

THESIS LLM IN CHILD LAW LEIDEN UNIVERSITY

The Prevention of Child Statelessness at Birth under
the Convention on the Rights of the Child:
the Committee's Role & Potential



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The one who follows the crowd will usually
get no further than the crowd.
The one who walks alone is likely to find himself
in places no one has ever been.

Unknown

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ABSTRACT

This thesis focuses on the role and potential of the UN Committee on the Rights of the Child in preventing child statelessness at birth. It discusses what obligations follow from the Convention on the Rights of the Child (CRC) regarding statelessness and related matters hereto, such as nationality and birth registration. Included will be several relevant sources, such as the Committee's General Comments, international customary law and, where relevant, other frameworks. Furthermore, an assessment will be made of to what extent the Committee has addressed these issues in its monitoring framework and whether (and how) this can be improved. In this regard, the reporting system is of main focus, since all concluding observations (a total of 419) have been studied and analysed. On the basis of identified gaps, several recommendations are made, covering the sharpening of the reporting guidelines, improvements concerning the concluding observations, devoting a Day of General Discussion to this topic, ultimately resulting in a proposed new General Comment on article 7 CRC.

LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
COs	Concluding Observations
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECN	European Convention on Nationality
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
LoI	List of Issues
PCIJ	Permanent Court of International Justice
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations Commissioner for Refugees
UNICEF	United Nations Children's Fund
VCLT	Vienna Convention on the Law of Treaties

1 INTRODUCTION

1.1 Statelessness: a global problem

Human rights are inalienable rights that one has 'simply because one is human'.¹ In the past few decades the human rights framework has greatly expanded due to the growing recognition of their importance. However, it seems that one group is being excluded from the enjoyment of its rights: those not belonging to any State, the stateless people. Statelessness has been an issue for as long there has been a right to a nationality. Its impact is significant: it can lead to exclusion from education, work, health care and social activities, among others. Moreover, because of their invisibility, stateless people tend to fall outside a country's protection system, leading in some cases to their subjection to harmful practices such as exploitation, violence or abuse. In this regard, the right to a nationality, often referred to as 'the right to have rights', appears to be a crucial one.

Statelessness has long gone unrecognised as a problem and it seemed every political event added a new group of stateless, extending the scope of the problem even more.² Also, statelessness exists due to discriminatory laws and the lack of a solid global nationality system; in principle it is up to each State to determine its nationality policies.³ With no world government in place and a general reluctance by States to limit their sovereignty, it is hard to make States shoulder their responsibility to close the gaps between nationality systems. Considering the well-developed world we live in today, it is hard to imagine that statelessness should even be a real issue. Nevertheless, an estimated 12 million people, five million of whom are children, face the challenges of statelessness every day.⁴

Over time, several initiatives have been taken to address statelessness, for example the adoption of the first convention dealing with nationality, the Convention on Certain Questions Relating to the Conflict of Nationality,⁵ and the recognition of the right to a nationality contained in the Universal Declaration of Human Rights (UDHR)⁶. Another convention, the Convention on the Reduction of Statelessness (1961 Statelessness Convention)⁷ specifically aims to reduce statelessness,⁸ but it has been

¹ Donnelly 2007, p. 282.

² For example, the Second World War: Arendt 1958, p. 277. See also Weis 1956; Frelick & Lynch 2005, p. 65.

³ For reasons why statelessness has not been solved yet, see also Kingston & Datta 2012, p. 496.

⁴ UNHCR 2013, p. 2-3, 34. See for a fuller overview: Lynch 2005, p. 28-46.

⁵ LNTS, vol. 179, p. 89.

⁶ Art. 15, adopted by UNGA Resolution 217 A(III) of 10 December 1948.

⁷ York 30 August 1961, UNTS Vol. 99, p. 175.

⁸ UNTS, Vol. 99, p. 175.

criticised for its low number of ratifications and limited impact.⁹ Despite these efforts, statelessness remains an unresolved problem.¹⁰ However, attention to this topic seems to be growing, as is demonstrated by the first global forum on statelessness being held this year.¹¹ Since 2014 also marks the 25th anniversary of the Convention on the Rights of the Child (CRC), this provides us with an opportune moment to combine these two subjects and to discuss the topic of ‘the prevention of child statelessness at birth’.

The CRC was adopted in 1989.¹² Considering the previous lack of recognition of the child as a rights holder, its entry into force in 1990 was an international breakthrough. With 194 States Parties, it is the most widely ratified human rights treaty in force today.¹³ The CRC covers not only civil and political rights but also economic, social and cultural ones. Its article 7 contains the right to acquire a nationality which, although weaker than the right to a nationality, is inextricably linked to statelessness.¹⁴ Birth registration has also been included: it establishes the link between the child and a state, given that birth registration is frequently a prerequisite for acquiring a nationality. Furthermore, the CRC is built on four general principles: non-discrimination (article 2), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right to be heard (article 12). The remainder of the Convention has to be interpreted in the light of these principles.¹⁵

The implementation of these rights is monitored by the Committee on the Rights of the Child, a body comprising 18 independent experts who meet in Geneva three times a year.¹⁶ It has developed several ‘General Comments’ which are non-binding but which nevertheless provide important guidance in interpreting the CRC’s provisions.¹⁷ Another notable feature is the well-developed reporting procedure, on the basis of which the Committee produces country-specific recommendations laid down in the ‘Concluding Observations’. Considering the CRC’s near-universal ratification (compared with the 55 Member States to the 1961 Statelessness Convention),¹⁸ the Committee’s full significance to the prevention of child statelessness from birth is yet to be explored.¹⁹

⁹ See also Detrick 1991, p. 151; Van Waas 2008, p. 17. Its impact is increasing, nevertheless, as indicated by the fact that 18 States have acceded to the 1961 Convention since 2011; see <https://treaties.un.org> (last accessed 30 June 2014).

¹⁰ For the changing context, see Manly & Persaud 2009, p. 7.

¹¹ 15-17 September 2014, The Hague. Other examples are the set of four guidelines developed by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2012, and the report ‘Childhood Statelessness in Europe’ (ENS 2014).

¹² UNTS, Vol. 1577, p. 3 (1989). For more background information, see Van Bueren 1998.

¹³ See treaties.un.org.

¹⁴ Doek 2008; De Groot 2012, p. 119. For the right to a nationality, see: art. 15 UDHR; art. 4, 6 Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166 (ECN); art. 20 Organization of American States (OAS), *American Convention on Human Rights*, Costa Rica, 22 November 1969 (ACHR); art. 29 League of Arab States, *Arab Charter on Human Rights*, 15 September 1994 (Arab Charter).

¹⁵ See inter alia: CRC General Comment No. 5, par. 12.

¹⁶ Art. 43 CRC.

¹⁷ There were 17 General Comments as of 25 July 2014; see www.ohchr.org/EN/HRBodies/CRC/.

¹⁸ For a visual statement of this point, see appendix I.

¹⁹ For the Committee’s significance in this regard, see also Bierwirth 2005.

1.2 Research questions and methodology

This thesis focuses on the question of the extent to which UN Committee on the Rights of the Child has addressed the situation of stateless children with regard to the acquisition of a nationality at birth and how this can be improved. In order to answer the question, several subsidiary questions need to be answered first. What is child statelessness, and why is it a problem? What obligations can be derived from the CRC with regard to preventing child statelessness at birth? What other relevant international legal obligations are States Parties bound by? What can be learned from other frameworks? How has the Committee addressed the implementation of these obligations? Finally, can this be improved, and if so, how?

In this regard the thesis has been divided into six chapters. After the introduction, the reader is provided with additional background information in Chapter 2, which explores the definition of (child) statelessness as well as its causes and consequences. The three chapters thereafter are the core of this thesis and deal with two related issues: obligations that can be derived from the CRC regarding the prevention of statelessness at birth, and how the Committee proceeds to use this framework to tackle the problem.

Chapter 3 deals mainly with the substantive part and scrutinises the CRC's implications. The focus is on the right to acquire a nationality and the right to be registered at birth, as well as article 7(2) CRC which refers to statelessness and other relevant provisions such as the general principles. However, to some extent this is intertwined with the question as to what extent the Committee has addressed this issue in its General Comments, since the latter provide an important source of interpretation. Chapter 3 considers both primary and secondary sources, including the CRC, relevant treaties such as the International Covenant on Civil and Political Rights (ICCPR)²⁰ and the African Charter on the Rights and Welfare of the Child (ACRWC),²¹ General Comments, international customary law and relevant literature. These sources are subsequently analysed to derive the obligations to which States are bound.

Chapter 4 explores how the Committee on the Rights of the Child monitors these obligations. As for the CRC's monitoring system, four mechanisms have been identified, the most important of which is the reporting procedure. All of them are examined, with the focus being on the latter. 419 Concluding Observations have been analysed to determine how often the Committee has addressed the prevention of statelessness at birth and, where it has done so, how it has gone about it. For the sake of a complete overview, 12 countries have been studied in detail, including the relevant state reports and lists of issues. (The methodology is discussed under 4.6.1 below.)

Building on the obligations identified in Chapter 3 and the discussion in Chapter 4 of how and to what extent the Committee has addressed the prevention of statelessness at birth, Chapter 5 makes several recommendations. Together with arguments based on the practice under other frameworks, the chapter explores possible improvements to the reporting procedure and the Days of General Discussion. Ultimately, a new General Comment on article 7 CRC is outlined.

Chapter 7 concludes with an overview of the main findings made in this thesis.

²⁰ UNTS vol. 999 (1966).

²¹ CAB/LEG/24.9/49 (1990).

1.3 Scope of the research

Since nationality and birth registration are closely intertwined with statelessness, they are a central focus of the research. In this regard, 'nationality' is to be understood as membership of a State and should be distinguished from 'citizenship', which refers to the national rather than international aspect of an individual's relationship with a State.²² Other nationality matters, such as the preservation of identity, fall outside the scope of this thesis. In addition, its point of departure is the Committee on the Rights of the Child; in general, then, other important actors such as UNICEF and the UNHCR are not examined. Finally, several aspects of statelessness can be identified, including the protection of stateless people and the reduction of statelessness; here, only the preventive aspect of statelessness is explored.

²² Weis 1956, p. 3.



2 BACKGROUND

2.1 Introduction

Before examining the concerns surrounding child statelessness, it is necessary to equip the reader with a better understanding of the phenomenon itself. Doing so is the aim of this chapter. First, to delineate the scope of the thesis, paragraph 2.2 addresses the definition of (child) statelessness. Secondly, it is beneficial to explore why child statelessness is a problem. Further to this, section 2.3 deals with the causes of (child) statelessness, while paragraph 2.4 engages with the consequences thereof and the question of why (child) statelessness is problematic. Generally, the same implications apply for stateless adults as for stateless children, so, unless it is necessary, this chapter makes no further differentiation between them.

2.2 What is child statelessness?

When exploring the problem of statelessness, the immediate issue that arises is its definition.²³ So far, no international consensus has been reached on the classification of statelessness. Article 1(1) of the 1954 Convention²⁴ defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law', with 'any State' referring to States to which a person has a certain link, such as by habitual residence or birth. This type of statelessness is also referred to as *de iure* statelessness, that is, statelessness according to the law.²⁵ Most frameworks are concerned with this type of statelessness only. Importantly, article 1(1) of the 1954 Convention has been recognised as part of customary law.²⁶

A second, more complex, category is *de facto* stateless persons. Consensus has not been reached on the definition of this group either.²⁷ However, during a UNHCR expert meeting the following definition was agreed upon: '*de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country'.²⁸ In my opinion, this definition is

²³ For the need of a definition, see also Manly & Van Waas 2014, p. 6.

²⁴ Convention Relating to the Status of Stateless Persons, New York 2 September 1954, UNTS Vol. 360, 1960, p. 117 (1954 Convention).

²⁵ As is also pointed out in UNHCR Guidelines No. 1, par. 16, which state that whether a person is considered a national or not depends on the State's law. This covers not only legislation, but also regulations, case law, etc., as well as the application hereof; it is therefore a question of fact *and* law.

See for the definition of a State: UNHCR Guidelines No. 1, par. 12-14.

²⁶ ILC 2006, p. 49; UNHCR 2010, par. 2; UNHCR Guidelines No. 1, par. 2.

²⁷ See e.g. Van Waas 1008, p. 21; Blitz & Sawyer 2011, p. 70; Van Waas 2013, p. 260; Rodrigues 2013, p. 281.

²⁸ Emphasis added. UNHCR 2010, p. 6.

almost correct – almost but not quite, because persons who are inside the country of their (effectively useless) nationality should also be included; in other words, place of residence should not affect the status of statelessness. *De facto* statelessness should be understood as a situation in which, according to the law, a person would have acquired a nationality of at least one State with which he or she has a link but – for whatever reason – has failed to do so; in addition, the authorities of that State deny either this entitlement to the nationality or its acquirement.²⁹ An example is a child who, according to the law, would acquire a nationality but who has failed to do so due to birth registration issues (for the causes of statelessness, see also 2.4).

In sum, *de iure* statelessness is concerned with the acquisition of a nationality by law (also at birth) and its recognition by States, whereas *de facto* statelessness instead entails the practical use of an already – presumably – acquired nationality (after birth). The two categories may often seem to overlap. It is important, however, to make this distinction, since *de iure* stateless persons enjoy more protection under international law than *de facto* stateless people. Nevertheless, both categories often face the same problems, and as such it is desirable to treat them in the same manner as far as possible.³⁰ In the light of this, the starting point of the thesis will be the *de iure* definition of statelessness as laid down in the 1954 Convention, but, where it is possible and relevant, *de facto* statelessness will be included as well.³¹

2.3 Causes of (child) statelessness

The prevalence of (child) statelessness cannot be attributed to one factor alone; several causes are identifiable, and they often overlap.³² Although this is not an exhaustive list, the main causes are the lack of a solid nationality framework; discriminatory laws; laws relating to marriage; denationalisation or denunciation; and other factors such as administrative practices. The first three categories constitute the most relevant factors for *de iure* statelessness at birth.

First, the lack of a solid nationality framework leaves room for people to fall outside systems. An important notion in this regard is that, in principle, it is up to States themselves to determine their nationality laws and policies.³³ Their systems can be divided roughly into the *ius sanguinis* system and the *ius soli* system. The former, literally meaning ‘the law of blood’, makes the acquisition of nationality dependent on descent.³⁴ In case of the *ius soli* system, nationality is linked to territory, with the place of birth being the general criterion.³⁵ In theory, the use of these different systems is not necessarily problematic. However, when people start to move across borders the issue of statelessness may come into play. For example, if a pregnant woman coming from an ‘*ius soli* country’ moves to an ‘*ius sanguinis* country’ where she delivers a baby, her child

²⁹ Partially inspired by Van Melle’s definition in: Van Melle 2013, p. 295-296.

³⁰ 1961 Convention, Resolution I.

³¹ Note that no distinction is being made between statelessness for adults and statelessness for children. Although this thesis focuses on statelessness at birth (that is, ranging from 0 to 1 years old), the term ‘*child*’ means every human being below the age of 18 years, as stipulated in art. 1 CRC.

³² See also Blitz & Lynch 2011, p. 5-10.

³³ See e.g. Lichtenstein v. Guatemala (Nottebohm); Nationality Decrees in Tunis and Morocco case.

³⁴ E.g. Finland, Italy and Turkey.

³⁵ E.g. the United States, Canada and Mexico.

might become stateless if no other provisions enable the acquisition of a nationality for her child. Furthermore, in States where the *ius sanguinis* system is applicable, statelessness can automatically be passed on to one's spouse.

Secondly, constituting the most common cause, statelessness can be the result of discriminatory laws that exclude certain people directly or indirectly from acquiring a nationality. This can occur when the right to a nationality is only attributed to certain people, when certain people or groups are being excluded or if it has been made virtually impossible for them to access their right to a nationality.³⁶ A clear and common form of this is gender-based discrimination; several States employ a system in which nationality can be derived only from the father, which may in certain cases lead to stateless children, for example if the father happened to be stateless or a non-national.

Interrelated to, and overlapping with, such discrimination are laws relating to marriage. In some countries women automatically change their nationality when marrying a man who is a non-national. If he is stateless or if she does not automatically obtain his nationality, she is likely to become stateless (too). However, this does not necessarily mean the child will become stateless as well. Another issue can arise due to the fact that in some countries children only obtain a nationality if their parents are married.³⁷ In Austria and Denmark, for example, children with an Austrian or a Danish father will only obtain that respective nationality if their father marries the mother during their childhood.³⁸

Fourthly, the denationalisation or denunciation of people might cause statelessness. Entire groups can be deprived of their nationalities, for example, on grounds of race, as evidenced by the horrific treatment of Jews during the Second World War. In addition, severe crimes or fraud can be grounds for denationalisation. Moreover, in the case of state succession, dissolution, independence or restoration, some citizens might lose their nationality and not obtain a new nationality. A good example of this is the break-up of the Soviet Union, which left many people stateless. However, these causes are not of primary relevance to this thesis, given that the deprivation of nationality occurs subsequent to birth.

Administrative practices such as excessive fees, lack of required documentation, and the general failure to register births due to factors such as distance or insufficient knowledge can contribute to *de facto* statelessness as well. According to a study by UNICEF, 36 per cent of all births remain unregistered, often due to these obstacles, leaving 48 million children without a nationality every year.³⁹ These problems arise much less from the lack of nationality according to the law than to deficiencies in registration and the like, which are common causes of *de facto* statelessness.⁴⁰

³⁶ See also Blitz & Lynch 2011, p. 6-8.

³⁷ See Southwick & Lynch 2009, p. 8.

³⁸ ENS 2014, p. 16.

³⁹ UNICEF 2004, p. 7 in: UNICEF 2007, p. 2.

⁴⁰ See for the causes of statelessness also: Plan & UNHCR 2012, p. 7.

2.4 Consequences of (child) statelessness

In theory, statelessness need not pose a problem. The rights as set forth in the CRC, for example, apply to all children regardless of their nationality or lack of it.⁴¹ However, in practice, as a result of the above-mentioned causes, many stateless children are at risk of lacking protection within the international as well as national framework. A selection of these risks are discussed below.

Health and educational provisions are often hard to access. In several countries children need documentation to be treated at a health facility.⁴² Vaccinations, too, can depend on documentation.⁴³ Closely related to this are social welfare programmes, which might apply only to nationals. The difficulty of finding a job or enjoying social benefits can lead to poverty, circumstances that could lead stateless persons into committing crimes such as theft and see them forced into the criminal circuit with all its dangers. Similarly, there is a risk of unlawful child labour: if the child's legal age cannot be proven, employers might elude prosecution due to a lack of evidence. Moreover, in certain countries where the lack of a passport or ID constitutes an offence, children without documentation are at risk of arrest and detention. If they are in conflict with the law, they might be treated as adults rather than children if their legal immaturity cannot be established.

In case of disaster or emergency, stateless children may face challenges in receiving help, such as shelter and care, due to a lack of documentation.⁴⁴ When separated from their parents, it is hard to establish the legal bond between parents and child if no proof of identity is present; this could lead to infringement of the child's right to be cared for by his or her parents. Where parents cannot be traced, such children are also more likely than others to be put in in orphanages, foster care and so on.

Furthermore, since they generally live under the radar, stateless children run the risk of being exposed to illegal practices such as trafficking, sexual or other exploitation, child recruitment by armed forces, or early marriage. If these practices do come to public light, it could difficult for such children to obtain protection from the State if the latter's protection systems apply only to nationals. Finally, being stateless also has detrimental effects on the child's personal and social development.⁴⁵

⁴¹ Art. 2 CRC.

⁴² Plan & UNHCR 2012, p. 8-10.

⁴³ Plan & UNHCR 2012, p. 9.

⁴⁴ Plan & UNHCR 2012, p. 9.

⁴⁵ Sen 2001 as cited in: Blitz & Sawyer 2011, p. 8. For further information on the consequences of statelessness, see Darling 2009; Bhabha 2011, p. 1-39; Kingston & Datta 2012, p. 492ff; Plan & UNHCR 2012, p. 8.

Background

Definition of a stateless person: a person who is not considered as a national by any State under the operation of its law (where possible *de facto* statelessness included)

Causes:

- No solid nationality framework
- Discriminating laws
- Laws relating to marriage
- Denationalisation/denunciation
- Other factors (e.g. administrative practices)

Consequences:

- Deprivation of access to health care, education
- Social exclusion
- Deprivation of liberty
- Higher risk of becoming subject to unlawful practices



3 THE LEGAL FRAMEWORK

3.1 Introduction

The problem of statelessness is intertwined with several rights, the most obvious being the right to (acquire) a nationality. Birth registration is important to prevent child statelessness since it establishes someone's link to a State and is often a prerequisite to be able to acquire a nationality.⁴⁶ Furthermore, other rights such as non-discrimination are linked to statelessness. In this regard, article 7 is the core provision of the Convention when it comes to preventing statelessness at birth:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 7 comprises of four elements: the right to birth registration; the right to acquire a nationality; and the implementation of these rights (i.) 'in accordance with their national law and their obligations under the relevant international instruments in this field' and (ii.) 'where the child would otherwise be stateless'.⁴⁷ In order to derive the obligations that follow from article 7, these elements are discussed in relation to sources such as the *Travaux Préparatoires* and relevant General Comments; the latter will also be used to assess the extent to which the Committee has addressed the prevention of child statelessness at birth. Moreover, this chapter examines further legal obligations to which States Parties are bound and also considers what can be learned from frameworks such as the ICCPR and the ACRWC. Finally, the role of other relevant CRC provisions is discussed, after which a number of concluding remarks are made.

It is important to note that while Concluding Observations play a significant role in interpreting article 7, these are addressed only later, in Chapter 5. Although it can be argued that General Comments fall under the heading of monitoring, they are dealt with in this chapter since they stand to provide guidance on the legal implications of article 7.

⁴⁶ For the importance of birth registration, see: UNICEF 2013a; UNICEF 2013b.

⁴⁷ From here on, references to art. 7 should be understood as covering these four elements, excluding the child's right to a name and to know and be cared for by his or her parents.

3.2 The right to birth registration

The first paragraph of article 7 contains the right to be registered immediately after birth. It was based on article 24(2) ICCPR which uses the exact same formulation.⁴⁸ Although the Working Group that was assigned to draft the Convention had started discussing the current article 7 (initially article 2) as early as 1980, the option of including the right to birth registration was only put forward several sessions later in 1989.⁴⁹ Subsequently, article 7 was amended by adding the word ‘immediately’, thereby constituting the right to birth registration as it exists today.

Together with statements of the Committee, the current formulation gives a clear indication of what is required of States Parties: they need to provide a framework which ensures that children are registered immediately after birth. The word ‘immediately’ stresses the urgency thereof, although the Committee omits to provide further clarification. It does adhere to register late rather than never.⁵⁰ In the light of the recognition of the vulnerable position of unrecorded children, the failure to register a child at birth, may, according to the Committee, even constitute neglect if those responsible for the care of children had the knowledge, means and access to services to have been able to do so.⁵¹

Furthermore, realisation of the right to birth registration requires an effective registration system that is free of charge and universally accessible.⁵² Such a system should be flexible and responsive to the circumstances of families; States Parties are encouraged to waive registration fees, set up mobile registration offices and provide registration units in schools for children who are not registered yet.⁵³ Additionally, it is important that this right is realised for all children without discrimination (article 2).⁵⁴ Vulnerable groups such as children with disabilities and children affected by HIV/AIDS therefore may not be excluded.⁵⁵ In order to ensure that indigenous children, too, are registered and that their parents understand its importance, the Committee further recommends that States Parties, after consulting with the communities concerned, adopt measures such as periodic birth registration campaigns. Thus, the Committee thereby addresses this aspect to some extent and provides States with concrete guidance as to what can be derived from this right.⁵⁶

It hereby leaves other frameworks behind, such as that of the ICCPR, where there birth registration is only being linked to the protection of a child and its aim to promote recognition of the legal personality of children and not the right to a nationality.⁵⁷ The exception is the ACRWC, which was based largely on the CRC and can be regarded as its African counterpart. Here, the African Committee of Experts on the Rights and Welfare

⁴⁸ UNTS, Vol. 999, p. 17. For more on the interpretation of article 24 ICCPR, see: HRC General Comment No. 17, par. 7; Van Waas 2008, p. 157.

⁴⁹ Detrick 1992, p. 123.

⁵⁰ CRC General Comment No. 7, par. 25.

⁵¹ CRC General Comment No. 13, par. 20, 72.

⁵² CRC General Comment No. 7, par. 25; CRC General Comment No. 11, par. 41.

⁵³ CRC General Comment No. 9, par. 36.

⁵⁴ CRC General Comment No. 6, par. 12; CRC General Comment No. 7, par. 25.

⁵⁵ CRC General Comment No. 3, par. 32; CRC General Comment No. 9, par. 35.

⁵⁶ CRC General Comment No. 11, par. 41-43.

⁵⁷ See HRC General Comment No 17, par. 7; Van Waas 2008, p. 157.

of the Child (ACERWC) has addressed the implications of this right extensively through its case law and its new General Comment. In the *Nubian Children* case, it ruled that the obligation of States Parties with regard to ensuring immediate birth registration includes not only passing laws and policies but addressing all *de facto* limitations and obstacles to birth registration, thereby sending a clear signal to States Parties that they have a positive obligation to take action.⁵⁸ Moreover, the General Comment of the ACERWC seems to follow the CRC but provides States with more detailed guidelines, inter alia by stating that ‘free’ does not simply entail abolishing registering fees but involves covering other associated costs as well.⁵⁹ In addition, with regard to their accessibility, registration systems should be connected with relevant institutions such as hospitals.⁶⁰ Furthermore, ‘immediately’ should be interpreted to mean ‘as soon as possible, with due regard to cultural and local practice related to maternity and infant rearing’, referring to days or weeks after birth.⁶¹ It seems that the CRC Committee could use this as an example of how it could go about giving States Parties more extensive guidance.

3.3 The right to acquire a nationality

The preamble of the CRC commences by observing that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. In this regard, ‘the right to have rights’ seems crucial. After all, how could one’s dignity be ensured without being legally existent?⁶² Nevertheless, the right to acquire a nationality comes only after the right to birth registration and a name, a fact which one hopes does not imply anything untoward about its relative importance.

The *Travaux Préparatoires* of the CRC reveal that the initial proposal was to adopt the right to a nationality from birth.⁶³ However, objections were soon raised about the possible difficulties this could cause in terms of the nationality and immigration laws of States; for example, the initial formulation might be understood as entitling every stateless child entering the territory of a State to a nationality of the country concerned. As nationality was perceived primarily as a matter of domestic law, some representatives argued that this could infringe on a State’s sovereignty. Therefore, it was proposed that the wording of the ICCPR be followed and, as a result, agreement was reached on the right to acquire a nationality.⁶⁴

Hence, the right to acquire a nationality should be distinguished from the right to a nationality,⁶⁵ which has stronger implications. The right to acquire a nationality does not entail a right to a certain nationality, nor does it prescribe which nationality is to be acquired. However, it is unclear who is responsible for granting nationality and what

⁵⁸ *Nubian Children*, par. 40; see also Odongo 2012, p. 119.

⁵⁹ ACERWC General Comment No. 2, par. 73.

⁶⁰ ACERWC General Comment No. 2, par. 75.

⁶¹ ACERWC General Comment No. 2, par. 79.

⁶² See for further implications of statelessness: Chapter 2.

⁶³ Detrick 1992, p. 123.

⁶⁴ Compare Bossuyt 1987, p. 466-467.

⁶⁵ An example is art. 15 UDHR. See Adjami & Harrington 2008.

exactly this right implies.⁶⁶ De Groot argues that it means a child needs to acquire a nationality after birth as soon as possible. The responsibility for this should lie not only with the State of birth but also with the State where the child's parents have nationality.⁶⁷ However, neither the CRC framework nor the Committee have provided clear guidance in this regard. Apart from two general sentences on the right to acquire a nationality, not a single reference is made to this topic in the existing General Comments.⁶⁸

The only guidance to be derived from the Convention is found in its general principles, which require the right to be enforced in compliance with the principle of the best interests of the child (article 3). Considering the problems that accompany statelessness, it would be hard to argue that such a status can be in the best interests of the child. In addition, this right should be realised for all children on a State Party's territory, in order to conform to the principle of non-discrimination (article 2).⁶⁹ Moreover, one could argue that the right to life, survival and development (article 6) and the right to be heard (article 12) might be seriously infringed when not acquiring a nationality, since this deprivation has been shown to impact on matters such as access to health care and education as well as the child's participation in, for example, social structures.⁷⁰ Nonetheless, the latter two have not been addressed by the Committee.⁷¹

When looking at other international and regional frameworks, again little interpretative guidance is provided. However, according to the monitoring body of the ICCPR, the Human Rights Committee, no unconditional obligation rests on States to grant nationality but they are nevertheless required to adopt all appropriate measures – internally and in cooperation with other States – to ensure that no child is left stateless at birth.⁷² This might not be much in the way of guidance, but it is a clearer indication than the CRC has given so far. In the African framework much more guidance is to be found. In the *Nubian Children* case, the African Committee reiterates that, although article 6(3) ACRWC does not contain the right to a nationality, it should be interpreted as strongly suggesting that, as far as possible, children should have a nationality beginning from birth.⁷³ Furthermore, following an *ius soli* approach, a State Party in whose territory a child is born should grant its nationality if the child would otherwise be stateless.⁷⁴ These guidelines have also been repeated in the African General Comment, accompanied by further prescriptions, for instance, that States may not discriminate on any basis in

⁶⁶ This confusion also surfaces in the literature. De Groot, for example, explains article 7 as meaning that a child has the right from birth to acquire a nationality. However, article 7 does not name 'from birth' in relation to nationality, only in relation to registration and the right to a name (De Groot 2012, p. 119).

⁶⁷ De Groot 2012, p. 119. See also Doek 2006, p. 26, 27.

⁶⁸ See CRC General Comment No. 9, par. 34; CRC General Comment No. 11, par. 41.

⁶⁹ Art. 2 CRC; CRC General Comment No. 6, par. 12; CRC General Comment No. 9, par. 36.

⁷⁰ See e.g. UNICEF 2013b, p. 6.

⁷¹ CRC General Comment No. 12, par. 124 does provide the following: 'Furthermore, attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside'. However, this does not underline the importance of realising the right to acquire a nationality.

⁷² HRC General Comment No. 17, par. 8.

⁷³ *Nubian Children*, par. 42. Here the Committee found a violation of article 6, since the existing practice left Nubian children without the possibility of acquiring a nationality for 18 years, which was contrary the best interests of the child and the spirit and purpose of article 6.

⁷⁴ Or, in the wording of the African Committee, 'should allow the child to acquire its nationality': *Nubian Children*, par. 50.

relation to the acquisition of a nationality.⁷⁵ In addition, the guidelines cover situations regarding foundlings and children born in ships or aircraft, thereby following the 1961 Convention.⁷⁶

3.4 Implementation ‘in accordance with their national law and their obligations under the relevant international instruments in this field’

The second paragraph of article 7 functions as an extension to the first and contains a general prescription of sources to take into account when implementing the right to birth registration and the right to acquire a nationality. When reading its text, however, one might be somewhat confused, especially by the phrase ‘in accordance with their national law’. It seems this provision provides States Parties with freedom to abide only by their individual national laws. Although this might have been included to emphasise respect for a State’s jurisdiction, it should not be forgotten that States Parties have ratified the CRC and are therefore bound to realise its subsequent rights and obligations.⁷⁷ It seems that to some extent the first paragraph of article 7 weakens the rights as set forth in its first paragraph.

The provision continues by referring to ‘obligations under the relevant international instruments in this field’, which appears redundant since obligations under other instruments are a distinct matter. Whether States are obliged to implement in accordance with these obligations is not dependent on this provision. However, its purpose is most likely to emphasise the importance of these instruments. Interestingly, it does not refer to the relevant international law or human rights standards, only to ‘instruments’, leaving out other sources of international law such as customary law. The *Travaux Préparatoires* do not reveal why this path was chosen, but it seems to have been as a result of compromises and lack of time rather than a well-considered outcome.⁷⁸

3.5 ‘[W]here the child would otherwise be stateless’

The last phrase of article 7(2) CRC specifically refers to child statelessness. Although this provision covers the entire first paragraph of article 7, it seems relevant mainly to the right to acquire nationality. Nevertheless, it is also related to the other parts of article 7(1), such as birth registration. As for its implications, it is unclear what exactly is required of States Parties and what steps they should take. Are they obliged to grant their

⁷⁵ ACERWC General Comment No. 2, par. 94.

⁷⁶ ACERWC General Comment No. 2, par. 96 resp. 91. The 1961 Convention’s first four articles do not require States Parties to grant their nationality unconditionally but instead attempts to balance responsibility between States in granting their nationalities. For example, if a child born on the States Party’s territory would otherwise be stateless, the State must grant its nationality *ex lege* or upon application.⁷⁶ The same goes for children who are not born on a State’s territory but whose parent had that nationality at the time of birth (see also Batchelor 1998, p. 162-163). See, for further interpretation of these articles: UNHCR Guidelines No. 4, par. 19-20, 29, 53-54. Compare also art. 3 European Convention on Nationality (ECN).

⁷⁷ ‘Pacta sunt servanda’, art. 26 Vienna Convention on the Law of Treaties, UNTS, Vol. 1155, p. 331 (VCLT).

⁷⁸ Detrick 1992, p. 123-131. Compare art. 6(4) ACRWC, regarding which the African Committee stated that although it respects a State’s discretion in relation to nationality, this is limited by the principles of international human rights law, including the ACRWC, which imposes the overarching obligation to reduce the possibility of statelessness (ACERWC General Comment No. 2, par. 91).

nationality? What does the provision imply for the right to birth registration? Although it is clear that its aim is to prevent and reduce statelessness, little interpretative guidance is to be found.⁷⁹

Considering the lack of clarity, this provision could be read in the light of other provisions as well.⁸⁰ In this regard, it is important to note that the principle that States should grant their nationality to children born in their territory if they would otherwise be stateless has become part of customary international law.⁸¹ Furthermore, the African framework, which provides for a comparable provision in its article 6(4) ACRWC, deals with this matter in its General Comment, which not only explains this phrase but also explicitly places the responsibility to prevent statelessness on the State where the child is born.⁸² Furthermore, it deals with the determination of whether a child acquires a nationality.⁸³ States have to accept, for example, that a child is not a national of another State if the authorities of that State indicate so. The CRC should perhaps incorporate some of these guidelines into its own framework.

3.6 Other CRC provisions

It could be argued that the obligation to prevent statelessness is grounded on the duty of States to respect, protect and fulfil the other rights as set forth under the CRC; after all, in terms of the CRC States Parties are obliged to undertake all appropriate legislative, administrative, and other measures to ensure all of the rights in the Convention, set against which is the fact that statelessness has been shown to jeopardise rights such as education and protection against exploitation.⁸⁴ However, this argument is not yet reflected in the CRC's explanatory documents, nor has the Committee derived this obligation. In this regard, it could draw inspiration from the European Convention on Human Rights (ECHR)⁸⁵ and the American Convention on Human Rights (ACHR). Although the ECHR does not contain a provision concerning nationality or birth registration, both of the latter have been read into the Convention by finding violation of other rights, in particular the right to family and private life (article 8 ECHR).⁸⁶ The Inter-American Court of Human Rights deals, too, with birth registration, although the ACHR remains silent on the matter.⁸⁷

⁷⁹ Doek 2006, p. 28.

⁸⁰ Art. 31(3) VCLT.; Ziemele 2007, p. 2.

⁸¹ See also art. 41 CRC; Ziemele 2007, p. 28.

⁸² ACERWC General Comment No. 2, par. 88.

⁸³ ACERWC General Comment No. 2, par. 100. Compare UNHCR Guidelines No. 4.

⁸⁴ Art. 4 CRC; CRC General Comment No. 5; Riedel 2012, p. 135.

⁸⁵ ETS 5 (1950).

⁸⁶ For example, in *Genovese v. Malta* the son of a British mother and Maltese father was denied Maltese nationality on the sole basis of being born out of wedlock. The European Court found a violation of articles 8 and 14 (the right to private life and non-discrimination): *Genovese v. Malta*, par. 45-49. Compare *Marckx v. Belgium*; *Karashev v. Finland*, p. 10; *Kafkasli v. Turkey*; *Van Waas* 2008, p. 160; *Adjami & Harrington* 2008, p. 99; *ENS* 2014.

⁸⁷ *The Yean and Bosico Children v. the Dominican Republic*, par. 171, 183, 192.

3.7 Concluding remarks

Article 7 CRC is the core article when it comes to the prevention of statelessness at birth. For the purpose of this thesis, it has been divided into four elements: the right to birth registration, the right to acquire a nationality, the implementation of these rights 'in accordance with their national law and their obligations under the relevant international instruments in this field' and 'where the child would otherwise be stateless'. However, the implications of these elements are not always clear, largely because the Committee has not addressed them.

An important exception is the right of the child to be registered immediately after birth, which is mentioned first in the article. Although this right was included only at the end of the drafting process and is mainly concerned with *de facto* statelessness, it has been well addressed in the CRC's General Comments, thereby enabling interpreters to derive its subsequent implications. Considering the fact that the Convention should be universally applicable and is binding on 194 States, it is inevitable that formulations will be pitched at a high level of generality. Nevertheless, the Committee has developed quite clear guidelines in its legal framework on the implications of this right (see box 1), for example by recommending the establishment of mobile registration offices or the abolition of registration fees. An aspect of this right which might require clarification is the question of what is meant by 'immediately'.

Despite its importance, the right to acquire nationality takes third position in article 7. As is shown by the *Travaux Préparatoires*, the right raises sensitive issues about State sovereignty, which explains the choice of 'the right to acquire a nationality' as opposed to 'the right of every child to a nationality'. Given the cautious approach that has been taken to this right, there is a scarcity of guidance as to how States Parties should implement it (see box 1) and the Committee has addressed it only to a limited extent. An important question that has been left unanswered, for instance, is which State shall be deemed responsible for allowing or enabling a child to acquire a nationality.

The same sensitivity can be found in article 7(2), which is unclear about the extent to which that States Parties have to realise the obligations under the first paragraph. The article might create the impression that they are bound only by their own legislation and international instruments. Moreover, the Committee is silent on the provision to implement the rights of article 7, in particular where the child would otherwise be stateless. Nevertheless, from international customary law and the obligation to respect, protect and fulfil it can be inferred that every child must be able to acquire a nationality. Finally, the reference to the interconnection between the various rights of article 7 is missing as well. The obligations that can be found under other international and regional frameworks are explored in the next chapter.

The Legal Framework

The right to be registered immediately after birth requires a birth registration system that is:

- effective
- free
- universally accessible (without discrimination)
- flexible
- responsive to the circumstances of families.

The right to acquire a nationality needs to be:

- distinguished from the right to a nationality
- realised for all, without discrimination
- enforced in compliance with the best interests of the child.



4 THE MONITORING FRAMEWORK

4.1 Introduction

In the previous chapter, the CRC's provisions regarding child statelessness were analysed. To ensure their effective implementation, monitoring is an important task for reviewing state practice and providing further direction. As such, this chapter examines the monitoring framework of the CRC whilst also considering its substantive aspect. Central to the discussion are the four monitoring mechanisms that have been identified: Days of General Discussion, General Comments, the communications procedure and the reporting system. They are discussed consecutively in order to investigate the further implications of article 7, with the main focus being the extent to which the Committee has addressed the prevention of statelessness at birth.

The reporting procedure is the most developed method of monitoring and is therefore the dominant subject of the chapter. After a discussion in sections 4.2-4.5 of this system as well as the other three monitoring mechanisms, the chapter proceeds to analyse the Concluding Observations issued by the Committee. A key question in this respect is whether the Committee has referred to statelessness and related matters concerning, *inter alia*, nationality and birth registration. If so, how has it addressed the issues that could potentially arise? In this regard, qualitative as well as quantitative information are reviewed, with the methodology thereof being explained in section 4.6. Finally, paragraph 7 concludes with several observations and an encapsulation of this chapter's main findings.

4.2 Days of General Discussion

During the biannual Days of General Discussion the Committee will devote one day of its sessions to a specific children's rights theme to gain deeper understanding of it.⁸⁸ A variety of actors may participate, including representatives from governments, UN mechanisms, bodies and specialist agencies, NGOs, national human rights institutions, experts and, indeed, children themselves. These Days result in recommendations for States Parties and often lead to the development of a General Comment.⁸⁹ So far, no Day of General Discussion has been devoted to the matter of acquiring a nationality, which

⁸⁸ In accordance with rule 79 Rules of Procedure;

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>.

⁸⁹ Examples of outcomes are the call for a UN Study on Violence against Children and the proposal for drafting the Optional Protocol on Children in Armed Conflict and General Comments.

means in effect that the Committee has addressed the prevention of statelessness at birth to virtually no extent at all.⁹⁰

By comparison, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has placed greater emphasis on birth registration, nationality and statelessness. Its reports deal extensively with practical issues that have come to the African Committee's attention, such as birth registration deficiencies for refugee children and the need to clarify the right to acquire a nationality.⁹¹ This has led to the development of a separate General Comment devoted to the topic.⁹²

4.3 General Comments

General Comments can be regarded as falling under the CRC's legal framework as well as its monitoring section. On the one hand, they form an important source of interpretation of the CRC's provisions, whilst, on the other, they are an essential tool for enabling the Committee to address specific problems. Since the General Comments were examined in the previous chapter, they will not be discussed in further detail. It suffices to say that whereas the Committee has addressed birth registration reasonably well, matters relating to nationality and statelessness are barely mentioned in the General Comments.

4.4 Communications Procedure

The Third Optional Protocol on a communications procedure came into force in April 2014 and provides (representatives of) children with the opportunity to complain to the Committee with regard to a violation of their rights.⁹³ Since no cases have been dealt with thus far, this Protocol will not be explored in detail. Nonetheless, in the future it might play an interesting role in the prevention of child statelessness at birth by giving States Parties more guidance and clarity about the obligations arising from article 7, as the *Nubian Children case* did in the African framework (see Chapter 3).

4.5 Reporting system

Like all other major UN human rights treaties, the CRC contains a reporting procedure.⁹⁴ Article 44 CRC requires States Parties to report periodically to the Committee on measures they have adopted to realise the rights laid down in the Convention and on progress made in the enjoyment of these rights. After a first comprehensive report, to be submitted within two years upon ratification, States have to submit periodic reports every five years. NGOs are also provided with the opportunity to submit a 'shadow report' of their own.⁹⁵ These are discussed during the pre-sessional Working Group, a private meeting held by the Working Group at which UN agencies and bodies, NGOs, National Human Rights Institutions, youth organisations, and other competent bodies can be heard.

⁹⁰ Only a few isolated sentences made reference to nationality in 2003, 2004, 2011 and 2012; see <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>.

⁹¹ See ACERWC 2012a; ACERWC 2012b; ACERWC 2013a; ACERWC 2013b.

⁹² ACERWC General Comment No. 2.

⁹³ Adopted by General Assembly resolution A/RES/66/138 of 19 December 2011.

⁹⁴ See also Scheinin 2012, p. 660.

⁹⁵ See for well-developed NGO participation e.g. Scheinin 2012, p. 664; Turkelli & VandenHole 2012.

Thereafter, a list of issues (LoI) is presented to the State Party concerned, indicating which topics the Committee is likely to discuss and possibly containing a request to report further on certain topics.⁹⁶ The State Party can provide this information in its written replies. Subsequently, the plenary session takes place, an open and public meeting during which the Committee members and representatives of a State Party enter into a constructive dialogue to discuss the State report.⁹⁷ In a closed meeting, the Committee formulates its Concluding Observations (COs), which consist of important recommendations by the Committee regarding a State's implementation. The Committee holds these sessions three times a year (see also figure 1).

By August 2014 the Committee had already issued more than 600 Concluding Observations.⁹⁸ Although these are not binding, they function as an important source of interpretation and guidance for a State on how to implement the CRC, or as Scheinin notes: '[T]he treaty obligations themselves are, naturally, legally binding, and the international expert body established by the treaty is the most authoritative interpreter of the treaty in question. Therefore, a finding of a violation by a UN human rights treaty body may be understood as an indication of the State Party under a legal obligation to remedy the situation.'⁹⁹ Furthermore, the Concluding Observations are an important instrument for building a bridge between legal human rights obligations and the actual situation, thus aiding the realisation of children's rights.¹⁰⁰

The fact that so many reports have been submitted is a clear indicator that States Parties do not view the Convention as a mere declaration of good intentions. On the contrary, the reports reveal that serious efforts are being made to improve the situation of children and that the Concluding Observations are being incorporated at the national level, leading to new legislations, policies, case law and so on. Krommendijk's study on the impact of six major UN treaties showed that the CRC was the treaty with the largest impact, with a crucial role attributed to the Concluding Observations.¹⁰¹ Therefore, their impact should not be underestimated.

⁹⁶ In line with art. 44(4) CRC.

⁹⁷ See for constructive dialogue: Liefwaard 2013, p. 477-481.

⁹⁸ See <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

⁹⁹ Scheinin 2012, p. 673-674.

¹⁰⁰ Collins 2008, p. 159.

¹⁰¹ Krommendijk 2014. See also Krommendijk 2012; Liefwaard 2013, p. 470.

Reporting process of the Committee on the Rights of the Child

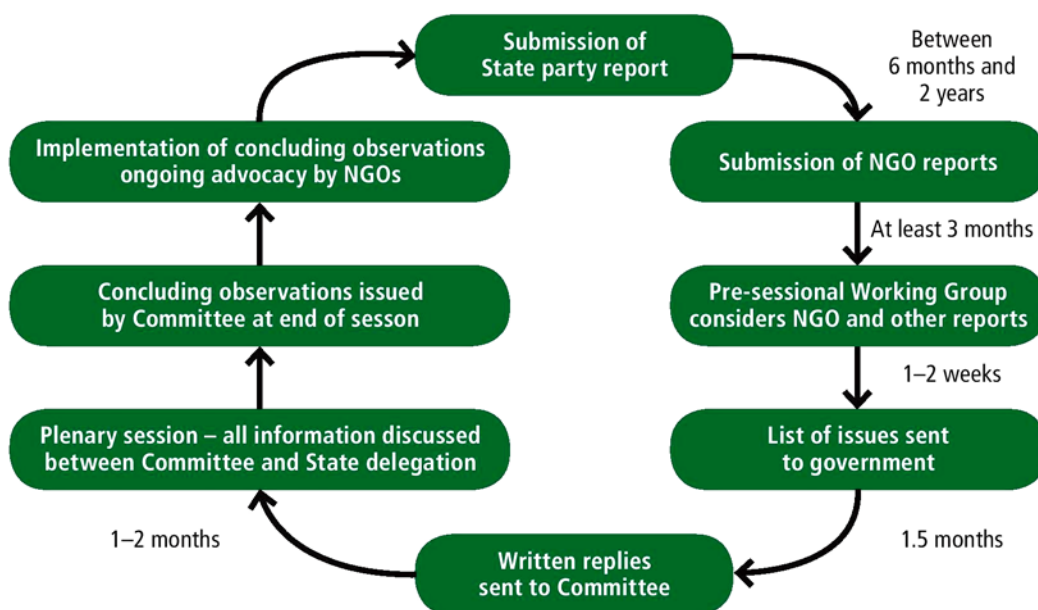


Figure 1 (Source: childsrighsconnect.org)

When submitting their reports, States Parties are required to provide the Committee with sufficient information for it to gain a comprehensive understanding of the implementation of the Convention in their countries.¹⁰² The guidelines regarding the reports require States Parties to attach copies of the principal legislative and other texts, accompanied by statistical information and indicators referred to therein.¹⁰³ However, the guidelines explicitly state that these texts are not being translated into one language, leaving it often impossible for the Committee to gain insight into a State's nationality system due to a language barrier. In addition, these guidelines require information only on nationality but not on birth registration (and statelessness).¹⁰⁴ One wonders if the guidelines have perhaps been deliberately formulated to be general in nature.

After a first, comprehensive report, only the second and subsequent reports have to include relevant and updated information on birth registration and nationality.¹⁰⁵ With regard to article 7, all that is requested from States Parties is 'to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provision of the Convention; and implementation priorities

¹⁰² Art. 44(3) CRC.

¹⁰³ General Guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1 (a), of the Convention, CRC/C/5 (CRC General Guidelines 1991), par. 7.

¹⁰⁴ CRC General Guidelines 1991, par. 15(a).

¹⁰⁵ Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, CRC/C/58/Rev.2 (CRC Guidelines 2010), par. 28.

and specific goals for the future'.¹⁰⁶ Other matters, such as data on statelessness, are not specifically requested. It seems at this point that several steps could be taken to improve the monitoring of statelessness at birth; the clearer the Committee is on what is expected of States, the more fruitful the outcome will be. Clear communication is also necessary if the Concluding Observations are to have a notable impact. Due to their magnitude, these issues are dealt with in detail in a subsequent section.

4.6 Concluding Observations

4.6.1 Methodology

In order to establish what further obligations can be derived from article 7 and to what extent the Committee has addressed the prevention of statelessness at birth, 419 Concluding Observations have been studied.¹⁰⁷ All prescriptions relevant to the topic of this thesis have been distilled and analysed, with the focus falling not only on Observations to do with statelessness, nationality and birth registration but those concerning related matters as well such as legislation, discrimination, data collection and follow-up measures.

In conjunction with this general exploration, 12 countries (equating to 30 Concluding Observations) were selected for an in-depth analysis. For every continent, three countries were chosen at random (see table 1) and the Concluding Observations in respect of them examined, thereby affording a clear overview of trends regarding statelessness at birth.¹⁰⁸ Over and above the Concluding Observations, State reports, lists of issues and written replies were studied as well with the aim of further analysing the extent to which the Committee has addressed this issue.

The analysis has been divided into three headings: general findings, the right to birth registration and the right to acquire a nationality. Other matters such as the general principles have been discussed where relevant. It is important to bear in mind the limitations and challenges the Committee faces when discussing State reports. It has to monitor implementation by 194 States and can judge only on the basis of the information presented to them.¹⁰⁹ Reports are often lengthy, containing the entire range of subjects on which States are required to report; nationality and birth registration constitute only one aspect among many. Furthermore, a State's margin of discretion, political factors and the availability of time are significant factors that can limit the Committee.¹¹⁰ It should also be noted that it is hard to obtain an overview of statelessness data per country or current nationality laws and practices. As a result, only the Committee's perspective has

¹⁰⁶ CRC General Guidelines 1991, par. 15; see also art. 44(2) CRC.

¹⁰⁷ These all concern Concluding Observations with regard to the CRC so far; the Concluding Observations on the reporting procedure under the Optional Protocols have been left out. See: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5.

¹⁰⁸ See table 1 and

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5.

¹⁰⁹ However, the Committee has undertaken some country visits, for example to North Korea.

¹¹⁰ See also: Doek 2008, p. 230; Collins 2008, p. 159; Boerefijn 2012, p. 66; Scheinin 2012, p. 662; Liefwaard 2013, p. 481.

been studied. Additional information made available to the Committee in its sessions has not been included either. The findings below thus have to read in this context.¹¹¹

Africa	America	Asia & Oceania	Europe
Benin	Brazil	Kyrgyzstan	Bulgaria
Democratic Republic of the Congo	Colombia	Myanmar	France
Sierra Leone	Dominican Republic	Philippines	Russian Federation

Table 1

4.6.2 General findings

The first Concluding Observations were issued in 1993 and consisted of approximately three pages, these containing an introduction; positive aspects, factors and difficulties impeding the implementation of the CRC; principal subjects of concern; and a joint and general reiteration of suggestions and recommendations.¹¹² From 1999, the Committee gradually started to address issues in more detail and on a per-subject basis, under headings that followed its reporting guidelines.¹¹³ It was not easy to find references to statelessness, although a separate heading, ‘Birth Registration and Nationality’, is generally part of the observations’ structure. Occasionally references to statelessness can be found under ‘Unaccompanied, Asylum-seeking and Refugee children’ or ‘Non-discrimination’.

Another important matter concerns States Parties’ reservations. The Committee has addressed almost all of these regarding article 7. Today, many reservations have been withdrawn, leaving only a remainder of five States that continue to uphold their reservations to article 7.¹¹⁴ The Committee also pays attention to its previous recommendations and the follow-up measures States have taken in response to them. With regard to the prevention of statelessness at birth, these are generally concerned with welcoming new nationality legislation as well as the ratification of other instruments like the Statelessness Conventions and the European Convention on Nationality (ECN).

If States Parties have not done so already, the Committee sometimes recommends acceding to the two Statelessness Conventions, but mostly with a view of the protection of the rights of refugee children. On two occasions the Committee also recommended that States consider ratifying the ECN.¹¹⁵ Furthermore, in the past few years the Committee has requested that steps be taken in relation to on data collection. In only two instances

¹¹¹ All relevant provisions of the Concluding Observations were mapped on Excel spreadsheets. These have not been attached to this thesis, but can be obtained from the author (stein.j22@gmail.com).

¹¹² See e.g. Russian Federation 1993; Sudan 1993; Sweden 1993; Bolivia 1993; Vietnam 1993.

¹¹³ See e.g. Russia 1999; Vanuatu 1999; Mexico 1999.

¹¹⁴ For instance, Tunisia (2002), Switzerland (2007) and Poland (2013) withdrew their reservations/declarations. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

¹¹⁵ Belarus 2011, par. 34; The former Yugoslav 2010, par. 33.

was specific reference made to stateless children.¹¹⁶ The focus instead seems to be on other groups, such as children with disabilities, refugee children or children in armed conflict. The same pattern is visible in the lists of issues, although the request for more information on birth registration can be found there as well.

4.6.3 The right to birth registration

General analysis

Although it is not known in how many countries birth registration is a problem and thus how often it could have been addressed, the Committee seems to have a strong focus on birth registration. As of August 2014 it had addressed the issue of birth registration in 230 out of 419 Concluding Observations, or 55 per cent of all observations. Figure 2 plots the number of such observations per year; their increase since 2004 is especially visible.

When looking at the formulations used by the Committee, several requirements can be identified that seem to reflect the approach adopted in the General Comments. In particular, the right to be registered immediately after birth requires an effective system that is free and accessible for all.¹¹⁷ The Committee often encourages States to abolish registration fees and late registration fines.¹¹⁸ States should also take appropriate measures to register those who have not been registered at birth.¹¹⁹ Services should be decentralised, and in the case of rural or remote areas, States Parties should establish mobile registration offices at schools or hospitals, amongst other places.¹²⁰ They are also required to take all appropriate legislative, administrative and other measures to ensure this right for all.¹²¹

Moreover, the Committee has frequently identified problems relating to discrimination, such as discriminatory practices with regard to children born out of wedlock, children of minorities, children living in rural areas or refugee children. Discriminatory laws and practices should be abolished; for example, birth registration should be available to refugee children as well.¹²² Cameroon was urged to improve its registration system, particularly for the children of certain groups that had been disadvantaged.¹²³ In addition, States should make birth registration compulsory for all children, not only (for instance) for children with non-African parents.¹²⁴

The Committee's recommendations often call for awareness-raising among parents, community leaders, hospital staff, the government and other actors by means of strategies such as awareness campaigns.¹²⁵ With regard to improving birth registration systems, States are often enjoined to cooperate with UN bodies like UNICEF.¹²⁶ In a few instances, the Committee also referred to internal cooperation, as it did in the case of

¹¹⁶ Latvia 2006, par. 17; Belarus 2011, par. 18.

¹¹⁷ E.g. Paraguay 97, par. 38; Kyrgyzstan 2000, par. 30; Malawi 2002, par. 32.

¹¹⁸ E.g. Guinea Bissau 2002, Mozambique 2009, Ukraine 2011.

¹¹⁹ E.g. Mozambique 2002, par. 35; Haiti 2003, par. 33; Papua New Guinea 2004, par. 34.

¹²⁰ E.g. Uganda 1997, par. 16; Yemen 1999, par. 20; India 2000, par. 37.

¹²¹ E.g. Paraguay 1997, par. 38; Micronesia 1998, par. 31; Iran 2005, par. 38.

¹²² Ecuador 2010, par. 44.

¹²³ Cameroon 2010, par. 34.

¹²⁴ Malawi 2002, par. 31-32.

¹²⁵ See e.g. Fiji 1998, par. 35; Yemen 1999, par. 20; Turkey 2012, par. 37.

¹²⁶ See e.g. Bangladesh 2003, par. 38; Indonesia 2004, par. 39; Liberia 2004, par. 35.

Belize (2005), where it recommended establishing cooperation between the birth registration authority and maternity clinics and hospitals, midwives and traditional birth attendants.¹²⁷ The Committee thereby acts in accordance with statements it has made in its General Comments, taking it one step further by providing States with recommendations that are adjusted to apply to a specific country's situation.

The issues above are usually addressed comprehensively, a tendency that has been especially apparent in recent years.¹²⁸ For example, it was recommended that Togo 'adopt the decrees and measures contained in the law on the organization of the civil registry system concerning birth registration, and provide adequate resources for its implementation'.¹²⁹ Uzbekistan was urged (not recommended) to set up a mechanism for its Ministry of Health and Ministry of Justice that could make systematic cross-checks to tackle birth registration issues.¹³⁰ In view of state sovereignty, external actors such as the Committee are generally regarded as insufficiently competent to prescribe a method of implementation and are allowed only to assess measures that have already been taken.¹³¹ However, in these examples the Committee appears to have crossed that line by giving countries detailed guidance on how to implement the right to birth registration.

Interestingly, the right to birth registration is generally considered in relation to children's enjoyment of fundamental rights and freedoms; infringement of the right is usually seen as jeopardising access to, among others, education and health.¹³² Occasionally, birth registration is linked to the CRC's general principles.¹³³ However, it is rarely linked to the right to acquire a nationality or the need to prevent statelessness.¹³⁴ Considering the importance of birth registration to realising the right to acquire a nationality, it is crucial that States implement this right and thus understand its context.

In-depth analysis

In analysing the 12 countries in question, what is clearly evident is that, particularly in the early reporting years, States Parties have provided little data to the Committee. Whilst lists of issues have been communicated since 2005, in respect of all 12 countries the Committee only used them once with regard to birth registration, in this instance to request that Myanmar provide more information on measures taken.¹³⁵ However, information from sources other than State reports indicates that registration issues are nevertheless being addressed.¹³⁶

¹²⁷ Belize 2005, par. 33.

¹²⁸ For example, Nigeria 2010, par. 36-37; Namibia 2012, par. 36-37.

¹²⁹ Togo 2012, par. 40.

¹³⁰ Uzbekistan 2013, par. 29. Note the cascading approach the Committee utilises where – after expressing its concerns – it commences by 'encouraging' States Parties to take action. In cases of follow-up, it will 'urge' States to change certain situations, laying greater emphasis on the need for action.

¹³¹ Boerefijn 2012, p. 633.

¹³² Bhutan 2008, par. 31; Bangladesh 2009, par. 40; Paraguay 2010, par. 33.

¹³³ For example, Albania 2005, par. 35; Guinea-Bissau 2013, par. 41.

¹³⁴ Exceptions are the Philippines 2005, par. 33-35 and Japan 2010, par. 45-46. The same trend can be observed under the ICCPR; see also: HRC General Comment No 17, par. 7; Van Waas 2008, p. 157. Compare ACRWC General Comment No. 2, par. 43-44.

¹³⁵ LoI Myanmar 2011, par. 8.

¹³⁶ See e.g. State report Sierra Leone 2000 and State report Kyrgyzstan 2000, where no information was given in the State report but the Committee nevertheless expressed its concerns and recommendations.

Although the Committee does not always make use of the information provided, in most cases it has addressed birth registration matters.¹³⁷ In general, the Committee adopts a positive approach in which it begins by welcoming new measures of implementation, including the concerns and observations raised made by the State, thereby setting out to open constructive dialogue.¹³⁸ When one looks more closely at the suggestions that have been made in connection with the right to birth registration, the Committee is clear in its formulations and the elements discussed above (such as a free and accessible system) are often found in the recommendations. The periodic reports show that these issues are being taken seriously, with a number of measures having been adopted, including target-setting, the development of campaigns and cooperation with UNICEF.¹³⁹

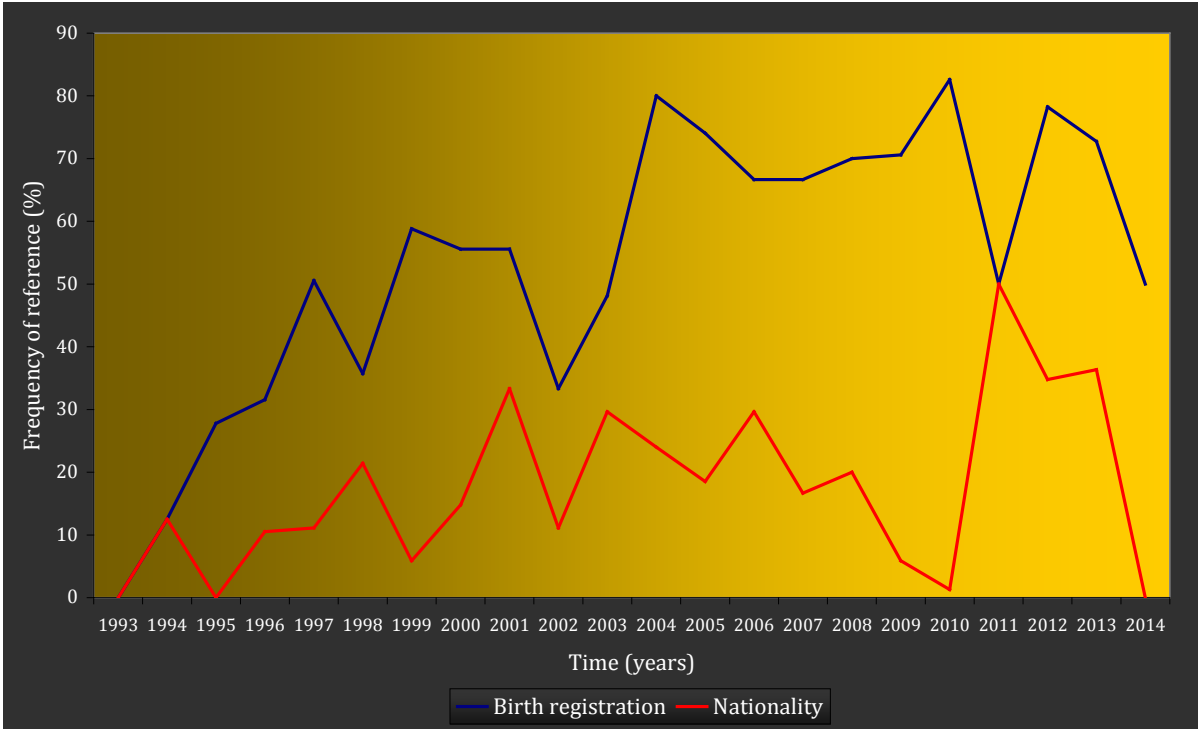


Figure 2

4.6.4 The right to acquire a nationality

General analysis

Although no detailed overview is available as to the scope of statelessness at birth, it is undeniable that statelessness is a global problem. As such, the fact that the right to acquire a nationality has been addressed in only 77 out of 419 Concluding Observations (or 18 per cent of them) is unsatisfactory. Statelessness was identified as a problem at an

¹³⁷ Benin, for example, reported a three-day registration term in 1999. This was addressed only in Benin 2006, par. 35-36.

¹³⁸ See e.g. Brazil 2004, par. 38-39.

¹³⁹ See e.g. State report Sierra Leone 2008, par. 144-150.

early stage in the Committee's Concluding Observations on Jordan in 1994.¹⁴⁰ Nevertheless, while the Committee receives an average of 5-6 reports per year, the right to acquire a nationality does not seem to feature on its list of priorities (see figure 2).

That being said, over time the Committee has begun to engage with the issue more visibly in its occasional references to statelessness.¹⁴¹ One aspect thereof that seems to draw significant attention is discrimination. In most observations on nationality matters, States are requested to abolish discriminatory provisions and practices. Nationality practices that negatively affect children born out of wedlock¹⁴² or children with disabilities¹⁴³ are not permitted. In addition, women's inability to pass on their nationality does not sit well with the Committee's understanding of the realisation of the right to acquire a nationality.¹⁴⁴ An example is Syria, in which the children of a Syrian parent married to a non-national did not automatically obtain a nationality. It was recommended that the country abolish the practice and 'take urgent steps to guarantee children of Syrian-born Kurdish parents the right to acquire Syrian nationality'.¹⁴⁵

In this regard, the Committee occasionally identifies situations in which children might be left without a nationality due to discriminatory laws. In several observations a similar formulation is used: 'The Committee recommends that the State Party ensure the right of a child to a nationality without discrimination on the basis of the gender of the parent(s), in accordance with articles 2 and 7 of the Convention.'¹⁴⁶ In addition, States Parties are encouraged to take all appropriate measures to protect children from being stateless, thereby correctly reflecting the obligations that flow from article 7(2).¹⁴⁷ However, what remains unclear are the exact measures that are deemed appropriate.

In sum, the Committee does not give much guidance on how to interpret the right to acquire a nationality or the second paragraph of article 7. Furthermore, apart from one recommendation to Honduras, this to continue its campaign on the right to a nationality, not a single reference is found to raising awareness about nationality.¹⁴⁸ The latter is important, because lack of awareness by the government as well as the population is a factor impeding the realisation of this right.¹⁴⁹ Although the lack of data on statelessness is a pertinent obstacle in this regard, the Committee nevertheless has requested such data once in its existence.¹⁵⁰ Finally, no further findings on nationality can be located in respect of new developments such as problems to do with surrogate mothers. There have been some instances, however, in which the Committee stated its opinion on nationality matters, as happened in the case of Yemen where the State Party was urged to withdraw a specific provision of its National Act.¹⁵¹ The latter two recommendations concerning data

¹⁴⁰ Jordan 1994, par. 11.

¹⁴¹ Lithuania 2006, par. 33-34; Belarus 2011, par. 33-34; Cuba 2011, par 30-31.

¹⁴² Togo 2005, par. 34; Madagascar 2012, par. 32.

¹⁴³ Yemen 2014, par. 39.

¹⁴⁴ Saudi Arabia 2006, par. 38; Algeria 2012, par. 39-40.

¹⁴⁵ Syrian Arab 2003, par. 32-33.

¹⁴⁶ Bhutan 2001, par. 37; Portugal, par. 34 ; Lebanon 2001, par. 33 .

¹⁴⁷ Lithuania 2006, par. 34

¹⁴⁸ Honduras 2007, par 40.

¹⁴⁹ UNHCR 2011, p. 25; UNHCR 2012, p. 9.

¹⁵⁰ Guinea Bissau 2013, par. 35.

¹⁵¹ Yemen 2013, par. 40.

collection and repealing a law both stem from 2013. Are they perhaps the first signs of a new approach?

In-depth analysis

From an in-depth analysis of the 12 countries selected for this study, what becomes clear is the extent to which the Committee is dependent on State reports and inputs from the other actors involved. It is hard to obtain a clear view of a country's legislation and its practical implications; holes in the framework might not be apparent, and even where the nationality system appears to be above board, the practical reality might be a different story and not come to light when State reports are being assessed.

For instance, where State reports deal with nationality, the discussion of nationality systems tends to be partial and superficial. To take Colombia as an example, it devoted merely one sentence of its report to this matter, stating that the minor shall have the right to a nationality.¹⁵² It remains unclear how Colombian nationality is obtained or whether the country's legislation and practice are in line with article 7. Nonetheless, in the four Concluding Observations issued so far on Colombia, the Committee has not made a single reference to the right to acquire a nationality, nor has it ever requested more information through its lists of issues or Concluding Observations.¹⁵³

It seems the Committee tends to uphold this trend in other Concluding Observations. Only four out of the 30 observations that were examined contained recommendations to take measures regarding nationality.¹⁵⁴ One attempt has been made to acquire more information regarding article 7.¹⁵⁵ The second engagement with nationality occurred in 2001, where the Committee urged the Democratic Republic of the Congo to ensure that all children, without discrimination, are accorded a nationality. In this regard, it also referred to Concluding Observations of the Committee on the Elimination of Racial Discrimination.¹⁵⁶ In 2008 the Dominican Republic was encouraged to apply the acquisition of nationality in a non-discriminatory manner to ensure no child would become stateless and, furthermore, to ratify the 1961 Statelessness Convention. Myanmar was enjoined to do so as well, and to address shortfalls in citizenship legislation that led to statelessness.¹⁵⁷

A pattern can be discerned in these four references which suggests that the Committee is possibly becoming more specific in its approach, but, given such a small pool of cases, one cannot draw any firm conclusions. It is a pity the Committee does not address issues regarding nationality in the other 28 reports, because it is evident from State reports that the Committee is given only limited information, in view of which it might be overlooking serious legal gaps and problems of implementation. This is a situation to which it could be all the more prone due to factors of time and the priorities it brings to its assessment of the reports.

¹⁵² Colombia 1994, par. 82.

¹⁵³ Colombia 1994; Colombia 1995; Colombia 2000; Colombia 2006.

¹⁵⁴ France 1994, par. 25; Democratic Republic of the Congo 2001, par. 28-29; Dominican Republic 2008, par. 39-41; Myanmar 2012, par. 41-42.

¹⁵⁵ France 1994, par 25.

¹⁵⁶ Democratic Republic of Congo 2001, par. 29.

¹⁵⁷ Myanmar 2012, par. 42.

4.7 Concluding remarks

Monitoring is not an end in itself but an important tool to ensure the effective realisation of the rights set forth under the CRC. Of the four identified monitoring mechanisms, both the Days of General Discussion documents and the Third Optional Protocol lack reference to statelessness. The General Comments have addressed this to some extent (see Chapter 3). The reporting procedure, on the other hand, has been shown to be the most effective in comparison to other major UN treaties. Nevertheless, several gaps have been identified. For instance, the generality with which the reporting guidelines are phrased does not encourage States to report in depth on their statelessness situation and measures. It is possible that the Committee has deliberately chosen this approach in order to be able to address the issue more fully in its list of issues and Concluding Observations.

The 419 Concluding Observations that were examined show this to be a system in continuous development. As time goes by, more structure is added and recommendations become more far-reaching, a trend which is illustrated by the right to birth registration. With a coverage of 55 per cent, this right was certainly on the Committee's agenda. It follows that birth registration requires States to take all appropriate legislative, administrative and other measures. This includes, at a minimum, an effective system that is free (no fees or late registration fines) and accessible (for example, decentralised) for all (that is, not allowing for any discrimination). Late registration should be facilitated by States. Furthermore, they need to facilitate cooperation with bodies like UNICEF and the UNHCR, and, where relevant, also do so internally.

In general, the Committee's recommendations are articulated in detail, providing States with a clear signal to take action. However, the right to birth registration has not been systematically linked to a nationality. What is more, in-depth analysis reveals that birth registration issues have not always been addressed. Nevertheless, the Committee has developed a comprehensive framework when it comes to birth registration and has effectively addressed many issues in this regard.

The right to acquire a nationality is noticeably less visible than birth registration in the Concluding Observations. Although statelessness is recognised as a global problem, only 77 of the 419 Concluding Observations dealt with the right to acquire a nationality. The main focus is on the elimination of discrimination. The Committee's dependence on the information provided to it is one possible explanation. Nevertheless, the Committee could well have requested more information, such as data, through its lists of issues or Concluding Observations. In-depth analysis shows that this was generally omitted, as was the imperative to address nationality or statelessness. Factors of time and prioritisation conceivably play a role in this state of affairs.

The Monitoring Framework

The extent to which the Committee has addressed nationality/statelessness and birth registration matters:

- Days of General Discussion: not yet
- General Comments: barely
- Communications Procedure: not yet
- Concluding Observations:

Birth registration: 230 out of 419 (55%). Content is extensive and specific.

Nationality/statelessness: 77 out of 419 (18%). Specific focus on discrimination, but other aspects are overlooked.



Introduction
Background
The Legal Framework
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Conclusion

5 THE CRC'S POTENTIAL

5.1 Introduction

As discussed in Chapter 3, article 7 CRC has many implications for the prevention of child statelessness at birth. The Committee on the Rights of the Child has made several efforts to improve this issue, focusing strongly on birth registration issues. However, several interpretative gaps were identified, especially with regard to the right to acquire a nationality. These are not insuperable. This chapter aims to combine the observations made in chapters 3 and 4 in order to formulate recommendations on what the Committee could do to improve its current practice with respect to the prevention of child statelessness at birth. Several recommendations are developed concerning the reporting procedure and Days of General Discussion. Lastly, a new General Comment is proposed to bridge the identified interpretative and practical gaps. It contains recommendations as to the interpretation of the CRC and the way in which the Committee should address the issues of statelessness at birth raised in chapters 3 and 4. Before reaching this point, it is necessary first to consider a number of trends that have evolved in relation to the theme of State responsibility.

5.2 State discretion vs. state responsibility

As mentioned, nationality is generally seen as a sensitive topic because of the possible limitations that could be placed on a State's sovereignty. It has often been argued that it is a matter falling solely within a national jurisdiction, a position that led States to refrain from including the right to a nationality in the CRC. However, attitudes have changed. This thesis has examined how the Committee should address the prevention of statelessness at birth on the basis of the CRC, customary law and, where relevant, other treaties such as the ACRWC. In addition, it is submitted that the Committee should take its engagement a step further, doing so on the basis of state responsibility.

The Permanent Court of International Justice (PCIJ)¹⁵⁸ has already ruled on state sovereignty when it stated in 1923 that whether the case concerned was solely a matter of domestic jurisdiction or not was dependent on the development of international relations and hence an essentially relative question. The PCIJ continued with the observation that 'it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a

¹⁵⁸ The PCIJ was later transformed into the International Court of Justice.

case, jurisdiction, which in principle belongs solely to the State, is limited by rules of international law.¹⁵⁹ Thus, a first delineation of State sovereignty was made.¹⁶⁰

Another important decision was the *Nottebohm* case,¹⁶¹ where the recognition by other States of the granting of nationality by Liechtenstein to Mr Nottebohm was questioned. The International Court of Justice ruled that it is up to every sovereign State to regulate the acquisition of its nationality.¹⁶² However, in answering this question an important issue is whether a link with a state can be said to be real and effective. Although it depends on the circumstances, relevant factors that could be taken into consideration are habitual residence, family ties and participation in public life.¹⁶³ In this instance, Guatemala did not have to recognise Liechtenstein's granting of its nationality to Mr Nottebohm since he could not be said to have a real and effective link with this country, given that, inter alia, he had lived in Guatemala for the past 34 years.¹⁶⁴ Thus, States may well seek effect at the national level when granting nationality, but different rules apply at the international level.

The Inter-American Court of Human Rights has expressed its views on the right to a nationality in reasonable detail. In *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, it stated:

[D]espite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the States in that area, and that the manners in which States regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights. The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues.¹⁶⁵

Hence, a State Party's jurisdiction is limited by the obligation to fulfil human rights. This limitation was later reiterated in the case of *The Yean and Bosico Children v. the Dominican Republic*, where the Court pronounced that the authority of States is limited by the obligation to provide individuals with equal and effective protection of the law as well as by the obligation to prevent, avoid and reduce statelessness.¹⁶⁶

This transformative understanding of state responsibility is demonstrated further by the adoption of the responsibility-to-protect doctrine (also referred to as 'r2p') which

¹⁵⁹ Nationality Decrees in Tunis and Morocco.

¹⁶⁰ See also Adjami & Harrington 2008, p. 95.

¹⁶¹ *Lichtenstein v. Guatemala (Nottebohm)*.

¹⁶² *Nottebohm*, p. 20.

¹⁶³ *Nottebohm*, p. 22.

¹⁶⁴ *Nottebohm*, p. 25-26.

¹⁶⁵ *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, par. 32-33.

¹⁶⁶ *The Yean and Bosico Children v. the Dominican Republic*, par. 140. Compare *Genovese v. Malta*, par. 45-49; *Marckx v. Belgium*.

reflects the idea that State sovereignty implies responsibility.¹⁶⁷ In principle, the responsibility to protect its people lies with the State, but when it fails in this, the responsibility should extend to the broader community of States.¹⁶⁸ The doctrine was aimed mainly at dealing with mass violations like murder and starvation, but considering the crucial role nationality plays in relation to the enjoyment of other human rights, it may be argued that this limitation on non-intervention extends to statelessness issues as well.¹⁶⁹

Although the Committee has to stick to the CRC's text and cannot impose more obligations than can be derived, it is justified in interpreting its provisions in the light of international developments. It is already an established principle that States should grant their nationality to children born in their territory if they would otherwise be stateless. It is now the Committee's responsibility to incorporate this in its work and make States understand that the prevention of statelessness at birth is beneficial not only to the individual but to States and the international community as a whole, because whether or not States grant their nationalities, the affected persons will still be there. Apart from the face-saving advantages of policy change, granting stateless people a nationality will benefit a State's social and economic system and contribute to international peace.¹⁷⁰

5.3 The way forward

5.3.1 Reporting procedure

First, a way forward could be found in the CRC's reporting procedure. Although it is important to bear in mind the limitations that the Committee faces, these are not reason enough to justify unsatisfactory monitoring of situations concerned with statelessness. The right to acquire a nationality may appear at first sight to be of minor relevance compared to issues such as torture and child trafficking, but it is the right that underlies all the others and which significantly affects their realisation. To begin with, then, the Committee could sharpen its reporting guidelines by requesting more information, such as a summary of a State's nationality system.

As already discussed, the Committee has a strong focus on birth registration. However, the in-depth analysis of the Concluding Observations in respect of 12 countries shows that it does not always take identifiable problems regarding birth registration into consideration. It would be useful to ask countries for data more regularly either through lists of issues or Concluding Observations in order to obtain a fuller picture of their birth registration issues. It is also recommended that the right to birth registration be linked more frequently to nationality. Hitherto, birth registration has been merely associated with the enjoyment of rights like education and health, omitting to acknowledge its

¹⁶⁷ See furthermore Pellet 2010, p. 3-5.

¹⁶⁸ ICISS 2001, p. viii, xi.

¹⁶⁹ Kingston & Datta 2012. According to De Schutter (2012, p. 57), human rights are a recognised exception to the principle of non-interference in the domestic affairs of States. Why should this not apply to issues of statelessness as well?

¹⁷⁰ See also Manly 2007, p. 258; Southwick & Lynch 2009, p. 23.

crucial link to nationality. If this were emphasised more strongly, States would be more likely to guarantee the right to acquire a nationality in the first place.¹⁷¹

As for the right to acquire a nationality, it would be beneficial for the realisation of article 7 were it to be addressed more regularly. On the one hand, the Committee should specifically ask more often for data and nationality legislation (for example, a summary of the current nationality system), if not in its guidelines then either through its lists of issues or Concluding Observations. On the other hand, it should take into consideration the provided information on a more frequent basis. It is important that the need for realising this right be emphasised, because doing so would provide clearer guidance to States Parties on implementation. The Committee could start by explaining what exactly the right to acquire a nationality entails. Furthermore, it is recommended that it give greater attention to statelessness and encourage or urge States to adopt an *ius soli* approach to a child that would otherwise be stateless at birth.

Further measures for enhancing knowledge and awareness of statelessness should be promoted. States should be encouraged to provide for a system that monitors this issue, and data should be collected. Legislation must be effective and, preferably, compatible with other national laws as well. Although imposing too many requirements might impede implementation of the recommendations, the Committee is encouraged to take a firmer stance in ensuring that no child is left stateless. This, after all, is article 7's minimum requirement. Further measures the Committee could take in respect of the prevention of statelessness at birth are discussed below in section 5.3.3.

5.3.2 *Day of General Discussion*

Currently, 20 days are assigned as Days of General Discussion. The topics range from juvenile justice to the right of the child to be heard, but so far no day has been devoted to statelessness. In view of the need to prevent, reduce and combat child statelessness and of the changing circumstances relating to State sovereignty, it is recommended that this basic right be discussed, given that it functions as a gateway leading to the enjoyment of other rights. The topics for the Days of General Discussion in 2014 and 2016 have been determined already, but, following the same approach taken with birth registration, the attitude should be "better late than never". Dedicated discussion would present a valuable opportunity to gain better understanding of article 7 and State responsibilities, and, indeed, might result eventually in a General Comment.

5.3.3 *General Comment*

Although non-binding, a new General Comment on article 7 would be a major achievement in the prevention of child statelessness at birth, since it could cover the interpretative gap and would provide the Committee with a solid frame of reference when formulating its Concluding Observations. Furthermore, it is likely to generate new political will and attention around this problem. The starting point would be the Committee's General Comments and Concluding Observations, complemented by ideas

¹⁷¹ Compare Nubian Children, par. 42; ACERWC General Comment No. 2, par. 23.

from other treaties, especially the ACRWC in view of its significant efforts in addressing nationality and birth registration matters.

In the next section recommendations will be made on the shaping of such a General Comment. It is important to note that the focus will only be on the prevention of child statelessness at birth. Other issues, such as the deprivation of nationality or the right to a name, should also be included in this General Comment, but fall outside the scope of this thesis. The General Comment could be shaped in many ways; the present model serves merely as an illustration of what should be included.

General Comment No. 18 on the right to birth registration, a name, the acquisition of a nationality and to be cared for by his or her parents (art. 7)

I Introduction

The introduction would be a suitable place to outline the reasons why the Committee has drafted a new General Comment on article 7, such reasons including concerns about the high number of stateless children, its consequences and the fact that children are still not being registered universally. For greater clarity, article 7 should be cited in its entirety. The interdependence of the several rights it comprises (that is, the child's rights to birth registration, to a name, to acquire a nationality and to know and be cared for by his or her parents) should be stated. It should be made clear that, although it generally does not confer a nationality, birth registration is essential for establishing a child's link with a State.¹⁷² Often it is also a prerequisite for obtaining a nationality and is therefore a key element in preventing statelessness.

Furthermore, it is important to outline article 7 in relation to all other rights of the CRC, for instance the right to health (article 24) and education (article 28).¹⁷³ The rationale of the article should be explained in detail, as well as the fact that preventing statelessness is beneficial not only to the individual but to States and the international community. This would enable States to understand the context of, and the need to fulfil, their obligations. In addition, the Committee could articulate the various assumptions that underlie article 7, an important one being that a nationality is a fundamental aspect of a person's inherent dignity. Doing so would provide a clear framework for outlining the remainder of this General Comment.

II Objectives

To give further context to the Comment's guidance, the following could be specified as its objectives:

- to guide States Parties in understanding their obligations under article 7 CRC;
- to outline the legislative, judicial, administrative, social and educational measures that States Parties must or are recommended to take;

¹⁷² Compare ACERWC General Comment No. 2, par. 23.

¹⁷³ See also Chapter 2.

- to provide States Parties and other actors with a basis (and perhaps best practice examples) on which to develop a coordinating framework for eliminating child statelessness and guaranteeing a child's right to birth registration and to acquire a nationality;
- to highlight the need for all States Parties (to move quickly) to fulfil their obligations under article 7; and
- to stimulate the cooperation of States Parties with regard to fulfilling their obligations under article 7.¹⁷⁴

III Normative content of article 7

The right to be registered immediately after birth

If the link between birth registration, nationality and statelessness has not already been emphasised, this would be an appropriate place to do so. The Committee needs to clarify how it interprets the right to be registered immediately after birth and could follow the same tripartite structure used in the African General Comment.¹⁷⁵ Starting with the universality of this right, it would elaborate on several groups of concern, deal with specific registration issues such as children with disabilities and children in refugee camps, and emphasise the need to combat discrimination. Before stating that registration should be compulsory, there should be an exploration of possible objections that could be made on the basis, for example, of cultural differences around birth registration.¹⁷⁶

In addition, birth registration must be a free service and other costs related to it should be compensated.¹⁷⁷ States Parties should be encouraged to decentralise registration services and set up mobile registration offices in hospitals and remote areas, for example. Again, the example of the African comment could be followed, by giving recommendations on interconnectedness, flexibility and responsiveness to the circumstances of families.¹⁷⁸

Regard should also be given to the notion of '*immediately*'. What is considered as '*immediately*' – days, weeks, months? A good example is the African interpretation which takes it to mean 'as soon as possible, with due regard to cultural and local practice related to maternity and infant rearing'.¹⁷⁹ States should be required to demand that births be registered within a specific number of days or, at the most, weeks. As for late registration, fines should be abolished or reduced to a minimum, and States Parties should facilitate services to register unregistered children in, inter alia, schools. With all of the three pillars above in place, the Committee should not hesitate to be clear and comprehensive; the clearer the obligations and suggestions, the more likely they are to generate political will. In order to promote better understanding, the best practices of certain States could be cited.

¹⁷⁴ Compare e.g. CRC General Comment No. 13, par. 11.

¹⁷⁵ ACERWC General Comment No. 2, par. 43-82.

¹⁷⁶ For example, what about tribes that want to stay outside the modern systems or have different conceptions of these matters? See e.g. Agorist 2014.

¹⁷⁷ Compare ACERWC General Comment No. 2, par. 73.

¹⁷⁸ ACERWC General Comment No. 2, par. 75.

¹⁷⁹ ACERWC General Comment No. 2, par. 79.

Furthermore, it needs to be explained what ‘all appropriate legislative, administrative and other measures’ are in relation to the right to immediate birth registration. As the Inter-American Court ruled, the obligation of States Parties with regard to ensuring immediate birth registration includes not only passing laws and policies but also addressing all *de facto* limitations and obstacles to birth registration.¹⁸⁰ This could be stated in the General Comment and complemented with explanation, examples and good practices. Finally, whether here or in a subsequent paragraph, reference should be made to the obligation to raise awareness, in conjunction with the need to establish internal and international cooperation.

The right to acquire a nationality

Much can be achieved by clarifying what the right to acquire a nationality entails. Currently the obligations that can be derived from it are unclear. It needs to be outlined initially that, although nationality is in principle a matter of domestic laws, States Parties are restricted by other international norms, such as those of the present Convention and international customary law. Furthermore, reference needs to be made to article 7(2), since this emphasises the obligation to implement the right to acquire a nationality in particular where a child would otherwise be stateless.¹⁸¹ With regard to the latter, it is important to reaffirm that the relevant principle – namely, that States should grant their nationality to children born in their territory if they would otherwise be stateless – is part of international customary law.

Strong emphasis should be placed on the principle of non-discrimination. States Parties should abolish any discriminatory provisions or practices, for example those regarding the disability of children or parents, births out of wedlock, or gender or marital status. Although a State has the discretion to choose the *ius soli* or *ius sanguinis* regime, the Comment could recommend application of the *ius soli* principle as a subsidiary rule if the child would otherwise be stateless.¹⁸² In addition, the nationality of children of specific groups, such as foundlings and children born on a ship or aircraft, needs to be dealt with. In this regard, inspiration can be drawn from the 1961 Statelessness Convention.¹⁸³ Finally, attention should be given to new technologies and developments relating to birth. For example, laws should regulate the nationality of children with surrogate mothers so that no child is left stateless.

Beyond this ‘basic’ level, the General Comment could proceed to an ‘optional’ or ‘additional’ level which, on the basis of the previously mentioned shift in the balance between state sovereignty and state responsibility, goes further than what can be derived from the Convention itself. In doing so, it could utilise several provisions from the 1961 Convention, the ECN, the African General Comment and the UNHCR guidelines no. 4 to provide for a framework where the responsibility of States to grant their nationality is balanced. It could be recommend that nationality be granted either *ex lege* or upon application, subject only to certain conditions such as habitual residence for a specific

¹⁸⁰ Nubian Children, par. 40; see also Odongo 2012, p. 119.

¹⁸¹ Compare ACERWC General Comment No. 2, par. 91.

¹⁸² Compare art. 1-4 1961 Convention and art. 6 ECN.

¹⁸³ Art. 2-3 1961 Convention.

length of time.¹⁸⁴ Whatever suggestions are made, a clear distinction should be drawn between obligations under the CRC and additional recommendations and best practices.¹⁸⁵

'[E]nsure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field'

In order to eliminate any misunderstanding, the General Comment should clarify the meaning of this sentence. It should be explained that, although the sentence might appear to mean otherwise, States Parties are also bound by other international norms such as customary international law, norms with which their national laws should comply. This could be supported by, for example, reference to relevant case law, such as the *Nationality Decrees in Tunis and Morocco* case. Finally, it is suggested that the previously described shift in the relation of state sovereignty and responsibility be included in order to emphasise the increased role of States Parties in preventing child statelessness, thereby accentuating the limitation on nationality matters in relation to the fulfilment of human rights.

'[I]n particular where the child would otherwise be stateless'

Before explaining the obligations under this provision, a workable definition of statelessness needs to be provided (if not already present). It could, like the African General Comment and several other international instruments, use the 1954 Convention's definition. However, considering the CRC's focus on birth registration and the desirability of treating *de iure* and *de facto* stateless people in the same way, it would be fruitful to include *de facto* statelessness wherever possible.

Following this definition, reference should be made to the fact that it is an established principle of customary international law that States should grant their nationality to children born in their territory if they would otherwise be stateless. Thereafter, several steps need to be taken. First, it has to be established how to determine whether a child would otherwise be stateless. Here, the burden of proof could be shared between the claimant and the State.¹⁸⁶ It could also be suggested that, if the authorities of a particular State refuse to recognise a child as a national, either by an explicit statement or by failing to respond to inquiries, the State of concern must accept this.¹⁸⁷

Second, it ought to be clear *who* should take responsibility if a child would otherwise be stateless. To start with, the child must be registered at birth, which will establish its link with the country of birth. Next, the General Comment should, without imposing the *ius soli* or *sanguinis* system, prescribe which State is then responsible to grant its nationality. By applying the Nottebohm principle, this could in principle be the State where the child was born (thus applying the *ius soli* regime).¹⁸⁸ Furthermore, the

¹⁸⁴ Compare art. 1-4 1961 Convention and art. 6 ECN.

¹⁸⁵ For good practices, see, inter alia, ENS 2014, p. 11, 16. One such example is the Ukraine, where a child of stateless parents who are permanent residents of the Ukraine can acquire Ukrainian nationality even if born abroad, if he or she would otherwise be stateless.

¹⁸⁶ Compare UNHCR Guidelines No. 4, par. 20.

¹⁸⁷ See UNHCR Guidelines No. 4, par. 19.

¹⁸⁸ See also Batchelor 1998, p. 157; Goldston 2006, p. 340.

Committee could follow the 1961 Convention and recommend that children who are not born on a State's territory but whose parent had that nationality at the time of birth should be granted that same nationality if they would otherwise be stateless.¹⁸⁹ However, it is important that wrongful practices are not encouraged. For example, the guidance provided should not tempt parents into seeking easy ways to give their child another nationality.

IV General principles

The general principles of the CRC have not been addressed under the previous sections, so it is important to outline them here in relation to article 7. Firstly, considering the sizeable effect discrimination has in the causes of statelessness, the General Comment should address this principle extensively. Reference should be made to, *inter alia*, girls, children living in poverty, children with disabilities, children from indigenous and minority communities, and children in situations of conflict, humanitarian and natural disasters, and to the problems each category might run into in relation to article 7.¹⁹⁰

The rights under article 7 also need to be enforced in compliance with the principle of the best interests of the child (article 3, par. 1), for it will be hard to argue that statelessness can be in the best interests of the child.¹⁹¹ Further implications should be mentioned as well, such as the notion that it is in the best interests of the child to be registered as soon as possible.

Finally, the right to life, survival and development (article 6) and the right to be heard (article 12) might be seriously infringed if a nationality is not acquired, since this deprivation has been shown to impact on such matters as access to health care and education as well as the child's participation in, for example, social structures.¹⁹² Therefore, clear guidance needs to be given on how to realise these rights in different settings such as the educational or health environments. Again, the General Comment could follow the African General Comment in this regard.¹⁹³

V Obligations and responsibilities

To begin with, inspiration could be drawn from the CRC's other General Comments to elaborate on States Parties' obligation to respect, protect and fulfil. One could consider the duty to review or amend legislation, withdraw reservations, establish independent human rights institutions and provide for interconnectivity and coordinating mechanisms.¹⁹⁴ This section of the General Comment would offer a good opportunity to include further obligations in relation to the reporting procedure. For example, States Parties could be requested to devote more attention to this matter in their state reports by fully addressing their nationality system at least once, by providing data on statelessness and birth registration, and by elaborating on measures taken to fulfil the

¹⁸⁹ Art. 4 1961 Convention. Compare art. 6 ECN.

¹⁹⁰ See also CRC General Comment No. 9, par. 36.

¹⁹¹ Compare Nubian Children, par. 42.

¹⁹² See e.g. UNICEF 2013b, p. 6.

¹⁹³ ACERWC General Comment No. 2, par. 17-22.

¹⁹⁴ Compare CRC General Comment No. 12, par. 48-49.

obligations under article 7. The role of other actors such as UNICEF, UNHCR and UNDP could also be considered.

VI Framework for implementation

Further clarification needs to be provided as to what measures States Parties can take to realise the rights under article 7. The topics that should be addressed include: legislative, regulatory and enforcement measures, remedial measures, policy measures (especially in relation to birth registration), coordination and monitoring measures, collaborative and awareness-raising measures on the right to acquire a nationality as well as birth registration, and data collection (for example, on the number of stateless children and cooperation, internal as well as international). Furthermore, the section could contain examples of good practices that are easy for States to adopt.¹⁹⁵

VII Dissemination

In this paragraph the Committee could reiterate the dissemination guidelines from other General Comments, thereby underlining, for instance, the recommendation that the Comment be widely distributed to government and administrative structures, parents and other caregivers, children, professional organisations, communities and civil society at large. All channels of communication should be used to ensure that the General Comment is made available in all relevant languages and media formats.¹⁹⁶

5.4 Concluding remarks

The findings of Chapters 3 and 4 have been combined in order to answer the question of how the Committee could improve its measures to prevent statelessness at birth. Together with the inspiration that was drawn from other frameworks, notably the African Charter, this has led to a number of recommendations. First, several improvements can be made to the reporting procedure can be made, beginning with a sharpening of the reporting guidelines. If States are required to report more extensively and accurately on issues of statelessness, the Committee will have a stronger foundation on which to base its recommendations on. Furthermore, the Committee could use the Concluding Observations to clarify further the meaning of article 7's provisions as well as bridge the gap between legal obligations and practice.

Secondly, a Day of General Discussion could be devoted to the issues surrounding statelessness, ultimately resulting in a new General Comment. A structure for the latter has been proposed and discussed in this chapter. The General Comment should address, *inter alia*, the definition of statelessness and the benefits that tackling the problem holds for the individual, the State and the international community. The clearer the Committee's formulation of its views, the greater the number of interpretative gaps that will be filled. Over and above clarifying the obligations that follow from article 7 CRC, other provisions of the CRC and international customary law, the Committee could

¹⁹⁵ See ENS 2014.

¹⁹⁶ For guidance on how to shape national laws, see Batchelor 2006; for recommendations how to strengthen monitoring and compliance with the ACRWC, see Johnson 2012.

include an additional level to its General Comment that contains suggestions on how to shape national laws and supports them with examples of good practices. Furthermore, the Committee could devote a paragraph to the changing attitudes in regard to state responsibility. Another suggestion is that the UN Committee enter into dialogue with the African Committee, since they do, after all, share a member.

The CRC's Potential

The Committee could improve the prevention of statelessness at birth under the CRC by:

- Clarifying its reporting guidelines
- Addressing issues regarding statelessness more often and in more detail
- Devoting a Day of General Discussion to the topic of child statelessness
- Developing a new General Comment on article 7



6 CONCLUSION

It is hard to justify statelessness in the world we live in today. Nevertheless, an estimated 5 million children still face the risks of statelessness, risks that range from falling outside a State's protection system in the case of harmful practices such as child abduction or abuse, to being excluded from education, health care and other systems. Although several initiatives were undertaken over the years to combat statelessness, including the adoption of the 1961 Statelessness Convention, little ground has been gained in addressing the problem. The advent of the CRC, however, would appear to offer a major solution, given that the Convention enjoys nearly universal ratification and devotes its article 7 to questions of statelessness. This thesis has discussed the role and potential of the CRC's monitoring body, the UN Committee on the Rights of the Child, by exploring the extent to which it has engaged with the situation of stateless children in terms of the acquisition of a nationality at birth; the thesis also considered how that engagement could be strengthened.

The complexity of the issues became clear when searching for a definition in Chapter 2. The most common definition of a stateless person is 'a person who is not considered as a national by any State under the operation of its law'.¹⁹⁷ However, where possible, *de facto* stateless children should be included as well, since they often face the same problems of access to education, vaccination or reunification with their parent/s. These difficulties can be attributed to a variety of causes, among them discriminatory laws, a lack of a solid nationality system, and birth registration issues. Considering the reluctance of States to take responsibility and the lack of a uniform nationality system, people will continue to fall outside the system and transfer this status to their children.

Chapter 3 explored how the relevant provisions need to be interpreted. Article 7, the core article, aims to prevent statelessness and contains the right to birth registration immediately after birth, the right to acquire a nationality and a provision on statelessness in its second paragraph. As for birth registration, the Committee's elaboration on this aspect of *de facto* statelessness is praiseworthy. States Parties are required, *inter alia*, to ensure a birth registration system that is effective, flexible, free and universally accessible. The right to a nationality has deliberately been turned into the – weaker – right to acquire a nationality, a right which should be realised without discrimination. As for the second paragraph, while it is somewhat unclear what is meant by 'in accordance with their national law', this ambiguity probably reflects the sensitivity surrounding

¹⁹⁷ Art. 1(1) 1954 Convention.

intervention in a State's nationality system. It is clear, furthermore, that article 7(2) aims at preventing statelessness.

In addition to answering the substantive question of what obligations can be derived from the CRC, by exploring the General Comments Chapter 3 also dealt to some extent with the way in which the Committee has treated the prevention of statelessness. It was shown that neither statelessness nor nationality has been addressed with any thoroughness. However, there does seem to be a relatively strong focus on birth registration, even though several gaps were identified in this respect, such as the meaning of the term 'immediate'.

Chapter 4 focused on the monitoring aspect of the CRC, which comprises the Days of General Discussion, the General Comments, the communications procedure and the reporting system. The first two have not played a noteworthy role in the prevention of statelessness thus far, and therefore were discussed only briefly. The reporting procedure, however, was shown to be a well-developed system which, by providing a linking mechanism between legal human rights obligations and the actual situation, serves as an important tool for reducing statelessness at birth.

For the purpose of this thesis, 419 Concluding Observations were analysed. With a coverage of 55 per cent, birth registration was shown to be high on the Committee's agenda. The guidance provided for in the General Comments has been further developed in the Concluding Observations, where quite extensive and country-specific recommendations were made, including establishing mobile registration units, making birth registration compulsory and cooperating with UNICEF. On the other hand, nationality and other matters regarding statelessness often seemed to be lacking in the Concluding Observations. The right to acquire a nationality was addressed in only 77 of the 419 Concluding Observations. In addition, the in-depth analysis revealed several gaps, such as a lack of requests for information or limited engagement with the information that was provided. In sum, it appears that the Committee has addressed statelessness only to a limited extent. There are several hypotheses that could explain this: time constraints, political factors, the magnitude of reports, and the possibility that statelessness is not recognised sufficiently as a problem. Although the exact reason is hard to identify, there is nevertheless evident room for improvement.

On the basis of the obligations that can be derived from the CRC framework regarding statelessness, together with the findings on how the Committee has addressed this issue, Chapter 5 contains several recommendations. Regarding the reporting procedure, the Committee could sharpen its reporting guidelines, requesting more information such as a summary of a State's nationality system. Its attention to birth registration is commendable, and the Committee is recommended to continue this positive approach, although it could do more to address the implications of birth registration. As for nationality and its related issues, the Committee should ask every country for more information about its nationality system and number of stateless people. Furthermore, additional explanation of the right to acquire a nationality would increase a State's understanding of its obligations and hence increase its willingness to act. Finally, the Committee could provide States with more guidance on what to do if the child would otherwise be stateless.

This thesis also recommends devoting a Day of General Discussion to statelessness, it would be a good opportunity to gain a better understanding of its

implications and obligations that follow from the CRC. Ultimately, this could result in a new General Comment on article 7. Inspiration can be drawn from other frameworks such as the African Charter. Section 5.3.3 of the thesis contains a suggested structure for a new General Comment, providing recommendations on how the CRC should be explained in relation to statelessness, based on the previous chapters. Furthermore, the General Comment could include a subsequent advanced level that provides States with optional implementation measures and examples of good practices.

The author has argued that the Committee should require States to fulfil their obligations not only on the basis of the CRC and international customary law but also on that of the evolving recognition of a State's responsibility. Furthermore, States could be argued to have an obligation to ensure a child's nationality, because they are obliged to ensure the full protection of human rights and this almost unthinkable without a nationality. Ultimately, the goal of the CRC is not to dictate to States but to guide them towards developing a nationality system that leaves no child behind. This would involve not only a greater inclusivity within a State's nationality system, but an interrelated network of cooperation between States to ensure that nationality is available to everyone. It is only through this version of global governance that child statelessness can be eradicated, and it is a path the CRC Committee is well-positioned to take. States need to comprehend the urgency of shouldering their responsibilities. Because without a world government, who else will take responsibility? It is up to the Committee to take a firmer stance in this regard.

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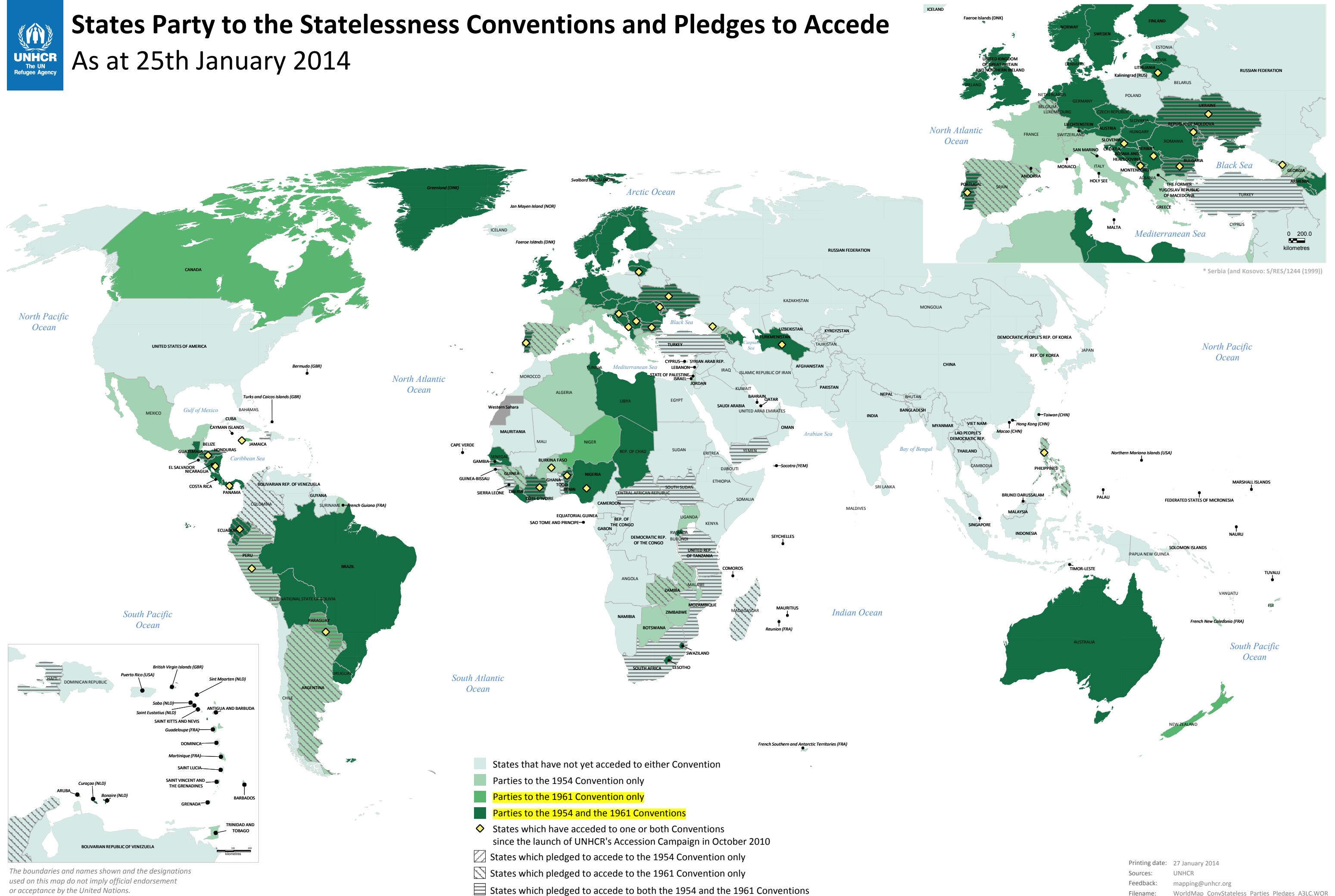
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Appendix I

States Party to the Statelessness Conventions and Pledges to Accede

As at 25th January 2014



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

