

A Study of Statelessness

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INTRODUCTION

I. ORIGINS OF THE PRESENT STUDY

1. THE TERMS OF REFERENCE GIVEN TO THE SECRETARY-GENERAL BY THE ECONOMIC AND SOCIAL COUNCIL

At its sixth session, the Economic and Social Council adopted resolution 116 (VI) D, dated 1 and 2 March 1948,[1] reading as follows:

“D
“STATELESS PERSONS

“The Economic and Social Council,

“*Taking note* of the resolution of the Commission on Human Rights adopted at its second session regarding stateless persons,[2]

“*Recognizing* that this problem demands in the first instance the adoption of interim measures to afford protection to stateless persons, and secondly the taking of joint and separate action by Member nations in co-operation with the United Nations to ensure that everyone shall have an effective right to a nationality,

“*Requests* the Secretary-General, in consultation with interested commissions and specialized agencies:

“(a) To undertake a study of the existing situation in regard to the protection of stateless persons by the issuance of necessary documents and other measures, and to make recommendations to an early session of the Council on the interim measures which might be taken by the United Nations to further this object;

“(b) To undertake a study of national legislation and international agreements and conventions relevant to statelessness, and to submit recommendations to the Council as to the desirability of concluding a further convention on this subject.”

The resolution of the Commission on Human Rights to which the resolution of the Council refers and to which it gives effect, reads as follows:

“46. Stateless Persons.

The Commission considered a draft resolution on stateless persons proposed by the Working Group on the Covenant relating to stateless persons (document E/CN.4/56, page 15). As a result, it adopted the following resolution:

The Commission on Human Rights

[1] Resolutions adopted by the Economic and Social Council during its sixth session (2 February to 11 March 1948), page 18.

[2] See Official Records of the Economic and Social Council, Third Year, sixth session, Supplement No. 1, pages 13 and 14.

I. *Expresses the wish:*

(a) ...

(b) That early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation.

II. *Recommends* that such work be undertaken in consultation with those specialized agencies at present assuming the protection of some categories of persons not enjoying the protection of any government and that due regard be paid to relevant international agreements and conventions.”[3]

It is important to note that, after the resolution of the Council, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, which reads as follows:

“*Article 15* (1) Everyone has the right to a nationality.

“(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

The fore-mentioned resolution of the Council deals precisely with the means of implementation of Article 15 of the Declaration, namely “the adoption of interim measures to afford protection to stateless persons” and action “to ensure that everyone shall have an effective right to a nationality”.

2. CONSULTATIONS BY THE SECRETARY-GENERAL

The Secretary-General, in accordance with the above resolution recommending him to consult “interested commissions and specialized agencies” consulted the Director-General of the International Refugee Organization at the various stages of his work.

In addition he requested information from the Director of the International Labour Office on certain points within the latter’s specific competence, and submitted the draft of the Study to him.

Finally, the Secretary-General obtained expert opinion from Mr. Paul Niboyet, Professor of the Paris Faculty of Law, on national legislation under which the possession of a nationality is not at present ensured to every individual.

3. NATURE OF THE STUDY

In accordance with paragraph (b) of the Council’s resolution, the Secretary-General is requested to study national legislation and international agreements and conventions relevant to statelessness.

In this connexion, the Secretary-General points out that he has not undertaken an exhaustive study of the provisions of national legislation concerning nationality. In the first place, that would have taken a long time, and, secondly, if the Economic and Social Council decides to work for the conclusion of international conventions for the abolition of statelessness, it will probably require to

[3] See Official Records of the Economic and Social Council, Third Year, sixth session, Supplement No. 1, pages 13 and 14.

request Governments for precise information on the present position of their legislation in the matter.

For the time being, therefore, it seems sufficient to give a general picture of the law governing nationality, indicating the main systems in force. The quotations and references here given are intended merely as examples.

II. STATELESSNESS PAST AND PRESENT

1. GENERAL HISTORICAL SURVEY

Statelessness is a phenomenon as old as the concept of nationality.

Present-day law recognizes the State as the sole authority responsible for determining the rules governing the attribution of its own nationality. There are only a small number of conventions concerning statelessness, designed to abolish it in certain specific cases.

The absence of general rules for the attribution of nationality and the discrepancies between the various national legislations constitute the permanent source of statelessness. Until the beginning of the twentieth century, however, the resultant statelessness was a limited phenomenon and consequently did not greatly disturb international life.

After the territorial reshuffling and the political-and social crises which followed the First World War, statelessness assumed unprecedented proportions.

First came the exodus of more than a million Russian and Armenian refugees.

Then the establishment of the Fascist régime in Italy was followed by the flight of tens of thousands of Italian refugees.

In 1937 France had to take in over 100,000 Spanish Republicans and in 1939, over 400,000. Since that time Spanish refugees have continued to enter clandestinely.

Immediately before and during the Second World War the exodus of Germans opposed to nazism and fascism and of persecuted Jews from the Axis countries and the occupied territories greatly increased. In the Far East population movements occurred as a result of Japanese aggression.

At the present time an interrupted stream of refugees from the East European countries is flowing towards the West.

2. STATISTICS ON STATELESS PERSONS

It is impossible to submit statistics concerning the number of stateless persons in need of international legal and political protection.

No account has been taken of *stateless persons who are not refugees*. The only thing that can be said is that their number is limited.

As regards the *stateless refugees* who would require international legal and political protection, their number cannot be determined even though there exist statistics concerning those individuals who formed the various waves of refugees who have fled from their countries since the end of the first world war; on the other hand, there exist complete and reliable statistics concerning the number of refugees who are the responsibility of the IRO.

It could be thought that the number of refugees in the charge of the IRO would supply a reliable basis for the determination of the number of refugees who would in the near future require international legal and political protection, inasmuch as the functions of the IRO include material assistance to refugees as well as their legal and political protection.

However such a basis of evaluation could lead to erroneous conclusions, for the following reasons:

In the first place, the main task of the IRO is the repatriation or resettlement of refugees who are under its care. It can therefore be said that the large majority of refugees who are the responsibility of the IRO will not, in the future, need legal and political protection. Such will certainly be the case for the repatriated refugees as well as for the re-established refugees who will have acquired the nationality of the country of resettlement. As for the re-established refugees who have not yet acquired the nationality of the country of re-establishment, it can be assumed that a large number among them will not require international protection.

In the second place, there exist refugees who have never received material assistance from the IRO. The IRO could have given them legal protection in accordance with its Constitution, but they have not made themselves known to the IRO. The statistics of the IRO therefore do not include these refugees.

It must also be remarked that the problem of refugees is in constant evolution.

In order to determine the number of refugees who would require international legal and political protection, it would be necessary to make the following calculations:

First, the total number of individuals who formed the various waves of refugees who fled from their country of origin, and who have thus become stateless *de jure* or *de facto* must be accounted for. To these should be added the descendants of these refugees who did not acquire a nationality at birth. Then, from this total number should be deducted the number of those who have died since their expatriation, and those who were repatriated or naturalized. The balance would represent the number of those who would be entitled to international protection. But even this group might, as has been said, include a number of re-established refugees who would probably not require international protection.

Subject to these remarks, an attempt will be made to give a few statistical data concerning the situation prior to the second world war and posterior to it.

(1) THE SITUATION BEFORE THE SECOND WORLD WAR

There were no reliable statistics in this field at the time of the League of Nations High Commissioner's Office and the Nansen International Office.

According, to data assembled by Sir John Simson,[4] an authority on this subject, the figures for the main categories of refugees were as follows:

(a) *Russian refugees*: in 1922, 718,000-772,000; in 1930, 503,000 536,000; in 1936, 355,000-386,000.

To these must be added about 95,000 Russian refugees in the Far East, making a total of about 450,000.[5]

(b) *Armenian refugees*: in 1924, 205,000; in 1930, 210,000; in 1936, 225,000.

Of these 225,000, 134,466 had acquired Syrian or Lebanese nationality.[6]

[4] "The Refugee Problem", Oxford University Press, 1939, and "Refugee", 1939.

[5] *Ibid.*, page 515.

[6] Report by Mr. Hansson, President of the Nansen International Office to the League of Nations Assembly (League of Nations Document A.21.1937 XII, page 7.) The acquisition of Syrian and Lebanese nationality by former Turkish nationals resident in the territory of Syria and Greater Lebanon as of 30 August 1924 was a

(c) *Spanish refugees*: in 1939, 400,000.[7]

(d) *Italian refugees*: Sir John Simson estimates that in 1938 there were 10,000 Italians living in France who could not return to Italy and 50,000 for whom return would have been difficult. The figure of 60,000 should be tripled to allow for the refugees' families, thus bringing the total to 180,000 persons.[8]

(e) *German refugees*: at the end of 1938 the number of German refugees was 350,000[9]

(2) THE POSITION AFTER THE SECOND WORLD WAR

The Preparatory Commission of the International Refugee Organization (IRO), established in the spring of 1947, tried to estimate the number of refugees and "displaced persons" entitled to its aid and protection. It collected information from the Inter-Governmental Committee for Refugees, the United Nations Relief and Rehabilitation *Administration (UNRRA)*, and the military authorities in occupied Germany.

(a) The information summary presented to the Second Part of the First Session of the IRO. Preparatory Commission (May 1947) by its Executive Secretary gave the numbers of refugees and displaced persons entitled to receive aid or protection from IRO as follows:

	Protection and help	Protection only
Germany	671,900	800,000
Austria	138,800	128,500
Belgium	5,000	-
China	13,500	12,000
Spain	482	482
France	431,200	150,000
Greece	2,000	-
Italy	146,500	146,000
Middle East	33,000	30,000
Netherlands	5,000	-
Portugal	230	230
United Kingdom	60,000	-
Sweden	40.800	-

right by virtue of the decrees issued by the High Commissioner of the French Republic, dated 30 August 1924 (Clunet, 1927, page 1265).

[7] Sir John Simson, "Refugee", page 1.

[8] Sir John Simson, "The Refugee Problem", page 120.

[9] *Ibid.*, page 5.

Switzerland	13,200	12,000
Turkey	1,200[10]	1,200[11]
	1,562,812	1,280,912

(b) On 15 September 1948, the IRO published the following additional figures:

As at July 1947. Protection and assistance; 704,000 refugees and displaced persons: protection only; 900,000 refugees (including 550,000 prewar refugees).

Total for the two categories: 1,604,000.

As at July 1948. The number of persons assisted declined to: 508,000 in the three Western Zones of Germany, 37,000 in Austria, 25,000 in Italy, 10,000 in the Middle East, 19,000 in Czechoslovakia, the Far East, France, the Netherlands, Spain and Portugal. Total, 599,000.

These refugees were of some thirty different nationalities, the main ones being: Poles, 253,637; Ukrainians, 99,946; Latvians, 72,026; Lithuanians, 43,717; Yugoslavs, 26,943; Estonians, 20,294; Romanians, 15,207; Hungarians, 10,789.[12]

III DE JURE AND DE FACTO STATELESS PERSONS

There are two categories of stateless persons: *de jure* and *de facto*.

1. *Stateless persons de jure* are persons who are not nationals of any State, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one.

2. *Stateless persons de facto* are persons who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals. The Constitution of the IRO in its Annex I (First part-Section A.2) uses this formula: "a person ...who ...is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality."

Although in law the status of stateless persons *de facto* differs appreciably from that of stateless persons *de jure*, in practice it is similar.

IV. "STATELESS PERSONS" AND "REFUGEES"

In order to determine his terms of reference, the Secretary-General must refer to the Council resolution which invests him with this mandate.

[10] Document Prep/35, dated 25 April 1947, page 6.

[11] Document SR/2, Lausanne, 5 May 1947.

[12] IRO: "The Refugee Problem", 1948, page 4.

This resolution mentions the protection of “stateless persons” but it does not refer at all to “refugees”.

Clearly, the fact that refugees are not mentioned does not mean that they must be excluded from the scope of the present study. In fact, a considerable majority of stateless persons are at present refugees. These refugees are *de jure* stateless persons if they have been deprived of their nationality by their country of origin. They are *de facto* stateless persons if without having been deprived of their nationality they no longer enjoy the protection and assistance of their national authorities, as it has been said under No. III above.

The measures taken since the end of the first world war in order to improve the legal status of refugees and to ensure them international legal protection will therefore have an important place in the present study.

However, in view of the fact that the Council resolution deals only with statelessness, refugees will be included only in so far as they are stateless persons. Therefore, refugees who are not stateless persons¹[13] will not be considered. The material assistance to refugees will also be excluded from the present study; this assistance is no less important for refugees than the international legal protection, but it exceeds the limits of the question which the Economic and Social Council has requested the Secretary-General to study.

It is evident, however, that if the study on the position of stateless persons must include refugees who are *de jure* or *de facto* stateless persons, it must also consider those stateless persons who are not refugees, even though this group is much less numerous than that of refugees who are stateless and even though its position is in certain respects more favourable than that of stateless refugees. For example, the stateless person who is not a refugee can obtain documents establishing his civil status from the authorities of the countries where these documents were originally issued, because these authorities have no reason to refuse them to him.

V. THE DIFFICULTIES RESULTING FROM STATELESSNESS

Statelessness is a source of difficulties for the reception country, the country of origin and the stateless person himself.

1. DIFFICULTIES FOR THE RECEPTION COUNTRY

1. The stateless person does not fit smoothly into the legal administrative or social life of his country of sojourn. The provisions of international law which determine the status of foreigners are designed to apply to foreigners having a nationality. The stateless person is an anomaly and for reasons of principle or method it is often impossible to deal with him in accordance with the legal provisions designed to apply to foreigners who receive the assistance of their national

[13]. Those refugees who have fled from one to another part of the country of which they are citizens are not stateless persons. This is the case of Greeks who have left the northern provinces of Greece to flee into the South of the country. Neither are those individuals stateless who found refuge abroad but who continue to benefit by the protection and assistance of their government, itself in exile abroad, which has been recognized by other States. Such was, for example, the case of -Norwegian, Belgian and Dutch refugees during the second world war. Refugees are not stateless who are to receive the nationality of the country to which they are transferred (Germans of countries of Eastern Europe transferred to Germany). Neither are refugees stateless whom the receiving country is prepared to consider immediately or after a short period as its nationals (Hindus who have left Pakistan for India, Moslems who have left India for Pakistan). Even though in theory individuals who sought refuge abroad and were denationalized by their government during a civil or international war involving the existence of this government, could, in theory, be considered stateless persons, in practice no useful purpose would be achieved by considering them as such until the end of the war: in fact, legal protection, as distinguished from material assistance, does not correspond to an immediate need, and the position of the refugee is a temporary one as long as the war lasts.

authorities, and who must, in certain cases, be repatriated by the countries of which they are nationals.

2. Administrative authorities which have to deal with stateless persons, having no definite legal status and without protection, encounter very great and often insurmountable difficulties. Officials must possess rare professional and human qualities if they are to deal adequately with these defenceless beings, who have no clearly defined rights and live by virtue of good-will and tolerance.

3. The fact that large numbers of persons are obliged to live outside the law, as it were, that they are at the mercy of the administrative authorities and are led to adopt various extra-legal procedures to win the favour of those authorities, creates a state of affairs incompatible with a healthy conception of the law.

4. The uncertain status of stateless persons exposes the nationals of the reception countries to various risks. Because of this uncertainty, some abstain from dealing with stateless persons, others protect themselves from risk by imposing onerous conditions. As a consequence, relations between nationals and stateless persons are strained.

2. DIFFICULTIES FOR THE COUNTRIES OF ORIGIN

When the *de jure* or *de facto* stateless person is a political refugee, he often retains a very strong resentment against the regime of the country from which he has fled.

His hope is that sooner or later, thanks to a change of regime, he will be able to return to his own country. He looks forward to that day and in certain cases may seek by his activities and hostile propaganda to hasten its coming.

Once settled in a country where he can re-establish himself, and often set up a home by marrying a national whose nationality he will acquire, his attitude changes. He will become more or less assimilated in the reception country, and it is there that he will tend to focus his interests and affections: his children will feel fully at home there and will have no thought of returning. The process of peaceful re-settlement is complete.

3. DIFFICULTIES FOR STATELESS PERSONS

Normally every individual belongs to a national community and feels himself a part of it. He enjoys the protection and assistance of the national authorities. When he is abroad, his own national authorities look after him and provide him with certain advantages. The organization of the entire legal and economic life of the individual residing in a foreign country depends upon his possession of a nationality.

The fact that the stateless person has no nationality places him in an abnormal and inferior position which reduces his social value and destroys his own self-confidence.

During the long period of peace and social stability at the end of the nineteenth and the beginning of the twentieth centuries, stateless persons were few and their situation was tolerable. Life was not highly organized as it is today and foreigners, whatever their status, enjoyed considerable freedom. The stateless person succeeded in making a place for himself in a country and finding a milieu to his liking. He was free to find employment as a wage-earner, to practice a craft or engage in trade. If his conduct was unobjectionable he was not troubled by the police, which exercised no special supervision over foreigners, and he could lead a more or less normal existence, without his legal disability causing him any serious difficulties.

Since the First World War, in Europe at any rate, the situation has completely changed. The re-establishment of the passport and visa system, the increased control over foreigners, the regulations governing all aspects of social life (work, exercise of professions, food, housing,

movement within the country, and so on) bring the stateless person in constant contact with the authorities and make him conscious of his handicapped status.

VI. PROBLEMS RAISED BY STATELESSNESS

Two main problems have to be considered: the improvement of the status of stateless persons and the elimination of statelessness.

First problem. Improvement of the status of stateless persons

The present status of stateless persons having first been defined, means to improve it must then be sought.

Second problem. Elimination of statelessness

The first task is to trace the sources of statelessness and find means of drying them up.

The second is to reduce the number of existing stateless persons by giving them a nationality or restoring it to them, after permitting them to settle in a country and integrating them in its national life.

The two problems—the improvement of the status of stateless persons and the elimination of statelessness—though quite distinct, are complementary.

However necessary and urgent, the improvement of the status of the stateless person is only a temporary solution designed to attenuate the evils resulting from statelessness. The elimination of statelessness, on the contrary, would have the advantage of abolishing the evil itself, and is therefore the final goal.

VII. FORM AND ARRANGEMENT OF THE STUDY

It follows from what was said at the end of the preceding section that the problem of improving the status of stateless persons is a particularly urgent one. This fact is emphasized in paragraph 2 of the Economic and Social Council's resolution 116 (VI) D quoted above.

The problem is examined in part one of this Study. Part one also includes the recommendations for the improvement of the status of stateless persons presented by the Secretary-General to the eighth session of the Economic and Social Council, in accordance with the request contained in paragraph (a) of the Council's resolution 116 (VI) D.

The problem of the elimination of statelessness, the importance of which has been emphasized and which is highly complex, can be solved only by measures the full effect of which will be felt only gradually. This second problem will be dealt with in part two, which also includes the Secretary-General's recommendations to the Economic and Social Council in pursuance of the request contained in paragraph (b) of the above-mentioned resolution of the Council.

Part One IMPROVEMENT IN THE STATUS OF STATELESS PERSONS

1. PRELIMINARY OBSERVATIONS

As stated in the introduction, the elimination of statelessness must be considered as a final solution; a rapid and complete solution of the problem cannot reasonably be expected.

It may be hoped that the majority of stateless persons who are young and fit for work will be settled, with the help of the International Refugee Organization, either in reception countries or in immigration countries where they will be assimilated.

However, it can be foreseen that the exodus of stateless persons from certain countries will continue for some time and that, on the other hand, demographic considerations will act as a brake on the absorption by naturalization of the stateless persons remaining in Europe.

In view of these facts, measures must quickly be taken to improve the status of stateless persons.

2. POSSIBLE OBJECTION

It has been asked whether an improvement in the status of stateless persons might not have certain drawbacks in that, if their position as such was "settled", they would no longer feel the need to obtain a nationality.

These drawbacks do not exist. Even if it is improved, the status of the stateless person will always be inferior to that of the national in any country.

Experience shows that naturalization is sought for by stateless persons even in those countries which grant them favourable treatment, and that Governments have never complained of any reluctance on the part of stateless persons to become naturalized. Indeed, naturalizations granted have been far fewer than the number of applications.

Naturalization implies a desire on the part of the applicant to be completely incorporated in a national community and to become a loyal member of it. If these conditions are not fulfilled, there is no point in inducing an individual to apply for naturalization by indirectly compelling him to do so.

Meanwhile, it is not in the interest of the State to keep stateless persons in a position of inferiority and insecurity which lowers their standing and makes their assimilation more difficult.

3. URGENCY OF THE PROBLEM

The number of stateless persons is at present very large, and to improve their status is an urgent necessity.

It is true that international conventions exist which have determined the status of certain categories of stateless persons in a fairly satisfactory manner. But there are many stateless persons who do not benefit from these conventions which apply only to certain categories and to which only a small number of States are parties.

Moreover, an important factor in the status of stateless persons, namely, their protection by an international organization, is at present guaranteed by the IRO. Now this agency is due to disappear in the near future. What will happen then?

SECTION I POSITION OF STATELESS PERSONS WHOSE STATUS HAS NOT BEEN DETERMINED

For a foreigner to enjoy any given right, it must be conferred on him by the country where he is living.

Under modern law in civilized countries every individual is recognized as having a legal personality. This principle is reaffirmed in the International Declaration on Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948.[14]

[14] Article 15 of the International Declaration on Human Rights reads as follow:

"1. Everyone has the right to a nationality.

"2. No one shall be arbitrarily deprived of his nationality..."

States are obliged by international law to respect the person and property of foreigners; in the event of any breach of this rule they are accountable to the State of which the injured party is a national.

Strictly speaking, all States are at liberty in their dealings with foreigners to adhere solely to the minimum imposed by international law. That minimum is not, however, sufficient to satisfy the needs of modern international life.

All States therefore grant *wider rights* to nationals of other States, members like themselves of the international community, without, however, usually granting them the same status as that of their own nationals. Hence the status of foreigners varies from country to country between these two limits: *minimum rights imposed by international law* and *equal status with nationals of the country*.

In the countries of immigration, especially in certain countries of Latin America, foreigners are assimilated to nationals, as far as their personal rights are concerned.[15] On the continent of Europe, their status is less favourable; enjoyment of a number of rights is dependent on reciprocity, either diplomatic, [16] or *de facto*, [17] However, the development of international relations has brought about a relaxation in the strict application of the principle of reciprocity in international law and practice.[18] Nevertheless this principle still permeates the private

[15] E.g.: *Argentina*, Constitution of 25 May 1853, article 20; *Brazil*, Constitution of 18 September 1946, article 141; *Canada*, Law of 27 June 1946, article 29; *Colombia*, Constitution of 4 August 1886, article 11; *Costa Rica*, Constitution of 7 December 1871, article 12; *Cuba*, Constitution of 10 August 1940, article 19; *Honduras*, Constitution of 28 March 1936; article 16; *Nicaragua*, Constitution of 22 March 1939, article 22.

[16] Thus, article 11 of the French Civil Code reads: "A foreigner shall enjoy in France the same civil rights as those granted to French nationals by the treaties of the nation to which such foreigner belongs."

Similar provisions are to be found in the Belgian and Luxembourg Codes.

[17] The following provisions may be quoted as examples:

Article 33 of the Austrian Code reads: "Foreigners shall have the same civil rights and duties as Austrian nationals, unless enjoyment of any right is made expressly conditional on possession of Austrian nationality. In case of doubt, foreigners, in order to enjoy the same rights as Austrian nationals, must furnish evidence that the State of which they are nationals treats Austrian nationals in the same way as its own nationals, as far as the right in question is concerned."

The same principle emerges from the whole of the provisions of the Introductory Law to the German Civil Code; article 31 of this law authorizes the Government, by way of reprisal, to prohibit nationals of a foreign country from enjoying civil rights.

Article 95, paragraph 2 of the Constitution of the Polish Republic dated 17 March 1921 reads as follows: "Subject to reciprocity, foreigners shall enjoy the same rights as Polish nationals", and article 40 of the Law on Private International Law of 2 August 1926 provides for reprisals against nationals of countries which fail to grant Polish subjects equally favourable treatment.

As regards Turkey, article I of the Convention respecting Conditions of Residence signed at Lausanne on 24 July 1923 is also based on the principle of *de facto* reciprocity.

[18] Spain (article 27 of the Civil Code of 1889), the Netherlands (article 9 of the Civil Code), Portugal (article 25 of the Civil Code of 1867), Turkey (Law of 1 March 1915), Switzerland (article 11 of the Civil Code of 1912) etc., in principle grant to foreigners the enjoyment of all civil rights with the sole exception of those expressly reserved for their own nationals. Such reserved rights may, however, be made available to foreigners by treaties subject to reciprocity. Similar provisions were also embodied in article 3 of the Italian Civil Code of 1863, but these have been replaced under the Law of 4 April 1942 (article 16) by the following:

international law of many countries, and reciprocity is always the essential factor in international treaties.

Bilateral treaties concluded by States on behalf of their nationals naturally contain no clauses relating to stateless persons. The same holds true for general conventions. However, some of these agreements, especially those for the protection of rights rather than of persons of any given nationality (e.g. the conventions on the protection of literary and artistic works: the Berne Convention of 9 September 1886, article 3; and the Berlin Convention of 13 November 1908, article 6) do entitle stateless persons to avail themselves of their provisions, but such conventions are exceptions to the general rule by which only the nationals of the contracting States enjoy the advantages laid down in the agreements.[19]

Clearly, stateless persons cannot comply with the requirement of reciprocity stipulated in the laws and treaties; hence they are refused enjoyment of numerous rights. In the majority of countries then, stateless persons are more or less on the fringe of the law.

After all, the laws, treaties and regulations governing the status of foreigners always apply, with a few rare exceptions[20] to foreigners possessing a nationality. And they do not take into account the special position of stateless persons, which is an anomaly in international law.

"Foreigners are entitled to enjoy the civil rights possessed by Italian citizens, subject to reciprocity and apart from the exceptions provided for in special laws."

Thus in Italy a foreigner's enjoyment of civil rights is now conditional on *de facto* reciprocity.

[19] This is so in the case of the very important convention on private international law signed at Havana on 20 February 1928 including the Bustamente Code, article 1, paragraph 1, and article 2, paragraph I of which provide that: "Foreigners belonging to any of the contracting States enjoy, in the territory of the others, the same civil rights as are granted to nationals;" and "Foreigners belonging to any of the contracting States shall also enjoy in the territory of the others identical individual guarantees with those of nationals except as limited in each of them by the Constitution and the Laws." (See League of Nations, *Treaty Series*, Vol. LXXXVI (1929), No. 1950, page 254.)

Thus the American States declare themselves ready to grant foreigners all civil rights and even, in the absence of any contrary provision in their constitutions, the same individual guarantees enjoyed by their nationals, provided the country of which the foreigner is a national does the same.

[20] Of the very few legal provisions which do mention stateless persons, the following may be quoted:

Swiss Civil Code, article 59, 7(a) of Final Title:

"Persons, neither the nationality nor the domicile of whom can be established, are subject to Swiss Civil Law."

Italian Laws

Law of 13 June 1912, No. 555, article 14:

"All persons resident in the Kingdom who possess neither Italian nationality nor that of another State, are subject to Italian law in so far as concerns the enjoyment of civil rights and military service obligations."

Law of 4 April 1942, article 29:

Mention should, however, be made of the five peace treaties concluded on 10 February 1947 with Bulgaria, Finland, Hungary, Italy and Romania. These all contain an article^[21] by which each of the above-mentioned States agrees to take "all measures necessary to secure to all persons under (its) jurisdiction without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms . . .".

If the formula "within its jurisdiction" effectively covers all nationals or foreigners who by reason of their residence on a country's territory come within its jurisdiction, then stateless persons are covered. However, even if the enjoyment of human rights and of the fundamental freedoms does afford the individual certain very valuable guarantees, it does not provide him with a status in the field of civil, economic or social rights.

Moreover, even when stateless persons are not debarred from enjoyment of a right, they are in practice often deprived of it inasmuch as it is dependent on the fulfilment of certain formalities, such as production of documents, intervention of consular or other authorities, with which, since they do not enjoy the protection of a national authority, they are not in a position to comply.

This emerges from a study of the position of stateless persons with reference to:

- (a) International travel, sojourn and conditions of residence;
- (b) Their legal status in countries of reception;
- (c) Their legal protection.

Chapter 1 INTERNATIONAL MOVEMENT, SOJOURN AND SETTLEMENT

"In the case of persons not possessing any nationality, the law of the place of residence shall apply in all cases where under the foregoing provisions the national law must be enforced."

German Civil Code. Introductory Law of 18 August 1896, article 29:

"In so far as the laws of the country of which a person is a national have been declared to be applicable, the legal relations of any person who is not a national of any country shall be determined by the laws of the country of which he was last a national, and if he has not previously been a national of any country, by the laws of the country in which he has or, at the time which is material, had his domicile, or, failing such, his residence." The Law of 12 April 1938 substituted the following for the above text:

"In so far as the laws of the country of which a person is a national have been declared to be applicable, the legal relations of a stateless person shall be governed by the laws of the country in which he has, or, at the time which is material, had his normal residence, or, failing such, his residence."

Brazilian Civil Code of 1 January 1946. According to article 9, the personal status of a stateless person is determined by the laws of his country of residence.

There is a similar provision in article 31 of the Civil Code of *Liechtenstein*. The position is the same in *Hungary* in so far as marriage is concerned: cf. article 119 of the Law of 9 December 1894.

See also the *Polish Law* of 2 August 1926 on the law governing private international relationships (Law Journal No. 101, text 581), article 1, paragraph 1 and the *Greek Civil Code* of 15 March 1940, article 4.

[21]. Bulgaria (article 2), Hungary (article 2), Finland (article 6), Italy (article 13), Romania (article 3).

(1) ENTRY INTO ANY COUNTRY

Since the First World War, it has not generally speaking been possible to enter any country lawfully without producing an unexpired national passport. The stateless person has of course no such passport, neither is he entitled to the exemptions granted in some cases to the nationals of certain countries.

Moreover, as a general rule the mere possession of a valid passport is not sufficient; its holder must also obtain an entry visa appended to the passport by the authorities of the country to which he is proceeding.

Apart from the technical difficulties resulting from the absence of a passport, the authorities of the country which the stateless person would like to enter are reluctant to receive him for various reasons. In the first place, his identity is not established or may arouse suspicion. Secondly, his legal status is uncertain. Thirdly, his eventual departure from the country will present serious difficulties, since a stateless person cannot be repatriated to a country of origin and his admission into any country will give rise to the difficulties mentioned above. Finally, there is no State able to intervene in his favour to support his application for admission.

In actual fact, the stateless person, since he cannot enter the territory of a State lawfully, often does so clandestinely. He will then lead an illegal existence, avoiding all contact with the authorities and living under the constant threat of discovery and expulsion. The disadvantages of this state of affairs, both for himself and for the country on whose territory he happens to be, are obvious.

A certain freedom of movement is, however, essential if the stateless person is to be able to settle down in a country presenting favourable conditions for his settlement and assimilation. The technical and administrative difficulties by which he is shackled thus constitute a serious obstacle to the appropriate distribution of stateless persons over the world and prevent or delay their arrival in countries where they could settle permanently. This state of affairs is prejudicial to countries which, because of their geographical position, are called upon to bear the burden of an influx of stateless persons who find it impossible to go elsewhere. Those countries are thus impelled to turn back newcomers. If they allow themselves to be swayed by feelings of humanity, they are obliged to make sacrifices which are sometimes out of all proportion to their economic situation.

International co-operation is the only means of remedying this state of affairs, by encouraging the appropriate distribution of stateless persons and by that very fact making their presence less burdensome.

(2) EXIT

To leave one country means to enter another.

The voluntary exit of a stateless person comes up against the difficulties described in the preceding section.

In cases where exit is compulsory (expulsion or reconduction) the difficulties become insuperable, for an expulsion order or even mere instructions to send him back render the stateless person suspect, pointing him out to the authorities of other countries as an undesirable.

The stateless person in respect of whom an expulsion order has been issued and who is unable to enter any other country legally is obliged either to remain in hiding, disobeying the order, or to enter the territory of a neighboring country by fraudulent means. In both cases he lives under a constant threat until the day when he is discovered, arrested and sentenced. After having served

his sentence he is conducted to the frontier. As there is no way out of this situation, sentence follows sentence and the stateless person becomes an outlaw.[22]

The question of expulsion shows the extent to which the law made for foreigners in possession of a nationality needs to be adapted to the special case of stateless persons. Expulsion and reconduction are universally recognized measures of order and security; in principle their implementation presents no difficulties in the case of nationals of any given country, since that country is obliged to receive its nationals and the expelled person is simply repatriated. But no country is bound to receive a stateless person in respect of whom an expulsion order has been issued taking no account of his peculiar situation. The desire to guarantee order and security leads to the creation of outlaws.

An agreement to remedy this state of affairs is essential.

(3) SOJOURN

Authorization to enter a country includes the authorization to remain there for a shorter or longer period. Nevertheless, a foreigner, even if he has entered the country lawfully must within a short space of time report to the administrative authorities and request the issue of a permit entitling him to reside there for a limited period.

A stateless person, unless he is considered as an immigrant invited to settle in the country, is generally given a short-term permit which must be renewed at frequent intervals, while its renewal may always be refused. On this account his situation becomes comparable to that of a person placed under police supervision and its precariousness makes it difficult for him to settle down.

The situation of stateless persons admitted as workers is particularly unfavourable. Their presence is tolerated and even solicited during periods of prosperity when there is a shortage of national labour. But once unemployment occurs stateless persons are the first to suffer; their situation is more critical than that of other foreigners since no country is bound to receive them.

In some countries foreigners cannot enjoy certain rights unless they possess a residence permit valid for a prescribed period. Permits granted one after the other are not cumulative, so that administrative authorities who limit the period of validity of permits issued to stateless persons are thus depriving them of the enjoyment of the rights in question.

Many treaties contain provisions safeguarding the interests of nationals of the contracting countries in this connection. The stateless person is not covered by any such measures.

(4) SETTLEMENT

The foreigner who has settled down is to some extent integrated in the economic and social life of the country where he resides. He is no longer a transient visitor. He gradually becomes assimilated and may be expected finally to acquire the nationality of the country in which he has settled.

[22]. In the *Nouvelle revue de droit international privé*, 1936, pages 276-277, M. Fatou published the following cases (reproduced by Niboyet, *Traité de Droit international privé français*, Volume II, page 117-Note)

Age	Original nationality	Grounds for initial expulsion	Number of sentences for violation of expulsion order	Total imprisonment
58	Italian	24 hours imprisonment	29	9 years 8 months
43	Bulgarian	1 month's imprisonment	20	7 years
60	Italian	2 month's imprisonment	17	6 "
36	Italian	1 month's imprisonment	16	5 "
67	Italian	40 days' imprisonment	12	2 "

Foreigners established in a country are mostly immigrants who, before leaving their country of origin, made a free choice of the country which was to become their new homeland. They arrive prepared to settle down there and in many cases are assured of employment. Sometimes they are rejoining relatives or friends who will help and advise them. The immigrant finds a consul ready to lend his services, and he remains in touch with the authorities of his country of origin.

The stateless person in the country he is able to reach and which is ready to admit him usually finds no encouragement to settle there. And yet, if he is not to remain beyond the pale of society and to become an "international vagabond" he must be integrated in the economic life of the country and settle down.

For the normal settlement of a foreigner two conditions are necessary:

- A. The protection and co-operation of the national authorities who negotiate and conclude treaties (in particular, treaties concerning settlement, immigration) by which the foreigner may benefit, and the assistance of the consular authorities who provide him with the documents he needs for the various acts of civil life;
- B. A clearly defined legal status based on two concepts, both bound up with the possession of a nationality: "personal status" and the principle of "reciprocity".

The stateless person does not enjoy the protection of his country of origin. His personal status is uncertain. No principle of reciprocity can come into play in his case.

Moreover, since he is a foreigner he finds himself subjected to a law and administrative practices created for foreigners possessing a nationality. He will find it difficult to conform to the requirements of such a law.

Thus the stateless person is in a position of inferiority which prevents his settlement and delays his assimilation. Neither from the point of view of humanity nor from that of the interest of the reception countries, can the present state of affairs be considered satisfactory.

Chapter 2 LEGAL POSITION OF THE STATELESS PERSON IN THE RECEPTION COUNTRY

The inferior status of the stateless person can best be judged by comparing it with that of the foreigner who possesses a nationality and enjoys the protection of his country of origin.

Broadly speaking, a comparison of the status of foreigners with that of stateless persons should cover the following subjects:

- (1) Determination of personal status;
- (2) Private rights;
- (3) Exercise of trade or profession;
- (4) Education;
- (5) Relief;
- (6) Social security;
- (7) The right to appear before the courts as plaintiff or defendant;
- (8) Law of taxation;

(9) Military service.

(1) DETERMINATION OF PERSONAL STATUS

The personal status of foreigners is governed, subject to the requirements of public order, either by their national law, as in most continental countries of Europe, or by the law of domicile (domicile of choice or domicile of origin), as in the Anglo-Saxon countries and in most Latin-American countries. Personal status determines:

- (a) A person's capacity (age of attaining majority, capacity of the married woman etc.);
- (b) His family rights (marriage, divorce, recognition and adoption of children etc.);
- (c) The matrimonial regime in so far as this is not considered a part of the law of contracts;
- (d) Succession and inheritance^[23] in regard to movable and in some cases to immovable property.

These are essential rights which an individual cannot enjoy in a normal way so long as his personal status is in doubt.

It is always an easy matter to determine the personal status of a foreigner possessing a nationality.

In the case of stateless persons residing in a country which grants foreigners the personal status defined by their national law, the question gives rise to controversy, and neither the stateless person nor the individuals with whom he maintains relations of a legal character are in a position to give a satisfactory reply. Since he does not possess a nationality, the stateless person has, in fact no national law. What law should be applied to determine his capacity, his family rights etc.- the law of the country of origin, or the law of his country of residence?

The uncertainty arising from the absence of any legal or conventional provisions governing the question is prejudicial both to the stateless person and to the nationals of the reception country.^[24]

[23] Certain countries, such as France, which determine the personal status of foreigners according to their national law, observe different rules in the matter of succession and inheritance.

[24] The question is less difficult in countries like the Anglo-Saxon countries, where the personal status of foreigners is governed by the law of domicile. In such countries, the solution is entirely satisfactory when the stateless person possesses a domicile of choice (the possession of such a domicile is subject to two conditions: the fact of residing and the intention of remaining indefinitely). In cases where the stateless person has no domicile of choice, personal status is governed by the law of the domicile of origin, viz. that of the father at the time when the person concerned was born. It is easy to establish this domicile, but the application to the stateless person of the law of the country of original domicile may in certain cases have disadvantages, as for instance when the legislation of the latter country has undergone radical changes following on a political or social revolution and when the new legislation is based on principles from which the person concerned wished to dissociate himself by going into exile. It should be noted, however, that in some countries where the personal status of a foreigner is that of his national law it is nevertheless ruled that the personal status of a stateless person is determined by the law of his country of residence; e.g. in Italy (see Italian Civil Code of 1942, General Legal Provisions; article 29). This eliminates the difficulty noted in the text.

Another cause of uncertainty concerns the fate of rights acquired by the stateless person in accordance with documents issued or action taken under the former national law. In this respect the position of married women who have become stateless is particularly difficult. At the time of their marriage these women may have been residing in their country of origin and have possessed the nationality of that country. In many cases, under their national law, marriage did not diminish their capacity but required the complete separation of the property of each spouse. Having become stateless and being resident in a reception country the law of which restricts the capacity of married women and ' where there is no marriage contract, requires the married couple to observe a matrimonial regime differing from that of separate estate, a *woman in this position often finds her rights actually disputed*. She can neither sign a lease, acquire property nor open a bank account. Her economic activity is hampered and her chances of settling down and becoming assimilated are jeopardized. For all these reasons, it would be in the interests of stateless persons and of the countries which receive them to adopt a uniform rule making it possible to determine in a clear and unequivocal manner the personal status of stateless persons. It is also important to ensure the respect of rights acquired by the stateless person in his country of origin under his former national law.

(2) PRIVATE RIGHTS

A. Family rights

Although the enjoyment of family rights is generally granted to all foreigners, the stateless person comes up against difficulties, in many cases unsurmountable, when trying to exercise these rights.

Thus, in order to contract marriage, a foreigner must usually produce a certificate specifying the conditions of his personal status (age, parents' consent, degree of relationship etc.) in this matter. Foreigners possessing a nationality can obtain the necessary certificate from their consulates. There is no consulate to which the stateless person can apply.

In addition to this certificate, any person desirous of contracting marriage must submit civil registration documents (birth certificate, in some cases certificate of celibacy or widowhood), The foreigner can obtain such documents either from his consul, or from the authorities of his country of origin. Stateless persons are not in a position to obtain them. In some countries, exceptional forms of procedure enable the stateless person to obtain, for the purposes of marriage, documents in lieu of the birth certificate. In other countries no such forms of procedure exist.

In certain countries foreigners, in order to be able to marry, must be in possession of a residence permit valid for a prescribed period and the periods of validity of successive permits are not cumulative. If he lacks such a permit, a foreigner possessing a nationality is free to return to his own country to get married. The stateless person is not in a position to do this. In addition, it is harder for him to obtain a residence permit for the period required to contract marriage.

Stateless persons encounter the same difficulties in exercising other family rights.

B. Rights of property

The property rights in question are chiefly the rights to acquire movable and immovable property, to enter into house-letting and farming leases, rights to commercial and industrial property, the right to a trade mark, rights to literary and artistic property etc.

In earlier days these rights were usually granted to foreigners. Since the First World War they have been greatly restricted. Some of these restrictions are waived in the case of foreigners able to invoke treaties concluded on the basis of reciprocity. Stateless persons are not in a position to invoke treaties of this kind.

(3) EXERCISE OF TRADE OR PROFESSION

It may be said that in general foreigners, except in the immigration countries, do not at present have free access to the various trades and professions.

A distinction must be drawn, first, between employees and independent workers, and second, according to the type of trade or profession.

A. Employees

Until the First World War, foreigners could, with a few rare exceptions, freely hire their services in return for a wage.

During the period between the two wars, this right was severely restricted in a large number of countries.

Despite man-power losses caused by the Second World War, these restrictions still exist.

The status of foreign workers is always precarious. They are the first to feel the effects of fluctuations in the labour market. But whereas foreigners possessing a nationality are to some extent protected by bilateral agreements and can, if they are out of work, return to their own country, stateless persons are able neither to invoke such agreements nor to return to a country bound to receive them. When unable to find employment, they are often reconducted or expelled.

Only the most arduous occupations, like coal-mining, offer them any relative security of employment. But this type of work requires special physical attributes.

Agricultural workers, too, have more chance of finding and keeping a job but, in addition to great physical strength, those who take up this occupation need the capacity to adapt themselves to rural surroundings.

(a) Industrial and commercial employees

The restrictions on the employment of foreign wage-earners in industry and commerce are very varied. These restrictions have a dual purpose, aiming firstly at preventing the employment of foreign workers from depriving nationals of work, and secondly at maintaining the living standards and wages of nationals. The principal restrictive measures affecting the employment of foreign workers are as follows:

(a) The employment of foreign workers in industry, or in certain sectors of industry, is prohibited.

(b) The employment of foreign workers is not prohibited, but made subject to various conditions.

(i) Special permits are required for the employment of foreign workers in those industries to which foreigners are admitted owing to the shortage of national labour.

These permits are generally valid for a limited period, but are renewable. When a foreigner has obtained employment in a particular enterprise or a certain branch of industry, he is generally able to have his permit renewed without difficulty, unless serious unemployment supervenes.

In some countries a foreign worker wishing to change his employment must obtain special permission.

(ii) Foreigners are forbidden to change their trade, or even to change their specialty within a given trade.

In immigration countries immigrants ordinarily enjoy freedom of employment after a certain lapse of time.

(iii) In some cases the proportion of foreign workers to nationals in industrial and commercial enterprises is fixed by quota. This type of restriction is common in many States of South America.

Occasionally the number of posts of a certain grade open to foreigners is fixed. Exceptions are normally permitted in the case of posts for which no qualified national is available.

In many cases these restrictions have their origin in the economic crisis but were continued afterward, in somewhat less rigorous form, at the request of the trade unions.

(iv) Before obtaining permission to engage a foreign worker employers are required to prove that the job cannot be filled by a national worker.

These various types of regulations may be combined.

It will be noted that the present tendency is to regulate the admission of foreign workers by means of bilateral agreements specifying the trades or jobs open to foreign workers. These agreements do not necessarily affect workers entering a country by virtue of a personal authorization.

(b) Agricultural employees

Generally speaking foreign agricultural workers have been admitted more liberally than industrial employees. The need to increase agricultural production during and after the Second World War and to restore agriculture in the devastated areas has tended to facilitate the admission of foreign agricultural workers.

Normally agricultural workers are not allowed to change their occupation, at least until a certain period has elapsed after their entry into the country. Further, various countries have introduced special regulations governing foreigners engaged in agriculture either as independent farmers or as employees. The object of these regulations is to prevent foreigners from certain countries from concentrating either in specified regions (frontier regions, for example) or in certain localities, or in a particular enterprise.

B. Owners of enterprises and independent workers

(a) Farmers

In general the right to set up as a farmer has not in principle been denied to foreigners. Nevertheless, the settlement of foreigners has been subjected to various restrictions.

The first is the restriction on the right of foreigners to acquire immovable property; sometimes this applies to the country as a whole, sometimes to certain regions. Foreigners may be forbidden to acquire such property, or the area which they may acquire may be restricted.

Secondly, there is the type of limitation mentioned before, restricting the number of foreigners engaged in agriculture either in the country as a whole, or in certain regions, or in each locality.

Thirdly, there are restrictions on the right of foreigners to enter into agricultural leases, or debarring them as tenants from the advantages enjoyed by nationals.

These restrictions may be waived or mitigated by agreements on a reciprocal basis, but only foreigners having a nationality benefit by such agreements.

Another fact which goes to handicap the stateless person is the precarious nature of the residence permit granted to stateless persons. Farming is, in fact, an undertaking which can only be engaged in by someone assured of a lengthy stay.

(b) Craftsmen

As a rule it is even more difficult for a foreigner to carry on a craft than to enter the ranks of wage-earners.

In this field the position of stateless persons differs little from that of foreigners. But the impossibility of carrying on a craft does in fact affect stateless persons more seriously in that many of them were craftsmen in their countries of origin. A large number of stateless persons come from the Eastern European countries where, owing to their economic structure, the crafts used to be more widespread than elsewhere.

(c) Industrial and commercial professions

In some cases certain industrial or commercial professions are completely closed to foreigners (stock-broking, mining, fisheries, charterage etc.); but this is the exception.

In some countries enterprises capable of influencing the political or cultural development of the nation (Press, theatre, cinema) are also closed to foreigners.

In some countries the industrial and commercial professions are open only to foreigners who possess a nationality and can invoke agreements concluded on a basis of reciprocity. In such countries, therefore, they are closed to stateless persons.

In other countries a person wishing to engage in trade must first obtain the permission of the administrative authorities. Foreigners who enjoy the protection of their country of origin can obtain this more easily than stateless persons.

In all cases, the stateless person who manages to set up for himself in trade or in industry finds himself at a disadvantage as compared with the foreigner who possesses a nationality. For his uncertain legal position is harmful to his credit, and the possibility of complications arising in the carrying out of the contracts he enters into makes people chary of doing business with him.

(d) Liberal professions

Most liberal professions are closed to foreigners, or open to them only under numerous and severe restrictions.

Generally the professions of doctor and chemist are reserved to nationals; in some countries, however, foreigners holding national diplomas or recognized equivalent foreign diplomas may be authorized to practice medicine.

With rare exceptions the legal professions (lawyers, notaries etc.) are reserved to nationals.

Teaching, even in private schools, is quite frequently closed to foreigners.

In engineering, architecture and the artistic professions foreigners are generally treated liberally.

The civil service is closed to foreigners, save for a few exceptional and very special cases.

The closing of the liberal professions is more prejudicial to the stateless person than to the foreigner possessing a nationality. If he has the necessary qualifications, the latter can practice as a lawyer, doctor, dental surgeon, chemist etc. in his own country. The stateless person cannot practice anywhere.

(4) EDUCATION

Educational establishments are usually open both to foreigners and to stateless persons.

Nevertheless, special facilities granted to needy students are enjoyed by foreigners on the basis of actual reciprocity. Such reciprocity does not hold good for stateless persons, who are thus at a disadvantage.

It is important to facilitate the admission of young stateless persons to the various educational establishments of the reception country. Children and young people become assimilated more quickly and more completely than adults. By mixing with his fellow-pupils who are nationals of the country, the young stateless person acquires their outlook.

(5) RELIEF

In principle, except in cases where it would be dangerous to leave a foreigner in utter neglect (lunatics, persons suffering from contagious diseases), the public assistance granted to indigent, infirm and sick persons is only extended to foreigners where treaties have been concluded on a basis of reciprocity. Such treaties usually stipulate that the person assisted must be repatriated at an early date unless the cost of relief is borne by the country of origin.

Stateless persons are unable to claim any rights under such a treaty. If public assistance is sometimes granted to them, it is a favour.

(6) SOCIAL SECURITY

A. Social insurance

(Sickness, maternity, invalidity, old-age, death, accidents at work and occupational diseases, unemployment.)

Wage-earning foreigners, even when no treaty exists, generally enjoy to some extent the rights granted to nationals. In this respect, therefore, state-less persons are in more or less the same position as foreigners possessing a nationality who are unable to invoke treaties.

Nevertheless, the complete assimilation of foreigners to nationals is only achieved through bilateral agreements or the general conventions concluded under the auspices of the International Labour Organisation.[25] The only persons able to benefit by these conventions, however, are the nationals of the countries which have signed them, stateless persons being unable to do so. In many cases, therefore, they are only insured against certain risks and they themselves and their dependents can only claim pensions and benefits for as long as they are resident in the country.

B Family allowances

The family allowance system is generally applicable only to families resident in the country.

In some countries, moreover, the system does not apply to foreigners unless they are assimilated in this Matter to nationals by special treaties or general conventions. In such cases stateless persons are unable to benefit by these conventions.

(7) RIGHT TO APPEAR BEFORE THE COURTS AS PLAINTIFF OR DEFENDANT

It is universally recognized today that foreigners have the right to appear before the courts as plaintiff or defendant. No discrimination is made between those with a nationality and those without one.

Nevertheless, in many countries foreigners are subject to an obligation, which is not imposed on nationals, that of furnishing the *cautio judicatum solvi*. A large number of treaties exempt the nationals of the contracting countries from this obligation, subject to reciprocity. Stateless persons are unable to invoke such treaties and are therefore bound to furnish the guarantee.

In all countries, there are regulations concerning legal assistance to indigent litigants. The grant to foreigners of an unconditional right to legal assistance is exceptional. Nevertheless, a large number of bilateral treaties extend the benefit of legal assistance to the nationals of the countries parties thereto, subject to reciprocity. Two general conventions concluded at The Hague, on 14 November 1896 and 17 July 1905, contain similar provisions. Stateless persons are unable to

[25] Cf., for example, Convention No. 19 concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents, of 19 May 1925.

invoke these conventions. Therefore, they enjoy the benefit of legal assistance only in those countries where it is granted unconditionally to all foreigners.

In the case of indigent stateless persons the obligation to furnish the *cautio judicatum solvi* and exclusion from the benefit of legal assistance reduce the right to appear before the courts as plaintiff or defendant to a *nudum jus*.

(8) LAW OF TAXATION

In principle foreigners residing in a country are subject to the taxes, duties and charges to which nationals are liable. They may also be subject to special taxes, duties and charges. A large number of bilateral treaties concluded on the basis of reciprocity stipulate that nationals of the contracting country shall enjoy the same treatment in fiscal matters as nationals. Stateless persons cannot invoke these treaties.

(9) MILITARY SERVICE

Under international law, foreigners are not called upon to serve in the armed forces of a country of which they are not nationals.

Unlike other foreigners, stateless persons who have settled in certain countries have been obliged to perform military service, in time of war and even in peace-time.

Chapter 3 PROTECTION OF STATELESS PERSONS

Every State protects its nationals. Its protective influence extends even beyond its frontiers. The mere fact that a person possesses a nationality, i.e. that he is linked to a State by a bond of allegiance, brings him within the orbit of the law, and determines his legal status; in short it secures for him a standing which the stateless person, not being a member of any national community, does not enjoy.

(1) PROTECTION ENJOYED BY THE FOREIGNER POSSESSING A NATIONALITY

The protection enjoyed by the foreigner possessing a nationality has a much wider connotation than is suggested by the term "protection". It is a matter far more of assistance to the national and of collaboration with the authorities in the foreign country than of protection proper. Only in rare cases does protection take the form of representations to a foreign Government. In normal times, "protection" is assistance and it is in this sense that the term is used in the present report.

Protection takes various forms:

- A. Governments seek to secure for their nationals abroad a status exceeding the minimum required by international law. To this end they negotiate treaties on the basis of reciprocity (settlement and immigration conventions, Consular conventions, commercial treaties, etc.);
- B. They see to it that such conventions and treaties are carried out, and where necessary, take action to ensure that the rights granted to their nationals are respected;
- C. The Consular authorities recommend their nationals to the authorities of the country and carry out certain technical functions designed to facilitate the application of the agreements and treaties;
- D. Governments issue to their nationals the passports which enable them to travel abroad;

E. The authorities in the country of origin and the national Consuls draw up various certificates and documents (identity documents, civil registration documents, customary certificates concerning personal status, certificates testifying that the documents drawn up in the country of origin are in conformity with the laws of the country etc.) so as to enable their nationals to carry out the normal formalities of civilian life;

F. The State bears the whole or part of the cost of relief (assistance to sick, infirm, indigent persons etc.) furnished to its nationals, or arranges for their repatriation.

(2) POSITION OF STATELESS PERSONS

Stateless persons, not being nationals of any country, are deprived of protection in all its forms.

They must perforce have relations with the authorities of the reception country but such relations are in fact those which relate to the supervision of foreigners. The stateless person is treated more as an individual to be watched than as a man whose rights must be respected.

The inferiority of the stateless person's legal position is reflected in his social standing. It creates a prejudice against him and makes people regard him with distrust and suspicion.

SECTION II ATTEMPTS TO IMPROVE THE POSITION OF STATELESS PERSONS

It was through the action of international institutions, and by means of international agreements, that efforts were made to improve the position of stateless persons.

The big international institutions, the League of Nations, the International Labour Organisation and the United Nations, have all dealt with the question.

Specialized international organs were established, either by the League of Nations, or by the United Nations, or, in one case, by an independent international conference.

The League of Nations set up:

- (a) A High Commissioner's Office for Russian and Armenian Refugees (1921-30);
- (b) The Nansen International Office (1930-38)
- (c) The Office of the High Commissioner for Refugees coming from Germany (1933), subsequently incorporated in the League of Nations (1936 to 31 December 1946);
- (d) A High Commissioner's Office for "Nansen" refugees and refugees coming from Germany (1938 to 31 December 1946).

The Evian Conference (1938) set up the Inter-Governmental Committee for Refugees (1938 to 1 July 1947).

The United Nations established a specialized agency, the International Refugee Organization (IRO), the functions of which were discharged by the Preparatory Commission for the IRO (established on 31 December 1946) until its Constitution came into force on 20 August 1948.

It will be noted, firstly, that the people dealt with were not stateless persons as such, but refugees and "displaced persons".

Secondly, it will be noted that up to the Second World War attention was paid not to refugees in general but only to certain categories of refugees. What happened was that the various categories of refugees were dealt with as and when they appeared.

Chapter 1 INTERNATIONAL PROTECTION

(1) PERIOD AFTER THE FIRST WORLD WAR

After the 1917 Revolution, the mass exodus of Russian refugees, who were at the time actually stateless persons, confronted the League of Nations with the problem of the international protection of stateless persons.

A. High Commissioner's Office for Russian and Armenian Refugees

(a) The Council of the League of Nations by a resolution of 27 June 1921^[26] decided to appoint a High Commissioner for Russian Refugees, and appointed Dr. Nansen to the post on 20 August 1921.^[27]

The High Commissioner had a complicated task. At first, the question of material aid predominated. Subsequently, there arose the questions of repatriation and distribution, and of the settlement of the refugees in the various countries. The problem of political and legal protection was, however, taken into consideration from the start.

In 1922, 1924, 1926 and 1928, the High Commissioner initiated international conferences, which elaborated the arrangements on which the status of refugees is still based.

(b) In 1924, Dr. Nansen's mandate was extended to Armenian refugees^[28] and, in 1928, to certain other small categories of refugees.^[29]

(c) By a resolution of 25 September 1924,^[30] the League Assembly at its fifth session, relieved the High Commissioner of certain "technical services" which were undertaken by the International Labour Office up to 1929. The political and legal protection of the refugees then became the High Commissioner's main task.

(d) In 1929 the work of protection and the work of assistance were both again entrusted to the High Commissioner and his services were placed, on a tentative basis, under the authority of the Secretary-General of the League of Nations.^[31]

B. Nansen International Office

[26] Cf. Minutes of the 13th session of the League of Nations Council, June 1921, section 427 (pages 53 and 54).

[27] Cf. Minutes of the 14th session of the League Council, August- September 1921, annex 245 (page 64).

[28] Cf. Minutes of the 26th session of the League Council, Official Journal of the League of Nations, No. 11, November 1923, section 1086 (page 1349).

[29] Namely, the Assyrian, Assyro-Chaldaean and Turkish refugees. Cf. Minutes of the 50th session of the League Council, O.1. No. 7, July 1928, section 2193 (page 898).

[30] Cf. Records of the 5th Assembly, O.J., Special Supplement No. 23, section 70 (page 152).

[31] Cf. Records of the 10th session of the 1929 Assembly, O.J., Special Supplement No. 75, section 67 (pages 145 and 146).

After Dr. Nansen's death, the League Assembly, at its eleventh session, by a resolution of 30 September 1930^[32] separated the two sides of the work: the politico-legal protection of refugees was entrusted without any time-limit^[33] to the Secretary-General of the League, whereas the humanitarian side was entrusted to an international office, the Nansen Office,^[34] established in accordance with Article 24 of the League Covenant and placed under the League's authority. This Office, which had been established for a period extending to 31 December 1939,^[35] started work on 1 April 1931.^[36] It was later decided that it would be wound up on 31 December 1938.^[37]

C. High Commissioner's Office for Refugees from Germany

Meanwhile, a new wave of refugees, coming this time from Germany, induced the League of Nations to take similar steps to protect them. A High Commissioner's Office for German Refugees was set up on 26 October 1933^[38] with headquarters in Lausanne. Owing to the opposition of the German Government, this High Commissioner's Office was not incorporated in the League of Nations. Being left outside this important international organization, it proved ineffective.

James C. MacDonald, who held the post of High Commissioner, gave up the task, which he considered he had not 'he means to perform, and submitted his resignation on 27 December 1935.^[39]

The Assembly, at its seventeenth session, decided to include the High Commissioner's Office within the framework of the League of Nations, and appointed as High Commissioner for Refugees from Germany, Major General Sir Neill Malcolm. His term of office was to come to an end on 31 December 1938, which was also the date on which the Nansen Office was to be wound up.

D. High Commissioner's Office for all Refugees

The League Assembly, at its nineteenth session, went very fully into the question of the future work in connexion with the protection and assistance of refugees. It decided, in a resolution of 30 September 1938,^[40] to establish a High Commissioner's Office responsible for the whole of the

[32] Cf. Records of the 11th session of the 1930 Assembly, O.J., Special Supplement No. 84, section 68 (pages 157 and 158), and annex 6 to the first part of the present Study.

[33] Cf. speech by Mrs. Hamilton, Sixth Committee, 11th session of the Assembly, O.J., Special Supplement 1930, No. 90, page 10.

[34] Cf. fourth paragraph of the resolution included in the Records of the 11th Assembly, O.J., Special Supplement No. 84, section 68 (pages 157 and 158).

[35] Cf. speech by the Rapporteur of the Sixth Committee at the 11th session of the Assembly, O.J., Special Supplement No. 84, section 68

[36] The decision concerning the date on which the International Office would start work was taken by the Governing Body of the Office; cf. O.J. No. 6 of 1931, section 7.

[37] Cf. O.J., Special Supplement No. 93, section 79, annex 20.

[38] Cf. Minutes of the 77th session of the League Council, O.J., No. 12 of 1933, section 3346.

[39] Cf. O.J., No. 2 of 1936, annex 1577 (page 160).

[40] Cf. O.J., Special Supplement No. 183, page 136, and annex 12 to the first part of the present Study.

work, namely material aid and legal protection for both “Nansen” refugees and refugees coming from Germany. It appointed as High Commissioner Sir Herbert Emerson. He chose as his assistant Dr. G. Kullmann. They occupied these posts until 31 December 1946.

The Assembly resolution defined the duties of the High Commissioner as follows:[41]

- (a) To provide for the political and legal protection of refugees, as entrusted to the regular organs of the League by paragraph 3 of the Assembly’s decision of 30 September 1930;
- (b) To superintend the entry into force of the application of the legal status of refugees, as defined more particularly in the Conventions of 28 October 1933 and 10 February 1938;
- (c) To facilitate the co-ordination of humanitarian assistance;
- (d) To assist the Governments and private organizations in their efforts to promote emigration and permanent settlement.¹[42]

To complete this brief historical survey, it should be added that after the Saar plebiscite of 13 January 1935, the Saar refugees who left the territory were included in the category known as Nansen refugees by a resolution of the League Council dated 24 May 1935.[43]

The powers of the High Commissioner were extended to cover Czechoslovak refugees from the Sudetenland by a resolution of the Council dated 17 January 1939.[44]

In addition, Austrian refugees were assimilated to refugees from Germany under an additional protocol of 14 September 1939.[45]

Mention must be made of the action taken by the Norwegian Government, which proposed in 1935, at the sixteenth session of the League Assembly, that the League’s protection be extended to all refugees and stateless persons.[46] The proposal was opposed by various Governments and was not adopted. Mr. Hansson, the Norwegian delegate, made the same proposal at the Inter-Governmental Conference held at Geneva from 2 to 4 July 1936.[47]

E. Inter-Governmental Advisory Commission for Refugees

[41] Cf. *O.J.*, Special Supplement No. 189, 1938, page 86.

[42] Cf. *O.J.*, XVI, page 634.

[43] Cf. *O.J.*, No. 6 of 1935, section 3593 (page 634).

[44] Cf. Minutes of the 104th session of the Council, *O.J.*, February 1939 (pages 7273).

[45] Cf. League of Nations document C.258.M. 176. 1939 XII and annex 11 to part one of the present Study.

[46] Cf. Minutes of the Second Meeting of the Sixth Committee of the League of Nations, 1935, *O.J.*, Special Supplement No. 143, section 8 (page 10).

[47] Cf. Minutes of the First Meeting held at Geneva on 2 July 1936 (League of Nations document No. Conf.SRA. First session/PV.1 of 9 July).

This Commission, set up by a resolution of the League Assembly dated 25 September 1928[48] included representatives of fourteen countries[49] and experts chosen from among the refugees.

This Commission, the Chairman of which was Mr. F. de Navailles-Labatut up to its sixth session, and subsequently Mr. Raphael, was in being from 1929 to 1935.[50] It studied all questions connected with refugees.

Two semi-official bodies should be mentioned: the Advisory Committee for Refugees coming from Germany, attached to the High Commissioner's Office for refugees coming from Germany, and the Advisory Committee of private organizations, attached to the High Commissioner's Office and to the Nansen Office. These Committees, which included the representatives of international voluntary associations and of refugee aid societies, existed until 1938.

F. Inter-Governmental Committee for Refugees (1938 to 30 June 1947)

The International Conference, held at Evian, from 4 to 15 July 1938 as the outcome of a proposal by the United States, in which thirty-two Governments took part, established the Inter-Governmental Committee for Refugees.[51]

Mr. George Rublee was the first Director of the Committee. Sir Herbert Emerson succeeded him in February 1939, and remained in office until the Committee was wound up on 30 June 1947.

The Committee had been set up to give international protection to German refugees, but its terms of reference were subsequently extended.

At the session held in 1943, the Committee decided that it could take under its protection " ...all persons whoever they may be, who, as a result of events in Europe, have had to leave, or may

[48] Resolution of 25 September 1928. Cf Records of the 9th session of the Assembly, *O.J.*, Special Supplement No. 64, section 87 (pages 148 to 150), and annex 5 to part one of the present Study.

[49] Cf. Minutes of the 53rd session of the Council, December 1928, *O.J.*, No. 1 of 1929, section 2344 (page 47). The States members of this Commission were the following: Bulgaria, China, Czechoslovakia, Estonia, France, Germany, Greece, Italy, Japan, Latvia, Poland, Romania, Switzerland and Yugoslavia.

[50] This Commission met on the following dates:

From 16 to 18 May 1929 (*O.J.* No. 7 of 1929, annex 1131, page 1077);

From 2 to 5 September 1930 (*O.J.* No. 11 of 1930, annex 1232, page 1462);

From 20 to 21 August 1931 (*O.J.* No. 11 of 1931, annex 1313, page 2118);

On 24 January 1933 (*O.J.* No. 7 of 1933, first part, annex 1440, page 854);

On 14 December 1933 (*O.J.* No. 6 of 1934, first part, annex 1499, page 524);

From 14 to 15 March 1935 (*O.J.* No. 6 of 1935, annex 1541, page 656);

From 9 to 10 October 1935 (*O.J.* No. 2 of 1936, annex 1574, page 139).

[51] Cf. annex 10 to part one of the present Study.

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”.

In practice, the Committee gave its assistance to the following categories of refugees:

- (a) German and Austrian refugees victims of the Nazi regime;
- (b) Spanish Republican refugees;
- (c) Certain small groups of stateless persons.

In 1946, the Executive Committee, at its 20th meeting, held on 16 July, decided as the result of a proposal by the United Kingdom and the United States, to extend its programme of work to displaced persons who were unwilling to return to their country of origin or to the country of previous residence, or who were unable to do so, applying in respect of them the principles laid down in annex 1 to the Draft Constitution of IRO as adopted by the Economic and Social Council at its second session.

When the activities of the League of Nations High Commissioner’s Office for Nansen Refugees came to an end on 31 December 1946, responsibility for these refugees was also assumed by the Inter-Governmental Committee.

(2) PERIOD AFTER THE SECOND WORLD WAR

When the United Nations came into being, the question of refugees and displaced persons was even more acute than after the First World War.

A. United Nations Relief and Rehabilitation Administration (UNRRA)

UNRRA, which was set up before the Second World War actually came to an end, had as one of its tasks that of repatriating the millions of persons who had been displaced by the Nazi and Fascist regimes and had been forced to leave their countries as a result of the war. It had to ensure their maintenance, pending repatriation.

UNRRA helped the military authorities and the governments concerned to repatriate nearly seven million persons, and towards the end of 1945 was still responsible for over a million persons, most of whom were in camps in Germany, Austria and Italy.

It should be mentioned that UNRRA had- no authority to resettle displaced persons or deal with refugees as such, or with persons whose displacement was not due to the Second World War.

B. United Nations

As UNRRA and the Inter-Governmental Committee were to come to an end, the General Assembly of the United Nations, during the first part of its first session, having recognized, in a resolution of 12 February 1946[52] “that the problem of refugees and displaced persons of all categories is one of immediate urgency”, *Decided* “to refer this problem to the Economic and Social Council for thorough examination ...and for report to the second part of the first session of the General Assembly”. It recommended to the Economic and Social Council that it “establish a special Committee for the purpose of carrying out ...the ...preparation of the report” requested by

[52] Resolution 8 (1) adopted by the General Assembly on 12 February 1946. Cf. Resolutions adopted by the General Assembly during the first part of its session, page 12.

the Assembly. Finally, the Assembly recommended to the Council that it take into consideration two principles, the first being that “this problem is international in scope and nature”.

The Committee established by the Economic and Social Council resolution of 16 February 1946 comprised twenty States.[53] That Committee met in London from 8 April to 1 June 1946, prepared the draft constitution of an “International Refugee Organization” and determined the categories of refugees which would be the concern of the new body.[54]

After it had been amended by the Economic and Social Council and by the General Assembly of the United Nations, the draft constitution was adopted by the latter during the second part of its first session, on 15 December 1946.[55]

C. International Refugee Organization (IRO)

By the terms of its Constitution one of the functions of the IRO is the legal and political protection of persons who are its concern (article 2, paragraph 1 of the Constitution).

The Constitution also provides that the IRO will be a specialized agency brought into relationship with the United Nations in accordance with articles 57 and 63 of the Charter and with article 3 of the IRO Constitution.

Annex 1 to the Constitution defines persons who are the concern of the IRO.[56]

The General Assembly had to take into account the fact that the Constitution of the IRO could not come into force until it had been accepted by at least fifteen States whose contributions to part I of the operational budget as defined in annex 2 to the Constitution amounted to not less than 73 per cent of the total contributions to the said part I; it also had to take into account the fact that the liquidation of the Inter-Governmental Committee and of UNRRA was imminent. Consequently, in order to avoid any break in the continuity of the work of international protection, the General Assembly decided by the same resolution mentioned above to establish a preparatory commission which would come into being when the agreement relating to the said Commission (“Agreement on the interim measures to be taken in respect of refugees and displaced persons”) had been signed by the representatives of eight Governments signatories to the Constitution of the IRO. That body, or the PCIRO, the headquarters of which were established in Geneva, came into being on 31 December 1946. On 1 July 1947, the Preparatory Commission took over the functions and activities of UNRRA and of the Inter-Governmental Committee. Through the participation of Denmark and Luxembourg in the Organization, the Constitution of the IRO came into force on 20 August 1948, and after the 7th part of its first session, held from 10-11 September 1948, the Preparatory Commission for the IRO ceased to exist. The General Council of the IRO held its first session in Geneva from 13-25 September 1948, and appointed Mr. W. H. Tuck (Executive Secretary of the Preparatory Commission) as Director-General of the IRO, and

[53] Australia, Belgium, Brazil, Byelorussian Soviet Socialist Republic, Canada, China, Colombia, Czechoslovakia, Dominican Republic, France, Lebanon, Netherlands, New Zealand, Peru, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, United States of America, Yugoslavia.

[54] Cf. United Nations document E/Ref. 1 and the Report of the Special Committee, document E/Ref.75.

[55] Resolution No. 62 (1). Cf. *Resolutions adopted by the General Assembly during the second part of its first session, page 97.*

[56] Resolution 62 (1) adopted by the General Assembly on 15 December 1946. Cf. *Resolutions adopted by the General Assembly during the second part of its first session, page 97.*

Sir Arthur Rocker (Deputy Executive Secretary of the Preparatory Commission) as Deputy Director-General. Mr. W. H. Tuck having resigned, the General Council of the IRO elected, on 8 August 1949, Mr. Donald G. Kingsley as General Director.

The General Council, at its first session, decided to recognize all the agreements concluded between Governments and organizations and the Preparatory Commission. In carrying on the activities of the PCIRO, the IRO is continuing to provide for the legal and political protection of the persons with whom it is concerned in accordance with annex 1 to the Constitution.

Apart from the purely humanitarian work (relief, repatriation, assistance in emigration and settlement), the protective activities of the Organization took and are taking the most varied forms. They can be summed up as follows:

- (a) Centralization of information concerning the status of refugees-,
- (b) Preparation of schemes and Proposal of measures to improve that status;
- (c) Collaboration with governments in applying the measures adopted;
- (d) Intervention on behalf of refugees;
- (e) Co-ordination of activities of the voluntary associations.

The work accomplished will be described in the following chapters.

Chapter 2 TRAVEL DOCUMENTS

(1) "NANSEN PASSPORTS"

One of the difficulties encountered by Dr. Nansen in connexion with the question of facilitating the settlement of refugees in a reception country was the absence of passports on which entry or exit visas could be affixed. Here was yet another example of the impossibility of applying the rules of common law to stateless persons without some previous measures to mitigate the consequences of the absence of national protection.

The Inter-governmental Conference, held at Geneva on 22 August 1921, in which ten countries took part,[57] declared in favour of the creation of an identity and travel document which would make up for the lack of a national passport.

The High Commissioner convened a fresh conference, which met at Geneva from 3 to 5 July 1922. This conference, in which sixteen countries took part,[58] adopted the Arrangement of 5 July 1922 [59] providing for the creation of a certificate of identity for Russian refugees. At the

[57] The Study Conference, convened at Geneva on 22 August 1921 by the Council of the League of Nations (resolution of 27 June 1921) devoted several meetings to the study of problems arising out of the position of Russian refugees. The following countries were represented: Bulgaria, China, Czechoslovakia, Finland, France, Greece, Poland, Romania, The Serb-Croat-Slovene State and Switzerland.

[58] Austria, Bulgaria, Czechoslovakia, Finland, France, Germany, Great Britain, Greece, Hungary, Japan, Poland, Romania, The Serb-Croat- Slovene State, Spain, Sweden, Switzerland (Minutes of the 19th session of the Council, 1922, page 9).

[59] See annex 1 to part one of the present Study.

present time, the countries which have adopted this Arrangement number fifty-three. The document created is known as the "Nansen passport".

A conference held at Geneva on 31 May 1924 extended the benefit of the "Nansen passport" to Armenian refugees. Up to the present time thirty-five countries have adopted the Arrangement of 31 May 1924.

Thus was created the document which was to take the place of a passport and on which visas could be affixed; but, unlike a passport, this document did not give the holder the right to return to the country of issue, and this lessened its practical value. The refugee now possessed a document on which a visa could be affixed, but the countries to which he applied for an entry visa used to refuse it out of fear that once he had entered their territory he would be unable to leave it.

This deficiency was made good by the Arrangement of 12 May 1926,[60] article 3 of which recommended the affixing of return visas on identity certificates. Twenty countries have acceded to the Arrangement of 12 May 1926. Article 2 of the Convention of 28 October 1933 and article 15 of the London Agreement of 15 October 1946 make the "return clause" an integral part of the travel document.

The arrangements of 1922, 1924 and 1926 related solely to Russian[61] and Armenian[62] refugees.

An Arrangement of 30 June 1928 concerning the extension to other categories of refugees of certain measures taken to assist Russian and Armenian refugees, to which eleven countries have acceded[63] extended the benefit of the Nansen passport to Turkish refugees who had lost their nationality under the terms of the Lausanne Protocol of 24 July 1923, to Assyrian and Assyro-Chaldaeian refugees, and assimilated refugees of Syrian or Kurdish origin.[64]

[60] See annex 2 to part one of the present Study.

[61] *Russian refugee*. "Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality".

[62] *Armenian refugee*. "Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality".

[63] Belgium, Bulgaria, Czechoslovakia, Esthonia, France, Germany, Latvia, Poland, Romania, Switzerland, Yugoslavia (30 June 1928). See *Official Journal of the League of Nations*, Special Supplement No. 193 of 1944, page 160, and annex 7 to the first part of the present Study.

[64] *Assyrian, Assyro-Chaldaeian and assimilated refugees*. "Any person of Assyrian or Assyro-Chaldaeian origin, and also by assimilation any person of Syrian or Kurdish origin, who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality".

Turkish refugee. "Any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of 24 July 1923, does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality". See preparatory documents and Minutes of the Inter-Governmental Conference on the Legal Status of Refugees (28-30 June 1928, page 188).

Finally the Arrangement of 30 July 1935 adopted by sixteen countries[65] granted Saar refugees the right to the Nansen passport.[66]

(2) TRAVEL DOCUMENTS FOR REFUGEES COMING FROM GERMANY

When the problem of refugees coming from Germany arose, a travel document similar to the Nansen passport was created for such persons under the terms of a provisional arrangement, dated 4 July 1936.[67] Article 3, paragraph 2 of this Arrangement, to which seven countries were parties,[68] expressly granted the holder of such a certificate the right to return, during the period of its validity, to the country which had issued it.

These provisions were reproduced in articles 3 and 4 of the Convention of 10 February 1938 concerning the status of refugees coming from Germany. They were made applicable to Austrian refugees by the Additional Protocol of 14 September 1939.

(3) TRAVEL DOCUMENTS OF 15 OCTOBER 1946

Lastly, an international conference convened in London on 15 October 1946 by the Inter-Governmental Committee on Refugees prepared an agreement[69] providing for a travel document similar to the Nansen certificate for refugees who are the concern of the Inter-Governmental Committee, other than those enjoying the benefit of earlier agreements (sections (1) and (2)).

In virtue of article 20 of the said Agreement,[70] the provisions of the Agreement apply to persons who are the concern of the Organization to which the functions of the Inter-Governmental Committee on Refugees have been transferred, i.e. the IRO. It should be noted that the maintenance of the Nansen passport for the categories of refugees entitled to it is the subject of special mention and that the "return clause" is likewise provided for. (Article 15 of the Agreement.)

[65] Australia, Argentina, Denmark, Estonia, Finland, France, India, Irish Free State, Italy, Latvia, New Zealand, Norway, Poland, Switzerland, Union of South Africa and the United Kingdom. (League of Nations document A/23/1936/XII, page 11.)

[66] "Persons who, having previously had the status of inhabitants of the Saar, have left the territory on the occasion of the plebiscite and are not in possession of national passports". (Annex to League of Nations document CL 120/1935/XII.)

[67] See annex 8 to part one of the present Study.

[68] "Belgium, Denmark, France, Great Britain and Northern Ireland, Norway, Spain, Switzerland (4 July 1936)" (see *Official Journal*, Special Supplement No. 139, 21st list of signatures, ratifications and accessions, 1944 Edition, page 141).

[69] See annex 13 to part one of the present Study.

[70] Article 20. "In the event of the transfer to any other international organization of the functions of the Inter-Governmental Committee on Refugees, all the provisions in the Agreement relating to the Inter-Governmental Committee shall be deemed to apply to the said organization."

The Agreement has been signed by eighteen Governments.[71] Seven other non-signatory Governments have undertaken to recognize the travel documents issued in virtue of the said Agreement.[72]

Chapter 3 CONSULAR SERVICES

On 7 September 1927, the Advisory Committee of Private Organizations requested the High Commissioner for Russian and Armenian refugees to propose to the Governments of countries granting asylum the conclusion of an Agreement authorizing the High Commissioner to appoint representatives in such countries. These representatives were to make up for the lack of consuls to whom refugees could have recourse, and were to fulfil, *inter alia*, the following functions:

- (1) Issuing to Russian and Armenian refugees, on request, documents certifying their identity, their position as refugees, their original' nationality, their civil status and family position, their skills, qualifications and occupation;
- (2) Drawing up customary certificates in respect of legal relationships established under the refugees' former national law; testifying to the legal validity of documents previously issued in their country of origin and issuing them certificates regarding their personal status;
- (3) Certifying the signatures of refugees and copies and translations of documents drawn up in their own language;
- (4) Issuing recommendations, certificates of good character and conduct, and so on;
- (5) Supporting the various requests submitted by refugees to the authorities of their place of residence.

In order to give effect to this suggestion, the High Commissioner, after consultation with the Governments of the countries of asylum, convened an international conference which met at Geneva, from 28 to 30 June 1928. This Conference, in which fifteen countries took part[73] adopted an arrangement concerning the legal status of Russian and Armenian refugees, dated 30 June 1928.[74] Article I of this Agreement provides:

"It is recommended that the High Commissioner for Refugees shall, by appointing representatives in the greatest possible number of countries, render the following services, in so far as such services do not lie within the exclusive competence of the national authorities:

- "(a) Certifying the identity and the position of the refugees;

[71] Those of: the Argentine Republic (*ad referendum*), Belgium, Brazil (*ad referendum*), Chile, China, the Dominican Republic, Ecuador (*ad referendum*), France, Greece, India, Italy, Luxembourg, the Netherlands, South Africa, Sweden, Switzerland, the United Kingdom, Venezuela.

[72] Those of: Australia, Canada, Denmark, Eire, New Zealand, Norway, Turkey (for transit purposes only).

[73] Austria, Belgium, Bulgaria, Czechoslovakia, Egypt, Esthonia, Finland, France, Greece, Germany, Latvia, Poland, Romania, Kingdom of the Serbs, Croats and Slovenes, Switzerland (Preparatory documents and Minutes of the Inter-Governmental Conference on the Legal Status of Refugees, 28-30 June 1928; Arrangement and Agreement of 30 June 1928).

[74] See annex 3 to part one of the present Study.

“(b) Certifying their family position and civil status, in so far as these are based on documents issued or action taken in the refugees’ country of origin;

“(c) Testifying to the regularity, validity, and conformity with the previous law of their country of origin, of documents issued in such country;

“(d) Certifying the signature of refugees and copies and translations of documents drawn up in their own language;

“(e) Testifying before the authorities of the country to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications and to his University or academic standing;

“(f) Recommending the individual refugee to the competent authorities, particularly with a view to his obtaining visas, permits to reside in the country, admission to schools, libraries, etc.

“The above-mentioned representatives shall be appointed and shall act in agreement with the Governments concerned. In countries in which persons or bodies already act unofficially in such a capacity the High Commissioner may utilize their services.

“Each Government shall be free to decide whether documents issued by such representatives may be recognized as having an official character. It is recommended in any case that the Governments shall take the greatest possible account of such documents. It is also recommended that any fees charged to refugees not in a condition of indigence in respect of the delivery of documents or the fulfilment of the above-mentioned formalities shall be moderate.

“It is understood that the activities of such representatives shall be of an entirely non-political character and shall involve no encroachment whatsoever on the duties incumbent on the authorities of the country of residence.”

The French and Belgian Governments, judging that the mere recommendation formulated in this Arrangement was not sufficient to give the document drawn up by the representatives of the High Commissioner an official value equal to that of consular documents, signed the same day, i.e. 30 June 1928, an agreement empowering the representatives of the High Commissioner to issue the documents enumerated in article I of the Arrangement. In these two countries the representatives of the High Commissioner received the consular *exequatur*.

In 1930, when the political and legal protection of refugees was taken over by him, the Secretary-General of the League of Nations was entrusted with the appointment of representatives who were at the same time to be representatives of the Nansen Office.

When the League of Nations ceased to exist, the Franco-Belgian Agreement was denounced by France, but Decree No. 46-2916 of 23 December 1946 entrusted identical consular functions in France to the representative of the Inter-Governmental Committee (from 1 January 1947 to 1 July 1947). Subsequently a fresh decree, entrusted them to the delegate of PCIRO.

At present these functions are carried out by the said delegate, under an agreement concluded on 13 January 1948 at Paris between the French Government and the Executive Secretary of PCIRO.

The importance of these consular services can be gauged by the ever-increasing number of documents issued to refugees. Whereas initially these documents could be counted by tens, at present they number thousands.

A decree issued by the French Government on 3 July 1945^[75] extended the system to Spanish refugees, and a decree of 10 May 1945 to refugees coming from Germany.^[76] Since 13 January 1948, in virtue of two agreements between the French Government and PCIRO, all refugees placed under the mandate of PCIRO benefit by this régime.^[77] Each month PCIRO issues several thousand certificates.

France and Belgium are the only countries which have accepted a consular service in such a fully developed form; nevertheless, other countries offering asylum have acted on the recommendations contained in article I of the Arrangement of 30 June 1928.

Thus the representatives of the Nansen Office, appointed by the Secretary-General of the League of Nations, were empowered by seventeen countries to render to refugees all the consular services enumerated in article 1 of the Arrangement of 30 June 1928.

The war put an end to this practice.

However, in a number of countries certain quasi-consular services, in various cases, continued to be rendered to refugees and displaced persons, first by the representatives of PCIRO, and subsequently by IRO.

If such persons came within the mandate of IRO, the representatives of IRO, where necessary, lent them assistance in a variety of forms, ranging from material aid to intervention with the authorities of the country of residence or with the Consuls of the countries of immigration.

Chapter 4 LEGAL STATUS

The necessity of providing stateless refugees with a specific legal status was recognized even before a high commissioner for Russian refugees was appointed. At its thirteenth session in June 1921, the Council of the League of Nations, on the report presented by M. Hanotaux, recognized the urgent necessity of making a thorough study of the legal questions relating to the status of refugees. This study formed one of the High Commissioner's tasks.

(1) ARRANGEMENT OF 30 JUNE 1928^[78]

On 26 September 1927, during its eighth session, the League Assembly adopted a resolution inviting the High Commissioner to convene a small conference to formulate proposals in regard to the legal status of refugees.

The High Commissioner convened a Committee of legal experts to prepare a preliminary draft convention. This Committee worked out a detailed questionnaire which was sent to the

[75] Decree No. 45-1465, *Journal de la République française*, of 4 July 1945.

[76] Decree of 10 May 1945, *Journal officiel de la République française*, of 4 August 1945.

[77] The documents issued by the delegation of IRO to refugees have the force of authentic official documents. They take the place of civil registration documents, as is evidenced by the judgment of the Court of Paris of 17 July 1948.

[78] Cf. annex 3 to part one of the present Study.

governments of the chief countries of refugee.[79] The replies of the Governments gave a clear indication of the legal standing of refugees and its shortcomings.[80]

The inter-governmental conference convened at Geneva from 28 to 30 June 1928, in which fifteen Governments[81] took part (listed in footnote 48) and to which Russian and Armenian experts were admitted in an advisory capacity, was supplied with a wealth of documentation. It drew up a certain number of rules but when the time came to decide their final form, eight Governments out of fifteen preferred them to be drafted in the form of mere recommendations. The Arrangement of 30 June 1928, which formed the basis of the Conventions Of 1933 and 1938, therefore contained nothing but recommendations.

(2) CONVENTION OF 28 OCTOBER 1933

It soon became apparent that the Arrangement in this form was ineffective. It was impossible to improve the status of refugees without introducing certain measures supplementary to the common law, in as much as the latter covered foreigners possessing a nationality but not stateless persons. The requisite changes could be made only by legislation or by formal obligations established by an international convention. Recommendations were not enough. In this connexion it should be noted that of all the various recommendations contained in the Arrangement of 30 June 1928, only one, in a single country, was incorporated in domestic legislation. (Article 93 of the Yugoslav law of 27 March 1931 on taxation.)

The approach of the date set for the closing of the Nansen Office made the improvement of the legal status of refugees a matter of urgency. The Governing Body of the Nansen Office and the Inter-Governmental Advisory Commission for Refugees both deemed it essential that refugees should be granted an international status before they were left to look after themselves without the assistance of the Nansen Office.

At its twelfth session, by a resolution dated 25 September 1931, the League Assembly, on the proposal of the Inter-Governmental Advisory Commission for Refugees, requested the said Commission, in consultation with the Nansen Office, to consider the advisability of preparing a convention.[82]

On the completion of the preparatory work, the League Council, by a decision of 22 May 1933, requested the Inter-Governmental Commission and the Nansen Office to convene an international conference and to submit to it a draft convention.

[79] Austria, Belgium, Bulgaria, Czechoslovakia, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Latvia, Lithuania, Romania, Kingdom of the Serbs, Croats and Slovenes, and Switzerland.

[80] Cf. *Documents préparatoires et procès-verbaux de la Conférence intergouvernementale pour le statut juridique des réfugiés*. (Série de publications de la Société des Nations, XIII, Réfugiés, 1930. XIII.1.)

[81] Cf. IV, paragraph 6 of the Report of the Experts submitted on 9 January 1933 to the Inter-Governmental Advisory Commission for Refugees. League of Nations file No. 3948-G.A.C.2/1933.

[82] Cf. Official Journal of the League of Nations, Special Supplement No. 93, 1931, pages 140 and 288.

The Conference, in which fifteen Governments took part^[83], was held at Geneva from 26 to 28 October 1933 under the presidency of M. de Navailles, representative of the French Government. The refugee experts were admitted in an advisory capacity.

The Conference adopted the draft prepared by the Inter-Governmental Commission and the Nansen Office with certain amendments.

The Convention of 28 October 1933,^[84] which was ratified by eight countries,^[85] settled a wide variety of questions relating to the status of refugees: administrative status, movement within a single country and internationally, residence, expulsion and non-admittance at the frontier (articles 2 and 3); juridical condition, personal status, dissolution of marriages, rights acquired under the former national law (articles 4 and 5); access to courts of law, guarantees, legal assistance (article 6); labour conditions (article 7); industrial accidents (article 8); welfare and relief (articles 9, 10 and 11); education (article 12); fiscal regime (article 13); exemption from reciprocity (article 14).

We shall return to these provisions when we come to discuss measures calculated to improve the status of refugees (part one, III).

Attention must be drawn to the importance of the Convention of 1933, which provided the refugees covered by it with a stable and equitable status while taking, the interests of the countries of refuge into account. In all probability it represented the limit of what was practically possible at that time.

This Convention covers the so-called "Nansen refugees" (article 1).^[86]

(3) CONVENTION OF 10 FEBRUARY 1938

At its eighteenth session, by a resolution dated 5 October 1937, the League Assembly decided, at the request of Sir Neill Malcolm, High Commissioner for Refugees coming from Germany, to convene a conference for the adoption of a convention for the benefit of refugees coming from Germany.

The Conference was held at Geneva from 7 to 10 February 1938, with M. Loudon as President, fourteen Governments participating.^[87]

[83] Austria, Belgium, Bulgaria, China, Czechoslovakia, Egypt, Estonia, Finland, France, Greece, Latvia, Poland, Romania, Switzerland, Yugoslavia.

[84] Cf. League of Nations Treaty Series, Vol. CLIX, page 199, CLXXII, page 432 and CLXXXI, page 429; also annex No. 7 to part one of the present Study.

[85] France, United Kingdom, Italy, Denmark, Czechoslovakia, Bulgaria, Norway and Belgium.

[86] The French Government, by Decree No. 45-766 of 15 March 1945, extended the benefit of this Convention to Spanish refugees.

[87] Belgium, Czechoslovakia, United Kingdom, Cuba, Denmark, France, Luxembourg, Norway, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland.

"The two Agreements concluded on 6 September 1947 with the French Government concerning operations in the French zones of Austria and of Germany (section 111, paragraph 12); Agreement concluded on 24

It adopted a Convention similar to that of 28 October 1933.[88] This Convention covers not only “persons possessing or having possessed German nationality” but also “stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government”.

The Convention does not cover persons who left Germany for reasons of purely personal convenience (article 1, paragraph 2).

The Additional Protocol signed at Geneva on 14 September 1939, to which three countries are parties,[89] extended the benefit of this Convention to refugees coming from Austria.[90]

(4) AGREEMENTS CONCLUDED BY THE IRO WITH VARIOUS GOVERNMENTS

In accordance with article 2, paragraph 1 of its Constitution, the IRO is entrusted with the legal and political protection of persons who are its concern. As a result, States which have ratified the Constitution of the IRO recognize that Organization’s right to protect refugees and displaced persons.

Furthermore, the IRO when using its right to conduct negotiations and conclude agreements with Governments (Constitution, article 2, paragraph 2 (e)) has included in such agreements provisions designed to improve the status of the refugees.

Sometimes these agreements contain a general clause confirming the competence of IRO in the matter of protection.[91] Often they specify certain elements of the status of the refugees.

October 1947 with the Italian Government (article II, paragraph I (f)); Agreement concluded on 7 November 1947 with the Allied Commission in Austria (British element) (article 4, paragraph 11); Agreement concluded on 21 July 1947 with the Government of Australia (paragraph 9); Agreement concluded on 26 September 1947 with the British Government concerning the recruitment of workers in the American zone of Germany (article 13); Agreement concluded on 28 June 1947 with the Control Council in Germany (British zone) (section IV, paragraph 10)

[88] Cf. League of Nations document C.75.M.30/1938/XII and annex 9 to the first part of the present Study

[89] Great Britain, France and Denmark.

[90].Cf. League of Nations document C.250.M.176/1939/XII and annex 11 to part one of the present Study.

[91] The two Agreements concluded on 6 September 1947 with the French Government concerning operations in the French zones of Austria and of Germany (section 111, paragraph 12);

Agreement concluded on 24 October 1947 with the Italian Government (article II, paragraph I (f));

Agreement concluded on 7 November 1947 with the Allied Commission in Austria (British element) (article 4, paragraph 11);

Agreement concluded on 21 July 1947 with the Government of Australia (paragraph 9);

Agreement concluded on 26 September 1947 with the British Government concerning the recruitment of workers in the American zone of Germany (article 13);

Agreement concluded on 28 June 1947 with the Control Council in Germany (British zone) (section IV, paragraph 10)

For example, the Agreement of 6 September 1947, concluded with the French Government provides that refugees in the French zone of Germany “shall have the same legal status and be subject to the same laws and tribunals as United Nations nationals having no official relations with the occupation Authorities” (section IX, paragraph 4).

The Agreement of 6-9 July 1947 concluded with the Commander-in-Chief in the American Zone of Occupation of Germany provides that “refugees eligible for IRO assistance in the United States area will have the same legal status and will be subject to the same courts as United Nations nationals who have no official relation with the occupation authority” (section VIII, paragraph 12 (c)), and that the “IRO will be responsible, in agreement with the occupation authority, for the legal and political protection of eligible refugees. The IRO will be recognized as the appropriate authority to safeguard the legitimate interests of such eligible refugees as may request its assistance”. (Section VIII, paragraph 12 (d).)

The Agreement concluded on 13 January 1948 with the French Government concerning the recruitment of refugees in Germany and Austria, gives the refugees admitted into France certain guarantees in regard to expulsion and reconduction (article 10 (a) and (e)).

The Agreement concluded on 21 July 1947 with the Australian Government guarantees the immigrant refugees enjoyment of all the rights and liberties granted to foreigners residing in Australia and recognizes their right to apply for naturalization (article 6 (b) and (c)).

The two Agreements of 13 January 1948 concluded with the French Government, one concerning the establishment in France of the IRO delegation (section 111) and the other concerning the exercise by the IRO delegate of quasi-consular functions both ensure the maintenance of the benefits previously granted to the so-called “statutory refugees” and extend the benefit of the quasi-consular services to all persons placed under the mandate of IRO.

The Agreement concluded on 24 June 1948 with the Government of Brazil provides, in article VI, paragraph 31, that “the rights of protection pertaining to nations with regard to their subjects abroad will be exercised in Brazil by the IRO with regard to the refugees established in Brazil so long as they are stateless or for other reasons have lost the protection of their national State and are therefore included in the jurisdiction and precepts of the IRO in accordance with its Constitution”. Moreover, article V, paragraph 30, guarantees to immigrant refugees in Brazil “treatment which is generally not less favourable than that enjoyed by Brazilian citizens in Brazil under similar conditions and aptitudes”.

The Agreement of 22 October 1947 with the British Government and the Government of the Netherlands, concerning the recruitment of refugees and displaced persons in the British zone of Germany for the Netherlands, contains a series of provisions which define the legal status of the refugees.

It lays down that in the Netherlands the refugees shall enjoy, with exemption from reciprocity, all the rights granted to other foreigners (paragraph 4 (b)).

It provides that the IRO shall be notified of the intention to deport refugees and may make its representations within fifteen days (paragraph 4 (e)). In no case will the person be repatriated against his will to his country of origin (paragraph 4 (f)).

In regard to fiscal matters ‘ the refugees shall not be subject to taxes, duties or charges other than those to which nationals are liable (paragraph 4 (i)).

They shall have free access to the courts (paragraph 4 (j))

In regard to social insurance and industrial accidents, they shall be accorded the most favourable treatment (paragraphs 4 (k) and 5 (e)). Their children shall receive the same treatment in the schools as foreigners in general in regard to remission of fees and charges and the award of scholarships (paragraph 4 (1)).

The refugees who enjoy the protection of the IRO (paragraph 1 (b)) shall be entitled to apply for naturalization after five years of unbroken residence (paragraph 4 (a)).

Finally, the Agreement concluded on 24 June 1948 with the Turkish Government in regard to the immigration of refugees and displaced persons who have expressed a desire to emigrate to Turkey and who, in the opinion of the Turkish Government, fulfil certain ethnic and cultural conditions, contains the following provision:

“The Government agrees that immediately on landing on Turkish territory refugees shall be granted full Turkish nationality. In this connexion, the Government will forthwith issue to refugees who enter Turkey under the provisions hereof all necessary identity documents and documents of a like nature together with such translation services in Turkey as may be requisite or desirable on first entry. Refugees shall enjoy the full protection of Turkish law and all rights and privileges available normally thereunder to Turkish subjects resident in Turkey.” (Article VI, paragraph 15.)

Some of the agreements concluded by the IRO contain a special clause under which Governments undertake to obtain work for the refugees and displaced persons.[92]

Other agreements cover the recruitment of refugee and DP workers and their employment in the reception country.[93]

[92] Agreement of 6 July 1947 with the Commander-in-Chief of the United States Zone of Germany (section V, paragraph 9, 2 (a)).

Agreement of 6 September 1947 with the French Government concerning the French Zone of Austria (section IV, paragraph 4 (b)).

Agreement of 6 July-29 December 1947 with the French Government concerning the French Zone of Germany (section IV, paragraph 4 (b)).

Agreement of 7 November 1947 with the Allied Commission (British element) in Austria (article V, paragraph 10).

Agreement of 28 June 1947 with the Control Council in Germany concerning operations in the British Zone (article V, paragraph 9).

Agreement of 12 September 1947 with the General in Command of the United States Forces in Austria (section II, paragraph 5 (e)).

[93] Agreement of 26 September 1947 with the British Government (recruitment in the United States zone of Germany).

Agreement of 22 October 1947 with the British Government and the Government of the Netherlands (recruitment in the British zone of Germany).

Agreement of 13 January 1948 with the French Government.

Agreement of 11 June 1948 with the Belgian Government.

Finally, other agreements concern the immigration and employment of refugees and displaced persons.[94]

Thus the status of such stateless persons as are the concern of the IRO has been appreciably improved in a large number of countries as a result of the agreements concluded by the IRO in its capacity as an organ of international protection.

SECTION III MEANS OF IMPROVING THE POSITION OF STATELESS PERSONS

As is apparent from the previous Sections, improvement in the position of stateless persons requires their integration in the framework of international law, which, by tradition, has dealt with cases of foreigners possessing nationality.

To this end, stateless persons must, on the one hand, be provided with status which will ensure their enjoyment of the rights necessary to enable them to lead an existence worthy of human beings, and must, on the other hand, be provided with adequate international protection.

With regard to the first consideration-that of status-stateless persons may be divided into two categories:

- (1) Those who already enjoy a status by virtue of the Convention of 28 October 1933, the Convention of 10 February 1938 or the Additional Protocol of 14 September 1939;
- (2) Those who have not yet been provided with a status by convention.

For stateless persons of the first category, the maintenance of their present status may be envisaged; but it should be noted that the Conventions mentioned above have received only a small number of ratifications and accessions. It is desirable, therefore, that other States become parties to these diplomatic instruments.

Stateless persons of the second category must be provided with a status; that would appear an essential step. In chapter 1 of this section the principal elements of this status will be determined and its form discussed.

Chapter 2 will deal with the international protection of stateless persons.

Chapter 1 STATUS OF STATELESS PERSONS

The first thing is to determine the principal elements of the status of stateless persons, and next its form.

(1) ELEMFNTS OF THE STATUS

Section I of this part of the Study describes the position of stateless persons whose status has not been determined.

Section II outlines the efforts made to improve the status of certain categories of stateless persons.

[94] Agreement of 21 July 1947 with the Australian Government.

Agreement of 30 April 1948 with the Brazilian Government.

Agreement of 24 June 1948 with the Turkish Government.

It is now necessary to examine the measures which must be taken to render the position of all categories of stateless persons satisfactory.

The status of stateless persons will include all the rights to be granted to them.

A. International travel. Right of entry and sojourn

For stateless persons to be able to travel, leave the country in which they happen to be, obtain an entry visa for another country and go there, either for personal or business reasons, or with a view to settlement, it is absolutely necessary that they be provided with a document which will take the place of the national passport. The value of this document and the advantages it can confer will increase in proportion to the number of countries which recognize it.

What should be the nature of this document?

As the London Agreement of 15 October 1946, which is based on the agreements concerning the "Nansen passport", concluded at Geneva on 31 May 1924, 5 July 1922 and 12 May 1926, is entirely satisfactory, all that is necessary is to take up its provisions as they stand and extend the benefits they confer to all stateless persons who are not entitled to the "Nansen passport".

It should be noted that these provisions confer on the holder of the travel document the right to return to the country which issued this document. He retains this right as long as the travel document is valid, that is, in principle, for two years. This clause, the so-called "return clause", is of special importance.

It alone makes it possible to obtain an entry visa for other countries. It brings the travel document closer into line with the passport. Experience with the "Nansen passports", which did not at first contain this clause later included in them by the Arrangement of 12 May 1926, showed that countries were not prepared to grant visas to foreigners who were not entitled to return to the countries from which they came. There should be no real objection to adopting this clause, since the only result of omitting it from the document is to immobilize stateless persons in countries which refuse them the right to return if they leave.

As regards the right of sojourn, Governments will assuredly not renounce their sovereign powers in this respect. However, it can be foreseen that improvement in the status of stateless persons, adoption of the above-mentioned travel document, and the undertakings not to expel or reconduct stateless persons who cannot legally enter another country, would, in fact, satisfactorily resolve the question of the right of sojourn.

B Determination of personal status

Mention has already been made above of the prejudice caused by uncertainty about the personal status of stateless persons both to themselves and to nationals of the Country of reception. It is essential that this status be clearly determined.

This was done in the Conventions of 28 October 1933 and of 10 February 1938.

Article 4 of paragraph 1 of the 1933 Convention, which applied only to persons who were, *de jure*, stateless, reads as follows:

"The personal status of refugees shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence."

Article 6 of the Convention of 10 February 1938, which applies both to persons who are, *de jure*, stateless, and to refugees who have retained their nationality, provides that:

"The personal status of refugees who have retained their original nationality shall be governed by the rules applicable in the country concerned to foreigners possessing a nationality. Save as

otherwise previously provided by treaty, the personal status of refugees having no nationality shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence.”

These provisions appear to be satisfactory.

C. Personal rights

(a) Family rights

Family rights have a marked personal character, and the individual is very sensitive to anything affecting them. In this respect, the status of the stateless person should not be inferior to that of other foreigners. In particular, the right to marry should not depend on an administrative authorization. Actual residence for a reasonable period should be sufficient to enable the stateless person to contract marriage in the country of reception.

Nor should he be refused the right to adopt or to be adopted, to be a guardian, member of a family council etc.

A stateless person cannot have recourse to a national court. It should therefore be made possible for him to apply for divorce to the courts of his country of residence, provided this is not at variance with the public law of the country and his own personal status.

In this respect, article 5 of the Convention of 28 October 1933 contains the following provision:

“...the dissolution of marriages of refugees shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence”.

This provision seems to be satisfactory, and it could be extended to cover all stateless persons.

Respect should be ensured for any rights acquired by stateless persons by a marriage contracted at the time when they were subject to their former national law. This applies particularly to the matrimonial regime and the legal capacity of married women.

There is no reason why the matrimonial regime established at the time of the marriage, whether it was imposed under the former national law of stateless persons or was established by contract in conformity with that law, should be modified by reason of the fact that the husband and wife have lost their nationality. However, if regulations to safeguard the interests of third parties are in force in the country of reception, stateless persons should comply with the formalities prescribed by law.

Nor is there any reason why a married woman's legal capacity, which was not affected by a marriage contracted under her former national law should vary once she has become stateless, as she happens to move from country to country.

In this connexion, article 4, paragraph 3 of the Convention of 28 October 1933, provides that:

“Rights acquired under the former national law of the refugee, more particularly rights attaching to marriage (matrimonial system, legal capacity of married women etc.), shall be respected, subject to compliance with the formalities prescribed by the law of their country of domicile, or failing such, by the law of their country of residence, if this be necessary.”

This provision appears to be just; it safeguards the interests both of stateless persons and of third parties connected with them.

(b) Rights of property

With regard to property rights the restrictions imposed on stateless persons result mainly from the fact that it is impossible for them to comply with the condition of reciprocity on which enjoyment of certain of these rights is often dependent. Among the rights of which stateless persons are

deprived on this score in a number of countries, the following should be mentioned: the right to acquire immovable property, or to collect an inheritance left by a person dying intestate, the right to register trade marks, industrial patents, trade names etc. If stateless persons were exempted from the condition of reciprocity, their position with regard to property rights would become satisfactory. (Cf. section I below.)

D. Exercise of trades or professions

(a) Employees

The bare minimum which should be granted to stateless persons is free access to the ranks of wage-earners. The right to earn a livelihood by one's work is a corollary of the right to live.

The grant to stateless persons of the right to work comes up against certain difficulties. These are particularly serious in times of economic depression. The question of stateless labour is one of the most difficult aspects of the problem to be solved. It would be easier to solve if the international movement of stateless persons became less restricted, their distribution among the various reception countries more rational and their legal status more satisfactory. Meanwhile, since, unlike supernumerary foreign workers, stateless persons cannot be repatriated and their reconduction to the territory of neighbouring countries is no solution, the restrictions at present applying to foreign labour should therefore be automatically suspended in favour of certain classes of stateless workers.

In this connexion, article 7 of the Convention of 28 October 1933 provides that:

"The restrictions ensuing from the application of laws and regulations for the protection of the national labour market shall not be applied in all their severity to refugees domiciled or regularly resident in the country.

"They shall be automatically suspended in favour of refugees domiciled or regularly resident in the country, to whom one of the following circumstances applies:

"(a) The refugee has been resident for not less than three years in the country;

"(b) The refugee is married to a person possessing the nationality of the country of residence;

"(c) The refugee has one or more children possessing the nationality of the country of residence;

"(d) The refugee is an ex-combatant of the Great War."

Similar provisions, but excluding paragraph (d), are also to be found in article 9 of the Convention of 10 February 1938.

The benefit of the above provisions might be extended to three more classes of stateless persons, namely: those who have served in the armed forces of the country; those who entered the country with employment contracts, and have fulfilled their engagements; and those who have been victims of nazi or fascist persecution.

(b) Trade and industry

Stateless persons should have access to these occupations on the same terms as other foreigners, but with exemption from the condition of reciprocity.

(c) Liberal professions

In most European countries the professions of lawyer, doctor, dentist, chemist etc. are overcrowded and reserved for nationals. It is therefore unlikely that Governments will be willing to

open them to stateless persons; nevertheless, the services of stateless persons possessing the necessary qualifications might profitably be used in overseas countries.

Although a difficult one, the question should nevertheless be examined.

E. Education

Stateless children should receive elementary or primary education under the same conditions as nationals.

As regards the other forms of education, stateless persons should have access thereto and enjoy the same advantages (remission of fees and charges, award of scholarships etc.) as foreigners possessing a nationality, without being subject to the condition of reciprocity.

Article 12 of the Convention of 28 October 1933 and article 14 of the Convention of 10 February 1938 provide that:

“Refugees shall enjoy in the schools, courses, faculties and universities of each of the Contracting Parties, treatment as favourable as other foreigners in general. They shall benefit in particular ...by the total or partial remission of fees and charges and the award of scholarships”.

Those provisions should be extended to meet the conditions described above.

F. Relief

Legislation relating to relief is based on humanitarian and social principles. It is hardly conceivable that indigent, sick or infirm foreigners should be left in a state of neglect. Apart from humanitarian considerations it is necessary to protect society from the danger of sick, infirm or aged persons and children, who are incapable of supporting themselves, being left unaided and uncared for.

Since stateless persons cannot fulfil the condition of reciprocity and it is usually impossible to send them back to their country of origin or to claim from that country the repayment of the cost of relief, they should, in the matter of relief, be assimilated to nationals.

Article 9 of the Convention of 28 October 1933 and article 11 of the Convention of 10 February 1938 contain the following provisions in this connexion:

“Refugees residing in a territory to which the present Convention applies who are unemployed persons, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made either by their families or by third parties, pregnant women, women in childbed or nursing mothers, shall receive therein the most favourable treatment accorded to nationals of a foreign country, in respect of such relief and assistance as they may require, including medical attendance and hospital treatment.”

In view of the special position of stateless persons, who cannot be repatriated, their assimilation to nationals of the most favoured nation is not satisfactory. In this matter stateless persons should therefore be assimilated to nationals.

G. Social security

The social security system is not based on purely national considerations. It springs from humanitarian principles of general application.

From the purely national standpoint, it is in the interests of national workers that foreigners working side by side with them should enjoy the same benefits as themselves.

Furthermore, foreign workers render the same services to society as national workers and are exposed to the same risks. There is therefore every justification for assimilating them to nationals in the matters of social security.

In this connexion article 8 of the Convention of 28 October 1933 and article 10 of the Convention of 10 February 1938 contain the following provisions:

“Each of the High Contracting Parties undertakes to accord to refugees who meet with industrial accidents in any of his territories to which the present Convention applies, or to their beneficiaries, the most favourable treatment that he accords to the nationals of a foreign country.”

A simpler formula assimilating the stateless person to the national worker would be preferable.

H. Right to appear before the courts as plaintiff or defendant

There is no need to repeat the remarks made above on page 31.

It is sufficient to recall the provisions contained in article 6 of the Convention of 28 October 1933 and in article 8 of the Convention of 10 February 1938.

Article 6 of the Convention of 28 October 1933 provides that:

“Refugees shall have, in the territories of the Contracting Parties, free and ready access to the courts of law.

“In the countries in which they have their domicile or regular residence, they shall enjoy, in this respect, the same rights and privileges as nationals; they shall, on the same conditions as the latter, enjoy the benefit of legal assistance and shall be exempt from *cautio judicatum solvi*.”

Article 8 of the Convention of 10 February 1938 provides that:

“1. Refugees shall have, in the territories to which the present Convention applies, free and ready access to the courts of law.

“2. In the countries in which they have their domicile or regular residence, they shall enjoy in this respect, save where otherwise expressly provided by law, the same rights and privileges as nationals. They shall on the same conditions enjoy the benefit of legal assistance and be exempt from *cautio judicatum solvi*.”

The first mentioned formula is preferable. The insertion in article 8 of the 1938 Convention of the words “save where otherwise expressly provided by law” reduces the practical value of the provisions.

I. Exemption from reciprocity

In section one of part two reference was made to the importance of the concept of reciprocity in the laws and conventions governing the status of foreigners, and to the consequences of the fact that stateless persons are not in a position to fulfil this condition.

Nevertheless, attention must be drawn to the changes which the considerable development of international relations during the nineteenth century have brought about in the concept of reciprocity as a condition governing the enjoyment by foreigners of certain rights. The tendency to allow foreigners to enjoy the whole body of private rights and to benefit by certain provisions of social legislation has become more marked.

Reciprocity still remains the basic concept but, as is evidenced by modern codes, doctrine and jurisprudence, it is no longer the condition under which, by way of exception, a right is granted to foreigners. It is becoming more the means of inducing less liberal countries to follow the general tendency, which is to assimilate the foreigner to the national in matters of private law. By invoking the concept of reciprocity countries make use of the right of reprisals against nationals of a State which refuses to grant to foreigners the rights accorded to them by other countries.

Hence, since measures taken against stateless persons cannot be used as a weapon against any State, there is no reason to keep the stateless person in a state of inferiority because he does not fulfil the condition of reciprocity.

The stateless person should therefore be granted the rights which are not refused to foreigners who possess a nationality and have fulfilled the condition of diplomatic or legislative (i.e. *de facto*) reciprocity.

In this connexion article 14 of the Convention of 28 October 1933 and article 17 of the Convention of 10 February 1938 contain an identical provision:

“The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity.”

So long as this or a similar provision is not applied to stateless persons as a whole, the status of stateless persons will leave much to be desired.

J. Expulsion and reconduction

Reconduction is the mere physical act of ejecting from the national territory a person who has gained entry or is residing therein irregularly

Expulsion is the juridical decision taken by the judicial or administrative authorities whereby an individual is ordered to leave the territory of the country.

The serious difficulties resulting from the application to stateless persons of expulsion or reconduction measures have been described above.

The Conventions of 28 October 1933 and of 10 February 1938 contain the following provisions on this subject:

Article 3 of the Convention of 28 October 1933:

“Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (*refoulement*), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

“It undertakes in any case not to refuse entry to refugees at the frontiers of their countries of origin.

“It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.”

Article 5 of the Convention of 10 February 1938:

"In every case in which a refugee is required to leave the territory of one of the High Contracting Parties to which the present Convention applies, he shall be granted a suitable period to make the necessary arrangements.

"Without prejudice to the measures which may be taken within any territory, refugees who have been authorized to reside therein may not be subjected by the authorities to measures of expulsion or reconduction unless such measures are dictated by reasons of national security or public order.

"(a) The High Contracting Parties undertake not to reconduct refugees to German territory unless they have been warned and have refused, without just cause, to make the necessary arrangements to proceed to another territory or to take advantage of the arrangements made for them with that object.

"(b) In such case, the travel document may be cancelled or withdrawn."

These texts do not go far enough. The provisions concerning expulsion and reconduction of stateless persons should be formulated in more precise terms and should contain the following rules:

- (a) No stateless person shall be reconducted to his country of origin;
- (b) No expulsion order shall be made against a stateless person for reasons other than those of national security;
- (c) No expulsion order shall be carried out until the stateless person has obtained authorization to enter another country;
- (d) If such authorization is not obtained, the authorities of the country of residence are entitled to adopt measures of an internal character, such as the assignment of a place of compulsory residence, with a view to safeguarding national security.[95]

K. Fiscal charges to which stateless persons are liable

It is natural that in return for the advantages resulting from the improvement in their status, stateless persons should be subject to certain charges to which nationals are liable.

(a) Taxation

In point of fact, stateless persons are liable to the same taxes, duties and charges as nationals of the reception country.

If, as is the case in certain countries, foreigners who are not entitled to the advantages of a treaty are liable to special taxes, stateless persons then pay higher taxes than nationals.

It would be useful to establish the stateless person's position from a fiscal standpoint.

Article 13 of the Convention of 28 October 1933 contains the following, provision:

[95] "Thus in France the Ordinance of 2 November 1945 concerning the sojourn and admission of foreigners in France provided for the *assignment of a place of compulsory residence* to foreigners in respect of whom an extradition order has been issued and "who are unable to leave French territory". The Ordinance states that "this impossibility is proved when the foreigner produces evidence to show that he can neither return to his country of origin nor proceed to another country" (article 27).

“The Contracting Parties undertake not to impose upon refugees residing in their territories duties, charges or taxes, under any denomination whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

“Nothing in the foregoing provisions shall affect the application of the Nansen stamp system, or the stipulations of the laws and regulations concerning charges in respect of the issue to foreigners of administrative documents and the extension of the validity of such documents.

“The present article is the only one in the Convention that governs fiscal matters. The latter are not subject to any other provisions of this Convention.”

There is a similar provision in article 16 of the Convention of 10 February 1938.

It would be useful to retain these provisions.

(b) Military service

Some countries have made stateless persons liable to compulsory military service or to duties of a military nature.[96]

If the status of stateless persons were to be improved as suggested in the present section of the Study, these obligations would be justified.

Stateless persons should, however, be given the option between military service and departure from the reception country.

Moreover, it would be only right that a stateless person who had agreed to serve in the armed forces of a country should be able to acquire the nationality of that country simply by a declaration.

(2) FORM TO BE GIVEN TO THE STATUS

Two questions of principle arise:

Is it necessary to resort to the method of concluding a convention, or is it enough to make recommendations to States urging them to modify their legislation and administrative practice?

If it is thought necessary to resort to the method of concluding a convention, what new conventions must in fact be concluded?

A. Convention or recommendation?

The question is whether the end in view could not be attained simply by legislative measures taken by each of the reception countries individually.

In the light of experience, this method does not seem likely to produce any results.

Nothing can of course be done in this respect without the collaboration, or *a fortiori* against the wishes, of the countries of reception. But if the good intentions of those countries are to be translated into action, it is essential to resort to the method of a convention, for the following reasons:

[96] Article 11 of the German Military Law of 22 July 1913, subsequently abrogated under the Treaty of Versailles; Belgian Law of 8 June 1870 on the Militia; Romanian Law of 5 March 1876; Italy, article 14 of the Law of 13 June 1912 and the Law of 15 August 1927; France, article 3, paragraph 2, of the Law of 1 April 1923, the Law of 31 March and the Law of 13 January 1940 concerning duties.

Certain measures, such as the provision of a document to take the place of a passport, necessitate a formal international agreement.

Other measures which could in theory be adopted through legislation cannot actually be taken for technical and psychological reasons.

In point of fact:

- (a) No Government will be willing to take the first step in this direction for fear of being the only one to improve the status of stateless persons, thus causing an influx of them into its territory;
- (b) Action on these lines, if taken by a single Government alone, might appear to be inspired by certain political views. Simultaneous action is the only means of avoiding such suspicions;
- (c) A law designed to improve the status of stateless persons would have to contain a whole body of provisions impinging on the most varied branches of internal legislation. It would be difficult to get parliaments, habitually overburdened with work as they are, to adopt such a law, of an unwonted nature and content, which would require prior study by a number of commissions;
- (d) Ratification of a convention in which all these provisions find their natural place gives rise to less difficulty;
- (e) Experience in this field shows that nothing was done in the field of internal legislation to give effect to the recommendations contained in the Arrangement of 30 June 1926, although these recommendations, which were adopted after exhaustive discussion, answered to the intentions of numerous Governments. However, when they had been inserted in the 1933 and 1938 Conventions, these same provisions were incorporated in the law of the contracting countries;
- (f) A general convention is a lasting international structure; being open to the accession of States which have not signed it, it encourages Governments to associate themselves with the work of their forerunners; even if those Governments are not in a position to accede to it, such a convention sometimes exerts a direct influence on the administrative and legal practice of their countries.

As a provisional measure and pending the conclusion of a convention, however, the possibility might be considered of inviting States Members, in the form of a recommendation, to refrain from taking discriminatory measures against stateless persons, either *de jure* or *de facto*, and to deal with them in conformity with a status inspired by the principles underlying the Conventions of 28 October 1933 and 10 February 1938.

B. Nature of the future convention

A number of solutions can be envisaged.

The first would be to determine by separate conventions the status of *each* category of stateless persons not benefiting under existing conventions.

Secondly, several conventions might be adopted, each relating not to a single category of refugees, but to a category of States.

The third solution would be to draft a protocol expanding the benefit of one of the existing conventions (that of 1933 or of 1938) to fresh categories of stateless persons, without concluding a new convention.

The fourth solution would be based on a concept diametrically opposed to that underlying the first solution: it would be to conclude a single convention applicable to all stateless persons, whether or not they were covered by existing conventions.

Fifthly, a new convention might be concluded which would apply to all stateless persons who are not covered by an existing convention.

First solution. Conclusion of separate conventions for each category of stateless persons

Stateless persons would be classified by origin; separate conventions would then be concluded to improve the lot of each of these categories. The advantage would lie in the fact that each government could thus accede to any of the proposed conventions, according to its aims or sympathies.

Could it be said in support of this solution that it would correspond to previous practice? In point of fact none of the agreements so far concluded cover all refugees-these, and not stateless persons, being the subject of those agreements. They applied to specific categories, the successive appearance of which was due to a number of different political causes.

Although agreements concluded in behalf of one category of refugees were sometimes extended later to cover other categories, they remained agreements dealing with special categories.

Discussion of this solution. These precedents are not conclusive. In fact, the multiplicity of conventions concluded in the past have not as wide a scope as one might expect.

Thus the Convention of 10 February 1938 concerning the status of refugees coming from Germany reproduces almost exactly the Convention of 28 October 1933 relating to the status of so-called "Nansen" refugees. When it was necessary to grant Austrian refugees a status, the Additional Protocol of 14 September 1939 merely extended to them the benefits of the 1938 Convention. This was also the case with the Spanish refugees, to whom were extended in France the benefits of the 1933 Convention. In short, the status of all so-called "statutory" refugees, i.e. all refugees covered by one or other of the various conventions, is at present determined by the Convention of 28 October 1933.

Moreover, the problem of stateless persons must not be confused with that of refugees as it has arisen hitherto, although the two are very closely connected. The problem of refugees was settled under special historical and political conditions. Today we wish to tackle the problem of stateless persons as such. It hardly seems possible therefore to discriminate between them or divide them into classes. The problem must be settled as a whole, and all stateless persons must in principle be treated alike.[97] A multiplicity of conventions would be a needless and unjustifiable complication.

It is true that certain States will on occasion be interested in specific categories of stateless persons. They cannot be asked to assume commitments in respect of them all, but it is nonetheless desirable that they should do so with respect to some. This situation can be adequately provided for in a convention of general scope. It is enough to incorporate in the actual convention any reservations formulated by Governments debarring any category they think fit to exclude.

Second solution. Conclusion of a number of conventions, each of which would be adopted by a different group of States
A convention on the status of stateless persons will have to supplement the internal legislation of the various countries. Now, since this differs (Anglo-Saxon law, Continental European law etc.), it should, according to this line of thought, be divided into a number of groups, for each of which separate conventions should be drawn up.

[97] That is, of course, stateless persons who are not war criminals or do not belong to certain categories to whom, for reasons of international morality, Governments parties to the Convention do not think it right to grant the benefits thereof.

Discussion of this solution. It is of course an easy matter to divide national legislation into a number of groups according to how any given legal problem, such as reciprocity, personal status etc., is resolved by it. But it appears to be impossible to divide it into separate groups for the whole of the problems which the status of stateless persons involves. Consequently, a number of conventions based on the above-mentioned principle would serve no useful purpose.

From this point of view the conclusion of a single convention should not be difficult. If, indeed, the convention contained a provision which was already incorporated in national legislation (e.g. exemption from reciprocity), this would not matter. If, on the other hand, it embodied a provision ignored by national legislation, it would be fulfilling precisely the function expected of it.

Third solution. Extension of one of the existing Conventions to other categories of stateless persons

The possibility might be considered of extending the benefit of the existing Conventions to new categories of stateless persons not covered by them, by simply extending their application. Governments could do this by adopting one or more protocols.

Discussion of this solution. This solution seems to have the advantage of simplicity and speed. But this advantage is more apparent than real.

Such protocols would of course bind only those States which became parties to them, and would not commit States parties to the existing Conventions unless they signed and ratified the protocols.

Furthermore, it seems unlikely that States not parties to the existing Conventions would become parties to protocols based on them.

Moreover the conclusion of one or more protocols would not be much easier than the conclusion of a new convention; for it would not be sufficient simply to refer to the Conventions of 1933 and 1938,[98] which were drafted with certain conditions and specific categories of refugees in mind. It would therefore be necessary to do more than replace the first articles of these Conventions, which specify their beneficiaries. Some of their provisions, including some fundamental ones, would have to be re-drafted.[99]

In conclusion, this solution would mean missing the opportunity of improving the system laid down in these Conventions by making various alterations found desirable in practice.

Fourth solution Conclusion of a single convention to replace existing Conventions

If the previous solutions are rejected, reasons of logic and simplicity may lead one to assume that a convention of general scope should be concluded to take the place of all existing agreements.

Discussion of this solution. This solution, which is based on a theoretical concept, is untenable. In its search for apparent simplicity, it runs the risk of jeopardizing the results already obtained. Indeed, the existing agreements function satisfactorily in the countries which apply them; they have paved the way for administrative practice and a voluminous case law is based on them. As things are, they represent something solid and alive. It is admittedly regrettable that only a small

[98] See annexes 7 and 9 to part one of the present Study.

Convention of 1933: articles 1, 2, 13 and 15 and all the general provisions (articles 16 to 23) would have to be re-drafted or replaced. This Convention refers to other agreements concluded on behalf of the "Nansen refugees" and inapplicable to stateless persons as a whole.

[99] Convention of 1938: articles 1, 3 and 5 (paragraph 3a) and all the general provisions (articles 18 to 25) would have to be re-drafted or replaced. This Convention includes provisions applicable only to refugees coming from Germany. Furthermore articles 3 and 4, relating to travel documents, antedate the London Agreement of 15 October 1945, and the new categories of refugees would therefore not benefit by the more liberal travel documents provided in that Agreement.

number of countries have ratified the 1933 and 1938 Conventions and that in some cases their ratification was accompanied by reservations. But this situation is capable of improvement. The Conventions remain open for new accessions, and reservations can be withdrawn.

To denounce the old Conventions in the hope of seeing them replaced by a new one which would be binding on a large number of States would be a delusion. Ratifications of and accessions to new conventions are problematical and in every case they take a certain amount of time. Moreover, there is the risk that Governments that become parties to the general convention might denounce it, whereas they would not have the same reasons for denouncing the existing agreements with their limited scope. In that case, if the other agreements were replaced by a general convention then there would be nothing left as far as those States were concerned.

Fifth solution. Conclusion of a general convention which would not entail abrogation of existing agreements

This general convention would apply in principle to all stateless persons except for those mentioned above (see footnote 4, page 65). It would not, however, apply to refugees benefiting under existing agreements which ensure them possession of a travel document^[100] and enjoyment of legal status.^[101] These agreements would represent the *lex specialis*, the general convention representing the *lex generalis*. Thus, in the event of the *lex specialis* ceasing to apply, the *lex generalis* would still hold good.

It is understood that the general convention would contain the whole body of provisions determining the status of stateless persons, i.e. both the issue of travel documents and legal status in the proper sense of the term.

Whatever the solution decided on, it will be desirable to recommend States which have not ratified the Conventions of 1933 and 1938 and the Additional Protocol of 1939 to become parties to these instruments.

This would appear essential if the first, second or third solutions are adopted, but it will be useful in practice, at least as a provisional measure, even if the fourth or fifth solutions are applied; for the conclusion of a general convention will take a considerable time.

C. Final clauses of the proposed convention

There are a number of formal clauses which need not be mentioned here. Others, however, present special importance; these are the clauses relating to:

(a) Reservations

For the convention to obtain the maximum number of accessions, fairly liberal provision must doubtless be made for reservations, either in respect of certain categories of stateless persons or in respect of certain benefits conferred on stateless persons by the convention.

Participating States would be permitted to withdraw these reservations subsequent to ratification or accession.

(b) States to which the convention would be open

The convention would be open to all States Members of the United Nations and to non-member States invited by the Economic and Social Council to accede to it.

[100] Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 13 October 1936 and 30 July 1933. Conventions of 28 October 1933 (chapter II) and of 10 February 1938 (chapter III).

[101] Arrangement of 30 June 1928. Convention of 28 October 1933. Convention of 10 February 1938 and Additional Protocol of 14 September 1939.

(c) **Number of ratifications or formal accessions required for the entry into force of the convention.**
In view of the nature and purpose of the convention there is no reason why it should not come into force as soon as two ratifications or formal accessions had been deposited.

(d) **Denunciations**
To facilitate the accession of States to the convention, it would be advisable to allow them to denounce it at any time. Denunciations would take effect one year after they had been received.

Chapter 2 THE INTERNATIONAL PROTECTION OF STATELESS PERSONS

(1) NATURE AND FUNCTION OF PROTECTION

The conferment of a status is not sufficient in itself to regularize the standing of stateless persons and to bring them into the orbit of the law; they must also be linked to an independent organ which would to some extent make up for the absence of national protection and render them certain services which the authorities of a country of origin render to their nationals resident abroad.

Such an organ is undoubtedly needed. The status of stateless persons, however carefully determined, cannot become a reality unless there is an organ of international protection.

Such an organ would need to work in close collaboration with the Governments of the reception countries.

It should comprise a central office with subsidiary branches in the countries concerned.

A. Functions of the central office

The main functions of the central office would be:

- (a) To collaborate in the application of the agreements in force;
- (b) To facilitate joint and simultaneous action by Governments on behalf of stateless persons;
- (c) To take a census of stateless persons, determine their requirements, collect all necessary data and information relating to them;
- (d) To promote the conclusion of such new agreements as may be required; and to secure further accessions to the agreements already concluded;
- (e) To conclude with Governments the arrangements necessary to enable stateless persons to obtain such documents as will allow them to perform various acts of civil and administrative life;
- (f) To facilitate the admission of stateless persons into countries willing to receive them temporarily or to allow them to settle there permanently;
- (g) To facilitate the assimilation and naturalization of stateless persons;
- (h) To co-ordinate the work of private voluntary associations on behalf of stateless persons.

B. Functions of the representatives of the central office in the various reception countries

The representatives of the central office carrying out their duties in the various reception countries would need to be approved by the respective Governments.

Their task would be to perform the duties normally carried out by national consuls and in particular:

- (a) To approach on behalf of stateless persons the authorities of the country of residence and the consuls, either of the country of residence or of other countries, and to co-operate with them;
- (b) To fulfil, in the countries to which they were accredited, the tasks entrusted to them by the central office, with a view to the execution of the arrangements and agreements concluded;
- (c) To co-ordinate locally the work of the voluntary associations.

(2) THE ORGAN RESPONSIBLE FOR PROTECTION

A. Necessity for an inter- governmental organ

The functions to be performed are of an official nature. Therefore, by virtue of its functions, the organ of protection must be inter-governmental in character. A private body would have neither the resources nor the authority required.

B. A national or international organ?

Would it not be possible for the task of protection to be entrusted to a national organ established in each country by the government?

The adoption of this form of administration would mean breaking with a tradition dating, from 1921 and the abandonment of a system which, in the countries that have applied it, has proved its value in regard to refugees.

The idea of setting up national organs (National Commissioners for Refugees) is not a new one and the reason it has not been carried out hitherto is because it was considered inadequate.

The problem of stateless persons, as the authors of this study conceived it, is in fact an international problem calling for joint action on the part of States. To this end both international agreements and an international organ are essential.

Furthermore, a national service wedged between the big State services would be more or less crushed by them and to ensure its survival would tend to become a subsidiary of one of the services in question, probably the service responsible for the supervision of foreigners.

C. What type of international organ is required?

Organs of various types could be envisaged. The international protection of stateless persons might be entrusted to one of the following bodies:

First solution. The United Nations

The United Nations would assume direct responsibility. A stateless persons' service would be established within the United Nations Secretariat. Its representatives would be accredited to the Governments concerned.

If this solution were adopted, the service in question might be located in Europe, in view of the fact that the majority of stateless persons are in Europe.

Second solution. High commissioner's office

A high commissioner's office could be set up by decision of the organs of the United Nations. While possessing a certain measure of independence, such an office would be placed under the control of the United Nations. Its expenditure would, in principle, be a charge on the United Nations budget.

Third solution. Continuance of the International Refugee Organization in another form

After it has concluded its arduous and costly task of caring for, transporting and resettling refugees, the IRO might be kept in being to continue the work of protection. Its budget would be considerably reduced since its outgoings would then be limited to small-scale administrative expenses.

Fourth solution. A new specialized agency

A new specialized agency (Articles 57 and 63 of the Charter of the United Nations) might be established to carry out the task in question.

As regards the choice of one of the solutions suggested above or any other which might be proposed, a decision will have to be taken fairly soon, at all events before the date set for the liquidation of the IRO.

It is to be hoped that by that date the majority of refugees and displaced persons will have been either repatriated or resettled in immigration countries. Nevertheless, protection, which would be the sole task of the new organ, will continue to be necessary in respect of a certain number of persons, i.e. all those who have not been repatriated or have not acquired a new nationality.

Whichever solution is adopted, it would be a good thing to employ the services of the present team of international officials who possess experience in the protection of refugees.

RECOMMENDATIONS SUBMITTED BY THE SECRETARY GENERAL TO THE ECONOMIC AND SOCIAL COUNCIL

The Secretary-General

In accordance with the request addressed to him by the Economic and Social Council in its resolution 116 D (VI) of 2 March 1948, submits the following recommendations:

Considering

That the possession of a nationality and the protection of a country of which they are nationals are the foundations of the status of foreigners;

That the fact of not having a nationality or not enjoying in practice the protection of a State places stateless persons, *de jure* or *de facto*, in a position of inferiority incompatible with the respect of human rights;

That statelessness complicates international relations and creates special difficulties for the reception countries;

That the number of stateless persons is considerable and is increasing;

That statelessness is an international problem which calls for international solutions;

That it is necessary to abolish statelessness and, until such time as this has been achieved, to improve the status of stateless persons;

That the political conditions which at present are the main cause of statelessness will not disappear until more stable conditions are restored throughout the world;

That in any event statelessness can be abolished only by measures which cannot produce their full effect until a certain length of time has elapsed; which measures will be recommended by the Secretary-General for adoption (see Part Two);

That it is important, meanwhile, to take action forthwith to improve the status of stateless persons;

That stateless persons should be:

- (a) Granted an international legal status guaranteeing them the enjoyment of fundamental human rights, and
- (b) Assured of the protection of an international organ of an intergovernmental character;

Considering

That at present only certain categories of stateless persons, and these only in certain countries, have the benefit as refugees of a legal status and of international protection provided by the International Refugee Organization, a non-permanent organization;

That without prejudice to the advantages accorded to the said categories of stateless persons by the agreements concluded in their favour, which would remain in force, it is necessary to establish a legal regime for all stateless persons, the said regime to comprise legal status and international protection;

In conclusion, the Secretary-General

Recommends the Economic and Social Council to take the following decisions:

1. To address an invitation to all Member States not yet parties to the Convention Relating to the International Status of Refugees of 28 October 1933, the Convention concerning the Status of Refugees coming from Germany of 10 February 1938 and the Additional Protocol to that Convention of 14 September 1939, to take the necessary steps as soon as possible to become parties thereto;
2. To urge States Members to refrain from taking any discriminatory measures affecting *de jure* or *de facto* stateless persons in territories under their jurisdiction, and to improve the conditions of such persons by providing them, through appropriate legislative or administrative action, with a legal status inspired by the principles underlying the agreements enumerated in item 1 above;
3. To request the IRO, in accordance with those provisions in its Constitution relating to the political and legal protection of refugees, to continue to use its good offices and to take whatever administrative measures are required to secure the implementation of items 1 and 2 above.

The Secretary-General further recommends the Economic and Social Council:

4.
 - A. To recognize the necessity of a convention, based on the agreements now in force, determining the legal status of stateless persons as such, but excluding war criminals and such other categories of persons as are specified in the convention.
 - B. To this end, to instruct either the Secretary-General in consultation with the Director-General of the IRO and the administrative heads of the other specialized agencies concerned, or an *ad hoc* Committee appointed by the Council, to prepare a draft convention including provisions concerning:

(a) The following subjects:

1. Personal status;

2. Rights formerly acquired;
 3. Property rights;
 4. The exercise of trades and professions;
 5. Education;
 6. Relief;
 7. Social security;
 8. The right to appear before the courts as plaintiff or defendant;
 9. Exemption from reciprocity;
 10. Taxation;
 11. Military service;
- (b) A travel document taking the place of a passport;
- (c) The procurement of documents enabling stateless persons to perform various acts of civil and administrative life;
- (d) Entry, sojourn, expulsion and reconduction.

This draft convention to be submitted to the Economic and Social Council with a view to presentation to and adoption by the General Assembly of the United Nations;

5. To recognize the necessity of providing at an appropriate time permanent international machinery for ensuring the protection of stateless persons.

ANNEXES TO PART ONE

1. Arrangement with regard to the issue of certificates of identity to Russian refugees, signed at Geneva, 5 July 1922[102] The registration of this Arrangement, deposited at the Secretariat, took place 16 November 1922

The undersigned representatives of the respective Governments, having taken part in the Conference on Russian Refugees convened at Geneva by the High Commission of the League of Nations on 3 July 1922;

Having considered the proposals formulated by Dr. Nansen in his report to the Council of the League of Nations on 17 March 1922;

And having carefully examined the proposals with regard to the issue of identification papers to Russian refugees who should apply for them;

[102] League of Nations, Treaty Series, Vol. XIII, No. 355.

Have unanimously agreed upon the attached form of certificate of identity and recommend its adoption and the adoption of the present arrangement to the States represented at the Conference, to the Members of the League of Nations and to States which are not members of the League.

This certificate will be issued subject to the following conditions:

(1) It shall not infringe the laws and regulations in force in any State with regard to the control of foreigners.

(2) It shall not in any way affect special regulations with regard to persons of Russian nationality, or those who have lost that nationality without acquiring another.

(3) The grant of the certificate does not in any way imply the right for the refugee to return to the State in which he has obtained it without the special authorization of that State.

(4) The State which issues the certificate is alone qualified to renew it so long as the refugee continues to reside within the territory of that State.

(5) On presentation of the certificate, the refugee may in certain circumstances be admitted into the State which he wishes to enter, if the Government of the State of destination affixes its visa directly on the certificate, or if the State in question regards it as a document containing proof of identity, the production of which would enable its consular authorities to issue a new certificate to the bearer enabling him to cross the frontier.

(6) Transit visa. The respective States shall grant transit visas, provided that the regulations in force in each State have been complied with, and in the form contemplated in the preceding paragraph, on condition that the Russian refugee has obtained the visa of the State to which he is proceeding.

(7) The text of the certificates shall be in at least two languages: the national language of the authority which issues the certificate and the French language, in accordance with the provisions made with regard to international passports at the Paris Conference of 21 October 1920. The issue of the certificate shall be made free of charge to destitute persons except in the event of legal provision to the contrary.

(8) The Members of the League of Nations and the other States which have not taken part in the present Conference are invited to adhere to the above arrangement and to communicate their decision as soon as possible to the Secretary-General of the League of Nations,

(9) In view of the urgency of the matter, the States represented at the Conference and the States which may adhere are requested to notify the Secretary-General of the League of Nations in writing as soon as possible of the date from which they will apply the present arrangement; the arrangement will come into force in each case at the moment when the notification reaches the Secretary-General.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 1942

The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change.¹⁰³

Thirty-three countries adopted the Arrangement, viz: Union of South Africa, Argentine Republic, Austria, Bolivia, Great Britain, Bulgaria, Chile, China, Cuba, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Mexico,

Netherlands, Norway, Paraguay, Poland, Portugal, Romania, the Saar Territory, Sweden and Switzerland.

Three signatories: Czecho-Slovakia, Spain (which had signed *ad referendum*) and Yugoslavia are not included in the list of thirty-three countries between which the Arrangement came into force.

IDENTITY CERTIFICATE

Authority issuing certificate	No.
	CERTIFICATE OF IDENTITY
Valid until...	

The present certificate is not valid for return to the country which issued it without a special provision to that effect contained in it. It will cease to be valid if the bearer enters Russian territory.

Surname	
Christian names	
Date of birth	
Place of birth	
Surname of father	
Surname of mother	
Person of Russian origin not having acquired another nationality	
Occupation	
Former residence in Russia	
Present residence	
<i>Description:</i>	
Age	(Place for photograph)
Hair	
Eyes	
Face	(To receive stamp)
Nose	
Special peculiarities	
Remarks	
	Signature of holder

The undersigned certifies that the photograph and signature hereon are those of the bearer of the present document.

Signature of the issuing authority

(Seal)

This certificate is issued in conformity with the resolutions of the Governmental Conference convened by Dr. Nansen, High Commissioner for Russian Refugees, at Geneva, 3-5 July 1922.

2. Arrangement relating to the issue of identity certificates to Russian and Armenian refugees, supplementing and amending the previous arrangements dated 5 July 1922 and 31 May 1924.

Signed at Geneva, 12 May 1926[103]

The undersigned, representing the Governments which took part in the Conference regarding Russian and Armenian Refugee Questions, convened at Geneva on 10 May 1926, by the High Commissioner of the League of Nations in pursuance of the resolution passed by the Sixth Assembly of the League of Nations and adopted by the Council of the League of Nations on 28 September 1925;

Having considered the excellent results obtained by the system of identity certificates for Russian and Armenian refugees;

Considering the necessity:

- (1) Of regularizing the systems of identity certificates for Russian and Armenian refugees;
- (2) Of determining in a more accurate and complete manner the number and situation of Russian and Armenian refugees in various countries;
- (3) Of creating a revolving fund to provide for the cost of the transportation and settlement of refugees;

Adopt the following resolutions, supplementing and amending the Arrangements of 5 July 1922, and 31 May 1924:

- (1) The Conference urges all the States which have not yet adhered to the Arrangements of 5 July 1922, and 31 May 1924, concerning identity certificates for Russian and Armenian refugees to ratify these Arrangements as soon as possible.
- (2) The Conference adopts the following definitions of the term "refugee":

Russian. Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality.

Armenian. Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired other nationality.

- (3) In order to facilitate freedom of movement of the refugees, the Conference approves the principle of the affixing of return visas on identity certificates for refugees leaving a country, on the understanding that Governments shall be free to make exceptions to this principle in special cases.

[103] League of Nations, *Treaty Series*, Vol. LXXXIX, No. 2004.

- (4) The Conference agrees that children under 15 years of age should be included on the identity certificates of their parents;
- (5) The Conference recommends that the Government issuing a national passport to a refugee should withdraw from him his identity certificate and return it to the authority which issued it.
- (6) The Conference considers that the fee for an identity certificate in each country should be the same as that for its national passport.
- (7) The Conference recommends the Governments to grant free of charge the various entrance, exit and transit visas to indigent refugees, on the recommendation of the International Labour Office or of its representatives in the different countries.

The Conference expresses the wish that in general the Governments will regard favourably the proposals of the International Labour Office with regard to possible reductions in the fees for those visas.

- (8) The Conference expresses the wish that all Governments will afford favourable consideration to any request from the International Labour Office for special facilities for the transport of refugees proceeding to a country in which employment has been found for them.
- (9) In addition to the fees payable in each country according to national legislation for the issue either of an identity certificate for Russian or Armenian refugees, the period of validity of which should not, in principle, exceed one year, or of an identity card or *permis de séjour*, a charge of five gold francs shall be made for the benefit of the revolving fund created by the League of Nations. This fee shall be charged, at the discretion of the States, either for the issue of one or other of these documents, or for both of them, in order to ensure that the fee shall be paid by all Russian and Armenian refugees, except those who are without means.
- (10) The Conference recommends that steps be taken to obviate payment of the above fee more than once a year by any refugee.
- (11) The Conference urges the various Governments either to generalize the use of the identity certificate or to take Steps to ensure that every refugee pays the fee every year.
- (12) In order to secure the payment of the fee of five gold francs, Governments will obtain, or the refugees will be required to obtain, a stamp to the value of this amount to be issued by the High Commissioner of the League of Nations for Refugees, which will be affixed either to the identity certificate or to the identity card or *perms de séjour*, and cancelled by the authority issuing either of these documents.
- (13) In order to husband the resources of the revolving fund, the Conference recommends that the States should make special contributions to cover the cost of transportation and settlement of numbers of refugees leaving or entering their territory.

The Conference recommends to the States represented at the Conference, to the States Members of the League of Nations, and to States which are not members of the League, the adoption of the present Arrangement.

The Conference requests the High Commissioner of the League of Nations and the Director of the International Labour Office to continue their negotiations with the Governments in order to

obtain by way of advances the necessary funds for the placing of refugees in employment, pending the payment of the fees provided for by the present Arrangement;

And expresses the wish that the representatives of the Governments at the next session of the Assembly of the League will be enabled to report on the measures taken to give effect to the terms of the present Arrangement.

DONE AT GENEVA, 12 May 1926.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 1944

The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change.¹⁰⁵

Document A.6(a) 1929. Annex, September 2nd, 1929, gives a list of twenty States between which the Arrangement came into force, viz.:

Germany,	26 August 1927
Austria,	23 October 1926
Belgium,	11 October 1926
Bulgaria,	27 August 1926
Cuba,	6 March 1926
Denmark,	20 September 1926
Estonia,	2 August 1926
Finland,	11 May 1927
France,	28 August 1926
Greece,	12 September 1926
Hungary,	22 September 1926
India,	21 September 1926
Ireland,	12 February 1927
Luxembourg,	2 August 1927
Norway,	10 January 1927
Poland,	11 September 1926
Romania,	3 July 1928
Sweden,	12 April 1927
<i>Switzerland.</i>	14 June 1926
<i>Yugoslavia,</i>	28 February 1928 ^[104]

[104] Yugoslavia has taken the necessary internal action in order to execute the provisions of this Agreement; this does not mean, however, in the Government's opinion that an international engagement should thereby exist between Yugoslavia and the other States which have put the Agreement into force.

(See League of Nations, *Treaty Series*, Vol. XIII, page 237; Vol. XV, page 322; Vol. XIX, page 284; Vol. XXIV, page 178; Vol. XXVII, page 420.)

Four signatories: Union of South Africa, Great Britain, Canada and Latvia, are not included in the list of twenty States in respect of which the Arrangement came into force.

3. Arrangement relating to the legal status of Russian and Armenian refugees, signed at Geneva, 30 June 1928[105]

The undersigned representatives of Governments, having taken part in the Conference concerning Russian and Armenian refugees, called together at Geneva by the League of Nations High Commissioner for Refugees on 28 June 1928, in execution of the Resolution adopted by the Eighth Ordinary Session of the League of Nations;

Having considered the Arrangement of 12 May 1926,[106] concerning the delivery of identity Certificates to Russian and Armenian refugees, by which the previous Arrangements of 5 July 1922,[107] and 31 May 1924, were completed and amended, and

Having agreed that it is necessary to define more clearly the legal status of Russian and Armenian refugees,

Adopt the following resolutions:

- (1) It is recommended that the High Commissioner for Refugees shall, by appointing representatives in the greatest possible number of countries, render the following services, in so far as such services do not lie within the exclusive competence of the national authorities:
 - (a) Certifying the identity and the position of the refugees;
 - (b) Certifying their family position and civil status, in so far as these are based on documents issued or action taken in the refugees' country of origin;
 - (c) Testifying to the regularity, validity, and conformity with the previous law of their country of origin, of documents issued in such country;
 - (d) Certifying the signature of refugees and copies and translations of documents drawn up in their own language;
 - (e) Testifying before the authorities of the country to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications and to his University or academic standing;
 - (f) Recommending the individual refugee to the competent authorities, particularly with a view to his obtaining visas, permits to reside in the country, admission to schools, libraries, etc.

[105] League of Nations, *Treaty Series*, Vol. LXXXIX, No. 2005.

[106] See annex 2 above.

[107] See annex I above.

The above-mentioned representatives shall be appointed and shall act in agreement with the governments concerned. In countries in which persons or bodies already act unofficially in such a capacity, the High Commissioner may utilize their services.

Each Government shall be free to decide whether documents issued by such representatives may be recognized as having an official character. It is recommended in any case that the Governments shall take the greatest possible account of such documents. It is also recommended that any fees charged to refugees not in a condition of indigence in respect of the delivery of documents or the fulfilment of the above-mentioned formalities shall be moderate.

It is understood that the activities of such representatives shall be of an entirely non-political character and shall involve no encroachment whatsoever on the duties incumbent on the authorities of the country of residence.

(2) It is recommended that the personal status of Russian and Armenian refugees shall be determined in countries in which the previous law of their respective countries is no longer recognized, either by reference to the law of their country of domicile or of usual residence, or, failing such country, by reference to the law of the country in which they reside. This recommendation shall not lessen in any way the validity as far as concerns the personal status of refugees of documents granted by the religious authorities competent respectively in the case of the Russian and Armenian refugees, in countries where the competence of such authorities is recognized.

That rights resulting from marriages contracted and documents issued under the previous national law of the refugees shall be regarded as acquired rights (matrimonial system, rights of married women, etc.) provided that where necessary the formalities prescribed by the law of the country of residence are fulfilled.

That the refugees be authorized, so far as the essential laws of their place of residence permit, to stipulate that their marriage shall be based on complete separation of property and that the right of the wife to dispose freely of her property shall not be affected by the fact of her marriage.

(3) It is recommended that in regard to divorce the national law of a Russian or Armenian refugee shall be regarded as being either the law of his country of domicile or usual residence, or, failing such country, the law of the country in which he resides.

(4) It is recommended that the exercise of certain rights, and the benefit of certain privileges granted to foreigners on condition of reciprocity shall not be refused to Russian and Armenian refugees on the ground that reciprocity cannot be obtained in their case.

(5) It is recommended that the benefit of legal assistance and if possible exemption from the *cautio indicatum solvi* shall be granted to Russian and Armenian refugees irrespective of reciprocity.

(6) It is recommended that restrictive regulations concerning foreign labour shall not be rigorously applied to Russian and Armenian refugees in their country of residence.

(7) It is recommended that measures for expelling foreigners or for taking other such action against them be avoided or suspended in regard to Russian and Armenian refugees in cases where the person concerned is not in a position to enter a neighbouring country in a regular manner.

This recommendation does not apply in the case of a refugee who enters a country in intentional violation of the national law. It is also recommended that in no case should the identity papers of such refugees be withdrawn.

(8) It is recommended that Russian and Armenian refugees be placed in regard to taxation on the same footing as nationals of the country in which they reside.

(9) It is recommended that the identity certificates of refugees be visés and extended in the simplest possible manner and with the minimum of formalities; that the refugees should not be subjected to special regulations in respect of travelling within the country in which they reside; that in the form of identity certificate for refugees the words "This certificate is valid for the return journey to the country by which it was delivered during the period of its validity. It shall cease to be so valid if at any time the bearer enters the territory of the Union of Socialist Soviet Republics (in the case of Russian refugees) or of Turkey (in the case of Armenian refugees) " be substituted for the words "This certificate is not valid for the return journey etc."

The undersigned recommend the adoption of the above resolutions to the States represented at the Conference, and to the Members and nonmembers of the League of Nations. They express the hope that the representatives of the Governments at the next session of the Assembly of the League of Nations may be in a position to announce the action, if any, to be taken in pursuance of the provisions of the present Arrangement.

DONE AT GENEVA, 30 June 1928.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 19449

The Supplement to the twenty-first list (League of Nations, Official Journal, Special Supplement No. 195) issued on 31 July 1946 indicates no change.110

The Arrangement came into force between *ten States, viz.:*

Austria

Belgium (25 April 1929)

Bulgaria (23 October 1928)

Czecho-Slovakia

Estonia (27 February 1929)

France

Germany (5 March 1929)

Romania (22 September 1928)

Switzerland (4 September 1928)

Yugoslavia[108]

Three others States signed, viz.: *Greece, Latvia, Poland.*

4 Arrangement concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian refugees. Signed at Geneva, 30 June 1928[109]

The undersigned representatives of Governments who have taken part in the Conference convened at Geneva by the League of Nations High Commissioner for Refugees on 28 June 1928, and in execution of the resolution adopted on 7 June 1928, by the Council of the League of Nations at its fiftieth session

Adopt the following resolutions:

(1) The measures taken on behalf of the Russian and Armenian refugees in virtue of the Arrangements of 5 July 1922[110] 31 May 1924, and 12 May 1926,[111] shall be extended to the Turkish, Assyrian, Assyro-Chaldaeian and assimilated refugees;

(2) For the purpose of defining these refugees, the Conference adopts the following definitions:

Assyrian, Assyro-Chaldaeian and assimilated refugee

Any person of Syrian or Assyro-Chaldaeian origin, and also by assimilation any person of Syrian or Kurdish origin, who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality;

Turkish refugee

Any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of 24 July 1923,[112]115, does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality.

The Conference recommends the adoption of this Arrangement to the States represented at the Conference, to the States Members of the League of Nations, and to non-members of the League.

DONE AT GENEVA, 30 June 1928.

[108] Yugoslavia has taken the necessary internal action in order to execute the provisions of this Agreement; this does not mean, however, in the Government's opinion that an international engagement should thereby exist between Yugoslavia and the other States which have put the Agreement into force.

[109] League of Nations, Treaty Series, Vol. LXXXIX, No. 2006.

[110] See annex 1 above.

[111] See annex 2 above.

[112] League of Nations, Treaty Series, Vol. XXXVI, page 145.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 19441

The Supplement to the twenty-first list (League of Nations, Official Journal, Special Supplement No. 195) issued on 31 July 1946 indicates no change.¹¹⁶⁵

The Arrangement came into force between 10 *States, viz.:*

Belgium (25 April 1929)

Bulgaria (23 October 1928)

Czecho-Slovakia

Estonia (19 April 1929)

Germany (5 March 1929)

Latvia (17 April 1929)

Poland (17 September 1928)

Romania (22 September 1928)

Switzerland (4 August 1928)

Yugoslavia^[113]

One other State, France, is a signatory.

5. *Resolution adopted by the IXth session of the Assembly of the League of Nations on 25 September 1928 establishing Inter. Governmental Advisory Commission on Refugees*^[114]

The Assembly:

- (1) After examining the reports submitted by the High Commissioner for Refugees and by the Director of the International Labour Office on questions connected with Russian, Armenian, Turkish, Assyrian and Assyro-Chaldaeian refugees:
- (2) Recognises the progress achieved in the course of the year;

[113] Yugoslavia has taken the necessary internal action in order to execute the provisions of this Agreement; this does not mean, however, in the Government's opinion, that an international engagement should thereby exist between Yugoslavia and the other States which have put the Agreement into force.

[114] League of Nations, IXth Ordinary Session of the Assembly, Meeting of 21 September 1928, Official Journal, Special Supplement No. 64, pages 149-150.

(3) Notes that a complete solution of the problem can only be provided by the return of the refugees to their country of origin or their assimilation by the countries at present giving them shelter;

(4) Earnestly invites the Governments concerned to provide the refugees with all possible facilities for acquiring the nationality of the countries in which they at present reside;

(5) Whereas, however, in present circumstances, international action is still necessary for some time to come:

(6) In conformity with the resolution of the Governing Body of the International Labour Office, invites the Council to take urgently all necessary steps to appoint an Advisory Commission to be attached to the High Commissioner;

(7) Recommends the Council of the League to invite this Advisory Commission to submit to it, before the next session of the Assembly, a general report on the possibility of reaching a final solution as soon as possible and on the means by which this object might be attained;

(8) Earnestly invites States Members to adopt and apply on as wide a scale as possible, the Inter-Governmental Arrangements concluded on 5 July 1922, 31 May 1924, 12 May 1926, and 30 June 1928, which offer the refugee work the means by which it may gradually become self-supporting;

(9) Points out, however, that the respective Governments must be left free to decide whether and how far they are prepared to give force of law to the recommendations adopted by the Inter-Governmental Conference of 30 June 1928;

(10) Notes that the taxes to be levied will be fixed in consultation with the respective Governments, that only the representatives of the High Commissioner will be entitled to levy them, and that the employment of the proceeds will be subject to the control of the High Commissioner;

(11) Declares that the Council's resolution of 27 June 1921 shall be applied in regard to all categories of refugees;

(12) Recalls with gratitude the endeavours of the High Commission and of the international Labour Office by which about 800 Russian refugees in Constantinople have been successfully evacuated during recent months; Cognizant of the very difficult situation of some 2,000 of these refugees who still remain in Turkey and who, in accordance with a Decree of the Turkish Government must be evacuated from Turkey before 6 February 1929;

Expresses the hope that the High Commission will seize every opportunity to press forward their evacuation and that the various Governments will, as an exceptional measure, and subject to the safeguarding of their own interests authorize the issue of emergency visas to enable the refugees to leave Turkey;

(13) Adopts the budget for the Refugee Services for 1929, as already approved by the Governing Body of the International Labour Office and by the Supervisory Commission, and Requests the Supervisory Commission to take -into consideration the uncertainty of the position of the officials employed in that Service, to which attention has been drawn by the Governing Body of the International Labour Office, and to grant them the improvements asked for on their behalf.

6. Resolution adopted by the XIth session of the Assembly of the League of Nations on 30 September 1930, setting up an inter. national refugees office (Nansen Office)[115]

The Assembly:

- (1) Recalling the work accomplished by Dr. Fridtjof Nansen on behalf of the refugees and mindful of his efforts to unite the nations in the cause of peace, pays a solemn tribute of gratitude to the memory of one of the best servants of the League;
- (2) Notes the report of the Secretary-General and the Inter-Governmental Advisory Commission for Refugees;
- (3) Decides to entrust to the regular organs of the League of Nations the political and legal protection of the refugees under the conditions indicated by the Inter-Governmental Commission;
- (4) Decides to entrust, during the period in which the Refugee Organization is being wound up, the humanitarian duties hitherto undertaken by the High Commissioner to an International Refugees Office placed under the direction of the League of Nations, in accordance with the principles of Article 24 of the Covenant;
- (5) Entrusts to M. Max Huber, whom it thanks for his willingness to undertake the duty, the work of preparing, in accordance with the guiding principles laid down in the report of the Inter-Governmental Advisory Commission, a draft statute for the International Office, which will be submitted for approval to the Council of the League of Nations, and requests him to take over the duties of Chairman of the Governing Body of the Office.
- (6) Grants the International Office for 1931 a subsidy of 333,800 gold francs.
- (7) Draws the attention of Governments to the importance of a general extension of the system of Nansen stamps;
- (8) Leaves the office full freedom to take all decisions in regard to appeals for funds made to private charity, particularly on behalf of refugee children;
- (9) Expresses the desire that one of the first tasks of the office should be to examine the situation of Armenian refugees in Greece;
- (10) Requests the Council to communicate to Governments the recommendations adopted by the Inter-Governmental Advisory Commission in regard to the application of the Inter-Governmental Arrangements and the situation of Russian refugees who are disabled ex-service men; and
- (11) Recommends that the International Office should, as far as possible, make use of the experience of the present staff of the Refugee Service.

7. Convention relating to the International Status of Refugees. Signed at Geneva, 28 October 1933[116] Official text in French Entry into force, 13 June 1935

[115] League of Nations, XIth Ordinary Session of the Assembly, Meeting of 30 September 1930, *Official Journal, Special Supplement No. 84*, pages 157-158.

His MAJESTY THE KING OF THE BELGIANS, His MAJESTY THE KING OF THE BULGARIANS, HIS MAJESTY THE KING OF EGYPT, THE PRESIDENT OF THE FRENCH REPUBLIC, His MAJESTY THE KING OF NORWAY,

Whereas the Preamble to the Covenant of the League of Nations contains the provision: "in order to promote international co-operation by the maintenance of justice", and whereas Article 23 (a) of the Covenant contains the provision: "the Members of the League will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organization";

In consideration of the measures previously taken on behalf of refugees, and, in particular, the Inter-Governmental Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, and 30 June 1928, at present in force in certain of the Contracting States;

Taking into account the opinions expressed by the Inter-Governmental Advisory Commission for Refugees and having in view more particularly the decision of the Assembly of the League of Nations of 4 September 1930, which sets up, in a temporary capacity, the Nansen International Office for Refugees under the authority of the League of Nations, in conformity with Article 24 of the Covenant;

Desirous of supplementing and consolidating the work done by the League of Nations on behalf of the refugees;

Anxious to establish conditions which shall enable the decisions already taken by the various States with this object to be fully effective, and desirous that refugees shall be ensured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions, of industry and of commerce, and in regard to the movement of persons, admission to schools and universities;

Have appointed as their Plenipotentiaries:

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I. DEFINITION

Article 1

The present Convention is applicable to Russian, Armenian and assimilated refugees, as defined by the Arrangements of 12 May 1926,^[117] and 30 June 1928,^[118] subject to such modifications or amplifications as each Contracting Party may introduce in this definition at the moment of signature or accession.

CHAPTER II ADMINISTRATIVE MEASURES

Article 2

Each of the Contracting Parties undertakes to issue Nansen certificates, valid for not less than one year, to refugees residing regularly in its territory.

[116] League of Nations, *Treaty Series*, Vol. CLIX, No. 3663.

[117] See annex 2 above.

[118] See annex 4 above.

The text of the said certificates shall include a formula authorizing exit and return. Bearers of Nansen certificates which have not expired shall be free to leave the country which has issued these documents and to return to it without requiring any authorization on exit or visa from the consuls of that country on their return.

The respective consuls of the Contracting Parties shall be qualified to extend these certificates for a period not exceeding six months.

The cost of visas for Nansen certificates shall, subject to their issue free of charge to indigent persons, be established according to the lowest tariff applied to the visas of foreign passports.

Article 3

Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

It undertakes in any case not to refuse entry to refugees at the frontiers of their countries of origin.

It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.

CHAPTER III JURIDICAL CONDITION

Article 4

The personal status of refugees shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence.

The validity of acts of the religious authorities to whom the refugees are subject, in countries which admit the competence of those authorities, shall be recognized by the States Parties to the present Convention.

Rights acquired under the former national law of the refugee, more particularly rights attaching to marriage (matrimonial system, legal capacity of married women, etc.), shall be respected, subject to compliance with the formalities prescribed by the law of their country of domicile, or, failing such, by the law of their country of residence, if this be necessary.

Article 5

Subject to the provisions of Article 4, paragraph 2, the dissolution of marriages of refugees shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence.

Article 6

Refugees shall have, in the territories of the Contracting Parties, free and ready access to the courts of law.

In the countries in which they have their domicile or regular residence, they shall enjoy in this respect, the same rights and privileges as nationals; they shall, on the same conditions as the latter, enjoy the benefit of legal assistance and shall be exempt from *cautio judicatum solvi*.

CHAPTER IV LABOUR CONDITIONS

Article 7

The restrictions ensuing from the application of laws and regulations for the protection of the national labour market shall not be applied in all their severity to refugees domiciled or regularly resident in the country.

They shall be automatically suspended in favour of refugees domiciled or regularly resident in the country, to which one of the following circumstances applies:

- (a) The refugee has been resident for not less than three years in the country;
- (b) The refugee is married to a person possessing the nationality of the country of residence;
- (c) The refugee has one or more children possessing the nationality of the country of residence;
- (d) The refugee is an ex-combatant of the great war.

CHAPTER V. INDUSTRIAL ACCIDENTS

Article 8

Each of the Contracting Parties undertakes to accord to refugees who may be victims of industrial accidents in its territory, or to their beneficiaries, the most favourable treatment that it accords to the nationals of a foreign country.

CHAPTER VI WELFARE AND RELIEF

Article 9

Refugees residing in the territory of one of the Contracting Parties: unemployed, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made either by their families or by third parties, pregnant women, women in childbed or nursing mothers, shall receive therein the most favourable treatment accorded to nationals of a foreign country, in respect of such relief and assistance as they may require, including medical attendance and hospital treatment.

Article 10

The Contracting Parties undertake to apply to refugees, as regards the social insurance laws at present in force or which may subsequently be established, the most favourable treatment accorded to the nationals of a foreign country.

Article 11

Refugees shall enjoy in the territory of each of the Contracting Parties, as regards the setting up of associations for mutual relief and assistance and admission to the said associations, the most favourable treatment accorded to the nationals of a foreign country.

CHAPTER VII EDUCATION

Article 12

Refugees shall enjoy in the schools, courses, faculties and universities of each of the Contracting Parties treatment as favourable as other foreigners in general. They shall benefit in particular to the same extent as the latter by the total or partial remission of fees and charges and the award of scholarships.

CHAPTER VIII FISCAL REGIME

Article 13

The Contracting Parties undertake not to impose upon refugees residing in their territories duties, charges or taxes, under any denomination whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

Nothing in the foregoing provisions shall affect the application of the Nansen stamp system or the stipulations of the laws and regulations concerning charges in respect to the issue to foreigners of administrative documents and the extension of the validity of such documents.

The present Article is the only one in the Convention that governs fiscal matters. The latter are not subject to any other provisions of this Convention.

CHAPTER IX EXEMPTION FROM RECIPROCITY

Article 14

The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity.

CHAPTER X. CREATION OF COMMITTEES FOR REFUGEES

Article 15

Each Contracting Party shall have the right either to organize in its territory a central Committee for refugees, or several Committees, if this be necessary, responsible for co-ordinating the work of the organs for finding employment for refugees and for assistance to refugees, or to authorize the constitution of such Committees.

Such Committee or Committees may be entrusted with the powers enumerated in Article I of the Arrangement and Agreement of 30 June 1928, in countries in which those instruments are in force, in so far as these powers are not exercised by representatives of the Secretary-General of the League of Nations.

In the absence of representatives of an international body, these Committees shall collect the charges represented by the Nansen stamp and those provided for in the said Arrangement and Agreement, in so far as such charges may be levied in the territories of the country in which they are operating.

CHAPTER XI GENERAL PROVISIONS

Article 16

The Arrangements and Agreement of 5 July 1922, 31 May 1924, 12 May 1926, and 30 June 1928, shall, in so far as they have been adopted by the Contracting Parties, remain in force as regards such of their provisions as are compatible with the present Convention.

Article 17

The present Convention, which shall bear today's date, may be signed at any time before 15 April 1934, on behalf of any Member of the League of Nations or any non-member State to which the Council of the League of Nations shall have communicated a copy of the present Convention for this purpose.

Article 18

The present Convention shall be ratified.

The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who will notify the deposit thereof to all the Members of the League of Nations and to the non-member States referred to in Article 17, indicating the date at which such deposit has been effected.

Article 19

On and after 16 April 1934, any Member of the League of Nations and any non-member State to which the Council of the League of Nations shall have communicated a copy of the present Convention may accede to it.

The instruments of accession shall be deposited with the Secretary-General of the League of Nations, who will notify such deposit and the date thereof to all the Members of the League of Nations and to the nonmember States referred to in the preceding paragraph.

Article 20

The present Convention shall come into force thirty days after the Secretary-General of the League of Nations shall have received ratifications and accessions on behalf of at least two Members of the League of Nations or non-member States.

In respect of each Member or non-member State on whose behalf any instrument of ratification or accession is subsequently deposited, the Convention shall come into force thirty days after the date of the deposit of such instrument.

It shall be registered on the day on which it is to come into force.

Article 21

The present Convention may be denounced after the expiration of a period of five years from the date on which it comes into force

The denunciation of the Convention shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who will inform all the Members of the League, and the non-member States referred to in Articles 17 and 19, of each notification and of the date of the receipt thereof.

The denunciation shall take effect one year after the receipt of the notification.

Article 22

Any Contracting Party may declare, at the time of signature, ratification or accession, that in accepting the present Convention, it is not assuming any obligation in respect of all or any of its colonies, protectorates, overseas territories, or the territories under its suzerainty or territories in

respect of which a mandate has been confided to it; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

Any Contracting Party may subsequently notify the Secretary-General of the League of Nations that it desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification thirty days after the receipt thereof by the Secretary-General of the League of Nations.

Any Contracting Party may, at any time after the expiration of the period of five years provided for in Article 21, declare that it desires the present Convention to cease to apply to all or any of its colonies, protectorates, overseas territories, or the territories under its suzerainty or territories in respect of which a mandate has been confided to it; the Convention shall, in that case, cease to apply to the territories named in such declaration six months after the receipt thereof by the Secretary-General of the League of Nations.

The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations, and to the non-member States referred to in Articles 17 and 19, the declarations and notifications received in virtue of the present Article, together with the dates of the receipt thereof.

Article 23

The Contracting Parties may at the moment of signature or accession declare that their signature or accession shall not apply to certain chapters, Articles or paragraphs, exclusive of Chapter XI ("General Provisions"), or may submit reservations.

The Contracting Parties shall have the right at any moment to withdraw all or part of their exceptions or reservations by means of a declaration addressed to the Secretary-General of the League of Nations.

The Secretary-General shall communicate the said declaration to all the Members of the League and to the non-member States referred to in Articles 17 and 19, specifying the date of receipt.

IN FAITH WHEREOF the above-mentioned plenipotentiaries have signed the present Convention.

DONE AT GENEVA, the twenty-eighth day of October, one thousand nine hundred and thirty-three, in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and a certified true copy of which shall be given to all the Members of the League and to the nonmember States referred to in Article 17.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 1942

The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change. **Convention in force since June 13, 1935**

1. RATIFICATIONS OR DEFINITIVE ACCESSIONS: 8

Belgium (August 4, 1937)

Subject to the following reservations:

- (1) Article 2, paragraph 3, relating to the right conferred on consuls to extend Nansen certificates, cannot be accepted by the Belgian Government.

(2) Article 9, in so far as it concerns the application of the provisions of the domestic legislation relating to "unemployment insurance", cannot be accepted.

(3) Article 10, concerning social insurance laws, cannot be favourably received.

(4) Article 14, which concerns the enjoyment of the rights and favours accorded to foreigners, subject to reciprocity, cannot be admitted.

(5) The Belgian Government, in accepting the present Convention, is not assuming any obligation as regards the colony of the Congo or the mandated territories of Ruanda-Urundi.

Bulgaria (December 19, 1934)

Subject to the following reservations:

I. Article 1. The Bulgarian Government maintains the reservations made by the Bulgarian delegate on signing the Arrangement of 30 June 1928, concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian Refugees.[119]

II. *Article 2.* The departure from the country of refugees in possession of Nansen certificates (passports) shall be governed by the general regulations in force in this respect. Bulgarian consuls will be empowered in cases of *force majeure* to extend Nansen certificates issued in Bulgaria for a period of three months. The cost of visas for Nansen certificates shall be fixed in accordance with the tariff applicable to the nationals of the country by which the certificate was issued.

III. *Article 6.* Exemption from *cautio judicatum solvi* shall be at the discretion of the courts in each individual case.

IV. Article 7. The Bulgarian Government cannot accept points (a) and (d).

V. Articles 8 and 10 (formerly 7 and 9). Disability and old-age pensions shall be paid (regard being had to the possibilities of the fund concerned) to the persons entitled, their heirs and assigns, provided always that such persons are resident in the country.

VI. *Article 13.* The Bulgarian Government cannot accept the first paragraph, as refugees resident in Bulgaria are subject to the same treatment in fiscal matters as other foreign nationals resident in the country.

VII. *Article 15.* The Bulgarian Government cannot accept paragraphs 2 and 3.

Denmark (December 21, 1935 a)

With reservation as regards articles 7 and 14 of the Convention.

This accession does not include Greenland.

[119] This reservation was worded as follows:

"On the understanding that the present Arrangement applies only to such refugees as are at the present date on Bulgarian territory."

France (November 3, 1936)

Subject to the following reservations:

- (1) Article 7 shall not preclude the application of the laws and regulations fixing the proportion of wage-earning foreigners that employers are authorized to employ in France.
- (2) The organization, in France, of Committees such as are provided for in article 15 shall not, if it takes place, confer on them powers incompatible with the existing laws in the matter of finding employment.
- (3) The French Government, by its acceptance of the present Convention, is not assuming any obligation in regard to the whole of its colonies, protectorates, overseas territories, territories placed under its suzerainty or territories in respect of which a mandate has been confided to it.

Partial denunciation (December 2, 1942)

Except articles I and 2 and chapter XL

Since then, this partial denunciation has been annulled.

The Provisional Government of the French Republic, in a letter dated November 8, 1944, stated that it regarded as null and void the denunciation of this Convention and that it would take steps in future to ensure the integral application of the articles of the said Convention within its territory.

This notification was registered on November 17, 1944.

Great Britain and Northern Ireland (October 28, 1936 a)

Subject to the following reservations:

1. Article 1. His Majesty's Government in the United Kingdom regard the Convention as applicable only to Russian, Armenian and assimilated refugees who at the date of the present accession no longer enjoy the protection of their country of origin.
2. Article 3. The first paragraph will not be applicable to refugees who have been admitted to the United Kingdom for a temporary visit or purpose. The term "public order" is deemed to include matters relating to crime and morals.

Paragraph 2 of article 3 is not accepted.

3. Article 7 will not be applicable to refugees who have been admitted to the United Kingdom for a temporary visit or purpose.
4. Article 12. Owing to the special position of schools and universities in the United Kingdom, this article is not accepted.
5. Article 14 is not accepted.

His Majesty does not assume any obligation in respect of any of his colonies, protectorates, overseas territories, territories under his suzerainty, or territories administered under mandate by His Majesty's Government in the United Kingdom.

Aden Colony

Bahamas, Basutoland, Bechuanaland (Protectorate), British Guiana, British Honduras, British Salomon Islands (Protectorate)

Ceylon, Cyprus

Falkland Islands and Dependencies, Fiji

Gambia (Colony and Protectorate), Gilbert and Ellice Islands (Colony), Gold Coast (a) Colony, (b) Northern Territories, (c) Ashanti, (d) Togoland under British Mandate

Hong-Kong

Kenya (Colony and Protectorate)

Leeward Islands (Antigua, Montserrat, St. Christopher and Nevis, Virgin Islands)

Malay States (a) Federated Malay States: Negri Sembilan, Pahang, Perak, Selangor; (b) Unfederated Malay States: Johore, Kedah, Kelantan, Perlis, Trengganu and Brunei, Mauritius

Nigeria (a) Colony, (b) Protectorate, (c) Cameroons under British Mandate, Nyasaland (Protectorate)

St. Helena and Ascension, Sierra Leone (Colony and Protectorate), Somaliland (Protectorate), Straits Settlements, Swaziland

Trinidad and Tobago

Uganda Protectorate

Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent)

Zanzibar (Protectorate)

May 30, 1940 a)

Subject to the reservations made in respect of the United Kingdom.

Italy (January 16, 1936 a)

Subject to the following reservations:

1. Article 3 of the Convention cannot limit the right of the Italian authorities to apply measures of expulsion to refugees for reasons of national security and public order.
2. In acceding to the Convention, the Italian Government assumes no obligations in regard to its colonies and possessions.

Norway (June 26, 1935)

With reservation as regards the provisions of Article 42, para. 3, and Article 14.

Czecho-Slovakia (May 14, 1935 a)

Subject to the following reservations:

“A. The Czecho-Slovak Government will regard as refugees within the meaning of Article I only such persons as formerly actually possessed Russian or Turkish nationality, lost it before January 1, 1923, and have not acquired any other nationality.

“B. The accession of the Czecho-Slovak Republic does not apply to:

“(a) Paragraph 3 of article 2, whereby consuls are qualified to extend Nansen certificates;

“(b) Paragraph 3 of article 3, so far as it limits the power of the national authorities to expel persons who constitute a danger to the safety of the State and public order; nor, of course, do the provisions of article 3 in any way affect expulsions by order of the courts, or obligations deriving from extradition treaties or from the Czecho-Slovak laws regarding the extradition of aliens;

“(c) The whole of article 7, which exempts refugees from the application of the provisions of laws and decrees for the protection of the national labour market;

“(d) The whole of article 14, which waives the condition of reciprocity;

“(e) The whole of article 15, which deals with the creation of local Committees.

“C. Articles 4 and 5, dealing with the juridical condition of refugees, and articles 8, 9, 10 and 11, dealing with industrial accidents and welfare and relief, will be applied in Czecho-Slovakia only so far as the laws of the **country permit.**”

2. SIGNATURE NOT YET PERFECTED BY RATIFICATION: 1

Egypt

Article 1. Apart from such modifications or amplifications as each Contracting Party may introduce in this definition, my Government reserves the right to extend or limit the said definition in any way.

Article 2. Bearers of Nansen certificates may not be admitted into Egypt unless the said certificates contain a visa for return to the countries by which they were issued. If these refugees are authorized to sojourn in Egypt, the competent local authorities reserve the right to issue to them Egyptian travel papers.

Article 3. These authorities reserve the right to expel such refugees at any moment for reasons of public security.

Article 4. Moreover, as regards the acquired rights referred to in paragraph 3 of article 4 of the draft convention, it should be stipulated that, in order to ensure respect for such rights, due account must be taken of international public order and of internal public order as the latter is conceived and applied in Egyptian law. Further, in order to dispel any misunderstanding, it should be stipulated that the rights in question are only those relating to personal status.

Article 13. This article must not in any case invalidate or impair our reservation relating to Egyptian travel papers, together with the consequences involved in the application of that reservation.

Article 14. Our signature does not apply to this article.

Article 15. The Egyptian Government wishes it to be understood that the Committees referred to in article 15 will not be invested with the powers laid down in paragraphs 2 and 3 of the said article in the event of its desiring to reserve the said powers for the representatives of the local authority.

The Egyptian Government reserves the right to substitute, should the case arise and whenever it may think fit, assimilation to nationals for the most favourable treatment granted to nationals of a foreign country in all the provisions of the convention in which such treatment is stipulated.

8. *Provisional arrangement concerning the status of refugees coming from Germany, signed at Geneva, 4 July 1936*[120]

Official texts in French and English. This Arrangement was registered on 4 August 1936, the date of its entry into force

CHAPTER I Definition of the term “Refugee coming from Germany”

Article 1

For the purpose of the present Arrangement, the term “refugee coming from Germany” shall be deemed to apply to any person who was settled in that country, who does not possess any nationality other than German nationality, and in respect of whom it is established that in law or in fact he or she does not enjoy the protection of the Government of the Reich.

CHAPTER II Certificates of identity

Article 2 Issue and renewal

1. The Contracting Governments shall issue to refugees coming from Germany and lawfully residing in their territory an identity certificate in conformity with the attached specimen (see annex), or some other document having the same object.

As a transitory measure, this certificate may be issued to refugees whose residence in the territory on the date of the coming into force of the present Arrangement was irregular, if they report themselves to the authorities within a time-limit to be determined by the Government concerned.

2. The issue of the certificate shall be subject to the following conditions:

(a) It shall not contravene any law or regulation governing the supervision of foreigners in any country to which the present Arrangement applies;

(b) It shall, in general, be valid for one year as from the date of issue;

(c) The Government issuing a certificate shall be qualified to renew or extend it until such time as the holder shall have been able to secure the issue of a fresh certificate. If the refugee has become settled in a regular manner in another country, the authority of that country shall be bound to issue a new certificate to him;

(d) Consuls specially authorized by the country issuing the certificate shall be able to extend its validity for a period which shall not, as a rule, exceed six months;

(e) The identity certificate shall be made out in the language of the issuing country, and also in French;

[120] League of Nations, Treaty Series, Vol. CLXXI, No. 3952.

(f) Children under sixteen years of age shall, if necessary, be included in the certificate of their parent(s);

(g) The fees for the issue of certificates shall not exceed the lowest tariff applied to national passports. It is recommended that when certificates are issued to destitute persons no charge whatever shall be made.

Article 3 Effects

1. Without prejudice to the State's power to regulate the right of residence the holder of the certificate shall be entitled to move about freely in the territory of the country in which the certificate has been issued.

2. The certificate shall entitle the holder to leave the country which has issued it to him, and to return to that country, during the period of validity of the certificate.

The Contracting Governments reserve the right, in exceptional cases, to limit the period during which the refugee may return, such limitation being noted on the certificate.

3. The competent authorities of the country to whose territory the refugee desires to proceed shall visa the identity certificate of which he is the holder, if they are prepared to admit him.

4. The intermediate countries undertake to grant facilities for the issue of transit visas to refugees who have obtained visas from the country of final destination.

5. The fees for the issue of admission or transit visas shall not exceed the lowest tariff for visas on foreign passports.

It is recommended that when visas are issued to destitute refugees no charge whatever shall be made.

CHAPTER III Administrative measures

Article 4

1. In every case in which a refugee is required to leave the territory of one of the contracting countries, he shall be granted a suitable period to make the necessary arrangements.

2. Without prejudice to the measures which may be taken within the country, refugees who have been authorized to reside in a country may not be subjected by the authorities of that country to measures of expulsion or be sent back across the frontier unless such measures are dictated by reasons of national security or public order.

3. Even in this last-mentioned case the Governments undertake that refugees shall not be sent back across the frontier of the Reich unless they have been warned and have refused to make the necessary arrangements to proceed to another country or to take advantage of the arrangements made for them with that object.

In such case the identity certificates may be cancelled or withdrawn.

CHAPTER IV Legal standing of refugees

Article 5 Determination of the law governing the personal status of refugees

The personal status of refugees who have retained their original nationality shall be governed by the rules applicable in the country concerned to foreigners possessing a nationality. Save as otherwise previously provided by treaty, the personal status of refugees having no nationality shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence.

Article 6 Rights acquired under the national law

In countries where these matters are governed by the national law of the parties, rights acquired under the former national law of the refugee, for instance rights resulting from marriage, such as the matrimonial regime, the legal capacity of married women, etc., shall be respected, subject to compliance with the formalities prescribed by the law of their country of domicile or, failing such, by the law of their country of residence if this be necessary.

Article 7 Right to appear before the courts as plaintiff or defendant

1. Refugees shall have in the territories of the countries to which the present Arrangement applies free and ready access to the courts of law.
2. In the countries in which they have their domicile or regular residence they shall enjoy in this respect, save where otherwise expressly provided by law, the same rights and privileges as nationals.

They shall on the same conditions enjoy the benefit of legal assistance and be exempt from *cautio judicatum solvi*.

CHAPTER V Final clauses

Article 8

The present Arrangement, which is drawn up in French and English, shall bear this day's date. It may be signed on behalf of the Government of any Member of the League of Nations or of any non-Member State to which the Council of the League shall have communicated a copy for that purpose.

Article 9

The Secretary-General shall give notice of the signatures received to all the Members of the League and to the non-Member States referred to in the preceding Article, mentioning the date on which the signature was received.

Article 10

1. This Arrangement shall come into force thirty days after the Secretary-General of the League of Nations shall have received signatures on behalf of at least two Governments.
2. In respect of each of the Governments on whose behalf a signature is subsequently deposited, this Arrangement shall come into force on the thirtieth day after the date of such deposit.

3. The Arrangement shall be registered by the Secretary-General on the day of its entry into force.

Article 11

1. This Arrangement may be denounced at any time.

2. Denunciation shall be effected by a written notification addressed to the Secretary-General, who will inform all the Members of the League and the non-Member States referred to in Article 8 of each notification and of the date of the receipt thereof.

3. The denunciation shall take effect forty-five days after the receipt of the notification.

Article 12

1. Any Government may declare, at the time of signature, that in accepting this Arrangement it is not assuming any obligation in respect of all or any of its colonies, protectorates, overseas territories or the territories under its suzerainty, or territories in respect of which a mandate has been entrusted to it; this Arrangement shall, in that case, not be applicable to the territories named in such declaration.

2. Any Government may subsequently notify the Secretary-General of the League of Nations that it desires this Arrangement to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Arrangement shall in that case, apply to all the territories named in such notification thirty days after the receipt thereof by the Secretary-General.

3. Any Contracting Government may at any time declare that it desires this Arrangement to cease to apply to all or any of its colonies, protectorates, overseas territories or the territories under its suzerainty, or territories in respect of which a mandate has been entrusted to it; the Arrangement shall in that case cease to apply to the territories named in such declaration forty-five days after the receipt thereof by the Secretary-General.

Article 13

The Secretary-General of the League of Nations shall communicate to all the Members of the League and to non-Member States referred to in Article 8, the declarations and notifications received in virtue of Articles 11 and 12, together with the dates of the receipt thereof.

Article 14

The Governments may make reservations at the moment of signature.

The Contracting Parties shall have the right at any moment to withdraw all or some of their reservations or to make further reservations by means of a declaration addressed to the Secretary-General of the League of Nations. Such declaration shall come into effect one month after its receipt. The Secretary-General shall communicate such declaration to all the States Members of the League and to the non-Member States referred to in Article 8, specifying the date of receipt.

IN FAITH WHEREOF the undersigned have affixed their signatures to the present Arrangement.

DONE AT GENEVA the fourth day of July one thousand nine hundred and thirty-six, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations

and certified true copies of which shall be transmitted to all the Members of the League and to the non-Member States referred to in Article 8.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 1944[121]

The Supplement to the twenty-first list (League Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change.

Arrangement in force since August 4, 1936

1. DEFINITIVE SIGNATURES: 7

Belgium (7 October 1936)

In application of article 12, paragraph 1, the Belgian Government, in accepting the present Arrangement, does not intend to assume any obligation in regard to the Colony of the Congo, the Mandated Territories of Ruanda-Urundi or any other territory provided in the said article 12, paragraph 1.

United Kingdom of Great Britain and Northern Ireland (25 September 1936)

Subject to the following reservations:

Article 4. Refugees who are the subject of extradition proceedings commenced in the United Kingdom will not be regarded as being entitled to claim the protection otherwise afforded to them under this article.

Paragraph 2 of article 4 will not be applicable to refugees who have been admitted to the United Kingdom for a temporary visit or purpose. The term "public order" is deemed to include matters relating to crime and morals.

His Majesty's Government in the United Kingdom does not assume any obligations in respect of any of its colonies protectorates, overseas territories, territories under suzerainty or Territories administered under Mandate.

Denmark (4 July 1946) Spain (27 January 1937) France (4 July 1936)

The French Government, by its acceptance of the present Arrangement, does not intend to assume any obligation in regard to any of its colonies, protectorates, overseas territories, territories under its suzerainty and territories for which a mandate has been entrusted to it.

Norway (21 September 1936) Switzerland (30 August 1937)

2. SIGNATURF AD REFERENDUM: 1

Netherlands

**IDENTITY CERTIFICATE FOR REFUGEES COMING FROM GERMANY (Valid for one year)
Certificate issued in accordance with the Inter-Governmental Arrangement of 4 July 1936**

[121] See League of Nations, *Official Journal, Special Supplement No. 193*, Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, page 141.

The present certificate is issued for the sole purpose of providing refugees from Germany with identity papers to take the place of a provisional passport. It is without prejudice to and in no way affects the holder's nationality.

On the expiration of its validity, the present certificate must be returned to the issuing authority.

Authority issuing the certificate...

Place of issue of the certificate...

No....

Date....

IDENTITY CERTIFICATE

Valid until ...

Failing express provision to the contrary, the present certificate entitles its holder to return to the country by which it was issued during the period for which it is valid. It shall cease to be valid if the holder enters German territory.

Surname
Forenames
Date of birth
Place of birth
Surname and forenames of father
Surname and forenames of mother
Name of wife (husband)
Names of children
Nationality
Occupation
Former address
Present address

Description

Age
Hair
Eyes
Face
Nose
Height
Distinguishing marks
<i>(Photographs)</i>
<i>(Stamp)</i>
Signature of holder
Remarks...

The undersigned certifies that the photograph and signature hereon are those of the holder of this certificate.

Signature of issuing authority

This passport expires on ...19 ...

Renewals ...

Visas...

**9. Convention concerning the Status of Refugees coming from Germany.
Signed at Geneva, 10 February 1938[122]**

Official texts in French and English. This Convention was registered on 26 October 1938

His MAJESTY THE KING OF THE BELGIANS; *His* MAJESTY THE KING OF GREAT BRITAIN AND IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA; His MAJESTY THE KING OF DENMARK AND ICELAND; THE PRESIDENT OF THE SPANISH REPUBLIC; THE PRESIDENT OF THE FRENCH REPUBLIC; His MAJESTY THE KING OF NORWAY; HER MAJESTY THE QUEEN OF THE NETHERLANDS;

Being desirous of supplementing and consolidating the work done by the League of Nations on behalf of refugees generally;

Having regard to the measures previously taken on behalf of refugees coming from Germany, and, in particular, the provisional Inter-Governmental Arrangement of 4 July 1936, at present in force in regard to certain of the High Contracting Parties;

Taking into account the resolution adopted by the eighteenth Assembly, in accordance with which the League of Nations High Commissioner for Refugees coming from Germany is instructed to convene, for the beginning of 1938, an Inter-Governmental Conference for the adoption of an international convention for the benefit of refugees coming from Germany;

Considering that the making of arrangements for the emigration of those who cannot be absorbed in the countries in which they have taken refuge is an essential part of the work undertaken for the benefit of the said refugees;

Being anxious to establish conditions which shall enable the decisions already taken by the various Governments with this object to be fully effective, and desirous that refugees shall be ensured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions, of industry and of commerce, and in regard to the movement of persons, admission to schools and universities:

Have appointed as their Plenipotentiaries:

.Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions:

CHAPTER I Definition

Article 1

1. For the purposes of the present Convention, the term "refugees coming from Germany" shall be deemed to apply to:

[122] League of Nations, *Treaty Series*, Vol. CXCII, No. 4461, page 59.

- (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government;
- (b) Stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government.
2. Persons who leave Germany for reasons of purely personal convenience are not included in this definition.

CHAPTER II Right of sojourn and residence

Article 2

Without prejudice to the power of any High Contracting Party to regulate the right of sojourn and residence, a refugee shall be entitled to move about freely, to sojourn or reside in the territory to which the present Convention applies, in accordance with the laws and internal regulations applying therein.

CHAPTER III Travel document

Article 3 Issue and renewal

- 1.
- (a) The High Contracting Parties shall issue, to refugees coming from Germany and sojourning lawfully in their territory to which the present Convention applies, a travel document in the form of a certificate similar to the attached specimen (see annex), or some other document taking the place of a passport.
- (b) As a transitional measure, such travel documents may be issued to refugees not staying lawfully in these territories on the date of the coming into force of the present Convention, provided such refugees report themselves to the authorities within the period prescribed by the Government of the High Contracting Party concerned.
2. The issue of the travel document shall be subject to the following conditions:
- (a) It shall be in conformity with the laws and regulations governing the supervision of foreigners in force in the territories of the High Contracting Party to which the present Convention is applicable;
- (b) It shall as a general rule be valid for one year as from the date of issue;
- (c) The renewal or extension of the travel document shall be a matter for the issuing authority, until such time as the holder may be able to secure the issue of a fresh travel document. 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;
- (d) Consuls specially authorized for the purpose by the country issuing the travel document shall be empowered to extend its validity for a period which, as a rule, shall not exceed six months;

(e) The travel document shall be made out in the language of the issuing authority, and also in French;

(f) Children under 16 years of age shall be entered on the travel document issued to their parent or parents;

(g) The fees charged for the issue of travel documents shall not exceed the lowest scale of charges for national passports.

It is recommended that, in the case of indigent persons, travel documents should be issued entirely free of charge.

Article 4 Effects

1.

(a) The travel document shall entitle the holder to leave the territory where it has been issued and to return thereto during the period of validity of the said travel document.

(b) The High Contracting Parties reserve the right, in exceptional cases, to limit the period during which the refugee may return, such limitation being noted on the travel document.

2. The competent authorities of the territory to which the refugee desires to proceed shall, if they are prepared to admit him, affix a visa to the travel document of which he is the holder.

3. The authorities of the territories of transit undertake to grant facilities for the issue of transit visas to refugees who have obtained visas for the territory of final destination.

4. The fees for the issue of entrance or transit visas shall not exceed the lowest scale of charges for visas on foreign passports. It is recommended that, in the case of indigent persons, visas should be issued free of charge.

CHAPTER IV Administrative measures

Article 5

1. In every case in which a refugee is required to leave the territory of one of the High Contracting Parties to which the present Convention applies, he shall be granted a suitable period to make the necessary arrangements.

2. Without prejudice to the measures which may be taken within any territory, refugees who have been authorized to reside therein may not be subjected by the authorities to measures of expulsion or reconduction unless such measures are dictated by reasons of national security or public order.

3.

(a) The High Contracting Parties undertake not to reconduct refugees to German territory unless they have been warned and have refused, without just cause, to make the necessary arrangements to proceed to another territory or to take the advantage of the arrangements made for them with that object.

(b) In such case, the travel document may be cancelled or withdrawn.

CHAPTER V Legal standing of refugees

Article 6 Determination of the law governing the personal status of refugees

The personal status of refugees who have retained their original nationality shall be governed by the rule applicable in the country concerned to foreigners possessing a nationality. Save as otherwise previously provided by treaty, the personal status of refugees having no nationality shall be governed by the law of their country of domicile, or, failing such, by the law of their country of residence.

Article 7 Rights acquired under the national law

In countries where these matters are governed by the national law of the parties, rights acquired under the former national law of the refugee for instance, rights resulting from marriage, such as the matrimonial regime, the legal capacity of married women etc.-shall be respected, subject to compliance with the formalities prescribed by the law of their country of domicile or, failing such, by the law of their country of residence, if this be necessary.

Article 8 Right to appear before the courts as plaintiff or defendant

1. Refugees shall have, in the territories to which the present Convention applies, free and ready access to the courts of law.

2. In the countries in which they have their domicile or regular residence, they shall enjoy in this respect, save where otherwise expressly provided by law, the same rights and privileges as nationals.

They shall on the same conditions enjoy the benefit of legal assistance and be exempt from *cautio judicatum solvi*.

CHAPTER VI Labour conditions

Article 9[123]

1. The restrictions ensuing from the application of laws and regulations for the protection of the national labour market shall not be applied in all their severity to refugees domiciled or regularly resident in the country.

2. They shall be automatically suspended in favour of refugees domiciled or regularly resident in the country, if one of the following conditions is fulfilled:

- (a) The refugee has been resident for not less than three years in the country;
- (b) The refugee is married to a person possessing the nationality of the country of residence;

[123] This article reproduces article 7 of the Convention of 28 October 1933. The last condition of article 7, namely, "(d) The refugee is an ex-combatant of the Great War" is not reproduced.

(c) The refugee has one or more children possessing the nationality of the country of residence.

CHAPTER VII Industrial accidents

Article 10[124]

Each of the High Contracting Parties undertakes to accord to refugees who meet with industrial accidents in any of his territories to which the present Convention applies, or to their beneficiaries, the most favourable treatment that he accords to the nationals of a foreign country.

CHAPTER VIII Welfare and relief

Article 11[125]

Refugees residing in a territory to which the present Convention applies who are unemployed persons, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made either by their families or by third parties, pregnant women, women in childbed or nursing mothers, shall receive therein the most favourable treatment, accorded to nationals of a foreign country, in respect of such relief and assistance as they may require, including medical attendance and hospital treatment.

Article 12[126]

The High Contracting Parties undertake to apply to refugees, as regards social insurance laws at present in force or which may subsequently be established, the most favourable treatment accorded to the nationals of a foreign country.

Article 13[127]

Refugees shall, as regards the setting-up of associations for mutual relief and assistance and admission to the said associations, enjoy in the territories of the High Contracting Parties to which the present Convention applies the most favourable treatment accorded to the nationals of a foreign country.

CHAPTER IX Education

Article 14 [128]

[124] This article reproduces article 8 of the Convention of 28 October 1933, with the exception of some purely formal modifications.

[125] This article reproduces article 9 of the Convention of 28 October 1933, with the exception of some purely formal modifications.

[126] This article reproduces almost exactly article 10 of the Convention of 28 October 1933.

[127] This article reproduces article 11 of the Convention of 28 October 1933, with the exception of some purely formal modifications.

Refugees shall enjoy in the schools, courses, faculties and universities of each of the High Contracting Parties treatment as favourable as other foreigners in general. They shall benefit in particular to the same extent as the latter by the total or partial remission of fees and charges and the award of scholarships.

CHAPTER X Professional training with a view to emigration

Article 15

With a view to facilitating the emigration of refugees to oversea countries, every facility shall be granted to the refugees and to the organizations which deal with them for the establishment of schools for professional readaptation and technical training.

CHAPTER XI Taxation

Article 16[129]

1. The High Contracting Parties undertake not to impose, upon refugees residing in their territories to which the present Convention applies, duties, charges or taxes, under any denomination whatsoever, other or higher than those which are or may be levied on their nationals in similar circumstances.
2. Nothing in the foregoing provisions shall affect the application of the stipulations of the laws and regulations concerning charges in respect of the issue to foreigners of administrative documents, and the extension of the validity of such documents.
3. The present article is the only one in the Convention that governs fiscal matters. The latter are not subject to any other provisions of this Convention.

CHAPTER XII Exemption from reciprocity

Article 17[130]

The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity.

CHAPTER XIII General provisions

Article 18

The present Convention replaces the Provisional Arrangement of 4 July 1936 as between all Parties to the present Convention. It does not affect the operation of that Arrangement as regards Parties thereto who are not Parties to the present Convention.

[128] This article reproduces article 12 of the Convention of 28 October 1933, with the exception of some purely formal modifications.

[129] This article reproduces article 13 of the Convention of 28 October 1933, with the exception of some purely formal modifications. A provision with regard to the Nansen stamp has, however, been omitted.

[130] This article reproduces exactly article 14 of the Convention of 28 October 1933.

Article 19

The present Convention, which shall bear today's date, may be signed on or before 9 August 1938, on behalf of any Member of the League of Nations or any non-member State invited to the Conference, or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

Article 20

The present Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who will notify the deposit thereof to all the Members of the League of Nations and to the non-member States referred to in Article 19, indicating the date at which such deposit has been effected.

Article 21

1. On and after 10 August 1938, any Member of the League of Nations and any of the non-member States referred to in Article 19 may accede to it.
2. The instruments of accession shall be deposited with the Secretary-General of the League of Nations, who will notify such deposit and the date thereof to all the Members of the League of Nations and to the nonmember States referred to in Article 19.

Article 22

1. The present Convention shall be registered by the Secretary-General of the League of Nations in accordance with the provisions of Article 18 of the Covenant thirty days after the receipt by him of the second ratification or accession.
2. The Convention shall come into force on the days of such registration.
3. Ratifications or accessions deposited after the deposit of the second ratification or accession shall take effect on the expiration of a period of thirty days after the date of their receipt by the Secretary-General of the League of Nations.

Article 23

1. The present Convention may be denounced at any time, but such denunciation shall not take effect until one year after notice thereof has been given.
2. Denunciation of the Convention shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who will inform all the Members of the League of Nations, and also the nonmember States referred to in Article 19, of each notification, of the date of receipt thereof and of the date on which denunciation is to take effect.

Article 24

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates, overseas territories, or the territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification thirty days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may at any time declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, overseas territories, or the territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the Convention shall, in that case, cease to apply to the territories named in such declaration under the same conditions as those stipulated in Article 23 above.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations, and to the non-member States referred to in Article 19, the declarations and notifications received in virtue of the present article, together with the dates of the receipt thereof.

Article 25

1. The High Contracting Parties shall, at the time of signature, ratification, accession or declaration under paragraph 2 of Article 24, indicate whether their signature, ratification, accession or declaration applies to the whole of the provisions of Chapters I, II, III, IV, V and XIII (the last chapter contains the general provisions) or applies to the Convention in its entirety.

2. Failing such indication, the signature, ratification, accession or declaration shall be deemed to apply to the Convention as a whole.

3. In addition, the High Contracting Parties may make reservations concerning articles contained in chapters to which their obligation extends.

4. The High Contracting Parties shall have the right at any time to extend their obligation to cover further chapters of the Convention, or to withdraw all or part of their exceptions or reservations, by means of a declaration addressed to the Secretary-General of the League of Nations. The Secretary-General shall communicate such declaration to all the Members of the League of Nations and to the non-member States referred to in Article 19, stating the date of receipt.

IN FAITH WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention.

DONE AT GENEVA, the tenth day of February, one thousand nine hundred and thirty-eight, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations and certified copies of which shall be transmitted to all the Members of the League and to the non-member States referred to in Article 19.

POSITION CONCERNING SIGNATURES, RATIFICATIONS AND ACCESSIONS, AT THE DATE OF 10 JULY 1944^[131] Convention in force since October 26, 1938

[131] See League of Nations, Official Journal, Special Supplement No. 193, Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, page 142. The Supplement to the twenty-first list (League of Nations, Official Journal, Special Supplement No. 195) issued on 31 July 1946 indicates no change.

1. RATIFICATIONS: 3

Belgium (1 September 1938)

Article 9

The Belgian Government specifies that the meaning given in the Convention, with special reference to Article 9 (a), to the concept of residence is that which it possesses under the laws and internal regulations of Belgium.

Article 11

Article 11, in so far as it concerns the application of the provisions of the domestic legislation relating to “unemployment insurance” cannot be accepted.

Article 12

Article 12, concerning social insurance laws, cannot be favourably received.

Article 17

Article 17, which concerns the enjoyment of the rights and favours accorded to foreigners, subject to reciprocity, cannot be admitted.

Article 24

In application of paragraph 1 of article 24, the Belgian Government, by its acceptance of the present Convention, is not assuming any obligation as regards the Colony of the Congo, the mandated territories of Ruanda-Urundi, or any other territory provided in paragraph 1 of article 24.

United Kingdom of Great Britain and Northern Ireland (26 September 1938)

Article 1

His Majesty's Government in the United Kingdom regards the definition as applicable only to refugees coming from Germany as defined, who at the date of ratification no longer enjoy the protection of the German Government.

Article 5

Refugees who are the subject of extradition proceeding begun in the United Kingdom will not be regarded as being entitled to claim the protection otherwise afforded to them under this article.

Paragraph 2 of this article will not be applicable to refugees who have been admitted to the United Kingdom for a temporary visit or purpose.

The term “public order” is deemed to include matters relating to crime and morals.

Article 9

The provisions of this article will not be applicable to refugees who have been admitted to the United Kingdom for a temporary visit or purpose.

Article 14

Cannot be accepted, owing to the special position of schools and universities in the United Kingdom.

Article 24

His Majesty's Government in the United Kingdom declares that it does not assume any obligations in respect of any of its Colonies, Protectorates, overseas territories, territories under suzerainty, or territories administered under mandate.

Article 17 is not accepted.

Aden Colony

Bahamas, Basutoland, Bechuanaland (Protectorate), British Guiana, British Honduras, British Salomon Islands (Protectorate)

Ceylon, Cyprus

Falkland Islands and Dependencies, Fiji

Gambia (Colony and Protectorate), Gilbert and Ellice Islands (Colony), Gold Coast (a) Colony, (b) Northern Territories, (c) Ashanti, (d) Togoland under British Mandate

Hong-Kong

Kenya (Colony and Protectorate)

Leeward Islands (Antigua, Montserrat, St. Christopher and Nevis, Virgin Islands)

Malay States (a) Federated Malay States: Negri Sembilan, Pahang, Perak, Selangor; (b) Unfederated Malay States: Johore, Kedah, Kelantan, Perlis, Trengganu, and Brunei, Mauritius

Nigeria (a) Colony, (b) Protectorate, (c) Cameroons under British Mandate, Nyasaland (Protectorate)

St. Helena and Ascension, Sierra Leone (Colony and Protectorate), Somaliland (Protectorate), Straits Settlements, Swaziland

Trinidad and Tobago

Uganda (Protectorate)

Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent)

Zanzibar (Protectorate)

France (March 23, 1945)

The French Government, by its acceptance of the present Convention, renews the reservations made by it on signing the Conventions of 28 October 1933, and the Provisional Arrangement of 4 July 1936, and declares in particular, that it is not assuming any obligations in regard to the whole of its colonies, protectorates, overseas territories, territories placed under its suzerainty, or territories in respect of which a mandate has been confided to it.

2. SIGNATURES NOT YET PERFECTED BY RATIFICATION: 4

Denmark

Articles 9 and 17 are excluded from the undertaking given by Denmark.

The Convention will not apply to Greenland.

The Netherlands

For the Kingdom in Europe, and with reservation as regards article 5, paragraph 3, and article 9.

Norway

I declare that I sign the Convention with the following reservations:

Paragraph 2 (d) of article 3 and article 17 will not be applicable.

Spain

With the following reservations:

The Spanish Government, by its signature of the present Convention, is not assuming any obligations in regard to the whole of its protectorates and colonies.

It likewise declares that articles 9 to 12 will not preclude the application of the provisions relating to labour and social insurance.

IDENTITY CERTIFICATE FOR REFUGEES COMING FROM GERMANY (Valid for one year)

Certificate issued in accordance with the Convention concerning the Status of the Refugees coming from Germany, of...

The present certificate is issued for the sole purpose of providing refugees from Germany with identity papers to take the place of a passport. It is without prejudice to and in no way affects the holder's nationality.

On the expiration of its validity, the present certificate must be returned to the issuing authority.

Authority issuing the certificate...

Place of issue of the Authority issuing the certificate...

Place of issue of the certificate...

No....

Date...

IDENTITY CERTIFICATE

Valid until...

Failing express provision to the contrary, the present certificate entitles its holder to return to the country by which it was issued during the period for which it is valid. It shall cease to be valid if the holder enters German territory.

	Surname ...
	Forenames ...
	Date of birth ...
	Place of birth ...
	Surname and forenames of father ...
	Surname and forenames of mother ...
	Name of wife (husband) ...
	Names of children ...
	Nationality ...
	Occupation ...
	Former address ...
	Present address ...

<i>Description</i>	
	Age...
	Hair...
	Eyes...
	Face ...
	Nose...
	Height...
	Distinguishing marks ...
(Photograph)	
(Stamp)	
Signature of holder	
Remarks...	

The undersigned certifies that the photograph and signature hereon are those of the holder of this certificate.

Signature of issuing authority

This certificate expires on: ...19 ...

Renewals ...

Visas

10. Resolution adopted by the Inter-Governmental Committee at Evian on 14 July 1938 defining the functions of the Intergovernmental Committee[132]

The Intergovernmental Committee having met at Evian, France, from 6 July to 15 July 1938:

1. Considering that the question of involuntary emigration has assumed major proportions and that the fate of the unfortunate people affected has become a problem for intergovernmental deliberation;

2. Aware that the involuntary emigration of large numbers of people, of different creeds, economic conditions, professions and trades, from the country or countries where they have been established is disturbing to the general economy, since these persons are obliged to seek refuge, either temporarily or permanently, in other countries at a time when there is serious unemployment; that, in consequence, countries of refuge and settlement are faced with problems, not only of an economic and social nature, but also of public order, and that there is a severe strain on the administration facilities and absorptive capacities of the receiving countries;

[132] League of Nations, Official journal XIXth year, Nos. 8-9: August-September 1948, pages 676, 677; C.244 M.143.1938 XII, annex. The Intergovernmental Committee was set up by the Evian Meeting (6-15 July 1938).

3. Aware, moreover, that the involuntary emigration of people in large numbers has become so great that it renders racial and religious problems more acute increases international unrests, and may hinder seriously the processes of appeasement in international relations;

4. Believing that it is essential that a long-range programme should be envisaged, whereby assistance to involuntary emigrants, actual and potential, may be co-ordinated within the framework of existing migration laws and practices of Governments;

5. Considering that, if countries of refuge or settlement are to co-operate in finding an orderly solution of the problem before the Committee, they should have the collaboration of the country of origin and are therefore persuaded that it will make its contribution by enabling involuntary emigrants to take with them their property and possessions and emigrate in an orderly manner;

6. (a) Welcoming heartily the initiative taken by the President of the United States of America in calling the Intergovernmental Meeting at Evian for the primary purpose of facilitating involuntary emigration from Germany (including Austria), and (b) expressing profound appreciation as to the French Government for its courtesy in receiving the Intergovernmental Meeting at Evian;

7. Bearing in mind the resolution adopted by the Council of the League of Nations on 14 May 1938[133] concerning international assistance to refugees;

Recommends

8.

(a) That the persons coming within the scope of the activity of the Intergovernmental Committee shall be (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 and (2) persons as defined in (1) who have already left their country of origin and who have not yet established themselves permanently elsewhere;

(b) That the Governments participating in the Intergovernmental Committee shall continue to furnish the Committee, for its strictly confidential information, with (1) details regarding such immigrants as each Government may be prepared to receive under its existing laws and practices and (2) details of these laws and practices;

(c) That, in view of the fact that the countries of refuge and settlement are entitled to take into account the economic and social adaptability of immigrants, these should in many cases be required to accept, at least for a time, changed conditions of living in the countries of settlement;

(d) That the Governments of the countries of refuge and settlement should not assume any obligations for the financing of involuntary emigration;

(e) That, with regard to the documents required by the countries of refuge and settlement the Governments represented on the Intergovernmental Committee should consider the adoption of the following provision:

[133] See League of Nations, Official Journal, May-June 1938, page 366.

In those individual immigration cases in which the usually required documents emanating from foreign official sources are found not to be available, there should be accepted such other documents serving the purpose of the requirements of law, as may be available to the immigrant; and that, as regards the document which may be issued to an involuntary emigrant by the country of his foreign residence to serve the purpose of a passport, note be taken of the several international agreements providing for the issue of a travel document serving the purpose of a passport, and of the advantage of their wide application;

(f) That there should meet at London an Intergovernmental Committee consisting of such representatives as the Governments participating in the Evian Meeting may desire to designate.

This Committee shall continue and develop the work of the Intergovernmental Meeting at Evian and shall be constituted and shall function in the following manner:

There shall be a Chairman of this Committee and four Vice-Chairmen.

There shall be a Director of authority, appointed by the Intergovernmental Committee, who shall be guided by it in his actions. He shall undertake negotiations to improve the present conditions of exodus and to replace them by conditions of orderly emigration. He shall approach the Governments of the countries of refuge and settlement with a view to developing opportunities for permanent settlement.

The Intergovernmental Committee, recognizing the value of the work of the existing refugee services of the League of Nations and of the studies of migration made by the International Labour Office, shall co-operate fully with these organizations, and the Intergovernmental Committee at London shall consider the means by which the co-operation of the Committee and the Director with these organizations shall be established.

The Intergovernmental Committee, at its forthcoming meeting at London, will consider the scale on which its expenses shall be apportioned among the participating Governments.

9. That the Intergovernmental Committee in its continued form shall hold a first meeting at London on 3 August 1938.

11. *Additional Protocol to the Provisional Arrangement and to the Convention signed at Geneva on 4 July 1936, and 10 February 1938, respectively, concerning the Status of Refugees coming from Germany. Opened for signature at Geneva, 14 September 1939*[134]

His MAJESTY THE KING OF GREAT BRITAIN, IRELAND, AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA;

His MAJESTY THE KING OF DENMARK AND ICELAND;

Whereas the question has arisen whether, after the union of the territory of the former Federal Republic of Austria with the German Reich, the provisions of the Provisional Arrangement[135] signed at Geneva on the 4th July 1936 (hereinafter referred to as the "Agreement"), and of the Convention[136] signed at Geneva on the 10th February 1938 (hereinafter referred to as the "Convention"), both relating to the status of refugees coming from Germany, apply to refugees coming from the territory of the former Austrian Republic; and

[134] League of Nations, *Treaty Series*, Vol. CXCVIII, No. 4634, page 141.

[135] League of Nations, *Treaty Series*, Vol. CLXXI, page 75, and Vol. CLXXXI, page 464.

[136] *Ibid.*, Vol. CXCII, page 59.

Whereas it is desired to settle this question;

Have accordingly appointed as their Plenipotentiaries:

Who, having exhibited their full powers, found in good and due form, have agreed as follows:

Article 1

1. The expression refugees "coming from Germany" in Article I of the Agreement and in Article 1 of the Convention covers (a) persons, having possessed Austrian nationality and not possessing any nationality other than German nationality, who are proved not to enjoy, in law or in fact, the protection of the German Government; and (b) stateless persons, not covered by any previous Convention or Arrangement and having left the territory which formerly constituted Austria after being established therein, who are proved not to enjoy, in law or in fact, the protection of the German Government.

2. Persons who leave the territories which formerly constituted Austria for reasons of purely personal convenience are not included in this definition.

Article 2

1. The present Protocol shall not require ratification.

2. It shall remain open for signature on behalf of any Party to the Agreement or Convention until 12 March 1940.

3. After 12 March 1940, it shall be open to accession on behalf of any Party to the Agreement or Convention.

Article 3

1. The provisions of Article 1 of this Protocol shall apply as an interpretation of the Agreement for each Party to that Agreement as from the moment that Party signs or accedes to the present Protocol.

2. The provisions of Article 1 of this Protocol shall apply as an interpretation of the Convention' for each Party to the Convention as soon as the Convention is in force as regards that Party and that Party has signed or acceded to the present Protocol.

IN FAITH WHEREOF the above mentioned.

Plenipotentiaries have signed the present Protocol.

DONE AT GENEVA, this fourteenth day of September, nineteen hundred and thirty-nine, in French and English, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Secretariat of the League of Nations and certified copies of which shall be transmitted to the Governments of all countries on whose behalf either the Agreement or the Convention has been signed or accessions thereto deposited.

POSITION CONCERNING SIGNATURES AT THE DATE OF 10 JULY 1944

The Supplement to the twenty-first list (League of Nations, Official Journal, Special Supplement No. 195) issued on 31 July 1946 indicates no change.¹⁴²¹

Protocol in force since September 14, 1939

DEFINITIVE SIGNATURES: 3

Great Britain and Northern Ireland (November 29, 1939)

Application to the following British Overseas Territories:

Aden Colony

Bahamas, Basutoland, Bechuanaland (Protectorate), British Guiana, British Honduras, British Salomon Islands (Protectorate)

Ceylon, Cyprus

Falkland Islands and Dependencies, Fiji

Gambia (Colony and Protectorate), Gilbert and Ellice Islands (Colony), Gold Coast (a) Colony, (b) Northern Territories, (c) Ashanti, (d) Togoland under British Mandate

Hong-Kong

Kenya (Colony and Protectorate)

Leeward Islands (Antigua, Montserrat, St. Christopher and Nevis, Virgin Islands)

Malay States (a) Federated Malay States: Negri Sembilan, Pahang, Perak, Selangor; (b) Unfederated Malay States: Johore, Kedah, Kelantan, Perlis, Trengganu, and Brunei, Mauritius

Nigeria (a) Colony, (b) Protectorate, (c) Cameroons under British Mandate, Nyasaland (Protectorate)

St. Helena and Ascension, Sierra Leone (Colon, and Protectorate), Somaliland (Protectorate), Straits Settlements, Swaziland

Trinidad and Tobago

Uganda (Protectorate)

Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent)

Zanzibar (Protectorate)

Denmark (September 14, 1939) France (March 29, 1945)

12. Resolutions adopted by the XIXth session of the Assembly of the League of Nations on 30 September 1938, concerning international assistance to refugees[137]

1.

The Assembly,

Having regard to its previous resolutions under which the Nansen International Office for Refugees and the Office of the High Commissioner for Refugees coming from Germany are to cease their activities as from 31 December 1938:

Adopts the following provisions:

[137] League of Nations, *Official Journal*, 1938, *Special Supplement No. 183*, pages 26-28.

1. A High Commissioner of the League of Nations shall be constituted to deal with refugees hitherto coming under the Nansen International Office and the Office of the High Commissioner for Refugees coming from Germany.

2. The High Commissioner's duties will be as follows:

(a) To provide for the political and legal protection of refugees, as entrusted to the regular organs of the League by paragraph 3 of the Assembly's decision of 30 September 1930;

(b) To superintend the entry into force and the application of the legal status of refugees, as defined more particularly in the Conventions of 28 October 1933, and 10 February 1938;

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

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

3. The High Commissioner shall report to the Assembly annually on his work.

4. In the performance of his duties:

(a) The High Commissioner shall keep in close touch with the Governments concerned and the competent official bodies, and shall maintain relations with the Intergovernmental Committee in London;

(b) He shall establish contact, in such manner as he may think best, with private organizations dealing with refugee questions.

5. The High Commissioner shall have no power to enter into any legal commitment whatsoever on behalf of the League of Nations; the League assumes no responsibility, legal or financial, in respect of his activities.

6. The High Commissioner shall appoint a Deputy High Commissioner and a small staff to assist him. The Deputy High Commissioner shall not have the same nationality as the High Commissioner.

The High Commissioner shall consult the Governments of the principal countries of refuge as to the need for appointing representatives therein. Should they agree, he may appoint to those countries representatives approved by them.

Neither the members of the High Commissioner's staff nor the aforesaid representatives or their assistants may be refugees or former refugees.

7. The grant from the League of Nations shall be appropriated for the High Commissioner's administrative expenses, including the emoluments of the Deputy High Commissioner, the staff and the representatives, if any. It may in no case be employed for the relief and settlement of refugees. It shall be fixed by the Assembly year by year.

8. The High Commissioner may accept funds from Governments or private sources; he may likewise accept any sums that may be offered to him by the Nansen International Office for Refugees.

He shall not himself directly provide assistance to refugees, but shall allot the aforesaid funds among such organizations and such official bodies, if any, as he may consider best qualified to administer such assistance.

The accounts in respect of these funds shall be periodically audited by the Auditor of the League of Nations. For the information of the Assembly, the High Commissioner shall include in his annual report a statement of his activities in this field.

9. The High Commissioner and his organization shall have their headquarters in London.
10. The High Commissioner shall be appointed for five years from 1 January 1939.

2.

The Assembly,

Having regard to its resolution No. 1 adopted today concerning international assistance to refugees:

Adopts the following provisions:

1. The High Commissioner's annual salary shall be 45,000 Swiss francs.
2. The grant made by the League for the year 1939 under paragraph 7 of the aforesaid resolution is fixed at 224,300 Swiss francs.

3.

The Assembly,

Having regard to its resolutions Nos. 1 and 2 adopted today concerning international assistance to refugees:

Grants to the future High Commissioner an inclusive allowance of 20,000 Swiss francs to cover his expenses and emoluments for the period that will elapse between the date of this resolution and 1 January 1939, when he takes up the duties of High Commissioner.

4.

The Assembly,

Having examined the reports of the Governing Body of the Nansen International Office for Refugees (document A.21.1938.XII) and the High Commissioner for Refugees coming from Germany (document A.25.1938. XII):

Expresses its appreciation of the tireless energy and devotion displayed by judge Hansson, Sir Neill Malcolm, and their assistants, in the performance of their mission for the benefit of the refugees, and tenders to them its heartiest thanks for their distinguished services;

Pays a like tribute to the members of the Managing Committee and the Governing Body of the Nansen Office, who have made an effective contribution to the work of assistance;

And expresses the hope that the utmost possible use will be made by the future High Commissioner of the experience gained by the officials of the Nansen Office and the Office of the High Commissioner for Refugees coming from Germany, and that, if possible, places may be found in the Secretariat of the League of Nations or the International Labour Office for those of whose services the High Commissioner is unable to make use.

5.

The Assembly,

In view of its resolutions Nos. 1, 2 and 3, taken today regarding international assistance to refugees: Adopts the following provisions:

(1) Sir Herbert EMFRSON, G.C.I.E., K.C.S.I., C.B.E., is appointed High Commissioner of the League of Nations for Refugees;

(2) This appointment is made for five years as from 1 January 1939.

13. Agreement relating to the issue of a travel document to refugees who are the concern of the Inter-Governmental Committee on Refugees. Signed in London, 15 October 1946[138]

The Contracting Governments,

Having examined a resolution adopted by the Inter-Governmental Committee on Refugees at its plenary session on 17 August 1944, relating to the establishment of an identity and travel document for refugees who are the concern of the Inter-Governmental Committee on Refugees,

Having regard to the international measures previously taken in the matter of travel documents for certain categories of refugees,

Convinced of the necessity of taking similar measures on behalf of the refugees referred to in the above-mentioned resolution, with a view, in particular, to facilitating the movement of these refugees,

Considering that the making of arrangements for the emigration of refugees who cannot be absorbed in the countries in which they have taken refuge is an essential part of the work undertaken for the benefit of the said refugees,

Have agreed as follows:

Article 1

1. Subject to the further provisions laid down in Articles 2 and 16, a travel document, in accordance with the provisions of Article 3, shall be issued by the Contracting Governments to refugees who are the concern of the Inter-Governmental Committee, provided that the said refugees are stateless or do not in fact enjoy the protection of any Governments, that they are staying lawfully in the territory of the Contracting Government concerned, and that they are not benefiting by the provisions regarding the issue of a travel document contained in the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928, 30 July 1935, or the Convention of 28 October 1933.

2. The said document will be issued to refugees who apply for it for the purpose of travel outside their country of residence.

Article 2

[138] Agreement concluded at the International Conference convened in London by the Inter-Governmental Committee on Refugees. See United Nations, *Treaty Series*, volume 11, No. 150, page 73.

As a transitional measure, the document referred to in Article I may, at the discretion of the Government concerned, be issued to refugees who, while fulfilling the other conditions laid down by the present Agreement, are not staying lawfully in the territory of the Contracting Government concerned on the date of the coming into force of the present Agreement, provided that they report themselves to the authorities within a period to be prescribed by the Government concerned and which shall not be less than three months.

Article 3

1. The travel document referred to in the present Agreement shall be similar to the attached specimen (see annex).

2. It shall be made out in at least two languages-French, and the national language or languages of the authority which issues the document.

Article 4

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of an adult refugee.

Article 5

The fees charged for issue of the travel document shall not exceed the lowest scale of charges for national passports.

Article 6

Save in special or exceptional cases, the documents shall be made valid for the largest possible number of countries.

Article 7

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Article 8

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

Article 9

Each Contracting Government shall recognize the validity of the documents issued in accordance with the provisions of the present Agreement.

Article 10

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him, affix a visa on the document of which he is the holder.

Article 11

The authorities of the territories to which the present Agreement applies undertake to issue transit visas to refugees who have obtained visas for the territory of final destination.

Article 12

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Article 13

When a refugee has lawfully taken up residence in another territory to which the present Agreement applies, the power to issue a new travel document will be transferred to the competent authority of that territory, to which the refugee shall be entitled to apply.

Article 14

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

Article 15

1. The travel document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the said document, to return thereto without a visa from the authorities of that country, subject only to those laws and regulations which apply to the bearers of duly visaed passports.

2. The Contracting Governments reserve the right, in exceptional cases, when issuing the document, to limit the period during which the refugee may return, the said period being not less than three months.

Article 16

1. Subject only to the terms of Article 15, the present provisions in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories to which the present Agreement applies.

2. Nor do they affect the special provisions concerning persons coming under the present Agreement in the territories to which it applies.

Article 17

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Article 18

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

Article 19

Travel documents issued before the entry into force of the present Agreement to persons benefiting by the provisions of Articles 1 and 2 shall remain valid until they have expired.

Article 20

In the event of the transfer to any other international organization of the functions of the Inter-Governmental Committee on Refugees, all the provisions in the Agreement relating to the Inter-Governmental Committee shall be deemed to apply to the said organization.

Article 21

The present Agreement, of which the English and French texts are both authentic, shall bear today's date and shall remain open for signature, in London, by the Governments Members of the Inter-Governmental Committee, and also by non-member Governments.

Article 22

The Government of the United Kingdom of Great Britain and Northern Ireland is designated as the authority to give notice of each signature and the date thereof to all Governments Members of the Inter-Governmental Committee and to any non-member Governments whose signature has been appended.

Article 23

1. The present Agreement shall come into force ninety days after it has been signed on behalf of six Governments.[139]

2. In respect of each of the Governments on whose behalf a signature is subsequently deposited, the present Agreement shall come into force ninety days after the date of such deposit.

Article 24

1. The present Agreement may be denounced by any one of the Contracting Governments after the expiry of a period of one year as from the date on which it came into force, by written notification addressed to the Government of the United Kingdom of Great Britain and Northern Ireland, who shall inform all Governments referred to in Article 22 of each notification, specifying the date of its receipt.

2. The denunciation shall come into effect six months after the date of the receipt of the notification by the Government of the United Kingdom.

Article 25

[139] The Agreement came into force on 13 January 1947.

1. Any Contracting Government may at any time after the coming into force of this Agreement in accordance with Article 23, declare in writing to the Government of the United Kingdom that the Agreement applies to all or any of its colonies, overseas territories, protectorates and territories under mandate or trusteeship, and the Agreement shall apply to the territory or territories named in the declaration from the date thereof.

2. The participation of any territory to which the Agreement has been applied under the preceding paragraph may be terminated by a notification in writing addressed to the Government of the United Kingdom, and the Agreement shall cease to apply to the territory or territories named in the notification six months after the date of the receipt thereof.

3. The Government of the United Kingdom shall inform the Governments referred to in Article 22 of all declarations received under paragraph 1 of this Article and all notifications received under paragraph 2, and of the date on which such declarations or notifications take effect.

IN FAITH WHEREOF the undersigned have affixed, in the name of their respective Governments, their signatures to the present Agreement.

DONE IN LONDON, the fifteenth day of October, one thousand nine hundred and forty-six, in French and English, in a single copy, which shall remain deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, and certified true copies of which shall be transmitted to all Governments referred to in Article 22.

POSITION CONCERNING SIGNATURES AT THE DATE OF 1 NOVEMBER 1949 Agreement in force since 13 January 1947 (in pursuance of article 23 of the Agreement)

1. DEFINITIVE SIGNATURES: 16

Australia	
Belgium	
Chile	
China (23 February 1948)	
Dominican Republic	
France	
Greece	
India	
Italy (10 October 1947)	
Luxemburg	
Netherlands	
Sweden	
Switzerland	
Union of South Africa (8 March 1948)	
United Kingdom:	Communication of the United Kingdom's Government of 30 April 1948

	Bahamas	
	Bermuda	
	British Guiana	
	British Honduras	
	Gambia Communication of the	
	Kenya United Kingdom's Government	
	Nyasaland of 30 April 1948	
	Sarawak	
	Seychelles	
	Tanganyika	
	Trinidad	
	Uganda	
	Southern Rhodesia-Communication of the United Kingdom's Government of 16 November 1948	
Venezuela		

2. AD REFERENDUM SIGNATURES: 3

Argentina

Brazil

Ecuador

II

The following States or Territories, without being bound by the Agreement of 13 October 1946, have decided to recognize the documents furnished in pursuance of this Agreement by the States parties thereto:

Guatemala- (Communication of the United Kingdom's Government of 28 January 1949)

Haiti- (Communication of the United Kingdom's Government of 1 November 1949)

Honduras- (Communication of the United Kingdom's Government of 14 May 1949)

India- "The Government of India has stated that although it was not in a position to create a travel certificate for refugees in the form envisaged by the Agreement it would recognize however the travel certificates furnished by other Governments and pending the time when it would itself be in a position to furnish these documents it would itself issue an appropriate identity certificates to the refugees in question." (Communication of the United Kingdom's Government of 20 March 1948)

Ireland- (Communication of the United Kingdom's Government of 30 April 1948)

New Zealand- (Communication of the United Kingdom's Government of 8 June 1948)

Norway- (Communication of the United Kingdom's Government of 20 March 1948)

United Kingdom-United Kingdom's dependent territories:

1. Falklands

Federated Malay States

Fiji

Nigeria

Sierra Leone

Singapore

Western Pacific Territory

Windward Islands

Zanzibar

2. In the following cases the Authorities will recognize the validity of travel certificates only for the purpose of transit through their territories:

<i>Barbados</i>	(Communications of 30 April 1948)
<i>Gibraltar</i>	
Malta	

Part Two THE ELIMINATION OF STATELESSNESS

SECTION I ELIMINATION OF THE CAUSES OF STATELESSNESS

Chapter 1 THE CAUSES OF STATELESSNESS

As stated in the introduction, both *de jure* and *de facto* stateless persons are considered in this Study.

The causes of statelessness may be classified in five groups:

(1) Inadequacy and conflict of national legislations concerning nationality.

This factor causes *de jure* statelessness either from birth or later.

(2) Deprivation of nationality as a penalty.

This factor causes *de jure* statelessness during life.

(3) Racial, religious or political persecution.

In the first place this factor causes *de jure* statelessness when the person is in his own country deprived of his nationality because of his racial origin, religious beliefs or political opinions.

In the second place, it causes both *de jure* and *de facto* statelessness when the victim has taken refuge abroad.

(4) Mass emigration of nationals caused by changes in political or social system.

This factor causes *de facto* statelessness of a person who leaves his country. If, after he has left, that country withdraws his nationality, he becomes stateless *de jure*.

(5) The inadequacy of the provisions relating to nationality contained in treaties bringing about territorial settlements or the defective application of such treaties.

This factor causes *de jure* statelessness during life.

I. INADEQUACY AND CONFLICT OF NATIONAL LEGISLATIONS CONCERNING NATIONALITY

At present each State has the right to determine the rules governing the acquisition of its own nationality. This principle is universally recognized.[140]

States may, however, bind themselves by treaties to observe certain rules restricting their liberty in this regard.

Treaties of this type are rare. They affect few States, and deal only with certain aspects of nationality without settling the question as a whole (see chapter 2 below).

This being so, the basis of the law governing nationality is to be found in the domestic legislation of States.

The diversity and conflict of national legislations, and the inadequacy of their provisions, are the principal causes of *de jure* statelessness.

Conflict and inadequacy of national legislations give rise to positive conflicts of sovereignty when a person has several nationalities, and "negative" conflicts when he has no nationality.

The sole concern here will be with the negative conflicts. These are extremely varied. Thus one writer indicates, in the law in force in the United States in 1934, eighty-six situations that could give rise to statelessness.[141] The present Study does not claim to provide an exhaustive

[140] The Hague Convention of 12 April 1930 on certain questions relating to conflict Of nationality laws merely recognizes the existing state of affairs:

Article 1. It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

Article 2. Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

[141] Catheryn Seckler Hudson discusses three general groups:

(a) Married women-four sub-groups with twenty-seven types of cases;

enumeration of all the possible conflicts. It merely indicates typical conflicts which experience has shown to arise.

The examples taken from various legislations refer principally to European countries, since it is in Europe that statelessness is most widespread.

(1) STATELESSNESS AT BIRTH

Statelessness at birth occurs when a person does not receive any nationality at birth because no country grants it to him.

What are the causes of this type of statelessness and the circumstances that permit it?

There are, as we know, two principles for determining nationality by birth: attribution of the nationality of the parents (*jus sanguinis*), and attribution of the nationality of the country of birth (*jus soli*).

The various legislations adopt one or the other of these principles and very often combine them.

The following are the principal cases of statelessness resulting from the conflicting application of *jus sanguinis* and *jus soli*.

A. Children born abroad

The sole concern here is with children born outside the country of which their parents are nationals.

1. The *jus sanguinis* countries do not take into consideration the country where the child is born. The child takes the nationality of his parents regardless of their permanent or temporary expatriation.
2. The system of the *Jus soli* countries has admittedly the great advantage of preventing any child from being born stateless in their territory. But what is the situation of children who are nationals of a *jus soli* country and born abroad in a *jus sanguinis* country?

In this respect there are two types of *jus soli* countries. Some adhere strictly to the idea of *jus soli*; but most accord a place to *jus sanguinis*.

(a) Strict *jus soli* countries.

Certain Latin-American countries such as Argentina^[142] Bolivia^[143] Brazil,^[144] Chile,^[145] Cuba,^[146] Panama,^[147] Paraguay,^[148] Peru,^[149] and Uruguay,^[150] apply the principle of *jus soli* strictly.

(b) Adults whose statelessness is due to causes other than marriage—sixteen subgroups with thirty-five types of cases;

(c) Stateless children—seven sub-groups with twenty-four types of cases, making a total of 87 types of cases (C. Seckler-Hudson, "Statelessness, with special reference to the United States". 1934, pp. 20-22).

[142] Argentine Law No. 346 of 8 October 1869 (see Richard W. Flournoy and Manley N.O. Hudson: A collection of nationality laws of various countries as contained in constitutions, statutes and treaties. Carnegie Endowment for International Peace: Oxford University Press (New York), 1929, page 10).

[143] Bolivian Constitution of 23 November 1945, article 39. (This provision was amended on 26 November 1947.)

The child born abroad of their nationals is born an alien except under certain legislations which enable him to obtain the nationality of his parents by option or by settling in their country.

(b) Countries which apply jus sanguinis as a secondary principle.

In certain countries where the principle of jus soli prevails, jus sanguinis has nevertheless played a certain part, but its effects are limited and a child born abroad does not necessarily acquire the nationality of his parents.

Such is the case for example, where the parents themselves were born abroad, or have never resided in the country of which they are nationals, or have resided abroad for a considerable time, or have acquired their nationality by naturalization. In this case, if the country of birth of the child does not grant it nationality by jus soli, the child is born stateless even though his parents may possess a nationality.

The earlier law of the United States of America and of the United Kingdom had such an effect.

In the United States the Nationality Act of 1790 denied nationality to any person whose father, though a citizen of the United States, had never resided in that country.

The Act of 1934, based on the principle of equality of the sexes, mitigated the severity of the earlier rule. It provided that

“Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not extend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless within six months after the child’s twenty-first birthday he or she shall take an oath of allegiance to the United States of America as prescribed by the Immigration and Naturalization Service.”

The Nationality Act of 1940^[151] by its section 201, developed the principle of the Act of 1934; if both parents are citizens of the United States, for the child to acquire United States citizenship it is sufficient for one of the parents to have resided in the United States before its birth.^[152] No period is fixed for the length of this residence. If, however, one of the parents is an alien, the other

[144] *Brazilian* Constitution of 18 September 1946, article 129.

[145] *Chilean* Constitution of 18 September 1925, article 5.

[146] *Cuban* Constitution of 5 July 1940, which came into force on 10 October 1940 article 12.

[147] *Panamanian* Constitution of 1 March 1946, article 9, paragraph 4.

[148] *Paraguayan* Constitution of 10 July 1940, article 38.

[149] *Peruvian* Constitution of 9 April 1933, article 4.

[150] *Uruguayan* Constitution of 18 May 1934, article 65.

[151] 54 Stat. 1137; 8 USC 907.

[152] Section 201 (c).

parent who is a citizen of the United States must have had ten years' residence, five of which must have been after attaining the age of sixteen, in the United States or one of its outlying possessions before the birth of the child. Moreover, in order to retain such citizenship the child must reside in the United States for at least five years during his minority between the ages of thirteen and twenty-one years.[153]

In the United Kingdom, the Nationality Act, 1948, section 5 (1), excludes from citizenship of the United Kingdom a child born abroad whose father, though a citizen of the United Kingdom, was himself born abroad and has United Kingdom nationality only by descent. Such a child nevertheless acquires citizenship of the United Kingdom if born in a territory under British authority, or if his father resides abroad in service of the Crown, or if the birth occurred in a country of the Commonwealth the law of which does not grant him his own nationality, or if the birth is registered in a consulate of the United Kingdom within one year after the day of birth, or subsequently with the authorization of the Secretary of State. Citizenship of the United Kingdom, nevertheless, is not transmitted to the illegitimate child of a citizen of the United Kingdom born abroad. Thus there remains a possibility of statelessness except in certain privileged cases.

In Canada, under the Law of 27 June 1946, article 5, certain children of Canadian parents born outside Canada are not born Canadians if the parents were not born in Canada or if the birth is not registered at a consulate within two years after the birth.

B. A child born in a jus sanguinis country whose father or mother is stateless

By virtue of jus sanguinis, where it forms the basis of the law of nationality, the child takes at birth the nationality of the father or the mother according to whether he is legitimate or illegitimate. This system, if strictly applied, has the result that the legitimate child of a stateless father or the illegitimate child of a stateless mother is born stateless.[154]

C. A child born in a jus sanguinis country whose father and mother are stateless or without known nationality

Many legislations adhere strictly to the principle of jus sanguinis and consequently do not grant nationality to children whose parents are stateless or of unknown nationality. Such children are therefore born stateless in pure jus sanguinis countries.

In certain jus sanguinis countries, however, the rule has been made less strict. These countries grant their nationality to children born of stateless parents, either unconditionally[155] or subject to certain conditions and when the children have reached a certain age.[156]

[153] Section 201 (g).

[154] The following laws may be cited by way of example:

German Law of 22 July 1913, article 4; Austrian Law of 10 July 1945, paragraph 3; Danish Law of 17 April 1925, article 1; Norwegian Law of 8 August 1924, article 1; Swedish Law of 23 May 1924, article 1.

This was also the law in *France* before the Nationality Code of 19 October 1945 (articles 18 and 19). The legitimate child of a stateless father and a French mother was stateless if born outside France (and even if born in France before the Law of 10 August 1927, article 1, paragraph 3).

The protocol relating to a certain case of statelessness signed at The Hague on 12 April 1930, article 1, condemned this cause of statelessness. See annex 2 to part two of this Study.

[155] The following laws may be cited by way of example:

Bulgarian Law of 6 March 1948, article 2; Chinese Law of 5 February 1929, article 1 (4); Greek Law of 12 August 1927, article 1; Japanese Law of 1899, article 4; Polish Law of 20 January 1920, article 2(2); Czechoslovak Law of 9 April 1929, article 2; Yugoslav Law of 1 July 1946, article 6, paragraph 2.

D. Children born of unknown parents in a jus sanguinis country

Children whose birth in the country is established but the identity and consequently the nationality of whose parents is unknown do not receive the nationality of the country if jus sanguinis is strictly applied.

Certain jus sanguinis countries, however, confer their nationality on such children by express statutory provisions.[157]

E. Foundlings

The position of foundlings would, in theory at least, be worse than that of the children referred to in paragraphs B, C, and D above since jus sanguinis does not apply and the place of their birth being uncertain, the jus soli does not operate in their favour unless under statutory provisions they are presumed to be born in the country where they were found. Many legislations contain such a provision.[158]

(2) THE EFFECT OF MARRIAGE UPON THE NATIONALITY OF THE MARRIED WOMAN

The conclusion of the marriage, the period of the marriage, and its dissolution must be considered separately.

A. The effect of the conclusion of marriage upon the nationality of the woman

In many countries, women marrying aliens may now retain their nationality, provided that they do not acquire a new nationality.

This was also the law in *France* from 1889 until the Decree-Law of 12 November 1938.

[156] Such is the law in:

Belgium. Decree of 14 December 1932, article 6, paragraph 1 (option). *France*. French Nationality Code of 19 October 1945, article 44.

[157] The following examples may be given:

Belgian Order of 14 December 1932, article 1, paragraph 2; *Chinese* Law of 5 February 1929, article 1, paragraph 4; *Egyptian* Law of 26 May 1926, article 10, paragraph 3; the *French* Nationality Code of 19 October 1945, article 21; the *Greek* Law of 12 August 1929, article 1; the Constitution of *Guatemala* of 13 March 1945, article 6, paragraph 1; the *Italian* Law of 13 June 1912, articles 1-3; the *Japanese* Law of 1899, article 4; the *Luxembourg* Law of 9 March 1940, article 1, paragraph 2; the *Polish* Law of 20 January 1920, article 5, paragraph 3; *Romanian* Decree No. 125 of 6 July 1948, article 9.

[158] The following examples may be given:

Austria, Law of 10 July 1945, paragraph 12; *Belgium*, Order of 14 December 1932, article 1, paragraph 2; *Canada*, Act of 27 June 1946, St. 7; *Denmark*, Law of 19 April 1925, article 1, paragraph 2; *Egypt*, Law of 26 May 1926, article 10, paragraph 3; and Decree-law No. 19 of 1929, article 6, paragraph 3; *France*, Nationality Code of 19 October 1945, article 22; *Germany*, Law of 22 July 1913, article 4, paragraph 2; *Hungary*, Law of 20 December 1879, article 19; *Italy*, Law of 13 June 1912, article 1-3, paragraph 2; *Luxembourg*, Law of 9 March 1940, article 1 (a); *Netherlands*, Law of 12 December 1892, article 2 (b); *Norway*, Law of 8 August 1924, article 1; *Peru*, Constitution of 9 April 1933, article 4; *Poland*, Law of 20 January 1920, article 5, paragraph 3; *Romania*, Decree of 6 July 1946, No. 125, article 9; *Sweden*, Law of 1924, article 1; *Turkey*, Law of 28 April, 1928, article 2; *United States of America*, Nationality Act of 1940, section 201 "T" and 204 "c" (see Hackworth, *Digest III*, paragraph 221); *Yugoslavia*, Law of 1 July 1946, article 6.

Some legislations, however, deprive a woman of her nationality on marriage with an alien irrespective of whether she acquired a new nationality by the marriage or not.[159]

The legislations of some countries do not, however, confer their nationality on the alien wives of their nationals or confer it only under certain conditions.[160] In such cases marriage results or may result in statelessness.

Statelessness also occurs if the husband is stateless.

B. The effect upon the nationality of the wife of the husband's change of nationality during the marriage
If the husband changes his nationality during the marriage, some legislations deprive the wife of her husband's former nationality without ascertaining beforehand whether she has acquired the new nationality of her husband.[161]167IXII

C. The effect of the dissolution of the marriage upon the nationality of the wife

(a) Widowed or divorced women

[159] This is the case, for example, in:

Germany, Law of 22 July 1913, art. 17, No. 6; *Haiti*, Law of 1907, art. 9, paragraph 2 (see Flournoy and Hudson, *Nationality Laws*, page 329); *Hungary*, Law of 20 December 1879, art. 34; *Spain*, *Civil Code* of 1 May 1889, art. 22.

It was also the case in several countries which have amended their laws on this subject. Thus:

Austria, previous to the Laws of 30 July 1925, paragraph 9 and of 10 July 1945, paragraph 8 (1); *Canada*, previous to the Act of 27 June 1946 (however, since 15 January 1932 the woman may retain her British nationality by making a declaration to that effect if the law of the country of which the husband is a national does not accord her the husband's nationality); *Czechoslovakia*, previous to the Law of 29 May 1947, art. 2 (1); *Japan*, previous to the Law of 1916; *Netherlands*, under the Laws of 12 December 1892, art. 5 and 7, paragraph 2 and of 10 February 1910, art. 7, paragraph 2 and art. 12, the provisions of which have been amended (see Decree of 3 July 1937 (Official Journal 1937, No. 206)); the *United Kingdom*, under section 10 of the British Nationality and Status of Aliens Act of 1914, before its amendment in 1933. The Act of 1933 has now been superseded, as regards the United Kingdom, by the British Nationality Act of 1948 which changed the legal position by providing that marriage does not affect the nationality of the wife, with the exception, however, that an alien who is the wife of a United Kingdom citizen may acquire United Kingdom nationality by registration (section 6 (2) of the British Nationality Act of 1948); the *United States*, between 2 March 1907 and 22 September 1922.

[160] This is the case, for example, in the following countries: *Argentina*, Decree of 8 October 1920, (Flournoy and Hudson, "Nationality Laws", page 12); *Bulgaria*, Law of 6 March 1948, art. 4, paragraph 2; *Canada*, Act of 27 June 1946, sec. 9, paragraph 1 "c" and 2 "c"; *Cuba*, Constitution of 5 July 1940, art. 16 and 13, par. 2; *Czechoslovakia*, Law of 29 May 1947, art. 1, paragraph 1 (except with authorization of the Ministry of the Interior); *France*, Nationality Code of 19 October 1945, art. 39 and 40 (France refuses French nationality to women who have been the subject of an order of deportation or of restriction of residence); *Mexico*, Constitution of 5 February 1917, art. 30, B II; *Nicaragua*, Constitution of 21 January 1948, art. 16, par. 2; *Romania*, Decree No. 125 of 6 July 1948, art. 3 and 13; *United Kingdom*, Nationality Act of 1948, sec. 6 (2) (application to the Secretary of State and registration are necessary); *United States of America*, Nationality Act of 1940 and before that Act, the Act of 22 September 1922, known as the "Cable Act", sec. 2; *USSR*, Law of 22 April 1931, art. 8; *Yugoslavia*, Law of 1 July 1946, art. 9, paragraphs 2, 3 and 5

[161] *Germany*, (Law of 22 July 1913, art. 17, paragraph 6, as applied) is a case in point.

Under most legislations, widowed or divorced women retain the nationality of the husband which they have acquired and they are not automatically deprived of their nationality. Under a few laws, such as the Egyptian Decree of 1929 (article 14, paragraph 1) denationalization is conditional on the resumption of the original nationality.

Nevertheless, a woman becomes stateless in” cases where, on the sole grounds of the dissolution of her marriage or as a result of renunciation subsequent to its dissolution, she loses the nationality of her husband, irrespective of whether she has resumed her nationality of origin.[162]

(b) Invalid or fictitious marriages

If a woman, in virtue of her marriage, assumes the nationality of her husband and loses her nationality of origin, such marriage in order to produce those effects must be a valid marriage.

Where laws are, in conflict, however, the question of the validity of the marriage may be decided differently in the wife’s country of origin and in the husband’s country. If, on the one side, the wife’s country regards the marriage as valid and if the wife has lost her first nationality in virtue of the marriage and if, on the other side, the husband’s country regards the marriage as invalid or fictitious and refuses to the wife the nationality of the husband, then the wife becomes stateless.[163]

(3) EFFECT OF LEGITIMATION UPON THE NATIONALITY OF THE ILLEGITIMATE CHILD

Legitimation of an illegitimate child who had at birth received the nationality of its mother may result in its becoming stateless.

Thus, the Austrian Law of 10 July 1945, paragraph 2 (7) provides:

“In the event of the marriage of the mother with an alien, illegitimate children shall lose their nationality at the same time as the mother, only if they are made legitimate in virtue of the marriage.”

Since, however, under certain legislations legitimation does not confer the nationality of the father on the child, legitimated children may lose Austrian nationality without acquiring a new nationality. This is also the case of German illegitimate children legitimated by an alien father the law of whose country does not confer the father’s nationality on legitimated children. Thus, in its reply to the League of Nations enquiry of 1929, the German Government stated that “an illegitimate child of German nationality loses that nationality as the result of legitimation by a foreigner when this is valid under German law ... Legitimation validly effected by a foreigner involves the loss of Reich

[162] The following examples may be given: *Liberia*, Law of 8 February 1922, article 70 (if resident abroad); *The Netherlands*, Law of 12 December 1892, article 9 (revised text, see Decree of 3 July 1937; option of repudiation).

[163] Article 42 of the French Nationality Code provides - "The wife does not acquire French nationality if her marriage with a French citizen is declared invalid by the judgment of a French court or a judgment enforceable in France, even if the marriage was contracted in good faith."

Article 8, paragraph I of the Romanian law of 19 January 1939 provided: "The wife shall be deemed not to have acquired the Romanian nationality of the husband, where the marriage is invalid or declared invalid, even if it is putative, provided that no child was born of the marriage." Since Decree No. 125 of 6 July 1948, articles 3 and 13, marriage no longer confers Romanian nationality on an alien woman marrying a Romanian.

nationality by the illegitimate child. This is not contingent on the child's acquiring another nationality.[164]

(4) THE EFFECT OF ADOPTION

In general, adoption does not confer the nationality of the adoptive parent on the adopted person.[165]

It follows that if the national law of the adopted person divests him of his nationality in virtue of the fact that the adoptive parent is an alien the adopted person becomes stateless.[166]

(5) THE VOLUNTARY RENUNCIATION OF NATIONALITY

Certain countries permit their nationals to request release from their allegiance and grant them such release without making it contingent on the acquisition by the person concerned of a new nationality.[167]1731

If the person thus released has not acquired a new nationality, he becomes stateless in virtue of such release.

(6) PROLONGED SOJOURN ABROAD

Under some legislations, persons absent for more than a stated period are deprived of their nationality.

This measure is not punitive in character.

In the United States, under the Nationality Act of 1940, section 404 "b", a naturalized citizen loses American citizenship after three years residence in his native country. The period is extended to five years (Section 404 "c") in the event of residence in another country. An exception is made in the case of persons who have resided in the United States for twenty-five years and who have reached the age of sixty-five (section 406 "a").

[164] "League of Nations, "Bases of Discussion," *Legal Questions* 1929, V.1, page 107. Article 16 of The Hague Convention of 12 April 1930 provides for this case.

[165] Among the few legislations conferring the nationality of the adoptive parent on the adopted person mention may be made of the *Japanese* Law of 1899, article 5, paragraph 4 and the *Polish* Law of 20 January 1920, article 6.

[166] Article 17 of The Hague Convention of 12 April 1930 covers this case.

[167] This is the case *inter alia*, in the *United States of America*, Nationality Act of 1940, section 401 "b" (see Hackworth Digest III, page 161, paragraph 242); in *Germany*, Law of 22 July 1913, article 17, No. 1; in the *Union of Soviet Socialist Republics*, Law of 22 April 1931, article 14 and Law of 19 August 1938, article 4.

A particular case of renunciation of nationality with no guarantee of possession of another nationality occurs in article 45 of the French Nationality Code of 19 October 1945, which authorizes a person born in *France* of foreign parents to refuse, within the six months preceding the year in which he attains his majority the French nationality which he would otherwise acquire on his majority, provided that he has resided previous to that date, and since the age of 16, in France. Renunciation of French nationality within the six months preceding majority is also admitted in the special cases to which articles 19, 24 and 25 of the Nationality Code refer.

The United Kingdom British Nationality Act of 1948, section 20(4) provides that naturalized subjects who have resided more than seven years abroad and who have omitted to register annually may be deprived of their citizenship.

The Canadian Act of 27 June 1946, section 21 "c" contains a similar provision. The period is six years.

In the Scandinavian countries' nationals born abroad lose their nationality on attaining the age of twenty-two years if they have been constantly domiciled abroad.[168]

Similar provisions are to be found in other legislations.[169]

Further cases of statelessness created by the inadequacy or discordance of national legislations might be cited; the grounds mentioned, however, are in practice the cause of almost all cases of statelessness caused by inadequacy or discordance of national legislations.

II. THE DEPRIVATION OF NATIONALITY AS A PENALTY

A. Cases of individual forfeiture of nationality as a penalty are frequent and vary from country to country. In such cases, the State accuses one of its nationals of committing an act or adopting an attitude contrary to its interests.

The main grounds for deprivation of nationality as a penalty are ascertained to be the following:

(a) Entry into the service of a foreign government, more particularly, enrolment in the armed forces of a foreign country;[170]176l

(b) Departure abroad without authorization;[171]

[168] *Denmark*, Law of 17 April 1925, section VI; *Norway*, Law of 8 August 1924, article 9; *Sweden*, Law of 23 May 1924, article 9.

[169] For example: *Cuban constitution* of 1 July 1940, article 15, paragraph 3 (naturalized citizen residing three years in his native country); *Guatemalan constitution* of 10 January 1945, article 12, paragraph 3 (naturalized citizen residing five years abroad); *Hungarian Law* of 20 December 1879, article 31: absence of ten years, unless the person is in possession of a *Hungarian passport* or has caused himself to be registered by the appropriate authorities; *Mexican constitution* of 5 February 1917, article 37, paragraph 3 (naturalized citizen residing five years abroad); *Netherlands Law* of 12 December 1892, article 7, paragraph 5 (see Decree of 3 July 1937). The law affects only persons born abroad, absence of ten years unless the person concerned makes an express declaration to retain his nationality; *Turkish Law* of 28 May 1928, article 10 (*in fine*): absence of five years unless registered with a consulate; *Yugoslav Law* of 1 July 1946, article 15: absence of fifteen years after the age of eighteen; loss of nationality by the father affects children born abroad.

[170] As for example: *Austria*, Law of 10 July 1945, paragraph 9(2); *Brazil*, Constitution of 18 September 1946, article 130(2); *Bulgaria*, Law of 6 March 1948, article 8(3); *Cuba*, Constitution of 1 July 1940, article 15, paragraph 2; *Egypt*, Decree Law of 27 February 1929, article 13 (this article does not refer to *natural-born* Egyptians); *France*, Nationality Code of 19 October 1945, article 97; *Mexico*, Constitution of 5 February 1917, article 37, paragraph 2; *Netherlands*, Law of 12 December 1892, article 7 (4); *Panama*, Constitution of 1 March 1946, article 15, paragraph 2; *Peru*, Constitution of 9 April 1933, article 7, paragraph 1; *Poland*, Law of 20 January 1920, article 11; *Romania*, Decree No. 125 of 6 July 1948, article 17, paragraph 1; *United States of America*, Nationality Act of 1940, section 401 "d"; *Turkey*, Law of 28 May 1928, article 10.

[171] As for example- *Bulgaria*, Law of 6 March 1948, article 81(l); *Romania*, Law of 17 January 1948, Decree No. 125 of 6 July 1948, article 17, paragraph 4.

- (c) Expatriation to evade military obligations;[172]
- (d) Disloyal attitude or activities;[173]
- (e) Aid furnished to Axis Powers during the Second World War;[174]
- (f) Naturalization obtained by fraud;[175]
- (g) Penal offences committed by a naturalized citizen.[176]

B. In such cases nationality is withdrawn by an express decision (judgment of a court or decision of an administrative authority) or is lost *de plano*. In the latter case, any authority or person may offer a plea.

III. RACIAL, RELIGIOUS OR POLITICAL PERSECUTION

This section refers principally to measures for the deprivation of nationality applied by the Nazi and fascist governments against their Jewish nationals and opponents of the regime which constituted a part of the body of the measures of racial, religious or political persecution.

Germany. A law of 14 July 1933 instituted a procedure for deprivation of nationality designed to revoke naturalizations granted between 9 November 1918 and 30 January 1933. The object was to denationalize all persons (primarily Jews) whose naturalization was deemed to be undesirable.

One of the so-called Nürnberg Laws of 15 September, 1935 divided Germans into citizens and subjects. All Jews became subjects without, however, becoming stateless.

In addition, up to 23 November 1941, the Nazi Government followed a policy of individual denationalization. The number of such denationalizations increased steadily.

[172] The following may be cited: *Bulgaria*, Law of 6 March 1948, article 8, paragraph 2; *Poland*, Law of 31 March 1938; *United States of America*, Nationality Act of 1940, section 401 "g" (desertion); *Turkey*, Law of 28 May 1928, article 10, paragraph 2 and article 11 (b).

[173] The following may be cited: *Belgium*, Law of 30 July 1934; *Bolivia*, Constitution of 23 November 1945, article 45; *Brazil*, Constitution, article 130; *Canada*, Act of 27 June 1946, section 21 "d" (does not relate to natural-born citizens); *Chile*, Constitution of 18 September 1925, article 6, paragraph 3; *Ecuador*, Constitution of 31 December 1946, article 15, paragraph 1; *France*, Nationality Code of 19 October 1945, articles 98-100; *Guatemala*, Constitution of 10 January 1945, article 12, paragraph 2; *Honduras*, Constitution of 28 March 1936, article 12, paragraph 3; *Nicaragua*, Constitution of 21 January 1948, article 19; *Panama*, Constitution of 1 March 1946, article 15, paragraph 3; *Poland*, Law of 31 March 1938; *Romania*, Decree of 6 July 1948, article 17, paragraph 3; *United Kingdom*, Nationality Act of 1948, section 20(3) (does not relate to natural-born citizens); *United States of America*, Nationality Act of 1940, section 401 "e", "h"; *Turkey*, Law of 28 May 1928, article 11; *Yugoslavia*, Law of 1 July 1946, article 16.

[174] Deprivation of nationality was used as a purge measure, see, for example: the *Romanian* Law of 29 May 1947, article 2(b); the *Yugoslav* Law of 20 October 1946 and that of 1 December 1946.

[175] The following may be cited: *Canada*, Act of 27 June 1946, section 21 (1) "b"; *Egypt*, Decree-Law of 27 February 1929, articles 10 and 13; *United Kingdom*, Nationality Act of 1948, section 20(2).

[176] The following may be cited: *France*, Nationality Code of 19 October 1945, article 98, No. 5; *United Kingdom*, British Nationality Act of 1948, section 20, 3(c) (naturalized citizens sentenced to imprisonment for a term of not less than twelve months within five years after naturalization).

On 25 November 1941, the XIth Nationality Ordinance was promulgated; article 2 divested of their German nationality all German Jews residing abroad or who left Germany after that date. Loss of nationality was followed by confiscation of property.

Italy. In Italy, a decree of 17 December 1938, No. 1728, article 23, withdrew all naturalization certificates issued to Jews after 1 January 1919.

Other countries subject to Axis domination.

Similar measures were taken in other Axis satellite countries or countries under Axis domination.[177]

The laws and decrees enacting such measures have been either repealed or annulled since the liberation.

IV. THE EXODUS OF NATIONALS CAUSED BY CHANGES IN POLITICAL OR SOCIAL REGIMES

From time immemorial, revolutions and civil wars which have had the effect of changing political or social regimes have caused the exodus of persons opposed to the new regimes or adversely affected by the changes that occurred.

During the nineteenth century, after the insurrections of 1830 and 1863, many Polish refugees sought asylum in the countries of Western Europe and the United States. In 1872 there was an exodus of Carlists from Spain.

Since the First World War, however, the exodus of political opponents reached proportions previously unknown—Russian refugees after the revolution of October 1917, Armenian refugees, Italian refugees after the assumption of power by the Fascists, German refugees after the rise of Hitler, Austrian refugees after the *Anschluss*, Spanish refugees after the defeat of the Republican Government in 1939.

The current of expatriation continues and affects certain countries in Eastern Europe and Asia.

Only part of the refugees are stateless *de facto*, the others are stateless *de jure* having lost their nationality of origin.

V. THE INADEQUACY OF TREATIES GOVERNING TERRITORIAL SETTLEMENTS OR THEIR DEFECTIVE APPLICATION

Treaties involving the cession of territories should not involve the loss of nationality of the inhabitants. Territories can be ceded in such a way that inhabitants of the ceded territory possessing the nationality of the State ceding the territory acquire the nationality of the cessionary State, unless they retain the nationality of the ceding State.

Unfortunately this is not always the case. For example, the peace treaties concluded at the end of the First World War resulted in many cases of statelessness.

A. Treaties regulating the Austro-Hungarian succession[178]

[177] As for example: "Protectorate" of *Bohemia and Moravia*, Ordinance of 3 October 1939; *French "State"*, Law of 22 July 1940; *Hungary*, Law of 24 May 1938 and 3 May 1939; *Romania*, Decree-Law of 21 January 1938; Decrees of 21 September 1938, 9 August 1948 and 30 October 1941; "State" of *Slovakia*, Law of 15 May 1942 and Decree of 14 May 1943 etc.

[178] Treaty of Peace of Saint-Germain-en-Laye with Austria of 10 September 1919; Treaty of Peace of Trianon with Hungary of 4 June 1920.

The framers of these treaties did not succeed in avoiding the creation of cases of statelessness. The principal reason for this failure was the fact that the Treaty of Saint-Germain-en-Laye (article 70)[179] and the Treaty of Trianon (article 61)[180] adopted the special conception of "citizenship" (*Heimatrecht*) instead of the simple conception of domicile.

In Austria, citizenship was a legal tie between an individual and a commune and was the basis of nationality.

Even before the war of 1914, the determination of citizenship had given rise to numerous disputes in Austria-Hungary. Before 1918 these issues had been settled by administrative courts sitting in Vienna and Budapest, but from 1919 onwards these courts ceased to be competent in the territories ceded to other States. The courts of the successor States sometimes gave an interpretation of the conditions for the acquisition and loss of citizenship differing from that given by the Austrian and Hungarian courts. As a result of these differences of interpretation, many persons were regarded as stateless.

Moreover, the peace treaties allowed the successor States[181] to make the grant of nationality dependent upon a special authorization in the case of persons whose citizenship was acquired after 1910.

In the territory ceded to Italy, the conditions for the acquisition of Italian nationality were still more difficult.[182]

The treaties for the protection of minorities, which imposed obligations upon the successor States, with the exception of Italy, included provisions concerning the grant of nationality to the inhabitants of the former territory of the Austro-Hungarian Monarchy.

These provisions were intended to prevent the creation of cases of statelessness. In Poland and Romania, nationality was to be granted to persons domiciled in the territory, or born in the territory of parents domiciled therein.[183]

In the Kingdom of the Serbs, Croats and Slovenes and in Czechoslovakia, nationality was to be granted to persons having domicile in or citizenship of the territory, or born in the territory of parents domiciled therein.[184]

[179] Article 70 of the Treaty of Saint-Germain-en-Laye reads as follows:

"Every person possessing rights of citizenship (*pertinenza*) in territory which formed part of the territories of the former Austro-Hungarian Monarchy shall obtain *ipso facto* to the exclusion of Austrian nationality the nationality of the State exercising sovereignty over such territory."

[180] Article 61 of the Treaty of Trianon is similarly worded.

[181] Article 76 of the Treaty of Saint-Germain-en-Laye and article 62 of the Treaty of Trianon.

[182] Under article 71 of the Treaty of Saint-Germain-en-Laye, Italian nationality was not acquired *ipso facto* by persons possessing rights of citizenship in the territories transferred who were not born there, or by persons who acquired their rights of citizenship after 24 May 1915, or who acquired them only by reason of their official position.

[183] *Poland*, Treaty of 28 June 1919, articles 3 and 4; *Romania*, Treaty of 9 December 1919, articles 3 and 4

In Austria and in Hungary, nationality was to be granted to persons who had been citizens of or had been born in the territory (without, however, possessing the nationality of another State).[185]

These treaties contained a number of gaps which permitted cases of statelessness to occur. Their defects, however, were considerably aggravated by the laws implementing them which were adopted in the successor States[186] and by the practice followed.[187]

Before the First World War there were a number of stateless persons in Austria-Hungary and the Balkan States. The defects in the treaties which followed and the resistance of the States concerned extended the evil instead of restricting it.

B. The Treaty of Versailles of 20 June 1919[188]

Broadly speaking, the Treaty of Versailles adopted the domicile of the inhabitants as criterion for the granting of nationality, and consequently gave rise to much fewer cases of statelessness than the treaties concerning the Austro-Hungarian succession. It did give rise to some cases, however, particularly among the inhabitants of the territories ceded to Poland. Article 91, paragraph 2,

[184] *Kingdom of the Serbs, Croats and Slovenes*, Treaty of 10 September 1919, articles 3 and 4; *Czechoslovakia*, Treaty of 10 September 1919, articles 3 and 4.

[185] *Austria*, Peace Treaty of Saint-Germain-en-Laye of 10 September 1920, articles 64 and 65; *Hungary*, Peace Treaty of Trianon of 4 June 1920, articles 56 and 57.

[186] Thus the *Polish* Law of 10 January 1920 adopted citizenship instead of domicile as the criterion. The law regards as domiciled in Poland "any person having citizenship in one of the communities of the Polish State formerly belonging to Austria or Hungary" (article 2, paragraph 1, sub-paragraph 2).

The *Romanian* Law of 25 November 1924 replaced the simple conception of domicile by the qualified conception of "administrative domicile" which was equivalent to citizenship.

In the *Serb-Croat-Slovene* State, of the two different criteria-citizenship as referred to in article 61 of the Treaty of Trianon and article 70 of the Treaty of Saint-Germain-en-Laye on the one hand, and domicile as referred to in article 4 of the Minorities Treaty on the other hand, - the latter alone was adopted.

Czechoslovakia, on the other hand, adopted the criterion of domicile (Law of 9 April 1920).

[187] See as regards the manner in which the time-limits and conditions of option were applied:

The *Italian* Decrees of 30 December 1920 (No. 1890), of 29 January 1922 (No. 41), of 28 April 1923 (No. 1283), and of 10 January 1926.

The *Serb-Croat-Slovene* Regulations of 25 November 1920 and 30 August 1921.

The *Austrian* Ordinances of 9 September 1919, 27 November 1921 and 28 June 1921.

Hungarian Ordinance No. 6500 of 1921

[188] The articles concerning the nationality of the inhabitants of the territories detached from Germany are as follows: article 91 for the territories ceded to Poland, article 105 for the Free City of Danzig, article 99 for the Territory of Memel, article 112 for Schleswig, article 84 for Czechoslovakia, article 36 for Eupen and Malmédy, article 27 of the annex to article 50 for the Saar Territory, and article 54 and annex for Alsace-Lorraine.

states that persons "who became resident in these territories after 1 January 1908" will not acquire Polish nationality without a special authorization from the State. A similar reservation is to be found in article 112 concerning Schleswig and article 36 concerning Eupen and Malmédy. In regard to Alsace-Lorraine, France reserved the right to refuse French nationality to certain categories of persons who possessed Alsace-Lorraine citizenship together with German nationality.

It would have been desirable for all persons who did not acquire the nationality of the cessionary State and did not possess a nationality other than German nationality to retain the latter nationality. This was not always the case.[189]

Other territorial arrangements than those put into effect after the First World War could be quoted which gave rise to cases of statelessness, but the arrangements of 1919 are especially typical of territorial arrangements giving rise to statelessness.

Chapter 2 ATTEMPTS MADE UP TO THE PRESENT TO ELIMINATE THE CAUSES OF STATELESSNESS

As has been stated on page 131 above, the rules concerning nationality are laid down by the national legislations.

Any State may change these rules either on its own initiative or as the result of concerted international action. Such action may take various forms: individual bilateral or multilateral conventions, general conventions (whether or not concluded under the auspices of an international organization) or recommendations formulated by international organizations for guidance.

Isolated action by one State or a number of States may be successful, but such success can only be partial as the scope of any national legislation is necessarily limited. Even on the territory of the State concerned, the inadequacy of the other legislations will inevitably continue to be felt, unless that State adopts the radical solution of regarding as its nationals all persons on its territory, like the Ottoman Empire and the Union of Soviet Socialist Republics.[190]

Systematic international action alone can provide a complete solution for the problem of statelessness, at least in so far as concerns stateless persons who are not refugees.

I. REFORM OF NATIONAL RIGHTS IN RESPECT OF NATIONALITY

[189] In the case of Poznan, inhabitants who took up residence after 1 January 1908 and whom Germany refused to retain as nationals became stateless.

The difficulty in the case of persons possessing Alsace-Lorraine citizenship but refused French nationality by France was that at this time immediate nationality was unknown in Germany. The persons concerned had therefore to acquire citizenship in one of the Reich *Länder*.

[190] *Ottoman Empire*. Law of Nationality of 19 January 1869: article 9: "Every person inhabiting the imperial dominions is considered as an Ottoman subject and treated as an Ottoman subject. If he (or she) is a foreign subject, it is necessary for him (or her) to prove it in a regular manner." (*Vide* Flournoy and Hudson, page 569).

USSR. Decree No. 202 of 29 October 1924: article 3. "Every person in the territory of the Union of Soviet Socialist Republics is deemed to be a citizen of the Union of Soviet Socialist Republics in so far as he does not prove that he is a foreign citizen." *id.* Law of 22 April 1931, article 3 (*vide* Flournoy and Hudson, page 512). These provisions, however, were annulled by the law on citizenship of the USSR adopted by the Supreme Council of the USSR on 19 August 1938 (*vide* Vyshinsky, "The Law of the Soviet State", pages 291-292).

Reform of this kind has resulted from the conclusion of international conventions or from legislative reforms carried out by a State on its own initiative.

(1) INTERNATIONAL CONVENTIONS

The scope of the present Study does not include conventions on nationality aimed at avoiding double nationality or settling disputes of sovereignty resulting from the existence of double nationality.[191]

A. The Hague Conference of 1930

This Conference represents the sole attempt to settle the question of statelessness by means of general conventions.

The Conference for the Codification of International Law convened by the League of Nations, which was held at The Hague from 13 March to 12 April 1930, sought to provide universal solutions for the problem of statelessness.

The Conference adopted three agreements on the subject, consisting of one convention and two protocols. It further drafted a number of recommendations.

(a) Agreements adopted by the Hague Conference (1930)[192]

(i) Convention on Certain Questions relating to the Conflict of Nationality *Laws, The Hague, 12 April 1930*. [193]

Chapter I (articles 1 to 6) is devoted to general principles and contains no provisions for the elimination of statelessness.

Chapter II deals with expatriation permits and contains an article 7 which states that the issue of an expatriation permit shall not entail the loss of nationality if the person to whom it is issued does not possess or acquire another nationality.

Chapter III (articles 8 to 11) deals with the nationality of married women. Its principal object is to prevent a married woman from losing her nationality without acquiring a new one.

Chapter IV (articles 12 to 16) concerning the nationality of children and chapter V (article 17) concerning adoption aim at ensuring that all children will possess a nationality.

The Convention came into force on 1 July 1937 and on 31 July 1946 was binding upon thirteen States. It had also received twenty-seven signatures not followed by ratification.[194]

[191] See the treaties known as "Bancroft Conventions" of the end of the nineteenth century and the Code of Private International Law of 20 February 1928 (articles 9 to 14) adopted at Havana by the Sixth Pan American Conference.

[192] For a critical study of the scope of the Agreements adopted by the Conference, see document A/CN.4/1, Nos. 76 to 78.

[193] See documents of the Conference for the Codification of International Law, held at The Hague from 13 March to 12 April 1930, C.224.M.111.1930 V (League of Nations Publications, V. Legal Questions, 1930.V.3). See also League of Nations Treaty Series (No. 4137, Vol. 179, page 89) and annex No. I to part two of the present Study.

[194] States Parties: Australia, Belgium, Brazil, Burma, Canada, China, India, Monaco, Netherlands, Norway, Poland, Sweden, United Kingdom.

(ii) Protocol relating to a Certain Case of Statelessness, The Hague, 12 April 1930.V[195]201XVI **Article 1 which is decisive in the case referred to in the Protocol provides as follows:**

“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 Protocol came into force on 1 July 1937 and on 31 July 1946 was binding on eleven States.

In addition it had received twenty signatures not followed by ratification.[196]

(iii) Special Protocol concerning Statelessness, The Hague, 12 April 1930.[197]

This protocol covers the case of a stateless person who is indigent, sick or has been sentenced to not less than one month's imprisonment. Under article 1 of the protocol, the State whose nationality the stateless person last possessed is bound to readmit him.

This protocol is not yet in force as ten ratifications or accessions are necessary for this, By 31 July 1946, however, it had received only nine.

It had further received twelve signatures not followed by ratification.[198] It should be noted that the convention and the two protocols referred to above contain an article providing that disputes relating to interpretation or application shall be referred to arbitration or judicial settlement at the request of one of the Parties.

States which have signed but not ratified: Chile, Colombia, Cuba, Czechoslovakia, Denmark, Egypt, Estonia, France, Free City of Danzig, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Luxembourg, Mexico, Peru, Portugal, El Salvador, Spain, Switzerland, Union of South Africa, Uruguay, Yugoslavia.

(League of Nations, Official Journal, Special Supplement No. 193, Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, 21st List, 10 July 1944 and Supplement to the 21st List. Special Supplement No. 195, 31 July 1946.)

[195] See Acts of the Conference for the Codification of International Law, held at The Hague from 13 March to 12 April 1930, C.226.M.113.1930.V (League of Nations Publications, V. Legal Questions, 1930.V.6). See also League of Nations Treaty Series, No. 4138 Volume CLXXIX, page 115; and annex 2 to part two of the present Study.

[196] States Parties: Australia, Brazil, Burma, Chile, China, India, Netherlands, Poland, Salvador, United Kingdom, Union of South Africa. States which signed but failed to ratify: Belgium, Canada, Colombia, Cuba, Czechoslovakia, Denmark, Egypt, Estonia, France, Free City of Danzig, Greece, Ireland, Japan, Latvia, Luxembourg, Mexico, Peru, Portugal, Spain, Uruguay (League of Nations, Official Journal, Special Supplement No. 193). (Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, 21st list, 10 July 1944 and Supplement to the 21st list, special Supplement No. 195, 31 July 1946.)

[197] See Acts of the Conference for the Codification of International Law, held at The Hague from 13 March to 12 April 1930, C.227.M.114, 1930 V (League of Nations Publications, V. Legal Questions, 1930.V.6). (Compare annex 3 to part two of the present Study.)

[198] Ratifications or accessions: Australia, Belgium, Brazil, Burma, China, India, Salvador, Union of South Africa, United Kingdom. States which signed but failed to ratify: Canada, Colombia, Cuba, Egypt, Greece, Ireland, Luxembourg, Mexico, Peru, Portugal, Spain, Uruguay (League of Nations, Official Journal, Special Supplement No. 195). (Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, 21st list, 10 July 1944 and Supplement to the 21st list, Special Supplement No. 193, 31 July 1946.)

The rules contained in the Hague Agreements have had a two-fold influence.

They have become binding upon the States Parties to these Agreements and they have been partly responsible for the trend taken by legislation in various States.

(b) Recommendation adopted by the Hague Conference

The Conference adopted a number of recommendations, the first of which concerns statelessness:

“The Conference is 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, and that the League of Nations should continue the work which it has already undertaken for the purpose of arriving at an international settlement of this important matter.”[199]

In conformity with this recommendation a number of States have amended their domestic law.

B. The VIIIth International Conference of American States (Montevideo, 1933)

This Conference, held at Montevideo from 3 to 26 December 1933, was also guided by this recommendation: The Convention on the Nationality of Women of 26 December 1933 provides in Article 1, in regard to the States Signatories, that:

“There shall be no distinction based on sex as regards nationality in their legislation or in their practice.” [200]

The Convention on Nationality of 26 December 1933 provides, in article 6, that:

“Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children.” [201]

It can be seen that this last article which is based on the desire to free women from the obligation of adopting the nationality of their husbands may give rise to cases of statelessness if it is not supplemented by a reservation. As long as the rule set out in article 6 is not universally adopted and as long as some legislations continue officially to deprive a woman married to a foreigner of her nationality, the formula will in certain cases have a purely negative effect by refusing the husband's nationality to the wife and will thus leave her without nationality. It would be

[199] Acts of the Conference for the Codification of International Law, C.351, M.145, 1930 V. Vol. 1, page 162.

[200] Ratifications of this Convention deposited 1 July 1937: Chile, Colombia, Ecuador, Guatamala, Honduras, Mexico, United States of America. States which signed but failed to ratify: Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Haiti, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay. (See document E/CN.6/79, pages 19-20.)

[201] Ratifications of this Convention deposited on 1 July 1937: Chile, Ecuador, Mexico (with reservations, in regard to article 6 in particular). The Convention was signed, but not subsequently ratified, by Uruguay. (See document E/CN.6/79, pages 20-21.)

appropriate therefore to supplement the formula by adding that if a wife loses her former nationality on marriage the nationality of the husband shall be conferred upon her.[202]

(2) DOMESTIC LEGISLATION

Since the 1930 Hague Conference for the codification of international law, changes have taken place in the domestic law of nationality of some countries. Some of these changes have the effect of limiting statelessness to a greater or lesser degree.

In order to prevent statelessness from resulting from marriages between spouses of different nationalities, many countries no longer refuse their nationality to a foreign woman married to one of their nationals.[203]

Other countries have repealed the rule denationalizing automatically and unconditionally a woman marrying a foreigner.[204]

There has also been a certain improvement in laws relating to the acquisition of nationality by birth.[205]

Unfortunately, these advances are offset by regression in certain respects in the legislation of some countries.

II. ABOLITION OF DEPRIVATION OF NATIONALITY AS A PENALTY

A. International conventions

At The Hague Conference of 1930 a proposal was made to the effect that loss of nationality should not be imposed as a punishment. This was not adopted.

B. Domestic legislation

Far from being abolished or limited, deprivation of nationality as a penalty has been introduced or extended in a large number of countries since the First World War.

[202] The Hague Convention of 12 April 1930 was specially framed to obviate this danger. Indeed, article 8 of that Convention provides: "If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband." A certain number of domestic laws have adopted the same precaution. (See below, page 146.)

[203] The following examples may be given:

Canada, Law of 27 June 1946; *Cuba*, Constitution of 10 October 1940, article 13, paragraph 2; *Guatemala*, Constitution of 13 March 1945, article 8, paragraph 4; *Peru*, Constitution of 9 April 1933, article 6; *United Kingdom*, British Nationality Act, 1948; *Venezuela*, Constitution of 5 July 1947, article 12.

[204] The following examples may be given:

Austria, Laws of 10 July 1945 and 30 July 1925; *Canada*, Law of 27 July 1946; *United States*, Nationality Act, 1940; *Japan*, Law of 1916; *United Kingdom*, British Nationality and Status of Aliens Act, 1933, now superseded by the British Nationality Act, 1948; *Czechoslovakia*, Law of 29 May 1947.

[205] The following examples may be given:

Bulgaria, Law of 6 March 1948, some of the *Latin-American States* (mitigation of the exclusiveness of the *jus soli* principle); *United States*, Nationality Act, 1940; *France*, Nationality Code, 19 October 1943, article 18.

This tendency has not ceased to grow, and no reaction against it is discernible.

III. STATELESSNESS RESULTING FROM RACIAL, RELIGIOUS AND POLITICAL PERSECUTION

This cause of statelessness, which resulted from the Nazi and Fascist regimes, disappeared with their fall.[206]

IV. STATELESSNESS RESULTING FROM MASS EMIGRATION DUE TO CHANGES OF POLITICAL OR SOCIAL SYSTEMS

The nature of this cause of statelessness prevents its remedy by any international agreement.

On the national level, mention should be made of the USSR Government's Decree of 14 June 1946, which permitted Russian refugees deprived of nationality by the Decree of 15 December 1921 and residing in certain countries to regain Soviet nationality by simple declaration made before a specified date in a USSR consulate.

As has been said, however, since the Second World War many laws promulgated in the countries of Eastern Europe have deprived dissident emigrants of their nationality.

V. EFFECT OF TREATIES PROVIDING FOR TERRITORIAL SETTLEMENTS

A. Territorial changes made after the First World War[207]

The numerous cases of statelessness resulting from transfer of territorial sovereignty under the 1919 treaties (see above, 1, (5)) constrained the successor States to seek remedies for the situation.

The following bilateral agreements were concluded for this purpose:

Treaty signed at Brno on 7 June 1920 between the Austrian and Czechoslovak Republics, with regard to citizenship and to the protection of minorities.

Legal and Financial Convention signed at Warsaw on 23 April 1925 between the Polish and Czechoslovak Republics.

Rapallo Agreement of 12 November 1920 between Italy and the State of the Serbs, Croats and Slovenes.

Agreement of 12 September 1924 between Yugoslavia and Austria.

Etc.

General conventions also were concluded: for example the Rome Convention of 6 April 1922 ratified by Italy, Austria and Poland.[208]

These various international agreements have admittedly allowed many stateless persons to regain a nationality. Nevertheless, their effect has been limited.

[206] See above, page 141.

[207] Certain clauses in international agreements concerning exchanges of population in the Near East concluded shortly after the First World War settled the question of change of nationality of exchanged persons. A case in point is article 7 of the Agreement between Greece and Turkey signed at Lausanne on 30 January 1923 (cf. E/CN.6/79, paragraph 32).

[208] Dates of ratifications: Austria, 8 March 1924; Italy, 21 November 1924; Poland, 1 June 1929.

B. Territorial changes and transfers of population taking place after the Second World War

Many territorial changes were made after the Second World War.

(a) Peace treaties

Five peace treaties have been concluded up to the present.[209] Of the five peace treaties concluded at Paris on 10 February 1947, only the treaty with Italy contains provisions relating to the nationality of the inhabitants of the ceded territories (articles 19 and 20).[210]

[209] These five treaties were concluded respectively with Bulgaria, Finland, Hungary, Italy and Romania.

[210] Article 19

1. Italian citizens who were domiciled on June 10, 1940, in territory transferred by Italy to another State under the present Treaty, and their children born after that date, shall, except as provided in the following paragraph, become citizens with full civil and political rights of the State to which the territory is transferred, in accordance with legislation to that effect to be introduced by that State within three months from the coming into force of the present Treaty. Upon becoming citizens of the State concerned they shall lose their Italian citizenship.

2. The Government of the State to which the territory is transferred shall, by appropriate legislation within three months from the coming into force of the present Treaty, provide that all persons referred to in paragraph 1 over the age of eighteen years (or married persons whether under or over that age) whose customary language is Italian, shall be entitled to opt for Italian citizenship within a period of one year from the coming into force of the present Treaty. Any person so opting shall retain Italian citizenship and shall not be considered to have acquired the citizenship of the State to which the territory is transferred. The option of the husband shall not constitute an option on the part of the wife. Option on the part of the father, or, if the father is not alive, on the part of the mother, shall, however, automatically include all unmarried children under the age of eighteen years.

3. The State to which the territory is transferred may require those who take advantage of the option to move to Italy within a year from the date when the option was exercised.

4. The State to which the territory is transferred shall, in accordance with its fundamental laws, secure to all persons within the territory, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 20

1. Within a period of one year from the coming into force of the present Treaty, Italian citizens over 18 years of age (or married persons whether under or over that age), whose customary language is one of the Yugoslav languages (Serb, Croat or Slovene), and who are domiciled on Italian territory may, upon filing a request with a Yugoslav diplomatic or consular representative in Italy, acquire Yugoslav nationality if the Yugoslav authorities accept their request.

2. In such cases, the Yugoslav Government will communicate to the Italian Government through the diplomatic channel lists of the persons who have thus acquired Yugoslav nationality. The persons mentioned in such lists will lose their Italian nationality on the date of such official communication.

3. The Italian Government may require such persons to transfer their residence to Yugoslavia within a period of one year from the date of such official communication.

4. For the purposes of this Article, the rules relating to the effect of options on wives and on children, set forth in Article 19, paragraph 2, shall apply.

Apparently, as a result of the inclusion in these articles of the concept of domicile and of the automatic imposition (except where option is exercised) of the nationality of the cessionary country, many new cases of statelessness should theoretically be avoided.

This text deals only with Italian nationals. It does not do away with existing cases of statelessness: stateless persons domiciled in a ceded territory will remain stateless.

(b) Cessions of territory brought about by bilateral treaties concerning Powers associated in the war against the Axis Powers

The treaties referred to here are the treaty concluded on 29 June 1945 at Moscow between the USSR and the Republic of Czechoslovakia concerning the Transcarpathian Ukraine, and the agreement concluded on 6 July 1943 between the USSR and Poland.

(i) Treaty of 29 June 1945 between the USSR and Czechoslovakia.

This treaty is accompanied by a protocol signed on the same day,[211] article II of which deals with questions of nationality.

The first paragraph of this article gives to persons belonging to the Ukrainian and Russian ethnic groups residing on Czechoslovakian territory a right of option for USSR citizenship before 1 January 1946, subject to the agreement of the Soviet authorities.

The second paragraph of article II gives to persons belonging to the Slovak and Czech ethnic groups residing on the territory of the Transcarpathian Ukraine a right of option for citizenship of the Czechoslovak Republic before 1 January 1946, subject to the agreement of the Czechoslovak authorities.

(ii) Agreement of 6 July 1945 between the USSR and Poland. The treaty of 16 August 1945 between the USSR and Poland [212] relating to the transfer of territory between the two States contains no clauses concerning the nationality of the inhabitants of the transferred territories.

On the other hand ' an earlier agreement, that of 6 July 1945, laid down rules for the transfer to the USSR of persons of Russian, Ukrainian, Byelorussian, Ruthenian and Lithuanian ethnic character who possessed Polish nationality before 17 September 1939, and the transfer to Poland of persons of Polish and Jewish ethnic character living on Soviet territory.[213]

(c) Transfers affecting certain populations of Poland, Czechoslovakia and Hungary

(i) The Potsdam Declaration of 2 August 1945 made by the Governments of the USSR, the United States of America and the United Kingdom provides:

5. The provisions of Annex XIV, paragraph 10 of the present Treaty, applying to the transfer of properties belonging to persons who opt for Italian nationality, shall equally apply to the transfer of properties belonging to persons who opt for Yugoslav nationality under this Article.

[211] Soviet News, 2 July 1945, No. 1196, page 2.

[212] See United Nations Treaty Series 1947, Vol. 10-II, No. 61.

[213] Communiqué concerning the agreement between the USSR and Poland relating to the change of nationality and repatriation- see *Soviet-Polish Relations* published by the *Soviet News*, London 1946.

"The three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary will have to be undertaken." [214]

Apparently the whole of the German populations transferred to Germany are required to keep or take German nationality; but it will be necessary to wait for the exact position to be established.

(ii) In respect of the former German territories transferred to Polish administration, a Polish law of 28 April 1946 provides for the grant of Polish nationality only to "persons of Polish ethnic character domiciled in the territories recovered by Poland".[215]

It would be premature to try to give an opinion at this stage on the consequences from the point of view of statelessness, of international treaties and national laws governing the nationality of persons affected by cessions of territory or transfers of population as a result of the Second World War. It will be necessary to wait until all the relevant texts are available and until the manner in which they are applied is known.

Chapter 3 METHODS OF ELIMINATING THE CAUSES OF STATELESSNESS

The adoption of suitable remedies would make it possible to eliminate at the source the various causes of statelessness indicated above.

I. REMEDIES FOR THE INADEQUACY OF AND DISCORDANCE BETWEEN NATIONAL LEGISLATIONS IN RESPECT OF NATIONALITY

Every individual should be provided with a nationality at birth and should be unable to be deprived of his nationality either with or without his consent unless he acquires another.

(1) GUARANTEE OF THE GRANTING OF NATIONALITY AT BIRTH

The main objective is that every child should be provided with a nationality at birth.

There are several general methods which would make it possible to attain this end or to approximate thereto.

[214] *Official Journal of the Control Council in Germany*, Supplement No. 1, Berlin, Allied Secretariat, 1946.

[215] Law No. 106 of 28 April 1946 on the Polish citizenship of persons of Polish ethnic character domiciled in the territories recovered by Poland:

"Article 1. Every person is entitled to Polish citizenship who before 1 January 1945 was residing permanently in the recovered territories and has proved his Polish ethnic character before a (nationality) verification commission, and whose Polish ethnic character has consequently been certified by the competent general administrative authority of first instance, and who has made a declaration of loyalty to the Polish nation and State.

"Article 2. In the case of persons whose ethnic character has for good reason not been established by the procedure laid down in Article 1, the authority competent to certify Polish ethnic character is the general administrative authority of first instance of the last place of residence.

"Article 3. In respect of all cases not governed by this law, the provisions of the Law of 20 January 1920 (*Official Journal of the Polish Republic*, No. 7, Article 44) concerning Polish nationality shall remain in force in the recovered territories.

"Article 4. This law shall be applied by the Minister of the recovered territories.

"Article 5. This law shall enter into force on the day of its publication. "Signed by the President of the National Council of the Fatherland, for the Minister of Recovered Territories (*Dziennik Ustaw*, No. 15, 10 May 1946, Point 106)."

A. First method. Adoption of the *jus soli* principle as a subsidiary principle

Legislative systems based on the *jus soli* ensure the possession of nationality to every child born in their territory.

This does not mean that all States can be asked to abandon the *jus sanguinis* principle in favour of that of the *jus soli*. This would be to disregard the traditional deep attachment of certain countries to the *jus sanguinis* principle, in support of which weighty arguments can be adduced.

But it is in no way necessary to sacrifice the *jus sanguinis* in order to attain the end in view. It would be enough if each time that the *jus sanguinis* was insufficient to confer nationality on a child, the *jus soli* was applied as a subsidiary principle. Thus, all cases where there was a risk that a child might be deprived of nationality at birth would be covered.

B. Second method. *Development of the jus sanguinis*

The *jus sanguinis* should be developed in two directions.

Firstly, the countries where the *jus sanguinis* prevails should close a certain number of gaps in the application of the principle.

Secondly, the *jus soli* countries should apply more widely the *jus sanguinis* principle, which many of them at present apply as a subsidiary principle.

The two methods recommended, which respect the traditional preferences of the various countries in regard to the granting of nationality, are not mutually exclusive.

The more widely the application of the *jus sanguinis* has provided children with nationality at birth, the easier it will be to induce the *jus sanguinis* countries to apply the *jus soli* as a subsidiary principle in the few cases where the application of the *jus sanguinis* has been ineffective.

(a) Children born abroad

The application in either a principal or a subsidiary sense of the *jus soli* principle would ensure a nationality to all children born abroad.

It would however be natural that countries applying the *jus soli* principle should depart from that principle to the extent of giving their nationality to children born abroad of parents who are their nationals. There is indeed a marked trend in this direction.

(b) Children born in a *jus sanguinis* country whose father or mother is stateless

As has already been said, in the *jus sanguinis* countries the child at birth takes the nationality of the father or mother, following different procedures according to whether it is a legitimate or illegitimate child. The legitimate child of a stateless father or the illegitimate child of a stateless mother is born stateless.

A child should be able to acquire the nationality of whichever parent possesses one.

The protocol relating to a certain case of statelessness signed at the Hague on 12 April, 1930 provides:

“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 a father without nationality or of unknown nationality shall have the nationality of the said State.”

The application of this protocol ensures the granting of a nationality to a legitimate child or an acknowledged illegitimate child whose father alone is stateless.

A legitimate child whose mother alone is stateless usually takes his father's nationality. There remains the case of an illegitimate child born of a stateless mother, which is not covered by the protocol.

(c) Children born in a jus sanguinis country, whose father and mother are stateless or without known nationality

Only the application of the jus soli can ensure a nationality to a child born of stateless parents. In that case the unconditional granting of the nationality of the child's country of birth seems to be the only perfect solution from the point of view of eliminating statelessness.

An objection has been raised to the application of the jus soli in cases where the child is born of stateless parents who may be only passing through the country, in which the child will not live. In practice this relatively rare case has not deterred the numerous countries which have based their nationality requirements on the jus soli.^[216] The general advantage which would result from the application of the jus soli in this connexion far outweighs any possible drawbacks.^[217] However, if the nationality of the country of birth was granted on certain conditions, such as the fact that one or both parents were born in the country, were domiciled there or were able to prove a long period of residence, this would be a step forward in countries where the child of stateless parents is now stateless at birth. A solution of this type was adopted in the Hague Convention of 12 April 1930, which provides:

"Article 15. 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."

(d) Children born in a jus sanguinis country of unknown parents

Apart from foundlings who are dealt with in the next paragraph, the present case refers to children whose mother's identity has not been revealed, but who are known to have been born in the country concerned.

[216] *Argentina* Law of 8 October 1869; *Bolivia*, Constitution of 23 November 1945, art. 39; *Brazil*, Constitution of 18 September 1946, art. 129; *Canada*, Law of 27 June 1946, art. 4 and 5; *Chile*, Constitution of 18 September 1925, art. 5; *Cuba*, Constitution of 10 October 1940, art. 12; *Honduras*, Constitution of 28 March 1936, art. 7; *Mexico*, Constitution of 5 February 1917, art. 30; *Paraguay*, Constitution of 10 July 1940, art. 38; *Peru*, Constitution of 9 April 1933, art. 4; *United Kingdom*, British Nationality Act of 1948, section 4; *United States of America*, Nationality Act of 1940, section 201 "a"; *Uruguay*, Constitution of 1934, art. 65.

[217] In practice, if a child born in any country of parents passing through that country is brought up and settles in another country, there is every likelihood that he will acquire the nationality of the country, and in that case there will be no need for him to keep the latter nationality of his country of birth.

It may be noted, that two jus soli countries, Guatemala and Nicaragua, only grant their nationality to children born of foreign parents on their territory under certain circumstances.

Article 6, paragraph 2, of the Guatemalan Constitution of 13 March 1945 grants Guatemalan nationality to children born of foreign parents on condition that one of the parents or the minor himself is domiciled in Guatemala.

Article 15 ' paragraph 1, of the Nicaraguan Constitution of 21 January 1948 grants Nicaraguan nationality to all children born in Nicaragua with the exception of those born of foreign parents passing through the country.

The chances are that a child born of unknown parents would be born of parents possessing the nationality of the country of birth.

In consideration of this fact it is normal for the country of birth to grant its nationality to such children.

It should be added that a child born of unknown parents will be brought up in the country of birth and no distinction will be made between it and other nationals.

The Hague Convention of 7 April 1930 settles the case of children born of unknown parents by granting them the nationality of the country of birth:

“Article 14. 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.”[218]

(e) Foundlings

The category of foundlings is particularly important. The parents are quite unknown, and it is not even certain that the children were born in the country where they were found. But in the majority of cases this is so. It is thus usual for the law to presume that foundlings were born in the country concerned.

It is desirable that the rule that a foundling is presumed to have been born in the country where he was found, which has not yet been adopted in all legislations, should be adopted everywhere.

Article 14 of the Hague Convention of 12 April quoted above establishes this presumption:

“...A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found.”

(2) NO LOSS OF NATIONALITY WITHOUT ACQUISITION OF A NEW NATIONALITY

The rule that every individual must be provided with a nationality at birth should be supplemented by another rule to the effect that there should be no loss of nationality without the acquisition of a new nationality.

A. Effect of marriage on the nationality of women

(a) Marriage should in no case deprive a woman of nationality

The main objective is to prevent a woman losing her nationality owing to marriage unless she acquires her husband’s nationality.

In this connexion, article 8 of the Hague Convention of 12 April 1930, provides:

“If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.”

(b) Change in the husband’s nationality occurring during marriage should in no case result in depriving the wife of nationality

[218] The provision contained in the second sentence of Article 14 may have the result of depriving the child of nationality if the establishment of parentage does not result in his acquiring the nationality of his parents. He would then be in the same case as children born abroad. (This case is examined in paragraph (a) above.)

In this connexion article 9 of the Hague Convention of 12 April 1930, provides:

“If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband’s new nationality.” The provisions of articles 8 and 9 of the above-mentioned Convention, which recur in a fuller and more developed form in a certain number of domestic legislations,[219] should be made general.

(c) The dissolution of the marriage should in no case result in depriving the wife of nationality

In order to attain this end, the country whose nationality is lost by the wife at the time of marriage should agree to restore her that nationality in the event of her losing her husband’s nationality, for any reason, upon the dissolution of the marriage.

B. Effect of legitimation on the nationality of illegitimate children

The legitimation of an illegitimate child should in no case have the effect of depriving the child of nationality.

In this connexion, article 16 of the Hague Convention of 12 April 1930, provides:

“*Article 16.* If the law of the State, whose nationality an illegitimate child possesses, recognizes that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of such State relating to the effect upon nationality of changes in civil status.”

C. Effect of adoption on the nationality of the adopted child

Adoption should in no case have the effect of depriving the adopted person of nationality.

In this connexion, article 17 of the Hague Convention of 12 April 1930, provides:

“*Article 17.* If the law of a State recognizes that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality.”

D. Voluntary renunciation of nationality

The effect of an expatriation permit should be subject to the condition that the person concerned acquires a new nationality if he does not already possess a second nationality.

In this connexion, article 7 of the Hague Convention of 12 April 1930, provides:

“*Article 7.* In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.”

An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision shall not apply in the case of an

[219] As an example the following may be quoted:

Austria, Law of 10 July 1945, paragraph 8 (1); *Belgium*, Law of 15 October 1932, art. 4, paragraph 1 and art. 18, paragraph 3; *China*, Law of 5 February 1929, art. 2, paragraph 1; *France*, French Nationality Code (Ordinance of 19 October 1945), art. 94, paragraph 3; *Venezuela*, Constitution of 5 July 1947, art. 12, paragraph 1.

individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him.

The State whose nationality is acquired by a person to whom an expatriation permit has been issued shall notify such acquisition to the State which has issued the permit.

E. Effect of prolonged residence abroad

The only means of avoiding that the prolonged residence abroad of any national should result in rendering him stateless is to abrogate legislative provisions entailing withdrawal of nationality from a national owing to his prolonged residence abroad without acquisition of another nationality.

II. LOSS OF NATIONALITY NOT TO BE IMPOSED AS A PENALTY

Loss of nationality as a penalty is open to serious objections.

Certainly, the punishment of criminal acts is an essential function of the State. The latter may inflict a variety of punishments and deprivations upon the guilty parties, the choice of which is left, in principle, to its discretion. But loss of nationality, by creating stateless persons, gives rise to an abnormal situation contrary to international public order and detrimental to other States. For this reason it is open to justifiable criticism.

A distinction should be made between stateless persons who are criminals and those who are political dissidents.

A. As regards *criminals*, the application of extradition and close collaboration between national police forces would be sufficient to ensure the maintenance of order and security. It is not necessary to resort to the withdrawal of nationality, which is an ineffectual measure to combat crime.

B. As regards *political* dissidents who have taken refuge abroad and cannot be extradited, the loss of nationality is not likely to cause them to return to their own country and is not a real punishment for them.

III. STATELESSNESS OF REFUGEES AS A RESULT OF CHANGES IN POLITICAL OR SOCIAL REGIME

The exodus of refugees arises from political causes over which no technical process can have any influence. We can only note the effects of historical changes and vicissitudes. Until the present critical period is over, it seems likely that exodus movements will *continue*.

In this *connexion*, it may be noted that a certain number of States have recognized the right of asylum, which is a promise to receive refugees in general or certain classes of refugees.[220]

[220] At present, the right of asylum is recognized by the law of many countries, and is extended either to all political refugees or to certain of them.

1. Amongst States in the first group are:

Brazil, Constitution of 18 September 1946, art. 141, paragraph 33; *Cuba*, Constitution of 5 July 1940, art. 31; *Haiti*, Constitution of 23 December 1946, art. 30; *Italy*, Constitution of 27 December 1947, art. 10; *Mexico*, Constitution of 5 February 1917, art. 15; *Nicaragua*, Constitution of 21 January 1948, art. 27.

2. Amongst the States in the second group are:

The right of asylum was recognized by the convention on political asylum of 26 December 1933, concluded at Montevideo by the Seventh Pan American Congress (see Final Act, page 168).

The Universal Declaration of Human Rights, adopted on 10 December 1948 by the United Nations General Assembly, provides:

“Article 14. 1. Any person who is the victim of persecution has the right to seek and receive asylum in other countries ...”.

IV. AVOIDANCE OF THE CREATION OF STATELESS PERSONS IN TREATIES MAKING TERRITORIAL ADJUSTMENTS

The authors of treaties making territorial adjustments have adopted the rule that persons who do not acquire a new *nationality* as the result of territorial changes retain their former nationality. But the mere adoption of this principle is not enough, for experience has shown that steps must be taken to ensure that in each country, whatever its structure and its law, the principle will be effectively applied in all cases.

CONCLUSIONS

1. METHODS OF ELIMINATING THE CAUSES OF STATELESSNESS

The causes of statelessness would be entirely eliminated by the adoption of all the methods mentioned below. They would be reduced to a greater or less degree by the adoption of some of those methods.

(1) NATIONALITY OF THE CHILD

A. The child should acquire at birth the nationality of the country in which he is born, unless he has acquired the nationality of both or one of his parents.

B. The countries where the *jus soli* applies should generalize or extend the subsidiary application of the *jus sanguinis* in order to confer their nationality upon children of their nationals born abroad.

Albania, Constitution of 15 March 1946, art. 36. Citizens of foreign States "who are persecuted for their activities on behalf of democracy, national liberation, rights of the workers, or scientific and cultural freedom". *Bulgaria*, Constitution of 4 December 1947, art. 84, foreigners "persecuted for defending democratic principles, for struggling for their national liberation or for the freedom of scientific and cultural activity". *Byelorussian Soviet Socialist Republic*, Constitution of 19 February 1937, art. 104, foreigners "persecuted for defending the interests of the working people or for scientific activities, or for their struggle for national liberation". *France*, Constitution of 27 October 1946. Preamble: "Anyone persecuted because of his activity in the cause of freedom". *Romania*, Constitution of 13 April 1948, art. 35, foreigners "persecuted for their activity in the cause of democracy, scientific or cultural work or action in the pursuit of national liberation". *Ukrainian Soviet Socialist Republic*, Constitution of 30 January 1937, art. 109, foreigners "persecuted for defending the interests of the working people or for their scientific activities or for their struggle for national liberation". *USSR*, Constitution of 5 December 1936, art. 129, foreigners "persecuted for defending the interests of the working people or for their scientific activities or for their struggle for national liberation". *Yugoslavia*, Constitution of 31 January 1946, art. 31, foreigners "persecuted on account of their struggle for the principles of democracy, for national liberation, the rights of the working people or the freedom of scientific and cultural work".

C. Children born of a stateless father or mother in a country where the *jus sanguinis* applies should acquire the nationality of the parent possessing the nationality of the country.

D. Children born of stateless parents or of parents without nationality or of unknown parents in a country where the *jus sanguinis* applies, should acquire the nationality of the country where they were born.

E. Foundlings should be given the nationality of the country where they were found.

F. The loss of or change in the nationality of the parents should affect the nationality of the children, only if such change confers a new nationality upon them.

G. Unless the recognition, legitimation, or adoption of the child confers upon him a new nationality, he should retain the nationality he possessed at birth.

(2) NATIONALITY OF WOMEN

A. A woman marrying a foreign national should retain her nationality unless she acquires the nationality of her husband.

B. A change of the husband's nationality during marriage should not cause his wife to lose her nationality, unless the new nationality of her husband is also conferred upon the wife.

C. The dissolution of her marriage should in no case result in a woman being deprived of her nationality.

If a woman loses the nationality she acquired by marriage, she should in all cases recover her original nationality.

(3) VOLUNTARY RENUNCIATION OF NATIONALITY

An expatriation permit should not involve loss of the nationality of the State which has issued it until the holder of the permit has acquired a new nationality.

(4) PROLONGED SOJOURN ABROAD

Nationality should not be withdrawn from persons who have established their domicile in a foreign country, whatever the length of their absence, unless they have acquired a new nationality.

(5) DEPRIVATION OF NATIONALITY AS A PUNISHMENT

Deprivation of nationality should not be applied as a punishment.

(6) TREATIES ON TERRITORIAL SETTLEMENTS

The principle should be that no territorial settlement should cause an inhabitant of the territory concerned to lose his former nationality until a new nationality has been conferred upon him.

2. SUGGESTED PROCEDURE

In order to reform national legislation concerning nationality, recommendations to this effect, or a proposal to conclude new international conventions (or revise existing conventions) might be

transmitted to Governments. Experience has shown that the second method, although lengthy and difficult, is more effective than the first.

In view of these considerations, it is suggested that the Secretary-General should be requested to study measures for the abolition of statelessness, in order to submit to one of the forthcoming sessions of the Economic and Social Council a report stating whether, in his opinion, existing conventions should be revised or whether one or more international conventions on that subject should be concluded. The Secretary-General should also be requested to prepare appropriate draft international instruments for submission to Governments of Member States.

SECTION II REDUCTION OF THE NUMBER OF EXISTING CASES OF STATELESSNESS

As has already been stated, there are at present many *de jure* or *de facto* stateless persons in all the countries of the world, but mainly in Europe. The reader should refer to the introduction to the present Study, in which information is given concerning the origin and present distribution of these stateless persons.

Chapter 1 EFFORTS HITHERTO MADE TO CONFER NATIONALITY ON PERSONS AT PRESENT STATELESS

Generally speaking, three principal methods have been used to reduce the number of cases of statelessness, namely:

- (a) The recovery by the stateless person of his original nationality;
- (b) The voluntary *repatriation* of the *de facto* stateless person to his country of origin;
- (c) The *settlement* of the stateless person in a country willing to grant him naturalization.

(1) RECOVERY BY THE STATELESS PERSON OF HIS NATIONALITY OF ORIGIN

It is only on the national plane^[221] that measures have been taken to enable certain categories of stateless persons to recover their nationality of which they have been deprived.

The measures taken in the following countries are of interest:

Germany. The promulgation of Law No. 1 by the Supreme Commander of the Allied Expeditionary Forces repealed Nazi discriminatory and racial legislation. This law was promulgated on the entry of the Allied Armies into Germany. These provisions were reiterated in another law issued on 20 September 1945 by the Allied Control Council.

These laws of principle did not reinstate all German refugees *de plano* in their former nationality. It is not, as a matter of fact, the purpose of these laws, each called Law No. 1, to cause persons against their will to recover their lost German nationality. Their provisions are not retroactive.

The Control Council recognized as fallacious the interpretation which resulted in victims of Nazi persecution being considered as enemy aliens and treated as such.^[222]

[221] Except in cases of statelessness arising out of the dissolution of the Austro-Hungarian Empire (see pages 142 et seq.).

In Germany itself, the restoration of nationality was carried out only after the publication of the law issuing administrative provisions and establishing the procedure to be followed in the case of persons wishing to recover their former nationality. Such law issuing administrative provisions was promulgated, for instance, in the State of Hesse, in the American occupation zone.[223] Under that law, restoration of nationality is granted at the request of the persons concerned.

Austria. Under the law of 10 July 1945 (paragraph I (a)) persons who possessed Austrian nationality on 13 March 1938 can recover that nationality.

Italy. Discriminatory racial laws have been repealed.

Hungary. Ordinance No. 9590 1945 annuls deprivation in the case of persons penalized on account of their socialist opinions or activities.

USSR. By the decrees of 10 November 1945 and 22 January 1946, the Soviet Government authorized the refugees residing in the territory of Manchuria who were subjects of the Russian Empire or possessed Soviet nationality on 7 November 1917 to acquire Soviet nationality by simple declaration. That option was extended to Russian refugees living in the province of Sinzian, at Shanghai and at Tsian-Tsin (decree of 20 January 1946), and to Russian refugees residing in France, Yugoslavia and Bulgaria (decree of 14 June 1946), in Japan (decree of 26 September 1946) and in Czechoslovakia (decree of 5 October 1946).

Furthermore, the decree of 19 October 1946 confers Soviet nationality on persons of Armenian origin repatriated to Soviet Armenia.[224]

France Under the law of 24 May 1946[225] a time limit until 31 December 1947 for the exercise of an option was granted to foreign women who, on marrying Frenchmen, had omitted to declare or were prevented from declaring that they opted for French nationality.

An ordinance of the Provisional Government passed after the Liberation repealed the law of the Vichy Government of 22 July 1940, establishing a commission for revising naturalization, which de-nationalized a certain number of naturalized persons. Those denaturalizations were annulled.

On the other hand, the decree-law of 12 November 1938[226] repealed the provisions of the laws of 26 June 1889 and 10 August 1927, conferring on the date of birth French nationality on children born in France of parents whose nationality was unknown. Furthermore, article 3 of the ordinance of 19 October 1945[227] (Nationality Code) made that repeal applicable to persons who had not reached full age on the date of the promulgation of the ordinance. Thus, children

[222] Letter from the Control Council, dated 24 July 1948, to the Danish Military Mission.

[223] Law of 23 March 1948 (*Official Gazette* of Hesse, 1st April 1948, No. 9).

[224] See the Soviet texts in the Compendium of the Laws of the USSR and the Decrees of the Presidium of the Supreme Soviet of the USSR, 1945-1946. Moscow 1947.

[225] *Journal Officiel*" of 25 May 1946.

[226] *Journal Officiel*" of 12/13 November 1938.

[227] *Journal Officiel*" of 20 October 1945.

born in France between 20 October 1924 and 12 November 1938 of stateless parents were deprived of the nationality they had previously acquired.

United Kingdom. The Nationality Act, 1948, reinstates or allows reinstatement in British nationality of a woman who has lost that nationality through marriage (sections 14, 15 and 16 (2))

This list is not exhaustive.

(2) VOLUNTARY REPATRIATION OF *de facto* STATELESS PERSONS

The first noteworthy instance is the attempt made in 1923 by the High Commissioner of the League of Nations to repatriate Russian refugees.

Dr. Nansen obtained from the Soviet Government leave to repatriate each month 2,000 refugees from the provinces of the Don, Kuban and Terek. Repatriation had to be voluntary and candidates had to be screened by a Soviet repatriation commission. During 1923, 4,589 Cossack refugees were thus repatriated. The work was discontinued in the autumn of 1923 owing to the difficulties which had arisen.[228]

After the Second World War about seven million "displaced persons" were repatriated by the Allied armies and the United Nations Relief and Rehabilitation Administration (UNRRA).[229]

These persons were not true stateless persons, but would have become so if they had refused to be repatriated or if their country of origin had refused to receive them.

At the present time one of the chief tasks of the International Refugee Organization (IRO) is the voluntary repatriation of refugees and "displaced persons".[230]

During the first year of its existence (1 July 1947 to 1 July 1948) the IRO repatriated 51,439 persons, of whom 29,746 were Polish, 6,265 Chinese from overseas, 4,526 Yugoslavs etc.[231]

It may be observed that the movement of repatriation is gradually slowing down. Those who have returned have been persons displaced by the events of war. Those who wish to remain and those who are arriving are true refugees, stateless persons in law or in fact.

(3) SETTLEMENT OF STATELESS PERSONS IN COUNTRIES WILLING To GRANT THEM ITS NATIONALITY

A. Activities of the High Commissioner of the League of Nations

[228] Extract No. 25 of the *Official Journal*, 10 March 1924, pages 11 and 12.

[229] International Refugee Organization (IRO). *Refugee Problems*, pp. 1, 16

[230] Constitution of the IRO of 15 December 1946, preamble, article 2 (a). The resolution adopted by the General Assembly of the United Nations on 12 February 1946 declares, however, that:
"(ii) No refugees or displaced persons who have finally and definitely, in complete freedom and after receiving full knowledge of the facts, including adequate information from the Governments of their countries of origin, expressed valid objections to returning to their countries of origin and do not come within the provisions of (d) below, shall be compelled to return to their country of origin."

[231] IRO, *Refugee Problems*, page 17 and PCIRO, *Statistical Report for year ended June 1948*, pages 2 and 24.

The High Commissioner of the League of Nations, in concert with the International Labour Office, worked out in 1926 a plan for settling a certain number of refugees in Latin-American countries. This plan could not be executed for lack of funds.

As may be seen from the report of the Secretary-General of the League of Nations dated 25 August 1938,[232] the emigration of refugees from Germany was more successful. By that date, out of about 150,000 persons who had left Germany, 120,000 had been settled in various receiving countries.

Moreover, a large number of Armenian refugees were settled in Syria[233] and acquired Syrian nationality. Some of these refugees were repatriated after the Second World War to Soviet Armenia.

B. Activities of the Nansen International Office (1930-1938)

The plan for establishing "Nansen" refugees in overseas countries, especially Paraguay, was taken over by the Nansen Office, which also met with financial difficulties.

That office carried on the settlement of Armenian refugees in Syria and Lebanon. In addition, it revived the plan worked out in 1924-1927 by Dr. Nansen[234] and conveyed to and settled in Soviet Armenia, especially at Erivan, more than 10,000 of these refugees. However, in 1937 owing to lack of funds this operation had to be discontinued.[235]

C. Activities of the Inter-Governmental Committee on Refugees (1938-1947)

Assistance to emigration and the resettlement of refugees was successfully resumed by the Inter-Governmental Committee in 1946. This work did not have time to develop, as the work of the Committee came to an end on 30 June 1947.

D. Activities of the International Refugee Organization (1 July 1947 to 1 July 1948)

During the first year of the IRO's existence (from 1 July 1947 to 1 July 1948) the number of refugees and displaced persons leaving its zones of operation for settlement in various countries was 204,577.[236]

Seventy-three countries in the five continents received those 204,577 emigrants. The numbers admitted to the fifteen of those countries were as follows:

United Kingdom, 69,788; Canada, 25,244; Belgium, 19,147; United States, 16,836; France, 16,216; Argentina, 12,163; Palestine, 6,741; Venezuela, 5,666; Australia, 5,632; Brazil, 3,491; Netherlands, 3,488; Paraguay, 2,892; Sweden, 1,943; Chile, 1,473; Peru, 1,282.

[232] Document A. 28. 1938, XII.

[233] Report of the Governing Body of the Nansen International Office, 29 August 1935. A. 22. 1935, XII. page 9.

[234] Report of the Governing Body of the Nansen International Office, 20 August 1937, A. 21. 1937, XII. page 10.

[235] Record of the 47th session of the Council of the League of Nations. P.V./5 (1) 1927, page 1.

[236] IRO Statistical Report, 2 June 1948, pages 32, 33 and 34.

Each of the other countries received less than 1,000 refugees.[237]

These initial results seem to justify the optimistic forecast of the Director-General of the IRO that by 30 June 1950 the Organization will have repatriated and settled by emigration 825,000 persons.[238]

It should, however, be remembered that a certain time will be needed to assimilate and naturalize the emigrants.

Moreover, emigration is only open to young persons with professional qualifications appreciated by the country of immigration. IRO assistance is only given to persons coming within the definitions of annex I of the Constitution (technically known as "eligibles").[239] These include pre-war refugees who have lived in the same country for some years and are therefore regarded as settled, but do not receive material assistance.

Emigration overseas is a costly undertaking, outside the means of most stateless persons without assistance.

Besides, emigration is not always successful. An emigrant must not only secure admittance to an immigration country but must also succeed in settling down, becoming assimilated and obtaining naturalization.

For these reasons, and although emigration is one of the most promising means of diminishing the number of stateless persons, it is not a panacea and is not sufficient to solve the problem.

E. Persons having become stateless after the dissolution of Austria-Hungary

Mention was made earlier (p. 142) of the various bilateral and multilateral agreements concluded after the peace treaties by the successor States of the Austro-Hungarian Empire.

These agreements allowed a certain number of stateless persons either to regain their nationality of origin or to obtain a new nationality.

Chapter 2 REMEDIES PROPOSED FOR REDUCING THE NUMBER OF EXISTING CASES OF STATELESSNESS

(1) REMEDIES

To reduce the number of existing cases of statelessness it would be necessary:

A. To accord the right of reinstatement in their nationality of origin to persons deprived of that nationality for racial, political, or religious reasons,[240]

[237] IRO News Bulletin No. 25 of 17 September 1948, pages 1, 2.

[238] IRO Communiqué No. 615 of 24 September 1948.

[239] Cf. resolution 62 (1) adopted by the General Assembly on 15 December 1946. See Resolutions adopted by the General Assembly during the second part of its first session, page 99.

[240] This would not include transfers of population under international agreements.

- B. To recognize as similarly entitled to this right stateless persons whose nationality has been withdrawn, either as a penalty or owing to a prolonged stay abroad,
- C. To reinstate in their nationality of origin persons who have obtained an expatriation permit but not acquired a new nationality,
- D. To guarantee in all circumstances to a woman who has become stateless by marriage or through events consequent upon it (e.g. dissolution of the marriage, change of nationality of the husband) the right to be reinstated in her nationality of origin,
- E. To grant every person stateless by birth (children of unknown parents, children of stateless persons or of parents whose nationality is unknown, children who have not received their parents' nationality) the right to obtain, by means of a simple declaration, the nationality of the country on the territory of which they were born, foundlings being presumed to have been born in the country on the territory of which they were found,
- F. To allow stateless persons who have lost their nationality as a result of territorial changes, further reasonable periods during which they may opt either for the nationality of their country of origin or for that of the successor country,
- G. To facilitate the naturalization of stateless persons who have spent a number of years in the country receiving them,
- H. To grant special facilities for that purpose to certain categories of stateless persons, in particular:
- (a) A stateless person whose spouse or one of whose children possesses the nationality of the receiving country;
- (b) Stateless persons who have served in the armed forces of the receiving country;
- (c) Stateless persons able to furnish sufficient evidence that their language and culture are those of the receiving country.

(2) MEANS OF APPLYING THESE REMEDIES

Governments could apply certain of these remedies without the conclusion of international agreements. In other cases either general or special agreements would be necessary.

In almost all cases, however, the desired result would be attained with much more certainty through agreements.

If the measures suggested above were adopted, they would considerably reduce the number of existing stateless persons by permitting them either to regain a former nationality or to acquire a new one.

(3) FINAL OBSERVATIONS CONCERNING STATELESS POLITICAL REFUGEES

The measures proposed cannot be expected to have a radical effect as far as stateless political refugees are concerned. Reinstatement would not be likely to solve their problem: though re-endowed with their original nationality they would remain stateless in fact. One should not of course ignore that, as dissidents, it would be impossible to guarantee them treatment in effect equal to that of their other compatriots. Moreover, their national feeling being generally very much aroused, they could not be expected to break immediately with their country of origin and accept

a new allegiance. Their scruples must be respected, and with them (but not their children) the problem is mainly that of ensuring them the right of asylum, protection and status.

RECOMMENDATIONS SUBMITTED BY THE SECRETARY-GENERAL TO THE ECONOMIC AND SOCIAL COUNCIL

The Secretary-General,

In accordance with the request addressed to him by the Economic and Social Council in its resolution 116 (VI) D of 2 March 1948, formulates the following recommendations:

Whereas,

Article 15 of the Universal Declaration of Human Rights adopted on 10 December 1948 by the General Assembly of the United Nations proclaims that everyone has the right to a nationality,

In order to implement this provision, on the one hand the sources of statelessness must be dried up, and on the other, existing stateless persons must as far as possible be granted a nationality,

The Secretary-General recommends

The Economic and Social Council to resolve as follows:

I. ELIMINATING THE SOURCES OF STATELESSNESS

A. To affirm that in order to eliminate the sources of statelessness the following two principles must be universally recognized and applied:

1. Every child must receive a nationality at birth,
2. No person throughout his life should lose his nationality until he has acquired a new one.

B. To invite all Member Governments to bring their national legislation into conformity with the two principles set forth in paragraph A.

C. To request the Secretary-General:

(i) To continue to study measures for the elimination of statelessness and its causes, with a view to submitting to a forthcoming session of the Economic and Social Council a report indicating whether, in his opinion, existing international conventions and agreements, in particular those adopted at The Hague on 12 April 1930 by the International Conference for the Codification of International Law, should be revised, or whether one or more new international conventions on the subject should be concluded;

(ii) To draft international instruments to that end;

(iii) To refer these drafts to the Members of the United Nations for comment, and

(iv) To submit these drafts to the Council with such comments as may have been received from the Members of the United Nations.

II. REDUCTION OF THE NUMBER OF EXISTING CASES OF STATELESSNESS

To invite all Governments of States Members of the United Nations to bring their legislation into conformity with the following principles:

I. A right to be reinstated in their former nationality, upon presentation of a request within a reasonable period, should be accorded to persons who have been deprived of their nationality for racial, political or religious reasons and have not in the meantime acquired another nationality;

II. A similar right of reinstatement should be granted to persons deprived of their nationality either as a penalty or by reason of a prolonged stay abroad;

III. Persons who have lost their nationality through obtaining a certificate of renunciation of nationality or an expatriation permit, but have not acquired a new nationality, should likewise be reinstated in their former nationality;

IV. Restitution of their former nationality should be granted in all circumstances to women who have become stateless by marriage or through events consequent upon it (e.g. dissolution of the marriage, change of nationality of the husband);

V. Stateless persons by birth, i.e. children whose parents are unknown, children of stateless persons and children who have not received their parents' nationality, should receive the nationality of the country on the territory of which they were born, upon presentation of a simple declaration. For purposes of the application of this principle, foundlings should be presumed to have been born in the country upon the territory of which they were found;

VI. New reasonable time-limits should be allowed during which persons who have become stateless through territorial changes may opt for the nationality either of the ceding country or of the successor country;

VII. Facilities for naturalization in the receiving country should be granted to stateless persons who have lived there for a number of years;

VIII. Special facilities for naturalization should be granted to certain categories of stateless persons, in particular:

(a) A stateless person whose spouse or one of whose children possesses the nationality of the receiving country;

(b) Stateless persons who have served in the armed forces of the receiving country;

(c) Stateless persons who are in a position to supply adequate evidence that their language and culture are those of the receiving country.

ANNEXES TO PART TWO

1. Convention on Certain Questions relating to the Conflict of Nationality Laws, signed at The Hague, 12 April 1930

See Acts of the Conference for the Codification of International Law, held at The Hague, 13 March-12 April 1930; C.224.M.111.1930.V. (League of Nations Publications-V. Legal Questions-1930 V.3.)247

Official texts in French and English. This Convention was registered on 1 July 1937 (Indication of the Heads of the States represented at the Conference)

Considering that it is of importance to settle by international agreement questions relating to the conflict of nationality laws;

Being convinced that it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality and should have one nationality only;

Recognizing accordingly that the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality;

Being of opinion that, under the economic and social conditions which at present exist in the various countries, it is not possible to reach immediately a uniform solution of all the above-mentioned problems;

Being desirous, nevertheless, as a first step towards this great achievement, of settling in a first attempt at progressive codification, those questions relating to the conflict of nationality laws on which it is possible at the present time to reach international agreement,

Have decided to conclude a Convention and have for this purpose appointed as their Plenipotentiaries:

Who, having deposited their full powers found in good and due form, have agreed as follows:

CHAPTER I General principles

Article 1

It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

Article 2

Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

Article 3

Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

Article 4

A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

Article 5

Within a third State, a person having more than one nationality shall be treated as if he had only one. 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 such person possesses, recognize 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 in fact most closely connected.

Article 6

Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorization of the State whose nationality he desires to surrender.

This authorization may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

CHAPTER II Expatriation permits

Article 7

In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality.

An expatriation permit shall lapse if the holder does not acquire a new nationality within the period fixed by the State which has issued the permit. This provision shall not apply in the case of an individual who, at the time when he receives the expatriation permit, already possesses a nationality other than that of the State by which the permit is issued to him.

The State whose nationality is acquired by a person to whom an expatriation permit has been issued, shall notify such acquisition to the State which has issued the permit.

CHAPTER III Nationality of married women

Article 8

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, the consequences shall be conditional on her acquiring the nationality of the husband.

Article 9

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

Article 10

Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

Article 11

The wife who, under the law of her country, lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by the reason of the marriage.

CHAPTER IV Nationality of children

Article 12

Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.

The law of each State shall permit children of consuls de carrière, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born, in any case in which on birth they acquired dual nationality, provided that they retain the nationality of their Parents.

Article 13

Naturalization of the parents shall confer on such of their children as, according to its law, are minors the nationality of the State by which the naturalization is granted. In such case the law of that State may specify the conditions governing the acquisition of its nationality by the minor children as a result of the naturalization of the parents. In cases where minor children do not acquire the nationality of their parents as the result of the naturalization of the latter, they shall retain their existing nationality.

Article 14

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 in the territory of the State in which it was found.

Article 15

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.

Article 16

If the law of the State, whose nationality an illegitimate child possesses, recognizes that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of another State under the law of such State relating to the effect upon nationality of changes in civil status.

CHAPTER V Adoption

Article 17

If the law of a State recognizes that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality.

CHAPTER VI General and final provisions

Article 18

The High Contracting Parties agree to apply the principles and rules contained in the preceding articles in their relations with each other, as from the date of the entry into force of the present Convention.

The inclusion of the above-mentioned principles and rules in the Convention shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding articles, the existing principles and rules of international law shall remain in force.

Article 19

Nothing in the present Convention shall affect the provisions of any treaty, convention or agreement in force between any of the High Contracting Parties relating to nationality or matters connected therewith.

Article 20

Any High Contracting Party may, when signing or ratifying the present Convention or acceding thereto, append an express reservation excluding any one or more of the provisions of Articles 1 to 17 and 21.

The provisions thus excluded cannot be applied against the Contracting Party who has made the reservation or relied on by that Party against any other Contracting Party.

Article 21

If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Convention and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the parties providing for the settlement of international disputes.

In case there is no such agreement in force between the parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the parties to the dispute are parties to the Protocol of the 16th December, 1920, relating to the Statute of that Court, and if any of the parties to the dispute is not a party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with the Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.

Article 22

The present Convention shall remain open until the 31st December, 1930, for signature on behalf of any Member of the League of Nations or of any non-Member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Convention for this purpose.

Article 23

The present Convention is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the Members of the League of Nations and to the non-Member States mentioned in Article 22, indicating the date of its deposit.

Article 24

As from January 1st, 1931, any Member of the League of Nations and any non-Member State mentioned in Article 22 on whose behalf the Convention has not been signed before that date, may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the Members of the League of Nations and to the non-Member States mentioned in Article 22, indicating the date of the deposit of the instrument.

Article 25

A procès-verbal shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten Members of the League of Nations or non-Member States have been deposited.

A certified copy of this procès-verbal shall be sent by the Secretary-General of the League of Nations to each Member of the League of Nations and to each non-Member State mentioned in Article 22.

Article 26

The present Convention shall enter into force on the 90th day after the date of the procès-verbal mentioned in Article 25 as regards all Members of the League of Nations or non-Member States on whose behalf ratifications or accessions have been deposited on the date of the procès-verbal.

As regards any Member of the League or non-Member State on whose behalf a ratification or accession is subsequently deposited, the Convention shall enter into force on the 90th day after the date of the deposit of a ratification or accession on its behalf.

Article 27

As from January 1st, 1936, any Member of the League of Nations or any non-Member State in regard to which the present Convention is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Convention. If such a request, after being communicated to the other Members of the League and non-Member States in regard to which the Convention is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the Members of the League of Nations and the non-Member States mentioned in Article 22, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The High Contracting Parties agree that, if the present Convention is revised, the revised Convention may provide that upon its entry into force some or all of the provisions of the present Convention shall be abrogated in respect of all of the Parties to the present Convention.

Article 28

The present Convention may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all Members of the League of Nations and the non-Member States mentioned in Article 22.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification but only as regards the Member of the League or non-Member State on whose behalf it has been notified.

Article 29

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligation in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Convention shall not apply to any territories or to the parts of their population named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Convention shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any High Contracting Party may make the reservations provided for in Article 20 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the Convention or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and the non-Member States mentioned in Article 22 all declarations and notices received in virtue of this article.

Article 30

The present Convention shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

Article 31

The French and English texts of the present Convention shall both be authoritative.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Convention.

DONE AT THE HAGUE on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

POSITION CONCERNING SIGNATURES, RATIFICATIONS AND ACCESSIONS AT THE DATE OF 10 JULY 1944[241] Convention in force since 1 July 1937

1. RATIFICATIONS: 12

Belgium (April 4, 1930)

Subject to accession later for the Colony of the Congo and the Mandated Territories.

Excluding article 16 of the Convention.

Brazil (September 19, 1931 a)

With reservations as regards articles 5, 6, 7, 16 and 17, which Brazil will not adopt owing to difficulties with which it has to contend in connexion with principles forming the basis of its internal legislation.

Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations (April 6, 1934).

Burma

His Majesty the King does not assume any obligation in respect of the Karenni States, which are under His Majesty's suzerainty, or the population of the said States.

Canada (April 6, 1934)

Australia (November 10, 1937)

Including the territories of Papua and Norfolk Island.

India (October 7, 1935)

In accordance with the provisions of article 29, His Britannic Majesty does not assume any obligation in respect of the territories in India of any Prince or Chief under his suzerainty or the population of the said territories.

China (February 14, 1935)

Subject to reservation as regards article 4.

Monaco (April 27, 1931 a)

The Netherlands (April 2, 1937)

Including the Netherland Indies, Surinam and Curaçao.

Excluding the provisions of articles 8, 9, and 10 of the Convention.

Norway (March 16, 1931 a)

Poland (June 15, 1934)

Sweden (July 6, 1933)

The Swedish Government declares that it does not accept to be bound by the provisions of the second sentence of article 11, in the case where the wife referred to in that article, after recovering the nationality of her country of origin, fails to establish her ordinary residence in that country.

[241] See League of Nations, *Official Journal, Special Supplement* No. 193, Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, page 63. The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement* No. 195) issued on 31 July 1946 indicates no change.

2. SIGNATURES NOT YET PERFECTED BY RATIFICATION: 27

Union of South Africa
Chile
Colombia
Subject to reservation as regards article 10.
Cuba
Subject to reservation as regards articles 9, 10 and 11.
Czecho-Slovakia
Free City of Danzig (through the intermediary of Poland).
Denmark
Subject to reservation as regards articles 5 and 11.
Egypt
Estonia
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Subject to reservation as regards articles 4 and 10 and as regards the words "according to its law" of article 13.
Latvia
Luxemburg
Mexico
Subject to reservation as regards paragraph 2 of article 1.
Peru
Subject to reservation as regards article 4.
Portugal
Salvador
Spain
Switzerland
Subject to reservation as regards article 10.
Uruguay

2. Special Protocol relating to a Certain Case of Statelessness, signed at The Hague on 12 April 1930[242]

The undersigned Plenipotentiaries, on behalf of their respective Governments,

With a view to preventing statelessness arising in certain circumstances, *Have agreed as follows:*

Article 1

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.

Article 2

The High Contracting Parties agree to apply the principles and rules contained in the preceding article in their relations with each other, as from the date of the entry into force of the present Protocol.

The inclusion of the above-mentioned principles and rules in the said article shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding article, the existing principles and rules of international law shall remain in force.

Article 3

Nothing in the present Protocol shall affect the provisions of any treaty, convention or agreement in force between any of the High Contracting Parties relating to nationality or matters connected therewith.

Article 4

Any High Contracting Party may, when signing or ratifying the present Protocol or acceding thereto, append an express reservation excluding any one or more of the provisions of articles 1 and 5.

The provisions thus excluded cannot be applied against the High Contracting Party who has made the reservation nor relied on by that Party against any other High Contracting Party.

Article 5

If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Protocol and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

[242] League of Nations, *Treaty Series*, volume CLXXIX, No. 4138, page 115. See documents of Conference for Codification of International Law, held at The Hague, 13 March-12 April 1930, P.226.M.113.1930 (series of League of Nations Publications, V. *Legal Questions*- I 930-V.3).

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the Parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of the 16th December, 1920, relating to the Statute of that Court, and if any of the Parties to the dispute is not a Party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with the Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.

Article 6

The present Protocol shall remain open until the 31st December, 1930, for signature on behalf of any Member of the League of Nations or of any non-Member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Protocol for this purpose.

Article 7

The present Protocol is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the Members of the League of Nations and to the non-Member States mentioned in article 6, indicating the date of its deposit.

Article 8

As from January 1st, 1931, any Member of the League of Nations and any non-Member State mentioned in article 6 on whose behalf the Protocol has not been signed before that date, may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the Members of the League of Nations and to the non-Member States mentioned in article 6, indicating the date of the deposit of the instrument.

Article 9

A procès-verbal shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten Members of the League of Nations or non-member States have been deposited.

A certified copy of this procès-verbal shall be sent by the Secretary-General to each Member of the League of Nations and to each non-Member State mentioned in article 6.

Article 10

The present Protocol shall enter into force on the 90th day after the date of the procès-verbal mentioned in article 9 as regards all Members of the League of Nations or non-member States on whose behalf ratifications or accessions have been deposited on the date of the procès-verbal.

As regards any Member of the League or non-Member State on whose behalf a ratification or accession is subsequently deposited, the Protocol shall enter into force on the 90th day after the date of the deposit of a ratification or accession on its behalf.

Article 11

As from January 1st, 1936, any Member of the League of Nations or any non-Member State in regard to which the present Protocol is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Protocol. If such a request, after being communicated to the other Members of the League and non-Member States in regard to which the Protocol is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the Members of the League of Nations and the non-Member States mentioned in article 6, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The High Contracting Parties agree that, if the present Protocol is revised, the new Agreement may provide that upon its entry into force some or all of the provisions of the present Protocol shall be abrogated in respect of all of the Parties to the present Protocol.

Article 12

The present Protocol may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all Members of the League of Nations and the non-member States mentioned in article 6.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification but only as regards the Member of the League or non-Member State on whose behalf it has been notified.

Article 13

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Protocol, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Protocol shall not apply to any territories or to the parts of their population named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Protocol shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Protocol shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires that the present Protocol shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Protocol shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any High Contracting Party may make the reservations provided for in article 4 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the Protocol or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and the non-Member States mentioned in article 6 all declarations and notices received in virtue of this article.

Article 14

The present Protocol shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

Article 15

The French and English texts of the present Protocol shall both be authoritative.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Protocol.

DONE AT THE HAGUE on the twelfth day of April, one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

POSITION CONCERNING SIGNATURES, RATIFICATIONS AND ACCESSIONS AT THE DATE OF 10 JULY 1944[243] Protocol in force since 1 July 1937

1. RATIFICATIONS: 10

Brazil (September 19, 1931 a)

Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations (January 14, 1932).

Burma

His Majesty the King does not assume any obligation in respect of the Karenni States, which are under His Majesty's suzerainty, or the population of the said States.

Australia (July 8, 1935)

(Including the territories of Papua and Norfolk Island and the mandated territories of New Guinea and Nauru.)

Union of South Africa (April 9, 1936)

India (September 28, 1932)

In accordance with the provisions of article 13 of this Protocol, His Britannic Majesty does not assume any obligation in respect of the territories in India of any Prince or Chief under his suzerainty, or the population of the said territories.

Chile (March 20th, 1935)

China (February 14, 1935)

The Netherlands (April 2, 1937)

[243] See League of Nations, *Official Journal, Special Supplement No. 193*, Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations, page 62. The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change.

Including the Netherlands Indies, Surinam and Curaçao.

Poland (June 15, 1934)

Salvador (October 14, 1935 a)

2. SIGNATURES NOT YET PERFECTED By RATIFICATION: 20

<i>Belgium</i>
Subject to accession later for the Colony of the Congo and the mandated territories.
<i>Canada</i>
Colombia
Cuba
Czecho-Slovakia
Free City of Danzig
(through the intermediary of Poland)
<i>Denmark</i>
<i>Egypt</i>
Estonia
France
Greece
Ireland
Japan
Latvia
Luxemburg
Mexico
Peru
Portugal
Spain
<i>Uruguay</i>

3. *Special Protocol concerning Statelessness, signed at The Hague on 12 April 1930*[244]

The undersigned Plenipotentiaries, on behalf of their respective Governments,

With a view to determining certain relations of stateless persons to the State whose nationality they last possessed,

[244] This Protocol is not yet in force. See documents of Conference for Codification of International Law, held at The Hague, 13 March-12 April 1930, C.227.M.114, 1930 V (series of League of Nations Publications, V. *Legal Questions, 1930-V.5*).

Have agreed as follows:

Article 1

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:

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

(ii) 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 such person last possessed may refuse to receive him, if it undertakes to meet the cost of relief in the country where he is as from the thirtieth 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.

Article 2

The High Contracting Parties agree to apply the principles and rules contained in the preceding article in their relations with each other as from the date of the entry into force of the present Protocol.

The inclusion of the above-mentioned principles and rules in the said article shall in no way be deemed to prejudice the question whether they do or do not already form part of international law.

It is understood that, in so far as any point is not covered by any of the provisions of the preceding article, the existing principles and rules of international law shall remain in force.

Article 3

Nothing in the present Protocol shall affect the provisions of any treaty, convention or agreement in force between any of the High Contracting Parties relating to nationality or matters connected therewith.

Article 4

Any High Contracting Party may, when signing or ratifying the present Protocol or acceding thereto append an express reservation excluding any one or more of the provisions of articles 1 and 5.

The provisions thus excluded cannot be applied against the High Contracting Party who has made the reservation nor relied on by that Party against any other High Contracting Party.

Article 5

If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Protocol and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement, in accordance with the constitutional procedure of each of the

Parties to the dispute. In the absence of agreement on the choice of another tribunal, the dispute shall be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of the 16th December, 1920, relating to the Statute of that Court, and if any of the Parties to the Dispute is not a Party to the Protocol of the 16th December, 1920, the dispute shall be referred to an arbitral tribunal constituted in accordance with the Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Conflicts.

Article 6

The present Protocol shall remain open until the 31st December, 1930, for signature on behalf of any Member of the League of Nations or of any non-Member State invited to the First Codification Conference or to which the Council of the League of Nations has communicated a copy of the Protocol for this purpose.

Article 7

The present Protocol is subject to ratification. Ratifications shall be deposited with the Secretariat of the League of Nations.

The Secretary-General shall give notice of the deposit of each ratification to the Members of the League of Nations and to the non-Member States mentioned in article 6, indicating the date of its deposit.

Article 8

As from January 1st, 1931, any Member of the League of Nations and any non-Member State mentioned in article 6 on whose behalf the Protocol has not been signed before that date, may accede thereto.

Accession shall be effected by an instrument deposited with the Secretariat of the League of Nations. The Secretary-General of the League of Nations shall give notice of each accession to the Members of the League of Nations and to the non-Member States mentioned in article 6, indicating the date of the deposit of the instrument.

Article 9

A procès-verbal shall be drawn up by the Secretary-General of the League of Nations as soon as ratifications or accessions on behalf of ten Members of the League of Nations or non-Member States have been deposited.

A certified copy of this procès-verbal shall be sent by the Secretary-General to each Member of the League of Nations and to each non-Member State mentioned in article 6.

Article 10

The present Protocol shall enter into force on the 90th day after the date of the procès-verbal mentioned in article 9 as regards all Members of the League of Nations or non-Member States on whose behalf ratifications or accessions have been deposited on the date of the procès-verbal.

As regards any Member of the League or non-Member State on whose behalf a ratification or accession is subsequently deposited, the Protocol shall enter into force on the 90th day after the date of the deposit of a ratification or accession on its behalf.

Article 11

As from January 1st, 1936, any Member of the League of Nations or any non-Member State in regard to which the present Protocol is then in force, may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of this Protocol. If such a request after being communicated to the other Members of the League and non-Member States in regard to which the Protocol is then in force, is supported within one year by at least nine of them, the Council of the League of Nations shall decide, after consultation with the Members of the League of Nations and the non-Member States mentioned in article 6, whether a conference should be specially convoked for that purpose or whether such revision should be considered at the next conference for the codification of international law.

The High Contracting Parties agree that, if the present Protocol is revised, the new Agreement may provide that upon its entry into force some or all of the provisions of the present Protocol shall be abrogated in respect of all of the Parties to the present Protocol.

Article 12

The present Protocol may be denounced.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all Members of the League of Nations and the non-Member States mentioned in article 6.

Each denunciation shall take effect one year after the receipt by the Secretary-General of the notification but only as regards the Member of the League or non-Member State on whose behalf it has been notified.

Article 13

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Protocol, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories; and the present Protocol shall not apply to any territories or to the parts of their population named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Protocol shall apply to all or any of his territories or to the parts of their population which have been made the subject of a declaration under the preceding paragraph, and the Protocol shall apply to all the territories or the parts of their population named in such notice six months after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires that the present Protocol shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of the said territories, and the Protocol shall cease to apply to the territories or to the parts of their population named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. Any High Contracting Party may make the reservations provided for in article 4 in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, or in respect of certain parts of the population of these territories, at the time of signature, ratification or accession to the Protocol or at the time of making a notification under the second paragraph of this article.

5. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and the non-Member States mentioned in article 6 all declarations and notices received in virtue of this article.

Article 14

The present Protocol shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

Article 15

The French and English texts of the present Protocol shall both be authoritative.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Protocol.

DONE AT THE HAGUE on the twelfth day of April one thousand nine hundred and thirty, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which certified true copies shall be transmitted by the Secretary-General to all the Members of the League of Nations and all the non-Member States invited to the First Conference for the Codification of International Law.

POSITION CONCERNING SIGNATURES, RATIFICATIONS AND ACCESSIONS AT THE DATE OF 10 JULY 1944

The Supplement to the twenty-first list (League of Nations, *Official Journal, Special Supplement No. 195*) issued on 31 July 1946 indicates no change.²⁵²¹

Not yet in force[245]

1. RATIFICATIONS OR DEFINITIVE ACCESSIONS: 8

Belgium (April 4, 1939)

With the reservation that the application of this Protocol will not be extended to the Colony of the Belgian Congo or to the territories under mandate.

Brazil (September 19, 1931 a)

Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations (January 14, 1932).

Burma

His Majesty the King does not assume any obligation in respect of the Karenni States, which are under His Majesty's suzerainty, or the population of the said States.

Australia (July 8, 1935 a)

Including the territories of Papua and Norfolk Island and the mandated territories of New Guinea and Nauru.

Union of South Africa (April 9, 1936)

India (September 28, 1932)

[245] The Protocol shall enter into force ninety days after having received ten ratifications or accessions (articles 9 and 10).

In accordance with the provisions of article 13 of this Protocol, His Britannic Majesty does not assume any obligation in respect of the territories in India of any Prince or Chief under His suzerainty or the population of said territories.

China (February 14, 1935)

Salvador (October 14, 1935)

The Republic of Salvador does not assume the obligation laid down by the Protocol where the Salvadorian nationality possessed by the person and ultimately lost by him was acquired by naturalisation.

2. SIGNATURES NOT YET PERFECTED By RATIFICATION: 12

<i>Canada</i>
Colombia
Cuba
Egypt
Greece
Ireland
Luxemburg
Mexico
Peru
Portugal
Spain
Uruguay