STATELESSNESS AS A LEGAL-POLITICAL PROBLEM

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

INTRODUCTORY NOTE.

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

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

I.—WHAT IS STATELESSNESS ?

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

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

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

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

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

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

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

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

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

II.—HOW STATELESSNESS OCCURS.

A—Origin :

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

I.—Original (Absolute) Statelessness.

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

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

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

II.—Subsequent (Relative) Statelessness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B.—Ending:

Statelessness ends by (*a*) Repatriation (only in case of relative statelessness),

(*b*) Naturalisation,

(*c*) By marriage (in case of women if the wife acquires the nationality of her husband under the law of the State of which he is a national),

(*d*) Death.

III.—DENATIONALISATION IN MUNICIPAL LEGISLATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.—DENATIONALISATION AS AN ANTI-JEWISH MEASURE.

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

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

1.—Germany.

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

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

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

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

" A Jew loses German nationality—

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

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

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

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

2.—Austria.

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

3.—Czechoslovakia.

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

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

4.—Italy.*

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

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

5.—France.

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

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

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

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

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

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

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

6.—Hungary.

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

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

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

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

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

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

7.—Rumania.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.—Bulgaria.

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

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

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

9.—Finland.

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

V.—STATUS OF STATELESS PERSONS.

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

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

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

(*a*) To provide for the political and legal protection of refugees as entrusted to the regular organs of the League;

(*b*) To superintend the entry into force and the application of the legal status guaranteed to refugees under the Conventions of October 28th, 1933, and February 10th, 1938;

(*c*) To facilitate the co-ordination of humanitarian assistance; and

(*d*) To assist the Governments and private organisations in their efforts to promote emigration and permanent settlement.

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

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

1. The personal status of stateless refugees should be governed by the law of their country of domicile or, failing such, by that of their country of residence.

2. Refugees and stateless persons coming under the Conventions are accorded a limited right of asylum; they should not be expelled without reasonable cause; reconduction (" refoulement ") to their country of origin should only take place as *ultima ratio*.

3. As regards industrial accidents, social insurance, welfare and relief, the persons coming under the Conventions should be accorded the most favourable

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

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

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

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

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

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

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

VI.—MODERN LEGAL POLICY WITH REGARD TO STATELESSNESS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Emet les résolutions suivantes :

PARTIE I.—DISPOSITIONS GÉNÉRALES ET DEFINITIONS.

Article 1.

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

Article 2.

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

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

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

PARTIE II.—LES APATRIDES.

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

Article 3.

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

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

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

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

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

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

Article 4.

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

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

Article 5.

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

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

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

Article 6.

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

Article 7.

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

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

Article 8.

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

PARTIE III.—*Les Réfugiés.*

Article 9.

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

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

Article 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

RETENTION.—(2) Such nationality is inviolable.

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

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

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

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

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

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

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

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

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

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

VII.—THE JEWISH ASPECT OF THE PROBLEM.

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

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

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

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

* Given by Hanson, in 1930.

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

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

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

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

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

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

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

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

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

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

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

VIII.—SUGGESTIONS FOR FUTURE POLICY REGARDING STATELESSNESS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IX. —CONCLUSION.

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

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

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