



UNHCR

United Nations
High Commissioner
for Refugees

THE STATE OF THE WORLD'S REFUGEES

A Humanitarian Agenda



6. Statelessness and citizenship

The Universal Declaration of Human Rights unequivocally states that “everyone has the right to a nationality” and that “no-one shall be arbitrarily deprived of his nationality.” But many thousands of people across the globe lack the security and protection which citizenship can provide.

A substantial proportion of the world’s stateless people are also victims of forced displacement. In some instances, individuals and communities are deprived of their nationality by governmental decree and are subsequently expelled from the country which they consider to be their home. In other situations, stateless people are obliged to flee because of the persecution and discrimination which they experience. And having left the country where they have lived for most or all their lives, stateless people may subsequently find it impossible to return.

Statelessness is not only a source of human insecurity and a cause of forced displacement, but may also pose a threat to national and regional stability. As this chapter indicates, citizenship disputes have become an important feature of the contemporary world, generating tension and even violence between different states and communities. Humanitarian organizations have a valuable role to play in averting such situations, protecting stateless people and finding just solutions to their plight. Ultimately, however, the problems of statelessness and disputed nationality can only be effectively addressed through the actions of states themselves.

NATIONALITY AND CITIZENSHIP

Citizenship is a fundamental element of human security. As well as providing people with a sense of belonging and identity, it entitles the individual to the protection of the state and provides a legal basis for the exercise of many civil and political rights. People who lack a nationality may find it difficult or impossible to engage in a range of activities that citizens take for granted. If an individual is to enjoy the automatic right of residence in a country, carry a passport and benefit from diplomatic protection while abroad, then citizenship is indispensable. In many situations, nationality also enables people to find employment, to make use of public services, to participate in the political process and to have access to the judicial system.¹

Nationality is not granted indiscriminately, but is generally based upon factors such as a person’s place of birth, parentage, or the relationship they have established with a state through long-term residence there. In legal terms, such ties provide the ‘genuine effective link’ between the individual and the state. For the vast majority of people around the world, that link is easily established and readily acknowledged by the authorities of the state concerned. In situations where these conditions do not pertain, however, problems of statelessness are likely to emerge.

Under international law, a stateless person is one "who is not considered as a national by any state under the operation of its law."² This definition is helpfully concise and to the point. But it is also a very limited and somewhat legalistic definition, referring to a specific group of people known as *de jure* stateless persons. It does not encompass the many people, usually described as *de facto* stateless persons, who are unable to establish their nationality or whose citizenship is disputed by one or more countries. This chapter uses the notion of statelessness in its broader sense, to denote all those people who lack what has become known as an 'effective nationality', and who are consequently unable to enjoy the rights that are associated with citizenship.³

Statelessness, whether of the *de jure* or *de facto* variety, has many causes. An individual may lose his or her nationality and fail to acquire a new one as a result of an extended stay abroad or through marriage to (and subsequent divorce from) a person of a different nationality – a problem which affects a disproportionate number of women. Although it is the fundamental right of every child to acquire a nationality, children who are born to stateless parents or refugees – or who are born out of wedlock – may be denied citizenship.

Individuals may also find themselves stateless because of faulty administrative practices, the failure or refusal of a state to ensure the registration of births, or because of conflicts in the nationality laws of different countries, particularly when one adheres to the principle of *jus sanguinis* (citizenship on the basis of descent) and the other adheres to the principle of *jus soli* (citizenship on the basis of the place of birth). Finally, a person may voluntarily renounce their nationality and fail to acquire a new citizenship before that renunciation takes effect. In recent years it has also been known for asylum seekers to become or remain stateless by choice, so as to enhance their prospects for admission to one of the more prosperous countries.

Situations of statelessness involving larger numbers of people tend to arise in a number of different circumstances. Governments may amend their citizenship laws and denationalize whole sections of society in order to punish or marginalize them or to facilitate their exclusion from the state's territory. The formation of new states, resulting from decolonization or the disintegration of a federal polity, may leave thousands or even millions of people stateless or with a disputed claim to citizenship. Large-scale statelessness may also arise in the context of mass expulsions and refugee movements, especially when the population concerned has lived in exile for many years without acquiring the citizenship of their asylum country.

The revival of international interest

During the cold war – a period of relative stability in the configuration of states – the problem of statelessness was generally regarded as a minor one, affecting just a small number of people who fell into the interstices of the international system. As a result, the issue failed to attract a significant amount of attention from governments or humanitarian organizations.

International conventions on statelessness were established in 1954 and 1961, but, for reasons that will be explained later, few countries chose to accede to these legal instruments. In 1975, UNHCR was entrusted with certain responsibilities in relation to stateless people. For the next 15 years, however, the organization devoted relatively little time, effort or resources to this element of its mandate.

Commenting upon this situation in 1988, the Independent Commission on International Humanitarian Issues (a body co-founded by a former UN High Commissioner for Refugees) observed that "UNHCR has remained somewhat indifferent when it comes to the fate of the stateless. The term 'stateless person' hardly ever appears in UNHCR publications – a fact which, together with the doctrinal vacuum in this particular area, only serves to heighten a general indifference towards a problem which should rather inspire in human terms the same compassion as that shown to refugees."⁴

Since that comment was made, the problem of statelessness has forced its way onto the international humanitarian and security agenda as a result of several related factors: the rise of ethnic consciousness in certain parts of the world; the increased incidence of communal conflict; the associated disintegration of several federal polities; the fear of large-scale population movements involving stateless people; and the tightening of immigration controls throughout most of the industrialized world.

At the same time, the international community's changing approach to the problem of forced displacement has prompted UNHCR and other humanitarian organizations to address the issue of statelessness in a more urgent and systematic manner. Three specific trends have contributed to this outcome: the new emphasis which is being placed on human rights in countries of origin and the prevention of mass exoduses; the growing recognition that countries of origin must play a primary role in averting and resolving situations of forced displacement; and the somewhat belated recognition that voluntary repatriation is in most instances the most appropriate solution to refugee problems. As a UNHCR staff member has observed, had voluntary repatriation been more actively promoted in earlier years, then the organization "would have been required to concentrate on nationality and citizenship issues much sooner, as a key element in the repatriation of stateless refugees."⁵

The relevance of history

The recent time of turbulence in international affairs can in many senses be compared with the period of imperial collapse which followed the first world war, and the period of state dissolution and formation which occurred in the aftermath of the second global conflict.

The disintegration of the Austro-Hungarian, German and Ottoman empires in the wake of their defeat in the first world war led to the establishment of new states such as Czechoslovakia, Hungary and Yugoslavia, the restoration of the former state of Poland, and the simultaneous adjustment of many international borders in the area directly or indirectly affected by the conflict. This process of state formation was accompanied by a number of large-scale population movements, including the transfer of populations on the basis of their ethnic and religious identity. Some five million people moved – or were moved – in this way, a process which evidently required the states concerned and the international community as a whole to address some complex citizenship questions.

US President Woodrow Wilson, perhaps the key figure of the post-war peace process, had little doubt about the relationship of nationality issues to the broader problem of regional and international security. Referring to the effort to create stable states through the redrawing of international borders and the transfer of populations, Wilson commented that "we are trying to eliminate those elements of disturbance, as far as possible, that may interfere with the peace of the world."⁶

Ironically, of course, the subsequent two decades were characterized much more by violence than by peace, culminating in a second world war that generated a new wave of expulsions and population displacements, many of them involving people who had lost or been stripped of their nationality. Analyzing these events in her seminal study of the period, Hannah Arendt observed that "since the peace treaties of 1919 and 1920, refugees and the stateless have attached themselves like a curse to all the newly established states on earth."⁷

Although some of these people were able to return to their homes almost as soon as the war had ended, the problems of displacement and statelessness persisted. With the borders of Europe being redrawn once more, up to 15 million Germans from Czechoslovakia, Hungary, Poland, the Soviet Union and Yugoslavia were forced to move to Austria or Germany. The Soviet Union's annexation of the eastern part of the inter-war Polish state resulted in the massive transfer and

expulsion of Ukrainians and Poles, many of the latter settling in areas which had been newly acquired from Germany and from which the native population had been expelled. These and other movements involved not only the displacement of people, but also necessitated a transfer of nationality and citizenship rights.

While the post-war configuration of European states had begun to assume a degree of stability by the end of the 1940s, the same period witnessed a new spate of upheavals in other parts of the world, leaving a further legacy of statelessness amongst the populations involved. These events included, for example, the decolonization and partition of India in 1947 and the subsequent movement of Hindus and Muslims between India and Pakistan; the conflict over Palestine and the creation of Israel in 1948, creating a Palestinian diaspora in the Middle East and beyond; and the Chinese revolution of 1949, which led to the establishment of a communist government on the mainland and a nationalist government on the island of Taiwan, both of them claiming to represent the Chinese state. All of these tumultuous events raised important questions about the citizenship status of the populations concerned – questions which in many cases have not yet been fully resolved.

In Bangladesh, for example, some 240,000 Biharis (primarily non-Bengali Moslems who fled from India during the partition of 1947 and who supported West Pakistan during the 1971 secessionist struggle) continue to live in camps, waiting for the day when they can take up residence and citizenship in Pakistan.⁸ Despite the progress that has been made in the Middle East peace process, the current and future citizenship status of many Palestinian refugees remains to be determined. And in early 1997, efforts were still being made to find a solution for a small number of ethnic Chinese boat people in Hong Kong, whose claim to refugee status had been rejected and who were refused readmission to Viet Nam, on the grounds that they had a stronger link to China or Taiwan.⁹

As these and other examples demonstrate, the question of nationality is an unusually sensitive one, going to the heart of a country's sovereignty and identity. It is for this reason that disputes over citizenship so frequently prove to be intractable and become the source of tension and conflict, both within and between states.

NEW DIMENSIONS OF STATELESSNESS

History has demonstrated that the problems of statelessness and disputed or ambiguous nationality are normally associated with periods of profound change in international relations. It is therefore not surprising that the past few years have witnessed a significant increase in the incidence of such problems.

Since the end of the 1980s, serious situations of statelessness have arisen in almost every part of the world, with the primary exception of the Americas (see [Map M](#)). For analytical purposes, such situations can be divided into two broad categories: those involving ethnic or minority groups which do not enjoy full or undisputed citizenship of the countries where they live; and those associated with the dissolution of multinational or multiethnic federal states and the formation of new political entities.

Africa, Asia, the Americas and Middle East

The situations of statelessness and disputed citizenship which can be placed in the first of these two categories are generally to be found in the less-developed regions of the world. The ethnic and minority groups most directly affected by these problems in recent years include:

- up to 120,000 Nepali-speaking southern Bhutanese who are living as refugees in Nepal and India, and whose claim to Bhutanese citizenship is rejected by the authorities of that country;¹⁰
- the ethnic Vietnamese population of Cambodia, thought to consist of around five per cent of the country's 10 million people, and whose citizenship remains unclear in the country's current nationality legislation;
- up to 250,000 Bidoons (an Arabic expression derived from a phrase meaning 'without nationality'), long-term but stateless residents of Kuwait, many of whom are now to be found in Iraq and other countries in the Persian Gulf;
- around 60,000 black Africans from Mauritania living as refugees in the neighbouring country of Senegal, and whose claim to citizenship has been challenged by the Mauritanian authorities;
- up to 200,000 Kurds in Syria, many of whom became stateless as a result of a 1962 census which withdrew Syrian citizenship from people who had allegedly entered the country illegally from Turkey;
- the Rohingya people of western Myanmar, a largely stateless Moslem minority group consisting of some two million people, a small proportion of whom are accommodated in refugee camps in Bangladesh; and,
- the Banyarwanda and Banyamulenge peoples of eastern Zaire, ethnic Tutsis with a previously disputed claim to Zairean citizenship, estimated by many commentators to number in the region of 800,000.

While the situations described above are somewhat disparate in nature, a number of broad generalizations can be made with regard to such manifestations of statelessness. First, they tend to involve groups which are clearly distinguished from the rest of a country's population, whether as a result of their race, religion or ethnic origin. Second, they often involve communities which are regarded as a threat to the ruling elite or the majority population, either by virtue of their numbers or as a consequence of their perceived disloyalty to the state. And third, such situations normally arise in countries which lack a pluralistic political culture, and where minority groups are liable to be used as scapegoats by the state and other sections of society. Recognizing this link, the UN High Commissioner for Refugees has observed that "on the plane of rights, the prevention and reduction of statelessness is an important aspect of securing minority rights."¹¹

The second of the two categories identified earlier – problems of statelessness associated with the break-up of multiethnic federal states – relates primarily to more developed regions of the world, and specifically to areas which are emerging from long periods of communist or socialist rule: the Commonwealth of Independent States (CIS), the Baltic states, former Yugoslavia, and the Czech and Slovak republics. As one analyst has suggested, with the end of the cold war and the disintegration of the communist bloc, an 'unmixing of peoples' is under way, bringing insecurity and uncertain citizenship status to substantial numbers of people.¹²

In numerical terms, the number of stateless people living in the former communist areas is almost certainly no greater than the number to be found in other parts of the world. And in humanitarian terms, the insecurity and hardship experienced by stateless people in the less-developed regions has in many instances been far more serious than that experienced by their European counterparts. Even so, it is quite evident that the international community's new interest in statelessness and nationality disputes has to a very large extent been generated by the fear of instability, conflict and population displacement in the geopolitically sensitive areas examined below.

The Commonwealth of Independent States

During its 75-year history, the former Soviet Union, a vast and ethnically heterogeneous state, experienced forced displacement and officially stimulated migration flows on a massive scale. Describing the ensuing problems for the Soviet successor states, one analyst has observed that "the breakup of the Soviet Union has transformed yesterday's internal migrants, secure in their Soviet citizenship, into today's international migrants of contested legitimacy and uncertain membership... In so doing, it has made the politics of membership and citizenship one of the most pressing issues confronting the successor states."¹³

A scholar from the region makes a broadly similar point, emphasizing that there has been nothing accidental about these developments. "The enforcement of ethnically selective citizenship and official language laws in societies with sizeable and culturally distinct communities has caused massive discontent and inter-ethnic tensions in Estonia, Latvia, Moldavia, Georgia, Ukraine and in Central Asia."¹⁴

When, in December 1991, Soviet citizenship ceased to exist, some 287 million people were left with or in need of a new nationality. One of the primary tasks for the 15 countries which emerged from the dissolution of the USSR was to define precisely who their citizens were, and to establish new rules for the granting of citizenship.

In general, the 12 countries which now comprise the Commonwealth of Independent States (CIS) have chosen variants of the so-called 'zero-option', whereby all those people who were permanent residents when the new law entered into force were recognized as citizens, irrespective of their ethnic origins.

Because of the different rules and policies used by the successor states for the granting of citizenship to those people who were not permanently resident when their respective citizenship laws were adopted, some groups of people have encountered problems of statelessness. Amongst such people are the 'formerly deported peoples', who were forcibly transferred en masse during the period of Stalinist rule, and who had not managed to return to their place of origin before the Soviet Union disintegrated (see [Box 6.1](#)).

In 1997, for example, between 60,000 and 170,000 Crimean Tatars who had returned to Crimea from Central Asia after 1991 remained without citizenship. The same problem confronts some of the Meskhetian Turks who are dispersed in the Russian Federation, Ukraine and other CIS states.

While not always stateless in legal terms, much larger numbers of Russians, Ukrainians and Belarusians living outside of their ancestral homelands have been significantly affected by the events of the past six years. A politically, economically and culturally dominant group during the period of communist rule, the special status of the Russian-speaking Slavic diaspora has been undermined by the unexpected transformation of the region's political geography and the reaffirmation of national identities within the successor states.

Having lost the security which they once enjoyed, having become akin to foreigners in their country of permanent residence, and having in some instances been affected by communal tensions, large numbers have decided to move. According to the Russian authorities, between 1992 and 1996, some three million people migrated to the Russian Federation, mainly from Central Asia and the Transcaucasus. Their reasons for moving were various: to improve their economic situation, to escape from armed conflict or to remove themselves from situations where they perceived a growing level of discrimination against them. Up to a third of these 'resettlers' have been recognized by the Russian authorities as forced migrants.¹⁵

The Baltic states

Of all the Russian diaspora – in 1991 more than 25 million people in total – those living in the Baltic states have been most directly affected by the issues of citizenship and statelessness. This phenomenon is the result of both demographic and political factors.

At the end of the 1980s, Russians comprised around 18 per cent of the total population living outside of the Russian Republic, the result of a longstanding migratory process that had been actively promoted during the Soviet period. But the Russian diaspora was not evenly scattered across the Soviet Union, over two-thirds of it being concentrated in Ukraine and Kazakhstan. In Georgia, Azerbaijan and Armenia, the Russian share of the population amounted to less than seven per cent, whereas in the Baltic republics of Estonia and Latvia, the proportion stood in the region of one third (see [Figure 6.1](#)).

The migration of Russians into Estonia and Latvia, a movement which continued until the latter years of the Soviet Union, led to significant changes in the ethnic composition of these societies. In the period from 1939 to 1989, for example, the proportion of Latvians in the population of Latvia fell from around 75 per cent to just over 50 per cent. During the same period, the titular proportion of the population in neighbouring Estonia fell from 90 per cent to just over 60 per cent.

The particular salience of the Russian presence in the Baltic states is not simply a question of demography, but also a matter of political history. For Estonia, Latvia and Lithuania, unlike the other successor states of the Soviet Union, had all enjoyed a protracted period of independence after the first world war. Only in 1940 had the Baltic states been annexed and incorporated by the USSR, an event which had opened the door to mass deportations, large-scale Russian settlement and a corresponding belief amongst the 'indigenous' population that their society and culture was being diluted.

Given this historical context, it was not altogether surprising that on reasserting their national rights and eventually regaining their independence, the Estonian and Latvian authorities chose to introduce new nationality laws which granted citizenship only to those residents and their descendants who were citizens at the time of occupation in 1940. Complex naturalization procedures were established for people who took up residence after that date, a provision which had important exculsory implications for most of the russophone Slavic population.

Not least of the conditions attached to citizenship was proficiency in the local language, a requirement which effectively barred many Russians from becoming citizens of the two reconstituted states. At the same time, substantial numbers of long-term residents have been excluded from the electoral process, prevented from taking up certain kinds of employment and barred from participating in privatization programmes. Consequently, in Latvia, out of a population of 2.6 million, over 700,000 people were left stateless, while in Estonia, a third of the 1.5 million population became non-citizens. By February 1997, fewer than 5,000 people had been granted Latvian citizenship through the new naturalization procedure.

These developments have had some important consequences, not only for the people concerned, but also for the broader issue of regional stability. Tensions have been generated between Russia and the Baltic states, while fears have been expressed that large numbers of stateless people will join the reflux to Russia, placing additional strains upon that country's already limited resources.

Former Yugoslavia

The significance and complexity of the citizenship issue in former Yugoslavia derives from three related phenomena: the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) at

the beginning of the 1990s; the subsequent armed conflicts which occurred within and between the successor states; and the displacement of around four million people, both within and beyond the borders of former Yugoslavia, as a result of those wars.

In the legal regime of the SFRY, every Yugoslav citizen possessed both federal citizenship and internal citizenship of one of the six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. But the latter form of citizenship had few practical implications. All citizens of the SFRY, irrespective of their republican nationality, enjoyed the same rights and were free to live and work on any part of the federal territory.

As all citizens of the SFRY held a republican citizenship at the time when the country disintegrated, and as the citizenship laws of the successor states all enshrined the principle of legal continuity, *de jure* statelessness has in general been avoided. In states which were affected by armed conflict, however, most notably Bosnia and Croatia, some people found themselves without a nationality because they could not prove their former republican citizenship and because municipal birth and nationality registers had disappeared or been destroyed.

While *de jure* statelessness may not have been a great problem, the application of the principle of legal continuity threatened to create a problem of *de facto* statelessness for the hundreds of thousands of people who were living outside of the republic of which they were now citizens. In short, they were at risk of becoming foreigners in their usual place of residence. Some successor states, such as Bosnia and the Federal Republic of Yugoslavia (Serbia and Montenegro) have taken steps to facilitate the naturalization of people who were living on their territory at the time of independence. However, many citizens of the former SFRY, particularly those in Croatia and Macedonia, as well as those who had fled abroad, have not been able to obtain an effective nationality.¹⁶

In 1995, a UNHCR publication reported that the citizenship problems of former Yugoslavia were political as well as legal in nature. "The main problem," it stated, "is that some of the newly established states have, by means of various legal devices, attempted to exclude from their nationality or at least delay the acquisition of their nationality by persons who have been residing in their territory for considerable lengths of time. Such cases have invariably involved persons belonging to an ethnic minority which is perceived as 'undesirable' from the point of view of the majority's nationalist faction."¹⁷

With the mutual recognition of the successor states and the signing of the Dayton accords (which include *inter alia* the 1961 Convention on the Reduction of Statelessness) a basis has been established for the resolution of the citizenship issue. In addition, a number of expert meetings on citizenship legislation have been held, enabling the Council of Europe and UNHCR to develop a set of recommendations that will allow the states concerned to address the problem of statelessness and to promote the right to an effective nationality for all former SFRY citizens. Even so, organizations such as the Open Society Institute have continued to express disquiet about this issue, especially its impact on already disadvantaged groups, such as ethnically mixed families, migrants, refugees and the Roma.¹⁸

The Czech and Slovak republics

From its emergence in 1918 until 1968, Czechoslovakia was a unitary state with a single citizenship. When the Czechoslovak Federation was created in 1969, however, two levels of citizenship were introduced: citizenship of the federation and citizenship (termed 'nationality' or 'internal citizenship') of the two constituent entities. In the context of international law, only citizenship of the federation was recognized and conferred any rights and duties. Internal citizenship held little meaning in practice.

When the country was dissolved in December 1992, each of the successor entities – the Czech Republic and the Slovak Republic – adopted new legislation to define both the initial body of citizens and the process whereby people could become naturalized citizens. The legislation of both countries defined their initial bodies of citizens by reference to the ‘internal citizenship’ of the former federation. As a result, many people with lifetime residence in the Czech Republic were nevertheless designated as Slovaks and vice versa. These people effectively became foreign citizens in their usual place of residence.

Whereas the Slovak legislation provided an unrestricted option of Slovak citizenship for all former federal citizens, the Czech legislation imposed three significant restrictions on the right to become a Czech citizen. An individual wishing to acquire Czech citizenship had to have been resident on the territory of the Czech Republic for at least two years, had to have been exempted from Slovak citizenship, and had to have a clean criminal record for the preceding five years. These restrictions applied regardless of the individual’s connections with the Czech Republic.

Although the scope of the problem was not clear, cases of *de jure* and *de facto* statelessness certainly occurred as a result of this legislation. The problem was of particular relevance to the gypsy or Roma minority group in the Czech Republic, since most were born on Slovak territory or were descended from people born in Slovakia (see [Box 6.2](#)).

Along with other bodies, such as the Council of Europe, UNHCR expressed concern about the restrictions incorporated into the Czech citizenship law and called for solutions to the problem. In addition to the obstacles contained in the law, UNHCR pointed out, people were finding it hard to acquire Czech citizenship as a result of restrictive interpretations of the legislation, coupled with high administrative fees, burdensome paperwork and a lack of clear guidance and information.

In September 1996, UNHCR’s Regional Bureau for Europe reported that there were "significant numbers" of *de facto* stateless persons in the Czech Republic, many of them wrongly assumed to be Slovak.¹⁹ At the end of the year, however, the Czech parliament passed an amendment to the citizenship law, providing the Minister of the Interior with the authority to waive the clean criminal record requirement – an amendment which is now being vigorously exercised. At the same time, UNHCR has established a project with a local non-governmental organization to provide legal assistance and administrative guidance to more than 2,000 people who have faced difficulties in ascertaining their nationality, a significant number of whom are former prisoners, foster children and people with physical disabilities.

HUMAN AND HUMANITARIAN IMPLICATIONS

The right to nationality or citizenship was once described by a member of the US Supreme Court as "the right to have rights."²⁰ As this comment suggests, citizenship provides the legal connection between individuals and the state, and thus serves as the basis for the realization and enjoyment of all other rights. It is therefore not surprising that stateless people have in many instances been denied those rights and have been obliged to live in conditions of acute legal, physical and psychological insecurity.

The desperate circumstances of stateless people have attracted the attention of many commentators over the years. A United Nations study on statelessness published in 1949, noted that "normally every individual belongs to a national community and feels himself part of it. He enjoys the protection and assistance of the national authorities. When he is abroad, his own national authorities look after him... The fact that the stateless person has no nationality places him in an abnormal and inferior position which reduces his social value and destroys his own self-

confidence."²¹ Two years later, Hannah Arendt observed that the tragedy of stateless people "is that they no longer belong to any community whatsoever," and that they are often forced into the role of outlaws, living on the margins of society, "without the right to residence and without the right to work."²²

A paper completed in 1996 by UNHCR's expert on nationality issues indicates that little has changed since those observations were made. "Failure to acquire status under the law," she comments, "creates significant human problems. These problems can negatively impact many important elements of life, including the right to vote, to own property, to have health care, to send one's children to school, to work, and to travel to and from one's country of residence."²³

In its analysis of the problem, the Independent Commission on International Humanitarian Issues draws particular attention to the linkages between statelessness, the right to freedom of movement and the broader problem of forced displacement. "The stateless are part of those unwanted people who are refused right of entry to countries or who are turned back at borders... If they are taken in, they often live in uncertainty for many years." "Nationality," the Commission continues, "is not only the right to a passport and material advantages. It also confers upon the individual an identity and the sense of belonging to a community – elements without which a person remains vulnerable and uprooted."²⁴

The link with forced displacement

There are some intimate connections between statelessness, refugee movements and others forms of forced displacement. This section considers three: displacement as a cause of statelessness; displacement as consequence of statelessness; and statelessness as an obstacle to the resolution of refugee problems.

Exiled communities and other uprooted populations are particularly vulnerable to statelessness, especially when their displacement is followed or accompanied by a redrawing of territorial boundaries. Several examples of this phenomenon have already been cited: the Biharis of Bangladesh, the Palestinians, and the formerly deported populations of the former Soviet Union.

The CIS region provides some additional instances of the way that large-scale displacement can arise in the context of forced displacement. The conflict between Armenia and Azerbaijan, for example, resulted in the forced displacement of hundreds of thousands of people. As the USSR still existed when the conflict began in 1988, these internally displaced people initially retained their status as Soviet citizens. After 1991, however, they became both stateless and refugees, due to the absence of citizenship legislation in the two successor states.

A second and perhaps more significant linkage between forced displacement and disputed citizenship is to be found in the frequency with which stateless and denaturalized populations are obliged to flee from their usual place of residence. In the CIS region and other parts of the former communist bloc, the movement of people affected by citizenship problems has not really assumed the dramatic form that some commentators had predicted two or three years ago. The return of the Russians and other Slavic peoples to their ancestral homelands can in some instances be regarded as a form of forced displacement, especially when it has been provoked by targeted attacks on such groups and discrimination against them. More generally, however, it is perhaps best described as a migratory movement.

Elsewhere in the world, however, several groups of stateless people have been directly involved in recent refugee movements, expulsions and internal displacements.

Mauritania. In 1989-90, around 60,000 black Africans were expelled from Mauritania to Senegal, where they were recognized as refugees and assisted by UNHCR. The impasse for the 56,000

refugees who are still in Senegal centres on their insistence that the Mauritanian authorities repatriate them *en masse*, return their land and issue them with new identity documents. For their part, the Mauritanian authorities have maintained that those people who were expelled from the country at the end of the 1980s were in fact Senegalese nationals and that their Mauritanian identity documents were fraudulent.²⁵

Kuwait. In the late 1980s, the Kuwaiti authorities promulgated a series of measures that removed the Bidoon from the country's census rolls and stripped them of their civil identification cards, thereby depriving them of access to government jobs and social services. During and after the Iraqi occupation and Gulf War of 1991, 100,000 or more Bidoons left Kuwait and arrived in Iraq, some of them leaving as a result of mass expulsions. Following their departure, the US State Department reported in 1993, "the government prevented the return of the Bidoon who had left Kuwait, either willingly or by force... by delaying or denying their entry visas." Since that time, few have been allowed to return to their former country of residence.²⁶

Myanmar. In 1991-92, some 250,000 Rohingyas, members of a Muslim minority group who are generally not recognized as citizens of Myanmar, fled from their homes and were accommodated in UNHCR-assisted refugee camps in Bangladesh. According to a report submitted by a Special Rapporteur of the UN Human Rights Commission, the exodus was occasioned by a military campaign which involved "extrajudicial executions, torture and ill-treatment, and forced labour and portering." These accusations have been rejected by the Myanmar authorities.²⁷

Bhutan. Between 1990 and 1992, up to 120,000 Nepali-speaking people abandoned their homes in southern Bhutan and fled to Nepal and India. Around 90,000 of this number are accommodated in UNHCR refugee camps in Nepal. According to a UNHCR-sponsored report, the exodus was provoked by an attempt to withdraw Bhutanese citizenship from these people and to impose the very different culture and language of northern Bhutan upon them. These initiatives led to a series of demonstrations by the southern Bhutanese, followed by a "swift and harsh" response from the authorities, involving "arbitrary arrests, ill-treatment and torture." While the refugees have expressed their desire to return to Bhutan, the authorities there continue to deny that the majority of the refugees have a claim to Bhutanese citizenship, and therefore refuse to admit them.²⁸

Cambodia. In 1993, around 35,000 ethnic Vietnamese – long-term residents of Cambodia who lack a clear status in the country's nationality laws – fled by boat after they had been subjected to a series of racially motivated attacks by Khmer Rouge soldiers. Most of this number fled into Viet Nam, while around 5,000 remained stranded on the Cambodian side of the border. According to a UNHCR publication, "all people of Vietnamese origin in Cambodia are vulnerable to racial violence, not only from the Khmer Rouge but also from other groups who may use anti-Vietnamese propaganda for political gains. The fact that the ethnic Vietnamese community cannot rely on regulations or legal documents makes them all the more vulnerable."²⁹

Zaire. In 1996 and 1997, eastern Zaire was engulfed by an armed conflict which was to a large extent sparked off by a dispute over the nationality of ethnic Tutsis living in the area. The subsequent fighting, involving at least three different forces – Tutsi rebels, the former Rwandese army and the Zairean military – has provoked mass displacement amongst the local population and amongst the Rwandese refugees who fled to the area in 1994 (see [Box 1.1](#)).

Third and finally, if statelessness can be both a product of and lead to forced displacement, then the peaceful settlement of nationality disputes can play an important role in the task of resolving and averting situations of forced displacement. The exercise of an 'effective nationality' evidently enhances the attachment of individuals to a state and its territory. It reinforces their security and sense of belonging, and thereby contributes to the objective of enabling people to remain in – or return to – their usual place of residence.

Unfortunately, statelessness and nationality disputes continue to obstruct the search for solutions to refugee-related problems in several parts of the world. According to the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies, in the CIS region and Eastern Europe, at least five different countries have refused to readmit rejected asylum seekers on grounds of their statelessness. And in Africa, Asia and the Middle East, a further 10 countries have declined to accept such rejected cases on the grounds that they did not recognize the people concerned as their nationals. In February 1997, moreover, Malaysia announced that it was unable to repatriate 8,000 irregular migrants originating from Myanmar, as the authorities of that country did not recognize their claim to citizenship.

More seriously, perhaps, nationality disputes continue to play an important part in several protracted situations of mass displacement, including those involving the Bidoons, the ethnic Vietnamese of Cambodia and the Palestinians (see [Box 6.4](#)). In the case of the southern Bhutanese, for example, the refugees in Nepal have expressed a desire to go back to their former country of residence, but have been unable to do so because their citizenship – and therefore their right to return – has not been recognized by the Bhutanese authorities. While the two states have held discussions on this and related issues, no solution has yet been found to the problem. As UNHCR has reported elsewhere, "the slow pace of progress of the Nepal-Bhutan government talks means that there is still some way to go before an end to the refugee crisis will be in sight."³⁰

The slow pace of repatriation to Bosnia has also been attributed to the persistence of the citizenship problem in that country. "The displaced would be far more likely to return home," the Open Society Institute suggests, "if they felt protected under rights afforded to citizens. Likewise, a harmonized and balanced approach to citizenship in successor states would probably build confidence and reduce instances of new movements of people."³¹

NATIONAL AND INTERNATIONAL RESPONSIBILITIES

Statelessness is first and foremost a problem for states to resolve. In the refugee field, it has become an established principle that countries of origin have a primary duty to desist from actions that force people to abandon their homes and a corresponding obligation to create the conditions that will enable exiled populations to repatriate.

A similar principle of state responsibility must be fostered in relation to the problem of statelessness. Above all, governments must acknowledge, both formally and in practice, that they do not have a right to withdraw or withhold the benefits of citizenship from whole sections of the population who can demonstrate a genuine and effective link with the country.

Given the frequency with which governments have denaturalized and expelled their citizens, coupled with the protracted nature of so many citizenship disputes, an appeal to the notion of state responsibility might seem somewhat naive. It is therefore worth recalling that in the past few years a number of countries have managed to address the problem of statelessness in a positive manner.

In Lebanon, for example, more than 10,000 stateless persons, most of them from Middle Eastern minority groups (but not including the Palestinians) were granted citizenship in 1994-95 (see [Box 6.3](#)). In the Baltic state of Lithuania, where the Russian population is relatively small, an inclusive approach to the nationality issue has given all permanent residents the opportunity to become citizens of the country. As a result, the issue has not become a matter of significant political controversy. And in early 1997, the Hong Kong authorities granted British passports to around

8,000 people, many of them of Indian origin, who were at risk of becoming stateless following the handover of the colony to China.

Despite the nationality issues which have arisen with the dissolution of Czechoslovakia, the two successor countries have largely succeeded in sorting out the affairs of the former state. What is more, this objective has been achieved in a very short period of time and in a peaceful manner – in striking contrast to the violence and mass population displacements which have accompanied the dissolution of other federal states.

Significantly, both the Czech and Slovak states have both welcomed international involvement in their nationality problems. This approach has enabled UNHCR, the Organization for Security and Cooperation in Europe and the Council of Europe to assist in a number of ways: undertaking fact-finding missions; commenting on new nationality legislation; training civil servants who are responsible for citizenship issues; and assisting individuals whose nationality status is unresolved.

As this example suggests, statelessness is often a result of rapid political change and a lack of preparedness in the countries concerned. A similar situation has arisen in Azerbaijan and several other parts of the CIS region. According to one commentator, "the administrative structures and legislative basis inherited from the Soviet period proved both inadequate and insufficient. New policies and legislation had to be designed without any institutional experience or trained personnel."³² In such situations, UNHCR and other international organizations evidently have an important role to play in helping the authorities to address the problem of citizenship.

The limits of sovereignty

Unfortunately, however, statelessness does not always arise in an accidental or incidental manner. Nor are states with substantial numbers of stateless people always willing to seek advice and support from the international community. In such situations, and particularly when governments take steps to denaturalize and expel whole sections of their population, more assertive forms of international action may ultimately be required.

Statelessness has important implications for the security of people and the realization of their human rights. Statelessness can provoke large-scale refugee movements and thereby place substantial burdens on countries of asylum. Statelessness is a source of regional instability and can even become a threat to international peace and security. The international community therefore has a wholly legitimate interest in its prevention and elimination. Sadly, it would appear, in some situations this objective may only be achieved by measures such as the introduction of economic or diplomatic sanctions, the suspension of preferential trading agreements and the public condemnation of the country concerned.

Many states would evidently resist such intervention, stating that they have a sovereign right to determine under their own law who are and who are not its nationals. While this is technically correct, the power of the state in this respect is by no means absolute or untrammelled. The 1930 Hague Convention, for example, the first international attempt to ensure that all people have a nationality, stipulated that states must act in accordance with "international conventions, international custom and the principles of law generally recognized with regard to nationality." Subsequent jurisprudence has reconfirmed the principle that the citizenship issue cannot be considered to fall within the sole jurisdiction of states.

Regional initiatives

Recent experience suggests that increased efforts should be made to articulate and implement the notion of state responsibility at the regional level. A good example of such initiatives is to be

seen in an agreement amongst the CIS states, signed in Bishkek, Kyrgyzstan, in October 1992, on the situation of formerly deported populations.

Under the Bishkek agreement, signatory states undertook to settle the question of citizenship of deported people in accordance with national legislation, bilateral agreements and international law. Forcibly transferred people who returned to their prior places of residence were guaranteed the same political, economic and social rights as other citizens living in those locations.

The signatory states agreed to provide the documents necessary for formerly deported people to enjoy full social, economic and political rights. While for reasons indicated elsewhere the agreement has yet to be fully implemented (see [Box 6.1](#)), it can be taken as a statement of good intent among the states concerned to right a historical wrong and to resolve a potential problem of statelessness in a multilateral manner.

Another example of positive action at the regional level is the attention paid to nationality questions in the CIREFCA process, a five-year programme of activities introduced in 1989 to resolve the problem of forced displacement in Mexico, Belize and the Central American states. Reflecting the region's traditionally liberal approach to nationality issues, the plan incorporated a provision to guarantee citizenship to every child born in exile, whether in their country of asylum or in the state to which they eventually repatriated.

Treaties and regional accords on nationality issues have an admittedly chequered history, as demonstrated by the human suffering associated with the population exchanges and organized repatriations which followed the first and second world wars. It is for this reason that bilateral and regional initiatives on issues related to statelessness must be supported by an agreed framework of principles, conforming to recognized international standards.

The CIREFCA agreement, for example, was clearly underpinned by the widespread acceptance of the *jus soli* principle throughout the Americas region and its incorporation into Article 20 of the 1969 American Convention on Human Rights: "every person has the right to a nationality of the state in whose territory he was born if he does not have the right to any other nationality." The practical and human benefits of this approach are to be seen in Mexico, where children born to Guatemalan refugee parents have an automatic right to Mexican citizenship when they reach the age of 18 – as well as the right to claim Guatemalan citizenship if they decide to repatriate.

Europe provides another example of a region which is attempting to establish a regional framework of principles on issues relating to citizenship and statelessness. A European Convention on Nationality is currently being finalized. As well as reconfirming the right to a nationality and the right not to be arbitrarily deprived of citizenship, the draft convention prohibits nationality legislation which discriminates on ethnic and other grounds. It also requires every signatory state to facilitate the naturalization of stateless persons and refugees who are "lawfully and habitually on its territory," and, in cases of state succession, obliges successor states to take account of four different factors in defining its initial body of citizens: genuine and effective links, habitual residence, territorial origin, and the will of the individual.

As the establishment of the European Convention suggests, there is a developing area of international law relating to state succession – an issue which has particular relevance to the problem of statelessness in regions such as the CIS, the Baltic States, former Yugoslavia and the Czech and Slovak republics. Recent experience in these areas shows all too clearly that when federal polities collapse and new states take their place, significant numbers of people may find that they are unable to acquire citizenship in the territory where they have lived for the whole of their lives.

New states and restored states have to establish principles in order to determine their initial body of citizens, and to ascertain who might subsequently be granted citizenship. In international law, the general presumption is that all those people who have been nationals of a predecessor state have a genuine and effective link with the successor state. As one international authority on this issue has written, "sovereignty denotes responsibility, and a change of sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government. The population goes with the territory."³³

While other legal scholars have disputed this assertion, the emphasis which it places on the principle of state responsibility is clearly a valuable one. If a person has a significant connection with a newly established state, derived from factors such as birth, descent and long-term residence, then this connection should be acknowledged as being indicative of the right to citizenship.

STRENGTHENING THE LEGAL AND INSTITUTIONAL REGIME

With the growth of statelessness around the world and the growing awareness of its implications for national and regional security, the international community has in recent years been revisiting the international instruments related to questions of citizenship. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness serve as important reference points for the current debate.

In brief, the former of these instruments was designed primarily to regulate the treatment of *de jure* stateless people who are not covered by the 1951 UN Refugee Convention, primarily in areas such as their legal rights, their access to work and welfare and their ability to acquire a nationality. The latter instrument, however, was intended to reduce the future number of stateless cases by addressing the problem at source.

As well as stipulating that *de jure* stateless children should be granted the nationality of the signatory state in which a parent had citizenship, the 1961 Convention attempts to avert those cases of statelessness resulting from a change of civil status, residence abroad or the voluntary renunciation of nationality. At the same time, the Convention prohibits signatory states from depriving people of their nationality on racial, ethnic, religious or political grounds. The Convention does not oblige signatories to grant nationality to any stateless persons who enter its territory – only those who already have a strong connection with the state and for whom no other nationality is forthcoming.

Other international instruments dealing with the right to a nationality include the 1957 Convention on the Nationality of Married Women, the 1966 Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the Rights of the Child. The instruments concerning women seek to ensure that they enjoy equal rights to acquire, change or retain nationality, while those covering children are primarily intended to ensure that children have the right to be registered and to acquire a nationality from birth (see [Box 6.4](#)).

There is a general recognition that the international instruments on statelessness are characterized by a number of related weaknesses – problems which must be addressed now that this issue has found a more prominent place on the international humanitarian agenda.

The first of these weaknesses is to be found in the failure of the existing conventions to address the causes of statelessness in a sufficiently vigorous manner. As the Independent Commission

on International Humanitarian Issues (ICHI) has observed, "they have been formulated more from the point of view of a state's prerogatives and sovereignty than of individual human rights."³⁴ Thus while the forum that was established to draft the 1961 Convention was described as the 'UN conference on the *elimination or reduction* of future statelessness', the instrument itself was described simply as the 'UN Convention on the reduction of statelessness'. As a UNHCR staff member has suggested, "the focus on reduction, rather than elimination, is evident in the articles which aim at avoiding statelessness at birth, but neither prohibit the possibility of revocation of nationality under certain circumstances, nor retroactively grant citizenship in all cases to address current statelessness."³⁵

The 1961 Convention also represented a compromise between states adhering to the principles of *jus soli* and *jus sanguinis*. Recognizing the advantages of the *jus soli* principle as a means of eliminating statelessness – an advantage which has been clearly demonstrated in the Americas region – the ICHI has called for the introduction of a new international instrument, enshrining this principle as the sole criterion for the acquisition of nationality.

While it is evident that such a far-reaching suggestion would not attract the support of many states, a broader consensus could very usefully be established around the notion of a 'right of attachment' or 'genuine effective link', whereby citizenship is determined not by a single criterion, but by a combination of factors such as birth, residency and descent. The basis of this approach to the problem is the sensible assumption that statelessness could normally be avoided if individuals were guaranteed citizenship in the country to which they are most closely connected and attached. Interestingly, this was the very suggestion advanced in a landmark report on statelessness prepared by the International Law Commission in 1952.³⁶

The role of UNHCR

The second weakness in the international community's efforts to eliminate and regulate the problem of statelessness is to be found in the very small number of states which have actually become signatories to the 1954 and 1961 Conventions – 44 and 19 respectively, compared with the UN's total membership of around 185 (see [Figure 6.3](#)). Significantly, more than 130 countries have signed the 1951 Convention relating to the status of Refugees or its 1967 Protocol, demonstrating a major difference in the attitude of governments to these closely related issues. Whereas the refugee problem concerns the situation of non-nationals, nationality issues are directly linked to the more sensitive matter of national sovereignty and membership of the state.

There is a broad consensus that the limited number of accessions to the conventions on statelessness is also a result of a third weakness in the current international arrangements relating to this problem: the absence of a body to supervise and promote these instruments. When the 1961 Convention on Statelessness was introduced, it foresaw the establishment of a body that might assist stateless people to present their naturalization claims to the appropriate authorities. When the Convention finally came into force in 1975, UNHCR was entrusted with this task. But no mention was made of UNHCR's competence with regard to the 1954 Convention, nor was UNHCR asked to assume any wider responsibilities in addressing the problem of statelessness.

In the past few years, however, recognizing the important links between statelessness, security and forced population displacements, the international community has encouraged UNHCR to adopt a more active role in this area. Thus the UN General Assembly has requested UNHCR "actively to promote accession" to the 1954 and 1961 Conventions on statelessness, "as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation."³⁷

In response to such requests, UNHCR has taken a number of practical steps to strengthen its efforts in this domain. These include, for example, the recruitment of a legal expert on the problem of statelessness, the preparation of an information package on the 1954 and 1961 conventions, the introduction of a staff training programme on citizenship questions, and the establishment of more systematic reporting procedures on nationality problems. In addition, UNHCR has reinforced its working relationship with a number of actors which are involved in this issue: UN organizations such as the Centre for Human Rights, regional bodies such as the Council of Europe and the Organization for Security and Cooperation in Europe, and non-governmental agencies such as the Open Society Institute, to give just a few examples.

At the same time, UNHCR has been able to play an active role in a number of situations where problems related to statelessness and the acquisition of an effective nationality have arisen. In countries such as Azerbaijan, Cambodia, the Czech and Slovak republics and the Federal Republic of Yugoslavia (Serbia and Montenegro), for example, the organization has been engaged in an intensive dialogue with the authorities with regard to their nationality legislation.

In former Yugoslavia more generally, UNHCR is playing a central role in supervising and monitoring the implementation of the Dayton agreement's provisions on citizenship issues. And through its involvement in the CIS conference on refugees, UNHCR has sought to ensure that the problem of statelessness in the former Soviet Union is addressed at both a national and regional level.³⁸ In addition, UNHCR continues to provide protection and assistance to many groups of stateless refugees, and to help the many individual asylum seekers who are without a nationality or whose citizenship is disputed.

Looking to the future, UNHCR and its partners might be expected to play a more active and assertive role in a number of different areas, such as:

- encouraging governments to sign and respect the existing international conventions on statelessness;
- promoting the establishment of new international and regional agreements on the elimination of statelessness and the protection of stateless people;
- providing advice, training and technical assistance to governments, especially those of newly-formed states and those confronted for the first time with nationality problems;
- mediating between governments which have become involved in nationality disputes, and assisting groups of stateless people to find a solution to their plight;
- intervening with governments which are responsible for creating situations of statelessness or violating the rights of stateless people;
- bringing public attention to the problems of stateless people and acting as their advocates on the international stage; and,
- reaffirming the principle of state responsibility in relation to citizenship rights, and encouraging other elements of the international community to ensure that this principle is respected.

One of the most important tasks to be undertaken by UNHCR and its partners is to collect and analyze information relating to the numbers of stateless people around the world, their conditions of life and the problems which they most commonly encounter. For despite the steadily growing volume of literature on this subject, the real dimensions and human implications of the problem remain somewhat obscure.³⁹

To give just one example of this difficulty, the US State Department, in its annual human rights survey, asserts that there are an estimated 85,000 stateless people in Sri Lanka. Known as 'estate Tamils', these are people of Indian origin who have not been able to establish their citizenship of either that country or their country of residence. In its annual protection report, however, UNHCR reports that only two cases of statelessness are known to the agency in Sri Lanka! Evidently, the two organizations are using divergent definitions of statelessness or have access to very different sources of information on the situation in that country.

Neither UNHCR nor the US Committee for Refugees (USCR) – the most authoritative sources of statistics on refugee-related issues – have been able to gather comprehensive data on the subject of stateless people, a situation which has arisen for a combination of different reasons: the ambiguities surrounding the very concept of 'stateless person'; the general reluctance of governments to collect or disseminate information on the matter; the limited operational involvement of UNHCR and other agencies with stateless populations; and the hitherto low priority accorded to this issue by the international community.

Those statistics which have been collected on the question of statelessness tend to be presented in different ways. In its year-end figures for 1995, for example, UNHCR lists 'stateless refugees' as a separate category, but includes 'stateless non-refugees' in a broader group of beneficiaries described as 'other people of concern to the organization'. In its *World Refugee Survey*, the USCR includes stateless people in its category of people 'in refugee-like situations', without distinguishing them from others in this group. Moreover, the USCR makes no attempt to present data on those stateless people who are not in refugee-like situations – the most elusive group of all.

The Inter-Governmental Consultations on Asylum, Refugee and Migration Policies has recently expressed its intention to investigate this issue and to undertake a survey of contemporary statelessness. UNHCR was also requested by its governing body, the Executive Committee, to report on the magnitude of statelessness at its October 1997 meeting. Responding to this request, the organization's statistical unit has added a section on statelessness to the questionnaire which is sent out every year to offices in the field. At the same time, UNHCR is cooperating with a number of non-governmental partners to build up a profile of statelessness in Central and Eastern Europe.

Hopefully, these exercises will provide the international community with a more accurate and detailed picture of statelessness in the years to come. Even so, given the practical and political constraints involved, it seems highly unlikely that the statistics on stateless people will ever compare with those which are available for more readily identifiable and quantifiable groups such as refugees, returnees and asylum seekers.

Citizenship and international security

The study of statelessness has historically been dominated by legal experts, with the result that much of the existing literature on the subject is somewhat technical and apolitical in nature. Responding to this situation, one commentator has suggested that the legal problems associated with nationality are in some senses "fairly artificial," and could be resolved without difficulty if states were prepared to cooperate with each other and to pursue more liberal citizenship policies.⁴⁰

UNHCR's expert on nationality issues makes a somewhat similar point. In practice, she argues, it is not usually very hard to identify the state or states with which an individual has the closest link. "The difficulty," she asserts, "lies in the legislation, administrative practices and political decisions which fail to recognize basic principles pertaining to the right to a nationality."⁴¹

The unwillingness of governments to assume their proper responsibility in relation to the question of citizenship has some important implications for both human security and the security of states. Statelessness is a threat to peace and security because it is a manifestation of intolerance and prejudice, especially when it occurs as a result of mass denaturalization and with the intention of forcing people to abandon their homes. Citizenship, on the other hand, and the ability of people to realize the rights associated with nationality, provide an indispensable element of stability to life, whether at the personal, societal or international levels.

NOTES

1 The terms citizenship and nationality are used as synonyms in this chapter.

2 Article 1, 1954 Convention relating to the Status of Stateless Persons.

3 For a fuller discussion of the legal dimensions of statelessness, see C. Batchelor, 'Stateless persons: some gaps in international protection', *International Journal of Refugee Law*, vol. 7, no. 2, 1995.

4 Independent Commission on International Humanitarian Issues, *Winning the Human Race*, Zed Books, London, 1988, p. 112.

5 K. Landgren, 'Foreword', *Refugee Survey Quarterly*, vol. 14, no. 3, 1995, p. viii.

6 D. Lloyd George, *The Truth about the Peace Treaties*, Vol. II, Victor Gollancz, London, 1938, p. 757.

7 H. Arendt, *The Origins of Totalitarianism*, Harcourt, Brace, Jovanovich, New York, 1973, p. 290.

8 See 'Repatriation of Biharis from Bangladesh', response to information request BDG6 of 3.3.94 on *Refworld* CD-Rom, UNHCR, Geneva, 1997.

9 The very complicated history of this group is examined in T. Lee, 'Stateless persons and the 1989 Comprehensive Plan of Action: Chinese nationality and the Republic of China (Taiwan)', *International Journal of Refugee Law*, vol. 7, no. 2, 1995.

10 This list has been drawn up from the databases which appear on the *Refworld* CD-Rom, UNHCR, Geneva, 1997.

11 S. Ogata, 'Statement to the 51st Session of the UN Commission on Human Rights', Geneva, February 1995, on *Refworld* CD-Rom, *op cit*.

12 W. R. Brubaker, 'Aftermaths of empire and the unmixing of peoples: historical and comparative perspectives', Ford Foundation paper no. DRU-563-FF, 1993. See also A. Zolberg, 'The unmixing of peoples in the post-Communist world', occasional paper, International Center for Migration, Ethnicity and Citizenship, New School for Social Research, New York, 1997.

13 W. R. Brubaker, 'Citizenship struggles in the Soviet successor states', *International Migration Review*, vol. 27, no. 2, 1992. For a more recent examination of these issues, see P. Kolstoe, *Russians in the Former Soviet Republics*, Hurst and Co., London, 1995.

14 V. Tishkov, *Ethnicity, Nationalism and Conflict in and after the Soviet Union: The Mind Aflame*, United Nations Research Institute for Social Development, International Peace Research Institute and Sage Publications, London, 1997, p. 241.

15 B. Nahaylo, 'Population displacement in the CIS: the background, problems and challenges', *The CIS Conference on Refugees and Migrants, European Series*, UNHCR Regional Bureau for Europe, vol. 2, no. 2, 1996.

16 The full name of the republic is the Former Yugoslav Republic of Macedonia.

17 J. Pejic, 'Citizenship and statelessness in the former Yugoslavia: the legal framework', *Refugee Survey Quarterly*, vol. 14, no. 3, 1995, p. 8.

18 *Forced Migration Monitor*, September 1996.

19 *Citizenship in the Context of the Dissolution of Czechoslovakia*, European Series, UNHCR Regional Bureau for Europe, vol. 2, no. 4, 1996, p. 6.

20 Earl Warren, quoted in Independent Commission on International Humanitarian Issues, *op cit*, p. 107.

21 UN Department of Social Affairs, *A Study on Statelessness*, United Nations, New York, 1949.

22 H. Arendt, *op cit*, p. 286.

23 C. Batchelor, 'Training package: statelessness and related nationality issues', UNHCR, Geneva, 1996, p. 35.

24 Independent Commission on International Humanitarian Issues, *op cit*, p. 109.

25 US Department of State, 'Country reports on human rights practices for 1993: Mauritania', on *Refworld*, *op cit*.

26 US Department of State, 'Country reports on human rights practices for 1995: Kuwait', on *Refworld* CD-Rom, *op cit*.

27 UN Commission on Human Rights, 'Rights of persons belonging to national or ethnic, religious and linguistic minorities: report of the Secretary-General', January 1996, para. 45, on *Refworld* CD-Rom, *op cit*.

28 T. Piper, 'The exodus of ethnic Nepalis from southern Bhutan', *Refugee Survey Quarterly*, vol. 14, no. 3, 1995, pp. 69-74.

29 UNHCR, *Different Time Different Place: UNHCR in Cambodia*, Phnom Penh, 1995, p. 21.

30 T. Piper, *op cit*, p. 77.

31 *Forced Migration Monitor*, May 1997.

32 C. Messina, 'Refugees, forced migrants or involuntarily relocating persons? Refugee definitions in the countries of the CIS', paper presented at a conference on refugee rights and realities, Nottingham, November 1996.

33 I. Brownlie, *Principles of Public International Law*, Clarendon Press, Oxford, 1990, p. 664.

34 Independent Commission on International Humanitarian Issues, *op cit*, p. 112.

35 C. Batchelor, 'Training package', *op cit*, p. 14.

36 M. Hudson, *Report on Nationality, Including Statelessness*, International Law Commission, 1952.

37 General Assembly Resolution 50/152, February 1996.

38 See [Box 1.3](#) for additional details of this conference.

39 For bibliographies on statelessness, see *Refugee Survey Quarterly*, vol. 14, no. 3, 1995, pp. 157-165; and *Austrian Journal of Public and International Law*, vol. 49, no. 1, 1995, pp. 105-108.

40 P. van Krieken, 'Disintegration and statelessness', *Netherlands Quarterly of Human Rights*, vol. 12, no. 1, 1994, p. 32.

41 C. Batchelor, 'UNHCR and issues related to nationality', *Refugee Survey Quarterly*, vol. 14, no. 3, 1995, p. 112.

Box 6.1

Forcibly transferred populations in the CIS

Amongst the many population movements currently taking place in the Commonwealth of Independent States (CIS) are those which are a legacy of forcible population transfers implemented during the Stalinist period. Several of these transfers have given rise to problems of citizenship and statelessness that still need to be resolved.

Between 1941 and 1944, large numbers of people, living mainly in the western part of the Soviet Union, were rounded up and forcibly transferred huge distances to Siberia or Central Asia. Most of the deportations were carried out during the second world war, amid accusations that the people concerned were disloyal, had collaborated with the Nazis, or presented threats to the Soviet war effort. The majority of the people moved were also members of ethnic minorities or nationalities, some of which had earlier been granted their own autonomous republics or regions.

The first and largest of these transfers affected the Volga Germans, who had settled in Russia since the end of the 18th century. In 1941, some 380,000 of them were forced into cattle wagons and shunted to Siberia or Central Asia by train. The forced transfer of seven other nationalities, totalling more than a million people, followed in 1943-44: the Karachai, Kalmyks, Chechen, Ingush, Balkars, Crimean Tatars and Meskhetians. More Soviet Germans were moved after the war from Ukraine to Central Asia. Others who were forcibly transferred during the Stalinist years included several hundred thousand Balts, Greeks, Koreans, Moldovans, Poles and Ukrainians.

With the political changes that took place in the 1950s after Stalin's death, some of this injustice was redressed, as the accusations against the deported nationalities were retracted. Some of the transferred peoples began to return, although not without experiencing great difficulties over issues such as access to land. However the right of return of the Crimean Tatars, Meskhetians and Volga Germans continued to be denied, even though they were cleared of treason charges in the 1960s. Since then, the situation of the Germans has been partly resolved by emigration agreements between the Soviet Union and the Federal Republic of Germany and later between the CIS and the reunited Germany. By the end of 1995, some 1,376,000 people had moved to the latter state.

The prospects for the other forcibly transferred peoples changed substantially with the demise of the Soviet Union. In April 1991, the parliament of the Russian Federation adopted a law on the rehabilitation of repressed peoples, which included the transferred peoples; and late in 1992, CIS countries signed the Bishkek agreement signalling their intent to deal with the restitution of the rights of forcibly transferred people. While the situation of most of these populations has been resolved – during the Soviet era and after – the situation of the Crimean Tatars and the Meskhetians is still not settled, giving rise to actual and potential problems of statelessness and disputed citizenship.

Crimean Tatars

About 250,000 Tatars have returned to the Crimea in Ukraine since 1988; an equal number are thought to remain outside their ancestral homeland, mainly in Uzbekistan. Their repatriation has been difficult, partly because of tensions between the returnees and the established ethnic Russian community, and partly because of difficult economic conditions and the consequent lack of resources. Between 1988 and 1992, the return was blocked by the local authorities, and the Crimean Tatars resorted to seizing land and establishing squatter settlements. Return and reintegration have also been hampered by the absence of a clear framework for confirming the Tatar returnees as citizens of the Ukraine.

The rate of repatriation has fallen substantially, from about 120,000 in 1990 to just 5,000 in 1995. Aware of the economic, citizenship and other problems the repatriates face, the Crimean Tatar leadership has focused on trying to secure the legal rights of those who have already returned rather than encouraging further return migration. The Tatar mejlis or council has urged the Ukraine authorities to grant citizenship immediately and pressed for measures to revive the Tatar language and culture.

Towards the end of 1996, estimates of the number of Tatars thought not yet to have acquired Ukrainian citizenship varied between 60,000 and 176,000. These people could not vote and lacked access to employment, housing, education, medical care and other services. The citizenship issue became an important source of dispute with the Ukrainian authorities, and indirectly a source of tension between the Tatars and the local ethnic Russian population.

While the Ukraine's 1991 law on citizenship was liberal and inclusive in its definition of the initial body of citizens – all those resident in Ukraine on the day the law came into effect – regulations for acquiring citizenship were more stringent, requiring renunciation of other citizenship, five years residence (except for those who could show their forebears were resident), sufficient Ukrainian language for conversation, a legal livelihood and acceptance of the Ukrainian constitution. Those Tatars arriving before 1991 were deemed citizens. But for later arrivals some of these conditions – particularly the language and means of existence requirements – were difficult to fulfill. Renouncing former citizenship was time-consuming, and in any case many wished to retain rights in Uzbekistan and other Central Asian republics where their relatives still lived. Many were also fearful that they might not secure Ukrainian citizenship after renouncing Uzbek citizenship. For some, following Soviet practice, securing a propiska or residence permit was the key to employment and social benefits, and was thought more important than citizenship.

Since 1996, UNHCR has been offering advice to those who wish to apply for citizenship, as well as examining the possibility of revising Ukraine's citizenship legislation to regularize the status of Crimean Tatars who have returned. Since the majority were still de jure Uzbek citizens towards the end of 1996, and Uzbek law stipulates that citizenship may be forfeited if residence abroad is permanent, there was some danger the Crimean Tatars might be rendered stateless if they were unable to secure Ukrainian citizenship. Changes in the Ukrainian citizenship law announced in April 1997, however, seemed to clear the way for a resolution of such problems.

Meskheties

The case of the Meskheties is different from the other deported peoples in several respects. First, they were not a recognized nationality like the others at the time of the deportation, and they had not been granted an autonomous territory within the Russian Republic. They only consolidated into a nationality after the deportation, from a number of disparate Turkic or Turkicised ethnic groups living in the south-western part of Georgia known as Meskheta. Their

ancestors had come under Russian rule when this area was annexed from Turkey early in the 19th century.

Second, the Meskhetians were never accused of collaborating with the German army, which did not come close to their territory; their deportation probably had more to do with Soviet designs on Turkey, removing a population with an ethnic and cultural affinity with a potential adversary. Third, the strategic importance of their territory – unlike those of the North Caucasus nationalities – militated against their restoration to their lands. Their plight drove the Meskhetians to develop a Turkic nationality, and they organized politically, comparing themselves to the Palestinians, but claiming worse treatment. Losing hope of restoration to their homeland, they turned, like the Germans, to emigration, with lukewarm support from Turkey.

More recently, while the plight of the Volga Germans and the Crimean Tatars has edged towards resolution, the repatriation of the Meskhetians has proved highly problematic, not least because they have experienced a series of secondary displacements. As a result of ethnic conflict in Uzbekistan, around 74,000 fled in 1990-91, of whom some 46,000 made their way to Azerbaijan, a country to which the Meskhetians have some close cultural affinities.

Although some tried to return to Georgia, that state has been unwilling to admit them, partly because of their Turkish background; partly because others, particularly Armenians, are settled in their former homes and Georgia is concerned not to antagonize Armenia by uprooting them; and partly because Georgia is already stretched by the presence of displaced people. Other Meskhetians have moved from Central Asia to the Russian Federation where they have suffered discrimination and harassment by both local populations and local authorities. Still others remain in Central Asia. They number some 200,000 to 300,000 in all, of whom up to 100,000 are now located in Azerbaijan.

The Meskhetians in Azerbaijan are split between those who are content to remain in the new republic and those (perhaps 50,000) who insist on returning to Georgia – either to within that republic or to their actual original homeland. The former are likely to be made citizens of Azerbaijan if they wish.

Azerbaijan has introduced legislation covering citizenship, the status of refugees and forcibly removed people, and the legal status of foreign citizens and stateless persons. UNHCR has argued for a liberal interpretation of citizenship to include those present at the time the Azeri Republic came into being. The organization has also suggested that all those whose 'genuine and effective link' is with Azerbaijan should be granted automatic citizenship, particularly where statelessness might otherwise result: this applies in particular to minorities like the Meskhetians. But even if this is accepted, some of the legal provisions on citizenship may falter in implementation. For example, under the law on foreigners and stateless persons, the latter are entitled to apply for Azeri citizenship; however, as elsewhere in the CIS region, in practice one of the requirements for citizenship is to hold a residence permit, a condition which cannot be fulfilled by most stateless people.

Although those Meskhetians who moved to Azerbaijan should be eligible for Azeri citizenship, the majority suffer the consequences of undetermined or disputed nationality. Those in the Russian Federation and elsewhere in the CIS region may be even worse off. The Meskhetians are rather less well organized than the Tatars in pressing their case, which remains one of the outstanding injustices of the Soviet era.

Box 6.2

The Roma of Central and Eastern Europe

The Roma or gypsies of Central and Eastern Europe have often been described as 'stateless' or 'border' people. Although they may not all be legally stateless, the citizenship status of many has been uncertain, as has their ability to exercise a full range of economic, social and political rights. Indeed, some commentators refer to the Roma as Europe's largest and most disadvantaged minority.

The history of the Roma has been one of migration. Most historians agree that the Roma left India between the 7th and 10th centuries, migrating to Europe via Persia and arriving in the Balkans between the 13th and 15th centuries. The majority of Roma settled in Central and Eastern Europe, although they have moved further west on three main occasions: in the 15th century following their initial arrival in Europe; in the 19th century after the abolition of gypsy slavery; and most recently in the late 1980s and early 1990s, following the collapse of communism.

Throughout their migratory history the Roma have never tried to establish a state of their own. They have settled instead in border areas, fiercely guarding their social and cultural identity. As a result, they have consistently been regarded and treated as outsiders. There are currently estimated to be some eight million in Europe. Exact figures are difficult to obtain, however, as many Roma are unregistered with the authorities or are not identified as such in national censuses.

State policies

Since their arrival in Europe, the Roma have been perceived by states as a problem to be resolved, whether by assimilation, containment, exclusion or expulsion. Between 1445 and 1856, gypsies in Transylvania (now Romania), were kept as slaves and excluded from citizenship rights, which were contingent upon the ownership of land. In other states, they were hunted down, imprisoned and killed.

History repeated itself in the 20th century, when the Nazi regime attempted to exterminate the gypsies. Initially the Roma were designated as 'social deviants'. As such, they were involuntarily sterilized and banned from marrying German citizens. Later they were incarcerated in concentration camps or Zigeunerlager, ostensibly on the grounds of crime prevention. By the end of the war, the gypsies were viewed not only as an 'undesirable social element' but also as an 'undesirable racial element'. As many as 500,000 are believed to have been put to death.

After the second world war, the communist regimes of Central and Eastern Europe attempted to assimilate, rather than exclude or eliminate, their Roma populations. Viewed by the authorities as social misfits, countries such as Bulgaria, Czechoslovakia, Poland and Romania all made efforts

to integrate the Roma into 'mainstream' society by means of forced settlement and employment programmes. Later, during the 1970s and 1980s, the government of Bulgaria took steps to abolish the special identity and culture of the Roma by requiring them to change their names and by prohibiting them from speaking their own language. If there was a positive aspect to these assimilationist policies, it was to be found in the insistence of the communist regimes that all citizens, including the Roma and other minority groups, should enjoy full citizenship status and civil rights.

The treatment and status of the Roma has in many ways deteriorated since the collapse of communism. New citizenship laws have been introduced throughout much of Central and Eastern Europe, which have often inadvertently (and in some cases deliberately) discriminated against the Roma. The criteria for obtaining citizenship in the Czech Republic, for example, were felt by many commentators, including UNHCR, to discriminate against the Roma.

As described elsewhere in this chapter, the new citizenship laws required any individual wishing to acquire Czech nationality to be fluent in Czech, to have been resident on Czech territory for at least two years, to have a clean criminal record for the preceding five years, and to have a document proving exemption from Slovak citizenship. Such criteria were difficult for many Roma to fulfill, due to their itinerant lifestyle and marginalized socio-economic status. Fears that the Czech Republic's citizenship law might render many Roma stateless have not materialized, however, due to legislative changes introduced by the authorities with the assistance and advice of UNHCR.

As well as experiencing such citizenship problems, the security of the Roma has been threatened in other ways. Many countries in Central and Eastern Europe adopted new constitutions after the fall of communism, recognizing the rights of specific minority populations. But the Roma were frequently excluded from such arrangements. More generally, the Roma have continued to experience social discrimination and victimization. An indication of this problem is to be seen in the failure of local officials, security services and judges to apprehend and punish the perpetrators of racist attacks on the Roma and their property, examples of which have been reported in Bulgaria, Germany, Hungary, Poland, the Czech and Slovak republics.

Asylum and migration

A common characteristic of almost all Roma communities across Europe is their nomadic lifestyle. Throughout their history, the Roma have moved continuously from one place to another, either by necessity or out of choice. For the Roma, migration has been both a defence against external aggression and discrimination, as well as a means of securing a livelihood. Indeed, one of the constant frustrations of European governments, both democratic and authoritarian, has been the unwillingness of the Roma to settle in one place and to engage in routine economic activities.

During the period of communist rule, the Roma of Central and Eastern Europe were limited in the extent to which they could move, due to strict border controls and the official sedentarization programmes to which they were subjected. But with the collapse of communism and the lifting of the iron curtain, they have been free to migrate once again. During the early 1990s, many thousands of Roma attempted to move into Western Europe, both to improve their standard of living and to escape from harassment.

Confronted with the arrival of so many Roma, the countries of Western Europe have attempted to obstruct their arrival and return them to their country of origin or previous place of residence. Germany, for example, which received the largest number of Roma asylum seekers, has signed a

succession of agreements with neighbouring states, facilitating the removal and readmission of unsuccessful asylum seekers.

An agreement signed in 1992 by Germany and Romania, for example, allowed for the “repatriation of German and Romanian nationals to their respective countries” with particular regard to “Romanian and German nationals who have entered one of these two countries illegally.” In practice, the convention was primarily intended to address the question of Romanian asylum seekers in Germany, about 40 per cent of whom were believed to be Roma. As the citizenship of some Roma is unclear, however, and as others do not carry a passport or identity documents, the task of returning them to the states of Central and Eastern Europe has in many cases proved to be difficult.

Figure 6.2: Estimated Roma populations in selected European countries

Fig.6.2

**Estimated Roma
populations
in selected
European countries**

State	minimum	maximum
Albania	90,000	100,000
Belarus	10,000	15,000
Bosnia and Herzegovina	40,000	50,000
Bulgaria	700,000	800,000
Croatia	30,000	40,000
Czech Republic	250,000	300,000
Germany	110,000	130,000
Greece	160,000	200,000
Hungary	550,000	600,000
Macedonia (FYR)	220,000	260,000
Moldova	20,000	25,000
Poland	50,000	60,000
Romania	1,800,000	2,500,000
Russian Federation	220,000	400,000
Slovak Republic	480,000	520,000
Turkey	300,000	500,000
Ukraine	50,000	60,000
Yugoslavia (FR)	400,000	450,000

Source: J-P. Liegeois and
N. Gheorghe,
*Roma/Gypsies:
A European Minority*,
Minority Rights Group,
London, 1995

Box 6.3

The problem of Palestinian nationality

As a result of the political and military upheavals which have taken place in the Middle East since the end of the second world war, millions of Palestinians have been obliged to take up residence in neighbouring territories, other parts of the Middle East and more distant parts of the world. Around half of the worldwide Palestinian population of 6.4 million are believed to be stateless, and many of those who have a nominal nationality are not able to exercise all of the rights enjoyed by other citizens.

The number of Palestinian refugees is itself a matter of great contention and lies at the heart of the Arab-Israeli dispute. When the state of Israel was proclaimed in May 1948, fighting between the Arab and Jewish populations of Palestine, a territory administered by Britain, was already taking place. The proclamation prompted the intervention of several Arab states and in the ensuing armed conflict, 700,000 or 800,000 Palestinians took refuge elsewhere, primarily in the West Bank, the Gaza Strip, Jordan, Lebanon and Syria. Around 150,000 stayed in Israel and became citizens of the new state.

According to many estimates, during the 'six-day war' between Israel and the Arab states in 1967, some 300,000 Palestinians moved from the West Bank to the East Bank in Jordan and to Syria, and from the Gaza Strip to Egypt and Jordan. In later years, substantial numbers of Palestinians were obliged to leave Jordan (1970-71), Lebanon (1982), Kuwait and other Gulf states (1990-92), and Libya (1995-96). A considerable number of Palestinians have thus been displaced on more than one occasion, a factor which has complicated the question of their nationality and legal status.

Rights of residence

The UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established in 1948 to assist those Palestinians who had been displaced when the state of Israel was established. Almost three million Palestinians are currently registered with the agency, which operates in Jordan, Lebanon, Syria, Gaza and the West Bank.

UNRWA defines Palestinian refugees as those people, and their descendants, who lived in Palestine two years prior to the 1948 hostilities, and who lost their homes and livelihoods as a consequence of the conflict. UNRWA was not given a mandate to protect the Palestinian refugees; that responsibility was implicitly left to the countries where they took refuge. Moreover, because they were already under the aegis of a UN agency, those Palestinians registered with UNRWA were effectively excluded from the mandate of UNHCR when it was established in 1951.

The legal status of the Palestinians varies according to both the date of their displacement (or that of their parents and grandparents) and according to their current place of residence. Some 850,000 Palestinians – those and their descendants who remained in the new state of Israel after

1948 – now have Israeli citizenship. An unknown number have also acquired the nationality of countries outside the Middle East. Of the Arab states accommodating Palestinian refugees, only Jordan has granted them citizenship on any substantial scale. The status of the remainder has proved at best ambiguous and has placed many Palestinians in an intolerable situation.

Those Palestinians who hold Israeli nationality are in many senses second-class citizens, with standards of education, housing, employment and social services that are generally inferior to those enjoyed by the rest of the population. Palestinians living in areas occupied by Israel experience considerably greater difficulties. They have for many years lived in a state of limbo, with severe restrictions on their access to jobs, land and public services, their freedom of movement and the exercise of other human rights. According to the UN Commission on Human Rights, Palestinians in the occupied territories are also frequently subjected to collective punishments, in violation of the Geneva Conventions.

In the Arab states, the Palestinians benefit in principle from the 1965 Casablanca Protocol, which enjoined signatories to uphold the right of Palestinians to work, to enjoy full residency rights and freedom of movement within and among the Arab countries. Such rights, however, explicitly stopped short of formal citizenship, due to the importance which the Arab states attached to maintaining the identity of the Palestinians and their claim to a separate homeland. In later years, however, as the Palestinian nationalist movement came into conflict with the governments of the Arab states, the legal status of the Palestinians diminished. As a result, few Palestinians in the Arab world now enjoy a secure right to remain in their country of residence.

Travel represents another difficulty for many Palestinians as no standard travel document has been established for them. Their entitlement to such documents consequently depends of a number of different factors, including their country of residence, date of arrival, marital status and means of support. The right of Palestinians to re-enter the country where they were born can also be jeopardized if the travel document which they are using expires while they are abroad.

Because of their problematic citizenship status, Palestinian refugees are particularly prone to expulsion. Those who have gone to the Gulf states and Libya, for example, are viewed in much the same way as other migrant workers, and are ultimately expected to return to their country of asylum, however long they have lived and worked in another country. Their vulnerability was highlighted during the Gulf Crisis of 1990-92, when up to 350,000 Palestinians were forced to leave Kuwait and other states in the Persian Gulf.

Some of the least secure Palestinians are those from the Gaza Strip, many of whom fled during the 1948 upheaval and again in 1967. While Gaza was administered by Egypt, they were issued with documents by that country. In practice, however, such documents have been of little use for travel. Those who fled to Jordan were given two-year renewable documents which did not confer citizenship. Others moved on to the Gulf states or Libya.

The expulsion in 1995 of part of the 30,000 strong Palestinian community in Libya – most of whom had long been settled in the country – was ordered by the government to demonstrate its anger at the peace agreement established between Israel and the PLO. Some of the Palestinians affected by this order had previously lived in Lebanon and held travel documents from that country, but Lebanon refused to admit them. Some of those expelled from Libya managed to travel overland through Egypt to the West Bank or Gaza, or, after an even more tortuous journey, to Syria and Jordan. But up to a thousand were stranded in very poor conditions on the border between Egypt and Libya. Most of this number originated from Gaza and did not have documents allowing them to enter other states.

Following international pressure, the Libyan government eventually relented and allowed most of the stranded Palestinians back. But several hundred remained on the border, living in appalling

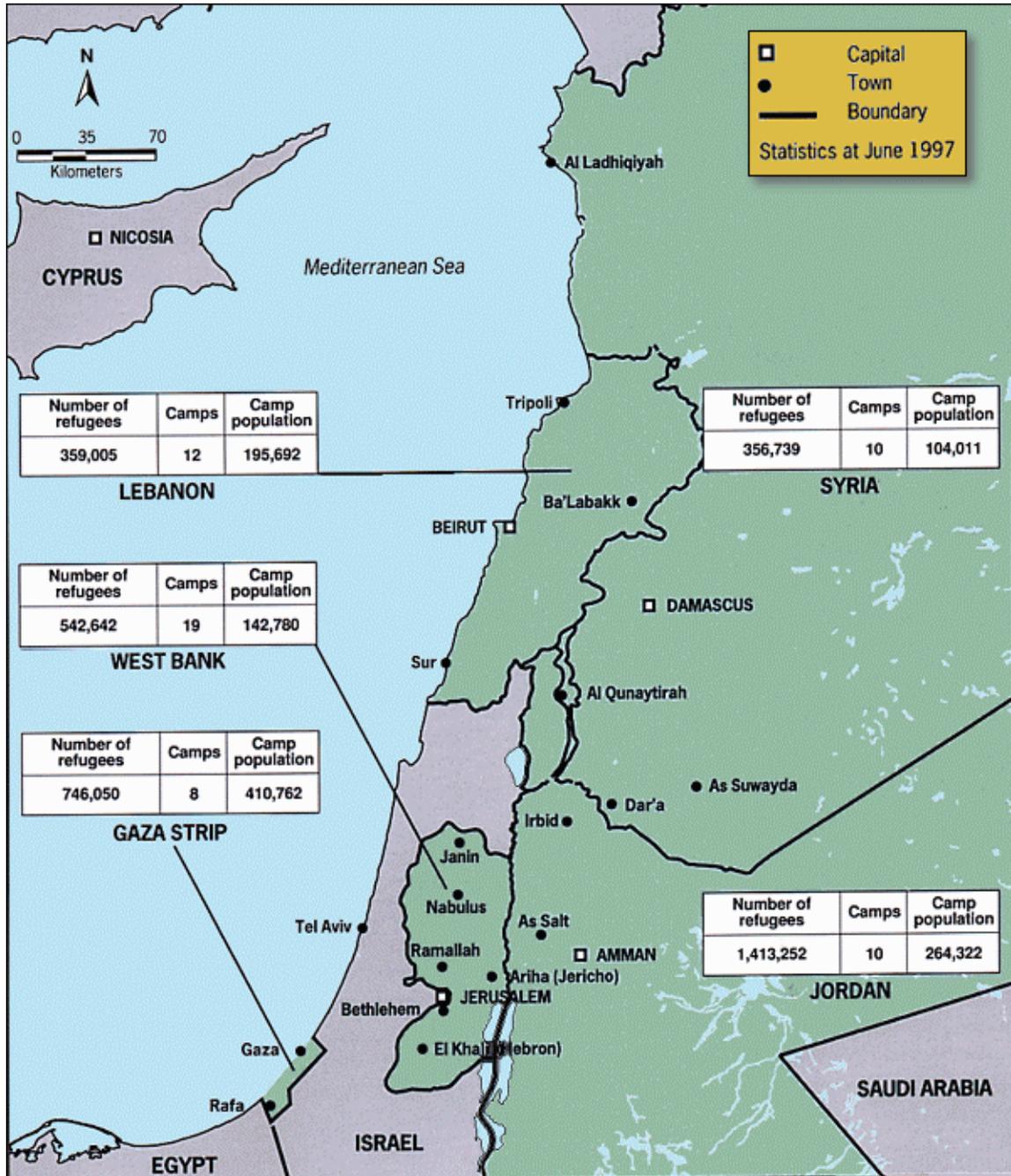
circumstances. In April 1997 those remaining in this no-man's land camp were forcibly removed by Libyan soldiers and sent to another location in eastern Libya.

Peace process

Despite these negative developments, the faltering Middle East peace process has offered a glimmer of hope that the issues of citizenship and statelessness can be resolved. Shortly after the time when most of the Gaza Strip and parts of the West Bank were handed over to the Palestinian Authority late in 1995, the Authority began to issue Palestinian passports to residents of the West Bank and Gaza. The documents allow travel outside the areas controlled by the Palestinian Authority, and have been recognized by more than 40 countries, including Israel, the US, Canada and the countries of the European Union. Continuing tensions in the area, however, mean that it is still very difficult for Palestinians to move between the Gaza Strip, the West Bank, Jerusalem and Israel, let alone further afield. Moreover, since the Palestinian Authority does not have sovereignty over any territory, such passports cannot confer citizenship on their holders.

Early in 1997, a draft law on Palestinian citizenship was being developed. Among the questions it may have to address is that of refugee status through male descent. If refugee status or registration is to be taken as a criterion for defining Palestinian citizenship, many Palestinian women who are married to non-registered men and their offspring could well be excluded, thereby perpetuating their marginalized status.

Map N
Palestinian refugees registered with UNRWA



Box 6.4

Stateless and unregistered children

In most countries, babies are registered with the relevant authorities soon after they are born, enabling them to receive a birth certificate. Without such a certificate, it can be very difficult for a person to lay claim to a nationality or to exercise the rights associated with citizenship. Individuals who lack a birth certificate may, for example, find it impossible to leave or return to their own country, register as a voter or gain access to public health and education services.

The legal framework

Recognizing the importance of these issues, Article 7 of the 1989 Convention on the Rights of the Child states that every child “shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” The convention continues by stipulating that signatory states “shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in the field, in particular where the child would otherwise be stateless.” The Convention on the Rights of the Child has now been signed by 140 states, very few of which have entered any reservations to Article 7.

Several regional instruments have also reiterated a child’s right to registration at birth and to a nationality, including Article 6 of the 1990 African Charter on the Rights and Welfare of the Child and Article 20 of the 1969 American Convention on Human Rights. Moreover, these instruments state that children should be granted the nationality of their place of birth if they do not have another nationality.

As discussed elsewhere in this chapter, nationality is normally granted on the basis of a person’s place of birth (*jus solis*) or on the basis of their descent (*jus sanguinis*). There has been a tendency in the existing (and very sparse) literature on children and nationality to equate registration at birth with the right to a nationality. But the two are not always synonymous. Although the right of children to registration at birth is unequivocal, this does not always give them an automatic right to a particular nationality.

In those countries which grant citizenship on the basis of place of birth, as in much of the Americas, registration at birth gives a child automatic rights to the citizenship of that country if he or she cannot claim citizenship by descent. However, in countries which grant citizenship exclusively on the basis of *jus sanguinis*, as is the case throughout most of Asia, registration at birth does not give a child a right to citizenship in their country of birth if the parents are not nationals of that state.

Children without a nationality

Despite the clear legal guidelines which exist in relation to a child's right to a nationality, there are many young people throughout the world who are effectively stateless. This can arise for a variety of reasons, the most important of which are summarized below:

- if nationality is granted on the basis of jus sanguinis and one or both of a child's parents are stateless or their nationality is disputed;
- if a child is born out of wedlock;
- if a child's birth is not registered because of the parent's failure to do so, because of flawed administrative practices or because the authorities refuse to register the birth;
- if a child is born in a refugee camp or to parents who are refugees, asylum seekers or migrant workers, and if the birth is not registered with the authorities;
- if a child is born in a country of asylum and the registration of that birth is not accepted by the authorities in the child's country of origin; and,
- if a child is born during a civil or international war, or during a process of state dissolution, and the authorities are unable or unwilling to register the birth.

Although cases of stateless children have come to UNHCR's attention in countries across the world, the problem is particularly prominent in those areas which grant citizenship on the basis of jus sanguinis and where the nationality of one or both of the child's parents is disputed. This is the case in Bhutan, for example, where the 1985 Citizenship Act stipulates that children do not have a right to Bhutanese nationality if they are born to parents who are stateless or who are not entitled to Bhutanese citizenship themselves. Children born in Bhutan to non-Bhutanese nationals and who are unable to obtain the nationality of their parents are therefore rendered stateless. The citizenship status of those children born and registered in the Bhutanese refugee camps of Nepal is even less clear.

A somewhat similar situation has arisen in Myanmar. The Rohingyas, a Muslim minority group living in the west of the country, are generally not recognized as Myanmar nationals because of the country's very restrictive citizenship laws. The citizenship status of Rohingya children who were born in refugee camps in Bangladesh and who have returned to Myanmar is even more precarious.

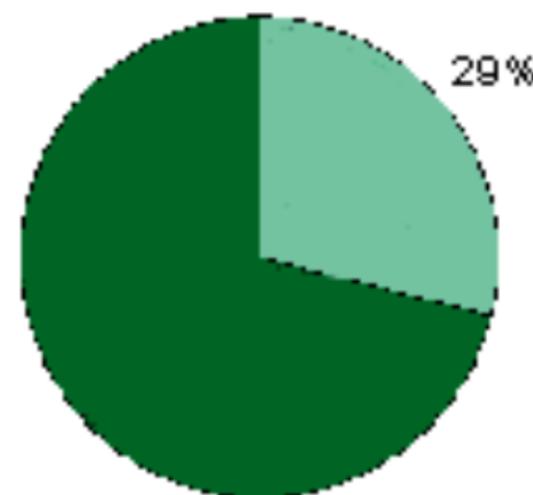
The problem of stateless children is not restricted to those countries which provide citizenship on the basis of jus sanguinis. Unfortunately, children can also face difficulties in obtaining a nationality in countries which provide citizenship on the basis of jus solis. This usually occurs because the authorities of those countries are reluctant to register the births of certain children born on their territory. This has been a common problem for the children of refugees, asylum seekers and migrant workers in several countries in Central and South America, where the authorities have been reluctant to register their births for the very reason that this will give them an automatic right to citizenship.

In Honduras, for example, none of the children born in the Salvadoran refugee camps during the late 1970s and 1980s were registered with the authorities. Although the Honduran authorities were legally obliged to register all children born on their territory, in practice, the refugee camps were treated as if they had extra-territorial status.

A similar situation arose in the Guatemalan refugee camps of Mexico. Until 1993, the Mexican authorities refused to issue children born in those camps with birth certificates, despite domestic legislation obliging them to take such action. Following lengthy negotiations with UNHCR, the Mexican government finally decided in 1993 to retroactively provide birth certificates to all the children concerned – some 10,000 children in all, who, when they reach the age of 18, will be entitled to Mexican citizenship.

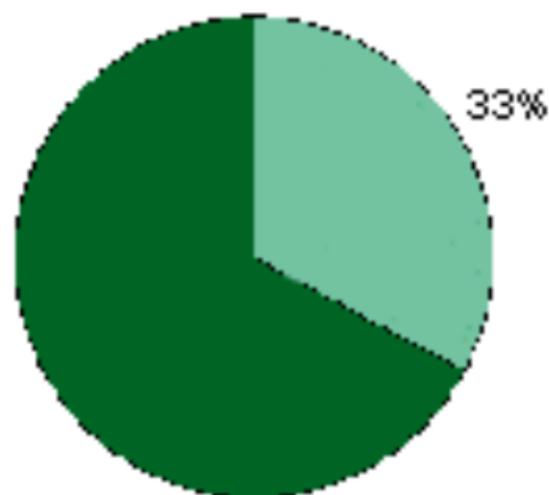
Asylum seekers in the Russian Federation have also been affected by this problem. According to Russian nationality laws, children born on Russian territory to non-Russian parents are considered to be Russian if the states of which their parents are nationals do not provide them with citizenship. Similarly, children born to stateless parents on Russian territory have the right to Russian citizenship.

In practice, however, non-Russian or stateless parents are unable to register the births of their children if they are not themselves legally resident in the country. As asylum seekers from countries outside the former Soviet Union find it almost impossible to regularize their status with the Russian authorities, and as many are unwilling to approach the embassy of their country of origin, their children can easily become stateless. Like stateless and unregistered children in other parts of the world, they are unable to attend school or seek medical assistance, and are more likely to be exposed to illegal adoption, trafficking and sexual exploitation.



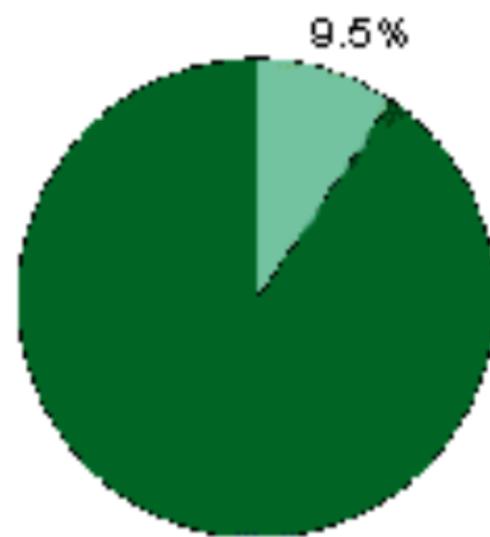
Estonia

Total population: 1,517,000
Resident Russians: 439,930



Latvia

Total population: 2,566,000
Resident Russians: 846,780



Lithuania

Total population: 3,730,000
Resident Russians: 335,700

Fig.6.1

Russians in the Baltic states



Source: *Forced Migration Monitor*, January 1997

Fig.6.2

**Estimated Roma
populations
in selected
European countries**

State	minimum	maximum
Albania	90,000	100,000
Belarus	10,000	15,000
Bosnia and Herzegovina	40,000	50,000
Bulgaria	700,000	800,000
Croatia	30,000	40,000
Czech Republic	250,000	300,000
Germany	110,000	130,000
Greece	160,000	200,000
Hungary	550,000	600,000
Macedonia (FYR)	220,000	260,000
Moldova	20,000	25,000
Poland	50,000	60,000
Romania	1,800,000	2,500,000
Russian Federation	220,000	400,000
Slovak Republic	480,000	520,000
Turkey	300,000	500,000
Ukraine	50,000	60,000
Yugoslavia (FR)	400,000	450,000

Source: J-P. Liegeois and
N. Gheorghe,
*Roma/Gypsies:
A European Minority*,
Minority Rights Group,
London, 1995

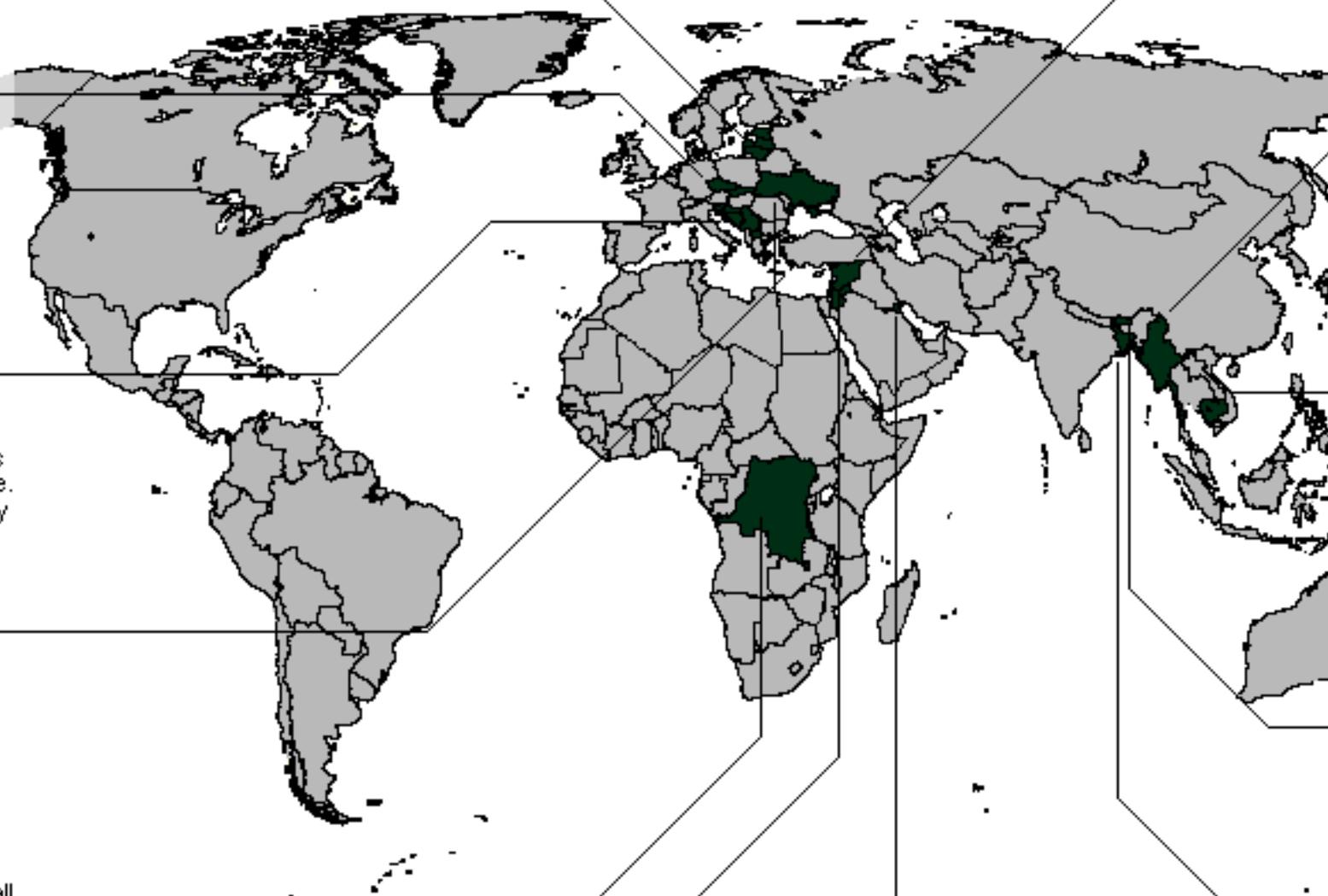
Fig. 6.3

States parties to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

Country	1954 Convention	1961 Convention
Algeria	+	
Antigua and Barbuda	+	
Argentina	+	
Armenia	+	+
Australia	+	+
Austria		+
Azerbaijan	+	+
Barbados	+	
Belgium	+	
Bolivia	+	+
Bosnia and Herzegovina	+	+
Botswana	+	
Canada		+
Costa Rica	+	+
Croatia	+	
Denmark	+	+
Ecuador	+	
Fiji	+	
Finland	+	
France	+	
Germany	+	+
Greece	+	
Guinea	+	
Ireland	+	+
Israel	+	
Italy	+	
Kiribati	+	+
Korea, Republic of	+	
Latvia		+
Lesotho	+	
Liberia	+	
Libya	+	+
Luxembourg	+	
Madagascar	+	
Macedonia (FYR)	+	
Netherlands	+	+
Niger		+
Norway	+	+
Slovenia	+	
Spain	+	
Sweden	+	+
Switzerland	+	
Trinidad and Tobago	+	
Tunisia	+	
Uganda	+	
United Kingdom	+	+
Yugoslavia (FR)	+	
Zambia	+	
Total number	44	19

Map M

Major situations of statelessness and disputed nationality worldwide



Syria

A large number of Kurds in north-east Syria, up to 200,000 according to some estimates, are not recognized as citizens of the country in which they live. In a recent report, Human Rights Watch stated that the people concerned are not allowed to vote, own property, obtain a passport or hold a job in the public sector.

Myanmar

The restrictive nationality laws imposed by Myanmar's military government mean that large numbers of the country's residents are not recognized as full citizens of the country. During the past 20 years, the Rohingyas, a Muslim minority group living in the west of the country, have on two separate occasions fled in large numbers to neighbouring Bangladesh.

Cambodia

Ethnic minorities in Cambodia, most notably those of Vietnamese and Chinese background, have often been regarded and treated as foreigners. In recent years, UNHCR has made many representations to the Cambodian authorities, so as to ensure that the country's new immigration and citizenship laws do not jeopardize the rights of these groups.

Bhutan

Citizenship has become a highly contentious issue within Bhutan and between Bhutan and Nepal. In the second half of the 1980s, the Bhutanese government introduced new citizenship laws, which effectively denationalized large number of ethnic Nepalis. Subsequently, many fled or were expelled from the country and took refuge in Nepal. Because their citizenship is not recognized by Bhutan, they are unable to repatriate.

The Biharis

Sometimes described as 'stranded Pakistanis', the Biharis are a group of Moslems who moved from India to West Pakistan in the late 1940s, and who subsequently opposed the establishment of an independent Bangladeshi state. Around 240,000 in number, some of the Biharis have waited more than 25 years to take up residence in Pakistan.

Kuwait

In recent years, human rights organizations have expressed concern over the situation of the Bidoons, a stateless minority group living in Kuwait and other countries of the Persian Gulf. During the political and military crisis which erupted in that region in 1991, many Bidoons were expelled from the country and forced across the border into Iraq.

The Baltic states

When the Baltic states gained their independence from the Soviet Union at the beginning of the 1990s, citizenship issues quickly found their way to the top of the political agenda. In Latvia and Estonia, large numbers of Russians who had been resident in those countries for many years found that they had been rendered effectively stateless following the introduction of new nationality laws.

The Czech and Slovak republics

Czechoslovakia was dissolved in 1992 and each of the two successor states introduced their own citizenship legislation. Large numbers of people, especially members of the Roma or gypsy community, found themselves threatened with statelessness as a result of problems in the formulation and implementation of these laws.

Former Yugoslavia

The question of nationality has been just one of the many problems to confront the people of former Yugoslavia since the early 1990s. The speedy disintegration of the country, the massive displacement of people during the war and the desire of some political leaders to obstruct the return of certain ethnic groups have combined to make the citizenship question a particularly important one.

Ukraine

Expelled from their homeland when Stalin ruled the Soviet Union, about quarter of a million Tatars have returned to the Crimea over the past decade. By the end of 1996, at least 60,000 - and possibly many more - of the returnees were waiting to acquire Ukrainian citizenship. Without it, they have not been able to vote and have lacked effective access to jobs and public services.

Zaire

The 1996 crisis in Zaire, which eventually led to the overthrow of the Mobutu government, had many different roots. Not least of these was the question of citizenship. When the regime attempted to strengthen its position by denationalizing and expelling large numbers of ethnic Tutsis in the east of the country, the affected population took up arms against the government and played a major part in its downfall.

The Palestinians

While accurate statistics are difficult to establish, there are thought to be some three million Palestinians who lack an effective nationality, making them the largest group of stateless people in the world. While this problem lies at the heart of the Arab-Israeli dispute, it remains to be properly addressed by the Middle East peace process.