

IWB was presented at the international conference “Punishing International Crimes in Domestic Courts: Sentencing, Incarceration and Reintegration”

On the 12th of June I attended a conference organized by VU University in Amsterdam called *“Punishing International Crimes in Domestic Courts: Sentencing, Incarceration and Reintegration”*.

I was invited to this conference by Adina Loredana Nistor, vice president of Issues Without Borders and a very close friend of mine. Adina graduated with a masters in Criminology at VU University and is still highly involved in many activities related to this great University.

The event that we attended was organized, as I previously said by VU University, together with the Center for International Criminal Justice, NSCR and NWO.

The moderators of the conference were Barbora Hola and Joris van Wijk, both professors at VU University.

The conference was divided into 4 panels followed by a final discussion and drinks.

The 4 panels were the following:

-panel 1: “Theoretical Considerations “, where papers like the following were presented: *“Penalty in criminal law on war crimes”* (Chair for Criminal Law and Criminal Procedure, University of Turin, Italy, Gianluca Ruggiero).

-panel 2: “Former Yugoslavia”, where papers like the following were presented: *“Domestic Trials for International Crimes- Challenge of Prosecuting and Sentencing Perpetrators of War Crimes in Croatia”* (Maja Munivrana Vajda).

-panel 3: “Latin America and Europe”, with papers such as: *“Sentencing*

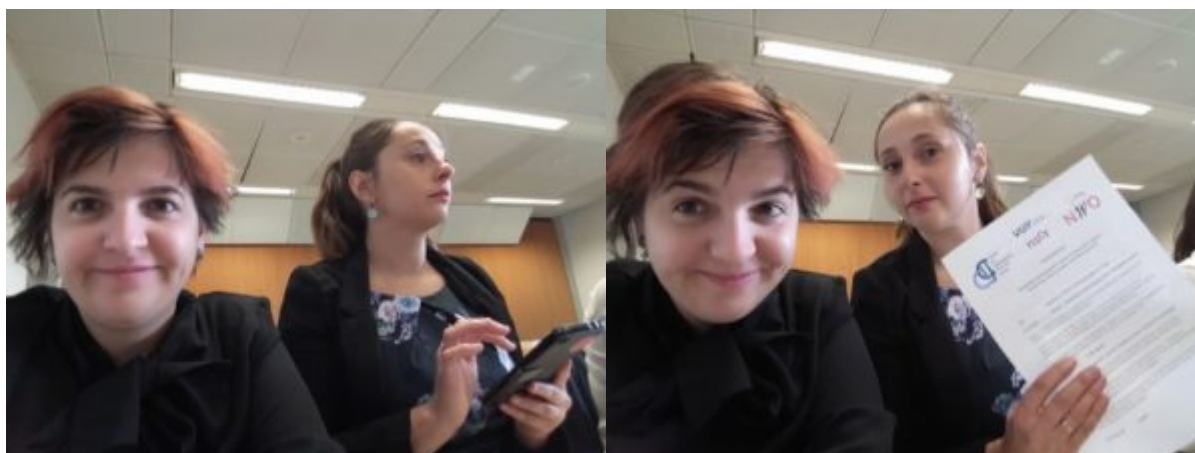
factors in cases against the most responsible for acts constitutive of international crimes: The Peruvian experience” (Post Doctoral Research Fellow, PluriCourts, Faculty of Law, University of Oslo).

-panel 4: *“Africa and Europe”, with papers such as: “Punishing the Core Crimes in Ethiopia: A comparative analysis of purposes and factors in Sentencing” (PHD Candidate International Criminal Law, University of Groningen).*

The conference was very interesting especially because all the topics were challenging, the authors raised a variety of issues, offered their suggestions and encouraged the participants to be active.

I highly appreciated the Q&A section because it led to a lot of brainstorming, many questions generated other questions, so I left the conference even more curious to discover more on this topics, which I think is great.

I thank you Adina and VU University for giving me the chance to expand my knowledge on International Criminal Law and to meet so many qualified professionals from across the globe, who were so happy to share their expertise with us, both in the formal setting during the conference as well as in the informal setting, at the post-conference drinks.





Statelessness: what is it and how does the international community address the issue?

Most of us acquire citizenship at birth, and it is something we often take it for granted. Citizenship is something we think about only “when we travel abroad, when the Olympic Games are on, or when we vote in national elections” (2009, Couldrey M. & Herson M. *Stateless*). However, for those who lack recognition as nationals, citizenship is a fundamental issue. Holding a nationality is the key to enjoy basic rights such as health care, education, access to the national judicial system or employment. A stateless person is someone who is not recognised as a national by any State. In a world of nation-states, it is a cruel contradiction that millions of individuals are not recognised as belonging to any of these.

The 1954 Convention relating to the Status of Stateless Persons defines a ‘stateless person’ as “a person who is not considered a national by any State under the operation of its law” (article 1). The absence of nationality or citizenship makes stateless people vulnerable in any aspect of their life and often subjected to the denial of basic human rights. The lack of official recognition does not mean that stateless people do not have ties to a particular country. However, because of a wide range of possible circumstances, they find themselves in the situation of not being recognised

as citizens.

Statelessness is prohibited under international law. Yet, the United Nations High Commissioner for Refugees (UNHCR) estimates that there may be as many of 12 million stateless people in the world. In order to give a more precise definition of what makes a person stateless, a first important distinction needs to be made between *de jure* and *de facto* stateless people. "Under the 1954 Convention, individuals who have not received nationality automatically nor through an individual decision under the operation of any state's law, are known as *de jure* stateless persons." (2009, Blitz BK, *Statelessness, protection and equality*) However, there is a large number of people who are unable to prove their nationality or they are denied to access many human rights that other citizens enjoy. These people are considered *de facto* stateless.

International law guarantees stateless persons the enjoyment of human rights. However, they frequently cannot access their rights. For instance, they may find barriers in accessing basic education, health care or other government services, obtaining travel documents, being employed. Stateless persons are also likely to be victims of trafficking or sexual and labour exploitation. Discrimination and inequality are common to any form of statelessness. Still, it is helpful to make a distinction between "*direct discrimination* on the basis of nationality, which is formally recorded in law, and *structural discrimination* that may be indirect but nonetheless denies individuals the opportunity to benefit from citizenship." (2009, Blitz BK, *Statelessness, protection and equality*)

Another useful distinction is between *primary* and *secondary* sources of statelessness. "Primary sources relate to direct discrimination and include: a) the denial and deprivation of citizenship; b) the loss of citizenship. Secondary sources relate to the context in which national policies are designed, interpreted and implemented and include: c) political restructuring and environmental displacement; d) practical barriers that prevent people from accessing their rights." (2009, Blitz BK, *Statelessness, protection and equality*)

How do people become stateless?

The largest populations of non-refugee stateless persons in UNHCR statistics are Myanmar with 810,000 Rohingya (the number only includes the Rohingya in northern Rakhine State), Cote d'Ivoire (700,000), Thailand (506,000) Latvia (312,000), Syria (231,000) and Dominican Republic (210,000).

Statelessness may result from different circumstances. In general, the denial of citizenship is the result of a state action which could be intentional or not. State secession or succession, often but not necessarily following conflicts, may cause statelessness: the dissolution of a State and emergence of new States; the separation of part of a State to form a new one; the transfer of a territory from one State to another.

Other causes of statelessness are the arbitrary denial or deprivation of citizenship on the ground of ethnicity (in law or in practise) or discrimination on ground of gender. In particular, the contribution of gender discrimination to generating statelessness is extensive: 27 countries in the world limit the right of women to pass their nationality to their children (only men can). Children become stateless when they cannot acquire nationality from their father. This can occur, for example, when the father is stateless; when he is unknown or not married to the mother at the time of birth; when he has been unable to fulfil the necessary administrative steps to confer his nationality or when he is unwilling to confer his nationality to his children; etc. Although there are differences between the limits they impose on mothers to confer their nationality to their children, some of the 27 countries whose nationality laws discriminate against female gender are: Brunei Darussalam, Iran, Jordan, Kuwait, Malaysia, Nepal, Qatar, Saudi Arabia, Sierra Leone, Somalia and Syria.

Statelessness may also be caused by documentation issues like lack of registration at birth, or the existence of rules for proving nationality which make it difficult for individuals to establish that they possess a nationality. Finally, it can also be the consequence of climate and

environmentally induced displacement. In the poorest regions, many minorities live without any documentation, and this kind of technical problem can cause the lack of citizenship.

The way a country grants citizenship at the moment of birth is a matter of interest and concern for those who operate to prevent statelessness. The most common principles for granting citizenship are the *jus soli* and the *jus sanguinis*. Nationality policies based on the *Jus soli*'s principle confer citizenship to all those born in the territory of a country, while those based on *Jus sanguinis* grant citizenship on children whose parents are citizens of a given country. In practise, nationality policies which prioritise blood over civic criteria make the incorporation of minorities more difficult.

Addressing statelessness

During the 1920s, it was common to make no distinction between stateless and refugee statuses. Lack of protection of Government of their country or origins or any other Government was common to both statuses. Nevertheless, the issue was a matter of concern to nation states and to the League of Nations, which encouraged measures to address the problem. It is, however, only after the massive population displacements following the Second World War that the stateless issue was reintroduced into the international agenda as a separate issue from the refugee problem.

The right to nationality has been elaborated in two United Nations' international conventions: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Although the two conventions have not been ratified from a large number of States, both are fundamental international instruments for the prevention and protection of stateless persons. Originally, norms regarding statelessness were to be included in a Protocol to the 1951 Convention relating to the Status of Refugees, however due to the need of dealing with the large amount of post-war refugees, the Convention was adopted without the inclusion of the

Protocol. Later, the two fundamental agreements that brought the attention of the international community to the discourse on statelessness were adopted.

Providing a definition of 'stateless person', the 1954 Convention Relating to the Status of Stateless Persons gives a fundamental contribution to international law. The Convention requires that States facilitate the assimilation and naturalisation of stateless persons. It also provides minimum standards of treatment. For instance, it defends the right to freedom of movement lawfully on the territory; for some rights such as freedom of association and right to employment, it requires States to guarantee at a minimum the same treatment as other non-nationals; with respect to freedom of religion and education to their children, it provides that stateless persons are to enjoy the same rights as citizens.

The 1961 Convention on the Reduction of Statelessness sets rules on States to prevent and eliminate statelessness. By doing that, the Convention gives effect to article 15 of the Universal Declaration of Human Rights which recognises that "everyone has the right to a nationality". A central focus of the Convention is the prevention of statelessness at birth. "It requires States to grant citizenship to children born on their territory, or to their nationals abroad, who would otherwise be stateless"(2011, Text of the 1961 Convention on the Reduction of Statelessness – Introductory note by the Office of the United Nations High Commissioner for Refugees).

The Office of the United Nations High Commissioner for Refugees (UNHCR) formally received from the UN General Assembly a specific and global mandate to prevent and reduce statelessness, as well as to protect the rights of stateless people around the world through the adoption of a series of resolutions. The UNHCR activities regarding statelessness can be grouped in four categories: identification, prevention, reduction and protection.

Following the positive steps made by countries and the guidelines provided by the UNHCR, several specific actions need to be taken to address statelessness. First of all, preventive actions to avoid potential instances of mass deprivation of nationality. It is fundamental to reform citizenship

laws, as well as to adopt administrative procedures to eliminate discrimination. UNHCR provides technical advice to implement legal reforms. In 2012 and 2013, the agency worked to address gaps in the national legislation of 56 States, mostly from a gender equality and child protection perspective.

Birth registration is, for instance, a fundamental action that has to be taken both to deal with statelessness and ensure child protection. Georgia and the Russian Federation have implemented pledges regarding civil registration, and birth registration will remain a priority for UNHCR actions.

Protection of stateless children is a matter of particular concern. There are an estimated six million children without a nationality around the world. They are particularly vulnerable to sexual and labour exploitation, abuses and trafficking. Many of them are denied access to basic rights such as education and health care. In spite of the importance of protecting stateless children from the many risks they face, only a few international or national child protection systems include stateless children in their programming.

Identification is also essential, since stateless persons usually lack personal documentation. In this regard, some States have taken positive steps toward pledging to undertake studies and surveys to report the issue. The Philippines is leading the way along with Georgia, Moldova and the UK. These countries implemented stateless determination procedures to improve identification of stateless persons. Other countries have made progress in resolving long-standing situations of statelessness by granting citizenship to stateless population: Côte d'Ivoire, the Kyrgyz Republic, Turkmenistan, Sri Lanka, Bangladesh and the Russian Federation.

UNHCR is also committed to promote accession to the Statelessness Convention. Although the number of States accessing to the two international instruments is still not very high, an unprecedented wave of accessions has been noticed since 2011. This year marks the 60th anniversary of the 1954 Convention on the Status of Stateless Persons. It is an opportunity to draw attention and

increase awareness of the issue of statelessness. Therefore, UNHCR launched a campaign which aims to eliminate statelessness within the next ten years. Some fundamental positive steps have been taken, but there is still much to be done to eliminate a phenomenon which continues to affect the lives of millions of people.

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