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6 Tensions among policy goals on statelessness

6.1 Introductory remarks

Policy documents on statelessness often presume harmony between the goals to avoid statelessness and to protect stateless persons, whereby achieving one goal positively contributes to achieving the other goal. Avoidance of statelessness is assumed to contribute positively to the human rights situation of the stateless. Similarly, protection of stateless persons is assumed eventually to lead to acquisition of a nationality. Identification of stateless persons, as has been discussed in the previous chapter, is often a prerequisite for successful implementation of avoidance and protection mechanisms.

In many instances and contexts of statelessness achieving one goal indeed contributes to the achievement of the other goals. As many testimonies by the UNHCR and civil society organizations illustrate, acquisition of nationality by stateless persons may lead to the improvement of the human rights situation of those persons.[400] However, the goals may also come into tension with each other: achieving one goal can stand in the way of the achieving the other. Such tensions are not incidental; they are structural and inherent in the fact that nationality does not always entail protection, and statelessness might be a well-regulated status that offers a decent level of protection.[401] Thus, the assumption of harmony among the policy goals on statelessness rests on the same misleading assumptions about the relation between the concepts of nationality, statelessness and rights, as discussed in Part I of this thesis. The current discourse on statelessness either does not explicitly address the tension among the goals, or discards them as exceptional coincidences. However, by applying the correct understanding of how rights are related to nationality and statelessness, it becomes apparent that the tensions among policy goals on statelessness are systematic. These tensions are a symptom of the policy's general misunderstanding of the way in which nationality and statelessness relate to rights, resulting in

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[400] See, for example UNHCR, *Ending Statelessness Within 10 Years. A Special Report*, (4 November 2014), pp. 20-22. See also stories reported on the UNHCR website, such as 'From stateless to having a nationality: the story of Mamadou' of 24 February 2016, available at <http://kora.unhcr.org/stateless-nationality-story-mamadou/>, [accessed on 24 February 2018].

[401] See for the relation between the concepts of nationality, statelessness and rights chapter 3 above.

the policy neither pursuing nor achieving optimal empowerment of individuals whose vulnerability it claims to address.

Section 6.2 discusses various types of such systematic tensions among the policy goals on statelessness, exploring how and why they occur, and referring to examples in practice. In section 6.3 I explore the limited ways in which current policy discourse addresses some of the tensions, namely by prioritizing the goal of avoidance of statelessness over the protection goal.

6.2 Types of tensions

6.2.1 Introductory remarks

In this section I identify four main ways in which the three goals on statelessness may come into tension with one another. Section 6.2.2 explores scenarios where the goal of avoidance of statelessness leads to a lower level of protection. Section 6.2.3 discusses situations when protection does not lead to acquisition of nationality. Section 6.2.4 looks at how identification of stateless persons can be perceived to stand in the way of avoidance of statelessness, and section 6.2.5 suggests how identification can interfere with protection. Since identification of stateless persons is framed as a subsidiary goal aimed at achieving protection and avoidance, the latter two interfering with the former does not manifest itself as a tension; although theoretically such tensions are conceivable, they are not specifically addressed in this section.

6.2.2 Avoidance leading to lower protection of affected persons

Ensuring that statelessness does not occur, and that attribution or possession of nationality occurs instead, which is the essence of the goal to avoid statelessness as pursued in international legal discourse, may lead to an overall lowering of the level of protection of rights of affected individuals, thus interfering with the goal of protecting the affected persons.

According to international treaties, the goal to avoid statelessness is not accompanied by a requirement that the specific nationality which replaces the specific instance of statelessness offers a higher level of protection to a stateless person than the level he or she already enjoys or would enjoy as a stateless person. Neither does the policy goal to avoid statelessness set any other quality requirement on the nationality which is to come in the place of statelessness.[402] If statelessness is replaced by a nationality which offers a lower level of protection than the alternative situation of statelessness, the goal of protection of stateless persons is not served by avoiding that instance of statelessness.

Thus, nationality may be problematic in terms of protection, and at the same time the situation of statelessness might not necessarily be that of rightlessness. Even though many stateless persons *are observed* to experience human rights violations, this is not *by definition* what statelessness entails.[403] Stateless persons may have access to a range of rights under a statelessness-specific protection regime or because of other circumstances.[404]

Thus, there is no reason for applying a blanket assumption that the human rights situation of any stateless person improves upon acquiring simply any nationality.

The tension between the goals to eliminate statelessness and to protect stateless persons was already discussed as early as in 1952 in the International Law Commission's report, which maintains that elimination of statelessness that does not lead to improving the protection of stateless persons is undesirable:

> *Any attempt to eliminate statelessness can only be considered as fruitful if it results not only in the attribution of a nationality to individuals, but also in an improvement of their status. As a rule, such an improvement will be achieved only if the nationality of the individual is the nationality of that State with which he is, in fact, most closely connected, his "effective nationality", if it ensures for the national the enjoyment of those rights which are attributed to nationality under international law, and the enjoyment of that*

[402] However, some scholars argue that such requirements should be put in place, see for example C. Vlieks, E. Hirsch Ballin, and M. José Recalde Vela, 'Solving Statelessness: Interpreting the Right to Nationality', *Netherlands Quarterly of Human Rights*, Vol. 35, No. 3, (2017), pp. 158-175.

[403] See chapter 3, section 3.2.1 above.

[404] See, for example, cases discussed in chapter 8, sections 8.2 and 8.4. A number of states have introduced statelessness determination procedures, and individuals who have been identified as stateless subsequently have access to a wide range of rights, see more in chapter 5, sections 5.3 and 5.4.

status which results from nationality under municipal law. Purely formal solutions which do not take account of this desideratum might reduce the number of stateless persons but not the number of unprotected persons.[405]

The report distinguishes between subjective (feeling of close connection) and objective (enjoyment of internationally and nationally guaranteed rights) criteria for establishing whether acquisition of nationality leads to the improvement of the situation of a stateless persons. The existing international legal mechanisms on avoidance of statelessness do not require the nationality that replaces statelessness to be either subjectively or objectively beneficial to the affected person, thus allowing for tensions between the avoidance and protection goals to occur.

More recent studies have noted instances of acquisition of nationality by stateless persons where the change in their status did not result in the desired improvement in well-being, in particular in the case of acquisition of Bangladeshi nationality by an Urdu-speaking formerly stateless minority, and in the case of acquisition of Comorian nationality by Bidoons of Kuwait.[406] The lack of expected improvement in the well-being of affected persons after the acquisition of nationality has been labelled as problematic and anomalous, and as an outcome to be avoided under statelessness policies. Interestingly, authors do not suggest focusing on the protection and rights of affected persons, which seems to be the main concern, *instead* of focusing on acquisition of nationality. Even in such cases where nationality clearly fails to deliver on unsubstantiated expectations about its virtues, the acquisition of nationality is praised as a good start. The prevailing option of even the most outspoken critics of the UNHCR's statelessness policies is that acquisition of any nationality is always 'a step in the right direction',[407] and that protection needs to be ensured *on top* of acquisition, not *instead* of it. Based on the findings of this thesis, acquisition of *a* nationality by *a* stateless person is rather a step in a random direction in terms of protection prospects. Acquisition of a specific nationality by a specific stateless person may increase or lower the level of protection of that person, and in the latter case come into tension with the protection goal.

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[405] M. O. Hudson, Special Rapporteur of the International Law Commission, report 'Nationality, Including statelessness', *Yearbook of the International Law Commission*, Vol. II, Doc. No. A/CN.4/50, (1952), p. 20.
[406] C. Vlieks, E. Hirsch Ballin, and M. José Recalde Vela, 'Solving Statelessness: Interpreting the Right to Nationality', *Netherlands Quarterly of Human Rights*, Vol. 35, No. 3, (2017), pp. 159-160.
[407] C. Vlieks, E. Hirsch Ballin, and M. José Recalde Vela, 'Solving Statelessness: Interpreting the Right to Nationality', *Netherlands Quarterly of Human Rights*, Vol. 35, No. 3, (2017), p. 174.

6.2.3 Protection not leading to the acquisition of nationality

According to Gibney:

> *[Stateless persons'] very need to join a state derives from the fact that they are not already receiving the protection of the state.*[408]

If the protection can be achieved by other means than the acquisition of a nationality, becoming and remaining a national may be unnecessary or even undesirable purely from the perspective of protection of affected persons. If a stateless person has access to a wide set of rights or is satisfied with their legal situation for whatever reasons, this might diminish the personal motivation to acquire a nationality.[409] This might be particularly relevant when the specific nationality most easily accessible for that person does not come with a high level of protection or is accompanied by burdensome duties, or both.[410] One could argue that if perfect implementation of the 1954 Convention was achieved, and adequate statelessness-specific protection regimes were universally established, the status of a stateless person would no longer be so problematic, and might be preferred by some individuals to the status of a national. Certainly, the opportunity to participate in a political project of a state might be attractive to many, but the possible disadvantages of being a national, such as military service, financial burdens, or other civic duties might outweigh the benefits if the alternative of a relatively well-protected situation of statelessness is available.

This possible clash between protecting stateless persons and aiming at their eventual inclusion into the citizenry of some state has been noted in the 1949 UN Study on Statelessness:

[408] M. J. Gibney, 'Statelessness and citizenship in ethical and political perspective' in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014), p. 61.
[409] See for example the case of Latvian non-citizens discussed in chapter 8, section 8.4.
[410] See more on nationality, rights and duties in chapter 3, section 3.2.

> *It has been asked whether an improvement in the status of stateless persons might not have certain drawbacks in that, if their position as such was "settled", they would no longer feel the need to obtain a nationality.*[411]

The study subsequently rejects the suggestion that such a clash exists, but bases its rejection on rather shaky arguments. The first argument is that '[e]ven if it is improved, the status of the stateless person will always be inferior to that of the national in *any country*' [emphasis added].[412] The study does not, however, explain why the improvement of the status of a stateless person would necessarily stop at the level of the well-being of the least protected national. Moreover, the claim does not take into account the cross-country effects, which are perhaps higher nowadays than they were in 1949. Statelessness protection status does not necessarily compete with the level of protection nationals receive *in that same country*. Often statelessness status in one country (host country) competes with a nationality status of a different country, where the latter does not necessarily offer the same level protection to its nationals as the former may offer to either stateless persons or its own nationals.[413] In its second argument, the study maintains that stateless persons genuinely want to naturalize in countries that grant them a favourable treatment:

> *Experience shows that naturalization is sought for by stateless persons even in those countries which grant them favourable treatment, and that Governments have never complained of any reluctance on the part of stateless persons to become naturalized. Indeed, naturalizations granted have been far fewer than the number of applications.*[414]

However, this second argument merely illustrates that (some) stateless persons aspire to become nationals of those *specific countries* that provide them with favourable treatment, unlike the first argument that claims that statelessness status will always be inferior to being a national in *any country*. There is an important difference between these two claims: that any statelessness will always be less desirable than any nationality, or that there will always be some countries where being a national is more appealing than having a statelessness status anywhere. While the former claim remains unsubstantiated and is unlikely ever to have been true, the second might well be

[411] UN, *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1, (August 1949), p. 11.
[412] UN, *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1, (August 1949), p. 11.
[413] See example the case studies discussed in chapter 8, sections 8.2 and 8.3.
[414] UN, *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1, (August 1949), p. 11.

true, but does not support the claim that protecting stateless persons will not generally discourage them from becoming nationals.

Interestingly, the study continues by making a sharp turn in its basic assumptions that stateless persons will always strive to be nationals, by focusing on naturalization as a highly personal process of desire to belong to a specific community, and implicitly allowing for the possibility of some stateless persons not having such a desire, in which case they should not become nationals:

> *Naturalization implies a desire on the part of the applicant to be completely incorporated in a national community and to become a loyal member of it.*
>
> *If these conditions are not fulfilled, there is no point in inducing an individual to apply for naturalization by indirectly compelling him to do so.* [415]

Thus, according to this study, even if protection of stateless persons would discourage them from naturalizing, it is not a problem, because such stateless persons lack the desire to become nationals, and 'there is no point' in pursuing such naturalizations. States are therefore discouraged from 'indirectly compelling' stateless persons to naturalize, where 'indirectly compelling' presumably refers to withholding protection in order to sustain the motivation of becoming a national. In this report we can thus observe first a rejection of a concern that the tensions between the goal to protect and the goal to avoid in fact exist, and later an implicit acceptance of such tension, with an implicit suggestion to prioritize protection. The justification for prioritizing protection is, interestingly, based on a claim of the importance of naturalizations remaining the genuine expression of desire to become a member of the political community, and not an act of desperation to obtain basic protection.

Thus, protection of stateless persons may lead to their diminished motivation to acquire a nationality, for example in contexts where the level of protection is similar to the protection offered by a specific nationality, and where other reasons for becoming a national are lacking. This raises some questions as to which goal to prioritize. Can protection be sacrificed in order to ensure that statelessness is avoided? Or, alternatively, should statelessness be tolerated in the name of protection? The current statelessness policy discourse avoids addressing these questions by not acknowledging the tension in the first place, implying that the status of nationality is

[415] UN, *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1, (August 1949), p. 11.

always preferable to statelessness. Section 6.3 below discusses some indications in policy documents that prioritize the goal of avoidance of statelessness over the goal of protection of stateless persons, and the implications of such priorities for resolving various tensions among policy goals.[416]

6.2.4 Identification perceived to stand in the way of avoidance

If it is accepted that identification of statelessness is a declaratory, and not a constitutive act,[417] it cannot be in tension with the goal to avoid statelessness. Identification merely leads to the recognition of the already existing fact of someone being stateless, and does not in itself cause statelessness. Despite that, tensions between identification and avoidance goals do occur within statelessness policies, but rather on the level of perceptions and linguistic discourse than on the technical legal level.

There are two ways in which identification can be perceived to interfere with avoidance of statelessness. Firstly, identification 'normalizes' statelessness.[418] Similar to protection mechanisms, identification and normalization mechanisms for statelessness status result in statelessness being a more accepted and better regulated legal situation, and no longer a systematic anomaly. This normalization, especially in combination with adequate protection mechanisms, may interfere with the sense of urgency of doing away with statelessness. Secondly, even though identification of stateless persons does not cause statelessness, but merely recognizes its existence, the difference between a constitutive and a declaratory act might get blurred in policy discourse, as a result of which recognition of instances of statelessness may be framed as being counter-productive to the avoidance of the phenomenon.[419]

[416] See also in chapter 8, sections 8.2 and 8.4, for examples of how such tensions occur and are addressed in practice.
[417] See UNHCR, *Handbook on the Protection of Stateless Persons,* (Geneva 2014), para 16, see more in chapter 5, section 5.4.3 above.
[418] See more in chapter 5, section 5.4.4 above.
[419] See as an example the case of registration of statelessness in the Netherlands, discussed in chapter 8, section 8.3 below. See also the above-mentioned UNHCR Report on Statelessness in Armenia (UNHCR Armenia, *Question on Nationality and Statelessness in Armenia*, (March 2013), p. 60), where the overly inclusive definition of a stateless

The UNHCR's general policy towards the so-called 'in situ' stateless populations may be seen in light of the tension between identification of statelessness and its avoidance. In particular, UNHCR generally discourages identifying in situ stateless persons as stateless,[420] and advises *instead* to grant them nationality. The definition of in situ statelessness is not crystal clear in UNHCR policy documents,[421] but is generally construed along the lines of 'non-migratory context', stateless persons residing 'in their "own country"', and having 'long-established ties' to it, the latter including 'long-term habitual residence or residence at the time of State succession'.[422]

UNHCR formulates in careful terms its policy advice not to identify the in situ stateless as stateless and to work towards their recognition as nationals instead:

> Depending on the circumstances *of the populations under consideration, States* might be advised *to undertake targeted nationality campaigns or nationality verification efforts rather than statelessness determination procedures* [emphasis added].[423]

Despite the non-absolute careful formulations of this advice, the theme of undesirability of identification of some stateless persons in order not to interfere with acquisition of nationality is clearly present in the UNHCR Handbook. Further on it reads:

> *Targeted nationality campaigns are undertaken with the objective of resolving the statelessness situation through the grant of nationality,* rather than *identifying persons as stateless to provide them with a status as such* [emphasis added].[424]

NGOs and academic commentators also seem to have taken over the idea that in cases of in situ stateless persons the identification and avoidance of statelessness are somehow counter-posed,

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person was criticized for not being in line with the goal to avoid statelessness, can also be analysed in light of such tension.

[420] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), paras 58-61.

[421] See also G. Gyulai, 'Statelessness in the EU Framework for International Protection', *European Journal of Migration and Law*, Vol. 14, No. 3, (2012), pp. 279-280; and C. Vlieks, 'Contexts of Statelessness: The Concepts "Statelessness *In Situ*" and "Statelessness in the Migratory Context"' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 35-52.

[422] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para 58.

[423] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para 58.

[424] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para 59.

and preference should be given to the latter, often formulating this in more absolute terms than the original UNHCR policy statements. A policy guide by the European Network on Statelessness, for example, states:

> *In case of such in situ stateless populations, targeted nationality campaigns with the objective of resolving the statelessness situation through grant of nationality,* is more appropriate *than identifying persons as stateless and providing them with status as such* [emphasis added].[425]

Caia Vlieks points to the lack of clarity around the use of the term 'in situ' in the UNHCR's statelessness policies, but supports the idea of the usefulness of this category for justifying the policy approach of 'skipping' identification of statelessness in cases where that appears appropriate.[426]

In another context, however, UNHCR tips the scale in a different direction, and resolves the tension between identification and avoidance in favour of identification. If individuals became stateless due to illegal acts of states that violate the principles of avoidance of statelessness, they should nevertheless be treated and identified as stateless according to the UNHCR:

> *The illegality on the international level [of the act that leads to statelessness] is generally irrelevant for the purposes of [the definition of a stateless person]. The alternative would mean that an individual who has been stripped of his or her nationality in a manner inconsistent with international law would nevertheless be considered a "national" […]; a situation at variance with the object and purpose of the 1954 Convention.*[427]

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[425] European Network on Statelessness, *Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons*, (December 2013), p. 5. See also G. Gyulai, 'Statelessness in the EU Framework for International Protection', *European Journal of Migration and Law*, Vol. 14, No. 3, (2012), p. 279.

[426] C. Vlieks, 'Contexts of Statelessness: The Concepts "Statelessness *In Situ*" and "Statelessness in the Migratory Context"' in *Understanding Statelessness* by T. Bloom, K. Tonkiss, and P. Cole (eds.), (Routledge 2017), pp. 35-52.

[427] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para 56.

Identification cannot be denied to stateless persons just to make a point of condemnation of illegal acts that lead to their statelessness.[428] Pretending that such individuals are nationals while they are not is recognized as unproductive from the point of view of the goal to avoid statelessness. Thus, even if identification of stateless persons amounts to giving effect to acts of state that violate the principle of avoidance of statelessness, identification is to be prioritized, or is at least not seen as in tension with the goal to avoid statelessness. This guidance seems more in line with the notion that identification of a stateless person as stateless is declaratory, and not a constitutive act.

There is clear recognition in UNHCR discourse that identification of statelessness does not cause statelessness, and thus does not in principle stand in the way of the goal to avoid statelessness. The UNHCR points out that not recognizing instances of statelessness just to make the point of not agreeing with actions of states that violated the principle of avoidance of statelessness is unproductive, as it will not actually stop relevant actors from creating statelessness. In the context of in situ stateless populations, however, there is a fear that formal recognition of statelessness status somehow forms an obstacle to avoidance of statelessness. That fear has no basis in the legal picture, as persons who are stateless do not become more stateless through the legal recognition of the fact of their statelessness. However, the fear may be explainable through the 'normalizing' effect of the identification mechanisms in the linguistic and policy discourse on statelessness discussed above is section chapter 5, section 5.4.4 above. The policy advice of the UNHCR towards the in situ stateless is to avoid 'solidifying' or 'normalizing' statelessness through identification. Refusal to identify individuals as stateless is meant to emphasize that their statelessness is anomalous, unstable and unacceptable to the extent that it should not find bureaucratic expression in the national legal systems. This reasoning builds again on the problematic assumption that nationality is always preferable to statelessness. It is also inconsistent with the UNHCR's stance on recognizing statelessness that resulted from illegal acts of states, as recognition of illegally created statelessness also leads to normalization and bureaucratic solidification of statelessness. The difference may be that in the case of the in situ

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[428] See R. Donner, '*The Regulation of Nationality in International Law*', 2nd edition, (Transnational Publishers 1994), pp. 166-174, for a discussion of a number of historical cases which dealt with the recognition by third states of an unlawful deprivation of nationality; see also chapter 2, section 2.5.1.

stateless, the state that is supposed to carry out the identification is also the state expected to offer the nationality. In the context of statelessness resulting from 'illegal acts', the presumption is perhaps that the state expected to offer a nationality is different from the state where stateless persons may attempt to have their status identified. There seems to be a double standard for resolving perceived tensions between the identification of stateless persons and the avoidance of statelessness depending on whether the identifying state is perceived to be more or less responsible for the statelessness at stake. The more responsible the state is, the more the identification of stateless persons is seen to be in tension with the goal to avoid statelessness, where the latter is, according to the current discourse, to be given priority.

6.2.5 Identification inhibiting protection

Theoretically, tensions between the protection of stateless persons and their identification are possible, in particular when the identification results in worsening the human rights situation of stateless persons. Historically, identification of individuals as belonging to a particular legal category, and subsequent structural discrimination against that category, has occurred. Rules concerning personal data protection aim to avoid such uses of identification mechanisms.[429] Individuals can only be legally identified as belonging to a specific category for a legitimate purpose, and the data should not be gathered and kept for purposes other than achieving that legitimate purpose.[430] Thus, it is possible to envisage a situation where stateless persons are identified, and that information on their statelessness is subsequently used to disadvantage them or reduce their access to rights.[431] The exact mechanisms of this tension, however, are not further

[429] See more in W. Schreurs, M. Hildebrandt, E. Kindt, M. Vanfleteren *Cogitas, 'Ergo Sum*. The Role of Data Protection Law and Non-discrimination Law in Group Profiling in the Private Sector', in Profiling the European Citizen, by M. Hildebrandt, S. Gutwirth (eds.) (Springer 2008), pp. 241-270; Adviescommissie Vreemdelingenzaken (Dutch Advisory Committee on Migration Affairs), *Profileren en Selecteren. Advies over het gebruik van profilering in de uitvoering van het vreemdelingenbeleid*, (November 2016), pp. 23-26.
[430] For example, the preamble to the EU Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data of 24 October 1995 states that 'any processing of personal data must be lawful and fair to the individuals concerned […], in particular, the data must be adequate, relevant and not excessive in relation to the purposes for which they are processed; […] such purposes must be explicit and legitimate and must be determined at the time of collection of the data'.
[431] See, for example, also a Legislative Proposal by Montenegro of a Law on Foreigners where the position of stateless persons when qualifying for residence status is different and arguably weaker than that of other non-

discussed here, since they relate more to the domain of personal data protection, and would drift too far away from the core discussion. Moreover, to the extent the contemporary problems related to statelessness have been documented, identification of stateless persons for the sake of their subsequent discrimination or decrease in their protection has not been signaled as a major issue. To my knowledge this tension is therefore not a central struggle of current statelessness policy making. It is, however, important to be aware that such a tension is conceivable, and ensure that identification or labels of any sorts do not lead to discrimination, segregation and disempowerment of those who are meant to be empowered by the relevant policy.

6.3 Prioritization of avoidance in the policy discourse

The current international statelessness policy discourse does not acknowledge the existence of tensions among policy goals on statelessness, and as a result it fails to address such tensions comprehensively. It fosters, explicitly and implicitly, the erroneous assumption that nationality always entails access to rights, and statelessness is necessarily a condition of rightlessness.[432] Thus, policy documents do not establish or justify a specific course of action for cases where, for example, a person is better off in terms of rights if he or she remains or becomes stateless, as opposed to remaining or becoming a national, or where a high level of protection may demotivate the stateless from naturalizing. The current statelessness policy does not provide any guidance as to what principles should govern the approach to such cases. However, a certain hierarchy of goals is suggested. Specifically, the avoidance of statelessness is generally framed as more important than the protection and identification of stateless persons. This is sometimes stated explicitly, but is more often implied in the language and logic of policy documents on statelessness. The UNHCR Handbook declares, for example, that 'as a general rule, possession of a nationality is preferable to recognition and protection as a stateless person'.[433] In a similar spirit, the 1954 Convention's 'Introductory Note by the UNHCR' of 2014 states that 'protection as a stateless person is not a substitute for possession of a nationality' and that 'the Convention

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nationals, Draft Law on Foreigners (in Montenegrin - *Predlog zakona o strancima*), No. 24-3/17-1, of 29 December 2017, in particular arts. 43, 59-60.

[432] See more in chapter 3 above.

[433] UNHCR *Handbook on the Protection of Stateless Persons* (Geneva 2014), para 14.

requires that States facilitate the assimilation and naturalization of stateless persons'. It also emphasizes that the 1954 Convention is only useful for assisting stateless persons 'until their situation *can be* resolved' [emphasis added], implying that once a *mere prospect* of obtaining a nationality arises, the Convention should not be relied on any more, and the acquisition of nationality should be preferred and pursued.[434]

The preference for the avoidance goal over any other goals within statelessness policy is not only apparent from the language of policy documents. Concrete solutions suggested for specific statelessness problems support such a hierarchy. Firstly, policies that prohibit voluntary statelessness are an indication that the agency of affected persons is not prioritized over the goal to avoid statelessness, an issue discussed in more detail in chapter 7. Secondly, guidelines on how to address in situ stateless persons, discussed in section 6.2.4 above, illustrate that the identification of stateless persons is quickly discarded when it threatens the goal of avoiding statelessness.

Interestingly, putting the protection and identification of stateless persons as a subsidiary target to that of eliminating statelessness can already be observed in early UN documents on statelessness. The 1949 UN Study on Statelessness found that:

> *The two problems - the improvement of the status of stateless persons and the elimination of statelessness - though quite distinct, are complementary. However necessary and urgent, the improvement of the status of the stateless person is only a temporary solution designed to attenuate the evils resulting from statelessness. The elimination of statelessness, on the contrary, would have the advantage of abolishing the evil itself, and is therefore the final goal.*[435]

The 'final goal' of abolishing the phenomenon of statelessness, described here as 'the evil itself', is clearly seen as an ultimately superior target to that of improving the lives of stateless persons.

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[434] Some scholarly works also support such hierarchy. Laura van Waas, for example, argues that the naturalization article of the 1954 Convention 'perhaps the most important provision […] which offers that crucial "right of solution" by considering access to citizenship', see L. van Waas, *Nationality Matters. Statelessness under International Law*, (Intersentia 2008), p. 364.

[435] UN, *A Study of Statelessness*, UN Doc E/1112; E/1112/Add.1, (August 1949), p. 10.

If this system of priorities is applied to the tensions described in this chapter, stateless persons who are better off remaining stateless than becoming nationals should become nationals anyway, as their protection is less important than the goal to avoid instances of statelessness. It also means that if protection of stateless persons demotivates them from acquiring a nationality, the level of protection can be sacrificed in order to ensure acquisition of nationality. However, such consequences of applying the principle of prioritization of avoidance of statelessness are not explicitly elaborated in policy documents that establish the hierarchy. In fact, such solutions to tensions may appear to contradict the spirit of those documents, which tend to emphasize their commitment to positively impact the lives of affected persons. The consistency of policies is thus clearly threatened by simultaneous commitment to the welfare, rights and empowerment of affected persons on the one hand, and emphasis on the acquisition of nationality as superior answer to all statelessness-related problems on the other hand.

6.4 Concluding remarks

The fact that nationality does not by definition entail access to rights is at the core of the tensions among policy goals on statelessness. The misleading assumption about nationality entailing rights, and statelessness entailing rightlessness, discussed in chapter 3 above, allows policy discourse on statelessness to largely ignore the structural tensions between policy goals on statelessness, as it allows the policy discourse to get away with not justifying the reasons for setting those goals in the first place.

In this chapter I described four main ways in which the two primary goals (protection and avoidance) and one secondary goal (identification) on statelessness clash with each other. I illustrated that such clashes are inherent to a policy discourse that relies on these three goals, and that many such tensions were already noted in early UN documents developing the foundation for the current policies. Coherent systematic solutions to the tensions are, however, lacking. The policy discourse does seem to favour avoidance of statelessness over the achievement of the other two goals, but there is no explicit guidance to always prioritize it. Always prioritizing avoidance of statelessness over the protection and identification goals can have detrimental

effects on the interests of affected persons, considering that nationality does not in any way guarantee access to rights or improvement of well-being of affected persons.

The tensions among policy goals on statelessness are a symptom of lack of prioritization of empowerment of affected persons within policies on statelessness. It is the consequence of the policies imposing solutions on affected persons, assuming what nationality and statelessness entails for each such affected person. In the next chapter I argue that statelessness policy goals can be re-phrased and re-structured in a manner that allows the affected persons to choose their own solutions, and identify their own priorities. There is a tool in law which empowers individuals instead of dictating outcomes, and that tool is called rights. The current statelessness policy invokes rights to blur the definition of nationality and statelessness, and to impose outcomes on stateless persons. A commitment to the rights-based approach could change that, and put rights at the centre of every policy on statelessness, leading to a policy that genuinely addressed vulnerability through empowerment.