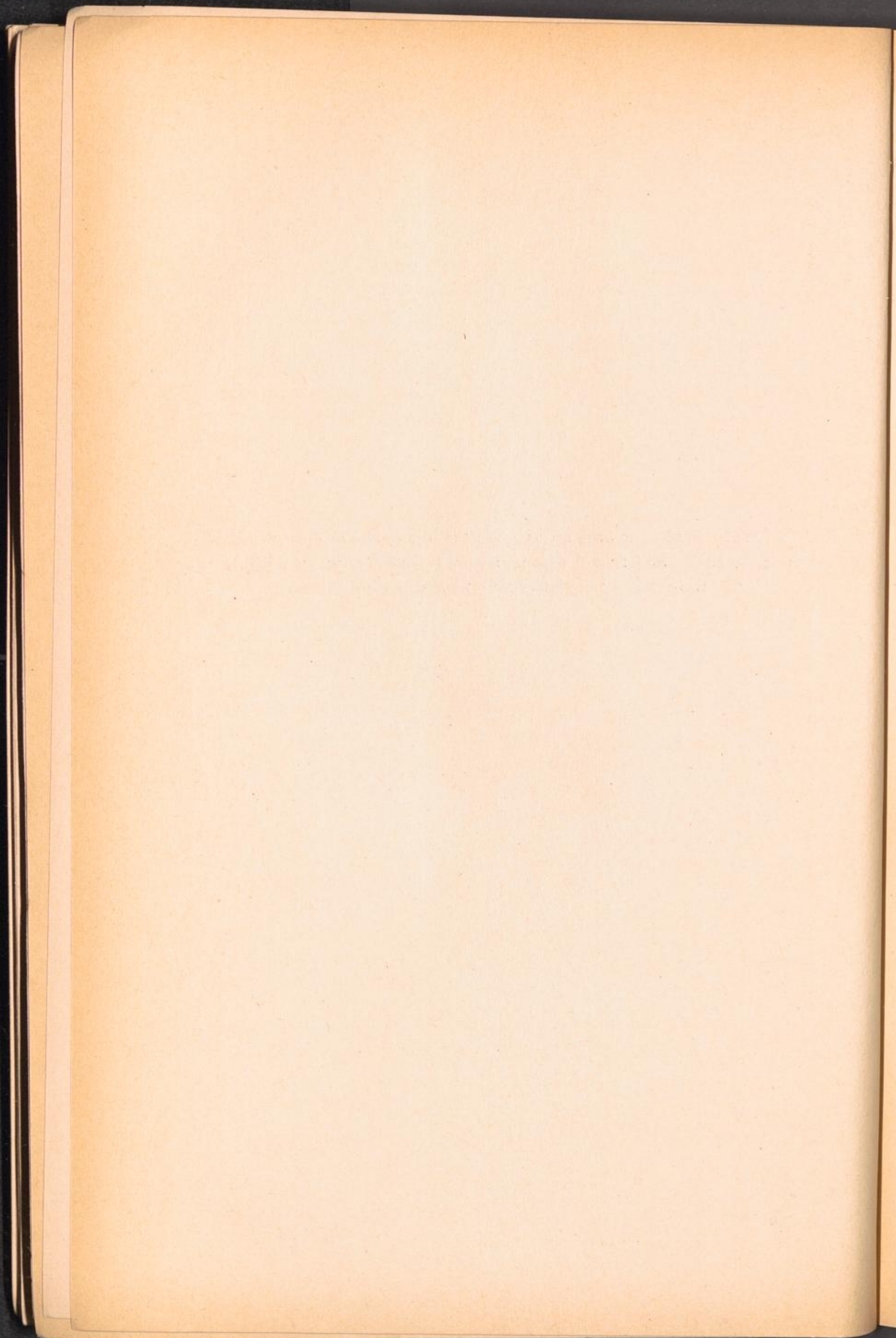
SECTION II

Study of the various questions relating to the adoption of an identity and travel document for refugees coming within the mandate of the Intergovernmental Committee.



The previous section provides a survey of past experience ; the time has now come to enter upon a study of the question which is the actual subject of this Report, i.e. the adoption of an identity and travel document for refugees who come within the mandate of the Intergovernmental Committee and who are not covered by the agreements or recommendations analysed in Section I. The following questions, in particular, will be examined : general questions of procedure (mandate entrusted to the Commission of Experts and action which may be taken by the Executive Committee ; preliminary questions ; possible forms of the international agreement to be drawn up) ; authorities qualified to issue the proposed document ; beneficiaries of the document ; procedure prior to issue ; recognition of the document ; type of document and text ; languages in which the document is drawn up ; children of holder ; fees for issue of the document ; questions relating to the validity of the document (territorial validity ; period of validity ; expiration of validity ; renewal or extension of validity or issue of a new document by territorial authorities ; renewal or extension of validity or issue of a new document by consular authorities ; countries where the document ceases to be valid) ; right to leave the country ; visas (entry visas ; transit visas ; fees for visas) ; change of residence (new document ; old document) ; authorisation to return ; regulations relating to the control of foreigners ; special provisions ; status of holder ; question of diplomatic and consular protection ; documents issued prior to the coming into force of the proposed Arrangement ; forbidding of additional pages ; final clauses of the Arrangement, in particular those concerning the notification of signatures, the conditions of entry into force and denunciations.

As a general rule, each heading in the present section corresponds to one of the provisions in the Preliminary Draft Arrangement or to some feature of the specimen document annexed thereto. Thus Section II constitutes an anticipated commentary on Section III, which is composed of the Preli-

minary Draft and specimen document referred to above. It must be pointed out, in this connection, that, in the margin opposite each Article of the Preliminary Draft, there appears the number of the corresponding heading in Section II under which are given all necessary explanations and reasons justifying the inclusion of the Article in question.

I. General questions of procedure

(1) *Mandate entrusted to the Commission of Experts and action which may be taken by the Executive Committee.*

It will be seen from the Resolution of 17th August, 1944, that there are two aspects to the mandate entrusted to the Commission of Experts. The Commission has, in fact, been requested, in the above Resolution, (*a*) to examine the question of the adoption and issue of an identity and travel document for refugees coming within the mandate of the Intergovernmental Committee, and (*b*) to submit a report on its findings for the consideration of the Executive Committee. The present preparatory Report is designed to facilitate this twofold task.

According to the above-mentioned Resolution, the Executive Committee is empowered, if it considers it desirable, " to make recommendations to various Governments ". The report of the Commission of Experts will obviously constitute an important factor in the decision the Executive Committee sees fit to take in this respect.

(2) *Preliminary questions.*

(*a*) What meaning must be given to the above term "recommendations" ? This word must obviously be understood here, not in the narrow, technical sense attached to certain resolutions adopted by various League of Nations organisations and termed " recommendations ", but in the wider sense of wishes expressed by the Executive Committee, concerning the adoption of appropriate measures to meet the needs of the situation under review.

(*b*) One may ask whether some of the agreements examined in Section I do not provide a ready means of achieving

the end which the Intergovernmental Committee has in view. In other words, instead of preparing, for instance, a new diplomatic instrument, would it not be simpler for the Intergovernmental Committee to consider making use of one or several of the international agreements already in existence ? The answer must be in the negative. Previous conventions and arrangements (categories A and B) refer, in fact, only to certain clearly defined categories of refugees, and would not cover all the groups of refugees which the Intergovernmental Committee wishes to benefit by means of the proposed identity and travel document. Similarly, the Recommendations of 1927 (category C) do not include all the refugees with whom the Intergovernmental Committee is, or will be, concerned. Apart from the fact that the persons to whom they refer are not necessarily refugees, these Recommendations are not applicable to certain groups of refugees which the Intergovernmental Committee has especially in mind, namely persons who have been affected by denationalisation measures and persons who are stateless in fact. Moreover, Recommendations possess certain characteristics, which will be dealt with later on in this Report, and in view of which they do not appear to constitute the type of international instrument most suitable for the establishment of a new régime.

(*c*) One may further ask whether the Card for Emigrants established by the Arrangement of 14th June, 1929, might not be an adequate identity and travel document for the purpose in view. The reply to this question must also be in the negative. It is clear from the comparative table shown hereafter that the above-mentioned Card differs essentially from the document which it is proposed to establish, and that it in no way fulfils the purpose which the Intergovernmental Committee has in view. In this connection, particular attention must be drawn to the points mentioned in paragraphs 2(*a*), 2(*b*) and 2(*c*) of this table [1].

[1] However, there is nothing to prevent the granting of a Card for Emigrants, in certain cases, to refugees who are holders of the document which it is proposed to establish. But, as in the case of emigrants who hold a national passport, this Card would then serve merely as a temporary, subsidiary document for transit purposes, the main document being that which it is proposed to establish.

Card for Emigrants	Proposed document
1. *Period of validity.* Very short period (see 2(*d*), left-hand column).	1. *Period of validity.* One year (Article 7 of Preliminary Draft).
2. *Object.* (*a*) *Travel* document which does not replace passport as identification paper. The holder of a Card for Emigrants must also be the bearer of a national passport, the number of which appears on the Card under the heading " Passport No..."	2. *Object.* (*a*) Intended for persons who do not possess a valid national passport. Would serve both as a travel document and as an *identification* paper.
(*b*) *Subsidiary* travel document. Article 4 of the Arrangement of 14th June, 1929, stipulates that the Contracting Governments undertake to allow the passage in transit of any emigrant " holding a passport and a transit card..." The Card for Emigrants is thus a subsidiary document, valid only if accompanied by a national passport, which is the main document.	(*b*) *Main* travel document. This document, duly visaed, would suffice for all journeys, no additional official document being required.
(*c*) *Incomplete* travel document. Intended essentially to guarantee the holder's freedom of *transit* and to avoid the necessity for consular transit visas and the levying of special control and transit charges. But although it enables the holder to pass through the country or countries of transit, it does not authorise him to enter the country of destination ; for this, a national passport, duly visaed by the representative of the aforementioned country, is necessary.	(*c*) *Complete* travel document. This document, duly visaed, would authorise the holder to enter the country of destination as well as the country or countries of transit.

Card for Emigrants	Proposed document
(*d*) The Card is valid for one journey only, from one specified country, which is often the country of origin, to another specified country (subject to 2(*c*) above) via one or several countries of transit.	(*d*) Would not necessarily relate to one journey only. During its period of validity, this document, duly visaed, would be valid for as many journeys as the holder wished to make.
(*e*) For emigration overseas.	(*e*) Use not restricted to emigration overseas.
3. *Beneficiaries.*	3. *Beneficiaries.*
(*a*) Persons enjoying the protection of a Government.	(*a*) Persons not enjoying the protection of any Government.
(*b*) Emigrants.	(*b*) Not necessarily emigrants.
4. *Issue.*	4. *Issue.*
The Card is supplied by the Government of the country of embarkation to a specially authorised shipping company, which, in turn, issues it to the emigrant.	The proposed document would be issued directly to the person concerned by the competent authority of the country of residence.

It will be seen from the preceding remarks that, should the Executive Committee consider it desirable to make recommendations to various Governments, as it is empowered to do by the Resolution of 17th August, 1944, these recommendations should not relate to the generalisation of measures previously adopted. A subsidiary argument in favour of the adoption of new measures may be mentioned : in previous agreements and in the documents established thereby, there are certain deficiencies which could be remedied in a new international agreement.

(3) *The two possible forms of the new international agreement— recommendation(s) or arrangement.*

In view of the technical and clearly defined nature of the subject of this Report, the proposed agreement might

take the form either of one or several recommendations or of an intergovernmental arrangement. Both possibilities are examined hereunder.

(a) *Recommendation(s).*

The term " recommendation " is used here in the special sense attached to certain resolutions adopted by League of Nations organisations. Once adopted, in accordance with one of the procedures mentioned hereafter, the recommendation or recommendations relating to the issue of the proposed document would be communicated to the Governments, which would act thereon as they considered advisable and take all appropriate steps which might be necessary.

With regard to the procedure prior to the adoption of the recommendation or recommendations, one of the two following alternatives might be considered : (*i*) the recommendation or recommendations would be adopted by the Executive Committee, possibly on the basis of the report of the Commission of Experts, and communicated by the Executive Committee to the various Governments ; (*ii*) the recommendation or recommendations would not be adopted by the Executive Committee, which would confine itself to proposing to the Governments the convening of an intergovernmental conference which could adopt one or several recommendations, possibly on the basis of the report of the Commission of Experts.

It appears unlikely that the principle of recommendations will be adopted by the Executive Committee. What the Intergovernmental Committee actually wishes to obtain is the speedy adoption, by the maximum number of countries, of a uniform type of document. In this connection, it should be pointed out that the inherent weakness of a recommendation and its inferiority, in some respects, by comparison with an intergovernmental arrangement, lie in the fact that it creates no reciprocal obligations. It is merely an expression of wishes which the Governments are free to take into consideration or not. At best, that is to say if the recommendation is accepted, apart from the fact that the Governments can, at any moment and without giving notice of denunciation, abruptly cease to comply with a recommendation which they have previously

adopted, they are also free either to put it only into partial application or to modify in any way they please the regulations previously laid down in accordance with the recommendation in question. These drawbacks are particularly serious when the main object is uniformity.

Moreover, a recommendation offers more scope than an arrangement for inaction and delay. There is less chance of achieving swift and territorially widespread results than by means of an arrangement. This, too, is a serious drawback, since in view of the urgency of the matter and the fact that the refugees are scattered over a wide area, the Intergovernmental Committee is anxious for the necessary measures to be adopted quickly and applied over as wide a territory as possible. Some of the above drawbacks have already been pointed out in Section I in the course of the survey of the Recommendations of 1927.

(b) *Arrangement.*

The preceding remarks explain why it seems that preference should be given to an intergovernmental arrangement, which offers more likelihood of achieving swift, widespread and uniform results. In respect of the last point, it is fully appreciated that it is always possible for Governments to adhere to an arrangement subject to certain reservations or to denounce it, the result being, in the case of reservations, to modify the régime adopted in a manner likely to impair its uniformity, and, in the case of denunciation, to limit the extent of its application and lessen its stability. These drawbacks are, however, less marked in the case of an arrangement than in that of a recommendation. In the first place, since a recommendation can, at best, only give rise to the introduction of national legislation, it is bound to open the way to many differences in application. In the second place, an arrangement, unlike a recommendation, stipulates certain formalities and delays in regard to denunciation, thereby reducing to some extent the danger of any Government's withdrawing too easily its adherence to the arrangement.

Since an arrangement appears to be the better solution, it remains to be decided what kind of arrangement should be proposed to the Executive Committee.

Bearing in mind past experience, two kinds of arrangements may be considered ; these might, for convenience, be termed Arrangement-recommendations and Arrangements proper respectively.

By Arrangement-recommendations is meant a certain group of international agreements of a hybrid character, couched in somewhat ambiguous terms—which, moreover, are legally disputable—and akin both to an arrangement and a recommendation. Some of the arrangements examined in Section I belong, in varying degrees, to this group. The Arrangement of 12th May, 1926, constitutes a particularly clear example : it is an arrangement in the sense that such is its official designation, but it also has some of the characteristics of a recommendation in so far as it is non-contractual in form. Apart from the fact that it does not begin with a clause such as " The Contracting Governments have agreed as follows ", which would proclaim and emphasise its contractual nature, the terms of the various provisions which make up its substance and embody its aims are not in the nature of rules by which the Governments mean to abide. It is a list of resolutions adopted by an *ad hoc* meeting of an intergovernmental conference and contains such expressions as : " The Conference approves the principle... " or " The Conference expresses the wish... " or " The Conference considers... " or " The Conference recommends... ".

It is difficult to determine the precise nature of so ambiguous an instrument. One may maintain that it is an arrangement. One may equally well maintain that, in fact, it is merely a recommendation " camouflaged ", so to speak, as an arrangement. In support of the second thesis, one may contend that the Governments confine themselves to signing a recommendation, thereby incurring no formal obligations from a strictly legal point of view. A Government is not bound by any contract simply because it affixes its signature at the foot of provisions such as : " The validity should not, in principle, exceed one year " or " The Conference... approves the

principle of the affixing of return visas ", " agrees that children under 15 years of age should be included on the identity certificates of their parents ", " recommends that the Government issuing a national passport to a refugee should withdraw from him his... certificate ", " recommends Governments to grant entrance visas free of charge to indigent refugees ". To take an example from another agreement coming within this category—the Arrangement of 31st May, 1924, concerning Armenian refugees—one can hardly maintain that a Government incurs a definite obligation by signing a clause couched in the following terms : " Governments are... recommended to grant such authorisation. " The most that can be said is that the Governments signing the agreement approve the wishes expressed or the principles proclaimed, and give them their moral support. But they incur no legal obligation, since their approval cannot change the non-contractual nature of the provisions or imply any obligation on the part of the Government, which is a signatory but not a Contracting Party. By signing, the Government merely expresses its acquiescence in the views of the conference. Consequently it may, for instance, introduce into its administrative regulations provisions more or less in conformity with the resolutions of the Conference—but only if it considers it desirable to do so [1].

In reply to the various points raised above, those who uphold the first thesis may assert that, by signing a text which was originally only a recommendation, the Governments have subsequently changed its nature to some extent and that, by virtue of these signatures, it has actually become an arrangement.

It will be seen that differences of opinion may arise regarding the true legal character of this kind of arrangement. At all events, it should be mentioned that, in France, the *Commission supérieure de Cassation* held the view that the Inter-

[1] With regard to the Arrangement of 12th May, 1926, those who uphold the second thesis might add that this Arrangement, like a recommendation, does not even stipulate that it must be submitted to the Governments for signature, but merely mentions, in a final paragraph, that the Conference expresses the wish that the representatives of the Governments at the next session of the Assembly of the League may be enabled to report on " the measures taken to give effect to the terms " of the Arrangement. This latter expression again emphasises the fact that the above Arrangement is in the nature of a recommendation.

governmental Arrangement of 30th June, 1928, concerning the legal status of Russian and Armenian refugees, was not an arrangement of a contractual nature binding the signatories, one of the reasons given being that it only contained recommendations.

The category of Arrangements proper, which might equally well be described as " Arrangement-agreements ", is characterised by the fact that the signing of such Arrangements results, beyond any doubt, in the signatory's incurring an obligation towards his co-signatories. The Arrangement of 4th July, 1936, examined in Section I, falls within this category. It constitutes an international contract, the clauses of which the signatories are bound to observe. It contains, *inter alia*, the following opening clause which underlines its contractual nature : " The undersigned representatives, acting in the name of their respective Governments, *agree*... to adopt the following provisions. "

In order to submit to the Commission of Experts a text which cannot give rise to difficulties of interpretation, it has seemed advisable to draw up a Preliminary Draft Arrangement belonging to this second category.

With regard to the formalities prior to the adoption of the proposed Arrangement, the following possibilities are submitted for the decision of the Executive Committee :

(*i*) The Executive Committee recommends to the Governments the convening of a Conference of Government representatives with a view to the preparation — possibly on the basis of the report of the Commission of Experts — of the text of an arrangement which would subsequently be open to signature by the Governments.

(*ii*) The same procedure, except that the above-mentioned representatives would be authorised to sign, on behalf of their Governments, the arrangement which they had drawn up.

(*iii*) The Executive Committee recommends to the Governments the adoption of an arrangement, the text of which might be prepared by the Executive Committee itself, possibly on the basis of the report of the Commission of Experts.

In this event, some duly authorised members of the Executive Committee might be in a position to sign the arrangement on behalf of their Governments.

II. Authorities qualified to issue the document

The identity and travel documents referred to in the various agreements examined in Section I of the present Report are all issued by the authorities of the country in which the refugee resides. The term " issue ", frequently employed in the above-mentioned agreements, has a twofold significance. In the first place, the document is actually handed to the refugee by the authorities ; in the second place, it derives its legal value from the fact that it emanates from these authorities and constitutes an attribute of the sovereignty of the State in whose territory the refugee resides.

It seems advisable to inform the Commission of Experts that the following suggestion has been submitted to the Intergovernmental Committee. It has been proposed that the document should still be issued by the authorities of the country of residence, but that legally it should emanate from the Intergovernmental Committee. This suggestion has been taken into consideration in Text 2 of Article 1 of the Preliminary Draft Arrangement, which reads as follows : " ... issued by the Contracting Parties, on behalf of the Intergovernmental Committee... " Text 1, on the contrary, conforms to the practice previously followed in regard to similar documents.

If Text 2 were adopted, the following considerations would apply :

The actual issue of the document would still be effected through the medium of the appropriate national authorities, acting in the capacity of agents of the Intergovernmental Committee. But the document would derive its international value and authority from the fact that it emanates from the Intergovernmental Committee, whose right, in this respect, would be recognised by the Governments. The travel document might, in that case, bear the title : " Intergovernmental Committee on Refugees — Identity and Travel Document " or some similar title.

Still assuming that Text 2 is adopted, the question of the return visa, which is an attribute of the sovereignty of the State in whose territory the refugee resides, would, of course, come within the sole jurisdiction of the appropriate national authorities. They would issue the document in their capacity of agents of the Intergovernmental Committee, but would affix the return visa in their capacity of national authorities.

Text 2 appears to offer certain advantages. In the first place, it would ensure the complete uniformity which is one of the main objects in view. A document emanating from a single authority would, of necessity, be uniform, irrespective of where it might be issued. Bearing the same statements and having the same external appearance, it could not give rise to confusion, would soon become well-known and would be easily recognised by the various police officials and authorities responsible for supervision. In the second place, it would be logical and in keeping with the protective functions of the Committee for the latter to issue a travel document.

III. Beneficiaries of the document

(1) *Method of definition.*

Two ways of defining the beneficiaries of the proposed Arrangement may be considered. For convenience sake, the first might be called the "empirical" or "geographical" or "categories" method, and the second the legal method. The first consists in specifying the origin of the beneficiaries. This was the method employed in previous conventions and arrangements (categories A and B). It was then obviously necessary and adequate because each of these arrangements and conventions applied to only one category of beneficiaries, all of whom had the same origin. Moreover, when each of these international agreements was drawn up, the various aspects of the position of the beneficiaries were perfectly clear. The second method is to define the beneficiaries, not by specifying their origin, but by laying down certain requirements which they must fulfil. This was the course adopted with regard to the Recommendations of 1927.

It has seemed desirable, for reasons explained hereafter, to combine the two methods. The relevant passage in Article 1 reads as follows : " ... an identity and travel document... shall be issued... to refugees belonging to categories which have been notified to the Governments concerned by the Intergovernmental Committee as coming within its mandate, provided that the said refugees are stateless or do not in fact enjoy the protection of any Government, that they are staying lawfully in the respective territories of the Contracting Parties, and that they are not benefiting by the provisions regarding the issue of an identity and travel document contained in one of the following arrangements or conventions : Arrangements of 5th July, 1922, 31st May, 1924, 12th May, 1926, 30th June, 1928, 30th July, 1935, 4th July, 1936, and Conventions of 28th October, 1933, and 10th February, 1938. "

(*a*) According to the above passage, the persons entitled to benefit by the provisions are defined in particular as being refugees belonging to certain categories. This stipulation is based on the first method, except that the categories are not specified in the Arrangement but will be specified by the Intergovernmental Committee at a later date.

(*b*) A certain number of conditions based on what has been termed the legal method are then laid down. Among the refugees belonging to the above-mentioned categories, the only persons who will be entitled to benefit by the provisions of the Arrangement will be those who are stateless or do not in fact enjoy the protection of any Government, who are staying lawfully in the respective territories of the Contracting Parties, and who are not benefiting by the provisions, regarding the issue of an identity and travel document, contained in one of the previous arrangements or conventions.

Some explanation is required in order to justify the use of this complex method.

It would have been possible to consider defining the beneficiaries merely by stating that they are refugees who come within the mandate of the Intergovernmental Committee, who are stateless or do not in fact enjoy the protection of any

Government, who are staying lawfully in the respective territories of the Contracting Parties, and who are not benefiting by the provisions of one of the above-mentioned arrangements or conventions. Such a definition would have been completely justified from a strictly legal point of view, since it would have constituted a general framework capable of including all the refugees concerned. There was, however, a serious drawback to this definition, namely, that in order to give effect to the provisions of the arrangement, the Government officials in the various countries would have been obliged to decide how the rules thus laid down should be interpreted, a task which would at times be difficult in view of the extremely wide scope of the mandate of the Intergovernmental Committee. These officials might sometimes be at a loss to know whether or not an applicant is entitled to benefit by the Arrangement. It therefore seemed advisable to state that the beneficiaries must belong to certain categories notified by the Intergovernmental Committee to the various Governments concerned. The Contracting Governments will thus be duly supplied with particulars regarding the origin of the persons entitled to receive the proposed identity and travel document.

It may further be asked why the above-mentioned categories have not been specified in the Arrangement itself, as in the case of the conventions and arrangements in categories A and B. As previously stated, each of these conventions and arrangements applied to only one category of beneficiaries, all of whom had the same origin, and whose position was well known when the above instruments were drafted. This does not apply in the case of the beneficiaries of the Arrangement now proposed. In the first place, the latter, like the Recommendations of 1927, is intended to cover many groups of persons of different origins, and it was consequently considered inadvisable to complicate the Draft Arrangement by including a long list of categories. In the second place—and this is a very important point—such a list, however carefully drawn up, would run the risk of being incomplete. While it is already justifiable to expect that many groups of refugees will need to be provided with the proposed document, it would be somewhat hazardous to attempt to specify all such groups in advance. The problems

relating to certain categories of refugees will depend upon political conditions in Europe and developments which it is impossible to forecast at the present time. Thus, any list of categories drawn up now would necessarily be of a somewhat theoretical nature and, in consequence, premature.

Finally, it might be argued that it would have been sufficient to define the beneficiaries merely by stating that they must belong to categories to be notified by the Intergovernmental Committee. In spite of its apparent simplicity and logic, this solution was not adopted, because it seemed advisable to define clearly the field of application of the present Arrangement by indicating the limits imposed by the conditions mentioned above in (*b*), in order that the facilities offered by the Arrangement might be granted only to refugees who really need and deserve them.

(2) *The four requirements.*

It is now advisable to examine in greater detail the definition previously given of the beneficiaries of the Arrangement. It will be seen from the relevant provisions of Article 1 that the proposed document may be issued to any person fulfilling the four following requirements. He must :

(1) belong to one of the categories coming within the mandate of the Intergovernmental Committee and notified as such by the latter to the Governments concerned ;

(2) be stateless in law or in fact ;

(3) not be benefiting by previous conventions or arrangements concerning the issue of special identity and travel documents ;

(4) be staying lawfully in the territory of a Contracting Party.

First requirement : to belong to one of the categories coming within the mandate of the Intergovernmental Committee and notified as such by the latter to the Governments concerned.

The Resolution adopted on 17th August, 1944, by the Intergovernmental Committee in the course of its Plenary Session lays down that the document in question is intended for

persons coming within the mandate of the Intergovernmental Committee. It should be recalled, in this connection, that the mandate of the latter covers " as may be found necessary and practicable... those persons, wherever they may be, who, as a result of events in Europe, have had to leave, or may have to leave their countries of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs." [1]

It will be seen that the Committee's mandate covers an extremely wide field and might sometimes give rise to difficulties of interpretation. In consequence, as has previously been pointed out in the part dealing with the method of definition, it seemed advisable to state that the beneficiaries must belong to categories of refugees coming within the mandate of the Committee and notified, for the purpose of the Arrangement, to the various Governments ; the latter would thus be in possession of all the information likely to define and to facilitate their task.

[1] When the Committee was set up in July, 1938, the classes of persons coming within its mandate were defined as follows :

> " (1) persons who have not already left their country of origin (Germany including Austria), but who must emigrate on account of their political opinions, religious beliefs, or racial origin ; (2) persons as defined in (1) who have already left their country of origin and who have not yet established themselves permanently elsewhere."

After the annexation of the Sudeten areas, persons of German origin who had been obliged to leave their own country and had settled in that territory were included in the mandate of the Committee.

At first, the essential purpose of the Committee was to achieve, by means of negotiations with the German authorities, an organised system of emigration of all those persons who had been obliged to leave their country of origin. Conversations took place between December 1938 and August 1939, but no conclusive results were reached. The outbreak of hostilities put a sudden end to these endeavours.

The problem of forced migration having been greatly aggravated by the war, the Governments of the United Kingdom and the United States appointed representatives authorised to examine the refugee problem and to propose relief measures. A Conference of delegates of the two Governments was held in Bermuda in April 1943. One of the Recommendations adopted by the Conference related to the reorganisation of the Committee and the extension of its mandate. This Recommendation was submitted to the Intergovernmental Committee, with the result that the Executive Committee, at its meeting of 4th August, 1943, adopted, *inter alia*, a Recommendation giving a new definition of persons coming within the mandate of the Intergovernmental Committee.

Second requirement: to be stateless in law or in fact.

(a) *Persons stateless in law.*

The Resolution of 17th August, 1944, stipulates *inter alia* that the proposed document is intended for stateless persons, without specifically enumerating the causes of statelessness. Subject, therefore, to the other conditions laid down by the Preliminary Draft, refugees who belong to the above-mentioned categories and who are stateless for any reason whatsoever, particularly as a result of denationalisation measures, shall be qualified to obtain the new identity and travel document.

Here again, the Preliminary Draft submitted to the Commission of Experts differs from the Recommendations of 1927. The latter referred to persons whose statelessness arose from a limited number of clearly defined causes, i.e. war or causes arising directly out of war, non-delimitation of frontiers, or a conflict of laws. The Recommendations did not cover persons who had lost their nationality as a result of denationalisation measures.

Right of option. — One of the United Nations' solemnly declared war aims is the repeal of the discriminatory measures taken by enemy countries, particularly against the Jews, in violation of the principle of the equality of all citizens in the eyes of the law. Anti-Jewish measures, including those relating to the denationalisation of Jews, will certainly be repealed either by decision of the Allied Occupation Authorities or by a decision on the part of the Governments set up in place of the totalitarian Governments. The repeal of these measures will naturally be followed by the reinstatement of the persons affected thereby in the nationality of which they had been deprived.

It should, however, be borne in mind that many Jews originating from totalitarian countries, and above all from Germany, will be unwilling to return to countries where they have undergone indescribable suffering, and where their co-religionists—and, in many cases, their own relatives—have been persecuted or murdered. Many of them will have severed all ties with their former homeland, with which they will wish to have

no further connection. In this respect it has been maintained that it would hardly be fair to compel these Jews to accept the nationality thus open to them again, since it has already been agreed that there can be no question of compelling them to return to their country of origin. It seems, therefore, not impossible that these Jews might be granted some right of option, in one of the two following forms, according to the country of origin of the persons concerned :

(*a*) The persons concerned are automatically reinstated in the nationality of which they have been deprived. The reinstatement is *ex tunc*, that is to say it becomes effective from the date of denationalisation, the latter being regarded as null and void and the persons concerned being considered as never having lost their nationality. They may, however, nullify their reinstatement by making a declaration to that effect within a prescribed period and subject to certain conditions. By availing themselves of this right of option, the persons concerned will retain their status of stateless persons [1]. Such a right of option would not be an entirely new legal departure ; it would be similar in nature to the right, provided for in the legislation of certain countries, to renounce nationality in certain circumstances [2].

(*b*) The persons concerned remain stateless unless, by an appropriate declaration, they make known their desire to be reinstated in their former nationality, *ex tunc* or *ex nunc* as the case may be. This arrangement, which is extremely severe as far as the country of origin is concerned, might be regarded as

[1] It is possible that, in addition, the persons concerned may be granted the right, not to nullify the reinstatement, but to limit the period of its effectiveness. In this case, they would be granted the right to decide, by making an appropriate declaration, that the recovery of nationality would take effect *ex nunc*, that is to say from the date of the above-mentioned declaration. This would enable them to safeguard the rights which they have acquired during their period of statelessness, and which are inherent in their status of stateless persons. Strictly speaking, however, this question is outside the scope of this Report since the persons concerned would, in any case, cease to be stateless from the date of the declaration.

[2] As regards Great Britain, for example, see Section 14 of the British Nationality and Status of Aliens Act, 1914 ; as regards the United States, see Act of Congress of 27th July, 1868, which declares that the renunciation of nationality is a natural right which anyone may exercise.

fitting in the case of Jews from Germany, in view of the particularly heinous forms of racial persecution in that country and of the severance—usually complete—of moral ties between German Jews and their former country. Moreover, among the Jewish victims of the totalitarian Powers, the German Jews are the least inclined to return to their country of origin [1].

In any event, should the victims of racial persecution in certain Axis countries be granted the right to remain stateless if they expressly indicate their desire to do so, these as it were " voluntarily " stateless persons would, if they fulfilled the other requirements laid down in the Arrangement, be qualified to obtain the document referred to therein [2].

It need hardly be stated that the above considerations in no way detract from the principle that every effort should be made to help in creating, in the countries concerned, conditions likely to encourage the voluntary return of refugees.

[1] The question is rather delicate as regards Jews of Austrian origin, since they acquired German " Staatsangehörigkeit " in consequence of the annexation of Austria, but were subsequently deprived of it. According to the Moscow Declaration of October, 1943, Great Britain, the U.S.S.R. and the United States regard the annexation of Austria by the Reich as null and void. It seems, therefore, that, according to this Declaration, the denationalisation, in conformity with German law, of Jews of Austrian origin, would not be recognised, and that the latter would have to be regarded as never having lost their Austrian nationality. However, since many Austrian refugees will probably refuse to return to Austria and will have severed all connection with their country of origin, it seems possible that they may be granted a right of option in one form or another.

[2] Under Section 2, sub-section 1, of the Reich Law on Citizenship of 15th September, 1935, (R.G.B.1/1146), Jews, as defined in Section 5 of the First Rules of Procedure established under the law of 14th November, 1935, (R.G.B.1/1333), are German nationals (" Staatsangehörige "), although they are not " Citizens of the Reich ". According to law, German Jews who have not left Germany during the war have kept their German nationality, since the law of 25th November, 1941, whereby Jews living abroad were denationalised, does not apply to them. It is conceivable that the right to renounce their nationality, by means of a declaration to be made within a period prescribed by law, may be granted to such of these Jews as may wish to dissociate themselves from Germany and who intend to leave the country. It should be noted that, in such a case, these " voluntarily " stateless persons would not be refugees and would not come within the mandate of the Intergovernmental Committee.

(b) *Persons stateless in fact.*

It will be remembered that, as a result of the determined opposition displayed in the course of the discussions which preceded the adoption of the Recommendations of 1927, the General Conference on Communications and Transit of 1927 did not extend the benefit of these Recommendations to persons stateless in fact. On the other hand, according to the Resolution of 17th August, 1944, previously referred to, the Intergovernmental Committee considered that the proposed document should also be issued to persons who, legally, have not lost their nationality, but who do not enjoy the protection of their Government and cannot therefore obtain from the Consuls of their country either a national passport or the renewal or extension of the passport which they hold. The persons in question—political refugees, for example—have not been formally denationalised but are, in fact, stateless.

The inclusion of persons who are stateless in fact is justified, since the latter come within the mandate of the Intergovernmental Committee, which will, *inter alia*, have to facilitate their emigration and final settlement. It is obvious that the Committee will be unable to carry out this task unless the refugees concerned are provided with travel documents.

Persons of doubtful nationality. — There are cases in which it is difficult to determine immediately whether a person does or does not possess a nationality. In such cases, the nationality or lack of nationality of the person concerned can be established only by means of legal proceedings, which sometimes take a considerable time.

It goes without saying that a person of doubtful nationality does not enjoy the protection of any Government. He is, to say the least, stateless in fact, and must consequently be allowed to benefit by the provisions of the proposed Arrangement.

The above-mentioned legal proceedings may reveal that the person concerned does not possess a nationality ; in this case, in his newly established status of a person stateless in law, he will still be entitled to the identity and travel document which he held as a person stateless in fact. These proceedings

may, on the other hand, establish his nationality. In that case, he will be entitled to receive a national passport, the special document which he previously held being withdrawn, in accordance with the provisions of Article 14 of the Preliminary Draft, by the authority issuing the national passport.

In either case, it would be unfair to make the element of doubt involved a reason for refusing to issue an identity and travel document to a person who is deprived, temporarily or otherwise, of the protection of a Government, and to force him to remain where he is, perhaps for some considerable time, when he may have pressing and urgent reasons for travelling.

Third requirement: not to be benefiting by previous Conventions or Arrangements concerning the issue of special identity and travel documents.

The Conventions and Arrangements referred to are the following: Arrangement of 5th July, 1922, Arrangement of 31st May, 1924, Arrangement of 12th May, 1926, Arrangement of 30th June, 1928, Convention of 28th October, 1933, Arrangement of 30th July, 1935, Provisional Arrangement of 4th July, 1936, and Convention of 10th February, 1938. The Russian, Armenian and assimilated refugees, and the German and Austrian refugees who are entitled to benefit by the above-mentioned international Agreements, will therefore not be qualified to receive the proposed document.

Derogation referred to in paragraph 2 of Article 2. — The above expression " not to be benefiting by previous Conventions or Arrangements, etc..." has been employed deliberately instead of the expression " not to be covered by previous Conventions or Arrangements..." It is, indeed, advisable to make provision for refugees belonging to one of the categories mentioned in the preceding paragraph who may be staying in a country which has adhered to the proposed Arrangement, but which has not adhered to the agreement or agreements covering the category to which they belong.

It seemed only fair to provide for this contingency. This has been done in paragraph 2 of Article 2, which reads as follows: " The provisions of the Arrangement shall apply to

refugees specified in the Arrangements or Conventions mentioned in Article 1, but who, because they are staying in the territory of a Contracting Party which has not adhered to the Arrangements or Conventions under which they fall, are unable to claim the benefits thereof ".

It would seem to be unjust to maintain, for purely formal reasons, that because he is covered by previous Arrangements or Conventions and is, by mischance, living in a country which has not ratified or signed one or several of these instruments but has, on the other hand, signed the proposed Arrangement, a refugee coming within the mandate of the Intergovernmental Committee should be deprived of all means of travelling. It would be all the more unjust in view of the fact that other refugees belonging to the same category can obtain, in countries which have signed and ratified the above-mentioned instruments, the document which is refused him, and that, in the country where he is staying, refugees of another origin are entitled to the document which is refused him, although he may have more urgent reasons than they for travelling. It would also be hardly fair to maintain that the refugee concerned must wait until the country in which he is staying has signed or ratified the Arrangement or Convention covering his case. The provisions of paragraph 2 of Article 2 of the proposed Arrangement would not only regulate the position of new categories of refugees, but would also permit a rapid settlement of the position of refugees belonging to earlier categories who might find themselves in the predicament described above [1].

[1] The above solution seems to be the simplest, the most rapid and the most effective. But four other methods might be considered, namely :

(*a*) Approaching the States concerned with a view to inducing them to ratify or sign the previous Conventions and Arrangements. The drawbacks to this method lie in the number and diversity of the steps which would have to be taken and the limited chances of achieving immediate results. It would be unfair if the persons concerned had to bear the consequences of the slowness of this method, and were prevented from travelling, perhaps for a very long time, until the necessary ratifications or signatures had been obtained.

(*b*) A Recommendation annexed to the Arrangement, expressing the hope that the countries concerned would take the necessary measures with regard to the required ratifications or signatures. This method, apart from being slow, would offer no definite guarantee of success and would involve the same drawbacks as (a).

Fourth requirement: to be staying lawfully in the territory of a Contracting Party.

This requirement is mentioned in Article 1. Comment on this point is unnecessary, every State having the right to insist on compliance with its regulations governing the residence of aliens and consequently to restrict the benefit of the proposed document to persons who are staying lawfully in its territory.

It was felt however that one should take into consideration the position of certain refugees, which is sometimes deserving of sympathy, and which may induce the authorities to make allowances in their case. It is for this reason that paragraph 1 of Article 2, without laying down any hard and fast rule, leaves the Governments concerned free to extend the benefit of the document in question, if they consider it desirable, to refugees who report themselves to the authorities and thereby regularise their position. The transitory nature of this provision is a logical consequence of the terms of the above-mentioned paragraph, which stipulates that the refugees concerned must report themselves to the authorities within a certain period.

Two other possible requirements. — The addition of two further requirements in respect of beneficiaries might be considered. Although these do not appear to be of great practical importance, they are nevertheless submitted for the consideration of the Commission of Experts.

(1) According to the Arrangement of 5th July, 1922, Nansen certificates were to be issued to Russian refugees "who should apply for them". As pointed out in Section I of

(*c*) A special clause in the Draft Arrangement whereby the Contracting Parties which had not adhered to previous Arrangements or Conventions or to certain of these, would declare their adherence to such of the provisions of these Arrangements or Conventions as related to the issue of an identity and travel document.

(*d*) When adhering to the proposed Arrangement, the Governments concerned could declare that, in so doing, they adhered to the relevant clauses of previous Conventions and Arrangements. In this connection, it should be remembered that, when signing the Arrangement of 12th May, 1926, the representative of the Republic of Cuba added a statement to the effect that this signature entailed the adherence of the Republic of Cuba to the 1922 and 1924 Arrangements.

the present Report, this clause was inserted so as to take into consideration a memorandum submitted by a group of Russian lawyers, who expressed the opinion that the certificate should be issued only to refugees who applied for it of their own free will, and that it should not be forced on refugees who possessed documents guaranteeing them the necessary facilities.

The Commission of Experts is asked to decide whether this precedent should be taken into consideration, and a clause added to Article 1, to the effect that the proposed document should be issued only to refugees, qualified to receive it, who apply for it.

(2) The second question concerns the two following classes of persons :

(*a*) Nationals of a country which has been at war with the United Nations who are denationalised by the authorities in power in that country after its defeat, because of their participation in the former totalitarian régime, or who, for the same reason, no longer in fact enjoy the protection of their Government. The following imaginary case might be taken as an illustration : A Nazi leader who has fled to a neutral country is denationalised by the competent authorities in the post-Hitlerian régime and applies to the authorities of the above-mentioned neutral country for the identity and travel document established by the proposed Arrangement, claiming that he is stateless and that he has left his own country because of the danger to his life or liberty on account of his " political beliefs ".

(*b*) Persons whose country of origin has been at war with the totalitarian Powers or has been occupied by the latter, and who have been denationalised or deprived of the protection of their Government because they have assisted the totalitarian Powers. The case in question concerns individuals commonly called " quislings " or " collaborators " who, after fleeing to a neutral country, might claim, on the grounds described above, that they are qualified to obtain the proposed document.

It seemed unnecessary to make provision for such cases in the Draft Arrangement. It is hardly likely that, even if they were

in a neutral country, these persons—some of whom will be war criminals—would think, paradoxically, of applying for the proposed document. However, if the Commission of Experts considers it desirable from a strictly legal point of view, the following article might be added to the Draft Arrangement :

> " Any person who, by reason either of his participation in a totalitarian régime or his collaboration with totalitarian powers, has been deprived of his nationality or does not in fact enjoy the protection of the Government of his country, shall be excluded from the benefit of the present Arrangement ".

IV. Procedure prior to issue

The above heading refers to the formalities, enquiries and attestations necessary to satisfy the authority which issues the document that the applicant is entitled to benefit by the provisions of the Arrangement.

With regard to persons covered by the Conventions and Arrangements relating in particular to Russian and Armenian refugees, the procedure varied according to the country concerned. In some countries, the organisations representing the refugees were authorised to certify that the person in question was a *bona fide* refugee belonging to a category entitled to benefit by the Agreement in question. In others, this declaration had to be certified by the accredited representative of the League of Nations High Commissioner. In certain countries, the authorities issued the document on the basis of the information in their possession concerning the refugee in question. Finally, there were countries which issued the document on the recommendation of the accredited representative of the High Commissioner.

It has seemed inadvisable to include provisions regarding this point, either in principle or in detail, in the Draft Arrangement. In the first place, it was not considered necessary to lay down as a general rule that applications submitted by refugees must be verified by the Contracting Parties. It goes without saying that the competent authorities must satisfy themselves

that an applicant is qualified to benefit by the provisions of the Arrangement. This is an elementary duty which it seemed unnecessary to lay down as a general rule. In the second place, it would have been inadvisable, when dealing with a question of administrative practice, to lay down in detail hard and fast rules which would necessarily be theoretical, and which would make no allowance for varying local conditions.

V. Recognition

It goes without saying that each Contracting Party must undertake, not only to issue the document established by the Arrangement, but also to recognise the document when it has been issued by other Governments. This is the purpose of Article 9 of the Preliminary Draft.

The possibility that certain Governments of the Western Hemisphere may be unwilling to undertake to issue special documents should be foreseen. In such a case, it might be suggested to the Governments concerned that they should stipulate, when signing the Arrangement, that their signature only entails an obligation on their part to recognise the validity of the document referred to therein.

VI. Type of document and text

It was considered inadvisable to complicate Article 3 of the Preliminary Draft by describing in minute detail the form of document proposed. However, in order to provide the fullest possible information, especially in view of the particular importance of this point, it seemed best to annex a specimen document to the Arrangement. Paragraph 1 of Article 3 is therefore confined to the following stipulation : "The identity and travel document referred to in the present Arrangement shall be similar to the attached specimen (see Annex)." The experts will find the specimen document at the end of the present Report. Their attention is drawn to the following points:

(*a*) Firstly, two considerations of a general nature : (*aa*) The specimen document contains such of the statements or

special features of the documents established by the various international Agreements examined in Section I as it seemed most advisable to retain ; it is also partly based on the recommendations of the Report annexed to the Final Act of the Passport Conference of 1926 ; in addition, there are certain innovations. (*bb*) It seemed advisable, in the interest both of the Governments and of the refugees, to establish a more comprehensive identity and travel document than those previously introduced.

(*b*) The document is in the form of a booklet. It will have a binding, thereby avoiding the drawbacks of some of the documents previously established. The new document will consequently last longer and remain in better condition.

(*c*) It has been impossible, for obvious technical reasons, to include in the above-mentioned specimen three special features which would be of assistance in preventing falsifications. These features, two of which are in accordance with the recommendations of the Report annexed to the Final Act of the Passport Conference of 1926, are mentioned at the beginning of the Annex to Section III.

(*d*) The Report annexed to the Final Act of the Passport Conference of 1926 fixed the minimum number of pages for a passport at 16. It was considered advisable to make provision for 32 pages in the new document, so as to avoid the inconvenience caused—particularly as regards visas—by an insufficient number of pages. This has seemed all the more advisable in view of the fact that the validity of the document can be extended over a period of years, and that the spaces reserved for visas do not begin until page 7 [1].

(*e*) In accordance with the recommendations of the Report annexed to the Final Act referred to above, and in order to prevent falsifications, the words : " This document contains 32 pages, exclusive of cover " appear on each page of the booklet.

[1] Should the Commission of Experts deem it advisable for the additional entries suggested hereafter in (*o*) to appear in the identity and travel document, the space reserved for visas might even not begin until page 10.

(*f*) The proposed size of the booklet is that of the British passport, *i.e.* approximately $15 \times 10\,{}^{1}/_{2}$ cm.

(*g*) The following remarks relate to the front of the *cover* :

(*aa*) As regards the title which is to appear on the cover and on page 1, two alternatives are shown in the specimen. The final choice of title would depend upon whether Text 1 or Text 2 of Article 1 of the Preliminary Draft had been adopted.

(*bb*) It would be helpful, especially in the initial stages of the new system, if the new document were easily identifiable by the police and the officials responsible for supervision in the various countries. With this end in view and, at the same time, in order to indicate its special nature, the document bears two horizontal black lines, each half a centimetre wide, in the centre of the cover, with a space of half a centimetre between them.

(*cc*) In accordance with the recommendations of the Report referred to above in (*e*), the serial number of the document, as well as the name and forenames of the holder and an indication of the number of pages in the document, are also shown. As in the case of the British passport, the date of issue of the document is also indicated.

(*h*) In addition to the serial number of the document, which appears on each page, the following details are given on *page 1* :

(*aa*) Date of expiration of the document.

(*bb*) Name and forenames of holder.

(*cc*) An entry, where necessary, to the effect that he is accompanied by his wife and child or children.

(*dd*) The following indications, some of which are particularly important, and which it was consequently considered necessary to include on the first page :

" (1) This document is issued in accordance with the Intergovernmental Arrangement of.........

" (2) The holder of this document is placed under the protection of the Intergovernmental Committee on Refugees.

" (3) The holder of this document does not enjoy, in law or in fact, the protection of any Government. He is not qualified to obtain a......... national passport. (Indicate here the country whose authorities are issuing the document.)

" (4) This document is issued solely with a view to providing the holder with a document which can serve as a temporary passport. It is without prejudice to and in no way affects the holder's nationality. It is forbidden to add slips or pages to this document, which would, in such a case, become invalid.

" (5) (*a*) The holder is authorised to return to...... (State here the country whose authorities are issuing the document) at any time during the period of validity of the present document.

" (*b*) The holder is authorised to return to......... (State here the country whose authorities are issuing the document) on or before......... (The period during which the holder is allowed to return must not be less than three months.)

" The authority issuing the document will strike out whichever statement does not apply and fill in the blank(s) in the remaining statement.

" (6) The present document ceases to be valid if the holder enters......... territory. (Indicate, if necessary, the holder's country of origin.)

" (7) On the expiration of its validity, the present document must be returned to the authority which issued it, or, if the holder is temporarily abroad, to the consular representative of the country where it was issued.

" (8) Should the holder take up residence in a country other than that which issued the present document, he must apply to the competent authorities for a new document."

(*i*) *Page 2* contains various particulars regarding the holder and gives a description of him. Various indications concerning the child or children of the holder are also included on this page.

(*j*) Spaces are provided on *page 3* for the photograph and signature of the holder and for particulars regarding his child or children. Furthermore, in view of the regulations in force in some countries of immigration, it has been considered advisable to introduce a new feature not found in previous documents, *i.e.*, a space for finger-prints.

(*k*) *Page 4* contains the following statement and headings :

(*aa*) " This document is valid for all countries, with the exception of the country which may be indicated in No. 6 on page 1 [1] and any other exceptions mentioned hereunder." On the dotted line provided for this purpose, the authority issuing the document may indicate the countries for which the document is not valid. It has seemed natural, in accordance with the provisions of Article 6 of the Preliminary Draft, to proceed on the assumption that the document will, as a rule, be valid for all countries or for the largest possible number of countries.

(*bb*) " Document or documents on the basis of which the present document is issued ". It has been felt that this entry, which does not appear in the documents established by previous Conventions or Arrangements, might be of assistance to the Governments, especially the Governments of the countries of final destination.

(*cc*) " Any other particulars which the authority issuing the document may consider necessary...". A more or less similar entry appears in the document referred to in the Recommendations of 1927. The following statement has been added to the above entry, in order to serve as a reminder to the authorities issuing the document : " particularly when the holder is of doubtful nationality

[1] *i.e.*, the holder's country of origin.

and legal proceedings have been instituted with a view to determining his nationality or lack of nationality."

(*dd*) Particulars of place and date of issue.

(*ee*) Headings of spaces reserved for the signature and seal of the authority which issues the document and certifies the authenticity of the photographs, signature and finger-prints on page 3.

(*ff*) Particulars of charge made for issue.

(*l*) *Pages* 5 *and* 6 are reserved for extensions or renewals of validity.

(*m*) *Pages* 7 *to* 30 are reserved for visas. In accordance with the Recommendations of the report annexed to the Final Act of the Passport Conference of 1926, the following sentence appears at the top of each of these pages : " The name of the holder of the document must be repeated in each visa." This would render fraudulent substitution more difficult.

(*n*) *Pages* 31 *and* 32 will contain practical information, expressed as clearly and simply as possible. This information will relate to those provisions of the Arrangement a knowledge of which is most likely to be of assistance to the holder of the travel document, as well as to the Government officials in the various countries.

These pages will also contain, for the benefit of the above-mentioned officials, concise information regarding the Intergovernmental Committee, and a list of the Member Governments. The addresses of the delegations of the Intergovernmental Committee in the various countries will also be given for the holder's information.

(*o*) It is fully appreciated that the inclusion, in the proposed document, of a great many printed headings would involve certain drawbacks. However, it might be in the interest of the Governments and, in some cases, of the holder himself, if certain additional headings were included. These entries might appear on pages 8, 9 and 10 respectively, under the following headings : (1) health certificate ; (2) vaccination

certificate ; (3) certificate of good morals. Certain countries do, in fact, require immigrants to produce such certificates [1].

These certificates would thus be contained in the document itself and there would be less risk of the holder's mislaying them. Moreover, the relevant heading at the top of pages 8, 9 and 10 would remind the holder or the competent authorities of the necessity or usefulness of these three certificates.

The question of including additional headings is submitted for the consideration of the Commission of Experts.

VII. Languages used in the document

The Preliminary Draft—like the Arrangement of 5th July, 1922, and subsequent Arrangements and Conventions—stipulates, in paragraph 2 of Article 3, that the document shall be drawn up in at least two languages—French and the national language or languages of the issuing authority.

VIII. Children of holder

The Arrangements of 12th May, 1926, 30th July, 1935, and 4th July, 1936, and the Convention of 10th February, 1938, stipulated that children under either 15 or 16 years of age, according to the Agreement in question, should be included on the certificates of their parent or parents. A similar provision has been included in Article 4.

IX. Fees charged for issue of the document

The Arrangement of 12th May, 1926, completing and amending the 1922 and 1924 Arrangements, stipulated that the fee for issue of the certificate should be the same as that charged for issue of a national passport. The Arrangement of 30th July, 1935, concerning Saar refugees showed an improvement in this respect by stipulating that the document should be issued at

[1] These items appear in the Emigrant's Identity Book submitted by MM. Deroover and Perassi on 29th August, 1925, to the Sub-Committee of the Advisory and Technical Committee of the Organisation for Communications and Transit (Appendix 1 to the annex to Annex 3, p. 77, League of Nations document C.423.M.156.1926.VIII).

the lowest scale of charges applicable to national passports (No. 9). The Arrangement of 4th July, 1936, and the Convention of 10th February, 1938, contained similar provisions. The Recommendations of 1927 expressed the wish that the relevant provisions of the Final Act of the Passport Conference be observed. These provisions read as follows : "The Conference recommends that the fees charged for the issue of passports should be fixed in such a manner as to bring in revenue to the States not exceeding the expenditure involved in the preparation of the passports and their issue to the persons concerned ".

It was considered desirable to reproduce, in Article 5 of the Preliminary Draft, the provisions of the 1935 and 1936 Arrangements and of the 1938 Convention, which are favourable to the refugees and more precise than the provisions of the above-mentioned Final Act.

With regard to destitute persons, the 1922, 1924 and 1935 Arrangements stipulated that the certificate should be issued free of charge, except in the event of legal provision to the contrary. The 1936 Arrangement and the 1938 Convention recommended that, in the case of indigent persons, travel documents should be issued entirely free of charge. Article 5 of the Preliminary Draft also stipulates that indigent persons shall receive the document free of charge.

X. Questions relating to the validity of the document

(1) *Territorial validity.*

Of all the Agreements examined in Section I, only the Recommendations of 1927 deal with this point. Recommendation III expresses the wish " that, save in certain special or exceptional cases, this document should be valid for all countries, or for as many countries as possible ". This text has been reproduced, in a slightly different form, in Article 6 of the Preliminary Draft.

(2) *Period of validity.*

It will be seen that the various Agreements examined in Section I differ with regard to the period of validity. Such

is the state of indecision reflected in these differences that some of the instruments in question (as shown by the following summary) successively stipulate or recommend different periods of validity for the same category of refugees or for related categories.

The 1922 Arrangement contains no provision relating to the period of validity of the document which it establishes. The same applies to the 1924 Arrangement, the only difference being that the specimen certificate attached thereto bears the following rather vague statement, which constitutes a kind of recommendation or implied wish : " A minimum period of two years is suggested." The 1926 Arrangement stipulates that the period of validity of the certificate should not, in principle, exceed one year. The Recommendations of 1927 fix the period of validity at six months, in principle. The 1933 Convention states that it must not be less than one year. The 1935 Arrangement fixes it at one year, without stipulating, however, that this is the minimum period. Finally, the 1936 Arrangement and the 1938 Convention lay down that the period of validity shall, as a general rule, be one year.

On the other hand, the Passport Conference recommended that all countries should adopt a minimum validity of two years for passports. However, the special nature of the proposed document makes it necessary to exercise more frequent supervision than in the case of ordinary passports. It has therefore seemed advisable to provide for a period of validity of one year (Article 7 of the Preliminary Draft), without qualifying this provision by such expressions as " as a general rule " or " in principle ", which would be likely to impair the uniformity of the régime.

(3) *Expiration of validity.*

The following statement appears on the specimen certificates attached to the 1936 Arrangement and 1938 Convention respectively : " On the expiration (in French : " Après l'expiration ") of its validity, the present certificate must be returned to the issuing authority." But this statement does not provide for the possibility of a document expiring while the holder is temporarily abroad. Moreover, as regards the French text, the

expression " après l'expiration... " is vague, and may give rise to confusion ; it seems better to use the expression " à l'expiration ", which emphasises the necessity of returning the document as soon as its validity expires. The following statement, which takes the two above-mentioned points into consideration, therefore appears under No. 7 on page 1 of the specimen annexed to the Preliminary Draft :

> " On the expiration (French text : " A l'expiration ") of its validity, the present document must be returned to the authority which issued it, or, if the holder is temporarily abroad, to the consular representative of the country where it was issued."

(4) *Renewal or extension of validity or issue of a new document by territorial authorities.*

Paragraph 1 of Article 8 of the Preliminary Draft stipulates that the renewal or extension of the validity [1] of the document is a matter for the authority which issued it, so long as the holder resides in the territory of the said authority, and that the same applies to the issue of a new document. These provisions are based on similar stipulations in the 1922 and 1924 Arrangements, which, however, only provide for renewal.

(5) *Renewal or extension of validity or issue of a new document by consular authorities.*

The extension of a special identity and travel document by Consuls was first provided for in the Recommendations of 1927. Provisions regarding such extension were subsequently included in the 1933 Convention, the 1936 Arrangement and the 1938 Convention.

Paragraph 2 of Article 8 of the Preliminary Draft reads as follows : " In the case of a refugee who holds a document

[1] In this connection, the difference between the expressions " extension or prolongation of validity " and " renewal of validity " should be borne in mind. As indicated in the report, dated 13th January, 1927, of the League of Nations Advisory and Technical Committee for Communications and Transit, " the validity of a passport can only be prolonged if the latter has not yet expired." On the other hand, once the validity of the document has expired, it has to be " renewed ".

containing an authorisation to return, during the period of its validity, to the country which issued it, the Consuls of that country, specially authorised for the purpose, shall be empowered to extend or renew the validity of the document or to issue a new document, for a period which shall not, in each case, exceed six months."

The following points are submitted for the attention of the Commission of Experts :

(*a*) With the exception of the Recommendations of 1927, the Agreements mentioned above only provide for extension of the validity of the document by Consuls. It seemed appropriate to stipulate that the latter should also be empowered to renew the document or even to issue a new document. It is obvious, however, that in the event of renewal or issue of a new document, the maximum period of six months must be calculated not from the day on which the request for renewal or issue of a new document is made, but from the date of expiration of the validity of the document which is in the possession of the holder when he makes such a request.

(*b*) None of the previous texts mentioned above specifies that a document can only be renewed if it contains permission to return. It seemed logical and necessary to add this stipulation in order to preclude the possibility—however remote it may be in actual practice—of a Consul's renewing a document which does not confer on its holder the right to return to the country which the Consul represents.

It should also be mentioned that the permission to return must have been granted for the whole of the period of validity of the document. A Consul will thus be unable to extend or renew a document which contains an authorisation to return valid for a shorter period than the period of validity of the document itself (see Article 15 of the Preliminary Draft). This point may best be illustrated by giving an example. A refugee is the holder of an identity and travel document issued by the authorities of Country A which is valid until 31st December, 1945, but which contains an authorisation to return expiring on 30th August, 1945. This refugee has been in Country B since

30th July, 1945. On 30th December, 1945, he goes to the Consulate of Country A to apply for an extension of his identity document. The Consul of Country A will be unable to grant such an extension, since the holder of the document no longer has the right to return to Country A and it would consequently be pointless to extend the document ; it is to the authorities of Country B that the refugee must apply for a new document, which may, if necessary, be used by him for returning to Country A, if he obtains the visa required for this purpose.

(c) It is felt that the above-mentioned period of six months should be the maximum, so that a refugee should not stay for too long a period in any given country with an identity and travel document issued by another country. There are two alternatives : either the refugee intends to return to the country where the document was issued, in which case the period of six months seems reasonable ; or he has left that country with no intention of returning, in which case he has only to apply for a new document to the authorities of the country in which he intends to settle ; if he wishes to return to the former country for a relatively short stay, he will have to obtain an entry visa, which will be affixed on his new document.

(d) The various forms of extension of the document which have been considered above in no way entitle the refugee to the protection of Consuls, nor do they confer on the latter any right of protection (see sub-section XVI of the present section).

(e) Article 8, paragraph 2, of the Preliminary Draft stipulates that the Consuls must be " specially authorised ". The advisability of granting such authorisation is a matter for the Governments concerned alone. The latter must have the sole right to decide whether, and in what circumstances, a Consul may extend or renew an identity document, issue a new document, or extend an authorisation to return.

(6) *Country where the document ceases to be valid.*

It is stated, on the specimen documents attached to the 1922, 1924 and 1936 Arrangements and the 1938 Convention, that the document ceases to be valid in a country, mentioned by name, which is the holder's country of origin. As the proposed

document is intended for refugees of various origins, it is not possible to include a printed statement indicating one particular country. A dotted space, which can, if necessary, be filled in by the authority which issues the document, has therefore been provided under No. 6 on page 1 of the specimen which appears in Section III of the present Report. It should be emphasised that this is only intended to meet a contingency, and that the document will not necessarily, in every case, cease to be valid in the holder's country of origin—which is another reason for not including a printed statement. It is, for instance, quite conceivable that, after the victory of the United Nations, a Jew of German origin, who has not taken advantage of the offer of reinstatement in German nationality, may nevertheless have the right to enter German territory.

XI. Right to leave the country

This right is mentioned only in the 1936 Arrangement (Article 3, paragraph 2) and the 1938 Convention (Article 4, paragraph 1 (*a*)). Although such a right is elemental and would seem to be unquestionable, it was considered desirable to mention it in paragraph 1 of Article 15 of the Preliminary Draft.

XII. Visas

(1) *Entry visas.*

The 1922, 1924 and 1935 Arrangements stipulated that the refugee might, in certain circumstances, be admitted into the State which he wished to enter, if the competent authorities of that State affixed the necessary visa directly on the identity and travel document, or if its consular authorities issued to the bearer a new document authorising him to enter the said country. The 1936 Arrangement and the 1938 Convention merely refer to the affixing of visas directly on the identity document. Only this latter procedure has been provided for in Article 10 of the Preliminary Draft, since space has been allowed for all necessary visas on the specimen document which appears in Section III.

(2) *Transit visas.*

The Arrangements of 5th July, 1922, and 31st May, 1924, merely stipulated, in substance, that transit visas should be issued on condition that the refugees concerned had obtained the visa of the country of final destination. The Recommendations of 1927 expressed the wish that visas should be granted under as simple and favourable conditions as possible. The Arrangement of 30th June, 1928, concerning the legal status of Russian and Armenian refugees, recommended that certificates should be visaed in the simplest possible manner and with the minimum of formalities. Finally, according to the Arrangement of 4th July, 1936, and the 1938 Convention, the Contracting Parties agreed to grant facilities for the issue of transit visas. This last formula has been adopted, with some slight alterations, in Article 11.

(3) *Fees for various visas.*

With respect to fees for issue of the various visas, the Arrangement of 12th May, 1926, expressed the wish that the Governments would give favourable consideration to the proposals of the International Labour Office with regard to possible reductions. The Recommendations of 1927 laid down the same provisions in respect of fees for visas as in the matter of fees for issue of the document (see sub-section X).

The 1933 Convention stipulated that the cost of visas should be established according to the lowest tariff applied to visas on foreign passports. Similar provisions were included in the Arrangements of 30th July, 1935, and 4th July, 1936, and in the 1938 Convention.

Article 12 of the Preliminary Draft is based on the provisions of the Conventions and Arrangements mentioned in the preceding paragraph. This article also refers to exit visas, for which no provision was made in the above Conventions and Arrangements, but which are, on the other hand, mentioned in the 1926 Arrangement.

With regard to destitute refugees, the 1926, 1935 and 1936 Arrangements, and the 1933 and 1938 Conventions stipulate that visas shall be granted free of charge. Article 12 of the Preliminary Draft contains similar provisions.

XIII. Change of residence

(1) *New document.*

Article 3, paragraph 2(*c*), of the 1938 Convention makes the following stipulation with regard to change of residence :

> " Should a refugee lawfully take up residence in another territory to which the Convention applies, the authorities of that territory shall be required to supply him with a new travel document."

It has been considered inadvisable to reproduce the above text, which refers only to the obligation devolving upon the authority of the new country of settlement. Not only this obligation, but also that which rests with the refugee himself, should be mentioned. Article 13 of the Preliminary Draft has therefore been worded as follows :

> " Any refugee changing his place of residence and lawfully taking up residence in a territory to which the present Arrangement applies, shall apply for a new document to the competent authority of the said territory, which shall supply him with such a document."

Moreover, an entry reminding the holder of the steps which he must take in such a case has been included under No. 8 on page 1 of the specimen annexed to the Preliminary Draft.

(2) *Old document.*

Article 14 of the Preliminary Draft reads as follows :

> " The authority issuing a new document shall withdraw the old document."

This article covers all cases in which a new document is issued. It will therefore apply not only in the circumstances mentioned above under (1), but also to cases in which the new document is issued by the authority which issued the previous document—either because all the pages in the latter have been used or because the document has expired. It will also apply when the new document is a national passport issued to a person whose nationality has been determined by means of legal proceedings.

In the drafting of Article 14, Recommendation II of 1927 has been borne in mind. Paragraph 3 of this Recommendation reads as follows: "That the authority issuing a new identity and travelling document should withdraw the document which has expired." The words "which has expired" have, however, been omitted from Article 14 of the Preliminary Draft, since the old document may not have expired.

XIV. Authorisation to return

The certificates issued to Russian and Armenian refugees during the first few years were not valid for return unless they contained a special statement to the contrary. Later on, from the time of the Arrangement of 12th May, 1926, the exception became the rule; thereafter, the certificate was valid for return unless it bore a statement to the contrary. The Recommendations of 1927 also laid down the principle of the authorisation to return. As regards documents issued to refugees from Germany under the 1936 Arrangement and the 1938 Convention, the rule adopted was that the certificate was valid for return, the Governments having the right, however, in exceptional cases, to limit the period during which the refugee might return.

Thus, from 1926 onwards, there was a marked evolution in favour of the right of return. It has not seemed possible to go against this tendency, especially since it must be admitted that a travel document which contains no authorisation to return loses a great deal of its value and does little to facilitate travel for the holder.

Article 15 of the Draft Arrangement therefore stipulates, in paragraph 1, that the travel document entitles the holder to return, during the period of its validity, to the territory where it was issued.

However, it has been considered desirable to work out as flexible a formula as possible. Paragraph 2 of Article 15 therefore stipulates that the Contracting Governments reserve the right to limit the period during which the refugee may return. Two points should be noted in this connection. Firstly, this limitation

is likely to be prejudicial to the interests of the refugees because it involves a restriction of their freedom of movement ; it has therefore seemed advisable to make it clear that such a limitation will only be imposed in cases which the Governments consider exceptional. Secondly, it has seemed useful, in the interest of the refugees, to specify that the period during which the holder of the proposed document is allowed to return should not be less than three months.

In consequence, the following statements appear under No. 5 on page 1 of the specimen identity and travel document :

> " (*a*) The holder is authorised to return to......... (State here the country whose authorities are issuing the document) at any time during the period of validity of the present document.
>
> " (*b*) The holder is authorised to return to......... (State here the country whose authorities are issuing the document) on or before......... (The period during which the holder is allowed to return must not be less than three months).
>
> " The authority issuing the document will strike out whichever statement does not apply, and fill in the blank(s) in the remaining statement."

XV. Regulations relating to the control of foreigners ; special provisions ; status of holder

(1) *Regulations relating to the control of foreigners.*

The 1922 Arrangement contained the following stipulation : " It (the certificate) shall not infringe the laws and regulations in force in any State with regard to the control of foreigners." The 1924 and 1936 Arrangements and the 1938 Convention contained similar provisions.

It has seemed preferable to use as a basis the wording of the Recommendations of 1927, which is more appropriate. Paragraph 1 of Article 16 of the Preliminary Draft therefore reads as follows :

> " The present provisions in no way affect the laws and regulations governing the conditions of admission to, and

residence and establishment in, the territories of the Contracting Party to which the present Arrangement applies."

(2) *Special provisions.*

With regard to the special regulations concerning the holders of identity and travel documents, paragraph 2 of Article 16 is based on the Recommendations of 1927.

(3) *Status of holder.*

Certain refugees who have been denationalised may consider that their denationalisation was as illegal as it was unjust; again, refugees of doubtful nationality may, rightly or wrongly, lay claim to a certain nationality; finally, persons stateless in fact possess a definite nationality. In consequence, it is advisable to avoid giving refugees the impression that their acceptance of the proposed document would imply a renunciation of their nationality, or of what they consider to be their nationality. Since the Arrangement is to be drawn up solely for practical purposes, it has seemed necessary to point out that neither the issue of the document nor the entries made thereon determine or affect the actual status of the holder and that, in particular, they can in no way influence the legal determination of his nationality.

No provision to this effect was included in the Agreements drawn up between 1922 and 1933. On the other hand, the specimen annexed to the 1935 Arrangement bore a statement indicating that the certificate was without prejudice to and in no way affected the holder's nationality. Identical statements appear on the specimen certificates annexed to the 1936 Arrangement and the 1938 Convention.

The statement mentioned in the preceding paragraph appears under No. 4 on page 1 of the proposed document. In addition, Article 17 of the Preliminary Draft reads as follows: " Neither the issue of the document nor the entries made thereon determine or affect the actual status of the holder, particularly as regards nationality."

XVI. Protection

At the meetings held prior to the adoption of the Recommendations of 1927, it appeared to certain delegates that the renewal or extension of the validity of the document by Consuls would involve the recognition of the right of the latter to protect the holder of the document.

As pointed out in the Report adopted by the Third General Conference on Communications and Transit of 1927, the granting to Consuls of the power to renew and extend documents can obviously not be regarded as conferring on them a right of protection in respect of the holders, nor does it entitle the latter to claim such protection. The granting of such power is purely a practical measure. It is normal that when a document contains an authorisation to return to a given country, the Consuls of that country should be able to renew or extend the document if the holder is temporarily abroad.

While the above-mentioned Recommendations were being drafted, the British and Netherlands Governments expressed the view that it was necessary to make it clear beyond doubt that the issue of the proposed document did not confer on its holder the right of protection by the consular authorities of the country which had issued it [1]. Article 18 of the Preliminary Draft takes into consideration the concern thus expressed [2].

XVII. Documents issued prior to entry into force of Arrangement

Of all the Agreements examined in Section I, only the Recommendations of 1927 contain provisions regarding this

[1] See Minutes of the Second Committee (C.558(*b*).M.200(*b*).1927. VIII, pp. 21 and 53).

[2] At the meetings held prior to the adoption of the Recommendations of 1927, a rather similar fear was expressed on another point, namely that the holder of the document might be recognised " as being in some way a national of the issuing country ". No such confusion can arise regarding the proposed document since the specimen submitted to the Commission of Experts bears the following statement under No. 3 on page 1 :

> " The holder of this document does not enjoy, in law or in fact, the protection of any Government. He is not qualified to obtain a ...... national passport (indicate here the country whose authorities are issuing the document)."

point. Similar provisions are included in Article 19 of the Preliminary Draft, which reads as follows :

"Identity and travel documents issued before the entry into force of the present Arrangement to persons referred to in Articles 1 and 2 shall remain valid until they have expired."

It must be remembered that, for administrative reasons, a certain time—possibly a fairly long time—is bound to elapse between the date on which the Arrangement will come into force and the time when it will be possible to begin the actual issue of the new documents. If the old documents were automatically cancelled, it would be absolutely necessary to issue new documents immediately to all persons concerned. In practice, this would be impossible. It was therefore advisable to make it clear, for the benefit of refugees who might need to travel during the transitional period, that documents previously issued would remain valid until they expired, in order that the change from the old to the new régime might be effected as smoothly as possible.

XVIII. Additional pages or slips

Only the specimen annexed to the 1935 Arrangement contains a statement forbidding the addition of new pages or slips to the certificate. In view of the number of pages in the specimen annexed to the Preliminary Draft, it will seldom happen that all the pages are completely filled before the document expires [1]. A statement forbidding additional pages or slips has nevertheless been included under No. 4 on page 1 of the specimen document, in conformity with the relevant recommendations of the Report annexed to the Final Act of the Passport Conference of 1926 and with the decisions of the Paris Conference of 1920, according to which any passport which has been completely filled must be replaced by a new document.

[1] According to a statement made by the British delegate at the Passport Conference of 1926, official statistics show that the number of British passports which become full before the date of expiration is extremely small, and that this occurs only in one case out of 10,000.

XIX. Final clauses relating to procedure

Articles 20, 21, 22 and 23 of the Preliminary Draft refer to procedure. Two remarks may be made in this connection.

(1) With the exception of the 1936 Arrangement, previous Arrangements belong to the category of instruments which have been called Arrangement-Recommendations. Their formal character is reduced to a minimum, and the final clauses relating to procedure are rudimentary and incomplete. When such clauses exist, they refer only to the following points :

(*i*) What is called, in these Arrangements, not " signature ", but " adhesion " or " adoption ". The Arrangements of 5th July, 1922, 31st May, 1924, 12th May, 1926, 30th June, 1928 (Assyrians), 30th June, 1928 (legal status), and 30th July, 1935, contain very brief clauses on this subject.

(*ii*) Communication of the above-mentioned adhesion or adoption to the Secretary-General of the League of Nations. Clauses regarding this point, which are also very brief, appear in the Arrangements of 1922, 1924 and 1935. On the other hand, this subject is not mentioned in the Arrangements of 1926, 1928 (Assyrians) and 1928 (legal status).

(*iii*) Communication of the above-mentioned adhesion or adoption to the other Governments by the Secretary-General ot the League of Nations. This is the case as regards the 1922, 1924 and 1935 Arrangements, but not as regards the 1926 Arrangement and the two 1928 Arrangements.

(*iv*) The date of entry into force. Only the 1922, 1924 and 1935 Arrangements contain stipulations regarding this point.

In drawing up the Preliminary Draft, an attempt has been made to work out final clauses which are less incomplete. These clauses cover the following points :

(*i*) Date of the Arrangement.

(*ii*) Place of signature of the Arrangement.

(*iii*) Possible signatories.

(*iv*) Notification of signatures by the Director of the Intergovernmental Committee.

(*v*) Conditions of entry into force.

(*vi*) Period after which denunciation is possible.

(*vii*) Formalities relating to denunciation.

(*viii*) Notification of denunciations by the Director of the Intergovernmental Committee.

(*ix*) Period which must elapse before a denunciation comes into effect.

(2) Some of the above clauses require explanation :

(*a*) Article 22 lays down that the Arrangement shall come into force sixty days after the Director has received signatures on behalf of at least two Governments, and that, in respect of each of the Governments on whose behalf a signature is subsequently deposited, the Arrangement shall come into force on the sixtieth day after the date of such deposit. This relatively long delay is justified in view of the fact that each Contracting Government will, in all probability, not begin to prepare the document until the Arrangement has been signed, and that a relatively long time should be allowed for the actual preparation of the document which, in view of its nature, will require special attention.

(*b*) With regard to the period laid down in paragraph 1 of Article 23 in respect of denunciations, it should be pointed out that the longer the period which must elapse before an Arrangement can be denounced, the more efficient the barrier to denunciations, which obviously have the effect of endangering the stability of the conventional régime.