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STATELESSNESS ARISING OUT OF ARBITRARY DEPRIVATION OF NATIONALITY AND PERSECUTION: AN IRREFUTABLE LINK

Rendering a person stateless can have devastating and long-lasting consequences, restricting an individual's ability to participate in society and severely curtailing their political, civil, economic, or social rights. This article delves into the relationship between the act of rendering a whole population stateless based on factors such as religion, ethnicity, or identity, and the commission of crimes against humanity such as torture, enslavement, and extermination. It is argued that the deliberate and unjust denial of nationality to a large group of people constitutes a crime against humanity of persecution and violates international law. The connection between making a population stateless and the perpetration of crimes against humanity has frequently gone unnoticed. The paper begins with an examination of the nature of statelessness, before moving on to a discussion on how the statelessness arising out of arbitrary deprivation of nationality invariably leads to crimes against humanity. The paper concludes with a suggestion to amend the definition of the crime against humanity of persecution under the Rome Statute to act as a deterrent for future violations.

Key words: Legal regime of statelessness, nationality, arbitrary deprivation, persecution

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Азаматтығынан ерікті түрде айыру және қудалау нәтижесінде пайда болған азаматтығы жоқтық: бұлтартпас байланыс

Азаматтықтан айыру адамның қоғамға қатысу қабілетін шектейтін және оның саяси, азаматтық, экономикалық немесе әлеуметтік құқықтарына айтарлықтай нұқсан келтіретін жойқын және ұзақ мерзімді салдарға әкелуі мүмкін. Алайда, бүкіл халықтың дініне, этникалық тегіне немесе жеке басына байланысты азаматтығынан айыру қудалау әрекеті болуы мүмкін және көбінесе азаптау, құлдық және жою сияқты адамзатқа қарсы қылмыстарға әкелуі мүмкін. Алайда, бүкіл халықтың азаматтығынан айыру мен қудалауға байланысты адамзатқа қарсы қылмыстар арасындағы байланыс жиі назардан тыс қалады. Бұл мақалада осы екі мәселенің арасындағы байланыс қарастырылады, халықтың көп бөлігін өз бетінше азаматтықтан айыру адамзатқа қарсы қылмыс болып табылады және халықаралық құқыққа сәйкес заңсыз болып табылады. Мақала азаматтығы жоқ табиғатты қарастырудан басталады, содан кейін азаматтықтан ерікті түрде айыру нәтижесінде пайда болатын азаматтығы жоқтықтың адамзатқа қарсы қылмыстарға қалай әкелетінін талқылауға көшеді. Мақаланың соңында Рим жарғысында адамзатқа қарсы қылмыстың анықтамасына өзгерістер енгізу ұсынылады, осылайша ол болашақ бұзушылықтар үшін тежеуші фактор болады.

Түйін сөздер: азаматтығы жоқтықтың құқықтық режимі, азаматтық, азаматтықтан айыру, қудалау

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Безгражданство возникающее в результате произвольного лишения гражданства и преследования: неопровержимая связь

Лишение человека гражданства может иметь разрушительные и долгосрочные последствия, ограничивая способность человека участвовать в жизни общества и серьезно ограничивая его политические, гражданские, экономические или социальные права. Однако лишение всего

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населения гражданства на основании его религии, этнической принадлежности или идентичности, возможно, является актом преследования и часто может привести к преступлениям против человечности, таким как пытки, порабощение и истребление. Однако связь между лишением всего населения гражданства и преступлениями против человечности в виде преследований часто упускается из виду. В этой статье исследуется связь между двумя вопросами, утверждая, что произвольное лишение гражданства большой части населения само по себе является преступлением против человечности и преследованием и является незаконным в соответствии с международным правом. Статья начинается с рассмотрения природы безгражданства, а затем переходит к обсуждению того, как безгражданство, возникающее в результате произвольного лишения гражданства, неизменно приводит к преступлениям против человечности. Статья завершается предложением изменить определение преступления против человечности преследования согласно Римскому статуту, чтобы оно служило сдерживающим фактором для будущих нарушений.

Ключевые слова: Правовой режим безгражданства, гражданство, произвольное лишение гражданства, преследование

Introduction

Statelessness is a situation where an individual is not ecognized as a national of any state, a status whereby the normal link between an individual and a state is missing. Statelessness may occur for many reasons, such as through conflict of laws or arbitrary deprivation of nationality. Likewise, it may affect a single individual or a large population depending on the circumstances. Examples of statelessness through the conflict of laws include the failure to acquire nationality at birth due to conflicts in nationality laws, being children of stateless parents, foundlings, and statelessness as a result of marriage especially among women or international commercial surrogacy (Rajan, 2017). The next major source of statelessness is the arbitrary deprivation of nationality, which may create statelessness among a large population. The disfranchisement of 'Zainichi' Koreans in Japan in 1952 (Odagawa, 2017) or the Rohingyas in Myanmar since 1982 (Cheesman, 2017) are examples of such forms of statelessness.

Nationality is often defined as a legal bond which has as its basis 'a social fact of attachment, a genuine connection of existence, interests and sentiments' (ICJ, 1955). It is considered as the right to have rights and the arbitrary subjection of a person or a population to statelessness is considered as a serious violation of human rights under contemporary international law (Perez v. Brownell). Even though all types of statelessness may invoke human rights violations, statelessness arising out of the arbitrary deprivation of nationality to a large population may lead to serious violations which may often result in jus cogens crimes. Many of the world's past genocides and crimes against humanities (CAH) can be traced back to the disenfranchisement of nationality and resultant statelessness issues (Eide, 1999). However, individual criminal responsibility has been overlooked in the context of statelessness (Kenny, 2020). Hence, this article hopes to fill that void with an exploration of the individual criminal responsibility concerning statelessness arising out of the arbitrary deprivation of nationality. The article argues and establishes the fact that statelessness arising out of the arbitrary deprivation of nationality to a large population invariably amounts to CAH of persecution and hence is illegal per se under international law. The article will first examine what statelessness arising out of arbitrary deprivation of nationality is and the legal regime associated with it. Second, the article explores how arbitrary deprivation of nationality induced statelessness invariably leads to the CAH of persecution. Finally, the article concludes with suggestions to amend the definition of the crime of persecution under the Rome Statute to include statelessness arising out of arbitrary deprivation of nationality to act as a deterrent for future violations.

The stated objective of the article is to focus on the connection between statelessness and crimes against humanity of persecution. It will only consider statelessness resulting from the arbitrary denial of nationality to a large group of people and does not encompass statelessness caused by conflicting nationality laws or individual cases. The term "arbitrary deprivation of nationality" refers to three specific scenarios: the loss of an existing nationality, the denial of nationality at birth, and the denial of the right to naturalize. The article will focus only on the first and second category, i.e. deprivation of existing nationality and refusal to access nationality at birth. This is because 'depriving somebody of his/her citizenship is a grave intrusion into a basic

human right, whereas not granting ecognizednt in a discriminatory procedure is in most cases are not (Bauböck, 2002), hence not a reason for CAH.

Legal Regime on Statelessness

Laws relating to statelessness are comparatively of recent origin, considering the fact that statelessness as a phenomenon is recorded as early as 212 CE (MI Finley, 1978). One of the main reasons for such neglect to statelessness is due to the freedom of states to enact and administer laws regarding nationality (C. Rousseau, 1948). A state's liberty to determine who is its national or not is considered as a fundamental sovereign right, and this goes back through much of history. By the end of the eighteenth century, the courts of some countries decided that states possessed the authority to expel individuals from their countries if ecognized by legislation (Conklin, 2005). This was supported by many scholars, who held the view that a state could legally reject a non-national as long as this did not cause that person's death (Kant, 1991). This notion of domain ecogni, which holds the exclusive and absolute freedom of the state to consent to the limitation of its actions, emerged in the late nineteenth century (Rousseau, 1948, 237-49). This notion led to many mass disenfranchisements of nationalities in Europe (Vishniak, 1945). For example, the Treaty of Paris (1815), Article 7 gives all natives or foreigners who found themselves in a successor state six years to dispose of their property and retire to whichever country they may choose (Treaty of Paris (1815). By 1915, the Great Powers had withdrawn French nationality from the Saar region, thereby making the inhabitants 'foreigners' in their own homeland for generations (Ann Dig, 1919-42). This was followed by various jurisdictions, including the courts in the UK and the US, affirming the unfettered freedom of states over nationality matters (US court, 1835, 1889, 1892, 1893).

After World War I, the League of Nations also reserved the matters relating to a state's conferral, withdrawal or withholding of nationality as a matter solely within the national jurisdiction of that state, even suggesting that the League's Council could not address such matters (League of Nations Covenant, 1920). This was further underlined by the Permanent Court of International Justice (PCIJ) in the Tunis and Morocco Nationality Advisory Opinion, where it was mentioned that nationality is within the 'reserved domain' of the concerned state (Permanent Court of International Justice, 1923). This was reiterated by PCIJ in Austro-German Customs Union Case in 1931 and by the Permanent Court of Arbitration in the Island of Palmas Case in 1928 (PERMANENT COURT OF INTERNATIONAL JUSTICE, 1931). The same opinion was maintained in many treaties of the 1920s and 1930s, such as the Rome Convention 1922 and the American Convention on the Status of Aliens 1928, which ecognized the conferral, withdrawal or withholding of nationality as being a matter solely within the reserved domain of the state (Conklin, 2014). Very important is the Hague Convention on Certain Questions Concerning Conflicts of Nationality Laws of 1930, Article 1 established this by stating 'It is for each state to determine under its law who are its nationals' (League of Nations, 1930). Hence, by the 1930s, international law had confirmed the position that states hold the complete right to decide on nationality matters.

Likewise, in refugee matters, there was no contemplation for the stateless population because statelessness and refugee issues were treated without any distinction, as both groups were without the protection of the government of their country of origin, or of any other government by way of "new" nationality (Goodwin-Gill, 2016). The only respite was the practice during the eighteenth century to admit non-nationals seeking refuge from persecution and oppression, which may have included stateless persons (European Roma Rights Centre, 2004).

It was only in the 1930s that the League of Nations, along with some states that were concerned about statelessness issues, promoted certain treaties intending to reduce the problem of statelessness (League of Nations, 1930). Nevertheless, those treaties, along with the League of Nations Convention, also continued to hold on to the position that states have the complete right to decide nationality matters (League of Nations, 1930). After World War II, the UN Charter institutionalized this concept through Article 2 (7), ecognized certain matters within the internal jurisdiction of any state (UN Charter, 1945). It was not until the adoption of international human rights instruments under the aegis of the UN that the importance of the individual's right to nationality or citizenship began to be ecognized*.[1] The Universal Declaration of Human Rights (UDHR), despite being a UN General Assembly Resolution and a non-binding document, has undeniably influenced the development of the

[1] The terms "nationality" and "citizenship" are used interchangeably in this Article to refer to a sovereign state's recognition of an individual to be a member of that state.

right to nationality globally (UNGA, 1948). Article 15 institutionalised citizenship as a basic human right by stating that 'everyone has the, and no one shall be arbitrarily deprived of their nationality nor denied the right to change his nationality (UN General Assembly, 1999).' Article 24 of the International Covenant on Civil and Political Rights (ICCPR) provides for every child's right to nationality. It also requires that every child shall be registered immediately after birth (UNTS, 1966). The United Nations Human Rights Committee (HRC) in its Comment No. 17 on Article 24 of ICCPR mentions that under Article 24, states are required to adopt every appropriate measure, both internally and in cooperation with other states, to ensure that every child has a nationality when he or she is born (UN HRC, 1989).

Article 5 of the Convention on the Elimination of all Forms of Racial Discrimination prohibits any racial discrimination which prevents a person from enjoying the right to nationality (UNTS, 1965). Article 1 prohibits the Convention's interpretation in such a way that it affects the laws relating to nationality unless it discriminates against a particular nationality. Article 9 (2) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ensures that women have an equal opportunity to pass on their nationality (UNTS, 1961). This plays an important part in preventing childhood statelessness, as many reasons to preclude access relate to the father's nationality (De Groot, 2014).

One of the most important international legal instruments protecting children's right to nationality is the Convention on the Rights of the Child (CRC) (UNTS, 1989). Article 7 and Article 8 of the CRC deal with statelessness issues. Article 7 provides for immediate registration after birth and the right to acquire nationality. It further requires state parties to ensure the implementation of these rights through their national laws and links their obligations under the relevant international instruments in this field, where the child would otherwise be stateless (General Assembly, 1989). The obligations imposed on the states by Article 7(2) of the CRC are not exactly aimed to the birth country of the child and to all countries with which the child has a link by way of parentage, residence or place of birth. (van Waas, 2008) Article 8 of the CRC also suggests that if a child is illegally deprived of some or all of his or her identity, States parties should provide appropriate assistance and protection in order to re-establish his or her identity as quickly as possible (General Assembly, 1989).

The accession rate of these human rights instruments is comparatively high. For example, the ICCPR has 167 ratifications, the Convention on Elimination of all Forms of Racial Discrimination has 175 ratifications and the CEDAW has 187 ratifications*.[1] The CRC has an exceptionally high ratification rate; 196 countries are party to the convention (General Assembly, 1989). The Universal Declaration of Human Rights (UDHR), although not a legally binding document, has had a significant impact on the development of international human rights law. The principles outlined in the UDHR have served as the basis for numerous international and regional human rights treaties, declarations, domestic laws, and constitutional provisions that together form a comprehensive and legally binding system for protecting and promoting human rights.

The emergence of specific Conventi"ns f'r statelessness was marked with the advent of the Convention Relating to the Status of Stateless Persons. Drafted in 1954, this Convention has 83 state parties and is the primary legal instrument aimed at ensuring certain minimum rights and fundamental freedoms to stateless people (UNTS, 1954). The Convention provides an internationally ecognized definition of statelessness, which defines a stateless person as one 'who is not considered as a national by any state under the operation of law'. The state parties of the Convention are meant to naturalise and assimilate any stateless person 'as far as possible. It further decrees that states should not withhold or withdraw nationality based on race, religion or country of origin. It also holds that stateless people shall not be subjected to the derogation of rights solely on the ground of their previous nationality, even though it allows states to take provisional measures in the interest of national security (UNTS, 1954). However, the state's freedom to expel on the grounds of 'national security or public order' should follow due process of law, giving sufficient time to allow the person to be admitted to another state (UNTS, 1954). The treaty continues with the various rights that should be guaranteed to stateless people, including access to courts and social security. The 1954 Convention further postulates minimum protections that should be given to people falling under this definition, such as non-discrimination, access to courts, property rights and freedom of religion (UNTS, 1954). However, the definition of a stateless person enshrined in the 1954 Convention leaves a serious lacuna, which

[1] Statistics at the time of writing this article.

might adversely affect stateless people. Article 1 of the 1954 Convention ecognized only the population that is stateless due to the operation of the law of a particular country. It fails to ecognize people who are or have become stateless not because of the process of law, but due to other factors. This lacuna has led to the differentiation between de jure and de facto statelessness. The de jure statelessness is explained in Article 1 of the 1954 Convention. A United Nations study on statelessness explains de facto statelessness refers to people who have left the country of which they were nationals, and no longer enjoy the protection and assistance of their national authorities (UN Ad Hoc Committee on Refugees and Stateless Persons, 1949). This type of statelessness could arise due to two reasons. First, authorities from those countries refuse to grant persons assistance and protection, or secondly, the de facto stateless persons themselves renounce the assistance and protection of the countries of which they are nationals (UN Ad Hoc Committee on Refugees and Stateless Persons, 1949)

The next major treaty on statelessness is the Convention on the Reduction of Statelessness, 1961, which has 65 state parties and is designed to reduce future cases of statelessness (UNTS, 1954). This is done by outlining principles for granting nationality at birth to avoid future cases of statelessness by providing the means of acquiring nationality for those who have an appropriate link with a country. For example, Article 1 explicitly provides that a contracting state shall grant its nationality to a child who would otherwise be stateless (UNTS, 1954). Further, under the 1961 Convention, a contracting state in which a parent has nationality has greater obligations to provide nationality for a child who is born in a non-contracting state, and who would otherwise be stateless (Groot). According to Article 7 (1) of the 1961 Convention, a state cannot withdraw nationality unless the individual in question has conferred nationality from another state (UNTS, 1961). Articles 6 to 9 of the Convention specifically sets standards for the deprivation of nationality by contracting states. In its Final Act, the 1961 Convention provided that persons who are stateless de facto should, as far as possible, be treated as stateless de jure to enable them to acquire an effective nationality to bridge the gap created by the 1954 Convention by ecognized only the population who are stateless due to the operation of the law of a particular country (UN General Assembly, 1961).

Various regional human rights conventions have also brought in provisions to prevent statelessness. It is necessary to note the African Charter on the Rights and Welfare of the Child (ACRWC), Article 6 of which guarantees the right of every child to acquire a nationality (OAU, 1990). It is an important document in addressing the problem of statelessness. The Convention also requires States Parties to ensure that their constitutional law recognizes the principles for the acquisition by a child of the nationality of the state in whose territory he was born, unless he was granted nationality by some other state in accordance with its legislation (OAU, 1990).

Within the framework of this study, it is also necessary to consider the American Convention on Human Rights, Article 20, which enshrines the right of every person to acquire citizenship (OAS, 1969). This Convention provides that every person is entitled to the nationality of the state in whose territory he was born, if he is not entitled to any other nationality, and no one may be arbitrarily deprived of his nationality or the right to change it. In addition, Article 27 of the Convention provides for the right to a nationality as a a non-derogable right and even in emergency situations (OAS, 1969).

As per the European Convention on Statelessness Article 4, everyone has the right to a nationality. It further states under Article 6 various ways of acquisition of the nationality of children, ex-lege, of its citizens whether born inside or outside its territory and foundlings within its territory who would otherwise be stateless.

Finally, statelessness and customary international law are addressed by the International Law Commission (ILC), in para 3 of the commentaries on its Articles on Diplomatic Protection. The ILC notes that the definition of a stateless person, as set out in Article 1(1) of the 1954 Convention relating to the Status of a Stateless Person 'can no doubt be considered as having acquired a customary nature.' However, the ILC does not elaborate based on this finding (UN International Law Commission, 2006). Further, according to experts like Groot, several examples demonstrate that the duty to prevent statelessness, at least in respect of children, is emerging as a norm of customary law: for example, the growing number of signatories to Statelessness Conventions; a review of the underlying principles of the 1961 Convention in State Practices which included non-state parties; a near-universal Convention on the Rights of the Child which specifically addressed statelessness among children; and many regional treaties to reinforce the obligation on states to grant nationality (Groot, 2014).

Arbitrary Deprivation of Nationality and Statelessness

Defining Arbitrary Deprivation of Nationality

As mentioned earlier the 'arbitrary deprivation of nationality' is only one among many reasons for statelessness. However, it is by far the most complex and sensitive origin of statelessness. It also falls among the gravest and most volatile, as well as the most protracted, of all statelessness situations worldwide (van Wass, 2009). Starting from the ecognizedntion decrees of the former Soviet Union, which disenfranchised around two million Russians in the 1920s (Bauböck, 2002), and the German Reich Citizenship of 1935 (Eide),[1] which waylaid to the Holocaust of Jews, Romanies and other non-Aryans, to the more recent 1982 Citizenship law of Myanmar which created the Rohingya exodus (Cheesman (n 4).)[2] – all of these examples support the view that arbitrary deprivation of nationality is the most damaging amongst all statelessness origins.

The word 'arbitrary' refers to 'acts based on individual discretion rather than a fair application of the law (Legal Information Institute, 2020).' Often arbitrary deprivation of nationality only connotes discretionary acts depriving nationality. However, the scope of this term goes beyond mere discretionary acts in this context. Scholars and practitioners have identified arbitrary deprivation of nationality into different categories in different contexts. (van Wass, 1958) For instance, the Report of the Office of the Human Rights Commissioner and Secretary-General in 2009 ranged the arbitrary deprivation under three categories: deprivation on discriminatory grounds, deprivation by operation of the law and deprivation by administrative actions (UN Human rights council, 2009).

Nevertheless, for the present discussion, arbitrary deprivation of nationality is classified into two broad categories. The first category is arbitrary deprivation of nationality through discriminatory nationality laws, i.e., against the established international legal norms on non-discrimination. Such nationality laws may justify deprivation irrespective of the state's recognition of those international norms. This criterion has to be tread carefully, as international law does not embrace any clear rules for citizenship determination but instead offers some restrictions on nationality determination. In addition, all citizenship laws are different and not all individuals will be equally associated with all states (UNHCR, 1998). For example, reference should be made to Article 9 of the 1961 Convention on the Reduction of Statelessness, which states that "A Contracting State shall not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds" (UNTS, 1961).

These principles of non-discrimination are omnipresent in all human rights documents starting from the UN Charter (UN Charter). The various human rights documents have extended the list of non-discrimination to 'race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status'(Universal Declaration of Human Rights, 1948). Despite this, many states have implemented nationality laws on the above, violating the discriminatory grounds by either withdrawing or denying citizenship, such as a version of the Sierra Leone Constitution limiting citizenship to persons of Negro African descent (UN General Assembly). Other examples could be the situation of Kurds in the Syrian Arab Republic in 1962 (Human Rights Watch, 2006) or the Dominican born of Haitian descent children in the Dominican Republic (Organization of American States, 2002).

The second category Is when someone is arbitrarily deprived of nationality without conformity with the domestic nationality law. Here, no fault can be found with the domestic law as it may be in conformity with international non-discriminatory norms, however, the authorities go beyond the provisions of domestic law in depriving nationality. In other words, such deprivations are not prescribed by the domestic nationality laws and are in line with non-discriminatory practices in nature. These types of arbitrary deprivations are caused when the authorities act ultra vires to domestic law and are not following the provisions of domestic law. This category also includes the denial of 'due procedural process, including review or appeal' once deprivation has taken place (Open Society Justice Initiative (n 71).). Hence, as per the second category, nationality deprivation or determination should not have taken place and there is no due process in place, such as the possibility for review or appeal. There are provisions in the 1961 Convention on the Reduction of Statelessness that indirectly prohibits such acts. Article 8(4) decrees against deprivation that takes place outside of the law and which does not allow for the right to a fair hearing by a court or other independent body.

[1] *Eide* (n 7),

[2] *Cheesman* (n 4).

Legal Provisions and Jurisprudence particularly on Preventing Arbitrary Deprivation of Nationality

In addition to the general legal provisions regarding statelessness, there are specific laws designed to prevent statelessness caused by the arbitrary denial of nationality. This prohibition is considered a fundamental principle of international law. (UNHCR A/Res/50/152) and has achieved the status of customary international law (Anudo Ochieng Anudo v. United Republic of Tanzania, 2015). The 1961 Convention on the Reduction of Statelessness aims to prevent the arbitrary denial of nationality and statelessness. According to the Convention, a signatory state may not strip a person of their nationality if it results in statelessness, and may not do so based on racial, ethnic, religious, or political grounds. Article 9 of the Convention addresses the first category of arbitrary deprivation of nationality, but its protection is limited to only four prohibited grounds, compared to other non-discrimination human rights provisions that are more comprehensive. Further, Article 8 (4) prohibits the deprivation of nationality except in accordance with the law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body. This clearly applies to the second category in our classification discussed above. According to the the American Convention on Human Rights, the European Convention on Nationality, the Arab Charter on Human Rights, the ASEAN Human Rights Declaration, and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms all prohibit arbitrary deprivation of nationality through their respective provisions. Further, the Convention on the Rights of Persons with Disabilities through Article 18 (1) also prohibits arbitrary deprivation of nationality based on disability (UN General Assembly, 2007). The ICCPR also provides that a person may be expelled from the state party's territory only in pursuance of a decision reached in accordance with the law. It further provides for equality before the law, which also prohibits discriminatory nationality laws. Additionally, there is the development of jurisprudence in many rulings by the Inter-American Court on Human Rights (IACHR) (Case of Expelled Dominican Haitian Persons v. the Dominican Republic 2014 and Bronstein vs. Peru), the African Commission on Human and People's Rights (Communication 318/06), the European Court of Human Rights (Ramadan v. Malta 2017), and the Court of Justice of the European Union (Rottmann v. Freistaat Bayern, 2010). All these decisions denounce acts of arbitrary deprivation of nationality by the respective states.

Adding to these legal provisions, there have been periodic resolutions by human rights bodies such as the Human Rights Council and its predecessor the Commission on Human Rights, which adds to the corpus of discussion on arbitrary deprivation of nationality (UNHRC A/HRC/RES/32/5). Based on these resolutions, many studies have been conducted and reports have been submitted to analyse the issues and to resolve problems associated with the various definitions. For example, the 2009 report of the Secretary-General on the arbitrary deprivation of nationality clarifies the meaning of the word deprivation (UNHRC A/HRC/13/34). Some international consultation initiatives on deprivation of nationality, aimed at interpreting international norms on this topic, are also worth noting here. Such initiatives include the Tunis Conclusions on the interpretation of the 1961 Convention standards relating to the loss and deprivation of nationality (UNHCR Expert Meeting 1961),[1] and the ILEC Guidelines focusing on loss and deprivation of nationality in the EU context. (ILEC Guidelines 2015).

Statelessness Arising out of Arbitrary Deprivation of Nationality and Crimes against Humanity

Having discussed the regime on statelessness and arbitrary deprivation of nationality thoroughly, it is important to understand the nuances of CAH before we proceed further with an analysis on the nexus between two. In this section, we will consider the general provisions of CAH and persecution and then compare them with statelessness arising out of arbitrary deprivation of nationality to a population.

Defining CAH and its Legal Framework

The definition of Crimes against Humanity (CAH) has continuously evolved over the course of its development. It was initially brought in to fill the gaps left by war crimes or genocide (J. Graven, 1950). After the Second World War, CAH was introduced to respond to the Nazi regime's atrocities committed against its citizens. Since it was first introduced in the International Military Tribunals after the Second World War, the CAH definition has gone through

[1] UN High Commissioner for Refugees (UNHCR), Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ('Tunis Conclusions'), March 2014.

many inclusions and deletions and has been amended through the Control Council Law No.10, the ICTY and ICTR, hybrid tribunals, national international criminal law tribunals and the International Criminal Court at the Hague. It is perceived that the definition of CAH evolved depending on the context in which atrocities were committed (Meron, 1995). Many scholars have noted that CAH definitions are shrouded in ambiguity, resulting in chronic definitional confusion (Geras, 2011). Hence, to understand CAH and its legal framework in the context of statelessness, we may need to go beyond the latest definition of CAH under the International Criminal Court's Rome Statute or the draft of the proposed CAH Convention. Therefore, this section first reviews the various approaches to CAH through its evolution in history to gain perspective from all possible angles.

The idea of CAH was first conceived to prosecute atrocities committed against Armenians by the Ottoman Empire after the First World War, but it failed as the definition allegedly lacked sufficient precision for prosecution (History of the United Nations War Crimes Commission and the Development of the Laws of War, 1948). The first successful definition of CAH was adopted in the Statute of the International Military Tribunal at Nuremberg (Crimes Against Humanity in International Criminal Law, 1999). The Article 6I definition of CAH in the Nuremberg Tribunal's statute includes acts such as murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war, or persecution on political, racial, or religious grounds (Charter of the International Military Tribunal, 1945). This definition, unlike the definition of war crimes, encompassed all civilians, including a country's own citizens, provided the acts were related to war. The Tokyo Tribunal followed the definition but omitted persecution on religious grounds for contextual reasons (Special Proclamation, 1946). The Allied Control Council Law No. 10 Article 2I also adopted the Nuremberg definition by adding rape, imprisonment, and torture to the list of prohibited acts (Control Council Law, 1946).

The International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) constituted by the UN Security Council, in its definition of CAH, followed the list of prohibited acts from the Control Council No. 10's definition and added 'widespread or systematic attack' as the threshold requirement. (International Criminal Tribunal for the former Yugoslavia, 1994) Further, the ICTY Statute Article 5 emphasised the relationship of armed conflict, either international or internal.(UN Security Council, 1993) Whereas, Article 3 of the ICTR statute required discriminatory grounds of national, political, ethnic, racial, or religious grounds as the threshold requirement.

The International Criminal Court's Rome Statute consolidated the definitions discussed above as well as the jurisprudence of the related tribunals in its Article 7 (UN General Assembly).It additionally added the forced transfer of population, sexual slavery, enforced prostitution, forced pregnancy, enforced ecognizedn, sexual violence, enforced disappearance, and the crime of apartheid to the list of prohibited acts it adopted from the ICTY and ICTR statutes (UNTS, 1954). However, Article 7 of the Rome Statute omitted the required armed conflict nexus and the requirement of discriminatory grounds that were present in the ICTY and ICTR, respectively. The contextual element present in the Rome Statute definition is 'when the crime is committed as part of a widespread or systematic attack directed against any civilian population'. It further requires that the attack on a civilian population be carried out pursuant to or in furtherance of a state or ecognizednt policy to commit such an attack.

Later, the hybrid international criminal tribunals, such as the Statute of the Special Court for Sierra Leone (SCSL) (UN Security Council,2002) and municipal international criminal law courts such as the Iraqi High Criminal Court, maintained the threshold of 'widespread or systematic attack' (Statute of the Special Tribunal for Human Rights, 2003). They also avoided the armed conflict nexus and the requirement of discriminatory grounds following the ICC's Rome Statute. The latest international effort to define CAH is the Draft Articles on Prevention and Punishment of Crimes against Humanity adopted in 2015 by the International Law Commission. In Article 3, the ILC adopted (Report of the International Law Commission, 2017) from the Rome Statute the requirements of 'committed as part of a widespread or systematic attack' and 'state or ecognizednt policy' that Article 18 of the 1996 ILC Draft Code inspired (Draft Code of Crimes against the Peace and Security of Mankind, 1996).

The definition of CAH is dynamic and continues to evolve. As we have seen, contemporary CAH definitions shredded the requirement of an armed conflict nexus, which was considered a mandatory requirement by the IMT and ICTY. It

is also noteworthy that the ICTY also rejected the armed conflict nexus in the Tadic case, holding it as a deviation against customary law. The UN Secretary-General's commentary to Article 5 of ICTY also suggests that CAH can be committed outside of armed conflicts (Report of the Secretary-General, 1993). Subsequent statutes of international tribunals, municipal case law, and expert opinions further support this position (Echmann, 1990). As Judge Meron mentioned, there is no justification or persuasive legal reason for treating perpetrators of atrocities in internal conflicts more leniently than those engaged in international wars (Meron, 1995). This development of no requirement of prohibited acts being committed in the context of armed conflict has made CAH applicable to situations of human rights violations committed during peacetime, including the cases of statelessness arising out of arbitrary deprivation of nationality.

Statelessness and CAH Nexus

As we have discussed earlier, causing statelessness may amount to CAH only in certain circumstances. It is very important to restate that ecognizednt before we proceed further with finding the nexus within both. First and foremost, only the arbitrary deprivation of nationality of a large population will amount to CAH. Hence, individual cases of arbitrary deprivation of nationalities are excluded in the discussion. This is because the arbitrary deprivation of nationality is a major weapon to target minorities within a state, and only such large-scale violations will give rise to jus cogens crimes. Secondly, we will only focus on deprivation of already existing nationality and refusal to grant nationality to children of a particular group, and not the refusal of nationality through ecognizednt (Meron 1995). Again, the analysis will be done through the lens of the two broad categories of arbitrary deprivation of nationality as ecognized earlier, i.e., through discriminatory nationality laws which are against the established international legal norms on non-discrimination and arbitrary deprivation of nationality not in conformity with the domestic nationality law, including the denial of 'due procedural process, review or appeal' once deprivation has taken place.

As seen in the previous discussion, the following elements need to be satisfied to establish a CAH. First, the attacks should be targeted against the civilian population; second, the act should have been committed as part of a widespread and/or systematic attack; third such attacks have been carried out pursuant to or in furtherance of a state or ecognizednt policy; and finally, the acts of the perpetrators shall be among the enumerated prohibited acts listed in the definition. Hence, to determine the irrefutable link of statelessness arising out of the arbitrary deprivation of nationality to a large population with CAH of persecution, the above essential elements need to be analysed in that context.

α) ***An attack against a civilian population***

As per Article 7(2)(a) of the ICC Statute, an 'attack directed against any civilian population' means a course of conduct involving the multiple commission of prohibited acts referred to in the definition against any civilian population (Prosecutor v. Dragoljub Kunarac, 1996). In cases of statelessness arising out of arbitrary deprivation of nationality, you may find deprivations affecting both individuals or a larger population. However, the cases of deprivations which may lead to CAH are those which are targeted to a population, especially a minority population. The deprivation of nationality of Kurds of Syria, Rohingyas of Myanmar and Haitian Descendants in the Dominican Republic fall under this category where larger civilian populations are affected. In the first two examples, the deprivation of already existing nationality of the population along with registration of nationality at birth is involved, and in the third case, the arbitrary deprivation of nationality through denial of registration of birth of a particular minority population is involved. In all these cases, the deprivation is due to discriminatory bias. The jurisprudence of CAH establishes a civilian population encompasses any group with common characteristics, like race, language, ethnicity or nationality, and the attacks are not required to be against the entire population of a territory (Prosecutor v. Dusko Tadic, 1997). All three cases discussed above have these common characteristics. Likewise, a perpetrator need not act repeatedly; a single act can constitute CAH if the act fits within the overall context. Hence, a single act to deprive nationality arbitrarily will be sufficient if it affects a large population. In some cases, the arbitrary deprivation of nationality is justified, alleging that the members of a minority group engage in terrorist/secessionist activities. Nevertheless, the jurisprudence in international criminal law reveals that the presence of armed groups amongst the deprived civilian population does not negate the civilian character of the whole group.

Widespread or systematic attack pursuant to or in furtherance of a state or ecognizednt policy

Even though under Article 7(1) of the ICC statute widespread and systematic elements need only to be present in the alternative (Ibid, Prosecutor v Akayesu, 1998) both are generally satisfied in actual circumstances (Prosecutor v. Haradinaj, 2004). Thus, we will attempt both in this present case. A widespread element can refer to a broad geographical area and a large number of victims. The quantitative element and intensity of an attack also support a widespread statutory definition. Instances of arbitrary deprivation of nationality leading to statelessness affect a large population of a particular group and usually covers an entire state. Hence, the above conditions are met with and satisfies the widespread element under the CAH definition.

The systematic element refers to a qualitative criterion, or the character of the acts committed requires a certain degree of ecognizedn and planning with repeated violations following a pattern. The involvement of high-level authorities in a case can also demonstrate a systematic approach. Likewise, evidence of planning on a common policy and the fact that acts were not just random occurrences also point to a systematic approach leading to CAH (Prosecutor v Nahimana, 2007). Further, the use of government documents or facilities adds to the systematic complicity as held by the Akayesu ruling in establishing public or private resources. In the cases of arbitrary deprivation of nationality leading to statelessness, it is very evident that such acts are done in a planned, ecognize and systematic way, always with government support or policy. The evidence of a 'pattern or methodical plan' of enacting a policy for arbitrary deprivation of nationality, an 'organised nature', or an 'organised pattern of conduct' to implement it signifies a systematic approach (Tadic, 2003).

The policy element applies both to widespread and systematic factors. Article 7(2)(a) of the ICC statute requires that 'the attack on a civilian population be carried out pursuant to or in furtherance of a state or ecognizednt policy to commit such attack'. Inspired by the 1996 ILC Draft Code, this principle broadens incitement or support of the crime beyond governments to organisations, or groups. Earlier IMT, ICTY, and ICTR statutes lacked this element, even though in all those cases CAH occurred as a result of criminal state policies, with the courts applying the policy element in its cases (The Prosecutor v. Clément Kayishema and Obed Ruzindana, 1999). Later in the Kunarac et al. case, the appeals chamber departed from this view, and thereafter policy was not mandatory for the ad hoc tribunals. The chamber argued that such a requirement has no basis in International Customary Law. Earlier discussions in ad hoc tribunals remained significant for the ICC statute deliberations in Rome and the policy element was subsequently adopted. As far as arbitrary deprivation of nationality amounting to statelessness is concerned, it cannot be committed without the government's ecognizednt policy as nationality matters are the exclusive prerogative of the government concerned.

For example, in the case of the Kurds of Syria, a minority population comprising around 10-15 per cent of the country, the people were systematically deprived of nationality from 1950 onwards (Shoup, John A, 2018). This started with the Syrian Government developing a comprehensive plan to Arabize the Kurdish areas. They conducted a census in 1962 and ecognized the Kurds into three groups, of which the last group, maktoumeen, ultimately lost citizenship (Human Rights Watch, 2006). In another example of the Rohingyas of Myanmar, arbitrary deprivation of nationality started with the Government passing the 1982 Citizenship Act. The subsequent military dictatorship collected the previous National Registration Cards which were the then proof of citizenship and issued National Scrutiny Cards to all except the Rohingyas, leaving them vulnerable to statelessness. The required elements of a widespread and systematic approach to ecognizedntion with a governmental policy are very clear in both cases.

β) ***Mental element – knowledge of the attack***

Crimes against humanity do not require a specific intention (known as dolus specialis) like the crime of genocide. An individual can be held criminally responsible and liable for punishment under CAH if they commit the required actions with intent or knowledge. This means that they must knowingly engage in the conduct and either intend to cause the consequences or be aware that they will occur in the ordinary course of events. The term "knowledge" in this context means an awareness that a certain circumstance exists or that a certain consequence will occur as a result of the individual's actions. The perpetrators simply need to be aware of the circumstances surrounding their actions and the consequences that may result from those actions (Tadic, 2000) i.e., the perpetrators were aware of the context that a widespread or systematic attack on a civilian population was taking place and that their actions were part of that attack (Katanga,

2005). The ICC requirements are modest in this regard, and in cases of arbitrary deprivation of nationality amounting to statelessness, the perpetrators being a part of the government machinery are aware that a circumstance existed, and such a consequence would occur in the ordinary course of events. The perpetrator does not need to be aware of the details of the state's/ ecognizedn's plan or policy (ICC Elements, 2011). Further, for the persecution, an additional mental element of discriminatory intent is a requirement. As arbitrary deprivation of nationality is itself based on discrimination, making such discriminatory intent inevitable.

χ) *Prohibited acts committed*

To be considered a crime against humanity, the individual act must be part of a widespread or systematic attack against a civilian population. It doesn't require a large number of victims, although that may be the case. In the case of extermination, a large number of victims may be required, but in other instances, even a single act targeting a single individual can be considered a crime against humanity if it is part of a larger, systematic attack (Blaskic, 2000). In the Bemba case, the ICC Pre Trial Chamber had laid down that for determining the commission of prohibited acts, the Court should take into account the context in which the act is committed, the method of commission, the consequence of the act, and the purpose and motive of the perpetrator (Bamba, 2000). The arbitrary deprivation of nationality amounting to statelessness by default satisfies the required elements of persecution under CAH, as discussed below. Another prohibited act which comes close to this is apartheid. However, it requires an element of discrimination based on race, which is not always the case. Nevertheless, other forms of CAH like murder, rape, extermination, and deportation may very often follow the situations of statelessness.

δ) *Persecution*

"Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law because of identity (Rome Statute of the International Criminal Court, 1998). It is committed against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally ecognized as impermissible under international law. The ICTY has required a gross or blatant denial of a fundamental right on discriminatory grounds laid down under international law for the commission of persecution. (Kupreškić) The most elementary characteristic of the CAH of persecution is that it is to be committed on discriminatory grounds. The ad hoc tribunals restricted discriminatory grounds to political, racial or religious grounds. (ICTY Statute) However, the ICC has evolved a more inclusive list of political, racial, national, ethnic, cultural, religious or gender, with an additional open-ended clause of 'other grounds that are universally ecognized as impermissible under international law (ICC Statute). However, persecution has not evolved a foolproof definition so far as it is absent in the major criminal justice system and needs careful and sensitive development in the light of the principle of nullum crimen sine lege.

The jurisprudence of the ad hoc tribunals decrees that persecution requires a gravity comparable to other CAH (Pre Trial Chamber, Case No. ICC-01/05-01/08, 2000), a condition which is also incorporated in the ICC statute by requiring the deprivations to be 'severe' and having a connection to other acts mentioned in Article 7 (1)(ICC Elements, 2011). However, this requirement is not inconsonant with customary international law. It exists purely as an objective element to ensure the seriousness of the situation and does not require any mental element (ICC Elements, 2011). The only special intent required by the ICC Statute and the ad hoc Tribunals for persecution is to have a particular intent to target a person or group on prohibited grounds of discrimination (ICC Elements 2011). This particular intent to discriminate is more than simple knowledge which is otherwise required in other CAHs (ICC Elements, 2011). The persecutory acts include all prohibited acts included in the definition of CAH under Article 7 (1) of the ICC Statute when committed with discriminatory intent.*[1]

[1] This include
(a) Murder;
(b) Extermination;
(c) Enslavement;
(d) Deportation or forcible transfer of population;
(e) Imprisonment or other severe deprivation of physical liberty in violation of
fundamental rules of international law;
(f) Torture;
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced
sterilization, or any other form of sexual violence of comparable gravity;
(h) (Persecution….)
(i) Enforced disappearance of persons;
(j) The crime of apartheid;
(k) Other inhumane acts of a similar character intentionally causing great
suffering, or serious injury to body or to mental or physical health

Along with this, ad hoc Tribunals' jurisprudence mentions that they can include other acts like one that severely deprives political, civil, economic or social rights like the discriminatory laws, restriction of movement and seclusion in ghettos, or exclusion from professions, business, educational institutions, public services etc (Tadić).

This article aims to examine the relationship between statelessness and crimes against humanity (CAH) of persecution. It looks specifically at statelessness that results from the arbitrary deprivation of nationality for a large group of people. This type of statelessness is considered a fundamental violation of international law. It meets all the criteria for being considered a crime of persecution because it involves intentional and severe deprivation of basic rights based on identity. The act of arbitrary deprivation of nationality is discriminatory in nature, and it is committed against an identifiable group due to their political, racial, national, ethnic, cultural, religious, gender, or other characteristic that is deemed unacceptable under international law. The discriminatory intent is a crucial component of statelessness resulting from arbitrary deprivation of nationality. Along with this, stateless people are always severely deprived of their political, civil, economic or social rights, restriction of movement and seclusion in ghettos, or exclusion from professions, business, educational institutions, public services etc., which squarely satisfies the requirement of the act to be 'severe' and having a connection to other acts under Article 7 (1), especially other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health. Statelessness situations may very often lead to murder, extermination, enslavement, imprisonment, deportation, torture, etc. This is evidence that causing statelessness through arbitrary deprivation of nationality inadvertently comes under the definition of the CAH of persecution as defined under the ICC statute.

Conclusion and Suggestions

Statelessness arising out of arbitrary deprivation of nationality to a large population may lead to jus cogens crimes like genocide and CAH. Various CAH crimes like apartheid, murder, extermination, enslavement, imprisonment, deportation, torture, etc. are often committed in such stateless situations. However, from the foregoing discussion, it is evident that statelessness arising out of arbitrary deprivation to a large population invariably leads to the CAH of persecution and satisfies all its required conditions, including the discriminatory intent. Further, such statelessness by default severely deprives the victims of their political, civil, economic or social rights, restriction of movement and seclusion in ghettos, or exclusion from professions, business, educational institutions, public services etc., which satisfies the nexus with other CAH acts. Thus, all cases of statelessness arising out of arbitrary deprivation of nationality to a large population should inevitably be classified under the CAH of persecution.

After clearly establishing this argument, it is important to see how repression of this crime can be effectuated. Even though it is possible that the present CAH definition under the Rome Statute can be interpreted to include cases of statelessness arising out of arbitrary deprivation of nationality to a large population as we did in this article, in reality, such an invocation may not be feasible. This could be because of two primary reasons. First, neither such an interpretation of persecution is accepted widely, nor the jurisprudence from the previous courts are sufficient to establish it. Secondly, because statelessness arising out of arbitrary deprivation of nationality to a large population would normally lead to other crimes under CAH, and the perpetrators will be prosecuted for those crimes rather than persecution. The issue with such a situation where cases of statelessness arising out of arbitrary deprivation of nationality to a large population are not expressly established as a CAH of persecution is that it is unlikely to have a deterrent effect on future perpetrators. The examples of such scenarios are the 1982 citizenship law of Myanmar, which was created by the military-led government in 1982 (Ibrahim, A, 2016). The law was arbitrarily constituted to deprive Rohingyas of their nationality with discriminatory intent (Haque, 2017). A similar situation occurred with the Kurds of Syria, where the government made the 1962 law for the Arabization of Syria, discriminating against ethnic Kurds. Had the perpetrators who made and implemented these laws been prosecuted in the initial stage of incorporation of such discriminatory nationality laws, the subsequent commission of atrocities against those victim's population could have been avoided. Therefore, it is recommended that an appropriate amendment may be brought to Article 7 (2) (g) of the Rome Statute of the ICC to include statelessness arising out of arbitrary deprivation of nationality to a population as part of the act of persecution.

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