

Outsourcing protection: lessons from bilateral responses to statelessness

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Abstract

Bilateral agreements are an increasingly common mode of state responses to the phenomenon of asylum seeking and irregular migration. Less well-known are bilateral responses to statelessness. In 2008, the United Arab Emirates concluded an arrangement with the Union of the Comoros to supply Comorian passports to the United Arab Emirates' stateless *bidun* population in exchange for the payment of US\$200 million. In 2014, Kuwait contemplated a similar arrangement with the small, East African island nation. This article examines the legality of the bilateral agreement made between the United Arab Emirates and the Comoros. It draws comparisons between this arrangement and bilateral responses to asylum seeking and irregular migration and it identifies lessons learned from this comparison. When placed side by side, it argues that bilateral agreements in both contexts are indicative of a growing deterritorialization and commodification of protection.

1. Introduction

States, particularly those in the Global North, are increasingly responding to the arrival of asylum seekers and irregular migrants through the conclusion of bilateral agreements. These agreements attempt to shift the functions of controlling migration and processing asylum claims to other countries, with the overarching aim of reducing the number of asylum seekers and irregular migrants reaching a country's borders.¹ This practice is variously referred

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¹ Bill Frelick, Ian M Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants' (2016) 4 Journal on Migration & Human Security 190, 191.

to as ‘outsourcing’,² ‘remote control’,³ ‘contactless’ migration control,⁴ and ‘non-entrée’.⁵ Bilateral responses to asylum seeking and irregular migration are occurring within the context of a broader ‘externalisation’ of migration functions. ‘Externalisation’ has been described as an ‘umbrella concept’, encompassing ‘any migration control measure...undertaken either unilaterally or multilaterally, either extraterritorially or with extraterritorial effects’.⁶

The externalization of migration functions and the adoption of bilateral agreements for this purpose have been well studied.⁷ However, it is less well known⁸ that some States have adopted or contemplated bilateral agreements as a response to *in situ* statelessness: stateless populations who are not migrants within a state’s territory but who are in their ‘own country’.⁹ These agreements take the form of the payment of money to a country, in the form of direct investment, in exchange for the supply of passports for the first country’s own stateless population. This article examines the legality of the extraordinary arrangement made between the United Arab Emirates (UAE) and the Comoros and the similar agreement with the Comoros considered by Kuwait. It argues that bilateral agreements on statelessness can also be understood as attempts by States to outsource their protection obligations. Framing these agreements as practices of outsourcing protection reveals lessons for bilateral agreements in the context of irregular migration and asylum seeking. Moreover, this article argues that bilateral agreements in both contexts are indicative of two parallel trends: the deterritorialization of protection (the erasure of the link between presence on the territory and the triggering of protection obligations under international law) and its increasing commodification.

² See eg Thomas Gammeltoft-Hansen, ‘Outsourcing Asylum: The Advent of Protection Lite’ in Luiza Bialasiewicz (ed) *Europe in the World: EU Geopolitics and the Making of European Space* (Ashgate 2011).

³ David Scott FitzGerald, ‘Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence’ (2020) 46 *Journal of Ethnic and Migration Studies* 4, referring to the use of ‘remote control’ by Aristide Zolberg in 1997 to describe the transatlantic system of visas that emerged in the 19th and early 20th centuries: ‘The Great Wall against China’ in Jan Lucassen and Leo Luccasen (eds) *Migration, Migration History and History: New Perspectives* (Peter Lang 1997) 111.

⁴ See Mariagiulia Giuffré and Violeta Moreno-Lax, ‘The Rise of Consensual Containment: From “Contactless Control” to “Contactless Responsibility” for Migratory Flows’ in Satvinder Singh Juss (ed) *Research Handbook on International Refugee Law* (Edward Elgar Publishing 2019).

⁵ James Hathaway, ‘The Emerging Politics of Non-Entrée’ (1992) 91 *Refugees* 40.

⁶ Nikolas Feith Tan, ‘Conceptualising Externalisation: Still Fit for Purpose?’ (2021) *Forced Migration Review* 8, 8.

⁷ See eg Azadeh Dastyari, Amy Nethery and Asher Hirsch (eds) *Refugee Externalisation Policies: Responsibility, Legitimacy and Accountability* (Routledge 2022); Elaine McGregor and others, ‘Conditionality, Compensation, or Both? Comparative Experiences of Third-Country Cooperation on Migration with the EU’ (2025) 23 *Journal of Immigrant & Refugee Studies* 47; Sebastian Cobarrubias and Paolo Novak, ‘Embedding Externalisation: How Bordering Practices Transform Places’ (2025) 30 *Geopolitics* 1; Ermioni Xanthopoulou, ‘Mapping EU Externalisation Devices through a Critical Eye’ (2024) 26 *European Journal of Migration* 108; Steffen Angenendt and others, ‘The Externalisation of European Refugee Protection: A Legal, Practical and Political Assessment of Current Proposals’ (Stiftung Wissenschaft und Politik 2024); Tan (n 6); Inka Stock, Aysen Üstübcici and Susanne U Schultz, ‘Externalization at Work: Responses to Migration Policies from the Global South’ (2019) 7 *Comparative Migration Studies* 48; Gammeltoft-Hansen (n 2); Emma Haddad, ‘The External Dimension of EU Refugee Policy: A New Approach to Asylum?’ (2008) 43 *Government and Opposition* 190.

⁸ But see Fiorella Rabuffetti and Emily Regan Wills, ‘The Problem with the Comoros Solution: Affect, Citizenship, Statelessness and the Kuwaiti Bidoon’ (2025) 29 *Citizenship Studies* 77; Yoana Kuzmova, ‘Statelessness Elimination Through Legal Fiction: The United Arab Emirates’ Comorian Minority’ *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press 2021); Noora Lori, *Offshore Citizens: Permanent Temporary Status in the Gulf* (Cambridge University Press 2019).

⁹ UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons* (UNHCR 2014) 25.

This article begins by outlining the background and the detail of the statelessness agreement made between the UAE and the Comoros, and that contemplated by Kuwait. Part 3 conducts a legal analysis of the UAE's agreement with the Comoros. Part 4 contextualizes this agreement within the broader phenomenon of the turn to bilateral agreements in response to asylum seeking and irregular migration, and it identifies lessons from this comparison. Part 5 develops the argument that both contexts of bilateral agreements highlight the deterritorialization and commodification of protection, and it draws the implications of these trends for the nature of citizenship and asylum.

2. Bilateral responses to statelessness

2.1. *In situ* statelessness in the UAE and Kuwait

A stateless person is 'a person who is not considered as a national by any State under the operation of its law'.¹⁰ The United Nations High Commissioner for Refugees (UNHCR), which has a mandate to identify, prevent, and reduce statelessness, and to protect stateless individuals, identifies two broad groups of stateless populations: those in a migratory and non-migratory context.¹¹ The latter group, also referred to as *in situ* stateless populations, are those who 'have never crossed borders'.¹² This group is further described as remaining in their 'own country'—a country to which they have 'long-established ties', including 'long-term habitual residence',¹³ and is 'in many cases the country of their birth'.¹⁴ The UNHCR recognizes that the majority of stateless people worldwide are *in situ*.¹⁵ Many situations of *in situ* statelessness are protracted, involving populations living without nationality over a long time, including over multiple generations.¹⁶

The *bidun* (also spelled as *bidoon* and *bidoun* and short for *bidun jinsiya*, meaning 'without nationality' in Arabic) of the UAE and Kuwait are two such protracted *in situ* stateless populations. Many of the *bidun* of the UAE are descendants of Arab tribal populations native to the Arabian Peninsula (the *Bedouin*), with long-standing connections to the territories on which the Gulf states are located.¹⁷ Notwithstanding these connections, the *bidun* have been denied nationality in these countries and, consequently, have been deprived of access to rights.¹⁸ For both populations, their statelessness is a product of the Gulf states' restrictive approaches to defining their nationals and the inability of these groups to produce documentary evidence of their ties to these territories.

The newly federated UAE finalized its nationality law in 1972. This law defined nationals as those who could demonstrate their lineage to an Arab tribe residing in a member Emirate

¹⁰ Convention relating to the Status of Stateless Persons (opened for signature 28 September 1954, entered into force 6 June 1960) 360 UNTS 117, art 1(1) (1954 Convention).

¹¹ UNHCR (n 9) 25.

¹² *ibid* 3.

¹³ *ibid* 26.

¹⁴ *ibid* 3.

¹⁵ *ibid* 3.

¹⁶ Adeyemi Saheed Badewa, 'Statelessness, Development, and Protection of "Disadvantaged Groups": Bridging the Post-2030 Sustainable Development Gaps' (2022) 8 African Human Mobility Review 56, 65; 'The World's Stateless' (Institute on Statelessness and Inclusion 2014) Report 7.

¹⁷ Alejandro Salamanca Rodríguez, 'Citizenship in the United Arab Emirates: A Spectrum of Categories' *Routed Magazine* <<https://www.routedmagazine.com/uae-citizenship>> accessed 15 May 2024.

¹⁸ Nationality remains key to accessing rights in the Arab region: see Laura van Waas, 'The Situation of Stateless Persons in the Middle East and North Africa' (UNHCR, October 2010) 3; Abbas Shiblak, 'The Lost Tribes of Arabia' (*Forced Migration Review*) <<https://www.fmreview.org/shiblak/>> accessed 9 December 2025.

in 1925—the year that oil was discovered in the region¹⁹—or earlier.²⁰ This lineage was demonstrated through possession of a document known as a ‘family book’.²¹ Despite the fact that many of the *bidun* of the UAE have an ancestral connection to the territory pre-dating 1925,²² the nomadic pastoral lifestyle of their ancestors meant the *bidun* population lacked documentary proof of their residence in the form of the family book. The 1972 nationality law left between 100,000 and 200,000 people in the UAE with an unclear legal status.²³

Notwithstanding this uncertainty, until the mid-2000s the *bidun* of the UAE were still able to enjoy some of the same benefits as nationals, including accessing public healthcare and attending public schools.²⁴ Their situation changed in 2006 with the introduction of a national biometric identity document (ID), which linked access to public services to possession of the ID.²⁵ To qualify for the national ID, applicants were required to produce the ‘family book’;²⁶ those unable to do so, including the *bidun* population, were subsequently prevented from accessing public services, such as public healthcare and public education, but also birth registration, driver licences, marriage licences, and access to the courts.²⁷

Like the UAE, Kuwait adopts a narrow approach to defining its nationals; the 1959 nationality law defines ‘original’ Kuwaiti nationals as ‘those persons who were *settled* in Kuwait prior to 1920’ and who resided in Kuwait until the enactment of the nationality law.²⁸ This law also provides that nationality in Kuwait is passed down from these ‘original’ nationals through patrilineal descent,²⁹ adding the possibility for naturalization by decree upon satisfying a period of residence in the country and meeting other specified conditions.³⁰ The effect of this nationality law was to consolidate a distinction between, on the one hand, the ‘settled’ urban population who were able to produce documentation, such as birth certificates and land deeds, attesting to their settlement in the country prior to 1920; and on the other hand, the nomadic population at that time and their descendants who lacked access to such documents.³¹

Prior to 1985, Kuwait treated the *bidun* as lawful residents in the country.³² In this year, following a decrease in the country’s revenue due to the falling price of oil, the Government

¹⁹ Rodríguez (n 17).

²⁰ Federal Law No. 17, art 2, cited in Lori (n 8) 91.

²¹ *ibid* 204.

²² ‘Bidoons in the United Arab Emirates: Deprived of Life and Death’ (Geneva Council for Rights and Liberties 2019) 2.

²³ Lori (n 8) 94.

²⁴ Anna Zacharias, ‘Special Report: Ten Years On, the UAE’s Stateless People Reflect on How Life Has Improved and on the Challenges Ahead’ *The National News* (6 September 2018) <<https://www.thenationalnews.com/uae/special-report-ten-years-on-the-uae-s-stateless-people-reflect-on-how-life-has-improved-and-on-the-challenges-ahead-1.767367>> accessed 5 March 2024.

²⁵ Lori (n 8) 204.

²⁶ *ibid*.

²⁷ *ibid*; see also Zacharias (n 24).

²⁸ 1959 Nationality Law, art 1 (emphasis added).

²⁹ 1959 Nationality Law, art 2.

³⁰ The specified conditions relate to employment, qualifications, good character, language, and religion: 1959 Nationality Law, art 4.

³¹ Farah Al-Nakib, ‘Revisiting Ḥaḍar and Badū in Kuwait: Citizenship, Housing, and the Construction of a Dichotomy’ (2014) 46 *International Journal of Middle East Studies* 5, 12.

³² ‘Kuwait Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression’ (*Human Rights Watch*, October 2000) <https://www.hrw.org/reports/2000/kuwait/kuwait-04.htm#P185_27694> accessed 3 October 2023.

issued several regulations stripping the *bidun* population of their rights.³³ It also began applying the Alien Residence Law 1959 to the *bidun*, shifting their status from lawful residents to 'illegal residents'.³⁴ Following the Iraqi occupation of 1990–1991, discrimination against the *bidun* intensified due to the perception that the *bidun* were collaborating with Iraq.³⁵

Nationality in the oil-rich Gulf states is a valuable status, entitling its holder to substantial economic benefits including free education and healthcare, land grants, subsidized housing, tax exemptions, discounted utilities, social security and pensions, child support, grants for weddings, and work-related benefits.³⁶ The UAE and Kuwait have a high proportion of foreign residents to nationals, meaning that these States are motivated to restrict the grant of nationality to a small group of 'original' nationals and their descendants: those who can demonstrate their lineage to those residing in their territories prior to the discovery of oil in the 1920s.³⁷ These countries view the *bidun* populations as 'illegal migrants' and suspect them of concealing their true nationality in order to stake their claim to nationality in the UAE and Kuwait.³⁸ Additionally, Kuwaiti politicians have expressed a concern that naturalizing the estimated 100,000 *bidun* in Kuwait would significantly alter the country's demography, with implications for its political orientation and leadership.³⁹ These factors explain the reluctance of the UAE and Kuwait to address the statelessness of the *bidun* through the grant of their own nationality and their turn to another country for a creative solution.

2.2. Bilateral agreement between the UAE and the Comoros

To address the problem of the statelessness of the *bidun* populations, the Gulf States embraced a novel approach. In February 2008, following a period of negotiation led by the Syrian-French entrepreneur and Kuwaiti resident, Bashar Kiwan, the Union of the Comoros and the UAE (acting through Kiwan's company, Comoros Gulf Holdings) concluded an arrangement in which the Comoros would supply their passports to the UAE's *bidun* population.⁴⁰ This 'Agreement relating to an Economic Citizenship Program'⁴¹ specified that, in return for the passports, the UAE would pay the Comoros US\$200 million.⁴² In November 2008, after one failed attempt and much debate, the Comoros National Assembly finally passed the Law on Economic Citizenship, establishing the legislative framework necessary to give domestic effect to this agreement.

In May 2014, it was reported that Kuwait was considering the same arrangement for its stateless population.⁴³ In November 2014, *Gulf News* reported on a Kuwaiti Government

³³ Atossa Araxia Abrahamian, *The Cosmopolites: The Coming of the Global Citizen* (Columbia Global Reports 2015) 98.

³⁴ *ibid.*

³⁵ *ibid.* 99.

³⁶ Lori (n 8) 7.

³⁷ Diala Alqadi, "'The Door That Cannot Be Closed': Citizens Bidoon Citizenship in the United Arab Emirates' (Thesis, Duke University 2015) 62.

³⁸ Rabuffetti and Wills (n 8) 79; Claire Beaugrande, 'Statelessness & Administrative Violence: Biduns' Survival Strategies in Kuwait' (2021) 101(2) *The Muslim World* 228, 229.

³⁹ Belkis Wille, 'Kuwait's Plan to Pawn off Its "Stateless"' *An-Nahar* (25 March 2015) <<https://www.anna-har.com/english/article/224039-kuwaits-plan-to-pawn-off-its-stateless>> accessed 5 March 2024.

⁴⁰ 'Rapport de La Commission D'enquête Parlementaire Sur La Loi Relative à La Citoyenneté Économique' (Parlement des Comores 2017) 9.

⁴¹ *ibid.* 10.

⁴² *ibid.* 9.

⁴³ Wille (n 39).

announcement that ‘tens of thousands’ of stateless people in Kuwait would be granted ‘special applications for Comoros’ economic citizenship’, with the process to commence following the establishment of a Comorian embassy in Kuwait.⁴⁴ In exchange, Kuwait would invest in housing and public infrastructure on the island nation.⁴⁵ The arrangement was justified in similar terms as by the UAE: the grant of foreign passports would regularize the legal status of the *bidun* in Kuwait and therefore ‘solve’ the problem of their statelessness.⁴⁶ However, by 2016 the Kuwaiti Government was denying that it had followed in the UAE’s footsteps by agreeing to such a plan.⁴⁷ Information about what caused the government to change their position is limited;⁴⁸ scholars have speculated that a high degree of awareness of the rights of the *bidun* in Kuwait may have led to public opposition to the proposal.⁴⁹ Since it is not possible to definitively state what became of the proposed agreement between Kuwait and the Comoros, the remainder of this section and the legal analysis in the following section focus on the agreement between the UAE and the Comoros.

In the UAE, in response to the gap created by the roll-out of the national ID, the Ministry of the Interior commenced a registration campaign for the *bidun* in 2008, aiming to ‘place everyone in a category’.⁵⁰ The Secretary General of the Ministry announced at the time: ‘once the process is completed, there will only be three sets of people in the country—citizens, expatriates and visitors. The remaining will be considered illegal’.⁵¹ The Ministry explained that a ‘registration card for undocumented persons’ would be issued to those who lacked documents, while those who failed to come forward would be labelled ‘illegal’ and arrested.⁵²

Following the adoption of the agreement with the Comoros, those *bidun* who had been identified as ‘undocumented persons’ through the country’s registration campaign were contacted by local passport offices and instructed to apply for the Comorian passports within a three-month window, or else risk detention.⁵³ Government press releases heralded the scheme as ‘the path to naturalisation’ for the *bidun* and newspaper articles explained that those seeking naturalization in the UAE would ‘need a passport to get a passport’.⁵⁴ Applicants were informed that the Comorian passports were a temporary measure that would regularize their status in the UAE: the passports would transform the stateless *bidun* into foreign residents, making them eligible to apply for a temporary residency visa as part of the nation’s guest worker programme, the Kafala Sponsorship System.⁵⁵ Applicants were assured that they could then apply

⁴⁴ ‘Kuwait’s Stateless Offered Comoros Citizenship’ *Gulf News* <<https://gulfnews.com/world/gulf/kuwait/kuwait-stateless-offered-comoros-citizenship-1.1410104>> accessed 5 March 2024; see also Rabuffetti and Wills (n 8).

⁴⁵ Rabuffetti and Wills (n 8) 83.

⁴⁶ *ibid.*

⁴⁷ Habib Toumi, ‘Kuwait Denies Comoros Citizenship Agreement’ (20 June 2016) <<https://gulfnews.com/world/gulf/kuwait/kuwait-denies-comoros-citizenship-agreement-1.1849101>> accessed 21 March 2024

⁴⁸ Rabuffetti and Wills (n 8) 78.

⁴⁹ Kuzmova (n 8) 281.

⁵⁰ Lori (n 8) 3.

⁵¹ *ibid* 205.

⁵² *ibid* 3.

⁵³ *ibid*; Katie Cella, ‘Stateless in Dubai’ (2014) 39 *Boston Review* 24, 28.

⁵⁴ Lori (n 8) 206.

⁵⁵ *ibid.*

for naturalization in the UAE.⁵⁶ Between 2008 and 2012,⁵⁷ tens of thousands of individuals residing in the UAE were issued passports from the Union of the Comoros.⁵⁸

3. Legal analysis of bilateral responses to statelessness

The UAE's arrangement with the Comoros was ostensibly adopted as a way of regularizing the legal status of the *bidun* population and thus as a means of resolving the problem of *in situ* statelessness within the country. But to what extent was this approach consistent with the UAE's existing obligations in respect of nationality towards the *bidun* population under international law? These obligations can be classified as (1) obligations in respect of the grant of nationality to stateless children; (2) obligations in respect of the grant or deprivation of nationality more broadly; (3) obligations in respect of a particular nationality; and (4) obligations relating to the quality or substance of nationality. These obligations derive from international human rights treaties, statelessness specific treaties, and customary international law. Related obligations, including obligations to register children after birth⁵⁹ and the protection of a child's identity,⁶⁰ while important, are excluded from this analysis due to space constraints.⁶¹

The classic position in international law is that States determine their own nationals through setting the conditions for the grant or withdrawal of nationality within their domestic law. However, as was established by the Permanent Court of International Justice in 1923, a State's laws on nationality must comply with developing international law related to nationality.⁶² As this section will demonstrate, the scope of States' *domaine réservé* in respect of nationality has been constrained through the adoption of a range of treaties and through customary international law establishing obligations owed in respect of nationality in certain circumstances. This section also advances the argument that States' obligations in respect of nationality imply a territorial component, meaning these obligations cannot be fulfilled through the substitution of another State's nationality.

3.1. Obligations in respect of nationality for stateless children

States' obligations regarding the grant of nationality are the most pronounced in respect of children born in a State's territory who, without the grant of nationality by that State, would otherwise be stateless. This obligation is set out in the Convention on the Reduction of Statelessness 1961 (1961 Convention);⁶³ under article 1(1), a State Party is required to grant

⁵⁶ *ibid* 203.

⁵⁷ *ibid* 214.

⁵⁸ Estimations of the number of passport recipients vary: one source reports that 'at least 50,000 stateless residents' of the UAE received Comorian passports, while a second source puts the figure at approximately 80,000–120,000 people: Kuzmova (n 8) 276; Lori (n 8) 204–205.

⁵⁹ Convention on the Rights of the Child (opened for signature 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), art 7(1).

⁶⁰ *ibid*, art 8.

⁶¹ Additionally, while there is burgeoning interest in the right to 'legal identity' (Target 16.9 of the Sustainable Development Goals) as a means of addressing statelessness, it is generally accepted that 'legal identity' is not synonymous with nationality and for this reason has been omitted from this legal analysis: see Bronwen Manby, 'Legal Identity for All and Statelessness: Opportunities and Threats at the Junction of Private and Public International Law' (2020) 2(2) *Statelessness & Citizenship Review* 248.

⁶² *Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921 (Great Britain v France) (Advisory Opinion)* [1923] PCIJ (ser B) No 4, 24.

⁶³ Convention on the Reduction of Statelessness (opened for signature 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (1961 Convention).

its nationality to a person born in its territory who would otherwise be stateless.⁶⁴ While paragraph 2 does allow States to affix certain conditions upon the grant of nationality, a requirement of habitual residence in the territory cannot exceed stated limits.⁶⁵ This provision is clear that it is its own nationality that States are obligated to provide.

Consistent with a low overall rate of ratification, the UAE is not a State Party to the 1961 Convention. However, the UAE is a party to the Convention on the Rights of the Child 1989 (CRC),⁶⁶ which provides in article 7(1) for the right of a child to acquire a nationality, with the second paragraph of the article adding ‘in particular where the child would otherwise be stateless’. Unlike the 1961 Convention, the CRC provides for the right of children to acquire a nationality. This vague formulation was settled upon due to States’ reluctance to commit to a broad-based obligation to grant nationality on *jus soli* grounds.⁶⁷ States were also concerned to avoid the implication that a stateless child who entered the territory of a State Party would be entitled to the nationality of that State.⁶⁸ More generally, during the drafting of this article, States expressed the view that nationality was a matter of domestic law⁶⁹ and that too broad a formulation of this article would lead to ‘far-reaching legal reservations by a large number of states’.⁷⁰ Indeed, the UAE has entered a reservation to article 7, explaining that the country ‘is of the view that the acquisition of nationality is an internal matter and one that is regulated and whose terms and conditions are established by national legislation’. Irrespective of this reservation, the UAE could argue that the supply of foreign passports to stateless *bidun* children who were born in its territory fulfilled its obligation under the broadly worded article 7.

However, the latitude conveyed by article 7 is not completely without limits.⁷¹ The Committee on the Rights of the Child has specified that ‘States are required to take proactive steps to ensure the right to a nationality [under article 7] can be exercised’.⁷² In the case of *AM v Switzerland*, the Committee ruled that Switzerland was required to take ‘all necessary steps’ to determine whether a stateless child facing a risk of deportation would have access to a nationality in the country to which they were returned.⁷³ While

⁶⁴ *ibid* art 1(1) (either at birth [a] or upon application [b]) (emphasis added).

⁶⁵ These are five years immediately preceding the application, or ten years overall: 1961 Convention, art 1(2)(b).

⁶⁶ CRC (n 59).

⁶⁷ Indeed, a more straightforward formulation of Article 7 – ‘The child shall be entitled from his birth to...a nationality’ – was declared to be ‘doomed to failure’: Comments from the Federal Republic of Germany on the first Polish draft (1978): ‘Legislative History of the Convention on the Rights of the Child (Part 1)’ UN Doc HR/PUB/07/1 (1 July 2007) 370.

⁶⁸ Comments from the United States of America: Discussion and adoption by the Working Group (1980): *ibid* 372.

⁶⁹ See, eg comments from Malawi on the first Polish draft (1978): *ibid* 371.

⁷⁰ Comments by Bangladesh submitted to the Working Group (1986): *ibid* 375.

⁷¹ Wouter Vandenhoe, Gamze Erdem Türkelli and Sara Lembrechts, ‘Article 7: Name and Nationality’ *Children’s Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (2nd edn, Edward Elgar Publishing 2024) 117.

⁷² Committee on the Rights of the Child, ‘Views Adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 95/2019’ UN Doc CRC/C/88/D/95/2019 (3 November 2021, adopted 22 September 2021,) *AM v Switzerland* [10.10].

⁷³ *ibid* (finding that Switzerland has violated this obligation).

recognizing that ‘States are not obliged to grant their nationality to every child born in their territory’,⁷⁴ the Committee has also stressed that States:

are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless.⁷⁵

The Committee goes on to call on States to ‘strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless’.⁷⁶ Here, the Committee specifies that what is required is the ‘conferral of nationality’—not the indefinite formulation ‘a nationality’—suggesting it is the grant of the territorial State’s nationality that is the key measure states are required to take in circumstances where a child born in their territory would otherwise be stateless. Although the Committee refers to measures taken in cooperation with other States, raising the possibility that the UAE could argue its arrangement with the Comoros was compliant with this directive, it is reasonable to assume the reference to international cooperation was in contemplation of the kind of measures required in the case of *AM v Switzerland*,⁷⁷ and not the attempted outsourcing of nationality from another country.

The obligation of States to grant nationality to stateless children born in their territory is repeated in other instruments. For example, the International Covenant on Civil and Political Rights 1966 (ICCPR)⁷⁸ states in article 24(3) that ‘[e]very child has the right to acquire a nationality’. In 2021, the Human Rights Committee found that the failure of a State Party to provide their nationality to a stateless child born in its territory amounted to a violation of this right.⁷⁹ Regional human rights instruments also specify that the obligation does indeed relate to the State’s own nationality. The American Convention on Human Rights 1969 (ACHR) proclaims that ‘[e]very person has the right to *the nationality of the state in whose territory he was born* if he does not have the right to any other nationality’.⁸⁰ The European Convention on Nationality 1997 requires each State Party to provide for ‘its nationality to be acquired by children born on its territory who do not acquire at birth another nationality’.⁸¹ Although the UAE is not bound by these treaties, this understanding of this obligation as relating to the States’ own nationality should guide the interpretation

⁷⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, ‘Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return’ UN Doc CMW/C/GC/4-CRC/C/GC/23 (16 November 2017) [24].

⁷⁵ *ibid.*

⁷⁶ *ibid* [26].

⁷⁷ In other words, liaising with the State of deportation (here, Bulgaria) in assessing the risks that would be faced by the applicant if they were to be returned to that country: Committee on the Rights of the Child (n 69) [10.9].

⁷⁸ International Covenant on Civil and Political Rights (opened for signature 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

⁷⁹ *DZ v the Netherlands Communication No 2918/2016* (20 January 2021) UN Doc CCPR/C/130/D/2918/2016, [8.5]–[9].

⁸⁰ American Convention on Human Rights (opened for signature 22 November 1969, entered into force 18 July 1978), art 20(2) (emphasis added).

⁸¹ European Convention on Nationality (opened for signature 6 November 1997, entered into force 1 March 2000) ETS 166, art 6(2) (emphasis added).

of the corresponding article 7 CRC. Indeed, it has been argued in scholarship that these different treaty obligations are ‘coalescing into a coherent obligation’ for States to grant their nationality to a child born in its territory who would otherwise be stateless,⁸² such that this obligation should be recognized as a forming part of customary international law.⁸³ Given the object and purpose of the CRC in extending special protection to children,⁸⁴ and the recognition of the negative impacts of statelessness upon children in particular,⁸⁵ it is arguable that the UAE’s arrangement with the Comoros was not consistent with the letter of the obligation of article 7, nor its purpose or intent, and as such did not amount to a good faith interpretation of this obligation.

3.2. Obligations in respect of the grant or deprivation of nationality generally

Beyond the situation of stateless children born in their territory, States have obligations in respect of nationality more broadly. The right of everyone to a nationality and to not be arbitrarily deprived of their nationality is set out in article 15 of the Universal Declaration of Human Rights 1948 (UDHR). A variety of international and regional human rights treaties repeat this right, although with varying formulations. Article 20(1) of the ACHR affirms the right of every person to a nationality. Other international human rights treaties protect the right to a nationality of particular groups. For example, the Convention on the Rights of Persons with Disabilities (CRPD) provides the right of persons with disabilities ‘to acquire and change a nationality’,⁸⁶ while article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW) provides that ‘[e]very child of a migrant worker shall have the right to a name, to registration of birth and to a nationality’.⁸⁷ The right to a nationality has been described as a fundamental human right and a fundamental legal right by the UN Human Rights Council⁸⁸ and the Council of the European Union respectively.⁸⁹

Given this broad codification and degree of recognition, the argument has been advanced that the right to a nationality in general has acquired the status of customary international law.⁹⁰ Regional human rights courts have affirmed the customary nature of this right. For example, the Inter-American Court on Human Rights (IACtHR) has stated that ‘[t]he right of every human being to a nationality has been recognized as such by international law’,⁹¹

⁸² William Thomas Worster, ‘The Obligation to Grant Nationality to Stateless Children Under Treaty Law’ (2019) 24 *Tilburg Law Review* 204.

⁸³ William Thomas Worster, ‘Customary International Law Requiring States to Grant Nationality to Stateless Children Born in Their Territory’ (2022) 4 *The Statelessness & Citizenship Review* 113.

⁸⁴ CRC (n 59) preamble.

⁸⁵ These include uncertainty, lack of rights protection, difficulties in travel and accessing justice, and obstacles to realising socio-economic rights. See, eg African Committee of Experts on the Rights and Welfare of the Child, *IHRDA and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. Kenya* Communication No. 002/2009 (22 March 2011), [42].

⁸⁶ Convention on the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 18(1)(a).

⁸⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003).

⁸⁸ See eg Resolution 20/5: ‘Human Rights and Arbitrary Deprivation of Nationality’, UN Doc A/HRC/RES/20/5 (16 July 2012), 2.

⁸⁹ Council of the European Union, ‘Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness’, 14978/15 (4 Dec 2015).

⁹⁰ Barbara von Rütte, *The Human Right to Citizenship: Situating the Right to Citizenship within International and Regional Human Rights Law* (Brill Nijhoff 2022) 97–99.

⁹¹ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica (Advisory Opinion)* (Inter-American Court on Human Rights, Series OC-4/84, 19 January 1984), [34].

while the African Court on Human and People's Rights agrees that the UDHR, including article 15, forms part of customary international law.⁹² Summing up the position in international law, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has expressed the view that, although:

States set the rules for acquisition, change and loss of nationality as part of their sovereign power...state discretion must be and is indeed limited by international human rights law standards...as well as customary international law and general principles of law that protect individuals against arbitrary state actions. In particular, states are limited in their discretion to grant nationality by their obligations to guarantee equal protection and to prevent, avoid, and reduce statelessness.⁹³

If the argument that the right to a nationality has achieved the status of customary international law is accepted, it would seem that, irrespective of its treaty obligations, the UAE is obligated to provide a nationality to the *bidun* population. As the next section demonstrates, this obligation is particularly pronounced in situations of statelessness and in situations involving the discriminatory and arbitrary deprivation of nationality.

3.2.1. Obligations in respect of the grant or deprivation of nationality in situations of statelessness

As stressed by the ACERWC, the strength of the claim to the right to nationality is heightened in situations of statelessness. Under article 8(1) of the 1961 Convention, the deprivation of nationality is generally prohibited if doing so would leave that person stateless.⁹⁴ 'Deprivation' includes the withdrawal or the automatic loss of nationality, as well as the denial of access to nationality by the State.⁹⁵ As the IACHR has explained, this means that 'states have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons'.⁹⁶ The next section develops the argument that the grant of Comorian passports to the *bidun* did not actually amount to the grant of nationality. If this argument is accepted, the UAE would be in violation of the customary international law obligation to address, and not to worsen, the situation of statelessness in its territory.

In addition to emphasizing the importance of addressing statelessness, a variety of treaties underline the importance of facilitating the naturalization of those who are stateless and/or who are habitually resident on the territory. Article 32 of the 1954 Convention urges States to, as far as possible, facilitate the naturalization of stateless people in their territory. Article 6(3) of the European Convention on Nationality requires state parties to 'provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory'. This Convention clarifies that for those who are lawfully and habitually resident on the State's territory (article 6(4)(e) and (f)), including stateless people (article 6(4)(g)), it is the State's own nationality that should be provided ('Each State Party shall facilitate in its internal law the acquisition of its nationality' for the

⁹² *Anudo Ochieng Anudo v United Republic of Tanzania* (African Court on Human and People's Rights, Application No. 012/ 2015, 22 March 2018), [76].

⁹³ *IHRDA and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. Kenya* (n 85) [48].

⁹⁴ This is subject to some limited exceptions, set out in art 8(3).

⁹⁵ Mark Manly and Laura van Waas, 'The Value of the Human Security Framework in Addressing Statelessness' in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (CUP 2010) 49, 63–64.

⁹⁶ *Case of the Yean and Bosico Children v Dominican Republic* (Inter-American Court of Human Rights) [142].

above persons). Statelessness law experts have characterized this provision as establishing ‘a right to nationality based on *jus domicile* (long-term residence) in certain situations’.⁹⁷ Both the 1954 Convention and the European Convention on Nationality emphasize that *in situ* stateless people should receive the nationality of the country in which they reside.

3.2.2. Obligations in respect of the discriminatory and arbitrary deprivation of nationality

States’ obligations in respect of nationality encompass obligations concerning the deprivation of nationality on discriminatory grounds and the arbitrary deprivation of nationality. These obligations stem from article 15(2) of the UDHR, which provides that ‘No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality’. The refusal of a State to grant nationality may be unlawful if the refusal was discriminatory based on prohibited grounds. Article 9 of the 1961 Convention prohibits the deprivation of nationality from an individual on ‘racial, ethnic, religious or political grounds’, while article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the UAE, prohibits racial discrimination in respect of the right to nationality. While article 1(3) creates a carve-out for laws relating to nationality, ‘provided that such provisions do not discriminate against any particular nationality’, scholars have argued in favour of reading down this provision by reference to the *jus cogen* status of the norm of non-discrimination in customary international law.⁹⁸ As the IACtHR explains, this means that ‘when regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights’.⁹⁹ Given that many of the *bidun* belong to the *Bedouin*, a distinct population group and, in the eyes of some, a distinct ethnic group,¹⁰⁰ it can be argued that the UAE’s agreement with the Comoros and its corresponding refusal to grant its own nationality to this group was discriminatory and thus unlawful.

The arbitrary deprivation of nationality is also prohibited in international law. Again, this obligation derives from article 15(2) of the UDHR and the fundamental nature of this prohibition was recognized in a resolution by the UN General Assembly.¹⁰¹ The deprivation of nationality will be deemed to be arbitrary when the deprivation lacks a legal basis, is not for a legitimate purpose, is not proportionate, and does not comply with procedural safeguards.¹⁰² The discriminatory deprivation of nationality is also inherently arbitrary.

To summarize the legal analysis so far, the UAE is bound by its treaty obligations arising under the CRC to provide stateless children born in its territory a nationality. Furthermore, under customary international law, the UAE is obligated to ensure the *bidun*’s right to a

⁹⁷ Michelle Foster and Hélène Lambert, ‘Statelessness as a Human Rights Issue: A Concept Whose Time Has Come’ (2016) 28 International Journal of Refugee Law 564, 577.

⁹⁸ See Michelle Foster and Timnah Baker, ‘Racial Discrimination in Nationality Laws’ (2021) 11 Columbia Journal of Race and Law 83; Bronwen Manby, ‘Filling the Holes in the Rights Framework: Statelessness, Racial Discrimination, Genuine Connections and the Right to a (Specific) Nationality’ (2026) 75 International & Comparative Law Quarterly 37, 54–56.

⁹⁹ *Case of the Yean and Bosico Children v Dominican Republic* (n 99) [141].

¹⁰⁰ See Susan Frances Kennedy, ‘The Stateless Bedouin in Kuwait Society: A Study of Bedouin Identity, Culture and the Growth of an Intellectual Ideal’ (PhD Thesis, University of Adelaide 2016); Ahmad Benswait, ‘Language and Statelessness: The Impact of Political Discourses on the Bidoon Community in Kuwait’ in Tendayi Bloom and Lindsey N. Kingston (eds) *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press 2021) 90.

¹⁰¹ ‘Office of the United Nations High Commissioner for Refugees’ GA Res 50/152, UN Doc A/RES/50/152 (9 February 1996) [16].

¹⁰² ‘Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary General’ UN Doc A/HRC/13/34 (14 December 2009) [25].

nationality, and, additionally under the ICERD, to avoid depriving the *bidun* of nationality on discriminatory and arbitrary grounds. These obligations are strengthened in respect of the *bidun* population, given they are both stateless and habitually resident on the state's territory. In response, the UAE may contend that the arrangement with the Comoros gave effect to the right of the *bidun* populations to a nationality. However, as the 1954 Convention and the European Convention on Nationality make clear, it is a State's own nationality that should be provided to *in situ* stateless populations. The next section further develops the argument that it is not any nationality can be supplied in satisfaction of States' obligations in respect of nationality, but the nationality to which the population is connected.

3.3. Obligations in respect of a particular nationality

In international law, States have historically been reluctant to commit to grant their own nationality to those who would otherwise be stateless, preferring instead to codify an abstract right to a nationality. This has led to a perception that individual claims to a nationality are not able to be enforced against any particular state.¹⁰³ However, this perception may be weakening; there seems to be growing recognition that an obligation to grant nationality falls first and most heavily upon the country with which a person is most closely connected.¹⁰⁴ This idea derives from a combination of the legal concepts of one's 'own country', 'a genuine connection', and 'effective nationality'.

International law protects rights in relation to one's 'own country'. Article 13(2) of the UDHR provides that '[e]veryone has the right to ... return to his country' while article 12(4) of the ICCPR states that '[n]o one shall be arbitrarily deprived of the right to enter his own country'. The Human Rights Committee has explained that this use of the term 'own country' suggests that a person can have a special relationship with, and be owed rights by, a country which may not officially recognize them as a national but to which they nevertheless have 'special ties to or claims in relation to'.¹⁰⁵ The Committee acknowledges this relationship arises in cases of 'long term residents, including...stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence'.¹⁰⁶ In the context of an individual communication concerning deportation, the Committee elaborated on the factors 'other than nationality which may establish close and enduring connections between a person and a country',¹⁰⁷ including the period of residence in the country, personal and family ties, the intention to remain, and the lack of ties to other countries.¹⁰⁸

The phrase one's 'own country' has particular resonance in the context of statelessness. The UNHCR's use of the phrase 'own country' to describe *in situ* stateless populations draws directly from the use of this phrase in article 12(4) of the ICCPR and its interpretation by the Human Rights Committee. It seems evident, then, that *in situ* stateless people have a right to the nationality of their 'own country': the country with which they are most closely associated.¹⁰⁹ For the UAE's *bidun* population, this is clearly the UAE and not the Comoros.

¹⁰³ Foster and Lambert (n 97) 574.

¹⁰⁴ See, eg Manby (n 98).

¹⁰⁵ Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement) (UN Doc CCPR/C/21/Rev1/Add9 (2 November 1999)) [20].

¹⁰⁶ *ibid.*

¹⁰⁷ Human Rights Committee, 'Views: Communication No. 1557/2007 (Stefan Lars Nystrom v. Australia)' UN Doc CCPR/C/102/D/1557/2007 (18 July 2011) [7.4].

¹⁰⁸ *ibid.*

¹⁰⁹ David S Weissbrodt, *The Human Rights of Non-Citizens* (Oxford University Press 2008) 108.

Complementing the concept of one's 'own country' is the idea that nationality should involve 'a genuine connection'. In the case of *Nottebohm*, the International Court of Justice (ICJ) commented that nationality should have:

as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments... It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.¹¹⁰

The concept of 'genuine connection', like the concept of one's 'own country', has value in the context of states' obligations in respect of statelessness.¹¹¹ These concepts can anchor the otherwise free-floating nature of the right to a nationality (which does not specify which country has the corresponding obligation to grant their nationality) by suggesting that stateless people have a right to the nationality of a country to which they have a genuine connection. The UAE's agreement with the Comoros violated the importance of one's 'own country' and the idea that nationality should involve a 'genuine connection'. It ignored the connection and claims of the *bidun* to the UAE and instead granted a passport to a country not based on any link between the recipients and the country. Indeed, as the next section explains, the passports did not entitle the *bidun* to even enter the Comoros, meaning they prevented such a connection or link from developing.

Indeed, Goodwin-Gill has suggested that the criteria set out by the ICJ in *Nottebohm* ('a social fact of attachment, a genuine connection of existence, interests and sentiments') indicate the circumstances in which a state should be 'considered bound by other incidental obligations, such as that of non-expulsion, readmission, and a certain standard of treatment'.¹¹² In other words, these circumstances should trigger states' obligations that are owed to nationals, generating the status of effective, if not *de jure*, nationality for the affected persons. As Foster and Lambert observed in 2016, 'jurisprudential developments in international and regional human rights law have progressed considerably closer to achieving this goal'.¹¹³ More recently, Bronwen Manby has characterized jurisprudence on this point, in particular from African institutions, as 'hav[ing] provided the *Nottebohm* judgment with an afterlife that was not imagined by the ICJ in 1955'.¹¹⁴

It is arguable, then, that the concepts of one's 'own country', 'a genuine connection' and 'effective nationality' strengthen the argument that the *bidun* population of the UAE have claims to nationality of that country—the country to which they have 'special ties to or claims in relation to'. Instead of recognizing and giving effect to these claims to nationality, however, the bilateral agreement transformed the *bidun* into foreigners in their own country.

3.4. Obligations in respect of the quality or substance of nationality

This section advances the argument that the grant of Comorian passports to the *bidun* of the UAE did not amount to the grant of Comorian nationality, because what was granted did not

¹¹⁰ *Nottebohm Case (Liechtenstein v Guatemala) (Judgment)* [1955] ICJ Rep 4 (International Court of Justice) 23.

¹¹¹ Rabuffetti and Wills (n 8) 85; Manby (n 98).

¹¹² Guy S Goodwin-Gill, 'The Rights of Refugees and Stateless Persons' in KP Saksena (ed), *Human Rights Perspective and Challenges (in 1990 and Beyond)* (Lancers Books 1994) 378

¹¹³ Foster and Lambert (n 97) 574.

¹¹⁴ Manby (n 98) 57.

satisfy the quality or substance of nationality. The substantive elements of nationality operate at two levels. At the international or external level, nationals are entitled to diplomatic protection (intervention by the state in international legal proceedings on behalf of the affected national) and consular protection (assistance rendered to nationals by the state while abroad). Nationals are entitled to the right of entry or admission into the country of their nationality, as well as the right to reside in that country. At the domestic or internal level, nationals typically have the right to vote and to stand for public office. Nationals commonly also have obligations to their country of nationality, including to pay taxes, to perform military service, and to be bound by the state's laws.

The grant of Comorian passports to the UAE's *bidun* did not offer any of these elements of nationality. Passport recipients are not entitled to diplomatic or consular protection from the Comoros.¹¹⁵ The passports expressly prohibit the *bidun* from residing on the island nation.¹¹⁶ This was dramatically illustrated in 2018, when a Comorian passport holder from the UAE was arrested and deported to the Comoros but was refused the right to enter the country, and then refused the right to re-enter the UAE, leaving him stranded for four months in Kenya's international airport.¹¹⁷ At the domestic level, the passport holders do not have the right to vote in Comorian elections or to serve in public office,¹¹⁸ and are not required to serve in the Comorian armed forces (although the UAE subsequently required Comorian passport-holders to participate in its mandatory national military service).¹¹⁹ The Comorian passports do not even reliably facilitate travel to other countries; suspicion about the veracity of the documents has meant that passport-holders are frequently stopped at borders when attempting to travel¹²⁰ and, without consular support from the Comoros, there is no way for passport-holders' claims about the validity of the passports to be verified.¹²¹ The documents do not even reliably function as passports, much less amount to a grant of nationality to the *bidun*.

Although the arrangement promised that passport recipients would subsequently be naturalized in the UAE, it is not known how many *bidun* were ultimately granted UAE nationality.¹²² It is likely that most remain on temporary residency visas, dependent upon their sponsor under the Kafala Sponsorship system to maintain their status as foreign workers in their own country.¹²³

4. Contextualizing bilateral responses to statelessness

Although the UAE's agreement with the Comoros was extraordinary, it did not occur in a vacuum. This bilateral response to statelessness adopted by the UAE and contemplated by Kuwait bears similarities to the broader phenomenon of the adoption of bilateral agreements as a response to asylum seeking and irregular migration. The turn to bilateral

¹¹⁵ Lori (n 8) 196.

¹¹⁶ Economic Citizenship Law, art 6.

¹¹⁷ Fred Mukinda, 'Meet "Stateless" Man Who Has Been Stranded at JKIA for Four Months' *Nairobi News* (6 April 2018) <<https://nairobi.news.nation.africa/stateless-man-stranded-jkia/>> accessed 23 May 2024.

¹¹⁸ Lori (n 8) 196.

¹¹⁹ Kuzmova (n 8) 282.

¹²⁰ Lori (n 8) 203.

¹²¹ *ibid* 231.

¹²² Abrahamian (n 33) 248; Rabuffetti and Wills (n 8) 84.

¹²³ Lori (n 8) 230.

agreements in this context has been a growing trend since the turn of the century,¹²⁴ corresponding with an increase in the number of people seeking asylum.¹²⁵ In order to seek asylum, people often need to cross borders without authorization and travel along the same routes, use the same means of transportation and attempt border crossings with other migrant populations, referred to in this article as ‘irregular migrants’. Despite irregular border crossings remaining a relatively rare phenomenon,¹²⁶ asylum seekers and irregular migrants—and particularly those arriving by boat—receive disproportionate attention in the media, political discourse, and in the public imagination.¹²⁷ Bilateral agreements are an increasingly common response by states to this attention.

Bilateral state responses to asylum seekers and irregular migrants provide for types of arrangements. One category takes the form of arrangements with third countries for the extraterritorial detention of asylum seekers and/or the processing of asylum claims. Australia’s arrangements with Nauru and Papua New Guinea exemplify this model,¹²⁸ as do Italy’s 2023–24 arrangement with Albania¹²⁹ and the UK’s proposed arrangement with Rwanda.¹³⁰ A second category comprises bilateral arrangements for the transfer or relocation of refugees or those deemed in need of protection, including arrangements framed as burden-sharing or resettlement cooperation, such as Australia’s proposed (but never implemented) arrangement with Malaysia,¹³¹ the UK–Rwanda arrangement insofar as it also purported to provide permanent settlement to refugees and other migrants,¹³² and the European Union’s 2016 EU–Turkey Statement.¹³³ A third category of bilateral arrangements provides for cooperation in the interception of irregular migrants, as well as broader forms of migration control. Examples include cooperation between the European Union and Libya in

¹²⁴ Although note that the United States–Haiti agreement, concluded in 1981, is often identified as the first extraterritorial interdiction agreement. See, eg Katherine H Tennis, ‘Offshoring the Border: The 1981 United States–Haiti Agreement and the Origins of Extraterritorial Maritime Interdiction’ (2019) 34 *Journal of Refugee Studies* 173.

¹²⁵ The number of asylum applications made to the UNHCR worldwide more than doubled between 2013 and 2022, increasing from 3.4 million in 2013 to 6.9 million in 2022: Refugee Council of Australia, ‘Is Australia’s Response to Refugees Generous? An Analysis of UNHCR Global Trends Statistics from 2013 to 2022’ (Report, 2023) 1.

¹²⁶ As Franck Düvell points out, the majority of ‘irregular migrants’ in European Union countries entered the country lawfully and overstayed or otherwise violated the conditions of their visa: Franck Düvell, ‘Paths into Irregularity: The Legal and Political Construction of Irregular Migration’ (2011) 13 *European Journal of Migration and Law* 275, 288.

¹²⁷ Tennis (n 124) 176.

¹²⁸ ‘Regional Resettlement Arrangement between Australia and Papua New Guinea’ (19 July 2013) and ‘Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues’ (6 August 2013); ‘Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues’ (3 August 2013).

¹²⁹ ‘Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria’ (6 November 2023) (‘Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania for the Strengthening of Cooperation on Migration Matters’).

¹³⁰ ‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership agreement’ (6 April 2023).

¹³¹ ‘Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement’ (25 July 2011).

¹³² ‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership agreement’ (6 April 2023).

¹³³ ‘EU Turkey Statement’ (18 March 2016).

relation to maritime interception in the Central Mediterranean, and Spain's bilateral arrangements with Morocco concerning border surveillance, returns, and border control.¹³⁴

Despite variations in their specific purposes, there are common features throughout all types of bilateral agreements adopted in the context of asylum seeking and irregular migration. This section examines these features and draws parallels to the UAE's arrangement with the Comoros and Kuwait's contemplated arrangement with the Comoros. It advances the argument that bilateral responses to statelessness should also be understood as attempts by states to avoid or outsource their protection obligations. It then identifies lessons learned from this comparison.

4.1. 'Undesirable' populations

In both the contexts of statelessness on the one hand, and irregular migration and asylum seeking on the other hand, States are turning to bilateral agreements in response to populations deemed 'undesirable' by the State. The Gulf states' turn to the Comoros in an effort to address the statelessness of the *bidun* stems from their distrust of these groups. The UAE views those without passports as foreign nationals who travelled to the country and destroyed their passports in order to benefit from the country's rapid economic growth.¹³⁵ Kuwait also views the *bidun* as nationals of other countries, illegally residing in the country in an attempt to gain access to state benefits.¹³⁶ Additionally, the Kuwaiti Government has viewed the *bidun* as a security threat; during the country's war with Iraq, some *bidun* were forced to fight with Iraq, leading to the stigmatization and labelling of the entire group as traitors.¹³⁷ The reluctance to extend nationality to the *bidun* populations is consistent with a broader policy of holding at arms-length other groups deemed to be 'foreigners' in the Gulf countries.¹³⁸

More broadly, most *in situ* stateless populations—like the *bidun* of the UAE and Kuwait—are stateless as a result of a deliberate and intentional state policy to deny them nationality.¹³⁹ Statelessness is often a product of the discriminatory denial of nationality to certain minority groups, often on racial, ethnic, or religious grounds. The UNHCR estimates that 75 per cent of the world's stateless people belong to minority groups,¹⁴⁰ a figure which points to the significance of discrimination as a cause of statelessness. In other words, the *bidun* are stateless because of the deliberate policy of the State to deny them nationality. The failure of the Gulf States to resolve the statelessness of the *bidun* in the most straightforward way—through the grant of their own nationality—is indicative of their view that it is undesirable to incorporate these groups into their national polities.

¹³⁴ 'Cooperation Agreement on security and the Fight Against Crime' (30 April 2022) based upon the 'Treaty of Friendship, Good Neighbourliness and Cooperation between the Kingdom of Spain and the Kingdom of Morocco' (4 July 1991).

¹³⁵ Muawia E Ibrahim, "'No Stateless People in UAE'" *Khaleej Times* (2 April 2015) <<https://www.khaleej-times.com/article/no-stateless-people-in-uae>> accessed 21 March 2024.

¹³⁶ Human Rights Watch, 'World Report 2013: Kuwait' (*World Report 2013*, 31 January 2013) <<https://www.hrw.org/world-report/2013/country-chapters/kuwait>> accessed 5 March 2024.

¹³⁷ 'Bidoon in Kuwait' (*Minority Rights Group*, 16 October 2023) <<https://minorityrights.org/communities/bidoon/>> accessed 3 June 2025.

¹³⁸ See Lori (n 8).

¹³⁹ See Neha Jain, 'Manufacturing Statelessness' (2022) 116 *American Journal of International Law* 237; Michelle Foster and Jade Roberts, 'Manufacturing Foreigners: The Law and Politics of Transforming Citizens into Migrants' *Research Handbook on the Law and Politics of Migration* (Edward Elgar Publishing 2021).

¹⁴⁰ 'Stateless Minorities and Their Search for Citizenship' (UNHCR 2017) 1.

Bilateral agreements adopted in response to asylum seekers and irregular migrants are also directed towards a population deemed undesirable by States. These agreements are concluded with the purpose of preventing these groups from entering into the country and often also seek to contain these groups in their countries and regions of origin. The perceived undesirability of asylum seekers and irregular migrants is a product of many factors, including the framing of irregular border crossings as a crime and thus the labelling of these groups as 'illegal'. Indeed, extraterritorial migration policies can be understood as pre-emptive punishments taken against those who pose the threat of a future irregular border crossing.¹⁴¹ Asylum seekers and irregular migrants are often deemed 'undesirable' for other interrelated reasons, including racism and other ideological and structural legacies of colonialism;¹⁴² nationalism and anxieties about demographic change; religious discrimination (particularly Islamophobia); the perception that asylum seekers and irregular migrants are seeking access to the territory in order to secure welfare and other forms of governmental assistance; the idea that asylum seekers and irregular migrants are not only committing a crime through irregular entry but represent national security risks, including terrorism risks;¹⁴³ and, particularly since 2020, the view that these groups present biomedical risks.¹⁴⁴ Like *in situ* stateless populations, asylum seekers and irregular migrants are often perceived as undesirable by states, so increasingly states are turning to other states to rid themselves of these populations.

4.2. Perceived legal ambiguity and a lack of accountability

Bilateral agreements emerge in both contexts because of perceived ambiguity in States' legal obligations, combined with a lack of legal accountability. As detailed above, states have clear obligations in international law in respect of granting nationality in the particular context of children born in the State's territory who would otherwise be stateless. Obligations relating to the grant of nationality in respect of other groups are less strongly-worded. This degree of ambiguity can be exploited by States in their refusal to grant their nationality to *in situ* stateless populations, or their adoption of unique arrangements in an attempt to subvert these obligations.

The leeway created by this perceived legal ambiguity is bolstered by a lack of legal accountability for States' actions in respect of stateless populations. As well as being deemed undesirable, stateless populations are often also disenfranchised, lacking political and economic power and the ability to advocate for their rights. There are no legal mechanisms established to oversee States' obligations under the 1954 and 1961 statelessness conventions. Neither statelessness convention confers a supervisory role upon the UNHCR, and it was only in 1995 that the UN General Assembly clarified that the UNHCR's mandate extended to stateless persons who were not also refugees.¹⁴⁵ Unlike other international human rights treaties, there are no treaty body committees established under the statelessness conventions. As a result, legal claims by stateless people are limited to claims proceeding in respect of relevant human rights treaties and regional human rights courts.

¹⁴¹ Mathew Coleman, 'A Geopolitics of Engagement: Neoliberalism, the War on Terrorism, and the Reconfiguration of US Immigration Enforcement' (2007) 12 *Geopolitics* 607, 621.

¹⁴² See E Tendayi Achiume, 'Migration as Decolonization' (2019) 71 *Stanford Law Review* 1509; Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking* (Rowman & Littlefield Publishers 2017).

¹⁴³ See Jef Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Routledge 2006).

¹⁴⁴ See Daniel Ghezelbash and Nikolas Feith Tan, 'The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection' (2020) 32 *International Journal of Refugee Law* 668.

¹⁴⁵ 'Office of the United Nations High Commissioner for Refugees' (n 101) [14].

Bilateral agreements in the context of asylum seeking and irregular migration can also be understood as attempts to exploit the perceived ambiguity in respect of States' obligations owed towards these populations. Externalization agreements attempt to circumvent obligations arising under the Convention relating to the Status of Refugees 1951 (1951 Convention) and international human rights law, often by attempting to sever or otherwise deny the territorial link that would trigger states' jurisdiction and thus their legal responsibility. Refugee law scholars have observed that externalization measures such as maritime interception, offshore processing, and carrier sanctions are specifically designed to prevent territorial access and therefore the triggering of States' legal obligations in respect of asylum,¹⁴⁶ in particular the obligation of *non-refoulement*.¹⁴⁷

This legal manoeuvring is likely enabled by a lack of accountability in respect of states' treatment of asylum seekers and irregular migrants. The 1951 Convention does require State parties to cooperate with UNHCR in the exercise of its functions, and in particular 'facilitate its duty of supervising the application of the provisions of this Convention'.¹⁴⁸ However, it is debated whether this provision positions UNHCR as the supervisory body of the 1951 Convention,¹⁴⁹ or whether the organization's functions in the refugee context are facilitative and coordinative in nature, and not to assess States' compliance with the Convention.¹⁵⁰ There are also few pathways to legal accountability in this context, although claims concerning the rights of asylum seekers and irregular migrants have been made in domestic and regional courts and to human rights treaty body committees. In both contexts, the turn to bilateral agreements reflects the perception that States' discretion in matters of nationality and the management of borders remains largely unconstrained and unchecked.

4.3. Unequal economic power and high costs

In both the contexts of statelessness and asylum seeking and irregular migration, bilateral agreements have been concluded between countries with unequal economic power, involving the payment of money to the partner State in exchange for undertaking migration functions for the first State. The bilateral agreements concluded and contemplated by the oil-rich Gulf countries were undertaken with one of the poorest nations in the world, where 45 per cent of the population live below the poverty line.¹⁵¹ With little industry and opportunity for revenue, the bulk sale of passports to the UAE and Kuwait represented a lucrative proposition for the Comoros. Indeed, the payment from the UAE to the Comoros amounted to approximately one-quarter of the country's annual Gross Domestic Product.¹⁵²

¹⁴⁶ See Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge University Press 2011); Violeta Moreno Lax, *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights Under EU Law* (First edition., Oxford University Press 2017).

¹⁴⁷ See Thomas Gammeltoft-Hansen and James C Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence' (2014) 53 *Columbia Journal of Transnational Law* 235; Guy S Goodwin-Gill, 'The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement' (2011) 23 *International Journal of Refugee Law* 443.

¹⁴⁸ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Convention), article 35.

¹⁴⁹ See Volker Turk, 'UNHCR's Supervisory Responsibility' (UNHCR 2002) Working Paper 67.

¹⁵⁰ James C Hathaway, Anthony M North and Jason Pobjoy, 'Supervising the Refugee Convention' (2013) 26 *Journal of Refugee Studies* 323, 324.

¹⁵¹ Lori (n 8) 220.

¹⁵² *ibid* 70.

Similarly, externalized migration arrangements are also often concluded between wealthy Global North countries and Global South countries. Bilateral agreements seek to interrupt the movement of asylum seekers and migrants from Global South to Global North countries by both preventing the arrival and, increasingly, preventing the departure of these groups from their countries or region of origin. For this reason, these agreements are often initiated by wealthy Global North countries with Global South partners which are geographically positioned to intercept migration flows (such as the movement of Syrian refugees through Turkey to the EU). Alternatively, partner States (such as Nauru and Papua New Guinea in their respective agreements with Australia) are incentivized by the financial and other benefits discussed above, and often a lack of other sources of revenue, to take on the task of detaining asylum seekers and processing asylum claims. Under these arrangements, Global South countries act in the ‘stead and/or for [the] benefit’ of wealthy Global North countries.¹⁵³ Payments may take the form of financial aid (for example, the Facility for Refugees in Turkey, established under the EU-Turkey Statement of 2016 in exchange for Turkey’s cooperating in ending irregular migration into the EU),¹⁵⁴ investment in the country for the purpose of establishing and operating asylum processing facilities and systems (as under Australia’s agreements with Nauru and Papua New Guinea),¹⁵⁵ or investment for broadly defined ‘capacity building’ purposes.

While outsourcing in the business context usually promises lower costs, attempting to outsource state obligations in the contexts of statelessness and irregular migration and asylum seeking comes with a high price tag. The UAE paid US\$200 million to the Comoros for the supply of—at the higher end of the estimate—120,000 passports, coming in at a not insignificant cost of \$1666 each. The costs of establishing transfer and offshore processing arrangements in third states are even more exorbitant. Under the proposed agreement between the UK and Rwanda, it was estimated that the deportation of 300 asylum seekers to Rwanda would cost £540 million: nearly £2 million per person.¹⁵⁶

5. Lessons learned

5.1. Outsourcing protection

This article has argued that bilateral agreements in the context of statelessness and in the context of asylum seeking and irregular migration share a number of common features: they target populations deemed undesirable by the State, they exploit perceived ambiguity in legal obligations and a lack of accountability, and they are concluded between States with unequal economic power and at high cost. These similarities suggest that it is appropriate to understand the UAE’s agreement with Comoros as an externalization agreement; a further attempt to outsource protection. This article asserts that framing this agreement in this way offers a way to make sense of this development. The comparison of these two contexts also helps illustrate the circumstances in which bilateral agreements are likely to be adopted.

¹⁵³ Giuffré and Moreno-Lax (n 4) 84.

¹⁵⁴ See Orçun Ulusoy, ‘Financing Externalisation: The Role That EU Funds Play in Shaping the Turkish Asylum and Migration Policies’ (2025) 23 *Journal of Immigrant & Refugee Studies* 91.

¹⁵⁵ See Tamara Tubakovic and Amy Nethery, ‘Attenuated Governance in Australia’s Offshore Immigration Detention Regime: How Financial Mismanagement Can Achieve Government Goals’ (2025) 23 *Journal of Immigrant & Refugee Studies* 121.

¹⁵⁶ ‘UK Passes Law to Send Asylum Seekers to Rwanda After Months of Wrangling’ *Al Jazeera* (23 April 2024) <https://www.aljazeera.com/news/2024/4/23/uk-law-to-send-asylum-seekers-to-rwanda-passed-after-months-of-wrangling> accessed 12 June 2026.

This can have value in predicting the likelihood of States turning to bilateral agreements in other contexts.

This comparison also suggests that there is a real risk that addressing *in situ* statelessness through the supply of foreign passports may become a popular policy among states. Refugee law scholars have traced the global spread of the policy of externalized border-control arrangements, locating the starting point in the United States-Haiti Agreement in 1981 and observing how, once adopted by a dyad of states, such a policy response gains legitimacy.¹⁵⁷ Although such agreements were once initiated by Global North countries, in recent years Global South countries have been adopting externalized arrangements in response to the regional movement of asylum seekers and irregular migrants.¹⁵⁸ The risk of other States following in the UAE's footsteps is heightened due to the protracted and intractable nature of many instances of *in situ* statelessness worldwide, such as the position of the Rohingya population in Myanmar and people of Haitian descent in the Dominican Republic. These situations remain unresolved because of the unwillingness of the host state to adopt the approach to resolving statelessness advocated by the UNHCR and embodied in the recently concluded global statelessness campaign, the Global Action Plan to End Statelessness: granting these populations their nationality.¹⁵⁹ Such States often reject the contention that these groups 'belong' to the nation, often arguing instead that they belong to another country. For these states, under international pressure to respond to the issue, but often internal pressure to sequester these groups, the grant of foreign passports may be viewed as an attractive solution. Framing the UAE's agreement with the Comoros as an externalization agreement highlights the risk of the spread of this response to statelessness.

5.2. Deterritorializing and commodifying protection

The comparison of bilateral agreements in the contexts of asylum seeking, irregular migration, and statelessness also highlights a growing deterritorialization and commodification of protection. 'Deterritorialization' can be understood as a process of 'the weakening of ties with, detachment from, or a movement away from a particular territory or system of territoriality'.¹⁶⁰ I am using 'deterritorialization of protection' to refer to the erosion of the link between territorial presence and states' protection obligations.

In the turn to bilateral agreements in response to asylum seeking and irregular migration, we are witnessing a weakening of the connection between presence on the territory and the triggering of protection obligations that states owe to asylum seekers and irregular migrants. As discussed above, outsourced migration arrangements often attempt to evade the activation of jurisdiction that occurs with territorial presence or the exercise of effective control extraterritorially.¹⁶¹ At the same time, through the shifting of asylum processing and resettlement away from the territory of destination States, it is arguable that bilateral agreements in this context are contributing to the deterritorialization of the concept of

¹⁵⁷ See Daniel Ghezelbash, *Refuge Lost: Asylum Law in an Interdependent World* (Cambridge University Press 2018); Tennis (n 124).

¹⁵⁸ Tomas Gammeltoft-Hansen and Nikolas Feith Tan, 'Extraterritorial Migration Control and Deterrence' in Cathryn Costello, Michelle Foster and Jane McAdam (eds) *Oxford Handbook in International Refugee Law* (OUP 2021) 804.

¹⁵⁹ UNHCR, 'Global Action Plan to End Statelessness 2014–2024'.

¹⁶⁰ Gail Lythgoe (ed) *The Rebirth of Territory* (Cambridge University Press 2024) 33.

¹⁶¹ Dana Schmalz, 'The Role of Proximity for States' Obligations toward Persons Seeking Protection' in Ayelet Shachar and Seyla Benhabib (eds), *Lawless Zones, Rightless Subjects: Migration, Asylum, and Shifting Borders* (Cambridge University Press 2025) 81.

asylum.¹⁶² These agreements are also enabling the financialization and commodification of the state functions of border control, asylum processing, and protection, leading some scholars to characterize these agreements as giving rise to ‘refugee markets’.¹⁶³

This deterritorialization is also apparent in the context of bilateral responses to statelessness. The agreement with the Comoros was only conceivable because of the existence of a broader trend in the commodification of citizenship, occurring as a result of the global proliferation of citizenship by investment schemes over the past decade.¹⁶⁴ Indeed, the legislation adopted by the Comorian Parliament to give effect to this arrangement was framed in terms of citizenship by investment (‘a law for economic citizenship’). Citizenship by investment schemes often do not impose a residency requirement on prospective citizens, or if they do, such requirements can be easily evaded (for example, by the applicant indicating a number of days of intended residence on the territory without actually fulfilling this commitment, or through renting a room in a property on the territory without actually residing there).¹⁶⁵ In imposing such minimal residency requirements, this new pathway to citizenship is contributing to an erosion of the need for a territorial link or connection between a state and a citizen. A recent decision by the Court of Justice European Union affirmed that Malta’s citizenship by investment scheme was contrary to provisions relating to the citizenship of the European Union, in particular the requirement for a ‘special relationship of solidarity and good faith’ between EU Member States and their nationals,¹⁶⁶ perhaps marking the beginning of a turning point in the deterritorialization and commodification of citizenship.¹⁶⁷

Although the agreement between the UAE and the Comoros involved the mass purchase of passports by a wealthy state, and not the *ad hoc* purchase by wealthy individuals common to most citizenship by investment schemes, it also contributed to a deterritorialization of the protection obligations owed by states to their nationals. This was because the Comorian passports were granted without a connection to the territory of the Comoros, in that the recipients had no preexisting link to Comoros, and without a right to enter and reside in that country, there was no possibility for such a connection to develop. Simultaneously, the grant of the Comorian passports ignored the longstanding connection of the *bidun* to the territory of the Gulf States. Thus, the bilateral statelessness agreements contributed to a dissolving of the link between territorial presence and the grant of citizenship.

The bilateral agreements discussed in this article emerge from attempts to evade obligations that derive from territorial presence, and their adoption is contributing to a weakening of the link between presence on territory and the triggering of states’ protection obligation under international law. By detaching citizenship and asylum from territory, these agreements are also paving the way from a legal protection-based response to a market-based response by states towards stateless people, asylum seekers, and irregular migrants.

¹⁶² Emma Haddad, ‘The External Dimension of EU Refugee Policy: A New Approach to Asylum?’ (2008) 43 *Government and Opposition* 190, 201–202.

¹⁶³ See, eg Mollie Gerver, ‘Moral Refugee Markets’ (2018) 11(1) *Global Justice: Theory Practice Rhetoric* 45.

¹⁶⁴ Magdalena Zabrocka, ‘The Sale of EU Citizenship and the “Law” Behind It’ (2023) 5 *The Statelessness & Citizenship Review* 44, 47.

¹⁶⁵ *ibid* 50–51.

¹⁶⁶ *Case C-181/23 European Commission v Republic of Malta* ECLI:EU:C:2025:283, [99].

¹⁶⁷ See, eg Manby (n 98) 60.

6. Conclusion

This article has explored the UAE's adoption of a bilateral agreement with the Comoros in an attempt to address the statelessness of its *bidun* population. It has assessed the legality of this arrangement, concluding that the agreement was contrary to the UAE's treaty obligations arising under the CRC to provide stateless people born in its territory a nationality, as well as its obligations under ICERD and customary international law to avoid depriving the *bidun* of nationality on discriminatory and arbitrary grounds. I have argued that it is not the case that any nationality can be supplied in satisfaction of states' obligations in respect of nationality, but rather the nationality to which a person is most closely connected. For *in situ* stateless populations, this is the nationality of the country in which they are residing. Moreover, this article has argued that the grant of Comorian passports to the *bidun* of the UAE did not amount to the grant of Comorian nationality, because what was granted did not satisfy either the external or internal dimensions of the quality or substance of nationality.

This article has compared this agreement adopted by the UAE, and a similar agreement contemplated by Kuwait, with bilateral agreements adopted in response to the phenomenon of asylum seeking and irregular migration. In both contexts, bilateral agreements target populations deemed undesirable by the state, exploit perceived ambiguity in legal obligations and a lack of accountability, and are concluded between States with unequal economic power and at high cost. Due to these similarities, I have argued it is appropriate to frame the UAE's agreement with Comoros as an externalization agreement, or an attempt to outsource protection. This framing not only offers a way of understanding and contextualizing an otherwise extraordinary arrangement; it also offers important lessons. Firstly, there is a real risk of policy spread of bilateral statelessness agreements among States, as many States grapple with the problem of long-term *in situ* statelessness. Secondly, placing these two contexts side by side highlights a growing deterritorialization and commodification of protection. This is taking place through the gradual erosion of the link between territorial presence and States' obligations owed towards stateless people, asylum seekers, and irregular migrants. This deterritorialization is, in turn, enabling the commodification of citizenship and of asylum, and leading to a troubling shift from a protection-based to a market-based response to the phenomenon of statelessness, asylum seeking, and irregular migration.

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