

Document:-
A/CN.4/50

Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur

Topic:
Nationality including statelessness

Extract from the Yearbook of the International Law Commission:-
1952 , vol. II

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NATIONALITY, INCLUDING STATELESSNESS

DOCUMENT A/CN.4/50

Report by Manley O. Hudson, Special Rapporteur

[Original text : English]
[21 February 1952]

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REPORT TO THE INTERNATIONAL LAW COMMISSION

1. In 1949, the International Law Commission placed on the list of subjects tentatively selected for codification "nationality, including statelessness".

2. In 1950, the Secretary-General of the United Nations communicated to the International Law Commission resolution 304 D (XI) adopted on 17 July 1950 by the Economic and Social Council, in pursuance of a report by the Commission on the Status of Women at its fourth session.¹ The Council proposed to the International Law Commission that

"it undertake as soon as possible the drafting of a Convention to embody the principles recommended by the Commission on the Status of Women".

and requested the International Law Commission to "determine at its present session whether it deems it appropriate to proceed with this proposal".

The International Law Commission adopted a resolution declaring it

"appropriate to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'Nationality, including statelessness'".²

¹ See *Yearbook of the International Law Commission, 1950*, vol. II, p. 363.

² *Ibid.*, Report of the International Law Commission, para. 20.

3. In 1951, the International Law Commission was apprised of resolution 319 B III (XI) adopted by the Economic and Social Council on 11 August 1950, requesting that the Commission

"prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness".³

This matter was deemed by the Commission to lie within the framework of the topic "Nationality, including statelessness".

4. In 1951, the International Law Commission decided to initiate work on "Nationality, including statelessness", and appointed one of its members, Manley O. Hudson, special rapporteur on this subject.

5. The special rapporteur promptly placed himself in contact with the United Nations High Commissioner for Refugees, to avail himself of the High Commissioner's generous offer of assistance to the Commission. The High Commissioner was good enough to request Dr. Paul Weis to render assistance to the special rapporteur. Dr. Weis arrived in Cambridge, Massachusetts, on 6 October 1951, and devoted seven weeks to working with the special rapporteur.

³ See *Yearbook of the International Law Commission, 1951*, vol. II, p. 121.

6. The special rapporteur also requested the assistance of the Legal Department of the Secretariat of the United Nations. The Legal Department decided to undertake the preparation of a collection of the nationality laws of all countries.⁴ It has also rendered assistance in the preparation of the papers accompanying this report.

7. The special rapporteur has taken account of the urgency with which the Economic and Social Council has viewed the two requests which were communicated to the International Law Commission. It has seemed to him, therefore, that a special effort should be made to embody in this report concrete materials which would enable the Commission to consider at its session in 1952 the two subjects suggested by the Economic and Social

⁴ See *Laws Concerning Nationality*, United Nations publication, Sales No. 1954.V.I.

Council, in the hope that the Commission might promptly frame some definite proposals with reference to these subjects.

8. This anticipation has dominated the preparation of the materials which the special rapporteur now submits to the Commission. These materials consist of :

Annex I. An introductory statement, partly historical and partly analytical, on the subject of " Nationality in General ";

Annex II. A working paper on the " Nationality of Married Persons "; and

Annex III. A working paper on " Statelessness ".

Annex I is intended to serve only as a presentation of the background of the subject, with which the Commission may wish to deal in the future. The two working papers are placed before the Commission for its consideration of them at its fourth session in 1952.

Annex I

NATIONALITY IN GENERAL

SECTION I. PAST ACTION FOR THE CODIFICATION OF INTERNATIONAL LAW IN THE FIELD OF NATIONALITY

1. *The Hague Conference for the Codification of International Law*

In 1924, the Council of the League of Nations appointed a Committee of Experts on the Progressive Codification of International Law, in order

" to prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realizable at the present moment ".

The Committee decided to include in its list the following subjects:

(1) " Whether there are problems arising out of the conflict of laws regarding nationality the solution of which by way of conventions could be envisaged without encountering political obstacles ";

(2) " If so, what these problems are and what solution should be given to them. "

The report on this subject, prepared by a Sub-Committee consisting of M. Rundstein as rapporteur, M. Schücking and M. de Magalhaes, included a Preliminary Draft of a Convention for the Settlement of Certain Conflicts of Laws regarding Nationality.⁵

The Committee circulated to Governments questionnaires on the subjects considered sufficiently ripe for regulation, and some thirty Governments sent replies.

The Assembly of the League of Nations decided to submit the following questions for examination to a first Codification Conference:

(a) Nationality

(b) Territorial waters, and

(c) Responsibility of States for damage done in their territory to the person or property of foreigners.

It entrusted the Council of the League with the task of appointing a Preparatory Committee composed of five jurists. [Resolution adopted on 27 September 1927].⁶

The Preparatory Committee, consisting of Professor Basdevant, Counselor Carlos Castro Ruiz, Professor François, Sir Cecil Hurst and M. Massimo Pilotti, circulated to Governments a list of points on which they were invited to state their views, both as to existing international law and practice and as to any modification therein which might be desirable; on the basis of the replies received from Governments, " Bases for discussion " were drawn up for the Conference by the Committee.⁷

The careful preparatory work provides a wealth of information on the legal position as regards the subjects concerned, particularly as to State practice. Despite this fact, the results of the Conference, which was held at The Hague from 18 March to 12 April 1930, were relatively modest.

The Conference adopted and opened for signature in the field of nationality the following instruments under the date of 12 April 1930:

(a) *A Convention on Certain Questions relating to the Conflict of Nationality Laws*⁸

This deals, in Chapter I, with general principles (Articles 1, 2), in particular principles relating to cases of double nationality (Articles 3-6); in Chapter II with expatriation permits; in Chapter III with the nationality of married women; in Chapter IV with the nationality of children; and in Chapter V with adoption.

The Convention first entered into force on 1 July 1937; it was ratified or acceded to before the end of 1939 by twelve States: Belgium (with reservations), Brazil (with reservations), Great Britain and Northern Ireland, Canada, Australia, India, China (with reservations), Monaco, the Netherlands (with reservations), Norway, Poland, Sweden

⁵ *Ibid.* (document C.L.36, 1928.V. Annex).

⁶ *Ibid.*, V. *Legal*, 1929.V.1 (document C.73.M.38.1929.V).

⁷ *Ibid.*, *Treaty Series*, vol. CLXXIX, p. 89. Also in *Laws Concerning Nationality*, *op. cit.*, pp. 567-572.

⁸ League of Nations publication, V. *Legal*, 1927.V.I (document C.196.M.70.1927.V).

(with reservations).⁹ No ratifications or accessions were deposited after 1939. The signatures of twenty-seven States were not followed by ratification.

(b) *A Protocol relating to Military Obligations in Certain Cases of Double Nationality*¹⁰

This Protocol first entered into force on 25 May 1937. It was ratified or acceded to by twelve States before the end of 1939: United States, Belgium, Brazil, Great Britain and Northern Ireland, Australia, Union of South Africa (with reservations), India, Colombia, Cuba (with a reservation), the Netherlands, El Salvador, Sweden. No ratifications were deposited after 1939.

(c) *A Protocol relating to a Certain Case of Statelessness*¹¹

This Protocol first entered into force on 1 July 1937. It was ratified before the end of 1939 by ten States: Brazil, Great Britain and Northern Ireland, Australia, Union of South Africa, India, Chile, China, the Netherlands, Poland, El Salvador.

(d) *A Special Protocol concerning Statelessness*¹²

This Protocol did not enter into force though it was ratified by eight States, as the required number of ten ratifications or accessions had not been reached.

The Hague Conference adopted also, in its Final Act, a number of recommendations relating to nationality.¹³

2. Inter-American conventions

(a) At Rio de Janeiro on 18 August 1906, the Second International Conference of American States adopted a convention concerning the resumption of their former nationality by naturalized persons. The Convention is now in force between ten States: Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Nicaragua, Panama and the United States.¹⁴

(b) The Code of Private International Law, known as the *Bustamante Code*, annexed to the Convention signed at the sixth International Conference of American States at Havana on 20 February 1928, deals in Book I. Title I, Chapter I, with conflicts of laws relating to nationality and naturalization. The Convention has been ratified by fifteen States, with reservations in some cases: Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Venezuela.¹⁵

(c) At the Seventh International Conference of American States held in Montevideo in 1938, two conventions on nationality were adopted:

(i) A Convention of 26 December 1938, on the Nationality of Women. This Convention is in force between ten

⁹ League of Nations, *Official Journal*, Special Supplement No. 193, p. 63.

¹⁰ *Ibid.*, *Treaty Series*, vol. CLXXVIII, p. 227. Also in *Laws Concerning Nationality*, *op. cit.*, pp. 572-575.

¹¹ *Ibid.*, vol. CLXXIX, p. 115. Also in *Laws Concerning Nationality*, *op. cit.*, pp. 575-577.

¹² League of Nations, *V. Legal*, 1930.V.6 (document C.227.M.114.1930.V). Also in *Laws Concerning Nationality*, *op. cit.*, pp. 577-580.

¹³ *Ibid.*, *V. Legal*, 1930.V.7 (document C.228.M.115.1930.V). Also in *Laws Concerning Nationality*, *op. cit.*, pp. 580-582.

¹⁴ See text in J. B. Scott, *International Conferences of American States* (New York, Oxford University Press, 1931, p. 131). Also in *Laws Concerning Nationality*, *op. cit.*, pp. 582-583.

¹⁵ See text in League of Nations, *Treaty Series*, vol. LXXXVI, p. 111. Also in *Laws Concerning Nationality*, *op. cit.*, pp. 583-584.

States: Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Mexico, Panama, United States; but Honduras, Mexico and the United States have made reservations.¹⁶

(ii) A Convention of 26 December 1933, on Nationality. This Convention deals with naturalization and the effects of transfer of territory and of marriage on nationality. It is in force between five States: Chile, Ecuador, Honduras (accession with reservations), Mexico (with reservations), and Panama (accession with reservations).¹⁷

3. Other international agreements relating to nationality

There exist, in addition, a great number of bilateral treaties which deal either exclusively or partially with nationality as well as multilateral treaties dealing partially with nationality such as the Peace Treaties concluded after the First World War and the Peace Treaty with Italy of 1947. They will be referred to in the text whenever necessary.

SECTION II. ANALYTICAL SURVEY OF INTERNATIONAL LAW ON NATIONALITY

1. Concept of nationality in international law

For the purpose of this survey, the term "nationality" is used in regard to physical persons only. The national character of business associations, of ships, and of aircraft, does not come within the scope of this paper.

The terms "nationality" and "national" have to be distinguished from similar, but not necessarily synonymous terms such as "citizenship" and "citizen", "subject", "ressortissant", etc.

A person may be a national of a State without having its citizenship.¹⁸

The term "subject" is usually employed in States with a monarchial head where it denotes "national". The recently enacted nationality legislation in some parts of the British Commonwealth declares the expressions "British subject" and "Commonwealth citizen" to be synonymous. It has created a distinction between "Commonwealth citizenship" and the citizenship of particular members of the Commonwealth, the latter being determined by the law of the member. The title "British subject" is a common denomination of the citizens of the members of the Commonwealth.

The French term "ressortissant" may be used with a wider meaning than the term "national". The fact that it has been used as an equivalent to "national" in the French text of treaties which were published in several languages has led to difficulties of interpretation.

Nationality is usually defined in terms of municipal law. The following definition is more general: "Nationality is the status of a natural person who is attached to a State by the tie of allegiance" (Draft Convention of the Harvard Research in International Law, Article 1).¹⁹

Distinctions made by municipal law between various classes of nationals are, as a rule, immaterial from the

¹⁶ See text in M. O. Hudson, *International Legislation* (Washington, Carnegie Endowment, 1937), vol. 6, p. 589. Also in *Laws Concerning Nationality*, *op. cit.*, p. 584.

¹⁷ *Ibid.*, p. 598. *Ibid.*, p. 585.

¹⁸ See U.S. Nationality Act, 1940 in 8 U.S.C., sec. 101(6).

¹⁹ Harvard Law School, *Research in International Law*. Supplement to *American Journal of International Law*, vol. 23 (1929).

point of view of international law.²⁰ They become, however, relevant if a State creates a class of nationals in regard to whom it does not assume the rights and obligations inherent in the above-mentioned concept of nationality for the purpose of international law.

The treatment of German Jews by Nazi Germany is a case in point. The Reich Citizenship Law of 15 September 1935 provided that Jews, though German subjects or nationals (*Staatsangehörige*) could not be Reich citizens (*Reichsbürger*). Jews had no political rights. In the course of its policy of persecution Jews were, by legislative and administrative measures, gradually deprived of all rights usually attributed to nationals under municipal law, and of the protection by the law. Their status was inferior to that of aliens. By the 11th Ordinance under the Reich Citizenship Law of 25 November 1941, German Jews who had their ordinary residence abroad were deprived of German nationality.

German Jews were forced to emigrate from Germany; later, the Government resorted to mass deportation, and, ultimately, to the extermination of the Jews. German Jews abroad were not given diplomatic protection; thus, a usual consequence of nationality was denied them.

2. General remarks regarding the relationship between municipal law and international law in the field of nationality

In principle, questions of nationality fall within the domestic jurisdiction of each State.

This rule has been codified in The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws in the following manner :

" Article 1. It is for each State to determine who are its nationals....

" 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 1 contains, however, in the second sentence, the following important qualification :

" 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."

This question gave rise to considerable discussion in the preparatory stages of The Hague Codification Conference and in the First Committee of the Conference itself.

In the Committee of Experts for the progressive codification of international law, M. Rundstein, rapporteur of the sub-committee on nationality, took the view that the jurisdiction of States in the field of nationality was unlimited.²¹

The Preparatory Committee for the Conference, after stating the principle that questions of nationality are within the sovereign authority of each State, defined the limitations imposed on this sovereign right by international law in the following terms :

" The legislation of each State must nevertheless take account of the principles generally recognized by States. These principles are, more particularly :

" As regards acquisition of nationality :

" Bestowal of nationality by reason of the parents' nationality or of birth on the national territory, marriage with a national, naturalization by or on behalf of the person concerned, transfer of territory.

²⁰ See L. Oppenheim, *International Law: A Treatise*, 7th ed. (London, Longmans, Green and Co., 1948), vol. I, p. 587.

²¹ League of Nations, *V. Legal*, 1926.V.1 (document C.43.M.18.1926.V), p. 2.

" As regards loss of nationality :

" Voluntary acquisition of a foreign nationality, marriage with a foreigner, *de facto* attachment to another country accompanied by failure to comply with provisions governing the retention of the nationality, transfer of territory ".²²

The representatives of Governments in the First Committee of The Hague Conference of 1930 could not agree on the principles set out in the basis of discussion and the rule was subsequently adopted in the form contained in Article 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws.

The matter has been stated succinctly by the Permanent Court of International Justice in 1928 in its Advisory Opinion on the Tunis and Morocco Nationality Decrees :

" The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of this Court, in principle within this reserved domain." ²³

It has, therefore, to be examined whether there exist any rules of international law which limit the sovereign jurisdiction of a State to confer, withhold or cancel its nationality — apart from treaty obligations; such rules may either impose on States a duty to act in a certain manner or may restrict its freedom of action.

3. Power of a State to confer its nationality and duty of a State to confer its nationality

(a) As regards conferment of nationality at birth

The links of attribution of nationality at birth are, according to municipal law, either descent (*jus sanguinis*) or birth on the territory (*jus soli*) or a combination of these links. The law of the Vatican City State under which nationality is not acquired at birth but by the exercise of an office or the authorization to reside in the territory only forms an exception which finds its explanation in the specific nature of that State.

This uniformity of nationality laws seems to indicate a consensus of opinion of States that conferment of nationality at birth has to be based on either, on *jus soli* or on *jus sanguinis*, or on a combination of these principles. It may be a moot question whether this rule merely constitutes usage or whether it imposes a duty on States under customary international law.

As regards *jus soli*, it seems an accepted rule that nationality shall not be conferred by reason of birth on the territory on children of an alien who enjoys diplomatic immunity in the country concerned or who is otherwise exempt from its jurisdiction. (Cf. Convention on Certain Questions relating to the Conflict of Nationality Laws, Article 12, and Harvard Research Draft, Article 5).

The question arises whether for the purpose of the application of *jus soli*, birth on a merchant vessel flying the flag of the State concerned should be assimilated to birth in the territory when the birth occurs (a) while the ship is on the high sea, (b) while the ship is in foreign territorial waters, (c) while the ship is in a foreign port.

The replies given by Governments on this question to the questionnaire prepared by the Preparatory Commission

²² *Ibid.*, V. Legal, 1929.V.1 (document C.73.M.38.1929.V), p. 20. Basis of discussion No. 1.

²³ Publications of the Permanent Court of International Justice, *Advisory Opinions*, Series B, No. 4, p. 24.

for The Hague Codification Conference showed great divergencies of views and of practice. The Conference did not succeed in incorporating a rule on this question in the Convention and it cannot be maintained that a rule of international law exists on it.

(b) *As regards conferment of nationality subsequent to birth (naturalization)*

Naturalization in the wider sense means every conferment of nationality upon an individual subsequent to birth. In the narrower sense it means grant of nationality to an individual on his application or on the application of a person acting on his behalf (father on behalf of minor children, husband on behalf of the wife; as to the latter, see, however, Annex II).

It cannot be said that rules of international law can be deduced from the practice of States as to the conditions on which such conferment of nationality can be considered as consistent with international law; in order to justify it, a personal or territorial link between the conferring State and the individual must exist. As to the nature of this link, the various modes of acquisition of nationality must be distinguished.

Nationality laws differ as to whether conferment (or, for that matter, withdrawal or cancellation) of nationality on the husband or father involves *ipso facto* conferment (withdrawal or cancellation) of nationality on the wife or minor children. The effect varies, moreover, according to the reason for the conferment (withdrawal, cancellation) of nationality. (On the effect of marriage on nationality, see Annex II.)

(aa) *Naturalization in the narrower sense. Option*

Naturalization must be based on an explicit voluntary act of the individual or of a person acting on his behalf. Habitual residence in the territory of the naturalizing State is usually a requirement (*cf.* Harvard Research Draft, Article 14), but there are exceptions to this rule (*e.g.*, in the case of the naturalization of the wife and minor children; under English law (British Nationality Act, 1948, 11 & 12 Geo. 6, ch. 56, second schedule, para. 1) and the law of the United States (54 Stat. 1149, 8 U.S.C. 724, sec. 324 (a)). State Service abroad is deemed equivalent to residence).

(bb) *Conferment of nationality by operation of law*

Under the law of some States nationality is conferred automatically by operation of law, as the effect of certain changes in civil status: adoption, legitimization, recognition by affiliation, marriage (as to marriage see, however, Annex II).

Appointment as teacher at a university also involves conferment of nationality under some national laws.

While these reasons for the conferment of nationality have been recognized by the consistent practice of States and may, therefore, be considered as consistent with international law, others have not been so recognized.

Thus, certain modes of conferment of nationality practised by certain Latin-American States in the last century such as the imposition of nationality on aliens ("collective naturalization") who had acquired real property in the country (Peru, Mexico) or who were residing in the country on a certain date (Brazil) were considered by other States as inadmissible and were held to be inconsistent with international law by international tribunals (*cf.* the decision of the U.S. Mexican Claims Commission in *re Fayette Anderson and William Thompson v. Mexico*).²⁴

²⁴ Moore, *International Arbitrations* (Washington, Government Printing Office, 1898), vol. 3, pp. 2479-2481, No. 3331.

The mass imposition of German nationality on nationals of territories occupied by Germany in the last war during *occupatio bellica* were obviously inconsistent with international law.

A recent example of automatic conferment of nationality is furnished by the legislation of the Argentine. Article 31 of the Constitution of the Argentine Republic provides:

"Foreigners who enter the country without violating the laws shall enjoy the civil rights of Argentinians, as well as political rights, five years after having obtained Argentinian nationality. Upon their petition, they may be naturalized if they have resided two consecutive years in the territory of the Nation, and they shall acquire Argentinian nationality automatically at the end of five years of continuous residence in the absence of express declaration to the contrary....".²⁵

(It will be noted that naturalization does not immediately confer political rights; two classes of nationals, such enjoying political rights and such who do not, are hereby created).

A bill which would have conferred Argentinian nationality automatically on aliens after two years' residence led to protests by other States.

It is difficult to draw the line between modes of automatic conferment of nationality which are or are not considered as consistent with international law.

Probably, the modes mentioned above which are recognized by State practice can, to a certain degree, be assimilated to voluntary naturalization: though not based on application, they result from a voluntary act of the individual or of the person acting on his behalf.

(c) *As regards conferment of nationality in consequence of territorial changes*

In cases of territorial changes the question of nationality becomes *ipso facto* a matter of international concern, as it is from the outset the concern at least of two States, the acquiring State and the State whose territory is acquired.

A distinction has to be made between original modes of acquisition: total annexation or incorporation; partial annexation and secession; and the derivative method of cession where the title to the territory is derived from the title of the predecessor State.

In the case of cession, the territorial transfer is usually based on treaty, and the agreement made between the ceding and cessionary State will, as a rule, include provisions concerning the nationality of the inhabitants of the ceded territory. It follows that, in distinction to other modes of acquisition, the ceding State is under an obligation to recognize the rules established by the cessionary State as regards the nationality of the inhabitants in accordance with the treaty of cession. This applies generally to all States parties to a multilateral treaty containing provisions for territorial changes, such as the Treaties of Peace concluded after the First World War. Of the Treaties of Peace concluded after the Second World War, only the Treaty with Italy contains provisions dealing with the nationality of inhabitants of the territories ceded by Italy and the nationality of the inhabitants of the Free Territory of Trieste.

In the absence of treaty provisions on nationality in case of cession and in case of original modes of acquisition the question arises what rules of customary international law and general principles of law, if any, exist which bind the acquiring State as regards the regulation of the nationality of the inhabitants of the territory concerned, by its mun-

²⁵ A. J. Peaslee, *Constitutions of Nations*, 2nd ed. (Martinus Nijhoff, 1956), vol. 1, p. 51.

cipal law which is the sole determining factor, in particular whether there is a duty to confer its nationality on such persons.

It is sometimes asserted that international law imposes a duty on the successor State to confer its nationality on the inhabitants of the territory acquired. (Such a rule based on habitual residence as the connecting link has been suggested by the Harvard Research Draft, Article 18.) In practice, States have, however, not necessarily conferred their nationality on all the inhabitants. The alleged rule cannot, therefore, be maintained, but it can be stated that under international law the successor State is under an obligation to make provision for the regulation of the nationality of the inhabitants of the acquired territory.

The acquiring State may not confer its nationality on aliens, i.e., persons resident on the territory, who are not nationals of the predecessor State or stateless, since such action would infringe on the right of protection of the State of nationality. (*Cf.*, i.e., *Masson v. Mexico*.)²⁶ In practice, States have rarely made use of their right to confer their nationality on stateless persons although this might be desirable in the interest of the elimination of statelessness (see Annex III).

The view has been taken by writers that the acquiring State has no power to confer its nationality on persons outside its territorial jurisdiction. Such persons who were nationals of the predecessor State will, according to this view, acquire the nationality of the successor State only if they submit voluntarily to its jurisdiction, either by a voluntary declaration to this effect (option) or by voluntary return to their territory of origin. This view is supported by decisions of municipal courts (cf., e.g., *U.S. ex rel Paul Schwarzkopf v. Uhl*, District Director of Immigration),²⁷ where it was held that an Austrian national who had been resident in the United States at the time when Austria was incorporated into Germany had not acquired German nationality.

The question arises: what is the criterion on which the acquisition of the nationality of the successor State is to be based? In case of cession this question is usually regulated by treaty. According to the Treaty of Versailles of 1919, habitual residence on the ceded territory on a certain date was stipulated as the criterion from which acquisition of the nationality of the cessionary State was to follow. In the Treaty with Italy of 1947, the principle of domicile (in the sense of habitual residence) in the territories ceded by Italy has been used (Article 19). The same applies as regards acquisition of the nationality of the Free Territory of Trieste (Annex IV, Article 6, to the Treaty).

The Treaties of St. Germain with Austria (1919), of Trianon with Hungary (1919), and the Minorities Treaties of 1919 with Czechoslovakia and Yugoslavia established the possession of *Heimatrecht* (*indigenat, Pertinenza*) in a community within the territory of the State concerned as the principal link for the acquisition of the nationality; this criterion, the right of citizenship in a particular community, constituted a condition for the possession of nationality of the Austro-Hungary monarchy peculiar to the law of that State.

The complicated nature of these links resulted in the creation of a great number of stateless persons. Moreover, in so far as these provisions were to affect the nationality of persons who were resident in the territories of States which were not parties to the treaties at the crucial time, they were probably *ultra vires*.

In the absence of treaty provisions, physical presence on the territory which is subject to the change of sovereignty must be considered as the determining criterion.

Where, as in the case of total annexation or incorporation, the predecessor State is extinguished, nationals of that State who fail to acquire the nationality of the successor State become stateless.

Thus, when the Baltic States of Latvia, Lithuania and Estonia were incorporated into the U.S.S.R. in 1940, the latter enacted legislation providing for the conferment of Soviet nationality on nationals of these States. (Edict of the Presidium of the U.S.S.R. of 7 September 1940.)²⁸ Nationals who resided abroad at the date of incorporation were required to register with the diplomatic or consular representatives of the U.S.S.R., failing which they might obtain Soviet nationality by naturalization only. Those who did not acquire Soviet nationality became stateless.

A last problem connected with territorial change is whether there is an obligation under international law to grant persons (to the inhabitants of the transferred territory) a right of option to retain their original nationality or to leave the transferred territory. Most of the treaties of cession and multilateral treaties dealing with cession of territories (Peace Treaties) or questions arising from such cession contain provisions for the exercise of this right; it has, however, in some instances been limited to specific groups (national or religious minorities). Persons exercising the right to opt for their former nationality were, as a rule, compelled to leave the transferred territory.

The Inter-American Convention on Nationality signed at Montevideo on 26 December 1938 provides that:

"In case of the transfer of a portion of the territory on the part of one of the States signatory hereof to another of such States, the inhabitants of such transferred territory must not consider themselves as nationals of the State to which they are transferred, unless they expressly opt to change their original nationality." (Article 4)

The Harvard Research Draft provides for a right of the inhabitants to decline the new nationality (Article 18).

As regards recent cases of cession, the treaty concluded between Poland and the U.S.S.R. on 16 August 1945 on the Soviet-Polish state frontier, by which parts of Eastern Poland were ceded to the Soviet Union, contains no provisions relating to the nationality of the inhabitants. An agreement was, however, concluded previously, on 6 July 1945, between Poland and the U.S.S.R. according to which persons of Polish and Jewish race, who had Polish nationality until 17 September 1939, and were residing on Soviet territory, and members of their families, were authorized to renounce Soviet nationality and to move to Poland. Persons of Russian, Ukrainian, Byelorussian, Ruthenian and Lithuanian race, residing in Poland, and members of their families, were authorized to renounce Polish nationality and move to Soviet territory. Acquisition of the nationality of the State to which the persons moved was subject to approval of the competent authorities.²⁹

A protocol accompanying the treaty between Czechoslovakia and the U.S.S.R. of 29 June 1945, by which the Transcarpathian Ukraine was ceded to the U.S.S.R., provides that persons of Ukrainian and Russian race residing in Czechoslovakia may, until 1 January 1946, opt for Soviet nationality. Persons of Czech and Slovak race residing in

²⁶ Moore, *op. cit.*, vol. 8, pp. 2542-2543.

²⁷ U.S. Circuit Court of Appeals, 137 F. 2d., p. 898.

²⁸ *Vedomosti*, 1940, No. 31.

²⁹ U.S. Department of State, *Bulletin*, Vol. XV, No. 374.

the Transcarpathian Ukraine may opt for Czechoslovak nationality until 1 January 1946 (Article II of the Protocol). The option referred to in this treaty does not constitute option in the usual sense, as it required the consent of the authorities of the State in whose favour it was exercised in order to become effective.

The Peace Treaty with Italy provides for a mutual right of option on the basis of linguistic affinity (Article 18, para. 2, Article 20, para. 1). A right of option for re-acquisition of Italian nationality is also provided for persons acquiring the nationality of the Free Territory of Trieste whose customary language is Italian (Annex VI, Article 6, para. 2).

It seems doubtful whether this consistent, but not entirely uniform treaty practice can be considered as a common consent of States for a rule of international law establishing such a right of option. In view of the tendency for the increasing integration of the individual in international law, this may be argued.

4. Power of a State to withhold or cancel its nationality and duty of a State to withhold or cancel its nationality

(a) In general

Nationality may be lost by unilateral act of the State or of the national. It may further be lost automatically, by operation of law, upon conferment of nationality by another State (see below).

Loss of nationality by unilateral act of the State may be caused by prolonged residence of the national abroad (expiration) or because of some action or conduct of the national (deprivation of nationality or denationalization). Denationalization has often the character of a penal sanction (because of criminal or political offences, misconduct, disloyalty). Loss of nationality may also take place on application by the national (release).

Loss of nationality by unilateral act of the national is effected by renunciation of nationality or declaration of alienage.

Under the laws of some States, the authorities have wider powers to deprive nationals who have acquired the nationality concerned by naturalization, of their nationality (denaturalization) than in the case of born nationals. Denaturalization may either consist in cancellation of nationality because it is found that the necessary requirements for the naturalization did not exist, whether such error was caused by fraud or misrepresentation by the applicant or not, or in revocation of nationality because of acts or conduct of the naturalized person subsequent to naturalization.

In principle, the power of States to cancel or withdraw nationality is, in the absence of treaty obligations, not limited by international law (as to duty to cancel or withdraw, see below).

When, however, certain States resorted to mass denationalization for political reasons, this was alleged to be inconsistent with international law. It has been said that such action by States was an abuse of rights as it was an attempt by the State of nationality to evade the duty of receiving back their nationals and would thus cast a burden on other States, or that it was irreconcilable with the notion of the individual as a person before the law.

The question arose on the issue of the recognition of the mass denationalization of nationals by a law of the Russian S.F.S.R. of 15 December 1921, and of the U.S.S.R. of 13 November 1925. The prevailing view was that the withdrawal of nationality had to be recognized (the decision

of the Swiss Federal Court in *Lempert v. Bonfol*, may be regarded as a leading case on this question).³⁰

The question was raised again in connexion with the withdrawal of German nationality from German Jews having their ordinary residence abroad, by the 11th Ordinance under the Reich Citizenship Law of 25 November 1941. As this Ordinance was issued during the war, the issue was somewhat blurred by the fact that the question of recognition raised in Allied countries the issue of the recognition of acts taken by an enemy power in time of war. Recognition was refused by an English Court in *The King v. The Home Secretary, ex parte L. and another* (1945), 1 K.B. 7, in line with decisions made during the First World War (*Liebmann's Case* (1916)). K.B. 268; 1 A.C. 421 (House of Lords). The withdrawal was recognized by United States courts (cf. the above cited case, *U.S. ex rel Schwartzkopf v. Uhl*, followed in later decisions).

After the Second World War nationality was withdrawn *en masse* from persons of German and Hungarian races by Czechoslovakia and from persons of German race by Poland. Persons of German race were expelled to Germany under the Potsdam Agreement.

The extent to which mass denationalization is prohibited by international law is not clear. A distinction has to be drawn between the power of States to withdraw nationality and the effect of withdrawal on the duty of a State to grant its nationals a right of residence and to receive them back in its territory. It has been contended that this persists after the withdrawal of nationality.

The Preparatory Committee for the Codification of International Law proposed, in its Basis of Discussion No. 2³¹ the stipulation of this duty as a relative duty only, existing between the State of former nationality and the State of residence provided the withdrawal of nationality took place after the individual's entry into a foreign country and he had not acquired another nationality (see also Harvard Research Draft, Article 20).

The Conference adopted on this question the Special Protocol concerning Statelessness which provides for a duty of readmission of former nationals under certain conditions only; this Protocol is not in force. The Conference adopted in its Final Act a recommendation to States to examine the desirability of readmitting former nationals who had not acquired another nationality under conditions different from those set out in the Protocol.

(b) Withdrawal of nationality upon conferment of another nationality (substitution of nationality)

Under the law of many States the nationality of their nationals is withdrawn *ipso facto* by their naturalization (in the wider sense of the term) by another State. But this practice is not uniform. There is, in fact, a sharp cleavage in the attitude of States to this problem. The United States legislation is a typical example for the law of those States which provide for automatic loss of nationality by foreign naturalization (Nationality Act of 1940, 54 Stat. 1169, sec. 401, a national of the United States "shall lose his nationality by... (a) obtaining naturalization in a foreign State...."). The right of expatriation has, by an Act of Congress of the United States (15 *Statutes at Large* 223), been declared "a natural and inherent right of all people".

In other States nationality may be withdrawn on foreign naturalization; the withdrawal is, however, not automatic but requires a renunciation of nationality (declaration of alienage).

³⁰ Tribunal fédéral, *Recueil officiel*, vol. 60, t. I, p. 67.

³¹ League of Nations, V. Legal, 1929.V.I (document C.73.M.38.1929.V, p. 21).

The law of England as regards this question has undergone certain changes. The common law doctrine of perpetual allegiance was abandoned in 1870. The British Nationality and Status of Aliens Act, 1914, contained the principle of automatic withdrawal (Article 18). Since the coming into force of the British Nationality Act, 1948, however, foreign naturalization is no longer a cause for the withdrawal of British nationality, but a citizen of the United Kingdom and Colonies who is also a national of another country may make a declaration of renunciation of citizenship (Article 19). (See also the Swiss law as regards nationals residing abroad.)

The law of France provides in principle for automatic withdrawal by voluntary acquisition of a foreign nationality, but in certain cases (liability for military service) withdrawal of nationality is subject to authorization by the government (*Code de la nationalité*, Ordinance No. 45-2441 of 15 October 1945, Article 88).

It would seem that the number of States which make authorization a condition for the release from their nationality upon foreign naturalization is on the increase. A number of recent nationality laws contain this condition (e.g., Bulgaria, Decree of 3 June 1948, Article 6; Egypt, Law No. 160 of 28 September 1940, Article 11; Hungary, Law LX of 24 December 1948, Article 14, under which renunciation of nationality requires acceptance; Romania, Law No. 125 of 6 July 1948, Article 2; Yugoslavia, Law No. 370 of 1 July 1946, Article 19).

The refusal of States to release nationals from their nationality and the obligations resulting from nationality, particularly from the obligation to perform military service, has led to friction between States, particularly between countries of emigration and countries of immigration. In order to overcome these difficulties a considerable number of bilateral agreements for the mutual recognition of naturalization have been concluded. The so-called Bancroft treaties concluded in the 1870s between the United States and European States are typical for this kind of treaties. Automatic withdrawal of the nationality of origin by foreign naturalization is also provided for in the Inter-American Convention on Nationality signed at Montevideo on 26 December 1933 (Article 1).

It is proclaimed in Article 15 of the Universal Declaration of Human Rights that :

"(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*". (Rapporteur's italics).

In the present stage of development of international law it cannot, in view of the divergencies of State practice, be said that there is, under international law, a duty of States to withdraw their nationality upon foreign naturalization.

(c) Withdrawal of nationality in consequence of territorial changes

The acquisition of the nationality of the successor State does not terminate *ipso jure* the nationality of the predecessor State. Withdrawal of its nationality depends on its municipal law. The question arises, however, whether, under international law apart from treaty, the predecessor State is bound to withdraw its nationality from those of its nationals on whom the nationality of the successor State is conferred by the latter.

This depends on the question whether the change of sovereignty and the conferment of nationality have been effected in accordance with international law.

Where the transfer of territory is based on cession the predecessor State recognizes its legality. If the effects of the cession on the nationality of the inhabitants of the ceded territory are regulated by treaty, such treaties usually provide that the nationality of the predecessor State is lost by the conferment of nationality by the successor State.

Where the transfer of territory and the conferment of nationality is in accordance with international law, the predecessor State is obliged to recognize it. Its sovereignty has been replaced by that of the successor State, and the predecessor State is, therefore, under an obligation of international law to withdraw its nationality from the inhabitants of the transferred territory upon whom the nationality of the successor State has been conferred.

Where the transfer or the conferment of nationality is not consistent with international law, no such duty rests on the predecessor State under international law.

5. Multiple nationality

Conflicts of nationality laws may result in a person having no nationality (statelessness, see Annex III) or more than one nationality (double or multiple nationality).

Multiple nationality may occur at birth or subsequent to birth. The most frequent case of double nationality at birth is caused by the application of *jus soli* and *jus sanguinis* to the same individual : a person born in a country which has the *jus soli*, of parents who have the nationality of a country which employs *jus sanguinis*, becomes a double national or *sujet mixte*.

Double nationality arises subsequent to birth if a new nationality is conferred on a person by naturalization or in consequence of transfer of territory without his losing his original nationality. Since, according to the law of many States, the former nationality is not automatically withdrawn by voluntary naturalization in another country, this is probably the most frequent cause of double nationality.

Double or multiple nationality may create difficulties both for States and for the persons concerned, because of the conflicts of allegiance which result from it. A person possessing more than one nationality may be considered liable for military service by any of the States whose nationality he possesses; he may be recalled by the State of his former nationality in time of war, although he has severed all links with that country, etc.

A number of bilateral treaties have been concluded in order to avoid double nationality or to define the duties of the individuals in relation to each of the States whose nationality he possesses.

The Inter-American Convention signed at Rio de Janeiro on 18 August 1906, has laid down rules for the avoidance of double nationality of naturalized persons who return to the country of their original nationality. Persons shall be considered as having resumed their original nationality and as having renounced the nationality acquired by naturalization if they have taken up residence in their native country without the intention of returning to the country in which they were naturalized; the intention not to return shall be presumed after two years' residence in the native country.

The Peace Treaties concluded after the First World War contain provisions to the effect that the defeated States undertook to recognize any acquisition of a new nationality under the laws of the Allied and Associated Powers by their nationals and

"to regard such persons as having in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin".

(*Cf.*, e.g., Article 278 of the Treaty of Versailles.)

The Hague Codification Conference found itself unable to eliminate multiple nationality; it tried, however, to reduce the cases of multiple nationality and to mitigate some of its adverse consequences. In its Final Act the Conference appealed to States to reduce, as far as possible, cases of dual nationality, and to the League of Nations to consider steps for the settlement of conflicts which arise from double or multiple nationality.²⁴

The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws contains provisions designed to avoid double nationality in certain special cases (Article 6, 12). It further contains certain general principles applicable in cases of multiple nationality:

(1) "Subject to the provision 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 3)

²⁴ League of Nations, *V. Legal*, V.7 (document C.228.M. 115.1930.V).

This rule is a consequence of the recognized sovereign right of States to regulate nationality.

(2) "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses." (Article 4)

This rule was applied in the Canevaro Case between Italy and Peru,²⁵ decided by a tribunal of the Permanent Court of Arbitration on 5 March 1912.

(3) "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 convention 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 5)

This has been called the principle of *active* or *effective* nationality. *Cf.* Article 3, par. 2, of the Statute of the International Court of Justice; Article 2 (3) of the Statute of the International Law Commission.

²⁵ See *American Journal of International Law*, Vol. 6 (1912), p. 746.

Annex II

NATIONALITY OF MARRIED PERSONS

(A working paper)

1. The subject of the nationality of married women has been studied by the Commission on the Status of Women since 1948. (See the Secretariat's report on "Nationality of Married Women", E/CN.6/126/Rev.1 and E/CN.6/129/Rev.1.) At its second session in January 1948, that Commission:

"Noting the many and varied discriminations against women that result from conflicts in national law relating to nationality..., and

"Noting The Hague Convention on the Conflict of Nationality Laws (1930), the Montevideo Convention on the Nationality of Women (1933), and the studies in that field undertaken by the League of Nations."²⁶ recommended to the Economic and Social Council that it instruct the Secretary-General

"To forward to Member Governments the request that married women should have the same rights as regards nationality as are enjoyed by men and single women."

The Economic and Social Council did not act on this recommendation in 1948.

2. At its third session in March-April 1949, the Commission on the Status of Women noted the right, with respect to nationality, contained in article 15 of the Universal Declaration of Human Rights, and considered:

"that a convention on the nationality of married women, which would assure women equality with men in the exercise of this right and especially prevent a woman from becoming stateless or otherwise suffering hardship arising out of these conflicts in law, should be prepared as promptly as possible."²⁷

On 1 August 1949, the Economic and Social Council adopted a resolution 242 C (IX), which read as follows:

"Noting that article 15 of the Universal Declaration of Human Rights states that:

"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';

"Considering that a convention on the nationality of married women, which would assure women equality with men in the exercise of these rights and especially prevent a woman from becoming stateless or otherwise suffering hardships arising out of these conflicts in law, should be prepared as promptly as possible",

and invited Member States to reply to certain supplementary questions.

3. At its fourth session in May 1950, the Commission on the Status of Women requested the Economic and Social Council:

"(a) To take appropriate measures, as soon as possible, to ensure the drafting of a convention on nationality of married women, embodying the following principles:

"(i) There shall be no distinction based on sex as regards nationality, in legislation or in practice;

"(ii) Neither marriage nor its dissolution shall affect the nationality of either spouse. Nothing in such a convention shall preclude the parties to it from making provision for the voluntary naturalization of aliens married to their nationals";²⁸

At this session, also, the Commission decided not to recommend that the draft convention include a provision con-

²⁴ Doc. E/615.

²⁵ Doc. E/1316.

²⁶ Doc. E/1712.

cerning distinction as between the father and the mother in the transmission of the nationality *jure sanguinis*.

In part D of its resolution 804 (XI) of 17 July 1950, the Economic and Social Council noted the above recommendation of the Commission on the Status of Women, and proposed

"to the International Law Commission that it undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women."

4. In July 1950, the International Law Commission decided to deal with the matter in connexion with its consideration of the topic " Nationality, including statelessness ", previously listed as a topic for codification.³⁷

5. At its fifth session in May 1951, the Commission on the Status of Women recommended that the Economic and Social Council propose that the International Law Commission undertake to complete a draft convention on the nationality of married women in 1952. At its thirteenth session in August 1951, the Economic and Social Council adopted a resolution 885 F (XIII) expressing the hope:

"that the International Law Commission will endeavour to complete the drafting of this convention as soon as practicable."

6. Under these circumstances, it is proposed that the International Law Commission undertake to comply with the request made by the Economic and Social Council in 1950, by drafting a convention embodying the principles formulated by the Commission on the Status of Women. It would seem to be unnecessary for the International Law Commission to express any views concerning those principles, or to analyse the consequences of their application, e.g., on the transmission of nationality *jure sanguinis* to children.

7. The Commission may wish to note that the first of the principles which it is asked to embody in a draft convention — no distinction based on sex either in legislation or practice — would seem to call for a broadening of the subject-matter to be covered. Instead of drafting a convention on the nationality of married women, the International Law Commission may wish to draft a convention on the nationality of married persons, men as well as women. The following draft, envisaging a convention on the nationality of married persons, is submitted for the appreciation of the Commission.

³⁷ See Report of the International Law Commission concerning its first session, para. 15, in *Yearbook of the International Law Commission, 1949*.

DRAFT CONVENTION ON NATIONALITY OF MARRIED PERSONS

Noting that conflicts in law and in practice with reference to nationality have arisen as a result of distinctions based on sex,

Noting that in Article 15 of the Universal Declaration of Human Rights the General Assembly has proclaimed that "everyone has the right to a nationality", and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality",

Desiring to co-operate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex.

The High Contracting States agree upon the following provisions:

Article 1. Each of the Contracting States agrees that it will make no distinction based on sex either in its legislation or in its practice in regard to nationality.

[This follows quite closely Article 1 of the Montevideo Convention on Nationality of Women, of 26 December 1933.]

Article 2. Each of the Contracting States agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien shall affect the nationality of the spouse who is its national.

Article 3. (1) Each of the Contracting States may make special provisions for the voluntary acquisition of its nationality by aliens who are the spouses of its nationals.

(2) Each of the Contracting States agrees that its nationals who voluntarily acquire the nationality of their alien spouses shall thereupon cease to be its nationals.

Article 4. Each of the Contracting States agrees that its naturalization of an alien will not affect the nationality of the spouse of the alien.

Article 5. Each of the Contracting States agrees that the voluntary acquisition of the nationality of another State by one of its nationals will not affect the retention of its nationality by the spouse of such national.

Article 6. Each of the Contracting States agrees that the renunciation of its nationality by one of its nationals will not affect the retention of its nationality by the spouse of such national.

Article 7. No reservation may be made either at the time of signature or ratification of, or at the time of accession to, this convention.

[Final clauses to be added.]

Annex III

STATELESSNESS

(A working paper)

A survey of municipal law relating to the subject has been made by the Secretariat of the United Nations in 1949 in a report on " Elimination of Statelessness " prepared by the Department of Social Affairs. This report, together with a report on " Improvement of the Status of Stateless Persons ", has been published in print under the title " A Study of Statelessness ".³⁸ Quotations of national laws have, therefore, as far as possible been avoided in the present paper, but some references relating, in particular, to

recent laws not yet considered in the report of the Secretariat, have been made.

SECTION I. PAST INTERNATIONAL ACTION FOR THE REDUCTION OF STATELESSNESS

1. *The Hague Conference for the Codification of International Law*

The Hague Conference in 1980 constitutes the only effort to eliminate statelessness by multilateral agreements.

³⁸ United Nations publication, Sales No. 1949.XIV.2.

The results fell far short of the aim of eliminating statelessness though they have to be assessed not only by the agreements reached but also by the influence they exercised on the legislation of States as well as on their practice. Provisions designed to reduce statelessness may be found in the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws, and in the Special Protocol relating to a Certain Case of Statelessness.

The relevant provisions of the Convention are of a two-fold nature : provisions purporting to prevent loss of nationality without acquisition of another nationality (Article 7 relating to expatriation permits, Articles 8 and 9 relating to the effect of marital status in nationality, Article 13 relating to the effect of naturalization of the parents on the nationality of minor children, and Articles 16 and 17 relating to the effect of legitimization, recognition and adoption on nationality) and provisions purporting to reduce statelessness occurring at birth (Articles 14, 15).

The 1930 Protocol contains only one substantial provision (Article 1), according to which a child born in a State which does not apply *jus soli* of a mother who is a national of that State and of a stateless father or of a father of unknown nationality shall have the nationality of that State.

The number of ratifications of these instruments has not been considerable and they include few countries whose law is based on *jus sanguinis*.

The 1930 Special Protocol concerning Statelessness (which has not come into force) deals with the question of readmission of former nationals.

It was stated in the Final Act of the Conference that

"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 as 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 matter."³⁹

It is probably true to say that this recommendation has influenced States to amend their legislation (as is stated in "A Study of Statelessness", p. 148), but this influence seems to have decreased in the course of time.

2. Action by the United Nations

The Commission on Human Rights adopted at its second session in 1947 a resolution on statelessness which reads :

"The Commission on Human Rights

"I. Expresses the wish :

"(a) that the United Nations make recommendations to Member States with a view to concluding conventions on nationality;

"(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."⁴⁰

³⁹ League of Nations, *V. Legal*, 1930.V.7 (document C.228.M.115.1930.V), p. 14.

⁴⁰ Doc. E/600, para. 46.

The Universal Declaration of Human Rights, which was adopted by the Commission at its third session in 1948 and subsequently proclaimed by the General Assembly, contains the following article on nationality :

"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."

On the basis of the resolution of the Commission on Human Rights the Economic and Social Council adopted at its sixth session in 1948 the following resolution 116 D (VI) :

"The Economic and Social Council,

"Taking note of the resolution of the Commission on Human Rights adopted at its second session regarding stateless persons,

"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."

In pursuance of this resolution, the Department of Social Affairs of the United Nations Secretariat prepared, in consultation with the International Refugee Organization, the above-mentioned study, which is divided into two parts : "Improvement of the Status of Stateless Persons" and "The Elimination of Statelessness".

By resolution 248 B (IX) of 8 August 1949, the Economic and Social Council decided

"to appoint an *ad hoc* Committee consisting of representatives of thirteen governments who shall possess special competence in this field, and who, taking into account comments during the discussions on the subject at the ninth session of the Council, in particular as to the distinction between displaced persons, refugees and stateless persons, shall :

"(a) Consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if they consider such a course desirable, draft the text of such a convention ;

"(b) Consider means of eliminating the problem of statelessness, including the desirability of requesting the International Law Commission to prepare a study and make recommendations on this subject ;

"(c) Make any other suggestions they deem suitable for the solution of these problems, taking into consideration the recommendations of the Secretary-General referred to above;...."

The *ad hoc* Committee held two sessions, in January/February and in August 1950. At its first session it discussed the problem of the elimination of statelessness.

A memorandum on elimination of statelessness had been prepared by the Secretariat for the Committee.⁴¹ A proposal for a basis of discussion for a draft convention for the elimination of statelessness was submitted by the representative of Denmark; the Committee took no action on this proposal. The part of the Committee's report which deals with the question of elimination of statelessness reads:

" 22. In dealing with the question of elimination of statelessness, the Committee discussed the responsibilities of various organs of the United Nations in regard to this problem, including the International Law Commission and the Commission on the Status of Women, having in mind the desirability of avoiding overlapping of activities in the same field.

" 23. It reviewed the basic causes of statelessness, including

- " (a) Failure to acquire nationality at birth;
- " (b) Loss of nationality through marriage and dissolution of marriage;
- " (c) Voluntary renunciation of nationality; and
- " (d) Deprivation of nationality.

" 24. Discussions in the Committee developed two main points of view: (a) that of the majority, that the Committee could not at this stage proceed to the drafting of a convention on the subject of the elimination of statelessness; and (b) the view of the minority, that a draft convention could and should be formulated by the Committee as a basis of discussion for some other organ which would be called upon to deal more definitely with the matter. A proposal submitted by the representative of Denmark as a basis for drafting will be found in Annex V.

" 25. The conclusions of the majority were based principally upon the following considerations:

" (a) The Committee had, by the time it reached this item on the agenda, already completed a draft convention relating to the status of refugees, and a protocol relating to the status of stateless persons. These labours had largely exhausted the time at the disposal of the Committee.

" (b) The Committee felt, moreover, that it was at this stage difficult, if not impossible, to approach in the necessary detail a matter of such complexity.

" 26. As a result of its deliberations, the Committee decided to recommend to the Economic and Social Council the following draft resolution:

" The Economic and Social Council

" "A. 1. Invites Member States to re-examine their nationality laws with a view to reducing so far as possible cases of statelessness which arise from the operation of such laws; and

" "2. Recommends to Member States involved in changes of territorial sovereignty that they include in the arrangements for such changes the necessary provisions for the avoidance of statelessness; and

" "3. Invites Member States to contribute to the reduction of the number of stateless persons by extending to persons in their territory the opportunity to be naturalized; and

" "4. Requests the Secretary-General to seek information from Member States with regard to the carrying out of this resolution and to report thereon to the Council; and

" "B. 1. Considering that progress in the elimination of statelessness requires joint international action; and

" "2. Considering that the conclusion of an agreement or of agreements for this purpose is necessary;

" "3. Requests the International Law Commission to prepare the necessary draft documents at the earliest possible date."

" 27. The Committee did not include in the above draft resolution a specific reference to the statelessness of women resulting from marriage or dissolution of marriage since the question of the nationality of married women is at present being considered on a broader basis by the Commission on the Status of Women."⁴²

The proposal of the representative of Denmark referred to in paragraph 24 reads:

" Article 1. In so far as the law of a State provides that the legitimate child of a father, possessing the nationality of that State, acquires by birth the nationality of the father, regardless of where the child was born, the illegitimate child of a mother possessing the nationality of that State shall acquire by birth the nationality of the mother.

" Article 2. (i) Where the nationality of a State is not acquired automatically by reason of birth in its territory, a child born in the territory of that State of a mother possessing the nationality of that State and of a father without nationality, shall acquire the nationality of that State by birth.

" (ii) The provision of paragraph (i) of this article shall also apply in cases where the father is in possession of a nationality which his children born abroad do not acquire by birth.

" Article 3. (i) Where the nationality of a State is not acquired automatically by reason of birth in its territory, a child born in the territory of that State of parents having no nationality shall acquire the nationality of that State either by birth or at least after -- years of residence in that State.

" (ii) The provisions of paragraph (i) of this article shall also apply in cases where the parents are in possession of a nationality which, however, their children born abroad do not acquire by birth.

" Article 4. A wife shall not lose her nationality on marriage with a foreigner unless by such marriage she acquires a new nationality.

" Article 5. A wife shall not lose her nationality upon a change in the nationality of her husband occurring during marriage unless she herself, by such change, acquires a new nationality.

" Article 6. A wife shall not lose her nationality acquired on or during marriage by the mere fact of dissolution of her marriage.

" Article 7. A child born out of wedlock shall not lose its nationality on legitimization or recognition unless by such legitimization or recognition, it acquires a new nationality.

" Article 8. A child shall not lose its nationality as a result of adoption unless, by such adoption, it acquires a new nationality.

" Article 9. A person who wishes to be released from his present nationality in order to acquire another nationality shall be released only on the condition that he acquires such nationality.

⁴¹ Doc. E/AC.82/4.

⁴² Doc. E/1618, chap. IV, paras. 22-27.

"Article 10. No person shall lose his nationality as a result of territorial settlements unless he acquires another nationality."

At its eleventh session in 1950, the Economic and Social Council adopted a resolution 319 B III (XI) of 11 August 1950 on Provisions relating to the Problem of Statelessness, which reads :

"The Economic and Social Council,

"Recalling its concern with the problem of statelessness as expressed in its resolution 248 B (IX) of 8 August 1949, in which it established an *ad hoc* committee to study this problem,

"Having considered the report of the *ad hoc* Committee and its recommendations concerning the elimination of statelessness [E/1618],

"Taking note of Article 15 of the Universal Declaration of Human Rights concerning the right of every individual to a nationality,

"Considering that statelessness entails serious problems both for individuals and for States, and that it is necessary both to reduce the number of stateless persons and to eliminate the clauses of statelessness,

"Considering that these different aims cannot be achieved except through the co-operation of each State and by the adoption of international conventions,

"Recommends to States involved in changes of territorial sovereignty that they include in the arrangements for such changes provisions, if necessary, for the avoidance of statelessness;

"Invites States to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory and, if necessary, to re-examine their nationality laws with a view to reducing as far as possible the number of cases of statelessness created by the operation of such laws;

"Requests the Secretary-General to seek information from States with regard to the above-mentioned matters and to report thereon to the Council;

"Notes with satisfaction that the International Law Commission intends to initiate as soon as possible work on the subject of nationality, including statelessness, and urges that the International Law Commission prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness;

"Invites the Secretary-General to transmit this resolution to the International Law Commission."

Based on the report of the Secretary-General on the replies so far received from governments, the Economic and Social Council adopted at its twelfth session on 13 March 1951, another resolution on the subject, resolution 352 (XII) which reads :

"The Economic and Social Council,

"Referring to its resolution 319 B (XI), sec. III, and

"Noting that only a limited number of governments have replied to the Secretary-General's inquiry of September 27, 1950,

"1. Requests the Secretary-General to address another communication to governments inviting them to submit their observations at latest by 1 November 1951, and to include in their replies not only an analysis of legal and administrative texts and regulations but of the practical application of those laws and regulations;

"2. Asks the Secretary-General to transmit a consolidated report on the basis of these replies to the Council and to the International Law Commission; and

"3. Decides to defer further discussion of this subject to its fourteenth session."

At the time this report was prepared, the rapporteur had received from the Secretariat the texts of the observations of twenty-one governments. The Commission will, when it considers this report, undoubtedly have the benefit of the consolidated report of the Secretary-General based on all the replies received from governments.

Most of the time of the first session of the *ad hoc* Committee on Refugees and Stateless Persons was devoted to the preparation of a draft Convention relating to the Status of Refugees and a draft Protocol relating to the Status of Stateless Persons. According to the Protocol, certain provisions of the draft Convention were to be made applicable to stateless persons not covered by the Convention.

The Economic and Social Council revised at its eleventh session the Preamble and Article 1 of the draft Convention [Resolution 319 B II (XI)]; it decided to reconvene the *ad hoc* Committee in order to revise the draft agreements, and to submit the drafts, as revised, to the General Assembly [Resolution 319 B I (XI)].

The General Assembly decided at its fifth session by Resolution 429 (V) of December 14, 1950, to convene a Conference of Plenipotentiaries in Geneva in order to examine and adopt these draft instruments.

The Conference of Plenipotentiaries which was held at Geneva in July 1951 adopted a Convention relating to the Status of Refugees, but took no action on the draft Protocol relating to the Status of Stateless Persons which was referred to the appropriate organs of the United Nations for further study [*cf.* document A/Conf.2/108].

3. Proposals for the reduction of statelessness made by non-governmental organizations

The problem of statelessness has frequently occupied learned societies. Among the proceedings of these societies, the following should be particularly mentioned :

The resolution on Nationality and Naturalization adopted at the 33rd Session of the International Law Association at Stockholm in 1929;⁴³

The resolution on Nationality adopted at the 35th Session of the Institute of International Law at Stockholm in 1928;⁴⁴

The resolution on the status of refugees and stateless persons adopted at the 40th Session of the Institute at Brussels in 1936;⁴⁵

The report of a Committee appointed by the Executive Committee of the Grotius Society for the Status of Stateless Persons⁴⁶ and

The report of a Committee of the International Law Association on Nationality and Statelessness, and a Report of the American Branch of the Association on this subject, which were both submitted to the 44th Conference of the Association held at Copenhagen in 1950.⁴⁷

⁴³ International Law Association, *Report of the Thirty-third Conference*, pp. 22-53.

⁴⁴ Institut de droit international, *Annuaire*, 1928, p. 760.

⁴⁵ *Ibid.*, 1936, vol. II, pp. 292-299.

⁴⁶ *Transactions of the Grotius Society*, vol. 28 (1942), pp. 151-168.

⁴⁷ International Law Association, *Report of the Forty-fourth Conference*, pp. 85-62.

SECTION II. STATELESSNESS " DE FACTO " AND " DE JURE ".

In a " Study of Statelessness " prepared by the Secretariat a distinction is made between stateless persons *de jure* and stateless persons *de facto* (pp. 8, 9). The former are described as " persons who are not nationals of any State "; the latter as

" 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 ".

Such a distinction may have been useful for the purpose for which the study was made; it has, however, no place in the present paper. *Stateless persons in the legal sense of the term are persons who are not considered as nationals by any State according to its law.* The so-called stateless persons are *de facto* nationals of a State who are outside of its territory and devoid of its protection; they are, therefore, not stateless: it might be better to speak of " *unprotected persons* " and to call this group " *de facto unprotected persons* ", in distinction to " *de jure unprotected persons* ", i.e., stateless persons. Refugees may be stateless or not; in the first case they are *de jure* unprotected persons; in the latter, *de facto* unprotected. The present paper deals exclusively with statelessness in the strict, legal sense of the term.

SECTION III. NUMBER OF STATELESS PERSONS

The Secretariat has, in its study, given some figures of stateless persons (*Ibid.*, pp. 7, 8), but they refer to stateless persons in the sense in which the term is used in the study; i.e., including *de facto* unprotected persons. The figures given refer, in fact, to refugees. No statistics or estimates of the number of stateless persons appear to be available.⁴⁸ It is, however, possible to indicate certain groups which, in whole or in part, consist of stateless persons.

The territorial changes resulting from the First World War, particularly the dissolution of the Austro-Hungarian Monarchy, created a great number of stateless persons, probably several hundred thousands. (D. A. Macartney, in his book *National States and National Minorities*, p. 509, mentions the figure of 80,000 for Czechoslovakia alone.) It cannot be said how many stateless persons of this group there are today; their number has decreased through death and naturalization, though in many cases the children of such persons are stateless.

Most of the Russian refugees who left Russia in consequence of the Soviet revolution became stateless as they were denationalized by the U.S.S.R. Their number was given as 355,000 in 1936, but for the same reason as in the case of the stateless persons from the territories of the Austro-Hungarian Monarchy an estimate of their present number is difficult, but it is probably considerably less than in 1936.

The sum total of refugees from Nazi Germany and Austria was estimated at approximately 400,000-450,000,

⁴⁸ An investigation made by the Council of Europe referred only to stateless refugees. According to figures received by the Committee of Ministers of the Council from the Governments of Belgium, France, Greece, Ireland, Italy, Luxembourg, Netherlands, the Federal Republic of Germany, United Kingdom, Saar, Sweden and Turkey, there are approximately 190,000 stateless refugees in the territories of these States [document CM (51) 17].

most of whom were Jewish and as such denationalized by Nazi Germany. Their present number is unknown, but here, too, the number seems to have greatly decreased by repatriation, naturalization and death.

The German expellees and refugees in Germany who number approximately 8,000,000 are in a special position; many were denationalized by the countries from which they were expelled or which they left. Article 116 of the Constitution of the Federal Republic of Germany provides that

" Unless otherwise regulated by law, a German within the meaning of this Basic Law is a person who possesses German nationality or who has been accepted in the territory of the German Reich as of December 1, 1937, as a refugee or expellee of German stock or as the spouse or descendant of such person."⁴⁹

In the absence of a nationality law they do not possess German nationality, but they possess the same rights, including political rights, as German nationals.

Among other refugee groups such as the non-German refugees who left eastern Europe after the Second World War, some are stateless while others have retained their nationality. (Yugoslav nationality, e.g., was, by a law of 28 October 1946, withdrawn from officers and non-commissioned officers of the former Yugoslav Army who fell into the hands of the enemy, and who refused to return to Yugoslavia, and from certain other groups. As a rule, withdrawal of nationality from refugees does not take effect by operation of law but is permissive for the authorities.)

Out of the large number of Arab refugees from Palestine, some have been naturalized (particularly those in Jordan), but the majority must be considered as stateless.

There is probably a number of stateless persons in the Far East owing to the political changes which have taken place there, but their condition and numbers are unknown.

Apart from these large groups of stateless persons there is, of course, a great number of individual cases. They are either persons born stateless, or persons who became stateless as a result of conflicts of nationality laws or by individual denationalization or denaturalization.

It is, therefore, impossible to make an estimate of the total number of stateless persons, but these indications might serve as an illustration of the magnitude of the problem.

SECTION IV. CAUSES OF STATELESSNESS

1. Statelessness at birth (original or absolute statelessness)

Both the application of the *jus soli* and the *jus sanguinis* may lead to statelessness, though *jus sanguinis* is the more serious case as it tends to make statelessness hereditary. As a general rule, the law of countries of emigration is based on *jus sanguinis*, while the law of countries of immigration and the law of common law countries which derives from the feudal conception of attachment to the soil is based on *jus soli*. In fact, the nationality laws of most countries are based on a combination of *jus soli* with *jus sanguinis* or of *jus sanguinis* with *jus soli*, though the nationality laws of a few countries such as Finland and Switzerland are still based exclusively on *jus sanguinis*. There are few if any countries whose law is based solely on *jus soli*.

The subsidiary application of *jus soli* in *jus sanguinis* countries, which may be partly due to the influence of

⁴⁹ Peaslee, *op. cit.*, vol. 8, p. 58.

The Hague Codification Conference, and the subsidiary application of *jus sanguinis* in *jus soli* countries, have contributed to the reduction of statelessness. Under the laws of most countries the application of the secondary principle is, however, subject to conditions, and it still leads to statelessness in those cases where the conditions are not fulfilled. Thus, e.g., United States nationality is conferred, by descent, if both parents are citizens and if one has resided in the United States prior to the birth of the child; if only one parent is a citizen, if he has resided in United States territory for ten years, five years of these after the age of sixteen, prior to the birth of the child, the other being an alien [Nationality Act of 1940 (8 U.S.C. § 601)]. The rule of English common law that nationality by descent is not transmitted beyond the second generation born abroad has been abolished by the Nationality Acts enacted in the British Commonwealth.

Foundlings may be stateless when the place of birth is unknown. A considerable number of States confer, however, their nationality on a child found in their territory on the basis of a presumption that the child was born there, in accordance with the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (Article 14).

Birth aboard merchant vessels may lead to statelessness in *jus soli* countries which do not assimilate birth aboard a merchant ship (outside their territorial waters) flying their own flag to birth in the territory (United States) or which do not assimilate birth aboard a foreign ship in their territorial waters to birth in the territory (Great Britain).

2. Statelessness subsequent to birth (subsequent or relative statelessness)

A person becomes stateless subsequent to birth if his nationality is withdrawn or cancelled without another nationality being conferred on him.

(a) As a result of conflicts of nationality laws

Under the laws of some countries change of personal status may lead to a withdrawal of nationality: marriage to an alien, legitimization, adoption, recognition of affiliation by an alien, dissolution of marriage in case of a person on whom nationality has been conferred by marriage. Where, under the law of the other countries, these changes in personal status are not recognized as modes of conferment of nationality, this leads to statelessness. (If the principle of sex equality were adopted, marriage and dissolution of marriage would cease to be causes of statelessness (see Annex II); it would, on the other hand, lead to perpetuation of statelessness in cases where the spouse was stateless prior to marriage.) The Hague Conference established rules for the elimination of statelessness in such cases (Convention on Certain Questions relating to the Conflict of Nationality Laws, Articles 8, 9, 16, 17)).

According to the principle of the unity of the family the nationality of the wife follows that of the husband, the nationality of minor children that of the father in the case of legitimate children, that of the mother in the case of illegitimate children. Divergencies of national laws as regards the application of this principle may lead to statelessness if the nationality of the wife or of minor children is lost in consequence of loss of nationality by the husband or parent, without the acquisition of another nationality (as to the wife, see Annex II). The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws contains rules designed to avoid statelessness in these cases (Articles 9, 13).

(b) Statelessness resulting from voluntary action of the national

Under the law of a few States nationals may renounce their nationality regardless of the fact whether another nationality is conferred on them (e.g., in the United States, Nationality Act, 1940 (8 U.S.C. § 801)); this may result in statelessness. According to the laws of other States, they may be released from nationality on application, by the granting of an expatriation permit. Article 7 of the Convention on Certain Questions relating to the Conflict of Nationality Laws is designed to reduce statelessness as a consequence of the granting of expatriation permits.

Under the law of some States nationality is withdrawn by operation of law if a national has continuously resided abroad over a certain period. (In Denmark, Norway, Sweden in the case of nationals born abroad; in the United States in the case of naturalized persons (Nationality Act, 1940 (8 U.S.C. § 804)).

Failure to comply with certain conditions or formalities prescribed by law for the conferment or retention of nationality (e.g., registration with a consular authority, assumption of residence in the country) may also be considered as coming within this category since it may be regarded as implying voluntary expatriation; frequently, however, omission of formalities is accidental rather than deliberate. It leads, however, to statelessness.

(c) Statelessness resulting from unilateral action of the State. Denationalization. Denaturalization

Under the laws of other countries nationality may be withdrawn on prolonged absence abroad or, in the case of naturalized persons, prolonged residence in the country of former nationality, by decision of the competent authority; in these cases denationalization may be regarded as giving effect to the national's desire for expatriation. This may be distinguished from those cases where denationalization is imposed as a penalty.

Denationalization may take effect by operation of law (collective denationalization) or by decision of the competent authority in the individual case based on enabling laws (individual denationalization). Denationalization may, or may not, affect automatically the wife and/or minor children.

The grounds on which denationalization is imposed are numerous: entry into foreign military or civil service; acceptance of honours and titles without authorization; conviction for criminal offences; and disloyalty. These are to be found in the laws of many countries. It is noteworthy that the tendency to provide for denationalization on the ground of disloyalty is increasing; a number of recently enacted nationality laws provide for this possibility. Disloyalty is considered to consist in evasion of military service, illegal emigration, refusal to return on request of the authorities, hostile association, desertion from the armed forces, committing of treason or of other activities prejudicial to the interests of the State.

Apart from denationalization on the ground of disloyalty, which is usually permissive and imposed by individual decision, some States have enacted special legislation providing for collective denationalization on political, racial or religious grounds.

Denaturalization may result in statelessness; such denaturalization may either consist in cancellation of the naturalization because of absence of material conditions for naturalization or in subsequent withdrawal of naturalization on the ground of disloyalty or disaffection, hostile association, bad conduct, criminal conviction, prolonged absence or return of the naturalized person to the country of his

former nationality with the intention to remain there. Denaturalization on racial grounds was effected by Germany under the law concerning the Cancellation of Naturalization and the Deprivation of German Nationality of 14 July 1938, as interpreted by the First Executive Order of 26 July 1938.

(d) *Statelessness as a result of territorial changes*

In case of annexation (incorporation) of the whole of the territory of a State, its nationality ceases to exist by the extinction of the State. Unless the nationality of the annexing State is conferred upon the former nationals of the annexed State, they become stateless.

In the absence of treaty regulations relating to the nationality of the inhabitants, their nationality is regulated by the laws of the acquiring State and the State whose territory is acquired. "Negative conflicts" of these laws may lead to statelessness; i.e., in those cases where the nationality of the predecessor State is withdrawn under its law but the nationality of the successor State is not conferred on the person. This is particularly likely to happen in the case of persons who were outside the territory of the acquiring State at the time of the transfer of the territory since its territorial jurisdiction does not extend to them while the predecessor State may withdraw its nationality from those persons (over whom it has personal jurisdiction). The problem is aggravated in those cases of change of sovereignty where the predecessor State has ceased to exist as in the case of the dissolution of the Austro-Hungarian Monarchy.

Where the nationality of the inhabitants is regulated by treaty, it may lead to statelessness:

(i) Because the treaties contain "lacunae" as to the conferment of nationality on the inhabitants, e.g., by the establishment of links of attribution which are inadequate or difficult to prove such as *Heimatrecht* in the Peace Treaties of St. Germain and Trianon,

(ii) Because the treaty provisions are not fully implemented by the municipal law of States parties to the treaty.

(iii) Because the treaties and implementing laws are interpreted or applied in a manner which creates statelessness.

The Peace Treaties of St. Germain and Trianon, the Minorities Treaties and the practice of the successor States of the Austro-Hungarian Monarchy provide ample examples of how statelessness was created by the treaties or the, often deliberately, defective application of treaties and nationality laws.

The exercise of a right of option granted to all inhabitants of a transferred territory or to special groups may also result in statelessness. (Such option may either be positive option, i.e., the right to declare in favor of retaining the nationality of the predecessor State or of acquiring the nationality of the successor State, or negative option, i.e., the right to repudiate the new nationality or to emigrate.) Option is a unilateral act which does not require acceptance, and positive option should, as such, not lead to statelessness. It has, in practice, led to statelessness; options were held to be invalid by the State in whose favour they were exercised on the ground of expiration of time limits or non-compliance with formalities prescribed for the exercise of the right of option or when the right was granted to particular groups only (racial, linguistic or religious minorities) because the optant was held not to belong to the eligible group while the original nationality of the optant was withdrawn from him by the mere fact that he availed himself of the right of option.

In order to overcome conflicts of nationality laws in the case of transfers of territory, arbitration tribunals were

sometimes established by treaty, which were authorized to settle conflicts. This was the case in the Convention between Germany and Poland relating to Upper Silesia concluded at Geneva on 15 May 1922.⁵⁰ A Conciliation Commission established at the Arbitral Tribunal created by the Convention had power to settle conflicts in questions of nationality arising from the interpretation or application of the relevant provisions of the Convention, on application by the interested individual (Articles 55, 56). If the Commission could not settle the difficulties or on request of the Agent of one of the Contracting States, the matter was to be submitted to the Arbitral Tribunal (Article 58).

Another instance is the Commission established by the Convention between Austria, Czechoslovakia, Hungary, Italy, Poland, Rumania and the Serb-Croat-Slovene State signed at Rome on 6 April 1922, which was authorized to settle disputes as regards nationality between the Parties to the Convention (Article 4);⁵¹ the Convention was ratified by Austria, Italy and Poland only. The Treaty between Czechoslovakia and Austria concerning nationality and the protection of minorities, signed at Brno on 7 June 1920, provided also for the establishment of a Mixed Commission and of an Arbitral Tribunal for the settlement of disputes concerning nationality and the protection of minorities between the parties (Article 21).⁵²

SECTION V. ANALYSIS OF THE PROBLEM AND THE POSSIBILITIES OF ITS SOLUTION

While all the causes mentioned in the preceding chapter may result in statelessness, they are not all of equal importance.

Failure to acquire a nationality at birth is an important cause; laws based exclusively on *jus sanguinis* and those establishing *jus soli* as a subsidiary link of attribution of nationality in special, limited cases only, are particularly apt to lead to statelessness.

Loss of nationality in consequence of territorial changes has created a great number of cases of statelessness, particularly after the First World War.

Denationalization is an important cause, particularly denationalization on the ground of disloyalty or disaffection. The number of cases of statelessness resulting from denationalization on these grounds is, however, limited under those laws which require for the denationalization or denaturalization of a national a decision of the competent authority in each individual case. Probably the greatest number of cases of statelessness has been created by collective denationalization on political, racial or religious grounds.

Statelessness is considered as undesirable, both from the aspect of the interests of States and from the aspect of the interests of the individual. From the point of view of States it is desirable in the interest of orderly international relations that every individual should be attributed to some State which, as a result, has certain rights and obligations as regards this individual under international law, in its relations to other States. As has been pointed out in Annex I, the right is that of diplomatic protection, the duty that to permit the national to reside in the territory of the State and to readmit him to that territory.

From the point of view of the individual, statelessness is undesirable as the status of stateless persons is, as a rule, precarious. The deficiencies of that status have been de-

⁵⁰ League of Nations, 122 (document 396.M.248).

⁵¹ Hudson, *op. cit.*, vol. 2, p. 866.

⁵² League of Nations, *Treaty Series*, vol. III, p. 190.

scribed in section I of Part I of the "Study of Statelessness" prepared by the United Nations Secretariat (pp. 17-33).

Any attempt to eliminate statelessness can only be considered as fruitful if it results not only in the attribution of a nationality to individuals, but also in an improvement of their status. As a rule, such an improvement will be achieved only if the nationality of the individual is the nationality of that State with which he is, in fact, most closely connected, his "effective nationality", if it ensures for the national the enjoyment of those rights which are attributed to nationality under international law, and the enjoyment of that status which results from nationality under municipal law. Purely formal solutions which do not take account of this desideratum might reduce the number of stateless persons but not the number of unprotected persons. They might lead to a shifting from statelessness *de jure* to statelessness *de facto* which, in the view of the Rapporteur, would not be desirable. (*Cf.* the proceedings of the International Law Association at its 39th Conference in Paris in 1936, where it was suggested that neither *jus soli* nor *jus sanguinis* should be decisive but the *jus connectionis* or right of attachment, i.e., a person should have the nationality of the State to which he has proved to be most closely attached in his conditions of life as may be concluded from spiritual and material circumstances).⁵³

From the purely technical and legal aspect, statelessness could be eliminated by the adoption of two rules:

(a) If no other nationality is acquired at birth, the individual should acquire the nationality of the State in whose territory he is born;

(b) Loss of nationality subsequent to birth shall be conditional on the acquisition of another nationality.

Yet an analysis of the preparatory work for The Hague Codification Conference, of the proceedings of the Conference itself, of the discussions which took place in various organs of the United Nations on the subject, particularly in the *ad hoc* Committee on refugees and stateless persons, and of the observations made by governments in response to the request made by the Secretary-General of the United Nations in pursuance of the resolutions of the Economic and Social Council of 11 August 1950, and 13 March 1951, would seem to indicate that governments are not prepared to accept these principles in their entirety.

Moreover, such a purely technical solution would be open to objection from the point of view of the individual. In any attempt at a solution the *functions* of nationality have to be borne in mind. Conferment of nationality can only be considered as fruitful if it confers the functions which are inherent in its concept.

It is doubtful, therefore, whether *elimination* of statelessness by international agreement is possible in the present stage of development of international law and international relations. In the absence of a complete solution, possibilities for the *reduction* rather than for the elimination of statelessness will have to be examined.

If it is true that statelessness cannot be eliminated at present, the efforts for the improvement of the status of stateless persons which are at present under consideration in other organs of the United Nations acquire added weight and importance.

In examining the possibilities of reducing statelessness, the various causes of statelessness have to be distinguished.

⁵³ International Law Association, *Report of the Thirty-ninth Conference*, pp. 18-51.

1. Reduction of statelessness at birth

As the unqualified acceptance of *jus soli* as a subsidiary principle of acquisition of nationality in countries whose law is based on *jus sanguinis* does not appear feasible owing to the traditional aversion of *jus sanguinis* countries against the adoption of *jus soli*, the following possibilities would seem to recommend themselves:

(a) Extension of the conferment of nationality *jure sanguinis* by *jus soli* countries. (There are few, if any, countries whose law is based exclusively on *jus soli*.)

(b) Extension of the conferment of nationality *jure sanguinis* by *jus sanguinis* countries whose law contains *lacunae* which lead to statelessness.

(c) Conferment of nationality in *jus sanguinis* countries by the application of *jus soli* in certain cases or by a combination of *jus sanguinis* and *jus soli* in cases where *jus sanguinis* alone does not confer nationality.

The following rules, which are not mutually exclusive, but which could be adopted alternatively, would give effect to these principles:

(a) A child born abroad shall acquire the nationality of the State of which one of the parents is a national, provided that it does not acquire at birth another nationality.

(b) A child born in the territory of a State whose nationality is not conferred by the mere fact of birth in its territory shall acquire the nationality of that State if one of the parents is a national, provided that it does not acquire at birth another nationality. (This broad rule would be supplementary to the normal rules of conferment of nationality *jure sanguinis* according to which a legitimate child acquires the nationality of the father; an illegitimate child that of the mother.)

(c) A child born of unknown parents, or of stateless parents, or of parents whose nationality is undetermined, and a child who for any other reason does not acquire the nationality of its parents, shall acquire at birth the nationality of the State in whose territory it is born. (*Cf.* Articles 14, 15 of The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.)

(A rule combining *jus sanguinis* with *jus soli* may be found in Article 1 of The Hague Protocol relating to a Certain Case of Statelessness:

"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."

This rule has been implemented by municipal legislation, lately by the nationality laws recently enacted in Scandinavian countries although they have not acceded to the Protocole.)

Two additional rules appear desirable in order to fill certain loopholes in municipal law which may result in statelessness at birth;

(a) A foundling shall be presumed to have been born in the territory of the State in which it was found until the contrary is proved. (*Cf.* Article 14 of The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.)

(b) Birth aboard national merchant vessels shall be deemed to constitute birth in the national territory.

The International Union for Child Welfare has, in a booklet on "Stateless Children" suggested a number of alternative model provisions founded on *jus sanguinis* or

*jus soli.*⁴⁴ Eight groups of countries whose nationality laws have common features are distinguished, and it is suggested that statelessness could be reduced if the various groups of countries adopted those model provisions which correspond most closely to the system on which their nationality laws are based.

2. Reduction of subsequent statelessness by the elimination of causes of loss of nationality

(a) As a result of conflicts of nationality laws

The rules contained in Articles 16 and 17 of the Convention on Certain Questions relating to the Conflict of Nationality Laws are adequate. The rule contained in Article 18 of the Convention could be generalized as follows :

"A minor child shall not lose its nationality in consequence of the loss of nationality by either of its parents unless it acquires another nationality."

(b) As a result of voluntary action by the national

Statelessness rarely results from renunciation of nationality. No special rule seems indicated, nor would it be desirable to tie the individual irrevocably to a State from which he has severed his connexion. (The rule on expatriation permits contained in Article 7 of The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws contributes, however, to the reduction of statelessness in case of release from nationality.)

(c) As a result of unilateral action by the State.

Denationalization. Denaturalization.

The Universal Declaration of Human Rights proclaims in Article 15 "No one shall be arbitrarily deprived of his nationality. . . ."

The reasons for which denationalization or denaturalization may take place are, as a rule, established by law, and may rarely be regarded as arbitrary.

A rule that "nobody shall be deprived of his nationality by a unilateral act of the State unless and until he acquires another nationality" has frequently been advocated, e.g., by the International Law Association at its session in Stockholm in 1924 and by the Institute of International Law at its session in Stockholm in 1928. Governments were, however, not ready to accept such a rule. Moreover, the objections against such a rule from the aspect of the individual would appear to be particularly strong. Even if, by international agreement, States could be obliged to refrain from denationalization, they could not be obliged to grant to the individuals concerned those rights which are usually implied in nationality. By denationalization, the individual loses the rights resulting from nationality, but he may also be relieved from his duties towards the State of nationality. By the abolition of denationalization, the individual would not be relieved from these duties while his rights could not be guaranteed in the absence of an International Bill of Rights. It appears, therefore, that the abolition of unilateral deprivation of nationality should be linked up with an international guarantee of human rights.

Nor does it seem likely that a proposal for the abolition of denationalization as a penalty would be accepted favorably by governments. . . .

A more hopeful course would seem to consist in efforts to restrict the grounds on which denationalization may be imposed. Some of these grounds — such as acceptance of foreign honours or commission of common crimes — would seem to be based on a confusion of citizenship rights and

nationality status. While there may be ground in such cases to withdraw certain rights of citizenship (e.g., political rights), there seems hardly to be any reason for the withdrawal of nationality in such cases which ultimately may cast a burden on other States. Agreement on internationally recognized grounds for denationalization and a stricter definition of such vague grounds as "disloyalty" or "disaffection" would be desirable.

Denaturalization on the ground that naturalization was obtained illegally is certainly justifiable. There seems, however, little justification for the practice of admitting denaturalization on wider grounds than denationalization, except in cases where the naturalized person returns to his native country with the intention to remain there or where he voluntarily re-acquires his former nationality when it will, however, not result in statelessness. Naturalization usually takes place after thorough screening of the applicant only, while acquisition of nationality by birth may be purely accidental and does not provide any greater guarantee of loyalty.

Except in the above-stated cases denaturalization should, therefore, be admissible only on the same grounds as denationalization.

It has already been stated that collective denationalization is a far more serious cause of statelessness than individual denationalization. It has, in the past, often been resorted to for reasons of a discriminatory nature. Such discriminatory action seems to many persons to be inconsistent with the Purposes and Principles of the Charter of the United Nations. It has been argued that the Charter of the United Nations imposes a duty on Member States to refrain from discrimination on the ground of race, sex, language or religion. If, however, an International Bill of Human Rights prohibiting discrimination should be adopted, discriminatory denationalization by States parties to the Bill would become illegal.

In order to reduce statelessness, collective denationalization should be prohibited. For this purpose the following rule may be suggested :

"No person shall be deprived of his nationality except in pursuance of a decision reached by the competent authority in each individual case in accordance with due process of law (unless the deprivation of nationality results from the acquisition of another nationality)."

(d) As a result of territorial changes

Statelessness has resulted in consequence of changes of sovereignty over territories for a variety of reasons. Statelessness is frequently created in consequence of territorial changes by the fact that the nationality of the predecessor State is withdrawn from the inhabitants of the territory which is subject to the change of territory, by operation of law, e.g., if they exercise a right of option for another nationality, regardless of whether they acquire another nationality.

Statelessness would be avoided in these cases if loss of nationality as a result of transfer of territory would be made conditional on the acquisition of another nationality. Any acquiring State could, moreover, be bound by an international convention to confer its nationality on the inhabitants of the transferred territory subject to a right of option to retain the nationality of the predecessor State.

It is, however, doubtful whether States would be prepared to undertake in an international convention general obligations for future cases of transfer of territory, but this objection seems to be less strong as regards the first principle suggested.

⁴⁴ International Union for Child Welfare, *Stateless Children*, Geneva, 1947.

3. Reduction of statelessness by the conferment of nationality after birth

(a) *By operation of law.*

According to the laws of some States children acquire their nationality subsequent to birth by operation of law or on option; e.g., under the law of the United States;

(1) A child born outside the United States one of whose parents is an alien and the other a citizen of the United States if the alien parent is naturalized while the child is under the age of eighteen years and it resides in the United States at the time of naturalization (Nationality Act, 1940 (8 U.S.C. §713));

(2) A child born outside the United States of alien parents if both parents are naturalized and on certain other conditions, provided the child resides in the United States (Nationality Act, 1940 (8 U.S.C. §714));

(3) A child born outside the United States one of whose parents is a citizen of the United States may be naturalized on petition of the citizen parent if it is under eighteen years of age and residing permanently in the United States with the citizen parent (Nationality Act, 1940 (8 U.S.C. §715)).

Under the law of the United Kingdom :

(1) A child born abroad of a father who is a citizen by descent shall be a citizen if the birth is registered at a United Kingdom consulate within one year of the occurrence or, with the permission of the Secretary of State, later (British Nationality Act, 1948, Article 5);

(2) A minor child of a citizen may be registered as a citizen upon application by a parent or guardian; in special circumstances, any minor may be so registered (British Nationality Act, 1948, Article 7).

Under the law of France :

A child born in France of alien parents acquires French nationality when it reaches full age provided it resides in France and had its habitual residence in French territory since the age of sixteen (*Code de la nationalité*, 1945, Article 44).

Under the recently enacted nationality laws of the Scandinavian countries, a stateless person born in the country and having been in continuous residence there, acquires the nationality concerned when he, between his eighteenth and his twenty-third year of age, declares his intention of becoming a national (*Cf.*, for example, Norwegian Nationality Act, 1950, sec. 3). Such provisions tend to reduce statelessness. If, however, the rules mentioned above were adopted, such persons would become nationals at birth.

(b) *By naturalization*

Statelessness is reduced by the naturalization of stateless persons in their country of residence. In order to become naturalized, a stateless person has to comply with the general requirements for naturalization prescribed by the municipal law of the country concerned.

It has been suggested that the naturalization of stateless persons should be facilitated. (Resolution 819 B III (XI) of the Economic and Social Council; *cf.*, also, Article 34 of the Convention relating to the Status of Refugees, 1951).

The laws as well as the practice of States as regards naturalization differ greatly. Naturalization is, in some States, made difficult by certain conditions required by law or, more frequently, by administrative regulations or practice, which either affect aliens in general or, in particular, stateless persons. Requirements which render naturalization of aliens in general difficult are :

(1) Prolonged residence requirements (in Belgium, ten years' habitual residence for "ordinary naturalization",

fifteen years, for full naturalization; in Luxembourg, fifteen years residence).

(2) Complicated and costly procedure which sometimes delays naturalization far beyond the minimum period of residence required by law.

(3) High fees.

(4) Stringent requirements as to the possession of property.

Requirements which create particular difficulties in the naturalization of stateless persons are.

(1) Proof of statelessness (Ecuador) or proof that the applicant has not availed himself of the opportunity of retaining his former nationality and that he loses it or has lost it (Luxembourg law of 9 March 1940, Article 7) or proof that the applicant will not retain his former nationality (Belgian law of 14 December 1932, Article 14).

Statelessness, as a negative fact, is difficult to prove. Stateless persons are often unable to obtain documentary evidence of loss of nationality from the authorities of the country of their former nationality.

(2) Production of documents from the country of former nationality or habitual residence.

It has also been suggested to grant priority in naturalization to certain categories of stateless persons who may be considered to be especially attached to the country of their residence. (*Cf. A Study of Statelessness*, *op. cit.*, p. 168.)

Naturalization is, however, in all countries a question which is decided on grounds of national, demographic policy and where the interest of the State is the overriding consideration (see Belgian observations in pursuance of the Economic and Social Council's resolution 819 B III (XI), document E/1869, Add.7). It seems unlikely that Governments would be prepared to undertake obligations by international agreement regarding naturalization, nor is it probable that they would be ready to grant privileges to applicants on the ground of their statelessness as each case is considered on its merits, from the aspect of national interests (see observations of the United Kingdom, document E/1869, Add.14).

International action in this matter would, therefore, seem to be limited to recommendations.

(c) *By reinstatement into former nationality*

The number of cases of relative statelessness can be reduced by reinstatement into the nationality which the stateless person has lost.

Thus, the legislation providing for discriminatory denationalization and denaturalization which was enacted by Nazi Germany and her satellites was repealed after the war by the Allied occupation authorities or the legitimate governments of the countries concerned. In Germany, reinstatement takes place on individual request.

In the U.S.S.R. several decrees were promulgated under which former nationals of the Russian Empire or former Soviet nationals who resided in certain areas were enabled to acquire or re-acquire Soviet nationality by option. A similar Amnesty Law has recently been enacted in Hungary. (For further examples, see *A Study of Statelessness*, *op. cit.*, pp. 164-165.)

Such reinstatement is obviously a question of national policy and cannot be regulated by international conventions, but it could be recommended as a means of reducing statelessness.

4. Reduction of statelessness by international arbitration

The activities of the Mixed Commission and the Arbitral Tribunal established by the Geneva Convention concerning

Upper Silesia of 1922 have proved the usefulness of international arbitration for the settlement of disputes in questions of nationality, particularly in case of territorial changes. The special features of this procedure were :

- (1) It could be instituted by the interested individual;
- (2) Individuals had direct access to the international tribunal;
- (3) The decision of the tribunal on nationality had binding effect *erga omnes* within the territories of the Contracting States.

The establishment of international arbitration for the settlement of disputes on nationality could do much to reduce statelessness. The question whether a person possesses the nationality of another State is frequently prejudicial for the determination of the nationality of a person by the authorities of the State whose nationality is in issue. In order to decide on the preliminary question they have to resort to the law of the foreign State, but this preliminary decision may be at variance with the determination of nationality by the authorities of the other State. If, in the determination of the authorities of the first State, the person is a national of the other State, but if in the determination of the second State's own authorities he is not such a national, a negative conflict on nationality arises which results in statelessness.

Statelessness would be avoided if recourse could be taken to an international tribunal which could determine the nationality of the person with binding effect on the authorities of both States.

SECTION VI. POINTS FOR DISCUSSION

The Rapporteur hopes that the foregoing exposition and analysis of the problem and of possibilities for its solution will furnish a sound basis for the deliberations and decisions of the Commission. In view of the fact that any solution of the problem of statelessness involves considerations of a political nature, the Rapporteur does not wish to make concrete proposals to the Commission. The following points are submitted for discussion :

A. Elimination of statelessness

1. It is difficult to envisage any measures which would wholly eliminate the statelessness of presently stateless persons. (Measures for reducing the number of such persons are suggested later.)

2. The general adoption of the following rules would preclude future additions to the number of stateless persons.

(i) If no other nationality is acquired at birth, every person shall acquire at birth the nationality of the State in whose territory he is born. This would extend *pro tanto* the application of the *jus soli* rule in many countries.

(ii) No person shall lose his nationality unless such person acquires another nationality.

3. The universal or general adoption of the rules stated in paragraph 2 seems to be improbable, even if the rules were thought to be desirable.

B. Reduction of presently existing statelessness

4. In lieu of an attempt to eliminate statelessness, efforts may be concentrated on the reduction of statelessness.

5. The number of persons who are presently stateless could be reduced by their naturalization in the countries in which they are habitually resident.

6. In cases in which presently stateless persons have previously possessed a nationality, the number of presently

stateless persons could be reduced by their reinstatement into a nationality previously possessed.

7. It seems improbable that many States would be willing to assume an obligation to naturalize (paragraph 5) or to reinstate (paragraph 6) presently stateless persons. Any measures to be adopted on these lines may therefore be limited to recommendations, as in resolution 819 B III (XI) of the Economic and Social Council of 11 August 1950, and in Article 34 of the 1951 Convention on Status of Refugees.

8. Can any useful system of arbitration be devised, on analogy to the precedent established in Upper Silesia, for resolving conflicts between national laws which have resulted in statelessness? (Cf. *Transactions of the Grotius Society*, *op. cit.*, vol. 28 (1942), pp. 151 ff.)

C. Reduction of statelessness arising in the future

9. Measures for the reduction of statelessness arising in the future require international legislation. The 1980 Hague Convention and the Special Protocol relating to a Certain Case of Statelessness are not sufficient for this purpose, and it seems better to draw up new international instruments. The Hague Convention does not deal exclusively with statelessness, and the provisions relating to this problem have done little to reduce statelessness; moreover, chapter III relating to the nationality of married women would be superseded by the adoption of a Convention on the Nationality of Married Persons as contained in Annex II.

10. It seems possible, therefore, that a new convention or conventions should be drawn up. The Commission will have to decide whether

(i) It considers the subject sufficiently ripe for international legislation and wishes, therefore, to proceed immediately to the drafting of one or several conventions; or

(ii) Whether it is necessary to ascertain the views of governments on the various possibilities regarding the substance of such an international instrument or instruments.

In the latter case, the Commission might wish to set out the various possibilities in the form of a questionnaire addressed to governments and may proceed to the drafting of texts only after the replies have been received and examined.

11. In doing so, the Commission may

(i) Draw up a single convention containing uniform provisions which would have to be accepted by all Contracting States;

(ii) The Commission may find that the problem is not amenable to a uniform solution because the principles of *jus soli* and *jus sanguinis* are too deeply rooted in the legal tradition and policy of States and may, therefore, decide to draw up several conventions. In view of the fact that various combinations of the two principles exist in municipal laws on nationality it might, in this case, be desirable to draw up more than two conventions whose provisions would be adjusted to the main systems of nationality laws. (Cf. the above-mentioned suggestions of the International Union for Child Welfare).

As regards the substantial provisions of such a convention, the following points should be considered :

12. Supplementing existing law in *jus soli* countries, a child born abroad shall acquire the nationality of the State if one of the parents has such nationality, provided that it does not acquire at birth the nationality of another State. This may have to be qualified by some additional identification of the parent with the State.

18. Supplementing existing law in *jus sanguinis* countries, a child, wherever born, of a national shall acquire the nationality of the State, provided that it does not acquire at birth the nationality of another State. This may have to be qualified by some additional identification of the parent with the State.

14. A child born of unknown parents, of stateless parents, or of parents whose nationality is undetermined, shall acquire the nationality of the State in whose territory it is born. (Cf. Articles 14 (1) and 15 of The Hague Convention).

A foundling shall be presumed to have been born in the territory of the State in which it was found, until the contrary is proved; and birth on a national vessel shall be deemed to constitute birth in the national territory.

15. If a child acquires no nationality at birth, it may subsequently acquire the nationality of the State to which it is specifically identified by criteria to be defined in an international convention; e.g., continuous residence within the territory of the State for a prescribed period, perhaps followed by a declaration to be made by the child at a certain age.

16. If the law of the State whose nationality is possessed by a person recognizes that such nationality may be lost as a consequence of a change in the person's personal status (legitimation, recognition, adoption), such loss shall be conditioned upon the acquisition of the nationality of another State in consequence of the change of personal status.

17. A minor child shall not lose a State's nationality as a consequence of the loss of that nationality by either of

its parents unless it acquires the nationality of another State.

18. No person shall be deprived of the nationality of a State, when such person does not acquire the nationality of another State, (a) except on decision in each case by a competent authority acting in accordance with due process of law; or alternatively (b) except on the following grounds:

(i) Cancellation of naturalization on ground of non-compliance with governing law;

(ii) Continuous residence of naturalized person abroad (or in the country of his origin);

(iii) Evasion of military service.

19. If neither (a) nor (b) of paragraph 18 is acceptable, the following rules shall be applicable with reference to territory over which the sovereignty is transferred:

(i) If the transferring State continues to exist, no person inhabiting the transferred territory shall lose his nationality as a consequence of the transfer, unless he acquires the nationality of another State;

(ii) The State to which the territory is transferred shall confer its nationality on the persons inhabiting the territory, subject to their option to retain the nationality of the transferring State if the latter continues to exist;

(iii) The State to which the territory is transferred may not impose its nationality against their will on persons who have previously inhabited the transferred territory but have established their habitual residence elsewhere.

[Alternative — leave this whole matter to be dealt with by treaty.]