



5-10-2018

Combating Statelessness in the Wake of the Syrian Conflict: A Right without a Remedy

Tim Schultz

University of Notre Dame Law School, tim.schultz2121@gmail.com

Follow this and additional works at: <https://scholarship.law.nd.edu/ndjicl>

 Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Schultz, Tim (2018) "Combating Statelessness in the Wake of the Syrian Conflict: A Right without a Remedy," *Notre Dame Journal of International & Comparative Law*: Vol. 8 : Iss. 2 , Article 9.

Available at: <https://scholarship.law.nd.edu/ndjicl/vol8/iss2/9>

This Note is brought to you for free and open access by the Notre Dame Journal of International & Comparative Law at NDLScholarship. It has been accepted for inclusion in Notre Dame Journal of International & Comparative Law by an authorized editor of NDLScholarship. For more information, please contact lawdr@nd.edu.

**COMBATING STATELESSNESS IN THE WAKE OF THE SYRIAN
CONFLICT: A RIGHT WITHOUT A REMEDY**

TIM SCHULTZ*

INTRODUCTION	131
I. HISTORY OF THE SYRIAN CONFLICT	134
II. AN EXAMINATION OF OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW	136
A. <i>STATE PRACTICE</i>	137
B. <i>SUBJECTIVE ELEMENT: OPINIO JURIS</i>	138
III. THE INTERNATIONAL LEGAL FRAMEWORK OF NATIONALITY	139
A. <i>TENSIONS BETWEEN SOVEREIGN AUTHORITY AND INTERNATIONAL LAW CONCERNING STATELESSNESS AND A RIGHT TO NATIONALITY</i>	139
IV. THE OBSTACLES PROVIDED BY SYRIAN NATIONALITY LEGISLATION AND ATTEMPTS AT REFORM	146
A. <i>SYRIAN NATIONALITY LAW</i>	146
B. <i>THE PRAGMATIC CONSEQUENCES OF GENDER DISCRIMINATION UNDER SYRIAN NATIONALITY LAWS</i>	147
C. <i>VIOLATING OBLIGATIONS UNDER INTERNATIONAL LAW</i>	148
V. NEIGHBORING DOMESTIC RESPONSE AND POLITICAL REALITIES.....	150
A. <i>THE IMPRACTICAL BURDEN OF REGIONAL RESOLUTION</i>	150
VI. PRACTICAL CONCLUSIONS UNDER CUSTOMARY INTERNATIONAL LAW ..	155

“Citizenship is man’s basic right, for it is nothing less than
the right to have rights. Remove this priceless possession and
there remains a stateless person, disgraced and degraded in
the eyes of his countrymen.”
–Chief Justice Earl Warren¹

INTRODUCTION

Inside a tent, one of a dozen in a small refugee camp in Lebanon’s Bekaa Valley, rests seven-month-old Nour, a child of Syrian refugees. She is the first child of her Syrian parents to be born outside of Syria.² Investigative journalist John Davison documents the struggle of Nour’s family as they navigate the incomprehensible landscape of nationality law in Lebanon, all while attempting

* Juris Doctor Candidate, University of Notre Dame Law School, Class of 2018; Loyola University Chicago, Class of 2015. I would like to thank Professor Mary Ellen O’Connell for all of her assistance in the preparation of this Note. I am also grateful to the Notre Dame Journal of International and Comparative Law for their generous work, and their thoughtful and insightful edits to this Note.

¹ *Perez v. Brownell*, 365 U.S. 44, 64 (1958) (Warren, J., dissenting).

² John Davison, *Redrawing the Middle East: A Generation of Syrian Children Who Don’t Count*, THOMPSON REUTERS (May 3, 2016), <http://www.reuters.com/investigates/special-report/syria-refugees-stateless/>.

to survive under dire conditions.³ Nour's family fled their native town of Homs at the beginning of the Syrian Civil war.⁴ After two hours spent aboard a crowded bus, her pregnant mother, father, and two siblings traveled seventy miles into Lebanon where Nour was eventually born.⁵ Because Nour was born outside of Syria, she must be registered at a government office in Lebanon by her first birthday in early September.⁶ If they fail to do so, Nour potentially faces the consequences that so many stateless children face: lacking a fundamental legal recognition of nationality.⁷ For Nour to be fully recognized as a Syrian national, her parents will need to navigate a maze of legal hurdles requiring the family to journey to government offices, traverse military checkpoints, and finally approach the Syrian embassy, which many refugees are justifiably scared to do.⁸

According to a report produced by the UNHCR in 2014, more than ten million people in the world are stateless.⁹ Statelessness occurs due to a number of factors, including: political instability; conflicts of law; complex and inefficient administrative practices; ethnic, racial, and gender discrimination; and even arbitrary deprivations of citizenship rights.¹⁰ These factors illustrate immense structural inconsistencies that exist between domestic citizenship processes and human rights obligations under international law. It is often, however, that these structural shortcomings are only exposed in the wake of large-scale armed conflict that produces mass exoduses from war-torn nations.¹¹ This is most evident in the case of the Syrian conflict, as current domestic legislation in Syria has produced inefficient, if not obstructive policies that, in turn, perpetuate human rights violations against fleeing citizens. Even a cursory examination of domestic Syrian nationality law illustrates the unfortunate reality facing vulnerable stateless populations and the insurmountable challenges they face when fleeing zones of conflict.¹²

The discriminatory nature of the Syrian Nationality Law presents enormous obstacles for future generations of displaced Syrian families.¹³ Syrian nationality regulations are predominately paternalistic, meaning that citizenship can only be

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; see also INST. ON STATELESSNESS & INCLUSION, THE WORLD'S STATELESS (2014), <http://www.institutesi.org/worldsstateless.pdf>.

⁹ INST. ON STATELESSNESS & INCLUSION, *supra* note 8, at 55.

¹⁰ *Id.* at 23–27; see also *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, U.N. HIGH COMM'R FOR REFUGEES (Mar. 7, 2014), <http://www.unhcr.org/4f5886306.pdf> [hereinafter *Background Note*].

¹¹ See generally INST. ON STATELESSNESS & INCLUSION, *supra* note 8; *Background Note*, *supra* note 10.

¹² Elveda Dana Gale, *Statelessness Risk of Syrian Refugee Children Born in Turkey* 53 (2016) (unpublished LLM Thesis, Tilburg University Law School) (available at <http://arno.uvt.nl/show.cgi?fid=141265>).

¹³ *Background Note*, *supra* note 10 (“In Syria, mothers can only confer nationality if the child was born in Syria and the father does not establish filiation in relation to the child. Syria has a safeguard in place to prevent statelessness among children born in the territory but is not clear that this is implemented in practice.”).

passed through the father.¹⁴ Due to immense casualties during the Syrian conflict, children born without paternal ancestors are particularly vulnerable to the ugly reality of statelessness.¹⁵ Furthermore, as the conflict ensues, births are often not recorded in an official registry, and children born in exile are especially susceptible to the realities of a lack of attributed nationality.¹⁶ As millions flee their homes and abandon all but their most necessary belongings, many do not carry official documentation.¹⁷ As a result, this lack of identification threatens the future security of Syrian families, and most notably, their children.

This Note seeks to illustrate structural inconsistencies between domestic nationality law and human rights obligations under international law. Furthermore, this Note seeks to emphasize the difficulties that arise when addressing statelessness in the context of customary international law, as current domestic frameworks are inadequate to address its magnitude, specifically in light of the modern Syrian refugee crisis. Though the status of refugees, and specifically the problem of statelessness, has theoretically been addressed under certain Conventions in the latter half of the twentieth century, such Conventions lack necessary mechanisms in and of themselves to effectively allay the statelessness problem.

The right to nationality represents far more than legal classification, as Chief Justice Earl Warren once described, it is inherently “the right to have rights.”¹⁸ In light of the fundamental connection between citizenship and the rights, protections, and privileges that flow forth from its possession, this Note argues that obligations under customary international law that exist for the protection of guaranteed human dignities should be honored, and domestic legislation that obstructs these obligations must be modified. It is imperative to recognize the inherent tensions between international customary norms and sovereign authority to make citizenship determinations. Addressing principles of citizenship through norms of customary international law is problematic, though, as it strains credulity to argue that such matters are met with consistency.¹⁹

¹⁴ See *id.* See generally Priyanka Boghani, *A Staggering New Death Toll for Syria’s War — 470,000*, PBS (Feb. 11, 2016) <http://www.pbs.org/wgbh/frontline/article/a-staggering-new-death-toll-for-syrias-war-470000/> (“More than 1 in 10 Syrians have been wounded or killed since the beginning of the war in 2011, according to a new report that finds a staggering 470,000 deaths have been caused by the conflict, either directly or indirectly. . . . ‘Hundreds of thousands of people, particularly male breadwinners, have [been] killed, injured, arrested, and kidnapped, enormously endangering their lives and the living conditions of their families,’ the report said. ‘The widespread insecurity and unbearable economic conditions and hardship, have forced millions of Syrians to resettle inside or outside the country and to depend completely on local and international humanitarian aids. This loss of security in all its forms has compromised human rights and dignity of the Syrian population.’”).

¹⁵ Boghani, *supra* note 14.

¹⁶ *Id.*

¹⁷ Amit Sen, *Lacking a Nationality, Some Refugees From Syria Face Acute Risks*, U.N. HIGH COMM’R FOR REFUGEES (Dec. 20, 2013), <http://www.unhcr.org/52b45bbf6.html> (“The issue of statelessness – individuals who have no officially recognized nationality – is a problem for some Syrian refugees. A 2013 survey in the Kurdistan Region of Iraq found that some 10 per cent of Syrian Kurdish refugees are stateless, as many were forced to flee Syria before they could apply for nationality or were not eligible because they had never been registered by the Syrian authorities.”).

¹⁸ *Perez v. Brownell*, 365 U.S. 44, 64 (1958) (Warren, J., dissenting).

¹⁹ See Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMP. L. 287 (1995).

In the latter half of the twentieth century, international courts have traditionally placed less emphasis on consistency of state practice in recognition of customary obligations in matters of humanitarian rights.²⁰ It is imperative to note, however, that the current international legal framework leaves matters of citizenship determinations entirely within the purview of the nation-state.²¹ Certainly, it would be ideal for an obligation under customary international law to a right to nationality to be honored. However, in order to address the statelessness crisis in the wake of the Syrian conflict, the inquiry must begin with the reform of obstructive domestic legislation that contravenes international human rights obligations.

The following section of this Note explores the history of the Syrian conflict – its origins, its progression, and its effect on massive segments of the Syrian population. Part II provides a background of customary international law, and in turn, Part III explores the international framework for decisions of nationality, and it explores the global normative framework for protection of human rights in conjunction with citizenship determinations. Part IV provides insight into Syrian Nationality Law, and the consequences of the statutory framework that have left its displaced population further vulnerable to statelessness. This section emphasizes the ethnic and gender discrimination practices that are inherent in Syrian nationality legislation and how such practices not only render Syrian nationality processes ineffective but also inhibit segments of the population from acquiring a nationality. Part V illustrates the realities that are confronted by countries neighboring Syria, and it illustrates the immense political, economic, and administrative burdens faced by these nations in the wake of the Syrian conflict. Part VI provides concluding remarks on the current state of the statelessness problem, and it urges that though there exists inherent tensions between international and sovereign authority over citizenship determinations, norms of fundamental human rights must come to supersede sovereignty considerations with respect to the creation of stateless persons.

I. HISTORY OF THE SYRIAN CONFLICT

Estimates suggest that nearly 465,000 Syrians have lost their lives in five and a half years of armed conflict, which began with anti-government protests before escalating into a full-scale civil war.²² As a result, 6.1 million persons have been internally displaced, and 4.8 million are seeking refuge abroad.²³ Forces loyal to President Bashar al-Assad and those opposed to his rule have engaged in bitter conflict, and citizens caught between the government and the

²⁰ *Id.*

²¹ See U.N. HIGH COMM'R FOR REFUGEES, THE STATE OF THE WORLD'S REFUGEES: A HUMANITARIAN AGENDA (Jan. 1, 1997), <http://www.unhcr.org/3eb7ba7d4.html>; Michelle Foster & H el ene Lambert, *Statelessness as a Human Rights Issue: A Concept Whose Time has Come*, 28 INT'L J. REFUGEE L. 564, 572 (2016).

²² *Syria's Civil War Explained from the Beginning*, AL JAZEERA (Apr. 14, 2018),

<http://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>.

²³ HUMAN RIGHTS WATCH, WORLD REPORT 2017, at 571 (2017), https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

opposition have found little recourse but to flee their life-long homes.²⁴ As remains true, tensions have been further escalated by the actions of jihadist militants from the Islamic State.²⁵

The Syrian conflict began as a result of events surrounding what became known as the “Arab Spring.”²⁶ In 2011, protests toppled the regimes of Tunisian President Zine El Abidine Ben Ali²⁷ and Egyptian President Hosni Mubarak.²⁸ In March of the same year, peaceful protests arose in Syria as well, after fifteen boys were detained and tortured for having written graffiti in support of the Arab Spring.²⁹ “The people want the fall of the regime,” the boys wrote.³⁰ Ultimately, one of the boys, 13-year-old Hamza al-Khateeb, was killed after having been cruelly tortured.³¹ In July 2011, military defectors proclaimed the formation of the Free Syrian Army.³² This rebel group sought to overthrow the government, and slowly Syria descended into civil war.³³

As conflict ensued, civil unrest was met with an abrupt, violent crackdown by government forces.³⁴ Calls for freedom grew louder, and Assad left destruction in his wake. In the early years of the rebellion, each weekly demonstration was attributed a “tag-line,” typically constituted by the simple, yet powerful words of sermons given by sympathetic imams during mid-day prayers.³⁵ This tradition was rebirthed in 2016, and it was reflected in a daily, unrelenting call to action—“the revolution continues.”³⁶ As the civil war in Syria progressed, millions were forced to flee their homes, exposing an inefficient

²⁴ *Syria's Civil War Explained from the Beginning*, *supra* note 22.

²⁵ *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868> (The “Islamic State has capitalised on the chaos and taken control of large swathes of Syria and Iraq, where it proclaimed the creation of a ‘caliphate’ in June 2014. Its many foreign fighters are involved in a ‘war within a war’ in Syria, battling rebels and rival jihadists from the al-Qaeda-affiliated Nusra Front, as well as government and Kurdish forces.”).

²⁶ *Arab Uprising: Country by Country—Tunisia*, BBC NEWS (Dec. 16, 2013), <http://www.bbc.com/news/world-12482315> (“The downfall of Tunisia’s President Zine al-Abidine Ben Ali inspired pro-democracy activists across the Arab world. Widespread discontent at economic hardship, decades of autocratic rule and corruption erupted into mass demonstrations in December 2010 after a young, unemployed man, Mohamed Bouazizi set fire to himself after officials stopped him selling vegetables in Sidi Bouzid. Around 300 people were killed during the subsequent unrest, which forced Ben Ali to resign in January 2011, after 23 years in power, and go into exile in Saudi Arabia. He was later sentenced to life in prison in absentia.”).

²⁷ Angelique Chrisafis & Ian Black, *Zine al-Abidine Ben Ali Forced to Flee Tunisia as Protesters Claim Victory*, GUARDIAN (Jan. 15, 2011), <https://www.theguardian.com/world/2011/jan/14/tunisian-president-flees-country-protests>.

²⁸ *Profile: Hosni Mubarak*, AL JAZEERA (Feb. 11, 2011), <http://www.aljazeera.com/focus/2009/12/200912693048491779.html>.

²⁹ Kelly McEvers, *Revisiting the Spark That Kindled the Syrian Uprising*, NPR (Mar. 16, 2012), <http://www.npr.org/2012/03/16/148719850/revisiting-the-spark-that-kindled-the-syrian-uprising>.

³⁰ *Id.*

³¹ *Tortured and Killed: Hamz al-Khateeb, Age 13*, AL JAZEERA (May 31, 2011), <https://www.aljazeera.com/indepth/features/2011/05/201153185927813389.html>.

³² *Syria's Civil War Explained from the Beginning*, *supra* note 22.

³³ *Id.*

³⁴ Louisa Loveluck, *Hundreds Across Syria protest Against Assad for the First Time in Years*, TELEGRAPH (Mar. 4, 2016), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/12183779/Hundreds-across-Syria-protest-against-Assad-for-the-first-time-in-years.html>.

³⁵ *Id.*

³⁶ *Id.*

administrative regional infrastructure that was rendered incapable of dealing with the massive flight of peoples from zones of conflict.³⁷

The consequences of the Syrian conflict have exposed the growing problem of statelessness in the affected region and its global ramifications.³⁸ In addition, the complexities, inconsistencies, and the structurally discriminatory nature of citizenship law in the region and particularly in Syria have contributed immensely to the global statelessness population.³⁹ As a result, it is necessary that the international community respond, and in turn, resolve to address the statelessness crisis confronting refugees fleeing zones of conflict by honoring commitments under widely-accepted human rights conventions. The following section will provide foundational principles regarding obligations under customary international law. In the section that follows next, this Note will explore the global normative framework of nationality. In turn, and more critically, this Note will assess the responsibility of nations under humanitarian treaties at international law, specifically in the context of customary obligations in the realm of human rights, to aid in the current statelessness crisis in the Syrian region.

II. AN EXAMINATION OF OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW

The International Court of Justice (“ICJ”) describes customary international law as “a general practice accepted as law.”⁴⁰ It is widely recognized that the existence of a rule of customary international law requires the presence of two distinct elements: (1) state practice; and (2) a subjective belief that such practice is required, prohibited or allowed, depending on the formulation of the doctrine, as a matter of law (*opinio juris*).⁴¹ The opinions of the Permanent Court of International Justice (“PCIJ”) and those of the ICJ have repeatedly acknowledged that the existence of a customary rule of international law requires each of these two elements.⁴²

³⁷ *Syria's Civil War Explained from the Beginning*, *supra* note 22; *see also* Gale, *supra* note 12, at 50–51.

³⁸ Louise Osborne & Ruby Russell, *Refugee Crisis Creates 'Stateless Generation' of Children in Limbo*, *GUARDIAN* (Dec. 27, 2015), <https://www.theguardian.com/world/2015/dec/27/refugee-crisis-creating-stateless-generation-children-experts-warn>.

³⁹ Gale, *supra* note 12, at 53.

⁴⁰ Statute of the International Court of Justice, art. 38, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 933 (Article 38 of the Statute of the ICJ also contains the modern definition of customary international law: “[t]he Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply . . . (b) international custom, as evidence of a general practice accepted as law.”).

⁴¹ Michael P. Scharf, *Accelerated Formation of Customary International Law*, 20 *ILSA J. INT'L & COMP. L.* 305, 305 (2014) (citation omitted).

⁴² *Id.* at 311.

A. STATE PRACTICE

Traditionally, in establishing whether a certain doctrine has become a customary rule of international law, jurists have placed most emphasis on state conduct.⁴³ In assessing state practice, it must be sufficiently “dense” to establish a rule of customary international law.⁴⁴ The ICJ has established that “constant and uniform usage” is required for establishing a customary rule.⁴⁵ There is not a definitive length of time that is required for certain practices to be sufficiently considered customary, as the ICJ stated in the *North Sea Continental Shelf Cases*:

Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.⁴⁶

The principles of uniformity and consistency of practice are largely a matter of interpretation.⁴⁷ Complete uniformity of practice is not required, though substantial uniformity must be established for the state practice element to be satisfied.⁴⁸ In *Military and Paramilitary Activities in and Against Nicaragua*, when the Court analyzed the customary nature of the principles of non-intervention, the ICJ stated that:

It is not to be expected that in the practice of States the application of the rules in question should have been perfect, in the sense that States should have refrained, with complete consistency . . . The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct

⁴³ *Id.* at 312.

⁴⁴ Sir Claud Humphrey Meredith Waldock, *General Course on Public International Law (Vol. 106)*, in COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW (1962).

⁴⁵ *Asylum (Colom. v. Peru)*, Judgment, 1950 I.C.J. 266, at 276 (Nov. 20).

⁴⁶ *North Sea Continental Shelf Cases (Ger. v. Den.; Ger. v. Neth.)*, Judgment, 1969 I.C.J. 3, ¶ 74 (Feb. 20).

⁴⁷ *Id.*

⁴⁸ *Id.* (“State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.”).

inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.⁴⁹

If consistency and uniformity of practice is established, formation of a customary rule does not require a specific passage of time in order for it to be effective,⁵⁰ as exemplified by the rules of airspace and the rules affecting the continental shelf which have come into effect following a short period of uniformity.⁵¹ The second element of establishing a rule of customary international law is *opinio juris*.

B. SUBJECTIVE ELEMENT: *OPINIO JURIS*

In order to establish a rule of customary international law, it has been emphasized that such an establishment requires not only evidence of state practice but also a subjective belief that the state is bound to abide by the doctrine in question, known as *opinio juris sive necessitatis*, abbreviated as *opinio juris*.⁵² Further, it is established that the nation must follow the practice because of *opinio juris* rather than because “of the demands of courtesy, reciprocity, political expediency or comity.”⁵³ In the 1985 *Continental Shelf Case*, the ICJ declared that customary international law must be sought “primarily in the actual practice and *opinio juris* of States.”⁵⁴ In addition, in the 1969 *Continental Shelf Cases*, the ICJ proclaimed that:

Not only must the acts concerned [constituting state practice] amount to a settled practice, but they must also be such, or carried out in such a way, as to evidence a belief that this practice is rendered obligatory by the existence of a rule requiring it. The need for such a belief, i.e. the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.⁵⁵

⁴⁹ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits, 1986 I.C.J. 14, ¶ 186 (June 27) [hereinafter *Military and Paramilitary Activities*].

⁵⁰ JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 24 (8th ed. 2012).

⁵¹ *Id.*

⁵² Military and Paramilitary *supra* note 49, ¶ 207 (“for a new customary rule to be formed, not only must the acts concerned ‘amount to a settled practice’, but they must be accompanied by *opinio juris sive necessitatis*. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is ‘evidence of a belief that the practice is rendered obligatory by the existence of a rule of law requiring it. The need for such belief. . . the subjective element, is implicit in the very notion of *opinio juris sive necessitatis*’.” (internal citations omitted)).

⁵³ Brian D. Lepard, *The Necessity of Opinio Juris in the Formation of Customary International Law* (July 12, 2013) (discussion paper for panel, University of Geneva), <https://www.scribd.com/document/339913049/The-Necessity-of-Opinio-Juris-in-the-Formation-of-Customary>.

⁵⁴ *Id.*

⁵⁵ North Sea Continental Shelf Cases (Ger. v. Den.; Ger. v. Neth.), Judgment, 1969 I.C.J. 3, ¶ 77 (Feb. 20).

As such, it is necessary for *opinio juris* to exist in concert with substantial uniformity of state practice so as to establish an obligation under customary international law. The following section will explore the international legal framework of nationality, and it will address concerns regarding tensions between sovereign authority over decisions of nationality and the evolving global framework for the protection of human rights. In so doing, the argument will be made that principles of customary international law have evolved in manner such that states must, at least minimally, seek to avoid the creation of stateless persons by perpetuating domestic citizenship regimes that discriminate in a manner that exacerbates the statelessness problem. Though it is clear that sovereign authority over citizenship decisions is paramount, norms of customary international law have come to favor human rights protections in the twentieth century.

III. THE INTERNATIONAL LEGAL FRAMEWORK OF NATIONALITY

A. TENSIONS BETWEEN SOVEREIGN AUTHORITY AND INTERNATIONAL LAW CONCERNING STATELESSNESS AND A RIGHT TO NATIONALITY

International law respects the inherent autonomy of sovereignty and equality of individual states.⁵⁶ Absent “consent to be bound,” a state is not required to remain consistent with obligations under international law.⁵⁷ In addition, it is clear that principles of non-interference at international law certainly preclude interference in the domestic jurisdiction of another state.⁵⁸ Questions of nationality have principally been addressed as matters of domestic jurisdiction falling within the authority of individual sovereigns.⁵⁹ According to Van Waas, however, the domestic actions of sovereign states can be affected by the actions of other states under international law.⁶⁰ In its *Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923*, the Permanent Court of International Justice stated, “[t]he question of whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations.”⁶¹ The Court continued, illustrating that norms of nationality law must ultimately conform to obligations under customary international law:

For the purpose of the present opinion, it is enough to observe that it may well happen that, in a manner which, like that of nationality, is not, in principle, regulated by international law,

⁵⁶ LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 36 (2008); see S.S. “Lotus” (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 18); see also *Military and Paramilitary Activities*, *supra* note 49, ¶ 202.

⁵⁷ VAN WAAS, *supra* note 56, at 36 n.26 (noting an important exception to this principle: that *jus cogens* may not be violated, even absent explicit state consent).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Nationality Decrees in Tunis and Morocco, *Advisory Opinion*, 1923 P.C.I.J. (ser. B) No. 4, at 24 (Feb. 7).

the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law.⁶²

It can be said that the Permanent Court left determinations of nationality within the purview of domestic legislation. However, the Court made clear that states are required to act consistently with obligations under customary international law.⁶³ The twentieth century has witnessed the evolution of numerous foundational instruments that address citizenship determinations in the context of human rights such as the 1930 Hague Convention, the 1948 Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. An examination of these instruments illustrates prevailing sentiment that norms of customary international law have come to favor the protection of human rights. As such, this section will proceed to explore the evolution of human rights norms that indicate that customary international law has embraced the obligation to avoid statelessness, yet in practice, there exists no practical remedy for millions of displaced persons.

B. TWENTIETH CENTURY NATIONALITY LAW: A SHIFT TOWARDS HUMAN RIGHTS PROTECTIONS

The first attempt to provide protections for the right to nationality was the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (hereinafter "1930 Hague Convention").⁶⁴ Considered by some scholars to be the most important multilateral agreement in the field of nationality, the 1930 Hague Convention affirmed the delegation of exclusive authority to sovereign states in matters of nationality.⁶⁵ Under Chapter I, Article I, the 1930 Hague Convention provides, "[i]t is for each State to determine under its own laws who are its nationals."⁶⁶ The Convention continues, however, with the following qualification, "[t]his law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality."⁶⁷ As such, the means by which a state exercises its right to determine its citizens ought to conform to provisions at international law. Notably, decisions at international law during the latter half of the twentieth century have developed in favor of human rights.⁶⁸

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, 179 L.N.T.S. 89 [hereinafter 1930 Hague Convention].

⁶⁵ PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW, XIV (2d ed. 1979).

⁶⁶ 1930 Hague Convention, *supra* note 64, at 99.

⁶⁷ *Id.*

⁶⁸ See generally VAN WAAS, *supra* note 56, at 36–47; Sandy Gandhi, *Human Rights and the International Court of Justice the Ahmadou Sadio Diallo Case*, 11 HUM. RTS. L. REV. 527, 527 (2011).

Under the Universal Declaration of Human Rights (hereinafter “1948 UDHR”), adopted by the General Assembly of the United Nations on 10 December 1948, “nationality” is codified as a basic human right.⁶⁹ Under Article 15 of the Declaration, “[e]veryone has the right to a nationality.”⁷⁰ Further, “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”⁷¹ The 1948 UDHR, however, neither provides mechanisms for enforcement of these principles, nor does it indicate that statelessness violates customary international law.⁷² Even absent such features, the 1948 UDHR exists as the foundation for the codification of human rights in the international legal system in the latter half of the twentieth century.⁷³

At the time of its adoption by the General Assembly, it was clear that the 1948 UDHR did not establish binding obligations on signatories, rather, it existed as a “manifesto with primarily moral authority.”⁷⁴ An examination of the 1948 UDHR, in and of itself, however, does not end the inquiry into whether its principles have attained customary character. Though it is arguably clear that international courts have developed inconsistent jurisprudence in their pursuit to analyze the existence of both state practice and *opinio juris*,⁷⁵ one leading scholar illustrates that the former is of less importance in the context of human rights.⁷⁶ He notes that the International Court of Justice’s recent approach “accords limited significance to state practice, especially to inconsistent or contrary practice, and attributes central normative significance to resolutions both of the United Nations General Assembly and of other international organizations. . . . The burden of proof to be discharged in establishing custom in the field of human or humanitarian rights is thus less onerous than in other fields of international law.”⁷⁷

What is clear, however, is that decisions of citizenship determination remain within the purview of the sovereign state, so it may be successfully argued that interference with the right of nation-states to make such decisions is an encroachment on sovereignty. Thus, it is appropriate to address the statelessness crisis through the lens of the normative influence of accession to international humanitarian conventions that provide for obligations that should be honored in order to avoid exacerbation of the statelessness problem.

⁶⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948) [hereinafter UDHR].

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Hannum, *supra* note 19, at 328.

⁷⁴ *Id.* at 318.

⁷⁵ *Id.* at 319 (citing THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 108 (1989)).

⁷⁶ *Id.*

⁷⁷ *Id.* (internal quotations omitted).

C. CONVENTIONS CONCERNING THE INTERNATIONAL PROBLEM OF STATELESSNESS

1. *The 1951 Convention Relating to the Status of Refugees*

The first Convention that specifically addressed refugees and stateless individuals was the 1951 Convention Relating to the Status of Refugees (the 1951 Convention). The 1951 Convention arose in similar fashion to the 1948 UDHR, as the international community sought to rectify and prohibit the atrocities committed by the Nazis during the Second World War. Notably, the 1951 Convention sought to establish the simple command that refugees were in need of protection from persecution.⁷⁸ The 1951 Convention acknowledged the existence of statelessness, as it explicitly provided refugee protections to persons lacking a nationality who feared persecution on one of the five delineated grounds: race, religion, nationality, member of a particular social group, or political opinion.⁷⁹ While the 1951 Convention served a valuable purpose in establishing legal recognition of stateless persons, it did very little to combat statelessness and reduce its prevalence.⁸⁰ Nonetheless, many of the rights later codified in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social Rights (ICESR), the 1954 Convention Relating to the Status of Stateless Persons (the 1954 Convention), and the 1961 Convention on the Reduction of Statelessness (the 1961 Convention) are preceded by the 1951 Convention. The 1951 Convention initiated a process that “entrenched and enhanced prior state practice”⁸¹ of addressing statelessness in the international arena.

2. *The 1954 Convention Relating to the Status of Stateless Persons*

Two United Nations conventions specifically address the problem of statelessness. The first was the 1954 Convention (entered into force in 1960). The 1954 Convention possesses narrowly tailored purposes: to define a class of stateless persons, to regulate and improve their status, and to assure to them the widest possible exercise of fundamental rights and freedoms.⁸² In defining a class of stateless persons, Article 1 of the 1954 Convention defined a stateless person as “a person who is not considered as a national by any State under the operation of its laws.”⁸³ The 1954 Convention was intended to improve the position of stateless persons by regulating their status, and by providing that basic rights of stateless persons be respected by their countries of residence without discrimination of race, religion, or nation of origin. Further, the 1954 Convention mandates that the host country provide “the same treatment as is accorded to aliens generally,” except in places where the Convention provides

⁷⁸ Convention Relating to the Status of Refugees pmb., July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 [hereinafter 1951 Convention].

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ Jill I. Goldenziel, *The Curse of the Nation-State: Refugees, Migration, and Security in International Law*, 48 ARIZ. ST. L.J. 579, 582 (2016).

⁸² Convention Relating to the Status of Stateless Persons pmb., Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Convention].

⁸³ *Id.* art. 1(1).

more favorable protections, including documentation (Article 27 and 28), and security from arbitrary expulsion (Article 31).⁸⁴ However, the initiative to reduce statelessness required further international cooperation and an alignment of domestic laws.

3. *The 1961 Convention on the Reduction of Statelessness*

The 1961 Convention on the Reduction of Statelessness was the additional instrument that the international community had long awaited. One of the most important parts of the 1961 Convention is that it imposes positive obligations on States to grant nationality under certain circumstances, which contrasted with the primarily negative obligations on States that were imposed in the 1930 Hague Convention.⁸⁵ For example, Article 1 of the 1961 Convention requires a State party to grant nationality to a person born in its territory who would otherwise be left stateless,⁸⁶ though the state does retain autonomy to proscribe certain conditions to this mandate. Under the 1961 Convention, state parties are required to provide mechanisms for persons born on/in their territory to acquire nationality.⁸⁷ In addition, the 1961 Convention provides limitations as to when a State could rid a person of their nationality in the absence of acquiring another.⁸⁸ Further, the 1961 Convention affirmatively addresses the problem of general equality norms with regard to citizenship law.⁸⁹ The 1961 Convention illustrates that it is necessary to establish a link between the loss or denial of nationality and the loss or denial of national protection. It is ultimately through the understanding that in the absence of nationality, fundamental human rights ensured by national protection may be infringed, and in turn, that international consensus must arise that a right to nationality has become a part of customary international law. This is further evidenced by the fact that the entrustment of

⁸⁴ *Id.* art. 7(1).

⁸⁵ Compare 1930 Hague Convention, *supra* note 64, with Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175 [hereinafter 1961 Convention]. See generally MARILYN ACHIRON, U.N. HIGH COMM’R FOR REFUGEES, NATIONALITY AND STATELESSNESS: A HANDBOOK FOR PARLIAMENTARIANS 12 (2005), http://archive.ipu.org/PDF/publications/nationality_en.pdf (“The articles of the Convention aim to avoid statelessness at birth, but they neither prohibit the possibility of revocation of nationality under certain circumstances, nor retroactively grant citizenship to all currently stateless persons. The Convention also provides for the creation of a body to which a person who may benefit from the provisions of the Convention may apply to have his/her claim examined and to seek assistance in presenting his claim to the appropriate authority. The General Assembly subsequently asked UNHCR to fulfill this role.”).

⁸⁶ 1961 Convention, *supra* note 85, art. 1.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ U.N. High Comm’r for Refugees, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality, Summary Conclusions*, ¶ 3, <http://www.unhcr.org/5465e2cb9.pdf> [hereinafter *Interpreting the 1961 Convention*] (“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(1) guarantees that women shall enjoy equality with men in their ability to acquire, change or retain their nationality. Of particular importance for the interpretation of the loss provisions of the 1961 Convention is the fact that Article 9 prescribes that the States Parties shall ensure that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force up her the nationality of the husband. Under CEDAW Article 9(2) States must also grant women equal rights with men with respect to the nationality of their children.”).

this responsibility has been placed in the hands of the UNHCR by the General Assembly of the United Nations.

*D. THE ROLE OF THE UNITED NATIONS IN THE FULFILLMENT OF
CONVENTION OBLIGATIONS*

The UNHCR is entrusted by the General Assembly to fulfill the functions delineated under Article 11 of the 1961 Convention.⁹⁰ When the 1961 Convention came into force, the UNHCR assumed the Article 11 responsibilities, “of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.”⁹¹ For much of the latter half of the twentieth century, the UNHCR has served as an important intermediary between stateless persons and respective host states in order to resolve legal questions of nationality.⁹² As such, this intermediary position serves as a significant reference point for consensus on state practice concerning nationality and the problem of statelessness. Indeed, though there are a minimal number of signatories to the 1961 Convention, it may be argued that “other human rights treaties have also become important in the protections of stateless persons.”⁹³ Among such standards proclaimed by the 1961 Convention and other human rights conventions, minimally, is an obligation to avoid the creation of stateless persons.⁹⁴

E. THE CUSTOMARY RIGHT TO NATIONALITY

Though it is clear that international law has traditionally afforded sovereign discretion to states with respect to their nationality processes, such autonomy has been considerably restricted by progress in international human rights law.⁹⁵ Because the formal attribution of nationality is the link through which persons are afforded rights, privileges and protections at both domestic and international law, it is critical that nations honor the right to nationality as codified under Article 15 of the 1948 UDHR.⁹⁶ The human rights system is rooted in the principle of universality, and statelessness should not be an obstacle to the enjoyment of human rights protections at international law.

Finding customary obligations to an absolute right of nationality is problematic, however, in part, because it is difficult to ascertain consistency of state practice in matters of citizenship determination.⁹⁷ In addition, accession to the 1951 Convention, the 1954 Convention, and the 1961 Convention is far from

⁹⁰ See GA Res. 50/152, U.N. Doc. A/RES/50/1 (Feb. 9, 1996).

⁹¹ 1961 Convention, *supra* note 85, art. 11.

⁹² *UNHCR Statistical Online Population Database: Sources, Methods, and Data Consideration*, U.N. HIGH COMM’R FOR REFUGEES (Jan. 1, 2013), <http://www.unhcr.org/afr/statistics/country/45c06c662/unhcr-statistical-online-population-database-sources-methods-data-considerations.html>.

⁹³ Foster & Lampert, *supra* note 21, at 567.

⁹⁴ 1961 Convention, *supra* note 85.

⁹⁵ Mirna Adjami & Julia Harrington, *The Scope and Content of Article 15 of the Universal Declaration of Human Rights*, 27 REFUGEE SURV. Q. 93 (2008).

⁹⁶ UDHR, *supra* note 69, art. 15.

⁹⁷ Adjami & Harrington, *supra* note 95.

universal.⁹⁸ However, the UNHCR reports that from 2011 to 2015 there were 49 accessions to the two statelessness Conventions, indicating some progress in recent years by states.⁹⁹ Because illustrating consistency of state practice in nationality processes is impractical, it is necessary to emphasize specific obligations that have attained more universal customary character that directly affect domestic citizenship practices. Consequently, rather than attempting to delineate broad obligations and duties upon states regarding permanent acquisition of nationality through vague background principles of human rights, it is prudent to illustrate specific facets of domestic citizenship frameworks that, if reconciled with obligations under international human rights law, would serve to better alleviate the global statelessness problem. What remains in the absence of universal accession, however, at a minimum, are foundational principles of non-discrimination and protection against arbitrary deprivation that can be said to have attained more universal character.¹⁰⁰

As will be explored in the following section, though, the right to nationality is codified in the 1948 UDHR.¹⁰¹ The practical reality in the wake of widespread, prolonged conflict is that millions of displaced persons do not have access to necessary administrative processes to realize their fundamental human right to nationality.¹⁰² The unparalleled burden faced by neighboring countries renders it impossible to provide necessary services to the massive influx of immigrants.¹⁰³ Though principles of non-discrimination in matters of nationality determination appear to have achieved universal character, the reality for persons left stateless as a result of the Syrian conflict is that domestic legislation in the region maintains discriminatory provisions that obstruct access to citizenship. This note urges, in part, that the maintenance of such discriminatory legislation contravenes obligations under international law and, in turn, contributes to the creation of stateless persons. Further, as international law has developed to favor the protection of human rights, it may be argued that domestic autonomy over citizenship determinations is restricted when domestic legislation contributes to the creation of stateless persons.

⁹⁸ See TENDAYI BLOOM, UNU-GCM INSTITUTE ON GLOBALIZATION CULTURE & MOBILITY, PROBLEMATIZING THE CONVENTIONS ON STATELESSNESS (2001), collections.unu.edu/eserv/UNU:1969/pdf/0201BLOOM.pdf.

⁹⁹ *U.N. Conventions on Statelessness*, U.N. HIGH COMM'R FOR REFUGEES, <http://www.unhcr.org/en-us/un-conventions-on-statelessness.html> (last visited Apr. 25, 2018).

¹⁰⁰ *Interpreting the 1961 Convention*, *supra* note 89.

¹⁰¹ UDHR, *supra* note 69, art. 15.

¹⁰² BRONWEN MANBY, WORLD BANK GROUP, IDENTIFICATION IN THE CONTEXT OF FORCED DISPLACEMENT: IDENTIFICATION FOR DEVELOPMENT (ID4D) 1 (2016), documents.worldbank.org/curated/en/37581146972770030/pdf/107276-WP-P156810-PUBLIC.pdf.

¹⁰³ *Id.*

IV. THE OBSTACLES PROVIDED BY SYRIAN NATIONALITY LEGISLATION AND ATTEMPTS AT REFORM

Amidst the chaos and destruction, hundreds of thousands of Syrian families are left vulnerable as they flee their homes. Refugees have been forced to settle in distant foreign lands, often without proper documentation for themselves, and in many cases for their children.¹⁰⁴ Such confusion amidst this chaotic struggle has allowed the fundamental problem of statelessness to rear its ugly head. The conflict has proved to further complicate the difficult systems of nationality law in the region, and it has left many, especially women and children, without recourse to establish their fundamental human right to a nationality.¹⁰⁵ The following section will explore the Syrian Nationality Law, illustrating its complexities and most critically its discriminatory practices that indicate the demonstrable need for a call to action from the international community.

A. SYRIAN NATIONALITY LAW

The Syrian Nationality Act was established on November 20, 1969 under decree number 276, following the coming to power of the Baath regime.¹⁰⁶ In 1976, the enacting regulations were issued and there have been no amendments to the legislation since then.¹⁰⁷ The Syrian Nationality Act is deficient in three respects: first, its adherence to strict, patriarchal *jus sanguinis* principles perpetuate statelessness through gender discrimination in the acquisition of citizenship;¹⁰⁸ second, though Syrian naturalization provisions are theoretically accessible, decisions of naturalization are discretionary in nature and perpetuate discriminatory practices against certain ethnic groups;¹⁰⁹ and third, the Syrian Nationality Act runs in contravention of Syria's obligations under international law.¹¹⁰ The deficiencies of Syrian Nationality legislation are further exacerbated by the current conflict in Syria, as the forced displacement of millions have left many to the vulnerabilities of statelessness and without protection.

¹⁰⁴ *Id.*

¹⁰⁵ Inst. on Statelessness & Inclusion & the Glob. Campaign for Equal Nationality Rights, Submission to the Human Rights Council, 26th Session of the Universal Period Review: Syrian Arab Republic, ¶ 2 (Mar. 2016) [hereinafter Submission to the HRC].

¹⁰⁶ ZAHRA ALBARAZI, STATELESSNESS PROGRAMME, TILBURG L. SCHOOL, THE STATELESS SYRIANS 6 (May 2013), <http://www.refworld.org/pdfid/52a983124.pdf> (“Article 43 of the Syrian constitution, established in 1973 under Baath party ruling, recognizes that Syrian citizenship is to be regulated by legislation. The constitution does not, therefore, set the conditions for acquiring or losing nationality – this is done through a separate decree. As such, amendments to the nationality act can be adopted through a regular legislative procedure and without the need for constitutional amendment. It also implies that is within the power of the authorities to pass additional decrees relating to the enjoyment of nationality.”).

¹⁰⁷ *Id.*

¹⁰⁸ Kristina Melicherová, Born in Exile – Children of Syrian Refugees Exposed to Statelessness 14 (2016) (Masters thesis) (available at <http://arno.uvt.nl/show.cgi?fid=139974>).

¹⁰⁹ Legislative Decree 276 - Nationality Law [Syrian Arab Republic], art. 6 (1969) [hereinafter Nationality Law].

¹¹⁰ Submission to the HRC, *supra* note 105, ¶¶ 6–10.

B. THE PRAGMATIC CONSEQUENCES OF GENDER DISCRIMINATION UNDER SYRIAN NATIONALITY LAWS

In Syria, the primary means by which one acquires nationality is through paternalistic *jus sanguinis*,¹¹¹ meaning that a right to citizenship is passed to a child who is born of citizen parents. The 2012 Constitution of Syria (hereinafter “2012 Constitution”), reiterating and reaffirming principles of the 1973 Syrian Constitution (hereinafter “1973 Constitution”) theoretically indicates legal equality for Syrian men and women, as it states under Article 33 Section 3, “Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.”¹¹² However, under the Syrian Nationality Law, citizenship is only passed to a child from a Syrian father. Article 3(a) of the Syrian Nationality Law Legislative Decree 275 1969 states that “anyone born inside or outside the country to a Syrian Arab father . . . shall be considered as Syrian Arabs ipso facto.”¹¹³

Though the former mention of gender equality under Syrian Constitutional Law should seemingly prevail, Syrian Nationality Law proscribes that *jus sanguinis* principles are applied strictly by paternal lineage.¹¹⁴ Though Article 3(a) theoretically preserves the right to citizenship regardless of place of birth, legislation in practice requires that children be able to prove their descent from a Syrian father. Children who are unable to prove patriarchal Syrian lineage will be unable to attain Syrian citizenship. In exceptional cases, Syrian Nationality Law does provide protections to children unable to prove paternal lineage, so long as the child is born within Syria.¹¹⁵ Such protection, however, is an empty gesture for displaced families and leaves them without recourse.¹¹⁶

In recent decades, there have been attempts to reform Syria’s discriminatory nationality law.¹¹⁷ In 2004, the Syrian Women’s League presented reformed legislation in an attempt to expose and ultimately eliminate the discriminatory phenomena produced by Syrian Nationality Legislation. This attempt to gain equality, however, was rejected in 2008 on the basis that it contravened provisions of Sharia law.¹¹⁸ Article 3 of the 1973 Constitution stipulates the two following foundational principles, “1. Islam is the religion of the President of the Republic; and, 2. Islamic jurisprudence shall be the main source of legislation.”¹¹⁹ In turn, the 2012 Constitution “has secured the right of religious

¹¹¹ ALBARAZI, *supra* note 106, at 7. Syria is one of twenty-seven countries around the world that continues to discriminate against women in their ability to confer their nationality to their children. “There are some exceptions whereby nationality can be acquired in the absence of a paternal link, such as for foundlings who are found on the territory and for children who are born to an unknown father and a Syrian national mother,” though it is unclear that such decrees are in practice. *Id.*; see also Nationality Law, *supra* note 109.

¹¹² CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Feb. 26, 2012, art. 33.

¹¹³ Submission to the HRC, *supra* note 105, ¶ 11 (citing Nationality Law, *supra* note 109, art. 3(a)).

¹¹⁴ ALBARAZI, *supra* note 111.

¹¹⁵ *Id.* at 8.

¹¹⁶ *Id.* (“Women can transfer nationality only in the exceptional case that the father is unknown – paternity has not been legally established – and only if the child in question was also born in Syria.” (citing Nationality Law)).

¹¹⁷ Sawsan Zakzak, *Syrian Women’s Right Pass on Citizenship to Children: An Appraisal*, LEGAL AGENDA (Jan. 8, 2016), <http://legal-agenda.com/en/article.php?id=742&folder=articles&lang=en>.

¹¹⁸ Submission to the HRC, *supra* note 105, ¶ 14.

¹¹⁹ THE CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Mar. 13, 1973, art. 3.

communities to draft discriminatory personal status laws.”¹²⁰ The fourth paragraph of Article 3 of the 2012 Constitution provides: “The personal status of religious communities shall be protected and respected.”¹²¹ Such legislation furthers principles of patriarchal guardianship over women, and as such can be considered as “the legal criterion for women's rights” in Syria; meaning that absent significant reform, “discriminatory effects will be reflected in civil laws, particularly the Nationality Law.”¹²²

The initiative for reform was revived in 2012, on the international plane, during periodic review by the Committee on the Rights of the Child (hereinafter, the “Committee”), when the Syrian government presented preparations of a draft amendment to the nationality law that would permit women to confer citizenship to children on an equal basis with Syrian men.¹²³ Such an amendment would have been a significant step in the right direction for Syrian women and children. The Committee, however, merely iterated its concerns that the amendment had yet to be addressed in Parliament.¹²⁴ Additionally, and more critically, the bill has yet to receive public attention. Absent significant, meaningful discussion in the public forum, the likelihood that this critical legislation will pass is meager at best. Furthermore, according to the United Nations High Commissioner for Refugees, it is estimated that “[o]ne fourth of all Syrian refugee families are now headed by women alone, as husbands and fathers have been forcibly separated from families by war.”¹²⁵ In the wake of such widespread destruction, it may ultimately prove an insurmountable task for thousands of children to attain fundamental human rights.

C. VIOLATING OBLIGATIONS UNDER INTERNATIONAL LAW

Syria's discriminatory nationality legislation is in violation of the nation's obligations under international law. Syria is not party to the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.¹²⁶ Syria is, however, party to the Convention on the Elimination of Discrimination against Women (CEDAW), which obligates State parties “to ensure that women and men have equal ability to acquire, change, and retain their nationality and to confer their nationality to children and spouses.”¹²⁷ Article 9(1) of CEDAW requires that state parties “grant women equal rights with men to acquire, change or retain their nationality.”¹²⁸ In addition, Article 9(2) obligates state parties to “grant women equal rights with

¹²⁰ Zakzak, *supra* note 117.

¹²¹ CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Feb. 26, 2012, art. 3.

¹²² Zakzak, *supra* note 117.

¹²³ Submission to the HRC, *supra* note 105, ¶ 15.

¹²⁴ *Id.*

¹²⁵ Jana Mason (Sr. Advisor, External Relations & Gov't Affairs, U.N. High Comm'r for Refugees) *Statement Regarding Human Rights of Stateless People* (Mar. 23, 2015).

¹²⁶ *States Party to the Statelessness Conventions and Pledges to Accede*, U.N. HIGH COMM'R FOR REFUGEES, <http://www.unhcr.org/en-us/protection/statelessness/4d651eeb6/world-map-parties-1954-convention-relating-status-stateless-persons-1961.html> (as is Oct. 1, 2012).

¹²⁷ Submission to the HRC, *supra* note 105, ¶ 6.

¹²⁸ *Id.* (quoting G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art 9(1), (Dec. 18, 1979) [hereinafter CEDAW]).

men with respect to the nationality of their children.”¹²⁹ Syria maintains a reservation with respect to Article 9(2), however, it maintains no objection to Article 9(1).¹³⁰ According to a report produced by the Institute on Statelessness and Inclusion as a submission to the Human Rights Council at the 26th Session of the Universal Periodic Review, the organization urges that “Article 9 among others is ‘central to the object and purpose of the Convention and that the reservations impact negatively on the enjoyment by women of their rights.’”¹³¹ Consequently, “the maintenance of nationality laws which discriminate on the basis of gender are *themselves* in conflict with the object and purpose of the Convention and with the general obligation of all state parties to ‘agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.’”¹³²

Syria is also party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).¹³³ The ICCPR requires that states ensure a child’s right to nationality under Article 24.¹³⁴ In addition, under Article 26, the instrument requires that all citizens be equal before the law and not subject to discrimination on any ground, including gender.¹³⁵ Syria’s Nationality Law violates these provisions. With respect to the CRC, Article 7 and Article 8 are especially relevant. Article 7 provides that a child has “the right to acquire a nationality.”¹³⁶ Article 8 obligates State Parties to “undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations.”¹³⁷ According to the Institute on Statelessness and Inclusion, Articles 7 and 8 are to be read in conjunction with CRC Article 2, which provides for nondiscrimination based on the gender of the child or the parent, and Article 3, which states that the “best interest of the Child shall be a primary consideration.”¹³⁸ Thus, it is clear that as far as Syria’s Nationality Law discriminates against women with respect to their ability to confer citizenship to their children, the legislation contravenes Syria’s obligations under international law.

¹²⁹ CEDAW, *supra* note 128, art. 9(2).

¹³⁰ *Status of Treaties: Chapter IV Human Rights*, U.N. TREATY COLLECTIONS, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec (last updated Nov. 3, 2018) (following the hyperlink for the “Syrian Arab Republic” as found in the “Participant” column).

¹³¹ Submission to the HRC, *supra* note 105, ¶ 6.

¹³² *Id.* (second emphasis added).

¹³³ *Id.* ¶¶ 7–8.

¹³⁴ *Id.* ¶ 7.

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 8 (quoting G.A. Res. 44/25, annex, Convention on the Rights of the Child, art. 7 (Nov. 20, 1989) [hereinafter CRC]).

¹³⁷ CRC, *supra* note 136, art. 8(1).

¹³⁸ Submission to the HRC, *supra* note 105, ¶ 8 (quoting CRC, *supra* note 136, art. 3).

V. NEIGHBORING DOMESTIC RESPONSE AND POLITICAL REALITIES

The following section provides a survey of two countries neighboring Syria that have registered the most Syrian asylum seekers: Turkey and Lebanon. This section will illustrate the practical, legal, and administrative realities faced by nations that have been most affected by mass flight from Syria due to prolonged conflict. There are currently 2.8 million Syrians registered in Turkey¹³⁹ and nearly 1.5 million registered in Lebanon.¹⁴⁰ As noted by journalist Elena Fiddian-Qasmiyeh, this figure is best put into context by noting that during the “so-called European ‘refugee-crisis’ a total of 884,461 Syrian refugees applied for asylum across Europe between April 2011 and October 2016.”¹⁴¹ From an empirical perspective, the burden felt by European countries pales in comparison to that felt by neighboring countries, such as Turkey and Lebanon, as Syrians flee across their borders in search of safety in person and dignity in life. Such vast, forced migration places immense political and administrative strain on neighboring countries.¹⁴² This strain, in turn, further complicates the ability of refugees to navigate the necessary processes needed to achieve not only physical separation from the conflict, but also legally recognized status in foreign nations.

A. THE IMPRACTICAL BURDEN OF REGIONAL RESOLUTION

1. Turkey

Turkey has been at the forefront of the reception of forced migrants from Syria since the inception of the Syrian conflict.¹⁴³ This can be attributed to the fact that Turkey has retained an adamant, anti-Assad stance from the beginning of the crisis, which further illustrates the Turkish government’s stake in the future of Syria due to significant populations of Kurdish and Turkmen populations.¹⁴⁴ Additionally, such a stance also indicates a strategic interest in being viewed as having a significant political role in the region by taking an “active and direct role in the ongoing crisis.”¹⁴⁵ In response to Assad’s lethal crackdown on anti-government protests, Syrians began to flee across Turkish borders in April 2011.¹⁴⁶ During the same year, migration to Turkey ebbed and flowed, and by the end of the year, only 8,000 Syrian refugees resided in

¹³⁹ Elena Fiddian-Qasmiyeh, *Syrian Refugees in Turkey, Jordan and Lebanon Face an Uncertain 2017*, CONVERSATION (Jan. 3, 2018), <https://theconversation.com/syrian-refugees-in-turkey-jordan-and-lebanon-face-an-uncertain-2017-70747>.

¹⁴⁰ *Lebanon*, EUR. CIVIL PROT. & HUMANITARIAN AID OPERATIONS, https://ec.europa.eu/echo/files/aid/countries/factsheets/lebanon_syrian_crisis_en.pdf (last updated Apr. 6, 2018).

¹⁴¹ Fiddian-Qasmiyeh, *supra* note 139.

¹⁴² Nicole Ostrand, *The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States*, 3 J. MIGRATION & HUM. SEC. 255, 255 (2015)

¹⁴³ See AHMET İÇDUYGU, MIGRATION POL’Y INST., SYRIAN REFUGES IN TURKEY: THE LONG ROAD AHEAD 6 (2015), <https://www.migrationpolicy.org/research/syrian-refugees-turkey-long-road-ahead>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

Turkey.¹⁴⁷ Forced migration escalated, however, when efforts to achieve a cease-fire failed in 2012.¹⁴⁸ As tensions with Assad's government heightened and militant jihadists continued to seize territory inside Syrian borders, forced migration to Turkey exploded as 55,000 Syrians began seeking asylum per month by late 2014.¹⁴⁹ Turkish reception of forced Syrian migrants was initially exceptionally welcoming, though evidence suggests that Turkish authorities were quick to assume that the crisis would be temporary, and the reality of prolonged migrant reception has begun to present ever-increasing difficulties.¹⁵⁰

Though Turkey has acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol, the scope of the Convention's applicability to asylum seekers is limited. In addition, Turkey's Settlement Act favors persons of Turkish descent in determining eligibility for temporary citizenship and eventual, possible citizenship. Though major changes in Turkey's asylum system have occurred, "most current asylum seekers are placed under 'temporary protection' for settlement in another country rather than being accepted as refugees for settlement in Turkey."¹⁵¹ Specifically, in the case of Syrian migrants, rights and protections have been expanded since the beginning of the conflict, however, "they remain barred from gaining regular refugee status and instead are classified as beneficiaries of temporary protection."¹⁵²

This restriction on refugee protections exists because Turkey's instrument of accession to the 1951 Convention stipulates "that the Turkish government will maintain a geographic limitation pursuant to the Convention's article 1b, limiting the scope of the Convention's application in Turkey 'only to persons who have become refugees as a result of events occurring in Europe.'"¹⁵³ As a result, "Turkey can only legally accept European asylum seekers as 'refugees' *stricto sensu*,' even though 'the majority of asylum seekers in Turkey originate from non-European states.'"¹⁵⁴ This geographical limitation is not fully implemented, however, as:

Turkey allows the . . . [UNHCR] to operate and conduct refugee status determination procedures whereby refugee status is jointly granted by the UNHCR and the Ministry of the Interior with the underlying condition that accepted refugees do not locally integrate but instead resettle in a third country. Considering its geographical proximity to conflict-ridden states, Turkey's geographical limitation disqualifies a vast number of asylum seekers and refugees seeking permanent protection from the Turkish state.¹⁵⁵

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 7.

¹⁵⁰ *Id.*

¹⁵¹ Wendy Zeldin, *Refugee Law and Policy: Turkey*, LIBR. CONGRESS, <https://www.loc.gov/law/help/refugee-law/turkey.php> (last updated June 21, 2016).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* (quoting Cavidan Soykan, *The New Draft Law on Foreigners and International Protection in Turkey* 2 OXFORD MONITOR FORCED MIGRATION 38, 38–39 (Nov. 2012)).

¹⁵⁵ *Id.* (quoting Ahmet İçduygu, *Turkey's Evolving Migration Policies: A Mediterranean Transit Stop at the Doors of the EU* 6–7 (IAI Working Papers 15/31, 2015)).

The Law on Foreigners and International Protection, enacted in April 2013, provides non-European refugees certain protections under one of three types of temporary status: conditional refugee status, humanitarian residence permits, or temporary protection.¹⁵⁶ As most Syrian migrants are classified to receive temporary protection status,¹⁵⁷ it is crucial that these processes be accessible to asylum seekers. As Human Rights Watch reports, however, “delays of up to six months in registration for temporary protection mean that some refugees are unable to get basic services and live in fear of being forced to live in a camp or deported.”¹⁵⁸

According to a 2016 report issued by the UNHCR, Turkey has, under a temporary protection regime, ensured “non-refoulement and assistance in 22 camps, where an estimated 217,000 people are staying.”¹⁵⁹ Under the European Union – Turkey Agreement, matters are further complicated for Syrian refugees even once they leave Turkey. There are two legal devices by which Greek authorities may return asylum seekers to Turkey without the necessity of examining an asylum seekers claim on its merits.¹⁶⁰ The first of these devices is “first country of asylum,” whereby Syrian asylum seekers may be returned to a country if they possess “sufficient protection” in the first nation as defined under Article 35 of the EU Asylum Procedures Directive.¹⁶¹ The second of these devices, known as “safe third country,” allows an asylum seeker to be returned “to a country where they could have requested and received refugee status.”¹⁶² Because Syrians are excluded from Turkey’s Refugee Convention protections as per geographical limitations, Turkey should not be considered to constitute a “safe third country.”¹⁶³ With regard to the first mechanism, its application depends on whether the asylum seeker is recognized in that country as a refugee or, in the alternative, provided with “sufficient protection” there.¹⁶⁴ As noted, Syrians are explicitly excluded from refugee status in Turkey.¹⁶⁵

According to the UNHCR, sufficient protection means that an asylum seeker is granted “a right of legal stay and [is to] be accorded standards of treatment commensurate with [the Refugee Convention] and international human rights standards,” including for “living, work rights, health care, and education.”¹⁶⁶ Finally, and most critically, the UNHCR has contended that “the capacity of States to provide protection in practice should be taken into consideration, particularly if they are already hosting large refugee populations.”¹⁶⁷ Turkey is currently home to more than 2.7 million Syrian

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *EU: Don't Send Syrians Back to Turkey*, HUMAN RIGHTS WATCH (June 20, 2016), <https://www.hrw.org/news/2016/06/20/eu-dont-send-syrians-back-turkey>.

¹⁵⁹ Zeldin, *supra* note 151.

¹⁶⁰ *EU: Don't Send Syrians Back to Turkey*, *supra* note 158.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (citations omitted).

¹⁶⁷ *Id.* (citations omitted).

refugees.¹⁶⁸ The nation has felt the prolonged impact of the Syrian refugee crisis, and the administrative realities of facilitating the safe arrival, departure, and resettlement of millions of displaced persons are unparalleled.

2. Lebanon

According to a March 2017 factsheet published by the European Commission on Humanitarian Aid and Civil Protection, with more than 1.5 million refugees, Lebanon accounts for the highest refugee per capita.¹⁶⁹ Since the outset of the Syrian crisis in 2011, hundreds of thousands of Syrian refugees have fled across Lebanese borders.¹⁷⁰ Lebanon is a country with an already fragile system of government and infrastructure, and both its policies and practical execution of such directives is indicative of a nation unprepared to meet the crisis adequately.

The legal framework that exists for the protection of refugees in Lebanon is troublesome at best. The nation is neither party to the 1951 Convention relating to the Status of Refugees, nor does it have any domestic legislation that addresses refugee status protections.¹⁷¹ Syrian asylum seekers, thus, are afforded no specific status of protection once inside Lebanese borders.¹⁷² Furthermore, the Lebanese government characterizes such migrants as “displaced persons,” not as “refugees.”¹⁷³ In October 2014, three years after significant violent outbreak and upheaval began in Syria, the Lebanese Council of Ministers adopted an official policy on Syrian displacement, “one explicit goal of which is to decrease the number of Syrians in Lebanon by reducing access to territory and encouraging return to Syria.”¹⁷⁴ While the Lebanese government was initially praised by the UNHCR for apparent policies of open borders and the facilitation of resettlement amidst the regional crisis, field research cited in an article by Maja Janmyr suggests that these policies were the product of political stalemate and a literal inability to close access to Lebanese territory before the influx began.¹⁷⁵ Decentralized government response to the crisis led to piecemeal application of rudimentary policies implemented by local authorities in an attempt to establish control.¹⁷⁶ “One of the clearest examples of this municipality autonomy,” according to Janmyr, was the implementation of curfews on Syrian refugees, “restricting freedom of movement.”¹⁷⁷

Lebanese policy toward mass emigration from Syria can be traced to the protracted Palestinian issue, which is often cited as evidence as to why many states in the region have refused to sign on to the 1951 Convention Relating to

¹⁶⁸ Factsheet: Turkey – October 2017, U.N. HIGH COMMISSIONER FOR REFUGEES (October 11, 2017), <https://data2.unhcr.org/en/documents/details/60180>.

¹⁶⁹ *Lebanon*, *supra* note 140.

¹⁷⁰ *See id.*

¹⁷¹ Maja Janmyr, *Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon*, 35 REFUGEE SURV. Q. 58, 59 (2016).

¹⁷² *Id.*

¹⁷³ *Id.* at 61.

¹⁷⁴ *Id.* at 59.

¹⁷⁵ *Id.* at 60.

¹⁷⁶ *See id.* at 60–61.

¹⁷⁷ *Id.* at 61.

the Status of Refugees and its 1967 Protocol.¹⁷⁸ Though Lebanon is not party to the Convention, the nation is bound by the norms of non-refoulement under customary international law.¹⁷⁹ Lebanon, like Turkey, has ratified the major international human rights instruments. In addition, foundational customary international human rights principles can be found in the Lebanese Constitution.¹⁸⁰ As Janmyr notes, “[t]he Preamble of the Lebanese Constitution of 1926 (as amended in 1990) explicitly states that ‘Lebanon is [...] a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights.’”¹⁸¹

Furthermore, it states, “the Government shall embody these principles in all fields and areas without exception.”¹⁸² As is noted by Janmyr, the embodiment of such principles “without exception” would include Article 14 of the Universal Declaration of Human Rights preserving the right of refugees to seek asylum.¹⁸³ Until 2015, Lebanon did not have a formal framework of domestic legislation in place for refugees.¹⁸⁴ In December 2014, Lebanese authorities instituted a new set of entry requirements and rules for Syrian refugees “already in Lebanon applying for and renewing residency permits.”¹⁸⁵ Such policies, instituted in 2015, were the first steps in the implementation of the Lebanese “Policy on Syrian Displacement,” adopted in October 2014.¹⁸⁶ Such policies were intended to deter and prevent Syrian refugees from seeking refuge in Lebanon.¹⁸⁷ As noted by Janmyr, the measures established in 2015 “entail restrictive conditions that are *only* applicable to Syrian nationals, and hence are discriminatory in comparison to other foreigners.”¹⁸⁸ Consequently, such policies have left Syrian refugees vulnerable to exploitation, and in turn, they are faced with two choices: leave Lebanon or stay in the country and resign themselves to exploitation, “which in some cases even may amount to forced labour and human trafficking.”¹⁸⁹

Though Lebanon operated an open-door policy for Syrian migrants at the outset of the conflict, attaining legal residency status required a valid Syrian identity card or passport and entry through an official border checkpoint.¹⁹⁰ After six months, this “entry coupon” could be renewed free of charge for an additional six months.¹⁹¹ After a year of residency, however, Syrian refugees were required to renew their status “at a cost of USD 200 per person/per year for everyone 15 and above.”¹⁹² Syrian refugees residing in Lebanon that either did not enter through an official border checkpoint, did not possess proper

¹⁷⁸ *Id.* at 62.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 62–63.

¹⁸² *Id.* at 63.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 65.

¹⁸⁵ *Id.* at 59.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 66.

¹⁸⁹ *Id.* at 71.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

documentation, or continued to reside inside Lebanon after their legal residency status expired were, and still are, subject to arrest, prosecution, and deportation.¹⁹³ Because Syrian asylum seekers most often fled their homes with little money, without proper documentation, and often times were unable to cross at official border checkpoints, such administrative practices are likely to add to the already widespread statelessness problem. Most critically, as Janmyr notes, “[t]his practice has been aggravated by the fact that the Lebanese Government has declared the Syrian refugee crisis not to be governed by law, but by governmental decisions.”¹⁹⁴ As relayed by one Lebanese lawyer through an interview cited by Janmyr, “the Syrian situation is not governed by law, but by security policy.”¹⁹⁵ Consequently, domestic law is often ignored in practice and Syrian asylum seekers are left without recourse.

VI. PRACTICAL CONCLUSIONS UNDER CUSTOMARY INTERNATIONAL LAW

The fundamental right to nationality should be considered a norm of customary international law. As codified in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the ICCPR, the CRC, and the CEDAW, and as specifically addressed by the 1951 Convention, the 1954 Convention, and the 1961 Convention, there exists a substantial global legal framework that urges State Parties to provide equal access to the right to a nationality and to avoid the creation of stateless persons. Tensions between sovereign authority over nationality determinations and the right to a permanent grant of nationality, ultimately, present inherent difficulties to solve immense problems of mass flight from conflict zones. The only means by which the statelessness problem might be alleviated is through global cooperation under international law by acknowledging a customary right to nationality and, in turn, customary obligations to minimally avoid statelessness.¹⁹⁶ It is clear that inconsistencies between national practices concerning citizenship has further exacerbated the statelessness issue, as uniform state practice is difficult to establish so long as such discrepancies exist.¹⁹⁷ What remains of paramount concern, however, is how the international community is to proceed to effectively allay the statelessness problem in the midst of such an immense crisis absent the ability to establish uniformity of state practice in citizenship determinations. First and foremost, domestic considerations must be examined. Maintenance of the current Syrian Nationality Law as it stands is an active contravention of Syria’s obligations under international law, and it must be reformed so as to eliminate provisions that perpetuate gender discrimination in citizenship determinations. Regional considerations, in practice, are difficult to address.

¹⁹³ *See id.*

¹⁹⁴ *Id.* at 66.

¹⁹⁵ *Id.*

¹⁹⁶ *See id.* at 10.

¹⁹⁷ *Id.*

Lebanon, Jordan, Turkey, Iraq, and Egypt currently host more than 5.2 million registered Syrian refugees.¹⁹⁸ This figure, though enormous, does not represent the hundreds of thousands of displaced persons who have not come forward for registration. Mass flight from the Syrian conflict has caused the worst humanitarian crisis in nearly two decades, and its impact upon neighboring nations is unparalleled. Nations bordering Syria were already under extreme economic duress, and loss of foreign investment, trade, and diminished tourism revenues as a result of the massive migrant influx have further crippled their economies. Security risks are immense, and local communities have had to face the brunt of these difficult circumstances.

On November 2, 2016, the United Nations High Commissioner for Refugees addressed the Third Committee, commenting on the difficulty in building peace in the modern world, as “[m]oral and legal boundaries embedded in international humanitarian law are crossed every day more deliberately, and with more impunity.”¹⁹⁹ The Syrian conflict has resulted from “deep sectarian divisions, religious extremism, terrorism and governance challenges fueling the violence.”²⁰⁰ Furthermore, the High Commissioner emphasized that, in dealing with this immense humanitarian crisis, *proximity should not define responsibility*.²⁰¹ So too, must responsibility for addressing the statelessness crisis not be defined by proximity to its source. In order for the fundamental right to an attributed nationality to be fully realized, the global community must participate in burden-sharing efforts. State engagement is critical. By forcing neighboring nations to bear a vastly disproportionate burden, ineffective administrative practices on the ground are furthered and facilitated, exacerbating the statelessness problem. Though international and sovereign tensions exist over autonomy to make citizenship decisions, what must remain as the foundation of global nationality practices is the progressive realization of human rights and, in turn, the preservation of human dignity.

¹⁹⁸ *Update: Durable Solutions for Syrian Refugees*, U.N. HIGH COMMISSIONER FOR REFUGEES (Oct. 8, 2017), <https://reliefweb.int/report/turkey/update-durable-solutions-syrian-refugees-8-october-2017>.

¹⁹⁹ Press Release, General Assembly, Addressing Urgent Plight of Refugees Hinges on State Engagement, Determination, High Commissioner Tells Third Committee amid Calls for Burden Sharing, U.N. Press Release GA/SHC/4183 (Nov. 2, 2016).

²⁰⁰ *Id.*

²⁰¹ *Id.* (emphasis added).