Expunging Statelessness from Terrorist Expatriation Statutes

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NOTE

EXPUNGING STATELESSNESS FROM TERRORIST EXPATRIATION STATUTES

I. INTRODUCTION

Concerns over national security and terrorism are escalating as the United States and the United Kingdom, as well as other nations, face the growing threat in the Middle East from the Islamic State of Iraq and Syria ("ISIS"), among others. Following the September 11, 2001, terrorist attacks, the United States and the United Kingdom developed legislative provisions to combat domestic threats of terrorism. Anti-terror legislation as a means to deal with such threats has allowed spying, indefinitely detaining, and killing those suspected of engaging in terrorist activities.

5. Through the Authorization for the Use of Military Force ("AUMF"), Congress authorized the President to wage unfettered, permanent war against anyone that he, in his sole discretion, deemed related to the September 11, 2001, attacks and any future attacks. Authorization for the
Recent “War on Terror” legislation in the United States and the United Kingdom has attempted to revoke the citizenship of nationals and render them stateless if they are suspected to have engaged in hostilities against the state. By rendering human beings stateless, these laws pose a serious threat to the international human right to a nationality and the right to not be rendered stateless. The legislative responses in the War on Terror have raised legal issues relating to national security concerns on the one hand but unnecessary inconsistencies with fundamental international human rights law protections against statelessness on the other.

In 2003, 2011, and 2014, the legislature drafted three distinct immigration and national security pieces of legislation that, if enacted, would allow officials to revoke the citizenship of U.S. citizens and render them stateless. In May 2014, the U.K. Parliament passed similar legislation that permits the British Secretary of State for the Home Department (the “Home Secretary”) to strip British nationals of their citizenship, potentially leaving them stateless.

The purpose of this Note is to establish that the statelessness provisions incorporated in both the recent U.S. and U.K. legislation are inconsistent with the fundamental international human rights protections against statelessness and to argue that the legislative goals can be fully achieved without rendering persons stateless.

Specifically, Part II examines the longstanding and well-established international human right to nationality and protections against

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9. See S. 2779; H.R. 3166; S. 1698; Dep’t of Justice, supra note 6, § 501.

10. See Immigration Act § 66.

11. See infra Part IV.
statelessness. Part III analyzes the proposed laws and determines that they would render persons stateless, which has severe consequences. Part IV establishes that the proposed legislation is inconsistent with international human rights law and asserts that adequate remedies exist to fully achieve legislative goals without the statelessness provisions. Part V concludes that any legislation proposed and enacted to prosecute the War on Terror should not render persons stateless in violation of fundamental international human rights law.

II. THE RIGHT TO NATIONALITY AND THE RIGHT TO NOT BE RENDERED STATELESS IN INTERNATIONAL LAW

The legislative proposals in the United States and the new legislation in the United Kingdom are inconsistent with the fundamental international human right to nationality and with the correlative international law duty of states to reduce statelessness. International human rights law has developed to establish the universal right to a nationality and the right to not be rendered stateless. Anti-terror legislation that aims to revoke citizenship, rendering citizens stateless and with no nationality, violates that international law.

A. The Right to Nationality and the Right to Not Be Rendered Stateless Deserve Protection Under International Law

Nationality is the means by which human beings are able to both develop relations with a state and assert their existence on the international stage. Nationality allows a legal bond to develop between an individual and a state, where the individual has certain duties and rights, and the state has certain duties and responsibilities in affording
protection to the individual. As sovereign entities under international law, states have the power to set the rules for acquisition, change, and loss of nationality. However, through obligations under international law, states are limited in their control of nationality. These limitations are established by treaties, "international agreements concluded between States in written form and governed by international law"; and custom, the general practice of states accepted as law. The right to nationality has become a fundamental legal human right protected by international law, which is binding on all states.

Each state's municipal law dictates to whom nationality should be granted and how nationality can be lost or changed. One way an individual can become stateless is through renunciation or deprivation of their citizenship by a state. To be stateless is to be without nationality or citizenship. A person becomes stateless by losing the nationality of one state and holding no other nationality. The loss of nationality that results in statelessness can be detrimental to one's liberty, as nationality is the vehicle through which individuals are able to assert other fundamental rights. An individual deprived of nationality may face a variety of consequential issues.
The United Nations High Commission for Refugees ("UNHCR") has estimated that twelve million people worldwide are stateless. There are two types of statelessness that are covered in international law: de jure and de facto. De jure stateless individuals are those who lack a formal bond of nationality. For example, in the Dominican Republic, tens of thousands of Dominicans of Haitian descent were rendered de jure stateless in September 2013 after a decision in which the constitutional court determined that they were non-nationals and were to be treated as such—including a denial of citizenship. In contrast, de facto stateless individuals retain a formal bond of nationality but are unable to rely on their country of nationality for the protections that nationality would ordinarily assure. Although these individuals maintain a formal nationality, that nationality is ineffective.

For example, there are many groups of people around the world who are suffering under intense discrimination or oppression in the very countries of which they are nationals. Practical considerations,

32. After World War II, a study by the then-newly commissioned United Nations found that there were protection issues for persons who had been disconnected from their own state, including both refugees and stateless persons. WAAS, supra note 7, at 15-16. The UNHCR was the first international law instrument that recognized the rights of stateless individuals. Id.; see also About Us, UNHCR, http://www.unhcr.org/pages/49c3646c2.html (last visited Apr. 10, 2016) (explaining that the UNHCR was "mandated to lead and co-ordinate international action to protect refugees" and was also "mandated to help stateless people").

33. Div. of Int’l Prot., supra note 21, at 4; see also Indira Goris et al., Statelessness: What It Is and Why It Matters, FORCED MIGRATION REV., Apr. 2009, at 4, 4 ("Estimates of the current number of stateless persons in the world range from about 11 to 15 million. There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on whom to include when counting stateless people.").


35. WAAS, supra note 7, at 20.


37. WAAS, supra note 7, at 20.


39. See, e.g., Paul White, Reducing De Facto Statelessness in Nepal, FORCED MIGRATION REV., Apr. 2009, at 28, 28. The UNHCR estimated that in 2009 there were approximately 800,000 de facto stateless Nepali citizens. Id. Many people displaced within Nepal during the violent years
such as fear of persecution, may preclude these people from asserting their right to citizenship, thus rendering them de facto stateless.40

Statelessness carries severe consequences, regardless of whether it is de jure or de facto.41 Among many other things, statelessness "limits access to birth registration, identity documentation, education, health care, legal employment, property ownership, political participation and freedom of movement."42 Denial of these rights affects not only individuals but also society as a whole.43 Society as a whole is affected because the exclusion of an entire sector of the population may create unacceptable social tension and significantly impede efforts to promote economic and social development.44 Statelessness may even lead to forced displacement, particularly when it results from the arbitrary deprivation of nationality.45

The deprivation of nationality has a significant impact on the enjoyment of basic human rights, including civil, political, economic, social, and cultural rights.46 As signatories to the International Covenant on Civil and Political Rights ("ICCPR"), which addresses the obligation of states to uphold various civil, political, social, and cultural rights, the United States and the United Kingdom have a binding duty to abide by its principles.47 Article 25 of the ICCPR provides for the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public service.48 For those who have been deprived of their nationality, these political rights may be unavailable.49 In some states, individuals without nationality may be unable to vote, occupy certain state and public positions, or become members of a political party.50 However, in many states, non-citizens

of the Maoist insurgency were faced with almost insurmountable difficulties in obtaining a citizenship certificate. Id.

40. See Milbrandt, supra note 34, at 82.
41. See WAAS, supra note 7, at 12.
42. Div. of Int'l Prot., supra note 21, at 4.
43. See WAAS, supra note 7, at 12; see also BINGHAM ET AL., supra note 36, at 6.
44. Div. of Int'l Prot., supra note 21, at 5.
45. Id.
46. See Waas, supra note 26.
49. A/HRC/19/43, supra note 30, ¶ 4.
50. Id. ¶ 7.
who meet certain conditions are permitted to cast a vote or stand for office in certain local elections.\footnote{Farooq: Expunging Statelessness from Terrorist Expatriation Statutes, supra note 30, ¶ 8.}

Article 12 of the ICCPR provides for the right to liberty of movement for everyone lawfully within the territory of a state.\footnote{International Covenant on Civil and Political Rights, supra note 48, art. 12.} Persons who have been deprived of nationality may face severe limitations on their ability to travel.\footnote{A/HRC/19/43, supra note 30, ¶ 8.} Despite international law protections, there are some states in which the freedom of movement of non-citizens is restricted and unavailable.\footnote{Id. ¶ 10.} Restrictions on the freedom of movement of stateless people has, in some instances, resulted in an inability to access medical and educational services and, for some, has meant an unaffordable fee just to travel outside of their respective villages.\footnote{International Covenant on Civil and Political Rights, supra note 48, art. 9.}

Those who have their nationality revoked may also face violations of the right to liberty pursuant to Article 9 of the ICCPR, which provides that no one shall be subject to arbitrary arrest or detention.\footnote{A/HRC/19/43, supra note 30, ¶ 15.} Detention is often the most immediate and direct consequence of citizenship revocation.\footnote{Id. at 16.} The U.N. Office of the High Commissioner on Human Rights ("U.N. Office") has considered practices that involve detaining non-citizens and has labeled them violations of the right to liberty.\footnote{Id. ¶ 9.3, CCPR/C/97/D/1442/2005 (Nov. 23, 2009), http://www.refworld.org/docid/4b1d223d2.html.} The U.N. Office classifies an arbitrary detention as one in which the state cannot provide an appropriate justification.\footnote{See Fong v. Australia, Communication No. 1442/2005, U.N. Human Rights Commission, ¶ 9.3, CCPR/C/97/D/1442/2005 (Nov. 23, 2009), http://www.refworld.org/docid/4b1d223d2.html.} For example, the U.N. Office found a detention of a non-citizen for a period of four years was arbitrary and unlawful because the state failed to demonstrate that, in light of the person's particular circumstances, there were no less invasive means of achieving the same ends.\footnote{Id. ¶ 16.} The U.N. Office has also expressed concern over the prolonged detention of non-citizens suspected of committing terrorist-related offenses.\footnote{A/HRC/19/43, supra note 30, ¶ 16.}
circumstances, the U.N. Office has indicated that detention of non-citizens is to be avoided and should only be used in exceptional circumstances, or as a last resort, and only for the shortest possible time.62

The revocation of citizenship affects not only individual rights but also collective rights of groups, leading, in some instances, to conflicts and wars.63 The Advisory Board on Human Security, created to advise the U.N. Secretary-General, looked closely at the effect of the denial of citizenship on human security and found that nationality disputes have directly contributed to internal, and even international, conflicts.64 In Bangladesh, for example, some 240,000 Biharis (primarily, non-Bengali Muslims who fled from India during the partition of 1947, and who supported West Pakistan during the 1971 secessionist struggle) continue to live in camps, waiting for the day when they can take up residence and citizenship in Pakistan.65 Additionally, in the Middle East, despite the progress that has been made in the peace process, the current and future citizenship status of many Palestinian refugees throughout the region is yet to be determined.66

Another example of an international conflict attributed to the denial of citizenship involves a large number of ethnic Chinese residents in Brunei, where citizenship has historically not been granted automatically, but is determined by ethnic decent.67 In 1984, following Brunei’s independence, only a small minority of ethnic Chinese people were granted citizenship by the government of Brunei.68 The others, numbering around 20,000, lost their nationality and were rendered stateless.69 It was not until the late 2000s that the Brunei government instituted initiatives for the thousands of stateless residents to obtain citizenship.70

62. Id.
63. See id. ¶ 43.
64. WAAS, supra note 7, at 14.
68. Id.
70. Id.
The deprivation of nationality has effects on the rights of families, the right to work, the right to healthcare, the right to housing, women's rights, children's rights, and minority rights. Since the deprivation of nationality can have such a detrimental effect on one's quality of life, international law standards have been established to limit a state's ability to revoke a person's citizenship and render her stateless. Throughout history, international law has evolved to establish a fundamental universal right to nationality and has enforced the correlative duty on states to reduce the existence of statelessness.

B. Developments in International Law Establishing the Right to Nationality and the Duty for States to Reduce Statelessness

International law instruments have developed to promote the right to nationality and the right to not be stateless. Treaties between nations have been formed in efforts to encourage fundamental human rights, like the right to nationality and the right to not be rendered stateless. Even though many nations are not signatories to such treaties, the principles and rights established within those treaties are nonetheless enforceable because of customary international law.

1. Treaties

The serious and detrimental effects of statelessness have led to developments in international law. Two distinct, yet complementary, conventions of international law emerged specifically to address the issue of statelessness: the 1954 Convention Relating to the Status of Stateless Persons (or "1954 Convention") and the 1961 Convention on the Reduction of Statelessness (or "1961 Convention"). Both conventions, taken in conjunction with each other, indicate the unacceptability of the condition of statelessness occasioned by the denial of the right to nationality.

71. See A/HRC/19/43, supra note 30, ¶¶ 21-26, 30-44.
72. See infra Part II.B.
73. See infra Part II.B.
75. See infra Part II.B.1.
76. See infra Part II.B.2.
77. WAAS, supra note 7, at 15.
80. WAAS, supra note 7, at 15. Despite the achievements of the two Conventions on statelessness, there remains a need for stronger efforts by the international community to combat the
a. The 1954 Convention

The 1954 Convention was designed to protect stateless individuals.81 It formulated protections for those without any nationality by providing them a set of basic rights.82 It represented the first significant step towards defining and reducing statelessness and connecting statelessness to the right to nationality.83 It aimed to regulate the status of stateless persons and to ensure the widest possible enjoyment of their human rights in lieu of nationality.84

The 1954 Convention defined a de jure stateless person and established an internationally recognized status for stateless persons.85 It notably extended specific rights, such as those relating to the issuance of identity and travel documents, to stateless persons.86 The 1954 Convention was the first to recognize the profound vulnerability of stateless persons and to set international standards for states to follow when dealing with such persons.87 While the 1954 Convention was aimed at improving the status of stateless persons, it did not oblige states to provide them with residence or nationality.88 On its own, the 1954 Convention failed to provide states with clear instructions on how to combat statelessness.89 However, with the establishment of international human rights law, and through the subsequent practices of states, various protections and mechanisms by which to protect stateless individuals have developed.90

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82. See 1954 Convention, supra note 78; see also WAAS, supra note 7, at 16.
83. See Milbrandt, supra note 34, at 87. The 1954 Convention relating to the Status of Stateless Persons is the "cornerstone of the international protection regime for stateless persons." Id.
85. See 1954 Convention, supra note 78.
87. See WAAS, supra note 7, at 228.
88. See MANDAL & GRAY, supra note 36, at 4 n.19.
89. See id. at 4.
90. Id. at 4 n.19. For example, a significant number of states provide persons recognized as stateless in their territory with permission to stay for periods of up to five years, often on a renewable basis. See EUROPEAN NETWORK ON STATELESSNESS, DETERMINATION AND THE PROTECTION STATUS OF STATELESS PERSONS 36 (2013), http://www.refworld.org/pdfid/53162a2f4.pdf.
The United States is not a party to the 1954 Convention. However, the rights of stateless individuals as well as the correlative duty of states to protect stateless individuals and the right to nationality have developed as norms of international law, which constitute principles of customary international law. Thus, the United States, which is not a party to the treaties on statelessness, at a minimum would be out of step with the direction of emerging international norms against rendering people stateless, and at a maximum would be acting contrary to customary international law. Since the deprivation of these fundamental rights to stateless individuals is not in line with customary international law and the clear direction of international law development, the United States and the United Kingdom (which is a party to the treaty) are nonetheless bound to exercise and establish the rights of stateless individuals if they wish to be perceived as acting within the rule of international law.

b. The 1961 Convention

The 1961 Convention goes further than the 1954 Convention in its proactive aims at reducing the prevalence of statelessness by state actions. At the time of the 1961 Convention, the elimination of statelessness was seen as an integral “part of the protection of the human rights of individuals.” Since the 1954 Convention only mitigated the adverse effects of statelessness on individuals, the 1961 Convention was thought to be necessary to reduce and eradicate statelessness itself. The 1961 Convention requires states to establish safeguards in legislation to address statelessness occurring at birth or later in life.

91. For a list of parties to the 1954 Convention, see Convention Relating to the Status of Stateless Persons, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsIl.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en. Unfortunately, the Conventions on Statelessness have very few state signatories, as compared with other international law treaties. See WAAS, supra note 7, at 17. The reason there are very few states as parties to the treaties turns on the reluctance of states to forfeit their sovereignty, to some extent, in mandating state-specific nationality laws. Id.

92. See supra note 24 and accompanying text.

93. See WAAS, supra note 7, at 71.

94. Id.

95. See 1961 Convention, supra note 79; see also WAAS, supra note 7, at 42-43.


97. WAAS, supra note 7, at 41.

98. See 1961 Convention, supra note 79; see also Div. of Int’l Prot., supra note 21, at 5.
Article 1 of the 1961 Convention provides: "A contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." Article 4 demonstrates an even stronger duty on states to eradicate statelessness and provides, in pertinent part, as follows: "A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State."

Most states stipulate the ways in which nationals may lose their nationality. The grounds for which a person's nationality may be lost are contained in the domestic immigration or nationality laws of the state. As sovereign entities, states enjoy discretion when establishing these grounds. However, there are limitations to this sovereign power via international law. One of the limitations on this sovereign power to revoke a person's citizenship comes from the 1961 Convention.

The 1961 Convention recognizes some of the grounds that various states invoke for a loss of citizenship. The 1961 Convention supports the legitimate grounds for which a person's nationality may be lost, when such grounds are not arbitrary and will not render a person stateless. The fundamental human right to not be rendered stateless is key when determining whether a ground for revocation can be invoked or not.

Article 8 of the 1961 Convention prohibits the deprivation of a person's citizenship if it will render her completely stateless. However, this prohibition is not absolute, and the 1961 Convention...
provides a number of exceptions. The 1961 Convention recognizes a narrow set of circumstances in which loss or deprivation of nationality leading to statelessness may serve a legitimate purpose. The 1961 Convention permits a state to subject a national to statelessness in various instances of failing to show proper allegiance, such as if the person has acted “inconsistently with his duty of loyalty to the Contracting State”, or, has “taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.”

The 1961 Convention goes further to provide that when a person has committed “acts seriously prejudicial to the vital interests of the State,” the State may provide for the revocation of their nationality as a form of punishment or as a response to the broken bond of allegiance or loyalty to the State. This is especially relevant to the proposed anti-terror legislation in the United States and United Kingdom, as those statutory provisions offer a similar ground to revoke citizenship.

Although the 1961 Convention provides such a ground for the revocation of citizenship, even if it renders the individual stateless, the anti-terror legislation may still be invalid under international law. Before such a determination is made, the context, history, and intent of the legislation must be considered. The U.N. Secretary-General issued a report that stressed the need for greater scrutiny when denationalizing an individual will result in is her statelessness:

Even in such cases, [where a legitimate ground to revoke an individual’s citizenship exists,]...the loss or deprivation of nationality must satisfy the principle of proportionality. The consequences of any withdrawal of nationality must be carefully weighed against the gravity of the behavior or offence for which the withdrawal of nationality is prescribed. Given the severity

111. See 1961 Convention, supra note 79, art. 8, ¶¶ 2–3.
112. Id. art. 8, ¶ 3(a).
113. Id. art. 8, ¶ 3(b); see Emanuel Gross, Defensive Democracy: Is It Possible to Revoke the Citizenship, Deport, or Negate the Civil Rights of a Person Instigating Terrorist Action Against His Own State?, 72 UMKC L. REV. 51, 63 (2003).
115. See supra note 6.
117. See id. at 7-8.
of the consequences where statelessness results, it may be difficult
to justify loss or deprivation resulting in statelessness in terms
of proportionality.118

In practice, the majority of states that are parties to the 1961
Convention have not invoked such grounds as a means to deprive
nationality if it leads to statelessness.119 Because the consequence of
statelessness is so serious and detrimental to fundamental human rights,
this exception to the correlative duty of states to reduce statelessness
provided in the 1961 Convention is to be construed narrowly.120

Subsequent reports by the United Nations have indicated that,
although exceptions to the duty of states not to render humans stateless
exist, international law strongly condemns the revocation of citizenship
if it will deem a person stateless.121 In October 2013, the U.N. High
Commissioner for Refugees initiated a process to clarify specific
questions surrounding the avoidance of statelessness in the context of
loss and deprivation of nationality.122 One finding by international
experts stated that “the burden of proof lies with the State to establish
that an individual will not be rendered stateless and that loss or
deprivation can therefore proceed.”123 Accordingly, states must take a
closer look at their nationality laws to ensure that international standards
against rendering humans stateless are respected.124 Under international
law, the avoidance of statelessness is a high priority that cannot, and
should not, be overlooked.125

The United Kingdom’s passage of Clause 60 of the British
Nationality Act led to some discourse on the United Kingdom’s
obligations as a party to the 1961 Convention in light of the grant of
power to the Home Secretary to revoke citizenship and render people
stateless under the new legislation.126 When it became a party to the
1961 Convention, the United Kingdom declared its intention to retain its
existing powers to deprive an individual of citizenship even if this
resulted in statelessness, which was permitted on the basis of paragraph

119. Id. ¶ 12.
120. Id.
121. See OPINION ON CLAUSE 60, supra note 116, at 9.
122. See A/HRC/25/28, supra note 29, ¶ 5; see also U.N. High Comm’r for Refugees, Expert
Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from
Loss and Deprivation of Nationality, Summary Conclusions, ¶s 11-14, at 4-5, http://www.unhcr.org/
5465e2cb9.pdf.
123. See A/HRC/25/28, supra note 29, ¶ 5, at 5.
124. Id. ¶ 3.
125. See Paulussen & Waas, supra note 16.
126. See OPINION ON CLAUSE 60, supra note 116, at 1.
3 of Article 8 of the 1961 Convention. Subsequently, however, the relevant domestic law was changed so that deprivation of nationality was only permitted if it did not result in statelessness. Most recently, domestic law in the United Kingdom has changed to permit the revocation of citizenship even if it does lead to statelessness. Because this power to revoke citizenship and render humans stateless is illegal under U.K. obligations to international treaty law, it relies on the declaration it made at the time of assenting to the treaty, in accordance with paragraph 3 of Article 8.

However, this may not free the United Kingdom of its obligations. Critics question whether the declaration under paragraph 3 of Article 8 continues to have an effect as the United Kingdom later relinquished the very power it sought to retain through that act, when the domestic law changed to permit revocation of citizenship only if the result would not lead to statelessness. Additionally, under customary international law, which is by its nature binding on all states, the United Kingdom may still be in violation of the international law on statelessness in its passage of Clause 60 of the British Nationality Act.

2. The General Practices of States Accepted as Law or Customary International Law

Despite the lack of parties to the two Conventions on statelessness, it can be argued that the general practices of states accepted as law reflects the trend of states to respect an individual’s right to nationality and reduce statelessness. The adherence to these principles by states is demonstrative of the overall emergence of customary international law that is binding on all states. There is certainly a strong presumption in favor of the prevention of statelessness in any change of nationality.

127. See Mandal & Gray, supra note 36, at 5.
128. Id.
129. Id.
130. See Opinion on Clause 60, supra note 116, at 2-3.
131. See Mandal & Gray, supra note 36, at 5.
132. Id.
133. See id.
134. See id.
135. See infra Part II.B.2.
136. See Waas, supra note 26.
137. See Waas, supra note 7, at 39.
The American Law Institute provides, in relevant part, that “[c]ustomary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.”139 Further, in Article 38 of the Statute of the International Court of Justice, the court is obliged to examine “international custom, as evidence of a general practice accepted as law” in its determination of disputes in international law.140 The international law that has developed in the past fifty years on the right to nationality and the right to not be rendered stateless indicates a uniform practice of states, accepted as law, to honor an individual’s right to nationality and not render people stateless.141

The earliest affirmation of the human right to nationality was made in 1885, when the Institute for International Law formulated a number of principles concerning the attribution of nationality, including “no one shall be without a nationality” and “everyone shall have the right to change nationality.”142 In 1930, under the support of the League of Nations,143 the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws was drafted as one of the first serious attempts of states in the twentieth century to agree on a number of basic rules applicable to states regarding matters of nationality.144 In 1984, the Universal Declaration of Human Rights145 was adopted as the most influential international soft-law instrument to articulate the fundamental human right to nationality.146 Article 15 of the Universal Declaration of Human Rights clearly and simply states that “everyone has the right to a nationality” and “no one shall be arbitrarily deprived of his nationality.”147

139. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (AM. LAW INST. 1986).
141. Blackman, supra note 138, at 1183.
142. RUTH DONNER, THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW 44 (2d ed. 1994) (discussing the concept of nationality within the scope of international law and the ongoing struggle of sovereign nations in maintaining power over its laws of nationality, while also abiding by principles of public international law).
144. WAAS, supra note 7, at 37.
146. WAAS, supra note 7, at 41 n.56.
147. Universal Declaration of Human Rights, supra note 25, art. 15. The right to nationality was seen as the foundation of other rights. Id.
Many additional international law treaties also formed, further suggesting the emergence of a general customary law with a sense of legal obligation applicable to all states. The 1961 Convention on the Reduction of Statelessness established, and legally endorsed, the right of humans to nationality and forbade denationalization “on racial, ethnic, religious or political grounds.” The International Convention on the Elimination of Racial Discrimination, which entered into force in 1965, required that the right to nationality not be denied for discriminatory reasons. The ICCPR, which entered into force in 1976, discussed the right of “[e]very child... to acquire a nationality,” and the Convention on the Rights of the Child, entered into force in 1989, guaranteed the right of every child to acquire a nationality and placed a duty on state parties to respect that right.

Several regional treaties also address the human right to nationality. Article 20 of the American Convention on Human Rights provides that “every person has the right to a nationality” and that “every person has the right to a nationality of the State on whose territory he or she was born if he or she does not have the right to any other nationality.” Article 4 of the European Convention on Nationality

148. 1961 Convention, supra note 79, art. 9.
150. International Convention on the Elimination of All Forms of Racial Discrimination, supra note 149, art. 5.
151. International Covenant on Civil and Political Rights, supra note 48, art. 24. The United States and the United Kingdom are signatories to the ICCPR. See supra note 47 and accompanying text.
155. WAAS, supra note 7, at 38.

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provides that the rules on nationality of each state that is a party should be based on the principles that "everyone has the right to a nationality"; "statelessness is to be avoided"; and, "no one should be arbitrarily deprived of his or her right to nationality."\textsuperscript{157}

In addition to these affirmations on the international law stage of the right to nationality and the duty of states to reduce statelessness, individual states have also taken action, reflecting the notion that the general practice of states in affirming the right to nationality and reducing statelessness is part of customary international law and thus binding on all states.\textsuperscript{158} The United States, despite not being a party to the 1954 and 1961 Conventions on statelessness, engages in practices that are consistent with them—thus accepting the principles and not vociferously objecting to the international law that has developed over the past fifty years.\textsuperscript{159} As the single largest donor to the UNHCR—the agency created to protect the stateless—the United States has demonstrated a strong adherence to the principles of the 1954 and 1961 Conventions.\textsuperscript{160} The U.S. Department of State provides "humanitarian assistance and engages in diplomacy to prevent and resolve statelessness" and "advocates on behalf of stateless people with foreign governments and civil society organizations, and conducts field monitoring of the conditions and challenges that stateless people encounter."\textsuperscript{161}

The prevalence of international law instruments, as well as the emergence of general practices of states confirming the right to nationality and the duty to reduce statelessness, reflects a greater consensus in the international law community supporting that this custom of international law exists.\textsuperscript{162} Thus, the United States and the United Kingdom have an obligation under international law to respect the right to nationality and avoid statelessness.\textsuperscript{163} As a result, the citizenship-revocation anti-terror legislation in both states is likely to be


\textsuperscript{158.} Blackman, supra note 138, at 1183.

\textsuperscript{159.} See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (AM. LAW INST. 1986) ("[I]n principle a state that indicates its dissent from a practice while the law is still in the process of development is not bound by that rule even after it matures . . . . A state that enters the international system after a practice has ripened into a rule of international law is bound by that rule.").


\textsuperscript{161.} Id.

\textsuperscript{162.} See Waas, supra note 26.

\textsuperscript{163.} Blackman, supra note 138, at 1183.
in violation of international law. There are alternative and effective means of achieving the goals of the legislation without violating the international law on nationality and statelessness.

III. PROPOSED ANTI-TERROR LEGISLATION IN THE UNITED STATES AND UNITED KINGDOM PROMOTE STATELESSNESS

Federal lawmakers in the United States have recently proposed legislation that would allow revocation of U.S. citizenship when a person has been suspected of terrorist activities, even if the revocation leaves the person stateless and with no nationality. Identical anti-terror legislation has recently been enacted in the United Kingdom. The United Kingdom is a party to various international law treaties that address statelessness, and the United States also has obligations under customary international law to abide by the international human rights law on nationality and reducing statelessness. This Part studies and analyzes anti-terror legislation in the United States and the United Kingdom through the lens of international human rights law, with a particular focus on its ramifications for individuals who might be rendered stateless.

A. Proposed Legislation in the United States

Following the September 11, 2001, terrorist attacks on the World Trade Center, the Pentagon, and the attempted attack on the White House, there have been numerous bills either drafted or introduced in Congress that, if enacted, would revoke American citizenship of those citizens suspected of terrorist activities. The bills have been a focal point of legislative concern for over ten years, and they all aim to achieve the same result—to amend the Immigration and Nationality Act of 1965 to include an additional ground to revoke citizenship. The

164. _Id._
165. _See infra_ Part IV.
168. _See supra_ Part II.
169. _See infra_ Part III.A–B.
172. _See S. 2779; H.R. 3166; S. 1698; DEP'T OF JUSTICE, supra_ note 6, § 501.
additional provision would provide that “engaging in or having provided material support to a terrorist organization” serves as a ground for revocation of citizenship.173

Most recently, on September 8, 2014, Senator Ted Cruz (R-TX) introduced the Expatriate Terrorists Act in the Senate.174 This bill is particularly aimed at revoking citizenship of Americans who join ISIS.175 Additionally, the bill would alter the requirements for stripping U.S. nationals of their citizenship to include those who “became a member of” or provided “material assistance” to a “designated foreign terrorist organization.”176 This measure would apply to both natural-born and naturalized U.S. citizens and would, thus, lead these individuals to become stateless if they did not have another nationality.177 The legislation was eventually blocked in the Senate, primarily because of the grave constitutional implications the bill would have on U.S. citizens, including the infringement on due process and equal protection rights.178 As the threat of terrorism continues to grow, future introduction and possible enactment of legislation with similar aims seems likely.179

In 2011, Senators Joe Lieberman (I-CT) and Scott Brown (R-MA) and Representatives Charlie Dent (R-PA) and Jason Altmire (D-PA) each introduced the Enemy Expatriation Act in the Senate and House of Representatives.180 The bill added “engaging in or purposefully

173. See S. 2779.
176. S. 2779.
and materially supporting hostilities against the [United States]" to the list of acts for which U.S. nationals would lose their nationality. It further defined "hostilities" broadly as any conflict subject to the laws of war. The legislation would "empower the federal government to dispossess citizens of their citizenship and send them into stateless exile." The legislation was eventually referred to a committee in both houses of Congress, but was never scheduled for a hearing, and the bill eventually died.

The Domestic Security Enhancement Act of 2003 ("Patriot Act II") was drafted by the staff of Attorney General, John Ashcroft, and was leaked to the public by the Center for Public Integrity. Section 501 of the legislation, entitled "Expatriation of Terrorists," provided for the denationalization of a citizen if the government determined that the citizen had either joined or provided material support to a terrorist organization. If enacted, this legislation would apply to both natural-born and naturalized U.S. citizens, who could be rendered stateless if their citizenship was revoked under its grounds and they had no other nationality.

Section 349 of the Immigration and Nationality Act, codified in 8 U.S.C. § 1481, which the three aforementioned anti-terror legislative proposals are attempting to amend, provides the grounds upon which the U.S. government may expatriate an American citizen. In the United States, a person cannot be denationalized. Denationalization is the

182. See H.R. 3166; S. 1698.
184. H.R. 3166.
185. DEP’T OF JUSTICE, supra note 6, § 501.
186. Graham, supra note 18, at 594.
187. See DEP’T OF JUSTICE, supra note 6, § 501. One of the most troubling aspects of this draft legislation is the elimination of the government’s burden to prove a citizen’s intent to renounce citizenship. See Graham, supra note 18, at 607. Currently, under the Immigration and Nationality Act, the government must prove that the citizen had an intention to relinquish his citizenship. See id. However, under the Domestic Security Enhancement Act of 2003, there is a presumption of intent to relinquish citizenship based solely on a person’s connection to a terrorist group. Id. For a discussion on the constitutionality of the intent-presuming provisions, see Peter J. Spiro, Expatriating Terrorists, 82 FORDHAM L. REV. 2169, 2176 (2014).
188. See Graham, supra note 18, at 608.
forcible divesture" of citizenship by the government.\textsuperscript{191} The only way for the U.S. government to revoke a person's citizenship is through the process of expatriation.\textsuperscript{192} Today, expatriation requires (1) a voluntary act of renunciation or abandonment of nationality and allegiance, and (2) an intent to relinquish citizenship.\textsuperscript{193}

Section 349 of the Immigration and Nationality Act, without the proposed additions, states that a person who is a national of the United States, by birth or naturalization, shall lose her citizenship by voluntarily engaging in certain enumerated activities with the intention of relinquishing U.S. nationality.\textsuperscript{194} Section 1481 specifies the seven expatriating acts: (1) obtaining naturalization in a foreign state; (2) taking an oath of allegiance to a foreign state; (3) serving in the armed forces of a foreign state (if the armed forces are engaged in hostilities against the United States or the person serves as a commissioned or noncommissioned officer); (4) accepting or performing the duties of a government office of a foreign state; (5) making a formal renunciation of U.S. nationality in a foreign state; (6) making a formal written renunciation of nationality, while in the United States, if the country is in a state of war; and (7) committing an act of treason against the United States.\textsuperscript{195}

The Expatriate Terrorists Act of 2014, the Enemy Expatriation Act of 2011, and the Patriot Act II all seek to amend the Immigration and Nationality Act to include terrorism as one of the enumerated voluntary activities that leads to expatriation.\textsuperscript{196} The draft and proposed legislation have all attempted to add "joining in, or providing material support to, a terrorist organization...if the organization is engaged in hostilities against the United States, its people, or its national security interests"\textsuperscript{197} as a grounds to revoke citizenship, even if the result is statelessness.\textsuperscript{198}

\begin{thebibliography}{99}
\bibitem{191} Id. at 344 n.14.
\bibitem{193} See Graham, supra note 18, at 609.
\bibitem{195} Id. § 1481(a)(1)–(7).
\bibitem{197} Id. DEP’T OF JUSTICE, supra note 6, § 501.
\bibitem{198} Critics fear that the proposed legislation’s reliance on over-broad definitions of “terrorist organization,” “providing material support,” and “hostilities” will lead to ordinary people being labeled as terrorists and facing revocation of their citizenship and possible statelessness. See Graham, supra note 18, at 606. The definition of “domestic terrorism” as provided by the Patriot Act includes any activity that "involves acts dangerous to human life that are a violation of the criminal laws of the U.S." See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-
B. Legislation in the United Kingdom

The United Kingdom has used revocation of citizenship as a means to combat domestic terrorism for the past eight years. The aggressive U.K. anti-terror legislation on citizenship revocation has resulted in the loss of citizenship for more than forty individuals. The United Kingdom is one of a few western countries that have revoked citizenship and its associated rights from dual citizens suspected or convicted of acts of terrorism or disloyalty. Under the British Nationality Act of 1981, the Home Secretary can remove someone’s citizenship with no warning and no judicial approval in advance where she feels this would be “conducive to the public good.” In almost every case of revocation, the Home Secretary, Theresa May, has issued the revocation order while the individual was abroad, preventing people from returning home while fighting appeals that can last years. In a number of those cases, the very individuals who had their citizenship revoked were soon after killed in drone strikes. Critics of the anti-terror...
legislation, concerned with constitutional rights of individuals, also argue that the nationality revocation legislation may be a roundabout means to enable extrajudicial killings of citizens while they are abroad to avoid the major constitutional and fundamental human rights obligations of states to respect citizens' due process and other domestic law rights.²⁰⁶

The U.K. government has gone even further in its revocation powers through the passage of Clause 60 of the Immigration Bill.²⁰⁷ On May 14, 2014, the Parliament of the United Kingdom passed the Immigration Bill, which includes a clause that is aimed at dealing with the domestic threat of terrorism.²⁰⁸ Clause 60 of the U.K. Immigration Bill provides that the Home Secretary may deprive naturalized individuals of their British citizenship through revocation if they have engaged in acts seriously prejudicial to the interests of the United Kingdom.²⁰⁹ The troubling part of this legislation is that it applies to natural-born U.K. citizens who could now be rendered stateless if found guilty of such a prejudicial act and if they have no other nationality.²¹⁰

1. The Case of Hilal Al-Jedda

The passage of such legislation has caused the emergence of various cases of stateless individuals in the United Kingdom.²¹¹ One such case, thought to have inspired Home Secretary May to propose Clause 60 of the Immigration Bill in the first place, is that of Hilal Al-Jedda.²¹² Mr. Al-Jedda was born in Iraq and arrived in the United Kingdom in 1992 as a refugee.²¹³ He was eventually naturalized as a British citizen in 2000, and he subsequently lost his Iraqi citizenship.²¹⁴

²⁰⁶. Woods & Ross, supra note 205.
²⁰⁷. See Bennhold, supra note 167.
²⁰⁸. See Ross & Galey, supra note 203.
²¹⁰. See Paulussen & Waas, supra note 16.
²¹¹. Dilwar Hussain, Statelessness and Britain’s Secret Courts, ALJAZEERA (Dec. 20, 2014, 4:13 PM), http://www.aljazeera.com/humanrights/2014/12/statelessness-britain-secret-courts-20141218958427020446.html (discussing the controversial legislation in the United Kingdom and its grant of new powers to the U.K. Border Agency and Police, allowing them to revoke passports of citizens charged with terrorism who subsequently are given no due process of law or opportunity to respond in a court of law).
²¹³. Id.
²¹⁴. Id.
In 2004, Mr. Al-Jedda went to Iraq and, shortly thereafter, British forces detained him on the grounds that he took part in armed attacks on Coalition forces. Before Mr. Al-Jedda was released from detention, the U.K. government executed an order depriving Mr. Al-Jedda of his British citizenship. Mr. Al-Jedda appealed the government’s order to revoke his citizenship, beginning his battle to regain citizenship and return home, which continues today.

Mr. Al-Jedda first appealed to the Special Immigration Appeals Commission, where the government succeeded in arguing that Mr. Al-Jedda had reacquired Iraqi citizenship automatically under a new Iraqi law. Mr. Al-Jedda filed an appeal to the court of appeals, which disagreed with the Special Immigration Appeals Commission and found that Mr. Al-Jedda was not an Iraqi citizen. The court of appeals was unpersuaded by Home Secretary May’s argument that Mr. Al-Jedda could regain Iraqi citizenship by making an application and the resulting statelessness would not be through her order, but rather through his failure to apply for Iraqi citizenship. Home Secretary May filed an appeal to the Supreme Court, which finally ruled in Mr. Al-Jedda’s favor in October 2013—that the government’s order revoking Mr. Al-Jedda’s U.K. citizenship would, in fact, illegally render him stateless.

Despite the U.K. Supreme Court’s ruling on the illegality of Home Secretary May’s action in ordering the revocation of Mr. Al-Jedda’s citizenship, on November 1, 2013, Home Secretary May issued a new order revoking Mr. Al-Jedda’s British nationality. The litigation lasted
six years and resulted in a unanimous decision, but “[r]ather than
accepting the findings of the court, just three weeks later, Home
Secretary May made a fresh order depriving [Mr. Al-Jedda] of his
British citizenship,” which resulted in revocation of his citizenship for
the second time. Home Secretary May sought enactment of Clause 60 of
the Immigration Bill, which would ensure the success of revocation
orders against those like Mr. Al-Jedda. Subsequently, Clause 60 of the
Immigration Bill made its way through Parliament and became law in
May 2014. Mr. Al-Jedda remains in proceedings today under the
current law, which allows the Home Secretary to revoke British
nationals of their citizenship, even if doing so renders them stateless.

There are serious issues with the current legislation that are still
being examined and evaluated by the U.K. Supreme Court. The
United Kingdom’s obligations under international treaty law,
particularly as a party to the 1961 Convention, are to be considered
when evaluating the legality of the legislation.

2. The Case of Minh Pham

In July 2011, Minh Pham, a Vietnamese-born British national, was
indicted on charges of terrorism in the United States after spending
seven months in Yemen. Following his indictment, Mr. Pham was
arrested in London to be extradited to the United States, but Home
Secretary May ordered authorities to deprive Mr. Pham of his British
citizenship and deport him to Vietnam. Vietnam refused to accept

known to have removed the same person’s citizenship twice, using powers that leading human
rights lawyer Gareth Peirce has compared to “medieval exile—just as cruel and just as arbitrary.” See Ross, supra note 105.

223. Id.

224. Ross & Rudgard, supra note 218.

225. See Bennhold, supra note 167.

226. See Ross & Rudgard, supra note 218.

227. Jane Croft, UK’s Highest Court Hears Statelessness Appeal, FIN. TIMES (Nov. 18, 2014), http://www.ft.com/cms/s/0/52e5dece-6f1f-11e4-b060-00144feabdc0.html#axzz3OoOYkn3h.

228. See Ross, supra note 105.


230. See Peter, supra note 199. Mr. Pham was wanted in the United States for terrorism-related
crimes, as he allegedly plotted to kill American citizens. Id. The Federal Bureau of Investigation
filed an indictment against Mr. Pham, and, as a result, he was then detained in the United Kingdom. See Cahal Milmo, Al-Qa’ida ’Online Propaganda Expert’ Arrested in Britain, INDEPENDENT (July 5, 2012), http://www.independent.co.uk/news/uk/crime/alqaida-online-propaganda-expert-arrested-in-britain-7917278.html.
Mr. Pham as its national, saying its 2008 nationality law only recognized single nationality for Vietnamese citizens. Mr. Pham challenged the revocation and deportation orders passed by Home Secretary May and succeeded.

Mr. Pham argued that if the order was passed, the revocation would render him stateless, which was not allowed under the British Nationality Act of 1981 and international law obligations. The Special Immigration Appeals Commission found that, if at the time the Home Secretary took the decision to deprive Mr. Pham of his British citizenship Vietnam did not consider him to be a national, then the deprivation order would be barred. Thus, Home Secretary May could not revoke Mr. Pham’s citizenship because doing so would, in fact, render him stateless.

As expected, Mr. Pham remains in custody and in proceedings as Home Secretary May has appealed the case to the U.K. Supreme Court. Home Secretary May argues that under the newly passed Clause 60 of the Immigration Bill, citizenship of a British national can be revoked if it is “conducive to the public good” and the person acted “in a manner which is seriously prejudicial to the vital interests of the United Kingdom,” even if doing so would have the effect of making the person stateless.

Despite the passage of Clause 60 of the Immigration Bill, the Court seemingly remains hesitant to enforce such legislation because of its detrimental effects on individuals who may become stateless. Cases such as Mr. Al-Jedda’s and Mr. Pham’s have developed, and will continue to develop, as the War on Terror proceeds. As such, the
recent legislative proposals and enactments in the United States and the United Kingdom should be scrutinized for their legality under both domestic and international law.\textsuperscript{241}

IV. ADEQUATE DOMESTIC LAW MECHANISMS EXIST TO ACHIEVE LEGISLATIVE GOALS WITHOUT RENDERING HUMANS STATELESS

National security, a goal of all sovereign nations, promotes the need of governments to develop creative methods to ensure the safety of the population.\textsuperscript{242} One of the greatest goals of the Obama administration has been ensuring national security by combatting terrorism threats.\textsuperscript{243} Arguably, the greatest national security threat facing the United States comes from domestic sources.\textsuperscript{244} The threat of homegrown or domestic terrorism has continued to develop in the last ten years, as indicated by numerous incidents in the last decade carried out by a variety of terrorist groups consisting of white supremacists\textsuperscript{245} and Christian extremists.\textsuperscript{246}

A classic struggle for any democratic government is ensuring that individual liberties and human rights are not compromised, and that the rule of law is upheld when national security interests are pursued.\textsuperscript{247} As the threat of domestic terrorism looms, the understandable desire for the government to pass anti-terrorism legislation continues, all while hopefully ensuring that individual liberties and human rights are not

\textsuperscript{241} See supra Part I.
\textsuperscript{242} See DEP’T OF DEF., SUSTAINING U.S. GLOBAL LEADERSHIP: PRIORITIES FOR THE 21ST CENTURY DEFENSE 1 (2012) (containing a discussion by President Barack Obama on the United States’s enduring national security interests and his plans to seek a just and sustainable international order where the rights and responsibilities of nations and peoples are protected).
\textsuperscript{247} See ANTI-DEFAMATION LEAGUE, supra note 8.
infringed upon. These individual liberties and human rights have sources in both domestic and international law. Although the citizenship-revocation anti-terror legislation discussed in this Note raises various constitutional and domestic law concerns, the main concern, as indicated in Part II, is the obligation of sovereign nations under international law.

Fully adequate domestic law mechanisms currently exist to achieve domestic legislative policy goals in the War on Terror without violating long-accepted international law practices to ensure people's right to nationality and protection against statelessness. The significant inconsistencies that proposed U.S. legislation and enacted U.K. legislation have with international law demonstrate the need for greater scrutiny and care when drafting anti-terror legislation. The statutory goals of the War on Terror that aim to ensure the security of the nation and its citizens can be achieved without violating the international law set out in Part II. As the leading democracies of the world, the United States and the United Kingdom arguably have a special obligation to respect and adhere to international law and the rule of law.

To ensure effective compliance with international law, the United States and the United Kingdom should not enact anti-terror legislation that compromises the liberties and rights of individuals that flow from international law. The legislatures in both sovereign nations have ways to fully ensure national security and effectively combat terrorism while, at the same time, adhering to international law obligations that ensure citizens' liberties and fundamental human rights. If legislation is passed without violating obligations under international law and fundamental international human rights, such as the right to nationality and the right not to be rendered stateless, while still successfully

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248. See CONST. RTS. FOUND., supra note 3.
249. See Graham, supra note 18, at 618.
251. See supra Part II.
252. See infra Part IV.A–B.
253. See OPINION ON CLAUSE 60, supra note 116, at 9.
254. See supra Part II.
256. See Graham, supra note 18, at 618.
257. See infra Part IV.A–B.
combatting threats of terrorism, a firm unobjectionable precedent for future legislation and action can be set. This Part sets out two different proposals that aim to combat the threats of terrorism while maintaining and upholding the fundamental international human rights to nationality and to not be rendered stateless.\(^{258}\)

A. Retaining Jurisdiction Over Terror Suspects

Revoking the citizenship of a person who may allegedly be disloyal or acting against the interests of the state can be credibly characterized as a mere reactive and ineffective means to deal with pervasive national security concerns.\(^{259}\) Citizenship is often seen in the context of loyalty and patriotism.\(^{260}\) It is the means by which we are able to differentiate between each other: “the marker between ‘us’ and ‘them.’”\(^{261}\) When a fellow citizen is acting disloyally or against the interests of the state, taking away his citizenship may seem like a viable and effective tool to ensure domestic tranquility.\(^{262}\) As a means of casting out those who already have demonstrated disloyalty against the nation, revocation seems, on the surface, harmless and may even appeal to a larger, loyal populace.\(^{263}\) That is, symbolically, citizenship is meant for the loyal and patriotic.\(^{264}\) Thus, taking away that citizenship from the disloyal and unpatriotic may seem appropriate.\(^{265}\) According to some, suspected terrorists should not be allowed to enjoy the rights of citizenship, all the while plotting to destroy the nation.\(^{266}\) Despite these attractive justifications, revocation of citizenship may not be the most effective anti-terror policy for a government to utilize.\(^{267}\) The policy goals of

\(^{258}\) See infra Part IV.A–B.


\(^{260}\) Linda Bosniak, Citizenship Denationalized, 7 IND. J. GLOBAL LEGAL STUD. 447, 479 (2000).


\(^{262}\) See Sekulow, supra note 259.

\(^{263}\) See id.

\(^{264}\) See Volpp, supra note 261, at 1592.

\(^{265}\) See Sekulow, supra note 259.

\(^{266}\) See id.

\(^{267}\) See SemotiuK, supra note 259.
ensuring domestic tranquility and providing for the national security can still be achieved without utilization of revocation powers that may violate both international and domestic constitutional law.268

The reliance on denaturalization as a security tool to deal with criminal behavior “is an abdication of society’s responsibility in dealing with such conduct.”269 When revoking an individual’s citizenship, a government effectively loses control over that individual.270 Revocation, which usually occurs once the individual leaves the country and goes abroad, makes it harder and more problematic for a government to maintain jurisdiction and control over that individual.271 Revoking the citizenship of a potentially dangerous individual who allegedly acted against the interests of his home state may tackle the problem of domestic homegrown terrorism, but it is unlikely to cater to national security interests alone.272 By merely revoking a suspected terrorist’s citizenship, “instead of capturing and prosecuting the accused, we will simply be dumping the problem in someone else’s back yard.”273 Revocation, at the very most, may allow a country to avoid dealing with a potentially problematic individual by simply exiling him to a far-away land where, hopefully, he can cause no harm.274

A better and more effective means of achieving policy goals, while abiding by international human rights standards and obligations, is retaining jurisdiction over terror suspects who are citizens of the state.275 By retaining jurisdiction over the suspected terrorists, the government can maintain power over the individual, punish the offender, and help deter other citizens from engaging in terrorist activities, all while ensuring both national security and compliance with international law standards.276

268. See Graham, supra note 18, at 617.
270. See Graham, supra note 18, at 618.
272. Semotiuk, supra note 269.
273. Id.
275. See Semotiuk, supra note 269.
276. See id.
With the passage of the National Defense Authorization Act ("NDAA"), the government already has plenary power of surveillance over citizens suspected to be engaged in terrorist activities.\footnote{Joe Wolverton, II, \textit{House Passes 2014 NDAA; NSA Surveillance Will Lead to Indefinite Detention}, NEW AM. (June 27, 2013), http://www.thenewamerican.com/usnews/congress/item/15829-house-passes-2014-ndaa-nsa-surveillance-will-lead-to-indefinite-detention.} Section 1061 of the NDAA expanded on the scope of surveillance established by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 ("Patriot Act") and the Authorization of Use of Military Force Act.\footnote{National Defense Authorization Act for Fiscal Year 2012, H.R. 1540, 112th Cong. § 1061(a) (2011).} Section 1061(a) authorizes the Secretary of Defense to "establish a center to be known as the 'Conflict Records Research Center'" ("CRR Center").\footnote{Wolverton, supra note 277.} According to the current text of the NDAA, the CRR Center is to compile a "digital research database including translations and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the [United States]."\footnote{Id.} With this expanded surveillance power, the U.S. government can keep track of those it deems to be seriously dangerous, rather than simply exiling them to a faraway land.\footnote{Rebecca A. Copeland, \textit{War on Terrorism or War on Constitutional Rights? Blurring the Lines of Intelligence Gathering in Post-September 11 America}, 35 TEX. TECH L. REV. 1, 2-3, 11-12 (2004).} The policy goals of the anti-terror revocation legislation will surely be met through surveillance and incarceration for terrorist activities, rather than through the exile and loss of jurisdiction over such a potentially dangerous threat.\footnote{See Semotiuk, supra note 269.} With increased surveillance, if an individual is found to have engaged in terrorist activities, evidence against the individual obtained through surveillance can be used against them in a lawful prosecution and sentencing procedure.\footnote{See Copeland, supra note 281, at 21.}

The U.S. government has various means to bring charges against dangerous, suspected terrorists without revoking their citizenship and rendering them stateless. Three such ways these suspected American terrorists can be tried and brought to justice are as ordinary criminals, enemy combatants, or Americans who have committed treason.\footnote{See JENNIFER K. ELSEA, CONG. RESEARCH SERV., R40932, \textit{Comparison of Rights in Military Commission Trials and Trials in Federal Criminal Court}, 10-11 (2014); Kristen E. Eichensehr, \textit{Treason in the Age of Terrorism: An Explanation and Evaluation of Treason's Return in Democratic States}, 42 VAND. J. TRANSNAT'L L. 1443, 1458 (2009).}
Criminal trials for suspected terrorists in the United States are the most common means of bringing charges against terrorism suspects. By ensuring a criminal trial in an American federal court, the various protections that are guaranteed to any criminal defendant will be granted to all alleged terrorist defendants, ensuring fairness and due process. Other benefits of trying terror suspects in federal courts include the increased resources and tools that exist in the federal court system that will enable greater justice, as defendants will be able to be tried for a variety of offenses; the use of Miranda and its public safety exception to get lawful and imperative information from defendants through interrogation; and, the secure protection of classified information.

Another way suspected American terrorists can be tried is through military commissions or tribunals as enemy combatants. Shortly after the September 11, 2001, attacks, President George W. Bush issued a new military order in the War on Terror. The order called for the Secretary of Defense to establish military tribunals or commissions to conduct trials of non-citizens and, later, even American citizens accused of terrorism either in the United States or in other parts of the world.

A military tribunal or commission is different from a regular civilian criminal court in that, in a tribunal, military officers act as both judge and jury. After a hearing, guilt is determined by a vote of the commissioners. Unlike a criminal jury, the decision does not have to be unanimous. Additionally, as an enemy combatant in a military tribunal, a defendant would not receive all of the due process protections
guaranteed to a defendant in a U.S. civilian criminal court. A defendant would still have the following: the right to an attorney; the presumption of innocence; the protection against self-incrimination; the protection against double jeopardy; and, the ability to negotiate and enter into a plea agreement when tried in a military tribunal, instead of a federal criminal court. However, in a military tribunal, the exclusionary rule, which keeps illegally seized evidence out of a civilian criminal trial, does not apply. Additionally, the appellate process in a military tribunal is not the same as the process in a criminal trial—there are no appeals. Rather, a three-member panel selected by the Secretary of Defense reviews the verdict. Lastly, in a military tribunal, no verdict is final until approved by the President or the Secretary of Defense.

Some argue that the best method of trying American terror suspects is by charging them with treason. Treason is the only crime defined in the Constitution, reflecting its historical significance. The Constitution states: “Treason against the U.S., shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.” There are several reasons why proponents urge the prosecution of American citizen terrorists for treason. One argument is that an American terrorist—as an American found to have committed an act of terrorism—should receive no privilege compared to non-American terrorists. In fact, they should be subjected to harsher punishment, as they have committed an additional crime.

296. Id.
298. Military Tribunals, supra note 291.
299. Id.
300. Id.
302. See Eichensehr, supra note 284, at 1449.
303. U.S. CONST. art. III.
304. See Lewis, supra note 301, at 1252.
305. See Etzioni, supra note 301.
306. Id. For more reasons as to why prosecutions for treason may have several potential benefits, see Eichensehr, supra note 284, at 1489-95. Benefits include reinforcing societal identity and unity, deterring future treasons, providing retribution against the traitor, and clarifying the procedural system under which terrorism should be addressed. Id.
The benefits of retaining jurisdiction over terror suspects far outweigh the benefits of revoking the citizenship of suspected terrorists and possibly rendering them stateless and in exile in a foreign country.\textsuperscript{307} The U.S. government has established many creative and effective ways to combat the domestic threat of terrorism and ensure national security.\textsuperscript{308} With the NDAA, the Patriot Act, and the establishment of Military Commissions or Tribunals, there exist adequate means to meet policy-based anti-terror goals.\textsuperscript{309} By simply, yet significantly, revoking the citizenship of an individual, the government will lose jurisdiction over the individual and may further jeopardize national security while also violating international human rights law.\textsuperscript{310}

B. Revoking the Citizenship of Dual Citizens Only

Allowing the anti-terror revocation statutes to remain as they are, but precluding their application towards those citizens who have no other nationality and could potentially be rendered stateless, may avoid the various conflicts the legislation currently has under international law.\textsuperscript{311} By simply not applying the statute to natural-born or naturalized citizens who have no other nationality, there will be no issue with the international law on statelessness, as the statute will not promote that consequence.\textsuperscript{312} National security interests will still be met by striking the statelessness provision, as the government could revoke citizenship of potentially dangerous terrorists who have dual nationality.\textsuperscript{313} This will ensure the compliance with the international law on statelessness, which is clear in its direction to promote the right to nationality and to impose a legal duty on states to reduce statelessness.\textsuperscript{314}

If a legislature determines that the remedy of stripping citizenship of suspected terrorists is needed, it should only apply to dual national citizens.\textsuperscript{315} This would ensure respect and adherence to international human rights law.\textsuperscript{316} The right to nationality is linked to the right to not be rendered stateless, and legislatures should ensure that one's right to

\begin{itemize}
\item[307.] Titus & Olson, supra note 183.
\item[308.] See Copeland, supra note 281, at 11-12.
\item[310.] See Semotiuk, supra note 269.
\item[311.] See Ross, supra note 105.
\item[312.] Graham, supra note 18, at 617.
\item[313.] See Parsons, supra note 229.
\item[314.] See supra Part II.
\item[315.] See Parsons, supra note 229.
\item[316.] Graham, supra note 18, at 617.
\end{itemize}
nationality and the right to not be rendered stateless are protected.\footnote{317} International human rights law would pose no obstacle to applying citizenship-revocation statutes to dual citizens.\footnote{318}

Although facially attractive, there are many serious international law implications when the government revokes a person’s citizenship.\footnote{319} Revoking an individual’s citizenship and rendering her stateless if she has no other citizenship raises grave international law violations.\footnote{320} To avoid such issues, currently proposed legislation should be amended to not apply when revocation would render an individual stateless.

V. CONCLUSION

Citizenship-revocation anti-terror legislation has been introduced to the U.S. legislature on a number of occasions over the past twelve
years. Similar legislation has gone even further in the United Kingdom, as reflected in Clause 60 of the Immigration Bill of May 2014. As the War on Terror intensifies, so does the pressure to increase national security. One of the most troubling potential consequences of the citizenship-revocation anti-terror legislation—which has support in the United States and even more so in the United Kingdom—is the possible effect of rendering human beings stateless.

International law, which has developed in the last fifty years, correctly imposes a duty on states to respect the right to nationality and to reduce statelessness. The United States and the United Kingdom have obligations, as nations that respect and abide by the rule of law, to uphold the fundamental human right to nationality and reduce statelessness, rather than to enact legislation that promotes statelessness of human beings. Legislative and policy goals to enforce national security and protect against terrorism are legitimate and obtainable goals that can be fully met without offending fundamental international human rights law.

The ability of a state to maintain jurisdiction over suspected terrorists and have a choice to try them in a criminal court or military tribunal for treason fully allows the state to uphold the perception of legitimacy on the international law stage by not violating fundamental human rights. It also ensures the security and safety of the nation. Another method that avoids the possible outcome of statelessness is the application of citizenship-revocation anti-terror legislation only to those who have another nationality. This would prevent humans from being rendered stateless and would avoid violations of international law and fundamental human rights.

The U.S. Congress has the opportunity to achieve valuable legislative goals without the appearance of acting contrary to the rule of international law and fundamental human rights. As the leading
democracy in the world, the United States should seize this opportunity to serve the cause of the War on Terror, human rights, and the rule of international law and reject enactment of laws that render human beings stateless contrary to the right to nationality. Alternative methods at achieving security in the increasingly terror-stricken world can be met without compromising fundamental human rights.

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