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Addressing Statelessness in South Asia: Customary Obligations and Policy Approaches

Ammal Atta Muhammad[1] **Cheng Chen**[2]

[1]LLM Scholar, Zhongnan University of Economics and Law, Wuhan, China E-Mail: amalattamuhammad@gmail.com
[2]School of Foreign Languages, Shanghai Ocean University, China E-Mail: cchean@shou.edu.cn

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Abstract
This research article examines the pressing issue of statelessness in the Asia-Pacific region, particularly focusing on South Asia where despite a significant stateless population, none of the states are signatories to the 1961 Convention on the Reduction of Statelessness. The author explores emerging customary international law (CIL) obligations within South Asia regarding statelessness by analyzing state practice and opinio juris. Through a comprehensive examination of evidence, including international law developments and regional court decisions, the study aims to identify evolving CIL norms obligating states to address statelessness. With a focus on Afghanistan, Bangladesh, Bhutan, India, and Pakistan, the interconnectedness of statelessness issues across these nations is recognized. By scrutinizing state practice and opinio juris, the article contributes to a deeper understanding of evolving legal obligations in South Asia. The conclusion suggests a persuasive probability of CIL responsibility to prevent statelessness and emphasizes the need for further research to strengthen this assumption and extend its application beyond the 1961 Convention. Ultimately, the article underscores the importance of ongoing exploration and examination of state behavior to ensure universal adherence to customary obligations regarding statelessness.

Corresponding Author's Email: amalattamuhammad@gmail.com

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1. Introduction

The United Nations High Commissioner for Refugees (UNHCR) highlights a troubling reality: approximately 40% of the global stateless population resides in the Asia-Pacific region (Mathur, 2021). Within this vast expanse, South Asia emerges as a focal point, harboring numerous statelessness "hotspots" where thousands are vulnerable to statelessness. Bangladesh, notably, stands as the world's largest host of stateless individuals, with approximately 906,000 individuals, primarily comprising Rohingyas from Myanmar. Myanmar itself ranks third globally, with an estimated 620,000 stateless persons (Rahman & Sakib, 2021). India, too, grapples with its share, hosting around 17,730 stateless individuals, including Rohingyas, with an additional 1.9 million at risk of statelessness (Immanuel, 2023). Despite these stark figures, none of the South Asian states are signatories to the 1961 Convention on the Reduction of Statelessness (1961 Convention), which outlines crucial guidelines for preventing and alleviating statelessness (Alam et al., 2021).

The absence of specific treaty obligations in South Asia compounds the challenge of addressing statelessness, as these states also lack a dedicated domestic legal framework. Nonetheless, customary international law (CIL) may impose obligations on states to avoid, reduce, or prevent statelessness, even in the absence of explicit treaty commitments (Bianchini, 2018). This holds particular significance for South Asia, where domestic courts have, on occasion, invoked CIL as part of their legal jurisprudence.

This article seeks to explore the emerging CIL obligations within South Asia to address statelessness, examining both state practice and opinio juris. By assessing evidence from the region, including developments in international law and regional court decisions, the author aim to discern the presence of an evolving CIL norm obligating states to mitigate statelessness. Our focus encompasses Afghanistan, Bangladesh, Bhutan, India, Maldives, Myanmar, Nepal, Pakistan, and Sri Lanka, acknowledging the interconnectedness of statelessness issues across these nations. Notably, while Myanmar has often been associated with Southeast Asia, its proximity and historical ties to South Asian states warrant its inclusion in this study.

By examining state practice and opinio juris, this article contributes to a deeper understanding of the evolving legal obligations surrounding statelessness in South Asia. Through this analysis, the author endeavor to inform policy discussions and advocate for proactive measures to address statelessness, emphasizing the imperative of customary duties in shaping effective policy perspectives.

2. Examining Customary Responsibilities in Reducing Statelessness

This section provides a detailed analysis of how states in South Asia approach the issue of statelessness, specifically focusing on their actions and legal beliefs regarding the need to prevent, minimize, or eliminate statelessness. The main goal is to determine if observable signs of state practice and opinio juris play a role in the gradual development of a customary international law (CIL) requirement among South Asian states to deal with the intricate problem of statelessness. It is important to mention that although this investigation specifically looks at evidence from South Asia, it does not mean that this evidence is the exclusive basis

for a regional customary international law responsibility within South Asia. Instead, it measures the degree to which these activities conform to the wider global movement of addressing statelessness.

In navigating this inquiry, it's essential to acknowledge inherent limitations, notably the confined scope of this analysis to South Asia. A comprehensive assessment of a general CIL obligation necessitates a broader empirical study encompassing a more extensive array of states. This section represents a foundational step in this direction, paving the way for future research endeavors.

Drawing upon the methodology outlined in the "International Law Commission's Draft Conclusions on Identification of Customary International Law," the analysis centers on examining state practice and opinio juris (Bourgeois & Wouters, 2018). State practice encompasses actions undertaken by states across various spheres – executive, legislative, judicial, among others – while opinio juris denotes the belief in the legal obligation underpinning such practice (Patel, 2016).

We adopt a nuanced approach to evaluate the evidence, recognizing the complexities and inconsistencies inherent in state behavior. Varied practices within a state are scrutinized within the broader context and nature of the evidence, with due consideration given to the circumstances underpinning such practices. This approach ensures a holistic understanding of state behavior and its implications for the emergence of customary obligations.

Furthermore, it's imperative to delineate between instances of state practice that align with established norms and those that contravene them. The principle of avoidance of statelessness, derived from fundamental human rights norms, serves as a guiding framework in this assessment. Practices that violate this principle are deemed as breaches rather than indicative of the establishment of new rules. This distinction is crucial in discerning the trajectory of customary obligations surrounding statelessness.

In analyzing state practice, due consideration is given to the multifaceted nature of evidence, which encompasses legislative enactments, executive actions, judicial decisions, among others. The examination extends beyond mere condemnation of human rights violations to encompass a broader spectrum of state conduct, including engagement with international organizations and adherence to treaty provisions.

In the subsequent headings, the author provides a comprehensive analysis that is structured according to national laws and court rulings, activities related to international organizations, and treaties. Through this thorough analysis, we aim to shed light on the usual obligations that South Asian countries have in reducing statelessness, thereby enhancing our comprehension of the developing international legal standards in this crucial area.

3. National Legislation and Judicial Decisions

Legislative acts are important indications of both the actions taken by a state and the legal opinions it holds. They provide valuable information about the ideas and legal standards upheld by legislative bodies inside a state (Banteka, 2018). These acts demonstrate the legislature's unified position on several legal issues, including those related to the prevention and decrease of statelessness. The provisions in nationality legislation are essential in addressing various

issues. These provisions include measures to prevent children from becoming stateless, eliminate gender discrimination in nationality laws, facilitate the naturalization of stateless individuals, protect against statelessness caused by conflicting laws or automatic loss of nationality, ensure equality and non-discrimination in nationality matters, and prevent any deprivation or loss of nationality that could make individuals stateless. The inclusion of these aspects in national laws not only represents the actions of the state but also demonstrates the state's commitment to a legal duty, indicating a sense of legal entitlement or obligation (Kingsbury, 2009).

Decisions made by national courts are important in showing both state practice and opinio juris since these courts act as instruments of the state. Judicial rulings that support or enforce obligations about the avoidance, reduction, or prevention of statelessness provide concrete proof of the actions taken by a state and its adherence to the appropriate legal responsibilities (Baluarte, 2017). Of particular importance are court opinions that interpret or overturn national laws, as these decisions not only influence the legal environment but also emphasize the state's dedication to maintaining fundamental principles, notably those related to reducing statelessness.

This analysis intertwines assessments of national legislation and judicial decisions, recognizing their interconnectedness and complementary roles in shaping legal norms and practices within South Asian states. In many instances, judicial decisions serve as authoritative interpretations of the law, especially in scenarios where they clarify or challenge provisions outlined in national legislation (Baude & Sachs, 2016). As such, an integrated examination of both legislative acts and judicial pronouncements offers a comprehensive understanding of state practice and opinio juris surrounding the obligation to address statelessness.

It is essential to acknowledge the inherent limitations associated with researching national legislations and judicial decisions within the South Asian context. Access to such legal materials may be constrained by factors such as language barriers and limited availability through online databases. In instances where primary sources are inaccessible, reliance on secondary materials becomes necessary, albeit with a potential loss of granularity and depth. Despite these challenges, this analysis strives to provide valuable insights into state practice and opinio juris within South Asia, contributing to a nuanced understanding of efforts aimed at mitigating statelessness in the region.

4. Case Studies

4.1 Case Study of Afghanistan

Following the assumption of governance by the Taliban in Afghanistan in August 2021, there has been considerable ambiguity surrounding the legal framework governing the country, particularly regarding the constitution and citizenship laws. While reports have made reference to decrees issued by the Taliban government, the status of any new constitution or the continuation of the 2004 Constitution remains unclear, exacerbated by the dissolution of the Independent Commission for Overseeing the Implementation of the Constitution of Afghanistan (Ayobi & Rahimi, 2018).

In light of these concerns, the author uses the 2004 Constitution and the Citizenship Law from 2000 as benchmarks for study. The Citizenship Law emphasizes the values of egalitarianism

and non-discrimination, guaranteeing citizenship to all individuals regardless of their race, language, gender, or educational background. Furthermore, the Constitution explicitly states that no person can be stripped of their Afghan citizenship, demonstrating a dedication to preventing and reducing statelessness while also upholding equality among citizens (Pasarlay, 2016).

Afghanistan's citizenship laws demonstrate a proactive approach towards preventing child statelessness. Notably, the law recognizes children as citizens regardless of their place of birth if one parent holds Afghan citizenship. Additionally, foundlings and children of stateless persons discovered within Afghan territory are automatically granted Afghan citizenship. Furthermore, children born in Afghanistan to foreign parents have the right to claim Afghan citizenship (Yousafzai et al., 2022).

However, challenges persist, particularly concerning the legitimacy of parental marriage under Sharia law as a basis for citizenship. While Afghan law grants citizenship based on parental marital status, this provision could potentially render children stateless if born out of marriages not recognized under Sharia law (Tucker, 2014). Yet, international human rights norms prohibit discrimination against children based on the legitimacy of their birth, thereby invalidating any legal basis for rendering individuals stateless on such grounds.

Moreover, Afghan citizenship laws safeguard against statelessness arising from marriage or conflicts of laws. Citizenship is not automatically revoked due to residence abroad or marriage to a foreigner, and the acquisition of Afghan citizenship by one spouse does not impact the citizenship status of the other (Lopez Oggier, 2022). Additionally, provisions exist for stateless individuals to apply for Afghan citizenship or acquire it through marriage to an Afghan citizen, provided it aligns with international treaties and does not contradict Islamic principles.

In conclusion, despite the legal ambiguities following the Taliban's assumption of power, Afghanistan's citizenship laws exhibit a commitment to preventing, reducing, and mitigating statelessness. While challenges exist, particularly regarding marital status-based citizenship, the overall framework aligns with international norms and supports the obligation to address statelessness.

4.2 Case Study of Bangladesh

Following the enactment of the Citizenship Act in 1951, Bangladesh's citizenship laws have established a jus soli regime, granting citizenship to individuals born within its territory (Hoque, 2016) . This inclusive approach ensures that foundlings and stateless children born in Bangladesh acquire citizenship, thereby effectively avoiding, preventing, or reducing statelessness. Additionally, children can inherit citizenship through either parent, regardless of their birthplace, provided their birth is registered at a Bangladesh Consulate or Mission (Titshaw, 2022). Moreover, offspring of naturalized citizens are entitled to citizenship, further affirming the commitment to prevent statelessness in children.

Nevertheless, in spite of the jus soli system, as Rahim (2021) pointed out, “Rohingya children born in Bangladesh have been refused citizenship, which is a blatant breach of Bangladesh's own laws that ensure nationality at birth and its responsibilities under the Convention on the Rights of the Child.” However, according to “Bangladesh's Foreigners Act of 1946, those who were born with Bangladeshi nationality will keep it unless the government instructs otherwise” (Rahim, 2021). Hence, the legal justification for denying citizenship to Rohingya children is

lacking, emphasizing Bangladesh's responsibility to prevent statelessness.

Furthermore, Bangladesh's citizenship laws exhibit gender discrimination by denying women the right to transmit citizenship to their non-citizen husbands (Sabhapandit & Baruah, 2021). However, this discriminatory provision contradicts Bangladesh's constitution, which guarantees equality, prompting the government to consider amending the law to rectify this discrepancy. Hence, despite the existing gender bias, Bangladesh's intent to address this issue signifies a commitment to the obligation to prevent statelessness.

Within the domain of judicial interpretation, courts in Bangladesh have consistently supported the principle of preventing statelessness through forward-thinking decisions. For example, the High Court Division confirmed the citizenship of stateless Biharis by considering their birth within the borders of Bangladesh (Haider, 2018). In a similar vein, the Supreme Court acknowledged the incorporation of international standards concerning statelessness into national legislation, underscoring the significance of protecting assertions of citizenship. Therefore, the Bangladeshi citizenship laws, as understood by the courts, emphasize the importance of preventing, avoiding, or minimizing statelessness (Kelley, 2010).

Overall, Bangladesh's citizenship rules, although they have some flaws and inconsistencies in their implementation, mainly conform to the international mandate of preventing statelessness. Despite the existence of persistent obstacles, such as those related to the Rohingya community and gender discrimination, Bangladesh is making continuous attempts to tackle these concerns. These efforts demonstrate Bangladesh's dedication to meeting its responsibilities under international law and safeguarding the right to citizenship for all individuals.

4.3 Case Study of Bhutan

Bhutan's citizenship regulations stipulate that citizenship is conferred exclusively to those who have both parents as Bhutanese citizens. Consequently, this excludes children born to a foreign national and a Bhutanese citizen, which may result in the risk of statelessness (Hutt, 2005). In addition, according to Bhutanese legislation, if a kid of Bhutanese parents chooses to leave the country without officially registering in the citizenship register, they will forfeit their citizenship and face a higher danger of becoming stateless. Although Bhutan has agreed to the "Convention on the Rights of the Child" (CRC), its laws on citizenship go against Article 7 of the CRC, which highlights the importance of registering births and acquiring nationality to avoid statelessness (Ferraro, 2012).

Furthermore, Bhutan's citizenship laws exhibit gender discrimination, as a woman's nationality hinges on her husband or father, making it challenging for non-Bhutanese women to acquire and retain citizenship due to changes in citizenship laws, potentially resulting in statelessness. However, as highlighted by Sharma (2010), "Bhutan cannot legally justify creating statelessness based on gender discrimination, as it violates the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)."

In addition, Bhutan's denial of citizenship to the Nepali-speaking Lhotshampas based on their race and ethnicity is a blatant violation of the international legal principle that prohibits racial discrimination (Singh, 2017). Nevertheless, this discriminatory practice does not invalidate the wider responsibility to prevent statelessness in South Asia, as it relates to a specific violation of human rights.

Despite the absence of significant evidence supporting an obligation to prevent statelessness in Bhutan's national legislation, it cannot assert a right to cause statelessness due to its violations of other international human rights commitments. In conclusion, while Bhutan's citizenship laws do not align with the obligation to prevent statelessness, its actions are constrained by broader human rights norms, prohibiting the creation of statelessness on discriminatory or racial grounds.

4.4 Case Study of India

India's citizenship laws have transitioned from jus soli to jus sanguinis, requiring a direct link to Indian citizenship through parentage. While this system allows children born abroad to Indian parents to acquire citizenship, statelessness may occur if a child is born to an Indian citizen and an illegal migrant, violating India's obligations under the CRC.

Despite adopting a gender-neutral approach to citizenship registration based on marriage to an Indian citizen, India's refusal to grant citizenship by registration to individuals married to Indian citizens who are illegal migrants can lead to statelessness. India's Citizenship Amendment Act of 2019, which provides citizenship to persecuted non-Muslim minorities from neighboring countries, is discriminatory and violates the principle of non-discrimination under international law (Nagarwal, 2019). Additionally, India's citizenship verification exercise in Assam, known as the National Register of Citizens (NRC) updating process, has faced criticism for potentially creating statelessness. However, the Indian government has clarified that those excluded from the NRC will not be rendered stateless, indicating an intention to avoid statelessness (Dixit, 2021).

As mentioned by Dixit (2021), “While the Indian citizenship law does not explicitly mention statelessness, the judiciary has intervened to protect stateless groups such as the Chakmas, Sri Lanka Hill Tamils, and Indian-born Tibetans.” The government has been directed to reassess their citizenship applications. In addition, citizenship has been conferred upon Hindu and Sikh refugees from Afghanistan and Pakistan, by the concept of preventing statelessness. Nevertheless, many stateless communities, like as the Rohingyas, have not been bestowed with citizenship.

Although there have been cases in which the actions of the Indian government have led to the possibility of people becoming stateless, the judiciary has made efforts to avoid this by providing protection to those who are stateless. This exemplifies India's comprehensive dedication to the avoidance, mitigation, or eradication of statelessness, notwithstanding the obstacles and incongruities in its citizenship legislation and procedures.

4.5 Case Study of Pakistan

Pakistan's citizenship legislation adheres to the principle of jus soli, wherein it confers citizenship upon anyone born inside its territorial boundaries (Sen, 2020). Furthermore, Pakistan recognizes citizenship by descent, even for those born abroad, as long as their birth is formally registered with a Pakistan Consulate or Mission. These principles demonstrate the traditional practice of governments and their conviction in the legal duty to prevent and mitigate statelessness. However, Afghan refugees born in Pakistan do not automatically acquire citizenship upon birth (Alimia, 2019). Nevertheless, the administration has proposed granting them citizenship in compliance with existing laws, so enhancing coordination efforts

to prevent and reduce statelessness.

Non-Pakistani women who marry Pakistani nationals have the right to obtain Pakistani citizenship. In addition, Pakistani women who are married to foreigners have the ability to obtain dual citizenship by marrying a foreigner, while yet maintaining their Pakistani citizenship (Charania, 2021). In addition, women have the ability to pass on their Pakistani citizenship to their offspring. These activities demonstrate proactive steps aimed at preventing and minimizing statelessness.

The legislation of Pakistan grants the President the authority to designate individuals in an acceded territory as citizens of Pakistan, thereby strengthening the resolve to avoid statelessness.Pakistan's judiciary has also fulfilled its duty to prevent, diminish, or avert statelessness (Farhat, 2019). For example, the Federal Shariat Court recognized Pakistan's responsibilities in relation to nationality rights as outlined in international agreements. In a same vein, the Lahore High Court acknowledged the inherent right to citizenship and the ramifications of its forfeiture, underscoring that no Pakistani citizen should be stripped of their citizenship unless it is done willingly (Rashid, 2023). These legal rulings demonstrate that both the actions of states and the belief in legal obligation support the notion of avoiding, minimizing, or stopping statelessness.

5. Analyzing Legal and Judicial Perspectives: State Actions and Opinions

This part explores the complex terrain of state practice and legal opinions that arise from national laws and court rulings in South Asia. The main focus is on the urgent need to tackle the issue of statelessness. Amidst the intricate nature of this problem, many states in the area have shown a dedication to addressing statelessness through proactive measures.

When exploring South Asian national legislations, it becomes evident that many of them are in line with the obligation to prevent statelessness. Noteworthy progress has been made in implementing important measures, such as awarding citizenship to abandoned infants to prevent them from becoming stateless, and enacting citizenship rules that do not discriminate based on gender, in order to address gender-based inequalities (Titshaw, 2022). In addition, the act of granting citizenship to foreign spouses and offering citizenship to stateless groups residing inside a country's borders highlights a comprehensive strategy for tackling this urgent issue (Parker, nd).

The judiciaries of South Asian nations play a crucial role in supporting the current state practice and opinio juris (Desierto, 2008). By intervening in prospective situations that could result in statelessness and acknowledging the responsibility to reduce it, these judicial organizations have significantly influenced the development and application of legal principles.

In the middle of implementing affirmative actions, it is crucial to address cases of discriminatory legislation and judicial rulings. These actions should not weaken the primary goal of reducing statelessness, as they go against core principles of human rights and international commitments (Lee, 2020). The legal frameworks of South Asian states do not provide any justification for discrimination based on nationality.

Nevertheless, despite making significant advancements, obstacles continue to exist. Certain laws continue to allow or enable statelessness, diverging from the exclusions acknowledged in international law. However, when considering the broader context of the objective of reducing

statelessness, these cases should be seen as breaches of customary international law rather than creating a new standard. This approach is consistent with well-established legal concepts, as demonstrated by previous cases such as Nicaragua (McGarry, 2018).
The legislative and judicial landscapes of South Asian governments provide strong evidence of a shared dedication to reducing statelessness. Although there may be occasional exceptions, there is strong consensus that a new customary international law obligation is developing within existing legal frameworks and precedents. This reflects a dynamic interaction between the actions of states and established legal principles.

6. Exploring State Engagement with International Bodies

The Draft Conclusions emphasize the importance of "behavior pertaining to resolutions adopted by an international organization or at an intergovernmental conference" as evidence of both state practice and opinio juris. This activity includes statements made about the resolution and its adoption, as well as the vote records, which provide insights into the legal beliefs of the participating states.
The United Nations General Assembly (UNGA) has enacted multiple resolutions that assert the idea of preventing statelessness, encompassing all governments in the South Asian region. These resolutions have the potential to embody both the actions of states and their legal beliefs, as demonstrated by their membership in the United Nations and the UNGA (Immanuel, 2023). Nevertheless, this article does not analyze the actions of the “South Asian Association for Regional Cooperation” (SAARC) because SAARC has not tackled matters pertaining to citizenship or statelessness.
When it comes to the UDHR, Article 15, guaranteeing the right to nationality, was unanimously adopted, indicating the support of South Asian states like Afghanistan, Burma (Myanmar), India, and Pakistan. India notably contributed to proposing the clause prohibiting arbitrary deprivation of nationality. This consensus reflects a shared belief, or opinio juris, in upholding nationality rights (Khan & Rahman, 2009).
Moving to the 1961 Convention, although South Asian states didn't sign it, their participation in the Conference on Statelessness Reduction showcased a commitment to mitigate statelessness. While advocating for state sovereignty in determining citizenship, they acknowledged the need to prevent statelessness, even if not aiming for its complete eradication (Lee, 2020). For instance, India endorsed measures to prevent statelessness due to changes in personal status, such as marriage.

Pakistan supported granting nationality to foundlings within state territories but, like India, didn't endorse complete elimination of statelessness. Ceylon emphasized state sovereignty in citizenship matters but expressed willingness to grant nationality to those at risk of statelessness.
Analysis of UNGA Resolutions from 2000 to 2020 indicates broad support among South Asian states for preventing, reducing, or avoiding statelessness, with several resolutions adopted without dissent. Resolutions addressing the Rohingya issue in Myanmar received significant backing, further affirming the commitment to mitigate statelessness (Kaveri, & Rajan, 2023).
These instances of engagement with international organizations underscore South Asian states'

shared commitment to addressing statelessness, evidencing both state practice and opinio juris towards the obligation to prevent, reduce, or avoid statelessness.

7. Treaties

Treaties serve as crucial evidence of state practice and opinio juris, as they reflect states' commitment to adhere to certain norms. The negotiation, conclusion, and implementation of treaties, along with their provisions and drafting processes, can indicate both state practice and opinio juris (Crootof, 2016).

In South Asia, states are party to various multilateral conventions that uphold the right to nationality. Most South Asian states, except Bhutan and Myanmar, as discussed by Keane (2011), "are parties to the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), among others." These treaties guarantee rights related to nationality, such as equal rights for women to acquire, change, or retain nationality, and the right of a child to nationality.

An analysis of the travaux préparatoires, or preparation work, of these treaties provides more evidence of the dedication of South Asian states to the prevention of statelessness. For instance, the "International Covenant on Civil and Political Rights" (ICCPR) has provisions that aim to ensure equal rights for both men and women, as well as the right of a child to have a nationality. These measures were suggested with the goal of eradicating statelessness (de Groot, 2014). Similarly, Article 9 of the CEDAW aims to prevent women from becoming stateless as a result of marriage, therefore contributing to the overall goal of reducing statelessness.

Despite initial reservations or contributions during the drafting process, South Asian states have ultimately ratified these treaties without expressing reservations to key articles related to nationality. This demonstrates their support for the obligation to avoid, prevent, or reduce statelessness as enshrined in these international agreements.

8. Emergence of a Customary International Law Norm: Preventing Statelessness

Considering the amassed evidence of state practice and opinio juris from South Asia regarding a customary international law (CIL) obligation to avoid, reduce, or prevent statelessness, this section highlights a noteworthy trend: when analyzed alongside other advancements in international human rights law, there emerges a compelling indication of an evolving CIL obligation to address statelessness. This holds significant implications, particularly given historical norms wherein international law seldom intervened in matters of state nationality decisions, reserving such authority as the sovereign prerogative of states. Prior scholarly discourse struggled to identify a CIL rule specifically aimed at averting, mitigating, or diminishing statelessness. For example, Weis argued that since states retain the authority to delineate their nationals and possess significant latitude in revoking nationality, complete prevention of statelessness seemed beyond the purview of customary international law (Spiro, 2011). He concluded that, save for instances of discriminatory nationality withdrawals or specific treaty obligations, there existed no customary obligation to prevent statelessness. Similarly, Boll contended that while nationality withdrawals leading to statelessness could be viewed as an international concern, claims asserting an obligation to prevent statelessness

might exceed the bounds of established international law (Boll, 2007). Given the entrenched principle of state sovereignty in determining nationality, mandating states to forestall statelessness appeared paradoxical.

Nonetheless, as contemporary legal frameworks evolve, including the proliferation of multilateral treaties and the reinforcement of human rights norms, states find their discretion in nationality matters increasingly circumscribed. The imperative to prevent statelessness, emanating from the fundamental right to nationality and enshrined in Article 15 of the Universal Declaration of Human Rights, serves as a constraint on states' discretion in nationality determinations (Mantu, 2015). While states retain the prerogative to determine their nationals, this authority is curtailed when it risks precipitating statelessness. It is important to note, however, that international law does not categorically prohibit states from causing statelessness, as certain actions by state parties to the 1961 Convention may result in nationality deprivation leading to statelessness (Keeman, 2015). Nonetheless, such instances are circumscribed, with Article 8 of the 1961 Convention generally proscribing nationality deprivation that engenders statelessness. As van Waas aptly observes, "states are certainly under an overall duty to promote the right to a nationality and prevent statelessness" (Neluvhalani, 2021). Despite these advancements, some scholars remain hesitant to affirm that the obligation to avoid, reduce, or prevent statelessness has crystallized into customary international law. Dörr and van Waas, for instance, express skepticism regarding the existence of opinio juris compelling states to avert statelessness.

9. Conclusion

In conclusion, this article has examined the presence of a developing customary international law (CIL) duty to refrain from, diminish, or avert statelessness. It specifically highlights the consequences of this duty for non-state entities involved in the 1961 Convention. An analysis of the actions and beliefs of states in South Asia, a region dealing with cases of statelessness, has shown that although there are occasional violations of the principle of avoiding statelessness and other human rights obligations, there is strong evidence of consistent state practice and shared beliefs supporting the prevention of statelessness in the region. This is demonstrated by the enactment of laws, rulings by courts, diplomatic behavior in global forums and conferences, and compliance with applicable treaties.

Such considerations raise a persuasive probability in favor of the establishment of a CIL responsibility to prevent statelessness. However, more research into state practice and opinio juris is needed to strengthen this assumption and expand its application to nations that are not parties to the 1961 Convention. Despite the need for more investigation, the evolution of international human rights law, notably the right to nationality, helps to substantiate and contextualize information from South Asian countries.

Traditionally, matters of nationality fell squarely within the domain of state sovereignty. However, contemporary developments, coupled with the demonstrated state practice and opinio juris supporting a CIL obligation to prevent statelessness, serve to limit state discretion in nationality determinations. Moving forward, continued exploration and scrutiny of state behavior and legal opinions will be crucial in confirming the customary nature of this

obligation and ensuring its universal adherence beyond the confines of treaty obligations.

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