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CITIZENSHIP:

a durable solution for those born as refugees¹

*Lutiana Valadares Fernandes Barbosa*²

ABSTRACT: An overview of the hardships faced by refugee children is presented. Granting citizenship for children born as refugees is proposed based on three lines of arguments: the meaning of citizenship and avoidance of statelessness, the child's best interest, and the prevention of children in a protracted refugee situation. Within this framework, three recent initiatives to address refugee's challenges are debated: the New York Declaration for Refugees and Migrants, the Global Compact, and the Model International Mobility Convention. Finally, three possible measures are suggested to implement citizenship for those born as refugees: An optional protocol on the Convention of the Rights of the Child, an optional protocol to the Convention Relating to the Status of Refugee, or else that States, while adopting the Model International Mobility Convention, expressly assure the right to citizenship for those born as refugees. The Latin-American States are prone to lead the call for a right to citizenship for those born as refugees since birthright citizenship is adopted by nearly every State in Latin-America.

KEYWORDS: Migration; Refugee; Citizenship.

CIDADANIA: uma solução perene para os que nascem refugiados

RESUMO: Uma visão geral das dificuldades enfrentadas por crianças refugiadas é apresentada. O artigo propõe *de lege ferenda* a concessão da cidadania do país hospedeiro para crianças nascidas refugiadas com base em três linhas de argumentação: o significado da cidadania e a prevenção da apatridia, o melhor interesse da criança e a prevenção das crianças em situação de refugio prolongado. Nesse contexto, três iniciativas recentes para enfrentar os desafios dos refugiados são debatidas: a Declaração de Nova York para Refugiados e Migrantes, o Pacto Global e a Convenção Internacional Modelo sobre Mobilidade. Finalmente, três medidas possíveis são sugeridas para implementar a cidadania para

1. L.V.F. Barbosa. Citizenship: a durable solution for those born as refugees. *Latin American Journal of European Studies*, v. 1, n. 2, 2021, pp. 239-273

2. Defensora Pública Federal desde 2010. Master of Laws (LL.M) Columbia University (2016). Mestre em Direito pela Pontifícia Universidade católica de Minas Gerais (2017). Doutoranda em Direito Internacional na UFMG.

aqueles que nasceram como refugiados: Um protocolo opcional à Convenção dos Direitos da Criança, um protocolo opcional à Convenção das Nações Unidas Relativa ao Estatuto do Refugiado, ou então que os Estados, ao adotarem a Convenção Internacional Modelo sobre Mobilidade, incluam expressamente o direito à cidadania aos nascidos como refugiados. Os Estados latino-americanos podem liderar a reivindicação do direito à cidadania para aqueles que nascem como refugiados, uma vez que o *ius solis* é adotado por quase todos os Estados da América Latina.

PALAVRAS-CHAVE: Migração; Refugiado; Cidadania.

SUMMARY: Introduction; 1. The current situation of refugee children, the Convention Relating to the Status of Refugee and the Convention on the Rights of the Child; 1.1. The current situation of refugee children; 1.2. CRSR, CRC, and refugee children; 2. A proposal *de lege ferenda*: Granting citizenship for those born as refugees; 2.1. Citizenship, statelessness, and the rights of refugee children; 2.2. The best interest of the child and citizenship; 2.3. Protracted refugee situation; 3. Some challenges of the proposal to grant citizenship for those born as refugees; 4. Recent initiatives: The New York Declaration for Refugees and Migrants, the Global Compact, and the Model International Mobility Convention; Final Consideration; Bibliographical References.

Introduction

(...) I have seen a world of suffering, of mental and moral and physical anguish, of bleak uncertainty and stark hopelessness. It is a world in which thousands of our fellow human beings, of different races and creeds and of all walks of life, find themselves suddenly uprooted from long-established homes, torn from family ties, and cast adrift in strange lands to find such refuge as they can.³

(...) These people are beating at the gates of any country, near or far, in which they can find refuge. The peoples and governments of the world are faced with an urgent problem which....they cannot ignore. Our task is...to find a solution of the problem....to seek to

3. No. 475, Address By the Honorable Myron C. Taylor, Vice-Chairman of the Intergovernmental Committee on Political Refugees, Before the Council of Foreign Relations in New York City, on Monday Evening, October 3, 1838 1-2 (Dep't of State, 1938).

replace the present chaotic exodus by orderly emigration; to seek the settlement of these people in new homes with a minimum of suffering and their integration into new societies to the best advantage both of the refugees and of the receiving countries.⁴

This excerpt perfectly describes the ongoing refugee crises. Nonetheless, it was extracted from a 1938 pamphlet that contains a speech about the refugee situation during the Nazi regime. This rather shocking information demonstrates that, albeit different contexts, the refugee situation is a long-lasting problem. It also highlights the importance of redesigning the framework for those who live in the refuge. Despite recent efforts to improve international response, such as the 2016 New York Declaration of Refugees and Migrants⁵ and the Global Compact on Refugees,⁶ more tangible measures such as the Model International Mobility Convention⁷ (MIMC) are necessary to protect refugees. Considering that children are more than one-third of the refugee population,⁸

4. No. 475, Address By the Honorable Myron C. Taylor, Vice-Chairman of the Intergovernmental Committee on Political Refugees, Before the Council of Foreign Relations in New York City, on Monday Evening, October 3, 1938 4-5 (Dep't of State, 1938).

5. New York Declaration for Refugees and Migrants G.A. Res. 71/1 (Sep. 19, 2016).

6. Global Compact on Refugees, Rep. of the U.N. High Comm. for Refugees, U.N. Doc. A/73/12 Part II (2018).

7. "The Model International Mobility Convention (MIMC) was developed by an International Mobility Commission involving over 40 eminent academic and policy experts in the fields of migration, human rights, national security, labor economics and refugee law. The Commission came together to debate and develop the MIMC in workshops conducted regularly from early 2015 through April 2017. The MIMC is the final outcome of this collaborative effort to produce a new and greatly needed international legal framework for human mobility." <https://mobilityconvention.columbia.edu/> (last visited June. 6, 2021). The MIMC is now endorsed by the Carnegie Council <https://www.carnegiecouncil.org/programs/model-international-mobility-convention>.

8. According to UNHCR Refugee Data Finder 38-43% are children below the age of 18.

U.N. High Comm'r for Refugees, *Refugee Data Finder*, available at <https://www.unhcr.org/refugee-statistics/>.

a child-specific approach is needed while rethinking the refugee regime. The present paper focuses on the situation of refugee children and proposes *de lege ferenda* granting citizenship for those born as refugees. Other related issues such as education, health, and violence are not discussed and need to be the object of further works.

1. The current situation of refugee children, the convention relating to the status of refugee and the convention on the rights of the child

This section sets the necessary ground for the proposal conveyed by this paper by presenting both the factual situation and the existing international norms. First, it presents the current situation of refugee children, and next, the existing norms of the Convention Relating to the Status of Refugee (CRSR) and the Convention on the Rights of the Child (CRC) regarding refugee children.

1.1. The current situation of refugee children

According to UNHCR, there are 26.3 million refugees globally, 86% live in developing regions, and more than two-thirds of all refugees are in protracted refugee situations⁹. About 38–43% of the refugee population in 2020 were children under 18,¹⁰ who are

9. U.N. High Comm'r for Refugees, *Global Trends Forced Displacement in 2017*, 2018, available at <https://www.unhcr.org/5b27be547.pdf>.

"UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five years or more in a given asylum country."

U.N. High Comm'r for Refugees, *Protracted Refugee Situations Explained (2020)*, available at <https://www.unrefugees.org/news/protracted-refugee-situations-explained/#How%20many%20refugees%20are%20living%20in%20protracted%20situations?>

10. U.N. High Comm'r for Refugees, Refugee Data Finder, cit.

per se physically and mentally vulnerable. Considering that their character, personality, and body are in development, they are more likely to suffer the hardships of the world's broad range of violence and unequal distribution of resources.

Refugee children are exposed to more significant dangers than other children.¹¹ Reports from United Nations Children's Fund (UNICEF) and UNHCR,¹² Concluding observations of the Committee on the Rights of the Child,¹³ among other international documents, have shown that those children are susceptible to discrimination, famine, lack of education, high level of school drop out, no proper access to health care, food, and sanitation, sexual and gender violence, work exploitation,¹⁴ trafficking, imprisonment and lack of birth registration.¹⁵ This means that millions of children are under

11. S. Ogata, *Preface, Refugee Children: Guidelines on Protection and Care, United Nations High Comm'r for Refugees, 1994*, available at <https://www.unhcr.org/3b84c6c67.pdf>.

12. See, for instance, U.N. High Comm'r for Refugees, *Through the Eyes of a Child: Refugee Children Speak About Violence*, 8, 2007, available at <http://www.unhcr.org/47c804682.html> (last visited Dec. 13, 2015). This study based on participatory assessments addressing children found that, despite the differences of the reality in different countries, the main hardships are similar: violence occurs inside and outside refugee camps and in the urban context; they are discriminated by local population including teachers and discrimination also occur among different ethnic groups of refugees; girls face gender-based discrimination including harassment and rape, unaccompanied children live under even more challenging conditions as a result of lack of adult protection and economic resources; forced marriage is a reality at camps; adults who consume alcohol and other substance abuse are perpetrators of violence against children; in some activities (like gathering water) there is a higher chance of discrimination and rape.

13. Comm. on the Rights of the Child, *Concluding Observations, Office of the U.N. High Comm'r for Human Rights U.N. Docs. CRC/C/JOR/CO/4-5; CRC/C/TUR/CO/2-3; CRC/C/PAK/CO/3-4, CRC/C/15/Add.254; CRC/C/ETH/CO/3; CRC/C/LBN/CO/3*, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5.

14. U.N. High Comm'r for Refugees, *The Future of Syria Refugee Children in Crisis*, 36, 2013, available at <https://s3-eu-west-1.amazonaws.com/unhcr-campaigns/childrensreport/Future-of-Syria-UNHCR-v13.pdf>.

15. See for example: Rep. of the Independent Expert for the U. N. Study on Violence Against Children, U. N. Doc. A/61/299 (2006), available at <http://www.unicef.org>.

extreme harmful situations without the expectation of short or long-term solutions and that a whole generation of children is in severe danger.¹⁶

The severe problems faced by refugee children are a reality that has lasted for over 70 years. A 1949 pamphlet about German refugees points that “ (...)it is the moral responsibility of society to give special protection to the children. They should be guaranteed a minimum essential food, clothing, health, education, and decent standard of privacy in living accommodations. They do not have such protection.”¹⁷

Nowadays, as highlighted above, the scenario is a long-lasting failure in the system. Children are especially vulnerable and require a specific approach as regards refuge law and procedure.¹⁸

1.2. CRSR, CRC, and refugee children

CRSR lacks provisions to address the unique condition of refugee children,¹⁹ and, despite the advances of international human

org/violencestudy/reports/SG_violencestudy_en.pdf.
Report of the Comm. on the Rights of the Child 10, U. N. Doc. A/69/41 (2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f69%2f41; Comm. on the Rights of the Child, Concluding Observations, Office of the U.N. HighComm'r for Human Rights U. N. Docs CRC/C/JOR/CO/4-5; CRC/C/TUR/CO/2-3; CRC/C/PAK/CO/3-4, CRC/C/15/Add.254; CRC/C/ETH/CO/3; CRC/C/LBN/CO/3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5; U.N. High Comm'r for Refugees, *The Future of Syria Refugee Children in Crisis*, cit.

16. G.S. Goodwin-Gill, *The Refugee in International Law*, Oxford Univ Press, 3rd ed, 2007, pp. 478-479.

17. B. Barton, No. 40110 M 5-49 L&A, *The Problem of 12 Million German Refugees in Today's Germany* 29, in *Am. Friends Serv. Comm.*, 1949. (Found at a Pamphlets on Refugees Columbia Law Library JX4211Zy2).

18. A. Edwards, *Age and Gender Dimensions in International Refugee Law*, in *Refugee Protection in International Law* 57, Erika Feller ed., Cambridge Univ. Press, 2003.

19. G.S. Goodwin-Gill, *The Refugee in International Law*, cit., p. 475.

rights law concerning the protection of the child, refugee law has not evolved in this regard.²⁰ It refers to children only in article 4 to guarantee parent's freedom of religious education of their children, and article 17 refers to employment conditions for parents whose children have citizenship of the host country. Article 22 establishes an education standard, and refugees must receive the "same treatment" as citizens in primary education, and at least as favorable as that given to non-refugee aliens in secondary education.²¹ Nonetheless, lack of access to education is a significant problem.²² Regarding nationality, article 34 set forth that States shall facilitate naturalization.²³ The revised literature on the preparatory works of article 34 does not demonstrate discussion of the contracting States and other organisms about the importance of addressing citizenship for refugee children.²⁴

The Convention on the Rights of the Child (CRC) and addresses refugee children in article 22. It asserts that States must act to ensu-

20. A. Edwards, *Age and Gender Dimensions in International Refugee Law*, cit.

21. U.N. High Comm'r for Refugees, *Refugee Children: Guidelines on Protection and Care 4-5*, 1994, available at http://www.unicef.org/violencestudy/pdf/refugee_children_guidelines_on_protection_and_care.pdf.

22. See for example Comm. on the Rights of the Child, Concluding Observations Office of the United Nations High Comm'r for Human Rights, U.N. Docs CRC/C/RTH/CO/3 items 65 and 66; CRC/C/RTH/CO/3 items 38, 59, 61 and 63; CRC/C/JOR/CO/4-5 items 55 and 56; CRC/C/LBN/CO/3 items 28, 65, 66 and 73; CRC/C/PAK/CO/3-4 items 79, 82 and 83; CRC/C/TUR/CO/2-3 items 60 and 61), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5.

23. Convention Relating to the Status of Refugees arts 4, 17, 22 and 34, opened for signature Jul. 28, 1951, 189 U.N.T.S. 137. (entered into force Apr. 22, 1954). (Refugee Convention). R. Marx, Article 34, in A. Zimmermann, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol. A Commentary*, Oxford Univ. Press, 2011. "Although in international human rights law 'citizenship' is to be distinguished from mere 'nationality'... general principles of international law use both terms synonymously".

24. Dr. P. Weis, *The Refugee Convention, 1951 the Travaux Préparatoires Analyzed with a Commentary by Dr. Paul Weis*, Cambridge Univ. Press, 1995.

re that a child seeking asylum or a refugee receives adequate protection and humanitarian assistance to enjoy the applicable rights established in the convention or other human rights instruments. In this regard, States shall, as they deem pertinent, cooperate with the United Nations (UN), intergovernmental organizations, and non-governmental organizations to provide protection and assistance and help families to reunite. Despite the somewhat vague provision that focuses specifically on refugees, CRC establishes an umbrella of protection that also applies to refugee children. It determines that the child's best interest must be a primary consideration in all actions regarding children. States have an obligation to ensure children's rights without any kind of discrimination. It sets forth the right to health, equal opportunity of education, an adequate standard of living for the child's physical, mental, spiritual, moral, and social development, the rights to participation, leisure, and protection from hazardous work. States must protect the child from sexual violence and exploitation. Torture or other cruel, inhuman, or degrading treatment or punishment, capital punishment, and live imprisonment is voided. Children affected by armed conflict must be protected. Measures must be taken to promote recovery and social reintegration for children who experienced abuse, torture, or other cruel, inhuman, or degrading treatment. Children have the right to acquire a nationality and to special attention if they are at risk of statelessness.²⁵ The Human Rights Committee has commented that the purpose of this article is to prevent diminished

25. Convention on the Rights of the Child, arts. 22,24,27,28,31,32,34,36,37,38,39, *opened for signature* Nov. 20,1989, 1577 U.N.T.S. 3. (entered into force Sep. 2, 1990). (Convention on the Rights of the Child).

protection for those who are stateless, but that it does not create the duty for states to confer nationality on a *jus soli* basis.²⁶ In this sense, it reinforces the Convention on Reduction of Statelessness.²⁷

All the UN member states ratified CRC except the United States,²⁸ which demonstrates a world consensus on the special protection that States must provide to children, including refugees. CRC addresses the significant hazardous situations suffered by refugee children and establishes together with the Charter of the UN, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and CRSR a responsibility of the international community to protect and solve²⁹ refugee children's critical situation.³⁰

The legislative history of the CRC demonstrates that, at the final plenary session of the European conference on the rights of the child in Warsaw (1979), participants from 19 countries of Eastern and Western Europe agreed unanimously upon the principle that "the children of refugees and child refugees should be treated in the same way as other children and enjoy the same protection, both in their country of asylum and abroad."³¹ Moreover, the In-

26. R. Hodkin, P. Newell, *Implementation Handbook for the Convention on the Rights of the Child Prepared for Unicef 104*, Unicef, 3rd ed, 2007. Author quotes from Human Rights Committee, General Comment n. 17, 185 8 U.N.Doc. HRI/GEN/1/ Rev. (1989).

27. Convention on the Reduction of Statelessness, *opened for signature* Aug. 30, 1961, 989 U.N.T.S.175. (entered into force Dec. 13, 1975).

28. Convention on the Rights of the Child.

29. The term responsibility to solve was taken from T. A. Aleinikoff, S. Poellot, *The Responsibility to Solve*, Georgetown Law Faculty Publications and Other Works, 2014, available at <https://scholarship.law.georgetown.edu/facpub/2090>.

30. U.N. High Comm'r for Refugees, *Refugee Children: Guidelines on Protection and Care*, cit.

31. Legislative History of the Convention on the Rights of the Child 52-53, U.N.Doc. HR/PUB/07/1 (2007), available at <http://www.ohchr.org/Documents/Publications/>

ternational Federation of Women in Legal careers and the International Abolitionist Federation raised concerns about nationality for refugee children. They submitted the following proposal to the Working Group:

Noting that in some cases the minor children of political refugees who have given up their nationality have to wait for a fairly long time to acquire the nationality of the country in which they are living, although in principle it should be theirs by right, we would suggest that the words "without delay or prior conditions" be added after the words "the principle according to which a child shall acquire" and before the words "the nationality of the State...".³²

Unfortunately, those more specific protections for refugee children have not been incorporated into the conventions. The lack of a specific framework and the critical situation that refugee children face are clear-cut evidence that further protection is urgently needed.

2. A proposal *de lege ferenda*: granting citizenship for those born as refugees

this paper claims that granting citizenship for those born as refugees is a feasible step *de lege ferenda* to address some of the problems refugee children face. The following sections will discuss three lines of arguments to ground this paper proposal to grant citizenship for children born as refugees: the meaning of

LegislativeHistorycrc1en.pdf (last visited Jun. 14, 2021). See Statement of Principles on The Legal Protection of the Rights of the Child, principle 19).

32. Legislative History of the Convention on the Rights of the Child 374 U.N.Doc. HR/PUB/07/1 (2007), available at <http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>.

citizenship and avoidance of statelessness, the child's best interest, and the prevention of children in a protracted refugee situation.

2.1 Citizenship, statelessness, and the rights of refugee children

Citizenship³³ is a legal, political, and social construction³⁴ that creates a bond between individuals and a national States. By this vital link, a State provides the highest level of protection, and the citizen has the broadest possibilities to participate and duties to cooperate. Thus, citizenship has to be considered at least in two dimensions: as a legal status in which a State recognizes someone as a citizen, creating formal obligation and rights, and in a more comprehensive approach embracing participation, membership, and substantial equality.³⁵ In modern democracies, citizenship means a "formal hallmark of full membership."³⁶

Throughout history, citizenship rules have mostly followed two principles, *jus soli* and *jus sanguinis*.³⁷ Among ancient Athenians and Romans, birth never fixed citizenship. Latter, "There was a time, when, under the influence of feudal ideas, nationality was

33. A. Zimmermann, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol. A Commentary*, Oxford Univ. Press, 2011. It is acknowledged that there are distinctions between citizenship and nationality. For the purposes of this paper and aligned with general principles of international law, both terms will be used as synonyms.

34. K. Rubenstein, *Citizenship in a Borderless World*, in *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry*, Antony Anghie & Garry Struggess eds., Kluwer Law Int'l, 1998, pp. 183-184.

35. K. Rubenstein, *Citizenship in a Borderless World*, cit., p. 187.

36. T. A. Aleinikoff, D. Klusmeyer, *Citizenship Policies for an Age of Migration 1*, Carnegie Endowment for Int'l Peace, 2002.

37. *Jus soli* means that if the person were born within the territory of a State, she or he would have the right to citizenship. *Jus sanguinis* considers the person ancestrally to define nationality.

determined exclusively by the place of birth, *jus soli*.”³⁸ Nowadays, more than 30 States recognize birthright citizenship (*jus soli*),³⁹ which means about one in each four States. In America *jus soli* is the most common practice.⁴⁰ Moreover, the increasingly migratory flux has motivated alterations in citizenship regimes which blurred the traditional concepts of *jus soli* and *jus sanguinis*. Thus, rules are becoming progressively mixed in many States.⁴¹ In this context, Aleinikoff and Klusmeyer propose a generations framework to grant citizenship.⁴² Considering that for the second generation (sons and daughters of migrants), socialization occurs in the host country, and they are members of the society where they live, they advocate those sons and daughters of migrants should be entitled to citizenship at birth or during childhood. Many European States grant second-generation citizenship. For instance, Belgium, Portugal, Ireland, Germany, and United Kingdom have experien-

38. Alexander Porter Morse, *A Treatise on Citizenship, By Birth and By Naturalization, with Reference to the Law of Nations, Roman Civil Law, Law of the United States of America, and the Law of France; Including Provisions in the Federal Constitution, and in the Several State Constitutions, in Respect of Citizenship; Together with Decisions Thereon of the Federal and State Courts* 12 (Little, Brown & 1881).

39. Central Intelligence Agency, *World factbook. Field listing Citizenship*, available at <https://www.cia.gov/the-world-factbook/field/citizenship/>.

40. Y. Zhou, *One in four countries around the world grant birthright citizenship*, available at <https://qz.com/1444724/mapping-the-worlds-countries-that-grant-birthright-citizenship/>. “Among the 174 countries with nationality laws data available for 2016, 39 of them, or about 1 in 4, grant citizenship to people born in the country, barring exceptions to children of diplomat parents. It’s the most common practice for the countries in the Americas: Canada, Mexico, Argentina, Brazil, among others, all follow this practice.”

41. T. A. Aleinikoff, D. Klusmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 7.

42. T. A. Aleinikoff, D. Klusmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 7.

ced changes in their citizenship laws since 1985 and adopted the second-generation paradigm.⁴³

Article 15 of the Universal Declaration of Human Rights establishes a right to a nationality and evidences a moral obligation of states to refrain from using sovereignty to create stateless persons.⁴⁴ International Covenant on Civil and Political Rights grants the right to a nationality to every child.⁴⁵ The Convention on Elimination of Racial Discrimination⁴⁶ also establishes the right to nationality in the context of non-discrimination and equal treatment. The Convention on the Elimination of All Forms of Discrimination Against Women⁴⁷ determines equal rights among both genders to acquire, change, retain, and concerning the children's nationality.⁴⁸ Article 7 of CRC, as already mentioned, establishes the right to a nationality, if otherwise children will be stateless.

Regarding citizenship in the CRSR, article 34 is framed as a recommendation but contains a duty to facilitate assimilation and

43. European Union Democracy Observatory on Citizenship, *Comparing Citizenship Laws: Acquisition of Citizenship*, available at <http://eudo-citizenship.eu/databases/modes-of-acquisition>. (last visited Nov. 16, 2015).

Global Citizenship Observatory, *Global Database on Modes of Acquisition of Citizenship*, available at <https://globalcit.eu/acquisition-citizenship/>.

44. R. Donner, *The Regulation of Nationality in International Law Transnational Publishers 190*, Transnational Publishers, 2nd ed. 1994.

45. International Covenant on Civil and Political Rights, art. 24, opened for signature Dec. 16, 1966. 171 U.N.T.S. 999 (entered into force Mar. 23, 1976).

46. International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 and 5, opened for signature Dec. 21, 1965. 195 U.N.T.S. 660 (entered into force Jan. 4, 1969).

47. The Convention on the Elimination of All Forms of Discrimination Against Women, art. 9, opened for signature Dec. 18, 1979. 13 U.N.T.S. 1249. (entered into force Sep. 3, 1981).

48. R. Donner, *The Regulation of Nationality in International Law Transnational Publishers*, cit., pp. 197-201.

naturalization⁴⁹ as far as possible.⁵⁰ The debates on the draft of the 1951 convention demonstrate that the issue of statelessness was raised, but the *Ad hoc* Committee on Statelessness and Related Problems decided that it does not fit into the purpose of the CRSR. Stateless is addressed specifically by the 1954 Convention relating to the Status of Stateless Persons⁵¹ and the 1961 Convention on the Reduction of Statelessness.⁵² Thus, article 34 does not address the close link between naturalization and statelessness, both *de facto* and *de jure*.⁵³ *De jure* statelessness are those who do not have a nationality. *De facto* statelessness are those who, despite having a nationality, cannot enjoy the bond and protection of the government and act as a national as it is not effective for him/her.

Refugees are considered *de facto* stateless⁵⁴ since they do not experience enough protection and rights of their State of nationality. The Final Act on the 1954 Convention Relating to the Status of Stateless Persons and the Final Act of the 1951 Convention on the Reduction of Statelessness claim that *de facto* statelessness are to be treated as *de jure* stateless. This similar treatment aims at assuring access to an effective nationality.⁵⁵

49. Dr. P. Weis, The Refugee Convention, 1951 the Travaux Préparatoires Analyzed with a Commentary by Dr. Paul Weis, cit., p. 352.

50. Dr. P. Weis, The Refugee Convention, 1951 the Travaux Préparatoires Analyzed with a Commentary by Dr. Paul Weis, cit., p. 344.

51. Convention Relating to the Status of Stateless Persons, *opened for signature* Sep. 28, 1955, 360 U.N.T.S. 117. (entered into force Jun. 6, 1960).

52. Convention on the Reduction of Statelessness, *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175. (entered into force Dec. 13, 1975).

53. A. Zimmermann, The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol. A Commentary, cit.

54. R. Donner, The Regulation of Nationality in International Law Transnational Publishers, cit., p. 185.

55. A. Zimmermann, The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol. A Commentary, cit. Cites Weis, Nationality, p. 164; Batchelor, IJRL

Weis points that The Consultative Assembly of the Council of Europe recommended that the Committee of Ministers invite states parties (recommendation 564 in 1969):

(ii) to accede to the UN Convention of 1961 on the reduction of statelessness and to treat *de facto* stateless refugees as though they were stateless *de jure* (...) (iii) to adopt provisions in national legislation with a view to enabling refugee children, born in a country to which their parents came as refugees, to obtain the nationality of that country at birth and refugee youths to obtain the nationality of their country of residence at their request, at the latest at their coming of age;

Moreover, according to the European Convention on Nationality, States shall facilitate the acquisition of their nationality for persons born on its territory residing there lawfully and habitually; stateless persons and recognized refugees lawfully and habitually resident on its territory.⁵⁶ In the same lines, the MIMC proposes in its article 24 that "Each State Party shall provide in its national law for its nationality to be acquired by children born on its territory who do not have or are not able to exercise a right to acquire at birth another nationality."⁵⁷

The Inter-American Court of Human Rights considers that "It is generally accepted that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the

10 (1998), pp. 156, 172-173. In the same sense Grahl-Madsen, *Status of Refugee in International Law* 315-317 (A. W. Sijthoff-Leyden 1966) "There is a recommendation to the effect that *de facto* stateless persons should also benefit from the convention."

56. European Convention on Nationality, art. 6.2, opened for signature on 6 November 1997, E.T.S. No. 166. (entered into force Mar. 1, 2000).

57. Model International Mobility Convention (MIMC) art. 24, 22 (2018), available at <https://mobilityconvention.columbia.edu/> (last visited June. 6, 2021).

exercise of political rights, it also has an important bearing on the individual's legal capacity."⁵⁸

The traditional sovereignty of a State to determine rules of nationality has progressively been limited by evolving standards of international human rights norms.⁵⁹ Among other scholars,⁶⁰ professor Ballin states that both the Human rights framework and the democratic constitutionality lead to the human right to be a citizen.⁶¹

The stated arguments linchpins this paper's claim that refugee children born in the asylum are unquestionably stateless. Even if they have the nationality of the State of origin, they have never experienced its protection. In addition, they are in the most vulnerable and crucial lifetime, which means that lack of protection will directly impact their future.

In sum, considering the trends towards "generation" rules to confer citizenship to migrants in general; that States' sovereignty to define rules of nationality has to conform to international human

58. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (ser. A), ¶ 32-33 (Jan. 19, 1984).

59. S. Forlati, *Nationality As a Human Right, in the Changing Role of Nationality in International Law* 18, A. Annoni & S. Forlati eds., Routledge, 2013, pp. 18-36. Classical international law defined nationality as an issue subjected entirely to State's discretion. In 1923 the Permanent Court of International Justice issued an advisory opinion on the nationality Decrees in Tunis and Morocco that ruled that States have in principle sovereignty to define norms of nationality, provided they have not assumed compromises with other states. A similar approach was used by the International Court of justice while ruling the 1955 *Nottebohm Case*.

60. See for instance S. Forlati, *Nationality As a Human Right, in the Changing Role of Nationality in International Law*, cit, pp. 18-36.

61. E.H. Ballin, *Citizen's Rights and the Right to Be a Citizen*, Leiden/Boston: Brill Nijhoff, 2014, pp. 121-122. "Under international law, in force of the principles of democratic self-governance and equal respect due to anyone anywhere, states should restate their "sovereign" power to recognize, give or withhold citizenship in the state -or depending on someone's existential situation, in a state -where he or she is at home."

rights standards; that refugee children born in the asylum are *de facto* stateless; and that international human rights rules about children, stateless and citizenship are a mandamus of protection to any kind of statelessness; this paper proposes, in a *de lege ferenda* perspective, that children born as refugees must be entitled to citizenship of the host country.

2.2 The best interest of the child and citizenship

Since 1924 the special protection required by children was internationally recognized by the League of the Nations declaration on the Rights of the Child. Despite a series of following declarations, there was a gap of sixty-five years until the 1989 CRC.

Article 3 of CRC “seems to place a best interest standard at the heart of international children’s rights law. In all matters not governed by positive rights in the convention, article 3 (1) will be the basis for evaluating the laws and practices of the States Parties.”⁶² Children’s best interests must be a primary consideration because their wellbeing has to be a priority. They are more vulnerable, must have the opportunity to develop towards adulthood, and become fully-fledged. From a utilitarian perspective, the best interest of the child maximizes the welfare of society. “Putting children first is a way of building of the future. It is significant that countries reconstructing after nightmares of rightlessness have put children’s interest in the foreground.”⁶³ CRC does not define what the child’s

62. S. Parker, *The Best Interests of the Child - Principles and Problems*, in *the Best Interest of the Child*, Reconciling Culture and Human Rights, Philip Alston ed., Clarendon Press, 1994, pp. 26-41.

63. M. Freeman, A Commentary on the United Nations Convention on the Rights of the Child, Article 3 The best interest of the Child, Andre Alen et al. eds.,

best interest is. Essential insights to fulfill this open concept can be drawn from the reports of the Committee on the Rights of the Child that has devoted attention to care of asylum-seeker and refugee children.⁶⁴ The committee has also used the principle of the child's best interest regarding the situation in Myanmar to interpret the right to citizenship to avoid denial of rights and stigmatization.⁶⁵

Policies towards refugee children must pass through a filter of the best interest of the child. "The developed world must carefully scrutinize its own policies, for example towards refugees and asylum seekers. How many of these uphold 'best interest' standards?"⁶⁶ Willems, noting the lack of definition, suggests using the model of Kalverboer & Zijlstra that lists fourteen elements to be met. The family has to provide security, affection, care, continuity in children rearing, attention, direction, guidance, and examples. Society has to ensure interaction with peers, respect in school, society and community, education, stability which includes social perspective, examples, and a social network.⁶⁷ The presented model also enhances the argument that granting citizenship for refugee children meets the child's best interest principle. A citizen

Martinus Nijhoff, 2007, pp. 40-41. (footnotes omitted)

64. M. Freeman, A Commentary on the United Nations Convention on the Rights of the Child, Article 3 The best interest of the Child, cit., pp. 50-54.

65. Comm. on the Rights of the Child, *Concluding Observations, Office of the U.N. High Comm'r for Human Rights U.N. Doc. CRC/C/MMR/CO/3-4(1997)*, available at <http://www1.umn.edu/humanrts/research/myanmar/Annex%20Q%20-%201997%20Concluding%20Observations%20for%20the%20Committee>.

66. M. Freeman, A Commentary on the United Nations Convention on the Rights of the Child, Article 3 The best interest of the Child, cit., p. 40.

67. J.C.M. Willems, *Chapter 7*, in J.C.M. Willems, Universiteit Maastricht, Centre for Human Rights, *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, J.C.M. Willems ed., Intersentia, 2007, pp. 199-202.

is much more likely to interact, have access to school, be respected, have a stable life and perspectives for the future, and be part of a network. On the other hand, being labeled from birth as a refugee means a high chance of remaining excluded and marginalized.

The 2012-2018 Council of Europe Commissioner for Human Rights, Nils Muižnieks, stated that:

The UN Convention on the Rights of the Child, ratified by every Council of Europe member state, provides that all children have a right to a nationality. The Convention's overarching principle is that "In all actions concerning children [...] the best interests of the child shall be a primary consideration." It is clearly in the best interest of the child to have an effective citizenship from birth.

While children are vulnerable, the risk of statelessness is greatest among the poorest and most excluded – minorities, the displaced, refugees, orphans, and the illiterate. Statelessness increases the vulnerability of children to serious human rights violations, such as trafficking, labour and sexual exploitation, as well as illegal adoption. This means that stateless children often face multiple, mutually reinforcing forms of marginalization.⁶⁸

Considering that the principle of the best interest of the child embraces the wellbeing of refugees children, that the current framework is not sufficient to address their situation, and that citizenship offers the broadest tier of protection that a State can grant, the proposal to confer citizenship to those born in as refugees is aligned with the principle of the best interest of the child.

68. N. Muižnieks, *Governments Should Act in the Best Interest of Stateless Children*, 2013, available at <http://www.coe.int/en/web/commissioner/-/governments-should-act-in-the-best-interest-of-stateless-childr-1> (last visited June. 9, 2021).

Thus, article 3 of CRC is also an essential linchpin for the claim, *de lege ferenda*, that refugee children born asylum have the right to citizenship. This principle has to be interpreted as encompassing a forbiddance of any kind of statelessness for refugee children, both *de facto* and *de jure*.

2.3. Protracted refugee situation

More than two-thirds of the refugees in the world live in a protracted situation, which means that they are in limbo without a perspective of a solution for five or more years. The New York declaration emphasizes that the protracted refugee crisis is nowadays commonplace and that international cooperation is needed.⁶⁹ Aleinikoff and Poellot developed the concept of responsibility to solve (R2S) the problem of refugees in a protracted situation and contend that the international community has a legal and moral obligation to address it. This duty is grounded on the hardships faced by refugees in long-term situations, the principles that are linchpins of the refugee regime of focus on solution and division of the onus, and the obligations of signatories of the UN charter and CRSR. The first goal of the refugee regime "is to in fact end the condition of being a refugee."⁷⁰ Three main durable solutions reestablish the human necessity of belonging and membership that refugees have lost: returning home, being resettled, and being integrated into the host country. The framework of the protracted

69. New York Declaration for Refugees and Migrants G.A. Res. 71/1, arts. 7, 37,75 (Sep. 19, 2016).

70. A. Aleinikoff, S. Poellot, *The Responsibility to Solve 21*, 2012 (citing UNHCR, Dadaab - World's biggest refugee camp 20 years old, 21 February 2012, <http://www.unhcr.org/refworld/docid/4f44d3782.html>) (last visited Dec. 14, 2015).

refugee situation is political instability in the country of origin, the unwillingness of the host country to integrate, and the lack of effort of the international community to develop resettlement possibilities. Several harms arise from it, such as children being raised in refugee camps, children soldiers, improper education, health, sanitary conditions, safety problems, and psychological harm.⁷¹

While the international community focuses on relieving the urgent refugee crisis, refugees living in protracted situations remain in shadow. International support and response tend to diminish with time. Thus, they stay in limbo, are often not prioritized by donor states, the international community, and host states, and are more likely to face deprivations and violations of rights.

The MIMC⁷² emphasizes in article 155 the relevance of citizenship for refugees in a protracted situation by stating that "(a) In situations of protracted displacement States shall as far as possible facilitate the integration and naturalization of beneficiaries of international refuge. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."⁷³

This paper agrees with professor Aleinikoff and with the MIMC proposes a step further that is deemed a realistic utopia.⁷⁴ Considering the need to solve the protracted refugee situation and that the children are the most vulnerable among refugees and can be

71. T.A. Aleinikoff, S. Poellot, *The Responsibility to Solve*, cit.

72. Model International Mobility Convention (MIMC), cit.

73. Model International Mobility Convention (MIMC), cit, p. 75, art. 155.

74. Expression used by Professor Michel Doyle during the first day of class of the Seminary Model International Mobility Treaty Workshop Collective Research Project, Columbia Law School, Fall 2015.

a lost generation or a promising future, granting citizenship to children born in host countries is a very effective measure. Moreover, if the children are considered citizens by the host country rather than foreigners, they are granted the same standards of care and dignity as the national children.

3. Some challenges of the proposal to grant citizenship for those born as refugees

It might be argued that this proposal is underinclusive as it does not confer citizenship to refugee children who arrive at the host country at an early age and are socialized and brought up there.⁷⁵ Despite highly recommended and certainly aligned with the principles of justice from many philosophical and human rights perspectives, it is not claimed by this paper. The reason is that it would make the proposal much less acceptable to the international community.

The proposal might also be deemed as over-inclusive. In this regard, the following concerns must be addressed. As stated by Professor Turk, "In Europe, countries that do not have a long tradition of immigration consider refugees as temporary, short-term resident and, consequently the refugee children only as staying a short time before resettlement or repatriation."⁷⁶ Regarding the length of time, it is essential to consider that more than one-third of the refugees are children and two-thirds of the refugees live in protracted refugee situations. Moreover, if they are resettled or

75. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 10.

76. Consultation with professor Danilo Turk. He kindly read a first draft of my paper and offered this comment. Columbia University Fall 2015.

return to their country of origin, the citizenship granted will have no practical significance. Finally, it worth considering that the United States and Canada birthright rules have very positive effects on integration for migrants in general.⁷⁷

It might be stated that it creates incentives for refugees to enter that country only to give birth.⁷⁸ It makes little sense considering that refugees migrate due to fear of prosecution, and it is not likely that citizenship would provide significant incentives to migrate for the sole reason to give birth.⁷⁹

The most challenging concern is that it might influence other refugee and migration norms and policies in an undesirable manner, including family reunification⁸⁰. This challenge must be addressed with responsibility-sharing measures that have to be developed in further works. Furthermore, to avoid push-backs, it is essential to promote a vision that granting citizenship for refugee children is an investment in the future. It will transform most of them into assets that contribute culturally, economically, and in other ways to the host State.

77. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 11. This argument was inspired by T. Alexander Aleinikoff & Douglas Klussmeyer that address migration in general.

78. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 10.

79. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 11. In the same sense, T. Alexander Aleinikoff & Douglas Klussmeyer argue with regard to migration in general that "We seriously doubt that a desire to bear citizen children in the receiving state adds much to these incentives"

80. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 10.

It might be argued that issuing a document for refugee children, like a Nansen passport, is a better measure.⁸¹ Nansen's passport had the scope to facilitate movement and helped refugees to become migrants.⁸² Such a passport would be an appropriate step towards protecting refugees, considering that it can offer mobility and is a valid document. Lack of documentation is a barrier to access many public services and exercise daily activities. Nonetheless, refugee children are incredibly vulnerable, and a travel document would not improve their situation to the same extent citizenship does. Citizenship promotes a higher level of protection, integration and perspectives to the future.

4. Recent initiatives: the New York declaration for refugees and migrants, the global compact, and the mimc

Recognizing the need to redesign the refugee regime, in 2016, all member states of the UN agreed on the New York Declaration for Refugees and Migrants, remarking the shared international responsibility to protect migrants and support host countries. The New York Declaration recognizes the importance of addressing the specific condition of refugee children and reiterates that the children's best interest must be a primary consideration.⁸³ It is a

81. Consultation with professor Danilo Turk. He kindly read a first draft of my paper and suggested that I address why a Nanssen passport would not be a more suitable effective measure.

82. K. Long, *When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection*, Oxford Journals: Soc. Sciences: Migration Studies, 2013, pp. 4-26, available at <http://migration.oxfordjournals.org/content/1/1/4.full>.

83. New York Declaration for Refugees and Migrants, G.A. Res. 71/1, art. 32 (Sep. 19, 2016). "32. We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child."

nonbinding document that reinforces the importance of education, non-criminalization, child adequate migration procedures, registration, and documentation, among other previously existing obligations that arise from mandatory agreements such as CRC and the CRSR.⁸⁴ Nonetheless, it does not foresee any effective measures to address the situation of children born as refugees.

The New York Declaration stated in its Annex that an all-encompassing refugee framework should be developed.⁸⁵ Thus, the UNHCR, in a joint effort with many stakeholders, presented The Global Compact on Refugees, which was affirmed by the UN General Assembly member States in December 2018. The Compact reinforces the necessity to address the unique condition of refugee children.⁸⁶ The document recognizes statelessness both as a cause and consequence of refugee movements and states that stakeholders will implement practices to end statelessness.⁸⁷ Nonetheless, it makes no consideration on the right to citizenship of those born refugees. Despite being a relevant initiative towards building international solutions, the Compact is, from a legal perspective, a non-binding instrument, and, in terms of content, unsatisfactory regarding refugee children. Beets point out that “The Refugee Compact has been criticized for what it left off the agenda, and it does postpone major challenges of law and policy. However, it

84. New York Declaration for Refugees and Migrants, G.A. Res. 71/1, (Sep. 19, 2016). See, for instance, articles 32, 70, 81, 82.

85. New York Declaration for Refugees and Migrants, G.A. Res. 71/1, Annex 1 art. 2 (Sep. 19, 2016).

86. Global Compact on Refugees, Rep. of the U.N. High Comm. for Refugees, U.N. Doc. A/73/12 Part II, at 76 (2018).

87. Global Compact on Refugees, Rep. of the U.N. High Comm. for Refugees, U.N. Doc. A/73/12 Part II, at 83 (2018).

could not realistically have addressed all aspects of the refugee system; certainly not at the current historical juncture.”⁸⁸

The MIMC⁸⁹ is a proposal of convention on human mobility that fills gaps in international law⁹⁰ which the Carnegie Council recently endorsed⁹¹ This cutting-edge proposal, if adopted by States, will mean a paradigm shift towards protecting all those who cross borders. This paper will discuss it only regarding the present proposal to assure citizenship for those born as refugees.

As previously mentioned, the MIMC proposes in its article 24 that “Each State Party shall provide in its national law for its nationality to be acquired by children born on its territory who do not have or are not able to exercise a right to acquire at birth another nationality.”⁹² Furthermore, as previously stated, the MIMC⁹³ emphasizes in article 155 the relevance of citizenship for refugees in a protracted situation:“(a) In situations of protracted displacement States shall as far as possible facilitate the integration and naturalization of beneficiaries of international refuge. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”⁹⁴

The MIMC almost embraces the present paper claim to assure citizenship for all those born as refugees. However, it is not clear

88. A. Betts, *The Global Compact on Refugees: Towards a Theory of Change?*, in *International Journal of Refugee Law*, Volume 30, Issue 4, 2018, p. 623.

89. Model International Mobility Convention (MIMC), cit.

90. Model International Mobility Convention (MIMC), cit.

91. <https://www.carnegiecouncil.org/programs/model-international-mobility-convention>

92. Model International Mobility Convention (MIMC), cit, p. 22, art. 24.

93. Model International Mobility Convention (MIMC), cit.

94. Model International Mobility Convention (MIMC), cit.

if de facto stateless, a category in which all children born as refugees fit in, is embraced by its article 24 or not. This paper claims that MIMC shall expressly assure the right of citizenship for those born as refugees.

Final consideration

The long-lasting hazardous situation demonstrates that the existing legal framework is insufficient to address the vulnerability of children refugees.⁹⁵ The present paper focuses on one small share of this problem. It proposes, based on the child's best interest, avoidance of statelessness, and the prevention of children in a protracted refugee situation, that host States grant citizenship to all children born as refugees.

Ensure citizenship to refugee children born in host countries means to provide them from an early age with the sense that they are legally members of a society and thus are part of and belong to it.⁹⁶ "Naturalization and citizenship at birth are likely to aid the process of integration."⁹⁷ Moreover, the highest standard of state protection that nationality encompasses means access to health, education, nutrition, and other public services, besides shielding them from discrimination and other hardships they face. From the host States' perspective, children who receive proper treatment, education, and living conditions are likely to become socially and economically productive adults, and the offspring of refugees

95. G.S. Goodwin-Gill, *The Refugee in International Law*, cit., p. 475.

96. In this sense, T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 10, discuss the issue with regard to migrants in general.

97. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 8.

will be an asset rather than a burden. In an immigration context, conferring citizenship on reasonable grounds meets the interests of both migrants and the host country.⁹⁸

It is acknowledged that other measures to address the adversities of these endangered children have to be the object of further works. It is important to emphasize that citizenship will be guaranteed but will not be imposed. At the age of eighteen, they will have the right to choose to bear the nationality or not, observing the right of identity, as stated in article 8 of CRC.

In order to guarantee this right, the suggestion is to add a new paragraph to article 34 of CRSR that will be part of an optional protocol, or else, an optional protocol to CRC on the rights of refugee children that would offer a child-specific framework and include the right to citizenship.⁹⁹ Another venue is that the MIMC expressly embraces such provision in its path to becoming a treaty. Those three venues ensure that those born as refugees will enjoy all rights entitled by children citizens of the host State. Host States will protect them as they do with their own children, and it is expected that many violations will diminish. They will be more likely to integrate¹⁰⁰ as their bonds are still being developed.¹⁰¹ Discrimination and violence will drop.

98. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 3.

99. Considering that since 2000 three optional protocols have been adopted by the UN general assembly, this measure is feasible. See also: *Strengthening the Convention on the Rights of the Child: Optional Protocols*, available at <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>.

100. T. A. Aleinikoff, D. Klussmeyer, *Citizenship Policies for an Age of Migration*, cit., p. 8.

101. In this sense it is interesting to observe that a pamphlet of 1945 about refugee children stated that "Refugee children adjust readily" S. Koenig, M.R. Davie, *111*

Granting citizenship for refugee children born in host countries fulfills the child's best interest principle that must be a primary consideration in all State's actions. The discussed the recommendations of the Committee on the Rights of the Child, the international human rights treaties, resolutions, and other international documents and the literature contribute to this interpretation. Assuring citizenship for those born as refugees will be most helpful to fight statelessness, both *de jure* and *de facto*. We recall that, many refugee children born in host countries are *de jure* stateless, and all of them are the *de facto* statelessness, as they never experienced and cannot have access to the protection of the country of origin.¹⁰² This proposal also contributes to the UNHCR campaign to end statelessness by 2024.¹⁰³

Ensure citizenship for the children will also be an essential step to integration so that the protracted refugee situation does not overcome a generation. There is a significant number of refugees born to refugees who were also born in host countries.¹⁰⁴ By acquiring citizenship by birth, they will no longer be refugees, according

The Refugees Are Now Americans, Public Affairs Pamphlet Committee for the study of recent immigration from Europe ed., 1945, pp. 16-17.

102. R. Donner, *The Regulation of Nationality in International Law* Transnational Publishers, cit., p. 185.

103. U.N. High Comm'r for Refugees, *Global Action Plan to End Statelessness: 2014 – 2024*, available at <https://www.unhcr.org/ibelong/global-action-plan-2014-2024/#:~:text=In%20October%202013%2C%20the%20UN,international%20organisations%2C%20sets%20out%20a.> "Action 2: Ensure that no child is born stateless."

104. T.A. Aleinikoff, S. Poellot, *The Responsibility to Solve*, cit. The authors cite UNHCR, *Dadaab - World's biggest refugee camp 20 years old*, 21 February 2012, available at: <http://www.unhcr.org/refworld/docid/4f44d3782.html>. "But one must also note—in addition to troubling issues of security at the camp—that Dadaab now counts among its residents 10,000 children born to refugees who themselves were born in Dadaab".

to article 1. C. 3 of the CRSR. Thus, the refugee regime's primary scope, which is to be a refugee no longer, is met.¹⁰⁵

It is known that granting citizenship will not solve all the problems faced by refugee children born in asylum, but it is deemed an essential step towards a more promising life. In order to prevent that States from adopting a more rigid policy toward refugees, incentives and mechanisms of responsibility sharing, such as the proposal contained in the MIMC have to be contemplated. The Latin-American States are prone to lead the call for a right to citizenship for those born as refugees since birthright citizenship is adopted by nearly every State in Latin-America. If comprehensive protection is granted to refugee children relying on an international effort, as said by Nansen, "(...)the refugees who were regarded as an intolerable burden would comprise a rich asset."¹⁰⁶

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105. T.A. Aleinikoff, S. Poellot, *The Responsibility to Solve*, cit.

106. U.N. High Comm'r for Refugees, *Nansen - a Man of Action and Vision*, 2009, available at <http://www.unhcr.org/4aae50086.html>. According to UNHCR this sentence was said by Fridtjof Nansen.

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