ISSUES OF STATELESSNESS IN INTERNATIONAL LAW
Two Cases: The Baltic States and Israel/Palestine

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# ISSUES OF STATELESSNESS IN INTERNATIONAL LAW

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## INTRODUCTION

Statelessness is a condition in which an individual has no citizenship or nationality\(^1\) in any country. Nationality is a legal relationship between an individual and a state that “confers

\(^1\) The term “nationality” can be used to mean citizenship or identification with an historical nation of origin other than the nation in which the individual is a citizen or permanently resides. For purposes of this paper, nationality will be used without qualification to mean citizenship. To indicate the second meaning of nationality, ethnicity or nationality of origin will be referenced.
mutual rights and duties on both2 and has been called "man's basic right, for it is nothing less than the right to have rights."3 Under domestic law, it is the prerequisite for the realization of other fundamental rights, because, as a matter of definition, without affiliation with a state one has no mechanism or context in which to exercise rights or duties, not only resulting in problems pertaining to the ability to work, access to social services, housing, etc., but also to obtaining documentation allowing exit from or re-entry to the country. In addition, although states could be seen as merely an organizational tool of human beings, at customary international law, there has been no practical recognition of human beings except through states, and thus stateless individuals lack the protections provided by states to their citizens abroad, such as diplomatic assistance, and thus have no rights in the international community.4 “International law is essentially rendered inoperable for the stateless individual.”5

Law pertaining to statelessness in the modern international community has evolved from a non-issue prior to the Twentieth Century, when it first became a notable problem, to recognition that nationality is a fundamental human right. Currently, international law is attempting to assert an obligation on states prohibiting statelessness. In addition, a trend can be identified that may be leading ultimately to recognition of a right of an individual to a nationality based on his or her subjective priorities and self-identification. This paper will begin by reviewing the origin of the problem of statelessness and the history of the development of

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3 Id., quoting former Chief Justice of the U.S. Supreme Court Earl Warren.
5 Blackman, supra note 2, at 1150.
international law pertaining to statelessness. It will then analyze two case studies in which statelessness continues unresolved, the Baltic States and Israel/Palestine. These case studies will illustrate two types of statelessness, the international law relevant to each situation, and the stance the United Nations has taken to try to resolve the problem. The final section will discuss the commonalities and differences of the two cases in light of a growing body of human rights coming to be recognized by international law.

I. THE PROBLEM OF STATELESSNESS

Origin

Statelessness is primarily a Twentieth Century phenomenon. Prior to World War I, statelessness was limited to unusual individual circumstances. As a result of the Peace Treaties following the war breaking up the empires, the League of Nations, controlled by Western powers, promulgated the model of the nation-state, which was intended to replace the old laws of feudal society and was based on the principle of equality of all citizens before the law.6 However, the League of Nations drew the boundaries of the new nation-states without regard to national identification of the inhabitants of the territory, creating “state-nationals”, who held the ruling power, other “nationals”, and officially recognized “minorities”.7 The scheme included Minority Treaties imposed on the new successor states, although not on conquered states like Germany.8 These treaties set up protections under the auspices of the League for groups of minorities that met a certain profile and thus were labeled “minorities” for purposes of the treaties.9 These groups made up an average of 30% of the new states’ populations (or

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7 Id. at 270.
8 See id. at 269.
9 See id. at 270-271.
approximately 30 million).\textsuperscript{10} However, other non-state "nationals" constituted up to 20% of a state's population.\textsuperscript{11} Thus, up to 50% of the population was not represented by the government controlled by the state-nationals.

An effect of the minority treaty scheme was that the implication prior to the war that only state-nationals could be citizens of a given state was in essence crystallized as an accepted norm. That is because the scheme explicated that minority interests could only be protected by an institution external to the state, in this case the League of Nations, instead of the state, unless and until the minority was completely assimilated, and thus divorced from its origin.\textsuperscript{12} This environment caused resentment by the new states and a general non-compliance with the treaties, as well as discontent among the unrepresented nationalities, each considering the treaties arbitrary in "handing out rule to some and servitude to others."\textsuperscript{13} Revolutions and civil wars caused many to flee their states, which then de-nationalized the refugees \textit{en masse}. This resulted in the statelessness of millions of Russians, hundreds of thousands of Armenians, thousands of Hungarians, hundreds of thousands of Germans and over a half million Spaniards, among others, during the inter-war years.\textsuperscript{14} The new attitude taken by the new states was that, if they were not yet actually totalitarian, at the least they would not tolerate opposition and would rather lose citizens than harbor people with different viewpoints.\textsuperscript{15}

Although control of access to territory by non-citizens was a matter completely within a state's sovereignty under international law, common interests of states, on a practical level,

\textsuperscript{10} See id. at 271.
\textsuperscript{11} See id. at 272.
\textsuperscript{12} See id. at 275.
\textsuperscript{13} Id. at 270-271.
\textsuperscript{14} See id. at 278.
\textsuperscript{15} See id. at 278.
historically had "restrained" this assertion of sovereignty. This comity of nations was destroyed by the First World War and by the imposition of the terms of the Peace Treaties and Minority Treaties, which led to a spate of laws allowing de-nationalization and de-nationalization in certain circumstances and an eroding of the presumption of the inviolability of citizen status by a citizen's state, even in Western Europe.

The two perceived solutions to the refugee problem—repatriation or naturalization—not only failed but added to the problem of statelessness. Repatriation was not an option where refugees' origin states refused to admit them. In addition, where origin states would accept their refugees back, refugees who were at risk of political persecution or legal sanction or had lost their genuine and effective links with the origin state sought refuge amongst the stateless to avoid repatriation.

Naturalization encountered unprecedented problems due to the sheer numbers of refugees. Although a few were naturalized, administrative agencies were not equipped to handle either the volume or persons of stateless status. In addition, as time went on, in the face of the influx of hundreds of thousands of refugees to any given country, the right of asylum traditionally recognized appeared to be an anachronism not suited to modern conditions, and, moreover, not supported by any written law—constitutions, international agreements, or even the Covenant of the League of Nations. Instead of continuing the naturalization process, in many

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16 Id. at 278.
17 See id. at 279, 290.
18 See id. at 283-284.
19 See id. at 278.
20 See id. at 284-285.
21 See id. at 280.
cases states simply cancelled the naturalizations already granted. As a result of these dynamics, although de jure statelessness was initially a much smaller problem, refugees who held de jure nationalities became de facto stateless as a result of their origin states' refusals to recognize them and the inability of host states to accommodate them.

Without the right to a residence or the right to work, the stateless were constantly in violation of the host states' laws trying to support themselves and their families, and subject to internment without hearing or sentence. Without other means of providing protection, many host states turned the whole stateless populace (prior to World War II, about 10 percent of the population) over to the police to rule directly. This increase in the power of the police led to a gradual consolidation of police power, even to a sort of fraternalization of police across boundaries, which consolidation may have been a major factor leading to so little resistance by police in Nazi-occupied countries.

This period between the wars established an attitudinal and factual precedent that the international community has not yet resolved. Although, as set out below, the United Nations and some regional treaties have begun to articulate international norms providing for a human right to citizenship, as a practical matter statelessness continues to be endemic.

22 See id. at 285.
23 See id. at 279.
24 See id. at 286.
25 See id. at 288.
26 See id. at 287.
27 See id. at 288.
28 See id. at 289.
Legal Status of Statelessness at International Law

Although the right to a nationality has been recognized at least theoretically since 1948, the international willingness to limit traditional sovereign power relating to nationality is only now beginning to be manifested. For centuries and through the first half of the Twentieth Century, nationality was determined to be solely a matter of domestic law. It was not until Post-World War II that the right to a nationality was articulated as an international concern.

The right to a legal nationality (citizenship) was first set out in Article 15 of the Universal Declaration of Human Rights of 1948, the principles of which have over time come to be accepted as norms of customary international law. Article 15 states that “[e]veryone has the right to a nationality” and “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” However, it lays out no guiding principles. Nor does it state the negative corollary that statelessness is violative of human rights.

The International Covenant on Civil and Political Rights of 1966 (entered into force in 1976), which was intended to be one of two instruments giving binding effect to the Universal Declaration, is silent on the Declaration’s Article 15 right to nationality, but mentions in Article 24, covering children’s rights, that “[e]very child has the right to a nationality.” Like the Declaration, however, the Covenant fails to articulate a mechanism to effectuate the provision. Nor does it state the negative corollary proscribing statelessness.

Two United Nations conventions specifically address statelessness. The first was the Convention Relating to the Status of Stateless Persons of 1954 (Status Convention)\(^{32}\) (entered into force in 1960). It does not assert the right to nationality or address prevention or rectification of statelessness, but it deals with treatment and protections of stateless persons. The Status Convention broadens the definition of stateless\(^{33}\) to a "person who is not considered as a national by any State under the operation of its law" (Article 1) and requires a stateless person to abide by the laws of his or her host country (Article 2).\(^{34}\) It reciprocally obligates the host country, *inter alia*, to non-discrimination (Article 3) and to provide "the same treatment as is accorded to aliens generally," except where the Convention affords more favorable provisions (often certain rights accorded the country's own nationals) (Article 7), documentation (Articles 27 and 28) and security from arbitrary expulsion (Article 31).\(^{35}\)

The second, the Convention on the Reduction of Statelessness of 1961\(^{36}\) (Reduction Convention) (entered into force in 1975) obliges a state party to "grant its nationality to a person born in its territory who would otherwise be stateless" (Article 1(1))\(^{37}\) and to grant nationality to a person not born in its territory, but has a parent who has nationality, if the person would


\(\text{34}\) See Status Convention, supra note 32, at 136.

\(\text{35}\) See id. at 136, 138, 150, 152, 154.


\(\text{37}\) Id. at 176.
otherwise be stateless (Article 4(1)).\(^3\) It goes on to prohibit depriving a person of his nationality if it would render him stateless (Article 8(1))\(^3\) or for discriminatory reasons (Article 9)\(^4\) and requires that treaties for transfer of territory have provisions such that no person shall become stateless as a result or that, in the absence of such provisions, the acquiring state shall confer its nationality on those as would otherwise become stateless (Article 10).\(^5\)

The Organization of American States iterates in the American Convention on Human Rights of 1969 in Article 20 that “[e]very person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality” and prohibits arbitrary deprivation.\(^6\) In addition, the Council of Europe has only recently concluded the European Convention on Nationality of 1997.\(^7\) Its Article 4 states, inter alia, that: “everyone has a right to a nationality”, “statelessness shall be avoided” and “no one shall be arbitrarily deprived of his nationality”.\(^8\) Although it remains to be seen what the legal effect will be on Eastern European countries who obtained independence prior to the convention, it, like the American Convention, is another indication of crystallization of international norms.

Therefore, it may be argued that the broad right to nationality is a norm of customary international law as shown by the Universal Declaration and supplemented by United Nations and major regional conventions. Despite this recognition of the general right to a nationality, as a practical matter citizenship laws have always been considered to be under a state’s domestic

\(^3\) See id. at 177-178.
\(^4\) See id. at 179.
\(^5\) See id.
\(^6\) See id.
\(^8\) Kalvaitis, supra note 4, at 249, citing European Convention on Nationality, Nov. 6, 1997, Eur. T.S. No 166, 37 I.L.M. 44.
jurisdiction. Thus, protecting individuals’ nationality status is in tension with the prohibition against interference in “matters which are essentially within the domestic jurisdiction of any state”.

Perhaps because of this conflict of principles and the difficulty of articulating solutions, there is a lack of uniformity of state practice regarding conferring of nationality, which results in an inability of the international community to attribute *lex lata* (“firm law”) status to the broader issues of states’ positive obligation to confer nationality. However, new activities in international law show a growing trend toward a “presumption” that a state may have a negative obligation not to create statelessness.

Nationality and statelessness have also been addressed in two new United Nations conventions, the Vienna Convention on Succession of States in Respect of Treaties (1978) and the Vienna Convention on Succession of States in Respect of State Property (1983), but neither of them have entered into force. Moreover, of course, even if these conventions were in force, they would not be binding upon successor states not signatory to them; indeed, those states would be bound only by norms of customary international law. To address this problem, the United Nations General Assembly has begun to attempt to codify customary law in this area by assigning the International Law Commission (“ILC”) to report on “state succession and its impact on the nationality of natural and legal persons.” The ILC prepared and submitted to the General Assembly in 1997 Draft Articles on Nationality in Relation to the Succession of States intended to constitute a General Assembly resolution and perhaps lead to a convention.

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45 U.N. CHARTER, art. 2, para. 7.
46 See Blackman, supra note 2, at 1183.
47 See id. at 1142.
48 See id. at 1142-1143.
49 Id. at 1143.
50 See id. at 1143.
What is new as evidenced in the documents and the supporting deliberations is the stated realization by the ILC and the General Assembly’s Sixth Committee (on Legal Matters) that the law of state succession must take into account the evolving norms of international human rights law pertaining, *inter alia*, to statelessness, the right to a nationality, and the principle of non-discrimination. The ILC concluded that state succession with respect to nationality “involved the basic human right to a nationality, so that obligations for States stemmed from the duty to respect that right ....”\(^{51}\) Furthermore, paralleling trends in human rights law and interpretations of the U.N. Charter, the Draft Articles depart significantly from the long-held view that international law “places few, if any, restraints on states’ discretion over nationality issues.”\(^{52}\)

However, there is a crack in the hard shell of sovereignty regarding such discretion that supports the Draft Articles’ departure. The International Court of Justice (ICJ) recognized a “delimit[ation of] the competence of States” in the area of discretion pertaining to nationality under a concept known as “effective nationality”. In the *Nottebohm Case (Liechtenstein v. Guatemala)*,\(^{53}\) the Court held that Guatemala was not required to recognize Liechtenstein’s claim to represent Nottebohm as his country of citizenship in front of the ICJ against Guatemala. Nottebohm was a German national whom Liechtenstein had naturalized, but who lived in Guatemala for thirty-four years. The ICJ said that Guatemala was entitled to continue to recognize his German nationality, since the primary purpose of naturalization by Liechtenstein was for Nottebohm to come under its protection rather than to attach to its traditions, way of life

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\(^{51}\) *Id.* at 1143-1144. 

\(^{52}\) *Id.* at 1144. 

or obligations. Thus, the Court said, he lacked genuine and effective links to Liechtenstein; or in other words, he did not establish effective nationality.\textsuperscript{54}

The Draft Articles would impose positive obligations on states based on the principle of effective nationality, which would require successor states to grant nationality to those persons who have established genuine and effective links through 1) habitual residence on the new territory; 2) prior nationality or secondary nationality in the predecessor state; or 3) entitlement to acquire nationality in the predecessor state.\textsuperscript{55} The Articles would also oblige states to allow a right of option for those who would be entitled to acquire the nationality of at least two successor states, based on effective links of domiciliary, nationality, familial or secondary nationality characteristics.\textsuperscript{56} Thus, the Draft Articles use a mix of criteria to determine effective nationality, with emphasis on domicile (\textit{jus soli}), but also including prior nationality, prior secondary nationality, and familial links (\textit{jus sanguinis}).\textsuperscript{57}

However, the Draft Articles are not yet descriptive of \textit{lex lata}, as the principles are lacking the required state practice and \textit{opinio juris}. On the other hand, they indicate the rapid development of international law in the area of statelessness.\textsuperscript{58}

The international community's attempts to rectify the problem of statelessness had limited impact on the actual practice of new, possibly ethnocentric, states that arose after World War II. Such lack of impact led to different forms of statelessness many of which at this time are yet to be solved.

\textsuperscript{54} See id.
\textsuperscript{55} See Blackman, \textit{supra} note 2, at 1165-1168.
\textsuperscript{56} See id. at 1169.
\textsuperscript{57} See id. at 1170.
\textsuperscript{58} See id. at 1170.
II. CASE STUDIES

Two examples where statelessness as a result of state succession has occurred are the Baltic States—Lithuania, Latvia and Estonia—after regaining their independence from the former Soviet Union in 1991 and Israel/Palestine since Israel declared its sovereignty in 1948. These examples also illustrate the different forms statelessness can take based upon the character and means of the particular state succession.

The Baltics

Pre-Independence History of Baltic States

As of 1991, the Baltic Region had inherited two law traditions—each country’s pre-Soviet, independent law and the Soviet Union’s federal law—and had developed a Russian minority population not in existence at the time of the Soviet take over during World War II. Although Lithuania, Latvia and Estonia were at the turn of the Twentieth Century a part of the Russian Empire, the countries had a prior history as sovereign states. Following the Bolshevik Revolution they each declared their independence and during the period between the two World Wars established stable foundations as independent, parliamentary democracies. However, all three parliamentary democracies were overthrown by nationalistic authoritarian regimes in the 1920s and 1930s. In 1938, Germany and the USSR signed the Nazi-Soviet Non-Aggression Pact which put the Baltic States under the “sphere[] of influence” of the Soviets, and in 1940 the USSR invaded them, completing their transition to Soviet Republics by 1944.

The effect of the Soviet policy of “russification” on population demographics of the three countries was significant. The Soviet government required that the Russian language be used in all official matters, including higher education and government; altered history to exaggerate the

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59 See Kalvaitis, supra note 4, at 233-234.
60 Id. at 234-235.
Russian-Baltic link and banned mention of a separate Baltic identity in literature; sent in waves of Russian, Ukrainian and Byelorussian settlers; and simultaneously deported large numbers of Balts to Siberian labor camps.61 These acts dramatically changed the ethnic makeup of the republics.62 (Interestingly, Lithuania increased its "indigenous" percentage and lowered its "other minorities" category, while increasing its "Russian" percentage and increasing its total population by 40%.63)

During the 1980s and until 1991, President Mikhail Gorbachev introduced perestroika64 and glasnost65 to the USSR, which resulted in, inter alia, a push by a number of Soviet republics, including the three Baltics, for their independence, which push Gorbachev resisted. The three Baltic States declared their independence in 1990, and in 1991, following the attempted military overthrow of Gorbachev and the ensuing change in Soviet leadership, their independence was

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61 See id. at 235-236.

62 See id. at 236. Note that the population percentages of the respective republics changed from inter-war censuses to 1989, a 50-60 year period, as follows:

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<th>Lithuania</th>
<th>Latvia</th>
<th>Estonia</th>
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<tr>
<td></td>
<td>Inter-War</td>
<td>1989</td>
<td>Inter-War</td>
</tr>
<tr>
<td>Indigenous</td>
<td>62.9%</td>
<td>79.6%</td>
<td>75.5%</td>
</tr>
<tr>
<td>Russian</td>
<td>2.5%</td>
<td>9.4%</td>
<td>10.6%</td>
</tr>
<tr>
<td>Other</td>
<td>28.3%</td>
<td>11.0%</td>
<td>13.9%</td>
</tr>
<tr>
<td>Total Poptn.</td>
<td>2,620,000</td>
<td>3,675,000</td>
<td>1,905,000</td>
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63 Id. at 236, table reproduced supra note 62.

64 "Restructuring" — policy of legal restructuring of Soviet Union, including, inter alia, a recognition and incorporation into domestic law of international law and increased participation in the international community, as well as movement toward democratization. See Richard C. Visek, Creating The Ethnic Electorate Through Legal Restorationism: Citizenship Rights In Estonia, 38 HARV. INTL L.J. 315, 322 (1997).

65 "Openness" — policy of more transparency and accountability in Soviet government as well as easing restraints on freedom of expression, etc. See id.
recognized by the USSR (as well as most Western states).66 One month later, the Soviet Union was dissolved.

Since the three Baltic States attained their independence from the Soviet Union, at the moment of dissolution of the Soviet Union, persons with Soviet citizenship, but without citizenship in individual Soviet republics, became de jure stateless. These persons held citizenship in a state that was now defunct. There were three nationality possibilities, each with different levels of viability depending on the laws of the Baltic State in which the stateless found themselves: 1) take citizenship in the state of their residency, which state may have strict residency and language requirements for naturalization; 2) accept Russian citizenship and lose certain rights and privileges reserved for republic citizens; or 3) become stateless, losing even the right to have rights.67

Baltic Nationality Laws

Upon independence, the Baltic States were in a position to determine their own citizenship laws, subject only to international normative parameters. International law distinguishes between a state that is a legal continuation of a prior state (accession) and a state that takes the place of another state (succession). The former carries the rights and duties of the prior state, while the latter establishes its rights and obligations anew.68 Each Baltic State considered itself to have regained its former independence and thus to be a continuation of the pre-1940 republic. This was supported by the fact that most Western states, including the United States, had never recognized the forced Soviet incorporation of the Baltics and continued de jure

66 Kalvaitis, supra note 4, at 238-239.
67 See id. at 240-241.
68 See id. at 241.
recognition of their independence throughout the Soviet occupation. Latvia and Estonia in particular considered that since the Soviet occupation was illegal, it could not create a legal regime (ex iniuria ius non oritur). Thus, they attempted to restore their prior sovereignty (restitutio ad integrum) by reinstating their prior laws, including citizenship, before drafting new legislation. However, it can also be asserted that fifty years of Soviet occupation had its effects and cannot now be ignored, despite its illegality, and restitutio ad integrum may not be possible. Long-standing circumstances, even though illegal, “crystallize” over time to become legal (ex factis ius oritur). Lithuania acknowledged this latter principle by re-enacting its pre-Soviet constitution but then immediately suspending it, enacting a Provisional Fundamental Law, which operates today.

Latvia. With a population that is 48% non-indigenous and 34% ethnic Russians (total population 2,680,000) in 1989, Latvia’s final revised legislation was the most restrictive naturalization law of the Baltic States. The law was not passed until July 22, 1994, three years after independence. The law provides automatic citizenship for persons who were citizens of the Republic of Latvia (pre-Soviet Latvia) on June 17, 1940, and their descendants, and for orphans who had no parents or whose parents were unknown. Others may be naturalized if they meet strict requirements: 1) five years’ residence after May 1990; 2) basic knowledge of the Latvian language, constitution and history; 3) oath of loyalty to Latvia; 4) legal source of income; and 5) .

69 See id. at 235.
70 See id. at 242.
71 See id.
72 See id. at 242-243.
73 See id. at 243.
74 See id. at 236.
75 See id. at 255-256.
renunciation of any other citizenship. In addition, the law provides for categories of persons to be established, and naturalization to occur in stages according to categories beginning in 1996 and ending 2003. Under this regime, for example, a 45-year-old person who did not qualify for automatic citizenship could not apply for naturalization until the year 2000, even though he was born and lived his entire life in Latvia, leaving him stateless for ten years.

Those ineligible for naturalization under any circumstances included individuals who: 1) acted against the state in violation of the constitution or held membership in organizations that were judicially found to have done so, or were judicially decreed to have propagated fascist, communist or other totalitarian ideas or have stirred up ethnic or racial discord; 2) are officials of a foreign state; 3) serve in the armed forces or security service of a foreign state or served in the USSR armed forces, unless they were permanent residents of Latvia at time of conscription; 4) were employees, informants or agents of the KGB or other foreign intelligence agency; 5) have been convicted of an intentional act considered by Latvia to be a crime requiring a prison sentence of longer than one year.

Latvia does, however, issue identity and travel documentation to stateless persons who are permanent residents.

Estonia. Estonia's non-indigenous population in 1989 was 38% and 30% ethnic Russian (total population 1,576,000). This republic retained its 1938 Law on Citizenship, with some amendments, which provides that citizenship is granted: 1) by birth; 2) to persons "recognized as Estonian citizens"; and 3) by naturalization. Naturalization requirements include: 1) having

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76 See id. at 256-257.
77 See id. at 257.
78 See id. at 257-258.
79 See id. at 258.
80 See id.
achieved age of majority (18 years); 2) two years' residency in Estonia prior to application and one year after; 3) knowledge of the Estonian language. Language and residency requirements may be waived for stateless persons who have ten years' residency prior to application and for invalids and the elderly.81

Estonia also passed a Law on Aliens which applies to foreign nationals and stateless persons. It provides for residence permits, allows permanent residents to vote in local, but not national elections, and allows persons with Soviet passports and Estonian residence permits, inter alia, to exit and enter the republic freely. The law also forbids issuance of permanent residency permits to: 1) foreign professional military personnel or those who have served in a foreign armed service and entered Estonia through such service or upon retirement from it; 2) former employees of the KGB or other foreign intelligence agencies; 3) convicts who have been sentenced to more than a year's imprisonment and who are "not considered rehabilitated with a spent conviction"; 4) persons who do not respect the Estonian constitutional system or obey its laws or who have acted against the Estonian state and its security; and 5) persons who provided false information on a permit or visa application.82 These same persons are barred from ever qualifying for Estonian citizenship, since at least three years of permanent residency is required to be granted citizenship.83

Estonia does, however, have one unique constitutional provision that allows permanent residents to vote in local elections, which can result in some protection for stateless persons' interests at the local level.84

81 See id. at 259.
82 See id. 259-260.
83 See id. at 260.
84 See id. at 260-261.
Lithuania. Lithuania had the unique experience of decreasing its non-indigenous population from 37% during the Inter-War period to just 20% in 1989, while its total population grew by 40%, from 2,620,000 to 3,675,000. Its ethnic Russian population grew from 2.5% to 9.5%, while its other non-indigenous population fell from 28% to 11%. Perhaps because of this stability of its native population, Lithuania promulgated more liberal naturalization policies than the other two Baltic States. It established its first citizenship law in 1989, well before it declared its independence. It was a "zero-option" law that provided the opportunity for any permanent resident of the Lithuania SSR with two years' residence, a legal source of income, and a declaration of allegiance to the Lithuanian constitution to register for citizenship, regardless of nationality or language ability. The deadline was November 1991. Only 10% of non-indigenous permanent residents opted not to take citizenship, representing only 1% of the pre-independence electorate. However, after it expired, a new, highly restrictive law was enacted addressing those few persons not having taken advantage of the earlier liberal law. Foreign nationals and stateless may be naturalized if they: 1) pass a language test; 2) have ten years' residency; 3) have a legal source of income; 4) pass a basic test on the constitution; and 5) have no nationality presently or will automatically lose it upon acceptance of Lithuania's.

Naturalization will be denied to those who: 1) committed genocide or crimes against humanity; 2) were sentenced to imprisonment for an act Lithuania considers to be a crime; 3) are chronic alcoholics or drug addicts; and 4) are ill with especially dangerous infectious diseases.

85 See id. at 236.
86 Concept of citizenship that allows citizens of the USSR who request it to take local citizenship. GEORGE Ginsburgs, FROM SOVIET TO RUSSIAN INTERNATIONAL LAW: STUDIES IN CONTINUITY AND CHANGE 149 (1998).
87 Kalvaitis, supra note 4, at 261.
88 See id. 261-262.
89 See id. 262.
These last two are particularly interesting, since the alcoholics, addicts and ill, who otherwise meet the requirements for naturalization, have already been permanent residents for at least ten years, may be members of families already naturalized, and may have become subject to those problems in the territory of Lithuania. Thus, they are already a burden to the state in some form and are equated for purposes of denial of citizenship with criminals and war criminals. The policy seems to this author to be non-synchronous with Lithuania’s otherwise liberal stance.

Lithuania also has a progressive law outlining the rights and duties of citizens who are ethnic minorities.90

The Russian Federation Point of View

The issue of ethnic Russian minority in the Baltics, in particular Latvia and Estonia, has been one of the major sources of contention between the Russian Federation and the Baltic States. The Russian Federation denounced Estonia’s citizenship and alien laws as a violation of human rights law and compared the policy to “apartheid and racism” since the laws prohibit non-citizens to vote or to own land.91 Russian-Latvian relations have suffered similarly over the issue as well.92

Former Soviet Union. For most of its history, the Soviet Union took an exclusively dualist approach to the incorporation of international law and its domestic law. Soviet legislation

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90 See id. 262; <http://www.homeoffice.gov.uk/ind/lit4.htm#minority> (Law and National Minorities of the Republic of Lithuania: guarantees to all its citizens, regardless of their ethnicity, equal political, economic and social rights and freedoms; recognizes its citizens’ ethnic identity and the continuity of their culture; respects every ethnic minority and language; discrimination with regard to race, ethnicity or nationality, language or anything else related to ethnicity is prohibited and punished; right to obtain aid from the State to develop minority culture and education; cultural organizations of ethnic minorities have the right to establish cultural and educational institutions; right to schooling in one's native language, with provision for faculties at institutions of higher learning to train teachers needed by ethnic minorities; right to have the press in one's native language; right to form ethnic cultural organizations; historical and cultural monuments of ethnic minorities have to be considered part of the cultural heritage of Lithuania; every citizen, upon obtaining a passport, is free to identify his national origin on the basis of his parents or one of his parents or to ask the authorities not to insert a "nationality" seal into her/his passport.)

91 See id. at 269.

92 See id. at 269.
determined which of its domestic laws were to be subject to international law and, further, whether international law was to be the sole source of the domestic provision, to take precedence over stated domestic sources, or to be on a par with domestic sources. Moreover, included sources of international law rarely included customary norms. Distrust of Western capitalism, suspicion of Euro-centric mores influencing customary international laws and the isolationist attitude of Soviet foreign policy resulted in a practice of sanctioning customary norms on only an exceptional basis and recognizing only that international law in treaties to which the USSR was a party. Thus, Soviet domestic policy was marked by a dominant attitude of separation from the international community.\textsuperscript{93}

During Brezhnev's regime, the Soviet Union became more active in international attempts to codify customary law. In addition, its 1977 Constitution included a provision promising fulfillment of obligations arising from both customary international law and treaties. However, while Soviet officials vaunted these activities, they made little effort to actually incorporate them in Soviet domestic law and declined to provide guarantees that domestic law would comport with international norms or that foreign policy decisions would be based on international law, viewing compliance with international norms as primarily voluntary, particularly in the area of human rights.\textsuperscript{94}

Gorbachev, however, attempted to set a national policy to elevate the status of international law in domestic affairs. He recognized the political importance of ending the Soviet Union's separatist stance in relation to the international community and promulgated a compulsory attitude toward participation in international law, assigning top priority to bringing domestic legislation pertaining to human rights into compliance. In addition, his Foreign

\textsuperscript{93} See Ginsburgs, supra note 86, at 1-7.

\textsuperscript{94} See id. at 6-7.
Minister, Shevardnadze, extended this mandate to international law norms generally and engaged the country in a surge of international diplomatic initiatives. Again, however, old habits die hard, and actual domestic implementation of the new priority fell dramatically short of official promises.95

Marking the priority given to compliance with international human rights law, in 1991 the Soviet Union signed on to the Optional Protocol of the International Covenant on Civil and Political Rights, recognizing the authority of the Committee on Human Rights to accept individual petitions against it, showing “a revolutionary break with precedent”.96 In addition, it loosened further its hold on its sovereignty by declaring recognition of the competence of the Committee on Human Rights under Article 41 of that Covenant (allowing state petitions between states having made such declaration), of the Committee for the Elimination of Racial Discrimination under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing state petitions), and of the Committee against Torture under Articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (allowing state and individual petitions).97 On the other hand, however, domestic legislation and the Soviet Constitution failed to be revised regarding basic rights established in the conventions, for example, immigration and emigration procedures.98 However, the Soviet Union continued to include reference to international law, primarily conventional, in certain of its legislation99 until the attempted military coup to overthrow Gorbachev in August 1991. Although the coup was thwarted, out of the chaos of that event,

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95 See id. at 7-15.
96 Id. at 20.
97 See id. at 21-22.
98 See id. at 20.
99 See id. at 46-47.
leadership passed from Gorbachev to Yeltsin and the Soviet Union dissolved itself on September 5, 1991, but not before passing the Declaration of the Rights and Freedoms of the Individual, which stated:

Every person possesses natural, inalienable, and inviolable rights and freedoms. They are consecrated in the laws which must conform to the Universal Declaration of Human Rights, the International covenants on human rights, other international norms and the present Declaration.  

Interestingly, in April 1990, well before its dissolution, the USSR passed a Law on the Procedure of Deciding Questions Connected with the Exit of a Union Republic from the USSR. Its citizenship provisions continued the USSR’s new incorporational attitude toward international law and stated:

Article 15. Citizens of the USSR on the territory of the exiting republic are afforded the right of choice of citizenship, place of residence and employment. The exiting republic compensates all expenses connected with the resettlement of citizens outside the confines of the republic.

Article 16. In accordance with the generally recognized principles and norms of international law and the international obligations of the USSR, the exiting republic guarantees the civil, political, social, economic, cultural and other rights and freedoms of citizens of the USSR who remain to reside on its territory without any discrimination whatever on grounds of race, color of skin, gender, language, religion, political or other convictions, national or social origin, property status, place and time of birth.

Of course, this Soviet law was disregarded by the exiting Baltic Republics as incompatible with their theory of legal continuation of a previously existing state and their view that their occupation by the Soviet Union was illegal in the first instance, and thus Soviet law could not establish a legal regime in the renewed independent states.

**Russian Federation.** Upon the dissolution of the Soviet Union, the Russian Soviet Federative Socialist Republic (the Russian Federation or RSFSR), now fully sovereign and

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100 *Id.* at 47.
101 *Id.* at 147.
independent, continued and increased the trend to receive international law into its domestic law, resulting in a monist approach to international law. It adopted the Declaration of the Rights and Freedoms of the Individual and Citizen, which stated:

... universally recognized international norms relating to human rights have precedence over the laws of the Russian Federation and directly engender rights and duties for citizens of the Russian Federation.\textsuperscript{102}

Furthermore, this paragraph was included verbatim in the Constitution of the Russian Federation when it was amended in 1992. The Declaration also granted legal non-citizens largely the same rights and freedoms as well as duties as citizens.\textsuperscript{103}

Although the clause above gives primacy of international law over domestic law, many of the laws promulgated have included a reference also stating that primacy. Interestingly, however, the laws that are written in this manner have limited international application, for example, regarding domestic agriculture and husbandry, while laws that do have an international component, for example, dealing with political asylum, communications, contributions of personnel to peace-keeping operations, usually skip the primacy language.\textsuperscript{104} In addition, the Russian Federation law-making bodies have not comported with international law due to an apparent lack of expertise.\textsuperscript{105}

Regarding nationality, the Russian Federation, as the self-nominated natural heir to the USSR in many ways,\textsuperscript{106} continued its liberal attitude as set out in its 1990 Exit of a Union Republic Law toward the residents of its territory in enactment of its own Law on Citizenship in 1991. This law provided for the “zero-option” method: Russian citizenship was automatically

\textsuperscript{102} Id. at 47.
\textsuperscript{103} See id. at 48.
\textsuperscript{104} See id. at 102.
\textsuperscript{105} See id. at 106.
\textsuperscript{106} See id. at 154, 157.
accorded to all citizens of the former USSR residing in the territory of the RSFSR, unless within one year they demonstrated their desire not to take Russian citizenship.\footnote{See id. at 152.}

However, Russia's historical difficulty in implementing the international components of its laws manifested again, which difficulty has resulted in denial of citizenship to many ethnic Russians abroad, as well as to other ethnic minorities on Russian soil. For one thing, the RSFSR interpreted "residing on the territory" to apply to those who had a permanent residency permit as of February 6, 1992, which narrowed the category. It left out recent immigrants from other Soviet regions who had not yet achieved formal registration as legal residents, including those who had been compelled to leave their prior domicile. Many in this category received the status of refugees.\footnote{See id. at 153.} The numbers are not insignificant, with a heavy influx during the late 1980s and early 1990s. One source offers 929,000 migrants from the "near abroad" (former Soviet republics outside of the RSFSR) in 1992 and 923,000 in 1993, with 324,000 of the latter characterized as forced migrants, including refugees.\footnote{See id. at 153, fn 12.}

In addition, the authors of the law ignored the Red Army units, which the RSFSR inherited from the USSR, stationed outside the Russian Federation on the territories of the successor republics.\footnote{See id. at 154.} As we have seen, Latvia and Estonia specifically exclude this category of residents from eligibility for citizenship, unless they were prior Latvians or Estonians, resulting in statelessness for these persons and their families. This was not corrected until 1993 when the Russian Supreme Soviet passed a resolution including them in the Law on Citizenship.\footnote{See id. at 155.}
Another difficulty could arise because the application for Russian citizenship required an appended document confirming termination of the prior citizenship.\textsuperscript{112} A person could be rendered stateless if the Russian application is denied and the prior citizenship has already been terminated.

In the territories of the near abroad republics, the Russian Federation portrayed itself as home to Soviet citizens who desired a citizenship tie with it and thus legislated a simplified registration process at sites abroad at which the Soviet citizens could declare such a desire within three years (by 1995), provided they had not accepted other citizenship. In lock step with other Russian legislative implementation, however, those who wished to avail themselves of this citizenship found no mechanism in place to facilitate it. Only 60,000 people out of the 25-30 million ethnic Russians in the near abroad republics obtained Russian citizenship by the end of 1993 due to lack of the intended local offices. Some estimates show that in Estonia 100,000-200,000 people indicated a desire to obtain Russian citizenship had they not been stranded without recording outlets.\textsuperscript{113}

**Effects of Baltic and Russian Nationality Laws on Statelessness**

There are a morass of problems that have resulted from the narrow naturalization requirements of language proficiency and additional years of residency after 1990 in the Baltic Republics combined with Russian and Baltic administrative problems and political sensitivities. As discussed supra, Lithuania's early liberal naturalization policy resulted in 90% of non-indigenous permanent residents to obtain Lithuanian naturalization. Thus, Lithuanian Russian minorities escaped most of the problems experienced by Estonian and Latvian Russian minorities.

\textsuperscript{112} See id. at 157.

\textsuperscript{113} See id. at 157-159.
Estonia. The situation in Estonia is illustrative. Russian policies allowed former USSR citizens to register for Russian nationality but it must occur within three years, while Estonia’s exclusionary policy forced the non-indigenous population to find other citizenship or face statelessness. However, the Russian embassy was reluctant to grant ethnic Russians citizenship for fear of opening an exodus to Russia. The time came, however, that processing of applications could be delayed no longer, since the Russian Federation citizenship deadline was approaching. Thus, in 1994 and 1995, the Russian embassy in Estonia processed 80,000 passports. Estonia’s government interpreted this activity as a demonstration of the Russian Federation’s goal to establish “a Russian state within the Estonian state.” As George Ginsburgs, author of *From Soviet to Russian International Law: Studies in Continuity and Change*, points out, however, these unfavored people had no other option under the circumstances short of leaving *en masse*. As it was, as of early 1995, nearly 400,000 people were still in “legal limbo” as to whether they would become permanently stateless.

Ethnic Russians in Estonia had no good options in the first instance. Effectively denied citizenship in Estonia, where they had lived for decades or all their lives and had built up genuine and effective links to the Republic, it was not desirable to uproot and return to Russia, where they had lost their original links. Nor is it desirable to take Russian citizenship and stay in Estonia where non-citizens cannot own land and are subject to reduced rights. Consequently, ethnic Russians, originally settled there subject to Soviet “whim” and possibly against their own wills, were again victim to a system forcing them to choose between leaving the country of their

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114 See id. at 225.
115 Id. at 218.
116 See id. at 218-219.
effective links, staying with second class status, or staying with no status, no rights and no protection.

In 1995, Estonia was brought before the UN Committee on Human Rights which gave it a negative assessment noting that a substantial portion of the population was unable to gain Estonian citizenship due to “an excess of criteria set by law, strict requirements for language fluency, as well as lack of opportunity to contest administrative decrees denying naturalization.”117 In addition, it denounced Estonia for recognizing as national minorities only those holding Estonian citizenship, barring holders of permanent residency permits from full participation in national minority organizations. Furthermore, the State Duma of the Russian Federation called for economic sanctions against Estonia for political, legal, social and economic discrimination.118

Latvia. Latvia has also carried out an exclusionary policy with a similar interface with the Russian citizenship law, and similar results. For example, in 1995, under Latvia’s new citizenship law, 120,000 of the 660,000 non-citizens applied for citizenship. Approximately 116,000 were disqualified due to age—no one was accepted over the age of 65—or failure to pass the exams in Latvian. Of the 3,787 people who were not disqualified, 2,361 submitted new applications, but only 810 actually received citizenship. Given the incredibly poor odds of success, 15-17% of the total population of Latvia moved to the Russian Federation by early 1996. The remaining non-Latvian populations remain stateless. However, populace-wide problems often are “solved” by the populace; the black-market is flourishing where Latvian passports go for $650-700 US, as compared to $25 US for a Russian passport at the Russian embassy.

117 Id. at 220.
118 See id.
Status of Compliance with International Law

Lithuania. Despite not being a signatory of the Convention on the Reduction of Statelessness of 1961, Lithuania comes closest of all the Baltic States to fulfilling the goal of that treaty. As discussed supra, 90% of non-indigenous non-citizens requested and were granted citizenship under Lithuania's early naturalization law. The remaining 10% were subject to a quite restrictive law which precluded anyone sentenced to imprisonment, chronic alcoholics and drug addicts, and anyone ill with especially dangerous infectious diseases. This last policy derogates from the goals of the treaty. Certainly, it would seem that Lithuania essentially fulfills the customary norm that everyone has a right to a nationality and the Universal Declaration's proscription of discrimination.

Latvia. It is interesting to note that Latvia is the only one of the Baltic States that is a signatory to the Convention on the Reduction of Statelessness of 1961. As described above, the Convention obliges a state party to “grant its nationality to a person born in its territory who would otherwise be stateless” (Article 1) and to grant nationality to a person not born in its territory, but has a parent who has nationality, if the person would otherwise be stateless (Article 4). It is fair to say that, to the extent that ethnic Russians would be unable to obtain Russian citizenship, Latvia would be in violation of its obligations under that treaty.

It may also be pointed out that ethnic Russians outside the Russian Republic held Soviet citizenship, but generally were not Russian citizens under Soviet law. Although the Russian Federation is considered heir to the USSR in many respects, it is not considered a continuation of the USSR for purposes of nationality, and thus may not simply confer its nationality on the

nationals of other states without their consent.\textsuperscript{120} Ethnic heritage or descent, in the absence of other links, arguably are not strong enough effective links to overcome those of persons who were born and reside in Latvia and call it their home. Thus, it could be argued that, under the concept of effective nationality, other states would be under no obligation to recognize attempts to justify imposition of Russian nationality on the ethnic Russians of Latvia.\textsuperscript{121}

\textit{Estonia.} Estonia, on the other hand, is not party to the Convention and thus is bound only by customary international law. As described above, although the broad right to a nationality can be identified, prohibition of a state to allow statelessness to occur is still aspirational under customary international law. Thus, Estonia’s policies cannot be considered explicitly illegal. However, it is subject to the same effective nationality argument that Latvia is. Perhaps due to the effective nationality concept and the United Nations’ increasing tendency toward recognition of the obligation of states to prevent statelessness, as discussed above, it is under international pressure, from Russia and the United Nations, to solve its statelessness problem.

\textbf{Conclusion}

The Baltic States situation demonstrates a type of statelessness that results from the disappearance of the state of origin, leaving ethnic minorities in the territory of successor states, which states establish policies biased toward their indigenous population. The three states have established varying policies regarding naturalization of stateless members of ethnic minorities. Lithuania has established extremely liberal naturalization laws, in effect recognizing genuine and effective links of the ethnic minorities. However, in the particular cases of Latvia and Estonia, naturalization policies are born from resentment of the ethnic minorities, who are associated with

\textsuperscript{120} See id. at 352-353.

\textsuperscript{121} See id. at 353.
a prior aggressor state that attempted to replace their languages and cultures. Perhaps it could be
said that these countries wish to deny the existence of genuine and effective links.

The United Nations' approach to the problem has been to recognize Russian citizenship
when an individual has chosen it, but takes the position, in this case, that the ethnic minorities
should be naturalized by the state of permanent residence and has thus condemned the
inflexibility in Latvia's and Estonia's naturalization laws. Thus, it continues to exert pressure on
them to eliminate the condition of statelessness among their inhabitants.

The Palestinians

Twentieth Century History of Palestine

Prior to World War I, the area known as Palestine was ruled by the Ottoman Empire and
identified with the larger Arab region. Palestinians were descended from the ancient Canaanites,
who for as long as recorded history constituted the majority population of the region.\textsuperscript{122} They
were primarily agricultural, and thus stationary, in contrast to other Arab groups who were
nomadic. After World War I, Western powers split up the Ottoman Empire and assigned a
number of areas under the new League of Nations mandate system, a system of trust oversight by
Western powers of less developed areas until the areas could operate independently. Palestine
was considered to be an “A” Mandate, by which was meant that it was categorized as a
community developed enough to deserve provisional recognition as an independent nation,
subject to administrative advice to be given by a Mandatory state (supervising state) until it was
able to stand on its own.\textsuperscript{123}


\textsuperscript{123} Omar M. Dajani, Stalled Between Seasons: The International Legal Status Of Palestine During The Interim
However, in contradiction to the terms of the League of Nations Covenant establishing the terms of handling an "A" Mandate country, the League of Nations assigned Great Britain as Palestine's Mandatory without Palestine's consent. In addition, the Mandate submitted by Great Britain and approved by the League of Nations Council established a mandate control level appropriate for a less developed community. Furthermore, the Mandate incorporated terms of the Balfour Declaration\textsuperscript{124} and thus included the goal of establishing a "Jewish national home" within the territory of Palestine.\textsuperscript{125} This goal was to be facilitated by "placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home" and establishing terms for the creation of a Jewish agency "to assist and take part in the development of the country".\textsuperscript{126}

In 1922, the population of Palestine consisted of 90% indigenous Arabs and the remainder Christians and Jews.\textsuperscript{127} The Mandate originally contemplated the eventual establishment of a single state with a single nationality law providing for acquisition of citizenship by Jews who took up residence in Palestine.\textsuperscript{128} However, the British Mandatory Government also established liberal Jewish immigration policies in support of its commitment to creation of a Jewish national home.\textsuperscript{129} Under this program, by 1947, the Jewish population

\textsuperscript{124} The Balfour Declaration was a letter issued during World War I by British foreign secretary Arthur James Balfour, expressing the British government's approval of Zionism with "the establishment in Palestine of a national home for the Jewish people." The immediate purpose was to win support for the Allied cause of Jews and others in the warring nations and neutral countries, such as the United States. \textit{See} Encarta Online Concise Encyclopedia, <http://encarta.msn.com/find/Concise.asp?z=1&pg=2&ti=038B9000&oe=1>; WILLIAM BRIDGwater, ED., \textit{THE COLUMBIA-VIKING DESK ENCYCLOPEDIA} 75 (1953).

\textsuperscript{125} Dajani, \textit{supra} note 123, at 35.

\textsuperscript{126} \textit{Id.} at 35, fn 40.

\textsuperscript{127} \textit{See id.} at 35.

\textsuperscript{128} \textit{See id.} at 37.

\textsuperscript{129} \textit{See id.}
constituted 30% of the Palestinian population. This rapid growth and the policies supporting it aroused resentment in the indigenous Palestinians who identified with the broader Arab nation and feared coming under the rule of European immigrants.

By 1937, with ten years left before the Mandate expired, tensions had become increasingly violent and Britain recognized that the conflict was “irrepressible”. Thus, it recommended partitioning the country into separate Jewish and Arab states, incorporating the latter into Transjordan. This inflamed emotions of both Zionists and Arabs, the Zionists feeling that the territory allotted them was too small, the Arabs objecting to Britain’s right to break up the country at all. Britain abandoned the idea, declaring its goal for an “independent Palestine state” within ten years. However, relations between the Arabs and the Zionists continued to deteriorate.

In 1947, Britain returned the Mandate to the United Nations, acknowledging it could not impose a settlement in Palestine. The United Nations recommended partition into three sections—Arab, Jewish and an “international enclave” surrounding Jerusalem—to come into effect two months after withdrawal of Britain’s armed forces. Although Palestinian Arabs and many Zionists rejected the plan, the United Nations General Assembly nevertheless endorsed it.

Upon the British exit, the Zionists established control over the territory allocated them by the United Nations plan, as well as some allocated to the Arab state. On May 14, 1948, they declared the establishment of the State of Israel. After its independence, it took over more of the Arab allotment. By the time armistice was established, Israel’s official boundaries included 80%
of Palestine, the West Bank and Gaza remaining under Arab control, less than the United Nations' recommendation. Israel then occupied these last areas in 1967 and continues to do so today.

**Statelessness of Palestinians**

Prior to 1948, the Palestinian Arab population of the area that came to be Israel was 900,000. During the hostilities of that takeover, 85% of that population, or about three-quarters of a million, became refugees in other states, 300,000 of which having already departed by the day of the declaration of independence. During the 1967 hostilities, 350,000 Palestinians, approximately one-quarter of the population of West Bank and Gaza, fled these areas into neighboring states. Israel has never permitted these individuals or their descendants to return, nor are they allowed citizenship in Israel, thus the majority of them are stateless.

The reasons for departure have been contested. The Arab view is that, in 1948, the Zionists forced them out with violent attacks and bombings, "terrorism, repression and forcible ejection," as well as by "psychological warfare," frightening them out by intimidation, whispering campaigns and false rumors of cholera and typhus outbreaks in Arab areas. The Israeli view has traditionally been that the Arabs organized themselves and left voluntarily as part of Arab war plans. However, with the recent committed approach to achieving peace in

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135 See id.
137 See id. at 173.
138 See Quigley, supra note 130, at 225.
139 See Quigley, supra note 136, at 177.
140 See id. at 181.
141 See Quigley, supra note 130, at 179-180.
142 See Quigley, supra note 130, at 229.
the Middle East, Israel has embraced a new history to teach its children more in line with the Arab view. Expulsions continued into the early 1950s with Israel trucking Palestinians to the border and forcing them to cross it. Israel also denies causing the 1967 exodus; however, the U.S. State Department documents that Israeli air strikes hit “many” civilian targets on the West Bank despite there being no military placements there.

Israeli citizenship laws are focussed on its self-identification as a Jewish state. These laws underlie further legislation whose purpose is to prohibit the election to the Knesset of any candidates, or the tabling of any bills, that “reject the existence of the State of Israel as the State of the Jewish people”, to incorporate Jewish religious law into Israeli law, and to undermine the economic viability of non-Jewish citizens. In 1950, Israel passed the Law of Return, which gave every Jew worldwide the right to immigrate to Israel. Then in 1952, the Nationality Law was passed which automatically conferred citizenship on any Jew who settled in Israel. Palestinian Arabs who were displaced in 1948 could not return because the Nationality Law only permits acquisition of citizenship by [non-Jewish] persons who proved “continuous residence from May 14, 1948 to July 14, 1952, or who legally returned during that period, if, in addition, the person registered as an inhabitant by March 1, 1952.” Furthermore, the Israeli government allowed few Arabs to return legally, taking the stance that the Arabs who departed in 1948 did so

145 See Quigley, supra note 136, at 184.
146 See id. at 181-182.
147 See Quigley, supra note 130, at 226.
148 See id. at 227.
149 See id. at 221-251.
150 Id. at 228-229.
because they were working against Israel.\textsuperscript{151} Moreover, citizenship was denied for many Arabs who never left because they could not prove residency to the satisfaction of authorities, leaving these persons and their children stateless.\textsuperscript{152}

Under pressure from the United Nations, Israel revised its Nationality Law in 1968 granting citizenship to stateless children who applied between the ages of 18 and 21 and had not been convicted of a security offense or sentenced to a term longer than five years imprisonment.\textsuperscript{153} In 1980, it was amended again to eliminate the requirement for residency between 1948 and 1952 for residents of Israel and granted them citizenship if they were citizens of Palestine at the time Israel was established, although still excluding any Palestinians who were permanent residents of Palestine at the time or who lacked sufficient proof of citizenship. Thus, a majority of Palestinians residing within the bounds of Israel have gained nationality\textsuperscript{154} (although with fewer services and protections than Jewish citizens). No Palestinians residing outside Israel are deemed to have a right to Israeli citizenship, ostensibly due to, \textit{inter alia}, security concerns.

The displaced Palestinians went to neighboring countries, taking up residence in refugee camps or within general communities. Each of these states has taken a different position as to the presence of the stateless Palestinians, only two of which states have offered citizenship, Iraq

\textsuperscript{151} See id. at 229.

\textsuperscript{152} See id. at 229-230.

\textsuperscript{153} See id. at 230.

\textsuperscript{154} Despite acquisition of citizenship, however, distinctions between Jews and non-Jews have remained, dictating different legal routes for acquisition of citizenship. See id. Jewish citizens and Arab citizens have distinctly different services and protections, with Jewish citizens being eligible for more beneficial land-ownership schemes, banking privileges, and social welfare benefits than Arab citizens. See id., at 221-251. Professor Quigley describes this situation as apartheid. In addition, Arabs comprise only 17% of the electorate, which includes the 100,000 Arabs of East Jerusalem, most of whom do not vote because of refusal to recognize Israel's jurisdiction over this area. See id., at 239. However, these discrepancies are beyond the scope of this paper.
(who offers citizenship to any Arabs who apply) and Jordan (to residents of West Bank and Gaza), and thus the majority of these refugees and their children remain stateless.

However, Jordan’s grant of citizenship has since been revoked. In 1954, Jordan granted citizenship to those Palestinians who were residents of the West Bank and Palestinians already within the borders of the rest of Jordan, as a result of its 1950 annexation of the West Bank. Palestinians holding citizenship enjoy the same rights as all other Jordanians, but non-citizen Palestinians, including those from Gaza who fled during the 1967 war, are not allowed to vote, hold public-sector jobs, or own property. However, they are issued two-year passports to enable them travel.

However, Jordan’s parliament specified that the annexation would “in no way be connected with the final settlement of Palestine’s just cause,” i.e., the future emergence of a Palestinian state. Thus, it is viewed that the Palestinians were “only provisionally placed under Jordanian sovereignty.” Jordan followed through on this provisional stance in 1988, when it renounced its claim to the West Bank in keeping with the decision of the Palestine National Council, constituted by representatives from Middle Eastern Arab states, to declare a Palestinian state. Under that renunciation, Jordan narrowed its passport policies and when, in 1995, the

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156 See id.


159 See Zureik, supra note 155.

160 See USCR, supra note 158.

161 Quigley, supra note 136, at 216-217.

162 See id. at 217.
West Bank and Gaza began issuing Palestinian passports, Jordan revoked its passports from Palestinians who moved to the self-rule areas.163

As an example of the magnitude of the Palestinian plight, at the end of 1997, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)164 had 1,413,252 Palestinian refugees registered, the United Nations High Commissioner for Refugees (UNHCR) had 763, and Jordan estimated an additional 800,000 “displaced persons” residing within it. (UNRWA does not track how many Palestinian refugees have Jordanian citizenship because it considers it irrelevant for its mandate.) Palestinian citizens of Jordan are now an outright majority in Jordan.165 The money available for the educational and medical services that UNRWA provides has remained constant despite a growing service population. Since 1993, it has been in financial crisis. As a result, Jordan has been spending more for such services for the Palestinians itself, but is concerned that such participation may imply to the international community an acceptance of the refugees contrary to its commitment to U.N. Resolution 194 (III), resolving that Palestinians should be returned to their homes.166

Other states, however, have declined to offer citizenship to Palestinians at all and each demonstrates a different policy toward hosting the Palestinians. Lebanon is the most restrictive, implementing objectives such as “redistributing” them to other Arab countries; severing links between refugee camps; not allowing them to work, thus relegating them to the “informal economy” where they are exploited through low pay and exempt from unemployment and welfare benefits; and “refusing to establish a legal and administrative framework ... which

163 See USCR, supra note 158.
164 Established in 1948 by the UN to provide protection and refugee relief services to Palestine refugees, as discussed further infra.
165 See USCR, supra note 158.
166 See id.
would define ... the status of the Palestinian refugees.”167 They are also denied free education (however, those eligible for UNRWA receive it through that agency until grade nine).168

In Syria, conditions for Palestinians are more favorable. They enjoy equal access to government social benefits, education and employment opportunities; however, they lack political rights. They may own one house, but no arable land and may not participate in politics.169 In Egypt and the Gulf Countries, the rights proffered Palestinian refugees have ebbed and waned since the 1948 exodus, with earlier periods of good employment, liberal travel allowance, and access to public services and later periods with many of those rights and benefits rescinded.170 Libya accorded Palestinians good access to work, but in 1995 abruptly changed its policies and expelled a significant portion of that population. Expellees were mostly turned away from other Arab countries and the West Bank and Gaza and now live in refugee camps along the Libyan-Egyptian border.171 In the North African countries of Morocco, Tunisia and Algeria, all signatories to the 1951 Convention on the Status of Refugees, Palestinians are well incorporated into their economies. Agreements between the PLO and the governments regulate their presence, and permits are coordinated between the PLO and the host government. However, Palestinian populations in these countries are small.172

United Nations Position

After the May 1948 declaration of the State of Israel, the United Nations General Assembly passed Resolution No. 194 (III) of 11 December 1948 in which it established a

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167 Zureik, supra note 155.
168 See id.
169 See id.
170 See id.
171 See id.
172 See id.
Conciliation Commission constituted of representatives of Turkey, France and the United States.\textsuperscript{173} The resolution stated the General Assembly’s position that those Palestinian refugees who desired it should be restored to their homes and that compensation should be paid for damage and property lost and to those refugees who did wish to return.\textsuperscript{174} It also established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to provide protection and refugee relief services to “Palestine refugees” and their descendants, who are defined as “any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both his home and means of livelihood as a result of the 1948 conflict.”\textsuperscript{175}

There are also many Palestinians who do not fall into that definition of Palestine refugees but who are nonetheless without Israeli or Palestinian residence or nationality. In addition are those displaced by the 1948 war who:

- went to states not included in UNRWA’s territorial jurisdiction, such as the Gulf States and North Africa;
- were internally displaced but whose situation has not been resolved by Israel;
- were outside the British Mandatory Palestine when the war broke out and were not permitted to return;
- sought refuge in 1948 but did not register with UNRWA due to pride.

Other displaced Palestinians are those who subsequently left Israel to study, work, visit relatives, etc., and were not permitted to return once their Israeli-issued residency permits expired (known as “latecomers”), and those who fled or were absent from West Bank and Gaza when the 1967

\textsuperscript{174} See id., ¶ 11, at 24.
\textsuperscript{175} Zureik, supra note 155.
war broke out or who were subsequently deported from those territories. Thus, the United Nations High Commissioner for Refugees is involved in advocacy for these categories.\textsuperscript{176}

Subsequent to the Six Day War in 1967, the United Nations took a stronger stance on behalf of the Palestinian stalemate. In a series of resolutions beginning in 1969, the United Nations has progressed from its position affirming repatriation of refugees to a declaration recognizing Palestinian Arabs as a "people",\textsuperscript{177} applying to them the appellation "the Palestinians"\textsuperscript{178} and recognizing the Palestine Liberation Organization (PLO) as their representative.\textsuperscript{179} Further, the resolutions explicitly affirm that the Palestinians have a right to self-determination\textsuperscript{180} and recognition, by both the General Assembly and the Security Council, that Israel is belligerently occupying foreign territories with regard to the Occupied Palestinian Territories (OPT).\textsuperscript{181}

The Oslo accords, the series of agreements between Israel and the PLO in 1993, 1995 and 1997, were intended to begin peaceful negotiation of the status of the West Bank and Gaza.\textsuperscript{182} They brought into being the Palestinian Authority (PA), recognized as the interim Palestinian

\textsuperscript{176} See id.


\textsuperscript{182} See id. at 60-61.
self-governing authority for portions of the OPT. However, the accords make no provision for repatriation of the Palestinian refugees.

Israel's Level of Compliance with International Law

The arguments in favor of the Palestinians' right to return take two compatible forms: first, the "right of return", i.e., they have a right to be repatriated to their former homes, wherever located within the bounds of the State of Israel or the Occupied Palestinian Territories (OPT); and second, the right to self-determination within the OPT. John Quigley, Professor of Law at Ohio State University, has provided an excellent analysis of Palestinians as nationals of Palestine with a right of return, irrespective of whether their exodus was voluntary or coerced, under international law, human rights law and humanitarian law. This includes answering Israel's challenges to the assertions of its obligations to repatriate, and an analysis of the legal consequences of coerced departure.

Professor Quigley establishes Palestinians' nationality by pointing out that since World War I, the international community has insisted that all new states must respect the nationality of the inhabitants. This is further supported by the recent work of the International Law Commission, as discussed supra, which stated that a new state must extend its nationality to the inhabitants. This position is supported by customary international law, also as discussed supra. Professor Quigley then extends this principle to a mandate territory, stating that there is no difference regarding nationality despite the factual difference. Inhabitants of a mandatory territory are not stateless; although the sovereignty of the territory is "in abeyance", the

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183 See id.
184 See Quigley, supra note 122, at 288.
185 See, generally, Quigley, supra note 136.
186 See id.
community is still a “subject of international law” as a beneficiary of the mandatory trust arrangement.\(^\text{187}\) That Britain and the League of Nations recognized this is clear: the inhabitants of mandate territories were not considered nationals of the mandatory governments, which governments recognized a mandate nationality in concordance with the mandate goal of political independence.\(^\text{188}\) In this case, Britain created a Palestine nationality, issuing Palestinian passports.\(^\text{189}\) Furthermore, state practice suggests that the “inference of nationality applies to all who carry the nationality of the prior state, regardless of their where-abouts on the date of transfer of sovereignty.”\(^\text{190}\)

International law admits of an obligation of a state to honor a right of return for displaced nationals, both on the state-to-state level and on the state-to-individual level.\(^\text{191}\) On the state-to-state level, a host state is under no obligation to receive another state’s nationals. Indeed if a state refuses to re-admit its own national, the host state’s rights may be violated, since it is entitled to control alien residence in its territory.\(^\text{192}\) On the state-to-individual level, under human rights law, an individual has a right of return, regardless of a waiver by the host state. This is established, \textit{inter alia}, by the Universal Declaration of Human Rights (Art. 13(2)),\(^\text{193}\) the International Covenant on Civil and Political Rights (Art. 12(4))\(^\text{194}\) and the International

\(^{187}\text{Id. at 208-209.}\)

\(^{188}\text{See id.}\)

\(^{189}\text{See id. at 209.}\)

\(^{190}\text{Id. at 210.}\)

\(^{191}\text{See id. at 194.}\)

\(^{192}\text{See id.}\)

\(^{193}\text{See Universal Declaration, supra note 30, art. 13(2).}\)

\(^{194}\text{See CPR Covenant, supra note 31, at 176.}\)
Convention on the Elimination of All Forms of Racial Discrimination (Art. 5(d)(ii)). Israel is a party to both conventions.

In addition, the United Nations considers Israel’s occupation of the OPT to be belligerent, as discussed supra, and thus humanitarian law guarantees a right of repatriation of those entitled to it. Professor Quigley points out that the Hague Regulations on the law of war require an occupying state to respect and maintain “public life” in the occupied state, which would require the participants of that public to be returned. In addition, the 1949 Geneva Convention pertaining to civilians requires a belligerent occupant to ensure the rights of “protected persons”, defined as those who at any time and under any circumstances “find themselves … in the hands of a[n] … Occupying Power of which they are not nationals” even if they are temporarily absent.

However, it is argued that Israel’s obligation to the Palestinians’ right of return are limited in a number of ways. Professor Quigley addresses six of these proposed limitations, each of which he disputes:

1) Return of displaced Palestinians would be a security threat to Israel. Some commentators interpret Article 29(2) of the Universal Declaration to permit suspension of...
rights on security considerations. However, if it does, the International Covenant on Civil and Political Rights only permits limitation on the “right to enter his own country” (Article 12(4)) during a declared emergency (Article 4), rather than due to security considerations. Furthermore, despite any limitations allowed by human rights or humanitarian law, the law of nationality provides its own limits. Under this law, a host state has no obligation to accommodate another state with security problems by keeping the other state's nationals.

2) *Israel is permitted to suspend its obligation under a declared emergency.* Israel has held a declared state of emergency since 1948. Accordingly, it made reservations to its ratification of the International Covenant explaining its state of emergency and only holding the option of derogating from Article 9 (pertaining to detention and arrest), thus not preserving a right to derogate from Article 12(4) regarding right of return. Thus, if it should ever decide to make such a declaration, it would have to state why keeping the Palestinians out would be “required by the exigencies of the [emergency] situation”, which may prove difficult to uphold.

3) *The displaced Palestinians indeed are not nationals.* The argument against this, addressed *supra*, states that Palestinians are nationals under customary international law because the post-World War I international community has insisted that new states respect the

202 This author reads Article 29(2) more as a justification of “affirmative action” policies and the normal justification for criminal legislation. In other words, the first part refers to an allowance of the state to infringe on one person’s rights and freedoms only in order to enable recognition of equal rights and freedoms for others who otherwise may not exercise them. The second part refers to the necessity of limiting exercise of rights and freedoms to the extent that they impinge on the essential well-being of others, allowing for standard laws such as the prohibition against murder, etc.


204 See *id.* at 202.

205 See *id.* at 204-204.

206 *Id.* at 204.

207 See discussion *supra*, p. 42.
nationality of inhabitants. The argument goes on to say that a mandatory state is no different in this respect than a sovereign state.

4) **International law provides no obligation to return large displaced populations.** However, while international instruments set out the right of return as an individual right, not a group or collective right, one cannot argue that a group is not comprised of individuals. Even if one could, the question remains how one would set a meaningful limit on how many individuals are required to cut off their rights as individuals. Furthermore, the instruments do not refer to isolated individuals and contain no text providing exceptions regarding groups. Moreover, state and U.N. political organ practice has had ample experience with group displacements and has consistently held in favor of group repatriation, one example of several being the Security Council’s resolution that South Africa unconditionally repatriate all Namibians in political exile.

5) **Israel is not obligated to admit Palestinians who have obtained new nationalities.** However, the only significant granting of citizenship has occurred in Jordan and, as discussed supra, was as a result of its annexation of the West Bank and was only provisionally granted, having phased out its nationality in the West Bank. Furthermore, the U.N.’s position as shown by the mandate for UNRWA is that citizenship is irrelevant, since the U.N. has called for repatriation, not for resettlement.

6) **Israel may deny return if Arab states mistreat their Jewish inhabitants.** Under international law, a state may engage in countermeasures if another state violates its rights.

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208 See id. at 211-212.
209 See id. at 212-216.
210 See id. at 215.
211 See id. at 216-217.
212 See discussion, supra.
However, putting aside an analysis of whether Jews are indeed being ill-treated in other states, countermeasures are subject to limitations. They may only be directed at the state who is committing the violation, limiting Israel’s exercise against specific host states, rather than Arab states as a whole. Countermeasures must be proportional, and thus denying a right of return to Palestinians may not be commensurate with a violation of Jews’ rights in some fashion. Countermeasures may be taken only in response to a violation that adversely affects the first state, thus requiring Israel to sustain the premise that its rights as a state were violated. Countermeasures may not violate “basic human rights” or peremptory norms, thus requiring Israel to overcome a general international presumption that right of entry into one’s state is “basic.” Thus, if Jews are mistreated in other countries, Israel’s blanket denial of the right of return to the Palestinians is not a viable countermeasure.213

Furthermore, under the facts of a coerced departure, i.e., expulsion, Israel violates the law of nationality, human rights law, and humanitarian law. Even if it were to be argued that the expulsion was not state policy, the state would be responsible on the basis of respondeat superior.214

Conclusion

Whereas the Baltics showed a case of statelessness that can be characterized as the "disappearance" of the state of origin, the Palestine/Israel situation demonstrates a cause of statelessness that can be characterized as the "displacement" of the state of origin. In this situation, an insurgent minority group takes over a majority of the territory of a state, in this case a transitional one, resulting in flight of the majority population beyond territorial borders. In this particular case, since the territory was “between governments” and for other reasons, the larger

214 See id. at 219-223.
international community tolerated the establishment of a “Jewish homeland” state, which legislated nationality laws inclusive of any Jew in the world and exclusive of residents of the territory who were Arab. This case is also exacerbated by Israel's later takeover of the remaining Palestinian territory, which created another wave of flight to neighboring countries. The United Nations has taken the position since the beginning that the Palestine Arabs who wished to must be allowed to return. In the face of Israel’s 1967 takeover and Palestinian perseverance in asserting their right of self-determination, the United Nations took the position that Israel’s occupation was illegal and Palestinians have a right of self-determination. However, it also maintains that Palestinians have a right of return to their original homes wherever they were in Israel and has pressured Israel to expand its nationality laws to include them. Thus far, most resident Palestinians have obtained citizenship, but Israel has not granted it to any but a very few refugees, leaving the rest stateless.

One commentator has suggested as a solution granting dual citizenship—Palestinian-Jordanian, Palestinian-Syrian, etc.—as a means to “facilitate Palestinians’ future right to travel to and perhaps eventually settle in an independent Palestinian state” without imposing the “destabilizing and impractical” effects of an immediate, mass return.215 This may have problems, such as, for instance, Jordan’s position that the Arab League bars dual Arab nationality.216 However, this author can envision a situation that could characterized as an "emergent nationality." This would be where the PLO joins with the host countries, as it does in other matters, to create a regime in which Palestinians are given Palestinian nationality via other states. Since the Palestine National Council has declared a Palestinian state, rather than

216 See USCR, supra note 158.
instituting a dual nationality regime, the PLO could "contract" with Council member states to provide documentation as well as state protection until Palestine is able to do so. Thus, a Palestinian refugee could be granted a nationality of "Palestinian in Jordan" or "Palestinian in Syria" by the PLO via the host state. This would augment diplomatic recognition of the Palestinian state and put the refugees on equal footing with host state citizens, without compromising the cause of Palestine or encumbering the host state with additional nationals on a permanent basis.

III. CONCLUSION

It is difficult to separate the legal stance taken by the United Nations vis-à-vis a particular group of stateless from the history and cause of the group's statelessness. In the Baltic situation, the ethnic minorities migrated to a particular Baltic State under citizenship of a federal state that was later dissolved, leaving them stateless. In the meantime, these minorities have established genuine and effective links to the Baltic State. The situation for the Palestinians can be seen as opposite. They fled or departed from their home state under conditions where the ethnic minority took power and then denied citizenship to the refugees under the argument that they were never nationals of the new state. The genuine and effective links of most of the Palestinians remain in their state of origin.

In the Baltic situation, the United Nations has exerted pressure on the Baltic States to naturalize the stateless ethnic Russians residing within the state, supporting the desires of the stateless individuals. In the Palestinian situation, although the United Nations made efforts toward naturalization of the refugees by the host states, it did so as a complement to its efforts to convince Israel to allow them to return and as a practical measure to connect the stateless to the most basic of rights. Its latest efforts have been toward helping to negotiate a separate
Palestinian territory as well as to allow refugees originating from elsewhere in Israel to be repatriated if they desire it, supporting the desires of the stateless individuals.

What the two situations have in common is consistency of recognition by the international community via the United Nations that not only does everyone have a "right to have rights" through a nationality, but, effectively, that an individual's nationality should be determined by his or her genuine links to a particular state. Arguably, these genuine links may be determined at least in part by subjective priorities and self-identification to the community of a particular state, since the Universal Declaration asserts a right to no "arbitrary interference with [one's] ... family [and] home"; the right to "leave [one's] country, ... and to return"; the value that the "family is the natural and fundamental group unit of society and is entitled to protection"; and the recognition that an individual may have a "community in which alone the free and full development of his personality is possible". These rights and values can be seen to embody the concept that at least a part of one's human identity is established according to one's family, one's house, and one's personal affinity for a particular community, or in other words, according to one's "home". Perhaps it can be viewed that the Universal Declaration, and increasingly broader international law, recognizes that an integral part of nationality and human dignity is a subjective identification of nationality through identification of "home".

In this author's view, the first priority of international law must be to ensure that everyone has a nationality, whether based on his or her effective links or not. Statelessness is an existence "between worlds" and creates a situation where one's "human rights" are not derived

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217 See Universal Declaration, supra note 30, art. 15(1).
218 Id., art. 12.
219 Id., art. 13(2).
220 Id., art. 16(3).
221 Id., art. 29(1).
from one’s status as a human being, but instead do not exist *per se* since, in practical terms, rights are conferred through nationality. Where citizens of a particular state generally share common abilities to access work and benefits, to exercise their rights, and to call upon protections, the stateless are a subclass alienated from those basic abilities. International law appears to be stepping over the fulcrum toward enough of an infringement upon state sovereignty to obligate states to confer nationality as shown by the Status Convention, the Reduction Convention, and Draft Articles.

However, in addition, the Twentieth Century has provided new challenges to “being at home”. National affairs affect the common person more than in the past due to increased state involvement in communities and support of individuals, as well as increased technology to effectuate state goals. The results are mass relocations, mass de-nationalization, mass flight—in short, mass evictions, either from home and community or from access to the state’s legal regime. Perhaps a reactionary trend has begun that will evolve into a right to determine nationality through genuine and effective links as defined by the subjective criteria evinced by the Universal Declaration.

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222 See discussion *supra*, pp. 7-8.
223 See discussion *supra*, pp. 8-9.
224 See discussion *supra*, pp. 10-11.