In reply, please refer to: 2649

JUL 4 1944

Dear Mr. Barul:

I wish to acknowledge with thanks your letter of June 24, 1944, enclosing an extract from your second memorandum to the American Jewish Conference and other Jewish Organizations concerning the plight of Jewish people in Europe.

Very truly yours,

[Signature] J. W. Fehle

J. W. Fehle
Executive Director

Mr. Salomon Barul,
548 Riverside Drive,
New York, New York.
June 24, 1944

Hon. John D. Pehle,  
Exec. Director War Refugee Board,  
Washington, D.C.

Honorable Sir:

I take the honor to submit to you for reference and special attention, a copy of an extract from my second memorandum on the Nazi-Jewish War to the American Jewish Conference, and other leading Jewish Organizations. In presenting a copy of this paper—only as an individual—even before I could dispatch the originals—I hope I do the right thing because of the gravity of the situation, and time urgency, particularly stressed in the President's message to Congress on Refugees, June 12, 1944, and the action just taken on the matter by the House Committee on Foreign Affairs.

The object of this paper is to stimulate the initiative of Jewish Leadership in asking of our Government the legal action to which all Refugees, irrespective of territorial conditions, whether within or without the Nazi reach, are now entitled to. Because in accordance with the word and the spirit of the War Refugee Board Act of January 22, 1944, all Refugees ceased to belong to the category of "No Land's Men". Thanks to the initiative of our President their destiny has come under the jurisdiction of the United States of America. The new Status of the Refugees without the Hitler reach is of Civilians in Distress, and within the Hitler reach—because of subsequent occupations—is of Civilians in Extra Distress.

The life of these civilians, now under American jurisdiction must be respected as required by the rule of International Law properly invoked, Article 46 of the Treaty Convention of 1907—cited on page 7 of this paper—is obligatory to Hungary, Roumania, Bulgaria, and other Nazi satellites, as they are Signatories to the Hague Convention. If requested to honor the Rule of International Law, there will be for them no way out but to submit, no matter what Hitler does.

Respectfully yours,

Zalmon Berul
I cannot help reflecting on the one lucky aspect in the world struggle that our top leadership is of the progressive kind, men of talent, men of letters, and of learning. Such men, if only they had had the time and an opportunity to pause long enough on the miserable role allotted to the Jewish People in this "Tyrant's War," they could never have failed to realize the fundamental wrong in Jus-Anticipation in the very midst of the horrors of this devastating war. For the very nature of the events, as they appear, have one significance for all other human beings, and a totally different meaning for the Jew.

The action which has been unfolded before our eyes for long years now is essentially dramatic. It is struggle between opposing forces. In terms of proportion it is the War of Giants in the greatest of all world dramas. Yet right here, behind the curtain, a quiet and peaceful scene is staged, a specifically Jewish scene, with no sign of any dramatic action, no struggle, no strife. Just a lonely chamber and grave digging. Just a air-bubble injected in the veins of a helpless Kirk and her 86 little Jewish, and they are no more. This is the scene of tragedy. And the whole drama of the War of Giants, performed in grand manner, played side by side with the actionless scene turns into a world Tragedy.

Should our own Jewish leadership have had the time, and the chance to give more thought to the fatal meaning of injecting this Jewish note into the dramatic whole, they would never have permitted such a tragic disturbance in the grand harmony of the world wide drama.

This even though the Jew is stateless, and, therefore, denied his proper place in the DRAMATIC PERSONAL. True, in this war, as in all
war, only nations are engaged. Nations with their own states, and with their own armies. Yet the FACT must not be overlooked that a fundamental change of conditions has occurred for the Jew in this war. Hitler has put him the disability, or the privilege, or remaining a Stateless People. For his attack on the Jew is not an attack on a Jewish freeman, or sphere of economic or industrial influence. It is an attack on Jewish survival. And "survival of a People" is a supreme "national category". On the other side of "survival", all talk of nationalism is nothing but a memory. If it is true that the Jew lives as a Stateless People, it is still more true that the Jew survived as a Stateless Nation. And now Hitler has subjected this very survival to attack.

In search for a proper name for this war, upon the initiative of our President, many suggested the name "War for Survival". And such it probably is. In the case of the Jew it has come to its fullest expression. Because it is easier to wipe off the surface of the earth a People without a State, and without an army, and without the chance of defense. Robbed of its right to its own State, its own army, and Self-Defense, it is robbed of its chance of survival. The destruction of European Jewry without the slightest attempt of interference from any corner is the final proof of this fact.

Should our own President, who is the only one to have shown more earnest concern in the matter, had the time and the opportunity to think the whole problem through, he most probably would have taken steps to remove this incoherent tragic Jewish scene from the world dramas. He would probably have taken into account not the "refugees" on this side, but rather the "imprisoned" on the other side, as the first and paramount issue. For at stake was the life of "Civilian Populations" attacked without any cause which might justify reprisals.

Can such imprisoned innocent civilians be helped? Yet International Law guarantees immunity to all civilian populations. Unprotected non-combat-
ante must not be caused to run into refuges for the sake of their lives. Nazi Germany is a signatory to the Hague Convention of 1907. Willy-nilly Germany can be made to give up her wish of exterminating any innocent civilian population, even if it belongs to the Jewish "enemy." For only in cases of "frustran" like that of Lidice for the assassination of Bayerich, or alleged acts of sabotage against the enemy's rule in occupied territories, can the law circumvent the intent of International Law.

Let it be made clear: the millions of the civilian Jews of all European communities perished without defense since July 1942 not because they were as "Jewish civilians" excluded from the protection of International Law, but the contrary: as Jewish civilians, having no other defense to rely upon, they were more or under such protection, in whatever country they lived. Legally the possessed the constitutional right enjoyed by every other civilian of the respective country, and the right to force their immunity against any violator. If, however they perished this was not due to the absence of a protective rule, but to the absence of the proper political instrument to force the issue by demanding the application of law to the Jewish cases.

The implied moral is that it must now be considered as solidly established, that legal obligations alone, without national tie, are insufficient to achieve the protection of a People. Only when such legal obligation coincides with national obligation, the power-potential turns into active force. When the survival of its own people is at stake, national initiative knows no obstacles, and no restraint. It watches above all to maintain its alertness and integrity, to take advantage of all means, and all rights, and all chances of defense. It is alert to its own destiny, and acts without the slightest delay.

On July 14, or after, when the Polish Government-in-Exile first learned about the decision taken by the Nazi authorities to launch its extermination attack upon the Jewish population of Poland, it was the legal obligation of that Government to counteract the attack of the enemy upon a sector of the
civillian population of the Polish State by all means at her disposal. The steps taken by the Polish Government-in-Exile to keep the world informed about this new attack, and to ask the United Nations to do something about it, while the enemy worked with such speed as to murder thousands daily, was a flagrant violation of the constitutional rights of the Jewish citizens of Poland on the part of the Polish Government-in-Exile. Whether supported by any other of the United Nations or not, it was the legal obligation of the Polish Government-in-Exile, as a Signatory to International Conventions and Agreements, to invoke immediately through her Legation the form of International Law for the protection of the civilian population of the Polish land. Protection due them because they were being slaughtered not on political or military charges, but on the sole charge of belonging to the Jewish people, under Nazi Germany elected to treat as an enemy. This is exactly why International Law must here be applied, as law to safeguard life and rights of the innocent civilian against enemy treatment.

The Hague Convention to which Germany is a Signatory, provided the law of protection in Article 44, Section III "ANNEX TO THE CONVENTION RELATING TO THE LAWS AND CUSTOMS OF WAR ON LAND" it makes it compulsory that:

"Preliminary and rights, individual life and private property, as well as religious convictions and practices, MUST BE RESPECTED."

This same obligation to invoke the rule of International Law fell on all other Governments-in-Exile as soon as it has become known that the enemy practiced the transportation of the Jewish & cultural of their populations to officially undisclosed destinations, but connected with the recent campaign of Extermination of the Jewish people.

Yet neither the Polish, nor any other Government-in-Exile, singly or together have taken any such action, and the murder continued without the slightest interference. Can any one pretend or even imagine that such action would not have been taken if at the time of the attack there had been in existence a Jewish Government, either on its own Land, or in Exile? Would a
Jewish Government have permitted the loss of millions and years with the
extermination of millions of life, doing nothing about the defense of its people.
It would have been noted without a second's delay, as does any other Govern-
ment, where the legal and national obligations toward the people is combined
rather than divided. One signature on a paper of the kind Secretary Hull has
recently presented to the Swiss Legation to the Japanese concerning the mis-
treatment of American civilians and prisoners of war, would have perhaps
settled the whole matter, and, if not, there would have been military action,
and the proper counter-attack of International Law, as long as Interna-
tional Law is the Law of States, and as long as even a Hitlerite State insists
on adhering to rules of International agreement, the murder of European Jewry
as a non-combatant civilian population would have been stopped.

Among the Gripsholm 'travellers' there were also some American Jews who
have come back to this country. Why were none of these Jews taken by the Nazis
to the slaughter house of the Polish Ghettoes? Because as citizens of American
citizens, they were under the protection of International Law by virtue of
American Sovereignty. But as also are the Danish Jews, and the Norwegian
Jews, and the Polish Jews, and all other Jews, citizens or subjects of their
respective European countries new under the occupation of the enemy, and
therefore under the protection of International Law, just as are the Jewish
citizens of America. They are, by virtue of the same Danish, Dutch, or Polish
sovereignty, because though the lands were occupied, yet they were not con-
quered. Because they continue the struggle against the enemy from without
with their Governments and their armed forces operating in exile. The demand
of all these Governments-in-Exile through their respective Legations to the
Nazi Government based upon the written letter of International Law, would
have forced even a Hitler to surrender.

It is neither my intention, nor my direct purpose to stress here the
political point of the inevitability of a Jewish State, if the Jewish people
is to survive. Here I am concerned primarily with the legal and the military
principles, because only the law of right, if violated, then the law of
Forces make it possible to protect the precious life of any human being. For if a people is forced to write off a full quarter or more of its living strength on the chains of any chance tyrant, and without even the opportunity to go to war with him, then such life is worthless, even if that people has evolved both creeds, Judaism and Christianity, for the human race.

And let no one make the fatal mistake of hiding it on that aberration in Judaism called Antisemitism, or on any other real or imaginary bad relations between existing powers and the Jewish People. Law is law, and it is law for Jew and Gentile alike. And, if the law of Sprach is the last ditch stand for the protection of the human species, is it the Jewish case neither obeyed, nor enforced, then there is something very serious to think about, and, -no lighthearted resort to ready-made formulas! Why was the Law of the Hague Convention of 1907 not enforced, and millions of human permitted to perish, when it clearly demands that the lives of civilians MUST BE RESPECTED? Why was the easiest step, -and the most realistic one- not taken when there was every opportunity to liquidate with it the whole problem and all difficulties connected with it in time and conditions of war?

There is but one answer, An answer both simple and tragic; there was no one to take a REAL interest. More correctly, there was no one under legal and national obligation to take the initiative. The legal obligation alone of Poland, and other states was not enough. The national obligation alone of the Jews, even if they were more concentrated, and at top national efficiency, was not enough. For only States withLegations to represent them in conditions of war are empowered and facilitated to invoke the action of International Law. The Jewish People is Statesless an non-representative. It has no political instrument of its own to safeguard even the right of life itself. It is no Signatory to International Conventions and Agreements. Such conditions tend, as they have, to make even a position Law, guaranteeing Jewish life, to become imperative. This is borne out by the cruel truth that in spite of all sympathetic verbiage from so many corners, not a single state has taken the
initiative to stop the murder.

No, it is not Antisemitism. It is just the inherent and natural ego-centrism that controls both, the individual and the nation, here for oneself first and for everyone else last. The best and the most humane State, the one which did take the matter to heart, failed to think of the mass of the numerous condemned European Jewish millions.

It is clear; there was no Jewish State to take the matter into its own hands, legally, as a "Person of International Law", and the fatal results were inevitable. Article I of the Montevideo "CONVENTION OF RIGHTS AND DUTIES OF STATES" of 1933, reads:

"The State as a person of international law should possess the following qualifications: a) a permanent population; b) a definite territory; c) Government; and d) capacity to enter into relations with other States."

This article only defines in legal terms the philosophy of security of life through the People's lawful participation in the Law of Nations. A People without a State cannot be a "Person of International Law" and can affect no security of life.

In this light the initiative taken by the Roosevelt Act of the WAR REFUGEE BOARD, of January 22, 1944, in behalf of the Refugees, acquires paramount importance. For through this act a considerable portion of the European Jewry, who survived the doom of extermination, has for the first time been given definite legal shape: "this board was charged with the responsibility of taking all action consistent with the successful prosecution of the war to RESCUE THE VICTIMS OF NERBY OPPRESSION IN IRIENTIAL DANGER OF DEATH." Before that act, all refugees fleeing from Poland, Czechoslovakia, Holland, and other lands have not only become Stateless, but also Status-less, under the jurisdiction of no Land, so none, except the United States of America, volunteered to take those "No Land's民" under protection by an act of State.

In his Message to Congress, June 12, 1944, the President says:

"I determined that this Government should intensify its efforts to combat the Nazi terror. Accordingly I established the WAR
REPORT BOARD, composed of the Secretaries of State, Treasury and War.
This Board was charged with the responsibility of taking all action consistent with the successful prosecution of the war to rescue the victims of enemy oppression in imminent danger of death, and to afford such victims all other possible relief and assistance. It was entrusted with the solemn duty of translating this Government's humanitarian policy into prompt action, thus manifesting once again in a concrete way that our kind of world and not Hitler's will prevail. Its purpose is directly and closely related to our whole war effort.

It appears that the American Government could take initiative only in behalf of Refugees, that is people who were no more under any foreign control. As refugees they were thus given a new Bill of Life: RESCUE from imminent danger of death through "prompt action", "thus manifesting in a concrete way that our kind of world and not Hitler's will prevail."

Is it possible that just because of the new Hitler invasion of Hungary and the Balkans, the intention and purpose of this great act of the American Government was to be changed? Can it be that all refugees, meaning all those humans in Hungary and the Balkan lands, who on the date of January 31, 1944, were taken under American Jurisdiction, have lost their legal status of Refugees in the sense just given to it by the President's Message to Congress on the Refugees? If recaptured physically by the new Hitler occupation, does it mean that they were also RECAPTURED LEGALLY, and subsequently, to be subject to extermination in the eyes "of our kind of world"?

This is obviously unthinkable. For if such were the case, then any lawful act of any sovereign state could be made null and void just by an arbitrary act of an enemy. The new Hitler occupations could not affect the factual status of conditions concerning the refugees, but not their legal reality. As all refugees are now under American Jurisdiction, the new invasion could only inspire prompt action on the part of the American Government to reaffirm the immunity of these humans as REFUGEES WITHIN Hungary, Roumania, Bulgaria, and other lands, by making effective the rule of International Law. The appointment of the Secretary of State as a Member of the Board obviously anticipated all eventualities requiring action on the part of the Secretary of State.

"Say: President Roosevelt in his Message to Congress:"

\[\text{[Text continues on next page]}\]
As the hour of the final defeat of the Hitlerite forces draws closer, the fury of their insane desire to wipe out the Jewish Race in Europe continues unabated... Notwithstanding this Government's UNHOLY WARFARE WHICH ARE CONTINUING, the number actually rescued from the jaws of death have been small compared with the numbers STILL FACING EXTINCTION in German Territory. This is principally due to the fact that our armies... persist in their fanatical extermination campaign and actively prevent the interned victims from seeking safety.

"In the face of this attitude of our enemies we must not fail to take full advantage of any opportunity, however limited, for the rescue of Hitler's victims. WE ARE CONFRONTED WITH A MOST URGENT SITUATION.

One of such opportunities is no doubt the resort to the power of International Law, Telegrams to the Hungarian, Romanian, Bulgarian and other Governments, through the respective Legations, by the American Government, similar in nature to those sent to the Japanese, and made public February 11, 1944, would no doubt be of the quickest effect in the urgent need for the rescue of Hitler's victims. In full coexistence with the war effort, it will place the Hitler satellite States all of the Signatories to the Hague Convention of 1907, and all other Conventions and International Agreements--under the direct obligation TO RESPECT THE LIVES OF CIVILIANS WITHIN THEIR LANDS. And even the most tempestuous fury of Hitler the demigod may not possess the power to force these lands, particularly in the present shape of events, to MANIFEST THEIR VIOLATION OF INTERNATIONAL LAW on the formal protest of the United States of America.

Salvo, Berul

New York, June 24, 1944.
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ZALMON BERUL
548 RIVERSIDE DRIVE
New York 27, N. Y.

Special delivery

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He. John A. Lebke
Exec. Director War Refugee Board
Washington, D.C.

SPECIAL DELIVERY