World Jewish Congress, Volume 1
(Folder 4 of 4)

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WORLD JEWISH CONGRESS

CONGRES JUIF MONDIAL • CONGRESO JUDIO MUNDIAL

1834 BROADWAY

NEW YORK, 23, N. Y.

LONDON
55 New Cavendish St., W 1

GENEVA
37 Quai Wilson

BUENOS AIRES
Corrientes 1979

JERUSALEM
Vaad Leumi P. O. B. 471

MONTREAL
1121 St. Catherine St. W

MEXICO CITY
Sonora 174-4

CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

August 1, 1944

In reply refer
to: No. 197

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Pehle:

Attached please find a copy of a report on the situation in Terezin (Theresienstadt) at the beginning of 1944 which we received from Mr. Ernest Frischer, member of the Czechoslovak State Council. May I add that the report is not for publication.

Sincerely yours

A. Leon Kubowitzki, Head
Rescue Department

ALK:ef
Enc.

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Received: 7.28.44

Report on Terezin given probably at the beginning of 1944 by a resident of the Protectorate in a neutral country.

Many people wrote and received letters regularly and sent parcels to their friends or relatives in Terezin. The first German commander of Terezin was Doctor Seidl. His rule was sometimes rigorous, sometimes more human, according to his humour. He was superseded by Burger "who was a biest". While Burger was in command, i.e. during 1943, many Jews died there of various diseases due to underfeeding. A few months ago, Burger was replaced by Rahm, who is reported to be rather human and decent as far as this can be expected of an SS-officer.

The maximum number of Jews accomodated in Terezin at a time was about 70,000. This was the beginning of 1943. At that time, the average death rate was about 100 persons daily. Thus the number of Jews had decreased to between 30,000 and 35,000, at the beginning of this year. There have been various diseases, even typhoid fever and much tuberculosis, but the spreading of infectious diseases was reported to have been stopped. There are many Jewish doctors in Terezin, including very famous men, and the hospital is well equipped. They are also supplied with some medicaments, but it is not known whether they receige all the medicaments they need.

Terezin is an old fortress which was abandoned in the first half of the 19th century. The old casemates have been used to accomodate people, as well as all houses and barracks. Sometimes up to twelve or fourteen people were obliged to live in one room. Married couples and families were sometimes massed together, sometimes accommodated separately. In the communal bedroom men and women were separated. Sometimes families or married couples who had connections or luck or were able to bribe somebody got hold of a room or small flat. The advantage of one's own room is combined with the disadvantage that food must be fetched from the public kitchen and becomes cold whereas people living in communal bedrooms are supplied from kitchens in the neighborhood.

The worst period was 1943 when the people interned received only a cup of coffee substitute in the morning, very bad soup and a slice of bread for lunch and coffee substitute in the evening. Parcels sent to the Jews have considerably relieved the situation of many of them, but this was of course no general solution. In the beginning, the weight of parcels was restricted to 2 kilogrammes, but their number was not limited. This fact was "abused" by many persons, particularly by those who had relatives or friends in the Protectorate. Some of them received as many as ten or twenty parcels weekly whereas others received nothing. Then the commander decreed that Jews in Terezin might receive only one parcel of 20 kilogrammes every six months if the parcel is dispatched from the Protectorate. From other parts of the Reich and from abroad, more parcels of 2 kilogrammes may be sent to Terezin. It is believed that the parcels which arrive in Terezin are regularly delivered to the receiver and not stolen. Persons to whom parcels were dispatched have always confirmed the receipt in uncensored letters which were smuggled out.

During the last few months the supply of food has considerably improved. The Jews now receive more bread and potatoes, cooking fat and, about three times a week, meat. Almost all of them are working. There are various workshops and factories in Terezin where parts of uniforms for the German army, furniture, toys, paper bags and many other articles are manufactured. The inmates of the ghetto have one cafe. They have formed an orchestra,

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concerts are performed and plays are acted. There was even a performance of Smetana's "Bartered Bride", accompanied by piano and without side-scenes. In summer the internees are allowed to bathe in the river Elbe, where a beach has been prepared. Nevertheless staying in Terezin is anything but pleasant. People receive no tobacco which is very unpleasant for smokers. Once, at the end of 1942, several Jews succeeded in fleeing and as a result very rigorous measures were introduced. There was a curfew at 7 p.m. and all lights had to be put out. Most grievous of all is the permanent fear of being sent to Poland. For a time Terezin has also been used as a transit camp for Jewish transports from Belgium, Holland and France to Poland. There is no evidence of real atrocities occuring in Terezin as are reported from Poland. The guards outside are mostly Czechs, who are very decent. In the town, the Jews have established a self government with Jewish policemen who are reported to be very strict. In autumn 1943 several Czech gendarmes, who secretly dispatched letters and parcels to the inmates, were caught and shot. Since then communication has been rendered more difficult, but nevertheless people succeeded in keeping contact with the inmates.

If parcels are being sent to Terezin it is recommended that they should contain particularly fats, sugar, meat and, if possible also vitamins, especially vitamin C.

People vene marry in Terezin. Sometimes the marriage is genuine, but sometimes only fictitious in order to save one of the partners from being deported to Poland when the other partner has an important job, or particularly when he or she is to move to another place, when wife or husband can thus leave Terezin also. There is nothing known about the birth of children in Terezin.

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August 1, 1944

In reply refer
to: No. 196

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Pehle:

I thought you might be interested in the attached summary of an article published by the Swedish newspaper "Eskilstuna-Kuriren" on July 10th.

The heading, "Better Late Than Never", has been invented by the News Digest and is misleading. The article which protests Sweden's inaction in the presence of the extermination of the Jews, states on the contrary: "It is too late." This indictment is interesting for a certain trend in the Swedish public opinion.

Sincerely yours

A. Leon Kubowitzki, Head
Rescue Department

ALK:ef
Enc.

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---Better Late Than Never

D44. Rekilstuna-Kuriren, 10.7.44. An editorial says: According to Swiss reports 450,000 out of 900,000 Hungarian Jews have been deported or killed. The rest will be speedily liquidated. Hitler is in a hurry. Was it impossible to prevent or at least limit the worst massacre of innocent people in history? At least 5,000,000 innocent people have died since the Nazis started persecuting the Jews. When extirpation was proceeding in Poland and several million Jews were carted to the shambles or the lethal chamber, it was the attitude of the Swedish Government that Swedish interests forbade the Swedish nation, and at the same time international opinion, to know what was happening. Anyone who tried to expose what Hitler was doing was stopped by confiscation. We had to avoid conflict with a mighty Power. We were neutral. The Swedish line was the Christian line. But it was also the line of safe-conduct ships, ore exports and coal imports. A Christian nationx believes in the victory of good. Yet we never tried to make its word of command heard by the world while there was still time.

Now the last of the Jews on the continent are suffering the death to which Hitler has sentenced them. It is too late. The same Government which concealed crimes when they reached their zenith sends forth the old Swedish monarch to appeal for mercy. King Gustav's appeal to Admiral Horthy is doubtless worthy of appreciation. Now we shall not have to pay for it. It is as free of risk as it is hopeless. We are too late, because we did not dare to intervene in time.

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August 1, 1944

In reply refer
to No. 194

Mr. Lawrence S. Lesser
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Lesser:

May I call your attention to the attached Letter to the Editor, which was published by the "New York Herald Tribune" on Sunday, July 23rd, and to a letter from the "Herald Tribune" received by my secretary.

I would like to discuss this matter with you at the earliest opportunity.

Sincerely yours,

A. Leon Kubowitzki
Head, Rescue Department

ALK:bg

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COPY

NEW YORK HERALD TRIBUNE

July 23, 1944

To the New Y ork Herald Tribune:

"We will turn this continent into a maelstrom of destruction," the Nazis broadcast. For years they have threatened to pull all Europe down in ruins with them if they are defeated. More than that, they have plotted so that Germany will emerge from this war with a wider margin of superiority over her neighbors than she had in 1939-- in man power, in industrial strength, in internal unity.

The Nazi threat of chaos in Europe is one which Germany's enemies should have met long ago. It might have saved the lives of millions of civilians and war prisoners, from North Cape to Sicily and the Caucasus. So far not a voice has been raised by any Allied leader comparable with President Wilson's scathing words to Germany in 1918, when her armies were systematically destroying every French village in the path of their retreat. That destruction ceased within twenty-four hours of his ultimatum of specific Allied reprisals against Germany.

We should deal with these Nazi acts and threats in the only way they can be met before Germany is defeated -- by official Allied warning that failure of the German people to prevent further German theft, butchery and destruction in occupied Europe will result in Allied refusal to discriminate in war or peace between Germans and Nazis, between Nazi arsenals and villages, between the Gestapo and the workers and peasants of the Reich.

George Dock, Jr.
Scarsdale, N. Y.
July 14, 1944

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O
P
Y

NEW YORK HERALD TRIBUNE
230 West 41st Street
New York

July 25, 1944

Miss Charlotte Weidenfeld
Room 222, 1834 Broadway
New York City

Dear Miss Weidenfeld:

The statement referred to in Mr. Dock's letter seems to have been President Wilson's note, dated October 14, 1918, in reply to the German Government's overture toward peace. We have been in touch with Mr. Dock, who says that his recollection of the incident is based on his own experience; that he was at that time in the Aisne region, and that after the publication of President Wilson's statement in the Paris papers, the Germans ceased destroying villages and homes as they retreated.

The note gave briefly the terms on which an armistice would be considered, and said, "The nations associated against Germany cannot be expected to agree to a cessation of arms while acts of inhumanity, spoliation, and desolation are being continued which they justly look upon with horror and with burning hearts."

If you wish the full text of the note, you may find it in the newspapers of October 15, 1918. The New York Tribune carried it on the front page. You could consult the issue in the New York Public Library, or could have a photostat made there.

Yours sincerely,

Secretary to the Editor

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File

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August 2, 1944

In reply refer
to: No. 200

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Pehle:

I would like to call your attention to the summary of an address delivered by the Deputy Reichs Press Chief, Helmut Suendermann, before the foreign press on July 19th.

May I suggest that this statement be taken advantage of in order to induce the International Committee of the Red Cross to request Mr. Suendermann to state:

1) Under what control the Jews are placed once they have been "put to work" (since they are no longer under the control of the State police);

2) What is at present the number of Jews in German-occupied Europe which Germany wishes to place "at the disposal of . . . a world quarantine in as remote a region as possible after the war?"

Sincerely yours

A. Leon Kubowitzki, Head
Rescue Department

ALK:ef
Enc.

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The Jewish Problem Whitewashed

A43. Transocean (for Far East), 19.7.44 (17.50). Referring to the lively debate in the neutral press on the measures taken against the Jews in Hungary, Deputy Reichs Press Chief, Helmut Sündermann, discussed the whole matter of the treatment of Jews in Europe when speaking to the foreign press today at noon.

In an explanation of the German attitude Sündermann once again drew attention to a letter sent by the Zionist leader, Weizmann, to Prime Minister Chamberlain at the outbreak of war, assuring him that the Jews were on the side of Britain and would fight on that side.

The measures taken against the Jews were at first very moderate ones. They were allowed to emigrate from Germany until the autumn of 1940. The Yellow Star to be worn by Jews was introduced only in 1941. This measure was followed later by the isolation of the Jews and their incorporation in the European production system, in accordance with their professional training. They were placed at the disposal of various organisations, like the OT, or were sent to farms. Like other manpower thus employed, they were housed in camps. After having been put to work, the Jews are no longer under the control of the State police. A particularly humanitarian angle of the treatment of Jews, Sündermann explained, is that old Jews, or Jews who had won awards, were not put to work, but have been sent to Terezin in the Protectorate, where they live in a Jewish settlement. There is no compulsion to work there, and Jewish administration has been instituted. A commission of the International Red Cross recently inspected the accommodation of Jews in Terezin. This Jewish settlement is in postal contact with the whole world. In June, for instance, 20,000 food parcels arrived there from Portugal. Negotiations are in progress with the Red Cross about the dispatch of food parcels to other Jewish camps also . . . .

Peace would reign in the world only after an international quarantine had been introduced against Jewry, as Jews were always in the background sending others into the war, Sündermann concluded. It is Germany's wish to place European Jews at the disposal of such a world quarantine in as remote a region as possible after the war.

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August 2, 1944

In reply refer
to: No. 201

Mr. I. M. Weinstein
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Weinstein:

May I call your attention to the attached summary of an article which appeared on July 8th in the Finnish newspaper, "Aamulehti", which is published in Tampere.

It appears that the Finnish opinion is not extremely well-informed of the German atrocities since the paper states that "Sweden has lost her sound sense of judgment is the fact that the British have already begun to spread horror propaganda in Sweden - for instance, they are reporting that the Germans have slaughter factories in Poland to which the Poles and Jews are taken in trains to be burned."

Is it not your opinion that a number of broadcasts be beamed to Finland giving them full details of the horrors committed by the Germans in the course of their "settlement of the Jewish problem"?

Sincerely yours

A. Leon Kubowitzki, Head
Rescue Department

ALK:ef
Enc.

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D32. Aamulehti, Tampere, 8.7.44. The commentator L.S. writes that the British are masters of propaganda, since they are not bound by any moral considerations, but use lies, falsifications and deceit to a great extent. This propaganda has greatly influenced Sweden, and the Swedes are now completely ruled by a war psychosis and are imbued with a blind hatred of the Germans.

The most frightening evidence of how fully Sweden has lost her sound sense of judgment is the fact that the British have already begun to spread horror propaganda in Sweden - for instance, they are reporting that the Germans have slaughter factories in Poland to which the Poles and Jews are taken in trains to be burned. They also say that the Germans torture their prisoners-of-war in concentration camps, and that the Swedes are urged to visit private film shows where such deeds are shown. It appears incredible that even the great industrial leaders believe such stories. Thus the Swedes say of the Katyn murders, etc., which were investigated by neutral committees, that with money one can prove anything. The Swedes do not bother to ask themselves what the Germans would gain by such activity, or wonder who has been able to make films of happenings in p-o-w camps. This propaganda is similar to the propaganda spread during the first Great War. The fact that the Swedes have become the victims of British propaganda ought to urge us to assume a cautious attitude to everything coming from there.

We have all the more reason to do so since the Swedes' wrong conception of the Russians' love of peace before the war influenced many of our politicians to adopt an attitude to our defence question from which we are still suffering. Sweden is in no respect a suitable example to us, our own situation being completely different. We must consider everything emanating from Sweden with Finnish eyes. This appears rather difficult to certain circles which are imbued with a slave mentality and an admiration of everything foreign.

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August 29, 1944

In reply refer
to: No. 224

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Pehle:

I beg to enclose a copy of a letter which Dr. Ignacy Schwarzbart, member of the Polish National Council, addressed on June 27th to the Polish Prime Minister Stanislaw Mikolajczyk.

May I call your particular attention to the suggestions formulated under 1a and 2b, 2c and 2d.

As concerns the first suggestion, I will be permitted to refer to the letter I wrote to you on July 1st in which I suggested that the Polish Government in London be approached by this government and requested to instruct its underground to attack the camps of Oswiecim and Birkenau and to destroy the instruments of death.

Sincerely yours

Leon Kubowitzki

A. Leon Kubowitzki, Head
Rescue Department

ALK:ef
Enc.

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(Translation)

Dr. I.Schwarzbart
45, Queens Court,
Queens way, London, W2

27th June 1944

The Prime Minister,
Stanislaw Mikolajczyk,
London.

Dear Prime Minister,

The Germans have intensified during the last weeks their action of cruel and barbaric extermination in regard to the Polish Nation as well as in regard to the remnants of Polish Jewry. They have increased the deportation of Jews from other countries into Poland in order to accomplish there their diabolical deed of the total biological destruction of European Jewry. The last event of 100.000 Jews from Hungary who have been gassed- there were among them without any doubt also Polish Jews who had succeeded in escaping from the German hell - is a link in the chain of barbarities committed by the Germans who have already destroyed in Poland up to date hundreds of thousands of Poles and millions of Jews. The defeat of the Germans approaching infallibly closer and closer will provoke them out of rage and spite to commit further and still more intensified acts of cruelty.

During the last days I have had an opportunity together with eng.Reiss to submit to the Minister of Interior several suggestions regarding the actions to be taken in Poland. Lately I had an opportunity to discuss with the Polish Minister for Foreign Affairs the latest information about the gassing of 100.000 Jews from Hungary and I submitted to him some suggestions regarding the actions to be undertaken in the international field. Both Ministers have manifested a genuine concern for this matter.

As I understand that this matter will be probably discussed today at the meeting of the Cabinet, I should like to submit to you, also in connection with the remarks which I have made yesterday in your presence during the debate in the National Council, my suggestions regarding these two problems for your favourable consideration and for the decisions to be taken by the Cabinet.

1). Regarding the action in Poland: a) Our Army in Poland is now undertaking an extensive action against the Germans. I think that time has come now that in the plans for this action should be included the liberation of victims imprisoned in diverse camps as Oswiecim, Majdanek, Treblinka, Sobibor and many others. It is an impelling necessity to save the lives of those tens of thousands of victims if we want to prevent their being killed by the Germans in this last period of the war. It is known that the slaughter of the Jews by the Germans is part of a systematic plan and the rescue of these remnants as well as of other victims becomes therefore one of the first tasks of our Government and country. Two means of action have been suggested in connection with this: to bomb from the air the administrative buildings in these and to arrange an armed attack on the camps by the units of our Underground Army in order to rescue the victims. Both these tasks are undoubtedly wrought with difficulties. But perhaps some " combined operation" of these means may achieve our purpose.

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I think that time has come now to do it. The success of this action may prove indeed to be the only practical means to prevent Hitler from continuing his action of deporting people to Poland, the country which he has selected as the slaughter place of millions of Jews. A successful action against these camps may dissuade the Germans from continuing with their procedure and may free tens of thousands of people. It is not suitable to enter into the details of this problem in a letter and it is rather a matter to be dealt with by the proper factors and not by me as a layman.

b). The further suggestion which has been raised several times is to arm the remnants of Polish Jews in Poland so that they may defend themselves.

c). The third suggestion is that the greatest possible number of Jews should taken in into the armed underground movement.

d). Fourth:- means should be assured enabling to hide the Jews in greater extent than hitherto.

e). Fifth:- to consider ways and means in order to free people from the forced labour camps which are in fact nothing else but places in which the inmates are wearied out before they are killed off.

f). Sixth:- special attention should be paid to the problem of rescuing the remnants of Jewish children in Poland, against whom the fury of the Germans is particularly directed as thus the future generations are being destroyed too.

All these suggestions are far from exhausting the problem, but at this moment I am mentioning only these.

2) Regarding the international action.

It appears from many observations experiences and conversations between Jewish Organisations and the representatives of various Governments that the wall of distrust in the received information about the extent of suffering and the losses of population in Poland has been breached. The tragic development of events succeeded, alas so late in the day to convince the leaders of international politics that all this is true. I am transmitting the information which has reached me about the murderous extermination action of the Germans to Jewish Organisations in Gt. Britain, the U.S.A. Palestine and to the Jewish Telegraphic Agencies. I have transmitted to all of them the information about the gassing of 100.000 Jews from Hungary in Oswiecim.

Our Government have several times taken the initiative to awaken the public opinion in the Allied countries as well as of the Allied Governments and they have done on many occasions with considerable success. As these terrible German atrocities are being committed on the soil of Poland it is but natural that our Government should take the initiative in the first place.

It is difficult to find political means of action about which one could state a priori that they will prove successful, because the power so far lies still in the hands of the Germans. But it seems to me that all steps should nevertheless be undertaken at this moment in view of the circumstances which I have mentioned in the beginning. The following suggestions occur to my mind:

a). The Polish Government should approach directly the Vatican in order that the Pope should appeal to the Hungarian people as a Catholic nation asking them to oppose in an active manner the deportation of Polish citizens and of Jews in general to Poland; the Vatican should also raise again their voice in this matter.

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b). Our Government should undertake steps in consultation with the British, the U.S.A. and other Allied Governments in order that a renewed solemn and strongly worded warning should be addressed to the Germans in this last period of the war. This warning should not be general but ought in my opinion contain an intimation that the leaders of the Gestapo of all ranks will be held responsible for the murder of the population in Poland, and especially for the action of gassing and deporting into Poland, and that they will be unremittingly punished for their crimes.

c). The initiative should be taken to arrange that on a given day the whole press in the Allied countries should raise their voices in indictment of the Germans for the atrocities committed in Poland at the present moment. The same thing should be arranged regarding the broadcast stations in the Allied world. This can of course be arranged only with the consent and the inspiration of Governmental factors.

d). Millions of leaflets should be dropped over Germany in which the German people should be told of the numbers of the victims killed by the Germans in the European countries up to day. The leaflets should also contain a warning addressed to the German people in case they themselves would not put an end to the mass murder committed by their representatives. It seems to me that at this moment when the German morale is cracking such leaflets may prove to be of a decisive factor.

e). The British and the U.S.A. Governments should consider the advisibility of bombing the administrative buildings in the death camps as montioned above.

It is clear that even these proposals do not exhaust the problem. In view of the tragedy of the Jews in Poland, which is the most terrible section of the sufferings of all nations, I beg you, and our Government to undertake action in this matter as a continuation of the efforts which have been made so far. I am sending a copy of the present letter to the Minister of Interior and the Minister for Foreign Affairs.

I beg you to accept the expressions of my highest esteem

I. Schwarzbart

#731 -8/29/44-fh

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Files

LAW OFFICES
LOUIS E. SPIEGLER
SOUTHERN BUILDING
WASHINGTON 5, D. C.

NATIONAL 9068

SOL. M. ALPHER

August 29, 1944

Mr. John W. Pehle,
Executive Director
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Pehle:

Dr. Nahum Goldmann received on August 23rd from Mr. Joseph Linton of the Jewish Agency for Palestine in London, cable as follows:

> "Adler Rudel proceeding shortly to Stockholm our behalf connection Hungarian Jews stop would be helpful if you could obtain recommendations for him to Stockholm representative WRB."

Adler Rudel is a Zionist Social Worker who has been associated for many years with refugee work in England.

The World Jewish Congress would like a word of reference from the War Refugee Board to your Stockholm representative.

Respectfully,

Louis E. Spiegler

LOUIS E. SPIEGLER
Washington Counsel and Representative
WORLD JEWISH CONGRESS

LES:sp

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August 29, 1944

In reply refer
to No. 228

Hon. John W. Pehle
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Pehle:

I beg to inform you that I received from Dr. Abraham Silberschein the following cable, which was sent from Geneva on August 22:

"TODAY ARRIVED FROM BELSENBERGEN 326 HUNGARIAN

JEWISH STOP AWAITING ANOTHER SIMILAR TRANSPORT

HERE REMAINDER FROM 1600 MAY BE SENT SUEDE"

Sincerely yours,

A. Leon Kubowitzki
Head, Rescue Department

ALK:bg

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WORLD JEWISH CONGRESS

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TELEPHONE: CIRCLE 6-1900

August 29, 1944

In reply refer
to No. 226

Mr. I. M. Weinstein
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Weinstein:

I beg to inform you that a cable received from London urges us to have preventive pressure brought to bear on the Slovak Government, in view of the approach of the war front to this country.

I am sure you will want to act at once on this suggestion.

Sincerely yours,

A. Leon Kubowitzki
Head, Rescue Department

ALK:bg

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AUG 28 1944

Dear Dr. Kubowitzki:

There are attached copies of cables which the War Refugee Board has requested the State Department to dispatch in your behalf.

Very truly yours,

(Signed) Florence Hodel

Florence Hodel
Assistant to the Executive Director

Dr. A. Leon Kubowitzki,
World Jewish Congress,
1834 Broadway,
New York, New York.

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RDrury 8/28/44

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Secretary Morgenthau

___Mr. Gaston	___Mr. Lesser
___Mr. Paul	___Mr. Luxford
___Mr. White	___Mr. Stewart
	___Mrs. Taylor
___Mr. E.M. Bernstein	✓ Files
___Mr. DuBois	_____
X Mr. Friedman	_____
___Miss Hodel	_____

We ought merely to tell Kubowitzki what we can tell him.

What he knows, + fears of German influence

J.W.D.

Done Aug 23

OFFICE OF THE EXECUTIVE DIRECTOR
WAR RESEARCH BOARD

Okay

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

To:
(1) Mr. Pehle (Room) (Bldg.)
(2) (Room) (Bldg.)
(3) (Room) (Bldg.)

Mr. Friedman suggested that I send it up to you.

From: Akzin (Date)
(Room) (Bldg.)

000173

File

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

INTER-OFFICE COMMUNICATION

DATE August 22, 1944

TO Mr. Friedman

FROM Mr. Akzin

Mr. Kubowitzki, of the World Jewish Congress, informed me that he received a cable from his representative in Geneva, Mr. Riegner, suggesting that Kubowitzki acquaint himself with the tenor of the cables sent by McClelland to the War Refugee Board in the first days of August, dealing with the Hungarian situation and the Red Cross offer.

Kubowitzki added that he believes this cable to indicate that McClelland is in favor of these cables being shown to him.

I replied that if McClelland had wanted us to know that he favors the showing of the cables to Kubowitzki, he might have forwarded Riegner's message through us, adding a note from himself to that effect.

I promised to let Kubowitzki know if his request meets with an affirmative decision.

B. A.

000174

AUG 13 1944

Dear Dr. Wise:

This is in response to your letter of August 14 with regard to certain material emanating from your representative in Lisbon.

The material to which you refer is transmitted to you herewith pursuant to your request. I regret that this material was not transmitted to you more promptly.

I should point out, however, that the exceptional facilities granted to the War Refugee Board by the State Department whereby private agencies may under certain circumstances use governmental facilities for the transmittal of private messages is strictly limited to messages necessary to carry out the objectives of the War Refugee Board, and should not therefore be used for other purposes.

Very truly yours,

(Signed) J.W. Pehle

J. W. Pehle
Executive Director

Enclosure.

Dr. Stephen S. Wise
World Jewish Congress
1834 Broadway
New York, 23, New York.

JWPehle:ecr
8/18/44

Cleared with Warren & State.

34

000175

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MONTREAL
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MEXICO CITY
Sonora 174-4

CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

August 14, 1944

Hon. John W. Pehle
War Refugee Board
Washington, D. C.

My dear Mr. Pehle:

Dr. Leon Kubowitzki, Head of our Rescue Department, has reported to us that correspondence between Mr. Weissman of Lisbon and the World Jewish Congress was held up by the War Refugee Board. The reason advanced by Miss Hodell to Dr. Kubowitzki was that the letters contained charges against another Jewish organization which the Board did not wish us to have pending an investigation of the situation in Lisbon by the Board's representative.

I am constrained to say that the whole situation makes a strange impression on me. I can very well understand a censorship that is applied for military or security reasons, but I cannot at all comprehend the motives that seem to have operated in this matter.

I should appreciate it very much if you will find it possible to write me some word of clarification in this regard.

Faithfully yours,

Stephen S. Wise

ssw/id

34

000176

My dear Dr. Wise:

I have your letter of August 14, 1944, in which you request that I give you some word of clarification regarding certain correspondence addressed to the World Jewish Congress by Mr. Weissman of Lisbon and sent through the State Department and War Refugee Board facilities.

As you know, a representative of the War Refugee Board has recently returned from Lisbon where he investigated the charges made by Mr. Weissman against the field representatives of the Joint Distribution Committee. During this trip an agreement was worked out between Mr. Weissman and the other interested parties and an understanding between the two appears to have been found. A copy of this agreement was given to Dr. Kubowitski and he was told that the above-mentioned material had not been forwarded to the World Jewish Congress pending an investigation by the War Refugee Board's representative of the matter. It was suggested that, in view of the agreement and the fact that the reports contained in the material did not coincide with the facts as found by the Board's representative, it would perhaps be just as well if such material were left with the Board. Dr. Kubowitski was told that he could read the material; ~~xxxxxxx understanding that he agreed to this procedure~~ take with him such of it as did not concern the above-mentioned charges and disagreement, and that representatives of the Board would gladly discuss with him any of the material which he felt was needed by the World Jewish Congress. It is my understanding that he agreed to this procedure; however, I must say that he has not consider the material sufficiently important to require him to spend his time reading it. Accordingly, in view of the attitude he appears to have taken in his conversation with the Board representatives, I am surprised at the report which, from your letter, I gather he has given you.

The Board has no desire to withhold correspondence from the World Jewish Congress and accordingly, the material is being referred to the Office of Censorship for clearance. If that office perceives no objection to forwarding such material to you, it will be transmitted at an early date.

000177

June 30, 1944

MEMORANDUM FOR FILES

In connection with the message contained in Lisbon's cable No. 1979 of June 28, I discussed with Mr. Pehle today the matter of releasing to the World Jewish Congress reports and letters from Weissman which have just been received from the American Embassy in Lisbon. In view of the confused situation in Lisbon and in view of Mr. Mann's present mission, Mr. Pehle decided to hold off delivery of these communications until after we have received a report from Mr. Mann on the whole situation.

F.H.

F. Hodel

000178

June 30, 1944

MEMORANDUM FOR FILES

In connection with the message contained in Lisbon's cable No. 1979 of June 26, I discussed with Mr. Pehle today the matter of releasing to the World Jewish Congress reports and letters from Weissman which have just been received from the American Embassy in Lisbon. In view of the confused situation in Lisbon and in view of Mr. Mann's present mission, Mr. Pehle decided to hold off delivery of these communications until after we have received a report from Mr. Mann on the whole situation.

F. Hodel

FH:ab 6/30/44

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There is nothing to report.

B. A.

000180

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CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

August 18th, 1944

In reply refer to No. 218

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington, D.C.

Dear Mr. Pehle:

May I refer to my letter of August 8th concerning the program submitted to the War Refugee Board by the Rescue Council established by the Polish government in London.

Mr. Anzelm Reiss, who is a distinguished member of said council, has cabled to me repeatedly, as he is anxious to have the reaction of the Board with regard to the suggestions submitted by the council. I would be extremely grateful to you for letting me have any information which you could authorize me to convey to Mr. Reiss on this subject.

Sincerely yours,

A. Leon Kubowitzki, Head
Rescue Department

ALK:arw

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CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

In reply refer to No. 213

August 15, 1944

Hon. John W. Pehle
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Pehle:

I beg to inform you that we received the following cables from Mr. Chaim Barlas:

Aug 4 "3096 According Krausz cable 25/7, first group two thousand in preparation stop Am now informed by Zissu, whom have instructed negotiate regarding transit Roumania, that Roumanian Government agreed transit of 8000 Hungarians immigrants stop For your information."

Aug 5 "3108 Seventh boat Marina with 340 refugees from Constanza arrived today stop Expecting tomorrow eighth boat Bulbul 410 refugees, ninth boat Mafruk 300 refugees stop All 1050 refugees leaving Monday 7/8 by special train for Palestine. Please inform accordingly."

Mafkuto?

Sincerely yours,

A. Leon Kubowitzki, Head
Rescue Department

ALK:bm

34

000182

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1121 St. Catherine St. W

MEXICO CITY
Sonora 174-4

CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

August 9, 1944

in reply refer
to: No.211

Hon. John W. Pehle
Executive Director, War Refugee Board
Treasury Building
Washington 25 D. C.

Dear Mr. Pehle:

I beg to call your attention to the following information reported by the Independent Jewish Press Service in its bulletin of April 8:

> "While Jewish guerrillas operating in Poland's forests in the vicinity of Radom, Kielce and Miechow are reported to have broken through the Nazi military cordon sanitaire and joined their Polish underground comrades in Warsaw's "battle within" against the harassed German forces, the extreme wing of the anti-Semitic, pseudo-fascist Polish Endek Party is reported to have delivered hundreds of Jews to the Gestapo."

> "Wholesale delivery of Jews by the Endeks followed an announcement by Nazi Governor General Frank that he would pay fifty zloti for each hidden Jew and one hundred zloti for each Jewish guerrilla delivered to him. Walls and billboards all over Poland were covered on June 20 with the award announcement and extreme Endeks immediately swung into action as "stool pigeons" for the Nazi secret police, according to a report submitted by Jacob Masliansky and David Rotstein representing the Jewish guerrillas of Poland, to Soviet-Jewish Colonel Volodia Shapiro, who is now a military liaison officer with the Polish Committee of National Liberation with headquarters in Chelm, liberated Poland."

May I suggest that the attention of the Polish Government be called to this most serious accusation and that it be

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requested to issue a stern warning to the leaders of the National Democratic Party in Poland on the consequences which these crimes, if verified, are likely to have, not only for themselves, but for the Polish name and standing among the nations.

Sincerely yours

A. Leon Kubowitzki
Head, Rescue Department

ALK:dl

000184

AUG 8 1944

Dear Dr. Kubowitzki:

Thank you for your letters No. 196 and 197 of August 1, 1944. The material attached to the letters is being examined with a great deal of interest.

Very truly yours,

(Signed) Joseph B. Friedman

Joseph B. Friedman
Acting Executive Director

Dr. A. Leon Kubowitzki
World Jewish Congress
1834 Broadway
New York, 23, New York

Copy to: Mr. Ahzin

BAzkin:JBF:css 8/4/44

JB7

000185

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

To: (1) Mr. Ales (Room) (Bldg.)
(2) (Room) (Bldg.)
(3) (Room) (Bldg.)
(Room) (Bldg.)

This is not in my bailiwick & should appropriate you according the matter

From: JT (Date)
(Room) (Bldg.)

34

000186

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

To: Mr. Hagen (Room) (Bldg.)
(1) .....
(2) Miss Hodel 190 (Room) (Bldg.)
(3) ..... (Room) (Bldg.)

Suggest to show Helen copy of Anderson report with names, I think Leser was going to give a copy of it to JDC

Akers

From: ..... 152 (Date)
(Room) (Bldg.)

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CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

August 7, 1944

Hon. John W. Pehle, Executive Director
War Refugee Board
Treasury Building
Washington 25, D. C.

Dear Mr. Pehle:

We would like to submit the following request:

We have been informed that the War Refugee Board is in possession of lists containing the names of surviving Jews in Latvia and Lithuania.

You will realize that our committees, composed of former leaders of the Jewish Communities of the Baltic countries, are extremely anxious to receive such vital information and to learn as soon as possible the names of those who escaped the terrible fate that has befallen their kinsfolk and constituents.

We would consequently be extremely obliged to you for letting us have the lists in question. If you so wish, the information they contain will be conveyed only to members of our committees and not be published in any way whatsoever.

Sincerely yours

Max M. Laserson

Prof. Max Laserson, Chairman
Latvian & Estonian Committee

L. Lowenstein

Dr. Lazar Lowenstein, Acting Chairman, Lithuanian Committee

LL:ef

34

000188

AUG 3 1944

Dear Mr. Kubowitzki:

The information contained in your letters No. 180 of July 24 and No. 174 of July 25 concerning the difficulties experienced by refugee organizations in obtaining Turkish transit visas is much appreciated.

The War Refugee Board will follow this matter up immediately.

Very truly yours,

(Signed) J. B. Friedman

J. B. Friedman
Acting Executive Director

Mr. A. Leon Kubowitzki
Head, Rescue Department
World Jewish Congress
1834 Broadway
New York 23, New York

Copy to: Mr. Marks

[illegible]:ro
7/29/44

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Friedman

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Sonora 1744

CABLES: CONGRESS, NEW YORK
TELEPHONE: CIRCLE 6-1900

July 24, 1944

In reply refer
to No. 180

Hon. John W. Pehle
War Refugee Board
Treasury Building
Washington, D. C.

Dear Mr. Pehle:

I beg to call to your attention that it appears from the minutes of a conference which took place on June 9 between Mr. Barlas, of the Istanbul office of the Jewish Agency for Palestine, and Mr. Kemal Aziz, of the Turkish Foreign Office, that the Turkish Government refused to fix the quota of transit visas at 50 per week, as Mr. Barlas had proposed, and was ready to fix it at 20 because this latter figure had been suggested by the British Embassy.

May I suggest that the Board take up this matter with the British authorities, and have them modify their request so as to have the quota of Turkish family transit visas fixed at 50 visas weekly at least for each of the following countries: Bulgaria, Hungary, and Rumania.

Sincerely yours,

Leon Kubowitzki

A. Leon Kubowitzki
Head, Rescue Department

ALK:bg

000190

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(three lines)

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Tacuba 15 Altos.

SYDNEY, N.S.W.
G.P.O. Box 1869.K.

LISBON
Avenida Liberdade 179.

29th August, 1944.

Dear Sir,

We have pleasure in sending you herewith a copy of our booklet "The Problem of Statelessness".

The status and rights of the vast number of people rendered stateless by conditions of war, alterations in sovereignty and frontiers, and internal political and social changes, form one of the most difficult post-war questions, rendered most acute by the use of outlawry as a weapon of persecution by the Nazi-Fascist regimes in Europe.

The enclosed pamphlet is an up-to-date examination of the legal aspect of the problem of Statelessness.

Yours faithfully,

N. Barou, A.L. Easterman

N. Barou A.L. Easterman
Joint Hon. Secretaries.

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No. 12

WORLD JEWISH CONGRESS

(BRITISH SECTION)

THE PROBLEM OF STATELESSNESS

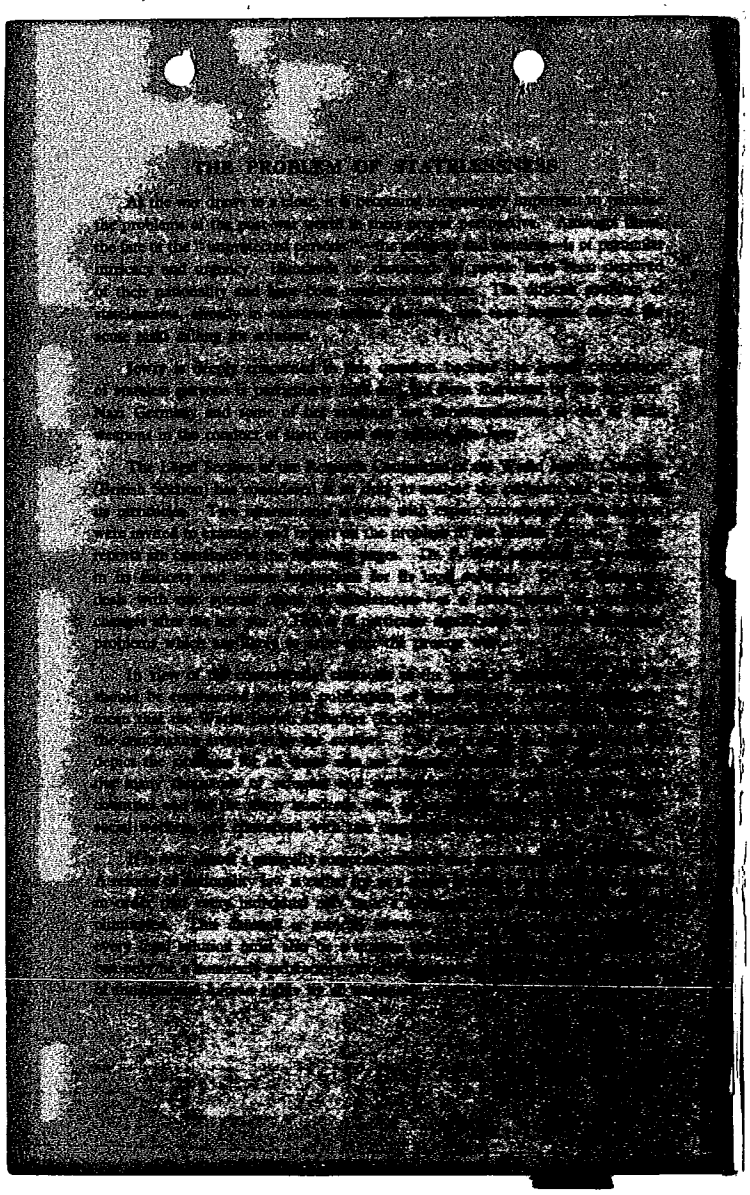
000192

ERRATA AND ADDENDA.

Page 11, line 39: after "domicile" insert "in these territories."

Page 20, footnote: read "1936" instead of "1930."

Page 35, footnote: read "see supra, p.33" instead of "see supra, p.16;" delete "(part one of these proofs)."



THE PROBLEM OF STATELESSNESS

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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 "nationalitaet" 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"—

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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.

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(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

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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.

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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 Maramuresh, who had the right of domicile 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

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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

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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 appliquér, 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 Etats 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 réligion il ne saurait priver des garanties prévues aux articles précédents."

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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 refugiés 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 mésure 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 institut 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 responsibilités 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 exclut, 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 Ier 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 oú l'exercice d'un des droits visés à l'alinéa Ier 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 ou 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 ou 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.

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Titre II. Droits et devoirs mutuels des Etats concernants 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 on 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 ou 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.

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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 1930.

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 orginally 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

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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 acqtisition 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.

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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 judical 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.

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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 ré-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.

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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 (Envian 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 particulary 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

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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.

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-Lorrainese 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-Lorrainese 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.

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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 re-distribution 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.

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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. 15. (second part of these proofs).

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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.

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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 domicil" 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 (1925), 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

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last 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."‡

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

† See *supra*, p. 16. (part one of these proofs).

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

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SUBJECT

RE: Report on Conferences with the War Refugee Board.

JEWISH NEGOTIATIONS WITH THE WAR REFUGEE BOARD

Writer explains why the World Jewish Congress is not in favour of certain suggestions, apparently put forward by the addressee, such as the razing of Budapest or the bombing of the extermination installations in Oswiecim and Birkenau. They do not want to give the Germans the chance to say that the Jews were killed by allied bombs and not by them. They want the installations to be destroyed by Russian paratroopers or by the Polish Underground.

The Report on negotiations with the War Refugee Board (copy attached) is divided into three sections, viz: I., Areas. II. General Questions. III. Our offices.

I. AREAS. deals with questions affecting different countries, as follows:-

1. Bulgaria.- Steps taken to persuade Turkish Government to allow Jews in Bulgaria provided with Palestine certificates to cross the frontier.

2. Hungary.- a) Details regarding deportations b) c) diplomatic action, d) personal appeal to Hungary by the Pope, e) Hungary's concession to the International Red Cross and intervention by Spain, f) proposal that United States and Britain grant protective citizenship to Jews in Hungary, g) Proposed change in U.S. visa policy to grant visas on arrival of people

/in

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BYRON PRICE,
Director.

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in neutral countries, to induce Germany to allow them to leave, h) consideration by War Department of proposals for destruction of the murder installations in Oswiecim, Treblinka and Birkenau, i) failure to induce Salvador and Paraguay to appoint protecting power in Hungary, j) Proposed WJC candidate for Tito's territory.

3. Latvia and Lithuania.- Efforts being made for the rescue of Jews still left there.

4. Rumania.- a) Solution of the question of securing rescue vessels; b) J.D.C. providing funds for Rumania.

5. Spain. - (See 2a)

6. Turkey. - Rescue ships now transporting refugees from Rumania to Turkish ports.

7. Yugoslavia.- Yugoslavia War Relief Funds to help with Jewish project

II. GENERAL QUESTIONS Agreement by Blockade authorities to allow food parcels for Jewish detainees in occupied countries; proposal to have Jewish detainees recognised as civilian internees. Treatment by German of internees with documents and certificates.

III. OUR OFFICES. Co-ordination Committee formed in Geneva of various rescue organisations; Refusal of WRB to agree to send money through WRB representative to evade terms of Swiss Treasury.

ATTACHED : COPY OF LETTER AND ENCLOSURE

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By RAP NARS, Date 4/10/81

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COPY OF LETTER

WORLD JEWISH CONGRESS

CONGRES JUIF MONDIAL

CONGRESO JUDIO MUNDIAL

New York August 2, 1944

Mr. Ernest Frischer
100 Oakwood Court
London, W.14, England

Dear Mr. Frischer;

Dr. Tartakower promised that I would let you have my views with regard to your letter of July 6 to Mr. Easterman.

Meanwhile, the situation has changed, and I doubt whether you would consider it appropriate for us to submit to the War Refugee Board, at the present moment, your suggestion about the razing of Budapest.

The time has not yet come to establish publicly the responsibilities for the terrible passivity of both non-Jews and Jews in the face of the extermination of our people in Europe. You know of the steps you and your friends have taken in London. To draw up the list of the charges, one should be informed of the efforts made by responsible Jewish organizations in all the important capitals. The picture that will result will be one of unparalleled callousness, or at least of criminal Traegheit des Herzens.

I think you know that we are not in favor of the bombing of the extermination installations in Oswiecim and Birkenau, because we believe in hayei shaa, and we are afraid for the Jewish victims of such bombings and of giving the Germans an alibi; that the Jews were killed by the Allied bombs and not by the Nazis' fiendish inventions. We want these installations to be destroyed either by Russian paratroopers or by the Polish Underground attacking in force. Jan Masaryk promised Dr. Goldmann to discuss this suggestion with President Benes.

I am attaching a recent report on my conference with the War Refugee Board. I assume that it will provide you with some interesting information.

Sincerely yours,

(sd.) Leon Kubowitzki

A. Leon Kubowitzki

ALK:bg

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By RAP NARS, Date 4/10/87

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WORLD JEWISH CONGRESS
RESCUE DEPARTMENT

~~STRICTLY CONFIDENTIAL~~

July 21st, 1944

To : The Office Committee
From: Dr. Kubowitzki

My conferences of July 19th, 1944 with Miss Hodell and Mr. Lesser of the WRB.

I had separate conferences with Miss Hodell and Mr. Lesser. Mr. McCormick of the WRB attended the conference with Miss Hodell. Mr. Spiegler, our Washington representative, was present at both.

I. AREAS

1. Bulgaria

I conveyed to Lesser the complaints we received from Bulgarian Jews who had arrived in Palestine, according to which the Palestine certificates which have been issued to Jews in Bulgaria cannot be made use of because of the Turkish policy with regard to the granting of transit visas. Lesser told me that the Turkish government had finally, in May 1944, instructed the frontier guards not to turn back refugees trying to cross the land border. As a result, in May and June, twelve refugees passed the land frontier, but in June, seven were sent back. Since then, no one had tried to cross the border. The WRB is now attempting to have the Turkish government reiterate its instructions.

2. Hungary

a) The reports concerning the deportations have been confirmed by very reliable sources. All Jews east of a line east from Kaschau to Miklosz(?), have been assembled in camps, and sent partly to Germany and partly to Poland. There were about 420,000 of these people. The remainder, with the exception of 150,000 who are in military labor camps, are scheduled for deportation. They number about 300,000.

b) The diplomatic note which I suggested on May 31st, in which the U.S.A. would request Hungary to state her intentions with regard to the Jews, etc. (see my report of June 19th, 3a) was presented by the Swiss to the Hungarian foreign office on June 27th. The text is still not in the possession of the WRB, in spite of two cables requesting it. A great effort was necessary in order to induce the Swiss to act.

c) According to Lesser, the British foreign office has agreed in substance with Shertok's suggestions in the Brandt matter. However, both the U.S.A. and Great Britain have to wait for the Russian reaction. The Americans and the British agreed that Brandt should return to Budapest.

/d)

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d) The Pope has made a kind of personal appeal to Hungary - by inference; he made a personal appeal to Horthy by commercial cable! He also sent someone to see Horthy. An encouraging reply has been received from the regent.

e) The day I spoke to Lesser and the following day, the WRB had not yet received any details concerning Horthy's concessions to the International Red Cross. Dr. Peter, whom I called Wednesday, had even less information on this matter. Today Lesser told me that the news has been confirmed by an official statement from the Hungarian government to the government of this country.

What the WRB know is that the Spanish government had requested Hungary to release 500 Jewish children. (This remarkable initiative on the part of the Spanish government was attributed by the WRB to the fact that the U.S.A. is no longer represented in Madrid by the Ambassador himself!)

f) I discussed with Lesser the information published by the New York Times of June 19th, under a headline from London, according to which "there has been a proposal that the United States and Britain grant protective citizenship to Jews still left in Hungary". I suggested that a statement be issued forwith by the United States Government, in which this country would proclaim that it considers all Jews remaining in Europe as being under its protection as far as their physical safety is concerned, and that any infringement upon this safety (such as removal from their dwellings, subjection to starvation diets, etc.) will be dealt with as if American citizens were concerned. I added that in order to have its full effect this statement should have the widest publicity.

Lesser promised to give this suggestion some serious thought. He was not very hopeful since Jews living in Hungary, who were genuine American citizens, had been purposely removed to places that were exposed to Allied bombings and had been killed as a result of such bombings.

g) Lesser told me that the WRB had induced the State Department, after protracted efforts, that it consider a change in its policy with regard to issuing visas to people in occupied Europe. A procedure will be adopted whereby Germany will be informed that certain categories of people living in occupied Europe will receive a visa the moment they enter a neutral country and will be requested that they be permitted to proceed to such countries. The people to which this new procedure will apply are namely:

1- Any parent, spouse or child of American citizens or resident aliens;
2- All persons to whom immigration visas were issued after July 1st, 1941 and whose visas expired because of the lapse of time.

h) I inquired whether action had been taken to our suggestion that Russian paratroopers or the Polish underground be instructed to destroy the murder installations in Oswiecim, Treblinka and Birkenau. He said that my letter, embodying these suggestions, had been immediately forwarded to the War Department and that the matter is now in the hands of the military authorities. He did not expect much from the Russians who had written off their war prisoners in German camps.

i) It has not yet been possible to induce Salvador and Paraguay to appoint a protecting power in Hungary, as such intermediaries involve considerable expense.

j) Concerning our candidate for Tito's territory, Lesser told me that

/he

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he has not yet finished his investigations on the former's fitness for the task.

3. Latvia and Lithuania

According to Lesser's estimate, about 2000 Jews are left in Latvia and 6000 in Lithuania. Efforts are now being made to rescue them by means of old-fashioned operations.

4. Rumania

a) The question of securing vessels for the rescue of refugees appears to have been solved. (See 6b)

b) According to Miss Hodell, the J.D.C. is taking care of the matter of money for Rumania.

5. Spain

(See 2a)

6. Turkey

a) Transit policy: see 1.

b) Miss Hodell informed me that five boats (four Turkish and one Greek) are now transporting refugees from Rumanian to Turkish ports, and that one boat had jus arrived with 760 passengers. She was full of admiration for the work done by the Istanbul people. She said that a Coordinating Committee has been set up in Istanbul which is responsible for these excellent results. The question of money has been taken care of by the J.D.C.

7. Yugoslavia.

Mr. McCormick informed that the United Yugoslavia War Relief has finally filed an application, a week ago, with the National War Fund in order to obtain an emergency slash allocation for a number of Jewish projects. The advice of the Red Cross has already been asked and has been favorable. The WRB too will be requested to give its advice which will also be positive.

II. GENERAL QUESTIONS

8. Food

a) Miss Hodell and Mr. McCormick informed me that the Joint Committee of British and American authorities has agreed to allocate 100,000 food parcels a month, for a period of three months, for the Jewish detainees in occupied Europe on conditions which are now being discussed by the I.R.C. and the German government. Miss Hodell stressed the decisive role played by Pehle in securing the agreement of the blockade authorities.

b) Parcels in Croatian concentration camps : see 7.

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9. Civilian internees

Miss Hodell informed me that the WRB has taken up our old idea of having the Jewish detainees recognized as civilian internees. The Swiss government and the Vatican are now working on it.

10. Internees with documents and certificates

Lesser told me that the news concerning the 163 holders of Latin American passports who had been removed from Vitell was very bad. The Swiss had been informed by the Germans that those people had been "removed to be subjected to the general treatment accorded to eastern Jews". The Swiss were very much incensed by the text of the answer and are now pursuing this matter vigorously. The American position is particularly strong because one of the deportees was actually born in Latin America and two of them were the wife and daughter of American citizens. The figure of 163 may be an understatement, as the Swiss consul in Paris received a list of 282 people who had been removed. It seems that the situation has now improved and that the Germans have made it clear that all those who were interned on May 11th would be dealt with as genuine citizens of Latin American countries.

III. OUR OFFICES

11. Geneva

a) Miss Hodell told me that McClellan has formed a Coordinating Committee in Geneva of various rescue organisations that that the Hungarian situation is now being dealt with jointly by these organizations.

b) With regard to Riegner's request that money be sent to him through the WRB representative in order to evade the harsh terms of the Swiss Treasury, Miss Hodell told me that the WRB could not agree with such a procedure.

12. Lisbon

Mr. Mann is on his way to the United States (if he is not here already). No word has been received by the WRB concerning the continuation of Weissman's children rescue work.

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