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THE PROBLEM OF STATELESSNESS

STATELESSNESS as a legal political problem
by P. WEIS, Dr. JUR.

STATELESSNESS as a consequence of the
change of sovereignty over territory after
the last war
by R. GRAUPNER, LL.B.

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THE PROBLEM OF STATELESSNESS

As the war draws to a close, it is becoming increasingly important to visualise the problems of the post-war world in their proper perspective. Amongst these, the fate of the "unprotected persons"—the refugees and stateless—is of particular intricacy and urgency. Hundreds of thousands of people have been deprived of their nationality and have been rendered stateless. The difficult problem of statelessness, already in existence before the war, has thus become one of the acute tasks calling for solution.

Jewry is deeply concerned in this question because the Jewish proportion of stateless persons is particularly high and has been increased by the fact that Nazi Germany and some of her satellites use denationalisation as one of their weapons in the conduct of their brutal war against the Jews.

The Legal Section of the Research Committee of the World Jewish Congress (British Section) has considered it its duty to analyse the problem and to clarify its intricacies. Two international lawyers with expert knowledge of the subject were invited to examine and report on the problem to the British Section. Their reports are contained in the following pages. Dr. P. Weis considers the problem in its entirety and makes suggestions for its legal solution. Dr. R. Graupner deals with one special cause of statelessness—as a consequence of territorial changes after the last war. This is of particular significance in view of the similar problems which are likely to arise after the present war.

In view of the controversial character of the political problems involved, it should be emphasised that the publication of these reports does not necessarily mean that the World Jewish Congress (British Section) identifies itself with all the conclusions arrived at by the authors. The purpose of this publication is to depict the situation for all those who are directly affected by the problem, for the many thousands of refugees and stateless persons in this and other free countries and for the many hundreds who, in an official capacity or as voluntary social workers, are concerned with this important question.

It is now almost a generally accepted doctrine that statelessness is undesirable. A reform of nationality law is called for as a major change in the post-war world, in order that every individual may have a nationality and statelessness may be eliminated. This demand is subject, however, to this important reservation: every legal solution must also be a human solution. Abolition of statelessness can only be a humanely satisfactory remedy if nationality warrants the enjoyment of fundamental human rights by all nationals.

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STATELESSNESS AS A LEGAL-POLITICAL PROBLEM

By P. WEIS, Dr. Jur.

NOTE :—This paper merely purports to outline the scope of the legal-political problems involved in statelessness and to furnish a basis for their discussion. References to the vast literature on the subject have been avoided in view of this self-imposed limitation. Particular reference must be made, however, to E. H. Loewenfeld's "The Status of Stateless Persons," London, 1941, and to H. Lessing's "Das Recht der Staatsangehörigkeit und die Aberkennung der Staatsangehörigkeit zu Straf- und Sicherheitszwecken" in Bibliotheca Visseriana, Leiden, 1937. Although most of the legal opinions expressed in this paper are in line with the views taken by the majority of legal authorities and textbooks, it must be noted that many of these opinions are highly controversial, and that the views expressed by the author should therefore be taken solely as his personal opinions. Owing to limitations of space it was not possible to cite authorities in support of these views.

INTRODUCTORY NOTE.

The increase in the number of stateless persons is one of the regrettable consequences of the great changes which the political structure of Europe has undergone since 1914. In view of the precarious position of the stateless, they have often been described as outlaws. Various attempts have been made to improve their position and to abolish or at least to reduce statelessness.

Several States have used their sovereignty freely to deprive nationals of their nationality. Nazi-Germany, in particular, and her satellites have introduced denationalisation—openly or under disguise—as part of their anti-Jewish legislation. The settlement of the status of individuals who have been rendered stateless thereby is an important post-war problem; it is, at the same time, a Jewish problem. It is, therefore, appropriate for a Jewish body to examine the position of stateless persons and the causes of statelessness, and to investigate the possibilities of remedying or at least improving the position of these unfortunate people.

I.—WHAT IS STATELESSNESS ?

A stateless person is a person who is not a national of any state.

The term "stateless" is to-day the usual term to denote "destitute of nationality." Terms like "apatrides," "apolides," "staatenlos," "staatlos," "heimatlos," have, more or less, the same connotation, and it seems fitting to use the term in its widest sense to describe all sorts of persons not having a nationality.

Hence, if we want to deal with statelessness, we must examine first what is meant by "nationality." A great number of definitions have been given, but G. Jellinek was probably right in saying that no accurate definition of nationality can be given.

Moreover, the question is made more difficult by the fact that the term "nationality," and the corresponding terms in other languages such as the French "nationalité," the German "Nationalität" and the Spanish "nacionalidad," are not wholly equivalent, and that frequently no distinction is made between "nationality" and similar but not synonymous terms such as "citizenship," "subject," "indigenat," etc.

It must be made clear, therefore, that the term "nationality" is used in this paper in the sense in which it is used in the Anglo-American countries—*i.e.*, to denote membership of a State (like the German "Staatsangehörigkeit") and not in the sense used in Central Europe, where it denotes "belonging to a nation"—

i.e., race. The term "subject" is mainly used in countries with a monarchical head of State, while the term "citizenship" usually implies political rights within and the obligation to certain duties to the State. A person may be the national of a State without being its citizen. While in Great Britain all British nationals are, at the same time, British citizens, this is not the case in the Union of South Africa, the U.S. (where the inhabitants of the Philippines are U.S. nationals but not citizens), and in the Dutch East Indies.

As to the question whether nationality is a conception of international or of municipal law, a simple consideration will give the clue. Nationality as membership of a certain State can only have a meaning if the existence of other States is presupposed. In that sense, therefore, nationality is a term of international law. Nationality is often conceived as a term of municipal law for the simple reason that it is confused with citizenship. As a rule, the national of a State is also its citizen, and in this sense Oppenheim is right in saying that "nationality of an individual is his quality of being a subject of a certain State and therefore its citizen." (International Law I., 5th ed., p. 511). As such he owes allegiance to the State and enjoys political rights. What, then, is the content of the nationality concept under International Law—*i.e.*, in relation to other States? In that sense, nationality denotes a distinct relation between the State and an individual, whereby the State has the right to protect the individual abroad and has the duty not to expel the individual from and to receive him back on its territory. Two qualities, therefore, are implied in nationality as a term of International Law: the enjoyment of diplomatic protection abroad and the right of sojourn and return.

A stateless person does not, as a rule, enjoy the protection of a State; as to the right of sojourn and return, the same rules do not apply equally to all classes of stateless persons (see *infra*, pp. 15, 23). Under municipal law a stateless person not possessing the citizenship of a State does not owe allegiance to a State and does not enjoy political rights within or from a State.

Stateless persons belong, therefore, to the category of "unprotected persons." The other class of unprotected persons are refugees. Refugees are persons who, for political, racial or religious reasons, have left the country of which they are, or were, nationals, and who do not enjoy, in law or in fact, the protection of this or of any other State. A refugee who has lost his nationality is, at the same time, stateless. It would be outside the scope of this paper to deal with the refugee problem, but some of the considerations, and in particular the suggestions made in this paper for the protection of stateless persons, apply equally to refugees.

II.—HOW STATELESSNESS OCCURS.

A—Origin :

Two kinds of statelessness must be distinguished: first, what may be called original or absolute statelessness,—*i.e.*, the status of persons who did not acquire a nationality at birth and have not acquired a nationality since; and secondly, subsequent or relative statelessness—*i.e.*, the status of persons who acquired a nationality at birth, but have lost this nationality and have not acquired another one, or who, after acquiring a nationality, have lost also this nationality.

I.—Original (Absolute) Statelessness.

Absolute statelessness results from a so-called conflict of laws, *i.e.*, from the fact that the nationality laws of the States do not secure for every individual the acquisition of a nationality at birth.

Two contrasting systems of nationality laws are at present in force in the world, *viz.*, the so-called *jus soli*, prevalent in the British Empire and America, whereby every individual shall acquire by birth the nationality of the State on the territory of which he is born, and the so-called *jus sanguinis*, prevailing in the countries

of Central Europe, which provides that the nationality of a child shall be determined by the nationality of its parents, *i.e.*, a legitimate child shall acquire at birth the nationality of his father while an illegitimate child shall acquire the nationality of his mother. The nationality laws of some countries, such as France and the Scandinavian countries, have a combination of both systems. It is obvious that under *jus soli* every individual acquires a nationality by birth, while under *jus sanguinis* children of stateless persons become stateless at birth. It makes statelessness hereditary, and is therefore apt to increase statelessness. Moreover, it does not determine the nationality of a foundling. Most of the nationality laws based on *jus sanguinis* contain therefore the provision that a foundling acquires by birth the nationality of the State on whose territory he or she is found.

II.—Subsequent (Relative) Statelessness.

Persons having acquired a nationality at birth may become stateless :
(a) *As a result of conflicting laws*, if under the law of the State of which they are nationals, they may lose this nationality without acquiring another. Thus, *e.g.*, a woman may become stateless if, under the nationality law of her State of origin, she loses her nationality by marrying a man who is not a national, even though she does not acquire another nationality by marriage.

(b) *As a result of territorial changes.* (*State succession.*)

Territorial changes, such as cession or subjugation, involve a change of nationality of the inhabitants (“*ressortissants*”) of the territories concerned. In the case of cession, provisions are usually made to this effect by treaty. Unless laws or treaties contain other provisions, such nationals of the ceding or subjugated State as are domiciled on the ceded or subjugated territory become *ipso facto* nationals of the acquiring State. Treaties usually contain similar provisions, but the connecting link (“*Anknüpfungspunkt*”) chosen to determine the class of persons acquiring the new nationality varies. It may be ordinary residence in the territory, origin (birth or parentage), or the possession of “*Heimatrecht*” (right of domicile, “*Indigenat*”) in the territory. Some treaties provide for the inhabitants a right of option to retain their old nationality on making a declaration to this effect. Such persons as avail themselves of this right have usually to leave the ceded (subjugated) territory, as they are regarded to be opposed to the acquiring State.

As to persons originating from but residing outside the ceded (subjugated) territory at the time of cession or subjugation, legal theory holds that they do not, *ipso facto*, become nationals of the acquiring State. An explicit declaration or a conclusive fact to this effect, such as the voluntary taking out of a passport at a consular office of the acquiring State, is considered necessary. Only such persons as come within the territorial sovereignty (competency, “*Kompetenzhoheit*”) of the acquiring State acquire its nationality *ipso facto*. The position of persons who leave the territory immediately after the cession or subjugation has taken place is doubtful.

It is evident that territorial changes may lead to statelessness in two ways.

First, those “*ressortissants*” from the territory concerned who do not declare their intention to acquire the nationality of the acquiring State become stateless unless they retain their former nationality; this is necessarily the case if the whole of the territory of the State is ceded or subjugated and the State therefore loses its existence.

Secondly, such inhabitants of the territory concerned as do not belong to the classes of persons acquiring the new nationality by law or by treaty become stateless unless they retain their former nationality, especially, therefore, if the State of their nationality ceases to exist.

(c) *By unilateral acts of the national or of the State.*

The laws of some countries grant to their nationals a right of expatriation by a declaration of alienage subject to certain conditions (*e.g.*, Great Britain, under section 14 of the British Nationality and Status of Aliens Act, 1914). In the United States the right of expatriation was solemnly declared as a natural and inherent right of all people by the Act of Congress of July 27th, 1868. As this right is, however, usually exercised by nationals only who wish to acquire or already possess another nationality, a declaration to this effect does not, as a rule, lead to statelessness.

As to the deprivation of nationality by unilateral act of the State, it may either be denationalisation if the provisions are applicable to all nationals or denaturalisation if they apply to such nationals only as have acquired the nationality by naturalisation, *i.e.*, by a formal act of the State, usually on application. Denaturalisation may either be genuine denaturalisation when the certificate of naturalisation is cancelled, because it has become apparent that the legal conditions under which naturalisation had been granted were not complied with, or denaturalisation *stricto sensu, i.e.*, because of circumstances which occurred after naturalisation had been granted.

While denationalisation has been known of old, denaturalisation has mainly been introduced into the legislation of various countries after the last world war, *e.g.*, in Great Britain by the Act to amend the British Nationality and Status of Aliens Act, 1918, empowering the Secretary of State to cancel the naturalisation of persons who are regarded as disaffected or disloyal to His Majesty, particularly of former enemy nationals.

Denationalisation takes effect either *ipso jure* or by decision of a Court or administrative authority after formal proceedings. Denationalisation is usually applied as a punishment, but recently the so-called preventive denationalisation for political or racial reasons has by far outnumbered penal denationalisation.

Thus we have to distinguish between general denationalisation, *i.e.*, denationalisation potentially affecting all nationals, and special or discriminatory denationalisation which is directed against certain groups of nationals and which is very frequently mass denationalisation.

Only a few countries such as Sweden and Norway do not know denationalisation as a legal institution.

B.—Ending :

- Statelessness ends by (a) Repatriation (only in case of relative statelessness),
- (b) Naturalisation,
- (c) By marriage (in case of women if the wife acquires the nationality of her husband under the law of the State of which he is a national),
- (d) Death.

III.—DENATIONALISATION IN MUNICIPAL LEGISLATION.

1. The Austrian Law of July 30th, 1925, provides for the loss of Austrian nationality *ipso facto* upon the voluntary entry into foreign public or military service.

The loss of nationality of persons upon entering foreign public or military service without authorisation is provided for by the laws of the following States :—

Bolivia, Brazil, Bulgaria, Costa Rica, Cuba, the Dominican Republic, El Salvador, Germany, Guatemala, Haiti, Hedjas, Honduras, Mexico, Monaco, the Netherlands and the Dutch East Indies, Panama, Paraguay, Poland, Portugal, Rumania, San Marino, Spain.

The laws of Albania, Bulgaria, the Free City of Danzig, Egypt, Finland, France and the French possessions, Germany, Greece, Hungary, Italy, Nicaragua, Turkey, Yugoslavia, provide for the loss of nationality in such cases only after denationalisation proceedings have taken place or if the national fails to obey an order to quit the foreign service.

2. The nationals of Portugal and of several Latin-American States lose their nationality upon acceptance of titles, honours, etc., from a foreign State.

3. In Bolivia, France, Paraguay, Portugal, and the U.S.S.R., nationals sentenced for certain crimes may be deprived of their nationality.

4. In the last few years denationalisation for reasons of disloyalty has greatly increased. The nationals of Liberia, Rumania, U.S.A. (upon swearing an oath of allegiance to a foreign State), and U.S.S.R. may lose their nationality because of conduct hostile to the State; the nationals of Chile, Ecuador, Haiti, Panama, Turkey, and the U.S.S.R. (because of voluntary service in an army which has fought the U.S.S.R.) by reason of hostile association.

Under the laws of Austria, Bulgaria, Germany, Haiti, Turkey, and the U.S.S.R. nationals lose or may lose their nationality because of absence in times of emergency, mostly on failing to comply with an order to return.

Under the laws of Germany, Latvia, Poland, Turkey, and the United States evasion of compulsory military service leads, or may lead, to deprivation of nationality.

The laws of Austria, Egypt, Germany, Italy, Mexico, and the U.S.S.R. provide for denationalisation of persons guilty of acts hostile to the State.

5. Under the laws of some States nationals forfeit their nationality upon prolonged absence from the territory of the State of which they are nationals (Hungary 10 years without authorisation, Netherlands 10 years, Turkey 5 years, Yugoslavia 30 years).

The majority of the laws mentioned above extend denationalisation to the wife and children under age of the denationalised person.

6. The Polish Law of March 31st, 1938, Official Gazette 22/191, the All-Russian Law of December 15th, 1921, and the Federal Law of the U.S.S.R. of November 13th, 1925, No. 581, are of particular importance, as they have resulted in mass denationalisation :

POLAND.—The Law of March 31st, 1938, reads as follows :—

Art. 1.—A Polish subject living abroad can be deprived of his citizenship if he :—

(a) while abroad, commits any act to the detriment of the Polish State ; or

(b) while permanently residing abroad for an uninterrupted period of at least five years after the restoration of the Polish State, has lost the connection with the Polish State ; or

(c) while residing abroad, did not return to Poland at the date prescribed by the authorities of the Polish Ministry for Foreign Affairs abroad.

Art. 2.—(1) The order concerning the cancellation of citizenship shall be issued by the Ministry of the Interior on the motion of the Ministry for Foreign Affairs.

(2) No reasons for the cancellation need be stated in the order, which has immediate effect.

(3) An appeal against the order can be made to the Supreme Administrative Tribunal.

Art. 3. (1) The loss of Polish citizenship by the husband extends to the wife, by the father (or unmarried mother) to his (or her) children up to 18 years of age if these persons reside abroad and have not been exempted from the loss of citizenship by the order.

(2) Exemption can be granted to the wife and children if it is evident from the whole of their situation that they had not been keeping actual conjugal or family

community with their husband or father (unmarried mother) and the conditions as provided in Art. 1 of the present law do not apply to them.

Art. 4. The wife of a Polish citizen can also be deprived of her citizenship if a breach of her conjugal community is evident from the whole of her situation and if the conditions as provided in Art. 1 of the present Law apply to her.

Art. 5.—(1) A person deprived of Polish citizenship on the grounds of Art. 1 of the present Law may, notwithstanding his having in the meantime acquired foreign citizenship, enter Polish territory for a temporary period and by special permission of the Ministry of the Interior only.

(2) Whoever enters Polish territory in violation of this provision shall be liable to punishment by imprisonment not exceeding five years and by a fine.

This Law was repealed by a Decree of the Polish President, issued in London on November 28th, 1941 (Official Gazette No. 8).

Restoration of citizenship of persons deprived of their citizenship under the Law of 1938 is granted on application after formal proceedings.

U.S.S.R.—The Law of the Russian S.F.S.R. of December 15th, 1921, provides as follows :

1. Persons of the undermentioned categories who remain outside the confines of Russia after the publication of the present decree are deprived of the rights of Russian citizenship :

(a) Persons having resided abroad uninterruptedly for more than five years and not having received, before June 1st, 1922, foreign passports or corresponding certificates from representatives of the Soviet Government.

(b) Persons who left Russia after November 7th, 1917, without the authorisation of the Soviet authorities.

(c) Persons who have voluntarily served in armies fighting against the Soviet authorities, or who have in any way participated in counter-revolutionary organisations.

(d) Persons having had the right to opt for Russian citizenship and not having exercised that right within the period prescribed for option.

(e) Persons not included under paragraph (a) of this section, who are residing abroad and who shall not have registered themselves at foreign representations of the Russian F.S.R. within the period prescribed in paragraph (a).

2. Persons mentioned in paragraphs (b) and (e) of section 1 may, up to June 1st, 1922, make application to the All-Russian Central Executive Committee through the nearest representation for the restoration of their rights. (Quoted from Flournoy-Hudson "Nationality Laws.")

Under the Federal Law of the U.S.S.R. No. 581, of November 13th, 1925, it was provided :

1. Former prisoners of war and interned persons in military service of the Tsarist or Red Armies who are abroad and have failed to register within the periods prescribed by the legislation of the Union Republics, and also amnestied persons who served in the White Armies and participated in counter-revolutionary risings shall be considered to have forfeited citizenship of the U.S.S.R. (*cf.* Flournoy-Hudson "Nationality Laws.")

IV.—DENATIONALISATION AS AN ANTI-JEWISH MEASURE.

The rise of National-Socialism in Germany was followed by a number of measures of a legislative and administrative character, first in Germany and then in countries under German occupation or domination purporting to give effect to the principle laid down in the Programme of the National-Socialist Party that "none but members of the nation (*i.e.*, race) may be citizens of the State" and

that "none but those of German (or cognate) blood, whatever their creed, may be members of the nation" (p. 4), and that "anyone who is not a citizen of the State may live in Germany only as a guest, and must be regarded as being subject to the Aliens Laws" (p. 5).

1.—Germany.

Since Hitler's coming into power on January 30th, 1933, various laws and decrees were issued, providing for the denationalisation or denaturalisation of German nationals, which were directed against Jewish German nationals, either openly or under disguise. The Law concerning the Cancellation of Naturalisations and the Deprivation of German Nationality of July 14th, 1933, R.G.B. 1/480, may serve as an example for the latter. Under section 1 of this Law, naturalisation certificates granted between November 9th, 1918, and January 30th, 1933, may be cancelled where such naturalisation is deemed to be undesirable. The First Executive Order made under this Law, of July 26th, 1933, R.G.B. 1/538, lays down that the decision is to be based on racial and national ("rassisch-völkische") reasons. It thereby makes clear that the Law is mainly directed against Jewish immigrants who had settled down in Germany after leaving their homes in North-Eastern Europe, which had become the battleground during the World War. In addition, section 2 of the Law provides for the forfeiture of nationality by German nationals abroad who have acted prejudiciously to German interests by conduct inconsistent with the duty of loyalty towards the Reich and the German nation, and of German nationals who have failed to comply with an order to return.

A great number of persons, Jewish and non-Jewish alike, have since been deprived of their German nationality by orders under this Law made by the Reich Minister of the Interior; but the percentage of Jews among them is particularly high owing to the German policy of forcible emigration of the Jews.

According to section 2, subsection 1, of the Reich Citizenship Law of September 15th, 1935, R.G.B. 1/1146 (R.C.L.), "Only a national of German or cognate blood, who proves by his conduct that he is willing and able to render loyal service to the German nation and Reich, can be a citizen of the State." Jews (as defined by section 5 of the First Executive Order under the R.C.L. of November 14th, 1935, R.G.B. 1/1333), therefore, are nationals ("Staatsangehörige"), but not citizens of the Reich. The R.C.L. created two classes of nationals—Reich citizens and nationals *stricto sensu*. The author of this paper repeatedly expressed his view that the latter class was, in fact, though not in law, denationalised by the sum of legislative and administrative measures directed against the Jews, which began with the deprivation of their political and economic rights and culminated in their deportation and mass extermination, and which deprived them of protection and of all those rights which nationality usually implies.

The 11th Ordinance under the R.C.L. of November 25th, 1941, R.G.B. 1/722, provided in section 1 that "A Jew who has his ordinary residence abroad cannot be a German national. Ordinary residence abroad exists when a Jew stays abroad in circumstances which make it clear that he is not staying there merely temporarily," and in section 2:

"A Jew loses German nationality—

(a) At the date of entry into force of the present Ordinance if he has his ordinary residence abroad at the date when the Ordinance comes into force.

(b) On the transfer of his ordinary residence abroad if he subsequently takes up such residence abroad."

The property of such Jews is forfeited to the Reich (section 3).

According to the author's view this Decree bears a declaratory character only; it merely lays down by statute for German Jews living abroad what has virtually been the position of all German Jews hitherto.

2.—Austria.

The Nuremberg Laws were extended to Austria by a German Decree of May 27th, 1938. Henceforth, the German laws and administrative measures directed against the Jews, and in particular the 11th Ordinance under the R.C.L. of November 25th, 1941, equally applied to Austria.

3.—Czechoslovakia.

In the "Protectorate of Bohemia and Moravia" legislation corresponding to the German Law of July 14th, 1933, was enacted by the German Ordinance of October 3rd, 1939, R.G.B. 1/1997, "Concerning the Deprivation of the Nationality of the Protectorate of Bohemia and Moravia," which provides for the denationalisation of nationals of the Protectorate who have committed acts prejudicial to the interests and the prestige of the Reich and for the forfeiture of their property. By the German Ordinance of November 2nd, 1942, R.G.B.1/637 of November 11th, 1942, legislation corresponding with the 11th Ordinance under the R.C.L. of November 25th, 1941, was introduced in the Protectorate, and Jewish nationals of the Protectorate living abroad were declared to have lost their nationality.

In Slovakia, Jewish Slovak nationals who were deported from Slovakia lost their nationality under the "Constitutional Law of the Slovakian Republic concerning the Expatriation of Jews" of May 15th, 1942 (Sl.Z.507), and the Decree of the Government of the Slovakian Republic of May 14th, 1943 (Sl.Z.303).

4.—Italy.*

Under the Royal Decree of November 17th, 1938, No. 1728, published in *Gazetta Ufficiale* of November 19th, 1938, and adopted as Act of Parliament on January 5th, 1939, alien Jews were prohibited to reside within the Italian Kingdom, Libya and the Ægean Possessions (Art. 17). Naturalisations granted to alien Jews after January 1st, 1919, were declared invalid (Art. 23). Such alien Jews to whom Art. 23 applied, and who had taken up residence in the Italian Kingdom, Libya and the Ægean Possessions after January 1st, 1919, had to leave these territories not later than March 12th, 1939. (Art. 24.)

Under the Law of July 13th, 1939, No. 1024, *Gazetta Ufficiale* of July 27th 1939, the Minister of the Interior was given powers to declare persons as non-Jews in agreement with the findings of a Commission to be set up for the purpose.

5.—France.

In France, legislation for the purpose of discriminatory denationalisation was introduced soon after the collapse of France in June, 1940. This legislation, though not explicitly mentioning the Jews, mainly affected the Jewish population.

On July 16th new conditions were laid down for the withdrawal of nationality by which 50,000 to 60,000 Jews were potentially affected.

A "Law Concerning the Revision of Naturalisations (*Journal Officiel* of July 23rd, 1940) provides that all naturalisations granted since the publication of the Nationality Law of August 10th, 1927, shall be revised and that a Commission is to be set up for the purpose by the Garde des Sceaux, Secretary of State for Justice. Loss of nationality shall take place by order of the said Minister, and may be extended to the wife and the children of the person concerned.

A "Law Concerning the Denationalisation of Frenchmen Who Have Left France" (*Journal Officiel* of July 24th, 1940) provides that all Frenchmen who left Metropolitan France between May 10th and June 30th, 1940, in order to go abroad without proper authorisation from the authorities concerned or without good cause shall be deemed to have intended to evade their duties towards the national community and to have renounced their nationality. Loss of nationality takes place by order of the Garde des Sceaux, Secretary of State for Justice. The property of the person concerned shall be confiscated by order of the competent

* This refers to the position as it existed before the fall of the Mussolini Government.

President of the "Tribunal Civil," and shall be liquidated after six months under the authority of the said official. The proceeds shall go to the "Caisse du Secours National."

Decrees of February 28th and March 8th, 1941, provide for the denationalisation of all Frenchmen who act in a foreign country inconsistent with their duties towards the national community or who have gone to a territory under the control of the Free French.

6.—Hungary.

Legislation providing for the denationalisation of Jews was introduced in Hungary by the so-called First Hungarian Anti-Jewish Law of May 24th, 1938, which was amended and partly repealed by the Second Hungarian Anti-Jewish Law ("Law concerning Restrictions on the Jewish Position in Public and Economic Life") of May 3rd, 1939. (Government Act IV, 1939.)

Art. 3 of this law, which deals with nationalisation, reads as follows:—

"A Jew cannot acquire Hungarian citizenship through naturalisation, marriage, or legitimisation.

"The Minister of the Interior is hereby authorised to revoke the naturalisation or renaturalisation of such Jews as have obtained Hungarian citizenship after July 1st, 1914, in so far as their living conditions do not make their continued presence on Hungarian territory necessary. Naturalisation (renaturalisation) must be revoked if the prerequisites of naturalisation (renaturalisation), as defined by law, were lacking, or if, for the purpose of the acquisition of Hungarian citizenship, a criminal or disciplinary offence had been committed, or if the authorities were misled.

"Unless a ruling provides otherwise, revocation of naturalisation (renaturalisation) shall extend to the wife living with and to the children being under the authority of the naturalised (renaturalised) person.

"Simultaneously with the revocation of the naturalisation (renaturalisation), permission for change of name shall also be revoked."

7.—Rumania.

On February 23rd, 1924, a Law was published "Concerning Acquisition and Loss of Nationality." (Mon. Off. Nr. 41.)

This Law contains special provisions for the acquisition of Rumanian nationality by the inhabitants of the newly-acquired territories (where the majority of Rumanian Jews lived). Article 56 of this Law provides:—

"The inhabitants mentioned below who up to the moment of the promulgation of the present Law have not used their option in favour of another nationality, are and remain Rumanian citizens, without being obliged to carry out any formality:—

1. All inhabitants of the Bucovina, the Banat, Crishana, Satmar and Marauresh, who had the right of domicile in these territories on December 1st (November 18th), 1918;

2. The inhabitants of Bessarabia who, on April 9th (March 27th), 1918, had their administrative domicile in Bessarabia in accordance with the laws in force in that province."

This means, in application of the law in force in these territories, that the following persons were to lose Rumanian nationality: all those former Austrian subjects who settled in the provinces ceded to Rumania by Austria after December 1st, 1908; all those former Hungarian subjects who settled in the provinces ceded to Rumania by Hungary after December 1st, 1914; all those who settled in Bessarabia after April 9th, 1918. In addition those who, although resident there, were minors on the prescribed dates. Finally those born in the territories

mentioned in Article 56 (1) whose mothers originated from other former Austrian territories and had contracted marriage according to the Jewish ritual.

A special procedure to check up on the nationality of the persons resident in the territories mentioned in Article 56, was instituted by the Provisional Regulation of April 15th, 1924, Nr. 744. (Mon. Off. Nr. 85).

These provisions which created a class of non-citizen subjects ("supusi") violated the obligations undertaken by Rumania in several Treaties.

By a Decree Law of January 21st, 1938 (Nr. 169), when the Government of Octavian Goga was in power, the revision of the citizenship of all Jews was ordered.

According to this Law all local municipal authorities had to compile within 30 days a register containing the names of all Jews entered in the Citizens' Registers and of those who were entered by decision of the Court. A register had also to be made of all resident Jews not entered in the Citizens' Registers.

The Jews entered in the registers except those entered by decision of the Court had to present within 20 days documentary evidence for their possession of Rumanian citizenship (in the newly acquired territories including evidence that they had not made use of the right of option for another nationality as granted to them by the Peace Treaties).

Those who were unable to produce satisfactory evidence were to be erased from the voting lists and were, consequently, deprived of their Rumanian nationality, the registration being considered as having been obtained by fraud.

By a Regulation published on March 9th, 1938, provisions for the execution of the Law of January 21st, 1938, were made which were regarded as easing the position of the Jews and as clearing up several ambiguities. According to this Regulation all persons who professed the Jewish faith on December 1st, 1918, are to be considered as Jews even if they have subsequently abandoned it. The time limit for the presentation of citizenship papers was extended to 50 days.

According to a Royal Decree published on September 21st, 1938, persons who, in accordance with the Decree Law of January 21st, 1938, have been removed from the Citizens' Registers or from the Registers of the grant of rights of citizenship are subject to the provisions of the law for the control of foreigners.

Residence permits shall be issued to certain classes of these persons on application for a period of three months in the Old Kingdom ("Regat") and for a year to all other persons. It should be noted that this Decree only refers to the Law of January 21st, 1938, and not to the more lenient Regulation of March 9th, 1938.

8.—Bulgaria.

According to Article 21 (a) of the "Law for the Defence of the Nation," of January 21st, 1940 (State Gaz., Nr. 16, year lxi) persons of Jewish extraction cannot be accepted as Bulgarian subjects; women of Jewish extraction follow the nationality of their husbands.

Under an Edict issued by virtue of the "Law authorising the Cabinet to take necessary measures for regulating the Jewish question and the problems connected with it" (Cabinet Decree Nr. 70 of August 26th, 1942, prot. Nr. 111, D. Vestnik Nr. 192) a Commissioner for Jewish Questions was empowered with the regulation of Jewish affairs.

It is not known whether provisions for the denationalisation of Jews were made under this Decree.

9.—Finland.

So far as is known no measures were taken against the Jews in the field of nationality law.

V.—STATUS OF STATELESS PERSONS.

As stateless persons do not possess the nationality of the country of their residence, they are subject to the Aliens Laws. International Law has established some rules for the treatment of aliens. According to these rules, the State of residence has to protect person and property of an alien; the State is, however, under no obligation to permit an alien to reside on its territory, or, in other words, not to expel him. As a rule, this right is exercised for definite reasons only, and expulsion without just cause is considered as an unfriendly act against the home State of the alien.

The same rules apply to stateless persons. While, however, the observance of these rules by the State of residence is guaranteed in the case of aliens possessing a nationality by the potential or actual exercise of the right of protection by the home State, such protection is lacking in the case of stateless persons. International Law is conceived as a law between States, and individuals are, in general, objects and not subjects of International Law. Since nationality is described as the link between the individual and the Law of Nations, stateless persons are not entitled to the benefits of the Law of Nations. It is for this reason that the position of stateless persons is so precarious and that stateless persons have been rather appropriately called "outlaws."

Since the number of stateless persons vastly increased after the last war and the Russian Revolution, attempts were made to improve the position of stateless persons. The great Norwegian explorer, Fridtjof Nansen, earned the gratitude of mankind through his untiring work in the interest of refugees and stateless persons. Upon his suggestion, the "Nansen-passport" was introduced as an identity and travel document for Russian and assimilated refugees, who were unable to obtain national passports; it secured for the holder the right of return to the State which had issued this document within the period of its validity. The "Nansen International Office," later called the "High Commissioner for Refugees under the protection of the League of Nations," was set up under Dr. Nansen. Its purpose is:—

- (a) To provide for the political and legal protection of refugees as entrusted to the regular organs of the League;
- (b) To superintend the entry into force and the application of the legal status guaranteed to refugees under the Conventions of October 28th, 1933, and February 10th, 1938;
- (c) To facilitate the co-ordination of humanitarian assistance; and
- (d) To assist the Governments and private organisations in their efforts to promote emigration and permanent settlement.

A number of Arrangements and Conventions were concluded between States Members of the League of Nations in order to grant a legal status and to define the legal standing of certain classes of stateless persons; of these the Convention of October 28th, 1933 (for Russian, Armenian, Assyrian, Turkish and assimilated refugees) and the Convention of February 10th, 1938 (for German and Austrian refugees) are the most important.

It is impossible to outline in detail in this paper the provisions and implications of these Conventions. The main principles are:—

1. The personal status of stateless refugees should be governed by the law of their country of domicile or, failing such, by that of their country of residence.
2. Refugees and stateless persons coming under the Conventions are accorded a limited right of asylum; they should not be expelled without reasonable cause; reconduction ("refoulement") to their country of origin should only take place as *ultima ratio*.
3. As regards industrial accidents, social insurance, welfare and relief, the persons coming under the Conventions should be accorded the most favourable

treatment accorded to foreign nationals in the country concerned. Restrictions provided for the purpose of protection of the national labour market should not be applied in all their severity to refugees domiciled or regularly resident in the country.

4. In general, these persons should receive treatment as favourable as that of other foreigners. Rights and benefits accorded to foreigners should not be refused to refugees, because, in their case, no reciprocity may be accorded to nationals of the State concerned in the country of origin of the refugees.

It must not be overlooked, however, that the application of the Conventions is limited in two respects :—

(a) As regards persons—to refugees and stateless persons of Russian, Armenian, Assyrian, Turkish and assimilated, German and Austrian origin.

(b) As regards territory—to States which are Parties to the Conventions.

The Conventions and the Resolutions of the Assembly of the League of Nations do not provide for representation and protection of these persons in the same sense as that enjoyed by nationals from their Governments. The High Commissioner is not the representative of refugees and stateless persons, nor is he entrusted with their direct protection. He has to assist the Governments of countries of refuge in respect to the burden imposed upon them by the influx of refugees. At the same time, he assists the refugees as regards their legal status, their re-emigration and their absorption into the country of final settlement. Upon a request emanating from a body assisting refugees, from refugee groups or individual refugees, he is entitled to make representations to the Government concerned, within the limits of his mandate, if he is satisfied that such a request contains a problem of general character. In this capacity, he is vested with a diplomatic character, and he is entitled to appoint representatives with quasi-consular functions duly accredited to the governments of States which are parties to the Conventions. The authority of the present High Commissioner is increased by the fact that he is, at the same time, Director of the International Committee set up at a Conference, which was held at Evian in July, 1938, on the initiative of President Roosevelt, to facilitate emigration of refugees from Germany and Austria. The present High Commissioner has recently been appointed Director of the Inter-governmental Committee set up at the Bermuda Conference, 1943, to succeed the Evian Committee.

On the whole, therefore, the legal status of stateless persons is not defined by International Law except that of such stateless persons who are covered by the International Refugee Conventions. Even those stateless persons, however, do not enjoy the benefits of International Law to the same extent as nationals, who are protected and represented by their Governments.

VI.—MODERN LEGAL POLICY WITH REGARD TO STATELESSNESS.

If we want to describe the present legal policy with regard to statelessness, there are mainly two sources from which we can derive our knowledge : the proceedings and results of the International Conference for the Progressive Codification of International Law, held at The Hague in 1930, and the resolutions of the Institut de Droit International and of the International Law Association passed at various Conferences of these bodies.

The Hague Conference adopted one Convention and two Protocols dealing with statelessness, which came into force in 1937, 90 days after a *procès-verbal* had been drawn up, upon the receipt of the 10th ratification : a "Convention concerning Certain Questions Relating to the Conflict of Nationality Laws," a "Protocol Relating to a Certain Case of Statelessness" and a "Special Protocol

concerning Statelessness." The general trend of policy of the Conference may be seen from the Final Act drawn up by the Conference. According to this Final Act the Conference "was unanimously of the opinion that it is very desirable that States should, in the exercise of their power of regulating questions of nationality, make every effort to reduce, so far as possible, cases of statelessness."

Various provisions give effect to this principle. Thus, Art. 14 of the Convention provides that "a child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known."

"A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found." Art. 15 provides: "Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State, of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State."

"The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."

Art. 1 of the "Protocol Relating to a Certain Case of Statelessness" provides that "In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory, of a mother possessing the nationality of that State and of a father without nationality, or of unknown nationality, shall have the nationality of the said State."

The "Special Protocol concerning Statelessness" secures a right of return (reconduction) for certain classes of denaturalised persons. Art. 1 reads: "If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality he last possessed is bound to admit him at the request of the State in whose territory he is—

(1) if he is permanently indigent either as a result of an incurable disease or for any other reason, or

(2) if he has been sentenced, in the State where he is, to not less than one month's imprisonment and has either served his sentence or obtained total or partial remission thereof.

In the first case, the State whose nationality that person last possessed may refuse to receive him if it undertakes to meet the cost of relief in the country where he is from the 30th day from the date on which the request was made. In the second case the cost of sending him back shall be borne by the country making the request."

Both the Institut de Droit International and the International Law Association dealt repeatedly with statelessness.

To quote only the most recent proceedings, *The Institut de Droit International*, at its 35th Session in Stockholm, in 1928, arrived at the following resolution:—

"Art. 1. Nul état ne droit appliquer, pour l'acquisition et la perte de sa nationalité des règles qui auraient pour conséquences la double nationalité ou l'absence de nationalité si les autres États acceptaient les mêmes règles.

"Art. 2. Nul individu ne peut perdre sa nationalité sans acquérir une nationalité étrangère."

At its 36th Session in New York in 1929 when the problem of an International Enactment of the Rights of Man was discussed, the Institut resolved *i.a.* that—

(Art. 6) "Aucun Etat n'aura le droit de retirer, sauf pour des motifs tirés de sa législation générale, sa nationalité à ceux que pour des raisons de sexe, de race, de langue ou de religion il ne saurait priver des garanties prévues aux articles précédents."

In 1936, at the 40th Session in Brussels, the Institut dealt with the legal status of stateless persons and refugees. The following resolution was passed :—

“ L'Institut de Droit International, rappelant ses résolutions de Genève (1892) sur l'admission et l'expulsion des étrangers, de Venise (1896) et de Stockholm (1928) sur la nationalité, de New York (1929) sur les droits internationaux de l'homme, résolutions auxquelles l'Institut n'entend en rien déroger, confirmant également ses résolutions d'Oslo (1932) relatives à la capacité des personnes, mais amendant ces dernières en ce qui concerne la loi applicable à la capacité des apatrides mineurs, aliénés, faibles d'esprit ou prodigues, ayant procédé à l'examen de l'ensemble des questions de droit international afférentes au statut juridique des apatrides et des réfugiés politiques ;

Réaffirmant sa conviction que chaque Etat devra s'efforcer de limiter, dans la mesure de possible, les cas d'apatridie.

Exprimant l'espoir que chaque Etat, en application de la faculté que lui laisse le droit international, continue d'accorder, dans toute mesure du possible, l'asile sur son territoire aux réfugiés et que les Etats se facilitent mutuellement l'accomplissement de ce devoir d'humanité, notamment par la conclusion d'accords aux termes desquels chacun d'eux, y compris l'Etat dont ressortissait le réfugié, participera, dans une proportion équitable, aux frais d'entretien de réfugiés indigents.

Exprimant en outre l'espoir qu'une convention internationale institue un Haut Commissariat chargé de veiller aux intérêts des réfugiés :

Considérant qu'il convient de réserver les dispositions qui pourraient être appliquées en temps de guerre à titre exceptionnel aux apatrides et aux réfugiés par les Etats belligérents :

Désireux de contribuer à l'élaboration de règles qui, adoptées par les Etats, pourraient amener un régime plus équitable pour les individus et consacrer une répartition plus juste des charges et responsabilités entre Etats :

Emet les résolutions suivantes :

PARTIE I.—DISPOSITIONS GÉNÉRALES ET DEFINITIONS.

Article 1.

Les présentes résolutions ont pour but de déterminer le droit général applicable aux apatrides et réfugiés, à défaut de dispositions plus favorables inscrites dans le droit interne ou les conventions internationales.

Article 2.

1. Dans les présentes résolutions, le terme “apatride” désigne tout individu qui n'est considéré par aucun Etat comme possédant sa nationalité. Cet individu ne cesse pas d'être apatride du fait qu'il est protégé diplomatiquement par un Etat, ou qu'un ou plusieurs Etats facilitent administrativement ses déplacements internationaux. La protection résultant d'un régime de capitulations ou celle qui se fonde sur le régime des territoires sous mandat exclus, dans tous les cas, l'application des présentes résolutions.

2. Dans les présentes résolutions, le terme “réfugié” désigne tout individu qui, en raison d'événements politiques survenus sur le territoire de l'Etat dont il était ressortissant, a quitté volontairement ou non ce territoire ou en demeure éloigné, qui n'a acquis aucune nationalité nouvelle et ne jouit de la protection diplomatique d'aucun autre Etat.

3. Les qualités d'apatride et de réfugié ne s'excluent pas.

PARTIE II.—LES APATRIDES.

Titre Ier. Droits et devoirs des Etats à l'égard des apatrides.

Article 3.

1. En ce qui concerne les droits privés et publics de l'apatride et la jouissance de ces droits, les Etats devront observer les règles suivantes :

(a) Chaque Etat devra reconnaître aux apatrides tous les droits dont jouissent, dans les mêmes circonstances de fait, les étrangers pourvus d'une nationalité, à l'exception de ceux qui seraient accordés aux ressortissants de certains Etats par des conventions ou des lois particulières.

(b) L'exercice des droits en justice sera assuré aux apatrides, domiciliés sur le territoire d'un Etat ou y ayant leur résidence habituelle, dans les mêmes conditions qu'aux sujets de l'Etat ou ils ont leur domicile ou, à défaut, leur résidence habituelle. Ces dispositions s'appliquent au libre et facile accès devant les tribunaux de l'ordre judiciaire ou administratif à tous les degrés de juridiction, au bénéfice de l'assistance judiciaire, à la dispense de fournir la caution *judicatum solvi*.

(c) La perte de la nationalité, le changement de domicile ou résidence habituelle ne peuvent porter aucune atteinte aux droits antérieurement acquis par l'apatride.

2. Au cas où l'exercice d'un des droits visés à l'alinéa 1er est subordonné à présentation, par l'intéressé, d'une pièce officielle délivrée par les autorités de l'Etat dont il est ressortissant, cette pièce sera délivrée à l'apatride par l'Etat sur le territoire duquel il a son domicile ou, à défaut, sa résidence habituelle.

3. Au cas où l'exercice d'un des droits visés à l'alinéa 1er est subordonné pour les étrangers à une condition de réciprocité ou autre, à laquelle l'apatride ne peut satisfaire en raison de sa qualité, il en sera affranchi, sous réserve des modalités légales qui pourront être prescrites à ce sujet.

Article 4.

1. Au cas où les tribunaux d'un Etat, d'après les principes de droit international privé observés par eux, doivent appliquer la loi nationale de l'intéressé, la loi applicable dans le cas de l'apatride sera celle du pays soit d'une nationalité qu'il aurait possédée antérieurement, soit de son domicile ou, à défaut, de sa résidence habituelle, à la date regardée comme pertinente par le Tribunal.

2. Au cas où les biens d'un étranger décédé ou en faillite doivent être administrés sous l'autorité de l'Etat dont cet étranger était ou est le national, au cas où la succession d'un étranger doit être dévolue suivant la loi nationale, l'autorité compétente et la loi applicable dans le cas de l'apatride seront celles de l'Etat du lieu de son domicile ou, à défaut, de sa résidence habituelle.

Article 5.

1. L'Etat sur le territoire dequel un apatride a son domicile ou, à défaut, sa résidence habituelle, devra, sur sa demande, lui délivrer un passeport ou titre d'identité et de voyage, autorisant la sortie et le retour. L'Etat devra lui accorder, dans une mesure convenable, l'aide de ses agents frontaliers.

2. Un Etat ne pourra expulser de son territoire un apatride non réfugié, régulièrement autorisé à y séjourner, que dans le cas où un autre Etat accepterait de le recevoir. A défaut d'expulsion, l'Etat pourra prendre à l'égard de l'apatride telles mesures de sûreté interne qu'il jugerait nécessaires.

Titre II.—Droits et devoirs mutuels des Etats concernant les apatrides.

Article 6.

Lorsqu'un Etat refuse protection et assistance à l'un de ses nationaux qui n'est pas réfugié et ne le devient pas non plus à la suite de cette mesure, tout autre Etat pourra traiter cet individu comme un apatride et notamment le faire bénéficier des avantages prévus aux articles 5 et 7.

Article 7.

1. L'Etat, sur le territoire duquel un apatride non réfugié a établi son domicile ou, à défaut, sa résidence habituelle, pourra exercer, dans l'intérêt de celui-ci, la protection diplomatique en conséquence de tout fait survenu après cet établissement. Si néanmoins ce fait, s'est produit pendant un séjour de l'apatride à l'étranger, l'Etat ne pourra exercer la protection que s'il a accordé à celui-ci, avant son départ, un passeport ou titre d'identité et de voyage dans les conditions visées à l'article 5, alinéa 1er.

2. Chaque Etat devra reconnaître la validité de tout passeport ou titre d'identité et de voyage qu'un autre Etat aura délivré à un apatride conformément à l'article 5, alinéa 1er. Il devra admettre, en outre, à l'égard de ce document, les dispenses de visa dont bénéficient les passeports délivrés par cet autre Etat à ces propres nationaux.

Article 8.

Si un Etat a, par une mesure d'autorité, retiré sa nationalité à un de ses sujets d'origine, et si celui-ci n'a pas acquis d'autre nationalité, le dit Etat devra néanmoins, à la demande de tout Etat sur le territoire duquel l'intéressé se trouve, et moyennant l'assentiment de ce dernier, le recevoir chez lui à moins qu'un autre Etat n'accepte de le recevoir. Les frais de rapatriement seront à la charge de l'Etat auquel incombe la précédente obligation.

PARTIE III.—Les Réfugiés.

Article 9.

1. Lorsque des événements politiques déterminent dans un Etat un exode, l'Etat qui reçoit les réfugiés sur son territoire ne pourra faire aucune distinction au point de vue de l'admission ou de l'assistance entre ceux qui ont gardé leur nationalité et ceux auxquels elle a été enlevée. Quant aux droits privés et publics, le réfugié auquel la nationalité a été enlevée pourra réclamer ceux afférents à sa nationalité perdue.

2. L'Etat sur le territoire duquel un réfugié ayant gardé sa nationalité a son domicile ou, à défaut, sa résidence habituelle, devra lui accorder tous les droits privés et publics que l'article 3 attribue aux apatrides. Les autres Etats devront reconnaître la validité des droits qui seront ainsi acquis au réfugié par application d'un régime autre que celui de sa loi nationale.

Article 10.

1. L'Etat sur le territoire duquel un réfugié ayant gardé sa nationalité a son domicile ou, à défaut, sa résidence habituelle, devra lui délivrer, en vue de ses déplacements internationaux, un titre d'identité et de voyage dans les conditions prévues à l'article 5, alinéa 1er. Les autres Etats devront reconnaître à ce document l'effet prévu à l'article 7, alinéa 2.

2. Un Etat ne pourra expulser de son territoire un réfugié régulièrement autorisé à y séjourner que dans les cas où un autre Etat accepterait de le recevoir. A défaut d'expulsion, il pourra prendre à l'égard du réfugié telles mesures de sûreté interne qu'il jugerait nécessaires. En aucun cas, l'Etat ne pourra diriger ou refouler un réfugié vers le territoire de l'Etat dont il était ressortissant.

The *International Law Association*, at its Session in Stockholm, in 1924, resolved—

1. This Committee approves the preamble of the Act of Congress of July 27th, 1868 :—

“Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness; and whereas, in recognition of this principle, this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign States, owing allegiance to the Governments thereof; and whereas it is necessary to public peace that this claim of perpetual allegiance should be promptly and finally disavowed; therefore be it enacted that any declaration, instruction, opinion, order or decision of any officers of this Government which denies, restricts, impairs, or questions the right of expatriation is hereby declared inconsistent with the fundamental principles of this Government.

2. A national should not be deprived by administrative or judicial order of his nationality, whether original or acquired.

3. Naturalisation obtained by fraud should be capable of cancellation, and upon this happening the individual concerned should revert to his former national status.

4. No individual should be made an outlaw or should be expelled from the territories of a State of which he is a national.

5. Nationality should only be lost as the effect of the acquisition of another nationality.”

In Paris, in 1936, the International Law Association again discussed nationality problems, but no resolution was arrived at. The rapporteur, Mlle. Delage, then took the view that neither *jus soli* nor *jus sanguinis* should be decisive for the acquisition of nationality, but the *jus educationis* or *jus circumstantiarum* or *jus conjunctionis* and, what I would call *jus connectionis* or right of attachment—i.e., a person should have the nationality of the State to which he has proved to be most closely attached in his conditions of life as may be concluded from spiritual and material circumstances.

The Executive Committee of the Grotius Society in London appointed in 1940 a committee for the study of the status of stateless persons.

This committee adopted, on April 30th, 1942, a report containing the following “Proposed Nationality Rules in Connection with Statelessness”:

ACQUISITION.—(1) Every individual has a basic right to acquire at birth a nationality (membership of a State). If no other nationality is acquired the individual should acquire the nationality attached to the territory of the State where he is born.

RETENTION.—(2) Such nationality is inviolable.

(a) It cannot be abandoned by the national's own act unless and until another nationality is acquired by him.

(b) A national cannot be deprived of his nationality by a unilateral act of the State of which he is a member unless and until he acquires another nationality (membership of another State).

PROTECTION.—(3) (a) It is the duty of the State to protect and to serve its nationals. Such protection and such service secures to the individual the benefits which he is entitled to under the Law of Nations.

(b) By depriving any one or more of its nationals either as an individual or *en masse* of his or their nationality or by refusing him or them protection and service a State would cast a burden upon another State which would be contrary to the Law of Nations.

RECOGNITION.—(4) Within the territory of a State other than the State of which he is a national any individual is entitled to be recognised as such national. In case of dual nationality the provisions of the Hague Convention of 1930 on the Conflict of Nationality Laws shall apply.

LAW OF NATIONS.—(5) In this respect the basic nationality rights of an individual are under the protection of the Law of Nations.

Should any future machinery be set up for the maintenance of the rules of international law, provisions should be made for the carrying out of the aforesaid rules and their application. It would be the function of the Law of Nations to guarantee the equality of individuals regarding their nationality rights, and the following rule is considered suitable in such case.

INTERNATIONAL COURTS OF JUSTICE.—(6) For the protection of his nationality rights under the Law of Nations in any one State, including his own, any individual will be entitled—in case he has no remedy in the Municipal Courts of the State where he is resident—to appeal to an International Court with ultimate appeal to the Permanent Court of International Justice.

At a meeting of the Society, held in May, 1942, it was decided to return the report to the committee for revision. No final report has been arrived at as yet.

On the whole, therefore, legal policy has tried to abolish or at least to reduce statelessness, to secure for relative stateless persons the right of return to their country of origin under certain conditions, and to establish a legal status for stateless persons similar to that enjoyed by foreigners possessing a nationality in the country of residence.

VII.—THE JEWISH ASPECT OF THE PROBLEM.

It is very difficult to assess the number of stateless Jews, but there are various reasons why the proportion of stateless people is very high amongst Jews. First, because of the anti-Jewish legislation enacted by certain countries with the purpose of depriving the Jews of their nationality (see Chapter V.). Out of 400,000 to 420,000 Jewish refugees from Germany and Austria, those who went to countries of temporary refuge and those immigrants who have not yet acquired the nationality of the immigration State are at present stateless. It is difficult to give an estimate as to their numbers, but it may be assumed that they form not less than one-third of the total number. To this must be added several tens of thousands of Jews from other Axis and satellite countries deprived of their nationality (approximately 20,000 from Italy alone).

The other sociological reasons of statelessness of Jews have their root in Jewish migration, which in modern times started in 1881, after the pogroms in Russia, and is still in progress. In so far as migration is directed to Palestine and to America, it does not lead to statelessness, as Jewish immigrants in these countries are, as a rule, in a position to acquire the nationality of the country of immigration.

In the course of Jewish migration, many Jews who had moved from their birthplace were unable to produce the documents required to prove their "right of citizenship" (Heimatrecht) in a particular community. In many instances also failure to exercise a right of option within the period prescribed by law is responsible for the fact that a great number of Jews became stateless under the Peace Treaties. (The Treaties of St. Germain and Trianon, which decided the fate of the former Austro-Hungarian territories, made the possession of "Heimatrecht" a prerequisite for the acquisition of the nationality of the successor States.)

The flood of refugees which left Russia after the Russian Revolution in 1917, and during the Russian Civil War, numbering approximately 1,000,000 people, contained a great number of Jews. The Jewish proportion is particularly high for the reason that a great many Jews fled from the Ukraine because of their persecution there and because of the social composition of the Russian Jews. It may be estimated that from the figure of approximately 450,000* stateless Russian "Nansen refugees" some 100,000 are Jews.

* Given by Hanson, in 1936.

The number of Polish Jews living abroad who are at present stateless may be put at several tens of thousands.

There also exists a number of originally stateless Jews—*i.e.*, children born of stateless parents in a country where nationality is not acquired *ipso facto* by birth.

Thus, though it is impossible to give figures with any claim to accuracy, the number of stateless Jews must at least be put at between 350,000 and 500,000 (excluding deportees).

If we try to conceive the Jewish aspect of the question of legal policy with regard to statelessness we must certainly subscribe to the principle "*Nul ne doit être sans nationalité*"—"Nobody shall be without a nationality"—and therefore, to its corollary: "Statelessness is undesirable." This not only for the reason that statelessness creates, in most cases, a status of outlawry which is contrary to the principles of justice and equality, but also for spiritual reasons. Nationality, though—as we outlined in Chapter II—as an international conception mainly connotating a right of protection of the State and a right of sojourn and return of the individual—is, in an ethical sense, much more than that. Usually coinciding with citizenship—which constitutes the enjoyment of certain basic rights within the State and the obligation to the performance of certain duties to the State usually described by the term "allegiance"—it means, in a spiritual sense, a certain community of interests, habits, and thoughts derived from residence, upbringing and common conditions of life within the community of the State.

The importance of spiritual connection for determining questions of nationality has even found expression in legal enactments. Article 5 of The Hague Convention on Certain Questions of Nationality Law provides that "without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be most closely connected." And Section 21, subsection 1, of the British Aliens Order, 1920, as amended 1939, provides: "Where an alien is recognised as a national by the law of more than one foreign State, or where for any reason it is uncertain what nationality (if any) is to be ascribed to an alien, that alien may be treated as national of the State with which he appears to be most closely connected for the time being in interest or sympathy or as being of uncertain nationality or of no nationality."

If we turn to the Bible we find loyalty to the State of residence prescribed to the Jews by the words of their Prophets:—

"And seek the peace of the city whither I have caused you to be carried away captives, and pray unto the Lord for it: for in the peace thereof shall ye have peace."—(JEREMIAH, Ch. XXIX, 7).

The States, however, which have adopted the totalitarian creed, and the principle that Jews are incapable of citizenship, which have robbed, expelled, deported and slain them, have by their action severed the spiritual link which nationality forms between the State and its nationals. Whether they may still formally be nationals of that State or not, the bonds of loyalty towards that State do no longer exist.

These fundamental facts of loyalty and affection must not be overlooked when questions of nationality have to be decided; once a conflict arises between spiritual and formal facts, the former may even claim preponderance before outward facts and appearances such as residence or former nationality. From this aspect, too, the existence of stateless persons, who are supposed to be devoid of any such connections, presents an absurdity.

While statelessness should, as far as possible, be avoided, this cannot merely be done by allotting stateless persons a nationality. The question has to be decided whether the nationality to be allotted is the nationality of the State with

which the person is in fact most closely connected. The State whose national an individual is, must be prepared to accord its national protection and, in the municipal sphere, the enjoyment of equal rights with all its nationals while the national, on the other hand, must be prepared to render loyal service to the State. Nationality, in order to constitute the link between the individual and the Law of Nations, must be—as it has been called—*effective nationality*.*

VIII.—SUGGESTIONS FOR FUTURE POLICY REGARDING STATELESSNESS.

In attempting to suggest remedies for the problem of statelessness, we must bear in mind that optimum suggestions are not likely to lead to practical results, and we have therefore put forward only such minimum solutions as appear realisable under existing conditions or, more accurately, under the conditions which are likely to exist after this war. This brings about another difficulty—viz., that we know nothing at present about the future international machinery which is to be set up for the development of International Law.

The following rules are based on the assumption that some sort of international machinery will be set up to enact the declared policy of the United Nations with regard to international relations and individual rights and to enforce effectively the application of these enactments against any contravening State.

As long as no other ways and means of enacting universal legislation are established, the way in which such universal rules can be adopted must either be by international Convention for the purpose of insertion in International Law and subsequent transformation into municipal law of the individual States or by the framing of model rules and their direct incorporation into the municipal legislation of the States. It is obvious that the effectiveness of any such rules is inseparably linked up with the existence of international bodies equipped with adequate powers to enforce their universal application.

1. In order to avoid statelessness for the future, we suggest the universal adoption of the *jus soli* as a subsidiary mode of acquisition of nationality—i.e., if no other nationality is acquired at birth, an individual should acquire the nationality of the State to which the territory belongs in which his birthplace is situated.

Such a provision could cause no undue harm to the individual, as it does not exclude the acquisition of another nationality of his own will after his coming of age or even before if his parents acquire the nationality of a State under whose law such acquisition extends to minor children.

This rule as embodied in Article 15 of the Hague Convention on Certain Questions of Nationality Law is at present already particular International Law. Its adoption by States not yet Parties to the Convention should not meet with considerable difficulties.

2. It is difficult to suggest any general principle as to the connecting link for the acquisition of the nationality of the acquiring State in case of State succession. Whether origin, residence or "Heimatrecht" (right of domicile) should be chosen as the determining factor, must largely depend on the provisions of the nationality law in force in the country concerned. While the rule must necessarily be that such nationals of the ceding or subjugated State as are *ressortissants* of the ceded or subjugated territory should acquire the nationality of the acquiring State, it is most desirable that as far as possible a right of option should be granted to the individuals concerned.

* As a specific Jewish solution the granting of a right of option for Palestinian nationality for stateless Jews has been suggested in view of the destination of Palestine as a Jewish National Home. This problem has not been dealt with in this paper as it requires special and most careful examination in connection with the entire Palestinian problem.

Furthermore, it is suggested that any rules providing for the acquisition of the nationality of the acquiring State by nationals of the ceding or subjugated State should equally apply to such stateless persons as have their ordinary and habitual residence on the territory concerned.*

In general it must be said that any provisions regulating the nationality of the population in case of territorial changes will only work satisfactorily if such changes—in the words of the Atlantic Charter—“accord with the freely expressed wishes of the peoples concerned.” The real decision is to be made at the stage when the will of the people is ascertained.

3. The solutions suggested *sub 1* and *2* can only be effective if conflicts of laws and, in particular, conflicting interpretation of nationality laws can be avoided. Thus—*e.g.*, the rule suggested *sub 1* could be frustrated if the State A in whose territory the individual was born, decides that he is, under the nationality law of the State B, a national of B while he is not recognised as a national by the authorities of B. From such examples it becomes clear that the compulsory settlement of conflicts of nationality laws by a supra-national judicature whose judgments would be binding on the States becomes imperative. In this respect the Mixed Arbitral Tribunals which were established by the Peace Treaties, and the Arbitral Tribunal of Upper Silesia established by the Geneva Convention of 1922, provide a good example.

It is suggested that similar courts or tribunals should be set up for the settlement of conflicts of nationality laws to which an appeal should lie after all remedies in municipal courts have been exhausted. An ultimate appeal to the Permanent Court of International Justice—appears desirable, but it is obvious that selective procedure or leave to appeal would be necessary to avoid that the Court should be flooded with such appeals.

4. With regard to denationalisation it would certainly be desirable to lay down the rule that no national can be deprived of his nationality against his own volition by a unilateral act of the State of which he is a national unless he acquires another nationality. But it is doubtful whether the States will be willing to accept such a far-reaching rule in the near future.

What can and must be asked for is that nobody should be deprived of his nationality for reasons of discrimination (political, racial, religious or others).

The desirability of a right of appeal to an International Court has been outlined *sub 3*. Such an appeal should also be available against the violation of nationality rights by the State. It must be realised, however, that the decision of an International Court would not, in all cases, give complete redress to the person violated in his rights. A State upon which a person is forced by such a decision whom it does not wish to retain as its national may well seek other means to deprive him of his rights. It is for this reason also that the general prohibition of denationalisation cannot, for the present, be considered as a sufficient means for safeguarding the rights of the individual, and that the establishment of an International Authority for the protection of unprotected persons must be demanded.

5. It is submitted that already under existing customary International Law no State may refuse to receive back into its territory any of its nationals or former nationals unless the latter has acquired another nationality. It is desirable that this rule should be laid down unconditionally and unambiguously by contractual legislation.

6. It is the declared aim of the United Nations to annul any discriminatory legislation enacted by the enemy Powers in violation of the principle of equality before the law. It may be expected, therefore, that the anti-Jewish legislation, and, in particular, legislation depriving Jews of their nationality, will be abolished immediately after the occupation of the countries concerned by the Allied armies.

* The subject is being dealt with more in detail in a paper by R. Graupner, “Statelessness as a Consequence of the Change of Sovereignty over Territory after the Last War,” which is included in this volume.

This would restore to the persons concerned their old nationality as from the date on which they were deprived of it.

It has to be taken into account, however, that these persons have been, in law and in fact, stateless for a considerable period, and that they may have acquired rights under that status. The fact has to be considered that many Jews from Axis countries will be unwilling to return to their countries where they have suffered indescribable hardship, where their brothers and sisters have been persecuted and murdered. They have severed the spiritual links with their homeland and have dissociated themselves from it. It has been declared from authoritative quarters that their compulsory repatriation is out of the question.*

It is, therefore, suggested that, under the conditions of the Peace Treaties or stipulations preceding them, a right of option should be introduced into the legislation of the countries concerned.

The persons concerned should re-acquire their former nationality *ipso jure* by the cancellation of the denationalisation Laws and Decrees as from the date of their denationalisation (*ex tunc*) as though they had never lost it unless they make a declaration within a reasonable period to be prescribed by law, to the effect

(a) that re-acquisition of their former nationality should take effect as from the date of the declaration only (*ex nunc*), or

(b) that they do not intend to re-acquire their former nationality.

Such an option would not be anomalous (*cf.* the declaration of alienage provided by the British Nationality and Status of Aliens Act) and would, we submit, not be inconsistent with the policy of reducing statelessness as only such persons would avail themselves of the latter facility as are desirous to acquire the nationality of their country of refuge or final settlement. Their naturalisation should, as far as possible, be facilitated by the Governments of the countries concerned.

These suggestions would apply to former nationals of Germany, Italy, Hungary, Bulgaria, Rumania and France.†

For former German nationals even reversed provisions may be suggested in view of the fact that in their case loss of affection for and dissociation from their previous country may be particularly strong and the number of those unwilling to return particularly high, *viz.*, that they should remain stateless unless they declare within a prescribed period their intention to re-acquire German nationality *ex tunc* or *ex nunc*.

It is obvious that such nationals of occupied Allied territories (such as Czechoslovakia) as have been deprived of their nationality by acts of the occupying Power or by acts of a Government acting under its control (Quisling Governments) will have their nationality restored *ipso jure*. It would be open to the rightful Governments of these States to introduce special legislation in order to meet the factual situation which has arisen from the unlawful deportation, forcible emigration and denationalisation of their nationals.

With regard to Austrian Jewish nationals who were deemed to have acquired German "Staatsangehoerigkeit," in consequence of the annexation of Austria by Germany and who were subsequently deprived of this nationality, the Joint Declaration made at the Moscow Conference in October, 1943, has to be taken into account. It states that the Governments of Great Britain, the U.S.S.R. and the United States regard the annexation imposed upon Austria by Germany's occupation of March 13th, 1938, as null and void. It would appear from this Declaration that any denationalisation of these persons under German law is not to be recognised and that Austrian Jewish nationals should be deemed not to have lost their Austrian nationality.

* Sir Herbert Emerson, in "Foreign Affairs," January, 1943.

† The position of France has been altered by the recognition of the French Committee of National Liberation.

As, however, many Austrian refugees may be unwilling to return to Austria and must be considered to have severed their links with that country, the granting of the right of option to them, as outlined above, must be strongly recommended.

7. It is obvious from the above that though it is possible to reduce statelessness, there will still exist certain classes of stateless persons for some time to come. It is, therefore, necessary to devise provisions for their legal position. Provisions at present in force are defective and limited to certain classes of stateless persons and to certain territories (see above, pages 13, 14). The following suggestions for the improvement of the position of unprotected persons are evolved from the deficiencies of the present situation. Uniform provisions are suggested for both categories of unprotected persons, refugees and stateless persons, in view of their similar position:—

(a) To set up an International Authority for Unprotected Persons which would cover all classes of unprotected persons, long-term refugees and stateless persons alike, irrespective of their origin.

(b) To entrust this Authority with the legal protection and representation of persons who do not enjoy the protection of any particular State.

(c) To define the legal status of all unprotected persons along the lines of the Refugee Conventions of 1933 and 1938 and of the Resolution of the Institut de Droit International passed in Brussels in 1936.

(d) To prevail upon all States to recognise the International Refugee Authority in its functions and to incorporate the provisions for the legal status of unprotected persons into their municipal law.

The Office of the High Commissioner for Refugees under the protection of the League of Nations and the Intergovernmental Committee set up at the Bermuda Conference, 1943, may well provide the nucleus for an International Authority for Unprotected Persons.

NOTE.—It would be outside the scope of this paper to deal with questions of property rights.

It must be emphasised, however, that the political status of a person does not affect rights acquired under private law. Claims for indemnification under private law which arise from dispossession of property—*e.g.*, claims against persons who have acquired such property—remain unimpaired by the fact that the claimant may subsequently have lost or changed his nationality.

The position is similar with regard to claims under public law such as claims against the State arising from confiscation or forfeiture of property. If—as is the case in many denationalisation Laws and Decrees—denationalisation is linked up with the forfeiture of property of the denationalised person, such forfeiture is invalid if it is inconsistent with public policy.

Such a decision has nothing to do with the question of the validity of the denationalisation as such. While claims of nationals are, as a rule, decided by the municipal courts, claims of stateless persons may well become the subject of international judicial proceedings. In addition, the country of refuge of an exiled person may bring an action against the confiscating State on the ground that the latter, by measures contrary to International Law, has cast a burden on the receiving State.

There should be no discrimination between stateless former nationals and nationals with regard to the restoration of their rights and restitution of their property, and equal treatment of all victims of discriminatory or arbitrary dispossession must be advocated. The inclusion of international agencies such as the International Refugee Authority into the procedure for the realisation of such claims appears desirable.

Reference is made, in this connection, to the Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control, of January 5th, 1943 ; the extension of its principles to acts of dispossession committed in enemy territories would go a long way to doing justice to all victims of spoliation by the National-Socialist régime (and its satellites) irrespective of nationality or residence.

IX. —CONCLUSION.

Nationality law is, at present, in a crisis. This is due to an exaggerated conception of the State and the unlimited exercise of its sovereign omnipotence—mainly, not only, developed by the totalitarian States—and to the lack of effective international machinery for the enactment and enforcement of universal rules. As long as these conditions prevail, any reforms suggested, any remedies recommended can only cure the symptoms of the disease, not the disease itself. As long as nationality is the link between the individual and the benefits of the Law of Nations, legal policy regarding nationality must see its task in providing this link. But nationality is a means and not an aim in itself. The aim must be the enjoyment of the benefits of the Law of Nations and—ultimately—of the Rights of Man by all, of those rights “ which are common to all men.” Nationality law should serve this aim.

It is our sincere hope that out of the horrors of this war an international community will emerge which is based on the mutual understanding and the spirit of good-will between the nations. That this international community will provide the machinery for the development and enforcement of a system of International Law in which individuals are no longer merely objects but become subjects of the Law of Nations. In such a system nationality would lose much of its significance.

It is in this spirit and in this hope that our suggestions have been conceived.



STATELESSNESS

AS A CONSEQUENCE OF THE CHANGE OF SOVEREIGNTY OVER TERRITORY AFTER THE LAST WAR.

By RUDOLF GRAUPNER, LL.B. (Lond.)

I.—PRESENT PROBLEMS OF STATELESSNESS.

Among the multitude of problems which will have to be dealt with in the coming peace settlement, that of the nationality of a great number of people will be of the utmost importance and urgency. As distinct from the situation at the close of the last war the future peace makers will not only be called upon to readjust the nationality of people affected by territorial changes, but additional questions in this sphere of law await solution. Even where certain territories will not change sovereignty, movements of more or less large populations, voluntary or forcible, are to be expected. Moreover, the practice of various States since the last war up to the present date has added further complications in this field. The numerous denationalisations decreed by Turkey in 1923, by Soviet Russia in the first decade of the formation of the Soviet State and later by Italy and Germany, and subsequently copied by many of their satellites, have created hundreds of thousands of stateless persons. And again, there are still a certain number of people in that unfortunate condition of statelessness who owe their fate to the Peace Treaties of 1919-1923, particularly to the Treaties of St. Germain and Trianon. Finally, the upheavals of the present war which has seen unprecedented movements of populations of nearly all States of Continental Europe by deportations or by the more or less voluntary entering into labour contracts to be performed in Germany or in countries occupied by her will make the ascertainment of the true nationality of a great number of persons very difficult. The destruction of records by air and land warfare will, in many cases render this task hardly possible.

Yet, however complex the problems of nationality may be which will confront the draftsmen of the Peace Treaties, the determination of the nationality of persons affected by territorial changes will certainly again constitute a major issue. Bearing in mind the consequences of the creation by the last Peace Treaties of hundreds of thousands of stateless individuals with all the misery resulting from this condition and its contribution to political unrest in general, it would not seem inopportune to re-examine this subject at this juncture. In this paper we will limit our discussion to a single one—namely, to the phenomenon of statelessness brought about by change of sovereignty over territory.

That a Jewish body should feel it necessary to pay attention to this subject is not difficult to justify. As was the case after the last war, questions of nationality will again be of particular significance for Jews. Although at present the main Jewish problem in this respect concerns the regulation of the national status of the Jews from many European countries who have been deprived of their nationality by unilateral act of State, the provisions in the coming peace settlement relative to the position of individuals in case of State succession or exchange of populations will undoubtedly be of great moment for many of those Jews who have found refuge in the free world or are still in enemy or enemy occupied countries. Whilst for the majority of Jews of Continental Europe the question will merely be that of re-instatement into their former status (subject to options for remaining stateless in certain cases), a small but not unimportant minority will face this issue complicated by their being affected by territorial changes or exchanges of populations. In such cases re-acquisition of the former nationality lost by deprivation (and the suggested option of remaining stateless) might become secondary to the ascertainment of the position under the relevant provisions of the coming Peace Treaties.

Before turning to our immediate subject, a few words must be said on statelessness in general and on the various types of this abnormal political status. Although some 50 years ago* statelessness was sometimes regarded almost as an enviable position from the point of view of the individual because such a person was not subject to the many duties of a national of a State (particularly to military service), and this opinion might perhaps have been maintained in the liberal world before the last war, in the last 30 years the political and economic conditions, especially in Europe, have changed all this. Mass unemployment and the resulting measures for the protection of the national labour market, the financial strain put on the treasuries of many States, sharp economic competition and national, racial and religious prejudices tended to exclude that group of individuals not only from the political but frequently also from the economic life of the nation. A stateless person has no political rights; he has, as a rule, no passport enabling him to leave his country of residence, or to enter other countries, not even for quite temporary purposes, unless there be special agreements in which States agree to issue and recognise papers for stateless persons like the so-called Nansen-passport for certain categories of refugees from Russia or the Certificates of Identity issued in pursuance of the Conventions of October 28th, 1933, and of February 10th, 1938 (Environ Conference) relating to refugees from Germany. A stateless individual is liable to arbitrary expulsion, though no other State will admit him; if he is expelled from State A and forcibly brought into State B, the latter will usually imprison him for the crime of having unlawfully entered its territory, and later repeat the action of State A. Even if he resides unmolested in a country he will be under great disabilities. Most States do not grant poor relief and other social benefits to stateless persons. Such persons are nearly everywhere excluded from the liberal professions or only allowed to practise under restrictions; *e.g.*, in Germany, former Russian doctors were only allowed to attend to their former compatriots. And, worst of all, the economic policy of most States in the last few decades prohibited or at least rendered difficult the employment of stateless persons or their establishment in a business of their own. Further, they are not entitled to pensions for former services—a consequence which caused great sufferings particularly to some of the former Austrian or Hungarian officers and civil servants who had become stateless after the dissolution of the Austro-Hungarian Monarchy. Stateless persons will in general not be admitted to Government employment. On the other hand, many States call up stateless persons for military service but do not grant them naturalisation afterwards.

Although the negative status of statelessness is as old as the positive one of possessing a nationality, it did not constitute either a serious political or economic problem until the close of the last war. In the comparatively safe and well-ordered world of the second part of the nineteenth and the beginning of this century, Courts of Justice, if they came across a case of statelessness at all, were not prepared, or were at least reluctant, to recognise the existence of such a status in law. For example, the United States Supreme Court† has said: "The existence of a man without a country is not recognised." Similarly, French Courts for a long time regarded statelessness as a legal impossibility until they hesitantly changed their view after the last war.‡. English Courts likewise saw difficulties in recognising such a status. Yet they ultimately acknowledged the existence of statelessness as a consequence of conflicts of nationality laws as well as of the deprivation of nationality by unilateral act of State.§ To-day, the frequency of statelessness on the one hand and its recognition and even furtherance by not a few Governments and, on the other hand, certain slight alleviations in the condition

* See *e.g.* André Weiss, *Droit International Privé*, Vol. I. (1892), p. 20.

† *Wong Kim Ark v. U.S.* (1898) 169, U.S. 649, at p. 720 (per Fuller, C. J., and Harlan, J. in their dissenting opinion).

‡ See Schätzel, *Die elsass-lothringische Staatsangehörigkeitsregelung und das Völkerrecht* (1929), p. 83.

§ See *Stoeck v. Public Trustee* (1921), 2 Ch. 67.

of stateless persons (such as the issue of special passports) would appear to have somewhat lessened the apprehension that mass statelessness is utterly repugnant to a well-ordered International Community. It is to be hoped that in the coming peace settlement the problem of statelessness will receive careful attention. Not only must the inadvertent creation of new cases of statelessness be avoided under any circumstances, but also existing cases, being the legacy of the last Peace Treaties, or the result of recent State practice, should be re-examined and remedied. A brief review of the main reasons for the occurrence of this abnormal condition as the result of changes of sovereignty over territory may therefore be of interest.

The Different Types of Statelessness.

Although in a well-ordered International Community composed of independent States the circumstance that an individual belongs to no State ought not to occur, cases of genuine statelessness (as distinct from those where merely the true nationality of a person cannot be ascertained with certainty) have been known since the modern law of nationality came into existence. At present, three large categories can be distinguished.

(a) *Statelessness as a consequence of divergent systems of nationality laws.*

One of the reasons for such occurrences is that different principles are chosen by different States for the acquisition of nationality by birth—viz., *jus sanguinis*, on the one hand, and *jus soli*, on the other hand. Although the pure *jus soli* is to-day hardly applied by any country, the limitation of the transmission of nationality by descent may also bring about statelessness of the children of a person who is a national of a country mainly adhering to the *jus soli*. (Examples : the illegitimate child of a British woman born in Germany, British nationality being transmitted only to children legitimately born abroad of British subjects ; a child of a British father who himself was born abroad of a father born within the British dominion.)

Another case within this category is that of a woman who loses her nationality through marriage with a foreigner without acquiring the nationality of her husband by the law of the latter's country. These (negative) conflicts of laws, which were the subject-matter of several international discussions and conferences, have been modified to some extent by recent legislative measures in various States.

(b) *Statelessness as a consequence of unilateral State action for penal or political reasons.*

The laws of a great number of States provide for the denationalisation of their nationals as penalty for certain crimes, particularly for evading compulsory military service. In earlier times emigration without special authorisation sometimes caused forfeiture of nationality (e.g., in the Austrian Monarchy by virtue of a decree of March 24, 1832). Whereas denationalisations in such cases were comparatively rare and created no serious international problems, the mass deprivations of nationality on political, religious or racial grounds (often coinciding with persecutions and expulsions of minorities) made the phenomenon of statelessness a political question of the first magnitude. It must be clearly understood that the origin of this kind of statelessness is in itself completely different from statelessness owing to territorial changes ; but, as we shall see shortly, the border line between these two kinds can be blurred if a State which is obliged to accept new nationals by territorial acquisitions refuses to comply with its international obligations by withholding conferment of its nationality or later cancelling of its previous acquisition. Denationalisation on political, religious or racial grounds need neither be restricted to nationals being abroad (as was generally the case in the State practice of Turkey, Soviet Russia, Italy and Germany and lately also of several other States), nor does it always presuppose the prior enjoyment of the nationality of the denationalising State. A well-known instance was the position of the Jews in Rumania from the formation of that State in the middle of the last

century when Jews inhabiting the territory of the new Rumanian State were declared foreigners, which meant practically stateless persons, by the Civil Code of 1864 and later by the Rumanian Constitution of 1886.

(c) *Statelessness as a consequence of changes of sovereignty over territory.*

This type of statelessness has a comparatively long history. We venture to submit that almost every territorial change—cession, annexation of a part or incorporation of the whole of a State—has necessarily the effect of making stateless such individuals who would come under a new sovereignty but for their residing outside the two States concerned. This problem has hitherto only casually engaged the attention of publicists, and the few relevant decisions of Courts or international tribunals have mostly expressed the view—thereby disregarding the rules of International Law—that such persons become automatically the nationals of the successor State, though it cannot be explained how an annexing State, or the two States concerned in case of cession, can validly act within the jurisdiction of a third State, particularly if the individual in question does not consent to having imposed upon him a new nationality.*

Yet the great number of stateless persons owe their unfortunate condition to incomplete or defective drafting of the relevant clauses in many peace treaties. Sometimes a real gap was left with the result that certain categories of inhabitants were not covered by the provisions of the treaty in question, sometimes bad drafting enabled ill-willed Governments to refuse admission as nationals to undesired individuals or whole groups. Moreover, experience has shown (especially where an option for retaining the old nationality was provided for) that technical mistakes in exercising the option led to statelessness.

Leaving aside earlier instances, we will discuss as briefly as possible the peace settlement after the last war in its bearing on our subject.

II.—THE PEACE TREATIES AFTER 1918.

(1) THE TREATY OF VERSAILLES.

The principle prevailing in this Treaty that those people who were "habitually resident" in the ceded areas were to change their nationality, was indeed the most effective one to prevent the rise of statelessness. However, two modifications of this principle caused some writers to argue that a number of German nationals did become stateless. First, according to the provisions of Articles 91, I, III, and 84 not only German inhabitants residing in the areas ceded to Poland or Czechoslovakia but also German nationals residing in other territories of the newly formed Polish or Czechoslovak States lost their German nationality and acquired the nationality of their State of residence. Since both Poland and Czechoslovakia disliked any avoidable increase of nationals of German origin, they refused to confer their nationality on the latter category, thereby contravening the Peace Treaty. Since Germany regarded those people as having become Polish or Czechoslovak nationals, the curious situation arose that they were treated as Poles or Czechoslovaks by Germany, and as Germans by Poland or Czechoslovakia—which meant in practice that they were stateless. Endeavours were, however, soon made to clear up this unbearable situation. By the German-Czechoslovak Convention of June 29, 1920, Germany agreed to continue to regard such persons as German nationals—*i.e.*, speaking strictly juridically, they became German nationals again with retrospective effect from January 10, 1920. The negotiations with Poland were only brought to a conclusion by the Viennese

* In two recent decisions, the United States Court of Appeals for the Second Circuit held that former Austrian nationals who had been living outside Austria (and Germany) at the date of the annexation of Austria, in March, 1938, and had not returned to Germany afterwards nor applied for German nationality had not become German nationals. See *American Journal of International Law*, 1943, pp. 634-640.

Convention of August 30, 1924 ; briefly it can be summarised by stating that the German view prevailed.

Secondly, that only such German nationals who were already habitually resident in some of the ceded areas at certain dates (as regards Poland : January 1st, 1908 ; Belgium : August 1st, 1914 ; Denmark : October 1st, 1918) acquired the new nationality *ipso facto* and without any formality whilst others could only acquire it by special authorisation of the successor State concerned, gave rise to the opinion that the latter category of inhabitants became stateless on the coming into force of the Treaty of Versailles on January 10th, 1920, unless and until they obtained the nationality of the cessionary State in the aforementioned way. A German writer, C. G. Bruns*, has asserted that those people lost their original German nationality in any case on the cession of the territory and became thus stateless, permanently or temporarily until the acquisition of the new one. But this theory was strongly disputed, and we are not able to subscribe to this rather artificial doctrine.

The quite special regulation of the return of Alsace-Lorraine to France resulted in statelessness of a large number of Germans ; at least this was the view prevailing with German authorities, law courts and many publicists. As the Peace Treaty was based upon the French doctrine that those provinces had virtually never ceased to be French territory it was merely the logical consequence that those German nationals who or whose ancestors did not live there in 1871, did not become French nationals by way of redintegration. Now, according to the German nationality laws those Germans possessed German nationality by the fact that they had the special Alsace-Lorraine citizenship (*Elsass-Lothringische Landesangehörigkeit*) this being the nationality of a political member body similar to the "nationality" of a member State in a federal State. By the extinction of Alsace-Lorraine as a component of the German Reich in 1918, this special citizenship necessarily came to an end with the result that those persons who did not acquire French nationality lost their Alsace-Lorraine citizenship which was the only medium for possessing the nationality of the German Reich. However doubtful the correctness of this argument may be, it was accepted by the German Supreme Court.† Consequently these former Germans had to apply for re-naturalisation, which, it seems, has been granted in all cases.

(2) THE TREATIES OF ST. GERMAIN AND TRIANON.

Whereas the principle of Habitual Residence in the Treaty of Versailles worked on the whole satisfactorily enough, the completely different scheme chosen for the determination of the nationality of the approximately 55 million inhabitants of the dissolved Austro-Hungarian Monarchy proved a failure as we can safely maintain now after more than two decades' experience.

The provisions for the change of nationality are contained not only in the Treaties of St. Germain and Trianon, but also in the Minorities Treaties‡ concluded between the Principal Allied and Associated Powers and Poland (June 28th, 1919), Czechoslovakia (September 9th, 1919), Yugoslavia (September 9th, 1919), and Rumania (December 9th, 1919). The Polish Treaty came into force together with the Versailles Treaty on January 10th, 1920, the other Treaties on September 26th, 1920. The execution of these Minorities Treaties was laid down in each of the respective Peace Treaties. Italy, however, was not bound

* C. G. Bruns, *Staatsangehörigkeitswechsel und Option im Friedensvertrag von Versailles* (1921).

† Official Collection of Decisions in Civil Matters, Vol. 120 (1928), p. 202. (Annual Digest, 1927-28, Case No. 190.)

‡ It is true that as far as Germany is concerned the Treaty of Versailles is not the exclusive basis for the change of nationality, for the Polish and Czechoslovak Minorities Treaties are also applicable to German nationals. But as the main principle of Habitual Residence is the same in the Versailles Treaty and in the Minorities Treaties the difficulties of reconciling these two sources were far less serious than in the Austrian and Hungarian Peace Treaties.

by a minorities treaty. No minorities treaties were imposed upon Austria and Hungary, but the Treaties of St. Germain (Arts. 62 *et seq.*) and Trianon (Art. 54) contained stipulations for the protection of minorities. It ought to have been plain from the beginning that the regulation of the nationality of former Austrians and Hungarians by divergent principles contained in a multitude of treaties would lead to complications. Cases both of double nationality and of statelessness were bound to arise. But as we shall see this complicated scheme might nevertheless have worked not too badly if the Succession States had not thwarted many of the provisions laid down in those international treaties by the introduction of municipal laws of nationality. By availing themselves of loopholes in, and of inconsistencies between, treaty provisions, by artificial interpretations and even open disregard of treaty stipulations they deprived a large number of people of the nationality to which they were entitled.

Let us consider now this question in more detail.

The Principles of Allocation.

Originally it had been the intention of the Allied Powers to apply the test of Habitual Residence as a general rule as was done in the Versailles Treaty. But on request of the Czechoslovak delegation which was seconded by the Austrian representatives, another scheme was chosen. As the administrative laws of the old Austro-Hungarian Monarchy were largely based upon the so-called "Heimatsrecht" (also called *indigénat* or *pertinenza*), which means Rights of Citizenship (or, more accurately, Communal Rights) in a certain commune or parish, it was urged that the future nationality of each national of the dissolved Monarchy should be determined by the situation of that commune after the redistribution of territory among the various Succession States. This suggestion was accepted as the primary mode for the determination of nationality. (According to the correct opinion the principle of Heimatsrecht was not to apply to acquisition of Rumanian nationality.) But as it seems to have been obvious from the beginning that this principle would not for various reasons guarantee that all people concerned would acquire a new nationality, the Minorities Treaties laid down secondary principles for the allocation of inhabitants of the dissolved Monarchy to the Succession States. These principles are, in order of their intended application: (1) Redintegrated Rights of Citizenship in a Commune; (2) Place of Birth qualified by the requirement of Habitual Residence of Parents or Parents' Rights of Citizenship in that place; (3) Place of Birth (Ordinary Birth).

Art. 70 of the Austrian and Art. 61 of the Hungarian Peace Treaty provide that "every person possessing Rights of Citizenship (*pertinenza*) in territory which formed part of the territories of the former Austro-Hungarian Monarchy shall obtain *ipso facto* to the exclusion of Austrian (Hungarian) nationality the nationality of the State exercising sovereignty over such territory." This conception of Heimatsrecht which is peculiar to the old Dual Monarchy proved to be the main source of statelessness. Heimatsrecht according to Austrian law meant originally the possession of Rights of Citizenship in a Commune (the main purpose being the right to poor law relief) which is acquired by descent* from a person who possessed these rights (*Heimatsgesetz* of December 3rd, 1863). In the middle of the last century birth and domicile in a certain community coincided in nearly all cases with Heimatsrecht therein, but the increasing movements of the population in the second half of the last and in the first decades of the present century made the possession of those rights for about half of the population a mere fiction, having regard to the real points of contact between a person and the commune in which he possessed such Heimatsrecht. Even the Austrian (amending) Law of 1896 which provided for the acquisition of a Heimatsrecht in the commune in which an individual had lived for ten years without having become a public charge during

* The Law of 1863 provided further for acquisition of Heimatsrecht: (a) For women through marriage; (b) For officials by taking up of a Government post; (c) By voluntary acceptance into a commune.

that time, by application of either the individual or the former commune concerned, did not remedy this state of things materially. It should be noticed that only Austrians or Hungarians could possess these Rights of Citizenship ; on the other hand, possession of these Rights was not necessary for the possession of Austrian or Hungarian nationality though it was a postulate that every Austrian or Hungarian national should have Heimatsrecht in an Austrian or Hungarian commune respectively. But there were a number of Austrians or Hungarians who had no such Rights of Citizenship, though they were undoubtedly Austrian or Hungarian nationals, and there were the inhabitants of Bosnia-Herzegovina where this institution never existed at all. Bosnia-Herzegovinians were neither Austrian nor Hungarian nationals proper but had a Bosnia-Herzegovinian citizenship of their own (*bosnisch-herzegovinische Landesangehörigkeit*). There was further a multitude of people belonging to all classes of the population whose Heimatsrecht could either not be proved or was contested between two communities ; whilst up to the dissolution of the Dual-Monarchy the Supreme Administrative Courts in Vienna and Budapest had jurisdiction to decide such disputes, they lost this competence as a matter of course with regard to disputes where a commune now outside the new Austrian Republic or Hungary respectively was involved.

Whereas an Agreement between Austria and Czechoslovakia signed at Brünn on June 7th, 1920, removed the danger of a petrification of statelessness of former Austrians to a considerable extent, the position of a large Hungarian minority in Slovakia remained unsatisfactory. According to the Treaty of Trianon these people were to become Czechoslovaks if they could prove that they possessed Rights of Citizenship in a commune now forming part of Czechoslovak territory. By Hungarian law as interpreted by Hungarian courts (as distinct from Austrian law) the fact of four years' residence in a commune and the payment of a single contribution to the communal fund resulted in the automatic acquisition of Heimatsrecht in that commune. There is no doubt that the overwhelming majority of the inhabitants of the aforementioned communes did comply with this requirement. But in two decisions of 1921 and 1923 the Supreme Administrative Court of Czechoslovakia by way of a new interpretation of the Hungarian law required continuing payments to the communal fund during the four years as well as express admission of the persons concerned by the commune. As in many cases the fulfilment of these conditions could not be shown, those people became stateless from the Czechoslovak point of view. True, in 1926 the "Lex Derer"* provided for remedies in many cases, but as late as 1928, according to Professor Seton Watson,† there were twenty to thirty thousand stateless persons in Slovakia, and in 1931 the British Foreign Office put this figure as high as between twenty and fifty thousand persons. C. A. Macartney‡ reports that from 1929 to 1935 about 19,000 former Hungarians were granted Czechoslovak nationality. Although this state of affairs was thus slowly remedied, there must still have been a fair number of stateless persons in Slovakia when Czechoslovakia was broken up by Germany in 1939.

One might think that where the principle of Heimatsrecht was found insufficient to determine the new nationality of a former Austrian or Hungarian, the secondary principles of allocation would furnish a satisfactory solution. But this was by no means true in all cases. We will try to set out the facts and reasons why these secondary principles likewise did not succeed in preventing the occurrence of statelessness.

There were, in the first place, a number of Austrian and Hungarian nationals by naturalisation who were born outside the Monarchy and the then existing Succession States, say, in Switzerland or Germany. If their Heimatsrecht was contested or could not be proved, no secondary principle could be relied upon. The result was statelessness. This was one of the genuine gaps in the Treaties.

* See Flournoy, *Collection of Nationality Laws* (1929), p. 205.

† Slovakia: *Then and Now* (1931), p. 56.

‡ *Hungary and Her Successors* (1937), p. 164.

Another category of stateless people came into existence as a consequence of the right granted to Italy, Czechoslovakia, and Yugoslavia to refuse to accept Austrians, and in the case of the two latter States also Hungarians, who had acquired Heimatsrecht after a certain date in one of the communes which now formed part of their territory. This date was in respect of Italy, May 24th, 1915, when that country entered the War. As regards the other two States, January 1st, 1910, was the decisive date (Arts. 76 St. Germain, 62 Trianon). Such persons only had the right to claim the nationality of the Succession State in question, but if they did not apply for it or if the application was refused, they were to obtain *ipso facto* the nationality of the State exercising sovereignty over the territory in which they previously possessed Rights of Citizenship (Arts. 77 and 62 respectively). This is the (secondary) principle of the "Redintegrated Rights of Citizenship." It is clear that the ascertainment of this previous Heimatsrecht, if any, was still more difficult, and as experience has indeed shown, in a very great number of cases impossible. This applies particularly to Hungary, where only a few large communes kept registers evidencing Rights of Citizenship (here called Gemeindezugehörigkeit). In many a case old contests relating to a person's Heimatsrecht revived, and as long as such controversies were not settled—a task which had become far more complicated by the absence of a central judicial authority having jurisdiction over the communes involved and now situate in different Succession States—no further secondary principle was allowed to be applied. But even the secondary principles of Qualified Birth or Ordinary Birth could not secure a nationality to a man whose place of birth was situate in an area ceded to Italy if that country rejected him because he was unable to prove his Heimatsrecht there and a previous one in another Succession State. This is the consequence of the regulation that birth by itself in new Italian territory is not sufficient for acquiring Italian nationality, since possession of a Heimatsrecht in that territory established before May 24th, 1915 had to be proved. And owing to his birth-place being situate in new Italian territory the provisions of the Minorities Treaties regarding birth do not come into play.

The next principle of allocation is that of the birth of a person in the ceded territory qualified by the additional requirement of the Heimatsrecht therein of his parents in the case of Czechoslovakia and Yugoslavia, and of habitual residence of his parents in the case of Poland and Rumania (Arts. 4 of the respective Minorities Treaties). Difficulties as regards the interpretation of this principle arose through the attitude of Poland which took the view that the parents must have been resident there at the date when the Minorities Treaty came into force. The Permanent Court of International Justice,* to whom this dispute was submitted, held, however, that the date of the birth of the individual in question is the only material one. Whereas Poland thereupon changed her attitude, it seems that the other three States were not prepared to depart from a similar practice and continued to follow the earlier Polish interpretation of that provision. It is obvious that insistence on the date of the coming into force of the Minorities Treaty (July 16th, 1920) must necessarily make this principle of allocation ineffective in the majority of cases involved.

The last secondary principle of allocation is that of mere birth in the transferred territory. Art. 6 of all the Minorities Treaties reads as follows: "All persons born in Polish (Czechoslovak, Yugoslav, Rumanian) territory who are not born nationals of another State shall, *ipso facto*, become Polish (Czechoslovak, etc.) nationals." It would seem that this provision would indeed solve all difficulties which the peacemakers imagined. But, as we have already pointed out, even this clause of last refuge is inapplicable to naturalised Austrians or Hungarians who were born outside the Succession States, or to persons whose place of birth is not known. And as regards Italy, it did not apply at all, as Italy was not bound by a Minorities Treaty; moreover, birth in new Italian territory did not secure Italian nationality unless possession of Rights of Citizenship acquired before

* Advisory Opinion, Series B, No. 7 (September 15, 1923).

May 24th, 1915 could be established. But, apart from these special cases, the interpretation of Art. 6, as adopted by all the Succession States which were bound by the Minorities Treaties, made this clause largely unworkable. It was conceived as a mere supplementary device, which was only to be used when any other principle had been found wanting after extensive and thus very lengthy scrutiny. Thus Art. 5 of the Czechoslovak-Austrian Agreement, signed at Brünn on June 7th, 1920, which was entered into for the purpose of settling controversial questions of nationality and protection of Minorities arising out of the Peace Treaty and the Minorities Treaty, provides that Article 6 of the Minorities Treaty "shall constitute a *presumptio juris sed non de jure* in favour of a nationality corresponding to the place of birth, which shall hold good in so far as no proof of nationality of another State by *parentage* (italics are the author's) is produced. The words at the end of Article 65 (St. Germain) '*par sa naissance d'une autre nationalité*,' and at the end of Art. 6 (Czechoslovak Minorities Treaty) '*d'une autre nationalité de naissance*,' are, therefore, in practice to be interpreted not according to the place of birth, but according to parentage." This somewhat obscure wording would seem to express the desire of the two contracting governments to avoid, as far as possible, having the nationality of any person in question determined by the mere fact that he was born in the respective territory. Art. 65 of the Treaty of St. Germain and Art. 6 of the Minorities Treaties are only to be material if all endeavours to find the true nationality of the *de cuius* by the tests of *jus sanguinis* (i.e., Heimatsrecht, Qualified Birth) have proved futile. It is obvious that such a practice, which presumably has its root in the dislike of the principle of *jus soli* in Central Europe, stultified the intention of a speedy and comprehensive solution of the nationality question in former Austria-Hungary, for it might and actually often did take years before the question was decided whether a person possessed a certain nationality by parentage or whether this could not be definitely established.*

Options.

The clauses relating to option contained in the Austrian and Hungarian Peace Treaties were a further source of numerous cases of statelessness. There were three kinds of options :

(1) Option provided for the inhabitants of a plebiscite area ; inhabitants of such an area could opt for the nationality of the State to which that area was not adjudicated ;

(2) Option provided for those persons who were to acquire a new nationality by virtue of Arts. 70 or 61 respectively ; such persons had the right to opt for the nationality of the Succession State where the commune was situate in which they previously possessed Rights of Citizenship. (This provision did not apply to options for Austria on account of Art. 64 of the Treaty of St. Germain.)

(3) Option based on language and race : Persons possessing Rights of Citizenship in territory forming part of the former Monarchy who differed in race and language from the majority of the population of such territory could opt for the nationality of one of the Succession States "if the majority of population of the State selected is of the same race and language as the person exercising the right to opt." (Arts. 80 and 62 respectively.)

The Peace Treaties do not contain any particulars regarding the exercise of options, but leave it to the different States to provide therefore unilaterally.

It is common experience that the technicalities inherent in the institution of options prevent in many cases the acquisition or retention of the desired nationality. But the scheme of the Peace Treaties and particularly the practice adopted

* This interpretation of Art. 6 of the Minorities Treaties would appear to be the ultimate reason for the statelessness of the Magyar minority in Slovakia ; see *supra*, p. 33.

by the Succession States resulted in a further evil—statelessness. If persons entitled to opt exercised this right too late or not in the prescribed form or addressed their declaration to an incompetent authority, their option was not only invalid, but, since their old States frequently regarded such declarations, though they were ineffective as options, as renunciations of the existing nationality, those persons became stateless. Such invalid options occurred particularly frequently in the case of Yugoslavia. Whilst generally declarations of option have to be directed to the authorities of the State whose nationality the optant desires to obtain, Yugoslavia decreed that options for Yugoslav nationality had to be addressed to the authorities of the country where an optant possessed the Rights of Citizenship. This deviation from a firmly established practice led to great confusion. Many of the wrongly addressed declarations (*i.e.*, to Yugoslav authorities) were refused as invalid, the optants being regarded as not having acquired the new, whilst having lost the old, nationality. In the similar case of reclamations for Italian, Czechoslovak or Yugoslav nationality many of the persons concerned who lived in another territory did not or not in time obtain knowledge of the often intricate regulations enacted by the States whose nationality they could claim. The result was that they failed to exercise their right or that they did it too late, or did not comply with the form or conditions required. By their failure they were compelled to rely on one of the other secondary principles of allocation, meeting thereby the difficulties described above. Again, the practice of Italy and Yugoslavia to regard options in favour of Italian or Yugoslav nationality as mere applications which require their consent, would appear to be a violation of the Peace Treaties, as these employ the conception of the option in the sense universally recognised in International Law, *viz.*, as a unilateral declaration of a constitutive character which does not require the consent of the State concerned. Refusal of this consent was bound to create new cases of statelessness, inasmuch as the old States frequently regarded such applications as renunciations of their hitherto existing nationality.

The last category of option, *i.e.*, the option based on language and race, led to difficulties in the new Republic of Austria. During the war many thousands of people, mostly Jews, had fled from Galicia when the Russians occupied that part of the Monarchy. They had lived for about five years mainly in Vienna, when, in 1919, the Austrian Government, denying their (new) Austrian nationality on account of their possession of Rights of Citizenship in the territory transferred to Poland, expelled them from Austria. Austria thereby violated not only Articles 228 and 229 of the St. Germain Treaty, which granted to the nationals of an Allied or Associated Power (*i.e.*, Poland) the right of fair treatment under a most favoured nation clause and constant protection for their person, property rights and interests, but also prevented these people from exercising the aforementioned option in favour of Austria. Moreover, when Jews of this category opted for Austrian nationality, the Austrian Supreme Court—after first interpreting the language and race condition in a liberal sense—later refused admission to Austrian nationality on the grounds that those Jews could not satisfy the Austrian authorities as to the requirement of race. This term, which was used in the Peace Treaty in the English sense as synonymous with nation, was interpreted in the pseudo-biological sense of the contemporaneous German racial theories. Thus Jews could in many cases not establish that they belonged to the Austrian race even if their mother tongue was German. Several endeavours by Jewish political bodies to alter this practice seem to have been unavailing. Even though a considerable part of those Jews succeeded at last in obtaining Austrian nationality by option, there were still a fair number who remained stateless, as they could for some reason or other not establish Rights of Citizenship in Polish territory and were also not admitted to Austrian nationality.

State Legislation.

The cases of statelessness are, however, not exhausted by the aforementioned causes. By the Peace Treaties and the Minorities Treaties the Succession States

were bound to accept parts of the population of the dissolved Austro-Hungarian Monarchy which had certain points of contact with each Succession State. But it became plain very soon that these States tried from the beginning of their existence or the acquisition of the new territory respectively to avoid the nationality stipulations of the peace settlement because these compelled them to absorb groups of persons whom they did not want as nationals. This was easily done by the enactment of nationality laws determining unilaterally the conditions for the acquisition of their nationality. In spite of elaborate arguments to the contrary, it cannot be seriously doubted that *e.g.* the Polish Nationality Law of January 20th, 1920, the Yugoslav decrees of November 25th, 1920, and August 30th, 1921, various Italian decrees from 1920 to 1926, and the Austrian decrees of September 9th, 1919, November 27th, 1920, and June 28th, 1921, cannot be reconciled with the letter and spirit of the Peace Treaties and the Minorities Treaties. A particularly serious effect resulted from the Rumanian Nationality Law of February 23rd, 1924. The Rumanian Minorities Treaty provided in Art. 3 for the acquisition of Rumanian nationality for all persons habitually resident at the date of the coming into force of the Minorities Treaty on December 9th, 1919 in the whole territory of (enlarged) Rumania if such persons were not at that date nationals of a foreign State other than Austria or Hungary. Arts. 4 and 6 oblige Rumania to confer her nationality *ipso facto* and without the requirement of any formality upon all persons born in the territory annexed to Rumania, Art. 7—which has no counterpart in the other Minorities Treaties—provides that “Rumania undertakes to recognise as Rumanian nationals *ipso facto* and without the requirement of any formality, Jews inhabiting any Rumanian territory who do not possess another nationality.” In spite of these plain treaty stipulations the Rumanian Government asserted that owing to the introductory words of Art. 3 of the Minorities Treaty, which reads “Subject to the special provisions of the Treaties mentioned below, Rumania admits and declares to be Rumanian nationals . . . all persons habitually resident . . .,” Art. 3 has become inapplicable. It was argued that this reservation must have some meaning, and though there are no such special provisions in the Peace Treaties regarding Rumania, the Rumanian Government found this to be a reference to the principle of Heimatsrecht laid down in the Treaties of St. Germain and Trianon. Outside Rumania, however, it seems to have been the universally accepted opinion that this was a misinterpretation of the Minorities Treaty. Rumania introduced a Law of Nationality on February 23rd, 1924, Art. 56 of which provides that “all the inhabitants of the provinces acquired from the Austro-Hungarian Monarchy who on November 18th, 1918, possessed Rights of Citizenship in those provinces, and who up to the date of the promulgation of the new Law of Nationality have not opted for any other nationality, shall be Rumanian nationals without the requirement of any formality.” Thereby not only the relevant articles of the Minorities Treaty were abrogated but the date chosen in that Law was fixed as December 1st, 1918, when the actual annexations took place, and not as September 26th, 1920, when the Minorities Treaty came into force. Yet there was still another serious consequence. The numerous former Austrian or Hungarian nationals who could not prove possession of the required Rights of Citizenship could not opt for the nationality of another Succession State according to Art. 80 of the Treaty of St. Germain (Art. 64 of the Treaty of Trianon) since the period of six months after the coming into force of the Peace Treaties had already elapsed. Neither could they opt for the State where they had previously possessed Rights of Citizenship for no such provision was made in regard to Rumania. As these persons were regarded as having become Rumanians on the strength of the Minorities Treaties by the other Succession States concerned, this discrepancy of views made them practically stateless.* As regards Art. 7 of the Rumanian Minor-

* As to the number of persons affected, the Rumanian Government gave the figure of more than 16,000 in Ardeal and the Bukovina, only two out of the six provinces involved. The Joint Foreign Committee estimated, in 1925, the number of Jews left without nationality in the Bukovina alone as 16,000.

ities Treaty the Rumanian Government declared in a Memorandum addressed to the Joint Foreign Committee of the Board of Jewish Deputies and the Anglo-Jewish Association in 1925 that this Article as well as Art. 3 are inapplicable for the same reasons.

(3) BESSARABIA.

The Peace Treaties and the Rumanian Minorities Treaty do not relate to Bessarabia, which was annexed to Rumania in April, 1918. The position of that annexed territory was peculiar in that Great Britain, France, Italy and Japan, notwithstanding Russia's refusal to recognise the Rumanian annexation, consented thereto in March, 1918, and by a special Treaty of October 28th, 1920 a Minorities Treaty regarding Bessarabia was signed in Paris. But owing to the non-ratification of that Treaty by Japan it never came into force. This Treaty imposed upon Rumania the obligation to confer her nationality on all former Russian nationals established in Bessarabia. Yet the aforementioned Rumanian Law of Nationality (Art. 56 (6)) is not in full conformity with the provisions of the special Minorities Treaty, for Art. 56 (2) requires proof of a "legal domicile" in accordance with the laws in force in that province. Although no special clause was thought necessary in that Minorities Treaty with regard to Jews, Rumanian Courts of Justice and administrative authorities found ways to prevent Jewish inhabitants of Bessarabia from obtaining Rumanian nationality, particularly by refusing to acknowledge that they had the "domiciliul administrative" in Bessarabia in the beginning of 1918. It must, however, be admitted that after the annexation of Bessarabia by Rumania numerous refugees from Russia, the great majority of whom were Jews, crossed the border* ; as regards these persons Rumania was under no obligation to admit them to her nationality.

(4) THE TREATY OF RIGA.

Among the Treaties of Peace concluded between Soviet Russia and her western neighbour States the Treaty of Riga of March 18th, 1921, with Poland is one of the most important. Under this Treaty, whereby Poland acquired certain territories from Russia, the nationality of the people concerned was determined by registration in corporate bodies or in census books or by the right to such registration, habitual residence being of no moment (Art. 6). If persons habitually resident in the new Polish territory were not thus registered there, they continued to be Russians. A great number of such persons decided, however, to remain in Poland and, refusing to be regarded as Russians, claimed Polish nationality under the Polish Minorities Treaty of June 28th, 1919. Although Arts. 3, 4 and 6 of this Minorities Treaty include Russian nationals, Poland declared the Minorities Treaty not applicable to that territorial enlargement. Later, however, Poland promised to remedy this situation, which affected a large number of people, among them many Jews. Yet we should not fail to mention that the Polish Government's endeavours to confer Polish nationality on all former Russians who were habitually resident in the territories in question met with some difficulties. Particularly during the first years after the cessation of Polish-Russian hostilities there was an infiltration on a considerable scale by people coming from Soviet Russian territory. These persons had obviously no right to Polish nationality. This circumstance caused the Polish authorities to scrutinise each application for Polish nationality. This had the effect that not only many recent refugees from Russia but also many former Russians who could not prove habitual residence at the date of the coming into force of the Minorities Treaty, although they had been settled there for a long time, were not admitted to Polish nationality and became thus stateless. No figures as to the number of persons affected are available, but it seems that up to the last few years before the present war that portion of the population in the Eastern provinces of Poland was not insignificant.

* Babel, *La Bessarabie* (1926), gives the figure of 38,116 refugees who came from Russia during the years 1918-1922. The Nansen Committee estimated their number as 100,000.

(5) THE SPECIAL POSITION OF JEWS.

We have frequently noticed in the foregoing discussions, especially when dealing with the Treaties of St. Germain, Trianon and Riga, that the Jewish portion of the populations affected by the territorial changes was particularly exposed to the danger of becoming stateless. The reasons for this phenomenon appear to be twofold. First, migrations of Jews in Eastern and South-Eastern Europe were relatively much larger and more frequent than the movements of other ethnic or religious groups. Jews were often compelled by political or economic reasons to leave the places of their birth in order to seek refuge from persecutions or to find their living in other provinces of the same State or even in other countries. Again, their exclusion from the free acquisition of rural property, and the legal or at least practical impossibility of carrying on farming, together with their forcible restriction to certain occupations, mainly in trade, made them in general less permanent than the rest of the population in that predominantly agrarian part of Europe. Thus provisions which might well be regarded as an appropriate basis for the determination of the nationality for the majority of the population in case of territorial changes were therefore often hardly suitable for a just and expedient solution of the national fate of the Jewish population in territory changing sovereignty. This applies particularly to the principle of Heimatsrecht and any similar system as well as to that of Habitual Residence of Parents. Yet the second reason is of far more serious character. The desire of some of the Succession States to keep as small as possible national or other minorities within their frontiers or a purely anti-Jewish attitude as shown by Rumania caused those Governments to avail themselves of the loopholes, doubtful interpretations and numerous technicalities of the Peace Treaties and Minorities Treaties with the object of refusing to admit Jews as nationals. We have seen this signally practised by Rumania; yet even the new Austrian Republic was guilty of such a policy in the case of the many Jews who, having fled to the capital of their country during the War, met with difficulties in obtaining Austrian nationality by option to which they were entitled by right.

III.—CONCLUSION.

Although most of the special problems which we have discussed appear at first sight to be primarily of historical interest, it is yet not inopportune from the practical point of view to recall at this juncture this legal aftermath of the first World War. Even though the problems of nationality which await solution in the future peace settlement will be different, particularly inasmuch as there will be no event like the breaking up of the Austro-Hungarian Monarchy, each resettlement of frontiers and populations raises the question by what principle the fate of the individuals affected by territorial changes is to be determined. We may be permitted to assert that the basis for the determination of the new nationality must, above all, be a real one—viz., one corresponding to the actualities of life and not to legal conceptions which may have become purely fictions owing to development in space and time. Thus the principle of Heimatsrecht and any similar system of ascribing people to a certain territory by some kind of administrative registration should be avoided. The principle of Habitual Residence would seem to comply best with the aforementioned requirements as habitual residence is the closest point of contact between individual and territory. Even birth alone will frequently only furnish a rather arbitrary basis, and it was therefore justly neglected in the State practice of the last century. At the most, Ordinary Birth may be chosen as a supplementary principle, particularly if artificial movements of populations instigated by a State for political reasons have falsified the original character of a territory in dispute. But even in such a case we would prefer the method adopted in the Versailles Treaty—namely, to fix the requirement of Habitual Residence for a date some years prior to the change of the territory. The principle of option, once rightly hailed as the realisation of the individual's right of self-determination, should be retained. In one case in the

ast peace settlement—namely, the transfer of a part of Upper Silesia to Poland—optants were granted a Right of Residence for a period of fifteen years, but a highly authoritative observer* has thrown some doubts on the value of such a stipulation. It is possible that exchanges of populations—which we experienced after the last War (between Greece and Bulgaria in 1921, and between Greece and Turkey in 1923)—will be insisted upon by some Powers. As far as such exchanges take place without preceding or accompanying territorial changes, they do not fall within the scope of our discussion. We want only to emphasise that they are by their nature the reverse of the long-established rule that populations of a transferred area acquire as a matter of course the nationality of the successor State. In this case Habitual Residence should be the test. For if some artificial principle, as, *e.g.*, that of Heimatsrecht, is chosen, people residing in other countries who by mere accident are still ascribed to that territory would have to share the national fate of the transferred population, to which they may stand in no relation whatsoever. This is particularly important in regard to the expected multilateral peace settlement whereby a multitude of States will be bound to observe treaty stipulations primarily concerning two States.

Lastly, the urgency of one provision should be emphatically stressed. Most of the difficulties arising from the regulation of the nationality question in the Treaties of St. Germain and Trianon and in the Minorities Treaties might have been overcome if a central international judicial authority for deciding disputes of nationality had been created. Unlike to the jurisdiction and procedure of the Permanent Court of International Justice (which was once called upon in such a controversy†) and more along the lines of the Mixed Arbitral Tribunals set up under the Peace Treaties, individuals concerned ought to have immediate access to such an international tribunal. This is the opinion of all the numerous critics of those treaty provisions. Neither the most careful and well-founded scheme for determining nationality in the case of State succession, especially in a far-reaching peace settlement, nor bilateral agreements are able to solve all problems arising unless an international tribunal, the decisions of which are binding on all States, is set up as the final arbiter. If such a tribunal had been established under the last Peace Treaties, it is almost certain that practically no former Austrians or Hungarians would have been left without a nationality, for the overwhelming majority of cases of statelessness owe their origin to the refusal of the Succession States to fulfil the obligations imposed upon them by the Treaties. There were only an insignificant number of people who had been born as stateless persons or had become such before the conclusion of the last war. Moreover, even these cases might have been satisfactorily solved by an international tribunal by way of a reasonable interpretation of the Treaties.

Although clear and careful drafting of legal provisions is of the greatest importance, yet the most satisfactory stipulations will prove futile if the respective Governments are not prepared to abide by their international obligations. We can only hope that a later historian will not be in the same position as an impartial observer who found himself compelled to state with regard to the phenomenon of statelessness in Central Europe, that “it is almost impossible to attack the question except by appealing to the good will of the Governments concerned; and that good will seem to be non-existent.”‡

* Kaeckenbeek, *The International Experiment of Upper Silesia* (1942), p. 213.

† See *supra*, p. 34.

‡ C. A. Macartney, *National States and National Minorities* (1934), p. 509.

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