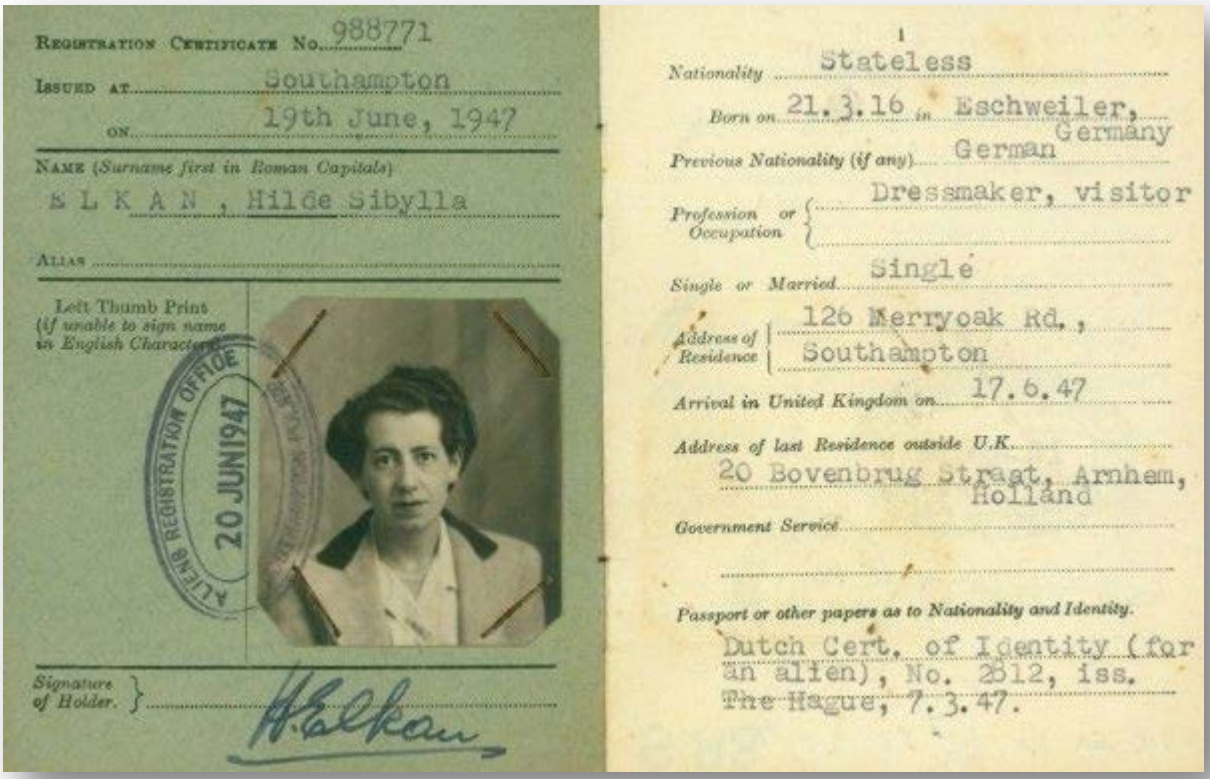
Statelessness in the European Union

“‘The right to have rights”’

Hannah Arendt



Name: L.T. Hohenhorst

Student number: 10002812

Supervisor: M.J. Weijerman-Kerremans

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Academy of European Studies

The Hague University of Applied Sciences

Submitted by:

Lisa T. Hohenhorst
Academy of European Studies
Student number: 10002812
Bachelor Thesis

Hohenhorst.l@gmail.com

Submitted to:

The Hague University of Applied Science
Johanna Westerdijkplein 75
2521 EN The Hague
The Netherlands

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Travel document from a stateless person

Executive Summary

Statelessness is a global issue that affects more than 12 million people around the world. Based on the United Nations (UN) estimates, the Council of Europe (CoE) has identified the number of stateless persons in Europe to be at least 680,000. Despite the above figures, statelessness remains a relatively hidden phenomenon in the European Union (EU). Without citizenship, stateless people find themselves in a legal limbo belonging to no country and being refused most of the fundamental social, civil or economic rights.

The main purpose of this research paper is to evaluate the current situation of statelessness within the European Union and the existing statelessness determination procedures available, meaning to find out to which extent Member States of the EU are able to function and act under a common framework that will help to prevent issues of statelessness. The general theme of the research derives from the main research question:

To what extent is the European Union able to develop an effective common EU policy framework for International protection to prevent Statelessness?

Therefore, a qualitative desk research was conducted and several sub-questions have been drawn that have the objective to help with the formulation of the content, by way of challenging different topics and in the same time by focussing on distinctive theories. This established the basis of the literature review and leaded to the empirical evidence that portrayed the current situation of statelessness and the relevant legislation around the issue within the EU.

The current International legal framework directing statelessness and state determination on citizenship consists of several principles and rules, belonging to various branches of international law, which a Member State must comply with. This International framework is needed since: they outline appropriate solutions, they establish mechanisms for the avoidance of cases of statelessness, and they assist Member States to address gaps in legislative frameworks. However, even though there are sufficient international instruments that converge over the issue, they still lack monitoring mechanisms and there is no assigned monitoring body to ensure that states comply with the given obligations.

So far, within the EU framework no specific regulation on statelessness exists. The EU refers in some of its EU legislation on immigration and asylum to stateless persons. However, within the scope of that legislation, its involvement in addressing the problem of statelessness has been limited. The fact that the ECHR, one of the first human right

instruments to give effect and binding force, and the Human Rights Charter do not even address the issue is a real shortcoming of the Human Rights law within the EU.

With regards to the future, there is a need for EU-regulation in order to oblige Member States to facilitate access to nationality and reduce statelessness. At present the EU does not have the explicit entitlement to adopt legislation or common measures that treats statelessness as a specific issue. This can only be done when fundamental principles, such as the division of competence and the doctrine of state sovereignty are changed in EU-laws. While a common EU-Framework to protect stateless persons in the EU law and policies seems unrealistic, the EU can still play an active role in improving the protection of stateless persons in Member States.

It is highly recommended for the EU to encourage Member States to create more reliable data in their statistics on stateless persons and develop relevant common guidelines. With regards to the International Conventions on Statelessness the EU should encourage Member States that have not yet ratified the 1954 and 1961 statelessness-related UN conventions and cooperate with the UNHCR. Finally, the EU should strive to implement the issue of statelessness within its own structure and relevant EU institutions such as dealing with fundamental right issues, national minorities or asylum and this should be integrated into the standard programme of these EU bodies.

Acronyms

BRP	Basisregistratie personen
CEE	Central and Eastern Europe
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECN	European Convention on Nationality
ENS	European Network on Statelessness
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IND	Immigratie-en Naturalisatiedienst
OAR	Oficina de Asilo y Refugio
OHCR	Office of the High Commissioner for Human Rights
PCIJ	Permanent Court of International Justice
PIL	Protocol Identificatie en Labeling
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

Preface

My first encounter with the issue of statelessness was one year ago, while investigating about a topic for my thesis research within the context of my bachelor in European Studies. Statelessness determination is a subject that appealed to me immediately and fascinated me right away. Nationality is needed for everyone and is a core part of our identity that also provides us with legal benefits from it. To be the owner of a passport that defines your nationality is probably the noblest part of a human being and therefore taking for granted our nationality this is not the case for every human being on this world.

The main exposure most people have had to statelessness comes from the 2004 movie called 'The Terminal'. The main character performed by Tom Hanks, is an immigrant from an eastern country who must take up temporary residence in JFK airport. The true story was that of Mr. Merhan Nasseri, an Iranian refugee, who lived at the departure lounge of Terminal 1 in the Charles de Gaulle Airport for years. This happened when Nasseri tried to travel to England from Belgium via France, however, his entry into England got denied, because his passport and United Nations refugee card had been stolen. His plight of living in a bureaucratic limbo for 17 years became an International human rights issue.

In the light of the above, there is a need for understanding the issue better and sharing responsibilities on facing the problem of stateless people living on the margins of society within several Member States of the EU. Statelessness remains a very complex subject and will always be apparent in modern day society. As a result of the absence of a coordinated EU policy and response in this area, there are still many people living in this legal limbo. This thesis will hopefully help to clarify further the phenomenon of statelessness and give an understanding of the complex notion of nationality. This happens in a way to create awareness of the issue, not only to sympathise with the stateless people, but also to understand the need for EU Protection.

The period while writing my thesis was a full learn and intriguing moment of my educational life. Saying this I would like to extend my sincerest thanks and appreciation to my supervisor Mrs. Weijerman-Kerremans. Secondly I would like to thank my family who helped me accomplish this study and Thamar Martin & Tolis Papageorgiou who supported me through my time of writing.

The Hague, September 2014

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Chapter I

Introduction

Statelessness is a global issue that affects more than 12 million people around the world (ENSa, 2014). Based on the United Nations (UN) estimates, the Council of Europe (CoE) has identified the number of stateless persons in Europe to be at least 680,000 (UNHCR, 2014a). Despite the above figures, statelessness remains a relatively hidden phenomenon in the European Union (hereinafter: EU). Without citizenship, stateless people find themselves in a legal limbo belonging to no country and being refused most fundamental social, civil or economic rights. The lack of essential documents as for example: Identity card, birth certificate or passport excludes them from participating in the political process and removes them from the protection of law (UNHCR, 2014b).

Since the early 20th century, several international and regional efforts have been constructed to regulate the reduction of statelessness and access to nationality. Despite these efforts, little progress has been made on the issue so far and the absence of harmonized approaches by EU Member States to the acquisition and loss of nationality continues to create cases of statelessness (Inter-Parliamentary Union and UNHCR, 2005). Even until today, many Roma people in Europe live outside the social protection and still remain stateless, due in part to the complex nature of Member States and EU citizenship law (Council of Europe Commissioner for Human Rights, 2009). This raises the importance of the need for sharing responsibilities and for a common EU-regulation to more efficiently reduce the problem and ensure access to nationality for everyone.

1.1 Aim and Scope

In content, this paper is intended to evaluate the current situation of statelessness within the existing statelessness determination procedures available in the EU. The final aim of this thesis is to analyse the EU competence to pass relevant legislation, and investigate to which extent Member States of the EU are able to function and act under a common framework that will help to prevent issues of statelessness.

In order to achieve this, it was necessary to answer a number of questions that address the issues which need to be assessed. The general theme of the research derives from the question: '*To what extent is the European Union able to develop an effective common EU policy framework for International protection to prevent Statelessness?'*

The scope of the question is rather broad and therefore it needs to be broken down into several sub-questions that will lead to the identification of the main topics.

- Question 1: What are the international standards on reduction of statelessness and the right to/access to nationality?
- Question 2: To what extent is the reduction of statelessness and the right to nationality regulated at the EU level. Are there obstacles that prevent EU to legislate?
- Question 3: In which ways does the EU have competence to address statelessness and how should these statelessness procedures be addressed?

1.2 Research methodology

The research questions have the objective to help with the formulation of the content, by way of challenging different topics and in the same time by focussing on distinctive theories. This will establish the basis of the literature review and will lead to the empirical evidence that is expected to portray the current situation of statelessness and the relevant legislation around the issue within the EU.

The research method used for the purpose of this paper was desk research and field research. The use of this research approach was adopted in order to gain qualitative & quantitative information (given the short extent of the thesis) and to get background knowledge, which will lead to a better understanding of the subject. The research tools used involved: books, online and academic journals, academic papers, related blog entries and universities' online databases and libraries. Moreover, the most used tools while conducting the research, besides the books, where the online versions of profile journals, such as Brill, Cambridge Journals, Oxford Journals, Journal of the United Nations, etc. Additionally, for a more accurate result, the information used was peer reviewed by academics and experts in the field, particularly the knowledge gathered from the internet databases, online libraries, blog entries and online journals.

Moreover, previous work written on the topic is limited for the reason that tackling the issue of statelessness is still an underdeveloped area of legal study and literature. During the research, a common topic written on was the status, protection and treatments of stateless persons, rather than solutions to reduce it. Nevertheless, there are a numerous of articles and reports available that address the problem of statelessness and its causes. These documents can be found in UNHCR's useful index Refworld and in the database

developed by the EUDO Citizenship Observatory, which includes information on the extent to which citizenship laws in all European Member States provide sufficient protection against statelessness in light of the most important international standards and which were adjusted to be able to assess in particular national regimes.

Additionally, one of the leading authors, with his book on Nationality and Statelessness in International law, is Paul Weis. His work provides an extensive overview of the concepts of nationality and statelessness, along with the challenges of dealing with the issue through international law. Furthermore, Laura van Waas, a Senior Researcher and Manager of the Statelessness Programme at the Tilburg University and David Weissbrodt a global authority on human rights and International law both have made significant contributions on the mechanism concerning nationality. Their work examines contemporary developments in international law and includes the influence of human rights law on this field.

Finally, the field research consisted of an interview that has been conducted with an expert in the field of Statelessness. The interview will provide an added value to the dissertation, since the interviewee has a relevant opinion concerning the topic.

1.3 Delimitation of the Research Problem

At the time of writing, several delimitations have been made, since dealing with such broad and complex notions there are a number of fundamental concepts that need to be explained in order to avoid misunderstandings. In this section clarifications are given and delimitations are described briefly. In addition, detailed definitions of the various concepts will be restated later in section 2.1.

Stateless Refugees and *in situ* Stateless

Stateless persons can be divided into two groups: stateless *refugees* and *non-refugee* stateless. The first category refers to those who are stateless and are either migrants or of migratory background (i.e. refugees) and for that reason protected by the *1951* Convention relating to the Status of Refugees[1]. In order to get an understanding of who conform to the definition of a refugee, Article 1 on the Convention states that the term “refugee” shall apply to any:

[1] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

> person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country (UNHCR, 2010b, p. 14).

In comparison with the first category the second group, *non-refugee* stateless, also known as *in situ* (on site) stateless, refers to persons who are stateless in their 'own country' and through birth and long-term residence have significant and stale ties with the country they reside in (APRRN, n.d.). The *in situ* stateless persons do not qualify for the refugee status and therefore they only rely on the protection set in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (UNHCR, 2011a).

De *jure* and *de facto* Stateless

Additionally stateless persons can be divided into the *de jure* stateless*,* those who have no legal nationality and the *de facto* stateless those who have no "effective" nationality. This categorisation is the result of an early position which broadly equated the *de facto* stateless with refugees, while viewing the *de jure* stateless as a distinct group (The Equal Right Trust , 2010). Given the range and limitations for this thesis the research does not focus on persons who have been recognised as refugees meaning those refugees who do have a nationality and are *de facto* stateless. Instead, it will focus on individuals including refugees who do not have a nationality at all and are the *de jure* stateless as well as the *in situ* stateless person

1.4 Structure

This paper is composed of six chapters. Chapter one is the introduction, the second chapter is intended to give an understanding of the concept and implications of statelessness. Chapter three outlines the current International legal framework directing statelessness, which consists of several principles and rules belonging to various branches of international law. Moreover, chapter four highlights the place of statelessness in EU laws & policies and focusses on the EU competence for complementary binding rules on the protection and identification of stateless persons. The fifth chapter focuses on a concrete and current example of statelessness determination in the Netherlands. At last leading up to the final chapter 6, where conclusions and recommendations for EU-regulation are presented.

Chapter II

Statelessness in the EU

This chapter is an introduction to the understanding of the complex notions of statelessness and will start with providing a definition of the terms ‘de jure’ and ‘de facto’ statelessness. Furthermore the various causes of the issue will be discussed and the important role of nationality within the Member States of the EU will be highlighted. In addition, the contribution of Hannah Arendt's theory to democratic citizenship will be described and two important International organizations that provide stateless related work will be explained and analysed.

2.1 Defining Statelessness

The discussion on the different forms of statelessness and what they consist of is a long, intricate one and too complex to cover in a comprehensive way in this research. For the understanding of the topic it is however necessary to know the basic terminology referred to principles, legal sources and the following text. It is worth nothing, that the 1954 Convention relating to the Status of Stateless Persons is legally binding only with respect to the ‘*de jure* statelessness’ (The Equal Right Trust , 2010).

According to International law, as expressed in article 1 of the 1954 Convention relating to the Status of Stateless Persons, “the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.” (UN, 1954, p.1). The definition of a stateless person contained in Article 1, as quoted above has been accepted by the International Law Commission and is now part of customary International law. However, there are two categories of stateless person: the *de jure* (in law) and *de facto* (in practice) statelessness (Buitrago, 2011).

The first kind of statelessness has been explained in the previous section, nevertheless, the second kind of statelessness is much more difficult to describe. The *de facto* stateless has never been comprehensively defined and there is no universally accepted definition of this term. Nevertheless, the most clear and thorough definition is made by Weissbrodt and Collins (2006), who characterise de facto stateless persons as:

> Persons who are de *facto stateless* often have a nationality according to the law, but this nationality is not effective or they cannot prove or verify their nationality. *De facto* statelessness can occur when governments withhold the usual benefits of citizenship, such as protection, and assistance, or when persons relinquish the services, benefits, and protection of their country. Put another way, persons who are *de facto* stateless might have legal claim to the benefits of nationality but are not, for a variety of reasons, able to enjoy these benefits. They are, effectively, without a nationality (pp.251-252).

In this view, the *de facto* stateless are persons without an effective nationality or those who cannot prove their nationality.

Since the concept 'nationality' comprises an important part of addressing the problem of statelessness; a common definition on nationality will be shortly introduced. According to the UNHCR: "Nationality/citizenship is the legal bond between a person and a state as provided for under the State's laws and encompasses political, economic, social and other rights as well as the responsibilities of both the State and of the individual" (UNHCR, 1999, p. 5).

The purpose of this paper is to present cases singular related to the *de jure* stateless people. In view of the fact that the *de jure* stateless people will not qualify for refugee protection and the UNHCR mandate assigned to prevent and deal with statelessness does not include the *de facto* stateless cases (Massey H. , 2010). At last, the reader should keep in mind that the terms nationality and citizenship are used interchangeably.

2.2 Causes of Statelessness

The cases of statelessness in the EU are numerous and there are a variety of reasons why a person may become stateless. Statelessness, from a technical level, always results from a loss or a non-acquisition of nationality. Nevertheless, the root causes of the problem can be outlined in a variety of factors and circumstances. The main causes of statelessness discussed in the EU are: as a consequence of state succession, the so called 'conflict of laws' or other administrative and procedural matters, discrimination against certain racial or ethnic minority groups and childhood statelessness (International

Justice Resource Center, 2012). In the following paragraphs these causes will be justified and if necessary illustrated on with examples.

2.2.1 State succession

The Succession of states appears, when a State comes into the possession of another state that undertakes a permanent action of its sovereign territorial rights of powers, with the consequence that, it loses control over parts of its territory and therefore fails to exist. (Hershey, 1911). The dissolution of the former Soviet Union and Yugoslav Federation has as a result, caused a large population of ethnic Russians remaining stateless in Central and Eastern Europe (CEE) (Priit Järve, 2013). To give an example, those who had links with countries like Estonia and Latvia were restricted to citizenship prior to the occupation at the time when the Baltics gained independence. As a result, hundreds of thousands of people were left stateless (Kohn, 2012). Figure 2.1 in the appendix presents an indication of the number of stateless people, based on data provided by the UNHCR, in the EU Member States. As can been seen from the figure, it illustrates that the scale of statelessness is most pronounced in the Baltic States and particularly in the countries Estonia and Latvia.

2.2.2 Conflict of laws and administrative practises

The statelessness cases of this matter are the result of a number of legal and administrative factors. In South-East Europe there are still obstacles to birth registration for non-citizens or persons that lack complete documentation. Although in theory they allow for undocumented or stateless people to register, in practice they established bureaucratic procedures, which make it difficult or in some cases expensive or even impossible for people to register (Lee, 2013). Moreover, statelessness may be faced when an individual may get caught between two states using two different principles of allocating nationality at the time of birth. For example, an individual born to parents who are nationals of a foreign state, may be rendered stateless if the state of his birth grants nationality by decent (*Jus Sanguinis*), whilst the state of his parent only grants nationality by birth on its territory (*Jus Soli*) (Honohan, 2010). Another example that can be given, on how conflict of laws can lead to statelessness, is a person born in Germany (whose nationality laws are based on *Jus Sanguinis*) of parents who are U.S. citizens, where the person has not been subsequently naturalised in the U.S. (The Equal Right Trust , 2010).

2.2.3 Discrimination against minority groups

Statelessness is not only the plight of random individuals it may also happen to occur that whole groups can suffer from a sort-of collective statelessness. This may be the case of ethnic or racial groups, who are within a state's legal framework arbitrarily excluded from citizenship. A contemporary example of this problem can be seen in the social exclusion of the Roma people, who are one of Europe's largest minority groups (Hammarberg, 2012). Due to the EU enlargement, the fall and break-up of former regimes, new states and borders, free movement and social & economic migration an even more instable situation has caused a large number of displaced Roma in the region stateless (Warnke, 1999). According to human rights defender Hammarberg, T., "there are no reliable data on the number of stateless Roma". However, he could estimate that they could make up at least 70,000 to 80,000 of a total Roma population of 11.3 million in Europe, whereby many live in Slovenia and South-East Europe (Thomson Reuters Foundation, 2011).

2.2.4 Childhood Statelessness

Among the more than 600.000 stateless people in Europe, children who are born into statelessness are of all the most vulnerable. The stateless children are at a high risk of facing illegal adoption, human trafficking or child labour. The causes vary. As many have inherited this status from their parents, in some Member States, the problem can be linked to migration and conflicting nationality law (Lynch & Teff, n.d.). As mentioned earlier, using two different principles of allocating nationality at the time of birth (*Jus Soli* and *Jus Sanguis*), may also lead to statelessness among children. In other cases, it is as a result of when the succession of states appears (UNHCR, 2010a). In addition, another major factor that creates childhood statelessness is the deficiency of birth registration which happens especially among national minority (i.e. Roma people) and other vulnerable social groups. The lack of birth registration is a consequence for numerous of obstacles that prevent people from registering children at birth (ESN, 2013a), these ones include:

- Incomplete, inadequate or incompatible pieces of legislation;
- Complicated and therefore inefficient administrative practices;
- Excessive fees;
- Language barrier;
- Lack of awareness among the population

2.3 Statelessness and nationality

Nationality has been a sensitive topic among EU countries since it presents a Member States sovereignty and identity. The EU does not have a sufficient competence when it comes to the regulation of nationality. For that reason, questions of nationality fall within the domestic jurisdiction of each state (Inter-Parliamentary Union and UNHCR, 2005). With regard to the EU context of nationality, it is important to be in the possession of one, as it conditions EU-citizenship. The Treaty of Maastricht has introduced 'European citizenship' as the legal status of nationals from the Member States of the EU. In other words, all the nationals of the 28 Member States are also EU-citizens given that their countries are members of the EU (Eijken, 2010).

As stated in Article 20 (1) of the Treaty on the Functioning of the EU (TFEU):

> Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship (van Ooik & Vandamme, 2010, p. 39)

The EU-citizenship brings forth specific rights such as the right to freedom of movement, residence and employment across the EU, along with the political right to vote during European elections (Yeong, 2013). The loss of nationality usually prevents people from having equalled certain rights. For the de *Jure* stateless persons, the absence of legal status as national not only results in the exclusion of rights and benefits every person is entitled to, but, also to those 'regional' rights that are related to EU-citizenship (van Ooik & VanDamme, 2010). According to Waas, L, this leads to severe hardships within the interaction between the individual and the state, as a consequence that the *de Jure* Stateless persons are not able to make claims towards the state, which results in inaccessibility to fundamental rights (Waas, 2008).

In Figure 1 the access to nationality per EU Member State, measured by the Migrant Integration Policy Index has been illustrated. Noteworthy are the low-scoring countries: Lithuania, Estonia and Latvia, as can be seen in appendix table 1.1. Arguably, it can be stated that their nationality policies are among all Member States been seen as most unfavourable.

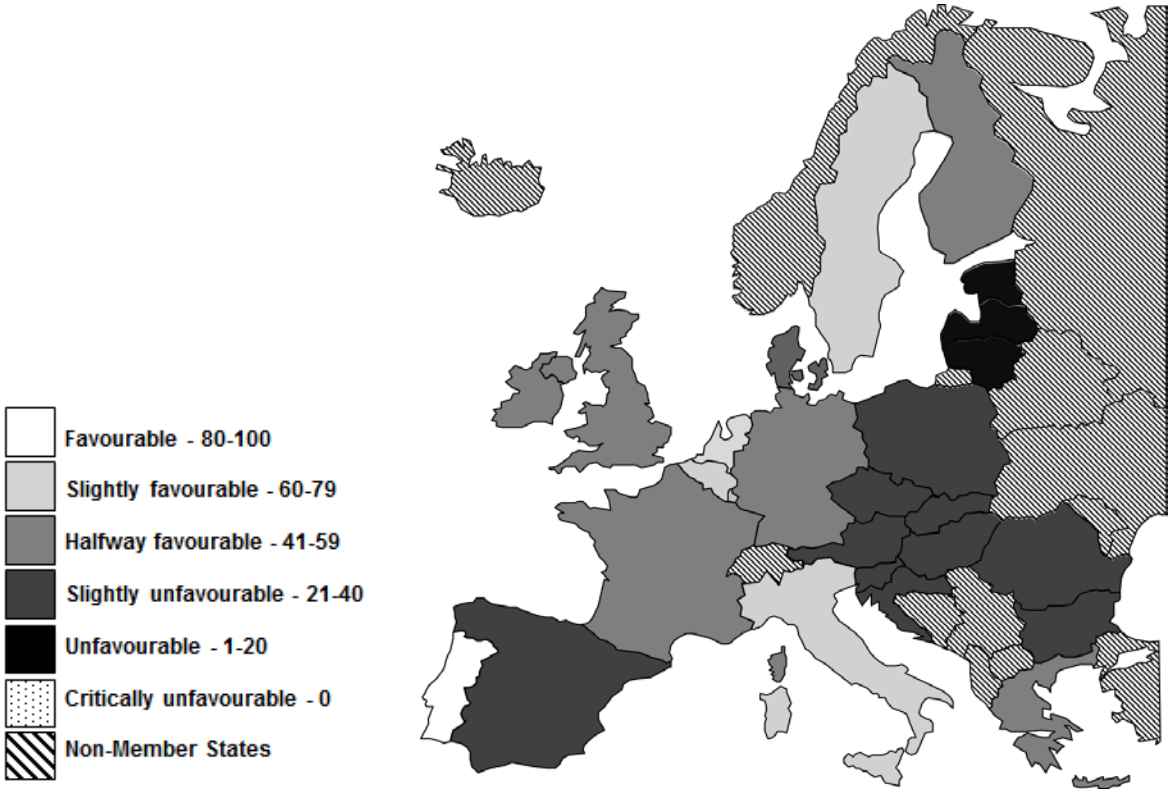

Figure 1. Access to nationality per Member State (Data obtained from the MIPEX website, 2010)

2.3.1 Hannah Arendt

The phrase “the right to have rights” which is used in the title of this thesis derives from the German-American theorist and philosopher Hannah Arendt, who provided valuable writings on the topic. In her various political thoughts on the discussion of the plight of stateless people, Hannah Arendt, being stateless for eighteen years herself, invokes the right to have rights as the most important human right. Hannah Arendt argued that the twin phenomena of ‘political evil’ and ‘statelessness’ would remain the most demoralizing problems into the twenty-first century. Arendt identifies the right to membership in a political community as the most fundamental one of all in human right (Hayden, 2008).

The importance of this became apparent when, between the two world wars, millions of stateless persons and national minorities found themselves travelling in Europe without states willing to protect them. In effect, figure 2 illustrates that between 1936 and 1949, 20,000 Germans and Austrians flocked to Shanghai, after having fled from German-occupied Europe before and during World War II, since it was the only place in the world that did not require a visa. In the aftermath of the Second World War and the Holocaust, it was for Arendt to realize that in order to ensure this right, being human was simply not enough, as a specific duty bearer was not appointed (Passerin d’Entréves, 1994).

In addition, she established nationality as the function to make sovereign states the duty possessor (Hayden, 2008).

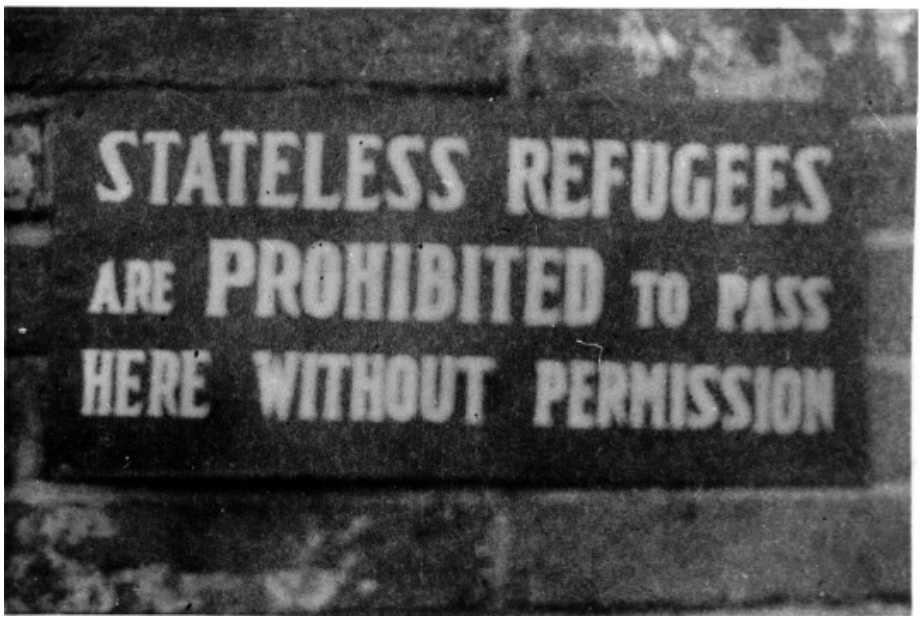

Figure 2. Sign for a "Restricted area for Stateless Refugees" in Shanghai (Source: Leo Baeck Institute, 2012)

To summarize Arendt's theory nationality gives individuals the advantage to claim several fundamental rights towards a state, in comparison to the *de Jure* stateless person who, according to Arendt has unwillingly lost the single-party state towards which rights are to be claimed.

Arendt says:

> We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation (Arendt, The Origins of Totalitarianism, 1958, pp. 296-297).

So even though nationality is not the only essential to enjoy fundamental human rights and freedoms, it still proves the relationship between the national and the state. The theory of Arendt is pointing this out by stating that statelessness and the lack of nationality invokes the access to fundamental human rights and protection, when there no longer is a state to ensure them (Benhabib, 2005).

2.4 Organization

It has been difficult for organizations to collect comprehensive data on the number of stateless persons. This is due to the reason that the concept of statelessness has been disputed among countries, in a way that governments are often unwilling to expose information about the issue. In recent years, however, the international community has become more aware that respect for human rights helps to prevent mass migrations and forced displacements (Achiron, 2005). There are two important International organizations that provide stateless related work and these are: the UNHCR and the European Network on Statelessness. In the following two subparagraphs these organizations will be shortly analysed.

2.4.1 UNHCR

Several decisions have been taken in order to ensure that the UN General Assembly has given the UNHCR the official mandate to prevent and reduce statelessness on a global level, as well as the order to protect the rights of stateless people[2] (UNHCR, 2014c). The UNHCR has therefore a mandate that is based on two definite elements: to address situations of statelessness on a global level and to assist in resolving cases that may arise under the 1961 Convention on the Reduction of Statelessness. Furthermore, the organization promotes the accession by states to the 1961 Convention on the Reduction of Statelessness and seeks to document gaps in legislative frameworks, whereby they assist states to address these gaps, and also to give advice on citizenship campaigns (Manley and Persaud, n.d.).

Moreover, the UNHCR works closely with numerous partners such as governments, civil society and leading humanitarian organizations in order to address statelessness. There are 2 international bodies: the UN's Children's Fund (UNICEF) and the Office of the United Nations High Commissioner (OHCHR), who also have mandates that relate to statelessness. At the same time while UNICEF cooperates with UNHCR when it comes to realizing every child's right to a nationality, in particular through birth registration, the OHCR together with UNHCR focus on the human rights side of statelessness. This happens in cooperation with the UN Development FUND, which aims at a full integration of stateless people into society, through access to justice or development programmes (UNHCR, 2014d).

[2] UN General Assembly resolution 3274 (XXIX), 10 December 1974

2.4.2 ENS

The European Network on Statelessness, established in 2012, is a civil society alliance upholding 50 member organisations in more than 30 countries pledged to address statelessness in Europe (ENS, 2014b.). The organization collaborates in partnership with several other organizations and institution to encourage and support international and regional organizations (i.e., EU, CoE and the UNHCR), in order to address statelessness within their respective mandates. In addition, the organization advocates countries in the region to adopt policies that prevent and reduce statelessness and to provide protection to stateless persons (ENS, 2014c).

2.4.3 Role of International organizations

The UNHCR fulfils an important role, when it comes to addressing statelessness, since nearly every international recognised state in the world is a member of the UN. The UN's core areas of work derive from International Conventions like the UN charter, the Universal Declaration of Human Rights (UDHR) and the International Court of Justice (ICJ) (UN, 2014a). Alongside, the UN has 15 specialized agencies in total, under these 15 specialized agencies there are a further 108 different agencies, that carry out various functions on behalf of the UN. The national governments and Member States of the UN consider the international conventions and the UN's vision therefore of high value (UN, n.d.). ENS on the other hand, is a network open to NGOs, research centres, academics and other individuals who wish to apply for associate membership. Due to its large number of member organizations it can be considered as an important network as well (Bandhopadhyay, 2010).

Chapter III

The International Framework

The current International legal framework directing statelessness and state determination on citizenship consists of several principles and rules, belonging to various branches of international law, which a Member State must comply with (ENS, 2014b). The objective of this chapter is to review the content and scope of various International and regional human rights instruments that converge over the issue of statelessness and nationality. This part starts with an analysis of the most pertinent conventions and treaties related to nationality, followed by an analysis of the international treaty regime on statelessness, including the two most important United Nations treaties directly related to promote the prevention of statelessness and to establish mechanisms for the avoidance of cases of statelessness. At last, the international treaty regime on childhood statelessness will be discussed.

3.1 The International Legal Framework for the right to a nationality

Since the nineteenth century states have been dealing with nationality matters, mostly through bilateral agreements. This was necessary when over 35 million nationals from different European states emigrated to North and South America and when new legal bonds with a state had to be directed (Schrover, 2008). Despite these movements, the growing number of regional and multilateral conventions started only to develop from the twentieth century (Pilgrim, 2011).

In principle as outlined before, questions of nationality fall within the internal State authority of each State, which is beyond the reach of international law. However, an applicable rule of a State's internal decisions can be limited by the similar actions of other States and by international law (Inter-Parliamentary Union and UNHCR, 2005). To give an example, this happened in its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923[3], where the Permanent Court of International Justice (PCIJ) stated that: "The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative one, since it depends on the development of international relations." (Kelsen, 2008, p. 777)

[3] Nationality Decrees Issued in Tunis and Morocco on Nov. 8th, 1921, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 4 (Feb. 7)

In other words, while nationality questions were regulated within the domestic jurisdiction, States must, nevertheless, respect their obligations to other States as directed by the rules of International law. These early efforts resulted seven years later in the Convention on certain Questions Relating to the Conflict on Nationality Laws (The Hague Convention of 1930), which will be elaborated on in the upcoming subparagraph (Inter-Parliamentary Union and UNHCR, 2005).

3.1.1 The Hague Convention of 1930

The Convention on certain Questions Relating to the Conflict on Nationality Laws[4] (The Hague Convention of 1930), supervised by the Assembly of the League of Nations, was the first multilateral treaty on nationality aiming to remove certain consequences of statelessness and double nationality. The Convention was signed by 30 governments and contained 31 articles of which the first 17 set forth substantive rules concerning nationality (Council of Europe , 1930).

Nevertheless, despite of these efforts, the treaty never entered into force, since it was only signed and ratified by eight countries, as a required number of ten was needed. Even though Member States could only agree on some principles, with its basic one each state is able to determine under its own law who are its nationals. In addition, article 1 of the Convention covers the exclusively right that the final determination of nationality belongs to a particular state. Thus, States are within their jurisdiction the final judge and lawmaker in issues and have the exclusive right to decide to whom it grants nationality to (Hailbronner, n.d.).

Article 1

> It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality

According to M. Hudson, member of the International law Commission and Judge of the ICJ, only very little had been achieved by The Hague Convention of 1930. Yet, he also stated that the Convention was one of the most meaningful international instruments, for the reason that it not only reflected the influence of public opinion in the matter of

[4] League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, Treaty Series, vol. 179, p. 89, No. 4137

nationality, however has also been followed by a certain trend towards the improvement of national laws in the context of eliminating statelessness (Hudson, 1952). In effect, during the twentieth century, those provisions gradually developed into the Universal Declaration of Human Rights (UDHR), to favour human rights over claims of State sovereignty (Inter-Parliamentary Union and UNHCR, 2005). The next subsection will discuss upon these developments.

3.1.2 Universal Declaration of Human Rights

The UDHR[5] was drafted by the General Assembly of the United Nations after the close of the Second World War in 1948. The declaration, adopted by all Member States, intended to more clearly define "rights" to which people are entitled to while also providing a clear and general definition of Human Rights for all. Altogether, the UDHR includes 30 articles that clearly outline the right of basic legal protections, such as the right to social, economic and cultural rights, however also, the right to social security, health and education (Nowak, 2005).

In addition, to ensure citizenship and the right to be free from arbitrary deprivation of citizenship, article 15, as listed in the Declaration established the basis legal relation between individuals and states:

> **Article 15**
>
> (1) Everyone has the right to a nationality.
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

It should be noted that the Universal Declaration is not a treaty and therefore does not directly create legal obligations for countries. However, it includes numerous of principles and rights that are based on legally binding human rights standards from other international instruments (e.g. International Covenant on Civil and Political Rights) in order to guarantee the protection and respect of those principles and rights (UN, 2014b).

[5] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)

3.1.3 1997 European Convention on Nationality

The European Convention on Nationality[6] (ECN), also referred to as the 1997 CoE Convention is until today the most important regional legal instrument regarding nationality law. The objective of the convention is to promote the developments of legal principles concerning nationality, as well as their adoption in internal law. Moreover, it also consists of several international instruments, which aim to avoid, as far as possible, cases of statelessness (Council of Europe, 1997).

Furthermore, the Convention outlines a set of key principles and obligations, as is presented in article 4, with special reference to stateless persons and their right to nationality. According to these, along with the right to nationality and prohibition of arbitrary deprivation of nationality, the nationality laws of states shall be based on the principle to prevent statelessness.

Article 4

> The rules on nationality of each State Party shall be based on the following principles:
>
> a. everyone has the right to a nationality;
>
> b. *statelessness* shall be avoided;
>
> c. no one shall be arbitrarily deprived of his or her nationality;
>
> d. neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse

The Convention further provides certain provisions for the acquisition and loss of nationality, whereby Art. 6 (4) g in the forthcoming text is of relevance on facilitated access to nationality (Pilgram, 2011).

Article 6 (4) g

> Each State Party shall facilitate in its internal law the acquisition of its nationality for the [...] *stateless* persons and recognised refugees lawfully and habitually resident on its territory.

[6] Council of Europe, European Convention on Nationality, 14 June 1997, No. 166

Until today, June 2014, of the twenty-eight EU Member State countries covered in this study, twelve have ratified and eight have signed the Convention. In addition, as figure 4 below indicates another eight still have not become a party yet. This means that almost half of the states have either ratified or signed the Convention.

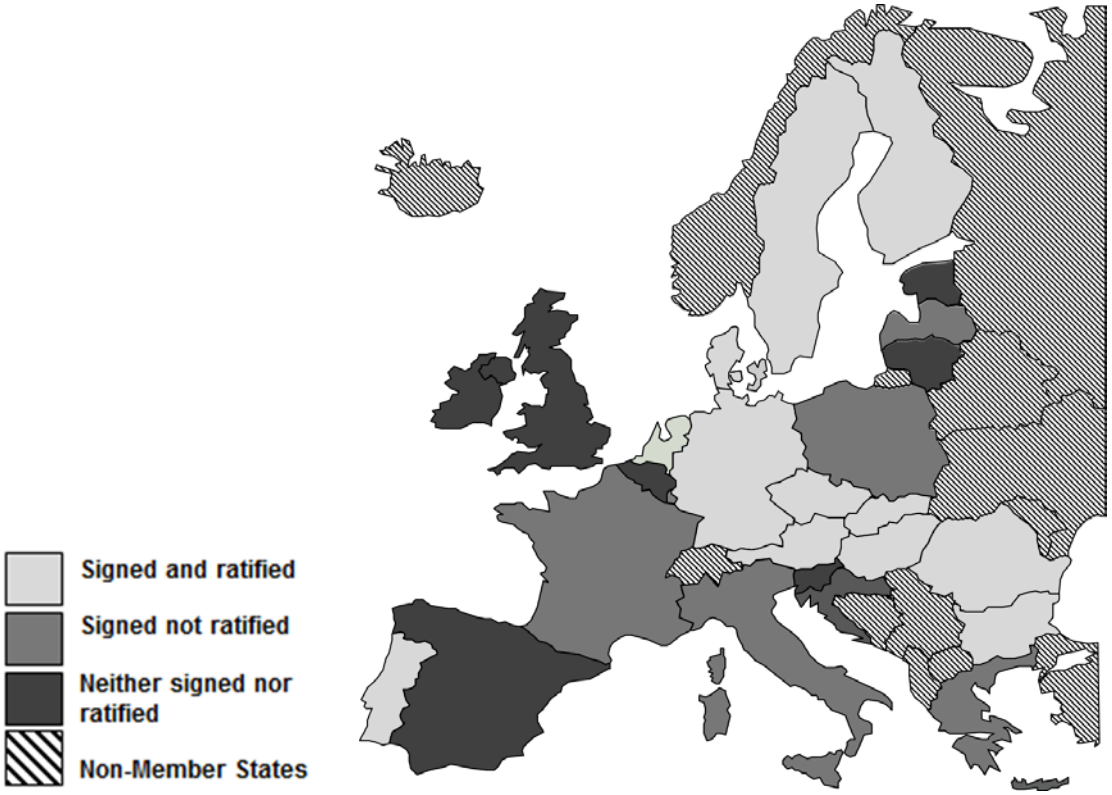

Figure 3. Ratifications of the European Convention on Nationality (Data obtained from the Council of Europe website, 1997)

3.2 The International Treaty Regime on Statelessness

The International community has seen the need to address the prevention of statelessness in cases of the reduction of post-conflict degree, conflict of laws, displacement and childhood statelessness for a longer period of time. Article 15, as listed in the UDHR, established the basic legal relation between individuals and states and declares that each person has an inherent right to nationality. When cases of statelessness appear, the right to a nationality as defined earlier in the UDHR has been without legal force (UNHCR, 2003). However, the desired aim of article 15 was given concrete form by way of two international instruments concerning statelessness, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (UNHCR, 2014f).

These two UN Conventions, prepared under the auspices of the United Nations, form a comprehensive legal framework to prevent cases of statelessness and to protect that individuals, at a minimum, are granted a legal status (Batchelor, 2002). The differences between the 1954 and 1961 Conventions is that the central focus from the 1961 Convention is on the prevention of statelessness with an individual who has specific links with a State (e.g. birth on the territory) or descent from a national or habitual residence (e.g. State succession) and would otherwise be stateless. Meanwhile, the 1954 Convention presents a legal framework for international protection in case where national protection is not available (UNHCR, 2010b).

3.2.1 The 1954 Convention relating to the Status of Stateless Persons

The 1954 Convention relating to the Status of Stateless Persons[7] was originally prepared as a protocol to the 1951 Convention relating to the Status of Refugees. The 1954 Convention was adopted to cover those stateless persons who are not refugees and therefore do not fall under the 1951 Convention relating to the status of refugees. (UNHCR, 2003). Furthermore, the most significant contribution of the 1954 Convention to international law is article 1, which provides a definition of a "stateless person" and requires that state parties must establish procedures at a national level to determine who is stateless (UNHCR, 2014).

Moreover, for those who qualify for statelessness, the convention provides the same treatment and rights for stateless individuals as non-nationals have. These minimum of standards can be found in basic rights such as gainful employment, public education, freedom of movement and social security (Edwards and Ferstman, 2010). Below, a selection of articles from the most essential of these is presented:

Article 17 (1)

Wage-earning Employment

> The Contracting States shall accord to *stateless* persons lawfully staying on their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

[7] UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

Article 22 (1)

Public Education

> The Contracting States shall accord to *stateless* persons the same treatment as is accorded to nationals with respect to elementary education.

Article 26

Freedom of Movement

> Each Contracting State shall accord to *stateless* persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances

In addition, according to article 32 of the 1954 Convention: “The contracting states shall, as far as possible facilitate the assimilation and naturalization of stateless persons” (UN, 1954, p. 154). The convention, however, does not oblige states to naturalise stateless persons instead it provides recommendations on where to do this. In this context, the 1954 Convention can only be seen as a legal framework for international Protection in cases where a state lacks national protection (Batchelor, 2002).

At last, there are circumstances when the convention does not apply. As stated in article 1 of the Convention it shall not apply to persons when:

Article 1 (2) iii

> (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
> (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
> (c) They have been guilty of acts contrary to the purposes and principles of the United Nations

These exceptions, laid down in the 1954 Convention, mean that not every stateless individual can be protected under this framework.

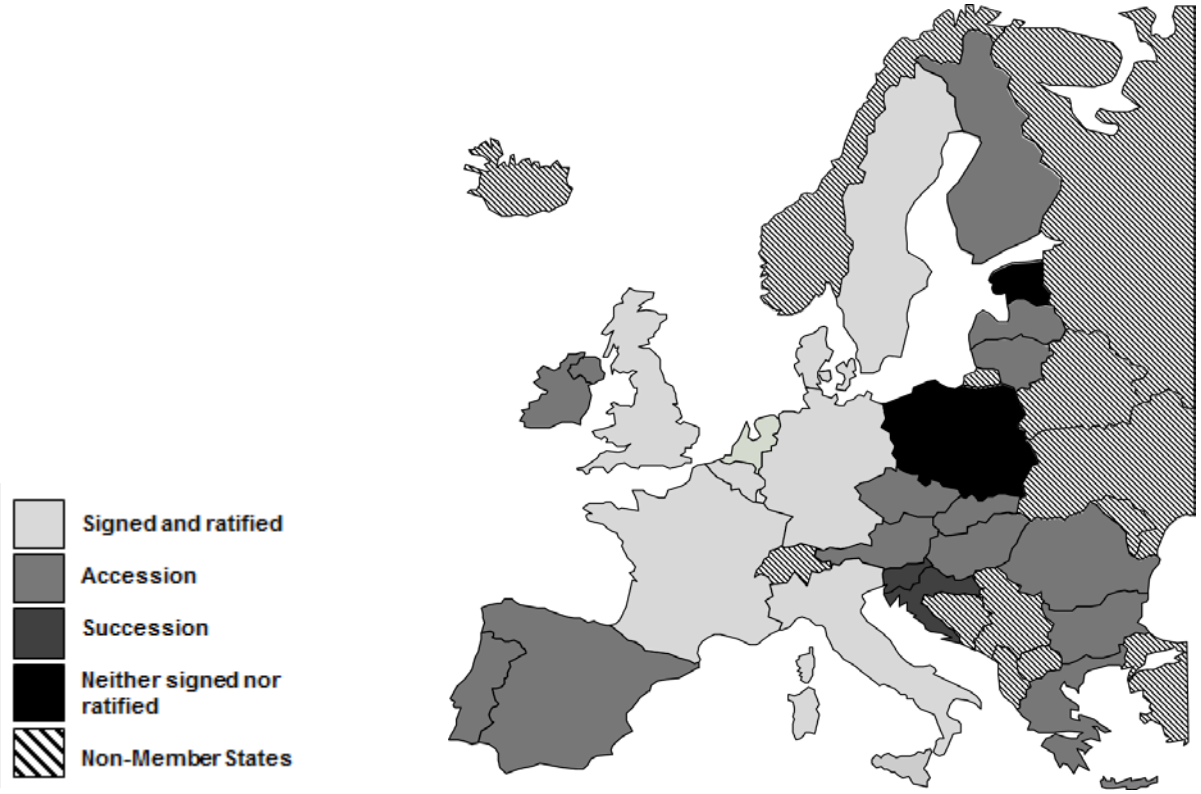

Figure 4. Ratifications of the 1954 Convention (Data obtained from the UN website, 2014)

3.2.2 The 1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness[8] was the result after many years of international negotiations on how to reduce cases of statelessness and complements the 1954 Convention Relating to the Status of Stateless Persons (UNHCR, 2014e). Both conventions differ from each other, since the 1961 Convention does not provide rights and can be seen as the primary international legal instrument aimed to avoid statelessness (Wakelin, 2012). Moreover, the Convention further seeks to avoid future cases of statelessness through three principles, which take introductory steps to address the causes of the problem of statelessness:

- Firstly it seeks for the granting of nationality for persons who would otherwise be stateless;
- Secondly it seeks to protect those individuals who as a result of loss or deprivation of nationality has become stateless;
- Thirdly, it shall ensure that cases of statelessness will not occur as a result of transfer of territory

[8] UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175

Furthermore, there are circumstances when the 1961 convention does not apply to an individual. The convention does not apply, as stated in Articles 8(2) and 8(3), to an individual when "the nationality has been obtained by misrepresentation or fraud" or "where the individual has conducted himself in a manner seriously prejudicial to the vital interests of the state" (UN, 1961, p. 179).

At last, during the 50th anniversary of the 1961 Convention, the UNHCR launched a statelessness Convention Compaign to encourage countries to access both statelessness conventions. Despite these efforts, the support of the two instruments still remains weak since among the EU member states (at the time of writing, July 2014) Cyprus, Estonia, Malta and Poland have not become parties to the 1954 Convention and Cyprus, Estonia, Greece, Italy, Luxembourg, Malta, Poland, Slovenia and Spain are still not parties to the 1961 Convention (See Figures 4 and 5).

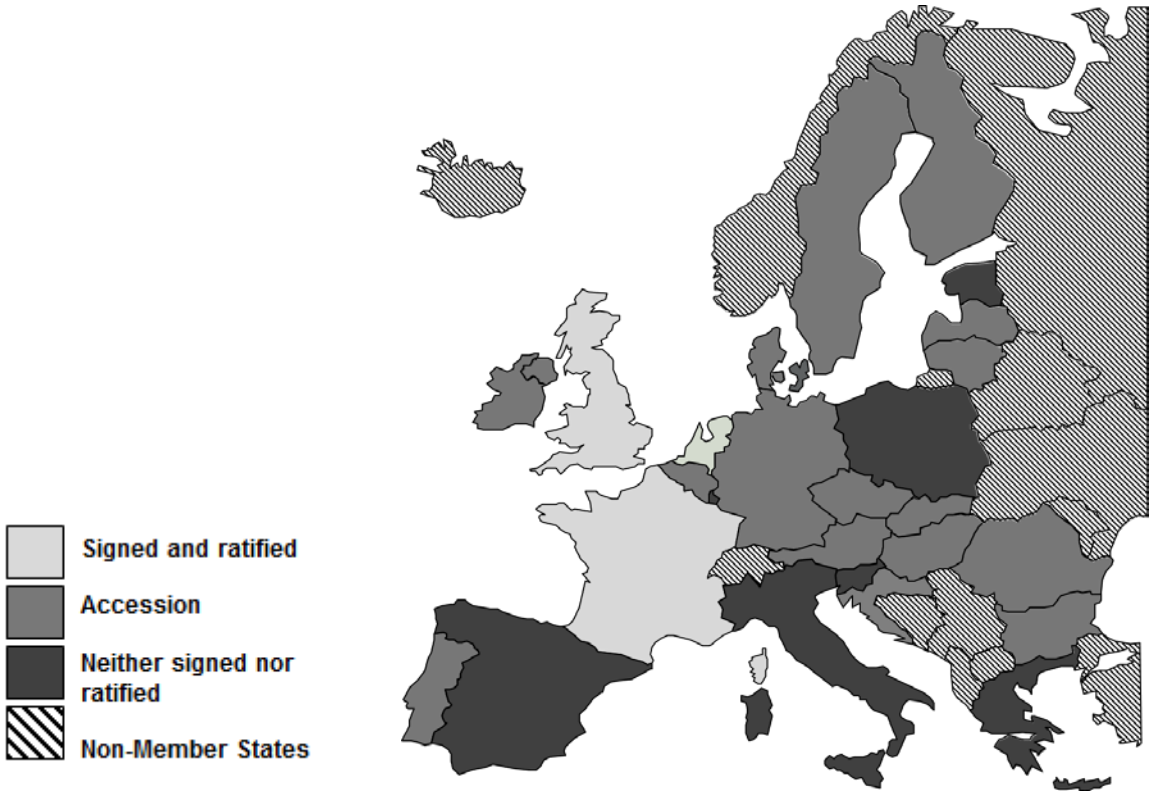

Figure 5. Ratifications of the 1961 Convention (Data obtained from the UN website, 2014)

3.2.3 Council of Europe Convention on the avoidance of statelessness in relation to State succession

State succession, in the case of Estonia as mentioned earlier, still remains a major source of cases of statelessness. In this context, the CoE adopted a convention solely aiming to reduce statelessness as a result of State succession[9] (European Commission, 2011). In comparison with the 1997 European Convention on nationality, that only contains principles and not specific rules on nationality in case of State Succession, the 2006 Convention provides a comprehensive range of provisions ensuring the right to nationality (Council of Europe , 2006) by:

- preventing statelessness;
- determining the responsibility of the successor and the predecessor states;
- facilitating the acquisition of nationality by stateless persons;
- avoiding statelessness at birth.

Below, a selection of two articles from the most essential of these is presented:

Article 5 (1)

> A successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the Predecessor State, and who have or would become stateless as a result of the State succession if at that time
>
> (a) they were habitually resident in the territory which has become territory of the successor State, or
> (b) they were not habitually resident in any State concerned but had an appropriate connection with the Successor State.

Article 9

> A State concerned shall facilitate the acquisition of its nationality by persons lawfully and habitually residing on its territory who, are *stateless* as a result of the State succession.

[9] Council of Europe, Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 15 March 2006, CETS 200

The Council of Europe Convention (CoE) makes it clear from the start that great progress has been made on the direction in which international law has been developed since the formulation and adoption of the 1961 Statelessness Convention. The CoE Convention focusses mainly on the role of the successor state in granting nationality and preventing statelessness. However, the instrument also concentrates on determining of which successor state is obliged to confer nationality upon the transfer of territory to a person who would otherwise be stateless (Waas, 2008).

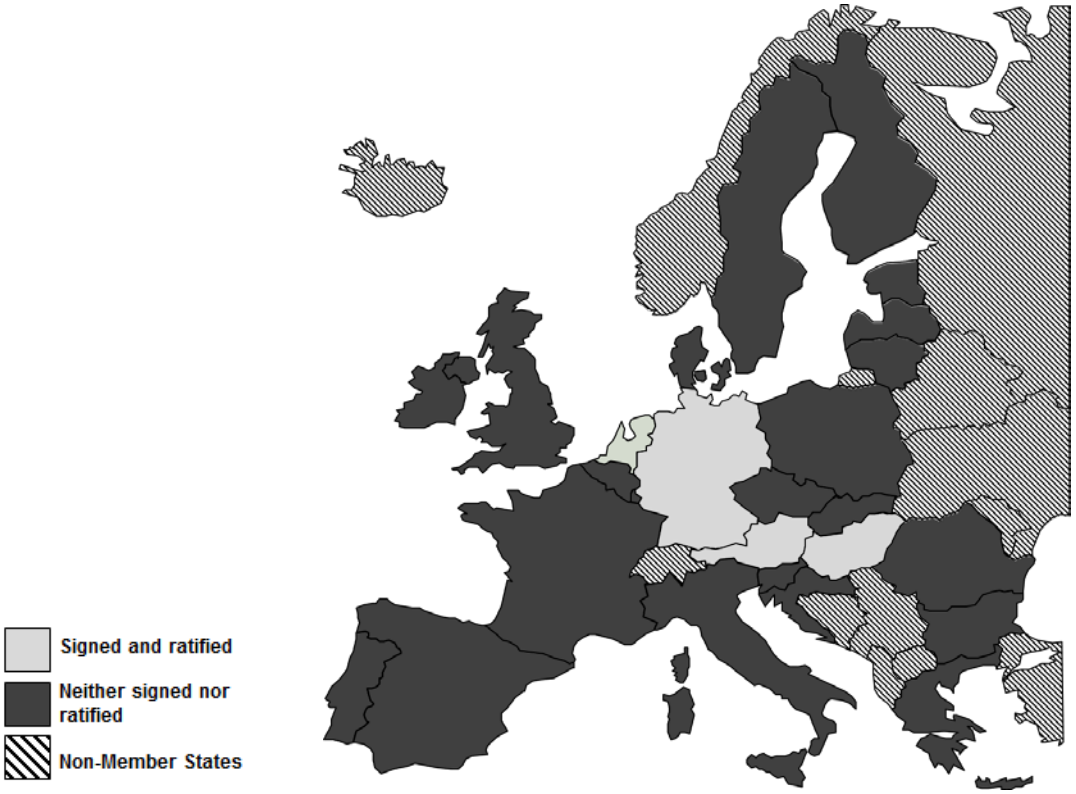

Figure 6. Ratifications of the 2006 Convention (Data obtained from the Council of Europe website, 2014)

3.3 Legal regime on Childhood Statelessness

In addition to the 1954 Convention, the 1997 European Convention and the 2006 Council of Europe Convention, there are several other International and regional standards that provide particular norms with respect to the right to nationality for children. The Convention on the Rights of the Child (CRC)[10] and the International Covenant on Civil and Political Rights (ICCPR)[11] also set out a basic, however, effective pathway for the prevention of childhood statelessness (ESN, n.d.). The upcoming instruments provide a summary of the overall international legal framework relating to the child's right to a nationality:

1966 International Covenant on Civil and Political Rights (ICCPR)

Article 24 (2)

> Every child shall be registered immediately after birth and shall have a name.

Article 24 (3)

> Every child has the right to acquire a nationality.

1989 Convention on the Rights of the Child (CRC)

Article 7 (1)

> The 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.

Article 7 (2)

> States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

[10] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3
[11] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

3.4 International law perspective on Human Rights

At present, the development of human rights law is an important source of norms for the protection of the rights of stateless persons. The noteworthy role of contemporary international (human rights) law in the protection of stateless persons, discussed in the course of this chapter, clearly presents that since the 1954 Convention great process has been made. This can been seen in the general human rights framework that offers equal and stronger guarantees to those developed in the 1954 Statelessness Convention (Waas, 2008).

Despite the International legal framework development, there is still an implementation deficit in some of these measures to prevent statelessness. Individuals who meet the definition of a stateless persons defined in the 1954 Convention, may not find the protection needed if the states in which they seek protection are not a member to those instruments. Therefore, a low rate of accessions and ratifications to the statelessness conventions still remains a problem in this respect (UNHCR, 2010c).

Chapter IV

Statelessness in the EU Framework for International Protection

So far, no specific regulation within the EU framework exists on statelessness. There are in total twenty-four of the twenty-eight EU Member States party to the 1954 Convention Relating to the Status of Stateless Persons (see figure 4). For all of these states the Convention is a common reference point for defining a stateless person, however, the process of identifying persons who meet this definition varies significantly from State to State (UNHCR, 2003.). This chapter highlights today's place of statelessness in EU laws and policies and focuses on the EU competence to pass legislation on the protection and identification of stateless persons. Furthermore, it discusses the need of regulating statelessness determination and setting minimum standards for the protection of stateless persons at EU level. In addition it will present one existing legislation model preventing statelessness in Spain and at last the gaps and possibilities for a common framework will be presented.

4.1 EU protection legislation

As previously stated, a specific regulation about statelessness does not exist. The EU refers to stateless person in some of its EU legislation on immigration and asylum. However, within the scope of that legislation, its involvement in addressing the problem of statelessness has so far been very limited (Gyulai, 2012a). The next paragraphs will present an analysis of the treaty basis for EU legislation on the identification and protection of stateless persons.

The European Convention for the Protection of Human Rights and Fundamental Freedoms[12] *(ECHR)* is one of the most significant human rights instrument in the region. It was the first instrument to give effect and binding force, in article 6(2) and (3) of the Lisbon treaty, to certain rights stated in the Universal Declaration of Human Rights. However, the European Convention on Human Rights does not contain any provisions on reduction of statelessness or the right to nationality (Council of Europe, 1950).

[12] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

Another important EU Human rights instrument, which sets out basic rights, is the *Charter of Fundamental Rights of the European Union (CFRE)*[13]*.* The CFRE must, when implementing EU law, be respected by the EU and Member States and together with the ECHR both instruments forms the Human rights regime of the EU (Raffaelli, 2010). However, also the CFRE does not include any statelessness-specific provisions either. The closest it comes to regulate nationality is to declare that 'any discrimination on grounds of nationality shall be prohibited' (van Ooik & Vandamme, 2010, p. 39).

The first EU treaty-level mention of statelessness can be found in article 67 (2) of *the 2007 Lisbon Treaty*[14]*.* This article states that with regards to EU law on freedom, security and justice "stateless persons shall be treated as third-country nationals'**."** (van Ooik & Vandamme, 2010, p. 52). The term 'third-country nationals' in this context refers to anyone who is not a national from one of the EU countries (IOM, 2009). Furthermore, this provision reflects one of the basic requirements of the 1954 Convention Related to the Status of Stateless Persons, namely that stateless persons should have the same treatment and rights as non-nationals (Swider, 2014).

Taking into consideration the above an acknowledgement of stateless persons can be sensed and together with the *Treaty on the Functioning of the EU*[15]*,* articles 77-79 (See appendix II) show that within the field of asylum and immigration the EU has the competence to form and operate in common policies (van Ooik & Vandamme, 2010). However, more elaborated provision that follow below these articles are not referring to statelessness or any other open category which could include measures for a common policy framework to protect stateless persons. Meanwhile, stateless people still find themselves in a legal gap as there is neither a common regime on the reduction of statelessness nor on determining the status of stateless persons (Gyulai, 2012a).

4.2 Statelessness-Specific Protection Statuses

At present, there is no explicit EU measure developed for the identification of stateless persons or for a single protection regime on the basis of statelessness (Swider, 2014). So far only a handful of countries (i.e. Spain, Hungary, Latvia and the United Kingdom) have adopted certain legislation within their government that entitles specific agencies (i.e. offices that deal specifically with asylum, refugees, and stateless persons) who examine and arbitrate claims of statelessness (Inter-Parliamentary Union and UNHCR, 2005).

[13] European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02
[14] European Union, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007/C 306/01
[15] European Union, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390; 26 October 2012

A few other states (i.e. France, Italy and Slovakia), while lacking specific legislation to establish a procedure, however, consist of an authority (administrative or judicial) who has the competence to recognise a stateless person. In subparagraph 4.3.1., an example of a protection mechanism model will be explained and elaborated on (UNHCR, 2002).

In addition, the greater number of EU Member States does not have a specific procedure for statelessness and therefore the questions of statelessness often arise during asylum or refugee statelessness determination procedures (UNHCR, 2012a). In this context, as a part of EU Asylum Acquis, *Qualification Directive 2011/95/EU*[16] serves an important instrument addressing refugee status and protection. According to the directive, the protection of stateless refugees is ensured as followed:

> on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (The European Parliament: Council of the European Union, 2011).

A stated above, the Qualification Directive covers stateless persons, however, the following article 2 (d) indicates that the protection shall only be provided for refugee stateless persons:

> **Article 2 (d)**
>
> For the purposes of this Directive the following definitions shall apply:
>
> (d) 'Refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a *stateless person*, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.

[16] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26

In other words, the non-refugee (*in situ*) stateless persons (the group covered in my thesis) are not protected by this directive. In fact, the *in situ* stateless persons do not even qualify for subsidiary protection, as article 2 (f) states that the qualification for such protection will only go into effect once the stateless person is outside his or her country of habitual residence (The European Parliament: Council of the European Union, 2011).

4.3 Existing Protection Models

In some EU Member States it is possible for stateless people, who do not qualify for refugee status or subsidiary protection, to obtain a legal status on the mere ground of statelessness (Gyulai, 2012a). In recent years, a growing number of EU countries established a statelessness determination and protection framework, also referred to as statelessness-specific protection regimes, that allow stateless individuals to claim protection only based on their statelessness (ESN, 2013b). At present no single good practice model exists, however, there is a small group of countries, who do operate with such a system. The following table 1 presents an overview of the seven EU countries with such a national statelessness-specific regime including the year of creation. Moreover, it also indicates the three potential ways of classifying these regimes.

Table 1. Member States with a statelessness-specific national protection regime (Source: European Network on Statelessness, 2013b)

	First generation (*20th Century)*	**Second generation (2000-2011)**	**Third generation (after 2011)**
Specific rules in law, clear or relatively clear procedural framework		**Spain (2011)** **Hungary (2007)** **Latvia (2004)**	**United Kingdom (2013)**
Clear Protection ground, but no detailed rules in law, yet functioning procedural framework	**France (1952)** **Italy (n.d.)**		
Clear protection ground, (yet incomplete) procedural framework			**Slovakia (2012)**

These existing models present positive examples, however, also suffer from important shortcomings as well. Spain, however, has established a more or less clear and transparent procedural framework for statelessness. The upcoming sub-paragraph will briefly explain and elaborate on the Spanish national mechanism.

4.3.1 Spain

The Spanish specific legislative act (Royal Decree 865/2001) was the first national mechanism protection adopted that exclusively deals with the protection of a stateless person[17] (Gyulai, 2012a). Along with that, it is also the only EU Member State with a sub-legislative act assigned to specify a procedure that examines an application for the recognition of stateless status.

The law provides that the Minister of Interior will recognise those stateless persons who meet the requirements of the 1954 Convention Relating to the Status of Stateless persons, in a procedure delegated to the Office for Asylum and Refugees (OAR) (Oficina de Asilo y Refugio), which is an authoritative order having the force of law (UNHCR, 2003). The implementing decree foresees that, within the procedural framework, applicants can make claims for stateless status at the police station, immigration office or at the OAR (Inter-Parliamentary Union and the UNHCR, 2005).

During the procedure the applicant must, by providing documentary (if available) or oral evidence, fully cooperate in order to assess his or her status. Furthermore, during the application the applicant is allowed to present all the relevant evidence and information he or she wishes in support of his or her claim (UNHCR, 2003). In general, this part of the procedure is called the burden proof meaning that the applicant provides documentation from the embassy or consular authorities of the country of origin, stating that he or she is not a national. However, within the Spanish procedure the burden shifts and the OAR may consult the central administration, national and international entities or experts to request as many reports as it considers appropriate (The Equal Rights Trust, 2010a).

Moreover, during the procedure a temporary residence permit will be issued to those applicants who are not under an expulsion or removal procedure, however, only for the time of procedure in Spain (ENS, 2013b.). After the investigative phase, the OAR recommends either recognition or non-recognition to the Ministry of Interior, which must then take a final decision within 3 months. In case of rejection appeal can be made, while in case of a positive outcome the 1954 Convention stateless status will be granted. The

[17] Real Decreto N° 865/2001, de 20 de julio, por el que se aprueba el Reglamento de Reconocimiento del Estatuto de Apátrida [Royal Decree 865/2001 of 20 July approving the Regulation for the Recognition of the Status of Stateless Persons]

recognition also includes the right to permanent residence and to seek employment (UNHCR, 2012b).

The current Spanish protection model can in some important aspects be used as an example, since the protection machinery has a significant body of interpretative law and an elaborate and transparent framework that delegates tasks to centralised administrative and judicial bodies (Guylai, 2012a). The Spanish system also presents some shortcomings which do not particularly lie in the regulation itself, however, more in the practice of it. The OAR, for example, has been criticized on the failure to seek international and national expertise in its application of the Royal Decree 865/2001 (the Equal Rights Trust, 2010b).

Furthermore, the following figure 6, demonstrates that the recognition rate is extremely low and this puts the earlier mentioned positive aspects in perspective (Gyulai, 2012a).

Year	Applicants	Recognitions
2001	30	00
2002	62	02
2003	99	10
2004	107	04
2005	44	04
2006	61	03
2007	26	03
2008	832	00
2009	51	02
Total	1312	28

*Courtesy of the Hungarian Helsinki Committee.

Figure 6 Number of applicants to apply for status (Source: Equal Rights Trust, 2010)

Despite the in between 2001 and 2008 increased number of applicants, only 26 requests for stateless status were considered to be well-found. These successful applications mainly concerned statelessness caused by the conflict of nationality laws in the context of State succession particularly in the former Soviet Union (Equal Rights Trust, 2010). However, between 2005 and 2010, from the 26 requests, three Palestinians were recognized as stateless persons by the stateless authorities at OAR (Badil, n.d.).

4.4 Gaps in national law and possibilities for a common framework

The treaty of Lisbon clarifies the division of several competences areas were the capacity to legislate is shared between the EU and Member States (van Ooik & Vandamme, 2010). There are three main types of competence: freedom, security and justice, whereby matters like EU citizenship, free movement of people, customs cooperation and asylum and immigration are included under these areas (European Commission, 2014).

As stated earlier, article 67 (2) of *the 2007 Lisbon Treaty* states that with regards to EU law on freedom, security and justice "stateless persons shall be treated as third-country nationals' and that according to articles 77-79 of the TFEU the EU has competence to adopt and operate with common policies and legislation within the field of asylum and immigration. Based on these provisions Qualification Directive *(2004/83/EC)*[18] has been established on whether the third national or stateless person will be granted refugee status or not. Stateless refugees and third country nationals are only mentioned and included by such directives. In this perspective, steps should be taken to also include the non-refugee (*in situ*) stateless persons within the policies of this field itself.

According to Gabor Guylai researcher at the Hungarian Helsinki Committee, a non-governmental human rights organization, he has formulates these thoughts as follows:

> In the EU context it might be possible to achieve a more effective implementation of relevant international instruments by bringing stateless protection under the scope of the common European asylum policy. […] Should this initiative be successful, a Statelessness Directive could be drafted that would reunite the principles and create a legally binding obligation on member states to establish a *protection regime* for (non-refugee) stateless persons, based on already existing good practices (Gyulai, 2012b, p. 49).

[18] European Union: Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC

Where there are gaps or uncertainties in legal sources, for example, the specific issue of statelessness which is not explicitly addressed in EU legislation, an analogy may be drawn in solving the problem. For example, suggesting that the term stateless should also include the non-refugee (*in situ*) stateless within the previously mentioned EU freedom in the security and justice competence area (article 67 (2) of the TFEU) and in the asylum and immigration regime.

However, if statelessness would fall under the asylum and immigration regime, the extent of the area only allows for EU regulation on the status and protection of stateless persons and not on the reduction of statelessness. An analogy in this case may be drawn in including the non-refugee *(in situ)* stateless persons in the current asylum and immigration policies. However, it would not extent the *Acquis* to include regulation of statelessness beyond issues concerning asylum and immigration, such as regulation on the prevention or reduction of statelessness.

In addition, both ECHR and CFREU lack provisions on statelessness, therefore, according to Guylai: "*it can be concluded that at present the EU does not have an explicit entitlement to adopt legislation or common measures on statelessness as a specific issue."* (Gyulai, 2012a, p. 284)*.*

Chapter V

Case Study – Stateless determination in the Netherlands

> "To be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages ...they could live and die without leaving any trace." Hannah Arendt 'The Origins of Totalitarianism' (Lang, A. F. and Williams, J., 2005, p. 109)

The Netherlands has signed both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (See Appendix 1.3 and 1.4), thereby the government pledged itself to reduce and prevent statelessness and to protect stateless persons. However, the country still does not have an adequate mechanism for identifying stateless persons. The existing Dutch procedures that stateless people can appeal to are proven to be insufficient in the light of relevant international standards (ENS, 2013). This case study, however, contains an analysis of the two procedures that have been invoked by the Dutch government in defence of the current statelessness protection regime and illustrates their insufficiency since neither of the two procedures are effective alternatives for statelessness determination in the Netherlands.

5.1 The Registration of Stateless persons

Together with many other European Member States, the Netherlands is one of the countries that still lack a determination mechanism procedure designed to protect stateless persons. In this context, the UNHCR published a report 'Mapping Statelessness in the Netherlands' in 2011 that included recommendations to institute a statelessness determination procedure (UNHCR, 2011b). Subsequently, the Dutch Minister at that time assigned the Advisory Committee on Migration (*Adviescommissie Vreemdelingenzaken*) for further investigation and to report the issue of statelessness. The final report was completed in 2013 and supported the 2011 provided UNHCR recommendation to institute a dedicated statelessness determination procedure in the Netherlands (ACVZ, 2013). As a result, the Dutch government referred to the upcoming two procedures that could fulfil this aim.

5.1.1 The population register

Every individual who, for an extended period of time, takes residence in the Netherlands should get registered in the population database (*Basisregistratie personen*, hereafter BRP) through the local municipality office. However, there are a number of obligatory entries (i.e. nationality), in order to accomplish the registration at the BRP. In case a person is unable to prove with documents his or her nationality, the system will register them with the status 'nationality unknown'. Although it is possible within the BRP to register a stateless person as 'stateless', at present there are no clear rules developed to deal with this type of entry (Rijksoverheid, n.d.).

According to the Dutch Central Statistics Office (CBR), there were 2003 persons recorded as stateless in 2013, while 88,313 were registered as having an 'unknown nationality' (CBS, 2014). One of the reasons for the relatively high number of 'unknown nationality' status is that the BRP system innately is a registration system and not a determination procedure. The frequent use of the 'nationality unknown' status can be explained by: the strict rules on evidence to place stateless persons in another category, the lack of comprehensive instruction on how and when to register statelessness and advices that discourage to register statelessness in the BRP (ACVZ, 2013).

Table 1. Number of stateless person registered at the Statistics Netherlands (Source CBS, 2014)

Year	Stateless persons
2010	**2097**
2011	**2107**
2012	**2033**
2013	**2003**
2014*	**1979**

** from January to April 2014*

In addition, it is for a civil servant convenient and safer to register a person with 'nationality unknown', as it simply means that he or she did not received a sufficient documents to register anything else. In principle, a stateless person can be registered with the status 'nationality unknown' for an endless time of period, and this could be passed on from generation to generation. If a parent's nationality is registered as 'nationality unknown' in the BRP, this will lead up to children who will remain without nationality, unless the child received a nationality based on grounds other than the *Jure sanguine* (state grants nationality by decent) from that parent as for example *Jus Soli (*state only grants nationality by birth on its territory) (BZK, 2014).

The UNHCR guidelines define statelessness determination procedures as procedures where determination of statelessness is the main objective (UNHCR, 2012a). Although the BRP registration includes the option of registering a person as stateless in its system, the lack of directions and rules on how to use this option indicates that in practise the registration of statelessness is not the main objective of the BRP. Finally, it can be acknowledged that statelessness determination does occur in the BRP context. However, the rules that are applied in such cases are in conflict with the 1954 and 1961 Statelessness Conventions (Swider, 2014).

5.1.2 The IND

The Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*, hereafter IND), is an agency that ensures that the immigration policy is carried out accurately. Furthermore, the IND has the exclusive competence to decide upon naturalisation applications and residents permits in the Netherlands (IND, 2014). The BVV is supplementary to the BRP and every state authority is required to consult the BRP first when taking action. However, not everyone in the Netherlands qualifies for a registration in the BRP and therefore the registration at the BVV will bring some difficulties for those stateless persons who are not registered in the BRP (VenJ, 2014).

Furthermore, the rules applied for the registration of nationality in the BVV are not regulated by law and therefore an internal Administrative Protocol *(Protocol Identificatie en Labeling, hereafter* PIL) has been set up that outlines how personal information should be registered. The PIL allows individuals to use a wide range of evidence, such as statements by third nationals or several official and non-official documents (PIL 2014). The collected information is getting registered in the BVV, and correction can easily be made in case stronger evidence contains conflicting data. In comparison to the BRP, it shows that the BVV may appear as an appropriate determination for statelessness, since the scope of admissible evidence is much wider, and the state authorities at least in some cases play an active role in acquiring evidence (Swider, 2014).

The IND is responsible for implementing the so-called ‘no fault’ *(buiten schuld)* procedure which is an immigration procedure. This procedure provides individuals with a temporary renewable residence status who in case by no fault of their own, are unable to leave the Netherlands (Dienst terugkeer en vertrek, n.d.). Legal acts regulating the ‘no fault’ procedure do not mention statelessness at all and a study of IND’s case files shows that decisions on ‘no fault’ applications rarely involve arguments related to statelessness (Ballin, 2014). While statelessness may play a role in the ‘no fault’ procedure, it rarely

gets mentioned in practise and therefore, the ‘no fault procedure can not been seen a statelessness determination procedure.

5.2 Prospects for the future

In practise stateless persons still depend on municipalities and the IND for the determination of their status. The report by the Dutch Committee on Migration Affairs, however, suggests that the District Court situated in The Hague should be empowered to determine statelessness. It suggests modelling the statelessness determination procedure according to the procedure for the possession of Dutch nationality which of course is an existing procedure of the District Court of The Hague (ACVZ, 2013). By doing so there is a potential in filling a large gap compared to the current situation, where a judge has the explicit power to determine statelessness on an individual. Whether this potential will be fully used will depend on the procedural and legal details belonging to such a procedure. However, even though the judges have expertise in dealing with foreign nationality law, additional training on the matters specific to statelessness would need to be conducted (Swider, 2014).

Chapter VI

Conclusion and Recommendations

The core objective of this research was to evaluate the current situation of statelessness within the EU and the existing statelessness determination procedures available. The aim was to analyse the EU competence to pass relevant legislation, and investigate to which extent European Member States are able to function and act under a common framework that will help to prevent issues of statelessness. This chapter will present an answer to the research question: '*To what extent is the European Union able to develop an effective common EU policy framework for International protection to prevent Statelessness?'*

The problem of statelessness has become a more global issue. While statelessness and refugee problems still overlap, in others (i.e. *in situ* statelessness) it is unrelated to refugee situations and needs a different approach in response and expertise. An International legal framework directing statelessness and state determination is available. It becomes clear that the existing international framework and the two statelessness Conventions are needed for the protection of stateless persons since they outline appropriate solutions, they establish mechanisms for the avoidance of cases of statelessness, and they assist Member States to address gaps in legislative frameworks.

Taken into consideration the above, it could be argued that there is no need for the EU to legislate in this field of law since the International Framework already consists of sufficient international instruments to which Member States have become parties. However although the International conventions and treaties are binding upon Member States, there are still a number of states who have not ratified them. A notable example is the 1961 Convention that only has been ratified by 3 European Member States. Additionally even though there are sufficient international instruments that converge over the issue, they still lack monitoring mechanisms and there is no assigned monitoring body to ensure that states comply with the given obligations.

Furthermore, it is noteworthy that the EU, a democratic institution, does not address the issue of statelessness in any of its regimes. The fact that the ECHR, one of the first human right instruments to give effect and binding force, and the Human Rights Charter do not even address the issue is a real shortcoming of the Human Rights law in the EU. Once an EU-directive is adopted all Member States have to comply with it, whilst CoE Conventions (i.e. CoE Convention on the avoidance of statelessness in relation to State

succession) are not binding meaning that each member state decides upon itself whether to sign or not.

It can be concluded that there is a need for EU-regulation in order to oblige Member States to facilitate access to nationality and reduce statelessness. Chapter 4 shows that at present the EU does not have the explicit entitlement to adopt legislation or common measures that treats statelessness as a specific issue. This can only be done when fundamental principles, such as the division of competence and the doctrine of state sovereignty are changed in EU-laws. It seems unlikely that such a large-scale project of harmonization of all the 28 European Member States in nationality laws will be carried out in the nearest future.

While a common EU-Framework to protect stateless persons in EU law and policies seems unrealistic, the EU can still play an active role in improving the protection of stateless persons in Member States. The following recommendations set out a starting point for these efforts:

- The EU should encourage Member States to create more reliable data in their statistics on stateless persons and they should develop relevant common guidelines (i.e. to be more precise on the number of stateless persons in a member state, to reduce categories such as ‘unknown nationality’ used in the Netherlands);
- The EU together with other institutions and bodies should encourage Member States that have not yet ratified the 1954 and 1961 statelessness-related UN conventions to do so and should promote cooperation of all Member States with the UNHCR;
- The EU together with other institutions and bodies should promote the idea to develop national-specific mechanism to protect stateless persons and should highlight already existing & successful ones (i.e. the Spanish model);
- The EU should strive to implement the issue of statelessness within its own structure and relevant EU institutions (dealing with issues such as fundamental right, national minorities or asylum) and this should be integrated into the standard programme of these EU bodies;
- The relevant EU institutions and bodies should closely cooperate with the two most important Statelessness International Organizations: the UNHCR and European Network on Statelessness

Furthermore, the first Global Forum on statelessness was held on the 15, 16 and 17 of September 2014 in The Hague. Events like the Global Forum is an opportune moment to discuss and analyse further the issue, to debate next steps and it could be the starting point for:

- Sharing good practices in policy development on statelessness;
- Exploring and debating on statelessness policy;
- Developing existing partnerships and build new networks among other engaged on statelessness (i.e. government representatives, legal practitioners)

Chapter VII

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Appendices

Appendix I …… Tables and Figure

Appendix II …….. European Basic Treaties

Appendix I – Tables and Figures

Table 1.1 Access to Nationality Rankings for all MS (Source: MIPEX, 2010)

Rank	Country	Score
1	Portugal	82
2	Sweden	79
3	Belgium	69
4	Luxembourg	66
	Netherlands, the	66
5	Italy	63
6	France	59
	Germany	59
	United Kingdom	59
7	Ireland	58
8	Finland	57
	Greece	57
9	Spain	39
10	Poland	35
11	Czech Republic	33
	Demark	33
	Slovenia	33
12	Cyprus	32
13	Hungary	31
14	Croatia	29
	Romania	29
15	Slovakia	27
16	Malta	26
17	Bulgaria	24
18	Austria	22
19	Lithuania	20
20	Estonia	16
21	Latvia	15

Table 1.2 1997 European Convention on Nationality Signatories (Source: Council of Europe 1997)

Member States of the Council of Europe	Signature	Ratification	Entry into force
Austria	6/11/1997	17/9/1998	1/3/2000
Belgium	x	x	x
Bulgaria	15/1/1998	2/2/2006	1/6/2006
Croatia	19/1/2005		
Cyprus	x	x	x
Czech Republic	7/5/1999	19/3/2004	1/7/2004
Denmark	6/11/1997	24/7/2002	1/11/2002
Estonia	x	x	x
Finland	6/11/1997	6/8/2008	1/12/2008
France	4/7/2000		
Germany	4/2/2002	11/5/2005	1/9/2005
Greece	6/11/1997	x	x
Hungary	6/11/1997	21/11/2001	1/3/2002
Ireland	x	x	x
Italy	6/11/1997		
Latvia	30/5/2001		
Lithuania	x	x	x
Luxembourg	26/5/2008		
Malta	29/10/2003		
Netherlands	6/11/1997	21/3/2001	1/7/2001
Poland	29/4/1999		
Portugal	6/11/1997	15/10/2001	1/2/2002
Romania	6/11/1997	20/1/2005	1/5/2005
Slovakia	6/11/1997	27/5/1998	1/3/2000
Slovenia	x	x	x
Spain	x	x	x
Sweden	6/11/1997	28/6/2001	1/10/2001
United Kingdom	x	x	x

Table 1.3 Convention Relating to the Status of Stateless Persons 1954 Signatories (Source: UN, 2014)

Member States of the Council of Europe	Signature	Accession(a), Succession(d), Ratification
Austria		8 Feb 2008 a
Belgium	28 Sep 1954	27 May 1960
Bulgaria		22 Mar 2012 a
Croatia		12 Oct 1992 d
Cyprus	x	x
Czech Republic		19 Jul 2004 a
Denmark	28 Sep 1954	17 Jan 1956
Estonia	x	x
Finland		10 Oct 1968 a
France	12 Jan 1955	8 Mar 1960
Germany	28 Sep 1954	26 Oct 1976
Greece		4 Nov 1975 a
Hungary		21 Nov 2001 a
Ireland		17 Dec 1962 a
Italy	20 Oct 1954	3 Dec 1962
Latvia		5 Nov 1999 a
Lithuania		7 Feb 2000 a
Luxembourg	28 Oct 1955	27 Jun 1960
Malta	x	x
Netherlands	28 Sep 1954	12 Apr 1962
Poland	x	x
Portugal		1 Oct 2012 a
Romania		27 Jan 2006 a
Slovakia		3 Apr 2000 a
Slovenia		6 Jul 1992 d
Spain		12 May 1997 a
Sweden	28 Sep 1954	2 Apr 1965
United Kingdom	28 Sep 1954	16 Apr 1959

Table 1.4 Convention on the Reduction of Statelessness 1961 Signatories (Source: UN, 2014)

Member States of the Council of Europe	Signature	Accession(a), Succession(d), Ratification
Austria		22 Sep 1972 a
Belgium		1 Jul 2014 a
Bulgaria		22 Mar 2012 a
Croatia		22 Sep 2011 a
Cyprus	x	x
Czech Republic		19 Dec 2001 a
Denmark		11 Jul 1977 a
Estonia	x	x
Finland		7 Aug 2008 a
France	31 May 1962	8 Mar 1960
Germany		31 Aug 1977 a
Greece	x	x
Hungary		12 May 2009 a
Ireland		18 Jan 1973 a
Italy	x	x
Latvia		14 Apr 1992 a
Lithuania		22 Jul 2013 a
Luxembourg	x	x
Malta	x	x
Netherlands	30 Aug 1961	13 May 1985
Poland	x	x
Portugal		1 Oct 2012 a
Romania		27 Jan 2006 a
Slovakia		3 Apr 2000 a
Slovenia	x	x
Spain	x	x
Sweden		19 Feb 1969 a
United Kingdom	30 Aug 1961	29 Mar 1966

Table 1.5 2006 Convention on the Avoidance of Statelessness in relation to State Succession Signatories (Source: Council of Europe, 1997)

Member States of the Council of Europe	Signature	Ratification	Entry into force
Austria	24/8/2009	23/9/2010	1/1/2011
Belgium	x	x	x
Bulgaria	x	x	x
Croatia	x	x	x
Cyprus	x	x	x
Czech Republic	x	x	x
Denmark	x	x	x
Estonia	x	x	x
Finland	x	x	x
France	x	x	x
Germany		16/12/2009	
Greece	x	x	x
Hungary	1/12/2008	7/1/2009	1/5/2009
Ireland	x	x	x
Italy	x	x	x
Latvia	x	x	x
Lithuania	x	x	x
Luxembourg	x	x	x
Malta	x	x	x
Netherlands	16/9/2010	30/6/2011	1/10/2011
Poland	x	x	x
Portugal	x	x	x
Romania	x	x	x
Slovakia	x	x	x
Slovenia	x	x	x
Spain	x	x	x
Sweden	x	x	x
United Kingdom	x	x	x

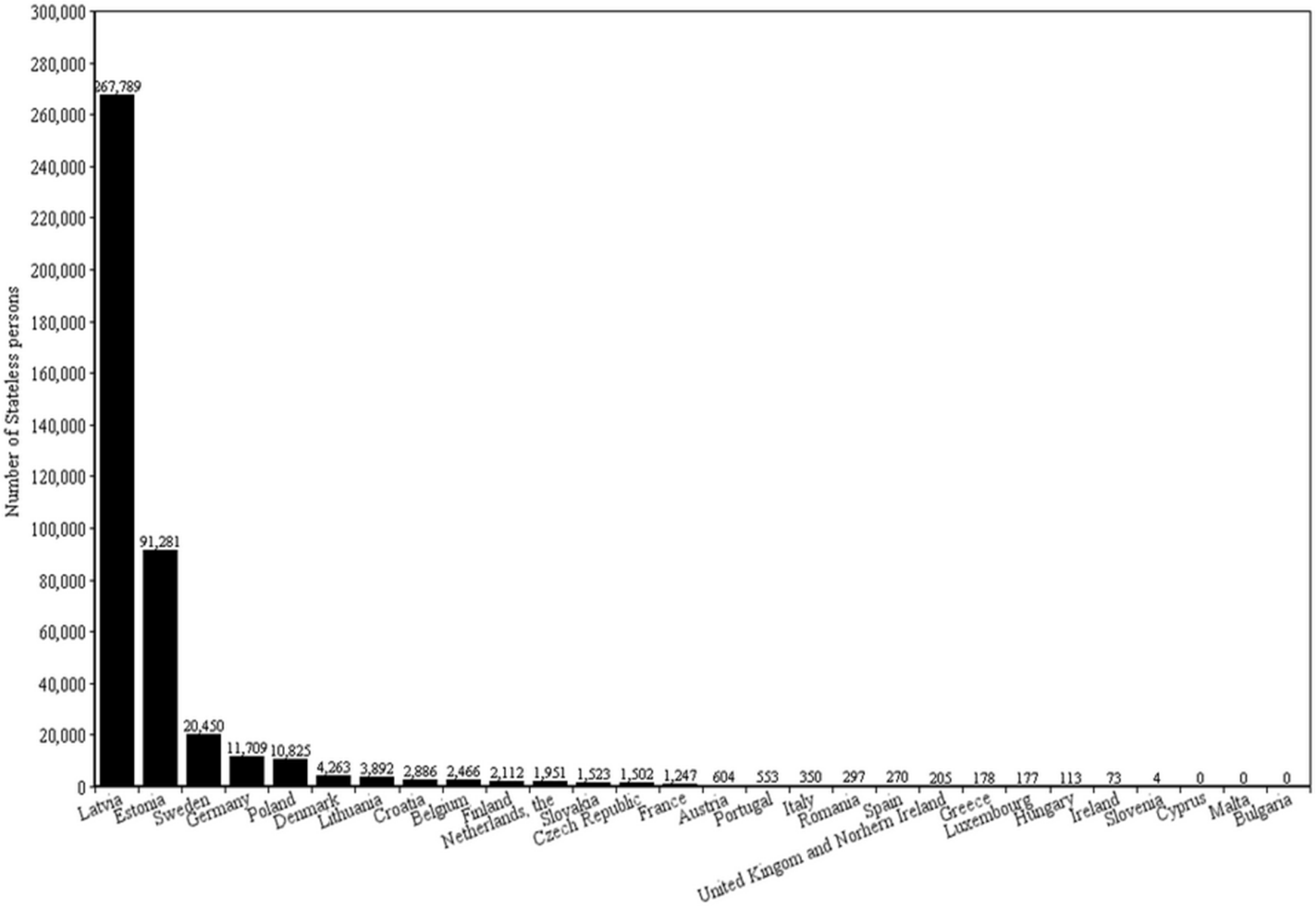

Figure 1.1 Numbers of Stateless People in the EU (Source: UNHCR, 2014)

Appendix II – European Basic Treaties

Treaty on European Union

Article 6

(2) The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties

(3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Treaty on the Functioning of the EU

Article 67

(2) It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.

Article 77

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
(c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;
(b) the checks to which persons crossing external borders are subject;
(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
(d) any measure necessary for the gradual establishment of an integrated management system for external borders;
(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
(c) a common system of temporary protection for displaced persons in the event of a massive inflow;
(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article 79

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.