statelessness is, nor what the legal and operational responses to *de facto* statelessness should be. In this respect, it should be noted that whereas an international treaty regime has been developed for addressing problems of *de jure* statelessness—including most notably the 1954 and 1961 Statelessness Conventions—there is no such legally binding regime at the global level for *de facto* stateless persons who are not refugees.”).

²³ *Id.* at i.

²⁴ *Id.* at iii.

This Article will address both forms of statelessness broadly, but focus on the latter, *de facto* statelessness, because it takes several forms and has received less recognition within the international legal community.²⁵

IV. A BRIEF HISTORY

In analyzing the UNHCR policy, Massey noted that “[i]t was not until after the Second World War that international action was taken to establish a protection regime specifically for stateless persons.”²⁶ In the 1920s, due to fallout from the First World War, Europe found itself with an influx of refugees spread across the continent. The League of Nations established the *Office international Nansen pour les réfugiés* (Nansen International Office for Refugees) to oversee the refugee challenge. The League of Nations High Commissioner for Refugees (HCR) was established in 1921, under the leadership of Fridtjof Nansen, a Norwegian explorer, scientist, and diplomat.²⁷ This represented the first time that the existence of refugees were analyzed as an international issue.²⁸ The HCR crafted the “Nansen Passport” for refugees, which was designed to be the first legal document that functioned to give refugees a legal existence and allow them to travel more

²⁵ *De facto* statelessness is not recognized by the 1954 Convention on the Prevention of Statelessness but it is covered by customary law and practices.

²⁶ Massey, *supra* note 21, at 1 (providing an elaborate history of post-World War II conventions, treaties, and studies with respect to statelessness).

²⁷ *A Century of Nobel Peace Prize Laureates: Fridtjof Nansen*, INDIANA UNIVERSITY CENTER FOR THE STUDY OF GLOBAL CHANGE, <http://www.indiana.edu/~nobel/league.php?lid=14> (last visited Oct. 5, 2011) (“Fridtjof Nansen was a Norwegian explorer, humanitarian, and statesman. He led a number of scientific expeditions to Greenland and the Arctic Ocean between 1888 and 1896 and accepted a faculty position at the University of Oslo as a zoologist. Nansen was the Norwegian delegate to the Versailles Peace Conference in 1919, advocating the adoption of the Covenant of the League of Nations and recognition of the rights of small states. He served as the Norwegian delegate to the League of Nations from 1920 to 1930 and held a number of high commissionerships. In this capacity he oversaw the repatriation of Central Power prisoners of war from Russia (1920 to 1922), developed the Nansen Passport for refugees in Eastern Europe and the Middle East (1921), supervised food shipments to famine-stricken Russia (1921-1922), monitored the exchange of Greek and Turkish refugees after the Turko-Greek War (1922), and planned for a national home for Armenian refugees in Syria and Lebanon (1925). Nansen received the Nobel Peace Prize in 1922 for his humanitarian work with refugees. He died on May 13, 1930 near Oslo.”). See also Laura Barnett, *Global Governance and the Evolution of the International Refugee Regime*, 14 INT’L J. REFUGEE L. 238, 242 (2002).

²⁸ Barnett, *supra* note 27.

freely than in the past.²⁹ The League of Nations agreed to the establishment of Nansen Passports at the Geneva Conference on July 5, 1922.³⁰ Nansen Passports were used during the period between World Wars I and II, with approximately 450,000 Passports issued, aiding those stateless individuals to immigrate to a country willing to accept them.³¹

Nansen Passport documents were originally issued solely to refugees fleeing civil war in Russia, but were subsequently offered to various other refugee communities, including Armenians in 1924, and to Turks, Assyrians, Syrians, Assyro-Chaldeans, and Kurds by 1928.³² No state was required to permit the entry or resettlement of refugees holding a Nansen Passport, but every state which was a member of the League of Nations agreed to recognize the documents as a valid form of identification.³³

Fifty-two governments ratified the original arrangement and issued Nansen Passports, but there was almost no defining unity as to the format and requirements of the various documents produced by these countries.³⁴ As a result, the power and value of the document varied according to the host country as well as the time period.³⁵ Often these travel documents took the form of no more than a sheet of paper or small booklet with printed categories to be filled in by the issuing authority, and a space for the photograph and signature of the holder. This wide array of documents, which came under the umbrella of Nansen Passport, could be seen as merely “a loose convergence of policy, paper, and personal information.”³⁶

The primary unifying factor among the differing manifestations of the Nansen Passport was the signifier “Nansen Stamp.” This stamp both officiated the document and helped pay

²⁹ *See id.*

³⁰ *Id.*; *see also League of Nations Passport*, ENCYCLOPEDIA BRITANNICA (2011), <http://www.britannica.com/EBchecked/topic/333862/League-of-Nations-Passport>.

³¹ *Nansen Passport Donated to the Zohrab Center*, ZOHRAB CENTER, <http://zohrabcenter.com/2010/08/20/nansen-passport-donated-to-the-zohrab-center> (last visited Sept. 15, 2011).

³² *Id.*

³³ *Id.*

³⁴ *Nansen Passport*, NYU DEPARTMENT OF MEDIA, CULTURE, AND COMMUNICATION—DEAD MEDIA ARCHIVE (last visited Sept. 15, 2011), http://cultureandcommunication.org/deadmedia/index.php/Nansen_Passport.

³⁵ *Id.*

³⁶ *Id.*

for the administrative costs of the HCR committee.³⁷ The fee required to obtain a Nansen Passport was the equivalent of five French francs.³⁸ A Nansen Passport, as agreed upon by the fifty-two governments, had to be renewed every second year.³⁹ As governments grew skeptical of the intent refugees claimed for being present within state borders, or of their future plans, it often became difficult for individuals to be granted a renewal of a Nansen Passport upon expiration.⁴⁰

After Fridtjof Nansen passed away in 1930, the Nansen International Office for Refugees was established to handle the issue of Nansen Passports, and the Nansen stamps used to officiate the Passports were changed.⁴¹ The Nansen Office was awarded the Nobel Peace Prize in 1939 for its work with refugees, and soon after, the UNHCR assumed the role previously carried out by the Nansen Office.⁴²

Although these documents served to facilitate cross-border travel for many refugees, it provided no guarantees of protection from the state in which these individuals settled.⁴³ In effect, although these individuals were granted increased freedom of movement through the Nansen Passport, they did not assure the protection enjoyed by citizens or nationals of the state in which they settled, such as personal welfare, access to employment, protection against expulsion, and other protections and liberties traditionally preserved through the state.⁴⁴

Additionally, the Nansen Passport did not serve the function of a modern passport. Most notably, the Nansen Passport did not give the bearer the right of return.⁴⁵ Therefore, when a country issued a Nansen Passport, it did not issue the right to return back

³⁷ *Id.*

³⁸ *Fridtjof Nansen*, THE FRAM MUSEUM, <http://www.frammuseum.no/Polar-Heroes/Main-Heroes/Fridtjof-Nansen.aspx> (last visited Sept. 15, 2011).

³⁹ *Nansen Passports in Norwegian Archives*, THE NATIONAL ARCHIVES OF NORWAY, available at <http://arkivverket.no/eng/Using-the-Archives/Online-Exhibitions/The-Nansen-Passport/Nansen-passports-in-Norwegian-Archives> (last visited Sept. 14, 2011).

⁴⁰ *Id.*

⁴¹ *The Nansen Office*, THE NATIONAL ARCHIVES OF NORWAY, available at <http://arkivverket.no/eng/Using-the-Archives/Online-Exhibitions/The-Nansen-Passport/Nansen-passports-in-Norwegian-Archives> (last visited Sept. 14, 2011).

⁴² *Id.*

⁴³ See Barnett, *supra* note 27, at 242-43.

⁴⁴ See *id.*

⁴⁵ *Nansen Passport*, <http://www.everything2.com/title/Nansen+passport> (last visited Apr. 11, 2011).

to that country after the bearer departed.⁴⁶

It was also established that the Nansen Passport was not intended to impinge on any existing laws of those nations issuing the document, and while all participating governments agreed not to expel refugees as long as they were not a threat to national security or public order, the interpretation of this arrangement was primarily left in the hands of the various governments.⁴⁷ This meant that the laws established by these countries regarding the treatment of foreigners and refugees still remained in effect despite country-specific contradictions with the spirit and ideals of the Nansen Passport.⁴⁸

While Nansen Passports are no longer issued, the UNHCR continues to recognize the need for open borders to those lacking formal identification, and encourages countries to issue temporary travel documents to stateless individuals.⁴⁹ Since World War II, travel documentation similar to the Nansen Passport has only been issued in times of emergency or grave unrest, and has not, as of yet, been considered as a method of addressing the existence of stateless individuals as a class. Examples of these temporary documents include the "Certificate of Identity," the "Refugee Travel Document," and the "United Nations laissez-passer."⁵⁰ The International Refugee Organization, which was later replaced by UNHCR, issued temporary documentation of a similar force and effect, known as a "Certificate of Eligibility."⁵¹ Similarly, an "Affidavit of Identity" was issued as a form of emergency travel documentation, in lieu of a passport, that allowed many refugees to flee Nazi oppression during the Second World War in order to emigrate to the United States.⁵²

The Universal Declaration of Human Rights specifically

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See id.*

⁴⁹ *See generally* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, www.unhcr.org (last visited Sept. 15, 2011).

⁵⁰ *See Note on Travel Documents for Refugees*, UN HIGH COMMISSIONER FOR REFUGEES (Aug. 30, 1978), <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68cce14.m>.

⁵¹ UNHCR HANDBOOK – PART ONE, <http://www.hrea.org/learn/tutorials/refugees/Handbook/hbpart1.htm> (last visited Sept. 15, 2011).

⁵² *See, e.g., A Century of Immigration, 1820-1924*, THE LIBRARY OF CONGRESS: EXHIBITIONS, <http://www.loc.gov/exhibits/haventohome/haven-century.html> (last visited Sept. 15, 2011).

enumerates statelessness as a matter of human rights.⁵³ Article 15 of the Declaration, issued in December 1948 affirms that:

1. Everyone has the right to a nationality; and
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.⁵⁴

In 1950, the United Nations created the Office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR's responsibility toward stateless persons began in 1951 with those persons who qualified as refugees.⁵⁵

The first significant step toward identifying statelessness took place at the 1954 Status Convention. The UNHCR calls the 1954 Convention the "cornerstone of the international protection regime for stateless persons."⁵⁶ According to UNHCR, the 1954 Convention defines the *de jure* stateless person, and establishes an internationally recognized status for stateless persons.⁵⁷ This newfound status extended specific rights to stateless persons, most notably, the issuance of identity and travel documents.⁵⁸

The next significant development was the 1961 Statelessness Reduction Convention.⁵⁹ This convention focused on strategy for eliminating statelessness.⁶⁰ The most significant achievement of the 1961 Convention was that it mandated that signatory states respond to statelessness and not arbitrarily deprive persons of citizenship.⁶¹ According to the UNHCR:

Specific obligations relating to prevention and reduction of statelessness are established under the 1961 Convention on the Reduction of Statelessness and in regional treaties. The 1961 Convention requires that States establish safeguards in

⁵³ Universal Declaration of Human Rights art. 15, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR], available at www.un.org/en/documents/udhr/index.shtml.

⁵⁴ *Id.*

⁵⁵ UNHCR Action to Address Statelessness – A Strategy Note, *supra* note 14 (“UNHCR’s responsibilities for stateless persons began with refugees who are stateless under paragraph 6(A) (II) of its Statute and Article 1(A) (2) of the 1951 Convention relating to the Status of Refugees (1951 Convention), both of which refer to stateless persons who meet the criteria of the refugee definition.”).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Convention on the Reduction of Statelessness, Aug. 30, 1961, U.N.T.S. 989, http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf.

⁶⁰ *Id.*

⁶¹ *Id.*

legislation to address statelessness occurring at birth or later in life. The Convention also establishes obligations for States in the event of State succession.⁶²

The 1961 Convention became enforceable on December 13, 1975.⁶³ By 2007, however, only thirty-two countries had ratified it.⁶⁴ The weak response from the international community damaged the intended strength of the convention.

Beyond the Universal Declaration of Human Rights and statelessness conventions, tangential conventions addressing susceptible classes of people have identified statelessness as an issue or recognized the right to nationality.⁶⁵ The 1959 United Nations Declaration of the Rights of the Child claims in Principle 3 that: "The child shall be entitled from his birth to a name and a nationality."⁶⁶

Massey summarizes the current UNHCR position on statelessness as follows:

UNHCR's mandate has since been progressively developed to the point where it . . . lists a number of measures to be taken by UNHCR, States and other actors with respect to:

- The identification of "stateless persons and individuals with undetermined nationality";
- The protection of "stateless persons"; and
- The prevention and reduction of "statelessness".⁶⁷

V. ENFORCEMENT OF INTERNATIONAL LAW

In 2010, Gary Haugen and Victor Boutros argued that:
Efforts by the modern human rights movement over the last 60

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?rel doc=y&docid=4c0f4b1f2> (last visited Apr. 3, 2011).

⁶⁵ International instruments include: Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); and the Convention on the Rights of Persons with Disabilities (CRPD).

⁶⁶ United Nations Convention on the Rights of the Child, art. 3, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), *available at* <http://www2.ohchr.org/english/law/pdf/crc.pdf>.

⁶⁷ Massey, *supra* note 21, at ii.

years have contributed to the criminalization of [violent human rights abuses] in nearly every country. The problem for the poor, however, is that those laws are rarely enforced. Without functioning public justice systems to deliver the protections of the law to the poor, the legal reforms of the modern human rights movement rarely improve the lives of those who need them most.⁶⁸

The problem for statelessness is, indeed, enforcement. Although international law provides the right to nationality, and a large number of countries have ratified one or several of these international instruments, the problem persists, even among countries that have ratified the aforementioned conventions against statelessness.⁶⁹ One reason is that international law is, by and large, silent on the procedures and criteria for establishing a bond of nationality between the state and the individual.⁷⁰ Thus, states may claim inhabitants lack the requisite bond, thereby keeping the state actor within the realm of the treaty. In other words, the state would argue that it is not *denying* citizenship, because the prerequisites were not met.

VI. THEORIES OF CITIZENSHIP AND THE GENUINE AND EFFECTIVE LINK PRINCIPLE

The two most commonly employed principles for granting

⁶⁸ Gary Haugen & Victor Boutros, *And Justice for All: Enforcing Human Rights for the World's Poor*, 89 *Foreign Affairs* (May/June 2010), <http://www.foreignaffairs.com/articles/66210/gary-haugen-and-victor-boutros/and-justice-for-all> (advancing the argument that “[i]nternational norms and legal codes that are meant to protect human rights mean little for people in the developing world, who suffer abuse not for a lack of laws but because these laws are not enforced. It is imperative, therefore, that the human rights community build up political will and capacity among local law enforcement bodies”) (Gary Haugen is the president and CEO of International Justice Mission, a human rights agency that secures justice for victims of slavery, sexual exploitation, and other forms of violent oppression. Victor Boutros is a federal prosecutor in the Civil Rights Division of the United States Department of Justice and a lecturer at the University of Chicago Law School.).

⁶⁹ *Bleak Future*, *supra* note 3. Thailand, for instance, with an estimated one million stateless children, illustrates the complex struggle that this problem causes:

In 2005, the government adopted a policy entitled ‘Education for All,’ which was intended to give all children in Thailand equal access to schooling. Practice does not reflect this policy, however. Even Thailand’s Deputy Education Minister, Chaiwut Bannawat, admitted that there remains a large number of children who fail to receive education, even though the Kingdom has striven to provide educational opportunities for all children.

Id.

⁷⁰ Goris et al., *supra* note 1, at 6.

citizenship both operate at the moment of birth.⁷¹ These two principles are *jus soli*, the ‘law of the soil’ and *jus sanguinis*, the ‘law of blood.’⁷² *Jus soli* provides that those born within the territory of a state have the right to citizenship of that state.⁷³ *Jus sanguinis* confers citizenship on children whose parents are citizens of a given country.⁷⁴ Unfortunately, *jus soli* and *jus sanguinis* fail to solve every case of *de facto* statelessness. *Jus soli* may fail when a child’s birth is not registered, and the parents cannot prove upon what soil the child was born.⁷⁵ *Jus soli* may also fail under circumstances of ethnic discrimination, where the government declines to recognize the nationality of a certain group or classification of individuals.⁷⁶ *Jus sanguinis* may fail under cases where the child’s parents are not citizens of any country.⁷⁷

Indira Goris, Julia Harrington, and Sebastian Köhn argue that there is still a gap in international law due to perceived “silence” in international law on “the procedures and criteria for establishing a bond of nationality between the state and the individual.”⁷⁸ The authors further argue that *jus soli* and *jus sanguinis* are “essentially proxies for a common-sense criterion for citizenship: where an individual is likely to live, and therefore have the need and desire for citizenship and the security and rights that go with it.”⁷⁹

An emerging theory to fill this gap in international law is the “genuine and effective link” principle.⁸⁰ This principle seeks to

⁷¹ *Id.* at 4.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Video Interview with Abba, Adja, and Jupee of the Akha Hill Tribe, in Chiang Mai, Thailand (Nov. 30, 2009). Author conducted firsthand interviews with families of stateless children. Mothers explained that they often could not prove the date or location of the birth because they received no birth documents.

⁷⁶ *Id.* The families interviewed described circumstances of severe ethnic discrimination. As expressed in *Bleak Future*:

“The stateless children,” Kanchana Di-ut, Program officer with MAP Foundation, said, “are denied basic human rights from time of birth.” Kanchana Di-ut, Program officer with MAP Foundation, further indicated that these children “are denied birth registrations and certificates, which are essential to gaining access to basic education and health services.”

Bleak Future, *supra* note 3.

⁷⁷ Video Interview with Abba, Adja, and Jupee, *supra* note 75. The mothers often could not prove the date or location of their own birth, or their own citizenship. *Id.*

⁷⁸ Goris et al., *supra* note 1, at 6.

⁷⁹ *Id.*

⁸⁰ See Mirna Adjami & Julia Harrington, *The Scope and Content of Article 15 of the*

establish nationality by focusing on “factual ties,” which may include the habitual residence of the individual concerned, familial connections, the extent to which the individual has participated in public life, and the degree of attachment the individual has expressed for a given country and passed onto his children.⁸¹ The genuine and effective link principle may provide a solution to these cases of *de facto* statelessness that cannot be solved by *jus soli* or *jus sanguinis*. It should be considered for codification and international adoption and could be utilized as last resort for cases where the *jus soli* and *jus sanguinis* principles fail.

The genuine and effective link principle is not without shortcomings. Safeguards would need to be established so that the genuine and effective link principle is not abused as a means for achieving citizenship in a desired country. Additionally, given the lack of enthusiasm from states to sign the 1964 Convention, it may be difficult to garner significant international support for widespread adoption. Nonetheless, whether or not adopted by states, the conventions and principles set forth in the conventions serve as guideposts for nations responding to statelessness, and metrics by which measures for addressing statelessness may be compared. Additional principles set forth in new conventions or treaties will continue to serve this good purpose.

VII. A GLOBAL CRISIS

This Part will illustrate the effects of statelessness and provide a regional survey focusing on specific countries of concern.⁸²

Universal Declaration of Human Rights, 27 REFUGEE SURV. Q. 93, 106 (2008) (discussing the impact of Article 15 of the Universal Declaration of Human Rights in laying the bedrock legal relationship between the individual and the state, and that citizenship is an essential prerequisite to the protection of human rights).

⁸¹ See generally *Liechtenstein v. Guatemala* (The Nottebohm Case), 1955 I.C.J. 4 (Apr. 6) (holding that Nottebohm did not meet the requirements for real and effective nationality in Lichtenstein despite being naturalized in that country). In the Nottebohm case, Nottebohm had been a German national from the time of his birth, had always retained connections with members of his family living in Germany, and had business connections there as well. *Id.* Nottebohm was granted naturalization in Liechtenstein and subsequently moved to Guatemala, where he lived for thirty-four years. *Id.* After Nottebohm was removed from Guatemala in 1943 as a result of war measures, he was subsequently held to lack sufficient connection to the traditions, interests, way of life, and obligations of Lichtenstein to be considered a national. *Id.*

⁸² See, e.g., *Stateless*, OPEN SOCIETY FOUNDATIONS, http://www.soros.org/indepth/stateless/where_it_happens.html (last visited Sept. 15, 2011) (pointing to examples and estimates of numbers of stateless individuals throughout the world). See also *Nationality and Statelessness*, HUMAN RIGHTS WATCH, <http://www.hrw.org/legacy/campaigns/race/>

A. Effects of Statelessness

Statelessness directly causes various human rights abuses, including a lack of access to “birth registration, identity documentation, education, health care, legal employment, property ownership, political participation and freedom of movement.”⁸³ Stateless persons often lack access to basic services, including entering a formal education system and public healthcare options.⁸⁴ Stateless persons are frequently denied the ability to work due to lack of identification. As a result, they must seek employment through whatever means possible, often in illegal or unethical trades. In the most extreme, but not uncommon cases, stateless persons find themselves as victims of bonded labor or human trafficking. Stateless children, for

nationality.htm (last visited Sept. 15, 2011) [hereinafter *Nationality and Statelessness*] (summarizing the plight of millions of individuals in Asia, Africa, Europe, and the Middle East who have been denied or stripped of citizenship in their own countries solely due to personal characteristics such as race, national descent, and gender).

⁸³ *UNHCR Action to Address Statelessness – A Strategy Note*, *supra* note 14, at 4. Additionally, stateless persons pose a security threat, particularly when placed in the situation of refugees. See Finn Stepputat, *Refugees, Security and Development: Current Experience and Strategies of Protection and Assistance in ‘The Region of Origin’* (Danish Institute for International Studies Working Paper, 2004), available at http://www.diis.dk/graphics/Publications/WP2004/fst_refugees.pdf, explaining that trends in refugee reception in neighboring countries are moving towards evermore constraining in the name of security, accomplished by restricting refugee rights in a variety of ways:

The refugees have no permission to travel beyond designated areas or are confined to camps, they have no work permits and no rights to own land, they have no political or civil rights, many have no clear legal status or prospects of becoming naturalised and many children are born into statelessness, they are subjected to impugnable abuses by camp officials and local authorities.

Id. at 13. These issues are rooted in what the host countries perceive as security threats. Security threats are either direct or indirect. *See id.* at 10. Direct threats include the “militarization of refugee groups” and armed attacks on camps. *Id.* Indirect threats include the perception that newly arrived refugees may shift the political power balance in the country (e.g., the radicalization of Islam in Pakistan is sometimes interpreted as an effect of the presence of Afghan refugees), the perception of injustice created by contradictions between host country treatment of refugees and its own population (either the population perceives preferential treatment of refugees or vice versa), which tends to yield antagonistic relationships between the hosts and the refugees and can lead to increased crime rates. *See id.* at 11-12. To be a viable solution, host countries must be persuaded that local integration of refugees will not be a security threat. *See id.* at 21. Additionally, local integration should include plans for repatriation. *Id.* Local integration includes development assistance for refugees by strengthening self-reliance, decreasing the need for long term care, reducing the potential for grievances between hosts and refugees, and better preparing the refugees for durable solutions. *Id.* at 19. This includes giving the refugees sufficient legal and physical protection in the host countries. *Id.* at 20.

⁸⁴ *Id.*

instance, are forced to become victims of child labor in an effort to survive.⁸⁵ Stateless women are also particularly susceptible to prostitution and sexual trafficking.⁸⁶

According to *Bleak Future*, “[i]t is estimated that there are about one million stateless children in Thailand ‘The stateless children,’ Kanchana Di-ut, Program officer with MAP Foundation, said, ‘are denied basic human rights from time of birth.’”⁸⁷ Certain classes of people are particularly susceptible, including women, children, and ethnicities. The following sub-Parts broadly illustrate recent ongoing cases of statelessness according to particularized geographical regions.

B. Europe

In Europe, the collapse of the Soviet Union led to citizenship discrimination in many newly independent countries.⁸⁸ Following the breakup of the former Yugoslavia, subsequent persecution and expulsion of minority groups coincided with measures to deny citizenship to members of ethnic minorities residing there or

⁸⁵ See *Bleak Future*, *supra* note 3 (“Tattiya Likitwong, a project coordinator for the Child Development Foundation, was quoted as saying that the child labor situation in Thailand has not improved because children, including stateless children from Burma, Laos and Cambodia, can be found working in businesses, particularly in the big cities.”).

⁸⁶ *Id.* (“Aye Aye Mar, the founder of Social Action for Women (SAW), said, ‘If children see no prospect for their future, they just take any job available in their community, which does not help them towards establishing better livelihoods.’ SAW is an NGO providing shelter, training, and learning centers for Burmese women and children. Aye Aye Mar also noted that many teenagers move to urban cities to seek better jobs using agents, which can make them vulnerable to human trafficking, exploitation, and abuse.”). In 2008, the U.S. State Department recounted the following case:

Fifteen-year-old Meesu was born in Thailand, and grew up there, but she is not a Thai citizen. Like some members of hill tribes, she is not a citizen of any country. Without citizenship, she faced travel and work restrictions in Thailand and was trafficked to Malaysia to be a sex worker. When Malaysian police busted the prostitution ring, they could not send Meesu home because she was not Thai. She languished in jail for months.

No Country, *supra* note 15. “As for Meesu, the fifteen year old trafficking victim and citizen of nowhere, she was eventually sent back to Thailand. After months of negotiation, the Thai government agreed to consider accepting, on a case by case basis, stateless people who could prove previous residence in the country.” *Id.*

⁸⁷ *Bleak Future*, *supra* note 3.

⁸⁸ See Andras Fehervary, *Citizenship, Statelessness and Human Rights: Recent Developments in the Baltic States*, 5 INT’L J. REFUGEE L. 392 (1993) (discussing the nationality legislation and human rights practices in former Soviet states shortly after the fall of the Soviet Union).

seeking to return to their homes.⁸⁹ As described by Goldston:

In Europe, citizenship has grown more contested with the post-1989 changes in borders that followed the collapse of Communism. As the multiethnic states, such as the Soviet Union, Yugoslavia, and Czechoslovakia, disintegrated, ethnic minority groups—ethnic Russians, Croats, Bosniaks, and Roma, among others—left on the wrong side of a new border commonly encountered difficulties in effectively acquiring or establishing citizenship in the newly emergent states.⁹⁰

Accordingly, statelessness continues to persist in Europe with cases falling into both *de jure* and *de facto* statelessness.

C. Asia

In South Asia, for example, the government of Bhutan expelled and stripped the citizenship of more than 100,000 Bhutanese of ethnic Nepali origin in the early 1990s—the majority of whom are still refugees.⁹¹

In Southeast Asia, the government of Thailand has registered some 300,000 members of the country's ethnic minority hilltribes and issued them special identity documents, but these indigenous people are denied a nationality or full citizenship rights.⁹² Hundreds of thousands of other hilltribe villagers are unregistered and are officially considered illegal immigrants.⁹³

The military junta in Burma (Myanmar) excludes hundreds of thousands of members of Burma's minorities from citizenship with a 1982 citizenship law.⁹⁴ In the 1990s, for instance, the government denied citizenship to more than 250,000 Rohingya Muslims.⁹⁵ The Rohingya fled to seek refuge in neighboring Bangladesh.⁹⁶

⁸⁹ ANITA INDER SINGH, *DEMOCRACY, ETHNIC DIVERSITY, AND SECURITY IN POST-COMMUNIST EUROPE* 51 (2001).

⁹⁰ Goldston, *supra* note 12.

⁹¹ *Nationality and Statelessness*, *supra* note 82.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Burma Citizenship Law [Myanmar], NATIONAL LEGISLATIVE BODIES, 15 Oct. 1982, available at <http://www.unhcr.org/refworld/docid/3ae6b4f71b.html> (last visited Sept. 14, 2011).

⁹⁵ *Id.*

⁹⁶ *Nationality and Statelessness*, *supra* note 82.

D. Middle East

Kuwait continues to deny citizenship to some 120,000 Bidun.⁹⁷ Many of these Bidun families have lived in Kuwait for generations and have no claim to citizenship in any other country.⁹⁸ Syria denies citizenship to some 300,000 Kurds, while recognizing that they are other than mere aliens.⁹⁹ Millions of Palestinians remain stateless.¹⁰⁰

E. Africa

In Zaire, moves to strip the citizenship of some 1.5 million citizens of the Banyarwanda ethnic group were made after domestic and interstate conflict in 1991.¹⁰¹ In Ethiopia, the government summarily denationalized and expelled some 70,000 Ethiopian citizens of Eritrean origin after war broke out with Eritrea in May 1998.¹⁰²

In many countries in North Africa, parts of Sub-Saharan Africa, and the Middle East, citizenship is restricted to the children of male nationals.¹⁰³ In these places, women may not independently obtain a nationality nor may they pass on nationality to their children.¹⁰⁴ When a woman marries a citizen of another state, she may be required to forfeit her nationality.¹⁰⁵ The effect of these policies has been to discourage female citizens from marrying men of a different ethnicity or nationality because their children will be denied citizenship.¹⁰⁶

⁹⁷ See *Kuwait: Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression*, HUMAN RIGHTS WATCH (Oct. 1, 2000), <http://www.unhcr.org/refworld/publication/HRW,,KWT,3ae6a87e0,0.html>.

⁹⁸ *Id.*

⁹⁹ *Buried Alive: Stateless Kurds in Syria*, REFUGEES INTERNATIONAL (Feb. 3, 2006), <http://www.refintl.org/policy/in-depth-report/buried-alive-stateless-kurds-syria>.

¹⁰⁰ *Nationality and Statelessness*, *supra* note 82.

¹⁰¹ See Norm Dixon, *Zaire-Sponsored Ethnic Cleansing Behind Crisis*, GREEN LEFT (Nov. 6, 1996, 11:00AM), www.greenleft.org/au/node/13075.

¹⁰² *Nationality and Statelessness*, *supra* note 82.

¹⁰³ *Id.*

¹⁰⁴ See Sanja Kelly, *Recent Gains and New Opportunities for Women's Rights in the Gulf Arab States*, FREEDOM HOUSE (last visited Sept. 14, 2011), http://www.freedomhouse.org/uploads/special_report/section/164.pdf.

¹⁰⁵ *Nationality and Statelessness*, *supra* note 82.

¹⁰⁶ *Id.*

VIII. RECOMMENDATIONS

A. Operative Recommendations

The following recommendations have been set forth by the Refugee Studies Center at the University of Oxford:

Recommendations to eliminate and reduce statelessness include the following:

1. States should ratify the 1954 and 1961 Conventions on Statelessness and should fulfil the obligations of these instruments including the introduction of necessary domestic legislation to provide procedures to determine status;
2. States should honour their human rights obligations to all those within the state's territory, irrespective of nationality status;
3. States should put in place adequate mechanisms to protect people from abuses that particularly affect stateless people, including human trafficking and the use of indefinite detention;
4. States should develop anti-discriminatory policies and practices, including the training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law;
5. States should ensure that children are provided with the means to acquire a nationality at birth;
6. States should implement birth registration campaigns in cooperation with UNICEF and Plan International and provide mobile birth registration teams where necessary;
7. States should facilitate the naturalisation of stateless people, for example by relying on reasonable use of residency and language criteria, and by relaxing the requirements for naturalisation in cases involving stateless persons;
8. States should improve access to procedures relating to the acquisition, confirmation or documentation of nationality so that those eligible to receive citizenship are not overburdened by fees; where necessary they should provide mobile registration units to ensure greater physical access to public administrative bodies responsible for issuing citizenship certificates;
9. International donor governments should provide greater assistance to UNHCR to strengthen its work on

the prevention and reduction of statelessness;

10. International donor governments and development agencies should ensure that aid effectively reach stateless groups;

11. States and international development agencies must improve the monitoring of the status of stateless people through their overseas embassies and in their human rights and country reports;

12. International funding bodies should support applied research by academics and non-governmental organisations in mapping the relationship between statelessness, poverty and vulnerability and in understanding the mechanisms that have encouraged effective reform.¹⁰⁷

These operative recommendations are all worthwhile and should be adopted by states. Given the past precedent, however, it seems historically unlikely that states will take further significant action on the issue of statelessness, especially ratifying the Conventions on Stateless, without intense international pressure. Such international pressure would best be applied to recommendations 5-8, with particular emphasis on recommendation 8. As to recommendation 5, although many states provide or mandate a means of acquiring nationality at birth, it does not happen in practice. This often takes place at the hospital or local community level where doctors and administrators can withhold proper identification. Governments will need to increase scrutiny of hospitals or incentivize them in order to change this practice.

Recommendation 6 wisely advises birth registration campaigns and mobile registration teams, as stateless individuals often do not know where or how to obtain identification. Many of the villages or settlements where stateless individuals live are so far away from regional government centers that it is impractical for those affected to seek assistance. Various organizations, such as the International Justice Mission, have successfully created mobile registration clinics for stateless persons. Though successful at reaching people, private organizations then struggle with subsequent government bureaucracy that follows. Deeper involvement by states would speed up the process.

Recommendation 7 may pose one of the greatest challenges.

¹⁰⁷ BLITZ, *supra* note 15, at 4-5.

Many states will likely need to craft exceptions to their immigration policies in order to accommodate stateless people. Though daunting, if particularized to certain known groups of stateless persons, the risk of abuse could be minimized.

Finally, recommendation 8 may be most crucial. In many cases, stateless persons have explored the process of obtaining citizenship but were held back by barriers such as cost and access. Many stateless people do not know if they are eligible and substantial fees are levied against them in order to begin the process of simply discovering their eligibility. Associated costs are not merely processing fees, but often include expensive trips to regional government centers lasting several days at a time. These costs include travel, travel for dependents, care for dependents who cannot travel, and the loss of day labor income. Barriers need to be reduced, cost set at a reasonable rate (particularly for discovering one's eligibility), and access centers need to be located within a reasonable range of the populations they serve.

Although these suggestions are useful, much more can be done by harnessing current technology and bypassing nation states altogether. In the remainder of this article, I will suggest that measures be taken *independent* of nation states to identify and document stateless persons. Accordingly, the international law community should consider a new form of international identification for stateless people founded upon the spirit of the Nansen Passport and an application of the Genuine and Effective Link principle.

B. A New International Identification Card

With recent advancements in global technology and the proliferation of communications services in the developing world, a new international identification system should be built in the same spirit as the Nansen Passport. This identification system would serve, first, to document and register stateless persons, and second, to provide significant resources to documented persons.

The identification system would document stateless persons under a similar charge as the Nansen Passport. Although not prescribed under the jurisdiction of a state actor, the Nansen Passport served as basic identification and eventually became recognized by many states. The proposed identification system would serve the same basic purpose of communicating a stateless

person's name, residence, birthdate, and other vital information.¹⁰⁸ Stateless persons have cited communication of this basic information as an initial stumbling block on the road to establishing their identity, accessing basic rights, and maintaining personal security.¹⁰⁹

The identification card system would provide guidance for states in considering official state citizenship or identification.¹¹⁰ With no paperwork, governments have no basic evidence upon which to establish nationality or citizenship and must conduct their own investigation. With limited resources for investigation, this almost always prevents a stateless person from obtaining official identification or, at a minimum, causes serious delays. Having this basic information available would provide a piece of evidence for these cases and reduce the steps necessary for governments to establish nationality. In the meantime, the card might allow for increased freedoms, such as the freedom of movement, opening

¹⁰⁸ See Sanitsuda Ekachai, *Searching for a State*, BANGKOK POST, June 25, 2002, available at <http://www.statelessperson.com/www/?q=node/700> ("Clad in a short-sleeved shirt and blue jeans, Boon, 19, looks just like any Thai teenager—until you ask him what his last name is. 'I don't have one,' he replied, looking embarrassed. But being deprived of a surname, and thus made an oddity in mainstream society, is not the only indignity he and thousands of other Karens native to Ratchaburi's Suan Pueng district have had to suffer.").

¹⁰⁹ See *id.* ("The situation is worse in northern Thailand where a large number of hill people speak only broken Thai—if at all. 'When a Thai official asked my father where he was from,' said a 29-year-old ethnic Akha man called Pilang Ahsang, 'he answered 'Koomma', the Akha name for Baan Tuay [a village in Mae Jan district, Chiang Rai]. The official immediately wrote down 'Burma'.' Many other Akha people born in Thailand face similar communications problem [sic]. When officials, seeking corroboration of their place of birth, ask 'Is it true?', many villagers reply 'papama', the Akha term for 'it's true'. Invariably the official hears 'Pa-ma', the Thai word for Burma, and assumes they were born in that country. Consequently, many hill people born here are categorised as illegal immigrants and are subject to various forms of discrimination which limit their freedom of movement, access to higher education and job opportunities and deny them voting rights. 'If the authorities were to allow locals who know both languages to help out during interviews, many of these [communication] problems would be solved,' said Chutima Morlaeku, an Akha activist with Impect (Inter Mountain People Education and Culture in Thailand Association), a non-governmental organisation for hill people.").

¹¹⁰ At a basic level, an identification card system might provide a consistent source for vital personal details, such as spelling one's name or establishing a birthdate. For instance, when immigrants arrived at Ellis Island during and after World War II, many names were changed because the immigrants had no paperwork and immigration officials did their best to spell the names that were spoken to them. Further, in my field research, I observed children in Southeast Asia, who were issued school documents by privately funded schools for stateless children. For the documents, the schools arbitrarily picked a date of birth, which, for many, the change thus became the date they continued to recognize as their birthdate.

bank accounts, obtaining lines of credit, and possibly holding a job. A significant advancement over the Nansen Passport system is that this modern identification network could be digitized with information available in the “cloud.”¹¹¹ The data would then be accessible throughout the world by states, which could also create real time updates to the database as stateless persons travel.

Universal identification could serve a significant purpose for international financial systems. Microfinance organizations could use credit scores as an identification metric across borders. One of the benefits of trust-group-based microfinance models, as applied in many countries, is that it confines persons to a single location if they wish to continue receiving loans. If they move, they would need to build trust in a new village, be invited into a trust group, and then establish a history with that trust group. Returning to their previous level of credit in a new trust group may take years. A universal identification network might allow a person to move and enter a new microfinance trust group at a similar level or access formal banking loans based on their established credit. It might also allow for persons to move around their country, as well as travel internationally, and still access their bank accounts—one of the significant dangers of travel in the developing world is financial security. Being able to move without cash in one’s pocket and access cash at another location greatly increases personal security and encourages the flow of commerce.

A universal identification network would also act as a significant resource during natural disasters and public health crises. The network would aid in the process of identifying persons and would provide assistance in suggesting the names of those who are missing.

¹¹¹ Cloud computing uses a network of remote servers on the Internet to store data rather than holding data on local computers. An example of cloud computing being used for humanitarian purposes is the recent development of “Crisis Tracker.” Crisis Tracker was developed by Invisible Children and Resolve Uganda to track activities of the Lord’s Resistance Army, “an ultra-violent radical Christian sect . . . engaged in armed warfare against the Ugandan government.” The system uses text messaging and shortwave radio communication to capture real-time data on the conflict, then instantly combine, map, and disseminate conflict information globally. According to Wired Magazine, “[Crisis Tracker] runs on a custom-designed platform by Digitaria that uses, of all things, a Salesforce backend. Salesforce normally provides cloud-based sales and marketing recordkeeping services for online businesses; in this case, the LRA Crisis Tracker team created a custom CMS that delivers the information into both the mapping system and the app.” *Neal Ungerleider, Cybermapping Africa’s Strangest Conflict, WIRED MAGAZINE*, Oct. 4, 2011, <http://www.fastcompany.com/1785098/lords-resistance-army-conflict-map>.

There are risks inherent in a universal identification system. These risks, however, can be overcome and are significantly outweighed by the benefits. The first risk is identity theft. Persons or organizations may try to steal the identity of vulnerable individuals. It seems slight, however, that the status of a stateless person would be an identity of significant value on the open market. Nonetheless, this risk has already been addressed by microfinance organizations banking with the poor who cannot read, write, or possess identification. These microfinance organizations have developed their own identification systems. In particular, many microfinance organizations have adopted biometrics, such as fingerprint recognition or retinal scans. These methods have proved effective and are being quickly employed through the developing world to allow the poor and those lacking identification to access financial markets.

Similarly, potential vulnerability of data storehouses is a risk.¹¹² Again, these matters have already been successfully dealt with by organizations that store and make sensitive data accessible on the Internet.¹¹³ Data would need to be stored on multiple servers at several locations worldwide to avoid risks of data attacks, natural disasters, and political upheaval.¹¹⁴ Further, modern digital encryption software is continually making sensitive data and cloud computing safe and successful.¹¹⁵

Another risk is corruption in the process of obtaining identification. Unfortunately, the current channels for obtaining identification are often already corrupt. In Thailand, for instance, the formal system for identification is plagued by corruption.¹¹⁶

¹¹² Steven Levy, *Steven Levy on the Perils of Cloud Computing*, WIRED MAGAZINE, Apr. 26, 2011, http://www.wired.com/magazine/2011/04/pr_levy_desktop_kill. Steven Levy outlines the weak spots in the cloud computing framework, which include global infrastructure and a regulatory framework. He argues that an age when everything is on the cloud is coming, but not yet here. *Id.* Nonetheless, many Internet-based projects are quickly moving to the cloud. *Id.*

¹¹³ *Id.* Google, for example, stores personal email data safely on its Gmail application.

¹¹⁴ *Id.* Wikileaks serves as an example of cloud computing. Wikileaks data was stored across multiple servers, withstanding attacks and website removals while continuing to publish stories.

¹¹⁵ *Id.* Google notoriously wiped the data of 150,000 users in 2011 data accident, demonstrating that there are still risks with cloud data storage.

¹¹⁶ Ekachai, *supra* note 108 (“More than 2,000 residents of Suan Pueng have asked to be given legal-immigrant status and some 800 children of theirs have applied for citizenship. The majority fled war and persecution in Burma several decades ago to seek refuge with Thai relatives. Most speak Thai fluently and are already culturally integrated into mainstream society. But they are stuck in limbo because the Interior Ministry,

Stateless persons admit that bribes are common practice for moving through the system and ultimately obtaining identification.

The network of universal identification proposed in this Article will aid in reducing corruption in the long run in three ways. First, it will provide an alternative avenue for obtaining identification—essentially competing with a corrupt market with a better product. Second, the system would offer greater transparency knowing that identification materials issued by one state or agency could be accessed and viewed throughout the network. Third, the database of stateless persons could be monitored to identify individuals or groups involved in particularized situations of corruption if they are subsequently applying for citizenship. Pressure could then be applied to states to address particular cases.

An international system such as the one described herein would allow for more accurate information on statelessness by automatically generating data on the stateless situation. This information would show where the global crisis is growing, and shrinking, so that the international community could address problem areas. The database could also be opened to researchers for further data mining. Such detailed information, though currently unavailable, could potentially revolutionize the way statelessness is addressed.

This proposed system could also provide additional social benefits such as aiding in the identification and recovery of human trafficking victims. The names and ages of victims could be identified more readily, as well as country and village of origin. For instance, if a victim profiled on the network is unable to explain their background or place of origin (such as a child too young to explain or a village name known only by its indigenous language), a biometric scan would instantly provide vital information.

Finally, this international system should not be administered by any government. Rather, it should be administered by a multinational organization or institution, such as the United Nations (which once administered the Nansen Passport), a non-governmental organization (for instance, how ICANN has managed Internet protocols), or a university.¹¹⁷ This multinational

suspecting irregularities—the bribing of officials—in several cases, have frozen the processing of all applications.”).

¹¹⁷ ICANN (Internet Corporation for Assigned Names and Numbers) is a non-

organization or institution could deputize local, trustworthy partners, such as human rights organizations, refugee resettlement agencies, and microfinance providers.

IX. CONCLUSION

This Article is intended to start a conversation about whether the Nansen Passport, a once highly successful innovation, is again applicable today. Admittedly, this article may subsequently create more questions than it answers, including: How would this be organized? What would it cost? What if states do not consent? Although there may be many more questions that need to be probed before a global network of identification for stateless persons can be established, we can take comfort in the fact that this is not a new idea. Based on recent technological advances, such a reinvention of a universal identification system could, if properly funded and administered, only be more successful.

While there is much to discuss, the central matter is that the issue of statelessness is growing. It has become more difficult for nations to deal with, and the effect on its victims has become more horrific. As we search for solutions to the consequences of statelessness (e.g., poverty, human trafficking, bonded labor), we miss that this simple need—the need to exist somewhere—is one of the primary underlying issues. While there are many problems that cannot be controlled, statelessness is an issue that can, and must, be solved.

governmental organization based in the United States, which manages Internet addresses, protocols, and top-level domains across the World Wide Web. Critics of ICANN, however, have argued that management of Internet addresses should move from a U.S.-based nonprofit to the United Nations. *Who Should Run the Internet?: A Plaything of Powerful Nations*, THE ECONOMIST, Oct. 1, 2011, <http://www.economist.com/node/21530955>.

