

**VERBATIM RECORD OF THE
AALCO-UNHCR HALF DAY SPECIAL
MEETING ON “LEGAL IDENTITY
AND STATELESSNESS”, ON
WEDNESDAY, 5TH APRIL 2006 AT
10.00 AM**

Welcome Address by Amb. Dr. Wafik Zaher Kamil, Secretary-General, AALCO

Honorable Ministers, the Learned Panelists, Mr. Justice Sujatha Manohar formerly Judge, Supreme Court of India and Mr. Ajay Dubey, Jawaharlal Nehru University, Ladies and Gentlemen, it is a great honour and privilege to welcome all of you to this half day special meeting on the topic “Legal Identity and Statelessness”. This meeting has been organized jointly between AALCO and UNHCR with whom AALCO has had a long-standing relationship, which was formalized by a Memorandum of Understanding signed between the two Organizations on the 23rd of May 2002.

In September 2003, AALCO had organized a two-day Seminar in Cooperation with UNHCR on the topic, “Strengthening Refugee Protection in Migratory Movements”. As a follow-up to that Seminar, AALCO proposed an in-depth study on the topic “Statelessness: An Overview from the Asian, African and Middle East Perspective”. It may be recalled that the item entitled “Status and Treatment of Refugees” was placed on the agenda of AALCO in 1963 at the reference of the Arab Republic of Egypt. Since then it has been under discussion at several Annual Sessions and inter-Sessional meetings. AALCO has adopted the ‘Principles on Status and Treatment of Refugees’ in the Bangkok Session in 1966 and these Principles reflected the State Practices followed by the Asian and African States in the Area. They were revised and adopted in 2001 in the 40th Session of AALCO, which was held in New Delhi. Two other important initiatives of AALCO in this area include, the drafting of the Model Legislation on the Status and Treatment of Refugees and the Concept of the Establishment of Safety Zones for Internationally Displaced Persons.

The problem of Statelessness remains one of the central issues in international relations today. The international community has witnessed several situations of mass displacements that involve questions of statelessness in the post cold war era. Though international legal instruments proclaim a right to have nationality to everyone, in practice how this right is to be realized remain under great uncertainty. The importance of this legal attribute of nationality which is indispensable to the enjoyment of fundamental human rights find reflection in the saying that, it provides a ‘right to rights’. International law stipulates that it is for each State to determine by operation of national law, who are its citizens, in principle it is not international law but domestic law of States that determines who is and who is not to be its nationals. However, it has also been noticed that international law does place some limitations on State sovereignty in this regard with the result that the legislative competence of States in matters of nationality is not without limitations. It was emphasized by the Permanent Court of International Justice as early as the year of 1923 and I quote:

“That the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question and it depends upon the development of international relations”.

International law therefore establishes certain criteria as to the enactment of national legislation and practice in the area of Statelessness. However despite developments in International law and practice relating to nationality, the international community faces many situations of Statelessness and inability to establish nationality. The problem arose in connection with State succession and adoption of nationality legislation by the newly independent States. Those affected mainly include life long residents of a State and ethnic minorities. The problem of Statelessness harshly affects women and children more than it affects others. The harsh consequences that lack of nationality entails for women arise from the fact that many States in the world still adhere to the long-standing principle of the ‘unity of nationality’ according to which a women who marries a foreigner automatically acquires his nationality losing that of her own.

Similar is the situation of children who lose their nationality due to the loss of their father's nationality.

Your Excellencies, today's special meeting is divided into three Sessions. Dr. Carol Batchelor, Chief of Mission, UNHCR New Delhi, would be introducing the topic and giving a background of the problem of Statelessness as occurring in various parts of the world. I will not of course go into more details as you have them on the schedule of meetings. On this occasion it shall be a matter of great pride to state that the study on 'Statelessness: An overview from Asian, African and Middle East Perspective' is under preparation and will be released very soon. With these few remarks I would like to invite Dr. Carol Batchelor, UNHCR, Chief of Mission to give her introductory statement on this topic. Thank you very much.

Introduction: "Legal Identity and Statelessness: The Link to Displacement" by Dr. Carol Batchelor, Chief of Mission, UNHCR, New Delhi.

Ambassador Dr. Kamil, Distinguished Ministers, Chairman, Expert Panelists and Participants, thank you Dr. Kamil for that introduction and we have gathered today to look at the issue of Statelessness, how this maybe linked to challenges relating to displacements, possible refugee flows and the legal situations in which people find themselves when they are stateless. This is indeed an appropriate forum for addressing the issue; the Asian-African Legal Consultative Organization would be particularly suited to review the problem of Statelessness, which by definition has a legal reference point. So, on behalf of the High Commissioner for Refugees and the Assistant High Commissioner for protection I would like to welcome you to this event and thank you for your participation on this Session concerning "Legal Identity and Statelessness".

UNHCR has been concerned with the problem of Statelessness for a number of years. When the Refugee Convention was being drafted, initially there was a Protocol attached to it. And that Protocol was called

the Protocol Relating to the Status of Stateless Persons. But if you read the 1951 Refugee Convention today, you will not find that Protocol. In fact, it was decided by the drafters early on that the problem of Statelessness was related to refugees flows. In the context, for example, of world war II many of the refugees that were needing to find solutions to the problems when the Refugee Convention was drafted, had also a problem with nationality, with their legal identity and some of them were found to be stateless. But the drafters looking at it in close detail at this issue found that the problem of Statelessness requires a broader analysis. It is not only refugees who are stateless, not all refugees are stateless and not all stateless persons are refugees. There are separate legal problems and it requires a separate legal approach. This is why you will find that 1954 Convention Relating to the Status of Stateless Persons to which many of the States represented here are parties, you will find a separate independent Convention on the problem of Statelessness. Likewise you will find a 1961 Convention on the Reduction of Statelessness. So we have international legal reference points we can of course look at the nationality laws of States. Virtually all States have nationality legislation or within the Constitution there are provisions that relate to the question of legal identity and UNHCR has been asked both by its Executive Committee to which many of your States are parties and by the General Assembly to take up the issue of Statelessness to provide technical advice and expertise to States were are facing problems of Statelessness to assist them in developing nationality laws which can anticipate and avoid problems of Statelessness and to facilitate an understanding of both the 1954 of the 1961 Statelessness Conventions which provide a legal reference point for defining the problem of statelessness, ensuring that persons who are stateless are granted some form of legal standing and of preventing future cases of statelessness.

Now Dr. Kamil made reference to Article 1 of the 1954 Convention. This Article defines a stateless person as 'someone who is not considered as a national by any State under the operation of its law'. So immediately we see that well, there must be a State, that State must have a legal reference point, they must have legislation under the operation of its law and

as is stipulated in Article 1 of 1938 Convention, it is for each State to determine who are its nationals. This is an element of State sovereignty. So States take that decision and it is not up to individuals or other States or International Organizations to determine which people are nationals of any given State. Each State determines that with reference to its national legal framework. So we have a clear outline of who would be stateless, how this might come about, the interesting thing is that, there is a legal definition for a non-legal position. So you are stateless person because you are not defined in the legislation of any State. So a legal framework exists to determine which people are not within any legal framework. Of course this is an anomaly in a world today, we live in a world composed of States. There is no place to which people might go which they don't belong to any particular State. So Article 1 in the 1954 Convention Relating to the Status of Stateless Persons is reconfirming that each State determines which persons are its nationals and it is indicating that there may be cases in which people might actually fall through the crux and are not identified as a national by any State under the operation of its law. And in a world that composes of States this of course is a legal anomaly. We can also make reference to Article 15 of the Universal Declaration of Human Rights that provides that; every one has the right to a nationality and no one should be arbitrarily deprived of nationality or the capacity to change nationality. So really a challenge for States and not a very small challenge is to look at how persons on their territory might be affected by legislation they render stateless of persons who are descended from their nationals who may be abroad are rendered stateless, how do we mend these two principles and concept, i.e. the absolute sovereignty of the States to determine who are its nationals, but it is the individual human right of every person each of us gathered here today of every other person to have a nationality. How do we bring these two concepts together?

Now UNHCR, given the responsibility that has been bestowed on by the Office by the General Assembly of the United Nations,

has undertaken a number of studies. You have a host of materials, a Global Survey that was undertaken two years ago to which several of your States participated. Just to look at some of the questions. Do States face a problem of Statelessness; if they do how do they identify; what mechanisms do they have for addressing it, what do you do if you find some one on your territory who has not been from in your State is not related to any one in your State, is not descended from a national of your State but they are there, what do you do in such instances. So again it is not a small challenge for States and on the context of doing this questionnaire, UNHCR found precisely that States are faced with many complex legal and practical problems when it comes to the issue of nationality, legal identity and Statelessness and one of the recommendations to the Office was to go further and to identify in more depth what are these problems, what are some of the best approaches and to cooperate with partners in doing this. And UNHCR has been particularly pleased to be in cooperation with AALCO towards this and as Ambassador Kamil has mentioned, a study is underway and will be able to talk about some of the preliminary findings here this morning.

So we have a technical legal question which has a direct impact on the lives of the individuals it can be related to the problems of displacement, it may be the root cause of refugee flows, it can be related to instances of migration whether it is forced migration or voluntary migration. If I move from one country to another, perhaps I marry someone from yet another country, my child is born in a fourth country, what is the nationality of me, for my spouse, for my child, should it all be the same. Indeed as Dr. Kamil has mentioned these have been developments relating to an independent legal identity for women, 1957 Convention Relating to Nationality laws impact women, the 1979 Convention Concerning Reduction and Discrimination against Women, Article 9 of this instrument. There are legal reference points but how does it impact the family. Perhaps I would want to have the some nationality as the other members in my family. So some degree of flexibility may also be necessary to arrive at a practical solution not only a legal solution. So this is not a small

challenge for States what for example, do states have different approaches some use the approach of *jus soli*, persons born on my territory and my nationals and other States may use the principle of *jus sanguinis* well someone born to a national of my State wherever you are born in the world, they are my national and both of these are perfectly legitimate standard accepted approaches to the granting of nationality. But what happens if there is a conflict between these approaches. If one State believes that the other State will grant nationality because the person is living there, but that State does not grant nationality because people are born or resident on its territory. So there can be simple conflicts of nationality laws and with close to 200 States in the world it is not a small task for States to know what other States are doing.

How do you possibly look at a legislation of all States in the world and try to draft nationality laws which will avoid gaps with a view to avoid creating Statelessness. What about the situation of dissolution of States and UNHCR has certainly worked with many States in this context not so long ago with the dissolution of former Czechoslovakia, former Soviet Union, former Socialist Republic of Yugoslavia in all of those instances, the individual did not move but the borders around the individuals changed. And one day there was a State called Czechoslovakia and the next day that State did not exist, you could not be Czechoslovakian citizen the following day. So what were you? What provisions were made? How do States cope with that? How do they cope if these developments take place in the context of conflicts, war displacement may take place. For example it was a serious problem in the Balkans in the early 1990's.

What about the situation of marriage, change in legal status, birth, registration what would be the legal identity of that child as we live in increasingly complex world whether it is extensive migration both illegal and legal. What is the legal identity of persons who go to another territory, may be descended from one parent from one nationality and the other from a different nationality. What about instances where a

nationality has internationally been removed from individuals, how do States approach these kinds of challenges. You may recall that in 2000-2001 UNHCR undertook a global analysis of the situation for refugees and many of you would have participated in that process and the final conclusion which led to the adoption of the Agenda for Protection and in the Agenda for Protection, it takes note that, the problem of Statelessness can be a root cause of displacement, can be a root cause of refugee flows, may even be a root cause of conflicts. Even if statelessness is not related to conflicts or displacement, say for example in the repatriation of refugees, what is the legal status when they return to the country of origin? Was there any change when they were away? How do they conform their legal identity when they return, if they do not conform legal identity, does that in itself become a potential for further problems and further displacement. All of these issues were identified and UNHCR was actively encouraged to assess best practices because States of course has been faced with this challenge for many years and there are many solutions available. So it is important that we can learn from what States have done to resolve these problems of Statelessness both existing problems and avoiding the creation of future problems of Statelessness.

So I would like once again to thank you for your participation here today and looking forward to hearing from you as well some of your proposals and recommendation learning from your experiences in this field. I would note that there is always a need to belong for individuals they must be part of one community or society, one or another this in a world composed of States does go to the question of legal identity. So we have a challenge before here us this morning and without further delay, I would like to return the Session over to Ambassador Dayal who would be chairing and facilitating this meeting this morning. Thank you.

Mr. Virender Dayal, the former Under Secretary-General of the United Nations: Excellencies, Distinguished Delegates, I first thank Ambassador Kamil for introducing this item of Statelessness in the agenda of AALCO. It is really reassuring and comforting that a group of eminent lawyers

and jurists should be concerned about a problem such as this. The stateless have a strange quality of being voiceless by virtue of not belonging to any nation. So this is doubly important for those of us who are blessed with nationality and proud to be nationals of X or Y country to give them those who do not have this tribute. Thank you.

I would also like to thank Dr. Carol Batchelor for her very very lucid presentation of the problem of Statelessness. It was a statement that combined a great knowledge of the subject with a true passion to deal with it and you can always tell that so when a person speaks with conviction. Thank you. Now we have this morning Session in two parts. The First part will deal with Regional Approaches and Comparative Analysis of the Problem of Statelessness. It should be a final discussion in which my eminent colleague and friend Justice Sujatha Manohar who was with me in the National Human Rights Commission of India, who served as a Justice of our Supreme Court and Chief Justice of two of our High Courts is a panelists. Prof. Dubey who is an expert in Jawaharlal Nehru University on African matters who has traveled extensively in Africa, studied the situation on spot, particularly in relation to Kenya and other countries he will be participating. Dr. Rajeev Dhavan who was supposed to be here is unfortunately busy in Supreme Court this morning. So he cannot come, but Dr. Batchelor has very kindly agreed to step in and fill in our discussions.

Let me just say a few opening words before opening the floor to our panelists. I must say when preparing to come to this meeting and reading the material which has been so kindly sent to us I was struck by the curious situation of a problem involving literally millions of people, having been given so little attention over so many years. This is somewhat painful because you see, we are trying to go with a wind and we create momentum for certain issues and we ignore others and the plight of stateless is one such issue which has been literally under estimated, literally understood and literally under nourished if I may say so.

It is really odd that a Convention adopted in 1954 on the Status of Stateless Persons and the Convention adopted in 1961 on the Reduction of Statelessness should after all these years have only had 57 States that are parties to them to the first and 29 to the second. This is not exactly indicative of a great desire of our countries to be upheld. It is a matter of great pity. Contrast this with the status of ratification and accession to the Refugee Convention of 1954 and of the 1967 Protocol, with the number now stand as 145, or take the instance of the Convention on the Rights of the Child where all Member States except 2 that is 189 out of 191 are parties. There is something wrong here. This is why I am glad you are taking it up here today because I am very much hopeful that these discussions are serious issue but it is not there. The people are alive. The only problem is that they don't have a legal identity. So we must have to secure to prevent and to reduce Statelessness. Now it is not as if only the Universal Declaration of Human Rights talks about this issue. It did in Article 15 we all know that. But subsequently a part from the two Conventions that we mentioned earlier, there are specific references about Statelessness in International Covenant on Civil and Political Rights, the ICCPR (1966) to which almost every Country by now is a Party. There are references in the Convention on the Elimination of All Forms of Discrimination, the CEDAW, there are reference in Convention on the Rights of the Child, there are reference in the Convention against all Forms of Racial discrimination, the CERD, so our States are modern in one way bound to do the right thing in terms of persons who are stateless and yet we have not done it, which means actually we should get the treaty bodies dealing with these topics to act a little more.

Now I should not take too much time. Let's get on with the panel discussion. As I said, the first part is on Regional Approaches and Comparative Analysis of the Problem of Statelessness, during this which we will explore the dimension of the problem, the various aspects of the problem. The second part of our topic will be 'Best Practices and Identification of Mechanisms' to reduce Statelessness, the solution side of the problem. After that I will open the floor for discussions.

Justice Sujata Manohar, please take the floor. Thank you.

Panel Discussion: “Regional Approaches and Comparative Analysis of the Problem of Statelessness”.

Justice Sujata Manohar, Former Judge Supreme Court of India and Member of the National Human Rights Commission:

Thank you very much Mr. Chairman Dayal. Excellencies and Distinguished Delegates let me begin by thanking UNHCR to have invited me to participate in this panel and to having interaction with the distinguished audience. As a start of this Panel discussion I would just like to refer to some of the basic issues around Statelessness. After the very lucid and through presentation by Dr. Carol Bachelor, I will only briefly refer to some of the issues, which she has touched upon. Basically Statelessness is emerging as a much larger problem than was earlier acknowledged and perhaps this is largely because a lot of Statelessness is unacknowledged or unrecognized. For example, and I am quoting these figures from a judgment of the Supreme Court of India in *Servananda vs The Home Minister* of this country in 1997 stated that there were 10 million illegal immigrants in this country. Given the break up West Bengal had 5.4 Million, Assam 4 million even States like Maharashtra had 5 million, Bihar 5 million and so on. The total came to 10.83 million illegal immigrants. It is not very clear how many of these are Stateless and how many can be considered as having some kind of a nationality and that has made, extremely difficult the question of resolving this issue and making some kind of a reasonable settlement for these illegal migrants. As you know we also have some problems with Nepali citizens in parts of Bhutan, the Indian partition trauma also has resulted in many instances of Statelessness, quiet a few of them unreported.

In the National Human Rights Commission for example, we have received a complaint about a member of a family settled in India who had during the wrong period gone to Karachi for a few months and decided to come back. He had to come back on a Pakistani Passport and as a result we have a

situation where the entire family has one nationality and one member of the family has a different nationality and he is facing problems in his daily life here. We also have a large influx of refugees from Sri Lanka, it is in connection with refugees, the traditional issue of Statelessness was examined. And these refugees who are in some of the camps in India also have various problems, they may claim to be nationals of X country but that country may say no they are not our nationals, they belong to another country. So, with this denial of nationality, how this issue is going to be resolved in a manner that is acceptable to both the countries involved. Then we had the case of Chakmas in Arunachal Pradesh, Mr. Dayal will remember that matter where one of the problems considered by the Supreme Court was how that some of these migrants could be given nationality over a period of time.

The recent trafficking survey which was conducted by the NHRC has thrown up a very big issue indirectly relating to Statelessness. The study in so far as it dealt with cross-border trafficking has highlighted that these trafficked persons who have been trafficked from different countries do not possess any legal papers naturally, because they are forced migrants they do not have papers showing their identity or nationality. If they have their papers initially they have been taken away by traffickers and there is no way of establishing their identity and if whenever an attempt is made to repatriate them to what is considered as their States of origin quite often there is a denial saying this person does not belong to this particular State.

Then we have a problem with children of migrants and if the father is stateless or the mother is stateless there may be a problem in establishing the nationality of the child. The two basic factors which are internationally considered as determinative of nationality, birth or descent don't always help in such situations where by descent, a person may not be able to establish the nationality. Of course, nationality is closely associated with State sovereignty and each State has the right to deport aliens at will, it may decide under which circumstances it will admit aliens and not expel them, what will be the period of stay and so on. This is a very well established

position. I would only refer to Attorney General of Canada vs. Cane (1906) decision of the House of Lords in England and in India, Louie Vs. Union of India, where the court recognized the absolute power of the State to expel foreigners. So although these two factors which determine nationality are well known, how actually the nationality law makes use of them can be very different. As Carol Batchelor pointed out, you may have a dichotomy between the laws of one State where the migrant is and the law of the State of origin of that migrant. So that the person may not be eligible for nationality in the country of nationality to which he or she is migrated and at the same time lose the nationality in the country to which the person originally belonged. And this kind of an issue also very frequently arises apart from trafficked women and children in the case of married women. Of course we have the Convention on the Nationality of Married Women, but in effect we still have states which do provide that on marriage the woman has to acquire the nationality of the husband. Well, other States do recognize the independent identity of the women which is of course the current international thinking, very much a result of attempts to eliminate discrimination against women CEDAW and other Covenants. But even when an independent identity of the women is recognized and she has a right to her own nationality. The problems arise when in a family she may have a different nationality from her husband and where paternity determines the nationality of the child the nationality of the child.

And question of loyalties, family unity, harmonious living they all come up when we deal with nationality of married woman. we have had a very famous case of Unity Dow v. State of Botswana, where the lady who is married to a foreigner could not confer her nationality on her children although they were all living in Botswana and as a result her child was denied right to education, right to health care and fortunately the Court of Appeal upheld the right to non-discrimination of Unity Dow who is now a Judge of a Court of Appeal in Botswana. These are some of the issues that arise around the question of Statelessness in many more cases than we expect. There can

be no doubt that nationality is a fundamental human right. Mr. Dayal referred to the various Conventions where the importance of nationality has been emphasized and this includes the rights of the child and Convention Against Elimination of All Forms of Discrimination Against Women.

Curiously the Palermo Protocol dealing with trafficking does not directly deal with this question of nationality though it is very much necessary in the case of trafficked victims and trafficking as you know is a very wide definition under the Palermo Protocol and it covers not just those trafficking for several exploitation it covers every person who is trafficked for the purpose of exploitation, it could be for exploitation of labour, it could be for organs removal, it could be trafficking of children for begging, for camel jockeying, all kinds of things and these are the people who do not have any identity papers and are in grave danger of becoming stateless. The Palermo Protocol only refers in Article 13, it says "at the request of another State party a State Party shall in accordance with its domestic law verify within a reasonable time, the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons". This is in my view far from adequate to deal with the issue of Statelessness.

I am therefore very happy that we have this distinguished audience here to deal with the issue and if we can have harmonious international norms which provide for a uniform basis as far as possible, for granting nationality and for determining the nationality of persons who are within a State, there will be much less chance of people who may become stateless because neither of the laws, either of the State of origin or the State of migration covers that case. So I am hoping for questions, suggestions and we hope that at the end of this panel discussion we may have some useful suggestion to offer.

Mr. Chairman: Thank you Mrs. Sujata Manohar for your characteristically clear views and the presentation was borne out of great experience. I must say that Justice Sujata Manohar guided a very serious study on trafficking in India. It is the best study by far

on the subject in our part of the world and United Nations has drawn about the knowledge of the subject. It truly adds a new dimension to the problem of Statelessness as if there were some dimensions of the problem of Statelessness already. Migration and its evil contents in trafficking has added a further rather dangerous and formidable violation.

Thank you very much for making out the subtle discrimination contained in the laws of nationality, the gender related discrimination and the discrimination sometimes based on race. We must be conscious of this thing when we look at this matter and thank you also for stressing the need for harmonious norms within States and within the region to deal with this question. I would now like to give the floor to Dr. Dubey of Jawaharlal Nehru University.

Dr. Ajay Dubey, Professor in African Studies, Jawaharlal Nehru University:

Thank you, Mr. Chairman, I want to thank the UNHCR and AALCO for giving me this opportunity and share my view on this topic. As has been highlighted by the previous panelists on the issue of Statelessness, there is no specific figures or data that is available. There are estimates based on some studies. There are around 11 million people who are stateless in the world. And a sizeable number of them are in Africa, some of the other indicators will help us to understand how big is this problem in Africa region and especially with the region with which I am familiar with a bit, the Eastern Africa and the horn of Africa. There are around 25 million people who are suffering from post displacement or internal displacement. Out of them, around 13 million of them are in Africa. Similarly, out of the 10 million population of the refugees a very large portion of them are in Africa and since we do not have a very accurate figure, I am sure out of these 11 million people who are categorized as stateless persons in the world, a very large portion of them are in Africa as well. African situation in terms of Statelessness is also significantly different from other regions and we need to understand the specificity of this region and to have strategies and recommendations for

that. As a group there are two kinds of people who are suffering from these Statelessness issues. One the historical groups, like you have Banyamulange in Democratic Republic of Congo who are staying there for a very long time even before colonial rule but as per Acts of Nationality and rules of those country, they are not citizens of that countries, and that entire group has been historically removed from that country of they are there for more than 300 years. Similarly the other historical groups like Batwa who are spread in different countries of these regions especially in Uganda and other areas have also not been able to get a nationality of different countries where they are located in large numbers.

We find in Kenya there are people from Southern Sudan, people who are in large number in hundred thousand and these are many ways by which they have not got the full citizenship of those countries through a few facilities have been extended to them. And there are similar other groups.

Succession or war or as you know, in Ethiopia and war had led to large number of people getting denationalized and moving from one region to another and these are protracted issues of Statelessness, in these regions, whether it is DRC or Zimbabwe or in Somalia and that issue is something that is not easily getting solved. So the second Portion I see is the outcome of the recent war between the State and the civil wars, all the migrations of the people because of the problems in the neighbouring country.

The third group of countries that was highlighted recently by the previous speaker and we don't have much data on that. Depending on the nationality law there are quite a number of individuals who do not qualify to be citizens, get nationality based on marriage, based on some other reasons and some of them are checked out and they are individual cases. But in my opinion the serious concern for the region and for that matter largely in Africa is that the de-nationalization of the ethnic or minority groups based on different criteria, based on different region and for that reasons we have to extend our definition of 'Statelessness', a bit more in my opinion from de jure stateless person to de facto stateless person. There are people who

might be theoretically citizens, nationals of a country but bulk of that group might be so marginalized, so much at the periphery not in the mainstream, not integrated that it really does not get any protection that comes with the nationality and citizenship, with several rights being extended to them and general facilities enjoyed by them. Therefore the de facto issues of statelessness are also very important that leads to various kinds of problems. As we know when you have several issues like this and this happens in the context of African States, which are by their very nature very heterogeneous kind of state in terms of their composition, in terms of their social base. I need not go detail in to the history, but the point remains that several communities who had lived for centuries together were partitioned into 3 or 4 countries several tribes and groups which were so hostile were part of the same State and are supposed to give loyalty to the State.

Now that had happened in many of the Countries, but the common denominator for such a process was that there were increasing integration of different population, different sections of the people, different ethnic groups, different marginalized groups into the State structures. In African countries and so much in East Africa we had seen that in few decades of independence that process had been a bit slow. And power had remained confined to few ethnic sections few elitist groups and in the democratic process. If we understand Africa not more than 30% participated largely in the democratic process and therefore a bulk of the people remain largely outside this political processes which articulates their demand which integrates them into the process and gets them all the benefits. And therefore as a result we find that in the Post Cold War phase when the democratization has started in Africa because of cold war, politics of cold war, involvement of the super powers and there is increasing involvement of the regional community, international community that Africa must be more democratized, and these internal demands for democratization have also thrown open many centrifugal forces and these centrifugal forces have also unleashed the

contest for power based on ethnicity, based on historical rights and different other reasons. And therefore one finds that there are large numbers of groups, community which are now contesting and facing resistance from established power are in trouble because of these unfolding process.

And therefore the issue of Statelessness in Africa is both historical and also based on the consolidation of nascent States where you see the civil war, where you see all these tribes, what you see the issue where the entire naxalite group though claimed by Sudanese Government to be part of its citizens do not feel integrated and feel outside the entire process. And more than 1.8 million people are displaced internally and a large number of them are outside and they are part of it. And therefore in African case where you have identifiable communities, you have identifiable de facto groups which somehow for some reason is not feeling integrated, is not part of de facto nationalized process and therefore we need to find out solution for Africa, Eastern Africa which is more regional and more internal from the State itself.

As was pointed out, it is the States, which have to implement all these things under the Conventions. But the kind of the state that we have, the stage of development of these States that we have witnessed in Africa are very nascent States which is not highly democratic, still not broad based, still in the process of evolution still evolving out of the colonial rule we find that the approach has to be regional and it is the Organization like IGAD that we need to resort to and on 24th February they had a major conference on this year and they came out with a Secretariat to identify forcibly displaced persons in the region and I think we need to do something like this for stateless people in this region as well as in Africa. I will come with solution in the next round what do I feel should be the solution for these regional issues. Thank you so much.

Mr. Chairman: Thank you Prof. Dubey. I think the presentation was an interesting one. It just really shows how sensitive and difficult is the problem of Statelessness and how closely is this related to the creation of our own States as a whole. Many of our societies whether in Africa or in Asia are pluralistic,

heterogeneous and many of us have in varying degrees similar problems in terms of how to deal with the multiplicity of ethnicities, linguistic groups, religious groups in our countries. The challenge for all of us therefore is similar how to bring into the mainstream of our countries the mainstreams of the resources of our governance the feeling of security that goes as part of the mainstream how to bring in varied mosaic, a wonderful mosaics of people into the commonality of national aspiration and I think that the other aspect therefore of the Statelessness question is, how does the governance of a State work properly to carry forward everybody to have all the boats rising on the same tide of expectation of hope that is another matter. But it is not singularly an African problem, it is a problem, which all of us face and we need to give thought to it. Now I give the floor to Dr. Batchelor and after that I will throw it open for a while. We are little running behind time. But Carol I know is an extremely astute speaker and she would say what she wants to with great precision.

Dr. Carol Batchelor: Thank you Mr. Chairman and so much has been covered by the previous speakers and that has largely made my job easy so I can be very brief. I just would like to mention that this really is a global problem. When UNHCR undertook the questionnaire globally with States to see the challenges that they might be facing the vast majority of States that responded indicated that they have faced the problem of Statelessness. Some 84% of the States indicated that they had adopted some solution or pre-emptive action typically through their nationality legislation and to deal with the problem of Statelessness. So this illustrates that there is a problem, it is a global problem but there are solutions to this problems. And the majority of States have found solutions so I think well we have raised the issue that of course under State sovereignty that each State determines who are its nationals this also illustrates that State are doing that they are taking positive and constructive steps to try and avoid problems of Statelessness while they deal with the question of their own identity as a State and members of that State.

I think this is such a serious problem, but I think that there are many solutions to this problem found first and foremost by States themselves. So it is incumbent upon us to learn what those solutions have been and try to share some ideals about best practices. I would note that in the Global Survey only 54% of States responded indicated that they had a mechanism to identify stateless persons. So this could be a real challenge for States. For example, with problems of migration you of course have different approaches to persons on your territory based on whether they are lawfully there and for persons who come to the territory through illegal mechanisms there is a different legal framework. Likewise how do you identify which persons are stateless it is very difficult to bring solutions to a problem. If you cannot identify precisely what the problem is what the magnitude of the problem is so I think this is an area where States would be facing many challenges.

By way of demonstrating the global nature of this problem I have worked on the issue of Statelessness for a number of years and very often you would hear people say, you know it should not be a problem in the Americas because the approach is taken that through *jus soli* everybody just gets a nationality where they are born. So there should not be a challenge that way. But perhaps I speak in relation to Canada that is the country where I am from, in Canada we too faced in the early days the types of problems that have been demonstrated today. For example, it was the immigrant population that received Canadian nationality. It was not the native local populations and many of these populations actually were thought to have a different nationality and Canada over the years has tried to find ways to address that. Not all persons who are called Native Americans Indians or Eskimos, all of them necessarily wanted to have Canadian nationality. Some were unable to acquire Canadian nationality and so you actually had Countries within a Country and this is again a very strong legal concept when we think that under international law we take a broader view of things and we look at that country as a single legal entity. But for practical purposes that was not necessarily the case.

Similarly, as Justice Manohar pointed out, with regard to the Unity Dow case there was a case in Canada dealing precisely with this issue that a Native American woman was stripped of her native American nationality by virtue of marrying someone who did not have that nationality. So this has been a struggle over the years for States. Very recently many problems have emerged in the Americas even with regard to *jus Soli*. In order to acquire nationality where you are born you have to have some evidence of where you are born. This is a very serious problem with both registration and practises in the Americas and some of you may have seen for example, the recent case in the Inter-American Court on Human Rights dealing with the situation between the Dominican Republic and Haiti where persons over from Haiti they were migrants to begin with but after 3,4 generations inter-marriage, birth in the Dominican Republic what should their legal identity be. So there are not simple questions and there are no simple answers to it but UNHCR has been very much encouraged that leading in finding the solutions and identifying the answers have actually been States taking the lead to find the solutions.

So this is where I think we can learn a great deal from the practice of States and one of our challenges then would be to share that information between States so that others can benefit from the experience and practice. I just close with one observation just 3-4 years ago Canada was looking to a change in nationality legislation and to the effect that after the second generation born abroad the persons would no longer automatically acquire Canadian nationality and we give nationality to everyone who is born on our soil so other States must be doing the same thing. So if there is 2nd generation Canadian born in Switzerland or South Africa or Japan or wherever it is, they must have that nationality. So rather than keeping extending year after year generation after generation we were just not extended any longer after the second generation. But of course that is not necessarily the case other States don't use that approach they use a different approach to the grant of nationality. So the result of that provision would have been Statelessness and UNHCR

approached the Canadian Govt. and said, that this would be the practical result of a provision of this kind. We had a completely different intention. So it is very simple to solve, to write into Article that the second generation from abroad would not be Canadian unless they were otherwise be stateless. And then they are. So is this very very simple little mechanisms but States can't use them unless they are aware of the practice of other States and so I think it is a key area to look at where these types of gaps are and the support that can be given to States who are leading the way in finding solutions. Thank you.

Mr. Chairman: Thank you Carol for your very very forceful comments. It just shows that even the most sophisticated operators can make the States the law of unintended consequences works unfortunately too well in the case of stateless people. That being said what we also derive from these talks is that there is great need for cooperation at the international level on matter of statelessness and nationality within the regional context something which Prof. Dubey emphasized, on the global context something which has come up in Dr. Batchelor's comment, of Justice Sujata Manohar's comments whether we can keep all the instruments together to the extent we can learn from each other surely we will find solution that will help us carry everyone with us. Thank you, now let us proceed as follows. We are running a little behind our time, shall we take 5 minutes question. Let us have question from the floor if you wish addressed to the panelists and we will see who is in the best position to answer that. Please be brief. It seems to me as was said earlier by Dr. Batchelor we all have a need to belong, the circumstances of the stateless persons as Dr. Paul Weiss who really was the author of the Convention on the Status of Refugees and the leading thinker on the Convention on the Status of Stateless Persons 1954. Paul rightly said that the situation is anomalous, it is totally anomalous and in the excellent track which we read before coming to the Seminar Dr. Weiss mentions that the Status of Stateless is the anti-thesis of everything which we assume in a world governed by constructive States. So we really are up against a problem which is not insolvable, but does require us to be meticulous in taking care that we do not hurt people inadvertently or advertantly or people

do not fall between the traps of our legislation. So let's start the questions. Would you like to ask anyone Please feel, kindly identify yourself.

The Delegate of Pakistan: Thank you Mr. Chairman. I am grateful to all the panelists for giving a lucid deliberation and particularly one of the important point Dr. Carol Batchelor made was the need for practical solution and we should not only confine to legal approaches and the proposal with regard to UNHCR we are receiving with regard to the local integration of refugees in host countries. Now this does not seem to be a practical approach in case of a country in Pakistan because as you understand Pakistan not being a party to both 1951 Refugee Convention and 1967 Protocol was not under any obligation to extend the level of assistance but it continued to extent as the refugees in hosting the world's largest case loads for over 24 years despite enormous social, economic and ecological costs. Now the question is to Dr. Batchelor that how would we address this issue of such a big or largest population of refugees to be integrated in the host country which I think is not a very practical approach and which cannot be accepted by countries which are over populated themselves. Thank you.

Mr. Chairman: Mrs. Carol, would you like to answer that question.

Dr. Carol Batchelor: I thank you very much for that observation and I think this is a particularly pertinent comment that has been made and illustrates as I mentioned earlier the need to have a separate legal frameworks because indeed the world has been very grateful to Pakistan for hosting the Afghan Refugees for so many years and for assisting them over those years and working closely with UNHCR and other concerned agencies in the process. However in this particular case, in most of the cases of refugees in Pakistan they are not actually stateless. So I think our approaches have to be guided by refugee legal framework rather than the Statelessness legal framework. So for example, refugees in exile, if you have refugees fleeing and they give birth in the host country when they are in exile, we

under the principle of family unity of course with some discussion with refugees as needed with reference to the legal framework of the host country if the host country wishes to extent to them nationality, that is fine, if they do not wish to extent to them nationality, as you have rightly said there is no international obligation to do that, because they are refugees and it is hoped that in the long run they would be able to find a durable solution and they would find it as a family unit. So we would not in those instances be wanting to have the parents with one nationality the children with another nationality, and perhaps the family members dispersed over the world with other nationality and so on.

That particular case is not so much a problem of Statelessness and its roots. They fled for different reasons. They are refugees for so many years for different reasons and the solution have to be based on their need for international protection as refugees, rather than any need for nationality we presume that the majority of them have a nationality basically their problem has not been able to voluntarily repatriate, have such a problem for over those many years. So these are slightly different issues. However it is absolutely the case that during exile these problems will come up of legal identity. The child is born in another country what is the legal identity perhaps the refugee marry someone on host country then what happens, what is the legal identity of the family should that family unity repatriate if that becomes possible. Should we be able to locally integrate perhaps even have access to the settlement, it is a different kind of solution. So in that case I think there has to be a very close dialogue with the host country to look at the best interest not only of the refugee but also the situation of the host country.

Mr. Chairman: Let's take your question and have coffee break, we can resume after coffee when we take up would you like to ask your question now.

The Delegate of Sultanate of Oman:¹⁴ We in Oman, do not have a general problem related to statelessness because the Omani law deals with most of the problems which are there in

¹⁴ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

this Convention. But I ask the question. How are international efforts being exerted by the United Nations and its different bodies which deal with this matter to map out an international agreement which deals with most of the real problems which are being monitored an agreement which can limit and confine this matter of Statelessness and at the same time does not give away for a duplicity of dual nationality. Thank you.

Dr. Carol Batchelor: Thank you representative from Oman for that observation and indeed we are pleased to hear that there is no practical problem in Oman. At the international level as Ambassador Dayal mentioned, there have been a number of instances in which the nationality issue has been raised although part of the broader discussion on human rights for example, the Covenant on Civil and Political Rights, rights of women, the rights of children and so on. At the international level there of course was the 1954 Convention, 1961 Convention. The 1954 Convention identifies stateless persons and gives States some suggestion on to how to bring them into legal identity although not necessarily as a national just to provide them with documentation as stateless person the 1961 Convention on the other hand provides States with some suggestions on how to prevent Statelessness to begin with. But as has been mentioned the ratification of these instruments have been relatively low. In recent years following the massive dissolution of the Soviet Union, in the Balkans, Czechoslovakia, Eastern European States there was a real effort to revisit this issue. So within the United Nations system the international Law Commission took up the issue of nationality in the context of the State Succession and they adopted a series of recommendations which were then endorsed by the General Assembly of the United Nations giving States suggestion on how to deal with this very complex issue, what do you do when it is actually the individual who has changed or moved or married and so on, it is the State that has changed. You had one State, now you have 15 States. So what will be the legal identity of people affiliated with that those various territories that emerged. So this effort has unfolded within the United Nations system.

At the regional level there are a number of issues for example, under the auspices of the Council of Europe, the 40 plus members States adopted in 1977 the European Convention on Nationality likewise within the America the Convention on Nationality there has been number of initiatives. Article 20 of the American Convention on Human Rights has particular provisions and has quite a bit of jurisprudence from the Inter-American Court. In the African context, the African Charter on the Rights and well being of Child, Article 6 provides that if a child is born in a State and would otherwise be stateless, they don't require any other nationality, that State will look at giving that child nationality in its State. So there have been various initiatives at the international level very important initiatives at the regional level which can be perhaps better tailored than as international instrument to the specific concerns of the regional level. Having said all of that, of course having an international contemporary Convention that is from 1954 of 1961 having an updated international instrument addressing problems of nationality could be very useful for States and I think further to our deliberations here, and to deliberations in other settings globally, this could be a proposal that is made and taken back to the United Nations as a kind of challenge that States have taken note that there is a problem, they are concerned about this and they would like to have additional support mechanisms in order to address it. Thank you.

Mr. Chairman: Thank you very much for that very comprehensive answer. I think that the work of the International Law Commission, I think it is very important that piece of work, it is interesting that of all the regional work the one which is the weakest is the Asian region, the African region, since the days of OAU have been very well developing in the African Convention on the Status of Refugees, and subsequently in the context of women and children and the African Charter itself, so is the case with Latin America. Asia is where the lacunae is. Now it is time for Coffee break we meet in 10-15 minutes maximum. I hope we will have a nice and enthusiastic conversation after that. Thank you.

Round Table Discussion: “Best Practices and Identification of Mechanisms for Reducing Statelessness”

Mr. Chairman: We have about 45 minutes in which we can discuss, it is all a round table, except that we are not sitting around a table we should have a free discussion on this part of the programme which is Best Practices and Identification of Mechanisms for reducing and preventing Statelessness. Because we have to both prevent and reduce Statelessness. Now we were entering into a very good discussion this morning when we adjourned for Coffee and I think what we should do now is I will encourage comments from the floor. Kindly identify yourself and questions from the floor. If you are making a comment try and keep it brief by a couple of minutes or 3 minutes of too long so that as many people as possible can speak and express their views. The comment you will make will all help Dr. Batchelor in creating the summary of the discussion and having ideas in her mind as to future course of action that is both to prevent and reduce Statelessness. When I was thinking about this Session some questions came to my mind. Let me try and just list them out. Are we doing enough to encourage States to review their nationality legislation in ways that are consistent with fundamental principles of international law?

Are our nationality laws consistent with our own treaty obligation even if we are the States Parties to the two Conventions. But are we consistent with our obligation under the International Covenant on civil and political rights, CEDAW, CERD, CRC. Do we have special safeguard in place to protect against Statelessness being added to that list of persons who are subject to Arbitration declaration, by the laws of nationality, through unexpected ways. Are our nationality laws sufficiently sensitive to discrimination based on gender, ethnicity and race? There are subtle points of discrimination. Are we clear in our own minds that we are doing as well as we should in respect of these issues? Is our system of documentation adequate? From this of our children through the various stages of their lives, matrimony and even death? Are we caring enough in terms of

documentation of everybody living in our territory regardless of whether they are nationals or otherwise, refugees migrants, stateless? Do we have a proper system of registration? you see this is required of us not least under the rights of the child Convention, CEDAW, and the ICCPR, quite of the requirements of our own Constitutional provisions.

Are we looking after those who have been abandoned adequately those who are displaced persons? Are we looking after those who have been trafficked. Do we even know what they are up against? Are we doing enough to encourage regional and global cooperation, as was mentioned this morning, the harmonization of laws, particularly between neighbours from where those people are likely to arrive, do we have harmony in our region and in the wider circle of the globe certainly efforts have been made at the regional level in various continents? Are they enough and have you taken the problems of Statelessness sufficiently into cognizance?

Can AALCO itself do more and work continuously on the subject perhaps with the encouragement from UNHCR and perhaps the Office of the High Commissioner for Human Rights? Are we building right linkages between civil society, NGO's and the apparatus of State in working on the issue? After all various elements in civil society from Academic to human rights activists would surely want to be help in preventing and reducing Statelessness. At times of conflict are we sufficiently vigilant that the arrangements that are made to bring the conflict to a close that we are working sufficiently into our thinking issues of nationality and issues of statelessness in many parts of the world situation of conflict of States? When borders change as human being are where they are, sufficiently conscious of what they are up to? And finally can we not use most of our treaty bodies, because we already have an apparatus as speaking under a number of our international instruments certainly ICCPR, CRC, CEDAW and CERD, 4 treaty bodies already exists. Are we making sufficient use of them in terms of their own provisions? When we write our country reports to them, on the questions put to

country representative adequate to deal with issues of Statelessness?

These are just the few questions that came to my mind when I was reflecting on how to channelise this discussion. Let it be solution oriented and best practices oriented. With that you have the floor. Kindly identify yourself and keep in mind if it is a comment keep it within 2-3 minutes, if a question give a brief and with that way we will be able to make use of our time that between now and lunch and now we have about 40 minutes. Thank you. Please kindly identify yourself and take the floor.

The Delegate of Bangladesh: Mr. Dayal, you have talked about the regional cooperation in regard to the the question of reduction of Statelessness. Dr. Dubey has said that there are some people who have remained stateless for 300 years in Africa. The nationality and Statelessness, these two things are inter-related. National laws are differing from one country to another. If they are different then it is really difficult to make any approach for regional cooperation. So I think a comprehensive international instrument or Convention harmonizing the national legislation and nationality and its ratification by most of the countries, domestic legislation may help a great extent to solve this problem.

Mr. Chairman: Your suggestion is somewhat similar to what was made by the Honorable Minister from Oman shortly before we went for coffee. Please any other questions. Mrs. Carol would you like to make a more specific comment on the question of the obligation of States?

Dr. Carol Batchelor: I think this is a very welcome and particularly pertinent observation that by definition when we are dealing with the challenging the problem of Statelessness in almost any type of circumstances whether it is a change in status because of marriage or whether it is a question of having parents with different nationalities, whether it is succession of states, conflict, migration, legal, illegal, migration all of these aspects involve more than one State. So to hit the nail on the head as it were in identifying that the solution will

have to involve more than one State and towards that end these needs to be the opportunity for States to communicate effectively with one another to know what the different approaches are. As I said I have worked many years in the field of nationality and Statelessness there really is not so much right or wrong. If there is a gap difference that is acceptable. It makes no sense for countries that are having massive, massive migration in the tens of million to necessarily adopt the approach of *jus soli*. Every single person born on my territory will be my national. Whereas other countries, the population of a size may be very very different so they will be looking at the things from a different angle. All of that makes sense. So it is not that everyone should be doing the same thing or having a same approach. But people need to be aware of what the others are doing and it is through that awareness and through that discussion and cooperation that the problem can be identified and solution can be found.

So I think it is very much appreciated both from Bangladesh and from Oman that this is a concrete proposal that could be made from this meeting, there are further steps that could be taken and the extent to which international agencies concerned with this problem can raise this issue and try to more constructively advice and suggest, this should be further explored within the United Nations and within AALCO as well.

Mrs. Sujata Manohar: I would just like to know do we have any international Organization or international agency which can act as a facilitator in this dialogue between two States which have a problem would UNHCR act in this matter?

Dr. Carol Batchelor: Under the terms of the 1961 Convention and as has been pointed out there are many States that are not Parties to that instrument, although that does not prevent States from making use of the principles that it contains, but under the 1961 Convention, Article 11 provides for an agency which can facilitate solutions with regard to Statelessness and the agency that has been designated is UNHCR. So when the Convention came into force in 1973, UNHCR was tasked by the General Assembly of United Nations to take on that responsibility directly under the terms

of the 1961 Convention on the Reduction of Statelessness, then as some years passed and there was this massive dissolution of States taking place in the East European Context, again the General Assembly of the UN requested the UNHCR to provide technical expertise and support to States in whatever way would be useful to them to help resolve problems of Statelessness, both problems that have arisen and problems that could arise and in that resolution UNHCR is requested to give technical advice on the draft implementation of nationality laws so that the law can anticipate and avoid problems of statelessness and that can be implemented in a practical way. So UNHCR has been doing this since 1955 and at least we have cooperated with over 150 States precisely to that end, providing technical advice on how the nationality law could be amended or drafted we cooperated with each of the State that emerged with the succession of States in the context of the Soviet Union, former Yugoslavia and so on to draft new nationality legislation. So UNHCR has been mandated shall we say, to play a particular role in relation to Statelessness.

Now I would note that there can be nationality problems, that don't necessarily relate to statelessness and forward that end of course the office of High Commissioner for Human Rights, the International Law Commission, those are various agencies and bodies both of the statelessness conventions provide that if States want to, there is certainly no obligation on States, but if State would like to, they can bring a case to International Court of Justice to arbitrate the issue, to get some advice on, as to how to resolve the problems. So there is extensive legal expertise both within UNHCR and within other legal institutions. AALCO has been doing a fair bit of research on the question of nationality and so on, it could be that a Member State here today would like to suggest that AALCO does more in this area and develop a kind of practical reference that States can use when they are looking at these types of problems to try and avoid the problem of Statelessness.

Mr. Chairman: Thank you so much, Mrs. Carol, I think I get the sense actually from

the discussions this morning and the brief discussion. So that it was difficult for the Organization to take more than it could carry. But I think the issue of statelessness is one which will fall if it is not lifted by UNHCR and therefore I think there is a need for greater salience in this and certainly to the extent that AALCO can keep it on its agenda. I have a feeling that it would be of great help to the countries of Asia and Africa. With that I would like to give the floor to the delegate of Kuwait.

The Delegate of Kuwait:¹⁵ Thank you Mr. Chairman, I thank the distinguished speakers who have taken the floor and dealt with this topic from all its aspects and dimensions. In fact I have noticed that there is an expansion in dealing towards this matter, which is multifaceted. And I think we should always discriminate between what we call refugee and stateless person. Refugee Status is known that he belongs to a certain nationality but due to security reasons perhaps he has sought refuge in another country. But he still keeps his nationality. I think he needs just human assistance from the UNHCR and other different international Organizations to help him find a place to which he can seek refuge. The matter has been raised with statelessness that is one who comes to another country carrying certain nationality or pretend or claims to be stateless may be he would not be honest in saying that he has no nationality because he simply needs to obtain another nationality and these are matters which could crop up in a rich country which for example, the United States of America, they have problems for those who come from South to the North and try to shake off their nationality and seeking job opportunities. I hope there would be discrimination between this matter of refugee and Statelessness brings about a lot of problems. Thank you Sir.

Mr. Chairman: Very pertinent comments. I think those who have to work in this field have always felt there is a great need for clarity. When it comes to the refugees the essential quality is a well-founded fear of being persecuted for which person leaves home and flees to the territory of another State, that

¹⁵ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

means the crossing of an international frontier, in search of asylum. In the case of economic migrants, it is another set of issues the compulsions of the dire economic situation that leads you to seek migration for economic purposes. That is another category. And the third is Statelessness, which is indeed distinct, it can be related to refugee status but is also distinct, and there the criteria and the considerations are yet different. Many of us have laws of nationality which are extremely blunt instruments they try and deal with everything under one chapeau, it does not work because there is a costness to that kind of national legislation which does not permit of the sensible distinction that should be made in the circumstances of people within a territory. This is why I think we do need to look into our national legislation in relation to nationality, in terms of foreigners, in terms of refugees, in terms of migrants of so on and sort them out to which category a person belongs. Otherwise you have a state of great confusion and everybody tries to do the same thing to every body that does not work. Thank you for your observation. You are absolutely right that there is a need for distinction.

The Delegate of India: Statelessness essentially relates to rights of non-citizens. The issue we are taking here is either the reduction of rights of a group of population or the non-existence of rights of that group of population. If this is the way we look at it, Statelessness is going to be a political problem and the question of sovereignty is involved in that. However it can easily be addressed not directly referring to a piece of legislation dealing with Statelessness or organize the provision under a Convention or an international instrument. The other possible way is that we can always tune the protection given by States on non-citizens. If that is the case what are all the areas where a State can concentrate even just getting it organized under a single legislation. The first thing is the rationalization of the laws of state succession and the second is bringing necessary changes in private international law, it deals with domicile, nationality all kinds of things and third which is most important, ensuring democratic governance

where you can find that it is the majority rule and minority protection so automatically under the protective umbrella all the rights otherwise the stateless person would really line to have those things would be addressed. And fourthly, protection of rights of aliens We have to enhance that protection of the rights of aliens and it can be addressed easily by bettering the human rights standards to all persons especially through the provisions of the equality and non-discrimination. Thank you.

Mrs. Sujata Manohar: I was just thinking and listening to the comment that there are some things that can be prevented through some kind of an international legal norm and some things which cannot be prevented. Where statelessness is the result of political upheavals, or one country for political reasons denying a group the right to nationality or citizenship is slightly different. Perhaps there is no international law solution, the solution could be political or it could make use of international law to bring about a solution. But where we have cases of unwitting or unintended Statelessness where a person sort of falls between cracks in legislations of two countries or where it concerns the second generation Statelessness where the children of stateless persons are denied benefits or where socio-economic opportunities are denied. International law can bring about a more equitable solution. So we were distinguishing between different factors, which lead to Statelessness. Some factors can be addressed straightaway through international law; some factors may require both political and legal approach.

The Delegate of Qatar:¹⁶ At the outset, I would like to thank those who have taken the floor Dr. Dayal and Dr. Dubey for the excellent statements they have made. As for my comment I would just like to know you have referred to two Conventions, of 1954 and 1961 that pertain to the provisions related to statelessness. I would like to know to what extent they are committed to the members who have acceded to it or if it is open-ended to all countries to accede to it and I thank you.

¹⁶ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

Dr. Carol Batchelor: Thank you very much. That is a very relevant question and these are instruments that were adopted under the overall guidance of the United Nations General Assembly so indeed there are open to all States. Without any indication there is no regional reference, any State that would like to ratify one of these or both of these instruments is quite welcome to do that.

2nd question From the Delegate of Qatar: How bindings are these Conventions? Thank you Mrs. Carol Batchelor.

Dr. Carol Batchelor: Well, like all international treaties, these are treaties or Conventions so when a country ratifies them they are binding on them. It is not a kind of soft law resolution, it is international treaty and States that have ratified them would be then subject to under the Vienna Convention on Law of Treaties would follow the same principle. Of course there is a possibility to make reservation to certain Articles, so a State may be bound by certain parts of the Convention and not other parts of the Convention and having said that I would take note that these particular instruments were drafted and came into existence at a time when it was less known about the problem of Statelessness. So they do not necessarily go into an enormous amount of details. They are very broad, general principles and to some extent articulate these principles as guidance rather than absolute criteria for States. So for example, under the 1954 Convention Relating to the Status of Stateless Persons, it defines what a Stateless person is, it says in which cases a person would be exempted or should be excluded from coverage under that Convention even if they are stateless and it goes on to say that a State can give this kind of treatment, a State could do this kind of thing to facilitate a legal identity for a stateless person and encourage the States to cooperate on this issue and so on. So there is a quite wide degree of latitude in these instruments which is useful because it makes them very flexible that it could also be a bit confusing. So what precisely should I be doing if I ratify this instrument and it also raises the question while if State A has ratified, and State B has ratified and there

are different interpretations what do you do when you are applying it. So it is here that UNHCR has been asked to provide some suggestions and proposals it was felt at the time, that it was important to have a degree of flexibility so that practical solutions could be found and I find very interesting today that several States have commented on the need to go to the next step now and look at something more concrete more contemporary and something based on the current challenges we are facing in our world today.

Mr. Chairman: Thank you very much Mrs. Carol. I hope she has answered your question. I found in my work with the UN that in many of these matters, the thinking of the international community evolves, it evolves in the light of experiences, in the light of what occurs some times happy often tragic. Now when the Convention on the Status of Stateless Persons was first adopted it was 1954, it was early years, it was the first decade of the UN's life and UN was at that time largely concerned with the residual problems of the 2nd world war when it first dealt with the question of Statelessness. Therefore there were sort of limitations in the concepts of the Convention in 1954. Well the world changed, the UN saw there was need for more so by 1961, came the Convention on the Reduction of Statelessness, because there was a great understanding of the facts. In the meantime people began to feel more specifically about certain categories of human rights issues. The question of status of women came up in CEDAW, so there is a reference in CEDAW to deal with problems especially relating to women and the question of nationality and equality under the law. Then the world evolved more, right of the child became an issue. So there it a reference in the Convention relating to children, rights of the child a specific mention. So the world was getting tired of racial discrimination in all of its multitudes in this world. So then it was worked into the concept of the Convention against all forms of Racial Discrimination. Now you have the International Law Commission dealing with the question of succession of States because of what has been happening recently in Europe and other parts of the world including Central Asia.

In other words you see, we are the makers of our own future and it depends on our vigilance

the direction that international law will take and should take. This is a value of a meeting such as this. Because we have a group of Asian African countries in large number thinking about a subject wondering whether the present dispensation fits the needs of the situation, worrying about how to deal with this situation, seeking to prevent and reduce Statelessness and I hope that this meeting will contribute to do that for this reason that international law is not a static thing, it grows through our experience and knowledge and desire to improve the state of the world.

The Delegate of the People's Republic of China: Thank you Mr. Chairman. It is nice to see you here in New Delhi, while acting in the international arena. I am grateful to the three panelists for their very lucid and comprehensive introduction of the issue we are taking about. I have a very simple question, which relates to the international rules and national institutions concerning the issue. We feel that the issue of Statelessness cannot be settled or resolved by individual countries. That requires the cooperation of all countries and the efforts of the international community. Traditionally the issue of Statelessness has been closely associated with the issue of refugees. That is why UNHCR has taken an active part in looking after the matter. But when we look back at the history that over the past 20 or 30 years in view of the economic globalization, migration has become an issue. In migration both legal migrants and illegal migrants pose a number of issues of Statelessness. For legal migrants I think starting from a second generation they were facing this issue of Statelessness. For illegal migrants they face the issue of Statelessness from themselves.

So I think my question is to the three panelist especially to Dr. Batchelor, since she is from UNHCR and has been dealing with this issue, whether the current international rules are adequate in addressing this issue? Whether the current international institutions are adequate to address the issue, and UNHCR is going to cooperate with International Organization for Migration (IOM) I think we agree that we need to extend and strengthen the

international mechanism, how are we going to do that? Thank you Mr. Chairman.

Dr. Carol Batchelor: well, Thank you very much this actually goes further to one of the earlier comments that we are the makers of our own future and the developments that take place. I think that it is a very important observation, that a challenge of our day, there are several challenges of our day States are looking at the issues of migration which is increasingly demanding large-scale and easy for some to do, others are caught in smuggling and trafficking because legal migration possibly resort to other kinds of migration routes. That is a major challenge for States. National security issues are indeed a major challenge for States. So it is not a simple question of Statelessness as linked to refugee issues.

Well the United Nations early on had the foresight to know that there should be a separate legal framework for Statelessness issues the extent to which Statelessness and legal identity would emerge as a challenge in the migration context, of course could not be foreseen in 1950 and earlier years. So I think it is a very very important observation and with regard to current institutions whether they are adequate and UNHCR has been tasked with a particular mandate in relation to statelessness. So if for example, we were lucky enough to live in a world where there are no refugees issues, we would not need the refugee Convention any more. The Office would still have an obligation to deal with problems of Statelessness under the terms of the Statelessness Conventions and other General Assembly resolutions. However the Office certainly cannot do that and does not want to do that in isolation. I think just as States need to cooperate international agencies have to cooperate in order to find a solution. Early on we mentioned that Article 15 of the Universal Declaration stipulates that every one has a right to a nationality and this is a human right so by definition the Office of the High Commissioner for Human Rights has to be engaged on this issue. The number of legal instruments that have been mentioned in legal treaty bodies that are dealing with this issue looking at the implementation of Article 9 of CEDAW, or Article 24 of ICCPR, or Article 7 of CRC. It is other institutions that do that.

So UNHCR must very closely cooperate with them, but they have their own expertise, role and responsibilities on this issue. I think that is a very important observation and it might be very interesting to see how we could articulate a proposal that partnerships and international cooperation not to be furthered only among States but also among concerned agencies and institutions, the International Organization for Migration essentially needs to cooperate on this issue how to bolster and strengthen this so that there is a support mechanism necessary in place to respond. I would also say that in several instances States have found that they need a regional approach. In the European context, they adopted a European Convention on Nationality, they felt that they had a common set of reference points, so they simply made their own Convention on the issue and the sort of legal expertise and support mechanisms are under the auspices of the Council of Europe. UNHCR gives support and advice and cooperates with them but it is the Council of Europe set up principles and guidelines. Likewise in the African context the Charter itself, and then the Charter on the Rights and well being of the child, so not only at the international level but States might like to consider further what are the nuances and particularities that they face certainly migration tends to be larger within the neighborhood. It is an international challenge, but it is easier to cross the border if you live next to the country. Just get on to the flight and go around to the other side of the world. So by definition there may be some components of this issue that States would like to look after from a regional perspective as well and UNHCR will very much support that.

Mr. Chairman: Thank you. I think that is a very sound answer. My feeling is that with UNHCR already having a mandate to deal with the issues of Statelessness UNHCR should as we have rightly seen be the focal point among the international institutions dealing with this issue. But equally so, it is important for UNHCR as Carol has mentioned to work as the leader of the team, we should involve in this vast migration, IMO in the stay of the consciousness of the

rights of the women and people dealing with women's issues, children's issues and so on and so forth. Now that is entirely possible to do if we would only do it with a little bit of thought and a little bit of care. So I think the institutions exist but they do need to pull their strengths together whether it be at the global level or at the regional level. It surprises me really that Asia is comparatively less organized of all the Continents in terms of rights issues. It's our history that has divided our experiences in this strange manner, but of course some of the groupings half a dozen grouping but we do not really have an umbrella institution for Asia, on any issue while every other Continent has it. We should work towards the concept of Asia and the commonality of the future even though our past has been one of great variation and variance. Thank you.

The Delegate of Islamic Republic of Iran:

Thank you Mr. Chairman, I would be failing in my duty if I don't extent my expression of how pleased I am to see once again among us as the Chairman Mr. Dayal said how appreciative we are and we are receiving such information and informative gathering today. I would like to make a very short comment on one of the paradoxes concerning the questionnaire which has been distributed, namely one of the main purposes of identification is the provision of assistance of granting assistance to the stateless people. But on the other hand there is no doubt that the reasons behind such identification process is offering help in reducing the problems of the stateless people. But one of the challenges which most of the stateless people are meeting is the reluctance of many of the stateless people to be identified as stateless. Why in some areas especially in Asian and African countries, people commit wrong. Due to some political discrepancies between the people, due to some tribal fractions , and many other reasons, there is a lack of desire and wish by the stateless people to identity themselves or to be identified as stateless. We know for example even here due to the lack of job in their own country there are many people who illegally immigrate to India and they live on streets in Delhi or others but the government is getting access to them to identify them and give them legal assistance, they do not want to identity because they fear that they may be

forced to return therefore one of the paradox is that identification of stateless is a means for protection but sometimes identification is anti-thesis, that is a reason not to be supported correctly or not correctly substantially or not substantially that is what is not my proposal. My proposal Mr. Chairman is that we should sensitize the population we should give them more and disseminate more information to show our sympathy about the real problem, the real challenges which there group of people are facing. Thank you.

Mr. Chairman: Thank you dear friend for your kind words. I could not remorse you for a stateless person, it is the fear of the State which is most pervasive and there is a hesitance in coming forward because the consequences can be so grim so often. We not only have to sensitize people the populations of our countries, we have to sensitize our Governments too because it is they who sometimes in the name of protecting the State do the most terrible things to people who are truly harmless and need their help, encouragement and support. So you made a very valid point. I wonder whether Mrs. Justice Sujatha Manohar would like to comment on it.

Mrs. Sujata Manohar: I also entirely agree with what you said. Perhaps the answer lies partly in providing for proper protection for these people and publicizing the fact that the States should support them rather than to oust them. So if you have a proper programme and policy at the level of the State which is then disseminated and people are asked to volunteer and told these are the specific benefits you will get if you access yourself and perhaps more people will be forthcoming otherwise you are entirely right.

Mr. Chairman: we take this as the last question or comment then we will give time to Dr. Batchelor to summarize the discussion and to help us wind up the Session. Please feel free.

The Delegate of Kuwait:¹⁷ Thank you Mr. Chairman. I believe that my previous

intervention needs some clarification. I have forgotten to add something. My intervention is meant to facilitate the understanding of this matter and to come out with specified recommendations. The more we link the matter of Statelessness with refugees the matter becomes more intricate. This refugee matter is a limited one and everyone knows about it and so because it is a human element which is being governed by regional matters and that is why I said that from the legal point of view the refugee and his nationality is known he comes and migrates or seeks asylum in another country and so we should enhance and better his life. That is why within this framework of AALCO we have the 'Bangkok project' to deal with the Status of Refugees but when we try to mix matters of Statelessness, this is another matter and it is being governed by other international Conventions. Refugees have a certain Convention or an agreement and Statelessness have a different one and the first one is to carry out certain action vis-à-vis this problems but as far the second Convention is not carrying out any action that is for example not to take away or deny nationality to this matter, the more we link the two matters of refugees and Statelessness the matter becomes more intricate. But if we talk of refugees we have to be very much specified about our proposals which we would set forth. But when we talk or try to make when we talk about women who loses her nationality this is a different matter and will make things more intricate. I just want to clarify this matter. When we link these two matters together we find more intricacy and more problems to be faced. Thank you Sir.

Mr. Chairman: Thank you very much. I would now call upon Dr. Carol Batchelor to respond to the discussion and to summarize it and to draw the conclusions. Thank you.

Dr. Carol Batchelor: Thank you Chairman Dayal and I would like to be very brief because we have already encroached on your lunch time and I know that you have another Session in the not too distant future. So I would just try to summarize very quickly and again thank you for your active participation this is extremely useful and you know it helps

¹⁷ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

us avoid discussion in the abstract that are not going to have a practical application. So I very much appreciate your active of discussion and participation today.

In this event today we opened with some comments from Ambassador Kamil who outlined some of the approaches and attempts that have been made by AALCO over the years to look at the issue of Statelessness and what has been done very recently and the collaboration between AALCO and UNHCR towards this end and I have mentioned why UNHCR is involved in this issue, that it is linked in some parts to displacement to refugee flows but not in every case and I think that it is important that this observation has been reinforced. Statelessness is a different problem, this was understood early on by the United Nations and it needs its own legal framework it needs a particular response and if it is successfully done hopefully that can also have an impact on other substantial question such as displacement.

Then we had some discussion Chairman Dayal took the lead of the debate this morning and we heard some perspectives from him on Statelessness issues on the legal framework as it exists, some of the practical problems that have arisen some of the challenges that we face even in discussing this was and identifying instances of statelessness. We heard from Justice Manohar about some of the particular problems in South Asia as well as some of the general and aid related components to this issue how these can be an additional impact particularly for women and children those who may find themselves in circumstances of being trafficked and certainly in the context of migration.

We heard from Dr. Dubey some of the challenges that have arisen over the years in the African context, some of the approaches adopted both by States and by African institutions and this is an important observation that he closed with that where further developments could be made, from a regional perspectives by African institutions and we had a chance in our deliberations to look at a number of issues.

I just would highlight what some of you have said that there needs to be a clear distinction between problems of refugee situation and a stateless situation this has been said by a number of delegations and that has been taken note of.

There need for practical emphasis on solutions that it will not be enough to adopt Conventions to change nationality laws to have legal approaches without a practical understanding of the problems and practical approaches to the solutions. Some proposals have been made on what could be done in the contemporary setting. There is clearly a lacuna when it comes to international legal framework. That is no international Convention dealing with the problems of nationality and all of its components. Statelessness is just one problem that is related to nationality but of course many States have faced over the years under the title of conflicts of laws.

The different approaches that may be taken by States so how can these be assessed, analyzed and approached from on international perspective. And some of you have challenged the United Nations to go further and take that next step and not only deal with the problem of statelessness in one packet and right to a nationality and another and the approach is taken by States with another with various human rights institutions and bodies the challenge has been put forward to put all of these elements together and give the States one reference point that would be constructive and practical for us in approaching this problem.

Some of you have raised the challenge of burden sharing and I think it is particularly active and important to take notice of the fact that again we can advocate the principle that everyone has a right to nationality but not every one is necessarily crossing the same territorial boundaries migrations not on the same scale every where in the world. So there needs to be not only international dialogue but international commitments to address the problems of Statelessness. Chairman Dayal outlined a number of questions that we are challenged to follow upon, how we encourage States to review their nationality legislation, are there sufficient safeguards in place, what are the mechanisms to prevent, avoid and

reduce Statelessness, Are there gender related components found in nationality legislation, Is the documentation that any one of us might have sufficient, some people are completely undocumented, so they may be born in a State national of the State have lived all of their life in that state, they have absolutely no way to demonstrate whether they should be a national of that state. Do we have proper systems of registration, what about abandoned or trafficked persons, how do we harmonize laws and what more could the institutions do for example, the challenge that was put to AALCO to explore a little bit further what some of these approaches might be.

Then additional comments made for example what about individuals who do not want to be identified as Statelessness what about those who intentionally try to make themselves stateless and I mentioned that the UNHCR has dealt with this problem as well. There were couple of instances in which States had legislation which allowed individuals to renounce their nationality without acquiring another one and individuals from these countries were appearing all over the globe denouncing their nationality making themselves stateless and creating a problem for the country which was kind enough to allow them to enter. Well here there are guidelines in place and States are encouraged not to allow individuals to renounce their nationality if they are going to make themselves stateless and in those instances UNHCR was able to identify their country of origin and have them regain their nationality that they themselves had voluntarily renounced.

Hence, there are tools for addressing those problems, well indeed it has got to be done in a way where individuals feel comfortable in identifying themselves and will come forward and will seek to avail themselves of the solutions that there are. And then a very interesting comment on how to deal with the rights of non-citizens, that there needs to be further development on democratic governance system so that individuals can say that States will impose nationality but at the end of the day there does need to be a practical link between the legal identity of the individual and the legal identity of the

State. So it should not be an artificial imposition of nationality, it should reflect the democratic developments taking place in States and we should be very practical towards this end.

We also had question that can all States ratify these instruments and how binding are they, what does it mean to ratify them and then also an observation that there needs to be greater international cooperation not only between States but also between international agencies, concerned with this problem.

So we have set out vast spectrum of concerns, of observations, of recommendations, we greatly thank you for this we will observe this information and take it further I am sure within AALCO also within United Nations we will take advantage of the expertise, of the perspectives, of the comments that you have here with us today and seek to go the additional step based on your guidance. So thank you very much for your participation in this meeting today. I would turn it over to Ambassador Kamil and Ambassador Dayal for any final perspectives. Thank you.

Secretary-General: Thank you very much Mrs. Carol. In fact I am extremely impressed by what I have heard. I have learned a lot from this very important problems which has huge human may be we can say inhuman dimensions. Because there people are completely disconnected from the international community. Before concluding I thank very much UNHCR, who have extended great help financial as well as technical help to AALCO to organize this Seminar and I have seen that the dialogue between the panelists and the audience was very bright and very alive. This will give us more courage to organize another seminar will be more in-depth and more longer to discuss this issue to concentrate on solution. Because we have heard about statistics, we have heard about causes but we have to in-depth to the solutions. So I thank all the panelists, and I give the floor to Dr. Dayal.

Mr. Chairman: Ambassador Kamil, Distinguished Delegates and Ladies and Gentlemen, just a few words. Thank you for your extremely thoughtful contributions to the discussions this morning. In particular I

would like to thank our panelists Mrs. Justice Sujata Manohar, Prof. Dubey. But each of you who have particular here have made a valuable contribution by your ideas, by the thought you have given to it and the care with which you have listened to the discussion. The United Nations is faulted for many reasons. It is after all an institution comprising human beings and States and both States and human being are fallible. But in one area in which the United Nations has been exceptional and I am not taking here about the Human Rights Commission or whether it is good or bad which is different. It has been in giving to the world an entirely new perspective a new set of eyes through which to see the problems of this world. And those are the eyes of human rights. Looking at the world through the eyes of human rights, through the lens of human rights transforms one's capacity to understand and to deal with it. It is often said that issue like peace, disarmament, weaponry and weapon control which are hard subjects, and issue of rights are soft subjects. Don't you believe it. nothing of that sort. It takes far more courage to deal with rights issues than to deal with weapon. Weapons are needed to destroy, right to preserve. I think this discussion today on question of Statelessness if we situate it within the deeper purpose of United Nations which is to enhance the dignity and worth of every human being, we have made a singular contribution.

The Universal Declaration and all the treaties that emanated from that document speak of every one they do not talk about nationals, they do not talk about women and children in isolation, they do not talk about stateless as if it does not exist. All the principal human rights instruments of United Nations talk of every one. The rights that are available under the Declaration, under other Convention and treaties apply to everyone including the stateless persons. We need to keep this in mind because in a way the work of the United Nations is a sacred work and the trust which is given to those towards the peoples no less than those States who represent us is further sacred course, that course is to defend the dignity and worth of each human being of this planet. With those words, I would like to

conclude this Session and to wish you well in your future deliberations and follow up of a matter of some importance it touches the lives of millions of people and they affect the lives of all of us. Thank you.

The meeting was thereafter adjourned.