# I N D E X

accession, 89 conditions at time, 201 early, 104 pledges, 100, 106, 112 promoting, 89, 94, 103 acquisition of nationality, 16-21 birth on territory, see jus soli descent/parentage, see jus sanguinis discretion, 18 exceptions, 17 nationality at birth, 174 naturalization, 16, 18, 110, 180-1 adoption basic principle, 164 instruments, 163 inter-country, 164 legal relationship, 163 state recognition, 164 Advisory Opinion of Costa Rica (IACtHR), 25 African Charter on the Rights and Welfare of the Child (ACRWC), 104, 148, 183, 208 allegiance family, 172 formal, 200 multiple, 271, 282, 287 role, 266 state, to, 19, 20, 265, 269 terrorism, and, 212 American Convention on Human Rights (ACHR), 104, 147, 183 Arab Charter on Human Rights, 185 arbitrary, meaning, 85, 195, 198, 261 armed conflict, 3 Articles on Diplomatic Protection (ILC), 31, 34

Asian-African Legal Consultative Organization, 98 asylum seekers children of, 17 claim, 137 credibility, 130 criminalization, 50 identification, 254 number, 44 stateless, and, 131 Australia, 19, 281-3 deportation, 52, 258, 260, 261 deprivation of citizenship, 281-90 dual nationality, 20, 266 immigration policy, 56 marginalized groups, 55 awareness of statelessness, 101, 123 Baruch Ivcher Bronstein v. Peru (IACtHR), 203 Bidoon, 2, 46 Biharis, 110 birth registration access to, 260 consequences of lack, 108 failure to obtain, 258 lack, 107, 108 late birth, 108 obstacle, as, 4 prevented from obtaining, 254 problems, 108 unaccompanied minors, 259 birth, nationality at, 74, 148 failure to acquire, 249, 258 modes of acquisition, 17, 174, 243 paternal lineage, 176, 178 securing, 144

292

Brazil, 106

Cambridge University Press 978-1-107-03244-6 - Nationality and Statelessness Under International Law Edited by Alice Edwards and Laura Van Waas Index More information

> Brownlie, Ian, 218 Canada, 34, 37, 170, 177, 270, 272, 274 childhood statelessness, 8, 76 avoiding, 144, 155 birth outside marriage, 176 conferral of nationality, 174-8 consequences, 191 dual nationality, 266 extent, 144 gender discrimination, 8, 114 preventing, 147 reproductive technology, born using, 178 children's right to a nationality acquiring, 145 adopted children, 163-5 African Charter on the Rights and Welfare of the Child (ACRWC), 104 age of majority, 145, 155, 157, 200 always stateless, 151 application, lodging, 149 automatic acquisition, 152 best interests of child, 167, 252 challenges, 158-67 conditions which can be imposed, 149 - 52Convention on the Reduction of Statelessness, 148-54 Convention on the Rights of the Child, see Convention on the Rights of the Child Council of Europe standards, 154-8 country of birth, 149 criminal conviction test, 151 descent, 147 differences in instruments, 155, 158 establishing child is otherwise stateless, 159-61 ex lege acquisition, 149, 152 exceptions, 156 foundlings, 161-3 gender equality, and, 186, 187 general principles, 167-8 habitual residence, 150 information, gaining, 159

### INDEX

293

inspiring debates, 158 international human rights law, 145-8 lawful residence, 152 meaning of nationality, 146 medically assisted reproduction, 166 non-discrimination, 146, 155 parental inability to secure, 153 preferential access, 159 principles, 156-7 procedural conditions, 155 registration, 15, 160 separation from parents, 259 substantive conditions, 155 surrogate mothers, born from, 165-7 unaccompanied minors, 259 UNHCR, 77 citizen/state contract, 61 civil registration, 99, 100, 104 documents, 107 exceptions, 160 fraudulent, 275 late birth, 108 migrants, 258, 260 procedures, 227 climate change debates, 5 Committee on Refugees and Stateless Persons, 188 Committee on Statelessness and Related Problems, 67 communitarianism, 60 conflicts of laws, 65, 82, 104 children, 167 citizenship, 53 dependent nationality, 191 potential, 75, 257 prevention of statelessness, 199 consular assistance, 12, 35, 279 diplomatic protection, and, 35 registration, 106 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 9, 27, 174, 186 Article 9, 27, 186-7 Convention on the Elimination of Racial Discrimination 1965, 26

# 294

INDEX

Convention on the Reduction of Statelessness, 64 application procedure, 76 approach, 74-7 arbitrary deprivation, 196 automatic conferral, 76 challenges, 82-5 change in personal status, 22 conflict with other international law, 85 contemporary issues, 84 depriving nationality, 26 exceptional circumstances, 76 family ties, 82 focus, 28 gender equality, 188 history, 69-71 importance, 83 influences, 82 interpretation, 150 limitations, 84 loss/deprivation of nationality, 22, 199-201 opportunities, 82-5 otherwise stateless, 148 permitted practices, 23 principles, 28 safeguards, 74 sovereignty, 222 state choice, 76 state interpretation, 77 state practice, and, 28 succession, and, 84 supervision mechanism, 77 territorial connection, 82 trends, 83 UNHCR, 77 women, 189 Convention on the Rights of the Child focus, 28 ratification, 144 safeguards, 15 universality, 182 Convention relating to the Status of Refugees, 27, 37, 48, 67, 89, 253 Convention relating to the Status of Stateless Persons, 64 approach, 71-4

benefits, 73 breadth, 81 challenges, 78-82 customary international law, as, 72 development, 80 gradual scale, 73 history, 65-9 interpretation, 81 operation, 74 opportunities, 78-82 problems, 74 protection scope, 81 purpose, 68 quality of nationality, 79 resurgence, 80 standard of treatment, 73 terminology, 79 UNHCR's role, 80 value, 111 Convention Travel Documents, 38 Council of Europe Convention on the avoidance of statelessness in relation to state succession, 98 Council of Europe's Convention on Nationality, 98, 104, 154, 183, 201, 224 Craven, Matthew, 220, 238, 239 Crawford, James, 232 criminal arrest, 35, 258, 261 customary international law applications, 243 discretion, limiting, 245 obligation to avoid statelessness, 243 refugeees, 253 state succession, 233 stateless person definition, 248 universal conventions, 72 Cyprus, 239, 240 data current, 111

field work, 102

range, 101

national statistics, 101

population figures, 102

registration, from, 102

sharing between states, 159

INDEX

295

de facto statelessness children, 259 de jure, and, 48, 60, 247 debate, 5, 79-80, 96 definition, lack of, 249 meaning, 47, 79 migration, 248-9 refugees, 67 situations, 81 de jure statelessness de facto, and, see de facto statelessness irregular migration, 248 meaning, 67 migration, 248-9 situation, 36 decolonization Europe, 232 force, use of, 240 illegal regimes, 239 illegal tranfers, and, 238 problems, 217 process, 218 questions, 222 democracy, multi-party, 4 denationalization, 10, 65 dual nationals, 290 human rights, of, 117 state succession, 226 Denmark, 19, 107 deportation, 52, 258, 260, 261 Australian, 284-7 dual nationality, 20, 266 serious criminal offences, 288 United Kingdom, 274-7 deprivation, see loss/deprivation of nationality detention, 35, 258 administrative, 131 alternatives, 261 arbitrary interference, 195 cycle of, 261 economic burden, 262 facilities, 261 forms of, 52 indefinite, 247, 261 unjustified, 121 diplomatic protection, 31-5 claiming, 33, 51

discretion, and, 35 dual nationality, 20, 266 exception, 31 exercise, 13, 31 individual element, 32 international law, 27 legal remedy, as, 34 meaning, 31 Nottebohm case, 32-4, 269 refugees, 32 right, 30, 31 rules, 33 social attachment, and, 34 state interest, 34 discrimination, 4 citizenship denial, 249 everyone has the right to a nationality, 182-4 gender, see gender discrimination international legal instruments, 182-4 dislovalty dual citizenship, 207 obedience, and, 50 state, to, 22, 179 terrorism, and, 54, 194 United Kingdom, 274-7 displacement, 47 forced, 89 internal, 92 mass, 182 refugees, 32 war zones, 259 divorce, 171 Draft Convention on the Elimination of Future Statelessness, 70, 71,76 Draft Convention on the Reduction of Future Statelessness, 70 Draft Protocol to the Refugee Convention on the Status of Stateless Persons, 68 dual nationality, 40, 104 Abu Hamza, 277-8 Australia, 281-3 children, 186 Commonwealth, 273, 286 David Hicks, 278-81

### 296

INDEX

dual nationality (cont.) deporation, and, 265-71 deportation, Australian, 284-7 deportation, United Kingdom, 274-7 deprivation of citizenship in Australia, 281-90 diplomatic protection, and, 20 dual citizenship in UK and Australia, 271 effective nationality, 266-9 evolving legal attitudes to dual citizenship, 272-4 exclusive allegiance, 265 exclusivity of identification, 20 legal responses, 266 loss of British citizenship, 277-81 membership, 284 'own country', 269-71 right to remain, 284 risks, 21 security, 264 state motivation to allow, 19 tolerance, 272 due process, 35, 124, 135 duties avoiding statelessness, 25, 243 military service, 38 pay taxes, 13, 38 vote, 13, 38, 52 Economic and Social Council (ECOSOC), 64, 66 effective nationality, 266-9 determining, 281 entry of country, 247 lack of, 79 multiple citizenship, 265 problems, 269 European Convention on Nationality (ECN), 104, 154, 183 European Union (EU), 20, 100, 206, 243 expulsion criminal convictions, 36 illegitimate aim, 214 non-nationals, 254

other states, and, 36 possible, 51 extradition, 21, 278, 284, 290 feudal status, 44, 62 Flores-Villar v. United States of America, 18 foundling age, 161 conventions, and, 162 discretion, 162 meaning, 161 parentage, 162 France, 19, 122, 123, 131, 133, 135, 136, 138, 163 freedom of movement, 119, 131, 204,205 rights, 251 state authority, 251 gender discrimination, 8, 114 administrative barriers to nationality acquisition, 177 African Charter on the Rights and Welfare of the Child (ACRWC), 104,253 automatic withdrawal, 178 birth outside marriage, 176 cause of statelessness, 191 children born using reproductive technology, 178 children's right to a nationality, and, 187 citizenship testing, 180 civil law, 173 colonization, and, 173 common law, 172 conferral of nationality to children, 174-8 consequences, 191 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 9, 26, 147, 253 dependent nationality, 172, 178 difficulties, 175 disproportionate impacts, 179 divorce, 171

obstacles, 121

INDEX

297

dual nationality of children, 186 economic sufficiency, 180 effect, 169-70, 171, 192 equality, achieving, 192 existence, 105 extent, 171 feminism, 173 generations, 180 historical origins, 172-4 human rights violation, as, 190 independent nationality, 184 international and regional legal framework, 181-91 international norm, as, 186 legal equality, 184-7 marriage, 170, 171, 178-80 marriage to a foreign national, 176 marriage to a stateless man, 176 Montevideo Convention, 184 national versus international law, 184 nationality laws, 18 naturalization, 180-1 obtaining nationality, 170 patriarchal legal values, 172, 173 patrilineal descent, 189 prohibition against statelessness, 187-90, 205 regional instruments, 185 right to a nationality for all, 182-4 state sovereignty, 181 transferring nationality, 180 unequal position of women, 191 General Assembly, 8, 70, 78, 88, 89, 90, 91, 92, 203, 205, 228 Genovese v. Malta (ECtHR), 155, 156 Georgia, 106, 113, 122, 123 Germany, 46, 49, 56, 122, 196, 215, 236, 267 global inequality, 46, 62 governance, 55 consent-based, 46 elites, 50 statelessness, 88 Greece, 19 habitual residence, 150-1, 154 criticism, 230 documents, 256

state succession, 226 surrogacy, and, 166 Hague Convention 1930 League of Nations, 69, 75 marriage, 188 human rights access, 182 arbitrary interference, 195 balance interests, 252 children, 145 compensation, 3 conventions, 93 detention, and, 261 expulsion, 252 gender discrimination, 189 gender promotion, 191 growth, 11, 218 importance, 97 international order, 45 non-discrimination, 42, 171, 191, 196 norms, 40 own country, 119 problems, 101 range, 39 restitution of nationality, 3 right to leave country, 251 shared humanity, 38 state succession, and, 217 states, and, 244 term, 117 trends of recognition, 24 UN Human Rights Council, 98, 203, 204 violation, 81, 190, 247, 255 humanitarian problems, 101, 121 Hungary, 122, 123, 129-135, 138, 139 identity cards, 110, 169 changing, 221 collective, 55 common national, 56 community, 232, 236, 237, 242 documents, 82, 108, 131, 249, 260

European, 244 gender, 172

lacking, 1

### 298

# INDEX

identity (cont.) parents, 162 personal, 172 proving, 107 shaping, 60, 231 social, 155 state, 232 illegal regimes case studies, 239 community identity, 242 liberation, 239 non-recognition, 237 post-transition, 240 immigration authorities, 129 detention, 121, 132 indefinite detention, 247, 261 open, 44 policy, 56, 252 procedural framework, 134 status, 253, 257, 258, 259 strict regimes, 256 International Convention on the Protection of Rights of All Migrant Workers (ICRMW), 183 International Court of Justice (ICJ) Norwegian Fisheries, 12 Nottebohm, 12, 32, 266, 269 International Covenant on Civil and Political Rights (ICCPR), 14, 119, 145, 183, 205, 251-3, 270 International Law Association, 14 International Law Commission's Articles on the Nationality of Natural Persons in Relation to Succession of States Convention, 98 Articles on Diplomatic Protection, 31, 34 international statelessness law promoting study, 2 scope, 1 Italy, 96, 122, 123, 134, 135 Janko Rottman v. Freistaat Bayern (CJEU), 204, 209, 215

jus domicili meaning, 16, 82 naturalization, 18 jus sanguinis changing practices, 18 children, 155, 165 claiming, 258 compromise, 152 default, as, 158 meaning, 11, 224, 264 paternal descent, 175 problems, 82 safeguards, 83 use, 17, 254 jus soli avoiding, 155 children, 58, 146, 257 claiming, 258 compromise, 152 default, as, 148 meaning, 11, 224, 264 precedence, 158, 230 qualifying, 258 risks, 175 safeguards, 83 use, 17 just distribution, 61 Kaunda v. President of the Republic of South Africa (South Africa Constitutional Court), 35 Kenya, 2, 118, 192, 209 Kurds, 60, 118 Kyrgyzstan, 103, 110, 209 Latvia, 123, 239, 241 legal aid, 90, 108, 135 legal relationship, 11 individual and state, 225, 243 nationality and citizenship, 264 liberalism, 60 long-term residence, 270 loss/deprivation of nationality, 21-3, 104, 195 administrative measure, 213 arbitrary, 23, 25, 195 arbitrary if it results in statelessness, 197-8

judicial review, 35, 135, 197

INDEX

299

Australian citizenship, 284-5 automatic, 199 British citizenship, 274-7 change in personal status, 22 changing legitimacy, 215 comparative studies, 206-8 conceptual background, 201 criminal activities, 23, 210 deception, 209 discrimination, 26, 75, 196 dislovalty, 22 domestic rules, 206 duty to avoid statelessness, 25 eliminating grounds, 208 exhaustive grounds, 201 expiration, 23 expulsion, 213 extent of prohibition, 198 fraud/misrepresentation, 22, 201, 207 gender, 181 gender discrimination, 8, 114 general provision, 200 global trend towards limiting, 206-9 human cost, 214 international instruments, 201 judicial progression, 203 justification, 201 least intrusive means, selecting, 209-11 legislative enactment, 3 legitimate, 199-202 limited discussion, 206 limits, 25 loyalty, 212 military service, 209 national legislation, 205 operation of law, 199 permissible grounds, 190 problems, 82 procedural standards, 197 prolonged residence, 209 proportionality, 209-15 public order, 212, 215 punishment, 201, 210, 212-13 regional courts, 203-6 regional differences, 203-4 renunciation, 22

reserved domain, within, 23 rights in country of origin, 250 safeguards, 83 security threat, 215 seriousness of crime, 211 situations, 199, 200, 215 sovereignty, 214 standards, 206 state interests, 202, 215 state protection, 47 statelessness, 2 substantive standards, 197 terrorism, 202, 212 travel abroad, preventing, 214 UN human rights mechanisms, 203-6 when arbitrary, 195-7 women, 190 marginalized social groups, 47 marriage, 19, 171, 178-80 birth outside, 176 foreign national, to a, 176–7 gender discrimination, 189 gender inequality, 176-8 stateless man, to, 176 mass denationalization, 49, 51 Mavrommatis (PCIJ), 31 Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner (Bangladesh High Court of Dakar), 110 Mexico, 122, 123, 137 migration access to nationality, 256 admission criteria, 249 children, 257 concern, 260 conflicts of nationality laws, 257-8 country ties, 118 cultural changes, 257 detention, 261 deterring irregular, 255 entry to destination country, 247 feminization, 171 forced, 120 fraud, 283 increased, 104

### 300

# INDEX

migration (cont.) international cooperation, 248 irregular, 247, 249, 256, 261 lack of access to birth registration, 258-9 lack of documentation, 251, 254-6 limbo, 247 motivations, 250 non-admission and expulsion of non-nationals, 251-4 non-refoulement, 253 permits, 253 procedural conditions for expulsion, 252 protection, 121 pull factors, 250 push factors, 250 statelessness as a consequence of irregular, 256-60 statelessness as a trigger, 249-56 statelessness in the context of return, 260 statelessness prevents people from using regular channels, 250-6 statelessness, and, 247 status, 257, 261 unaccompanied minors, 259 unregulated, 256 vulnerability, 260 Moldova, 113, 123, 128, 132, 133, 245 Montevideo Convention on the Nationality of Married Women (Montevideo Convention) League of Nations, 174 morality community, 59 duties, 62 issue, 45 responsibilities of States, 56-60 municipal law, 14, 41, 42 deference, 24 nationality regulation, 221 reserved domain, 23 residency, 38 Namibia, 239, 240, 241 national security, 54, 132, 151, 154, 214, 276

interests, 185

Kaunda v. President of the Republic of South Africa (South Africa Constitutional Court), 35 loss/deprivation of nationality, 215, 216 offence, 151, 202 Omar Khadr v. The Prime Minister of Canada (Canada Supreme Court), 34 post-9/11 environment, 5 preserving, 213 R (Abbasi) and Al Rawi and Others (UK Court of Appeal), 34 removing citizens, 132 threat to, 154, 214, 274 nationality belonging, 42 benefits, 51 birth, at, see birth, nationality at bond of, 13, 31, 225 British, 273 campaigns, 90 case law, 12 categories, recognizing, 39 conflict of laws, 53 criteria, 229 deliberate removal, 3 determining factors, 12 differential treatment, 39 dual, see dual nationality dual nationals' security, 290 entitlements of, 12 exclusivity, 265 functions under international law, 30 goods, 61 granting, 14 individual right to, 38-41 international law, 13, 25 international order, 46 jus domicili, see jus domicili jus sanguinis, see jus sanguinis jus soli, see jus soli legal aspects, 42 limits on state discretion, 23-9 loss or deprivation of, see loss/ deprivation of nationality meaning, 11, 224, 264 membership, losing, 58 minimum rights, 40

INDEX

modern concept, 12 modes of acquisition, 16-21 notion, 12–14 Nottebohm case, 266-9 political character, 230 privileges, 51 procedural, 11, 14-29 questions, 3 recognition, 118 regulation, 2 revoking, 290 rights of national, 40 securing rights, 62 state's perspective, 30-8 status and rights, 41 substantive, 11, 29-41 terminology, 13-14 testing, 19 UN Secretary-General's view, 16 nationality laws adopting, 54 combination, 175 conflict, 20, 82, 85, 108 different approaches, 95 discrimination, 26, 27 gaps, 27, 106 gender discrimination, see gender discrimination global review, 82 guidance, 69 implementation, 70, 107 migration, and, 256 reform, 93, 99, 100, 103 refugees, 120 safeguards, 104, 105 trends, 106 uniformity, 17 naturalization, 18, 110, 257 applying, 257 children, 157 conferral mode, as, 16 criteria, 225 discretionary procedure, 149 facilitating, 110 gender, 180-1 legal process, as, 269 migration, 262 policy, 56 political tension, and, 19

procedures, 227 rules, 19 state succession, 229 variation, 17 withdrawal, 204 Netherlands, 19, 103 non-admission and expulsion of non-nationals, 251-4 non-recognition of illegal regimes, 237, 239 Norwegian Fisheries case (ICJ), 12 Nottebohm case (ICJ), 32-4, 266-9 definition of nationality, 225 Nubians, 2, 118 Nystrom v. Australia (HRC), 270 O. Hudson, Manley, ILC Rapporteur, 17 O'Connell, Daniel, 219, 231 Omar Khadr v. The Prime Minister of Canada (Canada Supreme Court), 34 oppression, 47 otherwise stateless applying, 230 automatic conferral, 157 birth, at, 150 children, 144, 148, 149, 152 Convention relating to the Status of Stateless Persons, 149 discrimination, 189 identifying, 159 meaning, 149 parental, 153 regulation, 154 own country, 119 approach, 119, 271 broader view, 269-71 entry, 205 expulsion, 252 losing, 290 residence, 113 women, 189

301

Panevezys-Saldutiskis Railway (PCIJ), 31 passports access, 255 asylum seekers, 50 in lieu, 256

302

INDEX

passports (cont.) purpose, 254 renewal, 131 stateless persons' travel documents, 247, 255 use, 254 patrilineal descent, 189 Peace of Westphalia 1648, 12 Permanent Court of International **Justice** (PCII) Mavrommatis, 31 Panevezys-Saldutiskis Railway, 31 Tunis and Morocco Decrees, 24 Philippines, 113, 122, 123, 132, 133, 137, 256 Poland, 122 political rule exclusion, 55 obligation, 56 participation, 4 theory perspective, 45 post-9/11 security environment, 5 post-war era, 65 procedures access, 130 acquiring documentation, 109 administrative, 136, 258 asylum, 124, 133 determination, statelessness, 93, 99, 113, 137 national, 90 nationality, granting, 231 naturalization, 180, 227 safeguards, 128 state, 226 protection common charactersitics, 124 development, 120 effective, 8 international, 118 meaning, 117 mechanisms, see statelessnessspecific mechanism status, 118, 121-7 Protocol Relating to a Certain Case of Statelessness (Hague Protocol), 69-70, 153, 182 Protocol Relating to the Status of Stateless Persons, 67, 74

Africa, 185 R (Abbasi) and Al Rawi and Others (UK Court of Appeal), 34 racism, 2, 52 readmission denial, 36, 260 duty, 36 exceptions, 36 human rights, 37 importance, 36 international law, 37 meaning, 35-6 refugees, 48 applying, 130 Convention relating to the Status of Refugees, see Convention relating to the Status of Refugees international legal definition, 67 international protection system, 120 mandate, 92 non-refoulement, 58, 253 number, 44 protection, 81 regional instruments, 120 seeking status, 112 status, 120 United High Commissioner, see United High Commissioner for Refugees (UNHCR) visibility, 101 republican view, 244 residence abroad, 23, 209 countries of, 111, 118, 139 duty, see duty of (re)admission and residence entitlement, 121, 128, 130 genuine, 224 habitual, see habitual residence lawful, 155, 257 long-term, 18, 113 own country, 119 permanent, 254 requirements, 76 right, 250

Protocol to the African Charter on

Human and People's Rights

on the Rights of Women in

Rohingyas, 118 Second World War, 2, 24, 32, 215, 267 discrimination, and, 196 displacement, 65 international interest after, 69 mass displacement, 182 settled people, 58 Sevket Kafkasli contre Turquie (ECtHR), 204 social attachment, 12, 16, 33, 34, 59 social integration, 60 South Africa, 35, 109, 239 Spain, 122, 123, 130, 133, 135, 138 Sri Lanka, 53, 110, 192 state continuity criticism, 231 identity, 232 legal distinction, 237 preserving, 232 studies, 239 state dissolution, 53, 58 state responsibility birth, 58 collective, 57 division, 60 individual, 214 numerical equality, 58 proximity, 58 shared, 245 succession State, 226 UNHCR, 88, 92 state sovereignty, 224 expulsion of non-nationals, 250 Hegelian conceptions of, 231 interests, 71, 75, 222 preserving, 227 state succession aims, 237 approach, 222, 230, 231, 241 automatic, not, 233 challenges for nationality, 231-43 choice, 227 clean slate principle, 220, 229, 238 codification of law, 221, 238, 246 concerns, 217 consequence of violation, 234

temporary permit, 131, 132

Rhodesia, 239

# INDEX

303

Council of Europe, 223-8 Craven, Matthew, 220, 238, 239 Crawford, James, 232 criteria, 226, 229 current trends, 245 decolonization process, 218, 220, 221, 222, 230, 237, 240 development, 219 discretion, 229 effect, 244 general principles, 220 genuine residence, 224 grant of nationality, 227 history, 217 human rights solution, 241 human suffering, 107 identity, 242 illegal regimes, following, 236-42, see also non-recognition of illegal regimes impact, 90 individual's wishes, 230 International Law Commission, 228-30 law and nationality, 221-31 legal doctrine, 231 legal personality of states, 232 meaning, 218 modes, 228 national identity, and, 221 O'Connell, Daniel, 219, 231 obligation to avoid statelessness, 242-3, see also duties avoiding statelessness population, 245 predecessor state continues to exist, 232-4 predecessor state disappears, 235-6 reform, 103 relevance of types of succession, 231-6 residence, 113 responsibility, state, 226 rules, 229 self-determination, 238 social organization, 244 solutions, 242 stability, 241 substantial connection, 226

# 304

# INDEX

state succession (cont.) transfers, 230 unlawful, 237 Venice Declaration, 223 Vienna Convention, 237 Vienna Declaration, 229 statelessness childhood, see childhood statelessness circumstances, 40 current difficulties, 141 de facto, 7, 96, 249 definition, 96 deprived rights, 51 descriptive terms, 46-8 disloyalty, 54 distrust, 54 exisiting situations, 110 exploitation of minority groups, 53 extent\_1 framework for determination, 127 global legal framework, 7 injustice, 57 international State system, 49 loss, 50 mass, 89 meaning, 2, 27, 46 migration related, see migration motivation to end, 53 political issue, as, 45 political uses, 52-6 range of contexts, 117 resurgence, 85 rights, and, 1 scholarly view, 44 state incompetence, 53 undesirability, 49-52 universal conventions, 65 statelessness-specific mechanism access to determination, 127-31 access to legal aid, 135 administrative determination, 134 admissibility conditions, 130 asylum procedures, 133 authority, 133 awareness, and, 123 building blocks, 123-7 burden of proof, 137 bureaucracy, 129

categories, 122 centralized structure, 134 codification mistakes, 136 communication, 129 content and the limits of protection, 117 - 20conventions, and, 117 detention, 132 determining statelessness, 125-7 evidence types, 139-40 evidentiary framework, 137-41 extent, 121 features, 127-31 flexibility, 123, 139 identification, 141 importance of determining, 127 information requests, 138 initiation of procedure, 128 institutional framework, 133-4 judicial determination, 134 judicial review, 135 language, 129, 136 legal status of applicants, 131-3 long-term protection, 123 national practices, 140 perception, 137 personal hearing, 135 practical issues, 131 procedural framework, 135-7 regulation, failure to, 136 restrictive approach, 130 rights protection, 117 solution, as, 142 standard of proof, 138 state authority, 128 temporary residence permit, 131 time limits, 130 trends, 122 UNHCR mandate, 135 vulnerable groups, 128 Stewart v. Canada (HRC), 270 Study of Statelessness 1949, 2, 64, 65, 66, 67, 71, 81 surrogacy automatic consequence, 166 guidance, lack of, 165 residence, and, 166 Syria, 60, 118

### INDEX

305

territorial changes, see State succession terrorism, 194, 202, 207 citizenship deprivation, 274 Kaunda v. President of the Republic of South Africa (South Africa Constitutional Court), 35 Omar Khadr v. The Prime Minister of Canada (Canada Supreme Court), 34 R (Abbasi) and Al Rawi and Others (UK Court of Appeal), 34 war on, 207 trafficking, 255 Tunis and Morocco nationality decrees case (PCIJ), 24 UN Human Rights Committee, 15, 205 arbitrary interference, 195 duty of (re)admission and residence, 37 own country, 119 United Kingdom, 19 Abu Hamza, 277-8 David Hicks, 278-81 deportation, 258-61 deprivation of citizenship, 281-90 dual citizenship, 281 legal attitudes to dual citizenship, 274 United Nations objectives, 64 Study of Statelessness 1949, 2, 64, 65, 66, 67, 71, 81 United Nations Convention on the Nationality of Married Women, 27, 174, 184 United Nations High Commissioner for Refugees (UNHCR) accession, 103 activities, 91, 94 awareness-raising, 99-100 breadth, 92 changing law/policy, 109 civil registration, 103 clarifying content and scope of existing standards, 95-7 comparative analysis, 105 conventions, and, 77

Division of International Protection, 95 documents, 95 Executive Committee, 88, 90 global movement, as, 113 identification of statelessness, 101-3 implementation, 92-3 information, 99 interventions, 103 limitations, 96 mandate, 92 media campaign, 100 ministerial conference, 100 naturalization, and, 110 negotiating resolutions, 98 NGOs, 101 operational responses, 90 original mandate, 89 partnerships, 100 prevention, 103-9 promoting existing standards, 93 protection, 111-13 reactive, 103 reduction, 109-11 reforming nationality laws, 103, 106 refugees, see refugees regional work, 97 responsibility, 88, 91 role, 80, 114 safeguards, 104 scope, 91 standard setting, 97 state succession, 103 stateless person definition, 96 statelessness-specific mechanisms, and, 117 statutory function, 89 success, 92, 114 supervisory role, 91 technical advice, 84, 91, 111 terminology, 96 universal conventions, and, 90 United States of America, 39, 122, 166, 194 marginalized groups, 55 terrorism, response to, 194 Unity Dow v. Attorney General of Botswana (Uganda), 186

### 306

# INDEX

Universal Declaration of Human Rights (UDHR), 145, 147, 154 arbitrary deprivation of nationality, 25, 196 direct reference, 66 drafting, 65 equality language, 182 freedom of all, 65 prohibition on deprivation, 199 protection, 66 right to nationality, 14, 64, 75, 145, 190 unprotected people categories, 66, 67 circumstances of protection, 79 implications, 67 meaning, 96 regime, 66 status, 72 vulnerability, 65 unrecognized citizens, 46, 58, 59, 60 van Panhuys, Haro, 35 Venice Declaration on the Consequences of State Succession for the Nationality of Natural Persons, 223 Vienna Convention on Succession of States in Respect of State

Property, Archives and Debts, 218, 219–20, 229, 237

Vienna Convention on Succession of States in Respect of Treaties, 218, 219–20, 229, 237

Weis, Paul, 30, 34, 36 women's right to a nationality children, and, 186 colonialism, 173 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 9, 26 'coverture', 172 death of spouse, 178 dependent nationality, 179 divorce, 178 guidance, lack of, 191 husband's status, 179 international standards, 171 loss, 185 marriage, 178-80 naturalization, 180 patria potestas, 173 Shar'ia law, 173 work visas, 128, 180, 253

- Yean and Bosico v. Dominican Republic (IACtHR), 203
- Zhu and Chen v. Secretary of State for the Home Department, 22