

Expert Meeting

Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children

Summary Conclusions

Expert meeting convened by the Office of the United Nations High Commissioner for Refugees and the Open Society Justice Initiative, Dakar, Senegal, 23-24 May 2011

The third in a series of expert meetings on statelessness, convened in the context of the 50th anniversary of the 1961 Convention on the Reduction of Statelessness (1961 Convention), this event focused on interpreting Articles 1 to 4 of the 1961 Convention and the safeguards contained therein for preventing statelessness, particularly among children.¹ Professor Gerard-René de Groot prepared a background paper for the meeting. Thirty-three participants from eighteen countries with experience in government, NGOs, academia, the judiciary, the legal profession and international organizations contributed to the debate and conclusions.

The meeting discussed the grant of nationality to persons, particularly children, who would otherwise be stateless and who are either born in the territory of a State or born to a State's nationals abroad. A significant part of the discussion examined when a child, or person, is "otherwise stateless" for the purposes of the Convention. The discussion also addressed the grant of nationality to foundlings and the extension of the territorial scope of the Convention to ships and planes flying the flag of the State party concerned. Throughout the meeting, participants looked at the obligations arising under the 1961 Convention in light of universal and regional human rights treaties. The following summary conclusions do not necessarily represent the individual views of participants or those of UNHCR, but reflect broadly the key understandings and recommendations that emerged from the discussion.

¹ UNHCR has convened a series of expert meetings on statelessness doctrine in the context of the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. The discussions are in preparation for the drafting of guidelines under UNHCR's statelessness mandate on the following five issues: (i) the definition of a "stateless person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons; (ii) the concept of *de facto* statelessness; (iii) procedures for determining whether a person is stateless; (iv) the status (in terms of rights and obligations) to be accorded to stateless persons under national law; and (v) the scope of international legal safeguards for preventing statelessness among children or at birth.

Impact of International Human Rights Norms on the 1961 Convention

1. Article 15 of the Universal Declaration of Human Rights establishes the right of every person to a nationality. This right is fundamental for the enjoyment in practice of the full range of human rights. The object and purpose of the 1961 Convention is to prevent and reduce statelessness, thereby guaranteeing every individual's right to a nationality. The Convention does so by establishing rules for Contracting States on acquisition, renunciation, loss and deprivation of nationality.
2. The provisions of the 1961 Convention, however, must be read in light of subsequent developments in international law, in particular international human rights law. Of particular relevance are treaties such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC) and the 2006 Convention on the Rights of Persons with Disabilities. Regional human rights instruments, such as the 1969 American Convention on Human Rights, the 1990 African Charter on the Rights and Welfare of the Child, the 1997 European Convention on Nationality, the 2004 Arab Charter on Human Rights, the 2005 Covenant on the Rights of the Child in Islam, and the 2006 Council of Europe Convention on the avoidance of statelessness in relation to State succession are also relevant.

Paramount importance of the Convention on the Rights of the Child and regional human rights treaties that recognize the right of every child to acquire a nationality

3. The CRC is of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children. All save two United Nations Members States are party to the CRC. All Contracting States to the 1961 Convention are also party to the CRC.
4. Several provisions of the CRC are important tools for interpreting Articles 1 to 4 of the 1961 Convention. CRC Article 7 guarantees that every child has the right to acquire a nationality while CRC Article 8 ensures that every child has the right to preserve his or her identity, including nationality. CRC Article 2 is a general non-discrimination clause which applies to all substantive rights enshrined in the CRC, including Articles 7 and 8. CRC Article 3 also applies in conjunction with Articles 7 and 8 and requires that all actions concerning children, including in the area of nationality, must be undertaken with the *best interests of the child* as a primary consideration.
5. It follows from CRC Articles 3 and 7 that a child may not be left stateless for an extended period of time. The obligations imposed on States by the CRC are not only directed to the country of birth of a child, but to all countries with

which a child has a link, e.g. by parentage. In the context of State succession, predecessor and successor States may also have obligations.

6. States parties to the CRC that are also parties to the American Convention on Human Rights or the African Charter on the Rights and Welfare of the Child have an explicit obligation to grant nationality automatically at birth to children born in their territory who would otherwise be stateless.

Impact of gender equality norms on provisions of the 1961 Convention

7. The principle of gender equality enshrined in the ICCPR and CEDAW must be taken into account when interpreting the 1961 Convention. In particular, CEDAW Article 9(2) guarantees that women shall enjoy equality with men in their ability to confer nationality on their children.
8. Prior to adoption of the ICCPR (1966) and CEDAW (1979), many nationality laws discriminated on the basis of gender. The 1961 Convention acknowledges that statelessness can arise from conflicts of laws in cases of children born to parents of mixed nationalities, whether in or out of wedlock, on account of provisions in nationality laws that limit the right of women to transmit nationality. Article 1(3) of the 1961 Convention therefore articulates a safeguard requiring States to grant nationality to children who would otherwise be stateless born to mothers who are nationals.
9. Today, most Contracting States to the 1961 Convention have introduced gender equality in their nationality laws as prescribed by the ICCPR and CEDAW, giving the Article 1(3) safeguard limited importance. This safeguard remains relevant in States where women are still treated less favourably than men in their ability to transmit nationality to their children. Although Article 1(3) of the 1961 Convention only addresses the situation of equality for mothers, in light of the principle of equality set out in the ICCPR and CEDAW, children born in the territory of a Contracting State to fathers who are nationals should also acquire the nationality of that State at birth, if they otherwise would be stateless.

When is a Person “Otherwise Stateless”?

Definition of “stateless” for the 1961 Convention

10. Articles 1 and 4 of the 1961 Convention only require States to grant their nationality to persons who would “otherwise be stateless”. The Convention, however, does not define the term “stateless”. Rather, Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), establishes the international definition of a “stateless person” as a person “who is not considered as a national by any State under the operation of its law”. This definition, according to the International Law Commission, is now part of customary international law and is relevant for determining the scope of application of “otherwise stateless” under the 1961 Convention.

11. The exclusion provisions set forth in Article 1(2)² of the 1954 Convention relating to the Status of Stateless Persons limit the scope of the obligations of States under the 1954 Convention. However, they are not relevant for determining the personal scope of the 1961 Convention. Rather than excluding specific categories of individuals who are viewed as undeserving or not requiring protection against statelessness, the 1961 Convention adopts a different approach. It allows Contracting States to apply certain exhaustively listed exceptions with regard to individuals to whom they would otherwise be obliged to grant nationality.³

Focus on the situation of the child

12. The concept “otherwise stateless” requires evaluating the nationality of a child and not simply examining whether a child’s parents are stateless. Children can also be “otherwise stateless” if one or both parents possess a nationality but cannot confer it upon their children. The test is whether a child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child’s parents are stateless. To restrict the application of the safeguards against statelessness to children of stateless parents is therefore insufficient in light of the different ways in which a child may be rendered stateless and the obligations of States under the 1961 Convention.

Determination of the non-possession of any foreign nationality

13. A Contracting State must accept that a person is not a national of a particular State if the authorities of that State refuse to recognize that person as a national.⁴ A Contracting State to the 1961 Convention cannot avoid its

² Article 1(2) of the 1954 Convention states as follows:

This Convention shall not apply :

- (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
- (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
- (iii) To persons with respect to whom there are serious reasons for considering that :
 - (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country ;
 - (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

³ The Convention also establishes exceptions to the general rule that individuals should not lose or be deprived of their nationality if this results in statelessness. This was not within the purview of this Expert Meeting, however.

⁴ A State can refuse to recognize a person as a national either by explicitly stating that he or she is not a national or by failing to respond to inquiries to confirm an individual as a national. This issue was explored in greater detail in *Summary Conclusions of the Expert Meeting on the Concept of Stateless*

obligations to grant its nationality to an otherwise stateless person based on its interpretation of another State's nationality laws which conflicts with the interpretation applied by the State concerned.⁵

Undetermined nationality

14. Some States may make a finding that a child is of "undetermined nationality". When this occurs, States should seek to determine whether a child is otherwise stateless as soon as possible so as not to prolong a child's status of undetermined nationality. For the application of Articles 1 and 4 of the 1961 Convention, such a period should not exceed five years which is the maximum period of residence which may be required under Article 1(2)(b) of the Convention where a State has an application procedure in place (see below at paragraph 28). While designated as being of undetermined nationality, these children should have access to all social services on equal terms as citizen children. If a Contracting State of birth has opted to grant its nationality to otherwise stateless children automatically, children of undetermined nationality should be treated as possessing the nationality of the State of birth unless and until the possession of another nationality is proven.

Possibility to acquire the nationality of a parent by registration

15. Responsibility to grant nationality to otherwise stateless children is not engaged where a child is born in a State's territory and is stateless, but could acquire the nationality of a parent by registration with a State of nationality of a parent, or a similar procedure such as declaration or exercise of a right of option. However, as a general rule it is only acceptable for Contracting States to maintain an exception for granting their nationality to children who would otherwise be stateless if a child can acquire the nationality of a parent immediately after birth and the State of a parent does not have any discretion to refuse the grant of nationality. It is recommended that States that maintain this exception assist parents in initiating the relevant procedure with the authorities of the State of nationality of the parents.
16. Moreover, this exception should not be triggered if a child's parents have good reasons for not registering their child with the State of their own nationality. States normally apply a test of *reasonableness* in this regard. This needs to be determined depending on whether an individual could reasonably be expected to take action to acquire the nationality in the circumstances of their particular case.

Considerations for refugee children

Persons under International Law (UNHCR 2010) and *Summary Conclusions of Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons* (UNHCR 2010).

⁵ With regard to the key importance of the views of the State concerned in establishing whether a person is a national, or stateless, see Section B of *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law* (UNHCR 2010).

17. Owing to the very nature of refugee status, refugee parents cannot contact their consular authorities to register their children born abroad to acquire or confirm nationality. While refugees recognised under the 1951 Convention relating to the Status of Refugees (Refugee Convention) or the extended refugee definition who formally possess a nationality are viewed as *de facto* stateless persons,⁶ most refugees are not stateless as per the definition in Article 1(1) of the 1954 Convention. Given the fact that the Final Act of the 1961 Convention contains a non-binding recommendation that *de facto* stateless persons should be treated as stateless persons as far as possible, treatment of children born to refugees presents practical difficulties. In particular, refugee parents are in principle not in a position to register the birth of a child with the State of origin's consular representatives nor to approach the relevant authorities to obtain recognition or documentation of that child's nationality.
18. States are encouraged to offer refugee children the possibility to acquire the nationality of the country of birth as foreseen under Article 1(1) of the 1961 Convention. Where the child of a refugee is born stateless, the safeguard in Article 1 will apply and the considerations relating to otherwise stateless children discussed during the Expert Meeting are relevant. However, where the child of a refugee has acquired the nationality of the country of origin of the parents at birth, it is not desirable to provide for an automatic grant of nationality under Article 1(1) of the 1961 Convention at birth, especially in cases where dual nationality is not allowed in one or both States. Refugee children and their parents should be given the possibility to decide for themselves, whether or not these children acquire the nationality of the country of birth, taking into account any plans they may have for future durable solutions (e.g. an imminent voluntary repatriation to the country of origin).

Grant of Nationality to Otherwise Stateless Children Born in the Territory of a Contracting State (1961 Convention, Articles 1(1)-1(2))

Relation of Articles 1 and 4

19. The 1961 Convention and relevant universal and regional human rights norms do not dictate the basic rules according to which nationality is acquired and withdrawn by States. The Convention does not require States to adopt a pure *jus soli* regime whereby States grant nationality to all children born in their territory. Similarly, it does not require adoption of the principle of *jus sanguinis*. Rather, the 1961 Convention requires that in instances where an

⁶ Although the concept of *de facto* statelessness is not defined in international law, the first expert meeting in this series examined this concept in detail and concluded on the following operational definition for the term: “*De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.” *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law* (UNHCR 2010).

individual would otherwise be stateless, the Contracting State in which the child is born has to grant nationality to prevent statelessness. In the event that a child is born to the national of a Contracting State in the territory of a non-Contracting State, a subsidiary obligation comes into play and the State of nationality of the parents must grant nationality if the child would otherwise be stateless. As a result, the Convention addresses conflicts of nationality laws through an approach that draws on the principles of both *jus soli* and *jus sanguinis*.

Options for granting nationality to comply with 1961 Convention obligations

20. Article 1 of the 1961 Convention provides Contracting States with several alternative means for granting nationality to otherwise stateless children born in their territory. Such States can either provide for automatic (*ex lege*, or by operation of law) acquisition of its nationality upon birth pursuant to Article 1(1)(a), or for acquisition of nationality upon submission of an application pursuant to Article 1(1)(b). Article 1 of the 1961 Convention also allows Contracting States to provide for the automatic grant of nationality to otherwise stateless children born in their territory subsequently, at an age determined by domestic law.
21. A Contracting State may apply a combination of these alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of the individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by otherwise stateless children born in their territory whose parents are permanent or legal residents in the country, whereas it might require an application procedure for those whose parents are not legal residents. Any distinction in treatment of different groups, however, cannot be based on discriminatory grounds and must be reasonable and proportionate.

Acquisition of nationality at birth or as soon as possible after birth

22. The rules for preventing statelessness among children contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality, in particular where they would otherwise be stateless. The right of every child to acquire a nationality (CRC Article 7) and the principle of the best interests of the child (CRC Article 3) together create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention.
23. Where Contracting States opt for an application procedure to grant their nationality to otherwise stateless children, developments in international human rights law create a strong presumption that States should limit application requirements so as to allow children to acquire nationality as soon as possible after birth.

24. The presumption that States must grant their nationality either immediately at birth or as soon as possible after birth is most evident in States that are not only parties to the CRC, but also to regional human rights instruments, in particular the American Convention of Human Rights and the African Charter on the Rights and Welfare of the Child. Article 20 of the American Convention and Article 6 of the African Charter explicitly establish that children are to acquire the nationality of their country of birth if they would otherwise be stateless.

Permissible conditions for the acquisition of nationality upon application (1961 Convention, Article 1(2))

25. Where Contracting States opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, it is permissible for them to do so subject to the fulfilment of certain conditions. Permissible conditions are established by the exhaustive list set forth in Article 1(2) of the 1961 Convention and include: a fixed period for lodging an application immediately following the age of majority (Article 1(2)(a)); habitual residence in the Contracting State for a fixed period, not to exceed five years immediately preceding an application nor ten years in all (Article 1(2)(b)); restrictions on criminal history (Article 1(2)(c)); and the condition that an individual has always been stateless (Article 1(2)(d)). Imposition of any other conditions would violate the terms of the 1961 Convention.
26. The use of the mandatory “shall” (“Such nationality shall be granted...”), indicates that a Contracting State must grant its nationality to otherwise stateless children born in their territory where the conditions set forth in Article 1(2) and incorporated in their application procedure are met. The exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention. As a result, providing for a discretionary naturalization procedure for otherwise stateless children is not permissible under the 1961 Convention. A State may choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application.

Deadline for lodging an application (1961 Convention, Article 1(2)(a))

27. In accordance with developments in international human rights law, Contracting States that opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, should accept such applications from children who would otherwise be stateless born in their territory as soon as possible after their birth and during childhood. However, where Contracting States set deadlines to receive applications from otherwise stateless individuals born in their territory at a later time, they must accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. These provisions ensure that otherwise stateless individuals born in the territory of a Contracting State have a window of at least three years after majority to lodge their application.

Condition of habitual residence (1961 Convention, Article 1(2)(b))

28. Among the permissible conditions listed exhaustively in Article 1(2)(b) of the 1961 Convention, States may stipulate that an otherwise stateless person born in its territory fulfil a period of “habitual residence” on the territory of the country of birth in order to acquire that country’s nationality. This period is not to exceed five years immediately preceding an application nor ten years in all. “Habitual residence” should be understood as stable, factual residence. The 1961 Convention does not allow Contracting States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on *lawful* residence.
29. In cases where it is difficult to determine whether a person is habitually resident in one or another country, for example due to a nomadic way of life, it should be concluded that such persons habitually reside in both countries.
30. States should establish objective criteria for individuals to prove habitual residence. Lists of types of permissible evidence, however, should never be exhaustive.

Criminal history (1961 Convention, Article 1(2)(c))

31. The permissible condition that an otherwise stateless individual has been neither convicted of an offence against national security nor sentenced to a term of imprisonment for five years or more on a criminal charge as set forth in Article 1(2)(c) refers to the criminal history of an otherwise stateless person and not to acts of his or her parents.
32. Criminal consequences due to irregular presence on the territory of a State are never to be used to disqualify an otherwise stateless individual from acquiring nationality under Article 1(2)(c).
33. Whether a crime can be qualified as an “offence against national security” needs to be judged against international standards and not simply by such a characterization by the concerned State. Similarly, criminalization of specific acts and sentencing standards must be consistent with international human rights law and standards.

Has “always been stateless” (1961 Convention, Article 1(2)(d))

34. Where a Contracting State requires that an individual has “always been stateless” to acquire nationality pursuant to an application under Article 1(2)(d), there is a presumption that the applicant has always been stateless and the burden of proof rests with the State to prove the contrary. An applicant’s possession of evidently false or fraudulently obtained documents of another State does not negate the presumption that an individual has always been stateless.

Grant of Nationality to Otherwise Stateless Persons Born to Nationals of Contracting States Abroad (1961 Convention, Articles 1(4), 1(5) and 4)

35. Article 1 of the 1961 Convention places primary responsibility on Contracting States in whose territory otherwise stateless children are born to grant them nationality to prevent statelessness. The Convention also sets out two subsidiary rules. The first is found in Article 1(4) and applies where an otherwise stateless child is born in a Contracting State to parents of another Contracting State but does not acquire the nationality of the country of birth automatically and either misses the age to apply for nationality or cannot meet the habitual residence requirement. In such cases, responsibility falls to the Contracting State of which the parents of the individual concerned are citizens to grant its nationality to that individual. In these limited circumstances where Contracting States must grant nationality to children born abroad in another Contracting State to one of their nationals, States may require that an individual lodge an application and meet certain criteria set forth in Article 1(5) that are similar to those set forth in Article 1(2), with some distinctions.
36. The second subsidiary rule applies where children of a national of a Contracting State who would otherwise be stateless are born in a non-Contracting State. This rule is set out in Article 4. Although granting nationality in these circumstances is obligatory, Article 4 gives Contracting States the option of either granting their nationality to children of their nationals born abroad automatically at birth or requiring an application subject to the exhaustive conditions listed in Article 4(2).
37. Like Article 1, Article 4 of the 1961 Convention must be read in light of subsequent developments in international human rights law. The right of every child to acquire a nationality, as set out in CRC Article 7 and the principle of the best interests of the child contained in CRC Article 3, create a strong presumption that Contracting States should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad to one of its nationals. In cases where Contracting States require an application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth.

Implicit Obligations in Articles 1 and 4 of the 1961 Convention

Appropriate information

38. Contracting States that opt for an application procedure are obliged to provide, as soon as possible, detailed information to parents of otherwise stateless children about the possibility of acquiring the nationality of the country.
39. Information needs to be provided to concerned individuals whose children born in the territory of a Contracting State are otherwise stateless or of undetermined nationality. A general information campaign is not sufficient.

Fees

40. Where Contracting States grant nationality to otherwise stateless individuals upon application, they should accept such applications free of charge. Indirect costs, such as for authentication of documents, must not constitute an obstacle for otherwise stateless individuals to exercise the right to acquire the nationality of Contracting States.

Importance of birth registration

41. While the rules set out in the 1961 Convention operate regardless of whether a child's birth is registered, registration of the birth provides a key form of proof which underpins implementation of the 1961 Convention and related human rights norms. CRC Article 7 specifically requires the registration of the birth of *all* children and applies irrespective of the nationality or residence status of the parents.

Implementation of treaty obligations in national law

42. Contracting States are encouraged to formulate their nationality regulations in a way that makes clear the procedures by which they are implementing their obligations under Articles 1 to 4 of the 1961 Convention. This also applies for countries in which, according to their Constitutions or legal systems, international treaties are directly applicable.

Foundlings

43. Children found abandoned on the territory of a Contracting State must be treated as foundlings and accordingly acquire the nationality of the country where found. Article 2 of the 1961 Convention does not define an age at which a child can be considered a foundling. The words for 'foundling' used in each of the five authentic texts of the Convention (English, French, Spanish, Russian and Chinese) reveal some differences in the ordinary meaning of these terms, in particular with regard to the age of the children covered by this provision. State practice reveals a broad range of ages within which this provision is applied; several Contracting States limit granting nationality to foundlings that are very young (12 months or younger) while most Contracting States apply their rules in favour of foundlings to older children, including in some cases up to the age of majority.
44. At a minimum, the safeguard for Contracting States to grant nationality to foundlings should apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless.

45. If a State provides for an age limit for foundlings to acquire nationality, the age of the child at the date the child was found is decisive and not the date when a child came to the attention of the authorities.
46. Nationality acquired by foundlings pursuant to Article 2 of the 1961 Convention should only be lost if it is proven that the child concerned possesses another State's nationality.
47. A child born in the territory of a Contracting State without having a parent, who is legally recognised as such (e.g. because the child is born out of wedlock and the woman who gave birth to the child is legally not recognised as the mother), should be treated as a foundling and should immediately acquire the nationality of the State of birth.

Application of Safeguards to Children Born on Ships and Planes

48. The extension of the territory of a Contracting State to "ships" as prescribed in Article 3 of the 1961 Convention is to be interpreted as referring to all "vessels" registered in that Contracting State irrespective of whether the ship involved is destined for transport on the high seas.
49. It follows from the ordinary meaning of the terms used in article 3 that the extension of the territory of a Contracting State to ships flying the flag of that State and to aircraft registered in that State also applies to ships within the territorial waters or a harbour of another State or to aircraft at an airport of another State.

Transitional Provisions

50. Article 12 of the 1961 Convention provides that if a State opts to grant its nationality automatically to children born in its territory who would otherwise be stateless, this obligation only applies to children born in the territory of that State *after the entry* into force of the Convention for that State.
51. If a Contracting State opts to grant its nationality to otherwise stateless individuals upon application in accordance with the provisions of Article 1(1) and 1(2), the rules also apply for otherwise stateless children born before the entry into force for the State involved. This is also the case for Article 1(4) and the application procedure foreseen in Article 4.
52. However, States that opt for automatic acquisition should be encouraged to provide for a transitory application procedure for stateless children born before the entry into force of the Convention.

Expert Meeting
Interpreting the 1961 Statelessness Convention and
Preventing Statelessness among Children

Dakar, Senegal
23 and 24 May 2011

Agenda

Monday, 23 May 2011

- 09:00 – 09:30 Registration
- 09:30 – 10:00 Opening remarks
- UNHCR will briefly outline why it is focusing on development of guidance on the statelessness conventions, in particular the provisions of the 1961 Convention safeguards for preventing statelessness among children
 - The Open Society Justice Initiative will provide an overview of its work in the area of prevention and reduction of child statelessness
- 10:00 – 10:30 NORMATIVE DEVELOPMENTS ON PREVENTION OF STATELESSNESS – BACKGROUND TO THE 1961 CONVENTION AND DEVELOPMENTS IN INTERNATIONAL HUMAN RIGHTS LAW SINCE 1961
- Professor René de Groot will provide a brief overview of the background to the 1961 Convention and the developments in international and regional human rights law since 1961
- 10:30 – 11:15 WHEN IS A CHILD – OR PERSON – “OTHERWISE STATELESS”?
- *Definition of statelessness*
 - *Focus on situation of the child*
 - *Determination of the non-possession of any foreign nationality*
 - *Undetermined nationality*
- 11:15 – 11:45 Break
- 11:45 – 13:00 WHEN IS A CHILD – OR PERSON – “OTHERWISE STATELESS”? (contd.)
- *Possibility to acquire the nationality of a parent by registration*
 - *De facto stateless persons*
- 13:00 – 14:15 Lunch break

Monday, 23 May 2011 (contd.)

- 14:15 – 16:00 GRANT OF NATIONALITY TO OTHERWISE STATELESS CHILDREN BORN IN THE TERRITORY OF A CONTRACTING STATE (1961 CONVENTION, ARTICLES 1(1)-1(2))
- *Ex lege* versus acquisition of citizenship through application, including in light of CRC Article 7, ICCPR Article 24, and regional instruments
 - Permissible requirements of citizenship applications
 - Prescribed period for lodging of application
 - Habitual residence
 - Criminal history
 - “Has always been stateless”
- 16:00 – 16:30 Break
- 16:30 – 18:00 1961 CONVENTION, ARTICLES 1(1)-1(2) (contd.)

Tuesday, 24 May 2011

- 9:00 – 10:00 FOUNDLINGS
- 10:00 – 11:00 IMPACT OF GENDER EQUALITY NORMS ON PROVISIONS OF THE 1961 CONVENTION
- 11:00 – 11:30 Break
- 11:30 – 13:00 GRANT OF NATIONALITY TO OTHERWISE STATELESS CHILDREN BORN TO A NATIONAL ABROAD (1961 CONVENTION, ARTICLES 1(4)-1(5) AND ARTICLE 4)
- Limitations of *ius sanguinis* transmission of citizenship in cases of birth abroad
 - *Ex lege* versus acquisition of citizenship by application
- 13:00 – 14:15 Lunch break
- 14:15 – 15:15 1961 CONVENTION, ARTICLES 1(2), 1(4)-1(5), AND 4
- Comparison of provisions for the permissible rejection of an application for citizenship – Articles 1(2), 1(4)-1(5) and Article 4(2)
 - Applicability of safeguards before and after accession
- 15:15-16:00 APPLICATION OF SAFEGUARDS TO CHILDREN BORN ON SHIPS AND PLANES
- 16:00 – 17:00 Concluding remarks and closure of the meeting

ANNEX 2

List of participants*

Agnes Aidoo, UN Committee on the Rights of the Child, Ghana

René de Groot, University of Maastricht, Netherlands

Marie Diop, UNICEF, Senegal

Edmund Foley, Institute for Human Rights and Development in Africa, Gambia

Laurie Fransman, Legal Practitioner, United Kingdom

Sonja Hämäläinen, Ministry of Interior, Finland

Katalin Haraszti, Office of the Ombudsman, Hungary

Julia Harrington-Reddy, Open Society Justice Initiative, United States

Sebastian Köhn, Open Society Justice Initiative, United States

José Eduardo E. Malaya III, Department of Foreign Affairs, Philippines

Bronwen Manby, African Governance Monitoring and Advocacy Project, United Kingdom

Benyam Dawit Mezmur, African Committee of Experts on the Rights and Welfare of the Child, Ethiopia

Carolina Moulin, Pontifical Catholic University of Rio de Janeiro, Brazil

Gianluca Parolin, University of Cairo, Egypt

Antonio Pérez-Hernández, Spanish Embassy, Senegal

Alenka Prvinsek, International Centre for Migration Policy Development, Austria

Mary Grace Quintana, Department of Justice, Philippines

Bernadette Renauld, Constitutional Court, Belgium

Julia Sloth-Nielsen, University of Western Cape, South Africa

Joachim Theis, UNICEF, Senegal

Oumou Toure, Office of the High Commissioner for Human Rights (OHCHR), Senegal

Laura van Waas, Tilburg University, Netherlands

Esther Waweru, Kenya Human Rights Commission, Kenya

For UNHCR, Mirna Adjami, Gilbert Loubaki, Marie Aimée Mabita, Mark Manly, Janice Marshall, Jane Muigai, Sonia Muñoz, Inge Sturkenboom, Davide Torzilli

*Institutional affiliation given for identification purposes only.