

**Statelessness in a Norwegian political context: As a signatory of the 1954 and 1961 conventions on statelessness, why is Norway using the refugee determination process as a framework of protection for stateless persons?**



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## **Abstract**

By exploring statelessness in an immigration policy implementation aspect, this thesis examines statelessness in a Norwegian political context. The 1954 and 1961 conventions on statelessness being distinct from the 1951 refugee convention, the thesis asks why Norway is using the refugee determination process as a framework of protection for stateless persons. It explores the potential rationales of Norway's implementation of the statelessness conventions within the refugee determination process. Noting that Norway's practice leaves a number of non-refugee stateless persons in a precarious human rights status, it primarily seeks to explain it by examining Norwegian policy outputs as outlined in various government related documents and what might have inspired them. The thesis has further extrapolated the potential rationales for the Norwegian practice from an analysis of current trends in nationality and migration related international law, the characteristics and tendency of immigration flow to Norway and implementation theories. It posits that the Norwegian approach may have been inspired by the dynamics of implementation, uniformity of practice in immigration cases and the delimitations of the 1954 statelessness convention. Additionally decisive factors may be Norway's sovereignty in domestic policy determination, issue salience, administrative considerations and gaps in international law. Interacting within these themes are political, security and economic concerns and a general desire to control immigration and curb new instances of statelessness.

The thesis suggests that the intractability of statelessness and the parallel nature of statelessness and refugee issues may have encouraged Norway to use its comprehensive refugee determination process as a framework of protection for stateless persons. It hints at the complexity of the occurrence and resolution of statelessness in the current Westphalian system of states that grants exclusive privileges to states in nationality matters. Noting the adverse consequences of Norway's practice on failed stateless applicants for protection, the thesis suggests that as a rational actor, Norway may have considered these as inconsequential compared to the value-maximizing aspects of its chosen policy approach. The thesis concludes by suggesting that Norway's sovereignty in domestic policy determination appears to be an overall decisive factor in its approach on statelessness and immigration in general. In addition, it inspires the call for research that aim at improving the plight of rejected stateless asylum applicants in tact with Norway's immigration control aspirations.

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## **Abbreviations**

AU: African Union

ECRE: European council on refugees and exiles

EU: European Union

ExCom: Executive Committee (of the UNHCR)

IRO: International Refugee Organisation

NGO: Non-Governmental Organizations

NOAS: Norsk Organisasjon for Asylsøkere (Norwegian Organisation for Asylum Seekers)

OSCE: Organisation for Security and Cooperation in Europe

RAM: Rational Actor Model

SEIF: Selv Hjelp for Innvandrere (Self Help for Immigrants)

UDI: Utlendingsdirektoratet (Norwegian Directorate of Immigration)

UN: United Nations

UNE: Utlendingsnemda, (Norwegian Immigration Appeals Board)

UNHCR: United Nations High Commissioner for Refugees

UNICEF: United Nations Children's Fund

UNRRA: United Nations Relief and Rehabilitation Administration

WWI: World War One

WWII: World War Two

## Chapter one Introduction

“Citizenship is man’s basic right for it is nothing less than the right to have rights”

Chief Justice Earl Warren, (USA 1958).<sup>1</sup>

### 1.1 Background

Statelessness is presumed to be as old as the concept of nationality.<sup>2</sup> Far from being a recent phenomenon therefore, it has been a subject of concern in international relations for many generations. This fact is among others reflected by the adoption of the convention on certain questions relating to the conflict of nationality laws at The Hague in 1930.<sup>3</sup> After the establishment of the United Nations in 1945, finding solutions to the emergent concerns of the stateless and other displaced persons in the wake of World War II gained prominence. Sustained efforts to curb statelessness and meet the protection needs of stateless persons at the international level are still in effect.

The discourse on statelessness is inextricably intertwined with that of nationality, the pervasive concern being the rights associated with nationality or statelessness in international relations. Although the universal declaration of human rights stipulates in article 15 that every person has the right to a nationality, it does not dictate the specific nationality to which a person is entitled. Nationality is therefore acquired at the discretion of the state in the application of its domestic laws. The lack of nationality often presents enormous challenges to stateless persons in their quest for basic social, political and economic rights and particularly when their attainment depends on having a nationality or a legal residential status in a state. These challenges highlight the essential position of states as constituencies in the current international system and the ultimate significance of their practices in preventing, alleviating, perpetuating or eradicating statelessness. Addressing this subject domestically and internationally is a

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<sup>1</sup> Warren, Earl, Chief Justice: *Dissenting opinion in the US Supreme court’s proceedings in Perez vs. Brownell (No. 44) (1958)*, US Supreme Court case collection, 1958.

[http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0356\\_0044\\_ZD.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0356_0044_ZD.html), (Accessed September 10, 2008).

<sup>2</sup> United Nations: *A study of statelessness*, document E/1112;E/1112/Add.1, UN, Lake Success, New York, August 1949.

<sup>3</sup> The 1930 Hague convention on certain questions relating to the conflict of nationality laws in Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p. 257.

formidable task. Norway's practices, as that of all the other states in the system are contributing to current and future trends in this policy area.

In 2000, the United Nations High Commissioner for Refugees (UNHCR) launched the "Global consultations on international protection" in concert with governments, intergovernmental and non-governmental organizations (NGOs) and refugee experts. As a result of these consultations, the UNHCR adopted in agreement with states, the agenda for protection, which was endorsed by UNHCR's executive committee (Excom) and subsequently welcomed by the United Nations general assembly in 2002.<sup>4</sup> The agenda for protection invited states to consider ratifying the 1954 convention relating to the status of stateless persons<sup>5</sup> and the 1961 convention on the reduction of statelessness.<sup>6</sup> The UNHCR was given the task of surveying steps states have taken to reduce statelessness and to meet the protection needs of stateless persons, and to report findings and recommendations to UNHCR's executive committee. In April 2003 therefore, the UNHCR sent to all United Nations member states' ministers of foreign affairs a questionnaire on statelessness.<sup>7</sup> The questionnaire was intended to gather information from states on policies they have adopted in the field of statelessness in order for the UNHCR to shed light and gain a general overview on how individual states address this issue. One general finding of the survey was that no region is free of problems that lead to statelessness. The increasing magnitude and intricacy of statelessness internationally and the UNHCR's agenda for protection has inspired the conducting of this research and motivates an analysis of some of Norway's efforts at addressing this complex phenomenon.

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<sup>4</sup>UNHCR: *Agenda for protection*, Third edition, UNHCR, October 2003, <http://www.unhcr.org/protect/PROTECTION/3e637b194.pdf>, (Accessed September 10, 2008).

<sup>5</sup> The convention on the status of stateless persons was adopted on September 28, 1954 and entered into force on June 6, 1960.

<http://www2.ohchr.org/english/law/stateless.htm>, (Accessed September 10, 2008).

<sup>6</sup> The convention on the reduction of statelessness was adopted on August 30, 1961 and entered into force on December 13, 1975.

<http://www2.ohchr.org/english/law/statelessness.htm>, (Accessed September 10, 2008).

The two conventions may simply be referred to in the text as the statelessness conventions or the conventions on statelessness.

<sup>7</sup>UNHCR: Questionnaire on statelessness pursuant to the agenda for protection, UNHCR, March 2003. <http://www.unhcr.org/protect/PROTECTION/3fec529e4.pdf>, (Accessed September 10, 2008).

## **1.2 Research proposal and thesis statement**

The success of international legal measures adopted to prevent, eradicate statelessness or protect stateless persons ultimately depends on state practice. As a member of the international community and party to the 1954 and 1961 conventions on statelessness, Norway has been concerned with statelessness issues as early as before World War II. Inspired by the UNHCR's agenda for protection, this thesis analyses Norway's approach in the protection of stateless persons in its territory, its consequences and the concerns that may have inspired it. It also briefly remarks on how Norway's policies interact with the provisions of the 1961 convention on the reduction of statelessness. As a member party, Norway has under the 1954 statelessness convention, the obligation to meet the protection needs of stateless persons. Noting that the 1954 convention relating to the status of stateless persons and the 1951 convention relating to the status of refugees are two distinct legal documents, the thesis asks:

Why does Norway<sup>8</sup> use the refugee determination process as a framework of protection for stateless persons?

In view of answering the question, it presents potential rationales for Norway's chosen approach. The thesis argues that because Norway has not established a separate mechanism to address the issue of stateless persons, its efforts leave a number of non-refugee stateless persons seeking for protection in its territory in a precarious human rights status. The thesis posits however, that this may have been viewed by Norway as an inconsequential outcome of its policies since security, economic, political and immigration control reasons as well as the quelling of international statelessness may be said to lay behind its current practices. It argues that the Norwegian practice may have been shaped by the dynamics of implementation, uniformity of practice in immigration matters and the delimitations of the 1954 statelessness convention. Among additionally decisive factors in this context may be cited Norway's sovereignty in domestic policy determination, issue salience, administrative considerations and gaps in international law. The thesis suggests that the intractability of statelessness and the parallel nature of statelessness and refugee issues may have

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<sup>8</sup> Norway here denotes the Norwegian government as the actor.



further encouraged Norway to use its comprehensive refugee determination process as a framework of protection for stateless persons. Using a rationalist paradigm, it analyses Norway's approach to the implementation of the 1954 convention on statelessness and considers its actions as reflecting those of the rational actor. The thesis argues that despite the apparent immediate implications of Norway's practice, an extensive evaluation may indicate that the consequences of its policy are ultimately the reduction of voluntary statelessness in its territory and statelessness generally at the international level.

The thesis' first chapter presents the background for the research problem, the research proposal, thesis statement, the methodology and the significance of the study. Chapter two presents a general overview of statelessness in Norway. It first explores the literature review and the theoretical research framework before discussing the importance of nationality and Norwegian compliance with international law. The chapter puts forward some perspectives on implementation, briefly mentions the UNHCR's work and highlights some evidence of Norway's concerns with statelessness. Chapter three discusses Norway's policies on stateless persons and the background of current Norwegian immigration practices. It delves into Norway's practice regarding stateless persons seeking for protection and the implications of its chosen approach. Chapter four advances the potential rationales for Norway's policy. It looks at the dynamics of implementation in a domestic context and Norway's uniform approach in immigration cases. It additionally discourses the impact of the concept of state sovereignty in this context and deliberates on issue salience and administrative considerations that may have influenced Norway's policy choice. The chapter presents some gaps in international law that make statelessness an intractable subject and portrays Norway's approach as reflecting that of a rational actor before concluding.

### **1.3 Methodology**

According to the Norwegian authorities, it is an important principle that Norwegian law must as far as possible be presumed to be in conformity with treaties by which

Norway is bound.<sup>9</sup> Therefore, Norway enacts implementing legislation of international treaties in the form of amendments or specific parliamentary transformation or incorporation acts in its domestic laws.<sup>10</sup> The 1954 and 1961 statelessness conventions would presumably be incorporated into Norwegian law by extending existing provisions in the array of Norwegian domestic laws that impact on foreign citizens and stateless persons. The thesis suggests that in addition to adhering to the conventions on statelessness, it may be assumed that Norway has set a practical domestic framework for implementing their provisions. Since Norway ratified the two conventions on statelessness, according to the above-mentioned principle, it is logical to assume that its domestic practices in addressing statelessness reflect an implementation of the provisions of these two international legal instruments to which it is a party.

In accordance with *pacta sunt servanda*, state parties to the statelessness conventions may be presumed to have instituted domestic measures that seek to implement the conventions' provisions. The adopted measures are in various ways justified out of the domestic circumstances of the state. In a largely bureaucratic state such as Norway, such justifications will among others be generally reflected in related governmental policy documents and the discourses that shape the domestic political atmosphere. Therefore, the thesis has undertaken an analytical approach to the Norwegian government's policies, as outlined in governmental documents such as law proposals, and policy reports to the parliament.

Adopting a rationalist paradigm and using various theoretical perspectives the thesis undertakes a qualitative analytical approach to information from the stateless including administrative documents relating to their applications for asylum in Norway, the Norwegian governments parliamentary reports<sup>11</sup> and proposals<sup>12</sup> on immigration, and

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<sup>9</sup> Utenriksdepartementet: *Stortingsmelding 21 (1999-2000) Menneskeverd i sentrum: handlingsplan for menneskerettigheter*, Stortingsarkivet, 2000.

<sup>10</sup> Ibid.

<sup>11</sup> Parliamentary reports; (*Stortingsmeldinger*) are reports from the Norwegian government to the parliament (*Storting*), which give an outline of a policy area and the government's practice in that area as well as suggestions for future practice. They are used to present cases to the *Storting*, without necessarily being related to a law proposal. Parliamentary reports are usually characterised by a detailed informative presentation of

UNHCR documents on statelessness. Additionally, the thesis analyses archives of debates and stances in the Norwegian parliament as well as information from various governmental and non-governmental organisations concerned with stateless people in particular and the asylum regime in general such as the Norwegian organisation for asylum seekers (NOAS),<sup>13</sup> Self help for immigrants (SEIF),<sup>14</sup> the Norwegian Directorate of Immigration (*Utlendingsdirektorat*, UDI)<sup>15</sup> and the Norwegian Immigrations Appeals Board (*Utlendingsnemda*, UNE)<sup>16</sup> as primary sources of information. These documents have presented a picture of the Norwegian policy orientation and the concerns that shape it. A supplemental analysis of contemporary debates on statelessness issues in the broad Norwegian and international media have been undertaken. The thesis has further extrapolated the potential rationales for the Norwegian practice from an analysis of current trends in nationality and migration related international law, the characteristics and tendency of immigration flow to Norway and implementation theories.

As proposed above, this analysis will be concerned with what may be seen as the background of the Norwegian governments' policy outputs on statelessness and some of their outcomes. While it may be useful to analyse the extent to which the government's policy basis conforms to the legal objectives of the 1954 convention, the thesis will also present policy outputs, their consequences and their potential justifications. The policy outputs will shed light on the Norwegian domestic

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government practice in a particular policy area. The treatment of these parliamentary reports in the parliament may result in a proposal for new relative legislation.

<sup>12</sup> Parliamentary proposals (*Stortingsproposisjoner*) are suggestions from the government on cases the parliament is to vote on. Parliamentary proposals always contain an already formulated resolution that the government sends to the parliament to vote on.

<sup>13</sup> The Norwegian Organisation for Asylum Seekers (*Norsk Organisasjon for Asylsøkere*, NOAS) is an organisation that gives information to asylum seekers on rules and procedures of the Norwegian asylum regime. The organisation advocates as well for asylum seekers rights. See [www.noas.no](http://www.noas.no), (Accessed September 10, 2008).

<sup>14</sup> Self Help for Immigrants (*Selv Hjelp for Innvandrere*, SEIF) is an organisation that helps immigrants in Norway on various intractable migration related issues.

<sup>15</sup> On the Norwegian Directorate of Immigration (*Utlendingsdirektorat*, UDI) see [www.udi.no](http://www.udi.no), (Accessed September 10, 2008).

<sup>16</sup> The Norwegian Immigration Appeals Board (*Utlendingsnemnda*, UNE) is an independent quasi-judicial appeals board that handles appeals of rejections by the Norwegian Directorate of Immigration pursuant to the Norwegian foreign citizen's act and other relevant international instruments. See <http://www.une.no/>, (Accessed September 10, 2008).

framework that impacts on statelessness while the outcomes will outline a number of implications resultant of that policy.

The potential justifications will shed light on statelessness related issues prevalent in the international system and Norway's attempt at discharging its obligations while taking these and its other domestic concerns into consideration. The analysis thus, primarily dwells on the rationale of Norway's practice in its efforts at meeting the 1954 statelessness convention's objectives within the refugee determination process.

#### **1.4 Significance of the study**

Statelessness has once more ignited the discussions surrounding nationality, legal residence, human rights and the state system. It is challenging the policies of states regarding the allocation of basic rights to illegally residing stateless persons and has highlighted the consequential friction that may occur between states. It is a politically sensitive and charged subject whose intractability hinders the UNHCR to perform effectively in the face of sovereign states. Understanding the challenges faced by stateless persons and host states may lead to the crafting of more effective policies to address their predicament. Parliamentary report number 21 of 1999-2000 -the most significant government report on human rights in Norway in more than a decade- hardly mentions stateless persons. It is presumed that the findings of this study will provide insights that highlight the intricacies of dealing with statelessness in Norway and that these may contribute in inspiring the crafting of more effective solutions to statelessness domestically and at the international level.

The UNHCR's executive committee has consistently called on states to adopt measures that protect stateless persons. The UNHCR notes that certain states which have acceded to the 1954 convention and/or the 1961 convention have not introduced related domestic legislation or administrative measures for the implementation of these instruments within their territories. For those states, problems of statelessness and situations involving stateless persons are consequently dealt with on a largely ad hoc

basis.<sup>17</sup> The study of the implementation of the 1954 convention in Norway may contribute to the understanding of the exerted efforts of one state party in this context. In addition to shedding light on Norway's efforts at the protection of stateless persons, the analysis may reveal, how concern for statelessness affects other areas of Norwegian domestic legislation and policy. It may consequently uncover the significance of statelessness in the crafting of Norwegian migratory policies and whether these correspond to Norway's obligations to reduce statelessness internationally and address the protection needs of stateless persons domestically.

As posited above, the often-precarious human rights situation of stateless persons is the pervasive concern in international relations. Norway desires to be a pioneer in the human rights field. The government advances among others that human rights is a research field in which Norway from a political and humane point of view should strive to lead internationally.<sup>18</sup> Being one of the pioneers of international legislation on statelessness, Norway's efforts may be viewed as exemplary to the wider community of states and especially new member parties to these conventions and those currently contemplating accession. Complementing this reasoning is the government's position that to credibly promote human rights internationally and influence other states in this field, it is imperative for Norway to demonstrate a steadfast commitment to human rights in its domestic practices.<sup>19</sup>

The study of Norway's practice on statelessness may demonstrate the extent of its commitment to addressing statelessness. The thesis may be an inspiration for the adjustment or reformulation of domestic or international legislation in instances where practical gaps suggest that such adjustments will address statelessness more effectively. The phenomenon continues to be of concern to the United Nations.

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<sup>17</sup> Executive Committee of the High Commissioner's Programme: *Stateless persons, a discussion note*, EC/1992/SCP/CRP.4, UNHCR, April 1, 1992.

See also, Working Group on Solutions and Protection: *Stateless persons*, Doc. No. WSGP/12, UNHCR, April 10, 1991.

<sup>18</sup> Utenriksdepartementet: *Stortingsmelding 21 (1999-2000) Menneskeverd i sentrum: handlingsplan for menneskerettigheter*, Stortingsarkivet, 2000.

<sup>19</sup> *Ibid.*

The current global climate changes are, according to UN estimates prone to create more instances of statelessness. This view is presented after a thorough evaluation of the climate changes' effects on island nations such as Kiribati, Vanuatu, the Marshall Islands, Tuvalu, the Maldives and the Bahamas, which are considered at risk of completely disappearing.<sup>20</sup> The potential relocation of these islanders is deemed to create further conditions of statelessness unless the islanders find a way to reconstitute their vanished state elsewhere, or find another state to adopt them as citizens and provide them with the protection and assistance that a state extends to its nationals.<sup>21</sup> The subject of statelessness therefore, may persist and its elimination continues to require concerted efforts in various policy areas at the international level. Understanding statelessness trends globally is a positive step towards the potential coordination of effective international solutions on this subject.

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<sup>20</sup>Colville, Rupert (ed.): *The strange, hidden world of the stateless*, Special report, Number 147, Issue 3, UNHCR, 2007.

<sup>21</sup> Ibid.

## Chapter two Statelessness in international relations and the case of Norway

### 2.1 Literature review and theoretical framework

Much of the literature currently available on statelessness stems from organizations that work with statelessness and refugee issues such as the UNHCR and Refugees International.<sup>22</sup> Among the papers of interest produced within these organizations are working papers, discussion notes, progress reports, internal procedural documents on statelessness, field reports, summary of meetings and recommendations, project outcomes and plans for future action within the organizations. Among the most prominent academic works in this area can be cited Weis's (1979) "*Nationality and statelessness in international law*,"<sup>23</sup> Van Waas's (2008) "*Nationality matters*"<sup>24</sup> and Weissbrodt's (2006) "*The human rights of stateless persons*."<sup>25</sup> Weis's work is a central contribution to the knowledge on the subject; it presents important political and judicial implications of nationality and statelessness in international relations.

The international territorial system may be duly considered as a system of sovereign states, therefore since the populace is considered to be under the territorial jurisdiction of states, it is presumed that an individual has a nationality unless there is some evidence to the contrary. According to Weis (1979), "the power of the state to confer its nationality is derived from its sovereignty. It is an attribute of its territorial supremacy."<sup>26</sup> Although instances of dual citizenship<sup>27</sup> arise in international relations, most people are considered nationals by the operation of only one state's laws. States generally attribute nationality at birth either to persons born on their territory following the *jus soli* principle of nationality or to persons born to their nationals regardless of place of birth following the *jus sanguinis* principle, which is based on heritage or

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<sup>22</sup> See the UNHCR and Refugees International websites at respectively [www.unhcr.org](http://www.unhcr.org), and [www.refugeesinternational.org](http://www.refugeesinternational.org), (Accessed September 10, 2008).

<sup>23</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979.

<sup>24</sup> Van Waas, Laura: *Nationality matters*, PhD dissertation, Tilburg University, 2008.

<sup>25</sup> Weissbrodt, David & Collins, Clay: *The human rights of stateless persons*, Human Rights Quarterly, 28.1, 2006, pp.245-276.

<sup>26</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p. 101.

<sup>27</sup> Citizenship and nationality are used interchangeably in this thesis. Similar use of the two words may be found for example in Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.4.

descent. Norway's nationality legislation for example is generally considered to be based on *jus sanguinis* principles. Some states, such as Canada and the USA currently attribute nationality following a mixture of both *jus sanguinis* and *jus soli* principles in their nationality legislation.<sup>28</sup> The discrepancies between the various national legislations on conferral of nationality have long been viewed as constituting a permanent source of statelessness.<sup>29</sup>

Weis (1979) advances that other means of derivative acquisition of nationality include "acquisition by marriage, legitimation, option, acquisition of domicile, entry into state service, grant of application, resumption of nationality, acquisition of nationality by subjugation after conquest and acquisition by cession of territory."<sup>30</sup> A person who is not considered as a national by any state under the operation of its laws is called stateless, apatride, apolide or heimatlos.<sup>31</sup> This refers to all individuals who have not received nationality automatically or through an individual decision under the operation of any state's laws. They are considered to be *de jure*<sup>32</sup> stateless persons.

In international literature, a distinction has been made between *de facto* and *de jure* stateless persons. "*De facto* stateless persons are persons who, without having been deprived of their nationality, no longer enjoy the protection and assistance of their national authorities."<sup>33</sup> Since recognised refugees lack effective citizenship in this sense they are considered as *de facto* stateless persons.<sup>34</sup>

To ensure that stateless persons are not deprived of a minimum set of rights associated with nationality, the United Nations in concert with states developed three main

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<sup>28</sup>Department of justice Canada: *Canadian citizenship act*, Canadian government, 2008. (<http://laws.justice.gc.ca/en>), (Accessed September 10, 2008).

US citizenship and immigration services: *Immigration and nationality act*, US government, 2008. (<http://www.uscis.gov/portal/site/uscis>), (Accessed September 10, 2008).

<sup>29</sup> United Nations: *A study of statelessness*, document E/1112;E/1112/Add.1, UN, Lake Success, New York, August 1949.

<sup>30</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.96.

<sup>31</sup> *ibid.*, p. 161.

<sup>32</sup> For the purposes of this thesis stateless persons refer to *de jure* stateless persons unless otherwise specified.

<sup>33</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.164.

<sup>34</sup> *ibid.*



treaties; the 1951 convention relating to the status of refugees and the subsequent 1967 protocol,<sup>35</sup> the 1954 convention relating to the status of stateless persons and the 1961 convention on the reduction of statelessness. Individuals who are *de facto* stateless are not included in the 1954 convention's definition of a stateless person. The convention relating to the status of stateless persons was adopted to protect those stateless persons who are not refugees, as refugee stateless persons were already covered by the convention relating to the status of refugees of 1951.<sup>36</sup> The United Nations High Commissioner for Refugees has a supervisory role on these conventions.

The 1951 convention relating to the status of refugees has led to what is commonly referred to as an international refugee regime. The Norwegian refugee determination process may be generally understood as a reflection of this regime. The 1954 convention on the status of stateless persons heralded a statelessness regime. However, Batchelor (2002) posits that the statelessness regime is under-utilized in the efforts to promote the protection of stateless persons.<sup>37</sup> This thesis argues that because Norway does not have a separate, independent mechanism -that is a statelessness regime- to address the issue of statelessness; its efforts leave a number of stateless persons seeking for protection in its territory in a precarious human rights status. Such a regime would among others explicitly invoke the application of the 1954 statelessness conventions' provisions in deciding asylum application cases from non-refugee stateless persons. Analysed Norwegian administrative decision documents in asylum applications from non-refugee stateless persons suggest this to be not the case. Diagnostically, the ensuing insecure human rights conditions of a number of stateless persons whose asylum application has been finally rejected may be partly attributed to the lack of such a statelessness regime. While the 1954 and 1961 statelessness

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<sup>35</sup>The 1951 convention relating to the status of refugees was adopted on July 28, 1951 and entered into force on April 22, 1954. The protocol was opened for accession on October 4, 1967.

<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>, (Accessed September 10, 2008).

<sup>36</sup> Utenriksdepartementet: *St. prp. Nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956. See also Stortinget: *Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 September 1954*, Stortingsarkivet, 1956.

<sup>37</sup> Batchelor, A., Carol: *The international legal framework concerning statelessness and access for stateless persons*, UNHCR, Madrid, January 8-9, 2002.

<http://www.unhcr.org/home/PROTECTION/3dca6fc84.pdf>, (accessed, November 12, 2008)

conventions have provided some international guidelines on addressing statelessness, the various studies show that the measure of their effectiveness is disputed.<sup>38</sup>

In his article, Weissbrodt (2006) discusses the human rights of stateless persons as reflected in various human rights instruments while Van Waas (2008) explores the importance of nationality, the protection international law offers against statelessness as well as alternative sources of state obligation on statelessness in the human rights field. Common to Van Waas (2008) and Weissbrodt (2006) is an opinion that statelessness is no longer “the right to have no rights”<sup>39</sup> and that the development of human rights as it currently stands, affords many basic rights that are not conditional on the possession of a nationality. Among additional works in this area can be cited Batchelor’s (1998) “*Statelessness and the problem of resolving nationality status*”<sup>40</sup> and Walker’s (1981) “*Statelessness: violation or conduit for violation of human rights?*”<sup>41</sup> While Walker explores whether statelessness on its own may constitute a violation or be a conduit for the violation of human rights, Batchelor raises the complexities of allocating the right to a nationality in the current system of sovereign states. Highlighting the ultimate supremacy of states in nationality matters, Batchelor (1998) posits among others that although an individual has the right to a nationality, international instruments cannot actually even “grant the nationality to which a given individual may have a claim, or make nationality effective.”<sup>42</sup> Common to these major works is the view that statelessness is a serious challenge to individuals and states in many respects. While the above-mentioned works present important insights on statelessness internationally, noteworthy studies on statelessness in a Norwegian context are virtually non-existent. Furthermore, the implementation of the international

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<sup>38</sup> Seeing the modest impact the two statelessness conventions have had on the resolution of statelessness cases, Van Waas for example looks for alternative sources of protection for stateless persons, See Van Waas, Laura: *Nationality matters*, PhD dissertation, Tilburg University, 2008.

<sup>39</sup>The argument mentioned earlier put forth by Chief Justice Warren (1958) whereby he posited that statelessness is “the right to have no rights.” See Warren, Earl, Chief Justice: *Dissenting opinion in the US Supreme court’s proceedings in Perez vs. Brownell (No. 44) (1958)*, US Supreme Court case collection, 1958. [http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0356\\_0044\\_ZD.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0356_0044_ZD.html), (Accessed September 10, 2008).

<sup>40</sup> Batchelor, A. Carol: *Statelessness and the problem of resolving nationality status*, International Journal of Refugee Law, Volume 10, 1998, pp. 156-182.

<sup>41</sup> Walker, Dorothy Jean: *Statelessness: violation or conduit for violation of human rights?*, 3 Human Rights Quarterly, 106, 1981.

<sup>42</sup> Batchelor, Carol A: *Statelessness and the problem of resolving nationality status*, Volume 10, International Journal of Refugee Law, 1998, p.158.

conventions on statelessness in a domestic setting, like most types of implementation, constitutes a formidable task.

The theoretical framework for this study has been provided among others by Van Meter and Van Horn (1975)<sup>43</sup> who like Mazmanian and Sabatier (1989 & 1980),<sup>44</sup> view policy and performance as two distinct classifications. Van Meter and Van Horn define implementation as encompassing “those actions by public and private individuals (or groups) that are directed at the achievement of objectives set forth in policy decisions.”<sup>45</sup> Mazmanian and Sabatier (1989) define implementation as the “carrying out of a basic policy decision, usually incorporated in a statute, executive orders or court decisions.”<sup>46</sup> These perspectives suggest that these implementation theorists are of the opinion that the national enactment of laws does not automatically translate into their implementation. Mazmanian and Sabatier (1989) posit for example that the concern for implementation is usually not with the stated policies *per se* but rather the turning of the policies into practice. The implementation of the 1954 and 1961 statelessness conventions would therefore be generally reflected by those practices Norway has adopted to discharge the conventions’ provisions. In accordance with the principle of *pacta sunt servanda*, it may be assumed that Norway has taken measures to reduce statelessness and to meet the protection needs of stateless persons.

Ingram and Schneider’s (1990)<sup>47</sup> implementation approach as well as Allison’s (1999)<sup>48</sup> view on the rational actor have presented an additional relevant framework of analysis. Within a rationalist paradigm, Allison posits that the rational actor model attempts to “explain...events by recounting the aims and calculations

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<sup>43</sup> Van Meter, S. Donald and Van Horn, E. Carl: *The policy implementation process: a conceptual framework*, Administration and Society, (6), Feb. 1975, pp.445-488.

<sup>44</sup> Mazmanian A. Daniel & Sabatier A., Paul: *Implementation and public policy*, University Press of America, 1989. See also Mazmanian, Daniel & Sabatier, Paul: *The implementation of public policy: a framework of analysis*, Policy Studies Journal, 8(2), 1980, pp. 538-560.

<sup>45</sup> Van Meter, S. Donald and Van Horn, E. Carl: *The policy implementation process: a conceptual framework*, Administration and Society, (6), Feb. 1975, p. 447.

<sup>46</sup> Mazmanian A. Daniel & Sabatier A., Paul: *Implementation and public policy*, University Press of America, 1989, p. 20.

<sup>47</sup> Ingram, Helen & Schneider, Anne: *Improving implementation through framing smarter statutes*, Journal of public policy 10 (1), 1990, pp.67-88.

<sup>48</sup> Allison, Graham & Zelikow, Philip: *Essence of decision: explaining the Cuban missile crisis*, Longman, New York, 1999.

of...governments.”<sup>49</sup> Thus echoing the rationalist theory of international relations that generally recognises the pursuit of state interests as central in governmental policy choices and practice. Ingram and Schneider’s views on implementation suggest that practical, normative, and behavioral expectations cannot be specified at the international level because “successful implementation at the local level is determined by the synergism produced through many factors coming together in patterns unique to local circumstances.”<sup>50</sup> They view the extent of implementation success as the achievement of local goals rather than compliance with statutes or accountability to higher authority.<sup>51</sup> These views have been central in exploring the rationales behind Norway’s implementation efforts. The complexity of statelessness and the dynamics of implementation of international legal instruments as reflected in the theories of these writers give a glimpse of the delicate nature of the circumstances under which states discharge their responsibilities regarding this phenomenon.

Certain provisions in the 1954 convention relating to the status of stateless persons are in a legal sense self-executing, for example article 16.1 stipulating that a stateless person shall have free access to the courts of law on the territory of all contracting states is self-executing. Whereas article 28 regarding the issuance of travel documents to stateless persons would require the host state to enact implementing legislation at its discretion and is as a consequence non-self executing. The UNHCR’s conclusion resultant of the questionnaire on statelessness is that states have different approaches and practices in addressing statelessness.<sup>52</sup> This may be reflective of their discretionary powers in implementing some of the non self-executing provisions contained in the two conventions. The different approaches may highlight the divergent state views on the implementation of international legal instruments, statelessness and the role of nationality.

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<sup>49</sup> Ibid., p.13.

<sup>50</sup> Ingram, Helen & Schneider, Anne: *Improving implementation through framing smarter statutes*, Journal of public policy 10 (1), 1990, p. 79.

<sup>51</sup> Ibid., p. 80.

<sup>52</sup> Department of International Protection: *Preliminary report concerning the questionnaire on statelessness pursuant to the agenda for protection, steps taken by states to reduce statelessness and to meet the protection needs of stateless persons*, UNHCR, September 2003.  
<http://www.unhcr.org/protect/PROTECTION/3ff00a182.pdf>, (Accessed September 10, 2008).

## **2.2 The importance of nationality in international relations**

Discussions related to the reduction of statelessness and whether stateless persons are in particular need to be protected require beginning with an analysis of the importance of having a state of nationality. As suggested earlier, the issue of statelessness and the implications thereof for those affected have once more ignited the discussions surrounding the importance of nationality. What then is the role of nationality in the international system of states?

The importance of states in international relations since the treaty of Westphalia cannot be overstated. The rationalist school of thought in political science which views states as the main actors on the international theatre would arguably contend in the words of Chief Justice Warren that statelessness is the right to have no rights.<sup>53</sup> Even in the age of globalisation where liberalism portrays states as having a declining role to the benefit of international non-governmental entities, it can be argued that through diplomatic protection, states play a crucial function in securing their citizens' rights in the international system.

Weis (1979) postulates that nationality “is a politico-legal term denoting membership of a state.”<sup>54</sup> This is distinct from nationality as a historico-biological term alluding membership of a nation.<sup>55</sup> “From the point of view of international law... [the] nationality of an individual is his quality of being a subject of a certain state and therefore its citizen.”<sup>56</sup>

“Nationality connotes the quality of being a member of a state which is vested with the character of a subject in international law... It is through the medium of a subject of international law to which an individual belongs that he is connected with

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<sup>53</sup> Warren, Earl, Chief Justice: *Dissenting opinion during the US Supreme court's proceedings in Perez v. Brownell (No. 44) (1958)*, US Supreme Court case collection, 1958. [http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0356\\_0044\\_ZD.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0356_0044_ZD.html), (Accessed September 10, 2008).

<sup>54</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.3.

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*, p.6.

international law...The internal composition of the state is...  
not relevant unless it affects the quality of the state as a subject  
of international law.”<sup>57</sup>

Events that have global repercussions such as wars, economic upheavals, economic opportunities and ease of transport across vast distances are encouraging people to leave their countries of nationality or residence and migrate to other countries. By the fact of migrating, they as a rule find themselves under the (territorial) jurisdiction of other states. At the exception of refugees, they are still according to international law under normal circumstances under the diplomatic protection of their state(s) of nationality. Diplomatic protection is obviously severely limited or absent when it comes to stateless persons as they do not at the outset enjoy the full protection offered by states to their nationals.

“One of the functions inherent in the concept of nationality is the right to settle and to reside in the territory of the state of nationality or conversely, the duty of the state to grant and permit such residence to its nationals.”<sup>58</sup> This right is usually established in the constitutional law of the state. As such it is a right of the national, secured under municipal law.<sup>59</sup>

Norwegian legislators have acknowledged for example in parliamentary deliberations that despite the existence of the statelessness conventions and the professed willingness of states to adhere to them, statelessness remains a modern migratory concern with significant implications.<sup>60</sup> Norway’s nationality related legislation indicates that no Norwegian citizen can be expelled, deprived of citizenship without due judicial process or be refused entry into the Norwegian territory. State practice in nationality matters is a matter of importance. Referring to the mass expulsion of

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<sup>57</sup> *ibid.*, p. 13.

<sup>58</sup> *Ibid.*, p.45.

<sup>59</sup> *ibid.*

<sup>60</sup> Stortinget: *Interpellasjon fra representant Helle om å ta initiativ i internasjonale organer for å sikre statsløse rettigheter når det gjelder bosted og sosiale og økonomiske vilkår, Forhandlinger i stortinget nr. 312, 3 April, 1973, Stortingsarkivet, 1973.*

among others Ugandan born Asians from Ugandan territory in 1972 by Idi Amin, an act which resulted in some cases in statelessness, the Norwegian government remarked on the floor of the parliament (*Storting*) that historically, certain countries do not take state duties in this context seriously.<sup>61</sup> The mass expulsion of Ugandan born individuals of Asian descent in 1972 and its consequences for example crystallized once more the importance of citizenship in international relations and why the respect of international norms in that regard matters.

### **2.3 A historical view of statelessness in Norway**

Early immigration debates suggest that the phenomenon of statelessness in Norway is known to have existed in concert with the movement of refugees and other displaced persons as early as before WWII. The lack of legal protection for stateless persons in Norway before and during WWII was well known. For example, it is estimated that in 1942 out of a general Jewish population of about 2000 persons, there were about three hundred stateless Jews.<sup>62</sup> In the volatile environment of WWII immediately after the German invasion of the Soviet Union, stateless Jews in Norway are reported to have been arbitrarily detained or abused. Many of them had their properties confiscated and had no recourse to the law.<sup>63</sup> An exact estimate of the total count of stateless persons including those of other origins is unknown. Reports suggest that their institutionalised status was insecure, a factor that may have facilitated their persecution.<sup>64</sup> Although not being part of the original stateless population of Norway, one prominent stateless Jew of the time, Max Tau who eventually was accorded Norwegian citizenship on merit for his contribution to Norwegian culture, vividly expresses the ordeal of living as a stateless person without identity papers in his book; *Ein Flüchtling findet sein Land* (1964).<sup>65</sup>

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<sup>61</sup>Ibid.

<sup>62</sup> On the number of Jews in Norway ca. 1942 and an estimate of stateless Jews see Kjeldstadli, Knut (red.): *Norsk innvandringshistorie: i globaliseringens tid 1940-2000*, Pax forlag A/S, Oslo, 2003, p.29.

<sup>63</sup> Kjeldstadli, Knut (red.): *Norsk innvandringshistorie: i globaliseringens tid 1940-2000*, Pax forlag A/S, Oslo 2003, pp. 27-31.

<sup>64</sup> Ibid.

<sup>65</sup> Tau, Max: *En flyktning finner sitt land*, Den norske bokklubben, 1967, (original title: Tau, Max: *Ein Flüchtling findet sein Land*, 1964).

The Norwegian government considered WWI and WWII as precursors to the modern phenomenon of refugees in its realm. The precarious conditions of displaced persons immediately after WWI engaged Norwegian activists and pioneers of refugee rights such as Fridtjof Nansen, who among other things advocated for the issuance of the “Nansen passport,” to ease travel for stateless refugees in addition to campaigning for the enhancement of their position in Norwegian society in general.<sup>66</sup>

Norway’s early efforts in addressing the issue of refugees is reflected in its early ratification of the agreement on the status of refugees of October 28, 1933 and its support of various other efforts of the time to address this migratory challenge. Norway and subsequently the international community found most of those efforts however, ineffective in that they were only applicable to certain groups of refugees or dealt with a delimited aspect of the refugee problem.<sup>67</sup>

Subsequently, due to problems faced by populations in liberated areas and the pressing needs of displaced persons during WWII, the United Nations Relief and Rehabilitation Administration (UNRRA) was established in November 1943 to provide relief to areas liberated from Axis powers.<sup>68</sup> In concert with allied military command, the UNRRA role subsequently comprised the management of many displaced persons camps. Norway’s persistence in its early involvement with refugee matters is reflected by its continued economic support of the UNRRA.

Norway’s commitment to addressing statelessness and refugee issues is further reflected by the fact that the Norwegian government was the first at suggesting at the UN founding San Francisco Conference of 1945, the establishment of an international

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<sup>66</sup> The *Nansen Passport* was a travel document for stateless refugees advocated for by Fridtjof Nansen and approved by the League of Nations in 1922. Fridtjof Nansen’s tremendous humanitarian work later gained him the Nobel Peace Prize of 1922. See for example, Nobel Prize Committee: *Fridtjof Nansen; scientist and humanitarian*, Nobel Foundation, 2001. [http://nobelprize.org/nobel\\_prizes/peace/articles/sveen/index.html](http://nobelprize.org/nobel_prizes/peace/articles/sveen/index.html), (Accessed September 10, 2008).

<sup>67</sup> Stortinget: *Sak nr. 1; Redegjørelse vedkommende de norske myndigheters behandling av de såkalte ”displaced persons” (Polakker), redegjørelse fra sosialministeren av 23 Mai, 1947 med debatt*, Stortingsarkivet, 1947.

<sup>68</sup> United Nations: *Agreement for United Nations relief and rehabilitation administration*, UN, November 9, 1943. <http://www.ibiblio.org/pha/policy/1943/431109a.html>, (Accessed September 10, 2008).



organisation for refugees and stateless persons.<sup>69</sup> Although no decision in that regard was formally made at that conference, the Norwegian suggestion culminated after the establishment of the UN, in the creation of the International Refugee Organisation (IRO). The IRO, which was founded by the UN General assembly's resolution of December 15, 1946, is considered to have been one of the earliest institutions with a truly international aspiration in refugee matters. After ratification of the IRO's constitution on August 18, 1947,<sup>70</sup> Norway extended its earlier support of the UNRRA to this organisation as well.<sup>71</sup> The UN work directly after 1945 was a crucial milestone in the internationally coordinated efforts of states to address statelessness and refugee problems. The establishment of the IRO reflects an early attempt by allied governments to deal with the huge numbers of displaced persons in Europe in the direct aftermath of WWII. Among others, IRO helped refugees recognised under its criteria, with health care services, housing, food, education, repatriation and resettlement in other countries.

WWII and the migration of persons of various nationalities and stateless persons to Norway, mostly brought in by or part of the German Wehrmacht had left a number of persons with different backgrounds on Norwegian soil at the end of the war.<sup>72</sup> Although the Norwegian government had by 1947 no precise number of stateless persons in its territory, it acknowledged their presence among the general group of individuals that was commonly labelled as "displaced persons" for example in its parliamentary deliberations of May 23, 1947 on displaced persons. IRO's work with stateless refugees is considered to have been colossal. The organisation transported refugees to new destinations and had at its disposal a huge capacity for relocation services. Although the IRO was subsequently unsuccessful internationally due to the

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<sup>69</sup> Sosialdepartementet: *Stortingsmelding nr. 81 (1967-1968) Om Norges deltaking i flyktningarbeidet siden 1945*, Stortingsarkivet, 1968.

<sup>70</sup> Utenriksdepartementet: *Stortingsproposisjon nr.50 (1947) Om tiltredelse av den internasjonale flyktningsorganisasjonens konstitusjon*, Stortingsarkivet, 1947.

See also Stortinget: *Innstilling S. nr.137 (1947) Om tiltredelse av den internasjonale flyktningsorganisasjonen konstitusjon undertegnet i New York, 4/2-47*, Stortingsarkivet, 1947.

<sup>71</sup> Sosialdepartementet: *Stortingsmelding nr. 81 (1967-1968) om Norges deltaking i flyktningarbeidet siden 1945*, Stortingsarkivet, 1968.

<sup>72</sup> Stortinget: *Sak nr. 1; Redegjørelse vedkommende de norske myndigheters behandling av de såkalte "displaced persons" (Polakker), redegjørelse fra sosialministeren av 23 Mai, 1947 med debatt*, Stortingsarkivet, 1947.

lack of support from more states, Norway acknowledged the importance of this international effort and had used it from the beginning to deal with its own problems of displaced persons in the direct aftermath of the war.<sup>73</sup>

Directly after WWII, the administrative responsibility for displaced persons in Norway had been shared between Norwegian authorities and the Allied Command, which gradually transferred more responsibilities to Norwegian authorities.<sup>74</sup> In its reports on stateless persons and displaced persons in general in its realm therefore, the Norwegian government of the immediate post-war period argued that these were treated according to Allied Command Headquarter for Western Europe's recommendations, the UNRRA agreement and the UN resolutions of February 12 and December 15, 1946 that established IRO.<sup>75</sup> The temporary nature of IRO was inspired by the fact that the state parties had anticipated and confidently asserted that more responsibilities including the most important tasks dealing with refugees would be gradually transferred to governments and that the latter would effectively play the central role. When it was clear that the IRO was temporary in its character while refugees still needed protection, the UN General Assembly sought to establish a more permanent international institution to promote refugee rights. In its decision of autumn 1949 therefore, the UN decided to found the UNHCR with the mandate to provide political and judicial protection to the categories of refugees that the Assembly determined. The UNHCR was established on December 14, 1950 and began its work on the protection of refugees on January 1, 1951.<sup>76</sup>

Efforts to improve the rights of refugees and provide a legal, administrative framework of state action in the refugee field continued and saw the adoption of the 1951 convention relating to the status of refugees. The 1951 convention relating to the status of refugees was limited to persons who had become refugees as a result of events that had occurred before January 1, 1951. States had been given a choice as to limiting the

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<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> See [www.unhcr.org](http://www.unhcr.org), (Accessed September 10, 2008).

geographical application of the convention to causal events that had occurred in Europe before January 1, 1951 or events that had occurred in Europe or elsewhere before January 1, 1951. Because of the increasing problems of refugees worldwide, states sought to subsequently expand the 1951 conventions' geographical and temporal applicability so as to encompass those persons who had become refugees after January 1, 1951 in other regions as well. The 1967 protocol relating to the status of refugees was therefore adopted to accommodate these expanded definitional parameters for refugees.

On July 28, 1951 Norway signed the 1951 convention relating to the status of refugees, which was subsequently ratified on May 23, 1953 with no reservations. The standing committee on foreign affairs in the Norwegian parliament had agreed to Norway's accession to the protocol in its decision of October 17, 1967 and the parliament approved the committee's recommendations without debate on October 25, 1967. Norway acceded to the 1967 protocol relating to the status of refugees therefore on November 28, 1967 with no reservations.

Statelessness had been discussed at the UN parallel with the drafting of the 1951 convention on the status of refugees. A recurring question had been whether to incorporate stateless persons in the 1951 convention. Stateless refugees had been covered under the 1951 convention and it was decided that the adoption of a separate convention aiming to protect non-refugee stateless persons was more appropriate. These discussions led to the adoption of the 1954 convention relating to the status of stateless persons. The drafters of the 1954 convention, including a Norwegian delegation,<sup>77</sup> presumed that all persons without an effective nationality, that is, all *de facto* stateless persons were refugees and therefore were covered by the provisions of the 1951 convention. The 1954 convention on stateless persons outlines the obligations

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<sup>77</sup> At the meeting of the plenipotentiaries to draft the 1954 convention relating to the status of stateless persons, Norway was represented by Erik Dons who subsequently signed the convention on behalf of Norway. See Utenriksdepartementet: *St. prp. Nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956. See also Stortinget: *Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 September 1954*, Stortingsarkivet, 1956.

of states to meet the protection needs of *de jure* stateless persons. Further international efforts in improving the rights of stateless persons resulted in the adoption of the 1961 convention relating to the reduction of statelessness. The 1961 convention was an attempt to limit and prevent the occurrence of statelessness in international relations. Norway ratified the convention relating to the status of stateless persons on November 19, 1956 with no reservations.<sup>78</sup> The Norwegian Ministry of Foreign Affairs viewed it as a progressive step in the betterment of the conditions of stateless persons, a view shared by the *Storting* in its deliberations on ratification.<sup>79</sup>

While considering accession to the 1961 convention relating to the reduction of statelessness, Norway sought to maintain the judicial uniformity in the area of nationality legislation that it had with Denmark and Sweden. At the Nordic minister's summit in Reykjavik in September 1962 therefore, an *ad hoc* group of Norwegian, Swedish, Danish, and Finnish legal experts was established and met to discuss the amendments to these nations' nationality laws that would be required to accede to the convention on the reduction of statelessness. In accordance with the recommendations from the meetings of these legal experts, certain changes to the Norwegian nationality act of December 8, 1950 were undertaken by the act of September 28, 1968 to make Norwegian accession possible.<sup>80</sup> After the changes to its nationality legislation, Norway acceded to and ratified the convention on the reduction of statelessness on August 11, 1971 with no reservations. Under the two conventions on stateless persons, Norway has an obligation to reduce statelessness and to meet the protection needs of stateless persons.

## **2.4 Perspectives on Norwegian compliance with international law**

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<sup>78</sup> On reservations on the 1954 convention on statelessness, see United Nations: *Multilateral treaties deposited with the secretary general: declarations and reservations*, United Nations Treaty Series, vol. 360, 2002, p.117.

<sup>79</sup> Utenriksdepartementet: *St. prp. nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet 1956.

Stortinget: *Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956.

<sup>80</sup> On the changes to the Norwegian nationality act prior to the accession to the 1961 statelessness convention see Utenriksdepartementet: *Stortingsproposisjon nr. 93 (1970-71) Om samtykke til tiltredelse av konvensjonen av 30 august 1961 om begrenning av statsløshet*, Stortingets saksarkiv, 1971.

The question related to whether states assume the importance of international law is grounded in the notion of state sovereignty. States are seen as reluctant in admitting the existence of a system of laws that can potentially dictate their actions. Many states therefore conduct policy at their discretion leaving international law to assume a secondary position. Those with real international power seldom pay attention to the law; for them rather than international law being the framework that controls their actions, it is their actions that shape and has in the past resulted in (customary) international law.<sup>81</sup> State reluctance to relinquish authority to international legal instruments is reflected in the fact that they seek diligently to limit undesired impacts of some provisions of international law on their self-prescribed interests. This results for example in their reservations against certain provisions that do not reflect their interests in a treaty or convention.

A notable example may be mentioned in the context of statelessness in Norway. While the 1954 convention on the status of stateless persons was being drafted in 1952, there were many stateless seamen hired coincidentally in various ports, who were operating on Norwegian ships. These were subsequently a subject of debate in the ministry of industry, crafts and shipping in its discussion of article 11 of the convention that stipulates that:

“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 in 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.”<sup>82</sup>

The debates within Norway’s administrative apparatus prior to the ratification, show that the question was understandably settled only when the ministry of industry, crafts

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<sup>81</sup> Sir Arthur Watts QC: *The importance of international law*, in Michael Byers (ed.): *The role of law in international politics: essays in international relations and international law*, Oxford, UK: Oxford University Press 2000, p. 5.

On the sources of international law see also: William R. Slomanson: *Fundamental perspectives on international law*, 4<sup>th</sup> edition, West US, 2003.

<sup>82</sup> The 1954 convention relating to the status of stateless persons

and shipping, came to the conclusion that the article was of a recommending nature rather than obligatory.

The ministry had observed that the stateless seamen had only loose affiliations to the ships and would therefore not be considered as having particular attachment to the realm. No reservations were therefore taken toward article 11 of the convention as the ministry of foreign affairs concurred with the conclusions of concerned ministries of the recommending nature of the article. The discussions surrounding article 11 of the 1954 convention on the part of Norway may rightly raise the question about state compliance or even state intentions in signing international conventions. Had article 11 been obligatory, it may be argued that Norway would seriously have considered reservation against its provisions. This may be seen as giving credit to the argument in international relations that states would increasingly only commit themselves to those obligations that are seen to serve their perceived interests. This tendency may be viewed as being in keeping with the perspective of the Rational Actor Model (RAM) that states seek to maximize the utilities of international law in their favour while seeking to minimize the costs to themselves.

Despite Norway's seeming concerns relative to the ratification of the 1954 convention, its historical advocacy for stateless persons indicates that it considers the eradication of statelessness in international relations as preferable. The eradication of this phenomenon however, does require concerted international efforts. States have for various reasons, diverse approaches and commitments to international conventions that seek to address specific international challenges. This diversity of approaches ultimately has a bearing on the degree of success of the adopted international measures. Why would Norway implement international conventions domestically?

After assessment of the 1954 statelessness convention's provisions, the Norwegian ministries concerned recommended ratification due to overall considerations in the

field of statelessness.<sup>83</sup> On the whole it can be said that Norway does acknowledge the importance of an effective international legal system. Since the international system is made up of sovereign states that consider themselves to have equal status, the rule of law in international affairs imparts among others certainty as to what the etiquette is, predictability as to the legal consequences of state conduct, equal state sovereignty before the law and the absence of arbitrary power.<sup>84</sup> The system of international laws is seen as reflecting a culture of order. It may therefore be argued that Norway does abide by international rules partly because it recognises and rejects the alternatives of disorder and instability and acknowledges that international law provides a reliable framework for order and stability in the pursuing of its interests in the international system.<sup>85</sup>

Being a middle power, Norway recognises that its interests are best achieved through cooperation with other states. This may explain why it participates rigorously in the drafting of legal instruments at the UN by voicing its opinions prior to many legislative outputs of interest. As mentioned above Norway participated in the drafting of the 1954 convention on statelessness. Its domestic administrative apparatus being generally bureaucratic with an emphasis on the application of rules and regulations, views formal and informal behavioural rules that channel activity and shape expectations as vital in international relations. In the rationalist spirit of interstate relations it may be posited that Norway understands international law as “a functional, regulatory institution of international society.”<sup>86</sup>

In light of the argument presented above, critics of neo-liberals would posit that the idea that politics consists merely of strategic utility maximizing action and that law is simply a set of regulatory rules cannot account for why international law would be

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<sup>83</sup> Utenriksdepartementet: *St. prp. nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956. See also Stortinget: *Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956.

<sup>84</sup> Sir Arthur Watts QC: *The importance of international law*, in Michael Byers (ed.): *The role of law in international politics: Essays in international relations and international law*, Oxford, UK, Oxford University Press, 2000, p.7.

<sup>85</sup> *ibid.*, p.8.

<sup>86</sup> Reus-Smith, Christian: *The politics of international law*, Cambridge University Press, 2004, p.18.

obligatory and binding for Norway even in the absence of centralised enforcement mechanisms.<sup>87</sup>

To respond to a possible argument that Norwegian consent to international law is not *per se* obligation inducing, this thesis assumes that Norway recognises the “shadow of the future”<sup>88</sup> in international relations and since it uses international law regularly in its dealing with other states it would not appreciate to be seen as untrustworthy in the international community. It seeks to be viewed as a reliable partner that delivers on its contracts and keeps its promises. The “shadow of the future” would suggest that Norway complies out of fear that failure to do so will prevent it from using international law at some later time.<sup>89</sup> Following the reasoning of the “shadow of the future,” having violated international agreements, Norway would eventually be in a position where it wishes to invoke international law when its interests are at stake, and having failed to comply at an earlier time, will not be able credibly to invoke international law at a later time when it needs to do so.<sup>90</sup>

The pattern of Norway’s policies since WWI as expressed through its membership of the different above-mentioned migratory organisations suggests that Norway has long considered international cooperation as crucial to solving the challenges posed by the international movements of people. Many of the solutions to these challenges initially came then as they currently do in the form of multinational treaties that require(d) domestic implementation. Current migratory challenges while different in nature to those at the beginning of the 20<sup>th</sup> century, have become more complex and require even more the concerted efforts of all states. The complexity of common issues of

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<sup>87</sup> Ibid., p.20.

<sup>88</sup> Axelrod, Robert & Douglas, Dion: *The further evolution of cooperation*, Science New Series, vol. 242, no. 4884, Dec. 9,1988, pp.1385-1390.

<sup>89</sup> Norman, George & Trachtman, Joel: *Measuring the shadow of the future, an introduction to the game theory of customary international law*, University of Illinois Law review, 2007. [http://home.law.uiuc.edu/lrev/publications/2000s/2008/2008\\_1/Final%20PDF%20Files/Trachtman.pdf](http://home.law.uiuc.edu/lrev/publications/2000s/2008/2008_1/Final%20PDF%20Files/Trachtman.pdf), (Accessed September 10, 2008).

<sup>90</sup> Axelrod, Robert & Douglas, Dion: *The further evolution of cooperation*, Science New series, vol. 242, no. 4884, Dec. 9,1988, pp.1385-1390. See also Norman, George & Trachtman, Joel: *measuring the shadow of the future, an introduction to the game theory of customary international law*, University of Illinois Law review, 2007. [http://home.law.uiuc.edu/lrev/publications/2000s/2008/2008\\_1/Final%20PDF%20Files/Trachtman.pdf](http://home.law.uiuc.edu/lrev/publications/2000s/2008/2008_1/Final%20PDF%20Files/Trachtman.pdf), (Accessed September 10, 2008).



concern in international relations in all areas inspires the maintenance of open and reliable avenues of cooperation. There is hardly a country in the world without non-nationals and the cosmopolitan nature of contemporary states is likely to be accentuated and requires continued interstate cooperation in the future.

This thesis views the future and the prospects of future cooperation as important enough for Norway to seek compliance with international treaties to which it is a party and to expect the same of other states. Its engagement in UN reform proposals as exemplified by its efforts through the Nordic UN Reform Project, suggests that Norway recognises the importance of continued and strengthened international cooperation under the United Nations for example.<sup>91</sup> In accordance with the shadow of the future theory, this thesis therefore views the prospect of continued interaction between Norway and other states as laying the groundwork for the stability of Norwegian compliance despite the unpredictable nature of international challenges. Norway may be said to recognise that the basis of the stability of international cooperation rests on compliance. Being a middle power Norway makes rigorous use of international law in the diplomatic pursuit of its interests. This attitude reflects its regard for cooperation in international relations in general and not least in the context of global migrations.

## **2.5 Viewpoints of Norway's implementation of the conventions on statelessness**

Among others this thesis analyses Norway's policy outputs, their implications, as well as the potential reasons behind them. Noting that it is important to determine the effectiveness of Norway's practice in addressing statelessness, the implications of adopted mechanisms aiming at some of the goals and objectives of the statelessness conventions will be raised. These will nevertheless be analysed with the backdrop of the general domestic circumstances, goals and objectives that potentially motivate and influence Norway's overall practice in this specific area of its migratory policy. The concern for implementation is not with the objectives of the statelessness conventions

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<sup>91</sup>Ministry of International Development: *Norway presents UN reform proposal to Kofi Annan*, Norwegian government, 2006. <http://www.norway.org/News/archive/2004/200403annan.htm>, (Accessed September 10, 2008).

*per se*; rather, even if the conventions are ratified and enacted by Norway, the ability to translate stated goals into reality by Norway while taking care of its domestic concerns may be a challenging task. Adopting the view of Van Meter and Van Horn (1975), the thesis considers “policy and performance as two distinct categories.”<sup>92</sup>

Mazmanian and Sabatier (1989) note that the history of the implementing of some public programs is “a record of high aspiration but dismal failure to deliver.”<sup>93</sup> Rather than expect continuous progress, far less ambitious objectives for the public sector may be envisioned.<sup>94</sup> They support the view that patterns in the public policy domain seem to be moving from focussing on aggressive policies, through the complexities of implementation, and into the strategic retreat on objectives.<sup>95</sup> While observing that strategic retreats are made in many implementation efforts, Mazmanian and Sabatier (1989) posit that “the age of design is over; the era of implementation is passing; the time to modify objectives has come.”<sup>96</sup>

This thesis postulates in line with Mazmanian and Sabatier’s perspectives, that Norway’s efforts on statelessness may be viewed from three quite different perspectives, the centre’s, the periphery’s and the target group’s. Since the 1954 convention on the status of stateless persons was drafted by the UN in concert with states, the centre’s perspective as the policy maker’s may be considered as that of Norway and the UN. From an implementation perspective and more precisely considering the way international treaties are incorporated into Norwegian law by parliamentary decisions, the centre’s perspective would to a certain degree be that of the UNHCR and the Norwegian parliament. The periphery’s perspective would encompass according to Mazmanian and Sabatier that of field-level implementing officials,<sup>97</sup> in this case the Norwegian government and the Directorate of Immigration

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<sup>92</sup> Van Meter, S. Donald and Van Horn, E. Carl: *The policy implementation process: a conceptual framework*, Administration and Society, (6), Feb. 1975, p.446.

<sup>93</sup> Mazmanian A. Daniel & Sabatier A., Paul: *Implementation and public policy*, University Press of America, 1989, p. 268.

<sup>94</sup> Ibid.

<sup>95</sup> ibid.

<sup>96</sup>ibid.

<sup>97</sup> Ibid., p. 12.

as the primary implementing agency of Norwegian immigration policies. The periphery's viewpoint therefore would comprise the government's perspective including that of street level bureaucrats. Finally, the implementation efforts may be viewed and evaluated from the target's point of view, that is the private actors at whom the program is directed, in this case stateless persons.<sup>98</sup>

The basic concerns from the United Nations' and the Norwegian parliament's perspectives are first, the extent to which reducing statelessness and protecting stateless persons have been attained and second the reasons for attainment or non-attainment. The basic concern for the government may be protecting stateless persons and reducing statelessness but this being only one aspect of its mandate on migrations it would have to be subordinated to overall migratory policy concerns that Norway considers, both domestically and internationally. The perspective of the stateless persons as target groups may be to establish to what extent the services of reducing statelessness and protecting stateless persons have been delivered by Norway. This would imply an analysis of whether the two conventions on statelessness and Norway's efforts at preventing statelessness and meeting the protection needs of stateless persons make any real difference in the stateless persons' lives.

To the extent that the statelessness conventions were drafted by the United Nations in concert with states, which are ultimately the implementing agencies, the distinctions between the central policy makers and the periphery may seem indistinct. However, in exploring Norway's practice, among others in accordance with the rational actor theory, this thesis analyses the implementation process from what may be considered as the point of view of the Norwegian government. Following Montesquieu's (1748)<sup>99</sup> theories on the separation of powers, Norway's political system may as that of the other Nordic democracies be seen as divided into the executive, the legislative and the judicial. While all performing duties that are typical of their configuration, the different branches of state, may not always hold the same perspectives on policy

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<sup>98</sup>ibid.

<sup>99</sup> Montesquieu, Charles-Louis de Secondat: *The spirit of the laws*, Hafner publishing company, New York and London, 1966.

matters and practice. In this instance, this view is reflected by the fact that historically, different ministers responsible for immigration related issues have appeared on the floor of the *Storting* on interpellation, to clarify some aspects of the government's policies on immigration.

From the nature of the two conventions on statelessness and the UNHCR's accession package can be deduced that there are three types of measures that are essential for Norway to address statelessness. These can be categorised as preventative, alleviating and durable measures.<sup>100</sup> Firstly, preventative measures are those general measures that Norway as a state party to the statelessness conventions have domestically instituted to prevent statelessness. Secondly, alleviating measures are those measures that Norway has implemented to alleviate the already insecure conditions of recognised stateless persons, and thirdly durable measures are durable solutions to statelessness, namely the granting of Norwegian nationality. While preventative and alleviating measures are significantly valued in dealing with statelessness, only the acquisition of a nationality is deemed to address fully a condition of statelessness.<sup>101</sup>

As suggested above, nationality is the main connection between the individual and international law and the rules of international law regarding diplomatic protection are based on the understanding that nationality is the primary condition for securing to the individual the protection of his rights in the international sphere.<sup>102</sup> Partly due to their lack of diplomatic protection in the international system, the human rights status of stateless persons is precarious. The 1954 and 1961 statelessness conventions represent efforts to address this condition.

## **2.6 UNHCR's supervision and advocacy on statelessness**

The UNHCR has been given mandate to supervise the 1951 convention relating to the status of refugees and its 1967 protocol as well as the 1954 convention relating to the

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<sup>100</sup> Weissbrodt, David & Collins, Clay: *The human rights of stateless persons*, Human Rights Quarterly, 28.1, 2006, pp.245-276.

<sup>101</sup> Ibid.

<sup>102</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.162.

status of stateless persons and the 1961 convention on the reduction of statelessness through various UN General Assembly resolutions. It carries this work with other partner organisations such as the United Nations Children's Fund (UNICEF), the African union (AU), the International Law Commission and the Organisation for Security and Cooperation in Europe (OSCE) whose interests overlap the agency's mandate.<sup>103</sup> In addition to promoting the conventions on statelessness and encouraging state accession to them, the UNHCR plays a significant role in the efforts of eradicating statelessness internationally. It participates in the drafting of new nationality laws or amendments in concert with states to avoid and reduce cases of statelessness. The UNHCR has put its expertise at the disposition of states both in relation to nationality legislation as well as in individual cases in providing guidance on how to find solutions in such cases.<sup>104</sup>

The purpose of international supervision relating to the application of provisions of international instruments is, first and foremost, to promote compliance with these rules.<sup>105</sup> By supervising the application of these international legal instruments on statelessness, the UNHCR is considered as the foremost international institution mandated to promote the international protection of refugees and stateless persons. Since the protection of refugees and stateless persons is ultimately the responsibility of the host state, the UNHCR's role is primarily seen as that of "humanitarian advocacy and management"<sup>106</sup> of refugee and statelessness issues in concert with states. As the scope of displaced persons have expanded since the creation of this organisation, so have its roles.

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<sup>103</sup> Executive committee of the High commissioner's programme: *UNHCR's activities in the field of statelessness; progress report*, EC/51/SC/CRP.13, UNHCR, May 30, 2001.

<sup>104</sup> Executive committee of the high commissioners programme: *UNHCR's activities in the field of statelessness; progress report*, EC/53/SC/CRP.11, UNHCR, June 3, 2003.

<sup>105</sup> Turk, Volker: *UNHCR's supervisory responsibility*, Working paper nr. 67, New issues in refugee research, Department of International Protection, UNHCR Geneva, 2002.

<http://www.unhcr.org/research/RESEARCH/3dae74b74.pdf>, (Accessed September 10, 2008).

<sup>106</sup> On the UNHCR's mandate see Forsythe, David: *The politics of being non-political*, Working paper nr. 33, New issues in refugee research, UNHCR, 2001. <http://www.unhcr.org/research/RESEARCH/3ae6a0d08.pdf>, (Accessed September 10, 2008).

In its information and accession package for the 1954 and 1961 conventions on statelessness, the UNHCR stipulates that statelessness may occur as a result of several factors. It lists the ten most prominent factors as being; conflict of laws, transfer of territory, laws relating to marriage, administrative practices, discrimination, laws relating to the registration of births, *jus sanguinis* principles of nationality, denationalisation, renunciation of nationality without prior acquisition of another nationality and the automatic loss of nationality by operation of a state's law.<sup>107</sup>

Statelessness is currently viewed as a forgotten human rights crisis that is growing.<sup>108</sup> In light of the above-mentioned causal factors and in the spirit of the two conventions, states are increasingly urged through various international instruments to take into consideration the international repercussions of their domestic legislation, particularly if the application of that legislation may perpetuate or result in statelessness. The difficulty in positively affecting the conditions of the stateless through the two conventions lays mainly in the fact that few countries have ratified them, 63 have ratified the 1954 convention<sup>109</sup> while 35 have ratified the 1961 convention on the reduction of statelessness as of October 1, 2008.<sup>110</sup>

The subject of statelessness has been overshadowed by the massive refugee problems worldwide of the last decades, following UNHCR's initial work directly after its foundation. This factor is not least reflected in Norwegian public debates on immigration, which on the one hand often urge the government to exercise more compassionate policies towards potentially traumatised refugees from war zones, while on the other criticises the government as being too liberal in its immigration

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<sup>107</sup> Office of the united nations high commissioner for refugees Geneva: *The 1954 convention relating to the status of stateless persons and the 1961 convention on the reduction of statelessness; Information and accession package*, UNHCR, 1999. <http://www.unhcr.org/protect/PROTECTION/3dc69f1d4.pdf>, (Accessed September 10, 2008).

<sup>108</sup>The economist: *It's tough to live in limbo*, The economist, New York, November 2007. [http://www.economist.com/world/international/displaystory.cfm?story\\_id=10219923](http://www.economist.com/world/international/displaystory.cfm?story_id=10219923), (Accessed September 10, 2008). See also Scott Busby: *A forgotten human rights crisis: statelessness*, US department of state, Bureau of population, refugees and migration, April 2005. <http://www.state.gov/g/prm/rls/45288.htm>, (Accessed September 10, 2008).

<sup>109</sup> UNHCR: States parties to the 1954 convention relating to the status of stateless persons as of October 1, 2008. <http://www.unhcr.org/protect/PROTECTION/3bbb0abc7.pdf>, (Accessed October 24, 2008).

<sup>110</sup> UNHCR: States parties to the 1961 convention on the reduction of statelessness as of October 1, 2008. <http://www.unhcr.org/protect/PROTECTION/3bbb24d54.pdf>, (Accessed October 24, 2008).

policies.<sup>111</sup> While global mainstream media reports predominantly cover UNHCR's humanitarian work with refugees and the internally displaced concurrently with refugee generating events, there is currently an increasing literature on statelessness as various organisations take part in raising awareness on the subject and address the plight of the stateless.<sup>112</sup> While the debate may be gaining pace at the global level however, statelessness is not a major (political or) immigration issue in Norway and is only sporadically referenced to in Norwegian public discourses on immigration.

In its work with statelessness, the UN agency has encountered challenges of varying degrees. It regards statelessness as a very sensitive subject that touches directly upon the issues of national sovereignty and identity.<sup>113</sup> As a result, “ [the] UNHCR has on some occasions been reluctant to intervene in this area, especially when it is considered that such an involvement will have an adverse effect on the organization's activities in relation to refugees, returnees and asylum seekers.”<sup>114</sup> UNHCR's work on statelessness therefore is effectively being hampered by political dynamics in regions where such work may be most crucial. Its approach in any region is deemed to be sensitive to the local context, so as not to jeopardize other aspects of the organization's work. In addition, “UNHCR's major donors have not generally pressed the organization to assume a more active global role in this area.”<sup>115</sup> Despite the progress in this field therefore, “UNHCR's mandate in relation to statelessness has not received the same priority by senior management as its mandate in relation to refugees.”<sup>116</sup> Within the organization, “statelessness continues to be perceived as a specialized and highly sophisticated legal issue. A large proportion of UNHCR's protection officers...continue to feel uncomfortable in dealing with this issue.”<sup>117</sup> Consequently,

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<sup>111</sup> A compassionate approach towards asylum seekers is generally embraced by the Socialist Left Party (Sosialistisk Venstre, SV) while the Progress Party (Fremskrittspartiet, FRP) adopts a generally hostile attitude towards immigration in Norway. See [www.sv.no](http://www.sv.no), and [www.frp.no](http://www.frp.no) (Accessed September 10, 2008).

<sup>112</sup> Events that attract media attention such as wars, which also generate refugees often lead to the coverage of the UNHCR's initial efforts on the ground. Statelessness however, is usually a latent condition, sometime prevalent for years and as such the phenomenon may linger on under the surface.

<sup>113</sup> Engstrom, Magnus & Obi, Naoko: *Evaluation of UNHCR's role and activities in relation to statelessness*, EPAU/2001/09, Evaluation and policy analysis unit, UNHCR, July 2001.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

some NGOs have criticized the organization for not playing a sufficiently vigorous role in relation to statelessness. Many of the UNHCR's partners remain unsure about its mandate in relation to this subject.<sup>118</sup>

## **2.7 Stateless persons in Norway**

UNHCR estimates that by 2006, the number of identified stateless populations was about 5.8 million globally, and that exact figures may amount to as many as 15 million. This is a significant increase from the years 2004 and 2005 when the numbers were respectively at 1.5 and 2.4 million stateless persons worldwide. According to the UNHCR, these figures have been increasing not necessarily as a result of new cases of statelessness but primarily due to improved identification methods and data availability. UNHCR posits being currently unable to provide definitive statistics on the number of stateless persons worldwide due to various registration and identification factors that inhibit a precise count in potential host states. The 2006 UNHCR Statistical Yearbook therefore, includes data on countries with reliable official statistics and those for which estimates of stateless populations exist.<sup>119</sup> It puts the number of stateless persons under Norway's jurisdiction at 672.<sup>120</sup> According to the Norwegian Directorate of Immigration, the majority of stateless persons coming to Norway in recent years have been stateless Palestinians. The UNHCR bases the number on reported cases and recognises that providing an accurate count of stateless persons in any country is extremely challenging and that the numbers may be at any time higher than those reported.<sup>121</sup>

## **2.8 Some evidence of Norway's concerns on statelessness**

The nature of the causes of statelessness as outlined in UNHCR's accession package to the 1954 and 1961 statelessness conventions suggests that to meet the conventions' objectives, broadsided efforts and considerations comprising the application of various legal instruments beyond the two conventions are called for. In addition to analysing

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<sup>118</sup> *ibid.*

<sup>119</sup> UNHCR: *UNHCR statistical yearbook 2006*, UNHCR, 2007.

<http://www.unhcr.org/statistics/STATISTICS/478cda572.html>, (Accessed September 10, 2008).

<sup>120</sup> *Ibid.*, Table 15.

<sup>121</sup> *Ibid.*



Norway's approach toward the protection of stateless persons, this thesis therefore also briefly considers the extent to which some of Norway's practices seek to prevent statelessness.

States understand that statelessness occurs as a result of several factors that are interwoven. Therefore, in addition to the 1954 and the 1961 conventions on statelessness, provisions intended to prevent, reduce or alleviate statelessness are embedded in several international legal instruments including the universal declaration,<sup>122</sup> the 1966 covenant on civil and political rights,<sup>123</sup> the 1989 convention on the rights of the child,<sup>124</sup> the 1979 convention on the elimination of all forms of discrimination against women,<sup>125</sup> as well as the 1957 convention on the nationality of married women.<sup>126</sup> Norway is a member party to all of these instruments. How important then is the reduction and the prevention of statelessness for Norway?

As mentioned above, various international measures have been adopted to curb statelessness. In addition to being a party to these, Norway has in its immigration policies engaged in bilateral diplomacy and taken unilateral measures that aim partly at reducing and preventing statelessness. Some of the efforts that may demonstrate Norway's commitment in this regard are worthy of mention.

As referred to earlier, the UNHCR's accession package alludes to the potential for statelessness in cases of state succession and the consequences thereof. There have not been cases of state succession in Norway's immediate neighbourhood. However, the conflict in the Balkans and the break-up of Yugoslavia in the 1990's was a potential

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<sup>122</sup> UN: *The universal declaration of human rights*, 1948. <http://www.un.org/Overview/rights.html>, (Accessed September 10, 2008).

<sup>123</sup> The international covenant on civil and political rights, was adopted and opened for signature, ratification and accession by General Assembly resolution of December 16, 1966 and entered into force on March 23, 1976. <http://www2.ohchr.org/english/law/ccpr.htm>, (Accessed November 16, 2008).

<sup>124</sup> The convention on the rights of the child was adopted and opened for signature on November 20, 1989 and entered into force September 2, 1990. <http://www.unicef.org/crc/>, (Accessed September 10, 2008).

<sup>125</sup> The convention on the elimination of all forms of discrimination against women was adopted by the United Nations General Assembly on December 18, 1979 and entered into force as an international treaty on September 3, 1981. <http://www.un.org/womenwatch/daw/cedaw/>, (Accessed September 10, 2008).

<sup>126</sup> The Convention on the nationality of married women was adopted on February 20, 1957 and entered into force on August 11, 1958. <http://www.unhchr.ch/html/menu3/b/78.htm>, (Accessed September 10, 2008).

source of statelessness. During this crisis, Norway received many Bosnians, from Bosnia-Herzegovina for example and gave them collective protection.<sup>127</sup> Many of these were in danger of becoming stateless as a result of the redrawing of the borders in their region of origin. The government had instituted special migratory measures whereby they were granted a renewable temporary residence permit valid for three years which by the governments' decision of November 7, 1996, could lead to a permanent residence by application after the fourth year. They were thus given the choice to remain in the realm if they deemed conditions in their region of origin unsafe to return. Those who had chosen to remain would eventually be eligible for the application of Norwegian citizenship.<sup>128</sup>

Another measure that may be brought to light that Norway has adopted, having a bearing on statelessness and state succession in the Balkans, is the bilateral treaty it has signed with Croatia of January 25, 2005 on mutual exchange of illegal immigrants. This treaty came into force on July 30, 2005. The signing of this legal instrument and the provisions therein may be understood in the context of Norway's efforts at reducing statelessness as well as addressing parts of other migratory concerns originating from the Balkan region.<sup>129</sup> In addition to exerting efforts at preventing statelessness potentially originating as a result of events outside its territorial jurisdiction, Norway has domestically implemented mechanisms that effectively seek to eradicate the phenomenon domestically.

Among the measures enacted in the Norwegian nationality act that directly impact on statelessness include, the automatic allocation of Norwegian nationality on foundlings in the realm. The act of Norwegian nationality chapter 2, section 4 for example stipulates that a foundling is considered a national of Norway unless proven otherwise. In addition, Norway has enacted other general measures that seek to limit cases of loss of nationality where such a loss would result in statelessness. It has instituted extensive

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<sup>127</sup> Ola T. Lånke: *Spørsmål 30; Spørsmål til Statsråd Gerd Liv Valla ved forhandlinger i stortinget av 28 Mai 1997, ordinær spørretime*, Stortingets saksarkiv, 1997.

<sup>128</sup> *ibid.*

<sup>129</sup> Norske regjering: *Avtale mellom Norge og Kroatia om tilbaketaking av personer med ulovlig innreise og/ eller opphold*, Utlendingsdirektoratet, 2005. <http://www.udiregelverk.no/>, (Accessed September 10, 2008).

appeal rights in its administrative apparatus and not least in issues concerning the acquisition or loss of nationality. Other noteworthy measures addressing statelessness comprise among others, mechanisms that seek to curb international human trafficking.

Trafficking in human beings is currently seen as a considerable humanitarian scourge. The Norwegian government characterises it as a type of modern slave trade.<sup>130</sup> The United Nations convention against international organised crime<sup>131</sup> to which Norway is a party, has among others sought to address the problem at the international level. Norwegian efforts in countering trafficking is noticeable in the general debates on the asylum regime especially with regard to trafficked women subjected to forced prostitution by their controllers in Norway. Through such institutions as Prosentret and Rosa prosjektet<sup>132</sup> the government has instituted certain mechanisms for the victims of trafficking that include temporary shelters, and an offer of a residence permit of up to six months, providing a period of reflection during which potential victims can bring the perpetrators to justice. In addition, the government has provided them access to the application for asylum under its asylum regime and the possibility of leaving the occupation of prostitution. Harsher legislation against lawbreakers has been passed in this regard in an effort to address international human trafficking. Trafficking in human beings may lead to statelessness. The victims may find themselves in foreign countries, stripped of their identities and unable to prove their nationalities. They may end up as de facto stateless persons with apparently no effective citizenship. Increasingly aware of the phenomenon as are other states, Norway is instituting concerted measures to address human trafficking.<sup>133</sup>

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<sup>130</sup> Arbeids- og inkluderingsdepartementet: *Odelstingsproposisjon nr.75 Om lov om utlendingers adgang til riket og deres opphold her: Utlendingsloven* (2006-2007), Stortingsarkivet, 2007.

<sup>131</sup> The United Nations' convention against trans-national organised crime, 2000.

[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf), (Accessed September 10, 2008).

<sup>132</sup> On the organisations Prosentret and Rosa prosjektet that help victims of human trafficking and/ or prostitutes in general see <http://www.prosentret.no/> and <http://www.rosa-help.no/>, (Accessed September 10, 2008).

<sup>133</sup> United nations crime and justice information network, centre for international crime prevention: *Global programme against trafficking in human beings: an outline for action*, united nations interregional crime and justice research institute, February 1999. [http://www.uncjin.org/CICP/traff\\_e.pdf](http://www.uncjin.org/CICP/traff_e.pdf), (Accessed September 10, 2008).

Trafficking currently takes place worldwide and is increasingly considered in Norway as one of the most serious threats to human rights. Economic difficulty in some parts of the world, contrasted with apparent promises of attainable wealth in other countries has resulted in situations where a considerable number of women are being tricked and trafficked across international borders. Trafficked persons who are not officially recognised as stateless persons may not enjoy the rights outlined in the 1954 statelessness convention and may be at additional exposure. Arguing that many victims of trafficking are rendered effectively stateless due to their inability to establish their nationality status, the executive committee of the UNHCR urged states to cooperate in the establishment of identity and nationality status of victims of trafficking so as to implement measures that address their situation, “taking into account the internationally established rights of the victims.”<sup>134</sup> Due to the previously discussed rights flowing from the possession of a nationality, the establishment of the victims’ identity is a milestone in ensuring diplomatic protection including the right of re-entry into the country of origin. In Norway therefore, the governments’ efforts reflect a desire to achieve the UNHCR’s objectives in this regard. Norway’s efforts at reducing statelessness are also reflected in its practice towards refugee stateless persons and those granted residence on humanitarian grounds in the realm.

After the refugee status is favourably determined or a residence permit is offered on humanitarian grounds to a stateless person by Norway, alleviating circumstances are established as the stateless person is generally granted the same rights as all other legalised immigrants residing in the realm. A durable mechanism may be said to exist, as the road to nationality is generally open and facilitated for them, in those cases where the identity of the applicant has been established. Whereas other legalised immigrants are generally required to have resided continually for 7 years in Norway prior to the acquisition of Norwegian nationality, only three years residence is normally required for stateless persons. These outlined measures among others suggest

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<sup>134</sup> Excom: *Conclusion on international protection; para. (S) executive committee conclusions no. 90 (LII)-2001*, UNHCR, 2001, [www.unhcr.org](http://www.unhcr.org), (Accessed September 10, 2008).

that Norway takes the issue of statelessness seriously and that it has implemented various legal instruments domestically to prevent, alleviate and eradicate statelessness.

## **Chapter three Norway's policies on stateless persons**

### **3.1 The background of current Norwegian immigration practices**

Before exploring the reasons why Norway may have implemented the 1954 statelessness convention within the refugee determination process, an initial analysis of the background of current Norwegian immigration practices is required. Immigration cases are defined in the Norwegian context as comprising those that may end up rendering a permanent residence permit to the applicant. Temporary visa holders of various types such as students and tourists with no such prospect are therefore primarily not considered as immigrants.<sup>135</sup>

The Norwegian government posits that directly after WWII there was virtually no restrictions on migrating to Norway, the only control that was deemed necessary was the registration of newly arrived foreigners to make sure that they could take part in societal life like the rest of the population. As long as Norway was situated outside continental Europe, then seen as the main arena of immigration, the control of foreigners was not problematic. This scenario however, began to change towards the end of the 1960s when Norway became an attractive destination and restrictive immigration measures were called for. Despite this change however, the government viewed the situation as still well under control. As a result of an influx of migrant workers, this situation changed in the early 1970s when immigration to Norway increased so dramatically that the various institutions working closely with immigration issues called for a complete immigration halt. The halt was viewed as necessary to among others provide accommodation and basic necessities to the already relatively overwhelming number of immigrants in Norway. While not literal in interpretation, the immigration halt opened for immigration in exceptional cases.<sup>136</sup>

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<sup>135</sup>Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1987-88) Om innvandringspolitikken* Stortingsarkivet, 1988.

<sup>136</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1973-74) Om innvandringspolitikken* Stortingsarkivet, 1974. See also Stortinget: *Innstilling S. nr. 85 (1974-1975) Om innvandringspolitikken*, Stortingsarkivet, 1975.

During this same period the immigration modes changed and the first cases of illegal immigration were brought to light. The numbers of immigrants and the newly uncovered complexities of immigration cases to Norway further prompted tightly controlled immigration practices. The government therefore submitted the well-known parliamentary report number 39 of 1973-74 on immigration policy, which sought to primarily limit the extent of migrant workers coming to Norway.<sup>137</sup> Subsequent parliamentary reports on immigration show the powerful influence parliamentary report number 39 of 1973-1974 has had on Norwegian immigration policies. The proposals on halting immigration to Norway contained in this report were subsequently extended and validated indefinitely, they are currently considered as constituting a permanent feature of Norway's migratory policies. Already in parliamentary report number 74 of 1979-1980,<sup>138</sup> Norway assumed that with the uneven distribution of economic resources in the world, migratory pressures on Norway and other industrialised nations would increase. This therefore required a well structured mechanism and well developed criteria under which immigration could be regulated. The sorting out of immigration policies was evaluated by the Norwegian government of the period as requiring sustained deliberations. The government subsequently put forth that in the future Norway would limit immigration generally and in actuality to family reunification and refugee related cases towards which Norway had international obligations. The government assured that such immigration policies would be in accordance with the core proposals of parliamentary report 39 of 1973-74 according to which migrant workers' immigration was to be strictly controlled.

The policies that evolved around parliamentary report 39 and its extensive development stipulated that stateless persons and refugees who had been "forced" out of their countries of residence would be evaluated as deserving residence.<sup>139</sup> This

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<sup>137</sup> Ibid.

<sup>138</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 74 (1979-1980) Om innvandrere i Norge*, Stortingsarkivet, 1980.

<sup>139</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1973-74) Om innvandringspolitikken*, Stortingsarkivet, 1974.

See also Stortinget: *Innstilling S. nr. 85 (1974-1975) Om innvandringspolitikken*, Stortingsarkivet, 1975.

report propelled an in depth review and fine-tuning of Norwegian regulations on immigration practices. Norway's present immigration practices must therefore be understood in light of the currently indefinite validity of this parliamentary report. With the course of time, measures that sought to increase government efficiency in the coordination of efforts in addressing the changing nature of immigration to Norway culminated into the establishment of the Directorate of Immigration, on January 1, 1988. It is currently the institution that affects stateless persons by application of the Norwegian foreign citizen's act in determining their right of residence in Norway.

The Norwegian Directorate of Immigration was established to among others, implement the coordination of policies on immigration that includes, foreign citizens control, receiving of quota refugees, receiving of asylum seekers and other measures for foreign residents in addition to supplying information on domestic migratory practices. The directorate's role in the immigration policy domain has had as an objective to better coordinate the government's efforts, assure an effective use of resources and to ease the interaction between the Norwegian central administration and other actors in this sector. It is the main body that administers foreign citizen issues and has a professional influence on the Norwegian police in the control of foreigners in the realm. In addition to implementing domestic mechanisms that seek to address Norway's migratory policies domestically, the government has constantly been of the opinion that the complexity of migrations issues warrants complementing international approaches.

Among Norway's efforts at the international level channelled through the United Nations and its various agencies is human rights promotion, financial development aid aimed at achieving sustainable development in third world countries, peace-building efforts,<sup>140</sup> a commitment to the attainment of the UN millennium development goals<sup>141</sup> and support for the UNHCR and UNHCR-run refugee and displaced persons camps.

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<sup>140</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 17 (1994-95) Om flyktningpolitikken*, Stortingsarkivet, 1995.

<sup>141</sup> UN: *The UN millennium development goals*, 2000. <http://www.un.org/millenniumgoals/>, (Accessed September 10, 2008).



The Norwegian government stipulates that some of these efforts are directly aimed at reducing the extent of forced migrations from third countries. Since Norway realises that the complex international challenges posed by migrations require the adoption of complex measures, it is of the opinion that helping to stabilise other countries especially in the third world for example, overall contributes to the prevention of forced migrations. This consequently is considered overall as contributing to the reduction of immigration pressures on Norway. These pragmatic policy approaches are viewed by the Norwegian government as being in line with its general contribution in the migratory sector both domestically and internationally. How then does Norway meet the protection needs of stateless persons in its territory?

### **3.2 Norway's practice regarding stateless persons seeking for protection**

The identification of stateless persons is the first step towards extending protection to them. Norway identifies stateless persons seeking protection primarily in its refugee determination process. The identification procedure for those being processed in this framework takes place through the Norwegian police, which is the institution that first registers claims and applications for asylum. Norway has chosen to meet the protection needs of stateless persons within its refugee determination regime. But what is the nature of protection sought for stateless persons in general?

As mentioned above, the status of stateless persons in international relations is vulnerable. The disadvantages they face compared to nationals of sovereign states are varied and may range from lack of passports or travel documents, lack of identity cards, inability to enrol in schools for them and their children, lack of basic health care and lack of diplomatic protection, to among others the inability of seeking gainful employment or occupy political posts.<sup>142</sup> In addition to lack of public services in general, stateless persons may face long detentions due to illegal residence. The redressing of such conditions is among the reasons behind the drafting of the 1954

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<sup>142</sup> Excom: *Executive committee conclusion no. 106 (LVI) – 2006 Conclusion on identification, prevention and reduction of statelessness and protection of stateless persons*, UNHCR, 2006.

convention relating to the status of stateless persons. Concurrently, stateless persons may be (refugees) fleeing persecution.

Issues with the potential of affecting stateless persons negatively are various and differ from country to country. In addressing statelessness therefore, each state may consider instituting measures that address specifically those particular challenges facing stateless persons in its realm. Nonetheless, the policies on statelessness may not be crafted in isolation from other migratory issues within the boundaries of a state. The states will therefore justify the measures chosen to deal with the issue within their territorial jurisdiction in various ways. What measures has Norway chosen to address the protection needs of stateless persons within its territory?

As reflected in article 1.2, the 1951 convention relating to the status of refugees is applicable to stateless refugees. The 1954 convention relating to the status of stateless persons may therefore be considered to warrant a mechanism of protection for non-refugee stateless persons. Norway does not however, have a separate mechanism for dealing with stateless persons who seek protection under the 1954 convention relating to the status of stateless persons. Instead, stateless persons are channelled through the mechanisms of refugee status determination and asked in keeping with the 1951 convention to plead their case of persecution as the basis for seeking asylum. Asylum applications from stateless persons in Norway therefore, are not initially considered on the basis of their statelessness. They are rather primarily considered on the basis of whether there is credible fear of persecution as stipulated in article 1 of the 1951 Geneva convention relating to the status of refugees and the 1967 protocol.<sup>143</sup>

As mentioned above, Norwegian legal instruments are deemed to reflect the international obligations Norway is a party to. The Norwegian foreign citizen's act may therefore be assumed to have taken into consideration the provisions of pertinent international legal instruments in the crafting of Norway's migratory policies, because

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<sup>143</sup> UDI and UNE's asylum decision documents that outline the backgrounds of the outcome of asylum applications from stateless persons show the use of the 1951 convention relating to the status of refugees and the omission of the 1954 convention relating to the status of stateless persons in this context.

as seen earlier Norway ordinarily incorporates international law into its domestic legislation. The current Norwegian foreign citizens act -the main legal instrument that regulates foreign nationals and stateless persons in Norway- suggests in § 4 that it shall be applied in accordance with international rules by which Norway is bound when these aim at strengthening the foreigner's status in Norway.<sup>144</sup> International legal instruments constitute therefore constant points of reference in the application of Norway's foreign citizen's act in appropriate cases.

Rather than protect stateless persons on the basis of their statelessness, Norwegian immigration policies instruct the Directorate of Immigration to evaluate whether there is a credible fear of persecution to grant a refugee status to the individual stateless person with an emphasis on Article 1 of the 1951 Geneva Convention. Among others, this article defines a refugee as a person who

“Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>145</sup>

A recurrent question in the asylum context may be whether statelessness is a contributing factor to persecution or whether it constitutes on and in itself persecution. This question has among others been raised by Walker (1981)<sup>146</sup> and the US Supreme Court (1958), which viewed denationalisation as “a form of punishment”,<sup>147</sup> that

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<sup>144</sup> See the Norwegian foreign citizens' act: *Utlendingsloven* (1988). [www.lovdata.no](http://www.lovdata.no), (Accessed September 10, 2008).

<sup>145</sup> United Nations: *1951 Convention and the 1967 protocol relating to the status of refugees*, 1951 & 1967. <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> (Accessed September 10, 2008).

<sup>146</sup> Walker, Dorothy Jean: *Statelessness: violation or conduit for violation of human rights?* 3 Hum. Rights. Quarterly. 106., 1981.

<sup>147</sup> US Supreme Court: *Trop vs. Dulles* 356 US (86) (1958), US Supreme court case collection, 1958. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=356&invol=86>, (Accessed September 10, 2008).

among others is “more primitive than torture.”<sup>148</sup> Due to the resultant deprivation of the basic rights associated to the possession of nationality and legal residential status, it can in some cases be argued that statelessness constitutes persecution. As some UNHCR reports indicate, statelessness may constitute an intended persecution in a political campaign that discriminately aims at the deprivation of the rights flowing from the possession of nationality to certain groups.<sup>149</sup>

The UN agency notes the serious effects sweeping political or military changes such as a coup d'état can have. “In some complicated cases persons may have been welcomed under one government, only to be stripped of status and expelled when the regime changes in later years.”<sup>150</sup> In its resolution of February 9, 1996, the UN general assembly recognises that statelessness may on its own lead to displacement.<sup>151</sup>

In states where conflicts involving ethnic groups are present, the political processes adopted can produce statelessness. This scenario, which would potentially generate (political) refugees, would therefore be generally addressed within Norway's implementation of the 1951 refugee convention. However, although the argument that statelessness constitutes persecution can in some cases be put forward, not all stateless people are refugees. There are those whose circumstances neither involve persecution nor necessitate fleeing.<sup>152</sup> Where an asylum applicant is stateless, the statelessness may or may not relate to the asylum application. Norway's decisions in asylum applications from stateless persons do not generally reflect the interpretation that the condition of statelessness on its own is considered as persecution. In processing stateless persons under the provisions of the 1951 convention, reference of statelessness as ground for protection is decisively absent in relevant case decision

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<sup>148</sup> *ibid.*

<sup>149</sup> Working group on solutions and protection: *Stateless persons*, doc. No. WSGP/12, UNHCR, April 10, 1991.

<sup>150</sup> Executive committee of the high commissioner's programme: *Progress report on UNHCR activities in the field of statelessness*, EC/49/SC/CRP.15, UNHCR, June 4, 1999.

<sup>151</sup> UN General Assembly: *Assembly resolution A/RES/50/152*, Agenda item 109, Fiftieth session UN, February 9, 1996.

<sup>152</sup> Working group on solutions and protection: *Stateless persons*, doc. No. WSGP/12, UNHCR, April 10, 1991. This group of stateless persons may include those who are victims of conflict of nationality laws for example.

reports. The different causes of statelessness and the political undertones they may carry make the issue an extremely complex one to address.

The Norwegian asylum regime has considerable humanitarian criteria according to which a residence permit is accorded for non-refugee asylum seekers. The outcome of an asylum application from a stateless person can either be a granted refugee status under the 1951 refugee convention, a grant of residence permit on humanitarian grounds, or a rejection. The inherent humanitarian provisions of Norway's asylum regime necessarily mean that some non-refugee stateless persons are granted residence permits on various humanitarian grounds. When an application for refugee status from a stateless person is rejected by Norway on relevant eligibility criteria, a residence permit may be granted on humanitarian grounds as a last resort.

One of the most prominent provisions that is considered as among those of paramount importance in the Norwegian refugee determination process is the concept of non-refoulement found in article 33 of the 1951 convention relating to the status of refugees. This provision, which has become *jus cogens* in international law, is among the bedrocks of Norwegian asylum policy practices and one of the main reasons for Norway's issuance of residence permits on humanitarian grounds. Additionally, strong humanitarian concerns leading to the allocation of a residence permit on humanitarian grounds in Norway may among others be caused by the need to avoid the separation of a family, or acute sickness requiring immediate attention where the applicant would not receive it were he or she to be sent off to the country of former residence. Consideration is moreover taken as to whether the asylum seeker has a strong attachment to the realm. The government also historically accorded asylum on humanitarian grounds in cases where it was practically impossible to send the applicant back to their country of origin and as a safety precaution in instances where it may in fact be the case that the applicant fears persecution although initial analysis of the applicants' claim have concluded otherwise. The practice of humanitarian

asylum served in this case as a safety precaution.<sup>153</sup> This practice may be seen as a cautious attempt by Norway to avoid unintended breach of the non-refoulement principle.

In the Norwegian refugee determination process, when the application for refugee status has been rejected and claims of protection have been dismissed by the Directorate of Immigration on all counts, the stateless applicant is requested to leave the realm. At this point the applicant's appointed attorney may choose to send an appeal to the immigration authorities with further supporting arguments and documents. The case is as a consequence transferred to the Norwegian Immigration Appeals Board. This institution may rule favourably and give refugee status or a residence permit on humanitarian grounds or further reject the application for protection. As is the case with the Directorate of Immigration, administrative case documents show that the rulings in this body reflect a factual and discretionary evaluation based on the 1951 convention on refugees. According to analysed case decision reports, the mention of the 1954 convention relating to the status of stateless persons as ground for protection is again in this institution omitted where the application is from a stateless person. The final rejection by the Immigration's Appeals Board implies that the stateless applicant must leave the realm within a provided deadline or face forcible removal by the Norwegian police.

### **3.3 The implications of Norway's practices on stateless persons**

The use of the refugee determination process as a fundamental framework of protection for stateless persons does not address statelessness in all cases. Whereas other foreigners may be sent to their countries of origin for example, stateless persons whose applications for residence have been rejected are in a particularly vulnerable situation. Despite Norway's efforts at expanding legislation in this area for those stateless persons who have proven difficult to deport, their situation is initially volatile after receiving the final rejection from the authorities. In accordance with the Dublin

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<sup>153</sup> Stortinget: *Interpellasjon fra representant Helle om å ta initiativ i internasjonale organer for å sikre statsløse rettigheter når det gjelder bosted og sosiale og økonomiske vilkår, Forhandlinger i stortinget nr. 312, 3 April, 1973, Stortingsarkivet, 1973.*

conventions, where applicable, stateless persons may be requested to return to the country of first asylum.<sup>154</sup> In instances where their application has been rejected in a first country of asylum prior to coming to Norway, returning them there may merely prolong their ordeal. This may especially occur if the first country of asylum has similarly used the refugee determination process in deciding their case. This situation highlights the difficulty that *de jure* stateless persons may face in accessing residence rights in the territorial jurisdiction of a state. As will be seen under, rejected stateless persons may be a challenge to the immigration policies of a state.

It is likewise extremely difficult for stateless persons whose applications have been rejected by Norway to effectively influence the decisions of their former country of residence so as to be allowed to return when they no longer hold any residence rights there. The issue of return for failed stateless asylum applicants is broadly complex. A review of administrative case decisions show that the deliberations of the Norwegian Immigration Appeals Board, on the implications of deporting a stateless person after a failed asylum application, is conducted considering the potential for persecution for the stateless applicant were he or she to be returned to the country of former sojourn. When the immigration authorities deem that no such fear of persecution upon return exists, the stateless person is required to return to the country of former residence.

When stateless persons are denied asylum and requested to leave Norway, in cases where the Dublin conventions do not apply, it is the Norwegian authorities' assumption that they must return to their country of former residence. However, since the Norwegian asylum process takes time, the permit of residence the stateless person may have had in a third country is in some cases expired at the time of final rejection in Norway. The former country of residence is therefore under international law under

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<sup>154</sup> The Dublin regulations are European Union rules that aim to prevent an asylum applicant from lodging applications in multiple member states and to establish which member state is responsible for any particular asylum seeker. Norway is associated to EU laws and consequently takes the Dublin regulations into consideration in its refugee determination process. See European council on refugees and exiles (ECRE): *Summary report on the application of the Dublin II regulation in Europe*, European Council on Refugees and Exiles, March, 2006. <http://www.ecre.org/files/ECRE%20Summary%20Report%20on%20Dublin%2007.03.06%20-%20final.pdf>, (Accessed October 30, 2008).

no obligation to take the stateless person back onto its territory and as a result the stateless person will usually remain in Norway, living under the precarious conditions that stateless persons and their families are generally subjected to without the right to work or study and with little or no support from governmental institutions. The issue of return to the country of former residence for stateless persons highlights the friction that may arise between Norway and other states vis-à-vis the responsibility of stateless persons.

Some states where a stateless person may be residing even over long periods of time grant only temporary visas to stateless persons conditional on work for example, Kuwait is one such country. For instance once the stateless persons leave the host state and are absent beyond a certain period, their permits are cancelled and they lose their right of residence in those states. As the Norwegian refugee determination process takes sometimes up to six months and in some cases over a year, once a rejection on an application for protection from a stateless person is final, it becomes virtually impossible to return the stateless person to the country of former sojourn. Norway has therefore attempted to enact lenient legislation that seeks to remedy this situation, conditional on the cooperation of the applicant in acquiring travel documents from his/her former country of residence, in cases where return has proven difficult. However, as indicated earlier it may prove extremely difficult for a stateless person to affect the decisions of his/her former country of sojourn. The effects of the new measures enacted by Norway while considerably at the initial stage are at the time of writing therefore still unclear. Until such a return is effectuated or Norway reverses its previous decision and grants a residence permit, the stateless person continues to live in an insecure human rights condition within the realm. In certain instances for example despite Norway's pragmatic approach in this area, partly due to its *jus sanguinis* based nationality act, statelessness at birth has occurred in Norway for the descendants of those stateless asylum applicants who have been rejected. The children have faced similar human rights challenges as their parents and have in some cases not even attained the right to access kindergarten.



It can be posited therefore that the Norwegian asylum regime is primarily suitable for nationality holding refugees and refugee stateless persons rather than non-refugee stateless persons. The failure to institute a separate mechanism dedicated to non-refugee stateless persons seeking protection may be said to seriously curtail their position in Norway. While the 1951 convention includes stateless refugees, it does not address the issue of non-refugee stateless persons. Since the UN in concert with states chose to establish a distinct convention on statelessness, it can be argued that the 1954 convention calls for a separate, distinct mechanism appropriately mandated to protect non-refugee stateless persons in the territorial jurisdiction of a state.

As analysed above, stateless persons are accorded asylum in Norway where their cases are primarily evaluated on the basis of the 1951 convention relating to the status of refugees. The intention of the 1954 convention having been to cover those stateless persons who are not refugees, a number of stateless applicants therefore fail to meet the criteria for protective residence permits inherent in the Norwegian refugee determination process and are consequently living in a state of legal limbo within the realm. This begs questions as to the candour of the Norwegian ministry of foreign affairs' recommending statements of 1956 to the *Storting* on ratifying the 1954 convention on the status of stateless persons. As mentioned above, in recognition of their volatile circumstances, the ministry hailed the convention as “a progressive step towards the bettering of the status of stateless persons.”<sup>155</sup>

Seeing that the refugee determination process does not encompass all stateless persons, specifically non-refugee stateless persons has led to asking the reasons why Norway uses the refugee determination process as a framework of protection for stateless persons. The parameters of the refugee determination process that Norway primarily uses may be said to be inadequate in addressing the issue of non-refugee stateless persons as it is at the outset rather designed for refugees. The rest of the thesis

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<sup>155</sup> Utenriksdepartementet: *St. prp. nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956. See also Stortinget: *Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956.

therefore explores the reasons why Norway may have used the refugee determination process as a mechanism of protection for stateless persons.

## **Chapter four Potential rationales for Norway's practice**

### **4.1 Dynamics of implementation in a local context**

In accordance with Van Meter and Van Horn's (1975) model of the policy implementation process, this thesis views the path of implementation of the 1954 convention on statelessness in Norway as among others having been conceivably influenced by its stipulated standards and objectives in concert with Norway's overall domestic and international migratory interests. The carrying out of the chosen Norwegian policy has to among others take into consideration that resources are required for the reception of stateless immigrants and their integration into Norwegian society. It can moreover be posited that the policies adopted may have been shaped by social and political conditions that include the mentioned disposition of successive Norwegian governments at controlling immigration, as reflected in the extension of parliamentary report 39 of 1973-74. These considerations have a presumable bearing on Norwegian performance on statelessness domestically.<sup>156</sup>

Implementation requires that goals and objectives be identified and measured. Effective implementation requires that a program's standards and objectives be understood by those individuals responsible for their achievement.<sup>157</sup> Moreover, the implementation of international legal instruments will vary according to each state's interpretation of the wording. In international relations where the various states may have different priorities and interests on any particular subject, framing a statute to the satisfaction of all states can be challenging. Like other international conventions, the 1954 and 1961 conventions on statelessness require the ratification of as many states as possible to have an effective impact. This in turn partly depends on whether the wording of the conventions accommodates the perspectives of those states that are contemplating ratification or accession or whatever may be the case. Understandably, in the desire to accommodate as many state's wishes as possible in a policy area, a convention's stipulated means and objectives may end up as so watered down that it

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<sup>156</sup> Van Meter, S. Donald and Van Horn, E. Carl: *The policy implementation process: a conceptual framework*, Administration and Society, (6), Feb. 1975, p. 463.

<sup>157</sup> Ibid., pp. 465-466.

becomes virtually irresolute. As hinted at earlier, the 1954 convention on the status of stateless persons is generally recommending.

The recommending nature of statutes necessarily implies that states may adopt divergent views on the stipulated means and objectives. Consequently, the UNHCR observes that states have manifested different approaches to statelessness domestically.<sup>158</sup> Ingram and Schneider (1990) suggest that “when implementers disagree with the means or ends of vague or inconsistent policies, they may be able to thwart policy effectiveness by interpreting an ambiguous statute to fit their own domestic goals.”<sup>159</sup>

In international relations where interests may be diverse, vague, non-specifying and/or recommending legal instruments are not uncommon. Ingram and Schneider (1990) further advance that imprecise, vague decrees normally provide maximum flexibility to local level implementers allowing them to adapt the decrees to local circumstances and needs. This is because “it is believed that those who are closest to the program can select from among multiple goals those that are more relevant and choose the means that are most effective given their local circumstances.”<sup>160</sup> This view suggests that Norway would prioritise accountability and conformance to its domestic migratory aspirations in choosing the means of implementing the generally recommending 1954 convention on statelessness.

Ingram and Schneider (1990) propose that the relationship of statutes to implementation should be determined empirically by examining the value added to policy designs by implementing agents.<sup>161</sup> They advocate for value-added notions of implementation in which the extent of discretion exercised by implementers is

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<sup>158</sup> Department of International Protection: *Final report concerning the questionnaire on statelessness pursuant to the agenda for protection; steps taken by states to reduce statelessness and to meet the protection needs of stateless persons*, UNHCR, March 2004. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=405f09834&page=search>, (Accessed September 10, 2008)

<sup>159</sup> *ibid.*

<sup>160</sup> Ingram, Helen & Schneider, Anne: *Improving implementation through framing smarter statutes*, *Journal of public policy*, 10 (1), 1990, p. 79.

<sup>161</sup> *Ibid.*, pp. 67-88.

measured by changes they make in the central elements of policy. Norway's implementation of the 1954 statelessness convention within the parameters of its refugee determination process may therefore be viewed as a value-added approach that follows accountability and conformance to Norway's domestic and international migratory aspirations in tact with immigration trends in its territorial jurisdiction.

Additionally, Ingram and Schneider posit that vagueness in goals and objectives can be advantageous to implementers who wish to carry out the policy objective but must adapt it to local circumstances.<sup>162</sup> Statelessness is without a doubt a complex subject and states therefore hold different values on the phenomenon. In such an atmosphere where values are divergent, governments may emphasize different rationales and select from among multiple goals, those that are most acceptable in their domestic context.<sup>163</sup> On the other hand, "inconsistencies and vagueness in statutes may...contribute to domestic variation in implementation."<sup>164</sup> The 1954 statelessness convention's recommending nature gives states ample room to craft their desired policies on statelessness. In any case since the convention contains provisions that are non self-executing, it is expected of Norway to institute implementing mechanisms. It so happens that in implementing such measures Norway chooses those mechanisms that it sees as most appropriate and acceptable in addressing its migratory concerns both domestically and internationally. Such a mode of implementation requires an expansive interpretation of compliance with international law.

Ingram and Schneider (1990) make a point that may be taken into consideration in discussing the issue of state compliance with international conventions. In their logic, the argument that compliance leads to desired outcomes, that therefore compliance should be the measure of successful implementation and that the primary role of the statute is to produce compliance does not take into account the diverging domestic circumstances under which international treaties are implemented. Ingram and Schneider's view is that the definition of successful implementation as compliance is

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<sup>162</sup> *ibid.*, p. 75.

<sup>163</sup> *ibid.*

<sup>164</sup> *ibid.*

lacking. Instead of measuring implementation in terms of compliance and supposing that close adherence to statutory intent and specifications produces success, the characteristics of implementation should be determined realistically by studying the value added to the policy design by implementers.<sup>165</sup> “Thus it would be possible for an agency to depart from statutory prescriptions but if the departure produced better results than procedural compliance the implementation would be judged more successful.”<sup>166</sup>

#### **4.2 Uniformity of practice in immigration cases and the delimitations of the 1954 convention relating to the status of stateless persons**

As mentioned above, Norway’s immigration policies after parliamentary report 39 of 1973-74 were mainly confined to family reunification and immigration cases processed through the refugee determination process, migrant worker’s immigration was severely limited. Apart from the restricted migrant workers immigration, Norway’s refugee determination process is a comprehensive pillar of its overall immigration practices and aliens seeking for protection in Norway are generally processed through it. Norway’s practice in the processing of stateless persons therefore may be said to be justifiably within the bounds of article 7.1 of the 1954 convention on stateless persons which recommends that: “Except where [the] convention contains more favourable provisions, a contracting state shall accord to stateless persons the same treatment as is accorded to aliens generally.”<sup>167</sup> All aliens seeking for protection in Norway are initially processed through the Norwegian refugee determination process. Stateless persons in this case seem to constitute no exception. The 1954 convention on the status of stateless persons was meant to enhance the status of stateless persons and to provide them at least with the rights that other aliens enjoy within the territorial jurisdiction of states.<sup>168</sup> Despite this effort however, it may be

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<sup>165</sup> Ingram, Helen & Schneider, Anne: *Improving implementation through framing smarter statutes*, Journal of public policy, 10 (1), 1990, p. 76.

<sup>166</sup> *Ibid.*, p.77.

<sup>167</sup> Convention relating to the status of stateless persons.

<sup>168</sup> Robinson, Nehemiah: *Convention relating to the status of stateless persons; its history and interpretation*, Institute of Jewish affairs, World Jewish Congress, 1955, (Reprinted by the division of international protection of the United Nations High Commissioner for Refugees, 1997).

said that the situation of stateless persons in a state is to a certain extent unique and more vulnerable in comparison to nationality holding aliens.

As previously presented, “statelessness is often associated with displacements and refugee flows.”<sup>169</sup> Supplementing this reasoning is the observation that deprivation of nationality is increasingly a major causal factor in new refugee problems. Partly in recognition of this fact, the provisions of the 1951 refugee convention and the 1954 stateless person’s convention are considered to be broadly parallel.<sup>170</sup> Robinson (1955) advances that the 1954 convention relating to the status of stateless persons was largely modelled on the convention relating to the status of refugees.<sup>171</sup> He posits that the convention is for the most part the application to stateless persons of the provisions of the convention relating to the status of refugees.<sup>172</sup> This assessment was basically shared by the Norwegian ministry of foreign affairs in its proposal to the *Storting* on the convention’s ratification.<sup>173</sup> Norway’s use of the refugee determination process as a framework of protection for stateless persons is in this regard therefore not far-fetched.

Despite this observation however, as hinted at above the complexity of statelessness in the Norwegian domestic context manifests itself markedly where an application from a stateless person has been rejected. In interpreting Article 7 of the 1954 statelessness convention for example, Robinson (1955) offers a noteworthy international law perspective that may be taken into account. In what may highlight the limitations of

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<sup>169</sup> Department of International protection: *Preliminary report concerning the questionnaire on statelessness pursuant to the agenda for protection; Steps taken by states to reduce statelessness and to meet the protection needs of stateless persons*, UNHCR, September 2003.

<http://www.unhcr.org/protect/PROTECTION/3ff00a182.pdf>, (Accessed September 10, 2008).

<sup>170</sup> Executive committee of the high commissioner’s programme: *Stateless persons; a discussion note*, EC/1992/SCP/CRP.4, UNHCR, April 1, 1992.

<sup>171</sup> Robinson, Nehemiah: *Convention relating to the status of stateless persons; its history and interpretation*, *Institute of Jewish affairs*, World Jewish Congress 1955, (Reprinted by the division of international protection of the United Nations High Commissioner for Refugees, 1997).

<sup>172</sup> *ibid.*

<sup>173</sup> Utenriksdepartementet: *St. prp. nr. 75 (1956) Om innhentelse av stortingets samtykke til å ratifisere konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956. See also *Stortinget: Innstilling S. nr. 193 (1956) Debatt om ratifikasjon av konvensjonen om statsløse stilling av 28 september 1954*, Stortingsarkivet, 1956.

the application of some of the provisions of the 1954 statelessness convention and the 1951 refugee convention to stateless persons, Robinson put forward that:

If an “alien generally” is accorded certain rights without the requirement of residence (permanent or temporary) in the country concerned, a stateless person will enjoy these same rights. If, to be accorded a right, the “alien generally” must fulfil certain requirements which are contained in the expression “in the same circumstances”, a stateless person not fulfilling them cannot enjoy them under the treatment accorded by Para. 1 because he is not supposed to be treated more favourably than the hypothetical “alien generally”.<sup>174</sup>

Taking Robinson’s interpretation in this context, it may be observed for example that article 7.1 does not apparently request any special measures for stateless persons beyond those already provided for other aliens in the Norwegian refugee determination process. The uniformity of practice implied in article 7.1 may be one contributing factor to the Norwegian choice of approach towards stateless persons in its realm. However, while article 7.1 provides certain rights to stateless persons, which they would not in various instances otherwise enjoy due to the potential issues of reciprocity, it is imperfect in disregarding some fundamental differences of these two alien groups and their position in international law. A noteworthy observation in this context is that a uniform treatment of rejected stateless asylum seekers and rejected nationality holding asylum seekers in Norway is not without its problems.

As will be seen under, the ensuing consequences of Norway’s uniform practice towards these two distinct groups of asylum seekers after the refugee determination process period are potentially different. While nationality holding rejected asylum seekers may not claim the rights to schooling or work for example, the situation may be different for rejected stateless persons. The difference lies mainly in the fact that

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<sup>174</sup> Robinson, Nehemiah: *Convention relating to the status of stateless persons; its history and interpretation*, Institute of Jewish affairs, World Jewish Congress 1955, (Reprinted by the division of international protection of the United Nations High Commissioner for Refugees, 1997).



nationality holding finally rejected asylum seekers remain in the realm pending a return to their countries of origin. Their transitional residence in Norway prior to deportation is usually viewed as short and temporary in nature. In contrast, finally rejected stateless persons who are denied the right to work or schooling provisionally for themselves and their children may spend many years in Norway in a volatile human rights condition while returning them to a former country of sojourn proves to be drawn out and virtually impossible. As hinted at earlier, the policies of states are being challenged in the context of allocating basic social, economic and political rights to illegally residing stateless persons.

Norway's application of the 1954 convention within its comprehensive refugee determination process notwithstanding, stateless persons who are illegally residing in Norway and have proven difficult to deport risk living in legal limbo for many years as virtual outcasts. The effective deportation of rejected stateless persons, which in great part depends on the flexibility or goodwill of their former country of sojourn, is a tremendous challenge to Norway. In light of a likely impasse on deportation efforts in some cases therefore, exceptional measures that seek a more compassionate approach to their residential ordeal may be justifiable. However, such an exceptional approach may seem to grant extensive rights to illegally residing stateless persons to the detriment of immigration control mechanisms that Norway desires to maintain. Such a policy would seem to be tantamount to granting to all rejected stateless persons the rights accorded to legal residents of Norway. The asylum rejection and the ensuing illegal residence would effectively be of no consequence. As will be seen later such an approach may have an adverse consequence on the immigration control aspirations of Norway. Securing the human rights of rejected stateless persons while maintaining Norway's desired immigration control mechanisms is therefore a tremendous challenge to the Norwegian authorities.

Robinson's interpretation of article 7.1 reveals in this context a potential limitation of the extent of protection the 1954 convention offers to stateless persons and their continued vulnerable position in international relations. In any case, Norway's asylum

practices have often proved to be adaptive and responsive to the changing demands of domestic as well as international circumstances. Partly due to the recommending nature of the 1954 statelessness convention, it may be said that Norway has adopted a policy approach that it views as acceptable in its domestic context. There is therefore in this context cause to explore the significance of Norway's sovereignty in its policy determination and choice.

### **4.3 Norway's sovereignty in policy determination**

Early Norwegian policies on immigration are said to mainly have been limited to evaluating regulation and control of foreigners on the basis of national considerations. Later, with the increase in global migrations, these policies have been redesigned with considerations of the broader international trends. International migratory tendencies therefore, influence Norway's immigration policy approach. Nonetheless, the Norwegian government recognises that it "cannot solve all the world's refugee and immigrations problems by letting in all who desire to take up residence in the realm."<sup>175</sup> Therefore it is deemed necessary to maintain controlled immigration. In addition to allowing the settlement of a number of immigrants within the realm, Norway has as mentioned above, sought diverse methods of contributing to the curbing of problems that lead to forced migrations at the global level. Its domestic migratory practices therefore are based on various calculations in its overall foreign and domestic policy priorities.

Norway puts forward that a number of international obligations and agreements in addition to other states' policies affect and limit judicially and factually how it can craft its immigration policies. Its duties towards other states may take shape in the form of bilateral, regional or global agreements. Among Norway's most prominent bilateral and regional agreements on immigration can be respectively cited those it has with the Nordic countries and with Schengen countries. Global agreements taking shape in the form of international conventions in this context include the 1951

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<sup>175</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1987-88) Om innvandringspolitikken*, Stortingsarkivet, 1988.

convention on refugees and the 1954 convention on statelessness. Such considerations however, do not all the while hinder Norway to tailor Norwegian immigration policies according to Norwegian domestic circumstances and priorities.

It is an accepted rule of international law that states are not, unless bound by treaty duties, under an obligation to grant to aliens an unconditional and unlimited right of residence though they may not in keeping with the non-refoulement principle, arbitrarily expel them without just cause.<sup>176</sup> Norwegian territorial jurisdiction in questions of immigration control is therefore not overruled by any international law. The Norwegian government advances that according to its territorial jurisdiction, Norway chooses whether and under which circumstances a foreigner will be given a residence permit.<sup>177</sup> One primary consideration weighing on its choices in this domain is the observing of the customary international law principle of non-refoulement. According to the government, there is no single paramount international legal instrument that dictates state action on immigration policies, but there are many multilateral as well as bilateral treaties, recommendations and declarations, which in different ways and degrees have significance in the immigration policies of Norway.<sup>178</sup>

International law generally confers rights and obligations to states. Weis (1979) among others suggests that it is “the rights of the state that are the primary consideration of international law.”<sup>179</sup> Among the core arguments of the Norwegian government for its policies in immigration matters therefore, lies a classic, independent view of state sovereignty and territorial jurisdiction. The government justifiably posits that a refugee does not under international law have the right to asylum but that according to the international law concept of state sovereignty, the right of asylum is a states’, in this case Norway’s right to give asylum rather than the asylum seekers right to be given

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<sup>176</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p. 45.

<sup>177</sup> Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1987-88) Om innvandringspolitikken*, Stortingsarkivet, 1988.

<sup>178</sup> Ibid.

<sup>179</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.112.

asylum.<sup>180</sup> This reasoning on states' rights to give asylum, presents another interpretive perspective on the implementation of the 1951 and the 1954 conventions. The government suggests among others that while the universal declaration of human rights article 14 has an asylum related provision, it does not accord to a person the right to receive asylum; neither does the 1951 convention relating to the status of refugees and the subsequent protocol of 1967.<sup>181</sup> The preceding insights potentially highlight Norway's discretionary powers in its asylum practices and policy choices.

Even in cases where Norway grants residence permits respective of the concept of non-refoulement, the government proposes that this may be considered as a temporary safety mechanism. While prospecting an eventual repatriation of the applicant, Norway may apply this option as a temporary measure pending the improvement of the conditions in his/her country of origin. Besides Norway's obligations to respect the principles of non-refoulement in international law, and considering its broad discretionary powers on asylum conferral, it may therefore be argued that Norwegian asylum practices are based on humanitarianism and that Norway accords residence permits in this regard as a matter of grace.

As presented earlier, statelessness may in Norway not be considered as ground for a residence permit on humanitarian grounds. Humanitarianism in international relations is not a state obligation rather as is the case in the Norwegian practice in asylum cases, "it is rendered as a matter of grace."<sup>182</sup> However, Evans and Newnham (1998) for example advance that humanitarian assistance should be regarded as "a positive duty and consequently could be demanded by sufferers as a right not only from the doctrine of shared humanity but also as a logical consequence of membership of the international community."<sup>183</sup> It is noteworthy that Norwegian practice does not reflect the view that statelessness in itself is a strong humanitarian condition requiring remedy

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<sup>180</sup>Kommunal og arbeidsdepartementet: *Stortingsmelding nr. 39 (1987-88) Om innvandringspolitikken*, Stortingsarkivet, 1988.

<sup>181</sup> Ibid.

<sup>182</sup> Evans, Graham & Newnham, Jeffrey: *The penguin dictionary of international relations*, Penguin books, 1998, p. 231.

<sup>183</sup> Ibid.

in its asylum regime. Granting sojourn on humanitarian grounds for stateless persons could be considered as being in keeping with the preventative or alleviating measures in instances of statelessness.

Due to these observations and the implications inherent in the concept of territorial jurisdiction the thesis postulates that Norway exercises independent judgement on the mechanisms that it deems most appropriate in addressing migratory issues and particularly as they concern stateless persons. An additionally influential factor may be immigration trends to Norway. How may domestic migratory tendencies have instructed Norwegian practice on statelessness?

#### **4.4 Issue salience and administrative considerations**

The 1954 convention relating to the status of stateless persons does not contain an obligation to admit stateless persons to a state's territory,<sup>184</sup> but rather encourages the adoption of compassionate measures towards their status. Under such recommending provisions, Norway would as proposed above, have to institute implementing mechanisms to reach the conventions' generally intended objectives. Those measures nonetheless cannot be viewed as completely independent of Norway's other concerns in the field of international migration. The typical nature of statelessness would suggest that Norway has considered the implementation of the statelessness conventions in concert with other concerns within its migratory sector policy.

Statelessness is a multifaceted phenomenon. As hinted at earlier, rationalism would suggest that government actions are undertaken pursuant of state interests. Since Norway is a signatory to both the 1954 and the 1961 conventions on statelessness, and has seen no need to establish a separate framework for stateless persons, it may be argued that it views the refugee determination process as the most effective framework in fulfilling the objectives of the two conventions while acting in its interest within its dominion.

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<sup>184</sup> Executive committee of the high commissioner's programme: *Progress report on UNHCR activities in the field of statelessness*, EC/49/SC/CRP.15, UNHCR, June 4, 1999.

Policy implementation and the extent of attention the 1954 statelessness convention receives from governments may depend as suggested above on various domestic factors including political, social and economic considerations. As presented earlier, Norway's stateless population amounted in 2006 to 672. In the same year reports show that the number of stateless applicants for asylum was 237. Of these, altogether 102 received residence permits after being processed through the asylum regime.<sup>185</sup> Compared to these figures, the total number of asylum seekers in Norway in 2006 was estimated as 5300, of these 521 were granted refugee status while 1685 were granted permits on humanitarian grounds.<sup>186</sup> Stateless persons therefore constitute a marginal count of the total of asylum applicants. The Norwegian asylum system may be said therefore to have been geared towards the effective administrative processing of the total number of asylum seeking cases, which as suggested by these figures, is strongly tilted towards those with a nationality.

The magnitude of nationality holding asylum seekers historically compared to that of stateless persons may give an indication as to the aspects of the asylum regime that have been most salient in Norwegian political debates on immigration. Historically, the number of asylum seekers possessing nationality in Norway has been disproportionately higher compared to that of stateless applicants. The low number of stateless applicants may be due to Norway's relatively remote location, the fact that it is not located in the vicinity of a territory generating stateless persons and possibly the difficulty of travel for stateless persons. This disparity in numbers has certainly contributed to the fact that the media, the general political elite and the constituencies' attention has been mostly concerned with asylum seekers in general and to a far less discernible degree on stateless persons in particular. The impact of political conditions

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<sup>185</sup> See asylum applications and refugee status determination by origin and territory/country of asylum 2006, UNHCR statistical yearbook 2006, p. 132, table 9 at <http://www.unhcr.org/statistics/STATISTICS/478cda572.html>, (Accessed September 10, 2008).

<sup>186</sup> Norwegian ministry of labour and social inclusion: *International Migration 2006-2007: SOPEMI-report for Norway*, Norwegian government, December 2007. [http://www.regjeringen.no/Upload/AID/publikasjoner/rapporter\\_og\\_planer/2008/Report\\_migration2006-2007.pdf](http://www.regjeringen.no/Upload/AID/publikasjoner/rapporter_og_planer/2008/Report_migration2006-2007.pdf), (Accessed September 10, 2008).

on policy, including issue salience in the public discourse and the media cannot be overstated.

The asylum regime is one significant pillar of Norwegian migratory policies. The current policies may be said to have been influenced by the magnitude of asylum seekers who have in the past applied for protection in Norway as well as the complexity of their cases. As can be deduced from the numbers (respectively 237 stateless in a total of 5300 asylum seekers), stateless persons constitute a considerably low number compared to the overall number of asylum seekers. Non-refugee stateless persons constitute an even more minute number of persons seeking for protection in Norway. As hinted at above, the issue of stateless person's movements often go hand in hand with that of refugee movements. The common characteristics of these two subjects, combined with the low number of (non-refugee) stateless applicants for protection may be one additional factor that may have prompted Norway to adopt what it saw as a comprehensive asylum regime that would also encompass non-refugee stateless persons. The low number of stateless applicants may have contributed to a lack of domestic media coverage of the issue of statelessness.

The media's attention to issues has been known to attract the attention of politicians and to foster their efforts at addressing raised issues in what has been described as its agenda-setting power in politics. Statelessness had for long been overshadowed by the global media's attention to the more widespread problem of refugees. Additionally, statelessness is often a latent condition. This general tendency, which is also remarkable in Norway, has led to a virtual anonymous and low profile faring for stateless persons in Norwegian society. Only lately is public awareness of statelessness coming to the fore due to the sporadic reporting on the issue. The lack of widespread attention to the vulnerable circumstances of stateless persons may therefore have been another reason for the lack of political pressure for a separate mechanism more suited to addressing their condition.

An accompanying reason that may have caused the lack of an independent asylum mechanism for stateless persons within the Norwegian migratory policies is that such a mechanism would radically alter the features of the prevailing asylum regime and the procedures that Norway desires to maintain. Van Meter and Van Horn (1975) suggest that a policy may meet resistance if it represents a sudden and fundamental change in established practices.<sup>187</sup> As postulated earlier, Norway has had a long, varied and sustained experience with refugees since WWI. It may be advanced therefore that while significant international migratory changes have occurred over time, Norway's evolving refugee determination process is a well-rooted regime that has had reliable routines for sorting out those persons who needed protection. The establishment of a separate mechanism of protection for stateless persons parallel to or outside the refugee determination process may have been evaluated as a radical shift in the migratory policies of Norway.

The incremental tendency of state practice in various sectors has been widely acknowledged. In implementing new programs, such a tendency is said to favour a gradual change in policy over a long period. Van Meter and Van Horn's (1975)<sup>188</sup> views suggest for example that such a drastic reorganisation as may be required to implement a separate mechanism for stateless persons in Norway may in fact have led to bureaucratic resistance. They advance that "implementation will be most successful where only marginal change is required."<sup>189</sup> It is apparent that establishing an explicit statelessness regime outside the refugee determination process would require of Norway to craft an entirely different set of criteria specifically designed for the reception and protection of stateless persons. In any case, those stateless persons who receive residence permits on existing humanitarian grounds criteria are in Norway considered as non-refugee under the 1951 refugee convention. Among others, due to its extensive allocation of residence permits on humanitarian grounds to non-refugees therefore, Norway may have seen its refugee determination process as comprehensive

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<sup>187</sup> Van Meter, S. Donald and Van Horn, E. Carl: *The policy implementation process: a conceptual framework*, Administration and Society, ( 6), Feb. 1975, p.459.

<sup>188</sup> *ibid.*, p.461.

<sup>189</sup> *ibid.*



enough to meet the protection needs of non-refugee stateless persons as well. As will be seen later, this may have been inspired by a rational evaluation of various domestic and international considerations in keeping with what Allison (1999) calls the “Rational Actor Model.”<sup>190</sup>

#### **4.5 Gaps in international law, the intractability of statelessness and Norway as a rational actor**

In analysing Norway’s policy in the implementation of the 1954 convention on statelessness, consideration should be given to what Mazmanian and Sabatier (1980) would term the intractability of the issue of statelessness.<sup>191</sup> Statelessness is a problem of significant implications in international relations both for the affected and for the states in which the stateless persons find themselves. As mentioned above, it is caused by a myriad of complex factors and may lead to frictions between states. Solutions to statelessness therefore, require state commitment in various policy areas. Norway’s actions may be assumed to be inspired by a calculated approach at finding solutions to this issue in the general atmosphere of international events that impact on migrations.

International law is an evolving tool and does not cover all potential sources of disputes in the international system. The implementation of international treaties within the territory of states is therefore conducted with caution, because overlooked gaps that exist in international law may cause a backlash on the implementing state. As an illustrative example in the context of statelessness;

“The right of states to withdraw their nationality from individuals is on the whole, not limited by international law. Deprivation of nationality, even mass denationalisation, is not prohibited by

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<sup>190</sup> Allison, Graham & Zelikow, Philip: *Essence of decision: explaining the Cuban missile crisis*, Longman, New York, 1999.

<sup>191</sup> Mazmanian, Daniel & Sabatier, Paul: *The implementation of public policy: a framework of analysis*, Policy Studies Journal, 8(2), 1980, p.541.

international law, with the possible exception of the prohibition of discriminatory denationalisation.”<sup>192</sup>

When a state has conducted mass expulsion of its population as in the Ugandan case referred to earlier, the refusal to readmit its former residents is seen as laying the burden of responsibility on other states. While deprivation of nationality, in particular mass denationalisation is seen as incompatible with the international duties of states,<sup>193</sup> “statelessness is not inadmissible in international law; although it may be considered undesirable.”<sup>194</sup> How can Norway’s practice then be further interpreted in such an international atmosphere?

One significant aspect of Norwegian migratory practices is the framework of the restrictive immigration policies adopted in the above-mentioned parliamentary report 39 of 1973-74 on immigration control and its subsequent extension. Despite these restrictive immigration measures however, in applying the 1951 convention relating to the status of refugees, the government had maintained a mechanism of protection for those fleeing persecution. In essence, those who seek to settle down in Norway must present their case for such a desire, if the desire is to migrate for working purposes, legal channels of immigration, while restricted by parliamentary report 39 and its extensions were left open. Those who desire to settle down in Norway must present reasonable grounds for having left their territories of former sojourn in order to have their cases considered.

In essence this means that even non-refugee stateless persons must make a case for why they have left their former country of sojourn. As mentioned above, Norway was dismayed by Uganda’s actions in 1972 whereby a large portion of its inhabitants was expelled from Ugandan territory. It is a legitimate question to ask: whose responsibility are stateless persons? As posited above Batchelor notes that

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<sup>192</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p.242.

<sup>193</sup> *ibid.*, p.123.

<sup>194</sup> *ibid.*, p.125.

international law cannot even grant the nationality to which a person may have a legitimate claim or make nationality effective. This reflects a lack of supra-nationality in international relations on nationality acquisition or deprivation issues. States therefore have virtually unchecked powers in nationality related practices even where these may go contrary to desirable international norms. As reflected in the universal declaration of human rights, the desired condition is where every individual has a nationality. States that act contrary to international norms and thereby creating statelessness may be laying the burden of responsibility on other states. If Norway instituted a separate mechanism for the protection of all stateless persons on the basis of their statelessness, it is not hard to understand the logistical and the economic burden that that would entail for Norway. First and foremost, it can be argued that such an approach would perpetuate statelessness internationally. As the UNHCR suggests, some states have for political reasons for instance, maintained policies where a portion of their population is deliberately kept stateless.

If the signatories of the 1954 convention relating to the status of stateless persons plead to receive the millions of stateless persons solely on the basis of their statelessness, it is conceivable that some countries may choose to strip some section of their (unwanted) populations of their citizenship and expel them in the hope that state parties to the 1954 convention would be disposed to accommodate them. Arguably therefore, such logic of accommodation may lay the ground for further perpetuation of statelessness in international relations and would entail that some states end up with a burden of responsibility on statelessness that they have not generated. This possibility highlights the real challenges faced by states such as Norway, which while seeking to protect stateless persons must take into consideration that not all states take their duties seriously in nationality matters and some may be freely contributing to the perpetuation of the problem. As reflected in the Ugandan example above, there is precedence to such state practice. This prospect therefore in itself calls for criteria of recognition of protection claims from stateless persons beyond the status of statelessness. In the absence of international measures of any consequence to the

denationalising state, the Norwegian practice sends a signal to states that in effect urges them to take responsibility on statelessness resultant of their adopted policies.

The intractability of statelessness as reflected in the discussion above, may therefore be another avenue in explaining or understanding Norway's practice. Given Norway's goal to control immigration and as a rational actor, Norway could not choose a course of action that would effectively seem to grant all stateless persons a permit of residence in Norway solely on the basis of their statelessness. In view of the above-mentioned Norwegian perspectives and objectives, this would be acting against its own economic and migratory policy interests. This rational perspective suggests that an evaluation of the value added by Norway to the implementation process of the 1954 convention and the implications thereof in this case merit examination. Its practice may be contributing to raising awareness on statelessness in other states and thereby urging them to follow international law, adopt acceptable behaviour in this area and prevent statelessness within their own territories before the issue becomes an interstate concern. As hinted at earlier, statelessness is increasingly a major cause of displacements. Those states that deal with statelessness resulting in their territories may therefore be seen as contributing to the reduction of such displacements.

Following the rational actor model, Norway's actions may therefore be explained by what may be portrayed as some of its goals and objectives; strictly regulating immigration to Norway at the same time as meeting the protection needs of those who need protection. Its actions may be said to aim at reducing statelessness through the refugee determination process, rather than portraying statelessness as a virtue that leads to the granting of Norwegian residence permits.

The Norwegian state institutions that are dealing directly with the phenomenon of statelessness are, given the domestic circumstances, better positioned to select from among multiple goals those that are more relevant and choose the means that are most effective given the local circumstances. This view is, as proposed earlier, seen as emphasizing accountability and conformance to local needs in implementing

international treaties. Another argument that Norway as a rational actor would advance in choosing its practice therefore is that accepting stateless persons on the basis of their statelessness may domestically lead to voluntary statelessness. How can Norwegian practice overall be potentially contributing to the reduction of voluntary statelessness in its territory?

Most stateless persons are in that condition not by their choice. In the Norwegian asylum regime for instance, applicants have to make an effort to ascertain their origin during the asylum interview and hope of attaining protection considerably hinges on that credibility. If statelessness was on its own a basis for the attainment of protection, it is likely that many asylum seekers requesting asylum in Norway without satisfactory proof of nationality, would mask their identities and claim statelessness in an effort to gain the protection rights associated with such a status. Weis (1979) stipulates that the most significant proofs of nationality in international relations are passports and consular certificates.<sup>195</sup> In the case of persons seeking asylum, these are, for various reasons not always available. There have been cases where rejected asylum applicants have been unable to prove or unwilling to prove their nationality. For those who are intent on masking their identities to claim protection on the basis of statelessness, it would be virtually impossible for Norwegian authorities to uncover their true identity or origin where such proof of nationality were initially absent at the time of application. Norway has experienced for example cases where asylum seekers without sufficient proof of nationality, were unwilling to reveal their real identity and therefore has found it subsequently difficult to deport them after the final rejection of their asylum application.

Proving the nationality of such asylum seekers may prove extremely difficult where the asylum seeker seeks to conceal it and courts therefore statelessness. It can be argued therefore that, if statelessness is the desired outcome it would be another avenue for asylum seekers to explore in claiming protection even where they in fact

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<sup>195</sup> Weis, Paul: *Nationality and statelessness in international law*, Sijthoff & Noordhof, Germantown, Maryland, 1979, p. 205.

have an effective citizenship. As such it may be posited that the Norwegian asylum regime as it currently stands with its criteria contributes to the prevention of statelessness. Even though instances of identity concealment may still occur, they would not be as prominent as the case would be was statelessness to be instituted as a virtue in the asylum seeking process.

Overall, providing residence permits on the basis of statelessness therefore as presented above would among others put a significant burden on the Norwegian economy, and in the current era of global terrorism would possibly put Norway's security at risk as it would potentially and virtually be granting residence to persons whose real identities are unknown. Such alternative would therefore entail consequences that Norway as a rational actor would prefer to avoid. The asylum system with its mechanism of identifying applicants, their countries of origin and what may have led them to flee as a point of departure for the evaluation of claims may have seemed more appropriate. Even for non-refugee stateless persons therefore, as Norway expects other states to carry out their obligations as regard these, it would require to know the reason behind their leaving their countries of former sojourn. In the absence of persecution in such cases, Norway's actions are instructive of other states to institute mechanisms that address statelessness within their own territories and to take care of their stateless populations.

Norway's choice of mechanism to address statelessness therefore may be understood as having been deemed best in taking care of Norway's interests at regulating immigration as well as discharging its responsibilities regarding the international conventions to which it is a party. Norway's actions may be considered as a rational choice that takes care of Norway's national interests including its domestic security in the international migratory policy sector. It has chosen the asylum regime to achieve those objectives and secure those interests it sees as most prominent in the migratory sector. As mentioned above, its mechanism of protection has led to a precarious human rights situation for those non-refugee stateless persons who have not made a successful claim for protection and have subsequently been denied residence permits.

This may have been considered by Norway as an inconsequential outcome compared to the overall value-maximizing aspects of its refugee determination process in implementing the 1954 convention on statelessness. The hortatory nature of the 1954 convention may have given Norway a leeway in independently determining the best way to implement it while taking into account its overall policy concerns. In view of the perspectives given above, the alternative of instituting a separate mechanism may have seemed disproportionately costly.

## **Chapter five Conclusion**

The thesis has explored potential rationales of Norway's approach in asylum applications from stateless persons from various policy implementation perspectives. The implementation dynamics perspective has suggested that Norway's practice may be viewed as a discretionary value-added approach that follows accountability and conformance to Norway's domestic and international migratory aspirations in tact with immigration trends in its territorial jurisdiction. This perspective has presented domestic circumstances and priorities as significant factors in the Norwegian implementation process of the 1954 convention relating to stateless persons.

The thesis has additionally explored uniformity of practice in immigration cases and hinted at the delimitations of the 1954 statelessness convention in protecting stateless persons. It has noted that, as reflected in its Article 7.1, the 1954 statelessness convention does not apparently request any additional measures for stateless persons beyond those already provided for other aliens in the Norwegian refugee determination process. However, the thesis has suggested that close adherence to a uniformity of practice in this context may have adverse human rights effects especially in the post refugee determination process period in instances where the stateless person's application for asylum has been finally rejected and deportation prospects are virtually non-existent. The thesis' findings inspire the call for research that aims at examining mechanisms that may improve the human rights status of finally rejected stateless asylum applicants in tact with Norway's immigration control aspirations.

While the dynamics of implementation in a local context and a uniformity of approach in immigration cases may have played their part in explaining to some extent the rationales behind Norway's choice of implementation of the 1954 statelessness convention, the thesis has also examined the significance of Norway's sovereignty in determining migratory policies. It has remarked that the rights of states are the primary consideration of international law and has primarily postulated in this context that Norway's territorial jurisdiction is not overruled by any international law. The thesis has relayed the government's position that according to its territorial jurisdiction,



Norway chooses whether and under which circumstances a foreigner will be given a residence permit. It has additionally advanced that Norway's understanding of the right to asylum as a states' right to grant asylum rather than an asylum seekers' right to be given asylum goes far in laying the basis for the conclusion that Norway primarily grants asylum as a matter of grace. Norwegian sovereignty in domestic migratory policy determination as an incontrovertible fact is significant in explaining its practices in this context.

Other decisive aspects of immigration in Norway in this setting have been presented as pertaining to issue salience and administrative considerations. The thesis has explained that stateless persons seeking for asylum in Norway represent a marginal count of the total of asylum seekers and that therefore, the asylum regime has been geared towards the effective processing of the majority of asylum applicants; which in this instance is tilted towards those with a nationality. Furthermore, it has discussed gaps in international law, the intractability of statelessness and Norway's approach as that of a rational actor. The thesis has hinted at the complexity of statelessness in an international political theatre where the rights of states to denationalise are on the whole not limited. It has postulated that states that act contrary to accepted international norms thereby perpetuating statelessness may be laying the burden on other states. It has suggested that given such an atmosphere, Norway may be deemed to have taken this reality into consideration in its policies on statelessness in accordance with its immigration control aspirations.

Overall the thesis has suggested that as a rational actor, given such an international political environment where states may be deliberately holding parts of their populations stateless or using deprivation of nationality as a political instrument, Norway has to take into consideration Norwegian priorities and broad migratory interests in the implementation of the 1954 convention relating to the status of stateless persons. The immigration control aspirations that led to the parliamentary report number 39 of 1973-74 and its subsequent extensions show that Norway desires to maintain regulated immigration. The thesis has relayed a Norwegian position that may

depict the interaction between the discussed potential rationales: the government's view that considerations pertaining to Norway's international duties do not hinder Norway to tailor Norwegian immigration policies according to Norwegian domestic circumstances and priorities. Balancing the protection needs of stateless persons and Norway's migratory priorities while taking into consideration the international circumstances to which the prevalence of statelessness may be attributed remains a formidable task for Norway.

## Chapter six References

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