

**WILLIAM E CONKLIN, *STATELESSNESS: THE ENIGMA OF THE INTERNATIONAL LAW*, OXFORD, HART PUBLISHING, 2014**

*Rokeya Chowdhury\**

**Officer Dolores Torres:** Let me ask you something, Mr. Navorski. Why do you wait here two hours every day when I've told you there's nothing I can do for you—that your new visa will not arrive until your country is recognized by the United States?

**Viktor Navorski:** You... you have two stamp. One red, one green.

**Officer Dolores Torres:** So?

**Viktor Navorski:** So, I have chance go New York, 50-50 [*sic*].

**Officer Dolores Torres:** [*laughs*] Yes, that's a *beautiful* way to look at it. But America doesn't *work* that way<sup>1</sup>.

The above movie excerpt not only portrays the plight of a person rendered “stateless” by executive enforcement of nationality laws, but also questions the exclusive preserve of the State with regard to nationality. William E Conklin<sup>2</sup> in his recent book titled “*Statelessness: The Enigma of the International Community*”<sup>3</sup> does the same by constantly questioning the “enigma” of statelessness. The enigma arises from the claim of universal protections of all members of the international community, whereas millions remain unprotected because the membership can be secured only through intervention of a state. The international community as an aggregate will of the member States cannot encroach its member States absolute freedom in domestic affairs, including conferring, withdrawing or withholding of

---

\* Rokeya Chowdhury is a Lecturer (on study leave) at Faculty of Law, University of Dhaka, Bangladesh. She is currently pursuing her doctoral program as an O'Brien Fellow at Faculty of Law, McGill University. Rokeya's research interests include indigenous and minority rights, comparative constitution and interdisciplinary legal research.

<sup>1</sup> *The Terminal*, 2004, DVD (Universal Cit (Cal), DreamWorks LLC, 2004). The movie was partially inspired by a real life story of an Iranian refugee caught in an airport terminal in France for 15 years. Matthew Rose, “Waiting for Spielberg” *The New York Times* (21 September 2003), online: *The New York Times* <<http://www.nytimes.com/2003/09/21/magazine/magazinespecial/MFMERHANT.html?pagewanted=all>>. In the movie Viktor Navorski, an Eastern European visitor, was denied access to the United States of America (USA) because while he was flying a new regime overthrowing his government suspended all traveling privilege issued by the previous regime and no state recognized the new regime. Since the very existence of the war makes it impossible for USA to deport him, Navorski makes a terminal in the John F Kennedy Airport his home until the war ceases; despite language barriers he makes friends and also falls in love with a flight attendant.

<sup>2</sup> Professor Conklin teaches in the Faculty of Law and Graduate Program (Philosophy) at Windsor University. For his full biography see: University of Windsor, “William E Conklin: Biography” (2015), online: University of Windsor <<http://www.uwindsor.ca/law/wconkli/>>.

<sup>3</sup> William E Conklin, *Statelessness: The Enigma of the International Community*, (Oxford: Hart Publishing, 2014) [Conklin].

nationality on basis of allegiance.<sup>4</sup> By deconstructing this “beautiful” but “unworkable” surface discourse of international community, he reconstructs an inner discourse of “international community as a whole” which exists independent of the aggregate will of the member States and prizes social ties over allegiance with regard to nationality.<sup>5</sup>

Apart from war, migration and discriminatory nationality laws, one of the major causes of statelessness is exclusion of deemed foreigners regardless of their deep social ties or effective nationality within the member State in question.<sup>6</sup> With United Nations Refugee Agency (UNHCR) estimation of at least ten million stateless people “in a world comprised of states”<sup>7</sup>, the narrative of an international community independent of its member States and reliant on social ties experienced by a natural person is thought provoking and highly relevant to the work of policy makers, jurists, judicial and executive officers alike. By exploring judgments of domestic, supra-national and international courts and tribunals, Conklin shows the discursive nature of the international community as an aggregate will of the states giving way to the international community as a whole, where harm to a natural person is seen not as harm against a state but against the international community claiming universal protection for all.

The book is divided into nine substantial chapters apart from introduction and conclusion. The introduction glosses the two senses of international community and critics the efforts to identify and eradicate statelessness for their state centric approach. In his opinion, as long as state autonomy governs nationality, no universal standard or codification will succeed in eradicating statelessness.<sup>8</sup> Chapter 1 argues that the existence of a discrete right or universal standard by itself does not answer the enigma of statelessness, unless the nature of the legal obligation to uphold the international standard to protect a stateless person is questioned.<sup>9</sup> In international community as aggregate will of the member States, the legal obligation to protect arise only when the member State has consented to the universal standard, has conferred nationality to the natural person according to domestic law, and when the exercise of such obligation does not transcend the freedom of any other state. In *contra*, in an international community as a whole, the legal obligation exists independent of state consent, as the legal bond of “effective nationality” is tied with the place where a natural person has experienced social relationship with others, which is independent of nationality laws regulated by States.<sup>10</sup>

---

<sup>4</sup> The exclusive reserve of member States regarding nationality is well documented in article 1 of the *Convention Relating to Status of Stateless Persons*, 28 September 1954, 360 UNTS 117 [1954 *Convention*], which defines a “stateless person” as “a person who is not considered as a national by any State under the operation of its law”.

<sup>5</sup> Conklin, *supra* note 3 at 4, 27 and 32.

<sup>6</sup> UNCHR, “Who is stateless and where?”, online: United Nations High Commissioner for Refugees <<http://www.unhcr.org/pages/49c3646c15e.html>>.

<sup>7</sup> UNCHR, *Global Action Plan to End Statelessness: 2014-2024* (November 2014), at 4 online: United Nations High Commissioner for Refugees <<http://www.unhcr.org/54621bf49.html>>.

<sup>8</sup> Conklin, *supra* note 3 at 19-20.

<sup>9</sup> *Ibid* at 59.

<sup>10</sup> *Ibid* at 59-64.

Chapter 2 argues that the international community as an aggregate of the member States in relation to nationality is not a given, rather a historic and judicial construct which came into place by replacing a choice of nationality made by inhabitants based on their social relationships.<sup>11</sup> By tracing the historic roots of the legal obligation to protect natural persons regardless of nationality, the chapter shows that the impunity from external scrutiny that member States have come to enjoy lately with regard to nationality made the international standards only supplemental or circular.<sup>12</sup>

Chapter 3 elaborates the legal and social consequences of both *de jure* and effective stateless resulting from the “Operation of Law” in the reserve domain regarding nationality.<sup>13</sup> Chapter 4 argues that the three statelessness treaties<sup>14</sup>, despite claiming universal standard for all, maintain the *status quo* by acceding to the reserve domain of the state.<sup>15</sup> The reserve domain gets primacy over “right to nationality” and “legal personhood” as states can limit their obligation by reservation clauses. The lack of enforcement mechanism and the exclusion of nationality as an enumerated ground of non-discrimination in the treaties also contribute to such primacy.<sup>16</sup> Chapter 5 argues that the customary character of an international legal norm like statelessness and human rights treaties reinforces the exclusive reserve of the state and fails to explain the legal obligation based on which a state will recognize and protect right to nationality.<sup>17</sup>

Chapter 6 explores the nature of legal obligation by revisiting the two international communities and legal bond of allegiance vis-à-vis social relationship or effective nationality. The chapter argues that there is a discursive struggle between the legal bonds, as the legal bond of allegiance defines a unilateral conferment of nationality by the state and the social bond connoting a reciprocal relationship with others experienced within a place, which precedes the conferment, withdrawal or withholding of nationality by state.<sup>18</sup> By examining the International Court of Justice majority decision in the *Nottebohm case (Liechtenstein v Guatemala)*<sup>19</sup> invoking the “effective nationality” principle and the pre and post *Nottebohm case*, the chapter forcefully argues that the “social bond” pierces the boundary of internal jurisdiction of member States and brings into light an international community independent of states.<sup>20</sup>

Chapter 7 argues that the experiential social relationship as a legal bond for membership in the international community provides all *de jure* and effectively

---

<sup>11</sup> *Ibid* at 68-73.

<sup>12</sup> *Ibid* at 88-95.

<sup>13</sup> *Ibid* at 96-134.

<sup>14</sup> *1954 Convention*, *supra* note 4; *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137; and *Convention on the Reduction of Statelessness*, 30 August 1961, 989 UNTS 175.

<sup>15</sup> Conklin, *supra* note 3 at 138-146.

<sup>16</sup> *Ibid* at 147-156.

<sup>17</sup> *Ibid* at 162-176.

<sup>18</sup> *Ibid* at 178-185.

<sup>19</sup> *The Nottebohm case (Liechtenstein v Guatemala)*, [1955] ICJ Rep 1 [*Nottebohm case*].

<sup>20</sup> *Ibid* at 186-202.

stateless persons a country of their “own”, independent of allegiance to a member State.<sup>21</sup> Chapter 8 argues that the territoriality and territory like boundary of the internal jurisdiction of the state is dissolving with increased judicial scrutiny of executive actions.<sup>22</sup> The dissolution of the reserve domain through “effective nationality” makes state a third party to the social relationships experienced by natural persons and the state becomes the fiduciary of such relationship.

Chapter 9, the final chapter, argues that the objectivity of laws of an international community requires separate existence from the subject or subjects. In an international community composed of states there can be no such objectivity or subject as the state is the sole arbiter of nationality. In contrast, the effective nationality principle makes the objectivity comprised by international standards separate from the subjects, be it state, international organizations, or natural persons. Such objectivity independent of the state makes harm caused to stateless persons, harm against the “international community as a whole” as being violative of its legal bond.<sup>23</sup>

The book advances with asking questions and going back and forth to the core arguments and hypotheses, which completely supports the central theme of two nested discourses of international community, but makes the first half of the book excessively repetitive. The introduction creates high expectation of a clear-cut solution to the enigma of statelessness which in the final reading does not seem to be the intention of the author. The cases discussed with brief facts and core findings not only make the study informative, but also make it enjoyable. Although the focus of the book is on “international community as a whole” one is left to wonder how an objectivity of international standards will take place in effect with huge disparity among states with regard to economy, resources, debt, density of population, etc. Since the book is mainly based on analysis of judicial decisions, it was quite a surprise that despite noting the Supreme Court decision of 2008<sup>24</sup> acclaimed for affirming the citizenship of some 300 000 natural persons<sup>25</sup> the author commented that Urdu Speaking (Bihari) people in Bangladesh remain stateless despite social ties.<sup>26</sup>

In conclusion, the analysis of the nature of legal obligation in two international communities based on different legal bonds provides a deep understanding of the enigma of statelessness.

---

<sup>21</sup> *Ibid* at 220-234.

<sup>22</sup> *Ibid* at 236-260.

<sup>23</sup> *Ibid* at 271-301.

<sup>24</sup> *Md Sadaqat Khan (Fakku) and Others v The Chief Election Commissioner, Bangladesh Election Commission*, [2008] Writ Petition No 10129 (Bangladesh: Supreme Court), online: Refworld <<http://www.refworld.org/docid/4a7c0c352.html>>; *Ibid* at 216, nn 209. The author also cited an earlier decision of 2003 holding in favor of ten Urdu Speaking persons: *ibid* at footnote 133.

<sup>25</sup> UNHCR, *Notes on Nationality Status of the Urdu Speaking Community in Bangladesh* (December 2009), online: ecoinet <[https://www.ecoi.net/file\\_upload/1226\\_1261574665\\_4b2b90c32.pdf](https://www.ecoi.net/file_upload/1226_1261574665_4b2b90c32.pdf)>.

<sup>26</sup> *Ibid* at 116-117.