Statelessness Conventions and Japanese Laws

Convergence and Divergence

Osamu Arakaki

*This study was commissioned by UNHCR Representation in Japan

UNHCR
The UN Refugee Agency

Statelessness Conventions and Japanese Laws

Convergence and Divergence

March 2015

Osamu ARAKAKI

Translated by Hajime AKIYAMA

Osamu Arakaki
Statelessness Conventions and Japanese Laws: Convergence and Divergence

Translated by Hajime Akiyama

This study was commissioned by the UNHCR Representation in Japan. Any views expressed in the paper are those of the author and are not necessarily those of UNHCR.
This report is downloadable from http://www.unhcr.or.jp.

UNHCR Representation in Japan
Wesley Center 6-10-11 Minami Aoyama, Minato-ku, Tokyo 107-0062, Japan
Tel: +81-3-3499-2011
Fax: +81-3-3499-2272
www.unhcr.or.jp

Original Japanese Version published in May 2015
English Translation published in March 2016

Preface

Stateless people are those who are not considered as nationals of any state. It is very difficult to imagine; however, it is an unfortunate fact that there are at least 10 million stateless people worldwide. Some became stateless because their country ceased to exist; others inherit their status from their parents, unable to become citizens despite having ties to their communities and countries. In some countries, women cannot pass on their nationality to their children. Other people become stateless due to administrative obstacles; they fall through the cracks of a system that may simply have forgotten them. Without the formal legal bond of nationality, stateless people are often marginalized and vulnerable to violations of their basic human rights.

Through a series of resolutions beginning in 1994, the UN General Assembly gave UNHCR the mandate to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. Since then, UNHCR has been providing technical advice to governments to reform nationality laws, policies and procedures to close legal gaps that may lead to statelessness, to ensure that stateless people can acquire a nationality and that they are identified and protected. As a result, there are signs of a shift in attitudes. Within last four years, the number of accession to two Statelessness Conventions increased significantly: the number of contracting states for the 1954 Convention relating to the Status of Stateless Persons increased from 65 to 86 and the number of contracting states for the 1961 Convention on the Reduction of Statelessness increased from 33 to 63. UNHCR believes that such increase is strong evidence that there is now momentum to tackle stateless issues. Encouraged by such a shift and to mark the 60th anniversary of the 1954 Convention, UNHCR launched a campaign to end statelessness within the next 10 years in November 2014.

Japan is not a signatory to the two Statelessness Conventions. While Nationality Act contains a number of provisions that are relevant to the issue of statelessness, it does not have a procedure in place that would facilitate the determination of a stateless person. Against this backdrop, UNHCR, in 2010, commissioned a paper with a view to obtaining a better understanding of the statelessness situation in Japan, which was subsequently published entitled “Overview of Statelessness: International and Japanese Context”. Following the study, it was considered of importance to further analyze the compatibility of current Japanese laws and the jurisprudence of Japanese courts with the provision and standards contained in the 1954 and 1961 Conventions as well as relevant provisions of international human rights law. The study was undertaken by Prof. Osamu Arakaki of International Christian University (ICU) and his team throughout 2014 and is now published as “Statelessness Conventions and Japanese Laws: Divergence and Convergence”.

The study by Prof. Arakaki argues that mainly due to the lack of a definition of “a stateless person” in Japanese law and given that there is no mechanism in place through which statelessness can be determined, there are substantial gaps between the

Statelessness Conventions and Japanese law. The study further calls for a ‘mapping study’ to receive a better picture related to the number of stateless people in Japan and to bring to light the difficulties they may face in their day-to-day lives for reasons of being stateless.

The UNHCR Representation in Japan hopes that this study will be a valuable tool for government officials, academics, NGOs and other practitioners alike to further expand the knowledge and understanding related to the issue of statelessness in Japan, especially from a legal point of view. We trust that such an understanding will lead to more active discussions and will contribute to rendering the issue of statelessness more visible as well as to addressing any problems stateless people are confronted with in Japan.

Michael Lindenbauer
UNHCR Representative in Japan

About the Author

Osamu ARAKAKI is professor at International Chirstian University (ICU) and an expert of international law and international relations. He received a Ph.D in Law from Victoria University of Wellington, an MA in Political Science from the University of Toronto and an MA in Law from Meiji Gakuin University. Before he began serving at ICU, he was a visiting fellow at Harvard Law School and professor at Hiroshima City University. His main works include *Refugee Law and Practice in Japan* (Ashgate, 2008) and "Non-state actors and UNHCR's supervisory role in international relations," in James C Simeon (ed.), *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press, 2013).

About the Translator

Hajime AKIYAMA is a Master's student in the Graduate School of Arts and Sciences, ICU, majoring peace studies. He obtained a BA degree from ICU. He received the Award of Brilliance of the twenty-ninth Eisaku Sato Essay Contest. He is researching on statelessness from an international legal perspective.

Translator’s Acknowledgements

The translator expresses his deep gratitude to Mr. C. Cade Mosley, a Master’s graduate of the Graduate School of Arts and Sciences, ICU. He has proofread the text many times, and particularly his legal expertise greatly assisted the translator.

Translator

Acknowledgements

The author is responsible for the contents of this report. However, it could not have been completed without my colleagues' assistance.

I express my sincere gratitude to Mr. Hajime Akiyama, a student in the College of Liberal Arts, International Christian University (ICU). He has assisted me in the whole process from the collection of information to the writing and revision of this report. His assistance was indispensable to completing it.

Professor Sosuke Seki (Seikei University Law School, attorney-at-law), Ms. Ayane Odagawa (attorney-at-law) and Associate Professor Yue Fu (College of Humanities, Ibaraki University) have examined manuscripts many times as a monitoring team. They gave me many critiques and much advice, as well as invaluable information. I would like to express my gratitude to them.

Professor Masaki Ina (College of Liberal Arts, ICU) has given me the views of his expertise. Ms. Rina Ikebe, Master's student in the Graduate School of Arts and Sciences, ICU, has collected information and assisted me in conducting interviews. I appreciate them.

I thank my interviewees, including stateless persons, legal practitioners, government officials and child guidance offices.

Author

Table of Contents

List of Abbreviations

(1) States

Brazil	Federative Republic of Brazil
France	French Republic
Latvia	Republic of Latvia
Moldova	Republic of Moldova
Myanmar	Republic of the Union of Myanmar
Philippines	Republic of the Philippines
Thailand	Kingdom of Thailand
UK	United Kingdom of Great Britain and Northern Ireland
US	United States of America
Vietnam	Socialist Republic of Vietnam

(2) Organisations

ILO	International Labour Organization
NGO	Non-Governmental Organisations
RSAA	Refugee Status Appeals Authority in New Zealand
UN	The United Nations
UNHCR	The United Nations High Commissioner for Refugees
UNICEF	The United Nations Children's Fund

(3) Treaties

1930 Convention	Convention on Certain Questions relating to the Conflict of Nationality Laws (Adopted in 1930, entered into force in 1937)
1954 Convention	Convention relating to the Status of Stateless Persons (Adopted in 1954, entered into force in 1960)
1961 Convention	Convention on the Reduction of Statelessness (Adopted in 1961, entered into force in 1975)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (Adopted in 1979, entered into force in 1981)
ICCPR	International Covenant on Civil and Political Rights (Adopted in 1966, entered into force in 1976)
ICESCR	International Covenant on Economic, Social and

	Cultural Rights (Adopted in 1966, entered into force in 1976)
Refugee Convention	Convention relating to the Status of Refugees (Adopted in 1951, entered into force in 1954)
Refugee Protocol	Protocol relating to the Status of Refugees (Adopted in 1967, entered into force in 1967)
Statelessness Conventions	Convention relating to the Status of Stateless Persons and Convention on the Reduction of Statelessness
Human Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Adopted in 2000, entered into force in 2003)
UNTOC	United Nations Convention against Transnational Organized Crime (Adopted in 2000, entered into force in 2003)

(4) Japanese Laws

Act against Organised Crimes	Act on Punishment of Organised Crimes and Control of Crime Proceeds
Constitution	The Constitution of Japan
General Rules Act	Act on General Rules for Application of Laws
ICRRA	Immigration Control and Refugee Recognition Act
Special Act on Immigration Control	Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan

(5) Others

UNHCR Handbook	*Handbook on Protection of Stateless Persons: Under the 1954 Convention relating to the Status of Stateless Persons*
statelessness determination	determination of the status of stateless persons
Minshu	*Saikou Saibansho Minji Hanreishu* [Supreme Court Reports on Civil Cases]
Shumin	*Saikou Saibansho Saibanshu Minji* [Civil cases in the Supreme Court]
H.T.	*Hanrei Times* [*Precedents Times*]

Introduction

1. Statelessness and the World

Currently, there are over ten million stateless persons in the world.[1] In 2014, the Sixtieth Anniversary of the adoption of the 1954 Convention,[2] UNHCR launched a campaign to end statelessness by 2024. It is an ambitious challenge since it attempts to end the history of statelessness and to tackle an aporia within the state system.

The Puritan and Glorious Revolutions in the Seventeenth Century and the French Revolution in the Eighteenth Century transformed the holder of sovereignty from a monarch to a state's nationals, and the modern state was formed. As a result of the "Spring of Nations" in 1848 and the development of modernisation, the nation-state system has spread throughout Europe. The unity of members within a nation-state and nationals' loyalty to the state have supported the nation-state system. One source of this unity and loyalty has been social affinity. To ensure this social affinity, national groups that share culture, language and customs have gathered. As land was cut by borders and subsumed into states, nation-states also subsumed people as citizens by granting nationality. In other words, nationality has authoritatively set borders between the members of one nation-state and others, and it has substantiated the abstract concept of nation. On the other hand, those who do not qualify under the criteria to be a national of any state have been recognised as "others" by the system of nationality and have thus become stateless. In this manner, nationality, from its origins, has been an indispensable instrument to form and maintain the nation-state. Thus, nationality and statelessness have the same length of history.[3]

Nation-states construct the unique characteristics of statehood by granting and not granting nationality. Thus, the emergence of stateless persons (i.e., unchosen people) is an *inevitable* outcome of the nation-state system. The occurrence of statelessness as a result of conflicts or the formation of newly-born states is not an accident. Therefore, statelessness may emerge whenever a state is formed in international society.

At least a part of the political elite in states *needs* statelessness. In states that have many stateless persons, they tend to be recognised as *the persons who do not qualify the criteria to be a national* because of their racial and ethnic characteristics and their history. Once people feel that stateless persons are not worth any nationality, this sense is fixed. Political elites find it beneficial to arrange for second-class citizens in

1 UNHCR, "Stateless People Figure," at http://www.unhcr.org/pages/49c3646c26.html.
2 There are 82 Contracting States as of 1 September, 2014. The United Nations Treaty Collection, "Convention relating to the Status of Stateless Persons," at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en.
3 Osamu Arakaki, "*Mukokusekishachiijyouyakuno Seiritsuto Tenkai* [Formation and Development of the 1954 Convention]," *Nanmin Kenkyu Jyanaru* [*Refugee Studies Journal*], No. 4 (December, 2014), p. 3.

order to integrate and maintain the state. Sometimes the dominant ethnic group feels their superiority over stateless persons, and sometimes stateless persons are labelled as *a dangerous group that threatens social order*. In either case, the dominant ethnic group strengthens its unity, and nationalism rises. The necessity for statelessness is not limited to a political context. It is well-known that stateless persons become targets of labour exploitation. The economic benefits earned by exploiting stateless persons favours the dominant ethnic group. As a result, the dominant group puts its faith in elites.[4]

Since statelessness is inevitable and necessary, it has been maintained and reproduced. Currently, people who are not protected by law support people who are protected by law. This structure is observable not only in non-democratic states and states where violations of fundamental human rights take place. "Developed states" and "democratic states" may also, unconsciously, support structures that create statelessness and exploit stateless persons as members of this complicated global society. UNHCR tackles the statelessness issue in order to end it being recognised as inevitable and necessary. Exactly because statelessness is seen this way, it is an ambitious challenge.

2. About This Report

2.1. Contents and Methods

The Office of the UNHCR takes the initiative for activities including the collection of information on statelessness. On the page for "statelessness" in the "Refworld" website,[5] a variety of information can be found, for instance, the statelessness situation in each state and region, the outcome reports of conferences, discussion papers, statements, proposals and lecture texts, all of which are categorised by region, viz. Africa, North America, Asia, Europe and the Middle East and North Africa. Also, the Office of the UNHCR cooperates in investigations for the identification of stateless persons. It is working with partners to identify the number of stateless persons in the People's Republic of Bangladesh, Kyrgyz Republic, and the Republic of Serbia. The Office of the UNHCR also attempts to grasp the magnitude of stateless persons in the US, the UK, Kingdom of the Netherlands and Kingdom of Belgium using existing data.[6] These activities of UNHCR should reflect his or her will to work on statelessness.

4 For a relevant argument, see the following. Matthew J. Gibney, "Statelessness and Citizenship in Ethical and Political Perspective," in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014), pp. 52-56.

5 UNHCR, "Statelessness," at http://www.refworld.org/statelessness.html.

6 Mark Manley "*Mukokusekini Torikumutameno UNHCRno Mandetooyobi Katsudou* [UNHCR's Mandate and Activities to Address Statelessness]," *Houritsu Jihou* [*Law Times*], No. 1078 (October, 2014), p. 41.

Such activity is also conducted in Japan. Kohki Abe, an international legal scholar, has written *Overview of Statelessness: International and Japanese Context*, which was published in both English and Japanese by the Office of the UNHCR in April 2010.[7] The report provides an overview of statelessness in Japan. It has not only stimulated scholars and legal practitioners in Japan, but has also made the world aware of the situation of statelessness in Japan from an international legal perspective.

This report is commissioned by the Office of the UNHCR as a part of its project on statelessness. Criteria of this research are the 1954 and the 1961 Conventions on statelessness.[8] It aims to examine the compatibility between the Statelessness Conventions and Japanese laws. The primary concerns in this report are the following:

- Does Japan have official statistics that correctly identify the number of stateless persons?
- Do Japanese laws provide a mechanism or procedure that determines stateless persons? Are there judicial precedents or administrative practices relevant to the determination?
- To what extent do Japanese laws cover the contents of the 1954 Convention? Particularly, what contents are not covered? Are there judicial precedents or administrative practices related to the convergences and divergences between Japanese laws and the Convention?
- To what extent do Japanese laws cover the contents of the 1961 Convention? Particularly, what contents are not covered? Are there judicial precedents or administrative practices related to the convergences and divergences between Japanese laws and the Convention?
- Is it possible for stateless persons to be protected by treaties to which Japan has acceded and ratified? Particularly, what relevance does being a refugee or victim of human trafficking have to this question?

The principal method of this report was a bibliographic survey. Interviews with government officials, child guidance offices and stateless persons have supplemented the bibliographic survey. In addition, information and advice given by legal practitioners and specialists were also considered.

(Translator's note: the English original version is the following. Mark Manley, "UNHCR's Mandate and Activities to Address Statelessness" in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014).)

7 Kohki Abe, *Mukokusekino Jyoukei: Kokusaihouno Shiza, Nihonno Kadai* [*Overview of Statelessness: International and Japanese Context*]. (UNHCR, 2010), at http://www.unhcr.org/4ce643ac9.html. (Translator's note: the English version is the following. Kohki Abe, *Overview of Statelessness: International and Japanese Context*. (UNHCR, 2010), at http://www.refworld.org/docid/4c344c252.html.)

8 There are 60 Contracting States of the 1961 Convention as of 1 September, 2014. The United Nations Treaty Collection, "Convention on the Reduction of Statelessness," at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en.

2.2. Summary of the Results

The contents and results of a survey in this report are shown in chapters one to five and a supplementary chapter. The following is a summary of the results.

Chapter One: Statelessness Conventions and Japan

- While Japan has not acceded to the Statelessness Conventions, Japan has been influenced by international law concerning statelessness in the past. However, its impact has been limited.
- There is no mechanism that provides the total number of stateless persons present in Japan. There are official statistics which include the number of stateless persons, but they do not necessarily reflect the actual number of stateless persons. Since there has not been any attempt to measure the number of stateless persons precisely, even a round number of stateless persons is not known.

Chapter Two: Definition and Determination

- Japanese laws do not have a definition of stateless persons.
- There is not a determination mechanism for stateless persons which attempts to identify stateless persons in order to confirm their legal status in Japan.
- A lack of definition and a system for determinations is a cause of gaps between the 1954 Convention and Japanese laws.
- Some recent judicial precedents approach the definition and an understanding of stateless persons as found in the Convention. However, this does not mean that the recent judicial precedents fill the gaps between the Convention and Japanese laws.

Chapter Three: Rights and Protection

- Most of the rights listed in the 1954 Convention can be protected by resident status. However, the rights are not protected for stateless persons for whom the status of residence has not been granted.
- The subject of the Public Assistance Act is the Japanese people. Thus, even if stateless persons with resident status are currently provided with assistance, they have no legal basis to sue the government for a violation of rights when assistance becomes unavailable in the future.
- Regardless of resident status, there are gaps between provisions of the 1954 Convention and Japanese laws. Concerning the facilitation of naturalisation (Article 32 of the 1954 Convention), stateless persons born in Japan and other stateless persons face different criteria for naturalisation under Japanese law. This is likely to be incompatible with a principle of non-discrimination (Article 3 of the

1954 Convention). Furthermore, identity papers are not issued for all stateless persons (Article 27 of the 1954 Convention) under Japanese law.

- Since Japan does not have a procedure to determine stateless persons, there is not a concept such as "persons seeking the statelessness determination" or "applicants to the statelessness determination." Thus, rights cannot be protected by being stateless. For such people, basic freedoms such as freedom of movement (Article 26 of the 1954 Convention) and a prohibition of expulsion (Article 31 of the 1954 Convention) are not guaranteed.

Chapter Four: Prevention and Reduction

- Japanese laws do not guarantee to grant nationality to "a person born in its territory who would otherwise be stateless" (Article 1(1) of the 1961 Convention).
- There is not a Japanese law that completely adheres to the requirements concerning foundlings found in the territory (Article 2 of the 1961 Convention).
- Japanese laws do not provide explicit rules in case of birth on a ship or in an aircraft (Article 3 of the 1961 Convention).
- Although Article 5(1) of the 1961 Convention is interpreted such that nationality cannot be lost if the family relationship constituting the basis of a child's acquisition of nationality was registered erroneously unless another nationality is possessed or acquired, Japanese law does not seem to comply with this interpretation of the 1961 Convention.

Chapter Five: Refugees and Human Trafficking

- There are a limited number of precedents where both refugee status and statelessness are considered in Japan. Even in these limited cases, however, there is little possibility that stateless persons can be legally protected as refugees. One reason is that the discrimination which stateless persons face does not correspond to the meaning of "persecution" in Japanese courts.
- Under the current ICRRA, the Minister of Justice can grant Special Permission to Stay in Japan to victims of human trafficking. If the victim of human trafficking is a stateless person, he or she can be legally protected by the special permission. However, its effect is limited because of the Minister of Justice's room for discretion in granting resident status.

Supplementary Chapter
The Unregistered: Focusing on *Mukosekisha*

- There are unregistered persons in Japan. Recently, *mukosekisha* have been given particular attention. Also, there are children abandoned and hidden by persons without resident status.
- The full picture of unregistered persons is not apparent.

The details of the results and the process for the research are described in the following chapters.

Chapter 1: Statelessness Conventions and Japan

1.1. 1954 Convention

1.1.1. Background

During the era of the League of Nations in the Interwar period, both stateless persons and refugees were not legally differentiated since both were recognised to be groups that need to be coped with in a similar way. However, after the end of World War II, the concepts of stateless persons and refugees were separated as each issue was dealt though a separate international convention.[9] This legal separation took place in the UN. At that time, the UN Commission on Human Rights recognised that international agreement concerning stateless persons and refugees was insufficient. The committee then announced in December 1947 that "early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation."[10] In the year following, the UN Economic and Social Council requested Trygve Lie, the first Secretary-General of the UN, to research national law, international agreements and conventions concerning statelessness. Simultaneously, it asked him to submit a recommendation concerning the necessity of concluding a new treaty. As a result, *A Study of Statelessness* was published.[11]

The UN Economic and Social Council then appointed government representatives from thirteen states in its Ninth Session in August 1949, establishing an *ad hoc* committee. The committee's mandate was to distinguish stateless persons and refugees in order to consider the necessity of revising and integrating existing conventions. It also included drafting a new convention where necessary. The next year, the *ad hoc* committee was held twice in New York. During the session, the committee drafted the Refugee Convention and its protocol, a Protocol Concerning Stateless Persons. At the conference, the view to separating issues concerning the status of refugees and the status of stateless persons became dominant. The draft backed by majority opinion emphsised the urgency of refugees, and the subject of the convention was refugees. At the same time, the status of stateless persons, who were not included in the convention, was to be determined by the Protocol. According to this draft protocol, some provisions of the draft convention would be applied, *mutatis mutandis*, to stateless persons who are not refugees.

9 Osamu Arakaki, "*Mukokusekishano Nanminsei: Nyujirandono Jissenno Kentouwo Chuushinni* [Stateless Refugees: Practice of New Zealand as a Case Study of the Refugee Status Determination]", *Sekaihougakkai, Sekaihounenpou* [*Yearbook of World Law*], No. 31 (March, 2012).

10 UN Doc. E/600, para 46.

11 The United Nations, *A Study of Statelessness* (E/1112 and Add. 1, 1949).

UN General Assembly Resolution 428 (V) in December 1950 decided to hold a Plenipotentiary Conference aiming at the conclusion and signing of the convention and the protocol. The Refugee Convention was adopted at a diplomatic conference in Geneva the year following. However, the draft protocol on stateless persons was not discussed because of a lack of time. As a result, the adoption of the Refugee Convention proceded, and the drafting of the protocol was postponed. The relationship between the Refugee Convention and the Protocol on Stateless Persons as an international instrument was maintained, but it became evident that the humanitarian and political significance were different.

The UN General Assembly held in February 1952 welcomed the adoption of the Refugee Convention. However, deliberation concerning the Draft Protocol on Stateless Persons was postponed yet again because there was not enough time. Then in the Seventh Session held in the same year, the General Assembly requested the Secretary-General to circulate the draft of the protocol to states. It aimed to inquire about which provisions within the Refugee Convention are applicable to stateless persons.

On 28 September 1954, the UN Economic and Social Council convened the Conference of Plenipotentiaries to consider the protocol in New York, and delegates from 32 states (including delegations from five observer states) were involved in it. Eventually, the draft on the protocol was abandoned, and a separate convention similar to the Refugee Convention was adopted, the 1954 Convention. Pursuant to Article 39, this convention came into force on 6 June 1960, 90 days after the deposition of the French instrument of ratification, the sixth instrument.[12]

1.1.2. Structure and Summary

The 1954 Convention is composed of the Preamble, General Provisions (Chapter I: Articles 1 to 11), Juridical Status (Chapter II: Articles 12 to 16), Gainful Employment (Chapter III: Articles 17 to 19), Welfare (Chapter IV: Articles 20 to 24), Administrative Measures (Chapter V: Article 25 to 32) and Final Clauses (Chapter VI: Articles 33 to 42). The Convention defines stateless persons and the scope of stateless persons as well as lists the rights of stateless persons in its substantive provisions. The final clauses address procedural matters.

Various rights are guaranteed to a person when he or she qualifies under the definition of stateless persons under Article 1 paragraph 1[13] and does not meet the

12 For the drafting process of the 1954 Convention, see the followings. Arakaki, *supra* note 3, pp. 5-6. Nehemiah Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation", 1955, reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees, at http://www.refworld.org/docid/4785f03d2.html. Paul Weis, "The Convention Relating to the Status of Stateless Persons," *International and Comparative Law Quarterly*, Vol. 10 (1961), pp. 255-257.

13 See section 2.2.

exclusion clauses under Article 1 paragraph 2.[14] However, there are some important qualifications to make about the protection of rights pursuant to the 1954 Convention. First, rights are protected according to the level of attachment to the residing state. The levels of attachment are, from lowest to highest, "either subject to the jurisdiction of a State party or present in its territory", "lawfully in", "lawfully staying in", and "habitually resident". More rights are granted to the persons who have a stronger attachment. For people who have the lowest attachment to the state, the Convention guarantees rights including access to courts, a right to public education, and freedom of religion. For people who are lawfully in the state, freedom of movement and protection from expulsion are guaranteed. People who are lawfully staying in the state enjoy a right of association and a right to social security. And for people who are habitually resident in the state, protection of copyright and a right to legal assistance are also guaranteed.

The 1954 Convention also provides four standards of treatment: "the same treatment accorded to aliens generally", "treatment as favourable as possible and, in any event, not less than that accorded to aliens generally in the same circumstances", "the same treatment as nationals" and "treatment which is to be afforded to stateless persons irrespective of the treatment afforded to citizens or other aliens" (from lowest to highest). There are several rights that require the same treatment as nationals be accorded to stateless persons. For instance, stateless persons lawfully staying in the state are treated the same as nationals on the issue of public relief and assistance pursuant to Article 23. Furthermore, when one contracting state grants rights for aliens generally other than those mentioned in the 1954 Convention, stateless persons can demand the same treatment pursuant to Article 7(1).[15] Thus, if one contracting state grants rights to undocumented aliens generally, undocumented stateless persons are also entitled to such rights.

As can be seen from the drafting history of the 1954 Convention and the Refugee Convention, their structures are similar. Besides this, the rights listed in the two conventions are also similar. However, there are some differences between the 1954 Convention and the Refugee Convention. First, the subject of protection in the former is stateless persons, not refugees. Furthermore, the 1954 Convention neither include *non-refoulement* (Article 33 of the Refugee Convention) nor protection from penalties for illegal entry (Article 31 of the Refugee Convention). The right to work and a right to association in the 1954 Convention are less protected compared to the Refugee Convention.[16]

---

14 *Ibid*.

15 Article 7 provides that "Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally".

16 For the contents of the 1954 Convention, see the following. Arakaki, *supra* note 3, pp. 6-8. Robinson, *supra* note 12, p. 6. Weis, *supra* note 12, pp. 257-264. UNHCR "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level" (2012), at http://www.refworld.org/docid/5005520f2.html.

1.2. 1961 Convention

1.2.1. Background

During the Interwar period, the League of Nations paid attention to the prevention of statelessness. The 1930 Convention adopted by the Codification Conference embodied the concern of the League of Nations. The Convention places an obligation on states to prevent a loss of nationality caused by a change of status. Yet, it does not prohibit a deprivation of nationality, nor does it require states to grant nationality to those who possibly become stateless.

After World War II, the prevention of statelessness was considered in the UN. It was an ambitious attempt since an elimination of statelessness was also considered. In response to the *ad hoc* committee's recommendation of a resolution concerning stateless persons to the UN Economic and Social Council mentioned above, the Economic and Social Council adopted Resolution 319B III(XI) in August 1950. It was significant for two reasons. First, it proposed to states a specific way to reduce and eliminate statelessness. Second, it encouraged the International Law Commission to draft necessary documents to eliminate statelessness, given that the International Law Commission had already taken up the concern of statelessness. As a result, the International Law Commission began to draft a treaty. In 1951, it appointed Manley Hudson, the former judge of the Permanent Court of International Justice, to be the Special Rapporteur for the Study of Nationality including Statelessness.

Substantive discussion in the International Law Commission began the following year. Hudson made clear that statelessness by birth derives from an inconsistency between *jus soli* and *jus sanguinis*, and that statelessness after birth is caused by factors such as the renunciation of nationality, unilateral acts of states, change of territory, etc. However, due to political circumstances, he did not propose anything further than a reduction of statelessness. In the same year, Roberto Cordova succeeded as Special Rapporteur. Cordova submitted a Draft Convention on the Elimination of Future Statelessness and a Draft Convention on the Reduction of Future Statelessness in reaction to the request of the International Law Commission. The former placed a heavy obligation on states, and the latter was more modest. Based on these drafts, the International Law Commission adopted two drafts with some modifications during the Fifth Session in 1953. In the Sixth Session the following year, the International Law Commission adopted two draft conventions that reflected the views of governments, and it submitted them to the UN General Assembly. The General Assembly requested the Secretary-General to organise an international conference of plenipotentiaries when at least twenty states communicated their willingness to participate in it, by Resolution 896 on 4 November 1954.

After this condition was satisfied, the United Nations Conference on the

Elimination or Reduction of Future Statelessness was held from 24 March to 18 April 1959. Representatives from 35 states participated in the conference held in Geneva. Participants ultimately chose a Draft Convention on the Reduction of Future Statelessness. It focused on a prevention of statelessness by birth and placed relatively modest obligations concerning a loss and a deprivation of nationality. From 15 August to 28 August 1961, the conference was reconvened with representatives from 30 states in New York. On 30 August 1961, the 1961 Convention was adopted and entered into force on 13 December 1975 pursuant to Article 18.[17]

1.2.2. Structure and Summary

The primary aim of the 1961 Convention is prevention of future statelessness in order to reduce statelessness. In contrast to the 1930 Convention, the 1961 Convention placed obligations on contracting states to some extent. Although it was progress, the elimination of statelessness did not become the main effort. The Convention is composed of the preamble and 21 articles. Among its main substantive provisions, Articles 1 to 4 address birth and children, Articles 5 to 9 address a loss and a deprivation of nationality, and Article 10 addresses statelessness by transfer of territory.

The 1961 Convention emphasises acquisition of nationality by birth, which Articles 1 to 4 address. Article 1(1) provides that nationality be granted to a person born in a state's territory who would otherwise be stateless. It prevents statelessness by birth by applying the *jus soli* principle. Article 2 is about foundlings found in the territory. Absent proof to the contrary, a child is recognised to be born within the territory of the state of the parents' nationality. Article 3 provides that when a child is born on a ship or in an aircraft, he or she is deemed to be born in the territory of the state whose flag the ship flies or to which the aircraft is registered. Article 4 adds supplemental coverage over situations that the *jus soli* principle does not cover. It provides that nationality is granted by the *jus sanguinis* principle if a child is born outside of a contracting state and he or she would be rendered stateless.

Article 5(1) requires the acquisition of another nationality if a person's nationality is lost as a consequence or by termination of a marriage. This prevents statelessness after birth. Article 6 also requires the acquisition of another nationality if a person's nationality to the contracting state is lost or deprived, and it results in his or

17 For the drafting process of the 1961 Convention, see the following. Osamu Arakaki, "*Mukokusekisha Chiijyouyakuto Mukokuseki Sakugenjyouyaku: Seiritsumadeno Keiitogaiyou* [1954 Convention and 1961 Convention: Background and Overview]", *Houritsu Jihou* [*Law Times*], No. 1078 (October, 2014), pp. 37-38. Yoshio Tameike, "*Tsumanokokuseki, Mukokuseki* [Married Women's Nationality and Statelessness]" In Shigejiro Tabata (Ed.), *Kokusairengouno Kenkyuu* [*Studies of the United Nations*] Vol. 3 (Yuhikaku, 1966), pp. 243-247. Paul Weis, "The United Nations Convention on the Reduction of Statelessness, 1961," *International and Comparative Law Quarterly*, Vol. 11 (1962), pp. 1073-1080. Guy S. Goodwin-gill "Convention of the Reduction of Statelessness," at http://legal.un.org/avl/pdf/ha/crs/crs_e.pdf.

her spouse or children's loss of nationality. Article 7(1)(a) asserts that even if a voluntary renunciation of nationality is allowed in national law, a person's nationality cannot be lost without that person acquiring another nationality. Article 7(2) states that nationals who seek to naturalise to another state do not lose their original nationality until the acquisition of the other nationality is assured. These provisions show that the Convention is cautious about a renunciation of nationality. Article 8(1) prohibits a deprivation of nationality if it causes a person to be stateless in principle. However, Articles 8(2) and 8(3) list exceptions to prohibiting deprivation, such as an acquisition of nationality by fraud or a threat to the vital interests of the state. Even in such cases, Article 8(4) provides that deprivation is justified only when it follows the law requiring the right to a fair hearing. Article 9 bans deprivations of nationality based on discrimination. This illustrates a history whereby nationality has been deprived by racially discriminatory nationality laws.

Article 10 provides that treaties between contracting states concerning the transfer of territory need to ensure that no person becomes stateless as a result of the transfer. It derives from the history that transfers of territory were a main cause of statelessness.

Article 11 provides for the establishment, within the framework of the United Nations, of a body to which a person claiming the benefit of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the relevant authority. In order to meet this requirement, the UN General Assembly has expanded the mandate of the UNHCR through a resolution. As a result, persons within the concern of the Convention were included in an area of the UNHCR. In the 1961 Convention, the definition of stateless persons in the 1954 Convention is invoked.[18]

1.3. Development

As mentioned earlier, refugees predominated over stateless persons since the drafting of the Refugee Convention and the Protocol on Stateless Persons. During the Cold War period, this distinction between stateless persons and refugees became evident. The Refugee Protocol eliminated temporal and geographical limitations, and the Refugee Convention expanded its scope beyond Europe. The phenomenon of refugees has shifted to a universal refugee issue. Stateless persons were forgotten, and the interest of international society in the issue declined. This is one reason for the small number of contracting states to the 1954 and the 1961 Conventions. International society's indifference is not only reflected in the number of contracting

18 For the contents of the 1961 Convention, see the following. Arakaki, *supra* note 17. Tameike, *supra* note 17, p. 247. Weis, *supra* note 17, pp. 1080-1086. UNHCR "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness" (2012), at http://www.refworld.org/docid/50d460c72.html.

states to the Statelessness Conventions, but also in the quality of implementation of the Conventions. For example, a definition of stateless persons in the 1954 Convention and a determination method and standard were not pursued seriously until recently. This is completely different from the Refugee Convention since an interpretation of the definition of refugees and a determination standard have been refined by practical experience and academic argument.

However, statelessness was in the spotlight in international society in the 1990s. First, the UN General Assembly and the UNHCR Executive Committee adopted resolutions and conclusions emphasising the necessity of avoiding statelessness.[19] In response to a request of the UN General Assembly, the International Law Commission also paid attention to nationality again in the context of state succession. Furthermore, regional organisations such as the Organization of American States, Organization for Security and Co-operation in Europe and the Council of Europe are also working on issues of statelessness.[20]

International organisations began to work actively on issues of stateless persons after the end of the Cold War. With the collapse of the former Soviet Union, Czechoslovakia, and former Yugoslavia, and a reorganisation of new states, people who needed a new nationality dramatically increased.[21] As the magnitude of stateless persons became more evident, states feared a destabilisation of the region.[22] As a result, a political response became necessary.[23] Recently, there has been an international movement led by the Office of the UNHCR to deal with an estimated ten million stateless persons. The movement focuses not only on the Statelessness Conventions, but also on relevant provisions of international human rights treaties.[24] Following this movement, the development of implementation methods for the Statelessness Conventions and cooperation between international organisations and NGOs are becoming evident.[25] Also, concrete ideas such as strengthening regional cooperation, the active involvement of the UNICEF and the establishment of a special position to deal with issues of statelessness in the UN Office of the High Commissioner for Human Rights have been proposed.[26] Furthermore, normative

19 For instance, see the following. UNHCR Executive Committee, 1995 Conclusion No. 78 (XLVI).

20 Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *International Journal of Refugee Law*, Vol. 10, No. 1/2 (1998), p. 158.

21 David Weissbrodt and Clay Collins, "The Human Rights of Stateless Persons," *Human Rights Quarterly*, Vol. 28 (2006), p. 261.

22 *Ibid.*, p. 275. Abe, *supra* note 7, pp. 6-7.

23 Batchelor, *supra* note 20, pp. 157-158. Caroline Sawyer, "Stateless in Europe: Legal Aspects of *de jure* and *de facto* Statelessness in the European Union" in Caroline Sawyer and Brad K. Blitz (eds.), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press, 2011), p. 89.

24 For instance, Article 15 of the Universal Declaration of Human Rights, Article 5 of the Internaional Convention on the Elimination of All Forms of Racial Discrimination, Article 24 of the ICCPR, Article 9 of the CEDAW and Article 7 of the Convention on the Rights of the Child.

25 Sawyer, *supra* note 23, pp. 89-93.

26 James A. Goldston, "Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens," *Ethics & International Affairs*, Vol. 20, No. 3 (2006), pp. 342-343. Weissbrodt and Collins, *supra* note 21, pp. 275-276.

arguments such as the "right to a nationality" have been discussed. Statelessness, once forgotten, has in recent years seen renewed interest and activity.

In line with the current trend, many states have acceded to the Statelessness Conventions. Since 2000, Spain, Latvia, Hungary, Moldova, the Philippines and the UK have established statelessness determination procedures. This illustrates a new dimension in the Conventions' implementation.[27]

1.4. Japan and Statelessness Conventions

1.4.1. Japanese Laws and Treaties

Japan is composed of 7,000 islands including Hokkaido, Honshu, Shikoku and Kyushu,[28] with a total area of 360,000 km^2.[29] As of October 2014, the population is 127,090,000. Among them, 61,800,000 are male and 65,290,000 are female.[30]

Most of current significant Japanese laws are statutory law. Laws and regulations (*Hourei*)[31] can be classified into six categories: Constitution, Civil Code, Commercial Code, Penal Code, Code of Civil Procedure and Code of Criminal Procedure. There is not a code called administrative law, but it is made up of the laws and regulations enacted in the sphere of public law outside of the Constitution. The Diet Act, Court Act, Public Finance Act, Basic Act for Land, Basic Environment Act, Basic Act on Education and the ICRRA are all parts of administrative law.

The Japanese judicial system adopts a three-tiered court system. There is one Supreme Court located in Tokyo. It is composed of 15 justices, and includes the full bench and petty benches. The full bench makes decisions based on consultation of the 15 justices. There are three petty benches, and each makes a decision based on a consultation of five justices. Article 81 of the Constitution grants judicial review authority to the Supreme Court, and courts have a mandate to assess whether laws enacted by the Diet are compatible with the Constitution. There are eight high courts with six branches, and one of them is located in Tokyo. High courts make decisions based on a consultation of three judges, in general. District courts are basically located in each prefectural capital, although Hokkaido has four district courts because of its

27 For the development of Statelessness Conventions, see the following. Arakaki, *supra* note 3, pp. 8-9.

28 Statistics Bureau, Ministry of Internal Affairs and Communications, "*Dai 1 Shou: Kokudoto Kishou* [Chapter 1: Territory and Weather]," at http://www.stat.go.jp/data/nenkan/01.htm.

29 *Ibid*.

30 Statistics Bureau, Ministry of Internal Affairs and Communications, "*Jinkousuikei: Heisei 26 Nen 10 Gatsuhou* [Estimated Population: October 2014]," at http://www.stat.go.jp/data/jinsui/pdf/201410.pdf.

31 Law is enacted by the Diet, the legislative body. Besides these, there are cabinet ordinances, ministerial ordinances and regulations, which are prescribed by other governmental organisations. Furthermore, there are local ordinances prescribed local authorities. The effects of these laws and regulations are hierarchical. Constitution has the highest priority, and higher laws and regulations take priority over lower laws and regulations.

size. District courts also have branches. District courts make decisions based on a consultation of three judges or by one judge.[32] There are also family courts and summary courts.

Now, let us briefly explore the relationship between Japanese law and treaties.[33] International law basically entrusts the implementation of international law to the constitutions and domestic measures of each state. Japan incorporates treaties into Japanese law. Thus, treaties can be applied domestically without special legislation under Article 98(2) of the Constitution.[34] The Constitution is superior to Japanese statutes, with laws enacted by the Diet and administrative ordinances following. In this hierarchy, treaties are commonly recognised to be below the Constitution but above statutes. According to this understanding, if a Japanese court finds a treaty and Japanese law incompatible, then the Japanese law needs to be either revised or rendered invalid.

Japan has not acceded to the Statelessness Conventions so far.[35] Since Japan is a non-contracting state, it is not bound by the Statelessness Conventions, and Article 98(2) is irrelevant except in the case of customary law. Thus, the Statelessness Conventions themselves do not have domestic effect in Japan, and they are not within the scope of Japanese law.

1.4.2. Discussion in the Diet

Japan has not been indifferent to treaties related to nationality and statelessness. In fact, Japan has signed the 1930 Convention although it has not ratified it yet.[36] The 1930 Convention was adopted in the First Codification Conference. It does not prohibit a deprivation of nationality, and the main concern was a conflict of laws. However, since it provided that a change of personal status does not result in a loss of nationality,[37] it was an epoch-making convention.[38]

Although Japan has not acceded to the Statelessness Conventions, they have been discussed in the Diet in the past sporadically.[39] First, on 5 June, 1979, in the Committee on Foreign Affairs, House of Councillors, Mr. Kunihiko Shibuya made a request to consider accession to international human rights treaties including the 1954

32 Citizens participate in criminal trials in District Courts under the *saiban-in* (citizen judge) system.
33 According to Article 2(1)(a) of the Vienna Convention on the Law of Treaties, a treaty is "an international agreement concluded between States in written form and governed by international law."
34 Article 98(2) provides that "[t]he treaties concluded by Japan and established laws of nations shall be fruitfully observed." (Translator's note: Unless otherwise noted, translation of Japanese law is adopted from the website of the Japanese Law Translation Database System, at http://www.japaneselawtranslation.go.jp/.)
35 So far, accession to these Conventions has not been considered. Interview to Human Rights and Humanitarian Affairs Division, Ministry of Foreign Affairs of Japan (13 January, 2015).
36 League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law," (1930), at http://www.refworld.org/docid/3ae6b3b00.html.
37 Arakaki, *supra* note 17, p. 37.
38 For an evaluation of the 1930 Convention, see Abe, *supra* note 7, pp. 17-18.
39 *Ibid*, p. 31.

Convention in the context of stateless persons in Okinawa Prefecture. Mr. Sunao Sonoda, then Minister for Foreign Affairs, responded that he will consider accession to international human rights treaties if there is merit, but he did not mention the 1954 Convention.[40]

On 17 April, 1981, in the Committee on Foreign Affairs, House of Representatives, Mr. Shoichi Kuriyama, a government delegate, explained that it would be difficult for Japan to accede to the Statelessness Conventions because of the principle of *jus sanguinis* through the paternal line in the then-existing Nationality Act. Mr. Eiichi Tamaki asked a question about the possibility of Japan acceding to the Conventions. In response, Mr. Kuriyama stated that the Ministry of Justice is considering adopting *jus sanguinis* through both the paternal and maternal lines. He continued that when the principle of *jus sanguinis* though the paternal line is changed, Japan may accede to them. Mr. Tamaki then mentioned stateless children in Okinawa and requested facilitation of accession to the 1961 Convention.[41]

In the Committee on Judicial Affairs, House of Councillors, on 10 May 1984, there was an interesting deliberation about the gap between the 1961 Convention and the Japanese Nationality Act. Mr. Atsushi Hashimoto asked the reason for non-accession to the 1961 Convention. Mr. Taisuke Biwata, a government delegate, explained that Articles 1(2)(a) and 1(2)(b) are not compatible with the Nationality Act for the following reasons;

- Article 1 of the 1961 Convention provides that nationality should be granted by birth automatically, or by an application. In order to grant nationality by birth to reduce statelessness, nationality needs to be granted to persons staying in Japan for short periods. However, many states do not apply this idea, and it is also not appropriate for Japan.
- Concerning a conferment of nationality by application, the 1961 Convention states that people between the ages of 18 and 21 can apply for nationality. However, an age limit is not necessary, and this limitation should not be reflected in Japanese laws. Thus, Japan cannot accede to the 1961 Convention.

Regarding the second point, Mr. Hashimoto pointed out that since the requirement in Japanese law is less restrictive than the 1961 Convention requirement, there is no contradiction between the Japanese law and the 1961 Convention.[42]

---

40 Minutes of the Diet are retrieved from http://kokkai.ndl.go.jp/. *1979 (Shouwa 54) Nen 6 Gatsu 5 Nichi, Dai 87 Kai Kokkai Sangiin Gaimuiinkai Kaigiroku, Dai 15 Gou* [Minutes of the Committee on Foreign Affairs, House of Councillors, the 87th Session of the Diet. Vol. 15. 5 June, 1979], pp. 17-20.

41 *1981 (Shouwa 56) Nen 4 Gatsu 17 Nichi, Dai 94 Kai Kokkai Shuugiin Gaimuiinkai Kaigiroku, Dai 10 Gou* [Minutes of the Committee on Foreign Affairs, House of Representatives, the 94th Session of the Diet. Vol. 10. 17 April, 1981], pp. 13-14.

42 *1984 (Shouwa 59) Nen 5 Gatsu 10 Nichi, Dai 101 Kai Kokkai Sangiin Houmuiinkai Kaigiroku, Dai 6 Gou* [Minutes of the Committee on Judicial Affairs, House of Councillors, the 101st Session of the Diet. Vol. 6. 10 May, 1984], pp. 22-23.

Despite this discussion and the encouragement of the UN General Assembly to accede,[43] Japan has not yet acceded to the Statelessness Conventions. On the other hand, Japan acceded to the Refugee Convention and the Refugee Protocol at the beginning of the 1980s.[44] It was motivated by political and humanitarian necessity with the influx of Indo-Chinese refugees. Statelessness Conventions were discussed in the Diet around the same time. While Japan has acceded to the Refugee Convention and the Refugee Protocol, Statelessness Conventions were only discussed sporadically. Japan's level of engagement is completely different between the two issues, and it reflects a gap of concern that international society had then.

Accession to the Refugee Convention and the Refugee Protocol became a trigger to amend the then-existing Japanese laws and regulations concerning immigration control, as well as to establish a refugee status determination system. Furthermore, the nationality clause was eliminated from laws and regulations concerning social security, such as the National Pension Act and the Child Rearing Allowance Act. As a result, the legal basis for aliens, including refugees, to receive the same status as Japanese nationals in primary education, national pension, child rearing allowance and health insurance was arranged.[45] As already mentioned, the Refugee Convention and the 1954 Convention were part of one international instrument during the drafting process, and they share many provisions. Thus, accession to the Refugee Convention is not negligible when considering the convergence and divergence between the 1954 Convention and Japanese laws.

1.5. Statistics

1.5.1. Number of Stateless Persons

Official statistics of stateless persons staying Japan are found in the "Statistics on Foreign National Residents," released by the Ministry of Justice. According to the statistics, 599 "Foreign National Residents" are registered as stateless in Japan as of June 2014.[46] This number is based on a database prepared from the records of nationality and region on residence cards and special permanent resident certificates pursuant to Article 7 of the Special Act on Immigration Control. Furthermore,

43 Abe, *supra* note 7, p. 31.

44 Accession was approved in an ordinary session of the Diet in June 1981, and Japan acceded to the Refugee Convention in October 1981 and to the Refugee Protocol in January 1982.

45 Akira Takafuji, *Gaikokujinto Shakaihoshouhou: Seizonkenno Kokusaitekihoshouhourino Kouchikunimukete* [*Aliens and Social Security Law: Towards Building a Legal Principle of the International Protection of the Right to Life*]. (Akashi Shoten, 2001), p. 106.

46 Ministry of Justice, "*Dai 1 Hyou Kokuseki, Chiikibetsu Zairyuusikaku (Zairyuumokuteki) Betsu Zairyuugaikokujin* [Table 1: Foreign National Residents by Nationality, Region and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001127507.

according to the statistics, there are 635 stateless persons in Japan as "All Foreign National Residents" as of June 2014.[47] Since the statistics on all foreign national residents include not only residence card holders who have resident status for a medium to long term and special permanent residents, but also aliens who reside in Japan for a short term, its number is larger than the one in the statistics for foreign national residents.

However, there are concerns with measuring the number of stateless persons dependent on the statistics mentioned above. Regarding the statistics on foreign national residents, ineffective nationality can be recorded on a residence card or a special permanent resident certificate and be a basis for the data on foreign national residents.[48] In other words, the number of stateless persons in the statistics on foreign national residents does not seem to reflect the real number of stateless persons in Japan. The gap between the number in the statistics on foreign national residents and the number of recipients of re-entry permits to Japan furthers the concern. Re-entry permits are granted for aliens residing in Japan and not possessing any passport (Article 26(2) of the ICRRA) when they leave Japan and attempt to re-enter before the visa permission expires (Article 26(1) of the ICRRA).[49] Thus, stateless persons who cannot receive a passport can be recorded as having a nationality in their residence cards or special permanent resident certificates. In 2013, re-entry permits were issued 1,715 times.[50] This implies that the number of stateless persons may be larger than the number of the statistics on foreign national residents. Of course, this is a possibility. Even if a person has a nationality, re-entry permits should be granted if that person's state of nationality is not likely to grant a passport (for example, refugees and persons who are permitted to stay based on humanitarian considerations). Thus, not all people who have received a re-entry permit are stateless.

Furthermore, there are stateless persons who cannot be counted in either of the following groups, statistics on foreign national residents (foreign national residents

---

47 Ministry of Justice, "*Dai 1 Hyouno 2 Kokuseki, Chiikibetsu Zairyuusikaku (Zairyuumokuteki) Betsu Souzairyuugaikokujin* [Table 1.2: All Foreign National Residents by Nationality, Region and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001127507.

48 Ayane Odagawa, "*Kokuseki, Mukokusekininteino Genjyoto Kadai: Kaiseinyuukanhouwo Fumaete* [The Current Situation and Challenges of Determinations on Nationality and Statelessness]". *Imin Seisaku Kenkyuu* [*Migration Policy Review*], No. 5 (May 2013), p. 30.

49 According to the *Guidelines on Immigration and Residence Inspection*, disclosed by a request for information disclosure, short-term residents with "Temporary Visitor" status and applicants for the refugee status determination residing in Japan with "Disignated Activities" status are not allowed to re-enter. Therefore, even if the criteria to apply for a re-entry permit are met, it is not necessarily granted. *Nyukoku, Zairyuu Shinsa Youryou* [*Guidelines on Immigration and Residence Inspection*], pp. 86-87 (Request for Disclosure of Administrative Documents. Date for Disclosure Decision: 29 October, 2012. *Houmushou Kan Jyou Dai 5607 Gou* [No. 5607, *Kan Jyou*, Ministry of Justice].).

50 *Fukushima Mizuho Sangiin Giin* "*Mukokusekimondainikansuru Shitsumon Shuisho*" *Nitaisuru, 2014 (Heisei 26) Nen 6 Gatsu 20 Nichiduke Seifu Toubensho (Naikaku San Shitsu 186 Dai 127 Gou)* [The Governmental Reply on 20 June, 2014 to the "Memorandum on Questions in the Diet concerning Statelessness Issues" Submitted by Ms. Mizuho Fukushima, Member of the House of Councillors (No. 127, Questions in the House of Councillors, Cabinet)], at http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/186/touh/t186127.htm.

and all foreign national residents) or the number of re-entry permits issued. That is stateless persons who do not have a resident status. Resident cards, operated under a new residency management system since July 2012, are issued for aliens who have resident status for middle to long term, and special permanent resident certificates are granted to special permanent residents. In other words, unlike statistics on registered foreign nationals, which was based on the database granting alien registration certificates,[51] current statistics do not include aliens without a resident status. Statistics on all foreign national residents also counts only aliens who have resident status.[52] Also, re-entry permits are not issued for persons without a resident status.

This at last raises a fundamental question; to what extent can the official statistics discussed above measure the number of stateless persons under the definition of the 1954 Convention? As will be discussed in the following chapter, Japanese laws and regulations do not provide a definition of stateless persons, and there are limited judicial and administrative practices that meet the interpretation of the definition in international law. In such a circumstance, who are "stateless persons" in the official statistics? How much does the concept of "stateless persons" in the statistics reflect components of the definition of stateless persons in the 1954 Convention? Without a definition in Japanese law or an effort to measure the number of stateless persons, it is appropriate to conclude that even an approximate number of stateless persons is unknown.

1.5.2. Number of Stateless Persons who were Permitted to Naturalise

Table 1 illustrates an overall number of people who were permitted to naturalise and stateless persons who were permitted to naturalise from 2009 to 2013.

Table 1: Number of people/stateless persons who were permitted to naturalise

Year	2009	2010	2011	2012	2013	Total
Number of people who were permitted	14,785	13,072	10,359	10,622	8,646	57,484

51 Alien registration certificates, issued until July 2012, have been issued regardless of possession of a status of residence. The statistics on registered foreign nationals included stateless persons who do not have a status of residence. Ayane Odagawa and Yue Fu, "*Nihonno Mukokusekimondaiwomeguru Genjyouto Kadai* [Current Situation and Issues of Statelessness in Japan]". *Houritsu Jihou* [*Law Times*], Vol. 86, No. 11 (October, 2014), p. 48. In the last statistics on registered foreign nationals as of 2011, 1,100 stateless persons were regietered. Statistics Bureau, Ministry of Internal Affairs and Communications, "*Kokuseki (Shusshinchi) Betsu Zairyushikaku (Zairyuumokuteki) Betsu Gaikokujin Tourokusha* [Registered Foreign Nationals by Nationality (Place of Origin) and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001111183.

52 For details of the statistics, see the following. Ministry of Justice, "*Zairyuu Gaikokujin Toukei* [Statistics on Foreign National Residents]," at http://www.moj.go.jp/housei/toukei/housei05_00021.html.

to naturalise*						
Number of stateless persons who were permitted to naturalise**	8	4	5	10	5	32

* Retrieved from statistics released by Civil Affairs Bureau, Ministry of Justice.[53]
** Interview with the official of Civil Affairs Bureau, Ministry of Justice. These statistics are not released publicly.

"Stateless persons" in the statistics above used by the Civil Affairs Bureau, Ministry of Justice, include persons whose nationality is unknown in addition to persons who do not have any nationality. According to the bureau, the nationality of applicants to the naturalisation permit is assessed by considering the passport, birth certificate, identity papers, nationality of their parents and other documents that assure the nationality of applicants.[54] The relationship between the concept of "stateless persons" in these statistics and the definition of stateless persons under international law is unclear.

1.6. Conclusion

Since the period of drafting the Refugee Convention and the Protocol on Stateless Persons, refugees have been recognised as more *significant* than stateless persons. As noted earlier, the Refugee Convention and the Protocol on Stateless Persons were not adopted simultaneously because of a "lack of time." This illustrates the political superiority of refugees over stateless persons. The *ad hoc* committee states that "[i]n the view of the urgency of the refugee problem and the responsibility of the United Nations in this field, the Committee decided to address itself first to the problem of refugees, […] and to leave to later stages of its deliverations the problems of stateless persons who are not refugees."[55] Carol A. Batchelor remarks that "[r]efugees were the priority, while the status of the stateless [persons] was seen as a separate issue which did not attract the same urgency" since the period of drafting.[56] Japan has acceded to the Refugee Convention while it has not paid attention to the Statelessness Conventions. This concurs with the international trend of the superiority of refugees over stateless persons.

53 Civil Affairs Bureau, Ministry of Justice, "*Kika Kyoka Shinseishasuutouno Hensen* [Number of Applicants to a Permission of Naturalisation, etc.]," at http://www.moj.go.jp/MINJI/toukei_t_minj03.html.
54 Interview with the official of Civil Affairs Bureau, Ministry of Justice (8 January, 2015).
55 UN Doc. E/1618 and Corr. 1 (17 February 1950), para. 120.
56 Batchelor, *supra* note 20, p. 243.

While Japan has not acceded to the Statelessness Conventions, this does not mean that there is no convergence between the provisions of the Conventions and Japanese laws. When Japan acceded to the Refugee Convention, it amended Japanese laws that were not compatible with the Convention. Since the structure and contents of the Refugee Convention and the 1954 Convention are similar, Japanese laws possibly parallel the 1954 Convention. However, not only the contents but also subjects of protection of the Refugee Convention and the 1954 Convention are different. Therefore, accession to the former does not mean an automatic correspondence to the latter.

In terms of reduction, while Japan has not ratified the 1930 Convention, it has signed the convention. After World War II, Japanese laws were amended to make them compatible with CEDAW after its ratification. As a part of those amendments, the Nationality Act changed its principle from *jus sanguinis* through the paternal line to both the paternal and maternal lines. Of course, a change to both the paternal and the maternal lines does not guarantee consistency with the 1961 Convention.

How many stateless persons reside in Japan? Without a definition in Japanese law or an attempt to grasp the number of stateless persons, even a round number is unknown.

Chapters Three to Five explore the compatibility of Japanese laws with the Statelessness Conventions. Their main purpose is to examine to what extent Japanese laws cover the Statelessness Conventions even while Japan has not acceded to them.

Chapter 2: Definition and Determination

2.1. Introduction

For whom was the 1954 Convention prepared? Legally, of course, it is for stateless persons. A statelessness determination is an official act to determine whether applicants to the determination actually fit the definition of stateless persons. The statelessness determination is a significant act since an applicant's status as a stateless person is confirmed by the determination, and rights are protected based on the status.

This chapter first gives an overview of the definition of stateless persons in the 1954 Convention, then it clarifies points at issue with the system and procedures for the statelessness determination. Based on these, the report considers convergence and divergence between the 1954 Convention and Japanese laws.

2.2. Definition of Stateless Persons

A "stateless person" under the 1954 Convention refers to "a person who is not considered as a national by any State under the operation of its law" (Article 1(1)), called a *de jure* stateless person in contrast to another type of stateless person that will be discussed later. This definition first appeared in the first report submitted by Hudson as a Special Rapporteur on "Nationality, including Statelessness" appointed by the International Law Commission,[57] and later proposed by the UN Secretariat during the drafting of the Convention. The International Law Commission observed that "[t]his definition can no doubt be considered as having acquired a customary nature" today.[58]

Although the definition of stateless persons in the 1954 Convention is recognised as customary law, state practice interpreting it is limited. Given this circumstance, the *UNHCR Handbook* published in 2014[59] is remarkable. It attempts to interpret the definition of stateless persons and to explain issues and elements of concern holistically. According to the *UNHCR Handbook*, the general principle of the Vienna Convention on the Law of Treaties (ratified in 1969, entered into force in 1980) applys

57 UN Doc. A/CN.4/50, Report on Nationality, Including Statelessness, 1952, p. 17.

58 International Law Commission, *Draft Article on Diplomatic Protection with commentaries* (2006), at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.

59 *UNHCR Handbook* was published in 2014 based on the UNHCR "Guidelines on Statelessness No. 1" (definition of a stateless person), "Guidelines on Statelessness No. 2" (determination procedure for stateless persons), and "Guidelines on Statelessness No.3" (status of stateless persons residing in the state). Mai Kaneko, "*Mukokusekini Kansuru UNHCR Shin Handobukku, Gaidoraintouno Kaisetsu* [Commentary for the New UNHCR Handbook and Guidelines on Statelessness]". *Nanmin Kenkyuu Jyanaru* [*Refugee Studies Journal*], No. 4 (December, 2014), p. 46. This was published for the purpose of being a guide for the determination and protection of stateless persons. UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons* (UNHCR, 2014), p. 1, at http://www.unhcr.org/53b698ab9.html.

to an interpretation of the definition of stateless persons. Thus, the definition needs to be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[60] Accordingly, the *UNHCR Handbook* infers that the object and purpose of the 1954 Convention are "to ensure that stateless persons enjoy the widest possible exercise of their human rights" from its preamble and the *travaux préparatoires*. Furthermore, it points out that the statelessness determination is declaratory in nature.[61]

The *UNHCR Handbook* resolves the definition of stateless persons into two parts; "by any State" and "not considered as a national … under the operation of its law", and it analyses each of them. Clarifying the former is relevant to mitigating the difficulty of proving that a person does not have any nationality. It is unreasonable to demand that applicants prove statelessness vis-a-vis all states in the world, and it is also burdensome to the official who determines the status of stateless persons. Thus, an analysis of "by any State" helps to limit the scope of "States" to which applicants have a link. *UNHCR Handbook* discusses the second component, "not considered as a national … under the operation of its law", in detail. The discussion includes the practice and meaning of "law," situations of "not considered as a national," and details of evaluating evidence.[62] For instance, concerning the understanding of "not considered as a national," the *UNHCR Handbook* points out the following.[63]

> Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice and any review/appeal decisions that may have had an impact on the individual's status. This is a mixed question of fact and law.
>
> Applying this approach of examining an individual's position in practice may lead to a different conclusion than one derived from a purely formalistic analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to "law" in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.

The explanation above clearly shows the significance of the provision "under the operation of its law." According to this understanding, both provisions of the law and their operation need to be considered in the determination procedure (which

60 Article 31(1) of the Vienna Convention on the Law of Treaties.
61 UNHCR, *supra* note 59, pp. 10-11.
62 *Ibid*., pp. 12-23.
63 *Ibid*., pp. 12-13.

provisions include not only laws such as Nationality Act, but also cabinet ordinances and rules). How relevant authorities recognise the nationality of applicants is significant too. The validity and value of the *UNHCR Handbook's* contents will be tested by the future practice of contracting states.

Article 1(2) of the 1954 Convention is an exclusion clause. The 1954 Convention is not applied to persons who are at present receiving protection or assistance from organs or agencies of the UN other than UNHCR; persons who have committed a crime against peace, a war crime or a crime against humanity; persons who have committed a serious crime (excluding a political crime) outside the country of their residence prior to their admission to that country; and persons who have acted contrary to the purposes and principles of the UN, etc.

Elements other than those of statelessness determination should not be taken into account for the determination of status. For example, conflict of nationality laws, transfer of territory and discrimination have all been observed as causes of persons becoming stateless. While this is an analysis of the phenomenon, the 1954 Convention does not legally limit the causes or places whereby persons become stateless. Therefore, the reasons and places by which persons become stateless are not relevant to the elements of the definition. In addition, the personal characteristics of an applicant are not elements of the statelessness determination. Even if a person has a criminal record or some personality problem, these are not relevant to the definition of stateless persons unless they come under an exclusion clause.

In contrast with the definition of stateless persons under the 1954 Convention, persons who have nationality legally but cannot receive effective protection from the state of nationality are sometimes called *de facto* stateless persons. *De facto* stateless persons were mentioned in *A Study of Statelessness* completed by the UN in 1948, but it was excluded from the Convention. There are several reasons. First, drafters of the Convention wrongly assumed that *de facto* stateless persons would be protected by the Refugee Convention. Thus, an insertion of *de facto* statelessness into the 1954 Convention was considered redundant for them. Furthermore, they wanted a clear definition. In addition, drafters of the Convention feared a situation in which introducing *de facto* statelessness into the Convention would stimulate persons who recognised themselves as stateless persons, which would result in an acquisition of several nationalities.[64] Recently, there have been critical views on the classification of *de jure* and *de facto* statelessness. For example, persons who cannot prove nationality tend to be recognised as *de facto* stateless persons. However, if their stateless status is unknown even after due effort is put into proving it, it may be appropriate to regard them as stateless persons under the 1954 Convention, in other words, *de jure* stateless persons. If these people are labelled as *de facto* stateless persons, not *de jure* stateless persons, their rights under the 1954 Convention may not be protected. This situation

64 David Weissbrodt, *The Human Rights of Non-citizens*, (Oxford University Press, 2008), pp. 85-86. Batchelor, *supra* note 20, p. 172.

needs to be avoided. Effort should be devoted to a clarification and a realisation of the definition of stateless persons under the 1954 Convention, not that of *de facto* stateless persons. The quest for the latter may stimulate an intellectual curiosity, but it is not very significant concerning determinations in practice.

2.3. Determination of the Status of Stateless Persons

2.3.1. Purpose

The 1954 Convention requires contracting states to protect various rights. Also, stateless persons are to be identified through a determination system of contracting states. The determination system is significant since it specifies who to protect. The main purpose of the determination system for statelessness is to identify the subject of protection under the 1954 Convention. A set standard is necessary to protect stateless persons properly. In addition, the legal identification of stateless persons by the determination also contributes to a prevention and reduction of statelessness, as well as to measuring the number of stateless persons. Nevertheless, contracting states do not share views on implementation systems and methods. One reason is that the 1954 Convention does not provide any determination system or procedure. As a result, determination system or procedure were entrusted to the laws and discretion of each contracting state. As is the case with the Refugee Convention, an accumulation of practice by contracting states may form a unified standard for determinations and operationalisation that direct discretion in the future. However, such a standard has not yet been found, or is very limited. On the other hand, research on determinations is progressing as international interest in statelessness has increased recently.

Some contracting states of the 1954 Convention have organised a determination system for statelessness based on laws, including Spain, Hungary, the Philippines, and others. There are some similarities between the statelessness determination and the refugee status determination. As already mentioned, the Refugee Convention and the 1954 Convention were historically united. Thus, it may be natural for the latter to follow the former. In particular, for stateless persons entering the state as immigrants, experience with the refugee status determination should be helpful. However, a different subject of protection would require the preparation of a different system. While refugees must be outside their state of nationality, statelessness may take place *in situ*. In other words, statelessness can occur within a state without immigration. Thus, it may be appropriate to prepare a determination procedure within the agency concerning nationality.

2.3.2. Agents

Who should determine stateless persons? Each state equips various agencies to determine statelessness. One method is to integrate a determination system for statelessness into the refugee status determination system. This requires a modification of the structure of administration and quasi-judicial agencies such as tribunals. Another option is to establish an agency to determine statelessness administratively. However, it does not have to be established in the agency that is mandated to address immigration control. It may be appropriate to establish it in the agency that deals with a nationality concerns in order to deal with *in situ* stateless persons. It is also appropriate when the analysis and judgment capabilities are considered to be significant.

In either case, the deciding agents need to be the appropriate ones to achieve the purpose of the 1954 Convention, the protection of stateless persons. In order to do so, other elements aside from the strict determination need to be blocked in order to create an environment of fair determinations. In addition, officers for determinations need to be legal specialists and have a high analytical ability.

2.3.3. Procedures

2.3.3.1. Access to Determination Procedures

How should the statelessness determination progress? This procedural matter can be separated into four pillars based on the trend and view of states whose determination system and procedures are already established, namely, "access to determination procedures", "proof", "evidence" and "due process."

The first pillar is access to determination procedures.[65] Even if an excellent protection system for stateless persons is organised, its value may be seriously impaired if stateless persons do not have any access to the procedures. If the application form is prepared only in the language of the contracting state and the procedure only accepts that language, it may lead to a blanket denial of protection for stateless persons. Likewise, when the counters accepting application forms are limited to particular agencies in big cities, even the start of an application procedure is difficult.

Other practices to limit access include limitations on the period of application and on the applicants. The Spanish determination system limits the period of application,[66] and such a rule makes it difficult for applicants to access the protection system.[67] Furthermore, the determination system for stateless persons in Hungary permits access to the procedure only for persons with resident status. Thus, at least by

65 UNHCR, *supra* note 59, p. 28.

66 Basically, the period of application is within a month from an entrance to Spain. Gábor Gyulai "The Determination of Statelessness," in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014), p. 130.

67 *Ibid*.

the provisions, the application of persons without resident status is not accepted. Such implementation of the Convention is possibly incompatible with Article 38(1) of the 1954 Convention which prohibits a reservation of Article 1.[68]

2.3.3.2. Proof

(1) Burden of Proof

Who has a responsibility to prove the statelessness of an applicant? According to the *UNHCR Handbook*, which advocates a shared burden of proof,[69] the applicant is responsible to cooperate with the determination agency. When a stateless person attempts to prove his or her statelessness, he or she faces various obstacles. Stateless persons cannot be protected if there is not enough care taken to the circumstances they live in. For example, some applicants may not be able to access information on national law such as nationality law. Even if they have access, an analysis of the gap between provisions and their operation requires specialised knowledge.

Furthermore, there are various responses of government agencies when the determination agency enquires into the nationality of an applicant. Some governments respond only when nationality is enquired by applicants themselves, coming from the perspective of a protection of personal information. On the other hand, some governments do not respond to requests for information by individuals, but respond to official enquiries by a foreign government. In addition, some governments take a position on a case by case basis.[70] In extreme cases, different persons at a counter may deal with applications differently. The burden of proof in the statelessness determination must be set considering the various circumstances concerning proof.

Some contracting states have a light burden of proof. In France and Spain, the agency that determines stateless persons is responsible for proving an applicant's statelessness. On the other hand, applicants have a responsibility only to cooperate during the procedure. In the Philippines, the burden of proof is shared by an applicant and Protection Officer (the agent making the determination), but the applicant has the responsibility to provide an accurate, full and credible account or evidence, etc.[71] In Hungary, an applicant has the primary responsibility to prove his or her statelessness. Nevertheless, the burden of proof of the applicant is practically coordinated by the involvement of others in the determination of the facts. The determination agency collects nationality laws and information from other states. The Office of the UNHCR also cooperates in the collection of information. The purpose of this system is to

68 Arakaki, *supra* note 3, p. 12.
69 UNHCR, *supra* note 59, p. 34.
70 Gyulai, *supra* note 66, p. 138.
71 Ayane Odagawa, "*Firipinno Nanmin, Mukokuseki Nintei Tetsuduki* [Refugees and the Stateless Status Determination Procedure in the Philippines]," *Nanmin Kenkyu Jyanaru* [*Refugee Studies Journal*], No. 4 (December, 2014), p. 39.

lighten the applicant's burden of proof.[72]

(2) Standard of Proof

As refugee law has similarly developed the standard of proof, the standard of proof in the statelessness determination is different from that of the procedure in criminal cases.[73] The standard of proof must consider the possibility of rejecting an application incorrectly. The application of a high standard of proof would thus undermine the object and purpose of the Convention.

The standard of proof in the determination procedure in the Philippines is a "reasonable degree."[74] In Hungary, the term "substantiate" is also used in the wording establishing the standard of proof.[75] It borrows this terminology from refugee law, and it demonstrates a lower standard of proof compared to "prove."[76]

(3) Examined States in Proving Statelessness

Determining which states to examine in proving statelessness is a principal agenda concerning proof. Proof of an absence of nationality is a difficult task, and it is not reasonable to require proof of statelessness vis-a-vis all states in the world. Therefore, the number of states needed to prove statelessness is limited in contracting states' practice.

In the determination procedure of Hungary, it is enough for the applicant to prove or substantiate statelessness with regards to relevant states. Relevant states here mean the state of birth, states of residence or settlement in the past and the state of nationality of family and parents.[77] The Philippines does not explicitly limit which states are needed to prove statelessness, but Filipino law provides that it "involves the examination of the nationality laws of the country with which the Applicant has a relevant link (by birth, descent, marriage or habitual residence)."[78] This implies that the states needed to prove statelessness are limited.

2.3.3.3. Evidence

The following are types of evidence for the statelessness determination.[79]

- *Responses from foreign authorities to enquiries* — This is one of the most

72 Arakaki, *supra* note 3, p. 11.
73 UNHCR, *supra* note 59, pp. 34-35.
74 Odagawa, *supra* note 71, p. 39.
75 Arakaki, *supra* note 3, p. 11.
76 Gyulai, *supra* note 66, pp. 138-139.
77 Arakaki, *supra* note 3, p. 11.
78 Section 9 of the Department Circular No. 058, Department of Justice.
79 For instance, see the following. Gyulai, *supra* note 66, pp. 139-140. UNHCR, *supra* note 59, p. 33.

common types of evidence to be used in the statelessness determination.

- *Information on relevant states* — Credible, accurate and the latest information on relevant states is essential. Within this category, evidence of not only the law of relevant states but also its operation is significant. Information needs to be collected from not only governments and NGOs, but various other sources as well. The testimony of experts may be utilised.
- *Information provided by the Office of the UNHCR* — In case a government does not respond to an enquiry, the Office of the UNHCR may help.
- *Documents* — Applicants may submit a certification of renunciation of nationality and/or travel documents (which sometimes notify that the applicant is stateless). Certificates of naturalisation, marriage certificates and military service certificates are also pieces of evidence to consider statelessness. However, an examination of a passport acquired for applicants' convenience, an unlawfully acquired travel document, and the relationship with the state must all be carefully evaluated.
- *Testimony of the applicant verbally and in written form* — The consistency of the contents of an applicant's application form and his or her testimony is a significant component to assessing credibility.

2.3.3.4. Due Process

The following are some points concerning due proesss and not a comprehensive list.[80]

- *The right to an interview* — Applicants have a right to make assertions through an interview. The applicant can provide necessary information to the determination agency. He or she can explain any assertion to clarify ambiguities.
- *Providing legal aid* — Legal aid is important when an economically vulnerable applicant attempts to prove his or her statelessness. Assistance with interpretation and translation is vital.
- *Involvement of the Office of the UNHCR* — Access to information on an application and involvement in the interview by the Office of the UNHCR secures a fair procedure. Information and expert knowledge which the Office of the UNHCR shares are beneficial to a determination agency.
- *Opportunity for judicial review* — A method to appeal a denial of an administrative procedure should be prepared.
- *Attention to the status of refugees* — Where there is an opportunity for an applicant to apply for refugee status, it must be notified to him or her. When both applications for a refugee status determination and a statelessness determination proceed in parallel, each claim is assessed and a decision is made separately. For persons who are determined under both statuses, it is important to be aware that

80 For instance, see the following. UNHCR, *supra* note 59, pp. 28-30.

even after refugee status ceases, statelessness persists. In addition, the identity of the applicant must not be disclosed to the government of the state of origin until there is a denial of the refugee status.

2.4. Issues

2.4.1. Japanese Law and the Judiciary

Within Japanese laws and regulations, there are uses of the phrase "without nationality,"[81] and there is a provision that mentions "stateless persons."[82] However, there is no definition of stateless persons. Given the absence of a definition of stateless persons in the laws and regulations and non-accession to the Statelessness Conventions, there are few cases that consider the definition of stateless persons in the judiciary. One of them is *Judgment of the Deportation Order Issuance Revocation Lawsuit* in 2010.[83] In that case, the plaintiff insisted that he was a stateless person. Then, he claimed that the issuance of a deportation order was illegal because it decided to deport him to the state of the nationality which he was considered to possess. However, this judgment does not provide a sufficient indication of understanding the concept of stateless persons.

Recently, there have been considerable judgments demonstrating how the Japanese judiciary understands the concept of stateless persons. They are judgments concerning the revocation and the declaration of nullity of denials of refugee status in 2010[84] and 2013,[85] respectively. Both judgments determined that Myanmar nationality is not granted to most Rohingya people as a general statement in the process to consider the refugee status of the plaintiffs. Furthermore, the former

81 Article 26(2) of the ICRRA, Article 2(iii) of the Nationality Act, and Article 38(2) of the Act on General Rules for Application of Laws. See Odagawa and Fu, *supra* note 51, p. 47.

82 Article 9 of the Act on Special Provisions of the Copyright Act, Required as Consequence of the Enforcement of the Universal Copyright Convention. See section 3.2.1(2).

83 Tokyo District Court, Judgment, 19 February 2010 *(Heisei 22 Nen). H.T.* No. 1356, p. 146. The plaintiff in this case is a child of Vietnamese refugees. He was born and has lived in Thailand. According to the plaintiff, Thai nationality was not granted to children of Vietnamese refugees in Thailand. Although Vietnamese refugees were able to acquire Thai nationality later, it was not possible for him since he had left Thailand using a forged passport. Also, the plaintiff claimed that he does not possess Vientamese nationality because he does not have an official document that is issued by the Vietnamese government. Plaintiff defines nationality as "a social fact of bond, namely a legal bond based on the authentic link of the existence, interests and sentiment that is linked to a reciprocity of rights and duties," then claimed that he is stateless because he does not have such a relationship with either Vietnam or Thailand. Defendant (Japanese government) stated that the plaintiff himself testified that his nationality was Vientamese during the procedure of deportation, and the Vietnamese nationality was written in the plaintiff's Thai house book issued by the Thai government. Thus, defendant claimed that it was legal to determine his nationality as Vietnamese. The court concluded that Vietnamese nationality was not evident from the evidence such as Thai house book.

84 Tokyo District Court, Judgment, 29 October 2010 (*Heisei 19 Nen (Gyou-u)* No. 472, etc.). This judgment was kindly shared by Ms. Ayane Odagawa, attoney-at-law.

85 Tokyo District Court, Judgment, 19 November 2013 *(Heisei 25 Nen)*. Westlaw Reference Number: 2013WLJPCA11198001.

judgment determined that two among the several plaintiffs did not possess Myanmar nationality, and that they are stateless refugees. Both judgments focused on elements such as laws and regulations, perception of the government, operation, direct effect and discriminatory treatment within the consideration of the general situation of stateless Rohingya in Myanmar. The following is a summary of the points of discussion.

Laws and Regulations

- The 1982 Nationality Act established by the Myanmar parliament classifies the status of citizens into 1) “full citizenship”, 2) “associate citizenship” and 3) “naturalized citizenship”, and Rohingya are not included as an ethnic group that composes any of these citizenships.
- Thus, Myanmar nationality is not granted to most Rohingya people.

Perception of the Government

- Since the Myanmar government takes the position that Rohingya people are aliens who illegally entered into Arakan state relatively recently, they are not recognised as citizens.

Operation

- The Myanmar government has the competence to decide the rights of associate citizens and naturalized citizens. The government also has the competence to deprive the status of associate citizenship and naturalized citizenship for reasons of disloyalty to the state or unethical acts.
- Technically, Rohingya people can be associate citizens or naturalized citizens, but there is no chance for them to acquire the nationality even if they apply for it in reality.

Direct Effect

- While an identity document that classified persons by the three citizenship statuses was introduced in 1989, most Rohingya people are not recognised as citizens of Myanmar. Therefore, no identity document was issued.

Discriminatory Treatment

Rohingya people are discriminated by the authorities of Myanmar. The following are examples.

- Rohingya people are subject to expulsion.
- Their movement is heavily limited.
- Their land is confiscated in order to build model villages.
- They are impressed into forced labour discriminatorily.
- They are forced to give up property.
- They are treated discriminatorily and face extremely broad limitations to living in society, such as vis-a-vis marriage, religious activity, the assumption of official duties and in cases of education and medical treatment, etc.

Both judgments consider not only the provisions of the nationality law, but also the perception of the government and the operation of its law. Even its effects and results are considered to some extent to determine the general facts concerning statelessness. Therefore, the fact is not determined only by the form of law. This approach taken by these judgments is similar to that of the *UNHCR Handbook*.[86]

On the other hand, it cannot be claimed that these judgments demonstrate that the Japanese judiciary is approaching the understanding of the Statelessness Conventions, to which Japan has not acceded. First, at the time of the writing of this report, the author is not aware of any other precedents that contribute to a clarification of the concept of statelessness. This is a restriction in a quantitative sense. Secondly, the relationship with the definition of stateless persons in the 1954 Convention that is recognised as a part of customary law is not clear in these judgments. At least, the court does not state that the term "stateless persons", as used in its judgments, is the same as used in international law. Furthermore, while statelessness and the situation of Rohingya people are generally explained, the court neither explains the general elements of stateless persons, nor analyses the structure of the elements of the definition. In addition, in both cases the plaintiffs requested the court to either confirm their refugee status or revoke the denial of it. Thus, the focus of the judgments was not an identification of statelessness.[87]

2.4.2. Japanese Administration

Japanese administrative practice does not appear to approach the elements of the 1954 Convention's definition from the available documents. For example, a person "without nationality" in Article 2(iii) of the Nationality Act includes "stateless persons." Furthermore, according to an explanation by an official of the Ministry of

86 Although the court stated that many Rohingya people are generally stateless, it did not determine that the defeated plaintiffs of the judgment in 2010 (see footnote 87) nor the plaintiff of the judgment in 2013 were stateless.

87 Among twenty plaintiffs, two of them were granted refugee status in the judgment in 2010, and one additional plaintiff's refugee status was granted in the judgment of the high court. The refugee status of the plaintiff of the judgment in 2013 was denied. See section 5.2.2 (2).

Justice, a "stateless person" is "the person who does not have nationality of any state," and "whether he or she possesses nationality is determined by the nationality law of each state." Thus, "conceptually, whether a person is stateless or not needs to be judged by the nationality law of each state."[88] This explanation does not make clear to what extent there are convergences with the issues of the definition of the 1954 Convention, such as the restriction of "State" or an interpretation of "under the operation of its law."

As in cases of applying Article 2(iii) of the Nationality Act, there are circumstances where statelessness needs to be assessed in an administrative procedure. However, it is not done within a unified process like the refugee status determination. According to an article written by Ayane Odagawa, an attorney-at-law, and Yue Fu, a legal scholar, each agency of the government assesses statelessness depending on the purpose of the laws and regulations being applied, such as the ICRRA, the Nationality Act and private international law.[89] In other words, there is no unified method or criteria to judge the status of stateless persons across agencies. Some claim that the development of unified criteria and a consistent "determination" of stateless persons are essential to solve the problem of statelessness. On this point, the Japanese government has explained that unified criteria are not necessary because the nature of the purposes is different in an immigration control of aliens and an acquisition of Japanese nationality.[90]

The above argument seems to be related to *how* stateless persons are determined, that is, a "procedural" matter. However, the real issue is not the "procedure" but its precondition. In other words, the purpose of "why stateless persons are being determined" is at the core of the argument. As has been mentioned already, the purpose of a determination under the 1954 Convention is the protection of stateless persons. For this purpose, stateless persons need to be identified and protected based on their legal status, and their rights need to be secured. In the words of the 1954 Convention, its purpose and object are "to assure stateless persons the widest possible exercise of these fundamental rights and freedoms."[91] However in Japan, there is no legal structure that has been constructed to achieve this purpose. Without a purpose to protect stateless persons, there cannot be a statelessness determination. Furthermore, there is no room to argue for a procedure to determine stateless persons such as unified criteria.

In the spheres of the Japanese ICRRA, the Nationality Act and private international law, statelessness is assessed in the context of the relevant laws and regulations of each for their own respective purposes. These acts are fundamentally

88 Shozo Sawada, *Mukokusekishawo Chichitosuru Chakushutsushitouno Shusshoutodokewo Jyurisurubaaino Toriatsukaiwo Megutte* [The Management of a Case to Accept a Birth Report of Children Born in Wedlock whose Father is a Stateless Person]. *Koseki*, No. 454 (1982), pp. 20-21.

89 Odagawa and Fu, *supra* note 51, pp. 47-52.

90 *Supra* note 50.

91 Preamble of the 1954 Convention.

different in terms of their purposes. Since the purpose of protecting stateless persons is absent, the gap with the 1954 Convention may not be filled even if the Japanese government organised a unified method and criteria.

2.5. Conclusion

In contrast to the refugee status determination that has developed through practice and accumulated research, there is limited experience in the statelessness determination. On the other hand, discussions concerning the issue have been revitalising recently, and the quest for the appropriate subject and procedure to determine statelessness is ongoing.

Japan does not have a system to protect stateless persons on the grounds that they are stateless persons, and there is no definition of stateless persons within Japanese law. Thus, Japan does not have a “determination” mechanism for stateless persons that identifies them and confirms their legal status. This demonstrates a large gap with the 1954 Convention. On the other hand, there are some precedents that seem to be approaching the way of understanding of the definition of stateless persons under the Convention. However, one should be careful in their evaluation, given the limied cases and the nature of the precedents.

The following chapter explores the convergences and divergences between the 1954 Convention and Japanese laws concerning rights and protection. Although current Japanese laws lack a definition and a determination mechanism for statelessness, researching the aspect of rights and protection under the 1954 Convention is not meaningless. First, while a determination mechanism that focuses particularly on the protection of stateless persons is absent, the rights of stateless persons who have entered or reside in Japan under the 1954 Convention may be directly or indirectly guaranteed. Furthermore, if Japan plans to provide a definition clause and/or a determination mechanism by an amendment of Japanese laws, it is beneficial to know how many clauses on protection and rights are provided under Japanese laws in order to find the space that requires legislation.

Chapter 3: Rights and Protection

3.1. Introduction

The purpose of this chapter is to consider the compatibility of the main substantial provisions of the 1954 Convention and the contents of Japanese laws. The conclusion is that there are not many Japanese laws and regulations that are clearly incompatible with the rights listed in the 1954 Convention. The main reasons are as follows. First, the Constitution is at the top of the Japanese legal system. The Constitution is descended from modern constitutions that recognise human rights as one pillar. This is why the basic rights in the 1954 Convention harmonise with the provisions of the Constitution to some extent.

Furthermore, Japanese laws are compatible with much of the content of the 1954 Convention since Japan has ratified and acceded to many human rights conventions. In particular, the effects of Japanese legislation adopting the Refugee Convention through accession cannot be ignored. The 1954 Convention shares many provisions with the Refugee Convention,[92] so accession to the Refugee Convention and adopting its rules have led to a revision of laws and regulations that could conflict with the 1954 Convention.[93]

Although the same rights are provided, the rights of stateless persons cannot be automatically protected. It is true that many provisions in Chapter 3 of the Constitution, "Fundamental Human Rights", are consistent with the 1954 Convention. It is commonly accepted that the protection of human rights in the Constitution also applies to aliens (persons who do not possess Japanese nationality) as a general rule.[94] However, whether stateless persons can enjoy the rights guaranteed by the Constitution depends on their resident status. In reality, it is difficult for persons without resident status to be protected by the rights guaranteed by the Constitution.[95] Without laws and regulations and a system corresponding to Article 1(1) of the 1954

92 See section 1.1.

93 See section 1.4.2.

94 Today, the so-called wording doctrine (the doctrine that identifies aliens' rights under the Constitution focusing on the wording of "*kokumin* [national]" and "*nampitomo* [every person]") is denied, and there is a consensus on a nature doctrine which builds on the universality of human rights and a principle of international cooperation in the Constitution. For instance, see the following. Yasuhiro Okudaira, *Kempou III: Kempouga Hoshousuru Kenri* [*Constitution III: The Rights Guaranteed by the Constitution*]. (Yuhikaku, 1993), pp. 49-53. The Judgment on the McLean case also takes this position, stating that "it should be interpreted that fundamental human rights guaranteed by Chapter 3 of the Constitution is also applied to aliens residing in Japan equally unless the rights' scope is recognised to be limited to the Japanese nationals by its nature" (The Supreme Court (Full Bench), Judgment, 4 October 1978 (*Shouwa 53 Nen*). *Minshu* Vol. 32, No. 7, p. 1223). The contents of the rights whose "scope is recognised to be limited to the Japanese nationals by its nature" need to be carefully examined. Suffrage, social rights and freedom to enter the state have been recognised as rights that aliens cannot enjoy or rights that are largely restricted. Among them, social rights and freedom to enter the state are relevant to the provisions of the 1954 Convention. Social rights are discussed in sections 3.2.1. (4) and 3.2.2. (2).

95 See section 3.2.2. (1).

Convention (the definition of stateless persons),[96] there is no factor which connects stateless persons and the rights and protection system. In other words, even if rights are established in some provisions, stateless persons without resident status face difficulty in being protected as long as the framework of immigration control is a precondition.

This chapter first attempts to find convergences between provisions in the 1954 Convention and Japanese laws. Then, the scope of consideration expands to the effects of resident status and the rights of persons seeking a statelessness determination in finding the gap between the 1954 Convention and Japanese laws. This chapter does not examine all provisions but those which are particularly important.

3.2. Issues

3.2.1. Convergences

(1) General Provisions

Firstly, this part examines convergences between the general provisions in Chapter 1 of the 1954 Convention and Japanese laws. Article 3 of the 1954 Convention provides a non-discrimination principle prohibiting discrimination based on race, religion or country of origin in the application of the Convention. During the drafting process of the Refugee Convention, which used to be united with the 1954 Convention, persecution caused by discrimination based on these grounds was expected. Thus, discrimination in the application of the Convention based on these three reasons was prohibited, and it was stated that discriminatory treatment for other reasons should be left to contracting states.[97] Given this drafting process, it is appropriate to interpret the prohibition of discrimination under Article 3 as limited to situations of an application of the Convention. The Japanese law that corresponds to Article 3 of the 1954 Convention is Article 14 of the Constitution (equality under the law and the prohibition of discrimination). Strictly speaking, "country of origin", one reason listed in Article 3 of the 1954 Convention, is not listed in Article 14(1) of the Constitution explicitly. However, concerning "race", the reason of discrimination listed in the Constitution, there is an interpretation that it is not limited to biological race but includes "country of origin."[98] Also, among precedents, the "example" doctrine has been dominant, i.e., the doctrine that the reasons listed in Article 14(1) are not exhaustive, but they are examples.[99] Thus, Article 14 of the Constitution does not prevent a realisation of Article 3 of the 1954 Convention. In this way, Article 3 of

96 See section 2.4.
97 Robinson, *supra* note 12, pp. 16-17.
98 Hideki Shibutani, *Kempou* [*Constitution*]. (Yuhikaku, 2007), p. 195.
99 Okudaira, *supra* note 94, pp. 128-129.

the 1954 Convention and Article 14 of the Constitution are basically harmonised. However, in the case of an application of a facilitation of naturalisation (Article 32 of the 1954 Convention), the provision on a simplified naturalisation (Article 8(iv) of the Nationality Act) may conflict with this non-discrimination principle of the Convention.[100]

Article 4 of the 1954 Convention guarantees freedom of religion to stateless persons within the territory at least as favourable as that accorded to nationals,[101] and it includes religious acts.[102] Under Japanese law, Article 20 of the Constitution (freedom of religion) is equivalent. Since this article includes freedom of religion and religious acts,[103] they are consistent.

(2) Juridical Status

Chapter 2 of the 1954 Convention covers provisions concerning juridical status. First, Article 12(1) provides that "[t]he personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence."[104] Under Japanese law, Chapter 3 (Articles 4 to 43) of the General Rules Act corresponds to it. Article 4 of the Act provides that a person's capacity to act is determined by his or her national law. However, Article 38(2) provides that "[i]n cases where the national law of a party concerned shall govern, if the party has no nationality, the law of his/her habitual residence shall govern." In other words, in cases of stateless persons who do not have a national law, the "law of his/her habitual residence" is applied.[105]

Article 13 of the 1954 Convention provides that stateless persons be treated as favourable as possible, and not less favourable than that accorded to aliens generally concerning movable and immovable property. The scope of this article includes not only movable and immovable property but also other subsidiary rights. The concept of property in the article is broad, and it includes rights concerning securities, cash and bank accounts.[106] The Alien Land Act under Japanese law seems to be directly relevant to the article. Article 1 of the Act allows the establishment of laws and regulations which limit aliens' right to possess land, to the same extent as the state to which the alien belongs limits the rights of Japanese nationals to possess land under its

100 See section 3.2.2.(2).
101 This provision is the same as the Refugee Convention, but it was not included in the draft of the 1954 Convention. It was added later. Robinson, *supra* note 12, p. 18.
102 *Ibid*, p. 18.
103 Shibutani, *supra* note 98, pp. 378-380.
104 The 1954 Convention does not explicitly state whether stateless persons possess a legal status. However, this article shows that they possess a legal status. Laura van Waas, *Nationality Matters: Statelessness under International Law*. (Intersentia, 2008), p. 264.
105 In the 1954 Convention, determination of address is left to each state. In Japan, some assume that "habitual residence" is the same as "address." Ryoichi Yamada, *Kokusai Shihou [Shinban]* [*Private International Law [New Edition]*]. (Yuhikaku, 2003), p. 126.
106 Robinson, *supra* note 12, p. 33.

national law. Whether or not stateless persons have a state to which they belong is disputable, and if there is no such state, then the rights of stateless persons will not be limited by the Act.

Article 14 of the 1954 Convention requires contracting states to protect stateless persons the same as nationals of the state concerning artistic rights and industrial property. The article is calling on contracting states to recognise stateless persons who have a habitual residence as nationals of the state. According to this idea, in the state where the stateless person has a habitual residence, he or she should be protected as the same as its nationals. In other contracting states, he or she should be protected the same as a national of the state in which he or she has a habitual residence. Article 9 of the Act on Special Provisions of the Copyright Act, Required as Consequence of the Enforcement of the Universal Copyright Convention (adopted in 1952, entered into force in 1955) in Japanese law is partly related to the article. The Act was legislated on 28 April 1956 to enable the Universal Copyright Convention to enter into force in Japan,[107] and Article 9 reflects a provision of Protocol 1 Annexed to the Universal Copyright Convention.[108] According to it, in cases where Articles 3 (exception to the duration of protection of a work) to 5 (exception to the right of translation) are applied to stateless persons who have a habitual residence in a contracting state of Protocol 1, stateless persons are recognised to be "[nationals] of that state." Thus, a part of the protection of artistic rights is covered by this Act.

Article 15 of the 1954 Convention is devoted to non-political and non-profit-making associations and trade unions. It prohibits treating stateless persons lawfully staying in the territory less favourable than that accorded to aliens generally.[109] Article 21 of the Constitution (freedom of association) corresponds to this article. Article 21(1) of the constitutional guarantee for freedom of association includes freedom of religious association.[110] Although it is unclear whether Article 15 of the 1954 Convention includes freedom of religious association or not, the scope of

107 Explanation of Dr. Ichiro Kiyose, Minister of Education in the Committee on Education and Culture, House of Councillors on 28 February 1956. *1956 (Shouwa 31) Nen 2 Gatsu 28 Nichi, Dai 24 Kai Kokkai Sangiin Bunkyouiinkai Kaigiroku, Dai 5 Gou* [Minutes of the Committee on Education and Culture, House of Councillors, the 24th Session of the Diet. Vol. 5. 28 February, 1956], p. 2.

108 Explanation of Mr. Takasaburo Naito, a government delegate in the Committee on Education and Culture, House of Councillors on 28 February 1956. *Ibid*, p. 3.

109 During the drafting process of the 1954 Convention, there was a dispute whether a political association should be added to this article or not. During the drafting process of the Refugee Convention, each state was not positive to include freedom of political association. However, the Secretary-General included the refugees' right to join a non-profit-making association including a trade union into the draft of the Refugee Convention. Nevertheless, delegates of each state did not support it because of fears that it would be a threat to political stability. Under such circumstances, freedom of political association was eliminated from the draft. James C. Hathaway, *The Rights of Refugees under International Law.* (Cambridge University Press, 2005), pp. 881-884. Robinson believes that even if Article 15 does not include the right of a political association, it is guaranteed pursuant to Article 7(1). Robinson, *supra* note 12, p. 36. However, it is not clear whether drafters had such an intention.

110 Shibutani, *supra* note 98, pp. 378-380. In order to hold religious events, people demanded freedom of assembly. Because of this background, freedom of religious association is dealt separately from freedom of general association (p. 404).

the Constitution covers that of the 1954 Convention in any event.

Free access to the courts is guaranteed by Article 16(1) of the 1954 Convention. Although it is presumed that Article 7(1) of the Convention[111] guarantees stateless persons' access to the courts, this article was drafted to guarantee the right of free access to the courts without facing difficulties. Article 16(1) also provides that stateless person shall have free access to the courts on the territory of all contracting states. This takes into consideration stateless persons without habitual residence.[112] Article 32 of the Constitution provides that "[n]o person shall be denied the right of access to the courts." "[T]he right of access to the courts" in the article includes not only that for civil and criminal trials but also for administrative litigation.[113]

When aliens stand trial, the costs of the suit often become the problem.[114] The purpose of Article 16(2) of the 1954 Convention is to mitigate the burden with legal aid. Article 16(2) requires contracting states to treat stateless person with a habitual residence the same as nationals. The Comprehensive Legal Support Act is relevant. It aims to enforce the legal service. This Act is applied to stateless persons who have resident status and an address (Article 30(1)(ii) of Comprehensive Legal Support Act).

(3) Gainful Employment

Chapter 3 of the 1954 Convention lists the rights concerning employment and labour. Article 17(1) of Chapter 3 guarantees treatment not less favourable than that accorded to aliens to stateless persons lawfully staying in the territory regarding wage-earning employment. Although the 1954 Convention does not define "wage-earning employment," Nehemiah Robinson claims that it should be interpreted in a broader sense.[115] The relevant Japanese law is Article 27(1) of the Constitution (right to work) which guarantees the assurance of a human-like life by working people's own labour.

Article 18 of the 1954 Convention provides the right of self-employment. It requires contracting states to treat stateless persons lawfully in the territory of the state in a way not less favourable than that accorded to aliens regarding the right to engage in work on their own account or to establish companies. It is guaranteed to stateless persons lawfully staying in the territory regardless of their will to stay in the territory for a long period of time.[116] In Japan, freedom of business is not explicitly mentioned in the Constitution. However, it is generally understood that freedom of business is guaranteed by Article 22(1) of the Constitution, which ensures freedom to choose

111 The article provides that "[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally."
112 Robinson, *supra* note 12, p. 37.
113 Okudaira, *supra* note 94, pp. 383-385.
114 Robinson, *supra* note 12, p. 37.
115 *Ibid*, p. 39.
116 *Ibid*, p. 40.

occupation, and Article 29, which ensures the inviolability of property rights.

Article 19 of the 1954 Convention guarantees the right to practice a liberal profession. It is similar to Article 17 (wage-earning employment) and 18 (self-employment) of the Convention, but it is different since it requires possession of a recognised diploma. While the Convention does not specify what liberal professions include, Robinson considers that physicians, dentists, lawyers, teachers and artists are included. However, the difference between self-employment and a liberal profession is not clear. It is left to the view of the contracting states.[117] This right is also covered by Articles 22(1) and 29 of the Constitution.

(4) Welfare

Chapter 4 of the 1954 Convention lists provisions concerning welfare. Article 21 provides the right of stateless persons lawfully staying in the territory to housing. Since the article was inherited from the Refugee Convention without particular discussion,[118] it is valuable to refer to the drafting history of the Refugee Convention. Article 13 of the Refugee Convention provides the right to immovable property, so the *ad hoc* committee that drafted the Refugee Convention was originally sceptical about the necessity of adding a right concerning housing over again. However, since many refugees had been forced to experience severe conditions in refugee camps, Article 21 was drafted, which would be passed to the 1954 Convention.[119] Even if the background is different, there should not be a considerable gap between this article and Article 22(1) of the Constitution (freedom of residence). In fact, some state that the freedom of residence in the Constitution is not limited to economic freedom, but "it is a part of fundamental freedom of humans [...] [, and] it has a close relationship with human dignity."[120] Thus, freedom of residence in the Constitution is not inconsistent with Article 21 of the 1954 Convention, which takes the plight of refugee camps into account.[121]

Article 22 of the 1954 Convention guarantees the right of stateless persons to a public elementary education with the same treatment as is accorded to nationals. The article guarantees the right to public elementary education and not the right to private school. A primary education is defined by each state.[122] Article 22 of the 1954 Convention is covered by Article 26 of the Constitution (right to education). In

117 *Ibid*, pp. 40-41.
118 *Ibid*, p. 41.
119 Hathaway, *supra* note 109, pp. 820-824. The boundary between this article and Article 23 which provides public relief is not clear. In reality, both of them would be applied.
120 Kiminobu Hashimoto, *Nihonkoku Kempou* [*Japanese Constitution*]. (Rev. ed., Yuhikaku, 1988), p. 349.
121 Freedom of residence in the Constitution is restricted by Article 12 of the Constitution (public welfare), as are other rights. For instance, see Toshiyoshi Miyazawa, *Kempou II* [*Constitution II*]. (Yuhikaku, 1971), p. 387. Even so, according to Article 21 of the 1954 Convention, treatment of stateless persons shall not be less favourable than that accorded to aliens generally.
122 Robinson, *supra* note 12, pp. 42-43.

addition, Article 4(1) of the Basic Act on Education provides that opportunities of education are given to "[a]ll nationals." By provision, opportunities of education may not be guaranteed to aliens. However, due to the impacts of the ICESCR and so on, Japanese public elementary and junior high schools accept aliens free of charge. A report of the Ministry of Education, Culture, Sports, Science and Technology titled the "Plan to Enrich the Education of Alien Students" (2008), states that aliens' right to education is guaranteed.[123] Thus, a rejection of stateless persons' entrance to school may be a violation of the right provided in the Basic Act on Education.

Article 23 of the 1954 Convention provides public relief to stateless persons lawfully staying in the territory, and Article 24 provides labour legislation and social security. "[P]ublic relief and assistance" are not defined in the Convention, and it depends on the situation of each state's welfare system. Both of these provisions require treating stateless persons the same as accorded to nationals, so the conceptual distinction between public relief in Article 23 and labour legislation and social security in Article 24 is not a problem.[124] Since Article 24 was inherited from the Refugee Convention, it is possible to analogise from the Refugee Convention. ILO's Migration for Employment Convention (adopted in 1949, entered into force in 1952) was considered during the drafting process of Article 24 of the Refugee Convention. Social security here includes the whole scope of guarantees when workers are not able to work.[125] The purpose of Article 24 of the Refugee Convention was to make the rights to social security of refugees lawfully staying the same as that of nationals,[126] and the 1954 Convention shares this purpose.

The Japanese law relevant to Article 23 of the 1954 Convention (public relief) and Article 24 (labour legislation and social security) is Article 25 of the Constitution (right to life). Some explanation is necessary for this provision. As mentioned earlier, it is commonly understood that aliens' human rights are also guaranteed by the Constitution. However, there are human rights whose "scope is recognised to be limited to Japanese nationals by its nature."[127] Social rights (particularly the right to life) are one of them. This understanding places social rights as rights that require the involvement of the state, and as a result, Article 25 of the Constitution is interpreted to not apply to aliens.[128] According to the general understanding, "under the

123 Ministry of Education, Culture, Sports, Science and Technology, "*Gaikokujinno Kodomoni Taisuru Shuugaku Shiennitsuite* [Assistance of Alien Children to Attend School]," at http://www.mext.go.jp/b_menu/shingi/chousa/shotou/042/houkoku/08070301/004.htm. However, Sakuma points out that it is a non-binding goal of boards of education since it is a report, neither a circular (*tsuutatsu*) nor a notice (*tsuuchi*). Kosei Sakuma, "*Mombukagakushouno Gaikokujin Jidou Seito Ukeire Sisakuno Henka* [Change of the Ministry of Education, Culture, Sports, Science and Technology's Policy to Receive Alien Students]". *Senshu Ningen Kagaku Ronshuu*, Vol. 4 No. 2 (March 2014), p. 37.

124 Robinson, *supra* note 12, p. 44.

125 Hathaway, *supra* note 109, pp. 774-775.

126 *Ibid*, p. 785.

127 Judgment on the McLean case, the Supreme Court (Full Bench), Judgment, 4 October 1978. *Supra* note 94.

128 For example, Toshiyoshi Miyazawa states that protection of social rights is "a responsibility of the state each person belongs to. Japan is built on the principle of a welfare state, and it means that Japan first and

Constitution, there is not a problem to guarantee aliens' social rights by law."[129] Since the Constitution does not deny the discretion of legislative body concerning the guarantee of aliens' social rights, it does not prevent the passage of new laws corresponding to Articles 23 (public relief) and 24 (labour legislation and social security) of the 1954 Convention.

Article 25(2) of the Constitution (promotion of social welfare) is not the only provision that corresponds to Article 24 of the 1954 Convention (labour legislation and social security). Laws related to social security and labour laws are interesting, including the Child Rearing Allowance Act, the Health Insurance Act, the National Pension Act and the Employment Insurance Act. Although there was a nationality requirement in the National Pension Act, the Act was made applicable to aliens by legislation when Japan acceded to the Refugee Convention. In contrast, a nationality clause remains in the Public Assistance Act. It is not compatible with the 1954 Convention.[130]

(5) Administrative Measures

Chapter 5 of the 1954 Convention deals with administrative measures. Article 26 of the 1954 Convention provides freedom of movement for stateless persons lawfully staying in the territory the same as aliens generally. It is covered by Article 22 of the Constitution (freedom of movement). However, Article 24 of the ICRRA states that aliens generally, including persons seeking the statelessness determination, are subjects of deportation. Thus, here is a concern that Japanese law conflicts with the 1954 Convention.[131]

Article 28 of the 1954 Convention provides for the issuance of travel documents to stateless persons lawfully staying in the territory. It is recognised as a substitute for a passport,[132] and its purpose is to permit re-entry.[133] According to the article, the issuance of travel documents cannot be rejected except for compelling reasons of national security and public order. However, the issuance of travel documents to stateless persons who are not legally staying in the territory is not obliged, and this can be determined at the discretion of the contracting states.[134] Under Japanese law, re-entry permits are issued pursuant to Article 26(2) of the ICRRA. It provides for the issuance of a re-entry permit if an alien with valid resident status does not possess a

---

foremost has a responsibility to guarantee social rights of Japanese nationals. Aliens, of course, possess social rights as fundamental human rights, but the state he belongs to is responsible for possessing the rights." Miyazawa, *supra* note 121, p. 241.

129 Nobuyoshi Ashibe (revised by Kazuyuki Takahashi), *Kempou* [*Constitution*]. (5th ed., Iwanami Shoten, 2011), p. 241.

130 See section 3.2.2.(2).

131 See section 3.2.2.(3).

132 Robinson, *supra* note 12, p. 56.

133 van Waas, *supra* note 104, p. 252.

134 Robinson, *supra* note 12, pp. 51-52.

passport.

3.2.2. Divergences

(1) Resident Status and Stateless Persons

As we have seen, there does not seem to be many divergences between the rights in the 1954 Convention and relevant provisions under current Japanese laws. When stateless persons legally stay in Japan, the same or similar rights to the 1954 Convention are granted by Japanese law.[135] In other words, although there is no particular resident status for stateless persons in Japan currently, rights in the 1954 Convention are protected by an existing resident status. In the particular case of the Constitution, this circumstance reflects the reality that aliens' human rights are protected within the limits of the aliens' residency system.[136]

There are 28 categories of resident status in Japan pursuant to Article 19 of the ICRRA and provisions of the Special Act on Immigration Control. Business activities within the granted period of stay and the scope of activities are permitted for some aliens who enter to Japan with any status among 23 categories listed in the Appended Table I of the ICRRA. On the other hand, the statuses of Permanent Resident,[137] Spouse or Child of Japanese National,[138] Spouse or Child of Permanent Resident and Long-Term Resident[139] do not have any limitation on activities. For these people,

135 The right concerning courts (Article 16(2) of the 1954 Convention) clearly shows that the rights in the 1954 Convention can be guaranteed through a legal resident status in Japan. Article 30(1)(ii) of the Comprehensive Legal Support Act explicitly states that the subjects of an application of the act are persons "lawfully residing in this country." See section 3.3.3.

136 The Judgment on the McLean case, to which has already been referred, states that the "[g]uarantee of alien's fundamental human rights under the Constitution is provided within the limits of aliens' residency system as mentioned above." Some point out and criticise that it prioritises immigration control systems over aliens' fundamental human rights. For instance, see the following. Jyunji Annen, "*'Gaikokujinno Jinkenron' Saikou* [Rethinking 'Aliens' Human Rights']" in Ashibe *koki, Gendai Rikkenshugino Tenkai (Jyou)* [*Development of the Current Constitutionalism (Vol. 1)*] (Yuhikaku, 1993), pp. 165-181. Atsushi Kondo, "*Gaikokujinno 'Jinken' Hoshou* [Guarantee of Aliens' 'Human Rights']" in Japan Civil Liberties Union (ed.), *Kempouno Genzai* [*Current Constitutional Law*] (Shinzansha, 2005), p. 325.

137 This is classified to general permanent residents and special permanent residents. General permanent residents refer to aliens who do not possess Japanese nationality and are allowed to reside in Japan indefinitely because their application for permanent resident is permitted by the Minister of Justice. On the other hand, special permanent residents are persons with resident status provided in the Special Act on Immigration Control. Their residence is allowed indefinitely. Particularly, persons who were born in Korea or Taiwan, residing in Japan before 2 September 1945, the day Japan has signed the Instrument of Surrender, and had renounced their Japanese nationality when the Peace Treaty entered into force are special permanent residents. Their descendants who were born and reside in Japan are also special permanent residents. See the Appended Table II of the ICRRA. Ryoichi Yamada and Tadamasa Kuroki, *Yokuwakaru Nyuukanhou* [*Easy ICRRA*]. (Yuhikaku, 2010), pp. 160-163.

138 Appended Table II of the ICRRA. *Ibid*, pp. 90-91.

139 "Long-Term Resident[s]" are authorised to reside within the designated period of stay considering their special circumstances. For instance, resettled refugees, the third generation of Japanese descendants, and Japanese orphans in China are included. On the other hand, refugees determined by the Minister of Justice and ex-spouses of Japanese, long-term residents or special permanent residents who seek to reside in Japan after a divorce or loss of their ex-spouses, can become long-term residents with the fixed condition. In such

most of the rights in the 1954 Convention are protected.

There is no mechanism that grants resident status because of statelessness under Japanese laws and regulations. Article 50(1) of the ICRRA, which lists elements of the Special Permission to Stay, does not include the status of statelessness, and the "Guidelines on Special Permission to Stay in Japan"[140] also does not explicitly mention statelessness as a positive factor. Thus, the rights of stateless persons without resident status under the 1954 Convention are protected only when the Special Permission to Stay is granted. If stateless persons do not possess resident status, the rights in the 1954 Convention cannot be protected.[141]

(2) Divergences by Provision

Regardless of resident status, there are provisions within Japanese law that are questionably compatible with the provisions of the 1954 Convention. First is the gap between the nationality clause of the Japanese Public Assistance Act and Article 24 of the 1954 Convention (labour legislation and social security). The previous version of the Public Assistance Act, enacted in 1946, did not have a nationality clause, and then the Ministry of Health and Welfare recognised that the Act did not discriminate persons protected by the Act by their nationality. However, in the current Public Assistance Act, enacted in 1950, a nationality clause is included. According to the understanding of the Ministry of Health, Labour and Welfare, the subject of public assistance is limited to "nationals." Aliens legally staying Japan with the status of permanent residents or long-term residents whose activities are not restricted and who are recognised as refugees can receive public assistance under the Act "from the international morality and humanitarian perspectives." However, other people cannot receive public assistance even if they are legally staying in Japan.[142] Such benefits

---

a case, the status of long-term resident is granted after an approval of an application for change of the resident status.

140 Immigration Bureau, Ministry of Justice, "*Zairyuu Tokubetsu Kyokani Kakakwaru Gaidorain* [Guidelines on Special Permission to Stay in Japan]," at http://www.moj.go.jp/content/000007321.pdf.

141 Some Japanese laws and regulations explicitly exclude the status of alien including those without resident status. Relevant laws and regulations to the rights of movable and immovable property (Article 13 of the 1954 Convention) and access to courts (Article 16 of the 1954 Convention) are examples of it. Concerning the rights of movable and immovable property (Article 13 of the 1954 Convention), aliens who do not possess resident status for a medium to long term under Article 19-3 of the ICRRA ("persons granted to stay in Japan for less than three months, persons granted the status of Temporary Visitor, persons granted the status of Diplomat or Official and persons equivalent to Diplomat or Official provided by an ordinance of the Ministry of Justice") cannot acquire a certificate of registered seal (*inkan*) that is necessary for an application for registration of immovable property. Also, ownership of movable properties such as vessels, aircrafts and automobiles is restricted for the above reason. Related to access to courts (Article 16(2) of the 1954 Convention), the subjects of comprehensive legal support are persons "lawfully residing" in Japan as provided in Article 30(1)(ii) of the Comprehensive Legal Support Act.

142 Ministry of Health, Labour and Welfare, "*Shakai Hoshou Shingikai Fukushi Bukai: Seikatsu Hogo Seidono Arikatani Kansuru Senmon Iinkai Dai 12 Kai (Heisei 16 Nen 6 Gatsu 8 Nichi) Shiryou 1 Sonota* [Appendix 1 Others, the 12th Meeting (8 June 2004), Advisory Committee on the Public Assistance System, Sectional Meeting on Welfare, Social Security Council]," at http://www.mhlw.go.jp/shingi/2004/06/s0608-6a2.html.

pursuant to the Public Assitance Act are at the *mercy* of the state, so there is no legal basis to sue the government if aliens cannot receive public assistance. According to the *Judgment of the Lawsuit to Request a Decision to Obligate the Start of Paying Public Assistance* of July 2014, "'nationals'", the subject of the Public Assistance Act, means "the Japanese nationals, and aliens are not included." Furthermore, the judgment stated that "aliens remain to be a *de facto* subject of protection based on administrative measures pursuant to administrative circulars."[143] The Public Assitance Act cannot be a legal basis for even stateless persons lawfully residing in Japan to claim their rights. Thus, there is a gap between Japanese law and Article 24 of the 1954 Convention.

Facilitation of naturalisation provided in Article 32 of the 1954 Convention is another divergence by a provision. The article does not recognise naturalisation as a right of stateless persons, but it merely provides for a facilitation of naturalisation.[144] Articles 4 to 10 of the Nationality Act concern naturalisation, and they correspond to Article 32 of the 1954 Convention. Particularly, Article 5(v) concerns the naturalisation of stateless persons, and some stateless persons' conditions of naturalisation is eased by the article. The procedure of a simplified naturalisation in Article 8(1)(iv) is applicable to stateless persons born in Japan and continuously having a domicile in Japan for three or more years from the time they were born. One scholar claims that naturalisation of stateless persons should be easier than that of aliens who have another nationality.[145] Since Article 8 of the Nationality Act corresponds to this understanding, some see the value in this provision. However, it is applicable only to stateless persons "born in Japan", as Article 8(1)(iv) mandates. The procedure of a simplified naturalisation is not applicable to all stateless persons, but only for "chosen stateless persons." This provision gives preferential treatment to stateless persons born in Japan, and stateless persons born abroad are treated comparatively worse. Therefore, this can be discrimination by "country of origin" as provided by Article 3 of the 1954 Convention, the non-discrimination principle.

Furthermore, there seems to be a gap between provisions in Japanese law and the issuance of identity papers provided in Article 27 of the 1954 Convention. Identity papers are used within the contracting state to certify the identity of stateless persons, and they are issued to all stateless persons within the territory.[146] It is true that there

143 The Supreme Court (Petty Bench II), Judgment, 18 July 2014 (*Heisei 26 nen*). *Hanrei Chihou Jichi* No. 386, p. 78.

144 van Waas, *supra* note 104, p. 365. Although the article uses the phrase "assimilation", it does not intend to erase an identity according to Robinson. It means to integrate with society in terms of economic, social and cultural perspective. Robinson, *supra* note 12, p. 64.

145 Sam Walker, *Can Refugees Become Citizens of Uganda?* Refugee Law Project, Briefing Paper July 2008, at http://www.refugeelawproject.org/files/briefing_papers/RLP.BP0803.pdf, p. 5. Refugees are easier to naturalise compared to aliens generally in the Republic of Austria, Kingdom of Denmark, Federal Republic of Germany and Kingdom of the Netherlands. *Ibid.* p. 5.

146 However, an issuance of identity papers does not influence the rights of contracting states to control the border. Thus, it does not oblige contracting states to keep stateless persons within the border. Robinson, *supra* note 12, p. 50.

are residence cards pursuant to Article 19-3 of the ICRRA and special permanent resident certificates pursuant to Article 7 of the Special Act on Immigration Control in Japan. However, they are only issued to aliens with resident status for a medium to long term. Therefore, they are not issued to stateless persons with Temporary Visitor status or stateless persons without resident status. So there is no Japanese law that corresponds to Article 27 of the 1954 Convention.

(3) Rights and Protections of Applicants to the Statelessness Determination

The treatment of applicants to the statelessness determination is different in Japanese law to some of the practices of contracting states to the 1954 Convention and the view of the Office of the UNHCR. Even in the laws of contracting states of the 1954 Convention which establish the procedure for statelessness determination, the legal status of applicants for the statelessness determination is not clearly provided for, and a unified state practice is not established. Yet, some states permit applicants to the statelessness determination to reside during the period of the determination procedure at the government's discretion. In addition to this, the national laws of some states explicitly provide the right to reside during the period of the determination procedure.[147] UNHCR "Guidelines on Statelessness No. 3"[148] also states that individuals awaiting a statelessness determination are "entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as 'lawfully in' rights."[149] State practice and the view of the Office of the UNHCR which recognise some rights to applicants to the statelessness determination are reasonable because of the declaratory effects of the statelessness determination and the responsibility of contracting states to identify stateless persons. Stateless persons do not become stateless persons by a determination process. This idea entails that since applicants can be stateless persons even before a determination, some of their rights as stateless persons should be protected during the procedure. Such protection of applicants helps to determine stateless persons appropriately.

UNHCR "Guidelines on Statelessness No. 3" lists some of the rights that need to be protected for applicants to the statelessness determination. It is necessary to see the gap between the 1954 Convention and Japanese laws concerning freedom of movement (Article 26 of the 1954 Convention) and protection from expulsion (Article

147 Concerning the state practice, see the following. Gyulai, *supra* note 66, pp. 131-132.

148 UNHCR "Guidelines on Statelessness No. 1" (definition of a stateless person), "Guidelines on Statelessness No. 2" (determination procedure for stateless persons), "Guidelines on Statelessness No.3" (status of stateless persons residing in the state) and "Guidelines on Statelessness No. 4" (every child's acquisition of nationality through Articles 1-4 of the 1961 Convention) were issued in 2012 based on summary conclusions of the UNHCR Expert Meeting. They are "interpretative legal guidance" concerning statelessness. UNHCR, "Guidelines on Statelessness No. 1: The Definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons" (2012), preamble, at http://www.refworld.org/docid/4f4371b82.html.

149 UNHCR, *supra* note 16, para. 26.

31 of the 1954 Convention). Particularly Article 31, which provides that contracting states "shall not expel a stateless person lawfully in their territory", is a basis to protect stateless persons' fundamental freedoms comprehensively. Since an expulsion of aliens is permitted under general international law, the article was introduced to the 1954 Convention to control it for stateless persons.[150] According to a Moldovan law, applicants to the statelessness determination possess the right to reside in the territory of the state, and expulsion is allowed only on the grounds of national security or public order.[151] Similarly, concerning the suspension of the procedure of deportation and release from detention, a Filipino law explicitly states the following:[152]

> [The agency to determine stateless persons] shall notify the Commissioner of the receipt of the application. Following receipt of the notice, any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be suspended.
>
> If the Applicant and/or his or her dependents is/are in detention, the Secretary, subject to the conditions that he or she may impose, may direct the Commissioner to order his or her and/or their release.

As has been noted repeatedly, Japan does not have a determination system to identify stateless persons aiming at a protection of stateless persons. Thus, there are no concepts such as applicants to the statelessness determination and persons seeking the statelessness determination. As a result, there is no precondition to establish procedures or practices to treat them as people who are "lawfully in" the territory. Even if there were aliens without resident status who seek to be protected as stateless persons, they would have no chance to possess resident status due to their statelessness under Japanese law. Article 24 of the ICRRA concerning deportation and Articles 27 to 53 providing a procedure for deportation can be legally applied to potential stateless persons. The target of Article 24 of the ICRRA, which lists grounds for deportation, is a general alien, and aliens who seek to be protected as stateless persons are not an exception. Once a deportation order is issued, indefinite detention is possible, and freedom of movement is restricted.[153]

Recently, there have been judicial and administrative practices that attempt to shorten the legal distance between the 1954 Convention and Japanese law. First, two aliens, who had been detained at East Japan Immigration Detention Center, brought a lawsuit seeking to revoke issued deportation orders which recognised Vietnam as their

150 Robinson, *supra* note 12, p. 60.
151 Gyulai, *supra* note 66, p. 132.
152 Odagawa, *supra* note 71, p. 39.
153 As a reference to general aliens, see the following. Koichi Kodama, Sosuke Seki and Mitsuru Namba (eds.), *Konmentaru Shutsunyuukoku Kanrioyobi Nanmin Nintei Hou 2012* [*Commentary: Immigration Control and Refugee Recognition Act 2012*]. (Gendai Jimbunsha, 2012), p. 250.

nationality and a deportation destination.[154] The plaintiffs were born in Thailand to Vietnamese refugees who arrived in Thailand through Laos during the First Indochina War. Around 1990, they arrived in Japan with the forged passports acquired from a broker, and they were issued deportation orders as illegal stayers in 2008 which stated Vietnam as the deportation destination. Since they believed that their deportation destination should be Thailand, not Vietnam, they agreed to pretermit the procedure to seek a special permission to stay and renounced the right to request a hearing. However, they were not deported to Vietnam even after deportation orders were issued, and their detention continued. The court stated that they renounced the right to request a hearing because they wrongly assumed that Thailand is the deportation destination. It concluded that the plaintiffs' Vietnamese nationality is not evident, so an issuance of deportation orders which show Vietnam as the deportation destination is illegal. Later, Special Permission to Stay and a resident status were granted to them. This is a case where the involvement of the judiciary prevented a continuation of the detention of possible stateless persons as the result even without a system and procedure to determine stateless persons.

This judgment seems to have influenced administrative practices to some extent. From her experience as a representative since 2008 for procedures to acquire Special Permission to Stay, Fumie Azukizawa, attorney-at-law, has found 26 children of Vietnamese refugees born in Thailand in Japan. Since the finalisation of the plaintiffs' victory in August 2010, their long-term detention has not been reported.[155] This practice is supported by the words of the official of Immigration Bureau, Ministry of Justice:[156]

> If a deportation is not possible in the case that nationality is not verified, an administration can do nothing but to end the detention realistically. If the state which seems to be his or her native state does not accept him or her, the special circumstances of each case are considered from a humanitarian perspective. So we are not aware of disadvantages such as a long-term detention.

Nevertheless, it is too early to judge whether this practice will be continuous and certain.

3.3. Conclusion

Japanese laws already establish provisions that conrrespond to many rights and

154 Tokyo District Court, Judgment, 19 February 2010 (*Heisei 22 Nen*). *H.T.* No. 1356, p. 146.
155 Presentation made by Ms. Fumie Azukizawa, attorney-at-law, at Study Group on Statelessness in Japan (*Mukokuseki Kenkyuukai*) on 25 July 2014.
156 Interview with the official of Immigration Bureau, Ministry of Justice (21 January, 2015).

protections listed in the 1954 Convention. When stateless persons possess certain resident statuses, most of the rights in the 1954 Convention are guaranteed by Japanese laws. In contrast, many rights in the 1954 Convention are not guaranteed to stateless persons without resident status. A guarantee of the rights in the 1954 Convention for stateless persons mostly depends on the resident status.

There are several points for discussion. First, the subject of the Public Assistance Act is limited to Japanese nationals. Thus, even if stateless persons with resident status receive a benefit in practice, there is no legal basis to sue the government if it becomes unavailable later. Therefore, the Public Assistance Act is not compatible with the labour legislation and social security mandates (Article 24 of the 1954 Convention).

Second, regardless of resident status, there are provisions which are incompatible with the 1954 Convention. Concerning the facilitation of naturalisation (Article 32 of the 1954 Convention), the requirements for simplified naturalisation are different between stateless persons born in Japan and other stateless persons. This may not be compatible with the principle of non-discrimination (Article 3 of the 1954 Convention; it is particularly a discrimination by "country of origin" as provided in Article 3). Furthermore, although identity papers should be issued to any stateless person in the territory of the contracting state (Article 27 of the 1954 Convention), they are not issued to stateless persons in Japan with the status of Temporary Visitor or stateless persons without resident status. Here is a divergence between the 1954 Convention and Japanese law.

Third, Japan does not have a system which grants resident status on the grounds only of statelessness. Also, there is no factor which connects stateless persons and protection pursuant to Japanese laws. Furthermore, there is no such concept of persons awaiting the statelessness determination or applicants to the statelessness determination given the situation in which Article 1 of the 1954 Convention (the definition of stateless persons) is not incorporated into Japanese laws, and there is an absence of a procedure to determine stateless persons. Therefore, freedom of movement (Article 26 of the 1954 Convention) and a prohibition of expulsion (Article 31 of the 1954 Convention) for persons awaiting the statelessness determination or applicants to the statelessness determination are not even discussed. The absence of a definition and a procedure for the statelessness determination are linked here. The practice of some contracting states and the view of the Office of the UNHCR imply that some rights should be guaranteed to applicants to the statelessness determination. Specifically, they are treated the same as persons lawfully in the territory, and their freedom of movement is recognised. Some governments refrain from expelling applicants to the statelessness determination. Current Japanese laws and regulations do not accord with these state practices or the view of the Office of the UNHCR. Although there is a new practice in the judiciary and administration, its certainty cannot be judged at this moment.

Chapter 4: Prevention and Reduction

4.1. Introduction

As we have examined in Chapter 1, a movement to prevent statelessness in international law became evident by the 1930 Convention, and after World War II the 1961 Convention was adopted after deliberations in the International Law Commission and an international conference of plenipotentiaries. The 1961 Convention attempts to reduce statelessness by preventing future statelessness.

The Nationality Act is the most relevant Japanese law to the 1961 Convention. Even before 1899, the year in which the Nationality Act was first enacted in Japan, there was legislation concerning nationality. The first piece of legislation was the "Provisions Permitting Marriage with an Alien Person" (Proclamation No. 103 of the Great Council of State) in 1873. Although it does not concern the acquisition or loss of nationality generally, it provided for women married to Japanese men and alien husbands of Japanese women to acquire Japanese nationality, and Japanese women who marry aliens lose their Japanese nationality. It also stipulated that nationality can be restored when Japanese nationality is lost by marriage.[157]

After the Constitution of the Empire of Japan (Meiji Constitution) was enacted in 1889, the Nationality Act (the former Nationality Act) was enacted pursuant to Article 18 of the Meiji Constitution, which provided that "[t]he conditions necessary for being a Japanese subject shall be determined by law." The Act stipulates that Japanese nationality can be acquired if the father is a Japanese national at the time of birth (Article 1); if the father is unknown or stateless, and the mother is a Japanese national (Article 3); or if a child is born in Japan and both of his or her parents are unknown or stateless (Article 4). Based on *jus sanguinis* through the paternal line, the former Nationality Act prevented statelessness by being applied together with *jus sanguinis* through the maternal line and *jus soli*.[158]

Article 10 of the Constitution, enacted in 1946, states that "[t]he conditions necessary for being a Japanese national shall be determined by law." The Nationality Act enacted in 1950 (the present Nationality Act) is supported by Article 10 of the Constitution. Although the existing *jus sanguinis* through the paternal line was controversial in relation to gender equality during the drafting process, a fundamental change did not take place since *jus sanguinis* through the paternal line was recognised to be beneficial in preventing multiple nationalities.[159] Thus, although children born to Japanese men and foreign women could acquire Japanese nationality, children born

157 Shoichi Kidana, *Chikujyou Chuukai Kokuseki Hou* [*Commentary on the Nationality Act*]. (Nihon Kajo Shuppan, 2003), pp. 26-27. In the proclamation, the wording "Japanese nationality" is not used but expressed as "status for being Japanese." *Ibid*, p. 27.

158 *Ibid*, p. 32.

159 *Ibid*, pp. 37-38.

to foreign men and Japanese women could not.

However, *jus sanguinis* through the paternal line became the subject of a legislative review, and the Nationality Act was drastically amended in 1984 (coming into effect in 1985). The amendment was triggered by the Japanese signature to CEDAW in 1980.[160] The international trend on gender equality impacted on Japan, and the amendment of laws in other states which took *jus sanguinis* through the paternal line assisted in the amendment of a part of the Nationality Act in 1984. As a result, Japan has shifted to *jus sanguinis* through both paternal and maternal lines.[161]

It is also notable that a court judgment became a trigger to amend the Nationality Act to prevent statelessness. Article 3 of the Nationality Act had provided that when children are born to Japanese men and foreign women out of wedlock, are acknowledged after their birth, and acquire the status of children born in wedlock as a result of their parents' marriage (Article 3(1)), they can acquire Japanese nationality if they notify the authorities before reaching twenty years of age (Article 3(2)). In other words, children acknowledged by Japanese fathers before their birth could acquire Japanese nationality from the time they were born, but if childrens' parents were not married, they could not acquire Japanese nationality even if they were acknowledged after their birth. Regarding this, the Supreme Court stated that it is unreasonable discrimination when a child cannot acquire Japanese nationality because of the "parents' status about which the child cannot do anything," even if he or she builds a parent-child relationship with the Japanese man. The Court then judged Article 3(1) of the Nationality Act unconstitutional in 2008.[162] Based on this, the Nationality Act was amended in 2008 (came into effect in 2009), making children acknowledged after their birth able to acquire Japanese nationality even if their parents are not married.[163]

The judiciary has also provided an interpretation of the Nationality Act that is relevant to the prevention of statelessness. Article 2(iii) of the Nationality Act provides that a child acquires Japanese nationality by birth "[i]f [the child is] born in Japan and both of the parents are unknown or are without nationality" to prevent statelessness following Article 4 of the former Nationality Act. In a trial which disputed the meaning of "the parents are unknown" (the so-called Andrew Case), the judgment stated that "merely proving the existence of a situation that implies some persons are very likely to be a child's father or mother" is not enough to establish a child's parents, but it is necessary to "identify that a person is the child's father or

160 Article 9(1) of the CEDAW provides that "[s]tates Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." Also, Article 9(2) states that "[s]tates Parties shall grant women equal rights with men with respect to the nationality of their children."

161 Kidana, *supra* note 157, pp. 40-42.

162 The Supreme Court (Full Bench), Judgment, 4 June 2008 (*Heisei 20 Nen*). *Shumin* No. 228, p. 101, at http://www.courts.go.jp/app/files/hanrei_jp/416/036416_hanrei.pdf.

163 Abe, *supra* note 7, p. 35.

mother."[164] This implies that a child can acquire Japanese nationality unless the child's father or mother is identified, since both of the child's parents are unknown.

The main rules of the current Nationality Act are Articles 1 to 20. Articles 2 to 9 and 17 provide the grounds for the acquisition of nationality; Articles 11 to 13 address the loss of nationality; and Articles 14 to 16 address a selection of nationality. The following sections cover convergences and divergences between the main substantial provisions of the 1961 Convention and Japanese law (particularly the Nationality Act).

4.2. Issues

4.2.1. Convergences

(1) Birth and Children

Article 1 of the 1961 Convention is a general provision of conferment of nationality. Article 1(3) of the 1961 Convention provides for a child's acquisition of the mother's nationality when the child is born in wedlock in the territory of the contracting state. This provision attempts to prevent statelessness by a conferment of the mother's nationality. In the era when *jus sanguinis* through the paternal line was dominant worldwide, a stateless child would be born, for instance, when the father did not possess any nationality.

Article 2(i) of the Nationality Act is a relevant Japanese law to Article 1(3) of the 1961 Convention. It provides that Japanese nationality is granted to a child when either the father or mother is a Japanese national.[165] Since the article allows a child to acquire the mother's nationality, the provision of Article 1(3) of the 1961 Convention is satisfied. Furthermore, Article 3(1) of the Nationality Act allows an acquisition of nationality by notification of a child acknowledged by the Japanese father or mother. This provision of acquisition of nationality by acknowledement presupposes persons who cannot be covered by Article 2 of the Nationality Act, and as a result, it expands the scope of the conferment of Japanese nationality. In addition, concerning acknowledgement by the mother, since a mother-child relationship is acknowledged by the fact of childbirth, the child can acquire nationality.[166] Thus, opportunities to

164 The Supreme Court (Petty Bench II), Judgment, 27 January 1995 (*Heisei 7 Nen*). *Shumin* Vol. 49 No. 1, p. 56.

165 As has been noted earlier, ratification to CEDAW became the turning point by which Article 9(2) of CEDAW (gender equality concerning a child's nationality) and the Nationality Act were made compatible. Specifically, Article 2(i) of the current Nationality Act reflects *jus sanguinis* through both the paternal and maternal lines, not only the paternal line. Also, since it is commonly understood that "parents" is used here in its legal sense (Abe, *supra* note 7, p. 34.), it corresponds to the provision in the 1961 Convention which states that nationality is granted to children in wedlock.

166 The mother-child relationship between a mother and a child out of wedlock is acknowledged, in principle, by the fact of childbirth even without acknowledgement by the mother. The Supreme Court (Petty Bench II),

acquire nationality are broadened, and the Nationality Act fully covers Article 1(3) of the 1961 Convention.

Article 1(4) of the 1961 Convention provides that either of the parents' nationality should be granted to a child if the child has passed the age to lodge an application of nationality or if the child has not fulfilled the required residence condition. According to UNHCR "Guidelines on Statelessness No. 4," this was created as a subsidiary rule within Article 1.[167] The Japanese Nationality Act does not set conditions on the age or residency to lodge an application to nationality or residency in the procedure to acquire nationality by birth. Therefore, such conditions are not necessary to be considered in an application of Article 2(i), so there is no Japanese law that contradicts Article 1(4) of the 1961 Convention.

Article 4 of the 1961 Convention states that, concerning a child born outside of the contracting state who would otherwise be stateless, the nationality that either of the parents possesses is granted to the child by birth automatically, or by a procedure provided by national law. Article 2(i) of the Nationality Act is not restricted to birth within Japan and is applied to children born outside of Japan. Thus, Article 4 of the 1961 Convention is also covered by Article 2(i) of the Nationality Act.

(2) Loss of Nationality

Articles 5 and 6 of the 1961 Convention concern loss of nationality. Loss of nationality is an automatic withdrawal of nationality by operation of law.[168] Article 5 provides that a loss of nationality resulting from a change of personal status is conditional upon the acquisition of another nationality. Accordingly, when nationality is lost as a result of a change of personal status, including marriage and termination of marriage and recognition and adoption of a child, such loss needs to be conditional upon the acquisition of another nationality.[169] Articles 11 and 12 of the Nationality Act, which address loss of nationality, are relevant to Article 5 of the 1961 Convention. Article 11 of the Nationality Act concerns the loss of Japanese nationality when a Japanese citizen voluntarily acquires another nationality, and Article 12 of the Act is devoted to a loss of Japanese nationality by a person born abroad to reserve Japanese nationality without an indication of the person's intent. However, there is a gap

---

Judgment, 27 April 1962 (*Shouwa 37 Nen*). *Minshu* Vol. 16 No. 7, p. 1247, at http://www.courts.go.jp/app/files/hanrei_jp/715/057715_hanrei.pdf.

167 In particular, the provision concerns the acquisition of nationality of a child born in the contracting state to nationals of other contracting states, who has passed the age to lodge an application to nationality or cannot fulfil the required residence condition of the state in which he or she was born. UNHCR, *supra* note 18, para. 50.

168 UNHCR, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*. (UNHCR, 2014), para. 9, at http://www.refworld.org/pdfid/533a754b4.pdf.

169 This is supplemented by Article 9(1) of CEDAW which prohibits marriage from having an influence on the nationality of women. *Ibid*, para. 34.

between Article 5(1) of the 1961 Convention and Japanese practice.[170]

Article 6 of the 1961 Convention states that if the national law provides for loss of nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such a loss needs to be conditional upon his or her acquisition of another nationality.[171] In Japanese law, no provision vitiates the nationality of a person's spouse or child when that person loses or is deprived of his or her nationality. The Nationality Act is only applied to the person himself or herself, and the nationality of a spouse or children is not affected. Thus, there is not a gap between the provisions of Article 6 of the 1961 Convention and Japanese law.

(3) Renunciation of Nationality

Article 7(1)(a) of the 1961 Convention provides that even if the state permits renunciation of nationality, such renunciation is conditional upon a person's acquisition of another nationality. However, according to Article 7(1)(b), Article 7(1)(a) is not applied when it conflicts with freedom of movement, Article 13 of the Universal Declaration of Human Rights (1948), or the right to seek asylum from persecution, Article 14 of the Universal Declaration of Human Rights. This aims at preventing the risk of freedom of movement or a right to seek asylum from persecution being threatened because a person's nationality cannot be renounced. The relevant Japanese law is Article 22(2) of the Constitution, which grants freedom to divest nationality. According to the common understanding, the purpose of Article 22(2) is not to allow the freedom to be stateless. Yasuhiro Okudaira, a scholar on constitutional law, points out two reasons. First, stateless persons would face difficulties. Second, he states that "allowing [statelessness] […] costs a lot, and it causes trouble for the whole society."[172] This is embodied in Article 13 of the Nationality Act which allows a renunciation of Japanese nationality to Japanese nationals having foreign nationality. Accordingly, Japanese nationality is lost only when a person acquires another nationality, so Japanese nationality is not renounced if it causes a person to be stateless.[173] In this way, Article 13 of the Nationality Act and Article 7 of the 1961 Convention are consistent because possession of another nationality is a precondition to renouncing nationality in both articles.

Some Japanese judgments strictly require that the necessary condition be met to renounce nationality. *Judgment of the Lawsuit to Confirm Nationality*[174] in 1992 held that even if an acceptance of an application to renounce Japanese nationality is formally valid, the renounciation of Japanese nationality is not effective when the

170 See section 4.2.2.(2).
171 This is also supplemented by Article 9 of CEDAW which provides that a child cannot become stateless when a parent loses his or her nationality.
172 Okudaira, *supra* note 94, p. 219.
173 Kidana, *supra* note 157, p. 382.
174 Tokyo High Court, Judgment, 15 April 1992 (*Heisei 4 Nen*). *H.T.* No. 802, p. 118.

applicant does not concretely possess another nationality.

Article 7(2) of the 1961 Convention requires of states that the nationality of a person who seeks to naturalise in a foreign state not be lost unless he or she acquires or has been accorded assurance of acquiring its nationality. When a woman is married to a man with another nationality, she may renounce her original nationality to naturalise to the man's nationality, in which case Article 7 is also important to prevent the woman's statelessness.[175] Article 11(1) of the Nationality Act corresponds to this article. This article states that Japanese nationality is lost when a Japanese national voluntarily acquires another nationality. It aims at a realisation of the single nationality principle, and an automatic loss of Japanese nationality is allowed only "when a Japanese national acquires another nationality by a naturalisation in another state at his or her choice."[176]

(4) Deprivation of Nationality

Deprivation of nationality refers to the withdrawal of nationality initiated by the authority of the state.[177] In other words, deprivation is a withdrawal of nationality without due process. Article 8 of the 1961 Convention concerns the prohibition and allowance of this manner of deprivation of nationality. The principle of the article is that nationality cannot be deprived if it would render a person stateless. Based on this principle, deprivation of nationality is allowed if the nationality has been obtained by misrepresentation or fraud or if the person has violated a vital interest of the state, such as involvement in the services of another state. However, deprivation of nationality is exceptional, and it must be narrowly construed.[178] When a deprivation of a child's nationality acquired by misrepresentation or fraud is examined, Articles 1 to 4 of the 1961 Convention, Articles 7 and 8 of the Convention on the Rights of the Child and the best interest of the child need to be considered.[179]

In Japanese law, there is no provision that prohibits a deprivation of nationality explicitly. Yet, Articles 11 and 13 of the Nationality Act concern loss and renunciation of nationality, and a denial of nationality which contravenes these articles are illegal. Therefore, it can be understood that Japanese law implicitly ensures that nationality is not arbitrarily deprived by the authority of the state.

Article 9 of the 1961 Convention prohibits a deprivation of nationality of any person or group of persons on the grounds of racial, ethnic, religious or political discrimination. It is applied regardless of whether the person would be stateless or not by a deprivation of nationality. This provision was inserted to realise Article 15 of the Universal Declaration of Human Rights. Today, it is supplemented by the International

175 UNHCR, *supra* note 168, paras. 42-43.
176 Kidana, *supra* note 157, p. 338.
177 UNHCR, *supra* note 168, para. 9.
178 *Ibid*, para. 53.
179 *Ibid*, para. 62.

Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1965 and entered into force in 1969), CEDAW and the Convention on the Rights of Persons with Disabilities (adopted in 2006 and entered into force in 2008). Article 9 of the 1961 Convention prohibits a deprivation of nationality on a political or discriminatory basis.[180] Article 14 of the Constitution,[181] which establishes the equality principle, corresponds to this article of the 1961 Convention, and a denial of nationality without satisfying the criteria or procedures concerning loss of nationality under the Nationality Act is illegal.

4.2.2. Divergences

(1) Birth and Children

Article 1(1) of the 1961 Convention decrees that a contracting state shall grant nationality to an individual born in its territory who would otherwise be stateless. First, the interpretation of "would otherwise be stateless" is an issue. Although there seems to be no fixed definition, according to the UNHCR "Guidelines on Statelessness No. 4," "the child would be stateless unless a Contracting State with which he or she has a link through birth in the territory or birth to a national of that State grants that child its nationality."[182] Japanese law adopts the *jus sanguinis* principle, and a child born to either a father or mother with Japanese nationality acquires Japanese nationality. On the other hand, if a child is born to parents whose nationality is granted based on the *jus soli* principle in Japan, the child cannot acquire Japanese nationality. In this regard, the child can be stateless, and there is no provision in Japanese law which prevents such a situation. Thus, there is a gap between Article 1(1) of the 1961 Convention, which prevents a child born in the territory to be stateless if he or she would otherwise be stateless, and the Japanese Nationality Act, which lacks such a provision.

In fact, a child can be born stateless in Japan depending on the situation and procedures of states which apply *jus soli*. Brazil in the past is an example. Brazil did not automatically grant nationality to a child born to parents with Brazilian nationality outside Brazil. In order to acquire nationality, he or she was required to visit Brazil to satisfy the necessary procedure.[183] It is said that there are people who were influenced by this Brazilian provision.

---

180 *Ibid*, paras. 70-71.

181 Article 14(1) of the Constitution provides that "[a]ll nationals are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex social status or family origin." (Translator's note: The translator has modified a part of the translation of the Constitution as found in the Japanese Law Translation Database System.)

182 UNHCR, *supra* note 18, para. 18. There is also no standard of proof to determine whether the child "would otherwise be stateless." So if statelessness is proved to a reasonable degree, Article 1(1) is applied. UNHCR, *Ibid*, para. 21.

183 However, as a result of an amendment to the law in 2007, a child does not need to visit Brazil to acquire Brazilian nationality. Mark Manley, "UNHCR's Mandate and Activities to Address Statelessness" in Alice

It is true that Article 8(iv) establishes a simplified naturalisation to "[a] person born in Japan, not having any nationality since the time of birth, and continuously having a domicile in Japan for three years or more since that time,"[184] and a complement to its subsidiary function may be expected. However, this is not a prevention measure at birth. Also, permission to be naturalised is at the discretion of the Minister of Justice.[185] Furthermore, he or she needs to be stateless for at least three years. Thus, its compatibility with the principle of Article 1(1) of the 1961 Convention needs to be carefully examined.

Article 2 of the 1961 Convention provides that a foundling found in a contracting state's territory should be considered to have been born within that territory by parents possessing the nationality of the state as long as there is no proof to the contrary. The article itself does not grant nationality, but it establishes the basis for contracting states in which foundlings are discovered to confer nationality to them. The article follows the contents of the 1930 Convention,[186] and it aims at requesting contracting states to grant nationality to foundlings unless their status to possess another nationality is proved.[187] The standard of proof to the contrary is not mentioned in the Convention, and it is left to contracting states.[188]

No Japanese laws or regulations which accurately correspond to this article may be observed. It is true that Article 2(iii) of the Nationality Act —which provides that a child born in Japan, both of whose parents are unknown, is Japanese national— is the most relevant provision for foundlings to acquire nationality. Although *jus sanguinis* is a principle in Japan, a compromise with the *jus soli* principle has been adopted ever since the provision on nationality in the former Civil Code to prevent statelessness as an exception, as can be seen in Article 2(iii).[189] Nevertheless, there is a gap between Article 2(iii) of the Nationality Act and Article 2 of the 1961 Convention.

There is no definition of a foundling in the 1961 Convention, but according to UNHCR "Guidelines on Statelessness No. 4," foundlings are "children found abandoned in the territory."[190] The 1961 Convention further provides that a child is considered to have been born within the territory of parents possessing the nationality

---

Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014), p. 6.

184 This article attempts to mitigate the conditions of naturalisation for persons born in Japan who would otherwise be stateless and who have not acquired Japanese nationality by the *jus soli* principle, Article 2(iii) of the Nationality Act from the perspective of a reduction of statelessness. Kidana, *supra* note 157, pp. 323-324.

185 *Ibid*, p. 234.

186 Article 14 of the 1930 Convention provides that nationality is granted to a child born in the territory whose parents are unknown.

187 Weis, *supra* note 17, p. 1082.

188 van Waas, *supra* note 104, p. 70.

189 Kidana, *supra* note 157, p. 108. Article 7(4) of the former Civil Code stated that when both of a child's parents are unknown, Japanese nationality is conferred to a child born in Japan, and if the place of birth is unknown, persons found in Japan are recognised to be Japanese. *Ibid*, p. 29.

190 UNHCR, *supra* note 18, para. 57. A child born in the territory without a legally recognised parent is included in the concept of a foundling. *Ibid*, para. 61.

of the state in the absence of proof to the contrary. In contrast, wording such as "abandoned child" or "foundling" are not found in the Japanese Nationality Act.[191] According to Article 2(iii) of the Nationality Act, when a child is born in Japan and his or her parents are not known, he or she is a Japanese national, so most foundlings in the 1961 Convention can acquire Japanese nationality in practice.

However, the subjects of the two articles, by their provisions, are divergent. While the subject of the 1961 Convention is a foundling "found in the territory," the subject of Article 2(iii) of the Nationality Act is a child "born in Japan." "[B]orn in Japan" means a fact of childbirth took place in Japan. According to the ordinary meaning of the words, the scope of persons "found in the territory" and persons "born in Japan" are different, and Article 2(iii) of the Nationality Act cannot be applied to persons born outside of Japan. Yet, a general interpretation of the article assumes a child both of whose parents are unknown to be born in Japan, even if the child cannot have proven his or her birth in Japan or the place of birth unless evidence to the contrary is found.[192] In other words, while there is no provision which assumes that a foundling found in Japan is born in Japan, according to the view of a majority of scholars, foundings found in Japan are considered to be born in Japan in the absence of proof to the contrary because of the geographical circumstances of Japan.[193] Nevertheless, its purpose is not to consider persons born outside of Japan to be born in Japan. Thus, if it is obvious that a foundling was born outside of Japan, was brought to Japan after birth, and was found in Japan, viz., if his or her birth outside of Japan is proved, Japanese nationality is not granted. This is a gap in provisions between the 1961 Convention and Japanese law. In the current situation in which human trafficking is becoming more apparent under globalisation, this gap in provisions can be a gap in reality.

According to Article 3 of the 1961 Convention, a child born on a ship or in an aircraft is consider to have been born in in the territory of the state to which the ship or aircraft is registered. In case of birth on the high seas or in international airspace, the child is likely to become stateless since he or she has a heavy burden of proof. The purpose of the article is to prevent such a circumstance.[194] The article is applied when a ship or an aircraft is within the territory or on the high seas. Furthermore, it is applied to the case when a ship or an aircraft is within the territorial waters or a harbour of another state or at an airport of another state.[195] In such cases, pursuant to Article 1 of the 1961 Convention, if the child would otherwise be stateless, the nationality of a contracting flag state is to be granted.

---

191 Article 57 of Household Registration Act (also called Family Register Act) provides for the treatment of an "abandoned child," but it is a technical provision dealing with "abandoned child," so it is not relevant here.

192 Kidana, *supra* note 157, p. 201.

193 *Ibid*, pp. 201-202.

194 *Ibid*, p. 201.

195 UNHCR, *supra* note 18, para. 63.

In Japanese law, there is no a clear provision on a grant of nationality in cases of birth on a ship or in an aircraft. There is no dispute that the cases in which persons born not only in Japanese territory but also in its territorial waters and territorial air are included in the meaning of "born in Japan" in Article 2(iii) of the Nationality Act.[196] The issue is birth on a Japanse ship or in a Japanese aircraft that is on the high seas or in international airspace, or within the territorial waters or a harbour of another state or at an airport of another state. No laws or regulations explicitly mention Japanese ships or Japanese aircraft as a part of Japanese territory, so there is a gap in provisions between Article 3 of the 1961 Convention and Article 2(iii) of the Nationality Act. The academic view is also diversified on this point. According to the general understanding, birth on a Japanese ship or Japanese aircraft is considered to be "born in Japan," and Article 2(iii) of the Nationality Act is applied, even if the birth took place on the high seas or in international airspace.[197] On the other hand, another view denies it based on the principle of *jus sanguinis*.[198]

(2) Loss of Nationality

The UNHCR Expert Meeting[199] regards that the reasons of personal status (marriage, termination of marriage, recognition and adoption) listed in Article 5(1)[200] of the 1961 Convention are not exhaustive but are examples. Thus, according to this understanding, this article can be applied to a change in personal status such as a denial of paternity or maternity, annulment or revocation of a recognition or of an adoption.[201] It can also be applied when the family relationship which constituted the basis of a child's acquisition of nationality was registered erroneously.[202] Therefore, even when an erroneous registration is revealed, the acquisition of another nationality is conditional on whether the individual loses the nationality which he or she had possessed.

Some understand that, under the Japanese Nationality Act, persons who should not be listed in the household registration (*koseki*) should be deleted from it. That is, if

196 Kidana, *supra* note 157, p. 201.

197 *Ibid*, pp. 200-201. When a child is born in a Japanese aircraft which is flying in international airspace, he or she is not recognised to be born "abroad" in the sense of Article 12 of the Nationality Act. Japanese aircraft are recognised as "Japan." Staff of the Civil Affairs First Division, Civil Affairs Bureau, Ministry of Justice, "*Koukuukinaide Shusshousita Kono Kokusekinitsuite* [Nationality of Children Born in Aircraft]," *Koseki Jihou*, No. 536 (2001), pp. 66-67.

198 Aritsugu Tashiro, *Kokusekihou Chikujyou Kaisetsu* [*Commentary on the Nationality Act*]. (Nihon Kajo Shuppan, 1974), pp. 215-219.

199 Since there is no unified practice among contracting states to the Statelessness Conventions, and states establish a determination procedure for statelessness, UNHCR organised a meeting from 2010 to 2013 to solve the problem. Officers addressing statelessness in each government, NGOs, lawyers, scholars and UN staff participated in the Expert Meeting. The views shared by many of the participants were written in summary conclusions. Kaneko, *supra* note 59, p. 46.

200 This provides that an acquisition of another nationality is a condition for losing nationality as a result of a change in personal status.

201 UNHCR, *supra* note 168, para. 37.

202 *Ibid*, para. 38.

a person who should never have acquired Japanese nationality in the first place has been recognised to possess it, he or she should be deleted from the household registration, which has the function of officially proving Japanese nationality.[203]

The following case is an example that demonstrates the Japanese understanding. "A" (a male child), born in the 1970s in Japan as a child in wedlock to "X" (a Japanese male that is not the biological father) and "Y" (a Korean female) was acknowledged by "Z" (a Japanese male that is the biological father) in the 2010s to establish a legal father-child relationship corresponding to reality soon after the *Judgment to Confirm an Absence of the Parent-Child Relationship* with X. However, since the father-child relationship with X which was the basis of A's acquisition of Japanese nationality by birth was denied, A's Japanese nationality was denied retroactively from his birth, and he was deleted from the household registration. In addition, acknowledgement does not have a retroactive effect (in relation to nationality), so his Japanese nationality was not recognised despite Z's acknowledgement. As a result, he was considered to be a "Korean illegal stayer" by the ward office and Immigration Bureau in Japan.[204] Nevertheless, the Korean government did not recognise A's Korean nationality in reality, so he was rendered effectively stateless.[205] When A applied for a registration as an unregistered person, the high court acknowledged that a loss of Japanese nationality would result in considerable disadvantages because he has lived as a Japanese national for 30 years. Yet, it stated that since there is no parent-child relationship with X, "there is no choice but to say the basis of an acquisition of Japanese nationality is lost."[206]

(3) Territory

According to Article 10 of the 1961 Convention, if a territory is transferred, the

203 Tetsuya Chino, "*Nihon Kokusekito Kosekinitsuite* [Japanese Nationality and Household Registration]," *Houmu Tsuushin*, No. 716 (2011), p. 8. See also the supplementary chapter concerning persons who are not registered by household registration (*mukosekisha*).

204 "A" was later permitted to naturalise in Japan. When he applied for naturalisation, submission of a certificate of renunciation of Korean nationality was not required. This implies the possibility that the Japanese authority did not assume A acquired Korean nationality effectively.

205 Concerning the registration of unregistered persons, Tokyo Family Court, Decision, 30 August 2012 (*Heisei 24 Nen (Ka) Shuuseki Kyoka Moushitate Jiken* [Case to Request Permission for the Registration of an Unregistered Person], No. 9809). Its appealed hearing, Tokyo High Court, Decision, 18 November 2013 (*Heisei 25 Nen (Ra) Shuuseki Kyoka Moushitate Kyakka Shimpannitaisuru Moushitate Jiken* [Case on Appeal from the Decision to Reject the Request of Permission for the Registration of an Unregistered Person], No. 1969). Its appealed hearing by permission, Tokyo High Court, Decision, 20 December 2013 (*Heisei 25 Nen*). Its hearing for a special complaint, The Supreme Court (Petty Bench I), Decision, 31 March 2014 (*Heisei 26 Nen (Ku) Tokubetsu Koukoku Moushitate Jiken* [Case on Special Complaint] No. 97). Also, a request to confirm nationality was taken to the court as a Case to Request to Confirm Nationality No. 439, *(Gyou-u)* 2011 (*Heisei 23 nen*) to Tokyo District Court, but the judgment was not made because the case was retracted on 15 January 2013. Sources of this case were shared by Mr. Sosuke Seki, attorney-at-law. "A" contested the existence of his Japanese nationality in the above case to request for the registration of an unregistered person, but it was not recognised. He was later permitted to naturalise, then he re-acquired Japanese nationality after he was granted a Special Permission to Stay.

206 Tokyo High Court, Decision, 18 November 2013, *supra* note 205, p. 4.

treaty provides that the transfer needs to include a provision which determines that no person becomes stateless as a result of the transfer. Changes of territory have been the main reason for statelessness occuring, and the article aims to prevent it.[207] It requires states to insert the provision into a treaty concerning the transfer of territory, and whether or not this request needs to be included in national law depends on the constitution and the system for implementing treaties of each contracting states of the 1961 Convention. Thus, the absence of such a rule in national law does not directly mean that there is a gap with the 1961 Convention.

Japan in the past had a case which could be recognised as a gap with the provision of the 1961 Convention if one supposes that the Convention had existed then. The Peace Treaty with Japan (San Francisco Peace Treaty, which entered into force on 28 April 1952) did not mention changes of nationality by the transfer of territory, and no specific measure to prevent statelessness was taken. A Circular of the Director-General of the Civil Affairs Bureau of the Attorney-General's Office titled "Concerning Treatment of Nationality and Affairs of Household Registraion of Koreans and Taiwaneses Following the Entry into Force of the Peace Treaty" (*Minji Kou* No. 438) on 19 April 1952 stated that Korean and Taiwanese people lose their Japanese nationality.[208] In the deliberation of the Diet, Mr. Kumao Nishimura, Director-General of Treaties Bureau, Ministry of Foreign Affairs, noted that a choice of nationality was not provided in the Treaty because Koreans in Japan had an option of naturalisation if they desired to acquire Japanese nationality.[209] The Attorney-General's Office then also stated that the Japanese nationality of Korean and Taiwanese people would not be lost until the entry into force of the Peace Treaty, but they were registered as aliens, and their rights to vote and rights to be elected were suspended. On this issue, some point out that the Japanese nationality had been voided even before the issuance of the circular.[210]

In the *Lawsuit to Request Confirmation of Nationality* in 2010,[211] there was a debate on changes of nationality involving the attribution of sovereignty over persons following a change of territory for political reasons. The plaintiff, a Japanese national born in Kobe to "Koreans" who were residing in Japan with Japanese nationality, claimed that his Japanese nationality was deprived by the "Circular on Treatment of Nationality and Affairs of Household Registration of Koreans and Taiwaneses" following the entry into force of the Peace Treaty. The circular addressed the treatment

207 Weis, *supra* note 17, p. 1084.

208 Masataka Endo, *Kosekito Kokusekino Kingendaishi: Minzoku, Kettou, Nihonjin* [*Modern History of Household Registration and Nationality: Ethnicity, Blood and the Japanese*]. (Akashi Shoten, 2013), pp. 246-247.

209 *1951 (Shouwa 26) Nen 11 Gatsu 5 Nichi, Dai 12 Kai Kokkai Sangiin Heiwa Jyouyakuoyobi Nichibei Anzenhoshou Jyouyaku Tokubetsu Iinkai Kaigiroku, Dai 10 Gou* [Minutes of the Special Committee on Peace Treaty and Japan-US Security Treaty, House of Councillors, the 12th Session of the Diet. Vol. 10. 5 November, 1951], pp. 19-20.

210 Endo, *supra* note 208, pp. 231-239.

211 The judgment is the following. Tokyo District Court, Judgment, 20 July 2011 (*Heisei 23 Nen*). Westlaw Reference Number: 2011WLJPCA07208004.

of the Japanese nationality of persons who should belong to Korea after the recognition of the independence of Korea. The court judged that the deprivation was not against the Constitution because the plaintiff should be registered as a Korean, as a child of Koreans.[212]

> Concerning the persisting state's recognition of the independence of a part of the state, and the method to renounce sovereignty in such cases [,] […] it is difficult to recognise a fixed principle in international law, but concerning the attribution of sovereignty over persons related to the independence of Korea and persons relevant to it [,] […] by Article 2(a) of the Peace Treaty, as an international legal action, Japan made clear its recognition of the independence of Korea, and at the same time, Japan chose a method to renounce rights including sovereignty over Korea and Korean people […]

According to this judgment, as a result of the recognition of the independence of a part of the state, for instance in a case like this one where a recognition of the independence of Korea and a renunciation of all rights over Korea are obvious from the wording of the Treaty, a deprivation or loss of nationality is recognised to be inevitable. As emphasised already, the entry into force of the Peace Treaty with Japan took place before the adoption of the 1961 Convention. However, it is a gap that history teaches us. The situation resulted from a lack of consideration for statelessness regarding the transfer of territory.

4.3. Conclusion

The general principle of prevention of statelessness that was realised in the 1930 Convention is incorporated into laws and regulations on the nationality of many states including Japan. In fact, the Japanese Nationality Act pays attention to deprivation, and there is no gap in provisions with the 1961 Convention concerning it.

On the other hand, there is a distance between Japanese law and the 1961 Convention. Concerning provisions of the Convention on birth and children (Articles 1 to 4) and loss of nationality (Article 5), there are Japanese laws that are not completely compatible with the Convention. First, if a child is born in Japan to parents whose nationality is passed through the *jus soli* principle, there is no Japanese law which prevents the child from being stateless. Second, Japanese law does not accurately meet the requirement to prevent foundlings "found in the territory" from being stateless. Third, Japanese law does not provide any specific provision which

212 *Ibid*. Also, see section 2.1. of the supplementary chapter.

grants nationality to a child born on a ship or in an aircraft. Fourth, Japanese law may not be compatible with an interpretation such that an acquisition of another nationality is conditional on whether or not the family relationship constituting the basis of a child's acquisition of nationality was registered erroneously.[213]

213 Chapter 3 of the report confirmed that resident status decisively affects the rights and protections of stateless persons. How is resident status relevant to the 1961 Convention? Article 1(3) of the 1961 Convention, which decrees that a child in wedlock whose mother possesses the nationality of the contracting state acquires the mother's nationality, and Article 1(4) of the Convention, which lists the conditions by which a child is granted either of the parents' nationality, both assume that a parent of the child is Japanese. Thus, a particular relationship with the resident status is not found. Also, as stated repeatedly, the 1961 Convention pays heavier attention to the prevention of future statelessness than to a reduction of currently stateless persons (particularly Articles 4 to 9). Concerning foundlings in Article 2, since the parents are not known, the resident status is also not known in many cases. Furthermore, Article 3 requires states to consider children born in ships or aircraft to be born in the flag-state's territory, and Article 10 is related to a conferment of a new nationality by a change of territory. So the cases in which an element of resident status intervene seems to be limited.

Chapter 5: Refugees and Human Trafficking

5.1. Introduction

Chapters 2 and 3 of this report sketched the gap between the 1954 Convention and Japanese law. Is this gap narrowed by international instruments which are relevant to Japan or Japanese law influenced by the international instruments? Namely, do international instruments supplement the insufficient protection of stateless persons under current Japanese law? This chapter takes up legislation and judicial decisions concerning refugees and human trafficking to consider this possibility.

5.2. Refugees

5.2.1. Stateless Persons in the Refugee Convention

There are people who have been deprived of their nationality by a state which attempts to form and to exclude a lower class and people who cannot be granted a nationality by the state for reasons of their ethnicity or religion. These people, who are stateless persons and refugees at the same time, may be protected by the Refugee Convention. However, the protection of stateless persons under the Refugee Convention is limited in the practice of its contracting states. The determination of the status of refugee in each state tends to exclude stateless persons from international protection. One reason is the history of the legal separation between stateless persons and refugees as observed in Chapter 1, and the political and humanitarian priority of refugees. Practices in the UK, the US, Canada, Australia and New Zealand show that stateless persons are excluded from protection by international human rights law and refugee law as a result of a strict interpretation of Convention refugees. According to Kate Darling, the Refugee Convention places a heavier burden on stateless persons than on persons with nationality in proving refugee status.[214]

A tendency to exclude stateless persons from the process of refugee status determination in the above-mentioned states is observable in the context of states of consideration, of the possibility of return to the state of origin and of a cause-and-effect relationship.[215] One point this section discusses is the relationship between discrimination which does not amount to persecution and stateless persons. First, this chapter introduces the case of New Zealand, and then Japanese precedents will be observed.

214 Kate Darling, "Protection of Stateless Persons in International Asylum and Refugee Law," *International Journal of Refugee Law*, Vol. 21, No. 4 (2009).
215 Arakaki, *supra* note 9.

There are several comments to make before stepping into a main part of this chapter. First, as far as the author is aware of as of the writing of this report, there are a limited number of cases in Japan which consider refugee status and statelessness. Among judgments concerning the revocation and the declaration of nullity of denials of refugee status, only two judgments introduced in Chapter 2 stepped into a determination of the question of statelessness to some extent.[216] Second, the two judgments in Japan show that stateless persons can be protected under the Refugee Convention if they are refugees, but they are not automatically protected for the reason of being stateless. Third, the state which was being examined in the refugee status determination was the state of habitual residence of those who were determined to be stateless.

5.2.2. Discrimination which does not Amount to Persecution

(1) The Case of New Zealand

The RSAA was an agency established in 1991 which dealt with appeals concerning the refugee status determination.[217] Although the Refugee Convention and other international conventions do not define "persecution" in the definition of Convention refugees, the RSAA formulated the concept of persecution as "persecution = serious harm + the failure of state protection."[218] Also, as a method to visualise "serious harm," it adopted an international human rights approach. At the very early days of the RSAA, human rights were classified into four categories. Rights enshrined in the ICCPR, particularly, rights which need to be protected even in an emergency situation (non-derogable rights), tend to be recognised as "core human rights."

This international human rights approach was the basis for discouraging the protection of stateless persons by the Refugee Convention. Since civil and political rights were emphasised in the concept of persecution, violations of social and economic rights were often recognised as "discrimination but not persecution." Stateless persons are on many occasions subjected to inequalities in opportunities for education, work, or social welfare benefits; procedural inconveniences such as being denied the issuance of identity papers; and daily harassment of neighbours. These are cases of "low-level" discrimination which are relevant to social and economic rights.[219] When civil and political rights are emphasised, the plight which stateless persons are facing can be entirely dismissed as discrimination which does not amount to persecution. For instance, a decision of the RSAA in 2004 implied this understanding. In that case, the RSAA did not accept the claim of a stateless person

216 See section 2.4.1.

217 The RSAA finished its mission on November 2010, and its mandate was succeeded to the newly established Immigration and Protection Tribunal. The RSAA dealt with more than 9,000 claims.

218 *Refugee Appeal No.71427/99* [2000] NZAR 545.

219 Darling, *supra* note 214, pp.760-761.

from Latvia.[220]

> While it is certainly the case that the appellant has suffered discrimination, arbitrary interference with his home and privacy and sporadic low level assaults and harassment, the Authority concluded that his past experiences do not meet this standard [of persecution]. While his experiences have plainly affected his life in significant way (the enforced dissolusion of his marriage), he simply has not suffered serious harm in the past to a level required to be categirised as persecution.
>
> [T]he appellant will no doubt encounter this on his return [to Latvia]. However mere discrimination, while unjustified does not amount to persecution.

(2) The Case of Japan

Regarding the interpretation of persecution, Japanese precedent on refugee status determinations recognise only violations of freedoms relating to activities which impact on life or body as persecution, and it hesitates to include violations of other types of freedom as persecution, such as economic freedoms. This implies that the scope of stateless persons to be protected as refugees is limited. It is true that a judgment of the Tokyo District Court in 2010 determined that two of twenty plaintiffs (Rohingya people from Myanmar) are stateless and refugees.[221] One ground for the determination of their refugee status was a correspondence between their claim and the concept of persecution. Persecution according to precedents is limited as follows.

> "Persecution" is aggression or oppression which causes intolerable pain, in general, and it is appropriate to recognise persecution as representing a violation or oppression of freedom to life or physical integrity.

Regarding an understanding of "freedom" as a subject of a violation, the judgment noted as follows:

> [According to Article 1A(2) of the Refugee Convention,] it is reasonable to consider this "freedom" to be freedom concerning activities relevant to life, namely, freedom of physical activities. […] It is appropriate not to include freedom of economic activities

220 *Refugee Appeal No. 73575* (30 June 2004), paras. 45, 48.
221 Tokyo District Court, Judgment, 29 October 2010 (*Heisei 22 Nen*), *supra* note 84.

in the “freedom” above.

Likewise, the types of persecution are limited to violations of freedom of physical activities. As a result, the majority of stateless persons who suffer from violations of economic and social rights and discrimination are excluded from the scope of the Refugee Convention. The judgment provides the following general argument as to the relationship between the discrimination stateless persons face and their persecution.

> Even if a majority of Rohingya people are not considered as Myanmar nationals, or if discrimination and disadvantaged treatment against Rohingya people exist, it is difficult to identify a fear of being “persecuted” as [this judgment] interprets it by all Rohingya people because they are Rohingya.

As can be seen, according to the understanding of the Japanese precedents, refugee status is denied even if discrimination against stateless persons is a violation of human rights unless it amounts to persecution in the above meaning.

5.2.3. Cumulative Effects of Discrimination

The interpretation of persecution is different between New Zealand and Japan. However, they are similar in the sense that both construct an argument by which discriminatory treatment and violations of social and economic rights are not forms of persecution. All forms of discrimination are not equivalent to persecution, and “low-level” discrimination related to social and economic rights tends not to be recognised as persecution. To the extent this is a general tendency of the contracting states of the Refugee Convention, an exclusion of stateless persons from the refugee protection system may not be a unique feature of Japanese practice.

On the other hand, there has been a parallel movement to challenge the tendency to hesitate protecting stateless persons in the RSAA. This was an attempt to connect persecution and discrimination. It is true that persecution and discrimination are different, and a finding of discrimination itself is not enough to be recognised as a refugee. However, by an assessment using a “cumulative effects of discrimination” standard, discrimination can be considered to amount to persecution. According to this, situations considered to be persecution are not limited to a discrete loss of a significant interests protected by law. A violation of rights which is considered a loss of a relatively minor interests or a slight suppression can be recognised as persecution if there is an accumulation of assaults or a sum or collection of disadvantages significantly affecting the individual.[222]

222 Osamu Arakaki, “*Nyujirandoniokeru ‘Hakugai’ Gainenno Saikouchiku: Kokusai Jinken Kijyunno Dounyu* [Reconstruction of the Concept of ‘Persecution’ in New Zealand: An Introduction to the

The RSAA has utilised this interpretation to determine the refugee status of stateless persons. Concerning the Bidoon appellant who left Kuwait,[223] the RSAA's decision in 2004 stated the following, and the appellant was determined to be a refugee.[224]

> He [the appellant] was denied access to free education, health care and other social benefits, barred from employment, denied basic official documentation, including a driver's licence […]. [The curtailment of the right of bidoons to take up employment] further renders remote any prospect of the appellant being able to lead a normal life in Kuwait, in the sense of marrying and independently supporting a family of his own.
>
> […] The cumulative harm of the past discriminatory measures against him – which effectively rendered him a non-person in his own country – reached such a serious degree as to amount to persecution.

The international human rights approach that refugee law adopted tended to underestimate the value of social and economic rights, and a higher standard was required for a violation because it emphasised civil and political rights.[225] As a result, the predicament of stateless persons was not seriously considered in the field of refugee protection. At the time, although the RSAA was not enthusiastic to include stateless persons, there was also a challenge ocurring in the same period which attempted to resist this tendency. Thus, there was not a unified practice. Japanese precedent on the relationship between refugee status and statelessness does not use any standard similar to the cumulative effects of discrimination.

International Human Rights Standard]," in *Nanmin Mondai Kenkyuu Foramu* [Refugee Issues Research Forum] (ed.), *Nanminto Jinken: Shin Seikino Shiza* [*Refugees and Human Rights: New Century's Viewpoints*]. (Gendai Jimbun Sha, 2001), pp. 101-102.

223 *Bidoon* or *bidun* means "without" in Arabic, and it is used to refer to stateless residents in Kuwait. There are 100,000 Bidoons in Kuwait. According to reports of international NGOs, they are discriminated and face difficulties regarding legal status, issuance of identity papers, work, health care, marriage and travel. See the following. Human Rights Watch "Prisoners of the Past: Kuwaiti Bidun and Burden of Statelessness" (June 2011), at http://www.unhcr.org/refworld/country,,,,KWT,,4df7191b2,0.html. Refugee International "Kuwait: Gender Discrimination Creates Statelessness and Endangers Families" (October 2011), at http://www.refintl.org/policy/field-report/kuwait-gender-discrimination-creates-statelessness-and-endangers-families.

224 *Refugee Appeal No. 74467* (1 September 2004), paras.75, 103.

225 Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press, 2007), pp. 123-132.

5.3. Human Trafficking

5.3.1. The Relationship between Statelessness and Human Trafficking

It is not difficult to imagine that there is a relationship between human trafficking[226] and statelessness. People without a link to any state who are drifting between states are not protected and tend to be targets of human trafficking. At the same time, human trafficking can cause statelessness. In states that possess a nationality law discriminatory to women, if a woman becomes the victim of human trafficking after she is married in the state, she loses her nationality. If she has a child, the child also loses its nationality.[227] Particularly, if a victim of human trafficking is from a state which adopts the *jus sanguinis* principle, the possibility increases that his or her child cannot acquire nationality from that parent victim of human trafficking.[228] Moreover, victims of human trafficking who were taken from other states will not possess or be deprived of official identity papers. Thus, proof of nationality can be difficult.

5.3.2. Human Trafficking Protocol and Japan

International cooperation to deal with human trafficking began as part of a way to deal with organised crime. The World Ministerial Conference on Organized Transnational Crime held in Naples in 1994 became the trigger for a proposal to conclude an international treaty, and the intergovernmental *ad hoc* committee to draft a treaty and an annex protocol was established by the UN General Assembly in 1998. In 2000, the UNTOC and the annex Human Trafficking Protocol were adopted.

As it is evident from the fact that the Human Trafficking Protocol is an annex protocol of the UNTOC, the origin of the concern was that human trafficking is a source of funds for organised criminal groups which are covertly active across borders. Thus, it is an international instrument which has its roots in international criminal law rather than international human rights law. However, its purpose includes the prevention and combating of human trafficking, especially cases of women and children, and the protection and support of victims of human trafficking, respecting their human rights. As a result, the Human Trafficking Protocol was made to include

226 According to Article 3(a) of the Human Trafficking Protocol, trafficking in persons refers to "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

227 Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), pp. 158-159.

228 van Waas, *supra* note 104, pp. 180-181.

provisions for human rights protection.

Japan signed the UNTOC in 2000 and the Human Trafficking Protocol in 2002.[229] Facing international criticism, the Japanese government acknowledged that there are many victims of human trafficking in Japan, and it began to consider the establishment of relevant national laws from around 2003 aiming at a ratification of the Human Trafficking Protocol. At first, emphasis was put on the punishment of perpetrators of human trafficking, and not much attention was paid to the protection of victims. Nevertheless, the "Inter-Ministerial Liaison Committee regarding Measures to Combat Trafficking in Persons" was established to prevent human trafficking and protect victims in April 2004. After that, "Japan's Action Plan of Measures to Combat Trafficking in Persons" was approved in the Ministerial Meeting concerning Measures against Crime in December 2004. This plan recognises victims of human trafficking as subjects of protection. In addition, it requires each ministry to consider victims' situations both psychologically and physically. Around the time of the action plan's approval, relevant ministries began to modify laws, ministerial ordinances and circulars, and the government became involved in solving the human trafficking issue. During this process, the Penal Code, Code of Criminal Procedure and Act against Organised Crimes were amended in June 2005. An ordinance of the Ministry of Justice was also amended to prevent the abuse of the "Entertainer" resident status. The Act on Control and Improvement of Amusement Business, etc. was amended as well.[230]

Although efforts were made, including changes in the law, as can be seen from the above, Japan is still recognised as a destination, source and transit state for victim men and women, including children, of forced labour and sex trafficking.[231] The reality of human trafficking in Japan is not easily observable, but according to the Safety Division of the National Police Agency, there were 657 victims of human trafficking from 2001 to 2013.[232] Their nationality includes Thailand, the Philippines, Republic of Indonesia, Republic of Colombia and Japan,[233] but stateless persons are not reflected in the statistics.

---

229 However, Japan has not yet concluded the UNTOC since a national law to conclude it has not been enacted in the Diet. Because of this, Japan has yet to conclude the Human Trafficking Protocol as well.

230 For the Japanese efforts concerning the Human Trafficking Protocol, see the following. Shiro Okubo (ed.), *Ningenno Anzenhoshouto Hyuman Torafikkingu* [*Human Security and Human Trafficking*] (Nippon Hyoron Sha, 2007), pp. 195-196.

231 The US Department of State, "Trafficking in Persons Report" (June 2014), p. 220, at http://www.state.gov/documents/organization/226847.pdf.

232 Safety Division, National Police Agency, "*Heisei 25 Nenchuuniokeru Jinshin Torihiki Jihanno Kenkyo Jyoukyoutounitsuite* [Arrest of Human Traffickers in 2013]", at https://www.npa.go.jp/safetylife/hoan/h25_zinshin.pdf.
However, human trafficking takes place under-the-table, so the numbers in the statistics show merely a part of the reality.

233 *Ibid*.

5.3.3. Immigration Control

Although 62 states prosecute perpetrators of human trafficking by developing national laws which match the Human Trafficking Protocol, laws and policies to prevent the deportation of victims are lacking in 104 states.[234] In Japan's case, as has been mentioned above, the ICRRA was considered to be a subject of amendment in 2005. As a result, there is convergence between human trafficking and a protection of stateless persons within the immigration control phase. Special Permission to Stay in Japan is granted to the victims of human trafficking. The Minister of Justice, under Article 50(1)(iii), can grant permission to stay to a person without resident status if "[h]e or she resides in Japan under the control of another due to trafficking in persons." Under Article 12 (1)(ii) of the ICRRA, the Minister of Justice can grant special permission for them to land. Article 7 of the Human Trafficking Protocol requires contracting parties to "give appropriate consideration to humanitarian and compassionate factors," and to "consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases." The amendment of the Japanese ICRRA attempts to correspond to this.

Many rights and protections listed in the 1954 Convention are automatically realised when resident status is granted to a stateless person; however, statelessness is not considered to be a positive factor in granting resident status according to the "Guidelines on Special Permission to Stay in Japan."[235] On the other hand, Article 50 (1)(iii) of the amended ICRRA demonstrates the possibility for a stateless person who is a victim of human trafficking to be granted Special Permission to Stay in Japan.

The following points require particular consideration. First, it is the Minister of Justice who can grant resident status, and the ICRRA allows the space for that discretion to him or her. Thus, a victim of human trafficking who is a stateless person can be subject to deportation by the provision. This framework of national law reflects the framework of the Human Trafficking Protocol. Namely, the Protocol's provision reserves discretion on deportation to contracting states. The Japanese ICRRA is in line with this. The second point concerns the operation of the provision. Usually, a short-term resident status for "Designated Activities" (one month, three months or six months) is granted to victims of human trafficking as a result of Special Permission to Stay in Japan.[236] This seems to be an operation which presupposes victims returning

234 The US Department of State, *supra* note 231, p. 7.
235 See section 3.3.2.(3).
236 Yoko Yoshida, "*Jinshin Torihiki Higaishano Hogo Shiento Higai Boushi* [Protection Assistance for Victims of Human Trafficking and Prevention of Harm]" in Shiro Okubo (ed.), *Ningenno Anzenhoshouto Hyuman Torafikkingu* [*Human Security and Human Trafficking*] (Nippon Hyoron Sha, 2007), p. 243. "*Hito, Tokuni Jyoseito Kodomono Jinshin Baibainikansuru Tokubetsu Houkokusha Jyoi Nugoji Ezeiro Teishutsuno Houkokusho* [Report submitted by the Special Rapporteur on Trafficking in Persons, especially Women and Children, Joy Ngozi Ezeilo] (A/HRC/14/32/Add.4)" p. 13, at http://imadr.net/wordpress/wp-content/uploads/2012/09/T4-2-X7.pdf.

to the state of their nationality. From the perspective of the protection of stateless persons, if they are not allowed to stay longer than temporary period, the realisation of the rights in the 1954 Convention will be limited.[237] Third, even if stateless victims of human trafficking could be protected as victims of human trafficking with Special Permission to Stay for a medium to long term, they could not fully enjoy the rights in the 1954 Convention.[238]

Immigration control is merely one perspective on human trafficking. As a state which is criticised as a destination, source and transit state, Japan needs to strengthen its prevention of human trafficking generally to break the link between statelessness and the harm of human trafficking.

5.4. Conclusion

The first point of discussion was the possibility that stateless persons may be legally protected as refugees. There are few judgments in Japan which connect refugee status and statelessness, and the sphere of stateless persons who may be protected under the Refugee Convention is limited. Japanese courts acknowledge that a majority of Rohingya are stateless persons in Myanmar; they face limitations in their social lives; and they are discriminated as a general statement. However, the Japanese courts' position is that discrimination does not amount to persecution, even though it is a significant violation of human rights. Thus, refugee status is not granted to stateless persons unless their claim matches the definition of persecution, which means a violation or oppression of freedom to life or physical integrity. This definition of persecution rarely matches with the situation of stateless persons who tends to face discrimination in an economic or social dimension.

The next point of discussion was the possibility that stateless persons may be legally protected as victims of human trafficking. Japan signed the UNTOC in 2000 and the Human Trafficking Protocol in 2002. In this context, relevant national laws were established, and the ICRRA was also amended. As a result, for instance, the possibility for stateless victims of human trafficking to be granted Special Permission to Stay was explicitly mentioned in Article 50(1)(iii) of the ICRRA. Nevertheless, it is the Minister of Justice who can grant Special Permission to Stay, and there is plenty of space for discretion. Thus, stateless victims of human trafficking can be subject to deportation according to the law. If they are only granted a short-term resident status under the operation of law, they will enjoy limited rights under the 1954 Convention. Furthermore, even if they are granted Special Permission to Stay for a medium to long term, they cannot fully enjoy the rights under the 1954 Convention.

237 See section 3.2.2.(1).
238 See Chapter 3.

Conclusion

1. Recommendations

1.1. Examination and Development of Japanese Law

The findings of this report are written in Chapter 1. Since a summary of each chapter is also found in each chapter's conclusion, they will not be repeated here. Concerning the divergences discussed from Chapter 2 to Chapter 5, what needs to be done to fill the gap? This concluding chapter makes the following suggestions to Japanese government officials facing the issue of statelessness, the Office of the UNHCR and civil society. The following suggestions are rough and unsophisticated, but the author would appreciate if they become a basis for discussions in the future.

What needs to be done if there is a willingness to protect the rights of stateless persons and to eliminate statelessness in the first place? The following table lists points to examine and develop Japanese law based on the conclusions of this report.

Table 2: Points to Examine and Develop Japanese Law relevant to the Statelessness Conventions

1954 Convention		
Provision of the Convention	**Japanese Laws and Regulations**	**Points to Examine and Develop Japanese Law**
Article 1 (Definition of Stateless Persons)	No Laws or Regulations	- Stipulate the definition of stateless persons in laws and regulations (e.g., the ICRRA or Nationality Act). - Incorporate the definition of stateless persons which is recognised as a part of customary law (Article 98(2) of the Constitution), and use it as a reference point in guiding protection in all areas in the judiciary and administration relevant to statelessness.
Article 24 (Labour Legislation and Social Security)	Public Assistance Act	- Amend the Public Assistance Act and enact relevant laws so that stateless persons with resident status are subjects of the Public Assistance Act.
Article 27 (Issuance of Identity Papers)	No Laws or Regulations	- Amend the ICRRA and enact relevant laws to issue identity papers to stateless persons with short-term resident status (temporary visitor)

		and without resident status.
Article 3 (Non-Discrimination) and Article 32 (Facilitation of Naturalisation)	Article 8(iv) of the Nationality Act	- Eliminate the condition of "born in Japan" and take measures to open the procedure of simplified naturalisation to all stateless persons equally.
1961 Convention		
Provision of the Convention	**Japanese Laws and Regulations**	**Points to Examine and Develop Japanese Law**
Article 1(1) (Children Born in the Territory)	No Laws or Regulations	- Amend the Nationality Act to grant Japanese nationality to persons born in Japan who would otherwise be stateless.
Article 2 (Foundling)	Article 2(iii) of the Nationality Act	- Amend the Nationality Act to determine foundlings "found in the territory" of Japan to be born from Japanese nationals in the absence of proof to the contrary.
Article 3 (Children Born on a Ship or in an Aircraft)	No Laws or Regulations (Article 2(iii) of the Nationality Act is relevant)	- Amend the Nationality Act to consider birth on a Japanese ship or in a Japanese aircraft as a birth in Japanese territory.
Article 5 (Loss of Nationality by a Change of the Personal Status)	No Laws or Regulations	- According to an interpretation of Article 5, loss of nationality needs to be conditional to acquisition of another nationality, even if the family relationship constituting the basis of a child's acquisition of nationality was registered erroneously. Examine the possibility that Japanese law is not compatible with this interpretation.

Concerning the examination and development of laws and regulations suggested here, in connection with the 1954 Convention, in particular, the Immigration Bureau of the Ministry of Justice is the governmental agent which will play a significant role. It is the main implementing agent of the Refugee Convention and the Refugee Protocol. It is well informed about Japanese laws which are relevant to the 1954 Convention, and it has accumulated experience and knowledge. The Immigration Bureau's involvement in the discussion is indispensable to further investigate the compatibility of the 1954 Convention and Japanese laws.

Regarding further verification of convergences and divergences between the Statelessness Conventions (particularly the 1961 Convention) and Japanese law, and for a discussion on the examination and development of laws and regulations, it is desirable to have the involvement of the Civil Affairs Bureau of the Ministry of Justice. The Civil Affairs Bureau of the Ministry of Justice concerns itself with nationality issues on a daily basis, and the Legal Affairs Bureaus and District Legal Affairs Bureaus which deal with nationality issues are a part of the Civil Affairs Bureau. The Civil Affairs Bureau is in a position where it can comprehend the practical link between the Statelessness Conventions and the Nationality Act the most accurately. Among the eight items listed in Table 2, at least five of them (Article 32 of the 1954 Convention and all the provisions of the 1961 Convention listed above) seem to be relevant to the Nationality Act. In order to consider an agenda on statelessness, it is evident that the involvement of the agency which is working on nationality issues is necessary, not only the agencies which are working on immigration control and refugee status determinations.

This report particularly emphasised the gap between the Statelessness Conventions and Japanese laws by their language. This was the first step to measure the distance between the 1961 Convention and Japanese law, but it did not include practice, such as the laws' operation. Thus, the effects of laws and regulations which are not compatible with the Statelessness Conventions in practice need to be examined from the perspectives of expertise and practicality. Concerning this point, the Immigration Bureau and the Civil Affairs Bureau of the Ministry of Justice and the Office of the UNHCR should exchange their views further. Joint research by Japanese and non-Japanese scholars is also desireable.

1.2. Conferment of Resident Status

Concerning a majority of stateless persons in Japan, almost all rights and protections under the 1954 Convention are guaranteed to persons with legal resident status. However, without resident status, stateless persons cannot enjoy most of rights and protections listed in the 1954 Convention. Thus, in practice, in order to realise the rights and protection of a person who is determined to be stateless, resident status should be granted to them, and a conferment of resident status equivalent to a permanent or long-term resident needs to be considered.

First, the ICRRA should be amended to guarantee a grant of Special Permission to Stay to stateless persons without resident status at the phase of immigration control, as well as guaranteed special permission for landing to stateless persons. This amendment can bring the rights system of Japanese law to stateless persons. This proposal is not completely unrealistic. For instance, statelessness is already a point to consider for Special Permission to Stay as is illustrated by an official of the

Immigration Bureau of the Ministry of Justice:[239]

> Statelessness itself is not a positive element in the "Guidelines on Special Permission to Stay in Japan." However, in a case where a person lost a definite mother country as a result of statelessness, and if it is difficult to determine a base for the person's life except Japan, a renewal of resident status may be considered as a result of humanitarian considerations referring to other positive and negative elements. If the person intentionally does not acquire a nationality [despite the fact that the person can acquire it by a certain procedure] and claims statelessness or the status of unknown nationality scheming to live in Japan for a long term, the person is not a subject of consideration.

With this trend in mind, a connection with the refugee status determination system may be one way for the protection of stateless persons to be realised to some extent within the existing legal framework. One approach is that even if refugee status is not granted to the person because the criteria are not satisfied, Special Permission to Stay may be granted to stateless persons for humanitarian considerations. As is well known, persons who are not determined to be refugees can be granted resident status for humanitarian reasons under the current system.[240] This seems to be mainly applied to persons suffering from violent conflict in the current situation.[241] However, if stateless persons are considered to be able to receive Special Permission to Stay based on humanitarian considerations, persons who apply to the refugee status determination can be protected to some extent.

A conferment of Special Permission to Stay to stateless persons through an operation of the refugee status determination seems to be a realistic option in the current Japanese situation. However, this remains a temporary or supplementary option. Stateless persons who claim refugee status may be relieved by the operation of the refugee status determination proposed above. On the other hand, stateless persons who do not apply to the refugee status determination cannot receive any benefit from it. A determination and protection of stateless persons should be open to all stateless persons regardless of refugee status. Therefore, a complete picture of protection of stateless persons needs to be designed before organising a system within the refugee status determination. An appropriate procedure to determine stateless persons[242]

239 Interview with an official of the Immigration Bureau of the Ministry of Justice (21 January 2015).

240 Also, the Minister of Justice can grant a change of status of residence or Special Permission to Stay even if the person possessed resident status but cannot renew it, or if the person has not acquired resident status.

241 The Sixth Immigration Policy Discussion Panel and the Expert Meeting on the Refugee Recognition System, "*Nanmin Nintei Seidono Minaoshini Houkouseini Kansuru Kentou Kekka (Houkoku)* [Results of the Study on the Direction of the Revision of the Refugee Recognition System (Report)]" (2014), p. 8, at http://www.moj.go.jp/content/001130133.pdf.

242 See section 2.3.

needs to be incorporated into the refugee status determination system, even if it is a temporary or a complementary measure.

1.3. Conducting a Mapping Study

One pressing agenda is to grasp the round numbers of persons who may be equivalent to meeting the concept of stateless persons under international law. The Office of the UNHCR has already published a guidance document[243] on measuring the round number, and this is useful to conduct such research.

Since the situation of statelessness in Japan and the reality of occurences of statelessness in Japan (as a result of an inability to prevent statelessness) are unknown, an overall picture of the situation through concrete case studies is necessary. From a mapping study, not only may divergences between the Statelessness Conventions and Japanese law be observed, but also divergences between the law and reality in Japan special to statelessness. The conclusion of such a mapping study would provide the basis for considering a concrete way to deal with statelessness in Japan. The author is concerned about a situation where "invisible" stateless persons are left alone in the dark as if "they do not exist" without the implementation of such research.

1.4. Filling the Gap in Consciousness

Finally, the author would like to make additional remarks on what he has learnt during the research of this report. What is the biggest gap between the Statelessness Conventions and Japanese law? This is not found in substantial provisions, but in the preambles of the Statelessness Conventions.

> The High Contracting Parties, […] [c]onsidering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and *endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms*, […]
>
> [c]onsidering that it is desirable to *regulate and improve the status of stateless persons by an international agreement*, [h]ave agreed follows:
> (Preamble of the 1954 Convention, emphasis added)
>
> The Contracting States, […] [c]osidering *it desirable to reduce*

243 UNHCR, "Guidance Document on Measuring Stateless Populations" (UNHCR Geneva, 2011), at http://www.refworld.org/docid/4f6887672.html.

> *statelessness* […], [h]ave agreed as follows:
> (Preamble of the 1961 Convention, emphasis added)

What is found in the Statelessness Conventions but not in Japanese law? That is an awareness and willingness to protect stateless persons and to prevent statelessness. As a precondition to filling the gap between the Statelessness Conventions and Japanese law, and to assure the compatibility of each provision with laws and regulations, this awareness and willingness are significant. Without them, a substantial gap between the Statelessness Conventions and Japanese law will not be filled. Also, even if laws and regulations establish systems and procedures, their aim can be completely different from the protection of stateless persons or prevention of statelessness.

Japan is too indifferent to statelessness. Although there is no doubt that the role of the Japanese government is central with regards to paying attention to statelessness, at the same time, it is also vital to have the active involvement of civil society and the Office of the UNHCR, which has expressed its willingness to end statelessness. In particular, people's minds can be changed if civil society and the Office of the UNHCR expand the space in which various individuals can participate. The actors able to play in the legal sphere on statelessness are not limited to states and public authorities. Even if it is only a particular civil society group or individual that has unique ideas in its mind, these ideas may have an influence on the process of decision-making of the government through mutual social interactions. If such an ideal is shared and perceived as a norm, the value is infiltrated into society and is internalised. One of the best ways to overcome indifference to statelessness is to create a place to discuss each ideal with various actors and to persuade others.

2. Conclusion

This report concludes by sharing what the author realised personally. This begins with a kind of sense of loss a person has who meets the criteria of "stateless persons," a legally constructed concept. One stateless person residing in Japan (who was determined to be a refugee) said the following in a dialogue with the author.[244]

> I have lost my country twice. The first time was when I was betrayed and rebuked by the government of my country, and I escaped from it as a refugee. I would not return to the country, and I lost my country physically. The second loss of my country is a relatively recent one. That is when I am told that I am a stateless person repeatedly, and I

244 Interview by the author (22 January 2015).

> myself finally accept it. There was no home country of mine in the first place. That was the moment that I have lost my country psychologically. I feel a deep loneliness since then.

Law placed him in the category of stateless persons and imbued a particular meaning to statelessness. This took the “home country of his imagination” away from him. What does the law give him from now? Even if a legal system to protect stateless persons is established, a legal system itself cannot compensate a sense of loss and loneliness. The author asked him what he wanted. His answer was rather simple, “a connection with the Japanese people.” Before discussing institutions and legal structure, we need to think about how to face the pain of stateless persons who have no home country. Without this sensitivity in our minds, the gap between stateless persons and people in society will not be narrowed, even if Japanese law is legislated which is compatible with the Statelessness Conventions.

Are we ready to share stateless persons’ pain, where we notice their pain as if we were ourselves hurt? Do members of states share the pain of other communities? Finally, can we share the pain of people suffering regardless of the state to which they belong, or even if they do not belong to any state? Discussing statelessness seriously will inevitably draw us to challenge our minds.

Supplementary Chapter
The Unregistered: Focusing on *Mukosekisha*

1. Introduction

It is difficult to estimate the number of unregistered persons by the nature of the problem, but according to UNICEF, 51 million children born in the world in 2007 were not registered.[245] Birth registration is a condition to guaranteeing rights. Article 7(1) of the Convention on the Rights of the Child provides that "[t]he child shall be registered immediately after birth." Article 24(2) of the ICCPR also provides that "[e]very child shall be registered immediately after birth and shall have a name." Although the concreteness of a right to "be registered" is questionable, it is apparent that unregistered persons face disadvantages throughout their lives. For example, a birth certificate is issued as a result of registration, and it proves that a child is legally recognised by the government. If a child were not registered, that person would not be able to acquire a passport, open a bank account or be protected by the state.[246] Generally speaking, recording the name of a child and parents, date of birth and the place of birth form the basis for the protection of rights.[247]

There are similarities between the situations that unregistered and stateless persons face. Stateless persons are metaphorically considered as "invisible people," and unregistered persons are also legally invisible. One group of people in Japan, the *mukosekisha*, are persons who are not registered in a household registration. Both stateless persons and *mukosekisha* face similar situations because they do not legally exist due to their birth not being registered, and their situations are unstable.[248] *Mukosekisha* face disadvantages such as facing difficulties in acquiring a resident record, an inability to open a bank account, difficulty taking out insurance, an absence of a driver's licence and an inability to exercise the right to vote. This chapter touches upon unregistered persons, particularly *mukosekisha*, to supplement the main parts of this report.

2. *Mukosekisha*

245 UNICEF, *Kodomotachino Tameno Zenshin Dai 8 Gou Kodomono Hogoni Kansuru Houkoku* [*Progress for Children: A Report Card on Child Protection (No. 8)*]. (UNICEF, 2009), p. 5.
246 UNICEF, "The Right to a Formal Identity," at http://www.unicef.org/sowc06/profiles/unregistered.php.
247 Jonathan Todres, "Birth Registration: An Essential First Step toward Ensuring the Rights of All Children," *Human Rights Brief*, Vol. 10, No. 3 (2003), p. 32.
248 Tien-shi Chen (Lara), "Officially Invisible: The Stateless (Mukokusekisha) and the Unregistered (Mukosekisha)," trans. by David Chapman, in David Chapman and Karl Jakob Krogness (eds.), *Japan's Household Registration System and Citizenship*. (Routledge, 2014), p. 224.

2.1. The History of Household Registration

Household registration (*koseki*) is an official document which registers the personal status and its changes of Japanese nationals from birth to death. Household registration was created for the purpose of calculating the population of Japanese nationals by registering personal status. The *jinshin* household registration of 1872 is the foundation of the current system. Given that Western states developed a registration system of personal status, the *jinshin* household registration was created as a part of the Japanese modernisation process to calculate Japanese nationals. The survey subject of *jinshin* household registration was a "house (*ko*)" led by a householder. When people were registered by household registration, they were considered as nationals. On the other hand, persons who were not registered in the household registration were not considered nationals, and they could not be protected by the Japanese state. When nationals were registered by household registration, they were also considered as subjects of the emperor. Furthermore, it emphasised subjects' consideration as equals according to the idea of the equality of four social classes (*samurai* worriors, farmers, artisans and merchants).[249] However, it has been said that the aim of the household registration of that time was to calculate the number of nationals rather than register the personal status of Japanese people *per se*.[250] There were many erroneous registrations in the *jinshin* household registration, so it was difficult to measure the actual number of nationals accurately.[251] The household registration system was reformed in 1886, when characteristics of the current personal status registration system began to be observed.[252] The Household Registration Act was enacted in 1898, the same year as the enactment of the former Civil Code (the *Meiji* Civil Code), and it has characteristics of both individual and household registration, with emphasis on the "house (*ie*)." However, the element of individual registration was abolished from the Household Registration Act in 1914, since the procedure was redundant.[253] In the colonies, a similar system to household registration was introduced.[254]

In 1947, after WWII, a new Civil Code and Household Registration Act (also called Family Register Act) was enacted. The major amendment was the omission of a line for class as a result of the abolition of the nobility system, and household registrations began to be composed of a husband, wife and unmarried children, given the dominance of the "principle to prohibit household registration for three

249 Endo, *supra* note 208, pp. 119-123.
250 Shozo Sawada, *Gaidansu Kosekihou [Koseki Jyouhou Kanri Hen]* [*Guidance on Household Registration Act [Information Control of Household Registration]*]. (Teihan, 2002), pp. 46-47.
251 Endo, *supra* note 208, p. 129.
252 Sawada, *supra* note 250, p. 47.
253 Endo, *supra* note 208, p. 145.
254 *Ibid*, pp. 189-195.

generations."[255] The current Household Registration Act was finalised after an amendment in 1976. The history introduced above shows how the household registration system was operated in line with the maintenance of the "house" system.

In addition, the history of the colonial period shows a close relationship between household registration and nationality. After the First Sino-Japanese War ended in 1895, the Qing Dynasty ceded Taiwan to Japan. Japan stated that if residents of Taiwan did not leave from Taiwan within two years, Japan could consider the Taiwanese residents to be subjects of Japan. Concerning Korea, which was annexed to Japan in 1910, its territory and nationals were considered to be transferred to Japan; thus, residents in Korea were recognised to possess Japanese nationality.[256] At the time, systems similar to household registration were introduced to the colonies. However, they operated under a different legal regime than the Household Registration Act, and residents were considered as "foreign nationals."[257]

From the end of WWII to the conclusion of the peace treaty with the Allied states, the Japanese government regarded people from the former colonies to be Japanese nationals. However, the Act for a Middle Amendment of the Election Act of the House of Representatives promulgated on 17 December 1945 suspended the suffrage of persons who were not subject to the Household Registration Act, and foreign nationals began to be registered as aliens.[258] This means that although foreign nationals were still considered as Japanese nationals, the suffrage depended on the existence of household registration. Household registration functioned to limit their rights.

2.2. The Current Situation and Causes

History shows that household registration is not a mere procedure or a system of registration, but it has played a certain role in realising the protection of rights. Even today, there are people who are not guaranteed their freedom and rights because they are not registered in the household registration. *Mukosekisha* are one group of them.

Although there is no definition of *mukosekisha* in laws or regulations, "*mukosekiji* (*mukosekisha* who are children) issues" are defined as "issues where children are not registered in the household registration because the people who needed to notify the birth of their child […] did not notify it for some reason" according to the Ministry of Justice.[259] In Japan, there is no document to prove

255 Bunmei Sato, *Puroburemu Q&A Kosekitte Nanda [Sabetsuwo Tsukuridasu Mono]* [*Problem Q&A: What is Household Registration? [It Creates Discrimination]*] (Supplementary and Revised Edition). (Ryokufu Shuppan, 2010), p. 120.
256 Endo, *supra* note 208, pp. 161-164.
257 *Ibid*, p. 188.
258 *Ibid*, pp. 232-233.
259 Ministry of Justice, "*Mimpou 772 Jyou (Chakushutsu Suitei Seido) Oyobi Mukokusekijiwo Kosekini Kisaisurutameno Tetsudukitounitsuite* [Article 772 of the Civil Code (System to Presume a Child was Born in Wedlock) and a Procedure for Unregistered Children to Register in Household Registration]," at

Japanese nationality officially except for household registration. That is to say, household registration "registers and notarises kinship from a person's birth to death. It is compiled for Japanese nationals, and it is also the sole system to notarise Japanese nationality."[260] *Mukosekisha* generally refers to persons who are not registered in the household registration although they should be registered. According to a survey conducted by the Ministry of Justice in 2014 for the first time, at least 279 *mukosekisha* were identified.[261] However, at the time of the writing of this report, only 187 local authorities, one-tenth of them, reported it.[262] So the real number should be greater than this.

The whole picture and pattern of occurences of *mukosekisha* are not apparent. However, the "problem of the 300 days after divorce" which is rooted in Article 772 of the Civil Code, has drawn attention recently. According to Article 772(1) of the Civil Code, a child conceived by a wife during marriage is presumed to be the child of her husband. Article 772(2) also provides that "[a] child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage." Therefore, a child born within 300 days of the day of the divorce is recognised as a child of the ex-husband, and the notification of the birth is received based on that presumption. In other words, the child is registered in the household registration of the ex-husband.[263] In order to prevent this, mothers do not submit the notification of the birth. As a result, a *mukoseki* situation takes place.[264]

Recently, the administration has begun to take action relevant to the prevention of *mukoseki*. For instance, if the notification of a birth is submitted along with the document of a doctor certifying that a pregnancy was after a divorce, the presumption of Article 772 is not applied pursuant to the 7 May 2007 Circular of the Director-General of the Civil Affairs Bureau of the Ministry of Justice. In other words, such a child will not be considered as the child of the ex-husband.[265] The "problem of the 300 days after divorce" became apparent due to the advancement of technology.

---

http://www.moj.go.jp/MINJI/minji175.html.

260 Ministry of Justice, "*Koseki* [Household Registration]", at http://www.moj.go.jp/MINJI/koseki.html.

261 The Sankei Shimbun, "*Kosekino naihito, Zenkokude 279 Nin Miseinenshaga 9 Wari Jyaku* [279 Persons without Household Registration throughout Japan. Minors are around 90%]," at http://www.iza.ne.jp/kiji/events/news/141024/evt14102421250045-n1.html.

262 *Ibid*.

263 When an ex-husband, who was presumed to be the father of a child, denies the parent-child relationship with the child, the child will not be registered with the ex-husband. If an actual parent-child relationship is recognised by judges or conciliation, the child may be registered with the household registration of an actual parent. Yoko Sakamoto, *Houni Shirizokerareru Kodomotachi Iwanami Bukkureto No. 742* [*Children Dismissed by Law: Iwanami Booklet No. 742*] (Iwanami Shoten, 2008), p. 9.

264 Ministry of Justice, *supra* note 259. In particular, if domestic violence is the reason for a divorce, the ex-husband tends not to cooperate with the ex-wife and the child. In such cases, the parent-child relationship with the ex-husband is not denied. As a result, in many cases, a notification of birth will not be submitted. Sakamoto, *supra* note 263, p. 18.

265 However, if a certificate is not attached or a pregnancy commences before the divorce, the child is presumed to be the child of the ex-husband.

The parent-child relationship can today be assessed based on genetic and medical grounds. As a result, reality and law began to disagree. In order to deal with the changes of such fundamental circumstances, there have been discussions for a flexible operation of law and amendments to the law.

3. Other Unregistered Persons

Unregistered persons in Japan are not limited to *mukosekisha*. One category of unregistered persons is those born to alien parents or for whom either of the parents cannot confirm Japanese nationality. In principle, the household registration is not compiled for children born in Japan to alien parents. However, pursuant to Article 25 of the Household Registration Act, a notification of birth needs to be submitted to the local authority. Furthermore, if the child is to stay in Japan for more than 60 days after the date of birth, the child needs to submit an application for permission to acquire resident status to a regional immigration bureau of the Ministry of Justice within 30 days after the date of birth (Article 22-2(2) of the ICRRA). Children can be legally recognised by the Japanese state through these multiple registrations and applications following their birth.

However, in the absence of such registrations and applications, there are people (particularly children) who do not legally exist and are not visible to the local community. For instance, there are cases where alien parents without resident status are missing, and their children are abandoned. Sometimes alien parents without resident status do not submit a notification of birth fearing the risk that they and their children may be deported. Moreover, the existence of an unregistered child hidden within a family can become apparent by the communication of neighbours or by a claim of abuse.[266]

Child guidance offices contact these children. Child guidance offices, located throughout Japan, are notified of children requiring protection and protect them pursuant to Article 25 of the Child Welfare Act. When unregistered children are found, child guidance offices will become involved in the case based on this legal basis. So child guidance offices themselves do not actively research household registration to find unregistered children. However, child guidance offices actively intervene in cases of unregistered children if the case is within their mandate. For instance, if the parents are identified, the child guidance offices encourage the parents to take the procedures to register the child to the parent's household registration, although the child guidance offices cannot enforce parents to do so.[267] The author was impressed by the words of

266 Cases of unregistered children born to parents who do not possess Japanese nationality were shared in interviews with officers of several child guidance offices.

267 Interview with officers of several child guidance offices.

one officer of a child guidance office.[268]

> The core principle of our action is the best interest of the child. Alien parents who did not register the birth of a child violated Japanese law, and they neglected a necessary procedure. However, that is a circumstance of the parents, and their action took place for their convenience. Children are innocent; so the parents' penalty should not be put on the children's backs.

4. Conclusion

As mentioned at the beginning of this chapter, registration after birth is required by Article 7(1) of the Convention on the Rights of the Child and Article 24(2) of the ICCPR. It is remarkable that the provisions on registration after birth in both Conventions are followed by "the right to acquire a nationality." These provisions imply a close relationship between registration after birth and nationality. In fact, non-registration is relevant to statelessness, and it cannot be ignored from the perspective of the prevention of statelessness. Registration can be the first step to acquiring a nationality procedurally or in reality. Even if registration after birth is not directly related to acquisition of a nationality, it may certify that the person possesses the necessary conditions to acquire a nationality.[269] Besides, many unregistered children are poor and marginalised. If they become stateless as a result of non-registration, it is rather difficult for them to break out of a vicious circle.[270]

It is not the aim of this report to consider whether *mukosekisha* are stateless persons under international law.[271] However, the relationship between non-registration and statelessness discussed above needs to be paid attention, and it is significant from the perspective of the requirement of registration after birth in international law.

---

268 Interview with an officer of a local child guidance office (15 January 2015).

269 UNHCR Executive Committee of the High Commissioner's Programme, *Birth Registration: A topic protected for an Executive Committee*. EC/61/SC/CRP.5. 9 February 2010. para. 3. Jonathan Todres, *supra* note 243, p. 33.

270 Michael Miller, "Nationality and the Child," (2004), p.3, at http://www.coe.int/t/dghl/standardsetting/nationality/3_WEB%20E%20Rep.%2012.pdf.

271 As was observed in Chapter 2, Japanese law does not have a definition of stateless persons, so it is impossible to conclude definitively whether *mukosekisha* is a stateless person or not under Japanese law. However, a situation of *mukoseki* in Japan may have implications in considering the definition of stateless persons under international law. For instance, it is worth considering, in a situation of attempting to prove statelessness, the meaning of the fact that it is difficult for people to acquire a passport proving their nationality without household registration.

References

Academic Sources

(Japanese Sources)

Kohki Abe, *Mukokusekino Jyoukei: Kokusaihouno Shiza, Nihonno Kadai* [*Overview of Statelessness: International and Japanese Context*]. (UNHCR, 2010), at http://www.unhcr.org/4ce643ac9.html.

Jyunji Annen, "*'Gaikokujinno Jinkenron' Saikou* [Rethinking 'Aliens' Human Rights']" in Ashibe *koki, Gendai Rikkenshugino Tenkai (Jyou)* [*Development of the Current Constitutionalism (Vol. 1)*] (Yuhikaku, 1993).

Osamu Arakaki, "*Nyujirandoniokeru 'Hakugai' Gainenno Saikouchiku: Kokusai Jinken Kijyunno Dounyu* [Reconstruction of the Concept of 'Persecution' in New Zealand: An Introduction to the International Human Rights Standard]," in *Nanmin Mondai Kenkyuu Foramu* [Refugee Issues Research Forum] (ed.), *Nanminto Jinken: Shin Seikino Shiza* [*Refugees and Human Rights: New Century's Viewpoints*]. (Gendai Jimbun Sha, 2001).

Osamu Arakaki, "*Mukokusekishano Nanminsei: Nyujirandono Jissenno Kentouwo Chuushinni* [Stateless Refugees: Practice of New Zealand as a Case Study of the Refugee Status Determination]", *Sekaihougakkai, Sekaihounenpou* [*Yearbook of World Law*], No. 31 (March, 2012).

Osamu Arakaki, "*Mukokusekisha Chiijyouyakuto Mukokuseki Sakugenjyouyaku: Seiritsumadeno Keiitogaiyou* [1954 Convention and 1961 Convention: Background and Overview]", *Houritsu Jihou* [*Law Times*], No. 1078 (October, 2014).

Osamu Arakaki, "*Mukokusekishachiijyouyakuno Seiritsuto Tenkai* [Formation and Development of the 1954 Convention]," *Nanmin Kenkyu Jyanaru* [*Refugee Studies Journal*], No. 4 (December, 2014).

Nobuyoshi Ashibe (revised by Kazuyuki Takahashi), *Kempou* [*Constitution*]. (5th ed., Iwanami Shoten, 2011).

Tetsuya Chino, "*Nihon Kokusekito Kosekinitsuite* [Japanese Nationality and Household Registration]," *Houmu Tsuushin*, No. 716 (2011).

Masataka Endo, *Kosekito Kokusekino Kingendaishi: Minzoku, Kettou, Nihonjin* [*Modern History of Household Registration and Nationality: Ethnicity, Blood and the Japanese*]. (Akashi Shoten, 2013).

Kiminobu Hashimoto, *Nihonkoku Kempou* [*Japanese Constitution*]. (Rev. ed., Yuhikaku, 1988).

Mai Kaneko, "*Mukokusekini Kansuru UNHCR Shin Handobukku, Gaidoraintouno Kaisetsu* [Commentary for the New UNHCR Handbook and Guidelines on Statelessness]". *Nanmin Kenkyuu Jyanaru* [*Refugee Studies Journal*], No. 4

(December, 2014).
Shoichi Kidana, *Chikujyou Chuukai Kokuseki Hou* [*Commentary on the Nationality Act*]. (Nihon Kajo Shuppan, 2003).
Koichi Kodama, Sosuke Seki and Mitsuru Namba (eds.), *Konmentaru Shutsunyuukoku Kanrioyobi Nanmin Nintei Hou 2012* [*Commentary: Immigration Control and Refugee Recognition Act 2012*]. (Gendai Jimbunsha, 2012).
Atsushi Kondo, "*Gaikokujinno 'Jinken' Hoshou* [Guarantee of Aliens' 'Human Rights']" in Japan Civil Liberties Union (ed.), *Kempouno Genzai* [*Current Constitutional Law*] (Shinzansha, 2005).
Mark Manley, "*Mukokusekini Torikumutameno UNHCRno Mandetooyobi Katsudou* [UNHCR's Mandate and Activities to Address Statelessness],"*Houritsu Jihou* [*Law Times*], No. 1078 (October, 2014).
Toshiyoshi Miyazawa, *Kempou II* [*Constitution II*]. (Yuhikaku, 1971).
Ayane Odagawa, "*Kokuseki, Mukokusekininteino Genjyoto Kadai: Kaiseinyuukanhouwo Fumaete* [The Current Situation and Challenges of Determinations on Nationality and Statelessness]". *Imin Seisaku Kenkyuu* [*Migration Policy Review*], No. 5 (May 2013).
Ayane Odagawa, "*Firipinno Nanmin, Mukokuseki Nintei Tetsuduki* [Refugees and the Stateless Status Determination Procedure in the Philippines]," *Nanmin Kenkyu Jyanaru* [*Refugee Studies Journal*], No. 4 (December, 2014).
Ayane Odagawa and Yue Fu, "*Nihonno Mukokusekimondaiwomeguru Genjyouto Kadai* [Current Situation and Issues of Statelessness in Japan]". *Houritsu Jihou* [*Law Times*], Vol. 86, No. 11 (October, 2014).
Shiro Okubo (ed.), *Ningenno Anzenhoshouto Hyuman Torafikkingu* [*Human Security and Human Trafficking*] (Nippon Hyoron Sha, 2007).
Yasuhiro Okudaira, *Kempou III: Kempouga Hoshousuru Kenri* [*Constitution III: The Rights Guaranteed by the Constitution*]. (Yuhikaku, 1993).
Yoko Sakamoto, *Houni Shirizokerareru Kodomotachi Iwanami Bukkureto No. 742* [*Children Dismissed by Law: Iwanami Booklet No. 742*] (Iwanami Shoten, 2008).
Kosei Sakuma, "*Mombukagakushouno Gaikokujin Jidou Seito Ukeire Sisakuno Henka* [Change of the Ministry of Education, Culture, Sports, Science and Technology's Policy to Receive Alien Students]". *Senshu Ningen Kagaku Ronshuu*, Vol. 4 No. 2 (March 2014).
The Sankei Shimbun, "*Kosekino naihito, Zenkokude 279 Nin Miseinenshaga 9 Wari Jyaku* [279 Persons without Household Registration throughout Japan. Minors are around 90%]," at http://www.iza.ne.jp/kiji/events/news/141024/evt14102421250045-n1.html.
Bunmei Sato, *Puroburemu Q&A Kosekitte Nanda [Sabetsuwo Tsukuridasu Mono]* [*Problem Q&A: What is Household Registration? [It Creates Discrimination]*] (Supplementary and Revised Edition). (Ryokufu Shuppan, 2010).
Shozo Sawada, *Mukokusekishawo Chichitosuru Chakushutsushitouno*

Shusshoutodokewo Jyurisurubaaino Toriatsukaiwo Megutte [The Management of a Case to Accept a Birth Report of Children Born in Wedlock whose Father is a Stateless Person]. *Koseki*, No. 454 (1982).

Shozo Sawada, *Gaidansu Kosekihou [Koseki Jyouhou Kanri Hen]* [*Guidance on Household Registration Act [Information Control of Household Registration]*]. (Teihan, 2002).

Hideki Shibutani, *Kempou* [*Constitution*]. (Yuhikaku, 2007).

Staff of the Civil Affairs First Division, Civil Affairs Bureau, Ministry of Justice, "*Koukuukinaide Shusshousita Kono Kokusekinitsuite* [Nationality of Children Born in Aircraft]," *Koseki Jihou*, No. 536 (2001).

Akira Takafuji, *Gaikokujinto Shakaihoshouhou: Seizonkenno Kokusaitekihoshouhourino Kouchikunimukete* [*Aliens and Social Security Law: Towards Building a Legal Principle of the International Protection of the Right to Life*]. (Akashi Shoten, 2001).

Yoshio Tameike, "*Tsumanokokuseki, Mukokuseki* [Married Women's Nationality and Statelessness]" In Shigejiro Tabata (Ed.), *Kokusairengouno Kenkyuu* [*Studies of the United Nations*] Vol. 3 (Yuhikaku, 1966).

Aritsugu Tashiro, *Kokusekihou Chikujyou Kaisetsu* [*Commentary on the Nationality Act*]. (Nihon Kajo Shuppan, 1974).

Ryoichi Yamada, *Kokusai Shihou [Shinban]* [*Private International Law [New Edition]*]. (Yuhikaku, 2003).

Ryoichi Yamada and Tadamasa Kuroki, *Yokuwakaru Nyuukanhou* [*Easy ICRRA*]. (Yuhikaku, 2010).

Yoko Yoshida, "*Jinshin Torihiki Higaishano Hogo Shiento Higai Boushi* [Protection Assistance for Victims of Human Trafficking and Prevention of Harm]" in Shiro Okubo (ed.), *Ningenno Anzenhoshouto Hyuman Torafikkingu* [*Human Security and Human Trafficking*] (Nippon Hyoron Sha, 2007).

(English Sources)

Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *International Journal of Refugee Law*, Vol. 10, No. 1/2 (1998).

Tien-shi Chen (Lara), "Officially Invisible: The Stateless (Mukokusekisha) and the Unregistered (Mukosekisha)," trans. by David Chapman, in David Chapman and Karl Jakob Krogness (eds.), *Japan's Household Registration System and Citizenship*. (Routledge, 2014).

Kate Darling, "Protection of Stateless Persons in International Asylum and Refugee Law," *International Journal of Refugee Law*, Vol. 21, No. 4 (2009).

Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, (Cambridge University Press, 2007), pp. 123-132.

Anne T. Gallagher, *The International Law of Human Trafficking*. (Cambridge

University Press, 2010).
Matthew J. Gibney, "Statelessness and Citizenship in Ethical and Political Perspective," in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014).
James A. Goldston, "Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens," *Ethics & International Affairs,* Vol. 20, No. 3 (2006).
Guy S. Goodwin-gill "Convention of the Reduction of Statelessness," at http://legal.un.org/avl/pdf/ha/crs/crs_e.pdf.
Gábor Gyulai, "The Determination of Statelessness," in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014).
James C. Hathaway, *The Rights of Refugees under International Law.* (Cambridge University Press, 2005).
Human Rights Watch "Prisoners of the Past: Kuwaiti Bidun and Burden of Statelessness" (June 2011), at http://www.unhcr.org/refworld/country,,,,KWT,,4df7191b2,0.html.
International Law Commission, *Draft Article on Diplomatic Protection with commentaries* (2006), at http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.
Mark Manley, "UNHCR's Mandate and Activities to Address Statelessness" in Alice Edwards and Laura van Waas (eds.), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014).
Michael Miller, "Nationality and the Child," (2004), at http://www.coe.int/t/dghl/standardsetting/nationality/3_WEB%20E%20Rep.%2012.pdf.
Refugee International "Kuwait: Gender Discrimination Creates Statelessness and Endangers Families" (October 2011), at http://www.refintl.org/policy/field-report/kuwait-gender-discrimination-creates-statelessness-and-endangers-families.
Nehemiah Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation", 1955, reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees, at http://www.refworld.org/docid/4785f03d2.html.
Caroline Sawyer, "Stateless in Europe: Legal Aspects of *de jure* and *de facto* Statelessness in the European Union" in Caroline Sawyer and Brad K. Blitz (eds.), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press, 2011).
Jonathan Todres, "Birth Registration: An Essential First Step toward Ensuring the Rights of All Children," *Human Rights Brief,* Vol. 10, No. 3 (2003).
The US Department of State, "Trafficking in Persons Report" (June 2014), at

http://www.state.gov/documents/organization/226847.pdf.
Laura van Waas, *Nationality Matters: Stateless under International Law*. (Intersentia, 2008).
Sam Walker, *Can Refugees Become Citizens of Uganda?* Refugee Law Project, Briefing Paper July 2008, at http://www.refugeelawproject.org/files/briefing_papers/RLP.BP0803.pdf.
Paul Weis, "The Convention Relating to the Status of Stateless Persons," *International and Comparative Law Quarterly*, Vol. 10 (1961).
Paul Weis, "The United Nations Convention on the Reduction of Statelessness, 1961," *International and Comparative Law Quarterly*, Vol. 11 (1962).
David Weissbrodt, *The Human Rights of Non-citizens*, (Oxford University Press, 2008).
David Weissbrodt and Clay Collins, "The Human Rights of Stateless Persons," *Human Rights Quarterly*, Vol. 28 (2006).

Documents of the Government

Ministry of Education, Culture, Sports, Science and Technology, "*Gaikokujinno Kodomoni Taisuru Shuugaku Shiennitsuite* [Assistance of Alien Children to Attend School]," at http://www.mext.go.jp/b_menu/shingi/chousa/shotou/042/houkoku/08070301/004.htm.
Ministry of Health, Labour and Welfare, "*Shakai Hoshou Shingikai Fukushi Bukai: Seikatsu Hogo Seidono Arikatani Kansuru Senmon Iinkai Dai 12 Kai (Heisei 16 Nen 6 Gatsu 8 Nichi) Shiryou 1 Sonota* [Appendix 1 Others, the 12th Meeting (8 June 2004), Advisory Committee on the Public Assistance System, Sectional Meeting on Welfare, Social Security Council]," at http://www.mhlw.go.jp/shingi/2004/06/s0608-6a2.html.
Statistics Bureau, Ministry of Internal Affairs and Communications, "*Kokuseki (Shusshinchi) Betsu Zairyushikaku (Zairyuumokuteki) Betsu Gaikokujin Tourokusha* [Registered Foreign Nationals by Nationality (Place of Origin) and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001111183.
Statistics Bureau, Ministry of Internal Affairs and Communications, "*Jinkousuikei: Heisei 26 Nen 10 Gatsuhou* [Estimated Population: October 2014]," at http://www.stat.go.jp/data/jinsui/pdf/201410.pdf.
Statistics Bureau, Ministry of Internal Affairs and Communications, "*Dai 1 Shou: Kokudoto Kishou* [Chapter 1: Territory and Weather]," at http://www.stat.go.jp/data/nenkan/01.htm.
Ministry of Justice, "*Koseki* [Household Registration]", at

http://www.moj.go.jp/MINJI/koseki.html.

Ministry of Justice, "*Zairyuu Gaikokujin Toukei* [Statistics on Foreign National Residents]," at http://www.moj.go.jp/housei/toukei/housei05_00021.html.

Ministry of Justice, "*Dai 1 Hyou Kokuseki, Chiikibetsu Zairyuusikaku (Zairyuumokuteki) Betsu Zairyuugaikokujin* [Table 1: Foreign National Residents by Nationality, Region and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001127507.

Ministry of Justice, "*Dai 1 Hyouno 2 Kokuseki, Chiikibetsu Zairyuusikaku (Zairyuumokuteki) Betsu Souzairyuugaikokujin* [Table 1.2: All Foreign National Residents by Nationality, Region and Status of Residence (Purpose of Residence)]," at http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001127507.

Ministry of Justice, "*Mimpou 772 Jyou (Chakushutsu Suitei Seido) Oyobi Mukokusekijiwo Kosekini Kisaisurutameno Tetsudukitounitsuite* [Article 772 of the Civil Code (System to Presume a Child was Born in Wedlock) and a Procedure for Unregistered Children to Register in Household Registration]," at http://www.moj.go.jp/MINJI/minji175.html.

Civil Affairs Bureau, Ministry of Justice, "*Kika Kyoka Shinseishasuutouno Hensen* [Number of Applicants to a Permission of Naturalisation, etc.]," at http://www.moj.go.jp/MINJI/toukei_t_minj03.html.

Immigration Bureau, Ministry of Justice, "*Zairyuu Tokubetsu Kyokani Kakakwaru Gaidorain* [Guidelines on Special Permission to Stay in Japan]," at http://www.moj.go.jp/content/000007321.pdf.

Safety Division, National Police Agency, "*Heisei 25 Nenchuuniokeru Jinshin Torihiki Jihanno Kenkyo Jyoukyoutounitsuite* [Arrest of Human Traffickers in 2013]", at https://www.npa.go.jp/safetylife/hoan/h25_zinshin.pdf.

The Sixth Immigration Policy Discussion Panel and the Expert Meeting on the Refugee Recognition System, "*Nanmin Nintei Seidono Minaoshini Houkouseini Kansuru Kentou Kekka (Houkoku)* [Results of the Study on the Direction of the Revision of the Refugee Recognition System (Report)]" (2014), at http://www.moj.go.jp/content/001130133.pdf.

Administrative Document

Nyukoku, Zairyuu Shinsa Youryou [*Guidelines on Immigration and Residence Inspection*] (Request for Disclosure of Administrative Documents. Date for Disclosure Decision: 29 October, 2012. *Houmushou Kan Jyou Dai 5607 Gou* [No. 5607, *Kan Jyou*, Ministry of Justice].)

Documents of the UN and the League of Nations

League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law," (1930), at http://www.refworld.org/docid/3ae6b3b00.html.
UN Doc. A/CN.4/50, Report on Nationality, Including Statelessness, 1952.
UN Doc. E/1618 and Corr. 1 (17 February 1950).
UN Doc. E/600.
The United Nations, *A Study of Statelessness* (E/1112 and Add. 1, 1949).
UNHCR, "Guidance Document on Measuring Stateless Populations" (UNHCR Geneva, 2011), at http://www.refworld.org/docid/4f6887672.html.
UNHCR "Guidelines on Statelessness No. 1: The Definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons" (2012), at http://www.refworld.org/docid/4f4371b82.html.
UNHCR, "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level" (2012), at http://www.refworld.org/docid/5005520f2.html.
UNHCR, "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness" (2012), at http://www.refworld.org/docid/50d460c72.html.
UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons* (UNHCR, 2014), at http://www.unhcr.org/53b698ab9.html.
UNHCR, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*. (UNHCR, 2014), at http://www.refworld.org/pdfid/533a754b4.pdf.
UNHCR, "Stateless People Figure," at http://www.unhcr.org/pages/49c3646c26.html.
UNHCR, "Statelessness," at http://www.refworld.org/statelessness.html.
UNHCR Executive Committee, 1995 Conclusion No. 78 (XLVI).
UNHCR Executive Committee of the High Commissioner's Programme, *Birth Registration: A topic protected for an Executive Committee*. EC/61/SC/CRP.5. 9 February 2010.
UNICEF, "The Right to a Formal Identity," at http://www.unicef.org/sowc06/profiles/unregistered.php.
UNICEF, *Kodomotachino Tameno Zenshin Dai 8 Gou Kodomono Hogoni Kansuru Houkoku* [*Progress for Children: A Report Card on Child Protection (No. 8)*]. (UNICEF, 2009).
The United Nations Treaty Collection "Convention on the Reduction of Statelessness," at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en.
The United Nations Treaty Collection, "Convention relating to the Status of Stateless

Persons," at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en.

Minutes of the Diet

1951 (Shouwa 26) Nen 11 Gatsu 5 Nichi, Dai 12 Kai Kokkai Sangiin Heiwa Jyouyakuoyobi Nichibei Anzenhoshou Jyouyaku Tokubetsu Iinkai Kaigiroku, Dai 10 Gou [Minutes of the Special Committee on Peace Treaty and Japan-US Security Treaty, House of Councillors, the 12th Session of the Diet. Vol. 10. 5 November, 1951].

1956 (Shouwa 31) Nen 2 Gatsu 28 Nichi, Dai 24 Kai Kokkai Sangiin Bunkyouiinkai Kaigiroku, Dai 5 Gou [Minutes of the Committee on Education and Culture, House of Councillors, the 24th Session of the Diet. Vol. 5. 28 February, 1956].

1979 (Shouwa 54) Nen 6 Gatsu 5 Nichi, Dai 87 Kai Kokkai Sangiin Gaimuiinkai Kaigiroku, Dai 15 Gou [Minutes of the Committee on Foreign Affairs, House of Councillors, the 87th Session of the Diet. Vol. 15. 5 June, 1979].

1981 (Shouwa 56) Nen 4 Gatsu 17 Nichi, Dai 94 Kai Kokkai Shuugiin Gaimuiinkai Kaigiroku, Dai 10 Gou [Minutes of the Committee on Foreign Affairs, House of Representatives, the 94th Session of the Diet. Vol. 10. 17 April, 1981].

1984 (Shouwa 59) Nen 5 Gatsu 10 Nichi, Dai 101 Kai Kokkai Sangiin Houmuiinkai Kaigiroku, Dai 6 Gou [Minutes of the Committee on Judicial Affairs, House of Councillors, the 101st Session of the Diet. Vol. 6. 10 May, 1984].

Memorandum on Questions in the Diet (*Shitsumon Shuisho*)

Fukushima Mizuho Sangiin Giin "*Mukokusekimondainikansuru Shitsumon Shuisho*" *Nitaisuru, 2014 (Heisei 26) Nen 6 Gatsu 20 Nichiduke Seifu Toubensho (Naikaku San Shitsu 186 Dai 127 Gou)* [The Governmental Reply on 20 June, 2014 to the "Memorandum on Questions in the Diet concerning Statelessness Issues" Submitted by Ms. Mizuho Fukushima, Member of the House of Councillors (No. 127, Questions in the House of Councillors, Cabinet)], at http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/186/touh/t186127.htm.

Japanese Precedents

The Supreme Court (Petty Bench II), Judgment, 27 April 1962 (*Shouwa 37 Nen*). *Minshu* Vol. 16 No. 7, p. 1247, at

http://www.courts.go.jp/app/files/hanrei_jp/715/057715_hanrei.pdf.
The Supreme Court (Full Bench), Judgment, 4 October 1978 (*Shouwa 53 Nen*). *Minshu* Vol. 32, No. 7, p. 1223.
Tokyo High Court, Judgment, 15 April 1992 (*Heisei 4 Nen*). *H.T.* No. 802, p. 118.
The Supreme Court (Petty Bench II), Judgment, 27 January 1995 (*Heisei 7 Nen*). *Shumin* Vol. 49 No. 1, p. 56.
The Supreme Court (Full Bench), Judgment, 4 June 2008 (*Heisei 20 Nen*). *Shumin* No. 228, p. 101, at http://www.courts.go.jp/app/files/hanrei_jp/416/036416_hanrei.pdf.
Tokyo District Court, Judgment, 19 February 2010 (*Heisei 22 Nen*). *H.T.* No. 1356, p. 146.
Tokyo District Court, Judgment, 29 October 2010 (*Heisei 19 Nen (Gyou-u)* No. 472, etc.).
Tokyo District Court, Judgment, 20 July 2011 (*Heisei 23 Nen*). Westlaw Reference Number: 2011WLJPCA07208004.
Tokyo Family Court, Decision, 30 August 2012 (*Heisei 24 Nen (Ka) Shuuseki Kyoka Moushitate Jiken* [Case to Request Permission for the Registration of an Unregistered Person], No. 9809).
Tokyo High Court, Decision, 18 November 2013 (*Heisei 25 Nen (Ra) Shuuseki Kyoka Moushitate Kyakka Shimpannitaisuru Moushitate Jiken* [Case on Appeal from the Decision to Reject the Request of Permission for the Registration of an Unregistered Person], No. 1969).
Tokyo District Court, Judgment, 19 November 2013 *(Heisei 25 Nen)*. Westlaw Reference Number: 2013WLJPCA11198001.
Tokyo High Court, Decision, 20 December 2013 (*Heisei 25 Nen*).
The Supreme Court (Petty Bench I), Decision, 31 March 2014 (*Heisei 26 Nen (Ku) Tokubetsu Koukoku Moushitate Jiken* [Case on Special Complaint] No. 97).
The Supreme Court (Petty Bench II), Judgment, 18 July 2014 (*Heisei 26 nen*). *Hanrei Chihou Jichi* No. 386, p. 78.

Appendix I:
Convention Relating to the Status of Stateless Persons

Adopted at New York on 28 September 1954

Entry into force: 6 June 1960, in accordance with Article 39

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1: Definition of the Term “Stateless Person”

1 For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

2 This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the

nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(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.

Article 2: General Obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3: Non-discrimination

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

Article 4: Religion

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5: Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

Article 6: The term “in the same circumstances”

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

Article 7: Exemption from reciprocity

1 Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2 After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3 Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4 The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

Article 8: Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

Article 9: Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10: Continuity of residence

1 Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be

considered to have been lawful residence within that territory.

2 Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11: Stateless seamen

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12: Personal status

1 The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2 Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

Article 13: Movable and immovable property

The Contracting States shall accord to a stateless person 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 acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14: Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks,

trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15: Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 16: Access to courts

1 A stateless person shall have free access to the Courts of Law on the territory of all Contracting States.

2 A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi.*

3 A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III

GAINFUL EMPLOYMENT

Article 17: Wage-earning employment

1 The Contracting States shall accord to stateless persons lawfully staying in 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.

2 The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18: Self-Employment

The Contracting States shall accord to a stateless person lawfully in 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 on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19: Liberal professions

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

CHAPTER IV

WELFARE

Article 20: Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

Article 21: Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22: Public education

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

2 The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the

recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23: Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24: Labour legislation and social security

1 The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment, injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2 The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3 The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4 The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25: Administrative assistance

1 When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2 The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3 Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4 Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5 The provisions of this article shall be without prejudice to articles 27 and 28.

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.

Article 27: Identity papers

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

Article 28: Travel documents

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Article 29: Fiscal charges

1 The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2 Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30: Transfer of assets

1 A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2 A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31: Expulsion

1 The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2 The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3 The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 32: Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

FINAL CLAUSES

Article 33: Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 34: Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 35: Signature, ratification and accession

1 This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2 It shall be open for signature on behalf of:

(a) Any State Member of the United Nations;

(b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and

(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3 It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4 It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36: Territorial application clause

1 Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2 At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3 With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 37: Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 38: Reservations

1 At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2 Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 39: Entry inro force

1 This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2 For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 40: Denunciation

1 Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2 Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3 Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 41: Revision

1 Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2 The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 42: Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and

non-Member States referred to in article 35:

(a) Of signatures, ratifications and accessions in accordance with article 35;

(b) Of declarations and notifications in accordance with article 36;

(c) Of reservations and withdrawals in accordance with article 38;

(d) Of the date on which this Convention will come into force in accordance with article 39;

(e) Of denunciations and notifications in accordance with article 40;

(f) Of requests for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

SCHEDULE

Paragraph 1

1 The travel document referred to in article 28 of this Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.

2 The document shall be made out in at least two languages, one of which shall be English or French.

3 The Contracting States will consider the desirability of adopting the model travel document attached hereto.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of not less than three months and not more than two years.

Paragraph 6

1 The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2 Diplomatic or consular authorities may be authorized to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3 The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to stateless persons no longer lawfully resident in their

territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1 The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.

2 The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28 shall be that of the competent authority of that territory, to which the stateless person shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1 A travel document issued in accordance with article 28 of this Convention shall, unless it contains a

statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months, except when the country to which the stateless person proposes to travel does not insist on the travel document according the right of re-entry.

2 Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not *ipso facto* confer on these authorities a right of protection.

Note: The Convetion was adopted by the United Nations Conference on the Status of Stateless Persons, held at the Headquarters of the United Nations in New York from 13 to 23 September 1954. The Conference was convened pursuant to resolution 526A (XVII) of 26 April 1954 of the Economic and Social Council of the United Nations. For the text of the resolution, see Official Records of the Economic and Social Council, Seventeenth Session, Supplement No. 1 (E/2596), p. 12. The text of the Final Act of the United Nations Conference on the Status of Stateless Persons is reproduced in Appendix.

Appendix II: Convention on the Reduction of Statelessness

Adopted at New York on 30 August 1961

Entry into force: 13 December 1975, in accordance with Article 18

The Contracting States,

Acting in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

Considering it desirable to reduce statelessness by international agreement,

Have agreed as follows:

Article 1

1 A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2 A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3 Notwithstanding the provisions of paragraphs 1 (b) and 2 of this Article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4 A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused.

5 The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this Article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has always been stateless.

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

Article 3

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

Article 4

1 A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

2 A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this Article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has not been convicted of an offence against national security;

(d) that the person concerned has always been stateless.

Article 5

1 If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2 If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of Article 1 of this Convention.

Article 6

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

Article 7

1 (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of sub-paragraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in Articles 13 and l4 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2 A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3 Subject to the provisions of paragraphs 4 and 5 of this Article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4 A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5 In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6 Except in the circumstances mentioned in this Article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

Article 8

1 A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2 Notwithstanding the provisions of paragraph 1 of this Article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

3 Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4 A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

Article 9

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

1 Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2 In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

Article 11

The Contracting States shall promote the establishment within the framework of the United Nations,

as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

Article 12

1 In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of Article 1 or of Article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of Article 1 or of Article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2 The provisions of paragraph 4 of Article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3 The provisions of Article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

Article 13

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

Article 14

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

Artcile 15

1 This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this Article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply *ipso facto* as a result of such signature, ratification or accession.

2 In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one

with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the nonmetropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3 After the expiry of the twelve-month period mentioned in paragraph 2 of this Article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

Article 16

1 This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2 This Convention shall be open for signature on behalf of:

(a) any State Member of the United Nations;

(b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;

(c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3 This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4 This Convention shall be open for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 17

1 At the time of signature, ratification or accession any State may make a reservation in respect of Articles 11, 14 or 15.

2 No other reservations to this Convention shall be admissible.

Article 18

1 This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2 For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this Article, whichever is the later.

Article 19

1 Any Contracting State may denounce this Convention at any tine by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2 In cases where, in accordance with the provisions of Article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date or receipt thereof.

Article 20

1 The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in Article 16 of the following particulars:

(a) signatures, ratifications and accessions under Article 16;

(b) reservations under Article 17;

(c) the date upon which this Convention enters into force in pursuance of Article 18;

(d) denunciations under Article 19.

2 The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with Article 11, of such a body as therein mentioned.

Article 21

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

In witness of the undersigned Plenipotentiaries have signed this Convention.

Done at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in Article 16 of this Convention.

Note: The Convetion was adopted and opened for signature by the United Nations Conference on the Elimination or Reduction of Future Statelessness, convened by the Secretary-General of the United Nations pursuant to General Assembly resolution 896 (IX) on 4 December 1954. For the text of this resolution, see Official Records of the General Assembly, Ninth Session, Supplement No. 21 (A/2890), p. 49. The text of the Final Act of the Conference is reproduced in Appendix.

Appendix III: Japanese Nationality Act

Retrieved from Japanese Law Translation Database System, at

http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&ky=%E5%9B%BD%E7%B1%8D%E6%B3%95&page=1.

Act. No. 147 of 4 May 1950

Coming into effect on 1 July 1950

Amendments: Act No. 268 of 31 July 1952

Act No. 45 of 25 May 1984

Act No. 89 of 12 November 1993

Act No. 147 of 1 December 2004

Act No. 88 of 12 December 2008

(Purpose of This Act)

Article 1 The requirements of Japanese citizenship shall be governed by the provisions of this Act.

(Acquisition of Nationality by Birth)

Article 2 A child shall be a Japanese citizen in the following cases:

(i) If the father or mother is a Japanese citizen at the time of birth;

(ii) If the father died before the child's birth and was a Japanese citizen at the time of death; or

(iii) If born in Japan and both of the parents are unknown or are without nationality.

(Acquisition of Nationality by Acknowledged Children)

Article 3 (1) In cases where a child acknowledged by the father or mother is under twenty years of age (excluding a child who was once a Japanese citizen) and the acknowledging father or mother was a Japanese citizen at the time of the birth of the child, Japanese nationality may be acquired through notification to the Minister of Justice if that father or mother is currently a Japanese citizen or was so at the time of death.

(2) The person making notification provided for in the provision set forth in the preceding paragraph shall acquire Japanese nationality at the time of the notification.

(Naturalization)

Article 4 (1) A person who is not a Japanese citizen (hereinafter referred to as “foreign national”) may acquire Japanese nationality through naturalization.

(2) To undergo naturalization, permission of the Minister of Justice shall be obtained.

Article 5 (1) The Minister of Justice may not permit naturalization for a foreign national who has not met the following conditions:

(i) Having continuously had a domicile in Japan for five years or more;

(ii) Being twenty years of age or more and having the capacity to act according to his/her national law;

(iii) Being a person of good conduct;

(iv) Being able to make a living through his/her own assets or abilities, or through those of a spouse or of another relative his/her making a living;

(v) Not having a nationality or having to give up his/her nationality due to the acquisition of Japanese nationality; and

(vi) On or after the date of promulgation of the Constitution of Japan, not having planned or advocated the destruction of the Constitution of Japan or the government established thereunder with force, and not having formed or joined a political party or other organization planning or advocating the same.

(2) In cases where despite the foreign national’s intention, he/she is unable to give up his/her nationality, the Minister of Justice may permit naturalization of special circumstances are found concerning a familial relationship or circumstances with a Japanese citizen even if that foreign national has not met the conditions listed in the preceding paragraph, item (v).

Article 6 The Minister of Justice may permit naturalization for a foreign national currently having a domicile in Japan who falls under one of the following items even if that person has not met the conditions listed in the proceding Article, paragraph (1), item (1):

(i) A child (excluding an adopted child) of a Japanese citiznen, the former continuously having a domicile or residence in Japan for three years or more;

(ii) A person born in Japan, and continuously having a domicile or residence in Japan for three years or more or whose father or mother (excluding an adoptive parent) was born in Japan;

(iii) A person having a residence in Japan continuously for ten years or more.

Article 7 The Minister of Justice may permit naturalization of a foreign national with a spouse who is a Japanese citizen, said foreign national continuously having a domicile or residence in Japan for three years or more and who currently has a residence in Japan even if that person does not meet the conditions of Article 5, paragraph (1), item (i) and item (ii). The same shall apply to a foreign national with a spouse who is a Japanese citizen, for whom three years have elapsed since the date of their marriage, which foreign national has continuously maintained a domicile in Japan for one year or more.

Article 8 The Minister of Justice may permit naturalization of a foreign national who falls under one of the following items even if that person has not met the conditions listed in Article 5, paragraph (1), item (i), item (ii) and item (iv).

(i) A child (excluding an adopted child) of a Japanese citizen, said child having a domicile in Japan;

(ii) An adopted child of a Japanese citizen, said child continuously having a domicile in Japan for one year or more, and having been a minor according to his/her national law at the time of adoption;

(iii) A person having lost his/her Japanese nationality (excluding a person who lost his/her nationality after naturalization in Japan) having a domicile in Japan; or

(iv) A person born in Japan, not having any nationality since the time of birth, and continuously having a domicile in Japan for three years or more since that time.

Article 9 The Minister of Justice may obtain approval from the Diet and permit naturalization of a foreign national having provided a special distinguished service in Japan notwithstanding the provision of Article 5, paragraph (1).

Article 10 (1) When permitting naturalization, the Minister of Justice shall provide public notice thereof in the official gazette.

(2) Naturalization shall have effect from the date of thepublic notice set forth in the preceding paragraph.

(Loss of Nationality)

Article 11 (1) If a Japanese citizen acquires the nationality of a foreign country at his/her choice, he/she loses Japanese nationality.

(2) A Japanese citizen having the nationality of a foreign country loses Japanese nationality when he/she selects the nationality of that foreign country according to the laws and regulations thereof.

Article 12 A Japanese citizen who acquired the nationality of a foreign country through birth and who was born abroad shall retroactively lose Japanese nationality to the time of birh unless he/she indicates an intention to reserve Japanese nationality pursuant to the provision of the Family Register Act (Act No. 224 of 1947).

Article 13 (1) A Japanese citizen having foreign nationality may renounce Japanese nationality by notification to the Minister of Justice.

(2) The person making the notification provided for in the provisions set forth in the preceding paragraph shall lose Japanese nationality at the time of the notification.

(Selection of Nationality)

Article 14 (1) A Japanese citizen having a foreign nationality shall select one of the nationalities, where he/she obtains foreign and Japanese nationalities prior to his/her becoming twenty years old, before his/her reaching twenty-two years old, and where that time when he/she obtained foreign and Japanese nationalities comes after his or her reaching twenty years old, within two years from that time.

(2) In addition to renouncement of the foreign nationality, the selection of Japanese nationality and declaring the renunciation of the foreign nationality (hereinafter referred to as “selection declaration”) pursuant to the provisions of the Family Register Act.

Article 15 (1) The Minister of Justice may provide written notice that nationality must be selected to any Japanese citizen having a foreign nationality who has not selected Japanese nationality within the assigned time as provided for in the preceding Article, paragraph (1).

(2) In the unavoidable event that the whereabouts of the intented recipient of the notice

prescribed in the preceding paragraph may not be ascertained or notice in writing isotherwise not possible, the notice may be published in the official gazette. In such cases, the notice shall be deemed to have arrived on the day after publication in the official gazette.

(3) The person receiving the notice provided for in the provision of the preceding two paragraphs shall lose Japanese nationality when the period has elapsed if the selection of Japanese nationality is not made within one month of receiving the notice; provided, however, that this shall not apply in cases where the person is unable to select Japanese nationality within the period due to a natural disaster or some other cause not attributable to that person, and the selection is made within two weeks of the time when the selection may be made.

Article 16 (1) A Japanese citizen who makes the selection declaration shall endeavor to renounce his/her foreign nationality.

(2) In cases where a Japanese citizen having made the selection declaration and not having lost foreign nationality appoints the post of a public officer (with the exception of a post that may be appointed by a person not having the nationality of that country) at his/her own discretion, the Minister of Justice may pronounce a judgment of loss of Japanese nationality if it is found that the appointment of the post is markedly contrary to the purpose of the selection of Japanese nationality.

(3) The proceedings on the date of the hearing pertaining to the pronouncement of judgment set forth in the preceding paragraph shall be conducted open to the public.

(4) The judgment pronouncement of paragraph (2) shall be placed in a public notice in the official gazette.

(5) The person receiving the pronouncement of judgment of paragraph (2) shall lose Japanese nationality on the day of the public notice set forth in the preceding paragraph.

(Reacquisition of Nationality)

Article 17 (1) A person who loses Japanese nationality pursuant to the provisions of Article 12 and is under twenty years of age may acquire Japanese nationality, if he/she has a Japanese domicile, through notification to the Minister of Justice.

(2) A person who receives the notice pursuant to the provisions of Article 15, paragraph (2)

and loses Japanese nationality pursuant to the provisions of that same Article, paragraph (3) may acquire Japanese nationality if he/she meets the conditions listed in Article 5, paragraph (1), item (v) through notification to the Minister of Justice within one year from the date of knowing of the loss of Japanese nationality; provided, however, that if notification cannot be made within that period due to a natural disaster or some other cause not attributable to that person, that period shall be one month from the time when the notification can be made.

(3) The person making notification provided for in the provisions of the preceding two paragraphs shall acquire Japanese nationality at the time of the notification.

(Notification, etc. by a Statutory Agent)

Article 18 The notification of acquisition of nationality provided for in the provision in Article 3, paragraph (1) or the preceding Article, paragraph(1), application for permission to naturalize, selection declaration, or notification of nationality renouncement shall be made by a statutory agent if the person desiring nationality acquisition, selection, or renouncement is under fifteen years of age.

(Delegation to Ordinances of the Ministry)

Article 19 Procedures relating to acquisition and renouncement of nationality as well as other required matters relating to the enforcement of this Act not provided herein shall be prescribed by Ordinance of the Ministry of Justice.

(Penal Provisions)

Article 20 (1) In cases of notification provided for in the provisions of Article 3, paragraph (1), a person making a false notification shall be punished by not more than one year of imprisonment with work or a fine of not more than two hundred thousand yen.

(2) The violation set forth in the preceding paragraph shall be governed by the Penal Code (Act No. 45 of 1907), Article 2.

Statelessness Conventions and Japanese Laws

Convergence and Divergence

Osamu Arakaki