

**STATELESSNESS IN INTERNATIONAL LAW:  
A CHALLENGE TO THE MEMBER STATES OF THE OAS**

(presented by Dr. Gélin Imanès Collot)

Under the regulations of the IAJC, we are pleased to offer to the thinking members of this organization the following theme: “**Statelessness in International Law: A challenge to the Member States of the OAS.**”

The General Assembly of the OAS held in Antigua, Guatemala on June 5<sup>th</sup>, 2013 adopted in plenary Resolution No. AG/RES. 2787 (XLIII-O/13) on the prevention and reduction of statelessness and the protection of the stateless in the Americas.

The decision recalls the previous resolutions of the regional Assembly, for example: AG/RES. 1971 (XXXIII-O/03), AG/RES. 1963 (XXIX-O/99) AG/RES.1762 (XXX-O/00), AG/RES.1832 (XXXI-O/01), and AG/RES. 1892 (XXXII-O/02) AG/RES. 2511 (XXIX-O/99), AG/RES. 2599 (XL-O/10) and AG/RES.2665 (XLI-O/11) on stateless persons, and takes into account the United Nations Resolution of 7-8 December 2011 on the same subject, on the occasion of the 60<sup>th</sup> anniversary of the 1951 Convention, as amended by the 1954 Convention relating to the status of stateless person and the protection of stateless persons, on the 50<sup>th</sup> anniversary of the 1961 Convention on the reduction of statelessness.

In addition to this resolution, the recent Assembly held on June 4, 2014 at its 44<sup>th</sup> regular session recalls the last resolution in terms of the formal obligation for member States to reduce statelessness and to promote protection to stateless persons, which requires actions on the part of the IAJC:

*Emphasizing that this year<sup>1</sup> marks the sixtieth anniversary of the adoption of the 1954 Convention relating to the status of stateless persons and that, as part of the Commemorations for the 30<sup>th</sup> anniversary of the 1984 Cartagena Declaration on Refugees (Cartagena + 30 ‘), the Member States are considering the adoption of a new strategic framework that will enable them to promote the protection of stateless people and refugees over the coming decade<sup>2</sup>.*

The resolution of the regional Assembly also recalls the Brasilia Declaration of 11 November 2010 on the protection of refugees and stateless persons, and in turn,

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<sup>1</sup> The year 2014.

<sup>2</sup> AG./RES/doc.5480/14, OAS.

encourages States to promote legal reflection on the thorny problem of statelessness and the conducting of joint comparative studies of nationality law in the Americas or in the Committee for Legal and Political Affairs, with the support of the Department of International Law of the General Secretariat and in line with the teaching of law in our academic communities. It is this latter context, Mr. Chairman, that we believe should guide the legal thinking in this field of significant relevance.

## **1. Reflection on relevance**

According to a report by the United Nations High Commissioner for Refugees (UNHCR), there are about **12 million stateless people worldwide**, including children, who represent nearly 55%. They are victims of the circumstances of their birth, the conflict of laws between states, or other forms of discriminatory treatment.

Most often, the stateless people are victims of a double violation of rules of law: violation of domestic law on nationality, perhaps, and violation of international juridical instruments prohibiting statelessness and protecting human rights. They are supposed to be under the protection of the 1951 Convention, as amended by the 1954 Convention relating to the status of stateless person and the protection of stateless persons and the 1961 Convention on the reduction of statelessness.

In addition to these two international juridical instruments, the Universal Declaration of Human Rights<sup>3</sup> in the article 15.2 forbids the statelessness in the following terms: “*No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality*”.

These two well-known International Instruments forbid statelessness and the protect of the stateless persons in the world. This is the reason why international organizations involved in the protection of human rights are very concerned by statelessness, because it is evidently considered as a violation of human rights.

## **2. Objectives, expected results and expected impacts**

The conducting of a study with a comparative approach should seek some legal systems in the region. However, the choice of legal systems cannot be left to chance, or give rise to stereotype considerations. It must proceed from a representative sample of 35 states of the OAS Member States, including 16 in the Caribbean sub-region area.

The study would focus on the positive law of selected states (laws and regulations, jurisprudence and doctrine, to the extent possible) and should identify in each state the main guidelines and criteria chosen between the two broad principles, – *jus sanguinis* and *jus soli* – that govern the granting of nationality to natural persons in private international law, which are usually factors of conflict of laws.

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<sup>3</sup> December 10, 1948.

The conducting of this comparative study will involve the participation of several colleagues of the IAJC. It will produce significant impacts on at least two orders of interest to contributors, on the one hand, and to the Heads of State and Government of Member States, on the other.

In terms of self-interest contributors, this study will enrich knowledge of the law in the region in this area, despite historical, cultural and linguistic differences, and above all allow each and every participant to become more familiar with his/her national law, as in all comparative law studies.

In terms of state interest, where the need is most intensely felt, the study should also open the eyes of the public authorities (Heads of State and Heads of Government) to various nuances that fuel conflict laws and citizenship and contribute to statelessness in the region and sub-region in defiance of two highly significant international legal instruments.

Finally, the study should refocus everyone's attention on the need to adhere to the two Conventions on the subject, to ratify and incorporate them either directly into the national law of Member States, or to encourage developing laws and regulations to eliminate, or at least reduce, statelessness through a solid agreement between the states, or at least mitigate its effects in each Member State.

Following this study, the Inter-American Juridical Committee could possibly develop and propose a model law providing for a *modus vivendi* between the states, such as the establishment of an interstate dialogue structure to avoid statelessness, or at least indicate ways to mitigate the effects. The Inter-American Juridical Committee could also intervene on the topic at the University level in conferences of the Department of International Law of the General Secretariat.

Mr. Chairman, I congratulate you on accepting my request to conduct studies on statelessness in order to contribute to reduce it and mitigate its effects worldwide. That is one of the best ways to contribute to the protection of human rights in the Americas.