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THE

SYRIAN NATIONALITY

BY

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FOREWORD

No pretence is made in this essay to have covered the whole field of study of the Syrian Nationality. The motive for choosing this subject has been to satisfy an ambition on our part to make an attempt at scrutinizing and testing the divergent claims concerning the make up of the Syrian population and their fitness or unfitness to establish a Syrian state qualified to stand separately from the rest of the Arab neighboring states.

An attempt of this sort would have meant a research into the ethnological, social, political and literary back ground of the Syrians, an enterprise almost impossible to undertake under the present circumstances and in such a short period of time. This is why our study has been confined to the legal aspect of the Syrian Nationality with reference made to such phases of its broader and more general aspect as is possible under the circumstances. Some day, it is hoped, we shall be able to satisfy our original ambition and deal with the problem in a more comprehensive way.

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I N T R O D U C T I O N

This introductory analysis of nationality is an integral part of our study of the Syrian Nationality. It proposes to define the term "nationality" before any attempt is made to go into the details of the Syrian nationality. It tries to elucidate the subject matter (if the term nationality could ever be elucidated) and explain the meaning of the term before it carries the use of the term into particular realms belonging to any specific area or connected with any given state such as Syria.

The term nationality is used in a variety of meanings two of which are outstanding and deserve our attention. One is an abstract juridical meaning and expresses the tie of allegiance which binds a natural person to a given state by virtue of a law or of a treaty. The other is a concrete politico-ethnographic-psychic meaning and denotes a human group bound together by ties of similarities which differentiate them from other groups. The first meaning is one which does not lend itself to any ambiguities or complications for it stands defined by the law and enforced according to legal measures provided for in all states legislations. It is in this first meaning that the term nationality is used in connection with Syria. The second meaning is one which has been and still is the object of study of many sociologists and political thinkers who have varied in their views on the meaning of the term, its constituent elements and its place in modern state organization.

Nationality has had a very obscure meaning and has aroused the interest of so many writers because of its connections with such concepts as race, nation and state, as well as because of elements

emphacized in the opinion of one which are negligeble in the sight of another. When Bluntschli, of the German school, looks upon nationality as a consiousness of cultural and racial bonds regardless of political affiliation, or when Niebuhr of the same school considers common nationality as greater than political bond,[1] they are both emphacizing the racial factor and, at the same time, confusing the politico-legal concept with sociological-psychological considerations: nationality is subjective, statehood is objective; nationality is psychological, statehood is political; nationality is a condition of mind, statehood is a condition of law; nationality is a spiritual possession, statehood is an enforceable obligation.

Such a spiritual, psychological factor in nationality has been expressed by several writers who eliminate the racial element from all nationality considerations. Renan views nationality as "a spiritual principle, a spiritual family, and not a group determined by earth configuration."[2] He looks upon it as a "memory of great deeds accomplished together with a determination to accomplish yet more." According to Boutroux it is a will, the "will to pursue common aims," expressed in almost the same terms by Hocking as "the will to act together in the experiments of political life".[3] This same psychological factor is stressed by such writers as Henri Hauser for whom nationality is a "fact of collective conscience, or René Johannet who claims that "nationality is the consciousness of permanence around an original nucleus",[4] or again Renan himself who expresses the same idea in three words "vouloir-vivre collectif", the will to live collectively. Such clear ideas are often confused as, for example,

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1. Zimmern, Nationality and Government, p. 51.
2. Quoted in Le Fur, Races, Etats, Nation, P. 66.
3. Quoted in Roger Soltau, Essay on Nationalism, (unpublished)
4. René Johannet, Le Principe de Nationalités, p. 44.

when it is stated that the vouloir-vivre collectif is not sufficient to make a nationality for along with it there must be the pouvoir vivre collectif. Such statements are undoubtedly confusing, as is often the case, between nationality and state.

Such factors as identity of race, language, religion, territory, interests, culture, etc. have often been stressed as important in the process of nationality formation. Pascal Mancini is probably the earliest writer who clearly defined nationality as "a natural human society, based on the unity of territory, of origin, of culture and of language". Adding the territorial factor to the psychological Zimmern looks upon nationality as a "form of cooperate consciousness of peculiar intensity, intimacy and dignity, related to a definite home country". Other writers who have adopted this morphological definition are Ivanoff who analysis nationality and finds it composed of "physical individuality constituted of unity of race, of language, religion, as well as of political, cultural and literary unity", Pradier-Fodéré who, to the above, adds the unity of laws and of interests as well as the element of time which acts as an assimilating factor of all the constituent factors. Those who adopt the psychological definition agree, to a certain extent, with those who uphold the morphological with the only reservation that, to them, all these constituent elements would amount to nothing if divorced from the consciousness and the will of the people. After affirming that neither identity of race, of language, of religion, of territory, nor of civilization, are by themselves sufficient to constitute a nationality, Israil Zangwill goes on to show that something must be added to all of

them, something immaterial, superior to the elements which lie in the psychological domain and which has its own rules of origin, evolution and degeneration. That something has been explained earlier by Auerback as the consciousness and the will of the people.

What is nationality? one might still ask. No better answer can be given in this introductory survey than that presented in such a masterly manner by René Johannet in a chapter entitled "Qu'est-ce qu'une Nationalité" forming a part of an epoch-making book called "Le Principe des Nationalités". It is suggested here to give an adapted translation of this chapter.

In 1760 this chapter might have been called: What is a nation? The nation, then, entered into the political organization. In 1840 one would have said: What is a nationality? It was the time (1835) when the Croat Louis Gaj inscribed this epigraph on his propaganda journals: "A people without nationality is a body without bones." Later comes Mancini and his Germanic, racial definition (1851). The idea takes shape and we are able to ask: What is a nationality?

We cannot answer this question without analysing the elements of nationality. The first that comes up to our attention is race.

What is ambiguous and insufficient in this term which, at first, seems so clear, has been explained by our refuting the German theory of nationality.[1] And yet the fact remains that back of every nation is hidden the idea of race which it serves or believes to serve. With a bit of effort one may be able to detect in every people a sort of predominant type which gives the tone to the nation: Gaul in France,

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1. G. de Mortillet distinguishes three races, in the strict, quasi-zoological meaning: 1. the race of origin, an agrandized family; 2. the middle race, product of prolonged habitation; 3. the race of fusion produced by a long mixture. The anthropological race, contrary to the historical race has this distinctif feature that its common characteristics are transmitted by heredity.

Germanic in Germany, Anglo-Saxon in England, Aramaee in Syria and so on. This element evolves with the centuries and connects itself voluntarily with the most ancient historical population of a country. The frequency of intermarriage, of travel, of urban premiscuity, in a country with multiple races, tend to create a medium type which takes a solid shape in the course of centuries and stands as a community of origin. What is most serious about the national race is the consciousness, true or false, of belonging to it. When danger comes it is good for a people to feel united to each other by the tombs and by the cradles for this sentiment develops power. A Foch, realizing its significance, urges his men on the Marne to remember their race and this strengthens their energy. Every popular teaching that does not develop this belief must have no place in the state.

The racial question is one of approximation. If in an old European country, even in a national state, we take only the inhabitants of a village there is always chance that the community of origin for them may not be an illusion. Taking a province the risk becomes greater but the average truth remains. As soon as the state appears and grows this truth disappears. The wider the circle grows the more the race is effaced. But there again it lasts sufficiently in a reduced and diffused state. The empires of Charlemagne and of Napoleon rested, after all, on a vast racial step already occupied by the Celts. What we call the Athenian empire was nothing but an Ionian confederation. Words here mean but very little. The term race is ordinarily equivalent to nationality and,in this sense, it could be defined as a durable and tested equilibrium of moral qualities and physical habits which a heterogenious and massive accumulation may

risk to break; a social environment with power of assimilation whose crystallizing capacity must not be overloaded.

A people has, not only the right, but also the duty to preserve the type in which lies its identity against interfering adulterations. While it is true that cross-breeding strengthens the body and the intelligence, it is also true that mass incorporation of foreign elements provokes national deseases of the personality whose results may be death. For having acquired too many Jews too easily Poland perished, and it is the descendants of its old executioners who have just assassinated Russia.

At the present time the danger for a people does not lie in closing its door to foreigners, but in opening it too wide. A sure instinct warns a people of the danger. The practical result is that the nation of race is of capital importance. It inspires political measures the observance of which is a necessity. Indifference to the law of blood is often a mark of weakness. It is a symptom of dis-equilibrium and Aristotle, after having cited in his "Politics" examples of states lost by the immigration of undesirable elements of other races, lays down as a principle that one cannot manufacture a "Cité" with whatever kind of citizens.

Other elements constitute nationality.

Of all the elements territory is the most tangible. Herder regards it as a sufficient element. It models its occupant into her shape and infuses into him its secret will. Let us not exagerate. Territory exercises its activity mainly by its nature, plain or mountain, by its climate, hot or temperate, by its resources. Of all that changes on earth, territory is the one that changes least rapidly.

Some authors have excelled in pointing out the necessity of having a territory and its varied predestinations. In his many works on Germany, England, Persia, Turkey and Russia Victor Bérard insists on laying down the commandments which earth imposes upon man and which he cannot avoid from century to century. However big the part of artificiality might be in such a method, that of truth is not less. From the natural boundaries stand point alone, the role of territory is great. States like Poland and Armenia have not so much suffered but, partly, for lack of natural frontiers.

Camille Vallaux, considering the significance of territory, has built up his famous theory of Differentiation in a work of great merit, the Earth and the State. Here is the basic axiom: There is a permanent tendency towards the formation of autonomous states in the best differentiated geographical regions, and the activity of states formed in such regions drives them to extend towards less differentiated regions.

Here also the nationalitarian aspect passes into the second plane yielding to such present tendencies as have rendered it almost incomprehensible. It looks so conditioned to other factors that a scientific spirit dares no more utter the term with the accent nationalitarians prefer to pronounce it.

A living thing, a social animal, a psychological expansion, nationality remains but a symbol, an intellectual and moral banner. It is not an original, absolute, sufficient reality.

At all events, there exists no nation without territory. To push further: without traditional territory. The case of Zionism is a good evidence. The day the Jewish people threw themselves into

nationalitarian enterprises, their most urgent task has been to look for a territorial refuge. They thought they found it in Brezil; they even looked for it in Cyrenaica. Vain research! Palestine spoke too loud to their hearts. By obtaining the authorization to settle in Judea Zionism nationalized its adherents and is laying its pretentions to make a state of them.

It is true that there are cases where already formed nations look elsewhere for a new home. Such was the case of the Serbs in the VIIIth. century when they tried to escape the German domination. But, in general, a nation which has bound herself to a territory keeps accomodating herself on that territory from birth to death. "A nation, said Renan, results from the marriage of a group of men with a piece of earth." The union resulting from such marriage modifies the two partners but one cannot tell which of the two gets more modified. Physical influence of the environment is less noticeable on the human type. It must be extremely slow. For centuries certain races, newly established on a land long famous for its previous inhabitants, were not able to gain anything from the beauty or virtues of their predecessors. The coexistence on the same place of diversified human types has kept their peculiarities. It has often been noticed that the English of England have been able to settle in any spot on the globe without losing any of their principal acquired qualities, this, provided they had carried their hundred customs with them. There are regions, like Egypt, where for four or five thousand years white and black peoples have lived side by side without bearing any climatic influence. So neither races nor types seem to be influenced by climate. The factor of variation, if there is any,

comes more from the social environment. The English man, coloniser and out of home, changes quickly. In Australia he gains something of the American type.

The action of place is exercised with greater force in the field of interests. The permanency of interests imposes on the occupant, whoever he may be, certain political actions which are of major importance for the development of nationality. One of the tendencies is to seek strong, well protected frontiers. Milton's statement on education could be applied to good frontiers: they should provide "the indispensable qualities for peace as well as for war." Good frontiers must lend themselves for defense and must include the necessary resources for the national life. At the present moment, any people who cares for its nationality, that is to say who cares, among other things, for a sound economic policy, would bear the heaviest sacrifices in order to obtain a territory sufficiently rich in wheat, iron or coal to satisfy its needs. Nationality, in this sense, is an association which lives not only on beautiful language, but also on good soup. "A nation, says Lysis, is an economic system which aims at feeding a population."

Territory is also at the basis of another factor in which Israel Zangwill finds the essence of nationality. "Nationality, he says, in its internal aspect, being a form of sentiment, cannot be explained except by psychology. It springs up from an interaction which I propose to call the law of contiguous cooperation. This is a law according to which the occasional atoms are unified by mutual magnetism into an assembly, a body, a team, a political party, each of

which possessing its spirit of special group." Without territory, how could contigmity be produced?

Along with territory language occupies an important place, so important that certain philosophers of the legal school like Bluntschli see in it the alpha and the omega of nationality. "By adopting a new language, he declares, one loses his nationality." Meillet insists that "language is the first, the clearest and the most effective of all factors by which a nation is distinguished." One might without fear, state that if nationality were to depend upon one single physical condition, that condition should be language. As long as a people cultivates its mother idiom it can elevate itself, with favorable circumstances, to the status of nationality, then to that of state. One can hardly think of a national awakening which was not preceded by a linguistic renaissance.

The history of the last two centuries is rich in examples where nationality has received its greatest support from language. In Ireland as in Greece, in Bohemia as in Norway, the linguistic question is an integral part of the nationalitarian trend. The language is first purified and cleansed of foreign idioms and influences. Old native expressions are revived. All victorious nationalities follow this method and impose their language with the hope, which is not vain, of propagating themselves. The Irish of Ireland have succeeded in setting in their schools a privileged place for their language the study of which has become compulsary for all, even for the English.

One could cite the example of nations which, in order to distinguish themselves from their neighbors, have gone very far along

that road. Paraguayans have introduced Indian terms in their tongue. Greeks have removed from their language all terms of foreign root though these terms might be of universal usage.

Language and nationality go so much together that nationalizing governments believe that they have attained their goal once they have spread their language among the people they wish to assimilate. To Germanise, to Englicize, to Russify consist in increasing the number of persons speaking German, English or Russian. The same is true of rising or subdued nationalities who arouse their national consciousness by first carrying a campaign for their language, an innocent sport, a poetic and sentimental outburst, but in reality the first call to arms. Millions are spent on schools, on newspapers, on books before millions are expended on machine guns and cannons.

An ill-favored people, from this stand point, is the Turkish people who, for years, have been making a pathetic effort along linguistic lines, A poor language of the steppes and of war Turkish lends itself very badly to the multiple expressions required by modern civilization. Through the centuries the simple talk of the Ottomans has been stuffed with Persian, Arabic and even Greek, and contains no more of the original than the rules of syntax. The nationalists react against the empoverishment by harnessing the monosyllabic idioms of the ancestors to a rude and hard service.

The soul of a nation, the secret of her being and of her consciousness reside, for the greater part, in the language, that immaterial tie, all powerful and discreet unifier. Language drags

along with it a literature (a common treasure of sentiments and ideas), passions and national pride. By means of it one is annexed to a culture before being annexed to a state. Popular songs, stories, epics, every historical idiom bears in itself a national elixir. The French language is mainly Bossuet, Roland's song, Hugo, Descartes. It is historical words, proverbs and names with resounding sensitiveness. Ancient Greece is the daughter of Homer. Without Dante Italian nationality would have been cut short, like the Castillan without Don Quichotte. England would not have occupied her rank if Shakespeare had not sang. Israel and the Bible are one.

Religion is another factor having important relations with nationality. It presides and does not serve. Its prestige is so great that it effaces sometimes that of language: the reason why the Serbs and the Croats, who speak the same language, have kept separate camps is due to the difference of the two religions, Catholic in one, Orthodox in the other. But one may equally witness, by other examples, that religion depends also upon language. It has been found out that the number of American Catholics of Irish origin is far below that obtained from immigration bureaus and population tables. The reason lies in the fact that many of these immigrants, having acquired the English language and forgotten that of their fathers, have renounced their religion served to them by priests preaching in the Irish language. The loss suffered this way by Catholicism in the United States of America rises up to millions and shows the close ties that unite religion and nationality. The Islamised Bulgarians are sympathatic with the Turks. The Poles of Mazouri, converted to Lutheranism, voted for Prussia in 1920.

The causes of this solidarity can be brought down to three:

1. Religion, being what changes least and least quickly in society, and nationality, representing the identity of sentiment which that society has of itself, both realms find themselves engaged by history in a common system of permanency which results in the fact that a religion, professed for a long time, becomes a national religion and plays a great role in maintaining public conscience, the same way that a nation connected since a long time depends, so to speak, upon a religion.

The case of the Poles and of the Christians of the East explains this irreputable statement. Maronites, Poles, Irish are inseparable from Catholicism and it is Catholicism that has safeguarded their nationality. In the same sense, with Catholicism removed, there will be a break-up in the French, Italian or Spanish identity.

2. Religion, taking hold of the elementary emotions of man, reigns in that deep part of himself where national sentiments develop. Furthermore, religion does not concern itself with state considerations in regard to language and does not know any language but the popular, national speech. It teaches and it teaches prayer in the traditional idiom which is often the persecuted one. In this way there develops a sacred fusion between religion and nationality which stengthens them one by the other. The near East provides us with numerous specimens of this similarity. The beys of Bosnia and of Herzegovina who call and believe themselves Turks are none but Slavs converted to Islam in the XVth. century.

3. Another nationalizing force of religion is the clergy. Recruited from among the native element, the clergy represent, often better than the unitary adminis-tradition, the interests of the

population. If the French Canadians, deprived as they are of land aristocracy, had not had their Catholic clergy to maintain their traditions, they would have been eliminated since a long time from the number of people. One could say the same thing of Bulgarians, Serbs and Greeks under Turkish domination.

One could see that religion and religious phenomena serve as a safety-valve for suppressed national aspirations. Since the early middle ages there arose in the heart of Christianity certain autocephalic churches whose nationality is most apparent. The schism of Nestorius, that of Photius, have no meaning except for their relationship with Greek and Persian nationalism. On a larger scale the Protestant reform gives evidence of the same work. Several states owe their birth to it. Nearly everywhere their secterianism has been nothing but a pretext for nationalizing purposes. The significance of the Reformation seems to have been simply to favor the nationalization of retarded peoples. It failed among peoples whose unification was complete.

Another point which marks the influence of religion on nationality is worthy of mentioning. A religion which preaches pacifism leads its adepts along pacific paths. One that favors war drives its followers to conquest and eliminatory practices. Between the two tendencies, Christianity, which exalts obedience, endurance, spirit of sacrifice and all virtues which promote victory, explains, to a great extent, the reason for the supremacy of the white race.

To end up, it will be helpful to quote Machiavelli: "Princes and republics who wish to prevent the state from internal corruption must, above all, keep intact the ceremonies of religion and the re-

spect which they inspire, for the surest mark of a country's ruin is the despise of the cult of gods." Again he writes: "Let the heads of republics and monarchies maintain the foundations of the national religion...the more they are instructed in the science of nature, the more so they should act."

A very complex relationship is offered to us by zionism which o owes its origin to the weakening of religious feeling. Losing their faith which was undermined by critical spirit, consequently threatened of losing their intellectual and moral originality, many Jews sought refuge in zionism, being the sole refuge hence capable of saving their deep personality. They submitted to it all the luggage previously defended by religion: earth, language, national sentiment. By a strange return, zionism, once promoted to existence by such a gift, began to ranimate the faltering religion of Israel. Thanks to it the sacred language is reborn and people began to think of elevating once more the alter of sacrifice.

It is quite in place to inquire if the success of nationalism in the XIXth. century does not proceed forth from the decline of religion. Israel Zangwill claims that religion is bound to disappear before the growing nationality spirit: "Nationality, he says, will perhaps become the only religion of the future."

Dynasty is another great factor and it leads us into realms of different values. Those we have already mentioned and which, wrongly, we regard as essential to nationality, are nothing but its conditions, its support, its result. The cause of a statue is not marble, but the artist. In regard to nationality this artist is, primarily, the dynasty. Dynasty leads us into the world not of inertia, of matter,

of the unconscious, of the vague, of the determinate, but into that of initiative, of calculation, of the formative will. Left by themselves, religion, territory, language, race, all these would form a dispersed, difformed body. The power that intervenes first in order to draw from this chaos political results recognized by history, the power that evaluates, that commands, that selects, the power which is coherent to the nature of things, the power which determines nationality and provides it with a head, a mirror, a memory, a prevision and organs, that power is the national dynasty. It is through dynasty that nationality sees, moves, depends and perpetuates itself best. For Renan dynasty and nationality are alike. Without dynasty no nationality.

This idea must surely come from a French writer for if a nation has been created by a family, the French nation is one created by the Capetians. The law of dynasty shines over France, but every where else in Europe we witness its results. In England it is dynastic forces that have associated and then incorporated Scotland with the destiny of Great Britain, and if Ireland fell out it is for lack of a dynasty. Spain speaks more eloquently in favor of dynasty. Its formation is the result of a marriage in the 15th. century, which marriage accounts for the separation of Portugal which had its own dynasty in the House of Bragance of Lisbonne. Deprived of a dynasty Italy could vainly attempt at unification. What she had failed to accomplish in ten centuries the House of Savoy succeeded in building up in thirty years.

Dynasty is so inseparable from nationality that the ancient Hebrews, anxious to escape the threatening canaanization, were able

to overcome Samuel's objections by this argument which proved convincing: "We want to have a king in order to be like the other nations."

Side by side with dynasties Great Men determine the national evolution. It is no more the time when hyper-criticism blindly effaced from history the personality of great men by tolerating none but shapeless masses, a kind of germinating plasma of all national decisions. This absurd conception, incompatible with observation, tradition and science, is abandoned today, and a Frazer can bravely say that Sparta is un-intelligible without Lycurgus. Without Joan of Arc would France have still existed, and the Europe we know would it have offered us the same aspect if a Napoleon had not traced those vast avenues on it?

Bagehot, who was a judicious observer, has pointed out the tremendous part played by great men in the formation of nationalities. In accordance with Carlyle and his Hero Worship, he emphacises the importance of initiators and original actions, with Darwin he stresses survival by aptitude. He writes: "In the origin of states certain individuals endowed with an ardent energy got hold of small human groups and gave them a form to which these groups clung and which they kept." The same writer quotes a deep remark by Newman: "Men are guided by models not by arguments. Examples of success must be placed before their eyes for without such examples all appeals would be useless."

The whole problem is one of giving the right tone. "A ~~big~~ large number of persons, in harmony with one another in respect to essential traits, religion, politics, form a separate institution; they exagerate the native character, teach their own faith, establish their

favorite government; they discourage all the other tendencies, persecute the other beliefs, prohibit the other manners of the government. A nation formed this way bears, necessarily, a distinct trait." Bagehot does not conclude that nations today are maintained by virtues that were peculiar to their survival as of old, but he says enough to make us touch the importance of these minorities which are called "dynamic majorities" and whose influence over the masses has been brilliantly described by Manzoni before Le Bon. Nothing is less true than the word of Michelet when he compares nationality to the earth whose heat increases as one goes deeper into the lower stratas. Alas! A people abandoned with-out social arms to the nationalizing activities of the enemy does not take long to perish. The national expression may assume in the popular circles a more candid, mor concrete, more uncompromising form, but these are not a guarantee for preservation. What resisted Germanization best in Alsace was the bourgeoisie, and Gaul did not owe its Romanization except to the old alliance between its aristocracy and the Roman democracy. The role of the clergy, so important in Canada, in Poland and in all the Christian Orient, gives the best illustration of this phase of the national future. What is called organization is nothing but the general aspect of this law of energetic minorities, servants of the idea, whose function is to choose, to impose, to maintain, in the midst of vague collectivities, the precise categories of the state, of the culture and of the nation. There could be no nationality without aristocracy.

The conscience of nationality forms, therefore, a distinct chapter of this gigantic enterprise. Difficult as it may seem to admit that modern society differs from the ancient only by the all recent appearance of national consciousness, one may yet observe

among modern peoples one more degree of self-knowledge as compared with ancient peoples. The latter, one is apt to believe, did not fail to exteriorise their nationality. They did it in their own way by divine genealogies, by national cosmogonies, by legends and traditions of which India, Persia, Assyria, Greece, Egypt and our middle ages give a thousand examples. Today the theory replaces the might.

We may, therefore, push our way still further and reach a point where nationality is equivalent to consciousness of nationality. Israil Zangwill, to whom nations are "as old as the Pyramids", does not even at that, fail to admit that nationality is "a phenomenon of psychological order having its normal laws of origin, development and fall" "My point of view is very similar.

Every people figures out its nationality arbitrarily in its own way. It looks for its identity in institutions inspired by history as well as by the needs of policy or of national prejudices. It is the University which, almost every where, controls the distribution to the masses of this unique science and one might affirm that, without the confession of universitarians, nothing new would filter into the public consciousness. But, on the other hand, these are manouvered, mostly against their will, by the teaching which has formed them and which depends upon the political personnel in power. This remark, true for the average thinkers, does not hold for those schools with particularist spirit. L'Ecole des Chartes has had in France important indirect results from the national stand point. The same is true of the foundation, in 1874, of the Ecole des Sciences Politiques. Again, robust personalities, "sons of kings", can easily go over these artificial barriers. They obey to different wages of which opportunism is not the least strong. In times of crisis the general aims of life

shake and clash one against the other. One witnesses, then, an interplay of heterogeneous values, often contradictory, among which nationality is largely represented. Every one looks for his way, believes to have found it, merries himself with it, then repents, goes back and ends by finding himself where he was first. When several singers sing simultaneously bad hearers are to be pitied.

To understand better these sudden outbursts of nationality, so remarquable between 1790 and 1815 on the borders of the French nationality and generally witnessed after the imperialist fall, one must think of religious conversions as they work on the masses, as in Egypt after its conversion to Christianity. People passed suddenly, in mass, from one belief to another. We know today the methods by which energetic individuals make whole collectivities participate in their personal burning zeal. Bismarck in 1866, Garibaldi in 1860, both converted Germany and Italy from federalism to unity. At the end of 1918 the Rhineland heavily vascillates between Germany and France.

A clever writer has masterfully brought out the utilitarian reasons which accompany these shifts. "Along with affinities of race or language or historical solidarity, even above them, there comes the dominant factor of material advantages which, through certain national sacrifices, can be obtained by getting incorporated into a strong state or one on the way to become so. The second half of the last century marks the climax of such a movement. The current was so strong then that, far from

following the example of the British colonies of the 18th. century who sacrificed all for gaining their independence as sovereign states, the modern British Dominions, though feeling capable of self-sufficiency, dreamt of nothing but narrowing the ties of their interests and destiny with the powerful Empire whose immense resources would help their economic development and their security." A convinced nationalitarian, M. Léger, was well aware of this fact when he urged the Slovaks to look, not in themselves, but in Bohemia, for the seat of their national identity in order to form a stronger state.

The part of Politics, in the sense of premeditated combinations is striking in national development. To bring out from chaos a nationality useful for one's designs is a frequent game played by a strong and permanent government. All it needs is time, money and dexterity. In fact, all governments, at all times, have had political agents in their enemy camps among dissatisfied population in order to incite them to rebellion and separatism. A more common procedure in such cases is to extend help to rebels. This kind of complimentary rebellion, so to speak, was a favorite procedure adopted by French kings against the Empire. There is no need to insist that most small nationalities have come to life by imperialist competitions. What is important to note is that some of these smaller states may, circumstances helping, increase their power, nationalize around them and become the seat of imposing domination. Prussia could be given as the best illustration of this statement.

Things have not changed today from what they were of old. Diplomatic and military delegates are preceded now by a host of

less conscious preparing people. Nationalitarian progress has also its pre-war stage undertaken by archeologists, professors, philologists who follow designs set for them by the imperialist ambition of their masters. In Ireland, in Lithuania, in Finland, the German diplomatic action prepared the military action and both were made possible by a clever philological and historical preparation. Nearly all the agents of these secession movements were awakened to national consciousness by professors on the Berlin pay-roll, whose duty it was to teach them their origin in order to supply them with the chance of protecting its purity.

It is true that a nationality could not be manufactured of all pieces without a minimum of historical conditions, but at the present time, in Europe, the past centuries have so much left diversified traces on the field of national consciousness that a government, sure, patient and intelligent, may try, with lots of chances for success, to arouse, even artificially, thoughts on one's origins along lines already drawn by it. The enterprise does not run more risk of failure than any other human enterprise.

Who is it to decide whether the end of such an attempt is success or failure? Chance. Chance, that is to say the interruption of a necessary series by a necessary series of another order, fills in history the most important functions. Sometimes it accelarates, sometimes it abolishes. Some sociologists have been keen on drawing a satisfactory picture of the historical series. However rigid might be the ladder on which a historical series develops, this development always depends, partly, on chance.

Our nationality, formed by the Capetians, ows to chance, which for three centuries provided each of our early kings un-interruptedly with

a male heir associated first to the throne and then to monarchical interests, the formation of the hereditary law which favored so much this dynasty, mother of our nationality. The life and death of leaders, where chance often has the decisive word, have been for centuries the object of the highest considerations. When one imagines the enormous quantity of chance thrown by nature in the historical fate, one is quickly inclined not to see anything else. Cleopatra's nose, Cromwell's bladder, Louis XIV fistule fill our imagination. It is chance that brought forth Caesar at such and such an epoch, Napoleon at another, and Rousseau and Charlemagne. Without them the face of the world and of nationalities would have been different. Bolivar's premature death prevented perhaps the formation of the United States in South America. Young Rome could not grow but for lack of empires near her. It is mainly in war that chance decides: There are nationalities whose fate was staked on one battle, and there were battles whose outcome depended upon one unique chance.

And yet we should not carry too far this impression so favorable to religious and poetic meditation. If it is true that the first who was a king was a soldier favored by providence, it is also true that fortune adores energy. Will, attention, morality, confidence, discipline, all those are marks laid on the road of the happy chance to compensate for the proportion of a handicap chance.

Side by side with chance another element, without which nothing could be accomplished, waits majestically on the destiny of nations: Time. Time allows the forces mentioned above to exercise their influence. It is the one that determines the fusion of nationalities.

Without duration and permanence there would have been only individuals, nations would have been unknown. "A race cannot be spontaneously generated" M. Mellirand used to say. The action of time is exercised over nationalities by making familiar to them situations that seemed revolting at first.

All those different nationality factors we have reviewed often intermingle and often clash and either strengthen or weaken one another. It is Politics, for example, that create, or regularise common languages and so give a new basis for national sentiment. "If France, Italy and Spain had been united, said Renan, a common language would not have failed to prevail." In the Orient it is the proselytism of the new religions that determined the constitution of national written languages, capable of serving as common languages. These languages have contributed to the maintenance of the national sentiment. With the Jews, religion which prohibits marriage outside the group, has maintained, with the help of racial exclusiveness, first class nationalitarian possibilities.

With race and will as basic elements nationalitarian theories cannot stand if confronted with facts which show that nationality is a complex phenomenon where the opinion of the number does not count and has no meaning. It is energetic minorities, sometimes reduced to one, that, by force or by prestige, have spread around them their conceptions or have allowed collective institutions. It is they who created the race, chose and prepared the territory, established the religion, injected into the people that will to live together. What we call a nationality is, in its ultimum principle, a view of the intelligence accepted by those who live from it, sufficiently art-

ificial and therefore arbitrary like all human things. Every nationality is original in its constituent elements and obeys to its own laws. Of the several factors we have considered not all contribute equally to the formation of a determined nation and to giving it its distinctive features. The doses differ greatly. If it could be said that Germany is a race, it could also be said that Egypt is a river, Judea a religion, Great Britain an island, Italy a language, Turkey a conquest, The United States a territory, Prussia a state, France a dynasty, a tradition and a territory. There is no common measure between these powers, no possible agreement at least on nationalitarian grounds where they obey to contradictory urges.

Theorists forget this fact; just as there is in every organized society a clear part which is the State and a confused part which is nationality, so every nationality is composed of distinctive characteristics which are its manifestations of language, history, customs, and invisible elements which are the motor agents.

"Spiritual principle", "will to live collectively" are statements easily said but quickly forgotten. In practice things are materialized without great consideration. We mistake for political realities colors which have been generously placed on the atlas by ethnologists with no scientific discrimination, and we hope, by them, to measure, topograph and sound up this qualitative value of the nationality in motion. Others prefer to count it arithmetically by means of census forgetting that these plebiscites are no more than a game of prestidigitation with little honorable credit to it.

A nationality is intensity and preference and not a commodity that could be weighed on the scales. A nationality is an unexpress-

able vocation which depends upon the impregnations it has received.

Differing in their essence and in their form, nationalities also differ, each in relation to herself, in time. A nationality is born, it evolves and it changes shape. Should we eliminate the nebulae from among the heavenly bodies just because they are neither comets nor stars? Should we eliminate the beginnings because they do not resemble the end? Was not France already somewhat France at a time when its heterogeneous population made her look like Macedonia? Inspite of the war of secession, were the United States no more United States? Renan confesses that he would have separated the South from the North, in the name of Right. Still even better: Bainville was able to state, not without reason, that the war of 1860-64 was the American echo of nationalistic wars upheld by Prussia at the same time. In the one as in the other war is nothing but the aspect of a Federation in its growing stage which tends to nationalize itself.

Can a non-nationalized nation not get argument from her future to defend her present? See how much we commit mistakes. The third congress of nationalities of 1915 refused to admit the Ukraine into its meetings. Was it right? Was it wrong? One is embarassed to find a criterium for nationality. They do not obey to a stabilized norm of progress which presents them to us vague and floating at one time, dense and solid at another.

If there are nationalities which are germs, there are also nationalities which are residues. Nationality is a value of waiting which may bifurcate into all the directions which force or chance lay before it. The Irish are a nationality. So are the Scotch. What of the Gaellic and the people of the Cornwall? What of the Vogouls

and the Ostiaks and of all these thousand national colors who would go patching the world map with colors once you platter them with an appropriate stimulus. Proudbon counts twelve such nationalities in France. Is it from this material that the morrow will be made? It takes a great deal of courage to say so, but one does not really know whether a nationality runs for her death or for her glory.

The nationalitarian idea gives but vague indications to politics. Every nationality resembles a silhouette obtained by placing the drawn figures on the different paragraphs of this chapter. Each one of them in its turn is so extensive and so rectactile that the general shape brought forth from their collaboration quivers like the light under the effect of the wind. It is a fleeing vapor whose existence we know of only in the course of centuries without being able to fix in any one compartment of duration.

What is finally a nationality? Let us define it in the most abstract way? A nationality is the idea of a collective personality, variable in inspiration, in consciousness, in intensity and in greatness, related to the state, either in that it represents a unified state that has disappeared, or in that it coincides with an existing unified state, or in that it aspires or prepares itself to form a future unified state, and which finds in natural characteristics of origin justification for its identity as well as for its pretensions.

That much, taken from Johannet, is sufficient to show the significance of nationality considered from the political, social, and ethnological standpoint. One other meaning of nationality is left for us to consider. The legal, juridical meaning of nationality, will be the subject of our study in dealing with the Syrian nationality

While there is much disagreement on the first meaning of nationality, there is hardly any difficulty in defining the term from the legal point of view. Regardless as to whether a person belongs by race, by language, by history or by religion to this group or that, regardless as to whether he likes or yearns to be affiliated to this collectivity or to the other, every person in this world belongs to that political organization, known as the State, so long as our present political organization is based on the State System. That person might belong to a group which does not form a state in the strict meaning of the term and yet in the final analysis he owes allegiance to a state, either in that he is a citizen of it, or in that he is its subject or under its protection.

This makes it therefore evident that no individual can escape the allegiance to some state or another. Every person ought to have a nationality. Not only this, but also as a result of it, it must be assumed that no person may have more than one nationality, which amounts to saying that one may not owe allegiance to two different states; he should not serve two masters.

And yet it is not an uncommon feature to find persons bearing two nationalities, just as it is not strange to find others bearing no nationality at all. An individual may be a citizen of one state following the national law of that state, and he may be a citizen of still another state following the laws of the latter. Such conflicts often arise through international marriages, through naturalization, through the principle of perpetual allegiance, or through any other cause as long as every state is sovereign in her internal affairs and as long as nationality law is not of an international order.

Through birth abroad,

The principle of perpetual allegiance deserves special mention. It is one according to which no individual is allowed to renounce his nationality without the authorization of the state he belongs to. Some states, fearing mass renunciation of their nationality by their citizens, adopt this principle in order to make it more difficult for them to escape the jurisdiction of their state. This principle, however, is a very unfortunate one from the international standpoint. In practice it does not prevent a person from acquiring a new nationality; all it does is to make the individual bear two nationalities instead of one. When the Ottoman Empire or the Turkish Republic adopt this principle they certainly are not legislating for the Argentine or the Brazilian Republics. An Ottoman subject may, without securing authorization from his state get naturalized in Brazil, according to Brazilian laws, and so stand as a Brazilian and as an Ottoman subject, Brazilian for the first, Ottoman for the second.

Through a negative conflict of national laws a person may find himself without any nationality. A woman, national of one state, may be married with a national of another state. The law of her state may be one which makes the wife lose her nationality by marriage to an alien; the law of her husband's state may be one which does not absorb the alien woman married to a national. Her own state renounces her; her husband's state refuses her. This married woman will be, at least for sometime, without any nationality.

The end of the world war of 1914-1918, through the creation of new states, through annexations and through mass emigration, has witnessed a great number of heimatlosen (people without a nationality). As the situation is an abnormal one, and as the number of the victims was great, the League of Nations improvised a new system by which

certain heimatloses were made to fall, from the nationality standpoint, under its jurisdiction and carry a passport bearing the name of the person, Nansen, who suggested the idea.

Who is a national of a state? A very important question which bears no definite answer. Every state has its own laws which determine the status of its own citizens. Regardless of other states legislation every sovereign state legislates independently on matters concerning nationality and is the sole judge in determining who is and who could be a national, how one may acquire citizenship and what events bring about a loss of nationality. So a national of a state is he who is deemed as such by the laws of that state. It is on this account and because of the lack of international agreement on such points as acquisition and loss of nationality that conflicts of laws arise. It is also on this account that nationality forms one of the leading subjects of the study of International Private Law or, a better name still, the Conflict of Laws.

This is not the place to go into the details and labyrinths of the conflict of nationality laws. What is interesting to us at this present stage of our legal development is to point out to a worthy attempt recently made at reducing the cases of conflicts among states in regard to nationality. The League of Nations, under whose auspices several international problems were put to careful study, took up the question of nationality laws at the fifth meeting of its assembly on September 22, 1924. The Assembly "considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations......and desirous of increasing the contribu

ution of the League to the progressive codification of international law: requests the Council to convene a committee of experts to prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be the most desirable and realisable at the present moement."[1] The Committee was appointed by the Council, it met several times between 1925 and 1927, and finally on June 13, 1927, it submitted its final report. On September 27, 1927, the Eighth Assembly of the League adopted a resolution according to which Nationality was one of three subjects to be submitted for examination by a first Conference.

We shall not take up the work of the League along this line. We shall turn our attention across the Atlantic, to the United States of America, where the problem was taken up by the Harvord Law School. This school, following the initiative taken by the League, organized a research in International Law for the purpose of preparing a draft of an international convention on Nationality to be dealt with at the First Conference on the Codification of International Law. The result of the work of the research committee as embodied in 22 articles is only important in that it sets, for the first time, such rules on nationality as might help reduce, if not do away with conflicts. By just quoting some of these articles one may get an idea of the tremendous amount of conflicts which used to arise and of the wisdom behind adopting these or similar to these measures.

Although the draft still leaves it to the state to determine by its law who are its nationals, yet article 2 adds that "under international law the power of a state to confer its nationality is not

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1. American Journal of International Law, Vol. 23, 1929.

unlimited."

Article 3, limiting the power of a state, specifies that "a state may not confer its nationality at birth upon a person except upon the basis of a. the birth of such person within its territory or a place assimilated thereto (jus soli), or b. the descent of such person from one of its nationals (jus sanguinis).

Article 8 attacks a fundamental issue: "When a person is born of parents who are of different nationalities and are not married to each other, the state of which the mother is a national shall regard the mother as standing in the place of the father for the purpose of determining the descent upon the basis of which its nationality (Jure sanguinis) may be conferred; if such person is legitimated as the child of its father before it reaches the age of twenty-one years, the state of which the father is a national shall regard the person as the child of the father for that purpose, unless at the time of the legitimation the person is residing in the territory of the state of which the mother only is a national."

Article 10 recognizes the fact that it is impossible to avoid cases of double nationality. But art. 11 states that "a person who has the nationality of two or more states shall not be subject to the obligation of military or other national service in one of these states while he has his habitual residence in the territory of another of these states."

Art. 13 provides for the possibility of naturalizing nationals of other states, but adds that such naturalization" does not terminate liability for an offense committed by the naturalized against his

former state while a national thereof ...."

Concerning naturalization art. 14 provides for a measure which, if adopted by the Powers, would not have allowed the existence of such class of citizens in the Ottoman Empire as has been known as Protegees. It runs as follows: "Except as otherwise provided in this convention, a state may not naturalize an alien who has his habitual residence within the territory of another state".

Art. 16 is one which comes to support a measure adopted by the Nationality Law of Iraq: "When a person, after having been naturalized by a state, establishes a residence of a permanent character within the territory of the state of which he was formerly a national, the latter state may re-impose its nationality upon such person without his consent, whereupon he shall lose the nationality acquired by naturalization."

Art. 18 deals with partial and total cession of territory to another state and stipulates that nationals of the first state become nationals of the successor state unless otherwise provided by a convention or a treaty.

Married women, according to act. 19, retain their nationality of origin "in the absence of a contrary election on their part."

Who is a national of a state? The answer is still the same: he who is considered as such by the law of the state. As long as states exist and as long as they are sovereign conflicts will continue to arise.

Those are the two meanings of nationality: a political, social ethnological meaning, and a legal meaning. The first expresses the real, the natural nationality; the second marks a tie of artificial

allegiance to a state which is itself an artificially devised institution. A person is first and foremost a member of a family, of a clan, of a tribe, of a nation. This membership of a nation shown in common ties of blood, language, thoughts, history, culture, emotions, this is his real nationality. Facts arising from cession of territories, from emigration, from conquest, from motives of personal interest, such facts and events as may place a person under the jurisdiction of a state to which he comes to owe allegiance do not create such fundamental changes in the person as to make him belong to the nation, if it is one, of which the state is composed.

Such a view will lead us to agree with those who believe that there is no relationship between the two meanings of nationality. And yet, though one might be natural and the other artificial, it is our contention that such relationship exists, that if it does not things must be arranged in such a way as to create such a relationship.

There are two ways of having such a relationship. The first would be to carry the natural nationality into the artificial, state realm and have it coincide with the legal nationality. This would mean taking a nation by itself and allowing it to erect for itself a state. A procedure of this sort, known as the principle of nationalities, is not a new one. History is familiar with such attempts as have tried to allow nations to be masters of their political destiny. The last approach to a world organization on such a basis has been taken at the peace treaties following the world war of 1914-1918. The main difficulty arises from the facts that it is difficult to define a nation, that nationalities are very much territorially intermingled and that the world of man is still based on the principle of might, of selfishness and of interest.

As our work is mainly of a legal nature we shall not dwell long on this point but turn to the second way of creating a relationship between the real, social, ethnological nationality and the artificial, legal nationality. This consists of making Nationality laws as near to producing natural results as possible. After all, any kind of law is doomed to death if it does not adopt the natural order of things as a goal. Our second method is to make state law create a legal nationality as near to the natural as possible. Legislation on nationality must create such citizens of the state as are able and willing to live together. They should be made to understand each other and sympathize with the cause and hopes of the group, and not left to claim political, legal allegiance to the state to whose language they are foreigners, to whose ideals they are passive and to whose past of glory or suffering they are strangers. Lebanon

By formulating laws for the acquisition and loss of nationality in such a way as not to allow unassimilated elements to get into the national group the legal nationality will be approaching the natural nationality and will consist of a homogeneous group which will answer the first definition of nationality.

If, on the other hand, a state easily grants its nationality to individuals who do not know the language of the country, who have lived in it but a short time, who have no valid cause to be nationals, the nationality situation will be far from a natural one. Worse still, if a state, for political or other reasons, bestows its nationality upon such masses of individuals who find its territory a convenient place to live in, but who differ from the rest of its inhabitants by race, language, religion, culture, or history, and still even worse,

who still look back to their home they have left and cherish all cultural traits they possessed, without regard to institutions that surround them in their new residence, and without any effort at getting assimilated with the new people among whom they live, if such policy is followed it is certain that the legal nationality becomes still more artificial and every relationship between the two nationalities is broken.

The legislator cannot touch upon the hearts of men, but he can lay down statutes that would allow those only whose hearts have been touched to join the community that forms the state. The present world conflagration has proved, above and among many other things, that nationality laws need to be revised, that nations were absorbing new members but not assimilating them, that the door to the acquisition of nationality is vast open and that the danger of a foreign element has been great. Already some states have started depriving some nationals of their rights of citizenship, already others have begun revising their laws. Along what lines shall these laws be revised? What should be the leading principle?

One safe way, one sure remedy for the nationality laws: nationality laws should be made to establish, as near as possible, a nationality based on the natural order of affinities and similarities in which the group is homogeneously constituted and fitted to lead a political life it is destined to.

T H E S Y R I A N N A T I O N A L I T Y

CHAPTER I

Ottoman Nationality in Syria

A. The pre-Reform Period.

On the 24th. day of August, 1516 the Ottoman Sultan defeated the Mamluk Sultan and established the Ottoman suzerainty over Syria and the rest of the Arab countries. On the 30th. day of October, 1918 the Ottoman armies capitulated to the Allied forces[1] and the Armistice of Moudros was signed. Effective sovereignty of the Ottomans over Syria ceased after having been exercised for four hundred years and two years. During this long period the population of Syria had lived as Ottoman nationals[2] and had passed through all the vicissitudes related to Ottoman nationality, suffering before the reforms, still grumbling after them, so that a study of the Syrian nationality cannot go without a clear understanding of its background, covering four centuries, out of which they came to a national life of their own.

The Ottoman Empire was a theocratic state with Islam as its religion. The two terms theocracy and Islam have to be fully understood for a right comprehension of the characteristics of the Ottoman nationality, if such a nationality ever existed in the early stages of Turkish rule.

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1. Great Britain, France and Italy were allies during the war of 1914 - 1918.
2. The term is used in the sense defined in parag. 1, article 2, of the Iraq Nationality law of October 9, 1924: a person possessing nationality either by birth, naturalization or otherwise.

As a theocratic state the Ottoman Empire had a temporal head who was at the same time the spiritual head of the faithful. The Turkish Sultan was also the Caliph of the Moslems. His subjects were not only the Moslems and non-Moslems of the Empire, but also all Moslems wherever they were. The leading principle governing the Empire institutions was religious, and every state activity was, to a great extent, influenced by the religious character of the rules at the basis of public functions. These rules were religious commands the observance of which was sanctioned by religion and enforced by officers bearing religious insignias. The Padishah was the Commander of the faithful; the officials in the lower scale of the administrative hierarchy had the same dual aspect; the jurists were theologians.[1]

As an Islamic state the Ottoman Empire fell heir to the Arab states of which Syria formed an important part and whose religion was Islam. Islam was a religion and a state. The Arab Caliph, like his Ottoman successor, was the head of religion as well as that of the state. The Qur'an, the holy Book of the Moslems, was the source book of all laws governing those who professed Islam. As heirs to the Arab Moslem states the Ottomans adopted the same religious and political conceptions of statehood the Arabs had. Of all these conceptions the one that interests us most is that related to citizenship or nationality.

The rules, the laws, the commands, that govern the Islamic state are embodied in the Qur'an. This, it was stated earlier, is the main source book of all law: social, civil, religious, criminal or otherwise. It prorogued all preceding customs and it stood in the Moslem community as an important source book supplemented by such other sources as the Hadith (tradition), Qiyas (Analogy), Ijma'(concensus of opinion) and ~~Re'y (opinion). To the Moslem state there is no such~~

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1. Van den Berg, quoted by Ghali: Les Nationalités détachées de L'Empire Ottoman.

difference as that which exists nowadays between a moral or religious rule receiving a moral sanction, and a state rule receiving a civil sanction. To the Islamic state there is no difference in the nature of the sanction behind observing the fast in Ramadan, for example, or paying the Zakat (tax for alms to the poor), and stealing or corrupting or giving false testimony. All rules to determine any form of human activity are laid down in the Qur'an, or other religious sources, and the Moslem state, Arab or Ottoman, adopted this holy book as its basic constitution and code.

It follows, therefore, that every individual who owes allegeance to the Moslem state, that is every individual who claims citizenship of the Islamic state, is one who is ready and willing to abide by the Qur'an, the code of that state. Not only this, but it also follows that whoever adopts the Qur'an as his book, that is whoever professes the Islamic religion, is a citizen of that state whose constitution and code are embodied in the Qur'an. Taking the negative side of the proposition it follows, therefore, that whoever does not believe in the Qur'an, which means that whoever is not a Moslem, could not be a citizen of the Moslem state whose citizens are only Moslems.

This seems to be a logical conclusion of the above mentioned proposition, and it is not different from the practice followed in the Islamic states. Nationality and religion were one; unity of faith meant unity of nationality and visa versa.[1] From this fact the

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1. Seba: L'Islam et la Nationalité, p. 11.

conclusion is drawn that non-Moslems are not, strictly speaking, members of the state; they are not nationals. Only upon conversion to Islam would a person gain the nationality of the Arab- or Ottoman-Moslem state on whose territory he lives.[1] To be born and to live on that territory does not entitle one to the nationality.

The Islamic state was, therefore, classified among those having a "closed" nationality in the sense that only a certain group of people professing the Moslem faith were called upon to enjoy the full privileges and rights of citizenship. It was closed in the sense that one had to seek admission into it, and that only by using the key of faith. This closed nationality, however, was not particular to the Islamic community alone. Primitive society practiced this policy of privileges making distinctions among the peoples who lived on the same territory of one state. The Roman nationality in its early stages was closed both in religious and in racial aspects. A person was alien if he did not profess the Roman religion and worship the Roman Gods. He was also a foreigner from the Latin group if he were not a Latin even though he be a Roman subject. Aliens, in that racial and religious sense, had different laws to govern them. The full Roman citizen followed the Jus Civile, the foreigners or Peregrinus followed the Jus Gentium.[2]

In a state of affairs such as the one mentioned above the laws that govern the state are, as a general rule, personal and only in exceptional cases are they territorial. This is not the place to

1. Lybyer: The Government of the Ottoman Empire in the time of Suleyman, p. 63
2. For a detailed study of Roman institutions see Foustel de Coulanges: La Cité Antique; R. Monier: Droit Romain t.I pp 300-319, Ed. Domat-Montchrestien, 1936.

enter into the study of the personality and the territoriality of law. It is sufficient to state here that a law is personal when it is enacted for personal considerations, producing the legal result that it governs the person for whom it was meant wherever he might be. The Moslem law is personal in the sense that it applies to Moslem subjects regardless of the territory on which they live.[1] It is also personal in that it does not apply to a non-Moslem. An Ottoman subject enjoying the full Ottoman citizenship in the religious, Qur'anic sense obeys to the commands of the Ottoman law not only while he is on Ottoman territory, but also while he is on foreign land. Conflicts between the personal Moslem law and the foreign land's territorial law very likely arise. This personality of the Moslem law implies also that non Moslems living on an Ottoman territory do not follow the commands of the Ottoman law which is not meant for them, but follow rather those laws laid down for them by their own religion, churches and synods.

When a law, on the other hand, is territorial it is sovereign, in every respect, on the territory of the state it emanated from. The story of the conflicts between personal and territorial laws, of what categories of laws should belong to the one or to the other, of the evolution of legal institutions from personality to territoriality, of the effects, sometimes happy, often times unhappy, one theory or the other had on national and international relationships, is a long story which finds no justification for being just mentioned here except in the fact that it had a great deal to do with the question of nationality.

It has been stated earlier that in the Ottoman Empire, heir to

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1. Lybyer: op. cit. p. 34.

the Moslem Arab states, faith and nationality were determined one by the other. It follows, therefore, that on the Ottoman territory, and as long as law was religious and personal, there were subjects who escaped the Jurisdiction of the state and over whom the latter was not fully sovereign since its laws did not reach them. What was, therefore, the national status of the non-Moslems in the Ottoman Empire of which Syria and its inhabitants formed an important part? What was the policy adopted towards them, and what was their reaction to that national policy.

States usually determine the national status of their citizens by one of two factors or by the two together. They either emphasize the jus soli, the land tie, and consider as national any individual born on the territory over which they have jurisdiction, or they stress the jus sanguinis, the blood tie, and consider as nationals those individuals born of nationals wherever the birth might happen to be. A combination of both factors strikes a happy medium and is adopted by most modern societies, although the land tie is gaining ground[1] at the expense of the blood tie which was almost exclusively adopted in ancient and medeaval society. To speak in terms of jus soli and jus sanguinis it is safe to say that the Ottomans adopted the jus soli basis for the determination of nationality, but a jus soli based on a community of faith,[2] with the result that only Moslems living on the Ottoman territory were Ottoman citizens. It follows that non-Moslems were not citizens, What were they?

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1. A list of states whose nationality laws are based solely on jus sanguinis, on jus soli and jus sanguinis, on jus sanguinis with provisions based on jus soli, on jus soli with provisions based on jus sanguinis, can be found in supplement to the American Journal of International Law, Vol. 23, 1929, p. 80 - 82.
2. Seba: L'Islam et la Nationalité, p. 11.

In the Moslem state, under the Arabs as well as under the Ottomans, the non-Moslems who were established[1] in the state were called Dhimmis and Rayas,[2] by the first the Arabs meaning the people of the book who came under their protection and were allowed to keep their faith, by the second the Ottomans meaning those who were subjects to them. Dhimmis or Rayas were not citizens of the state; they did not enjoy the rights the Moslems had, and public offices were not open to them except where their personal ability and knowledge made their services indispensable.[3] These subject-citizens had a status of their own, paid the jizya (poll tax) to their Moslem protectors, but continued to be under the jurisdiction of their churches or synagogues with the Patriarchs and Grand Rabbi (Hakhampashi) at the head of the administrative hierarchy applying the laws of their respective sects.[4] When Muhammad II entered Constantinople in 1453 he called the Patriarch of the Greek Orthodox, Genadios, and the Grand Rabbi of the Jews, and invested them with the power over their co-religionists. Turning to the Patriarch, he said,"the all Saint Trinity who has delivered the Empire unto my hands makes you archbishop of Constantinople, the new Rome, and oecumenic Patriarch."[5] Then he conferred upon him the power of unlimited jurisdiction over his coreligionists who are subjects of the Sublime Porte by granting him the title of Millet-Pashi (chief of a nation). The Bara'at (chart of investiture) granted by Muhammad II to the Patriarch Genadios is the

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1. See Meaning of "established" in chapter II.
2. Although Ra'aya means literally subjects, yet henceforth it will be used in the sense of non-Moslem subjects, a common usage adopted by most Western writers.
3. Tritton: The Caliphs and their non-Moslem subjects.
4. Van den Steen de Jehay: La situation légale des sujets Ottomans non Musulmans, Ed. Oscar Schepens, 1906.
5. De Jehay: P. 68-69.

starting point of all privileges and immunities which the Ottoman sovereigns have accorded, at different times, to the non-Moslems of the Empire.

What was granted to the Greek Orthodox sect was simultaneously granted to the Armenian sect (Gregorians), and subsequently to other recognized sects. Each one of these was declared a Millet, which is the Turkish equivalent to the word nation, itself a misuse of the Arabic word meaning a religious faction and not nation, as common practice, especially among Western writers, has made it to mean. One should not really wonder at the apparent misuse of the term "nati for it is very frequent that differences of sects and religions in the East correspond to differences of races and nationalities:[1] Jacobites are Syrians, Greek Orthodox are Greeks, Gregorians are Armenians, etc.. It is only later that, through prosylitism, other nations were brought under the jurisdiction of one of those main original Oriental sects. These Millets, with all the privileges they had, with all the power the Patriarchs acquired, formed a state withi the state. What else could be said other that that they formed a state by themselves and were not considered as citizens of the Empire when they did not obey the laws of the Empire state but rather their own laws, when they did not stand before the courts of the state but before their own church courts, when their last appeal was not to the Sultan but to their own Patriarch, when they could be arrested, imprisoned, deported and exiled not by the sovereign of the land but by their own religious chief, when, in war or in peace, they were not called upon to do military service, when, finally, their mere existence was not taken into account when census of the citizens was made.[2]

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1. De Jehay: p. 23.
2. Neither the birth nor the death of non-Moslems were registered before the Tanziaat were put into effect. Early reforms required the registration of children of the male sex. By a decree of August 21, 1881, registration of females was required. It migh be said that until the present day registration of births is deficient in the East although careful legislation has been enacted to render it well organized.

The Rayas of the Empire, it has been stated, were exempted from military service. This sounds like beeing a privilege, But, in reality, it was a result of their lack of having citizenship. However, the Rayas had to pay a tax in return for this exemption. This is the same kind of tax the early Arab states required of their non-Moslem subjects. The Arabs called it the Jizya, the Ottomans Kharadj, with this difference that where-as the Arabs differentiated between the Jizya as a poll tax and the Kharadj as a land tax, the Ottomans used the same term for both. It was much later that the word Kharadj-Arazi and then Verghi came to be applied for the land tax as distinguished from the poll-tax. When modifications were made later in the fiscal legislation the Kharadj, as a compensation for exemption from military service, was abolished and replaced by a tax known as the "Askariyyah-Badali" (army compensation). It is of great significance to note that all these taxes were not paid directly to the Sultan or his agents but to the Patriarch of each Millet who, in his turn, saw to it that they are delivered unto the public treasury. This is another evidence of how the affairs of the state went in such a way as to exclude the non-Moslems from all participation in public life thus making them conscious of their standing as a separate group and of their lack of allegiance to the Ottoman state of which they were not nationals.

This idea of a state within the state should not be carried to an extreme for, after all, the independence of the Rayas from the Ottoman government had its limits. One example is sufficient to denote the tie of dependence upon the Sultan. The religious heads of the different communities were chosen by the faithful from among the prelates whose names were listed by the Holy Synods and then

submitted to the Sultan who was the one to give them the investiture.[1]

It will have become evident from the preceding description of the status of the Rayas that grains of national feeling would not meet a fertile soil in the Ottoman Empire. This dual sovereignty, so strange to any modern conceptions of public law, tended to sharpen the differences which race and religion had already created. There is no wonder, therefore, that a non-Moslem, a raya, looked Westward to Europe for a feeling of political affiliation. The 19th. century, and only the second half of it, which affected, or tried to affect, reforms in the Empire in order to place the state on sound, modern foundations helped to assimilate the different nations into a national unit though very far from anything desirable then or today.

This is not the place for a study of Ottoman international relationships and the long story of European intervention in the internal affairs of the Empire, such intervention as has led to the reforms of 1839 and 1856. It is necessary, however, to glance over these European interventions from the nationality standpoint and see how the two were inter-related.

One of the main reasons, not motives, why the European powers interfered in the internal affairs of the Ottoman Empire was the protection of minorities. Which minorities? The religious minorities, is the obvious answer. But it has been stated earlier that religion in the East was equivalent to nationality in the sense that non-Moslems were not only religious minorities but national minorities as well. In the light of this the status of religious minorities in

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1. Seba: p. 51

the Orient would give the first example of protection of minorities. Ghali[1] quotes Holsza expressing this idea in a very clear and elaborate way: "This idea of the protection of minorities is born in Turkey. It is in comformity with the role which religion plays in the Orient and which assumes logically the existence of a state religion, or at least of a national religion. Religion in the East beeing the main symbol of nationality, it is not religion but nationality that has become the object of international protection of minorities.....The protection of religious minorities in the Orient is politically equivalent to the protection of national minorities in Central and Eastern Europe."

The protection of minorities in the Ottoman Empire was another factor to help sharpening racial and religious differences. It was detrimental to any feeling of national unity. In the first place the protected nationalities were looked upon more like aliens than subjects of one national state, a fact which made them more conscious of their particularism. In the second place the minorities began to look so much Westward that the Greek Orthodox of the Empire felt more like being Russians, the Catholics more like being French and the Protestants more like being English than Ottoman subjects.

To this anomaly of a dual nationality must be added a third one, that of Capitulations. It is not that we are concerned here with the study of Capitulations as such, but through the privileges granted to foreigners we are proposing to lead up to a third category of subjects known as the Protegees.

On the territory of every state there is always a number of aliens staying for a long or a short period of time. By aliens is

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1. Ghali: p. 47.

meant those individuals who are already subjects of another state but who live temporarily on the territory other than that belonging to their national state. The early Moslem state recognized the status of an alien, allowed him into her land and gave him protection. The alien was not called a Dhimmi but a Musta'min (one seeking protection) and he was subject not to the law of the land but to his own national law, the local law beeing religious and personal.[1] A Moslem, it must be noted, was never an alien in the Moslem state though he might come from the most distant corners of the earth.

The Ottoman Empire, a religious Moslem state, was not different in her policy towards aliens from her predecessor. Foreigners continued to come into the land, their number was grewing big, international relationships with Europe were more frequent, and so it was found necessary to sign treaties with such European powers as happened to have nationals on Ottoman territory. These treaties, known as capitulations, were meant to define the status of a foreigner and to give him the necessary protection during his stay in the Empire.

The powers which Muhammad II granted to the Greek Orthodox Patriarch Genadios on June 1, 1453, and to the Armenian Patriarch of Brussa as weâl as to the Grand Rabbi Moshi Capsoli on June 3d. of the same year, to administer, legislate, tax, judge and condemn the Rayas, formed the first step towards extending immunities to foreigners of the Empire.[2] The causes of these capitulations should not be looked for in the weakness of the sovereign who granted them for he did grant them at a time when he was the mightiest of ruling monarchs. The first capituàation treaty was signed between Sultan

1. Al-Halabi, Shikh Ibrahim: Maltaqa el Abhur, Cairo, 1291h. p. 97
2. Seba: p. 27.

Sulayman the magnificent, the strongest monarch in his time, and Francis I of France who had previously been defeated at Pavia and taken prisoner by Charles V of Spain.[1] The real causes of capitulation treaties must be found in the Ottoman conception of law and sovereignty. "If we carry our present conception of, the role and the rights of the state", says M. Pélissié du Rausas, "back to the 16th. century, capitulations would seem a non-sense, an absurdity, an anomaly. The modern conception of sovereignty is essentially secular. As long as law is mixed with religion, the state remains unconscious of her role and of her rights. The reason is easy to understand. The modern idea of the state is a territorial role. Religious law is necessarily personal. It is made for the believers only; when it punishes her measures are meant for them only.[2]" So the alien, like the Raya, is out of the reach of the local law, the latter being under the jurisdiction of his religious law and spiritual head, the former under that of his national law and consul.

Whether the causes of capitulations are based on legal conceptions or on political weakness[3] of the Ottomans to safeguard the rights of foreigners, whether they are justified religiously and economically,[4] or whether they form nothing but another part of the whole system of international relationships developed in feudal Europe,[5] the fact remains that the capitulatory powers abused these immunities, grew more exigent in their demands and

1. For text of this Capitulation Treaty see Noradounghian, Recueil d'Actes internationaux de l'Empire Ottoman, Vol. I, p. 83-87
2. Quoted in Seba: p. 32.
3. M. Pic: Revue de Droit International Privé, III, p. 627.
4. Abi-Chahla: L'Extinction des Capitulations en Turquie, p. 51-53
5. Abi-Chahla: p. 52.

their subjects stood in a highly privileged and extremely enviable position.[1] Where as Turkey had granted the first capitulations out of her free will and consent, later capitulations were extracted from her by means of pressure and diplomatic measures. Whereas the early capitulations did not create any opposition on the part of the Ottoman politicians and political thinkers, capitulations because in modern times a subject of hatred, discontent and vehement attacks. The greatest issue raised against them came in 1856 after the Treaty of Paris. By means of this Treaty the Ottoman Empire was admitted into the family of nations. The reforms it promised and actually caried out by the Khatti Hamayoun assimilated her to a European power. An attempt to abolish capitulations which became no more necessary was well justified. All attempts were vain.

The Young Turks who were successful in their revolution of 1908 made strong attempts to abolish the capitulations. When, in 1914, Turkey was still hesitant in her choice as to the side she ought to join in the World War, the allies offered to abolish capitulations if she should join them. She, however, joined the Central Powers and on September 9, 1914 sent a note announcing her abolition of the capitulations. It remained to be seen whether or not this unilateral act was recognized by the capitulatory powers. On January 11, 1917, the Central Powers recognized the abolition. The Treaty of Sèvres which settled the war with conquered Turkey stipulated in its article 261 their re-establishment, but the Turkish National Pact of January 28, 1920, resolved on the abolition. The Treaty of Sèvres having received no application, it was left, after much discussion, to the Treaty of Lausanne, July 24, 1923, to abolish the capitulations in its article 28.

1. Hylyne: op. cit. p. 35

It is the Treaty of Lausanne, as will be seen later, that officially determined the separation of Syria and the rest of the Arab territories from the Ottoman Empire. It is the Treaty of Lausanne also that marked the abolition of capitulations. Does it follow that capitulations were abolished in Syria by othe same act?

Whether detached territories are bound by the treaties of the Empire or not is a very debatable question which has received different solutions at different times. When Greece got her independence by the Treaty of London, 1829, capitulations were abolished in her favor. Article 35 of the Treaty of Berlin confirmed capitulations in free and independent Serbia, and it was not until 1885 that Great Britain, France, Russia and Italy agreed to their abolition. In Rumania capitulations were not abolished until 1878, while the British abolished them in Cyprus right after their occupation of the Island.[1] History of European diplomacy can give us the reasons for the differences in policy adopted toward one or the other of the newly born states, the abolition of capitulations in some and the confirmation of them in others.

In a country like Syria, where the Mandate System replaced Empire affiliation, it would be queer to keep capitualations alive. If capitulations aim at giving guarantee to aliens, would the presence of a Mandatory power not be enough of a guarantee? Would it not be against all legal rule to adopt a system of cumulative guarantee? And yet the attitude adopted was different from previous 19th. century practices, in disharmony with all legal

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1. Abi-Chahla: p. 141 - 151.

conceptions, and against all law. In the first place the French military occupation of Syria revived the capitulations and abolished the Turkish Act of 1914. The High Commissioner's arrété bringing the capitulations back to life based itself on article 261 of the Treaty of Sèvres which revives them but forgot to make use of article 28 of the Treaty of Lausanne which abrogated both the Treaty of Sèvres and the Capitulations altogether. In the second place a more abominable mistake was committed in articles 5 and 6 of the Mandate Act for Syria ratified on July 24, 1923. These two articles state that privileges and immunities of foreigners "including consular jurisdiction and protection as were once practiced in the Ottoman Empire by virtue of capitulation treaties and usage will receive no application." The document goes on to add that "unless the powers whose subjects enjoyed these privileges and immunities on August 1, 1914, have not renounced the re-establishment of these privileges and immunities, or have not consented to their non application during a certain period, these (privileges and immunities) will be revived without delay at the expiration of the Mandate integrally or with such modifications as migh be accepted by the Powers interested". In other words, the Mandate Act suspends the Capitulations till the time comes when Syria becomes independent and is able to stand alone. While she is a minor state, no capitulations; when it becomes an adult state, capitulations will be brought back to life.

Here we end with capitulations and turn back to see the great influence they had on the question of nationality in the Ottoman Empire. It was said before that they were among the factors which

helped evating a third class of subjects in the Empire known as the Protegées. Let us see how this happened.

Privileges and immunities granted to foreigners by capitulations were a great incentive to the Rayas to escape their inferior status and become, if not foreigners, similar to foreigners enjoying the same privileges. Such privileges as inviolability of residence (Art. 70 of the French capitulation of 1740), freedom of access and establishment (Art. 1 of the French Capitulation of 1535), individual and public liberties (Articles 6, 38, 40 of the capitulation of 1535, 1604 and 1740 respectively), exemption of paying the Kharaj, reduced custom duties and especially escaping the jurisdiction of Ottoman courts by being under consular protection and jurisdiction, all these made the mouths of the Rayas water and drove them to seek the status of the privileged foreigner.

Protection (Arabic: Himaya) has been defined as the juridical tie that binds a person to a determined state and makes it enjoy certain rights and advantages derived out of the quality of being national of that state, without conferring upon it the national quality or the personal status which depends upon it.[1] Since 1569 capitulationshave have provided that the powers could extend their protection to certain subjects of the Sultan whose functions of interpretor or drogman of consulates or ambassies placed under the direct authority of foreign diplomatic agents.[2] However, the powers did not ob serve the restrictions required by the different capitulations and by the end of the 18th. century and through the 19th. foreign ambassadors were known to have been

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1. Saba: P. 62 - 63.
2. Legal sources on Protection can be found in George Young: Corps de Droit Ottoman, Vol. II, pp. 230-239.

openly abusing the restrictions laid by the capitulations. In the first place it was agreed that every interpretor might have two servants exempted of the Kharaj and of every other tax. Later, Bara'ats were found to be transmitted from servants to particulars who bought them and so placed themselves under the protection of a foreign ambassy. The number still increased when Ministers and Consuls began to sell not only Bera'at placed at their disposal by the Porte, but also Bara'ats granted with their own authority and under their own responsibility.[1] When the number of Protegées grew too big to be neglected the Porte began to worry and after 1807 it was agreed that no Baraat would be granted without a previous permission given by the Ottoman Government. In spite of all precautions their number continued to grow and in 1860 they were found to be more than the foreigners in the Empire. Negociations with the powers resulted in the rule of 23 Sefer, 1280 (August 9, 1863). According to this rule only the following could secure foreign protection:

1. Consular agents -- Art. 6.
2. Drogmans and Yassakjis of a foreign consulate--Art. 1
3. A representative and a drogman from each foreign ecclesiastical mission or monastery.

It is to be noted that this rule was not retro-active, that Art. 5 made protection an individual privilege attached to the function, and that it, this rule of 1863, had a great bearing on the Ottoman Nationality Law of January 19, 1869, and finally that inspite of it there continued to exist in the Ottoman Empire a big army of Protegées, who formed a class by themselves, Rayas escaping the sovereignty of the Ottoman Government.

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1. For a full study of Protegées see de Jehay, p. 502 - 515.

Such was the nationality situation in the Ottoman Empire before drastic changes were made in the administration and before a law on Nationality was promulgated: a theocratic state with religious, personal laws making it necessary to distinguish between Moslem citizens and non-Moslem subjects thus undermining all national feeling and disintegrating the Empire by driving part of her subjects into the arms of foreign states who made of them their protegées.

B. Nationality Law of January 19, 1869.

Reforms in the Ottoman Empire are needed. The cry for a remedy to heal the sick man is loud. If the Empire is to live it has to modernize herself by adapting Western ideas, by introducing European systems into her administration and legislation and by secularizing her institutions. The story of the Reforms known as the Tanzimat that started in the 19th. century is a long one.[1] Such reforms as the Nizam Djehid of Selim III and Mahmoud II, the Khatti-Sharif of Gulkhaneh of 1839, of the Khatti-Hemayoun of 1856, and a host of other minor reforms are of no particular interest to us except in that they show a new secular trend of mind in the Empire and they pave the way for the Nationality Law of 1869 according to which the Empire functioned till the Treaty of Lausanne in 1923.

A first step towards the Nationality Law was the tendency to secularize the institutions. The Khatti-Sharif of Gulkhaneh of November 3, 1839 promised reforms in justice by making all subjects regardless of religious affiliations, equal before the law. In 1842 Mixed Civil and Criminal Courts were established. The Khatti-Sharif of May 7,1855 abolished the Kharaj tax and admitted the Rayas into the

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1. Detailed study of the Reforms can be found in Ed. Engelhardt: La Turquie et le Tanzimat; in Noradounghian, op. cit. Vol. II, p. 288

army and administrative services. By so doing the power of the religious heads was reduced and an Ottoman state and nationality was in the embryo. The Khatti-Hamayoun of February 18, 1856, established equality before the law, admitted all citizens to public and military functions, revised the civil and political privileges of non-Moslems and so aimed at the assimilation of all citizens. The laws also tended to be secular. A Constitution was granted on December 23, 1876. The Qur'an was no more the organic law of the Empire. A code of Commerce was promulgated for the first time in 1850, a Criminal Code in 1858, A civil Code, the Majallat, ~~in 1878~~, and on June 17, 1879 the Courts were re-organized. The Grand Assembly of Angora separated the Sultanate from the Caliphate on November 1, 1922, forty four years after Midhat Pasha had preached it. A Turkish Republic was proclaimed on October 29, 1923 and the Caliphate was abolished on March 3, 1924.

With these reforms and changes in mind we can proceed to study the law on Nationality and see how it became a necessity in order to harmonize all state institutions with the spirit of the reforms.

The law of January 19, 1869, on the Ottoman Nationality is a monumental work which shows the change in the Ottoman conception of law and politics. Two main principles are striking in this law: first, the strict application of both the jus sanguinis and the jus soli in the determination of nationality. Second, the lack of any religious distinctions for the acquisition of nationality.

The Jus Sanquinis is clearly expressed in Article 1 which reads as follows: "Every individual born of an Ottoman father and mother, or of an Ottoman father only, is an Ottoman subject." Nationality, according to this first article is determined by paternal filiation, and the mother's nationality is not taken into consideration. It is

a very logical and natural step that a country just coming out of a religious régime when nationality was closed should accept into its membership only those born of her subjects. To open the door to the jus soli, without any restrictions, and adopt all those residing or established on Ottoman territory[1] would mean inviting in lots of undesirable elements.

The Jus Soli, however, plays an important role in the acquisition of Ottoman nationality as shown by articles 2, 3 and 9. Article 2 deals with foreigners born on Ottoman territory and provides that "they may ask for the Ottoman nationality within three years after becoming adults". It is to be noted here that, even for foreigners becoming Ottomans, the question of religion is not mentioned in any way. This article 2 was a necessary measure in order to assimilate the foreigners or the children of foreigners who were growing numerous in the Empire.

Article 3 deals with the acquisition of Ottoman nationality by naturalization. "Every adult foreigner who has resided for five consecutive years in the Ottoman Empire may obtain the Ottoman Nationality, by addressing his demand, directly or indirectly, to the Ministry of Foreign Affairs." This requirement of five years residence and an authorization by Imperial Iradeh sound strict at first sight. But if one remembers that previous to the law of 1869 naturalization was prohibited and only conversion to Islam was a means of acquiring Ottoman nationality, the generosity of this article will become apparent.

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1. See infra, Lausanne Treaty, Art. 30.

A corallary to Article 3 is the Article 5 of the same law. Whereas the former speaks of the naturalization of a foreigner as an Ottoman subject, the latter speaks of the naturalization of an Ottoman subject as a foreigner. For this case of naturalization the Ottomans had to be strict and to adopt such measures as will make it difficult for their subjects to get naturalized in foreign states. It will be remembered that "nationality in Turkey was not for the majority of the Sultan's subjects what it is elsewhere, an advantage the loss of which is equivalent to a penalty. It was rather for the Rayas a calamity he will be happy to get rid of if he can do so without causing harm to himself and to his dependents."[1] An attitude of the sort towards the Empire made many subjects escape the Ottoman Nationality either by getting naturalized abroad or by acquiring the status of a protegée pr prior to 1863. In order to prevent such escape on the part of their subjects the Ottomans required, in Article 5, an Imperial authorization to be obtained by any one who wishes to get naturalized abroad. The Islamic theory of perpetual allegiance finds a parallel in this measure. At one time it used to be said "once Moslem never foreigner"; now it could be said, "once Ottoman never foreigner without authorization".

This measure that "no Ottoman subject may get a naturalized unless he has previously obtained an act of authorization delivered by virtue of an Imperial Iradeh" had some practical and unhappy results. Conflicts began to arise on account of Ottoman subjects who had migrated to foreign lands whose nationality laws applied a strict jus soli principle. Such subjects as might have

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1. Engelhardt -- La Turquie et le Tanzimat.

emigrated to Brazil or the Argentine Republic began to carry two nationalities once they had acquired the foreign nationality by residing a certain number of years there. These conflicts will have a bearing on the Syrian nationality when Syria will get detached of the Ottoman Empire.

This theory of perpetual allegiance has often been used by states who are even different from the Ottoman Empire in regard to the causes that inspired the measure. Before 1870, the naturalization of a British subject abroad did not produce any effect in the home country. In Germany before the law of 1873, a German subject naturalized abroad lost only his state citizenship but not the general German citizenship. Such measures, therefore, are adopted to preserve the citizens of the state for the state are not particular to the Ottomans. In order to appreciate the seriousness of the perpetual allegiance in the minds of the Turks, one should note that articles 9, 10, and 12 of the Law of May 28, 1928 on the Nationality in the Turkish Republic continue to require an authorization to be secured from the Commissioner of the Interior by any one who wishes to get naturalized abroad. Tradition, inspite of the lack of the original motives, has proved to be stronger than the adoption of Western conceptions.

Article 9 of the law of 1869 is another one that shows an application of the Jus Soli. By stating that "every individual living on the Ottoman territory is presumed to be Ottoman subject and treated as such until his foreign nationality has been regularly established" (art. 9), the Ottomans have handled two problems all in one: they have tried to gain more subjects by applying the jus soli principle and they have, mainly, checked out every foreign

intervention which used to be common in cases where the nationalities of certain individuals were unknown.

Two main topics remain to be discussed in the study of the law of 1869: the question of the nationality of the married woman and the minor child and that of the acquisition of the Ottoman nationality by those who simply deserve it.

What is the nationality of the married woman according to the law of 1869; Article 7 is very vague on the subject and it leaves to us lots of things to conclude. "The Ottoman woman who has married a foreigner may recover her Ottoman nationality if she becomes widow, and that by making a declaration during the tree years following her husband's death." (Art. 7) What does this article mean to say but that an Ottoman woman who marries a foreigner acquires her husband's nationality? This is an easy and simple conclusion. But article 7 does not mention anything about the nationality of a foreign woman who marries an Ottoman. The most logical solution to follow would seem that of applying a reciprocal treatment. If the Ottoman woman becomes a foreigner by marrying an alien, the foreign woman should become Ottoman by marrying an Ottoman. Several arguments stand to support this view. One is the fact that Islam is not against the marriage of Moslems with women of the people of the book. Another one is the practice of having a foreign woman married to a non-Moslem (a Rayah) submit to the Moslem jurisdiction while she resides on Moslem territory. A third argument can be drawn from the Circulars of the Sublime Porte published after the law of 1869 in which instructions are given to Turkish Consuls abroad to register all foreign women who get married to Ottoman subjects.[1] And yet, inspite of all these arguments and evidences the

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1. Ghali, p. 65

practice in many Ottoman as well as Consular courts has been different from what should have been logically concluded. The principle was adopted that the alien woman married to an Ottoman keeps her nationality of origin. By so doing it has been contended that this is in order to deprive her of certain personal interests such as those of inheritance. Laws of inheritance being religious and personal, the foreigner who, islamically speaking, is a non-Moslem would not be able to take advantage of them. Hence, the foreign wife of an Ottoman would be deprived of the inheritance of her husband if she continues to be foreigner, and the judicial practice has aimed at keeping her non-Ottoman in order to keep her off that inheritance by applying the Moslem principle of Ikhtilaf ed-Darayn or the difference of the two origins.[1] Following this principle the difference of religion between Moslems and non-Moslems becomes an obstacle to inheritance. It is best expressed in art. 109 of the Ottoman Code of Lands: The land of a Moslem cannot pass, by inheritance, to his non-Moslem children, father or mother; nor can the land of a non-Moslem pass, by inheritance, to his Moslem children, father or mother. It can also be expressed by the words of art. 110 of the same Code: The land of an Ottoman subject does not pass, by inheritance, to his children, father or mother who are foreign subjects; a foreign subject has no right of "tabou" on the land of an Ottoman subject.[2]

It will be notice, therefore, that the Hanafi doctrine, followed in Turkey, is characterized by the fact that difference of countries is made a cause to render non-Moslems incapable of inheriting Moslems. Pushing the analogy further still it is agreed that the will of a Dhimmi in favor of an alien established in foreign lands is nil.[3]

Inspite of the fact that difference in countries has come to be

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1. Ghali, p. 65.
2. George Young: op. cit. Vol I pp. 328 - 330
3. El-Halabi: op. cit. p. 284.

expressed in terms of difference of nationalities, and in spite of the fact that the world is no more divided into Dar-ul-Harb and Dar-ul-Islam but into foreign nationality and Ottoman nationality (Tib'a adjnabiyyeh and Tib'a dawlat aliyyeh), and inspite of the fact that most European countries have abolished this cause of exclusion from inheritance, yet Ottoman jurisprudence continued to maintain the principle of the Shari'ah.[1]

It is worth noting that the application of the principle of Ikhtilaf-ud-Darayn is waning and, at present, it finds little support even among Moslem judges.

This explanation, with all the merits it has at the surface, shows a lack of appreciation of the spirit the law of 1869 has tried to introduce. If Ikhtilaf-ud-Daryn is to be applied it would show a reversion to the old religious principles in what concerns nationality and the Ottomans would be felling down with one hand what they have erected with the other. Furthermore, it is not very probable that the Ottomans who were trying to assimilate the subjects and decrease the bearers of capitulatory right should keep a woman foreigner for the sake of personal interests. All one could say about the motives for a measure of the sort is that the Ottomans, who have created a great deal of friction between them and Europe on account of the Nationality Law, could not and did not want to stand the pressure brought to bear by the powers who wanted to keep to their nationals their nationality of origin when they get married

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1. For decisions of the Ottoman Council of state to that effect see George Young, op. cit. Vol I pp. 330-331.

to Ottoman subjects.

It is noteworthy that the Turkish Nationality Law of 1928 has settled the controversy on the subject of the nationality of a married woman. Article 13 of this law declares that a foreign woman who marries a Turk becomes a Turkish subject. This same article takes a very daring step by stating that a Turkish woman who marries a foreigner must keep her nationality of origin. The conflicts that might arise are obvious especially if the national law of the foreign husband grants the nationality of the husband to the wife. However strict this law might be it has the merit of being clear in expressing what it wants.

The national status of a minor, son of an Ottoman subject, is expressed in article 8 which states that, in case the father gets naturalized as a foreigner or loses his nationality, he (the minor) does not lose, but does retain his Ottoman nationality. The same article goes on to give the reciprocal situation of a minor whose foreign father gets naturalized Ottoman. This minor, the article states, remains foreigner. In trying to discourage the acquisition of a foreign nationality the Ottoman law had to show a generous measure in what concerns foreigners.

The second topic previously announced is that of the acquisition of the Ottoman Nationality by those who simply deserve that nationality. Hardly any other article of the Law of 1869 has been as much an object of comment as article 4. It reads as follows: "The Imperial Government can grant the Ottoman nationality extraordinarily to the foreigner who, without fulfilling the conditions of the preceding article (5 years residence), is deemed worthy of this exceptional favor." Its wording is clear; its aim is praise-

worthy. Yet the first question one would ask is, who is worthy of this exceptional favor? Other laws on nationality usually allow such measures of granting a nationality, but the motive behind article 4 is different from any advanced in other countries. It has been a common feature in pre-1869 days to see any Moslem enjoy the Ottoman nationality, the Ottoman Empire being a Moslem state. The law of 1869 left no room for any privileges that could be granted to Moslems or to those converted to Islam. In order not to hurt the Islamic feeling the Council of State has set a judicial precedence by making use of article 4 and granting the Ottoman nationality to those who are converted to Islam.[1] It would mean then that if a foreigner living on Ottoman territory is converted to Islam he may be easily granted the Ottoman nationality.

This practice was a great source of friction with the foreign powers. In order to escape his national laws all a foreigner had to do was to adopt Islam. By so doing he began to have a double nationality for his national law was generally one that did not consider a change of religion as a cause of a change of nationality. Furthermore, one doubts sometimes the wisdom of adopting such a measure when the person to be gained to the Empire is a criminal or an outlaw. However, Germany had adopted a very diplomatic attitude in regard to this law by depriving the converts of the consular protection without recognizing their loss of their German nationality, thus preserving her rights and at the same time keeping

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1. Ghali, p. 66; Salem, Journal de Dr. Int. Pr. t. 34, 1907, p.51-52.

herself in good terms with the Ottoman Empire she was courting in the last quarter of the 19th. century.

That was the law by which the Ottoman nationality was determined and by which Syria had to abide until it was officially separated from the Empire by the Treaty of Lausanne. It was a law meant for the satisfaction and welfare of nationals as well as aliens, and yet it was one which received opposition from all directions. It tried to satisfy Europe but Europe was the first one to protest. For inspite of the fact that Europe had urged the Empire to reform herself along Western models, yet deep in her heart it was not anxious to see Turkey modernized. It also tried to satisfy the Rayas but the Rayas, or rather their heads, were among the first to complain. Patriarchs and Grand Rabbis were previously autonomous in their administration. With the secularization of the Empire institutions they lost a great deal of their autonomy. It made a feeble attempt to reconcile herself with the Moslem conception of nationality, but Islamic doctrines were too deeply rooted to be reconciled to the idea that religion is not the basis of nationality.

This last difficulty became especially more acute as the Ottoman Empire began to get dismembered in the course of the 19th. century. The Empire which at one time included almost all the Moslem people of the world made it possible for every Moslem, in the course of centuries, to feel that he is a subject of the Caliph at Constantinople because he is a Moslem. Now when separate states or semi-states began to spring out of the Ottoman Empire, such as

Morocco and Tunisia, the question began to arise as to whether or not these territories would still follow the Islamic conception of nationality and make no distinctions among the nationals of one or the other. If each one of these detached territories had her own statutes on nationality there would have been no problem whatsoever for each one would have followed its own legislation. When they did get a legislation the problem ceased to exist.

The case of Abdul-Hakim[1] is a classical one illustrating the conflicts arising among the Moslem communities. Being a Moslem Abdul-Hakim had it in his mind that he could be Moroccan or Tunisian without any difficulty. In its verdict, the Tribunal de la Seine concluded: "From the disintegration of the big Moslem 'Patrie' there have been formed small Moslem 'Patries' and the principle of distinct nationalities has become separated from the old Quranic law." It, therefore, became evident, especially after the law of 1869, that to be a Moslem does not mean any change of nationality. Already before 1869 an Anglo-Moroccan treaty was concluded on December 9, 1856, in which article 16 says: "British subjects professing the Islamic faith shall not lose the rights and privileges granted to British Christian subjects."[2] After the law of 1869 the secular principle was still more clearly applied as is evidenced by the Perso-Ottoman treaty of December 14, 1873, in which the nationalities of the two states are made specifically distinct from each other regardless of the similarity of the religion of their subjects.

As the disintegration of the Ottoman Empire continued in the 19th century some territories gained their internal autonomy altho

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1. Dalloz Péréodique 1908, 2e. p. p. 121.
2. Dalloz " 1908, 2e. p. p. 122.

they continued to acknowledge the suzerainty, temporal or spiritual, of the Sultan. Such autonomous territories as Egypt, Bulgaria or Crete[1] continued to bear the Ottoman nationality from the international view point but had to adopt a local citizenship law of their own for their internal interests. Being internally autonomous these territories had to distinguish their citizens from others who belong to the rest of the Ottoman Empire but who are not internally affiliated to that territory, and that for questions of suffrage, military service, etc. By means of this practice there developed in the Ottoman Empire a double nationality, so to speak, one general and internationally recognized, another local and restricted to the autonomous provinces. To express correctly the affiliation of an individual one had to call him an "indigenous" of such a locality, and a "national" of the Ottoman Empire.

Mount Lebanon, not the rest of Syria, was in a similar situation in regard to nationality after 1864. But Syria, the country of our concern, continued to follow the Nationality Law of January 19, 1869, until after the Ottomans had evacuated it, in fact, until the Treaty of Lausanne was signed in 1923.

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1. Ghali, p. 67 - 71.

CHAPTER II

Lausanne Creates a Syrian Nationality

The Treaty of Lausanne of July 24, 1923, created Syria and laid down in its Articles 30 to 36 the basis of the Syrian nationality. These articles of the Lausanne treaty do not, in any way, mention Syria but they deal with those territories detached from Ottoman Empire of which Syria is one. Those territories detached from the Ottoman Empire are Syria, Iraq, Palestine, Egypt and Arabia and so a study of the Lausanne provisions applies not only to the country of our concern but to the neighboring countries as well.

One of the leading principles in the Peace treaties of 1919 was that of Nationality. While the world war was being fought conventions and agreements were being signed among the different nations providing certain ways of settling the post war international affairs. It was adopted almost as an axiom that in order to establish world peace and permanent solution to world problem the principle according to which every nationality must be given a chance to determine her political life and set a state for herself was applied. Self-determination of nations, the principle of nationality,[1] such were the measures adopted which accounted for the creation of such states as Poland, Czecho-Slovakia, Finland, Lithuania, Esthonia, Latvia, and others. It is such principles too that accounted for certain annexations and separations of territories to and from newly established or already existing states. It is such principles, finally, that accounted for the creation of those Arab states whose peoples had lived for four hundred years under the Ottoman rule.

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1. Le Principe des Nationalités -- René Johannet.

Whether the principle of nationality has been adequately applied in the Arab East or not, whether instead of three or four separate Arab states there should have been one or there should have been a dozen, is not a matter of our concern. Suffice it to say that political and imperialistic, as well as national and historical considerations have been the determining factors in the establishment of what came to be known as Egypt, Palestine, Iraq and Syria.

Syria, this double state legally separated from the Ottoman Empire by Lausanne and practically by the Armistice of Moudros five years earlier, corresponds roughly to the three Vilayets (Turkish administrative division) of Adana, Aleppo and Syria and the two Sanjaks of Zor and Lebanon, as existed under the Turkish administrative reforms of 1867. In 1888 another administrative division was made and the Vilayet of Syria was divided into two Vilayets, that of Damascus and that of Beirut, and the Sanjak of Ourfa, previously belonging to the Vilayet of Dear Bekir, was annexed to the Vilayet of Aleppo.[1] The Vilayet of Damascus comprised the four Sanjaks of Damascus, Hama, Houran and Ma'an with an area of 100,000 sq. kms. and a population of 955,000 people. The Vilayet of Beirut comprised the five Sanjaks of Beirut, Acre, Tripoli Lattaqiyeh and Naplouse with an area of 30,000 sq. kms. and a population of 727,448 people. The autonomous Sanjak of Lebanon had an area of 6500 sq. kms. and a population of 500,000 people of whom four fifths were Christians and the remainder Druzes and Moslems, while the Sanjak of Zor had an area of 85,000 sq. kms. and a population of 81,165 people.[2]

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1. G. Samni, La Syrie, p. 96-97
2. G. Samni, La Sryie, p.113-116.

Three main issues the allies had to face after their occupation of the lands the Turks had just evacuated, issues without the understanding of which it is impossible to proceed to study the Syrian nationality. The first was the determination of the political status of the occupied territories (not yet formally detached.). This was settled by setting a Mandate over them with France as the Mandatory power over Syria to enforce Article 22 of the League of Nation's covenant, and that by virtue of the right given to her by the Treaty of SanRemo of April 25, 1920,[1] confirmed by the Assembly of the League on September 29, 1923.[2]

The second issue was that of determining the frontiers of Syria, the French Mandated territory, as with those of Turkey, Iraq, Palestine and Transjordan. This problem was not an easy one and it took several treaties and conventions to arrive at a conclusion. It was not before 1930 that the final frontiers between Syria and Turkey were set up and the countries concerned knew their own territories. From the London agreement of March 11, 1921 to the final settlement by the Protocol of Ankara on April 3, 1930, there runs a series of propositions and counter-propositions, of conventions, treaties and protocols which show how intricate the question of delimitation was.[3] To determine the frontiers between Syria on one side and Iraq, Palestine and Transjordan (British Mandated territories) on the other, the task was not less complex and intricate. The Franco-British Convention of December 23, 1920, marks the beginning of the trouble. Although Article 2 of this convention[4] lays down February 3, 1922, as the final date for settling the

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1. Naim, Les Frontières de la Syrie, p. 10.
2. High Commissioner's Report to the League, 1922.
3. Naim, Les Frontières de Syrie, p. 13 - 34. H.C.R. 1924-1930
4. Naim, Les Frontières de la Syrie, p. 55-56.

frontier problems, yet it was not before 1932 that a final agreement was arrived at to set the frontier line between Syria and Iraq. The frontiers with Palestine were established on time (February 3, 1922)[1] Those with Transjordan were left till October 31, 1931, to be settled by the Paris Protocol, and submitted to the Council of the League on January 30, 1932.[2] Those with Irak aroused a great deal of interest on the part of the League which finally had to leave the task into the hands of a commission to study on the spot and report recommendations to it. The Iselin Commission was appointed on February 20, 1932, and its report was submitted to the League on September 10, of the same year and was adopted the next day. Chapter VII of this long report gives the frontiers in details as they stand today.[3]

The third issue the allies had to face was that of arriving at a legal, juridical, arrangement by means of which Syria, as well as the rest of the neighboring countries, will be considered as officially separated from the Ottoman Empire. This problem is to be the work of a Peace Treaty signed between the victorious allies and conquered Turkey. On August 10, 1920, the Treaty of Sèvres was signed and, to all intents and purposes, the problems connected with Turkey seemed to be settled and Syria seemed to be declared a separate unit from Turkey as expressed in Section VII, Article 94, of the Treaty. Nothing of the matter. The Kemalist revolt in Turkey and the advent of the Nationalists to power left the Treaty of Sèvres a dead letter. Negociations for a new treaty had to be resumed with Turkey and conclusion was arrived at when a treaty was

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1. Naim--Les Frontières de Syrie p. 56 - 63
2. " " " " " " 69 - 78. H.C.R. 1931
3. " " " " " " 83 - 91, 160 - 162, H.C.R. 1931.

signed at Lausanne on July 24, 1923. It is this treaty of Lausanne, and not that of Sèvres, that settles the affairs with Turkey, that sets up a separate legal status for the detached territories, and that lays down the basic principles for a nationality law in Syria. Before we undertake to make a study of Section II, Articles 30 to 36, of the Lausanne Treaty, let us have a bird's eye-view of the main events which took place in Syria between the time of the Armistice of Moudros, October 30, 1918, and the date of the Treaty, such events as may have a bearing on the Nationality Laws.

One of the first interesting features to be noticed in the creation of Syria is that of the division of the country under the French Mandate into two separate states: the State of Lebanon and that of Syria. Following traditional arrangement strengthened by the administrative autonomy granted to it in 1864, Lebanon was erected as a separate state from the rest of Syria. The Treaty of San Remo of April 25, 1920, made a special mention of Lebanon. By an arrêté No. 318, September 1, 1920, General Gouraud, French High Commissioner in Syria, established its frontiers by adding to the boundaries of 1864 all the coastal strip from Tripoli to Nakoura including Tripoli, Beirut, Saida and Sour to the west, as well as Baalbeck, the Beka'a, Rashaya and Hasbaya to the East, the whole including 836,000 inhabitants. The Mandate Act of London of July 23, 1922, recognized this arrangement and division.

The second part of the country came to be known as Syria and, in turn, it was sub-divided into several provinces which varied in number and in political nature according to the whims and experiments of the authorities in charge. To start with Syria gave birth to five states: The state of Damascus and that of Aleppo

were constituted on September 1, 1920, by Arrêtés No. 2145 and 330 respectively. The state of the Alawites was created by arrêté No. 319, on August 31, 1920, that of Alexandretta by arrêté no. 987 on August 8, 1921, and that of Djebel Druze was created by means of a Treaty signed in 1921. Further developments took place on June 28, 1922, when arrêté no. 1459 bis created a Syrian Federation of the above mentioned states excluding Djebel Druze which was bound by a treaty. Still more developments were to take place on December 5, 1924, when, by an arrêté no. 2980, Aleppo and Damascus formed what was known as Etat de Syrie, a creation which meant a separation of both the Alawite State and the Sanjak of Alexandretta from the dissolved Federation. On January 1, 1925, the Alawite State was reconstituted by an arrêté no. 2979 and the Sanjak by an arrêté no 2980.[1]

It is far from our concern to go into further political developments in the country, developments which belong more to a political history of Syria than to a study of its nationality. It has become evident from the date at which we have stopped that we aim at getting a clear idea of the political situation of the country both at the time when the Lausanne Treaty was signed, and at the time the Syrian Nationality law was promulgated. We can bear in mind at present that the country was composed of two states, a Syria and a Lebanon, the former internally commanding three semi-autonomous states which, fortunately, bear the same nationality as the rest of Syria.[2]

Now that we have set the background and the frame of this newly constituted state, such a frame being necessary for a newly

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1. Recueil des Actes Administratifs du H.C. 1920 - 1925.
2. In January, 1942, the Free French Delegation having declared Syria an independant state, promulgated acts establishing complete union of the Alawite and Djebel Druze states with Syria.

born country, we can proceed to study the legal aspect of the Syrian Nationality. It should be kept in mind that although we use the word Syria, yet the study concerns Lebanon too, for the same measures are applied in one and in the other.

The Syrian Nationality laws are composed of three sets: the first one is made up of the stipulations of the Lausanne Treaty of July 24, 1923, and it determines the nationality of the inhabitants of the territories detached from the Ottoman Empire; the second is formed of Arrêtés No. 2825 and 2825 bis of August 30, 1924, a national law which abrogates that of January 19, 1869, and provides, in almost the same terms as the Treaty of Lausanne, measures for creating a Syrian nationality; the third, arrêtés no. 15/S and 16/S of January 19, 1925, is also a national law to determine the acquisition, and loss of the Syrian nationality as well as naturalization in it.

In this chapter only article 30 of the Treaty of Lausanne and its corresponding article 1 of the arrêtés of August 30, 1924, will be dealt with. Articles, 31, 32, 34, 35 and 36 of Lausanne and 2, 3, 4,5and 6 of the arrêté no. 2825 will be dealt with in a following chapter.

Article 30 of Lausanne reads as follows: "Les ressortissants Turcs établis sur les territoires qui, en vertu des dispositions du présent traité, sont détachés de la Turquie, deviendront, de plein droit et dans les conditions de la législation locale, ressortissants de l'Etat auquel le territoire est transféré." Article 1 of the Arrêté 2823 bis stipulates the following: "Sont confirmés de plein droit dans la nationalité Syrienne et réputés avoir desormais perdu la nationalité Turque les ressortissants turcs

établis sur le territoire de la Syrie à la date du 30 Aout, 1924."

The first article declares and the second confirms that the Turkish subjects established in Syria have become Syrian subjects. The date chosen by the arrêté is August 30, 1924 where as the Treaty of Lausanne was signed on July 24, 1923.

Why was this date chosen by the legislator in Syria? What nationality did the inhabitants of Syria belong to during this whole period running from the Treaty of San Remo 1920 to August 30, 1924? These two questions will hold our attention for a long while.

It should be born in mind that although the Lausanne Treaty was signed in 1923, yet it was not ratified and published in France until August 30, 1924. International treaties do not become effective until after the decree of ratification is published.[1]

The question as to whether the Treaty should have been ratified or published in Syria or not should not come up because Syria did not exist, de Jure, at the time the treaty was negociated. As to the necessity of publishing it in Syria several authors claim that France being a party to the treaty, and not Syria the publication of the latter in France should be sufficient. The choice of August 30, however legal it might be from the French view point, still remains untenable when one remembers that Turkey renounced her rights and pretensions over the detached territories on August 6, date on which the Lausanne Treaty was in force for all other interested parties except France. Does it not sound queer that the same treaty should produce its results at different times in different territories? It looks as

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1. Pillet, Traité pratique de Droit International Privé, Tome I p. 155.

though the Mandatory powers did not care very much about the question of date when they issued the nationality laws in their respective mandated territories. Great Britain ratified the Lausanne Treaty on August 6, but Iraq enacted its law on nationality on October 9 and to be consistent with Lausanne it adopted August 6 as the date for the change of nationality thus committing the more flagrant mistake of making retroactive a law on personal status. The Palestinian legislator tried to avoid the mistake made by the Iraqians and so enacted a law on Nationality on August 1, 1925, and laid down the same date for the change of nationality thus making the term of uncertainty longer. But the same legislator adopted August 6, 1924, as the date of the beginning of the time of option,[1] and thus scored a record in giving evidences of how legislation, even on nationality matters, could be made matters of convenience. One state did not take the Lausanne Treaty into consideration in promulgating its nationality law. The Su'udi Arabian Kingdom, in a law of September 24, 1926, consideres as citizen any one whose residence is Hyjaz and who was Ottoman subject before the World War. With the differences in dates one can imagine the amount of conflicts that are bound to arise among these several states detached from the Ottoman Empire at the same time.

As to the nationality of the inhabitants of Syria before Lausanne the immediate reaction would be to say that they were Ottomans until then. This will sound strange at first sight for how would it be possible to conceive of a situation in which Lebanon and Syria would be declared independent states by arrêtés issued

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1. Chapter III on option.

in 1920 and 1921 while their legal separation from the Empire dates back only to 1923. The answer to this objection would be to say that the Syrian territory was under military occupation and the occupying power made such political organizations as were necessary under the circumstances. Another answer would be to say that, de Jure, the Syrians were still Ottomans until 1923 while, de facto, they had acquired the Syrian nationality previous to that date. Whatever the juridical explanation might be the fact remains that conquered Turkey left the country without hope of returning to it, that national life had started in the country since the evacuation, that France had begun, by legal acts, to erect states and give them organic laws, and that the League of Nations had formally given to France a Mandate over Syria. The whole machinary and functioning of state activities tended to show that Syria was completely separated from Turkey and that the Syrians were no more Ottoman subjects.

In the light of this discussion the phrase "are confirmed in the Syrian nationality and reputed having lost the Turkish nationality...." will become full of meaning. If they had not been looked upon as still bearing the marks of the Turkish nationality, or if they had been considered as full fledged Syrian citizens, the legislator of August 30, 1924[1], would not have used the term "sont confirmés".

Who are those who have become Syrians by virtue of Article 30 of Lausanne Treaty and have been confirmed in this nationality by virtue of the Arrêté 2825 and 2825 bis? They are those Ottoman subjects "établis" (established) on the Syrian territory.

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1. General Weygand, Third High Commissioner to Syria.

In chapter I we have tried to explain who an Ottoman subject is. Let it be remembered that in this case it is the Ottoman Law of January 19, 1869, that applies. The next part of the statement refers to those "établis"[1]. What is meant by the term established? What factors make a person established on a certain territory. According to whether one meaning or the other is adopted Syria will gain or lose some of the people whose origins are in Syria.

The term established is used in the Treaty of Versailles, in articles 36 and 37 in what concerns Belgium, and in articles 84 and 85 in regard to Czcho-Slovakia. The term domicile is used in the same treaty, article 91, for Poland, and the term inhabitants, article 112, for Danemark. Also the treaty of Lausanne uses the term established, article 2, in regard to the exchange of population between Greece and Turkey. Nero, if the "established" of article 30 of Lausanne means the "domicile" or residence (in the legal sense) then it will denote the place where a person has his principal establishment. Article 102 of the French Civil Code defines the domicile as that place where a person has his "principal établissement". There is no reason to believe that this is not the meaning the Lausanne Treaty implied. However, a great difficulty arises when we realize the Turkish meaning of domicile. The Ottomans, in order not to allow their subjects to escape the jurisdiction of the Empire had stipulated, following the principle of perpetual allegiance, that the "domicile" of an Ottoman subject could not be transferred outside the Empire. In other words, according to this rule if an Ottoman subject is established abroad, if he has his "principal établissement" abroad, he is to be considered

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1. Although the English text has used a different term yet it is the French term as it stands that should be discussed because the results follow out from the denotation it carries.

only as temporarily absent for the "domicile" of the absent remains where he is originally registered on the public registers. This being the case, every Ottoman subject established abroad, is considered by Ottoman law to be still "domiciled" in the Ottoman Empire. One can easily see that if this interpretation of article 30 is adopted then all Ottoman emigrants of Syrian origin continue to be établis in Syria and consequently should be considered automatically as having acquired the Syrian nationality by virtue of article 30 of Lausanne. On the other hand, if the domicile in the French and international sense is adopted then these emigrants are not considered domiciled and as they are not to be considered Syrians automatically.[1]

There is no question but that the Ottoman meaning was not adopted, for an international treaty cannot be interpreted in the light of one national law.[2] The Permanent Court of International Justice having had to decide on an issue raised by article 2 of Lausanne Treaty in regard to the exchange of population between Greece and Turkey issued the following interpretation on February 21, 1925: "Ce mot 'établis' vise une situation de fait constituée pour les habitants par une résidence ayant un effet durable.[3]" It is this interpretation that has prevailed and has been followed in the process of enforcing the Treaty of Lausanne. The English text, it should be noted, was very happy in its choice of terms, for in legislating for Palestine and for Iraq the term "habitually resident" has been used and this has saved much trouble.

Following this interpretation, therefore, those Ottoman subjects who were habitually resident in Syria on August 30, 1924,

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1. Their nationality will be dealt with in chapter III.
2. Nicholas: La Nationalité Libanaise d'après le Traité de Lausanne.
3. Nicholas: "Notes sur la Nationalité Syrienne", R.Dr.Int.Privé 1926, p. 481.

became automatically Syrians and that without any formalities of registration or declaration or any other official act. No racial, or ligguistic differentiations are made. No trouble is taken to discriminate between one who is Syrian by origin and one who is non Syrian but happens to be a resident in Syria. An individual or groups of individuals might have broken ties with their old homes and migrated into Syria with the intention of settling in it. If they had been Ottoman subjects they become Syrians. The only happy alternative given in the Lausanne Treaty or in the arrêté 2825 bis is that of the option[1] which certain people can make and choose another state than Syria. But even this option does not solve the whole problem for there were certain communities who neither by race, nor by language, nor by traditions, nor by any other nationality forming factor have any thing in common with the Syrians, and yet they became Syrians and cannot opt for any other state, for such state that might take them does not exist.

There were already before 1914 some Armenian communities settled in Syria. Between 1914 and 1918, following the Turkish persecutions a greater number of them migrated into the country from their home in Cilicia. But the greater number that flooded the country was that which left Cilicia following the French evacuation of it in 1920. At that time tens of thousands of Armenians moved South fleing the Turkish influence. The French authorities in Syria welcomed them and the League of Nations undertook to find them homes and get them settled. The annoch of settling them and of their activities are too vast to be handled in this study. But one question occupied the minds of the Syrian nationalists at that

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1. Chapter III

moment and that was the nature of the Armenians' nationality. The controversy was hardly started when Arrêté 2825 bis was issued and by reading it one can easily say that the Armenians, being Ottoman subjects residing, as it is, in Syria, are Syrians. The controversy is closed.

The Armenians are Syrians but the emigrants of Syrian origin are not Syrians. Those of them who have continued to be Ottomans after their emigration are still Ottomans according to article 30 as well as according to the arrêté no. 2825 bis. The same documents, however, give them the chance to opt for Syria as we shall see in a later chapter.

The Sanjak of Alexandretta deserves a special mention. In view of its proximity to Turkey and of the presence of a big Turkish element among the population the Sanjak was treated, since the beginning of the occupation as semi-autonomous province. An agreement between France and Turkey was reached at on October 20, 1921, whereby the Sanjak was organized as a separate unit and a High Commissioner's arrêté no. 987, dated November 8, 1921, confirmed the agreement.[1] On December 31, 1924, the Sanjak was placed under a special administrative and financial régime. When the Syrian Nationality law was enacted in 1924 and 1925 the inhabitants of the Sanjak, like the rest of the inhabitants of other provinces attached to Syria, were considered Syrians. There was no question about this fact and Turkey seemed to be satisfied though one would assume that she was waiting for a chance to lay her hands on that territory.

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1. Recueil des Actes Administratifs, 1924.

The chance came in 1936. In that year negociations were carried between France and Syria for signing a Treaty of alliance, between the two countries after which the latter would gain her full independence. Turkey considered that a withdrowal of the French Mandate from Syria means a repeal of the 1921 agreement, and that independent Syria is not a sufficient guarantee to the Turkish element in the Sanjak. Hence Turkish protests to the League, telegrams on December 8, letters on December 10, to the Secreariate, followed by the appointment of Commissions to study the question and report suggestions. The last of these reports, submitted on May 28, 1937 and adopted the next day, was put into effect on November 29, 1937.[1] The Sanjak came to be called the State of Hatay; internally it was declared independent; externally it was to be part of Syria. A delegate of the French High Commissioner was to hold supreme power along with a Parliament of 40 members. In April, 1938, the frontiers between Hatay and Syria were drawn and the question was closed up no one knows for how long.

The question now arose as to the nationality of the inhabitants of Hatay. They had been Syrians before November 1937. Are they still? Section VI of the statut Organique of Hatay deals with nationality and articles 8, 9, 10, and 11 furnish the answer.

The principle, in general, implies no change in the nationality of the inhabitants of Hatay. The only measure taken is to create a Hatay citizenship within the Syrian nationality. This act reminds us of the "indigénat" as it existed under the Ottomans in such provinces as may have acquired internal autonomy. Article 8

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1. H.C. Report to League, 1938, p. 13.

of the statut declares that a citizen of the Sanjak is a Syrian subject and that the loss of this citizenship does not entail loss of the Syrian nationality. A citizen of the Sanjak, stipulates article 9, is any Syrian subject established (read habituall resident) on the Sanjak territory before January 1, 1937. Those who happen not to be registered before that date are given one year to do so and gain the Hatay citizenship. An option is given by article 10 to any Hatay inhabitant to repudiate the six months from the application of the Satutu. Finally, it is stated in article 11 that the married woman and the non-adult child follow the citizenship of the husband and father with a possibility to opt for the Syrian nationality within a year from separation or adulthood.

The case of the Sanjak of Alexandretta, turned into the State of Hatay, is very similar to that of the State of Syria and that of Lebanon. In the latter case the Treaty of Lausanne had to set up a Syrian nationality and to provide for options as we shall see in the following chapter. In the former case, that of Hatay, provisions had to be made not only for the determination of the Hatay citizensh but also for options of those citizens who choose to be Syrians and nothing but Syrians.

Options were provided for by an agreement between France and Turkey on June 23, 1939. Following articles 3 and 4 of this agreeme citizens of the Sanjak over 18 years of age may opt for Syria or Lebanon and transfer their residence thereto.

What is the nationality of these optors? How and within how much time will they acquire the new nationality? These questions are answered by arrêté 182/LR of August 26, 1939.[1] Article 1 of

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1. Journal Officiel of the Republique Libanaise, October 2, 1939, p. 3380.

this arrêté grants the Syrian or Lebenese nationality to any citizen of the Sanjak who, having opted for the Syrian or Lebenese nationalit (in accordance with the provisions of articles 3 and 4 of the Franco-Turkish agreement of June 23, 1939), has transferred his residence to the Syrian or Lebenese territory. This individual will be registered on the registers of the place of his new residence. This registration will be followed by the granting of an identity card and must be accomplished within six months from the change of residence.

It is also stipulated in article 2 of arrêté No. 182/LR that married women follow the condition of their husbands, and children below 18 years follow the condition of their parents in regard to the provisions of article 1 of the arrêté.

The only unfortunate result of the Sanjak question, after that of depriving Syria of part of her territory, is that the agreement of June 23, 1939, tended to throw into Syria another wave of Armenians who, again, automatically are declared Syrians. While it is true tha they were Syrians while they were in the Sanjak it is also true that as long as they lived together in a compact community of Armenians they were less of a burden on Syria than when they moved into the country to partake of its economic wealth which is already deplorable for the rest of the Syrian population. The case of Alexandretta is another evidence of what politics may do to hamper the national life of a people.

CHAPTER III

OPTIONS.

The Syrian nationality having been established by article 30 of the Treaty of Lausanne and confirmed by article 1 of the High Commissioner's arrêté no. 2825 and 2825 bis., four situations remain to be settled. The question of stating who could be a Syrian does not go without certain complications which, however difficult they might be, stand at the basis of any logical solution for the Syrian nationality problems. It should be remembered, once again, that nationality laws and political developments after the Great War were aiming at the application of the principle of nationality, at gathering into one state peoples who belong to the same origins, at forming a state out of every nationality, and that by trying to reshuffle peoples either through migration or through exchange of populations or through options and plebiscites. This was not a new phenomenon in world affairs but it has taken such a vast application after the Peace Treaties that there is not one newly established state which did not have some provisions concerning the settlement of populations on nationality basis.

The situations in the case of the Syrian nationality which offer themselves for a solution are the following:

1. That of persons who, by article 30 of Lausanne, have acquired the Syrian nationality but who would have preferred to keep their old Turkish one.

2. That of emigrants of Syrian origin who would prefer to acquire the new Syrian nationality and renounce the old Ottoman nationality which they continue to carry by virtue of the Ottoman law of January 19, 1869.

3. That of persons who, according to the same article 30, have acquired the Syrian nationality but whose preference would go to some other one of the newly detached territories.

4. That, finally, of those Ottoman subjects settled in Turkey who are of Syrian Origin and who would like to acquire the Syrian nationality and renounce their Ottoman citizenship.

The study of these four situations forms the material for this chapter. It is a study of articles 31, 32, and 34 of the Treaty of Lausanne, with the corresponding articles 2, 3 and 5 of the arrêtés 2825 and 2825 bis. The fourth situation, it will be noticed, is not provided for in any text, but as it is always one possible to arise, an attempt will be made to find a solution to it.

After having stipulated that those Ottoman subjects habitually resident in Syria become automatically Syrians (art. 30) the Treaty of Lausanne goes on (art. 31) to say that persons over 18 years of age who have lost their Turkish nationality and acquired a new one may opt for the Turkish nationality within two years from the date the Treaty is put into effect. It is, therefore, clear that in order to be able to opt for the Turkish nationality one must be an adult of 18 years, he must do so within two years from the date of enforcing the Treaty, and he must be a Syrian having acquired this nationality by virtue of article 30 of Lausanne. What is not clear in this measure is the procedure to be followed for making the option and its retro-activity or non retro-activity.

An adult of 18 years may make this option for Turkey, but a minor has to follow the condition of his parents and the married woman that of her husband. Article 36 of the Treaty of Lausanne is very clear on this point when it reads, "Les femmes mariées suivront

la condition de leurs maris et les enfants agés de moins de 18 ans suivront la condition de leurs parents, pour tout ce qui concerne l'application des dispositions de la présente section"[1] Article 6 of the arrêté 2825 bis confirms this stipulation.[2]

The option must be made within two years from the application of the Treaty. This term of two years is liable to create difficulties in view of the fact that the Treaty did not receive application at the same date in the different states newly established. It must be remembered, for example, that Palestine adopted August 1, 1925, for the application of the Treaty and the beginning of its nationality. In her case, therefore, option begins to run from this adopted date. The legislator in Syria who confirmed the article 31 in his arrêté 2825 bis stated that option for Turkey may be made within two years, beginning August 24, 1924. It will be remembered that this is the date of the arrêté itself as well as that of the ratification of the Treaty by France.

When compared with article 124 of the Treaty of Sèvres article 31 of the Treaty of Lausanne will seem very lenient. Whereas the former had given a term of only one year for the option, the latter gave two. This can be easily explained by the fact that Sèvres was signed hastily by a dislocated, annihilated and submissive Turkey, whereas the Treaty of Lausanne was agreed to by a rejuvenated and nationalistic Turkey conscious of her claims and anxious to get as many of her citizens back to the fold as she possibly can. The whole story of the repeal of the Sèvres Treaty and the negotiations at Lausanne is one

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1. Articles 30 - 36 of Lausanne Treaty.
2. A study of this article will be made further.

f a revolt against the spirit of punishment and vengeance as manfested in the former treaty. The allies, however, did not see any erious objection to the prolongation of the term of option as long s it will ultimately lead to placing every individual in the nation e belongs to or he likes to belong to. The number of people who vailed themselves of this privilege of option was not one to make the Syrian nationalists alarmed. Only 5817 persons opted for Turkey in 1926: 4717 in Syria, 1000 in Lebanon and 100 in the Alawite region.[1]

What is the procedure to be followed in making the option? There are two ways by which a person is considered as having opted for a certain state: either a tacit declaration by transferring himself from one country to the opted one, or an explicit declaration made to the authorities interested. History has provided us with evidences of the application of the two systems. Article 14 of the Treaty of Utrecht has considered emigration as a valid way of opting for a country. On the other hand article 6 of the Franco-Sardinian Treaty of March 24, 1860, has required a formal declaration of option without which declaration the individual is held to belong to the old nationality. The Treaty of San Stephano of February 19, 1877, considered emigration as a sign of option for the Ottoman Nationality by the inhabitants of those territories ceded to Russia.[2]
The case here differs, however, for whereas other treaties were silent on the procedure for making the option San Stephano was explicit in accepting emigration as a sign of option.

Neither the Treaty of Lausanne nor the arrêtés 2825 and 2825 bis give any explanation about the procedure. This silence must lead us,

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1. H.C.R. 1926.
2. Nicholas--La Nté. Libanaise selon le traité de Lausanne.

therefore, to adopt the traditional and practical solution and that of the necessity of making a declaration of option for Turkey. It is true that articles 30 of Lausanne and 4 of the arrêtés require a person who has opted for Turkey to transfer his residence to Turkey,[1] but this is far from being taken as a step to indicate the option for that country; it is nothing but a result of the option not a cause for it.

A declaration, and that within two years, is, therefore, necessary. Declaration to whom? To the French authorities or to the Turkish authorities? Again two views have clashed on this field, the national and the international. The national view holds that a declaration should be made to the local authorities who in their turn will transmit it to those of the territory opted for. Treaties have adopted a different view. The practice has been to have the declaration of option made to the authorities of the territory opted for who, in their turn, will inform the local authorities about the desires of their subjects. The procedure adopted in Syria was the international one. The individual is required to hand in his declaration to the Turkish Consuls in Syria who are supposed to communicate it to the Haut Commissariat.[2]

It must be understood now that there is no reason whatsoever to refuse the option of any individual for Turkey. This act of option is not a demand; it is not an act of naturalization which will meet with discretionary power; it is a right granted by a treaty and confirmed by a national legislation.

An important legal question arises after the option has been made. It is understood that a Syrian who has made an option for

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1. See later in this same chapter
2. Necliclas--Op. cit. p. 45-48

Turkey becomes a Turkish subject. But one is interested to know when this Syrian has ceased to be Syrian and when he has become a Turk. To say that because he has opted for a state he previously belonged to and from the nationality of which he has been only recently deprived, he has to be considered as having never been a Syrian but always a Turkish subject, would be making his option retro-active thus looking upon the individual as never having been Syrian. He was once an Ottoman subject. The Treaty of Lausanne has made him a Syrian. His option for Turkey made him a Turk. To say that he has never been a Syrian but has continued to be a Turkish subject would be to neglect all effects of the Treaty of Lausanne. Some authors[1] have supported the retro-activity of an option by claiming that it is an infringement on the autonomy of the will to attribute to a person a nationality he does not desire to have in the interval between the cession of a territory and the option for the previous nationality. With all due respect to this view much remains to be said on the evils, not to say the dangers, the retro-activity of a law on personal status entails. Of all the laws that cannot stand the evils of retro-activity that concerned with personal status is the most vulnerable. Of all the countries where the retro-activity of a law on personal status is to be avoided Syria stands as the most delicate. In a country where most of the official acts are determined by the status, where a foreigner enjoys several immunities and privileges, where courts are established on the basis of a distinction made between a foreigner and a native, in a country such as that one can easily imagine the amount of disorder created when many of the official acts done by a Syrian between November,

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1. Weiss -- ~~Traité~~ Manuel de Droit ~~Constitutionel~~ Int. Privé.

1918 and August 1926,[1] are considered done by a foreigner, a Turkish subject, and consequently irregular, not to say invalid.

Every logical consideration seems to command the adoption of the non-retro-activity view. The legislator for Syria, however, did not make this point clear but some of his decrees reveal his intention and provide a way for the courts to follow. Arrêté no. 405 of July 17, 1926, stipulates that in case of change of nationality by one of the parties in a case pending before an ordinary Syrian court or before a court constituted according to the arrêté no.2028,[2] there shall be no change in the procedure followed. The legislator is trying by this arrêté to avoid trouble in the course of the procedure of a case before courts. One must conclude, therefore, that in applying the option all trouble which might arise on account of the change of nationality must also be avoided. Hence, the option should not be made retro-active.

The second situation arising after the Syrian nationality has been established according to article 30 of the Lausanne Treaty is that of individuals who, having legally acquired the Syrian Nationality, would prefer to affiliate themselves to some other state newly detached from the Ottoman Empire. Article 32 of Lausanne and article 3 of August 30, 1924, have provided a solution to this situation. "Les personnes agées de plus de 18ans, qui sont établis sur un territoire détaché de la Turquie en conformité du présent traité, et qui y diffèrent, par la race de la majorité de la population du dit territoire, pourront, dans le délai de deux ans, à dater de la mise en vigueur du présent traité, opter pour la nationalité d'un

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1. Counting the two years beginning August, 1924.
2. Courts where the majority of judges are French, held when one of the parties is a foreigner.

des Etats où la majorité de la population est de la même race que la personne exerçant le droit d'option, et sous réserve du consentement de cet Etat", stipulates article 32 and confirms arrété 2825 bis.

It is clear from the above that a person who has acquired the Syrian nationality by virtue of the Lausanne Treaty and differs by race from the inhabitants of Syria may opt for some other one of the newly established states and that according to the following conditions:

a. he must be eighteen years old,
b. he must differ by race from the majority of the Syrians,
c. he must opt within two years from Aug. 30, 1924,
d. he must opt for a state whose majority is of the same race as his,
e. his option depends upon the consent of the state opted for.

These provisions differ in many ways from those of the Treaty of Sèvres. In its article 125 the latter has enumerated the states the person may opt for. Armenia, Azarbayjan, Georgia, Greece, Hijaz, Iraq, Syria, Bulgaria and Turkey are mentioned as states one may opt for. Lausanne does not give any mention of these countries, and so it leaves us at a loss as to what states are in question. It is true that several of the states enumerated under Sèvres have disappeared as states. Armenia, Azarbayjan and Georgia have come to form part of the Soviet Union. But what would be the situation in regard to Hijaz which has not, in any way, recognized the Treaty of Lausanne? As for relations with Turkey one may say that this has been settled by article 31 of Lausanne. We are, therefore, not at a loss as we might have thought. The political changes that took place between Sèvres and Lausanne might have made it wiser not to make any enumeration of these states.

Another difference with the Treaty of Sèvres is shown by the period for option. Sèvres gave only one year; Lausanne gave two. This is a better solution for it really takes much time to make up one's mind and to prepare one's self for the transfer of residence required by article 33 of Lausanne.

The most important difference is that related to the consent of the state opted for. Sèvres did not provide for this condition, and by not doing so, it left the matter of option according to article 32 a right similar to that granted by article 31 of Lausanne. Under the present provisions the option is not a right which can be exercised by every individual. It is a privilege which depends upon the will of the state newly chosen, which state may refuse to grant it without giving any motives for its refusal.

It must have been noted that the option must be made by one who differs by race from the majority of the inhabitants of the territory in which he resides, and for a territory in which the majority of the inhabitants are of the same race as that of him who makes the option. What does all this mean? The Treaty has not given any definition of race, and one is almost sure that if it had tried to give any such definition it would have landed on something which is not exactly race. This article uses the term race, but it is much safer not to take it on its word, for it, most probably, does not mean it.

The Peace Treaties were anxious to group nationalities together in one state. They have provided lots of means for that end. Their main concern was to have people live under states where they feel they belong ~~to~~. They were trying to apply the principle of nation-

ality. Now if Lausanne wants to apply race as the criteria for nationality it will not be offering any practical solution because race, by itself, is the weakest of all factors which determine nationality. Not only this, but one will wonder at the gain to be obtained once it is realized that most of the people of the Arab states detached from the Ottoman Empire belong to the same race. Race is a physical trait pertaining to the ethnological origins of an individual. To proceed to form states on that basis would be to create more ambiguity than is necessary.

Article 32 might have wanted to say nation instead of race. This again will not reduce the amount of ambiguity. Prof. Muir says that there is not a single infallible test of what constitutes a nation.[1] Toynbee says that the same group of factors may produce a nation here, and have no effect there. If a nationality is to be defined as "that group of people who speak either the same language or closely related dialects, who cherish common historical traditions, and who constitute or think they constitute a distinct cultural society,"[2] then the problem of options becomes more complicated. Article 32 speaks of race, not language, nor history, nor culture, nor religion. In the Near East religion and language are strikingly important factors in the determination of nationality. Not having mentioned them as the basis of the option, Lausanne meant not to give them any application.

What else can be said, in the light of what is known to have been the purpose of the Peace Treaties, but that the makers of Lausanne meant to leave the choice of the allegiance to the individual himself. It has adopted a deeper, more psychological interpretation of

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1. Israel Zangwill--The Principle of Nationalities.
2. Hayes---Essays on Nationalism.

a nation and that is the will to live together. The vouloir-vivre collectif[1] has often been taken as a strong factor in nationality formation, and it must be said that Lausanne had this in mind when it adopted the term race in its text. According to this a Christian Syrian might opt for Lebanon, a Lebenese Jew for Palestine, a Palestinian Kurd for Iraq and an Iraki Moslem for Hijaz, each one of these doing so for different motives of religious, racial or linguistic nature, but for the same reason which drives them to live with a group they feel they belong to.

The third situation is one which has aroused a great deal of comments and in which Syria is very much interested. The Syrian and Lebenese emigrants form a vast colony dispersed all over the globe and their allegiance to Syria is of such concern to the local government that when a Cabinet was formed in the Lebenese Republic on November 28, 1941, a department was created called the Ministry for Foreign Affairs and Emigrants. When the Lausanne Treaty was signed a solution had to be found for the situation of the emigrants who were Ottoman subjects but of Syrian origin. Article 34 of the Lausanne Treaty is given here below in full text:

"Sous reserve des accords qui pourraient être nécessaires entre les gouvernements exerçant l'autorité dans les pays détachés de la Turquie et le gouvernement des pays où ils sont établis, les ressortissants turcs, agés de plus de 18 ans, originaires d'un territoire détaché de la Turquie en vertu du présent traité, et qui, au moment de la mise en vigueur de celui-ci, sont établis à l'étranger, pourront opter pour la nationalité en vigueur dans le territoire dont

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1. Hauser---Problèmes des Nationalités p. 7.

ils sont originaires, s'ils se rattachent par leur race à la majorité de la population de ce territoire, et si le gouvernement y exerçant l'autorité y consent. Ce droit d'option devra être exercé dans le délai de deux ans, à la date de la mise en vigueur du présent Traité." Article 5 of the arrété no. 2825 bis confirmed this article and has worded itself in such a way as to explain some of its contents.

According to the above two articles an Ottoman subject resident in a foreign country may opt for Syria in accordance with the following conditions:

a. he must be of Syrian origin and racially attached to Syria,

b. he must be settled in a foreign country,

c. his option becomes effective upon agreement between Syria and the country in which he is resident,

d. his option must be consented to by the authorities in Syria,

e. he must be more that 18 years old,

f. he must make the option within two years from the application of the Treaty.

Before we start to explain every one of these conditions let us make it clear that this option of article 34 is not concerned with Syrians in countries detached from the Ottoman Empire. These have been taken care of by article 32. It is not concerned with Turkey, either, this country having been provided for by article 31. With these two remarks it becomes evident that it is of great importance to determine what is meant by a foreign country. Let it be anticipated now that in the case of the first two options the person who opts must transfer his residence from the country he was in to that he has opted for. In the case of the option of emigrants in foreign lands there is no such requirement as transfer of residence.

This, again, is another important reason why a clear understanding of what is meant by a foreign land is necessary.

The first condition is that the emigrant should be of Syrian origin and belonging to the same race as that of the majority of Syrians. We shall not attempt here to make another discussion of the meaning of race. It must be clear by now that the term should not convey the physical, ethnological meaning taught by a Comte / a Gobinean or a Houston Chamberlain. It is sufficient that the emigrant should feel that he belongs to the Syrian group and that he likes to be one of them.

As for the origin the term is open to a great deal of discussion. When can a person be considered of Syrian or Lebanese origin? Professeur Nicholas[1] quotes a definition of "originaires" given by the Tribunal Civil of the city of Lyon on March 24, 1877, "In diplomatic treaties the term indicates the place of birth and not the filiation, and that in order to avoid practical difficulties arising from a research of filiation" (recherche de filiation). This definition is a very narrow one and it is apt to create an artificial origin by its exclusive use of the jus soli. According to it a Greek or an Armenian emigrant in the U.S.A. is to be considered of Syrian origin if he happens to have been born in Beirut when his mother was travelling from Athens or Van to Jerusalem for the Easter festivities there. By adopting it we would be adding one more mistake to that of considering Armenian residents in Syria as Syrians and leaving Syrians in America to choose for the home land, thus incorporating Armenian emigrants also into the Syrian nationality.

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1. Nicholas---La Nationalité Libanaise d'après le Traité de Lausanne.

A better definition of the term "originaires" is the one given by Brunet and quoted by Nicholas: "To belong to a country by origin is to belong to a family fixed in that country or having been fixed for a long time, having left it with the intention of returning to it some day". This looks to be a happy combination of the jus soli and jus sanguinis theories. The tie to the land alone is not sufficient to create that sentiment of love to the people and to the country which is shown by patriotism and nationalism. A land may develop this sentiment in the course of time, but time in its turn produces new generations of individuals who will become related to a country not only because they were born in it, which is an accident, but because their ancestors have lived in it before them and have brought them up in traditions and in an atmosphere which are characteristic of hers.

Lebanon, which has always shown a great deal of interest in its emigrants, has expressed its desire to apply the blood tie as the basis of origin. At its meeting on May 24, 1927, the Lebanese Parliament adopted the system of considering as of Lebenese origin all those emigrants who are attached to this country by filiation.

The second condition for an emigrant to be able to opt for Syria is that he should be one habitually residing in a foreign land. It was stated earlier that other territories detached from the Ottoman Empire are not considered as foreign, hence the article 32 to settle problems connected with them. Although it is a very simple question to determine what a foreign country is, yet in our case there are two countries about which doubts arise. Is Egypt a foreign land or is it one of the territories detached from the Ottoman Empire? If it is the first, Syrian emigrants there might opt

for the Syrian nationality and continue to live in it by virtue of article 34. If it is the second, persons of Syrian origin there may opt for Syria according to article 32 and leave it in accordance with article 33 of the Treaty of Lausanne. The same question and situation may apply to Turkey. That is why it is of extreme importance to determine legally and historically whether Egypt is a foreign country outside the scope of article 32, or a detached country beyond the reach of article 34.

When was Egypt separated from the Ottoman Empire? Was it separated by the Treaty of Lausanne in 1923, or was it separated on November 5, 1914, when it declared war on Turkey? Historians as well as politicians tend to adopt the latter date as that of the separation of Egypt from the Ottoman Empire. In May, 1919, the Government of the United States of America recognized Egypt as an independent state having detached itself from Turkey in 1914. In December of the same year, France did the same. Others hold a different view and draw their support from the Treaty of Sèvres. In its article 101 Turkey formally renounced her rights over Egypt and recognized the British Protectorate over it as announced by Great Britain on December 18, 1914. As the Treaty of Sèvres was replaced by that of Lausanne, they say that Egypt was detached from the Empire in 1923 and not in 1914. This view is legally very weak for as long as Lausanne replaced Sèvres it is to the text of that treaty that one has to refer and not to the contents of the one which is dead. Article 17 of the Treaty of Lausanne recognizes that Turkey renounced her rights over Egypt and sets the date of November 5, 1914, as that of renonciation. According to this article, therefore, Egypt is not one of the territories detached from the Ottoman Empire

by the Treaty of Lausanne and so article 34 of this treaty must apply for the emigrants who wish to opt for Syria. That seems to have been the intention of the authors at Lausanne. Consequently, Syrians may opt for Syria and keep their residence in Egypt.

Egypt was alarmed at a solution of this sort. She was not anxious to keep aliens on her soil and her attitude was one of "I like you to stay but you must belong to me". It will be seen later how Egypt issued her law on nationality on May 26, 1926, and did not recognize this view, nor did she take into consideration the special situation the Syrians occupy there. Article 4 of this law gives the option to "persons born or whose father is born in Turkey or in one of the territories detached from Turkey by the Treaty of Lausanne" to opt for "the Turkish nationality or for that existing in the territory of their origin," and that within a year from the publication of this law. The Egyptian legislator goes on to stipulate in article 5 of the same law that the options imply that the person who has made them must leave Egypt within six months from the date of the option.

The position taken by Egypt towards immigrants of Syrian origin is, therefore, clear.

The only moderate and tolerant point in this law is that expressed in paragraph 2 of article 5: "However", says the legislator, "the Minister of the interior can, in exceptional cases and by individual measures, annul the term mentioned above or even completely dispense one of comforming himself to the said obligation." This reserve, it was hoped, would be widely applied and so dispense the Syrians of the obligation of having to leave Egypt once they opt for

the Syrian nationality.[1]

Egypt is, therefore, neither a foregin land to follow article 34, nor a territory detached from the Ottoman Empire for which article 32 may apply. It is a countyy that wished to work out its own system of nationality laws without consideration except to that which a national policy dictates.

The third condition to make the option effective is that it must depend upon an agreement between the government exercising authority in the territory detached from Turkey and that of the country where the emigrant resides. This condition is expressed in the opening words of the article 34. Without going into details and calling upon international law to furnish the arguments, let us understand that by "government exercising the authority in the detached territory" is meant the Mandatory Power, for the local authorities do not have the power to undertake international agreements.

The first impression which one may have after a first reading of this condition is that it is superfluous. As long as Lausanne is an international treaty and as long as it gives certain privileges to emigrants, why, one might ask, should there be more agreements to allow the option? The reason is obvious. Some countries are parties to the Treaty, others are not. Those which are do not have to make any agreements. But this group of contracting parties are not the ones which have the great number of Syrian immigrants. It is mostly in countries which are not parties to the Treaty that

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1. Chapter VII will discuss modifications brought by the Egyptian Décret. loi of 1929 on options.

Syrian immigrants exist. It is in such countries as the U.S.A., Bresil, Argentine, Chili, Columbia and Mexico that big colonies of Syrian immigrants live.

Now these countries of the second group are ones which apply the jus soli principle in their nationality laws. In other words, it is assumed, and correctly so, that many emigrants have adopted foreign nationalities by residing a short while abroad. We must be able to assume also that many of them have acquired not only one new nationality, but also kept their old Ottoman nationality for lack of having got an authorisation from the Imperial government[1]. With such premises, the condition of governments agreement becomes necessary and logical. If the emigrant has not acquired a foreign nationality, but has rather kept his Ottoman citizenship, he may opt for the new Syrian nationality, and that without any agreement between the authorities in Syria and those of the emigrant's residence. On the other hand, if the emigrant has acquired a foreign nationality, without having been authorized by the Imperial Government, then for the Ottomans he is an Ottoman, and for the makers of the Treaty he is one who may opt for Syria upon agreement between the two authorities. If, on the other hand, he had acquired a foreign nationality after imperial authorisation, then he is a complete foreigner and option is not open for him. This seems to be a clear and logical analysis of the condition requiring an agreement.

The fourth condition is that of having the consent of the authority exercising power in Syria. Who is this authority in Syria to assent to the adoption of an emigrant into his native land. It

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1. Article 5, of the Ottoman Law of January 19, 1869.

has been stated earlier that for making agreements with foreign states the Mandatory Power was the legitimate authority. The situeation here changes. It is no more a question of international relations but one of internal order. The agreement having been made, the candidate having been released of his previous ties, the question now comes up whether or not the Syrian state wishes to adopt him as one of its citizens. The Gordian knot was broken by the High Commissioner's arrètè no. 2825 bis which, in its article 5, laid down the "Mandatory Government" as the one whose consent is necessary.

Now, this is a very unhappy interpretation of the Lausanne text. The adoption, it was stated, is of internal order. A foreign power should not be the one to decide who shall and who shall not be a national of the state whose independence it has declared and to whom she is supposed to give nothing but "advice and assistance."[1] Furthermore, the Mandatory Power in Syria is apt to base her consent on such political considerations as the National Government might completely disregard. It might be argued that the Mandatory Power has been rather generous in her decisions, that, in practice, she has been leaving the assent to the local authorities, and that she has almost completely disregarded political considerations in her decisions. All this might be true, but what is also true is that the text of article 5 still exists and it remains the official word concerning the authority to consent.

Another remark remains to be made on the necessity of obtaining a consent. The Treaty of Lausanne is more strict, in this respect, than its predecessor, the Treaty of Sèvres. The latter did

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1. Article 22, Covenant of the League of the Nations.

not provide for any such condition and the whole process looked very much nearer to option than that which requires a consent. This need for a consent tends to give the whole procedure the nature of naturalization "without period of residence" rather than that of option.

The fifth condition for making a valid option is that requiring that option be made within two years from the date of enforcing the Treaty of Lausanne. It will be remembered that this term is the same as that laid down by articles 31 and 32. But the difference is great between a person living in Syria who wishes to opt for Turkey or Iraq, for example, and one living in Australia and wishes to opt for Syria. Two years for the former are sufficient; two years for the latter are meagerly little.

It is this short term given to emigrants that aroused a great deal of discontent in Syria. Information bureaus were established abroad to help winning back the emigrants. All methods tried were of no avail. The emigrants were still ignorant of what they should do. To many of them there was no issue and all they could think of was that they were Syrians or Lebenese, where as, legally they were not. One factor has especially added to the confusion in their minds. On March 9, 1921, an arrèté no. 763 was issued requiring a census of the Syrian population. This arrêté stated that all Syrians settled in foreign lands shall be mentioned on a special register and shall call later at French Consulates in the lands in which they live. Those emigrants who presented themselves for registration in accordance with this arrêté thought, erroneously, that they had accomplished all the formalities to become Syrians. They had not.

The Treaty of Lausanne came later and article 34 made a new demand upon them. Many of those who knew of it misunderstood it. To the majority it was Chinese.

Figures on Lebanon as of January 31, 1932, are before us. This country had a population of 793396 living in Lebanon, and a population of 254987 living abroad. With one ~~third~~ fourth of its people abroad the Lebenese Republic could not keep silent on the matter of delay for making options. It knew very well that the only way for an emigrant to regain his Lebenese nationality would be to get naturalized in accordance with the arrêté no. 15/S of January 9, 1925. But article 3 of this arrêté requires a residence of five consecutive years on Lebenese soil for naturalization. The period is too long for a Lebenese emigrant. A bill was laid before the Lebenese Parliament in 1927 proposing to abolish the term of five years in favor of emigrants who return to Lebanon. In its first article the bill proposes a reintegration in the Lebenese nationality of every Lebenese emigrant who comes back home. Article 2 of the bill explains who is meant by the first article:

a. persons born in Lebanon from a Lebenese father,

b. Persons, born in Lebanon, who, at birth, have not acquired, by filiation, a foreign nationality,

c. Persons born in Lebanon from unknown father and mother.[1]

Several objections were raised against the bill. It was said that the bill has no international value. To the state the emigrant is settled in, he is still either an Ottoman or a citizen in case he is naturalized there. That state shall not recognize the Lebenese legislation. From the international point of view, also, this bill is in direct conflict with the Treaty of Lausanne and in this conf-

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1. Nicholas, op. cit. p. 113

lict the latter must prevail. A treaty is superior to a national law. The former is an imperative and bilateral order, the latter is an imperative and unilateral command.[1] From the national stand point the bill has also been attacked. Legislation on nationality in Syria has been the function of the mandatory power. The League of Nations has granted her this duty and the Lebenese Constitution of May 20, 1926, recognises the fact that it shall function in ac-accordance with the international rights and duties of the Mandatory Power. The bill did not pass. National and International considerations killed it. It remains as a historical document to testify the amount of worry Lebanon and Syria had regarding their emigrants abroad. The only possible way that remains for regaining the emigrants who have not complied with article 34 of the Lausanne Treaty is to have them naturalized according to article 3 of the arrêté 15/S of January 9, 1925.

In regard to options three situations have been dealt with; there remains a fourth one. This is the situation of those Ottoman subjects of Syrian origin who happen to be habitually residing in Turkey itself. Neither article 31 of Lausanne which deals with options for other territories detached from the Ottoman Empire, nor article 34 which deals with options for Syria by Ottoman subjects living in foreign lands, neither of the three articles is able to give us a satisfactory solution. And yet a solution we must have.

To say that article 32 could be applied would be to consider Turkey as one of the territories detached from the Ottoman Empire. This is absurd. To say that article 34 shall apply would be to consider Turkey as a foreign country. This is more absurd. The whole

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1. Joseph Barthélemy--Traité de Droit Constitutionnel, ed. 1926, p. 647.

wording of the treaty assumes that Turkey is the soul and body of the whole measures and article 5 of arrêté 2825 bis which corresponds to article 34 of Lausanne states specifically that those concerned are individuals living outside of Syria and of the Turkish territory. And yet there must be a solution. Those peoples of Syrian origin settled in Turkey, in Smyrna mainly, would want to be affiliated to Syria, now that it exists, and not to Turkey, to whose allegiance they have always been repugnant.

Nor can one find any solution to this situation in the Peace Treaties themselves. Their contents have often been used as arguments to support this view or that. But in this particular case no help from them can be obtained. In regard to the territories detached from Germany and the options granted to nationals of detached territories the Treaty of Versailles is residing in Germany and allows them to opt for the new Czechoslovakia. In our case mention is only made of Ottoman subjects residing in foreign lands.

In view of the above one can safely say that neither the Treaty of Lausanne nor the arrêtés 2825 and 2825 bis have any bearing on the Ottoman subjects of Syrian origin who wish to opt for Syria. But as the problem is an important one from the nationality stand point, and as some kind of a legislation is necessary in order to bring about harmony between the legal and ethno-political conceptions of nationality, it was found necessary to settle the question betweeen France and Turkey. On May 30, 1926, a Treaty de bon-voisinage was signed between France and Turkey settling several issues concerning the frontiers, etc. Article 3 of this Treaty has settled the question of options. It stipulated that individuals above 18 years

of age and of Syrian origin may opt for Syria within six months from the date of the Treaty. It also follows articles 31 and 32 of the Lausanne Treaty by requiring those who opt for Syria to transfer their residence to Syria and that within 12 months from their option. They may keep their real estates in Turkey, but they must carry with them all movable property, which property will be exempted from customs duties. So the problem of Syrians in Turkey is settled, but only on paper.

Going over all the four situations related to options we are faced with two more problems common to them all. What happens to an individual who opts for Syria or for some other territory detached from the Ottoman Empire? What is the national status of the married woman and the minor child after the option has been made by the head of the family? Both problems are provided for by the Treaty of Lausanne and by the arrêtés of 1924, the first by articles 33 and 36, the second by articles 4 and 6.

Article 33 of the Lausanne Treaty stipulates that all individuals who have made options according to article 31 and 32 shall be required to move their residence to the state they opted for and that within twelve months from the date of option. Article 4 of the arrêtés, following the same principle, stipulates that all persons who have opted for a nationality other than the Syrian must move their residence to their newly opted state. In both cases, the stipulations go on to say, the persons may keep their real estate in the land they are leaving and may carry out with them movables without paying any customs duties.

It is because of the obligation to transfer residence that we have found it important to distinguish between an option in accord-

ance with articles 31 and 32 and one in accordance with article 34. The first two, let us remember, deal with options made by Syrians for Turkey or for other detached territories. The last, article 34, deals with options for Syria made by residents in foreign lands. The first group is required to transfer residence; the second is not. It was because of this obligation that we tried to discover whether Egypt was a foreign land and whether Turkey falls under the requirements of article 34. It will be remembered that Egypt settled the issue unilaterally, and that Turkey found a solution in the Treaty of Bon-Voisinage of 1926.

Our second problem is that of the national status of the married woman and the minor child in cases of option. Article 36 of Lausanne stipulates as follows: "Les femmes mariées suivront la condition de leurs maris et les enfants agés de moins de 18 ans suivront la condition de leurs parents, pour tout ce qui concerne l'application des dispositions de la présente section."

It is clear from the preceding article that neither the married woman nor the minor child have the capacity to opt. They follow the condition of the husband and father. This settlement has aroused a great deal of comment especially among circles which have been favoring the independence of the nationality of a married woman. Several legislations have taken this attitude of late, the married woman keeps her nationality of origin.[1] This group of thinkers have seen an arbitrary settlement very much against the freedom of women.

In favor of this article it has been argued that in case of options it is better to have the married woman follow the condition of the husband in order to avoid the separation between the two necessitated by the required transfer of residence. This does not sound

1. See chapter V

like a satisfactory argument for if it is true of cases falling under articles 31 and 32, it is not true of cases falling under article 34. This counter argument is theoretically true, but in practice it does not hold. Article 5 of the Syrian Nationality Law, expressed in arrêté no. 16/S, stipulates that "a foreign woman who marries a Syrian becomes Syrian." In this case the Syrian legislator is trying to assimilate the foreign women married to Syrians. The makers of the Treaty, following the same line of thought, but a bit earlier, might as well assimilate the foreign women already married to an emigrant who opts for Syria in accordance with article 34 of Lausanne.

At what time must one stand to consider the situation of the woman (whether she is married or unmarried) and the age of the child? The simplest way would be to take their situation and their age at the time the Treaty is put into effect. But this simple way becomes complex when we realize that the individual has two years to make the option. In the course of these two years the married woman might become sole and the minor child might become adult. In cases like these the national law of the individuals, not the Treaty of Lausanne, has to furnish the solution. Every law on nationality provides for means of getting re-integrated into one's nationality of origin, and the Syrian nationality law is no exception especially in cases where the nationality has been lost through the option of the husband or father. The question is however delicate in regard to children, for Lausanne stipulates that they follow the condition of the parents not that of the father. When the marriage tie is broken by divorce or death the situation of the child differs according to

whether the parents were married in this or that religious community. In case it is a Moslem marriage, the divorce makes the wife completely free and the children are placed under the ~~care~~ guardianship of the father. In this case the minor child follows the father's condition. Maronites have no divorce but only separation. The father, in this case, remains the leading figure in the determination of nationality. The Greek Orthodox authorize divorce and often place the children under the mother's care. In this case the national law will find a solution. Under all circumstances, therefore, if the marriage is completely dissolved either by divorce or by death, and if the child is no more under his father's care, the Syrian legislator has stipulated that "persons who have acquired a foreign nationality by virtue of article 36 of Lausanne may be naturalized in the Syrian nationality one year after becoming adults or the dissolution of marriage.[1]"

The study of options cannot be closed without glancing at subsequent events which show the significance of the subject to the local authorities in Syria and in Lebanon. Of all the cases arising under the problem of options that of the re-integration of native Syrians remained the most acute. The delay given to emigrants did not prove to be sufficient. The explanation made to them did not seem adequate. The claims of Turkey over them continued to be practiced. Thousands of native Syrians remained outside the national fold.

Those natives who had not opted for Syria in due time remained Turkish subjects, and that, most generally, against their will. Those even who had acquired a foreign nationality without the required Turkish authorization, and had not opted for Syria were also

1 See chapter IV

considered Turkish subjects by the Turkish authorities. Neither the internal organization nor the international obligations binding upon Syria could be of any help in regaining the natives legally. The State of Lebanon was most persistent in her claims, not probably as much for stronger nationalistic inclinations as for the greater number of Lebenese emigrants and their more constant connections with their native land. Due to re-iterated demands the emigrants were granted another delay to make options and that for a year beginning May 29, 1937. This option was even open to those emigrants of Syrian origin who had been naturalized abroad but without authorisation from the Ottoman government. Several thousand Syrians availed themselves of this new delay and opted for their native country.

There is one point which has always remained objectionable to native Syrian emigrants. It will be recalled that passed the period of option there was no other way for an emigrant to gain the Syrian nationality but naturalization. What annoyed these emigrants most was that not even their return and their settlement in Syria was enough to make them Syrian citizens. Cases are numerous of those emigrants bearing a foreign nationality and a strong desire to be officially Lebenese, who found all doors locked except that of naturalization. Naturalization is not an appealing process to any one of them. One of them said, "I refuse to be declared Lebenese in the same way a Pole or a Russian is. My native village still bears marks of my childhood days. My gun at the time I was a boy still hangs in my father's cottage in our vine-yard in Zahleh." Another said, with more far-sightedness, "I refuse to be affiliated to my home-land in an artificial way and bear all the consequences a

foreigner naturalized in my country is called upon to bear when discrimination is to be made between the white and the black goats." Measures taken in France after her capitulation to Germany in 1940 by which some naturalized French citizens were deprived of their citizenship showed what that ardent Lebenese meant. Still another one stated that he will continue to be a citizen of the United States in form and a Lebenese at heart until such time comes when the Lebenese law opens its arms in a natural way to welcome him as a citizen without any artificial effort on his part. That time has come, the Lebenese Government and he and his similars knew how to take advantage of it. When a new delay for option was open on May 29, 1937, it was intimated in some circles in Lebanon that Lebenese natives residing in Lebanon but having a foreign nationality could quietly proceed to register as citizens in the course of the year ending May 29, 1938.[1] Several individuals availed themselves of this semi-clandestine facility and both they and their government were satisfied.

The question of options is a complicated one which aims at creating a natural relationship between the individual and the State, the results of which depend upon the spirit with which it is carried.

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1. Source of information cannot be revealed.

CHAPTER IV

Acquisition of the Syrian Nationality

In the two preceding chapters we have tried to establish the the rules according to which the new states of Syria was able to build up her substance of the people who are to be regarded her citizens. As Syria was a new state it was necessary to define the elements which constitute its existence. Its territory was defined by means of international treaties and agreements; its population were determined by the Treaty of Lausanne as has been explained before. From the stand point of time, therefore, it could be said that the Treaty of Lausanne has determined the citizens of the Syrian state for the past and the present in such a way as to make it possible for one who examines the people's status on August 30, 1924, to tell who is and who is not a Syrian citizen. This was a necessary step to be taken in the case of any new state without a political past upon which citizenship is built.

The set up of the citizens having been made, the new state proceeds to enact such laws as will determine citizenship in the future. Granted that one knows who is a citizen of the state now, the question comes up to determine, for the future, those who are to be considered nationals. It is the purpose of such a law to tell how an individual may acquire the Syrian nationality, how he may lose it, and how he may regain it, if he so wishes, having once lost it. It is these laws as embodied in the arrêtés no. 15/S and 16/S of January 19, 1925, that will form the material for the remaining study of the Syrian nationality.

Before we undertake a study of these laws in detail it will be helpful to recapituate the political situation in the country previous to their enactment. By virtue of the Mandate which the

League of Nations had confided to her, the Mandatory power had to undertake a reconstruction of the internal organization of the Syrian provinces by substituting herself to the Turkish authority before the disappearance of the Turkish sovereignty.[1] After San Remo and after the signing of the Treaty of Sèvres, temporarily independant states were erected and called to enjoy their own political life with the help and advice of France. The independence of Greater Lebanon was proclaimed on September 1st., 1920, and in the same year the states of Damascus and Aleppo were constituted, then those of the Alawites and Djebel Druze. Later, a Syrian Federation was erected by a High Commissioner's arrêté on June 28, 1922, composed of the states of Damascus, Aleppo and the Alawites region. Divergence of opinion began. Since 1924 friction had risen in the midst of the Federal Council of the states of Syria, mainly between the delegates of the Alawites on one hand and those of the other states on the other. As a result of this friction the Alawites were granted their autonomy on December 5, 1924. In 1925 the states of Aleppo and Damascus were united into a Syrian Republic. In may, 1926, Greater Lebanon became the Lebenese Republic. The political agitation was an obstacle for the Mandatory Power to grant constitutions to all the Syrian states at the time required by article 1 of the Mandate Act.[2] It was not earlier than May 14, 1930, that Syria was granted a constitution in three parts: one for Syria with the Sanjak of Alexandretta, one for the Alawite region and one for the Government of Djebel Druze.[3]

In spite of the existence of four different states under the French Mandate, only two nationalities were provided for: a Syrian

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2. Article 1 "The Mandatory Power shall elaborate an Organic Statute for Syria and Lebanon within three years from the application of the Mandate."

3. High Commissioner's report to the League, 1922, 1930.

and a Lebenese nationality. A special place was reserved for Lebanon although the international texts speak of Syria alone. The population of the states of Syria, the Alawites and Djebel Druze enjoyed, from the internal standpoint, one nationality which is the Syrian nationality. One wonders if the Mandatory Power ever considered the possibility of establishing four different nationalities in the four states as one reads the notes of Professeur Nicholas who seems to apologize that "it did not seem possible to go further in the process of differentiating among the ethnic groups.[1]" As it is, two nationality laws are one too many for the land of Syria, but since for political and social considerations, outside the scope of our study, two separate states have been erected, it has become necessary to enact a law to each though one is absolutely similar to the other.

To be viable and strong, to be just and logical, a law must try to approach as near as possible the natural order of things. A law, it has been stated,[2] is an artificial implement to regulate human behavior and create order and justice. In order to accomplish its purpose it must be an expression of the needs of the people, it ought to correspond to their social condition, and it should establish only such rules as will bring about a natural order which can be enforced smoothly without arousing friction and antagonism. Laws which are enacted without due consideration to the natural order of things, to the needs and to the circumstances under which they are supposed to function are condemned to death! They will not live long. They will meet opposition from every side. The natural order is stronger than any enactment man lays down as a rule of conduct.

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1. Nichola--Notes sur la Nationalité en Syrie et au Liban, Rev. de Dr. In. Pr. 1926, p. 483.

2. See introduction.

In regard to nationality it is of a natural order that people of the same origin, speaking the same language, having the same traditions and history on one territory and wishing to be bound together in the future by that territory, people of the same nationality, should be made, by law, capable of uniting into one nationality. The most wholesome, the wisest, the most natural law on nationality is that which aims at grouping together individuals who, in a natural way, feel similar to each other and are anxious to belong together to the same community. The politico-ethnic nationality is of a natural order. The legal nationality must approach it as a limit and try to bring about its accomplishment. It is for this reason that nationality laws differ from one country to the other. Human associations differ in their constitution and build up. They differ in their tendencies and likes and dislikes. They differ in accordance with their geographical habitat and their economic and social structures. Hence laws on nationality differ accordingly. A country with high immigration tries to absorb incoming foreigners easily. Naturalization is rendered easy.[1] A country with strong emigration tries to keep the allegiance of the outgoing citizens. Blood tie, jus sanguinis, will be made the principal factor for the acquisition of nationality.[2] A country with certain traditions, say of religious nature, will try to absorb only those having the same traditions. Religion will be made a condition for the acquisition of nationality.[3] A country where women have gained equality with men, and where these women are apt to get married to foreigners, tries to legislate

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1. As in the Latin American states.
2. Syria
3. Su'udi Arabia Nationality law of September 24, 1926, article 5.

in such a way as to keep the woman's nationality of origin intact by marriage. It will stipulate that a woman will keep her nationality if married to a foreigner.[1] A country may consider her language as an important factor for the determination of nationality. Its laws will require the knowledge of the language of the land by individuals seeking naturalization.[2] Still a land might have such traditions as are considered sacred through the ages and so foreigners shall not be supposed to take part in these traditional institutions and practices. In order not to keep a foreign husband outside of the Home center and its sacred rites he is made to become a citizen by his marriage to a woman of that nation.[3] Another country might still have religion at the basis of some of its institutions and marriage, to her, is a sacrament to be given only by the church. Such a country will not recognize any international marriages of her citizens, and will not enforce any results on nationality produced by these marriages, unless marriage had been celebrated in the proper, religious form.[4] And finally, a country might consider all nationality limitations as contradictory to her principles which are founded on international understanding and cooperation, and so it will not lay any conditions for the acquisition of her nationality. Her basic principles being of an international order, she will grant citizenship to any one who sympathizes with these principles.[5] Laws on nationality are made only after a thorough understanding of the history and the social structure of the country concerned. There is

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1. U.S.A. law on nationality, Cable Act of Sept. 22, 1922.
2. Transjordania, Article 7 of the Nationality law of April 1, 1928.
3. Japan, Article 5 of the Nationality law of March 1899, revised and completed by the law no. 27 of March 1916 and by the law no.19 of July, 1924.
4. Greece: Decree of May 23, 1835; Nationality Law of August 12, 1927.
5. Soviet Union: Nationality law of June 13, 1930.

not one ideal nationality law for all countries; there is one ideal nationality law for each country. It is the business of the legislator in that country to find it and enact it.

What are some of the outstanding characteristics common to Syria and Lebanon which must be taken into consideration before any nationality laws are formulated? First and foremost one must remember that both are newly established states just beginning their national life. The population substance of these states must be one of a homogenious nature comprising none but those who are in complete understanding of the national problems and in full sympathy with the national and cultural aspirations of the country. Racial and linguistic foreigners must not be allowed automatically into the citizenship of the state. It must be noted, in the second place, that the Syrians, in general, remain attached to a professional particularism inspite of centuries of subjugation to the Ottomans and of internationalization within the Empire. In the third place, Syria is a land of high birth rate, with little immigration and strong emigration. This makes it imperative to enact such laws as will make naturalization difficult, and the tie between the emigrant and his native land strong. To keep emigrants in touch with their homeland a jus sanguinis law will be necessary. Last, but certainly not least important, one must keep in mind that religious traditions were and, to a certain extent, still are, at the basis of the country's national and political life. Laws should not break abruptly with these traditions.

A study of the Syrian Nationality laws of January 19, 1925, will reveal to us the extent to which these characteristics have been

taken into consideration. Although two arrêtés were issued on that date, one no. 15/S for Lebanon, and the other 16/S for Syria, the study of one of them will be sufficient for they are absolutely identical.

Nationality could be acquired by one of three ways: by origin, by marriage or by naturalization. States may device other ways of acquiring nationality.

A. Nationality of Origin.

The law of 1925 in Syria has officially abrogated the Ottoman nationality law of 1869 and has been inspired by it. Jus sanguinis, the blood tie, remains the fundemental factor for the acquisition of the Syrian nationality. The jus soli, the land tie, is taken only as a supplement and used in such cases where otherwise Heimatlosat[1] will become unavoidable. The legislator for Syria has wisely adopted such measures in order to harmonize between the needs of the country, nationalistic and economic, and the legislation that governs the Syrian population.

According to article 1, parag. 1 of the law of 1925, all individuals born of Syrian father are Syrians. This is the rule and every thing else is only meant to meet special cases and circumstances. There is no stronger or more general statement than this article which lays claim not only on those born in Syria but also on those born abroad from a Syrian father. Paragraph 2 of the same article, however, applying the jus soli brings into the Syrian citizenship elements which might not be desirable from a nationalistic point of view. Those individuals who are born on the Syrian territory(jus soli) and who do not justify having acquired at birth by filiation, a

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1. State of an individual who finds himself without any nationality.

foreign nationality are counted as Syrians." This paragraph clearly grants the Syrian nationality in accordance with article 30 of the Lausanne Treaty and brings in those elements who have no other nationality but the Syrian to cling to. Armenians form the biggest group which falls under this provision. Then the third paragraph of the same article 1 goes on to provide, by a jus soli principle, a legal status to those who otherwise would have been without any nationality. The end of the World War brought forth many individuals and groups who, through the creation of new states and the disappearance of others, had lost their nationality without finding a substitute for it. In order not to increase the number of heimatloses it was provided that "individuals born on the Syrian territory of unknown parents or whose nationality is unknown" are Syrians.

There is probably no stronger evidence of the desire to apply the jus sanguinis and the paternal filiation than that revealed in article 2 dealing with the illegitimate child. This article has undoubtedly for model article 8 of the French Civil Code, and yet with a few changes in its wording it stands as a characteristic of the legislator on the Syrian nationality. Compare: Article 8, parag. 1, French Civil Code: "The natural child whose filiation is established during minority....follows the nationality of that parent in regard to whom evidence has been made first. If it (the evidence) results for the father or the mother from the same act or from the same judgment, the child follows the father's nationality,"
with article 2, law of 1925, "The natural child whose filiation is established during his minority shall take the Syrian nationality if that of his parents in regard to whom evidence had been made first

is himself Syrian. If this evidence results for the father and the mo mother from the same act or from the same judgment, the child shall take the nationality of the father if the latter is Syrian."

A close examination of the two texts reveals the following: whereas the French law takes into consideration the nationality of the parent who recognized the child first, the Syrian law takes that parent's nationality into consideration only if he is Syrian. Consequently, the first stands to lose a number of illegitimate children by leaving them acquire the nationality of a parent who might belong to any non French citizenship, and the second stands to gain these children by not determining their nationality except when the recognizing parent is himself Syrian. The second part aims also at the same results. In the first article, when both parents recognize the child in the same act, the latter follows the nationality of the father who, himself, might not be French while the mother is French. When, according to the second article, both parents recognize the child, he (the child) shall take the nationality of the father only if this father is Syrian. The obvious conclusion is that if the father is not Syrian, if he is foreigner and the mother is Syrian, he will acquire his mother's nationality. In the Syrian case the legislator tries to add up to Syria more citizens affiliated by blood and that by devising any measures which will bring about the required results. It should be stated, finally, that if the child is recognized by foreign parents he will follow the nationality of that parent who has recognized him. And if he is recognized by both his father and mother (assuming that both are foreigners) he will follow the nationality of his father.

There is still another article that deals with the Syrian
[na]tionality of origin, an article whose application is of a tem-
[po]rary nature for its provisions apply only at the early period of
[th]e change of nationalities. It is for this reason that this art-
[ic]le is placed in a separate section called Transitional Dispos-
[it]ions. It is for its transitional character, probably, that many
[au]thors have neglected dealing with it. It is because of this
[ne]glect and because of its great historical importance that we
[p]ropose to deal with it.

Article 10 reads as follows: "With a reserve made to the op-
[t]ions provided for by the Treaty of Peace signed at Lausanne on
[J]uly 24, 1923, are considered Syrians all individuals born on the
[S]yrian territory of a father who was also born there and had the
[O]ttoman Nationality on November 1st., 1914."

What does this article mean? Why does it refer us to November
1st., 1914? Let us first neglect the opening statement, for it is
only a reminder that these individuals, like many others, may make
an option for whichever state they prefer in accordance with the
Lausanne Treaty as explained in the preceding chapter. This state-
ment discarded it is left to us to remember that on November 1, 1914,
Turkey, by a unilateral measure, took the daring step of revoking
the capitulation treaties.[1] While these lasted the foreigners and
the protégés enjoyed certain immunities and privileges which put
them in such a favorable condition as they would hate to lose. But
when Turkey abolished the Capitulations these protégés yearned for

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1. See chapter I.

some method by which they could escape the Ottoman jurisdiction. The "protectors" among the foreign powers began to bestow upon them their own nationality by naturalizing them. Thus the Ottoman Empire, by abolishing the Capitulations, lost some of its citizens. Now some of the ex-citizens happen to be residents in Syria, and as they are not Ottoman subjects, but foreigners, on August 30, 1924, article 30 of the Lausanne Treaty and article 1 of the arrêté 2825 are incapable of rendering them Syrians. So Syria has lost this first generation. Having lost this first generation the legislator of January 19, 1925, has taken measures in article 10 of his law to gain the second generation. Hence the provision that he who is born of a father who was born in Syria and was Ottoman subject on November 1, 1914, is a Syrian.

Such are the measures taken for the acquistion of the Syrian nationality by origin. The blood tie is at the basis; the measure is a very wise one.

B. Acquisition by Marriage.

One of the most important subjects to be discussed in any study of the modes of acquiring nationality is that of the influence of marriage on nationality. In a primitive society where all the intermixture by marriage seldom arises this question finds no place. But in our modern society where natives and foreigners meet daily on the same territory, where travel is easy and human associations are frequent the question of marriages among people of different nationalities is a common feature of daily life. Every state has its own view on the subject of the influence of marriage on nationality. Though different solutions have been adopted in different countries

yet all have agreed on the principle that it is the nationality of the husband that leads every time a change of nationality results from marriage. Legislations in the different parts of the world have these two alternatives to meet. Shall the wife follow the nationality of her husband or shall she keep her own nationality after her marriage to a foreginer? The question has never come up as to whether a husband shall or shall not follow the nationality of his wife. It is the nationality of the married woman that is under discussion. Whether this is because we are living in a patriarchal society or because this is a man made world is a question we leave to the sociologists to answer. With the exception of Japan where a foreigner married to a Japanese woman acquires the nationality of his wife it would be quite safe to say that the study of the influence of marriage on nationality is nothing but the study of the nationality of the married woman.

The nationality of the married woman in Syrian law is interesting to us for two reasons. In the first place it is a clear and logical legislation settling the dispute which arose out of article 7 of the Ottoman law of 1869. In the second place it is a law which seeks very specifically the assimilation of the foreign woman into the Syrian nationality by imposing her sovereignty on the foreign woman married to a Syrian subject.

It will be remembered that article 7 of the law of 1869 stipulated indirectly that an Ottoman woman married to a foreigner acquires the nationality of her husband. Nothing was said there about the foreign woman who marries an Ottoman. The controversay was great.[1] Authors and authorities differed in their views and

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1. See chapter I.

the courts followed the safest way by keeping to the foreign woman her nationality of origin. The legislator in Syria settled the controversy by stating in his article 5 of the arrêté 15/S and 16/S of January 19, 1925,.that"the foreign woman who shall get married to a Syrian shall become Syrian." Article 6 of the same arrêté stipulates that "the Syrian woman who shall marry a foreigner shall lose her nationality on condition that the national law of her husband confers upon her his nationality, otherwise she will remain Syrian."

The problem of the married woman's nationality, therefore, was settled in a non controversial way in January, 1925. Before this date the Ottoman law of 1869 continued to be applied and the foreign woman kept her nationality, if she so wished, when married to a Syrian. There is no question but that the legislator did not intend to make this new law retroactive. If he did he would have stipulated so and would have, consequently, created a great deal of conflicts and troubles. We shall not try to draw an argument in support of this conclusion by pointing to the future tense used here. Such an effort based on the grammatical constructions of laws is a vain one especially when we realize that other articles use the future tense. Logic and consistency command the adoption of the non-retroactivity view. A foreign woman married to a Syrian before January 19, 1925, and, continuing to be foreigner, is still a foreigner under arrêté 16/S

The situation of the married woman under the new Syrian law is, therefore, as follows: A foreign woman married to a Syrian after January 1925 becomes Syrian. A Syrian woman married to a foreigner acquires the nationality of her husband if his law is one, which, like the Syrian Law, confers the nationality of the husband upon the wife.

One can imagine the amount of conflict among states which arises out of the first measure adopted. Such conflicts are very common among states and it is, probably, on this account that many countries study nationality law under the study of international private law, which study is termed by the Anglo-Saxons Conflict of Laws. It is very possible, under the Syrian stipulation, to have a woman with two nationalities. Fortunately, it is not possible under such a wise stipulation to have a woman without any nationality. The married woman might have two nationalities if she belongs, originally, to a state where women nationals are said to keep their nationality of origin when they get married to a foreigner. In this case Syria would claim the foreign woman as Syrian according to article 5, and the national state would claim her as a citizen by virtue of her nationality of origin which, in its view, she did not lose by marrying a Syrian. On the other hand, if the legislator had been satisfied by saying that a Syrian woman who married a foreigner loses her nationality, heitmatlosat would have become very probable. The Syrian woman might marry a foreigner whose national law does not confer her nationality upon the foreign woman who marries this foreigner. This Syrian woman will be found to be neither Syrian, for having married a foreigner, nor of her husband's nationality, for this nationality does not provide for such a mode of acquisition. Happily, therefore, the Syrian law made the loss of the Syrian nationality depend upon the acquisition of the married woman of her husband's nationality.

To make our study more practical I propose to go over the nationality laws of the different countries Syria is in contact with

and find out first, those with which a conflict will arise on account of article 5, second those whose nationality law absorbs the Syrian woman who marries with one of their nationals thus making her lose her Syrian nationality by virtue of article 6.

The Syrian law stipulates that a foreign woman who marries with a Syrian becomes Syrian herself. Now this law is of a national, internal order and might not harmonize with the law of that country the foreign wife belongs to. Every country legislates in her own way concerning the nationality of the married woman. If the country is one which stipulates that a woman of her nationals loses her nationality by her marriage with a foreigner no conflict will arise. The foreign woman loses her nationality of origin automatically and acquires the Syrian nationality. England, Australia, Spain, Czecho-Slovakia and Germany belong to that category of states where the woman loses her nationality by her marriage with a foreigner. The English law of August 7, 1914, the Australian law of 1920--1925, article 18, the Spanish Civil Code of May 1, 1889, article 22, the Czecho-Slovak law of April 9, 1920, article 16, the German Constitution of August 11, 1919 and the German nationality law of July 22, 1913,[1] all these laws harmonize beautifully with the Syrian law. Their women nationals become Syrians by their marriage with Syrian citizens.

There is another category of states with which a conflict will not arise. It is those states which stipulate that their native women lose their nationality by their marriage with a foreigner only if the national law of the foreign husband grants the nationality of the husband to his foreign wife. In other words these states do not release the woman of her nationality unless they are sure that she

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1. Complete text of nationality laws of countries mentioned in this study can be found in Bourbousson's La Nationalité dans les cinq parties du Monde. Edition Sirey, 1931.

is going to acquire a nationality, that of her husband, elsewhere. Since the Syrian law is one which grants the husband's nationality to his foreign wife there is no fear of a conflict arising. The Austrian law of July 30, 1925, article 9, the Greek law of September 13, 1926, the Italian law of June 13, 1926, article 10, the Polish law of January 20, 1920, article 10, the Mexican Constitution of 1917, the Japanese law of December 1, 1924, article 18, all provide for a loss of nationality of the woman who marries a foreigner whose national law grants the husband's nationality to the foreign wife. France also belongs to the same category but for one slight difference. Article 8, of the Nationality Law of August 10, 1927, stipulates, in addition to the above practice, that if the marriage is celebrated in France the French wife will keep her nationality unless she declares, before the marriage, her desire to lose her nationality and acquire that of her husband.

There are three cases where a conflict with the Syrian law is apt to arise. The first is that of a marriage where the foreign wife belongs to a country which leaves the matter of losing the nationality to the personal will of the woman. The foreign wife who marries a Syrian may decide to acquire her husband's nationality. Her national law does not object since this is her wish, and no conflict arises. But the foreign wife, following the stipulations of her national law, may decide to keep her own nationality. In this case the foreign wife remains foreigner by virtue of her own law, but becomes Syrian by virtue of the Syrian law. This conflict has given the wife a double nationality. Cases of a double nationality are quite common on that account, but those caused by the above stip-

ulations can be found in the Belgian law of August 4, 1926, and in article 38 of the Rumanian law of March 29, 1923.

The second case which creates a conflict with the Syrian law is that of states stipulating that women who get married to foreigners lose their nationality only if they leave the country. The Scandinavian countries, Sweden, Norway, Denmark and Finland have adopted this measure. Now, in regard to Syria this stipulation amounts to preventing the wife from losing her nationality of origin. The problem rarely arises of Syrian marriages with Scandinavians but those which may arise are marriages between Syrians and Danish women outside of their country. Being in Syria, and not in Denmark, a Danish woman married to a Syrian keeps her nationality of origin according to her national law and acquires the Syrian nationality by virtue of the Syrian law and so stands with a double nationality.

The third case creating a conflict with the Syrian law comes from countries where marriage has no effect on the nationality. By virtue of American law of September 22, 1922, (Cable Act), of the Soviet law of October 29, 1924, of the Argentine law of 1891 and of the Brazilian law of July 6, 1910, the native woman does not lose her nationality of origin after her marriage with a foreigner. A native of these countries is, therefore, a Syrian according to the Syrian law and a national according to law of her country.

Conflicts as the above mentioned are unfortunate but unavoidable. Laws are the expression of the sovereignty of the state. The state's sovereignty does not go beyond the boundaries of that state. Every law is sovereign on its own territory. Nationality law is one which every state considers as the one where sovereignty must be best exercised. Internal legislation, in this field, is done regard-

less of what the situation elsewhere may or could be. Each state wishes to be absolutely sovereign in determining who should and who should not be her citizens. Conflicts must arise.

Article 6 of the Syrian law is one which does not open the way to conflicts. Let it be remembered that this article stipulates that a Syrian woman loses her nationality by marrying a foreigner only if the husband's law grants the nationality to the foreign wife. To make our discussion clear let us state that in regard to marriage and nationality states are either of those which grant their nationality to a foreign woman married to one of their citizens or of those which do not grant such a nationality. If they are of the first category no conflict arises: Syria releases her woman citizen because the law of the foreign husband grants her citizenship, and the husband's state is willing to take in a foreign woman married to a national. If they are of the second category, also no conflict arises: Syria does not release her woman national because the foreign husband's law does not lay claim on her, and the foreign husband's state does not object because her law does not aim at taking her in. If the Syrian legislator had not added the statement "on condition that the husband's national law confers upon her the husband's nationality" one can imagine the number of Syrian women heitmatloses if one may think that a Syrian woman may get married to a foreigner whose national law does not confer his nationality upon his wife.

For practical examples here is a number of states which grant the husband's nationality to the foreign wife:

Belgium, article 4, of the law of May 15, 1922, Italy, article 10, of the law of June 13, 1912, Great Britain, law of August 7, 1914,

Spain, article 22 of the Civil Code of May 1, 1880, Germany, Constitution of August 11, 1913, and article 6 of the law of July 22, 1913 Austria, article 6, of the law of July 30, 1925, Greece, law of September 13, 1926, Rumania, article 4 of the Constituion of March 29, 1923, Czecho-Slovakia, article 16 of the Constitutional law of April 9, 1920, Mexico, constitution of 1917, Japan, article 5, paragraph 1, of the law of December 1, 1924, and Australia, article 18, of the law of 1920 - 1925. If a Syrian woman gets married to a national of any of the above states she automatically acquires the nationality of her husband without conflicting in any way with the Syrian law.

The following countries do not grant the husband's nationality to the foreign wife: Brazil, Decree of Rio de Janeiro of April 15, 1914, Argentina, law of 1891, U.S.A., law of September 22, 1922, the U.S.S.R., article 5 of the law of October 29, 1924. The Syrian woman who gets married to a citizen of any of the above countries remains Syrian by virtue of article 6 because these countries do not confer upon her the husbands nationality.

France stands in a separate category by herself. Her law of August 10, 1927, provides that the foreign woman acquires her French husband's nationality only if her own national law makes her lose her nationality by marriage. Now this amounts to saying that the Syrian woman acquires the French nationality by her marriage with a French man and that without creating a conflict.

Although the picture looks gloomy at first sight, and although the sense of state sovereignty does not want to know of any compromise, yet there is always a solution to cases creating a double nationality

or no nationality at all. A woman who finds herself with two nationalities may always get naturalized into her husband's nationality and leave her nationality of origin if she so wishes. A woman who stands with no nationality at all on account of the interplay of laws and of the conflicting stipulations may also get naturalized into her husband's nationality. Every nationality law has provisions for the naturalization of the wife and these provisions are so easy to comform oneself to that the way is always open for avoiding unhappy situations.

A more common solution is that provided for by international treaties and agreements. Neighboring countries, or countries whose citizens mix quite frequently have always had agreements among themselves whereby certain laws on nationality may be changed or discarded in regard to marriages among nationals of those states. The agreements are usually made in order to avoid conflicts by creating a reciprocal treatment. Syria, under the French Mandate, has signed several of these treaties and so we must not assume that all the afore said situations must necessarily arise. It must also be remembered that Syria has been a country of capitulations, that although capitulations have been abolished (more correctly suspended until after the expiration of the Mandate) it is a country where foreigners still have certain privileges,[1] and so agreements have been quite in order to avoid a strict application of the Syrian law. The study made and the examples given aim at explaining the theoretical functioning of the Syrian law in the light of other legislations.

Although our study takes Syria and Lebanon as one entity both having the same nationality laws and both laws being issued by one

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1. See chapter on naturalization.

sovereign body, yet in the case of the nationality of the married woman a distinction between the two states has to be made. As a matter of fact the distinction is very necessary in view of the frequent intermarriages between citizens of these two states. There is no problem that needs any special or complicated study. Conflicts on account of these intermarriages do not arise. If a Lebenese woman is married to a Syrian or a Syrian to a Lebenese she loses her nationality automatically. By virtue of article 5, both being foreigners in their husbands' respective countries, they both acquire the nationality of their husband. By virtue of article 6 also each one of them loses her nationality because the foreign husband's nationality law is one which grants citizenship to the foreign wife.

CHAPTER V

Acquisition by Naturalization

One of the most artificial, yet one of the most common ways of acquiring a nationality, is by naturalization. By this method a person acquires the nationality of a state neither because he is related to it by blood ties, nor because he is attached to its territory by the fact of his birth in it, nor because he bears any linguistic or historical or cultural or psychological resemblance to the majority of the inhabitants of that state, but rather because he has asked to be admitted as a member of that state. The state, in this case, acts like any association laying down rules and conditions for admission into its membership. Having fulfilled these conditions and followed those rules an individual may seek admission and the state will be ready to consider his request.

Naturalization is artificial because it aims at making a natural citizen out of one who, by nature, is not a member of the association of citizens of that state. What is more artificial than to turn an Egyptian, for example, into a French citizen just because he has rendered some services to France, or because he has served in the French army, or because he has introduced into France a useful industry or invention, or because he has obtained a diploma from a French Faculty, all this without any consideration to his background, his origins, his sentiments, or even to his knowledge of the French language?[1] His residence of one year in France is sufficient to make him a French citizen. What is also more artificial that to see a Syrian turn Chinese just because he has lived for five years in China[2] and has found it to his interest to seek a Chinese citizenship

1. French law of August 10, 1927.
2. Chinese law of February 5, 1929.

while his sentiments and loyalty still cling to the Syrian soil, and his love of the Syrian peoples remain unchanged?

Naturalization is yet a common practice, inspite of its artificiality. There are many reasons why naturalization is universally adopted and very commonly used as a method for acquiring nationality. These reasons vary from one country to another. In newly constituted states with a vast territory to absorb a big number of immigrants the legislation tends to encourage assimilation of foreigners and so makes naturalization quite simple and easy. The Latin American states belong to this category. Argentina requires only two years residence before a demand of naturalization is made. Brazil also requires the same short duration of residence. The motives are plausible. Immigration into South America is stong. The state cannot afford to leave a huge number of foreigners enjoying the facilities in it and not falling directly under its jurisdiction. Also it does not deem it wise to place obstacles before foreigners for the country must be filled and so immigration must be encouraged. When a state of that sort feels that she has absorbed just the number she can assimilate it may raise obstacles against immigration and may render naturalization more difficult. Reasons of expediency coupled with social factors may be easily seen in the naturalization process followed by the United States of America. In their early stages the United States were anxious to absorb as many foreigners as they possibly could. A law of March 26, 1790, made it so easy for any one to gain the American citizenship that nothing was required beyond taking an oath of fidelity to the American Constitution, the candidate having the right to keep his nationality of birth if he wanted to. It was only according to the law of January 29, 1795, that the re-

nonciation of the nationality of origin was required. With the change of social and political conditions in the United States, a change was made in the law of naturalization. But the law of June 16, 1906, modified by that of March 2, 1929, a foreigner is required to have resided five years in the United States and six months in the State where he makes his demand in order to get naturalized. The United States is one of the rare states where the foreigner is required to solemnly renounce his nationality of origin and take an oath of fidelity to the Constitution. All the foregoing shows the attitude taken by a newly established state which encourages immigration and facilitates assimilation as long as there is room for settlers, but which restricts immigration and naturalization when space shortens and the number of citizens increases.

In other than newly constituted states naturalization is also a common feature in nationality acquisition with motives varying from those in the former case. Any group of foreigners in any state give rise to an exceptional application of the laws of that state. The foreigners most frequently, carry their own laws with them (at least laws pertaining to personal status). The state is always conscious of their being a group by themselves receiving a different treatment from that of the rest of the population. The longer they stay the more awkward it becomes for the state to deal with them. In order, therefore, to diminish the number of foreigners on its territory every state will try to give them a chance to forget that they belong elsewhere and make them get affiliated to her. Naturalization is the solution. So when Holland grants a naturalization certificate after five years residence on her territory it does not

do so in order to encourage immigration which, God knows, she does not need. The measure is taken in order to absorb whatever foreigners there are and rid herself of the special condition she has to provide for them and the special situation they live under. When France naturalizes a foreigner who has stayed only three years on her territory she does so only to get rid of the foreign status hundreds of thousands of Russians, Italians and Poles live under while on the French territory. No country, however conservative in her views, can get away from the necessity of formulating some kind of a measure by which foreigners may acquire the nationality of that country.

It has been stated earlier in this study, to be sure it is the purpose of this study to show, that a sound legislation is one which harmonizes best with the natural order of things, that a good nationality legislation is one which lays down rules to make people come to live together collectively if they belong to oneanother in a natural way. Bearing this in mind we can state that the best laws on naturalization are those which will make the state absorb those individuals who, after examination and much testing, have proved to be capable of belonging to the community, not to say nation, of that state. One state may require a long period of residence on her territory[1] hoping that after this long stay a foreigner might have already been assimilated to the people of that state, feeling what they feel, thinking of what they think, sad when they are sad and happy when they are happy. Still by requiring a knowledge of her national language[2] another state may have thought community of langu-

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1. Denmark--Law of September 10, 1920
2. Many have linguistic requirements; Poland, Egypt, Transjordania, for example.

age a good factor in national affinity, and coupled with a longer or shorter period of stay, it has been sufficient to place the foreigner among the blessed nationals of the state. A third state might find a good test of national loyalty in the fact that the foreigner has taken the arms with the state against her foes thus proving his love and collective feeling as well as his aptness to assimilate with the group he lives with. States may differ in their conditions for granting naturalization, they may impose shorter or longer periods of residence, they may require or may not require knowledge of the language, they may differ in many ways, but they all agree on one condition: to obtain naturalization the foreigner has to demand it. There is no state that offers an ipso facto naturalization. Naturalization is not an automatic process. The foreigner demands, not declares, naturalization. This demand may implicitly mean a desire on the part of the candidate to belong to the group, to be one with it, to live and share with it all conditions of life. It shows in him an individual potentially possessing the qualities the members of a nation should possess. By his demand he is showing a vouloir-vivre collectif with the group he is seeking to join.

Now the objection may be raised that sometimes individuals seek naturalization in a state for personal motives without any consideration to national loyalty or to patriotic feeling. This is true and it very often happens. But the question there is one of conflict between national interest and personal interest. It is a situation revealing lack of patriotism which might find its parallel among the natives of the state themselves. Every nation, every group, has its own Judas and the naturalized do not have the monopoly. It is the business of the state to legislate soundly, to test thoroughly and and to adopt the worthy. If deficiencies arise the state cannot help

it just as it cannot help deficiencies in its own native citizens.

With this general knowledge in view let us proceed now to study the Syrian law regarding naturalization, and try to see the extent to which sound principles have been laid down to meet social and political developments and situations in the country.

The Syrian naturalization law deals with three groups: the first is composed of the foreigners who seek naturalization, the second comprises the married woman and the adult child of a naturalized Syrian, and the third deals with those minors and married women who have lost their Syrian nationality by the application of the article 36 of the Treaty of Lausanne. We shall take up these three groups separately.

Foreigners can be naturalized, according to article 3 of the arrêté of January 19, 1925, either if they have resided five consecutive years in Syria, or if they have resided one year and had been married to a Syrian woman, or if they have rendered important services to Syria.

Paragraph 1 of article 3 requires an un-interrupted residence of five years. In the case of Lebanon it is stipulated that residence is to be "au Liban". In the case of Syria residence on the "territories of the state of Syria, of the Alawites or Djebel Druze" is stipulated. This is easily understood if we remember what was said earlier that these three states existed autonomously at the time the Syrian nationality law was drawn, and that all the three had one nationality which was the Syrian nationality. The period of five years residence has been criticized as too long and as being much longer than that required by Palestine or Iraq. Now it should be remarked that five years residence is hardly suf-

ficient to create a community of sentiments among the foreigners, that the two-year residence required by the Palestine law should not be taken as a model for it was intended to meet special circumstances created by the Balfour Declaration to establish a Jewish National Home in Palestine, and that it is too short if compared to states which require 10 years residence (Poland) or even fifteen (Denmark).

Article 3, paragraph 1, is silent on one fundamental point. Nothing is mentioned about the capacity of the candidate who seeks naturalization. Would he have to be adult or would a minor's demand be considered? If he has to be adult, then according to which law his adulthood has to be judged? Is it according to his national law or according to the Syrian law? The arrêté is silent on all these points. The most logical solution would be to consider only the demand of an adult, not a minor, and that according to the Syrian law, not according to the law of the candidate. If the legislator had clarified all these points many undue discussions and difficulties would have been avoided.

The same article 3, in its paragraph 2, makes it possible for a foreigner married to a Syrian woman to seek naturalization. In this case the period of five years is reduced to one year and one can easily understand the motive, An important point has to be raised, however, in this connection. Article 6 of the same arrêté stipulates, as has been discussed earlier, that a Syrian woman married to a foreigner acquires her husband's nationality if his law grants her that nationality. Now if the Syrian woman is no more Syrian by her marriage to a foreigner what would be the sense of the parag. 2 of article 3? The husband is a foreigner and his wife, originally

Syrian, has become a foreigner too. Why then grant the husband the privilege of one year residence for seeking a naturalization? The answer to that lies in the fact that there are cases where a Syrian woman does not lose her nationality by marrying a foreigner, and also in the fact that the legislator, seing that there are many cases where foreign residents marry Syrian women, he tries to win them to the Syrian nationality not as much for their own sake as for that of their children who live in Syria and whom he wants to make Syrians. This paragraph has a great deal of sense and far-sightedness. Let it be noted now that this measure does not exist any where in the Palestinian or Transjordanian nationality law.

The third paragraph of article 3 deals with the naturalization of foreigners who have rendered important services to Syria. Here again arrêté 15/S for Lebanon speaks of important services rendered to "Liban" whereas arrêté 16/S for Syria speaks of the same services rendered to Syria, the Alawites or the Djebel Druze. This enumeration of the Syrian states in the latter arrêté is easily understood. But a problem arises in regard to the authority competent to grant the naturalization. It should be remarked that in all the cases mentioned in article 3 naturalization is granted by an arrêté of the head of the state. In the case of Lebanon the head of the state is the President of the Republic under the provisions of the Constitution of 1926. In the case of Syria article 3 of arrêté 16/S speaks of the head of the state where the candidate resides, and in regard to paragraph 3 it speaks of the head of the state to which service was rendered. Therefore, as a general rule, we must assume that a naturalization is given to foreigners by heads of the state where they reside at the time their demand is made,

if the naturalization is based on residence, and by the head of the state to which a service was rendered if the naturalization is based on service. This means that if a foreigner resides in Djebel Druze for five years and demands naturalization, authorization must be given by the head of the state of Djebel Druze, but if the foreigner resides in the Alawites, for example, and renders a service to Syria the authorization has to be given by the head of the Syrian state.

It is still interesting to inquire into the wisdom behind granting the Syrian nationality to those who have rendered services to Syria. One might ask first, what are the services that deserve this reward? There is no critéria, there is no answer. This must, therefore, be left to the discretion of the head of the State. Only one service has been mentioned as deserving a reward, and that to be sure, is not one commanded by the head of the state who is the only one qualified to grant authorization for naturalization, but by the High Commissioner himself. Article 9 of the arrêté 160/LR of July 16, 1934, considers as an important service to Syria the enlisting for two years in the Troupes Spéciales du Levant.[1] Still one might venture further and wonder if, in a country just coming out of a régime of corruption, nepotism and favoritism, this measure of granting a naturalization might not be abused especially when a standard measure lacks completely. Neither Palestine nor Transjordan provide for such a method of acquiring naturalization With the political condition of the country as it is it would be much wiser not to have this luxury of bestowing the Syrian nationality on people whose services, ~~God only knows,~~ very often do not deserve a reward.

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1. Bulletin Officiel, 1934, p. 242.

The Lebenese legislator, not the French, was aware of the defeciencies in the law on naturalization especially in regard to the brevity of the residence period required of a foreigner to gain the Lebenese nationality. He remedied the situation by a law dated May 27, 1939. This law is significant for two reasons: first, it is the work of a Lebenese legislator, not the French High Commissioner, second, it meets with our desire of prolonging the period of residence.

Article 1 of the law of May 27, 1939,[1] stipulates in its paragraph 1 that the Lebenese nationality may be granted to a foreigner who justifies an "effective and uninterrupted residence of 10 years on the territory of the Lebenese Republic. "Paragraph 2 of the same article goes on to change the period of residence re-quired of a foreigner married to a Lebenese woman who wishes to acquire the Lebenese nationality. Instead of one year residence provided for by the law of 1925 this new law requires five years of uninterrupted residence.

It seems from the change made by the Lebenese legislator that when legislation is made by local authorities better consideration is taken for national interests.

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1. Journal Officiel de la Republique Libanaise, June 28, 1939, p. p. 3077.

Whether a foreigner gains naturalization by ~~five~~ ten years residence, or by being married to a Syrian woman, or by rendering service to the Syrian state, article 3 requires that the candidate must demand naturalization and that it may be granted to him only after "enquête" made on his condition. The demand made by the candidate is a necessary condition. It has been stated that there is no ipso facto naturalization. The foreigner must express his desire to be a member of the community he wishes to be affiliated to. He must reveal his vouloir-vivre with the Syrian community. Unless a demand is made there is no possibility of one obtaining a Syrian naturalization.

An inquest is made. An inquest on what? It is hoped that it is an inquest into the morality and social as well as financial condition of the person concerned. Most, if not all, of the nationality laws in the different states of the world explain in detail the moral, social, and financial requirements the foreigner has to fulfill in order that his demand for naturalization be considered. Such statements as that "the foreigner must prove that he exercises a profession or that he owns a property or sufficient fortune",[1] or as that "the interested must be of good conduct and must know how to read and write fluently the ... language",[2] or as that "the foreigner must prove his aptitude to satisfy his needs by means of his work or the possession of a sufficient fortune, that he must prove the absence of judicial antecedents are doubtful, the examination of the demand is submitted to the Ministry of the Interior,[3]" are very common in the different legislations. And yet the Syrian law is silent on all these important prerequisites. It

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1. Panama law of December 19, 1914.
2. English law of 1914.
3. Czecho-Slovak law of April 9, 1920.

is a characteristic of the French legislation, let it be remarked, to lay down a general principle in as brief and concise a form as possible and leave it to the execûtive to develop and explain the intention of the Legislator and the methods of application of the law. The legislator for Syria has used just one word, "enquête", and we hope that he means by it all the detailed and necessary conditions which a foreigner must fulfill before his demand is considered.

The second group dealt with by the Syrian law on naturalization is composed of the adult children and the wife of a foreigner who gets naturalized as Syrian. These, stipulates article 4 of the arrêté of January 19, 1925, "may, upon their request, obtain the Syrian nationality without condition of residence, either by the same arrêté which confers this nationality to the husband or to the father or the mother, or by a special arrêté." As for the minor children the same article 4 goes on to stipulate: "Become Syrians the minor children of a father or a surviving mother[1] who have been naturalized Syrians, unless they decline this quality in the course of the year following their adulthood." The situation of the wife, the adult children and the minor children is, therefore, as follows:

The wife of a Syrian naturalized husband may obtain naturalization in Syria, if she so requests, without condition of residence. Her naturalization may be granted either by the same arrêté as that concerning her husband, or by a separate arrêté. This implies, therefore, that the wife does not follow the condition of her husband if he changes his nationality in the course of marriage. She may seek naturalization if she wants to.

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1. French: survivante--meaning the mother who is still alive after the death of her husband.

The adult child of a Syrian naturalized father does not follow the condition of his father either. He may abtain a naturalization in Syria, if he wishes and upon his request, without any condition of residence. This naturalization will be granted either by the same arrêté as that concerning the father, or by a separate arrêté.

The minor child of a Syrian naturalized father, on the contrary, follows the condition of his father and acquires the Syrian nationality, like his father, by naturalization. This naturalization, however, does not have a permanent effect for, at adulthood, the child may renounce his quality as Syrian. This act of renouncing his Syrian nationality has to be made within a year from the date on which he has attained adulthood.

The third and last group to acquire Syrian citizenship by naturalization is that dealt with in article 11 of the arrêté 16/S of January 19, 1925. Here is the complete text of this article:

"The children and the married women who have acquired a foreign nationality by virtue of article 36 of the Peace Treaty of Lausanne, may be naturalized as Syrians by making a declaration during the year following their adulthood or the dissolution of their marriage, if they are established on the territory of the States of Syria, the Alawites or Djebel Druze (state of Grand Liban in arrêté 15/S[1]), and that after an inquest and by an arrêté of the head of the state on whose territory they are established."

Before we enter into the problems this article creates let us recall that article 36 of the Lausanne Treaty is the one which stipulates that married women and children below 18 years follow the condition of their husband and father with regard to nationality, in the sense that those aimed at by this article 11 of the arrêté

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1. author's parenthetic phrase.

16 are those who have not acquired the Syrian nationality (not to say lost it) just because they had to follow the condition of the husband or father who has opted for a foreign nationality. It is to be assumed here, therefore, that those concerned were Ottoman citizens before the Lausanne Treaty, that they are of Syrian origin and that they would have been able to acquire the Syrian nationality at that time had they not had a status which makes them follow the nationality of the head of the family by motive of article 36 of the Lausanne Treaty. It should be noted also that candidates for this kind of naturalization are expected to be settled in Syria in order to apply for this citizenship.

That much being clear let us proceed to take up what is ambiguous and misleading in this article. Two questions are relevent: 1. Is the process of acquisition of the Syrian nationality implied here one of naturalization or one of regaining of nationality? 2. who are the persons meant in this article?

The first question has to arise because the text itself is not specific in its formulation of what it means. It starts by saying that the individuals concerned may be naturalized. This shows a process of naturalization. Then it goes on to say "by making a declaration during the year following their adulthood or the dissolution of their marriage." To make a declaration is not to request naturalization. A declaration, in the legal language, is a unilateral act by which one exposes a certain condition or situation which will, ipso facto, make him acquire a certain right or privilege. If article 11 means what it says all the interested persons have to do is to show that they are above 18 years of age or that their marriage has been dissolved and the Syrian nationality will be

granted to them without leaving any discretion to the head of the state. If the head of the state refuses his assent and the case is one of declaration, he has to give reasons for his refusal and the interested has the channels of appeal open before him. On the other hand, if the process is one of naturalization the head of the state has all the power of discretion and his decision is not subject to appeal. It is a request to acquire the Syrian nationality; it could be accepted, it could be refused, the candidate has no say in it.

The latter detailed conditions given in the article tend to indicate that the legislator meant the procedure to be one for naturalization inspite of the ambiguity revealed earlier in the same article. One of these conditions is that an inquest should be made on the condition of the candidate. Another is that the citizenship is granted by an arrêté of the head of the state, Now, although these two provisions are not exclusive to naturalization yet they are very indicative of its existence. The legislator meant, therefore, that such individuals who have acquired a foreign nationality by virtue of article 36 of the Lausanne Treaty may regain the Syrian nationality by naturalization not by simply mere declaration of their desire to do so.

How do these individuals differ from any others seeking naturalization, it will rightly be asked? Simply in that no long period of residence is required of them

The second question as to who is meant to enjoy this kind of naturalization is still more difficult to answer. The individuals who have acquired a foreign nationality by virtue of article 36 of the Lausanne Treaty have done so because they are either children

or wives of persons who have acquired a non-Syrian nationality by virtue of articles 31, 32, or 34 of the same Treaty. The problem to solve, therefore, is to find out the cases according to which a person acquired a foreign nationality which his wife or child had to follow and of which they may be released by naturalization at the time of the dissolution of marriage or of adulthood. Is an acquisition of nationality by virtue of article 31 one which provides for a naturalization by article 11 of arrêté 16/S? The answer should be in the negative. By virtue of article 31 of Lausanne a person is made to opt for Turkey. Turkey is not a foreign state according to Lausanne and the person opting for it is only choosing to continue to be a citizen of the country he belonged to previous to Lausanne. This means that article 11 which speaks of children and wives acquiring foreign nationality by article 36 of Lausanne does not imply those who are related to a father-husband who has acquired a non-Syrian nationality by virtue of article 31 of Lausanne for this article provides for the acquisition of a Turkish not foreign nationality.

Is an acquisition of a foreign nationality by virtue of article 32 of the Lausanne Treaty intended by article 11 of arrêté 16/S? This is probable but impractical. Article 32 provides for an option for territories detached from the Ottoman Empire other than Syria. Also those who opt for Iraq or Palestine, for example, must transfer their residence to the newly opted for country and settle there, following conditions laid down by article 32. This is why it would seem impractical to have wife and children of a person who has moved to settle in one of these territories seek naturalization in Syria especially when it is realized that article 11 of

the Syrian nationality law requires the candidate to be a resident in one of the states of Syria.

What remains is an acquisition of a foreign nationality by virtue of article 34 of the Lausanne Treaty. Is it this kind of acquisition the one intended by article 11? Again the answer is no. Article 34 deals with Ottoman subjects settled abroad who would like to opt for Syria or for the country of their origin. It will be recalled that if these emigrants have not opted for Syria or for any other state detached from the Ottoman Empire they remain Turkish subjects and so are not tobbe considered as foreigners according to the Lausanne Treaty.

If neither article 31 nor 32 nor 34 of the Lausanne Treaty are the ones intended what then does article 11 of the Syrian nationality law mean? It certainly could not be an overflow of words on the part of the legislator. He means to make certain individuals regain the Syrian nationality by an easy naturalization and that is what he drives at in his article 11. If his words, carefully scrutinized, do not mean any thing, his intention, at least is clear. He means to say that those children and wives who failed to acquire the Syrian nationality because they had to follow the condition of the father or husband, may be naturalized as Syrians, and he expressed his intention by using such terms as might lead into ambiguity and arouse a great deal of comment. Instead of "The children and married women who have acquired a foreign nationality" it might be advisable to go straight to the point and substitute "The children and married women who have not acquired the Syrian nationality." This substitution, it seems to me, saves all the trouble and expresses the intention of the legislator.

What the Syrian law on naturalization has said may seem plenty and to the point, but what it has failed to say is still more and shows lack of harmony with the needs of the country. The Syrians form a small nation newly born to national life and political responsibilities. The history of this nation is one of internal dissentions and intestinal troubles of racial, religious and linguistic nature. Conquerors in the past have tried to nourish these divisions and dissentions following the principle of "divide et impera." Such policy of dividing the people on themselves has made of the Syrians not one nation but as many as there are religions and sects, not one group but as many as there are races, not one people but as many as there are languages. Then the Syrians were shown the way, or rather they saw the way, to a national life. They were given a guide and assistant to help them until the time comes when they are able to stand alone. The Mandatory power started by promulgating a law on nationality, a necessary law, to be sure, but a still more necessary law for Syria, for in this embryomic stage it aims at setting the national boundary of the state the same way the treaties have laid down the territorial boundaries. This is the purpose of every such law: the national boundaries are laid down by stating who is or who should be within the national comprehension of the state, who could be admitted into the national fold, and who is or should be outside the national group of Syrians. In dealing with the second factor in the process of setting national boundaries this chapter on naturalization has tried to explain what the rules are as set by the legislator of 1925 are for a possible admission of foreigners into the Syrian national fold. It behooves us now to make some comments on these

rules and show how they do not reconcile with the Syrian national life and development.

The Syrian law on naturalization tries to develop both a wide and a narrow nationalistic entity in Syria. Two contradictory policies seem to be at the basis, not only of the Syrian nationality law in general, but also of the naturalization law in particular.

The naturalization law sets a wide nationalism in its omissions of all the national factors which foreign conquerors have tried to kill in an attempt to kill the national spirit in Syria. Of all the factors that suffered persecution language is one which has come out strong and intact. The Arabic language is that strong, sacred tie which stands at the basis of the Arab national feeling. It unites, not only the Syrians to one another, but also all those who speak it into one family which is the Arab family. With the position the Arabic language as a national factor occupies it becomes very surprising how a naturalization law does not require the knowledge of Arabic as a primary condition for the acquisition of the Syrian nationality. It is revolting to see that Egypt, in article 8 of its law of February 27, 1929, that Transjordan, in article 7 of its law of May 1, 1928, and that Palestine, in article 7 of its law of August 1, 1925, have required the knowledge of Arabic as a prerequisite for naturalization, the latter requiring it along with the two other official languages of the state,[1] while Syria, the mosaic of religions and races but all with one language, makes no mention of this fundamental condition. It is certainly no contribution to Syrian national life to admit into the Syrian nationality Russians, Poles, French or Turks with the same facility as Palestinians or Iraqians are admitted, or even worse, as the emigrants of Syrian origin are. To state it even

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1. The official languages in Palestine are Arabic, English and Hebrew.

more revoltingly, it is not fair to lay before an emigrant of Syrian origin the same naturalization hurdles that are placed before a Russian, a Pole, a French or a Turk. This policy of granting citizenship by naturalization, a necessity as it is in other European or American countries, is a handicap in a country like Syria. There is something in the prestige, in the might, in the wealth of the United States of America to make them a melting pot of nations. There is something in the deep rootedness and old age of the French national feeling to turn a foreigner into a French patriot. There is something in the English traditionalism and the universality of the English language to make a person feel English at heart even before he sets foot on the island or fulfills the requirements of candidacy for naturalization. There is nothing of all these in Syria to make a foreigner feel Syrian. Economic, not psychic, factors are the motives for naturalization in Syria. Material, not emotional, urges are at the bottom of almost every approach to affiliation to Syria. This being the case, and language being a great factor in the process of building up affinities, a knowledge of the Arabic language should have been required of every one seeking naturalization in Syria.

Worse, probably, than the omission of linguistic requirement is the omission to lay transitory restrictions on naturalized citizens. Even in countries where national feeling is deeply rooted and statehood is of age old standing naturalized citizens continue to be deprived of certain public and political rights for a certain number of years. This seems to be a necessary measure for ensuring loyal and patriotic participation in the political life of the country. Here in Syria a foreigner gets naturalized one day, and he stands at the polls the next day. Ignoring the language of the country, ig-

noring its traditions and customs, ignoring her past of struggle and suffering, ignoring her sensitiveness to one thing or the other, he, the Pole, the French, the Roumanian, the Armenian, comes forward to tackle problems of public interest which the white-haired fathers of the country have experienced but failed to solve. Restrictions on the naturalized political rights, of transitory nature, are necessary in the Syrian naturalization law.

Worse than all the omissions in the Syrian naturalization law is the failure to admit by individual naturalization the thousands of foreign immigrants who acquired the Syrian nationality as though they were natives of the country. It will be remembered that article 30 of the Lausanne Treaty granted, ipso facto, the Syrian nationality to all Turkish subjects habitually residing Syria at time the Treaty was signed. It was pointed out earlier that among those who were settled in Syria in 1923 there were thousands of Armenians who had left their homes in Cilicia and migrated southwards into Syria later to become Syrian citizens. There was only one justification for their acquisition of the Syrian nationality: France occupied Cilicia in 1919 and the Armenians there were delivered of the Turkish rule they have always abhorred. When, for military and political causes, the French army had to withdraw from Cilicia the Armenians, deprived of French protection and handed back to Turkey, preferred to leave their homes and settle in Syria. As a compensation for the so-called injustice done th them by the French withdrawal the French facilitated their immigration to Syria and arranged to have them treated as Syrian citizens. Such was the cause for adding to the Syrian population an element that differs in race, in language, in traditions, and even in religion, from the majority of

the Syrian population. These thousands of Armenians did not follow the rules of naturalization; there were no such rules. They were not taken in by special measures which will keep them as a separate category until such time comes when the second or third generation feel Syrianized; the question was never raised. They were Armenians in Cilicia; they became Syrians in Syria.

It might be argued that Syria, before the Armenian immigration, was already a mosaic of nationalities and religions and that the addition of one other nationality, or more as actually happened later, is not going to change the situation a great deal. That is just the mistake and facts are overlooked when such an argument is made. In the first place the national problem under the Ottoman rule was quite different from what it became under an independent Syria. Under the Ottomans different nationalities moved and lived in the same localities but in all cases they were citizens of the Ottoman Empire. Mixture of nationalities on the same territory did not mean any breach in the national unity of the already heterogeneous state. In independent Syria national unity was the strong hope and wish of the Syrians. In struggling to gain their independence the Syrians were seeking to establish a state of Arabic speaking and arabic thinking peoples. The principle of nationality as applied by the post-war peace treaties has met with their desire and there was no question of adding one more foreign element to the newly established state.

In the second place, it is just because of the fact that Syria was already a mosaic of nationalities and religions that an additional nationality should be debarred. A mistake is never justified by the fact that it has been preceded by a mistake. The peace treaties as applied in the cases of Austria-Hungry, Germany, Russia, Turkey and Greece aimed at rectifying, by an act of man, what

history had aggravated in the national sphere. It is no excuse for the wholesale admission of Armenians into Syria to say that they could no longer live under Ottoman rule and that they have no where else to go. If any solution is to be proposed, and this is outside of the scope of our study, one might suggest the creation of an Armenian state in Cilicia to stand as a hupper state between Turkey and Syria. Such a hupper state is a very desirable institution from the Syrian stand point especially after the events of 1936 had unveiled the Turkish designs towards an independent Syria.

Two facts are outstanding in the Syrian nationalitarian considerations: 1. The Syrian population is nationalistically heterogeneous and is in no position to absorb one more nationality, 2. The diversity of religions affiliations in Syria is a great obstacle to national unity.

The racial and national heterogeneity of the Syrian population is a striking and deplorable fact. Hardly any conqueror passed by this country without leaving traces behind. Aramaeans mixed with Hebrews and Greeks and all mixed with Arabs and were assimilated by them. Turks, Kurds and Persians met along with Byzantines in the Syrian plains and left traces in Syrian towns and country side. It is true that the Arab element was dominant, but those unassimilated nationalities continued to be a thorn in any Syrian national movement. The Syria of 1920 still contained, inspite of centuries of existence, national groups who had nothing and did not want to have any thing in common with the rest of the Syrian population. Circassians who had been dislodged from their homes in the Caucassus Mountains following the Russo-Turkish war of 1878 were settled in

Damascus, Aleppo and Homs.[1] Inspite of a half century of existence in Syria this group continues to be segregated in dress, customs, and sentiments from the rest of the Syrian population. Another group of people, Indo-European by race, is formed of the Kurdish tribes settled in the North-Eastern and North trans-Euphratean plains of Syria.[2] The Kurds count nearly 60,000 persons,[3] and a big fraction of this live in Syrian villages and towns faithful to their traditions and aloof from the activities of their Syrian neighbors. The Turcomans, small in number, form another national group descended either from the Seljuks who invaded the country during the reign of the Abbasids or from the Mongol tribes which devastated the country under Timurlane. These also have not been assimilated.

The diversity of religious affiliations is still more deplorable than that of the national associations. The problem here does not lie so much in the religious beliefs and affiliations as it does in the repercussions of these on national life. There was a time, it has been stated earlier, when religion and nationality were one, when public life was based on religious confession, when religion was the main factor in the status of a person. Although institutions and public activities have been secularized, although the Church was separated from the state, yet the fact remains today in Syria that a person's religious affiliation stands at the top in the determination of his status after his nationality has been determined. The idea of how a confusion is still being made between a national and a religious affiliation can be best illustrated by the following

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1. Georges Samné, La Syrie, p. 303-304
2. Encyclopedia Britanica, 14th Edition.
3. George Samné, La Syrie, p. 304.

example: When the Turks occupied all Anatolia in the Summer of 1922 and the non-Turkish element was driven out of the country an agreement was arrived at between France and Turkey by which compensations will be paid to Syrians who owned property in Turkey. On October 27, 1932, 650 files were presented to the Turkish government. By July 11, 1934, 108 demands had been rejected including 44 files which belonged to Syrians of the Greek Orthodox religion. The Turkish government rejected these 44 demands on the grounds that the petitioners are Greeks to whom the Turco-Greek convention for the exchange of population must be applied. To the Turkish mind a Greek Orthodox is a Greek by nationality.[1]

It is not our concern to study the influence of religion on public life in Syria, but a few practical examples will be given to show that status, not contract, is still at the basis of public life, that governmental organization is based on sectarian divisions and that the country is not yet as completely unified as to be able to disregard internal religious and racial groupings.

In Lebanon the Constitution of 1926 provided for 30 seats to be distributed according to religious communities. The Lebenese Cabinet formed on May 29, 1926 was composed of 7 ministers--2 Maronites, 1 Sunni, 1 Greek Catholic, 1 Greek Orthodox, 1 Druze, 1 Shi'ite. When the Lebanese Constitution was amended on October 17, 1927, and the two Chambers were replaced by one it was found necessary to have a Christian Prime Minister and a Moslem President of the Chamber. On August 8, 1928, a Cabinet of five members was formed to take the place of that composed of three resigning the previous day and that in order to satisfy all the religious communities[2]. Such a view

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1. High Commissioner's Report to the League of Nations, 1934.
2. High Commissioner's Report to the League of Nations 1926-1929.

towards public life did not change even after the British authorities occupied Syria in the Summer of 1941 and the Free French authorities took over the civil government of the country.[1] General Catroux, representing General de Gaulle, head of the Free French Forces, declared Lebanon an independent state and appointed a Maronite to the Presidency of the Republic and a Sunni to the Premiership. The latter had to form a Cabinet of ten Ministers in order to be able to distribute portfolios among all the religious sects of Lebanon including what is commonly known as the minority sects.

In Syria, although the overwhelming majority belong to the Sunni Moslem sect, yet the situation is not different. The Parliament elected on April 4, 1928, was composed of 70 deputies distributed as follows: 52 Sunnis, 3 Alawites, 1 Isma'ileh, 2 Greek Orthodox, 3 Armenian Orthodox, 1 Syriac Orthodox, 1 Greek Catholic, 1 Armenian Catholic, 1 Syriac Catholic, 1 Jew, 4 nomads. The case of the Alawite state is not different. The Representative Council elected on April 6, 1930 was composed of 9 Alawites, 3 Sunnis, 2 Greek Orthodox, 1 Christian non-Orthodox, and 1 Isma'ileh.

The civil service in all these states of Syria does not differ, in that respect, from the upper political offices. Civil servants are recruited on a religious basis. Religious heads stand ready to make claims for their parishiners in government affices. Nepotism here is a common practice, but it is nepotism carried on by the clergy. Political parties have no official existence. Religious, sectarian groupings are at the basis of national life.

Now with all these disintegrating factors biting at and eating

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1. Details about the shift of power may be obtained from Beirut daily of July 1941.

up the national unity of the country it would seem quite audacious, rather rash, to carry on a policy of wholesale immigration and mass naturalization. Statistics as of January 1, 1925, give us 96,000 persons, immigrants from Anatolia of whom 89,000 were Armenians. To these must be added another 2,000 Armenians who were already in the country and who were discovered by the International Labor Office which office was making a search for children of Armenians massacred in 1916.[1] All these immigrants were granted the Syrian citizenship with full civil and political rights. They were settled in different parts of Syria, the Mandatory Power, the League of Nations and the Nansen office offering the necessary funds.

Among the 96,000 immigrants there were 4,000 persons of Assyro-Chaldean origin. The number of this group increased in 1933 and 1934 following the campaign made against the Assyrians of Iraq. In 1933 five hundred of them moved into Syria, and in 1934 another 1400 were admitted following agrreement with the League of Nations. The fact that Chaldeans had moved from Anatolia made Syria a home for other Chaldeans and a safety-valve for the admission of those who were persecuted, or provoked persecution, in Iraq. The Assyro-Chaldean immigrants were settled in Khabour following a suggestion made by the League based on recommendations of committees appointed to study ways and means of settling them. By 1935 their number had gone up to 6,000 and by 1936 there were 16 villages at Khabour comprising 8819 persons.[2]

It is to be regretted that while American and European states were busy amending their immigration laws in order to diminish the

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1. H. C. R. 1924 - 1938.
2. For a study of international immigration problems see Survey of International Affairs, 1924 and 1925.

strain of competition and increase the tie of national unity, Syria was opening its arms to receive more immigrants and add to her national and religious complexity. The United States of America, Mexico, even the states of South America, even France, awoke to the fact that there should be a limit put on immigration. Syria, a newly constituted state, with no national back ground, with lots of national difficulties calling for treatment, started her political career by acting as a dumping ground for neighboring nationalities. If Syria had done so after fifty years of national experience, or if she had done so by careful measures of naturalization, the problem would not have been as acute.

The Lebenese Ministry taking power after November 26, 1941, started her career in a rather serious and consciontious fashion. Among the topics taken up at her meetings one concerning the law on naturalization was welcomed with enthusiasm by the Beirut Press. It was pointed out that the Cabinet has been alarmed at the anarchy and looseness in the domain of naturalization and that it (the Cabinet) is proposing to introduce certain changes in the law.[1] The Lebenese Cabinet will certainly find a vast field for work and it will come out the more proud if it strikes the deeper at this edifice of naturalization. Besides the weaknesses previously mentioned and the different remedies already suggested, one more suggestion must be offered, a suggestion which becomes more necessary as alien propaganda increases in the country and as loyalties tend to shake. It is not our pretention or intention to say that the suggestion is original, for it has been inspired by Egyptian, Palestinian and Iraqi laws on nationality and naturalization.

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1. Al-Hadith, Beirut daily, January 16, 1942.

Article 10 of the Egyptian Nationality law of 1929 states:

"May be declared losing the Egyptian nationality....the individual who has acquired this nationality by virtue of the three preceding articles,[1] in one or the other of the following cases:"

1. If he has acquired the Egyptian nationality on the basis of false declarations or by fraudulous means,

2. If he has been condemned in Egypt for a criminal pain or for at least two years imprisonment,

3. If he has committed an act of such nature as to be against internal or external security of the state, or the order established by the government or the social order in Egypt.

4. If, by means of speeches, writings or any other publications, he propagates subversive ideas contrary to the fundamental principles of the constitution."

Article 10 of the Palestinian Citizenship Order, 1925 stipulates:

"Where it appears to the H. C. that a certificate of naturalization granted by him has been obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate is granted has, since the grant, been for a period of not less than 3 years ordinarily resident out of Palestine, or has shown himself by act or speech dissaffected, or disloyal to the Government of Palestine, the High Commissioner may, subject to the approval of one of His Majesty's Principal Secretaries of State by order revoke the certificate, and the order of revocation shall have effect from such date as the High Commissioner may direct."

And finally a decree no. 62, of August 15, 1933, on the loss of Iraqi nationality reads as follows:

1. These are: Article 7 on the acquisition of the Egpt. Nationality a person born in Egypt of a foreign father, article 8 on acquisition by naturalization, and art.3 on short term naturalization.

"The Cabinet may decide the loss of Iraqi nationality of any Iraqi subject who does not belong toa family habitually resident of Iraq before the Great War, provided he undertakes or attempts to undertake an act considered as dangerous to state peace and public security."[1]

The Syrian government may get the hint. The state may and is supposed to bear the harm done to her by her native subjects. But no state is required to carry charity to the extent of bearing the disloyalty of those who have just been naturalized or have acquired nationality by means other than their being natives.

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1. Explanations and motives in the following chapter.

CHAPTER VI

Loss of and Reintegration into the Syrian Nationality.

Every law on nationality provides for rules by which a citizen is considered to have lost his nationality. A citizen loses his nationality either because the state he belongs to deprives him of his citizenship for punitive purposes, or because he wishes to renounce it or finally because he has undertaken an act which automatically makes him fall into the nationality of a second state.

The way to be reintegrated into one's nationality depends upon the cause which made him lose it. This is a fact which strikes any one who goes over the nationality laws of the different states. If the loss of the nationality is caused by a punitive measure or by one's renouncement of his nationality the reintegration becomes difficult and the process is similar to that followed by a foreigner seeking naturalization. The demand might be accepted; it might be rejected. If, on the other hadn, the loss is a result of a legal act contracted by the individual, then the reintegration becomes not only easy but also desirable.

In this chapter we shall not take up the causes of the loss of the Syrian nationality which we have studied earlier under different headings, It will be recalled that the Syrian woman loses her nationality by marriage to a foreigner, and that a married woman and a minor child follow the condition of the husband and father. Without going back to our discussion of the influence of marriage on nationality let us look into the reintegration into the Syrian nationality of the Syrian woman who lost her nationality by marrying a foreigner.

Such a woman may, states article 7 of the arrêtés of January 19, 1925, "after the dissolution of her marriage, and provided she resides on the territories of Syria (or Lebanon), or comes back to these territories declaring that she wishes to reside on them, regain the Syrian nationality by an arrêté of the head of the state..."

The measure is simple and clear, the facilities are abundant. The law views with favor the return of the married woman to her nationality of origin. This person had not lost her nationality for punitive reasons or because she had so desired. Her marriage, a contract, has produced the loss and her will had nothing to do with it. Three conditions are required by this article:

1. that the marriage be dissolved
2. that the woman resides on the Syrian territory
3. that she comes back and declares that she wants to reside

We should not be mislead by the third condition into concluding that a woman who already resides in Syria regains her Syrian nationality automatically after the dissolution of her marriage with a foreigner. The third condition requires a declaration of the intention to reside only in order to make it possible for the returning widow to regain her old nationality without any delay. Both, the one who already resides and the one just returning to reside, have to address a demand of reintegration, for article 7 stipulates that the regain of the nationality is made by an arrêté of the head of the state. An arrêté of this kind can certainly not be made on the initiative of the head who has no knowledge of one's desire to be reintegrated.

These three conditions are necessary. They are also sufficient. No other conditions of good moral standing or financial capacity are

required. No research into the condition of the person is made. The married woman is not requesting to be naturalized; she is only declaring her intention to regain her nationality. It is a right; it cannot be refused.

There are two other ways by which a Syrian loses his nationality and once he does so he will be treated as a complete foreigner not not to be reintegrated except by naturalization. Article 8, paragraph 2, of the law of January 19, 1925, states:

"Loses the quality of Syrian citizen, any Syrian who, having accepted public functions conferred by a foreign government, retains them inspite of the injunction of the Syrian Government to leave them within a definite period." This measure is self explanatory and any discussion or comment will be superfluous.

Paragraph 1 of the same article 8 speaks of another way of losing the Syrian nationality. "Loses the quality of Syrian citizen, any Syrian who has acquired a foreign nationality, if this acquisition had been previously authorized by the head of the state..."

What is significant about this article is not the fact that it provides for loss of the Syrian nationality when one has acquired, by naturalization or otherwise, a foreign nationality, but the fact that the principle of perpetual allegiance, peculiar to the Ottoman law of 1869, still hangs in the Syrian nationality law. It will not escape our memory that the Ottoman law of January 19, 1869, in its article 5, provided that no Ottoman subject may be naturalized a foreign citizen without previous authorization secured from the Imperial Government.[1] Stating that a Syrian loses his nationality by acquiring a foreign one, and that upon securing an authorization from the Head of the State, is stipulating the same measure enacted by

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1. See chapter I.

the Ottoman legislator.

The Ottoman legislator, it will be recalled, had important reasons for laying down the principle of perpetual allegiance according to which a citizen is not free to renounce his nationality whenever he wishes. The Capitulations and the privileges and immunities granted to and enjoyed by foreigners in those days presented to the many dissatisfied citizens of the Empire such a tempting bait to get at that many of them sought naturalization in a foreign country in order to enjoy what a foreigner enjoyes.[1] That, in our opinion, is a good means of keeping within the state those citizens who are readily willing to give up their nationality.

What justification is there at present for such a measure of perpetual allegiance? Are the Syrians anxious to renounce their nationality? Is the situation of a foreigner such a tempting one that a Syrian would prefer it to his own? A brief survey of the status of foreigners, necessary in a study of nationality, will rightly fall within the scope of the subject under consideration in this chapter.

Let it be stated first that the principle of perpetual allegiance was condemned explicitly by article 128 of the Treaty of Sèvres.[2] Turkey was required by this text to recognise the new nationalities which had been acquired by her subjects and to liberate them (her subjects) from all ties of allegiance to her. It cannot be claimed that this article concerned Turkey alone and not the states detached from her. The fact that this article falls under paragraph 12 of Part III of the Treaty, which fixes the conditions of all changes of nationality, is a strong evidence that it lays down a rule binding upon Turkey as well as upon the new states proceeding from its dis-

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1. See chapter I.   2. Ghali, op. cit. p. 251.

memberment. It is true, however, that this measure was not reproduced in the Treaty of Lausanne which replaced the Treaty of Sèvres, but the principle it lays down is so important that it deserves to have been respected instead of imposing such archaic measures beneath which lie fear of losing nationals and suspicion of Syrians disloyalty to their nationality, not to mention international conflicts that follow and unnecessary complications ensuing in the procedure required for securing an authorization.

With all the privileges and immunities attached to the person of a foreigner in Syria the situation remains far from arousing a desire to change one's nationality. The most striking privilege a foreigner has in Syria appears before justice. By an arrêté dated October 13, 1923 the Capitulations were suspended in Syria. Even before their suspension the Consulor Courts were abolished and a new system was introduced on July 7, 1923, creating what came to be known as Mixed Courts which handle cases in which a foreigner is a second or third party and in which the majority of the magistrates as well as the President are French.[1] In 1925 the Mixed Courts were abolished in Lebanon and arrêté no. 69/S created a new system known as the Fusion Judiciaire according to which all Lebenese Courts were to include French Magistrates, and so foreigners, are made to stand before any of them. Outside of Lebanon the experiment of the Fusion Judiciaire was never tried and even in Lebanon it utterly failed.[2]

The ~~Syrian and~~ Lebenese Judicial Organization ~~took~~ saw its ~~final~~ embodiment ~~shape~~ on February 17, 1928 and was ~~slightly~~ modified on February 3,

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1. Recueil des Actes Administratifs du H.C.F., 1923.
2. Abi-Khater, La Condition des Etrangers en Syrie et au Liban p.76.

1930. Article 2 of the arrêté 1820 which replaced arrêté 2028 of July 7, 1923, provided that if a foreigner is a party in a case the competent court will be presided over by a French judge and will be composed of a majority of French magistrates. Several changes were made in the Lebanese Judicial Organization after that date. As our concern is not so much a study of Judicial Organization for its own sake as it is for seeing its relationship with the status of foreigne we shall concentrate on arrêté No. 324/LR of November 22, 1939, which is the most recent act on such organization. We cannot be sure however that no further change will be made in this field of frequent experimentation.

Article 8 of arrêté 324/LR[1] stipulates that Civil, Commercial or Criminal cases related to foreigners will follow the following rules:

If the dispute ~~is of the competence~~ falls within the jurisdiction of the Judge of Peace a French judge will handle the case;

If an appeal is made on the decision of the Judge of Peace and the case happens to be of the competence of the Court of First Instance the case must come before the Beirut Court of First Instance for Foreign Cases which court will be presided over by a French judge Appeals from this court will go to that Court of Appeal presided over by the first President or by a French president of a chamber.

In regard to majority of French majistrates in cases where foreigners are parties to the dispute article 9 of arrêté 324/LR stipulates that the Court of Appeal shall be composed of a majority of French judges, but that the Beirut Court of First Instance shall be composed of a majority of French judges only upon the request of the Attorney General or of one of the parties in the dispute.

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1. Bulletin Officiel du H.C.F. of December 15, 1939, p. 520.

Article 12 of the same arrêté marks an important step by stipulating that in every civil or commercial case in which the parties are Lebenese or Lebenese and foreigners the parties in the dispute may choose to give competence to courts of foreign cases provided the agreement between the two parties has been concluded before the case and that the agreement bears a correct date. As for criminal cases it is stipulated in article 14 that cases in which a foreigner is involved, in whatever quality, shall be referred to a French judge. It is very important to explain the denotation of the term foreigner as intended by the arrêté.

According to the law of July 7,1923, all foreigners could stand before Mixed Courts. Subjects of ancient capitulatory powers, subjects of non capitulatory powers, and even subjects of states detached from the Ottoman Empire, were considered foreigners and Mixed Courts were competent for cases involving them. Article 8 of the law of 1929 made the term more restricted and since then only the following fall under the category of foreigners:

1. Subjects of European states who, up to August 1, 1914, enjoyed capitulations privileges.
2. Subjects of states whose actual territory was detached from capitulatory states, as well as subjects of states under the jurisdiction of the said states.
3. Subjects of the U.S.A. and of Japan.
4. Subjects of states admitted by special agreement to benefit of the measures of article 2 of the present law.[1]

According to this enumeration the following are foreigners:
All Europeans except Yougo-Slavs, Albanians, and Bulgarians,
all individuals belonging to colonies and protectorates of European states,
all Americans and Japanese,
all citizens of Seoudi Arabia.

Members of the last category were considered foreigners because Seoudi Arabia signed an agreement with the Mandatory Power in Syria to that effect.[2] The date of this agreement expired on December 20, 1930, and the agreement was never renewed. Consequently, Arabs of Seoudi Arabia, like Palestinians, Iraqis or Turks, cannot make any claim on the Mixed Courts in Syria.[3]

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1. Abi-Khater ---Op. cit. 76.
2. See next chapter.
3. See next chapter.

Iranian subjects have been added to the list of foreigners by an arrêté no. 218/LR dated September,19, 1935. Article 1 of this arrêté considers these subjects as having acquired the foreign status as of August 7, 1935, date of the Franco-Iranian agreement.

This is in no way the place for a critical study of the Syrian judicial Organization and the Mixed Courts. It is sufficient to state that Mixed Courts mark an advance on Consular Courts in the way of political sovereignty. On the other hand, it should be noted that in one sense the Mixed Courts mark a retrogression on the Consulor and Ottoman Courts. Under the system of Capitulations Consulor Courts were competent only when the two parties in the dispute were foreigners. When one party was foreigner and the other Ottoman, the Ottoman Courts were competent and the foreigner was only assisted by the Drogman of his Consulate. Under the present Syrian system Mixed Courts are competent not only if the two parties are foreigners but also if one of them is foreigner and the other Syrian.

It must be mentioned, incidentally, that Lebenese are not foreigners in Syria and Syrians are not foreigners in Lebanon.

Now, these judicial privileges can hardly be a motive for a change of nationality. It could be expected that there are always those who, for personal reasons, prefer to stand before Mixed Courts but the whole organization does not, in itself, justify the severe measure of perpetual allegiance laid down by the legislator in Syria.

Let us go still further into the study of the situation of a foreigner in Syria in order to see if there is much reason to fear conversion from Syrianism to Foreignerism. A study of this sort will lead us into examining the right of the foreigners as granted and guaranteedd by the authorities in Syria.

Rights are either public or civil; the former belong to the individual as a member of a state and deal with his participation in the functions and activities of the state; the latter belong to him as a private being and deal with his person, his property and his relationships. Again Public Rights are either Political or Public in the strict sense. Public rights are, in general, withheld from foreigners. Exceptionally a state might grant certain public rights to foreigners for reasons of courtesy, necessity or reciprocity.

In Syria differences exist between citizens and foreigners. This is a normal situation. But these differences are favorable to foreigners when compared with their status in states with full political independence. Political rights are withheld from foreigners. These cannot vote, are not eligible to representative bodies and have no access to public functions, etc. An exception to this rule is found in arrêté 3527 of April 21, 1926, which stipulates that the Municipal Council of the city of Beirut must contain four seats for foreigners out of a total of fourteen.[1] Other Public Rights like freedom of conscience and freedom of speech and writing are also enjoyed by foreigners. Article 9 of the Mandate Pact provides for a guarantee to freedom of speech and arrêtés 2404 and 2630 of April 21, 1924 and May 27, 1924 for Lebanon and Syria respectively open the way to any foreigner to become editor or owner of a newspaper.

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1. Abi-Khater, op. cit. p. 33.

This right granted to foreigners becomes very strange when contrasted with the provision of the French law of July 29, 1881, which renders editorship of a newspaper prohibited to foreigners. Here then is a case where a foreigner is treated like a citizen, or to reason along lines of our subject, here is a case where a Syrian would not lose if he becomes foreigner.

In Syria a foreigner has access to all kinds of work and professions. He could join a professional syndicate, he could practice medicine and own a pharmacy, and what is more, he could become a barrister if he belongs to a state member of the League of Nations or if he is American. In this respect Syria has shown a great deal of generosity with no reason but that she lies under the tutelage of an international institution, the League of Nations, and economic facilities must be open to all members of this institution. What is regrettable in such measures is not so much the fact that foreigners enjoy equality with Syrians as the fact that citizens of Arab neighboring lands are not even equal to foreigners. An arrêté of January 21, 1926, for Lebanon, and another of June 2, 1930, for Syria, prohibit the practice of barrister to any citizen of Arab lands like Palestine or Iraq.

Although the rights of a foreigner are almost equal to those of a native, yet certain restrictions do exist which, fortunately, enable us to make a distinction between one and the other. These restrictions concern the right of a foreigner to enter or leave Syria.

In order to penetrate into Syria a foreigner is required to have a passport (arrêté 2283 of December 24, 1928) bearing a visa from a French consular authority abroad. This restriction, however, does not make the situation of a foreigner worse than that of a native for the latter too is required, by the same arrêté, to bear a

passport in order to leave or to come back to his own country Syria. Following provisions of article 3 of the Mandate Pact passports used to be delivered by the Mandatory Power.

This practice continued up to 1942 and was consistent with the idea that all international relationships are of the competence of the Mandatory authorities. The Sûreté Générale, a branch of the Haut Commissariat, was the competent department to issue such passports.

With the advent of the new régime introduced by the Free French Delegation according to which Syria and Lebanon were declared independent states, the power to issue passports to Syrians and Lebenese was transferred to the Syrian authorities. Passports as of March 1942 are issued no more in the name of the French High Commissioner, but in the name of the Presidents of the Syrian and Lebenese Republics.

Certain agreements with neighboring countries have created some exceptions to the rule concerning passports. Turks transiting on the Bagdad rail-road are not required to bear visaed passports when they enter within the Syrian frontiers between Meidan-Ekbes and Tchaban-Bey. Also the Treaty of Bon-Voisinage of 1926, with Turkey, allows people on both sides of the Turco-Syrian frontier to penetrate and circulate freely within five kilometers of the said frontiers.

Under the Ottoman régime a foreigner was offically recognized as such and was eligible to enjoy capitualtions privileges and immunities by being required to register at his consulate. A foreigner in Syria today is not required by the authorities to proceed to such registration. His own Consulate might make him do so for his own private interest, but the Syrian law, expressed by arrêté 81/LR of

August 21, 1931, requires every foreigner to register with the Sûreté Générale[1] and secure an identity card. "Tout étranger agé de plus de 15 ans et devant résider dans les territoires sous Mandat français plus de trois mois, est tenu, dans les dix jours de son arrivée, de se présenter au service de Sûreté Générale ou, à défaut, au service de police locale, le plus proche de sa rési - dence, pour y faire une demande de carte d'identités" says article 1 of the arrêté.[2]

Other restrictions on rights of foreigners are found in the power of expulsion and extradition by local authorities. It is interesting to note that the Ottoman authorities did not have the power of expelling a foreigner, such power having been left, by capitulation treaties, to the Consulates concerned. If, for any reason, the Imperial government wished to expel a foreigner the only means at her disposal was to notify the consulate of her desire. The situation today is more sovereign-like: the Mandatory Power who has the right to expel foreigners may do so on her own initiative or following a demand of the local government. Similarly in the case of extradition. No treaties for extradition existed between the Ottoman government and any other government. On the contrary today, besides extradition treaties between France and other powers there exist treaties with neighboring countries. An extradition treaty was signed with Palestine on July 11, 1921. Protocol Annex 2 to the Ankara Convention of May 30, 1926, provided for extradition agreements with Turkey, and the Iraqi law of December 3, 1926, including the rules of extradition, was communicated to the Mandatory Power in Syria.

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1. A service under the jurisdiction of the Mandatory not the local authorities.
2. Recueil des Actes Adm. du H. C. F. 1930.

One more phase of the rights of foreigners could be mentioned, not as a restriction, for it is not, nor as a privilege, for it has taken away a privilege. Under the régime of Capitulations foreigners enjoyed many kinds of fiscal immunities. These immunities were among the most important factors to make the condition of a foreigner an enviable one. Today, the foreigner has no fiscal immunities. He pays customs taxes, personal taxes, professional taxes, and he stands, in that respect, in perfect equality with a native.

This sketch does not pretend, in any way, to give a thorough study of the condition of foreigners in Syria. It is intended to point out to the most striking distinctions between a foreigner and a native in order to find out if there is still any room for a desire on the part of the Syrians to renounce their nationality and get a foreign naturalization, a supposed desire which might have influenced the promulgation of the principle of perpetual allegiance in the Syrian nationality law.

With the capitualtions suspended and the condition of foreigners as it is there can hardly be an excuse for continuing the principle of perpetual allegiance in Syria. On the other hand, it is probably correct to assume that the legislator was laying down principles which might prove necessary in the post-mandatory period. Captitulations, it will be remembered, are not abolished in Syria; they are only suspended. When and if they come back to life, a situation highly improbable, these restrictions of article 8 may prove to be helpful. Another assumption might be that the legislator found it wise to legislate on Ottoman lines in a country which has just fallen heir to a part of the Ottoman Empire. Whatever the reason might be it is worthy of noting that with a measure such as the one we are cons-

idering conflicts with neighboring states are very apt to arise especially because neither Iraq nor Palestine have made similar restrictions.

APPENDIX

The following is a study of article 9 of the law of January 19, 1925. This article reads as follows:

"Les contestations en matière de nationalité relèvent exclusivement des tribunaux civils."

What else could be said in regard to this article but that in case of disputes concerning the nationality of individuals the Civil Courts of Syria are competent to settle the dispute. And yet the question is more important than can be figured out at first sight and the history of the problem is more complicated than a few words can show.

Disputes concerning nationalities arise in the past and continue to arise today. As long as there was a distinctive value to a foreigner, as long as there is today some difference between the rights of a foreigner and those of a native, there always were and will always be cases in which the nationality of the individual is important to be determined. When a conflict on nationalities arises before a court one of two organs may settle the conflict and determine the nationality: either the court handling the case will settle the question of nationality and proceed with the case, or the court will refer the conflict to another organ which will settle it and then advise the court.

The Ottomans had a special department known as the Bureau of Nationalities to settle conflicts pertaining to nationality.[1] The functions of that bureau were very important: in the first place the distinction between a foreigner and an Ottoman was very important and carried important results on account of Capitulations, in the

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1. Nicholas--Notes sur la Nationalité en Syrie et au Liban.

second place the bureau had not only legal but also political powers. It did not only belong to that bureau to determine the nationality of an individual, but it also fell upon it to state whether this individual, belonging to this or that nationality, enjoyed this or that category of privileges or immunities. The decisions of the Bureau were based on a good knowledge of the game and intricacies of capitulations.

The High Commissioner in Syria re-established the same kind of bureau under the name of Bureau des Nationalités, by an arrêté no. 1809, dated January 15, 1923. Although capitualtions had been suspended, yet because of the judicial organization of the country there was still interest in distinguishing nationalities one from the other. This Bureau functioned for several years and proved to be impartial in its decisions. It did not have any political power for it only acted upon the demand of a court where a case was pending. It only determined the nationality of the person in question and the court was left to settle the question as to whether that individual enjoys the privilege of having his case come before Court of "Causes Etrangères" or not.

Arrêtés 15/S and 16/S abolished the Bureau des Nationalités as is evidenced by article 9 heading this appendix. The civil Courts in Syria, like those in France, are, according to this article, competent to settle conflicts of nationalities. The Courts hailed with pleasure, and authors agreed, almost unanimously, that the measure taken is the most logical one.[1] Cogordan was then able to write: "Rien n'est plus juste que d'avoir confié au magistrat seulement la connaissance des questions si delicates et si importantes que soulève

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1. Ghali--op. cit. 253; Recueil des Acts Ad. 1923.

la loi sur l'allégeance. Les formalités dont sont entourées les décisions judiciaires, l'instruction pénale préalable, la publicité des audiences, les modes de recours, sont des garanties que l'on chercherait vainement, si l'affaire devait être tranchée sommairement dans les bureaux de l'Administration Publique."[1]

Inspite of all the advantages gained by the suppression of the Bureau des Nationalités--the problem was not completely settled. Practical considerations have rendered the new measure almost inapplicable. By leaving it to courts to settle questions of nationality it was made possible to stamp an individual with different nationalities depending upon whether the case comes up before this or that court first. In Tripoli an individual may be declared a Lebenese and made to stand before a court composed of Lebenese magistrates, in Beirut. The same individual may be declared foreigner and made to stand before a court of "Causes Etrangères".

In order to avoid such contradictory judgments it was found necessary to abrogate this article 9 of the law of January 19, 1925. The law on the judicial Organization of February 17, 1928, reverting to past arrangement, established a special commission, outside of the courts, to decide upon all conflicts relating to nationality. Article 9 lived three years and was substituted by an organization similar to the Bureau des Nationalités.

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1. Cogordan: La nationalité au point de vue des rapports internationaux, 2e. Edition, p. 1102 and 1103.

The story of the Bureau des Nationalités did not end here. Its functions being very important, its jurisdiction being vast and of significant results, this Bureau has been open to a big number of changes and modifications. On March 25, 1935 the arrêtés of February 17, 1928, were abrogated by an arrêté No. 66/LR[1]. According to this arrêté the Commission des Nationalités is declared the only organ competent to deal with matters of nationality. Article 3 widens the jurisdiction of the Commission by stipulating that administrative as well as judicial authorities may bring cases forth before it. Articl 4 states that the Commission may not deliberate unless at least three of its members take part. This stipulation, however, was modified on November 3, 1939, by an arrêté No. 308/LR[2] which in view of the war conditions, renders valid deliberations made by the Bureau even when only two members take part.

Further change in the Bureau des Nationalités was made on June 28, 1935, when arrêté No. 145/LR[3] modified its composition. Whereas arrêté 66/LR of March 25, 1935, had provided for the advisor on Political affairs as president, and the Head of the Diplomatic Bureau, the legislative Advisor and an advisor of the Court of Cassation as m members, the arrêté No. 145/LR, replaced the last member of the previous arrêté by "a French magistrate on service in one of the jurisdictions whose seat is in Beirut", leaving the president and the rest of the members intact.

So much to show that conflicts on nationality are solved by a special organ, the Bureau des Nationalités. The process of experimentation, however, is not at an end. The Bureau des Nationalités received her second death blow on July 27, 1940. On that day an arrêté No. 197/LR decreed the death when it stipulated in its article 1 that conflicts in matters of nationality shall fall under the jurisdiction of Civil Courts for foreign cases. It is clear, therefore, that such a measure abrogates arrêtés 66/LR, 145/LR and 308/LR of Marc 25, 1935, June 28, 1935 and November 3, 1939. The Bureau des Nationalités is no more.

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1. Bulletin Officiel du H.C.F., April 15, 1935, p. 133.
2. " " " " " " , July 15, 1935, p. 275.
3. " " " " " " , December 7, 1939, P. 3859.

CHAPTER VII

Syrian Nationality and the Neighboring States

The purpose of this chapter is three-fold: to point out to the political problems arising between Syria and the neighboring lands out of nationality legislation, to investigate into these legislations with a view to find out if historical, racial and cultural community between these lands and Syria have been taken into consideration, and finally, to suggest such measures as might seem advisable for the betterment of relationships among Arab countries. From this it becomes clear that it is not proposed to make a study of the conflict of nationality laws among these countries, such a study being of the scope of private international law and not of that of Syrian law which has only a national character. A study of this sort should not have found place in our work, but the fact that Syria and her neighbors are so much related to each other, and that the Arab aspirations have so often been directed towards creating more political unity among Arab states, these facts, it was thought, are sufficient reasons to make our attempt, if not worth while in its outcome, at least advisable in its intention.

Syria borders on Turkey and on three other states detached from Turkey, like her, by the Treaty of Lausanne. Palestine and Trans-jordan lie to the South, Iraq lies to the East. A fourth country is Egypt. Although it does not border on Syria, yet because of racial and linguistic affinities and because of the many Syrian natives settling in it deserves a great deal of our attention. The Kingdom of Su'udi Arabia will be mentioned along with the rest not so

much for its close relationships with Syria as for its being an undetachable unit from any study concerning the Arabs and the Arab nationality. Turkey, the heart of the old Ottoman Empire, Iraq, Palestine, Transjordan, Egypt and Su'udi Arabia are therefore, the countries to be considered in their relationships with the Syrian nationality. As Turkey is a non-Arab country from which the Arab people were only too glad to detach themselves, we shall discuss its relationships with Syria separately taking up only those nationality problems created by its own dismemberment.

It will be remembered that article 31 of the Lausanne Treaty made provisions for Ottoman subjects acquiring the Syrian nationality to opt for Turkey within two years from the application of the Treaty.[1] It was pointed out also that the Lausanne Treaty failed to provide any solution to the case of Syrian natives living in Turkey and who wish to opt for the Syrian nationality. Options of Turks in Syria, for Turkey, and options of Syrians in Turkey for Syria, have already been discussed and the legal solutions have already been mentioned.

Neither the solutions proposed by the Treaty of Lausanne in regard to options for Turkey, nor those laid down by the Ankara Convention[2] concerning options for Syria proved practicable. The two years delay for option and the twelve months delay for transfer of residence given by Lausanne were not sufficient to make any effective option or transfer. More so was the six months delay for option and the twelve months delay for transfer set by the Ankara Convention. In both cases there were complaints and protests. In

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1. See chapter III on Options.
2. Treaty of Bon-Voisinage, May 30, 1926.

both cases there was much difficulty in harmonising between the national feeling and the economic condition created by the necessity of transfer of residence and of movables.

The delay of option for Turkey expired on August 30, 1916.[1] The Mandatory Power in Syria extended the delay till August 30, 1927. As this date did not meet with satisfactory results for Turkey the High Commissioner for Syria made it known that the delay is prolonged till January 31, 1929.[2] On the Syrian side, however, the situation was different in view of the strict attitude taken by Turkey. The Turkish claim was that logic demands that it should be made more difficult for Turkish subjects to renounce their Turkish nationality than it is made for Syrian subjects to regain their Turkish nationality lost to them by the Lausanne Treaty. Hence, when following the stipulations of the Ankara Convention, the delay for option expired, Turkey reluctantly prolonged it till 1927. And when, in 1927, Lebanon asked for another prolongation Turkey refused to grant it announcing that the only channel left for Syrian natives in Turkey to follow is that of naturalization.

A new problem of options arose again in 1930. On April 3, 1930 a protocol was signed with Syria defining the Turco-Syrian frontiers. Following the frontier line drawn by this protocol some territories already in Syria fell to Turkey and others in Turkey fell to Syria. This exchange of territories made the question of options arise again. The same protocol provided, however, for a three-months delay within which options for Syria or for Turkey should be made.[3] It is interesting to note that thirty five

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1. This is two years after the application of the Treaty of Lausanne
2. H. C. R. 1929 - 1930
3. H. C. R. 1930 - 1931.

families in Turkey opted for Syria and that none in Syria opted for Turkey, a fact which shows, among other things, that boundaries were not drawn on strictly nationalistic basis.

The problem of options between Turkey and Syria was never settled. There were not only the dates of options, but also the dates of transfer of residence and whatever economic complications that follow it. There was also, and here is the most important of all problems, the case of Syrian native emigrants who still had Turkish nationality for having failed to enjoy the facilities offered to them by article 34 of the Lausanne Treaty. The League of Nations, approached by France on more than one occasion, had to leave it officially to her to settle this problem with Turkey. The Franco-Turkish Treaty of May 29, 1935, drew out some provisions for settlement. It stipulated that emigrants of Syrian origin have another delay of one year beginning May 29, 1937, to opt for Syria. This Treaty simplified the formalities of options and Syria began to make plans for the reception of her thousands of children abroad. It was just after this Treaty that Lebanon formed that well known "Office des Emigrés" in order to facilitate matters for those 300,000 Lebenese native emigrants still under Turkish jurisdiction.[1]

This much for options and their effect on subjects of Syrian origin. As a country bordering on Syria, Turkey is in close touch with private life in this country and so it is interesting to glance over the reforms and changes made in its nationality which have a bearing on the national status of Syrians who come in touch with Turks.

One of the most important principles followed by the Ottoman

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1. H. C. R. 1936.

nationality law has been that of perpetual allegiance. It has been taken up in the case of the law of 1869, and it has been taken up also in the case of the Syrian law. The Turkish law of May 28, 1928, has kept this principle in its article 7 by stating that the abandonment of the Turkish nationality is subordinate to a special authorisation obtained upon a request addressed to the Minister of the Interior and by a decision of the Council of Ministers. As in the case of Syria the reasons which had motivated perpetual allegiance in this country had also disappeared in Turkey, and to a larger measure too. Turkey has become now a modern state in the juridical sense. Nationality laws are in complete harmony with the principles of international law as generally adopted in Europe. The evolution which started at Gul-Khaneh in 1839 is completed in 1923. Secularization of the stae institutions made a tremendous progress. The Caliphate was abolished on March 3, 1924, and complete separation of Church from the State was inaugurated. Article 38 of the Lausanne Treaty provides guarantees to minorities, Religious distinctions are no more a basis of differenciations among subjects; all Turks are equal before the law. Above all, Capitulations, repudiated unilaterally by Turkey in 1914, have been officially abolished by article 28 of the Lausanne Treaty. All these modifications would have been good reasons to wave out the principle of perpetual allegiance which still stands as firm as ever before. If a Turkish subject gets a Syrian naturalization without his government authorization he will continue to be considered a Turk.

It is also important to emphacize the significance of secularization in Turkey. As the majority of Syrians belong to the Moslem

religion it is worth noting that conversion to Islam is no more a means of acquiring the Turkish nationality as was the case under article 4 of the law of 1869 used by the Council of State for such purposes. Neither a Syrian Moslem, nor a Christian Syrian converted to Islam, can seek any favor in Turkey by using religious factors as means for acquiring Turkish Nationality. It is only after five years residence or by special favor granted by the Council of Ministers that naturalization can be obtained.[1]

Marriage is another source of international relationships creating changes in national status of individuals. The Turkish nationality law is one which is in direct conflict with the Syrian and so it deserves some study. "Foreign women", stipulates article 13, "who get married to Turks become Turkish citizens, and Turkish women who get married to foreigners remain Turks". The first part of this rule does not create any conflict with Syria for the Syrian law recognises the loss of the Syrian nationality for a woman who marries a foreigner if the law of the latter grants her the husband's nationality. On the other hand, to state that a Turkish woman remains Turk after her marriage to a Syrian is irreconcilable with the Syrian rule making the foreign woman acquire the nationality of her Syrian husband. What this means, therefore, is that a Turkish woman will have a double nationality; she is Syrian before the Syrian law and Turkish before the Turkish law.

Although such conflicts are unavoidable yet it is regrettable, in a way, to have cases arise between two countries whose citizens are likely to intermarry because of the proximity of territories, if not for many other causes. When conflicts of this sort do arise among neighboring states the general measures commanded by the law

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1. Art. 5 and 6 of the law of 1928.

are usually tempered by means of special agreements in the form of treaties and protocols, etc. The case of Turkey and Syria remains hanging.

With these few points we end our brief survey of the nationality relationships with Turkey. It will be seen that the separation between the states has become complete. Neither history nor religion form any common ground on which the two nationalities meet. There were no racial, or linguistic, or cultural ties to unite Syria to Turkey when one made the other a part of her Empire; there are, today, no more legal ties to make the two countries even remember that they were, at one time, artificially united.

Coming now to the Arab countries having relationships with Syria we begin by taking up Egypt. This land had a peculiar situation at the time the Lausanne Treaty was signed. Whether Egypt is a state detached from the Ottoman Empire by Lausanne, or whether it was already a state before the Treaty, is a question on which jurists have very much dwelt without arriving at a definite conclusion.[1] Egypt's peculiarity lies in the fact that even when it formed a part of the Ottoman Empire it had its own internal nationality as distinct from the general Ottoman nationality.[2] From the international standpoint an Egyptian native was an Ottoman subject, but from the purely national viewpoint he was an Egyptian indigenous by virtue of the law on indigineity of 1855 and of 1892. This double nationality does not concern us here for the other peculiarity is more important. If Egypt had continued to exist as strictly a part of the Ottoman

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1. See Abdul-Hamid Badawi Pacha: Aperçu sur la question de la nationalité Egyptienne; Ghali: Les nationalités détachées de l'Empire Ottoman.

2. See chapter I.

Empire until the end of the World War as Syria did, the Lausanne Treaty would have been applied in her case and the problem in respect to her would not have been different from that in regard to Iraq. But conditions were different. On December 18, 1914, Great Britain declared her Protectorate over Egypt and severed the legal tie, hoever weak it might have been, which bound the Nile Valley to the Sublime Porte. On March 15, 1922, Egypt was declared an independent kingdom and King Fouad I ascended the throne. On July 24, 1923, the Treaty of Lausanne was signed.

These three dates are remarkable. The first lies before the Treaty of Sèvres, the second after Sèvres, and the third after the independence of Egypt. This means that the Treaty of Sèvres, lying after the unilateral act of creating a British Protectorate and before the Independence Act of 1922, could legislate for Egypt and for the Egyptian nationality. The Treaty of Lausanne, on the contrary, coming after February 28, 1922, date of the abolition of the British Protectorate, and after March 15, 1922, date of the Proclamation of the Egyptian Independence, did not make any allusion to the nationality of Egyptians although in questions of nationality related to other states it repeated the same stipulations laid down by Sèvres. But such a situation cannot but call for clarification due to the fact that, after all, Egypt contained a big number of Ottoman subjects whose national status is determined only by the Lausanne Treaty. Independent Egypt cannot entirely escape the influence of Lausanne.

If Lausanne did not directly settle the problem of Egyptian nationality in regard to Syria and other ex-Ottoman provinces, it did not fail, however, to provide a solution to the difficulties which might arise of Egypt's non participation in the Peace Treaty.

Article 19 of Lausanne bridged the gap:

"Des stipulations ulterieures, à intervenir dans des conditions à déterminer entre les puissances intéressées, régleront les questions naissant de la reconnaissance de l'Etat Egyptien, auquel ne s'appliquent pas les dispositions du présent Traité relatives aux terrétoires détachés de la Turquie en vertu du dit traité."

The day following the signing of the Lausanne Treaty, on July 24, 1923, Great Britain and France, aware of the necessity of finding a right solution to the national status of individuals touched by Lausanne, signed an agreement between themselves advising that the French Government, acting for Syria, and the Egyptian Government come to a settlement on the determination of the conditions for options. The Franco-British agreement runs as follows:

"Les Délégations Britanniques et Françaises, considerant que le Gouvernement Egyptien n'est pas signataire du Traité de Paix avec la Turquie en date de ce jour, et que les conditions d'acquisition de la nationalité égyptienne par les ressortissants turcs établis en Egypte ne sont pas encore fixées, sont d'accord pour juger necessaire qu'avant, ou, aussitôt que possible, après la mise en vigueur du Traité de Paix avec la Turquie, conformément à l'article 34 du dit Traité, un accord à conclure entre le gouvernement Egyptien et le gouvernement Français, agissant pour la Syrie et le Liban, précise les conditions d'option prévues par cette stipulation. Le délai courrait à partir de la conclusion du dit accord." Following the terms of the above convention an agreement for determining the conditions of option was arrived at between France on behalf of Syria, and Egypt, on March 11, 1925.

The above mentioned texts clearly show the intricate problem of the Egyptian nationality in its relationship with the national status of the natives from territories detached from the Ottoman Empire and more especially with Ottoman subjects in Egypt of Syrian origin. Benefiting of the special tie which bound Egypt to the Ottoman Empire thousands of Syrian natives had migrated to the Nile Valley long before the World War. They settled there and prosperously built up a situation which made them look upon Egypt as a second home. In business, literature and politics they stood among the leaders. The intellectual and national life in Egypt was greatly contributed to through their incessant efforts. They became assimilated to the Egyptian autochtones. They were not conscious of their original home, Syria, as long as Egypt was looked upon as a part of the Ottoman Empire. Their view, as well as that of their government, changed, however, when the end of the world war presented them with a home independent from Turkey. Now that Syria is a separate unit many of them wanted to bear allegiance to her. The Treaty of Lausanne offered two means for doing so. Either they would have to opt for Syria according to article 32 and consequently transfer their residence to Syria by virtue of article 33, or they have to opt according to the terms of article 34 and keep their residence in Egypt if they wanted to.[1] It was pointed out in an earlier chapter, and has been repeated again in this, that Egypt was not effected by the Lausanne Treaty and so the Syrian had to obey not to international stipulations but to a rule of a completely national order. The stipulations have been mentioned. But the

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1. See chapter III on Options.

law of 1926, discussed earlier for its theoretical value, was abrogated, and it is in the décret-loi of February 27, 1929, that we have to seek a solution for the problem with Syria for it is here that is formulated the Egyptian Nationality Law.

The law of 1929 differs in many ways from that of 1926 in regard to options. Whereas the latter required a transfer of residence within six months from option, the latter, in its article 2, does not make this requirement. Paragraph 2 of this article states that "unless it is otherwise stipulated, the optors may be submitted to the obligation of leaving the Egyptian territory." The same paragraph, indicating the time within which a person has to leave, if he is required to, says "within six months from the injunction which will be sent to him by the Ministry of the Interior." The difference here is enormous. In 1926 the Syrian native had to leave for Syria six months after his option for it. By the law of 1929 he will remain in Egypt unless the Ministry of the Interior requires him to leave in which case he will do so six months after receiving the order.

Another difference between the law of 1926 and that of 1929 lies in the fact that the former annuled the option of one who does not leave the country within the prescribed period or who comes back to Egypt within five years from his leaving it, and considered him Egyptian, whereas the latter expelled, by force, an individual who does so. In the first case a Syrian native who has opted for Syria without leaving Egypt within six months is considered not to have opted for Syria but to have remained Egyptian.[1] In the second case, which is the one actually in practice, a Syrian native who does not

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1. An Egyptian, according to parag.3, article 1, of the law of 1929, any Ottoman subject who had his habitual residence in Egypt on Nov.5,1914,and who has maintained this residence up to the publication of the present law.

leave Egypt within the prescribed delay after the order to do so is expelled from the country. This new measure is, undoubtedly, more in harmony with the spirit of the Peace Treaties which aimed at grouping nationalities according to their free will and desire. One who has opted for Syria should not be made Egyptian after his choice has become manifest. Better send him to Syria the land he has chosen to belong to.

Still a third difference is seen in the category of individuals who are automatically considered Egyptians. According to the law of 1926 are considered Egyptians not only those whose habitual residence was in Egypt before or on November 5, 1914, but also those who had it after November 5. While considering as Egyptian all Ottoman subjects whose residence in Egypt dates back to November 5, 1914, the law of 1929, does not grant such nationality to those Ottoman subjects who had their residence in Egypt after that date. Article 3 stipulates that "Ottoman subjects who have fixed their habitual residence in Egypt after November 5, 1914, and who have maintained it up to the publication of the present law, may demand, within a year from the said publication, to be considered as having acquired the Egyptian nationality. Failing to do so these individuals will have to submit to the obligation of leaving the country according to the conditions prescribed in the previous article."

To sum up: Syrians whose habitual residence was in Egypt before or on November 5, 1914, and maintained it up to February 17, 1929, are considered Egyptian subjects. If their habitual residence in Egypt was after November 5, 1914, and continued up to February 27, 1929, they may gain the Egyptian nationality upon a

request, which cannot be refused, filed before February 27, 1930. If they had their habitual residence in Egypt before or on November 4, 1914, but did not maintain it up to February 27, 1929, they may gain the Egyptian nationality upon a request, which may be refused by the Council of Ministers, filed between February 27, 1929, and February 27, 1930, in which case the candidate may be required to enter Egypt within a period prescribed by the Minister of the Interior. Also, a Syrian in Egypt may opt for Syria and lose the Egyptian nationality. In that case the Egyptian Minister of the Interior may order him to leave the country and he will have to do so within six months from the date of the order. If he does not leave Egypt the Egyptian authorities will make him leave it. It may happen that a Syrian native opting for his native country will not be required to leave Egypt.

The question that worried Syria most is that of having Syrians in Egypt leave the country upon their option for their native land. The Mandatory Power in Syria took up the matter with the Egyptian authorities and the result was nothing but an assurance on the part of the latter that the measure of forcing Syrians to leave Egypt will be used with utmost discrimination and that it is only intended to clean up the country from undesirable elements. Actually the number of Syrians who had to fall under this obligation was too slight to deserve any attention.

Considering now the Egyptian law on nationality from the internal stand point we will notice, first and foremost, that Egypt still sticks, with valid reasons, to the principle of perpetual allegiance. Article 12 is very specific in requiring that an individual who wishes to acquire a foreign nationality has to obtain

an authorisation from the Egyptian Government. In Egypt, more than any where else in the Arab world, the foreigner still has privileges and immunities which remind one of the days when Capitulations were in their full swing in the Ottoman Empire. Mixed Courts, not Consulor Courts, have jurisdiction over cases involving foreigners. Perpetual allegiance is, in Egypt, a sound measure for preserving the country's children.

The influence of marriage upon national status in Egypt does not conflict with the Syrian law. An Egyptian woman who gets married to a Syrian loses her nationality of origin since the Syrian law grants her the nationality of her husband (article 14). A Syrian woman, according to the same article 14, who gets married to an Egyptian becomes Egyptian citizen without any obstacle coming from her national law. However, a certain requirement was made later according to which the future wife of an Egyptian will have to notify the Ministry of the Interior of her intention to marry an Egyptian in order to secure an authorization to gain the Egyptian nationality.[1] The purpose of this authorization is to avoid granting Egyptian nationality to immigrants whose number has increased lately and who seek gaining the nationality by a "Mariage de Complaisance". It will be worth while for Syria to adopt the same measure and apply more discrimination in granting a nationality to foreign women married to Syrians.

Although Egypt is a separate political unit from the rest of the Arab world, although it has not taken as active a part in the movement for Arab unity as the other smaller states have in post-war years,[2] yet there are several evidences to reveal that it, the

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1. Verbal information given by the Egyptian Consulate in Beirut. Text sources unknown.
2. The part she played in the XIX Century in Arab national movement is a great one.

greatest of the Arab states, has not severed herself from the rest of the Moslem Arab world. Paragraph 4 of article 6 declares to be Egyptian children born in Egypt from a foreign father he who was born there provided he belongs by race to the majority of the population of a country of Arabic language and of Moslem religion. Again in requiring a period of ten years residence to fulfill prerequisites for naturalization article 8 adds that the candidate should know the Arabic language. Still again, aware of the fact that heads of religious communities have a great influence on the members of their congregation, and seeking a policy of assimilation and uniformity, Egypt grants its nationality, without any further condition, to heads of Egyptian religious communities. Religious communities in Egypt being in close community of faith with the rest of the Arab world, their heads, if foreigners, may be of Syrian or any Arab origin. If they happen to be of Greek origin, which fact is very likely to occur, the relationship with many Christians in Syria who profess the Greek Orthodoxy will still be a close one.

Egypt is one of those countries which had adopted a measure for depriving a person from his Egyptian nationality which we have strongly recommended for Syria. A foreigner who has acquired the Egyptian nationality by naturalization, (art. 8) or by birth in Egypt (Art. 7) or by established residence (art. 9), may be deprived of his nationality if he has acquired it by false declarations or fraudulous means, or if he has been condemned in Egypt for a criminal pain with two years imprisonment, or if he has committed an act, endangering internal and external security of the state, or, finally, if he has propagated submissive ideas contrary to the fundamental principles of the Constitution by means of speeches, writings

or any other means of publication. From the above it is clear that Syrians who have automatically acquired the Egyptian nationality by virtue of articles 1, 2, 3 and 4 do not fall under the rule expressed by this measure. It is only foreigners who have newly acquired the Egyptian nationality that can be deprived of it. Syrians, in that respect, are looked upon as having been assimilated and are in every way, treated like Egyptians.

Two countries, Syria and Egypt, which have for generations entertained close relationships in the economic, cultural, national and political fields; two countries with a strong community of language and religion; two countries so geographically near to each other and in which live two intelligent and capable peoples who stand at the foundation of any Arab understanding and unity, such countries whose inhabitants know so well each other, could develop more harmonious nationality legislation than they have done so far. A Syrian is naturalized Egyptian after ten years residence, and an Egyptian is naturalized Syrian after five years. Better results would be attained if any one of them is made to gain the other country's nationality after one year residence preceded by a declaration of his future intention of getting naturalized. The relation between an Egyptian and a Syrian is not the same as that between any one of them and an Italian or a Greek or a French. Egyptians who spend the Summer Season in the Lebanon mountains feel much more at home than they do in Cyprus or in Switzerland. They are never a problem to the country. They add to its cultural life and their striking homogeneity is encouraging to any future measure for closer legal ties.

Nationality gained through marriage should not be hampered by any previous authorization based upon investigation. If this measure is necessary in the case of European immigrants or Jews it is not at all necessary in the case of Syrian women. Intermarriage between the two countries has existed for long years and the balance has always been more favorable to Egyptian families. A Syrian woman should, therefore, be made Egyptian without delay and not be treated as though she were a complete foreigner.

While it is true that legislation should be general and should not make discriminations between individuals and states it applies to, it is also true that by means of agreements and treaties many laws can be waved out and many rapproaching measures adopted. It is true that several treaties have been signed between Egypt and Syria settling questions of nationality. But the field remains vast for a better understanding when Syrian negotiators, not French, get together with Egyptian negotiators to lay down solid but intimate principles for a better Arab understanding.

The next Arab countries to be considered in their relationship with Syria are Iraq, Palestine and Transjordan. Like Syria, these three states were separated from Turkey by the Treaty of Lausanne; like Syria they were placed under a Mandatory Power to give them advice and assistance; and like Syria they started their national existence before Lausanne was actually signed and put into effect. But whereas, like Syria, Iraq and Palestine received Mandatory Power by virtue of article 22 of the League of Nations Pact, Transjordan received her Mandate System according to the provisions of article 25 of the same Pact. It should be remembered that the

Mandate over Palestine had a triple purpose; first, to undertake a political education of the people, second, to develop in Palestine a National Home for the Jews, and third, to see that civil and religious rights of other communities in Palestine do not suffer because of the special situation given to the Jews. Following the second and third of these three purposes it was found wiser to separate the land to the East of the Jordan from the rest of Palestine since the Jews are known to have had no historical ties with that portion of the land. Hence, the article 25 of the Pact gives power to the Mandatory state to organize and administer the land East of the Jordan as a separate unit.

Of all the three countries Iraq acquired the most and Palestine the least favorable political status. The relationship between Iraq and Great Britain, the Mandatory Power, was determined, from the start, by a Treaty of alliance signed on October 10, 1922. The country made such a political and economic progress that by June 30, 1930, another Treaty was signed between Great Britain and Iraq preparing the latter's admission into the League of Nations. On July 1932 the Assembly of the League voted to admit Iraq as a member and on October 6 of the same year it became a regular member.

The political situation in Palestine is quite different. The country falls under the Mandate A type but the power of the High Commissioner is so vast that it includes that of administering and of legislating without the participation of the native inhabitants except in what the Mandatory's representative sees fit. This situation is in striking contrast with that of Transjordan where the local government exercises the power. In 1928 an agreement was signed between the Emir of Transjordan and Great Britain whereby

the latter leaves the power of administration and legislation to the former who will be assisted in his functions by a Legislative Council. The Emir, in return, agreed to adapt the organisation of the country to the obligations and responsibilities the mandatory power has. It is understood, however, and here the situation becomes critically different, that the Emir accepts to be guided by the advice of the British Resident in all matters that concern foreign policy, financial obligations and international interests of Great Britain in Transjordan.

Each of the three countries has a separate nationality of its own and each one of them like Syria, had to observe the measures and provisions laid down by the Lausanne Treaty. Article 30 of Lausanne, having laid down the principle of the change of nationality in the territories detached from the Ottoman Empire, it was left to these detached states to set their rules of the change. It will be remembered that Syria adopted the date of August 30, 1924, as the starting point for the change of nationality. Iraq did not do the same. Her starting point was August 6, 1924, and the date set for the beginning of the habitual residence was August 23, 1921. This difference in dates with Syria would, theoretically, mean that a native Syrian residing in Iraq before August 6 will have become Iraqi subject if he has been settled there since August 23, 1921. He could not become Syrian except by option for the Syrian nationality was not established until 24 days later. In regard to options for Syria or other detached territories the principles of articles 31, 32, 33, 34, and 36 of Lausanne are the same for Iraq as well as for every other Arab territory.

Iraq seems to have become very jealous about her nationality especially after she gained independence and was admitted into the League in 1932. Her nationality law, dated October 9, 1924, (the earliest nationality law in the mandated territories) was modified at four intervals each of which coincides with an important political development. The first three amendments of February 5, 1925, of January 10, 1928 and of June 5, 1932, do not give us any change important to our subject. The last amendment, that of August 15, 1933, is very important for us since it has a bearing on Ottoman subjects. A decree issued that year under the number 62 reads as follows: "The Council of Ministers has the power of depriving of his nationality any Iraqi who does not belong to a family residing in Iraq before the World War if he does or tries to do an act considered a danger to the state and her safety." This measure simply means that an Iraqi subject who is not a native of Iraq could lose his Iraqi nationality by an order of the Council of Ministers. The reason why this measure was taken is known. A group of Assyrians, fleeing the Turkish persecution at the end of the World War, had sought refuge in Northern Iraq where they received hospitality and, like the Armenians in Syria, were granted the Iraqi nationality. When Iraq became an independent state these Assyrians thought that their life has become endangered since they can no more count on British help and protection. Mar Sham'un, their spiritual and temporal head, organized a revolt which was ruthlessly checked by the Iraqi army. In order to deprive Mar Sham'un and his associates of the Iraqi nationality they had been enjoying so far this decree was promulgated. But the Assyrians were not the only people

against whom this decree was enforced. In the summer of 1941, following the failure of an uprise of the Iraqi government against the British authorities, the decree was enforced against an Iraqi subject who gained his nationality at the early date of the change of nationality from Ottoman to Iraqi, but whose family, Syrian by origin, was not residing in Iraq before the World War.[1] This Syrian native was deprived of his Iraqi nationality and was made to leave Iraq.

Palestine has also her own nationality law which dates back to the first of August 1925. The interesting point about the Palestine Order in Council of 1925 is that it was issued on the first day of August 1925 and sets for the starting point of options a much earlier date, August 6, 1924, the same as that adopted by Iraq. These stipulations in the Palestine Order have a great bearing on the Syrian national status. According to parag. 1 of article 1 all Turkish subjects habitually resident in the territory of Palestine upon the first day of August, 1925 shall become Palestinian citizens. Hence, a Syrian native residing in Palestine at that date would become Palestinian. He could not have become Syrian on August 30, 1924, for although he is a native of Syria, yet he is not an Ottoman subject residing in Syria. The only way for him to become Syrian is opt for Syria. But the option in Palestine has been given a very short term. In other countries Iraq and Syria, it has been set at two years from the publication of the law. In Palestine it has been set at two years beginning one year before the publication and leaving nothing but one year for after the publication.

How much better it would have been if all the Arab countries had adopted one date for the change of nationality instead of several which have added more to the complication of the situation.

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1. Sati' bey al-Husri was an Iraqi official of high standing, at one time Iraqi Minister of Education

Another peculiarity of the Palestine Order is that it uses the term citizenship and not nationality. Norman Bentwich sustains that this terminology has been used in article 7 of the Mandate in order to make the distinction which exists in the East between the allegiance to a state, which corresponds to citizenship, and the fact of belonging to a nationality, which is a question of race and religion.[1] Mr. Bentwich is undoubtedly referring to the fact that Palestine is composed of the Arab and the Jewish element, two groups which, ethnically, do not belong to the same nationality. Whether this explanation is correct or not is not a problem of our concern. The important thing for us to know is that the Balfour Declaration had a great influence on the Palestine citizenship. The first sign of this influence appeared in article 7 of the Mandate Act for Palestine:

"The Administration of Palestine shall assume the responsibility of promulgating a law on nationality. This law shall contain such clauses as might facilitate to the Jews who will settle in Palestine permanently, the acquisition of the Palestine citizenship."

The Treaty of Sèvres, at an earlier date, had provided in its article 129 an ipso facto naturalization of all the Jews settled in Palestine. A measure like that has no parallel in the annals of International Law. Here the signatory powers give up, renounce, in favor of Palestine, those of their subjects who are residents of Palestine. The Lausanne Treaty, however, abolished this provision completely and the Jews stood, after that, waiting for help to come to them from article 7 of the Mandate Act of 1922. The only favor

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1. N. Bentwich: "The nationality xxxx in the Mandated Territory" B.Y.B. 1926, quoted in Ghali, op. cit. 209.

given to them, and that is plenty, lies in the very short period of two years residence required to seek naturalization in Palestine. Another one could be found in the fact that a naturalized citizen in Palestine acquires full political and civil rights as a native.

The Transjordan nationality offers us another of those anomalies which politics usually create. The national status of the inhabitants was defined by a law dated May 1, 1928. This law, coming three years after 1925, has put an end to the strange situation in which the people of Transjordan lived. Between 1925 and 1928 the people had no nationality. It must be recalled that article 7 of the Mandate Act does not apply to Transjordan, but to Palestine alone. The Order in Council of July 24, 1925, had expressly set aside the people of Transjordan from the benefit of the Palestinian citizenship. Nor could these people, by virtue of the Lausanne Treaty, still continue to be Ottoman subjects, nor are they British subjects since the Mandate system recognizes that the Mandated territories must have a nationality of their own. The only possible definition of their nationality is that so wittily given by Norman Bentwich who says that between 1925 and 1928, they are "something like nationals of Transjordan under British protection."

Turning now from the political situation which has created the nationality laws to the national laws as they have been formulated we shall consider first, the measures provided for naturalization, and next the national status of the married woman in Iraq, Palestine and Transjordan.

Iraq has made it easier for an individual to acquire nationality by naturalization than Syria has. Whereas Syria requires five

years residence, Iraq requires only three. (Art.10) This facility with which Iraq naturalizes foreigners can only be beaten by that furnished by Palestine where a residence of two years is sufficient to make a demand of naturalization valid. Another peculiarity of the Palestine residence term lies in the fact that the two years do not have to be consecutive for parag. a. of article 7 speaks of "a period not less than two years out of the three years immediately preceding the date of his application." Transjordan has the same residence requirement as that of Palestine with one difference, e. g. that it requires two consecutive years.

Both, Syria and Iraq, have no language requirement for naturalization. On the other hand, Palestine requires the knowledge of one of the official languages and Transjordan requires the knowledge of Arabic from any candidate for naturalization. It looks very strange to see Iraq, the land of strong national consciousness, the leader in nationalistic movements, neglect such an elementary requirement as the knowledge of Arabic. One reason might be the fact that not all the inhabitants of Iraq are Arabs or of Arab origin. The Kurdish element, quite strong in the North of Iraq, might object to such measure.

Looking at the naturalization law in general one is struck by the strictness of the Syrian law and the facility rendered by the rest. These facilities are easy to explain. Palestine provides an easy naturalization for the thousands of Jewish immigrants. Transjordan tries to attract immigrants of Arab stock to settle in her vast plains and exploit them. Furthermore, Transjordan is in great need of a foreign Arab element to help in running the administration

and the different services of the state. Such foreigners, it was thought, have better become naturalized citizens easily. As for Iraq, it has followed that policy followed by any newly formed state; it tries to acquire new nationals and is afraid of losing any. By the short residence term, by the advantage given to the naturalized, Iraq has tried to make of the law of 1924 an instrument for the increase of her population.

Concerning the rules determining the cases of loss of nationality, we shall take up only those which have some bearing on the Syrian nationality. In Iraq a citizen loses his nationality if he voluntarily gets naturalized abroad (art. 13). However, the rule goes on to stipulate that if he shall at any time hereafter have his usual place of residence in Iraq for the period of one year he shall, if he continues to reside in Iraq, be regarded while in Iraq as an Iraqi national. The conflict with the Syrian law is quite evident. An Iraqi subject who gets a Syrian naturalization and goes back to live in Iraq will become again Iraqi after one year residence. He is Iraqi while in Iraq, but he is Syrian, from the Syrian standpoint, in Iraq as well as any where else. The same rule, in almost exactly the same terms, applies in Transjordan. Hence, a conflict is always apt to arise between Syria on one side, and Iraq and Transjordan on the other.

It will have been noticed that both countries do not apply the principle of perpetual allegiance still followed in Syria. It is very probable that instead of this principle the two countries have formulated such measures as will keep their nationals as citizens as long as they reside in their own country. Such a measure, however strict it is, may seem more reasonable and may create less

conflicts than that which requires a citizen to secure an authorization from his state in order to be able to get naturalized abroad.

National status is effected by marriage in the following terms:

"The wife of an Iraqi national shall be deemed to be an Iraqi national and the wife of an alien shall be deemed to be alien". (Article 17.)

"The wife of a Palestinian citizen shall be deemed to be a Palestinian and the wife of an alien shall be deemed to be an alien" (Article 12).

"The wife of a Transjordan national shall be deemed to be a Trans-Jordan national and the wife of an alien shall be deemed to be an alien." (Article 10).

Here are three laws which do not conflict with those of Syria. The Syrian law could be expressed in the same terms: The wife of a Syrian national shall be deemed to be a Syrian national and the wife of an alien shall be deemed to be an alien...if her husband's national law grants her his nationality. Iraq, Palestine and Transjordan grant their nationality to the foreign wife of one of their citizens and so a Syrian woman becomes Iraqi, Palestinian, or Trans-Jordanian by marriage, just as an Iraqi, Palestinian or Trans-Jordanian woman becomes Syrian by her marriage to a Syrian.

This, a brief survey of nationality relationships among Arab states of the Near East, has meant to show to what extent these states are separated from one another in political and legal matters. Iraq, Palestine, Transjordan, Syria, at one time four provinces of one vast Ottoman Empire, at another four provinces of one Arab Empire, have come to be so separate from one another that all the rules of

state game are applied in them in their minutest details. Thirteen centuries of union, though broken by uprises of provincialism and regionalism, were sufficient to develop among the inhabitants of these territories unity of language, of race, of traditions and of culture too strong to be forgotten under a régime which brought about their complete separation.

The seeds of their re-union exist. Arab unity is not a fiction. It is a reality to which serious consideration is being given by nationalists and patriots in the Arab lands. Arab unity has a cause and a history behind it, two factors which are strong enough to have it dare raise its head. Twenty five years of political separation are too insignificant to make the cause die. Twenty five years of political separation form a small proportion of the number of centuries of community life. The Italian aspiration for unity did not die because historical accidents broke up the Roman Empire into subdued provinces and independent states. National consciousness only kept dormant for a few centuries, but when the time came it woke up again and proved to be stronger than the dominating power of Austria, or the hampering power of the Pope, or the interventionist forces of international politics. When the right time came and the right leader was found in the House of Savoy the separate states and provinces of Lombardy, Venetia, Naples, Sicily, Parma, Modena, Romagna and the Papal States were annexed, one after the other, to the Kingdom of Sardinia to form one Italian unified state. The Italian cause was not stronger than the Arab; its claim to unification was not more justified. It was accomplished mainly through foreign intervention. The Arab unity might be accomplished through foreign non-intervention.

Let us not drift into a subject not much of our concern. What is to be pointed out is the fact that of all the factors called upon to support Arab Nationalism nationality is the one most neglected. Promoters of the idea preach economic and cultural collaboration among the Arab states as a first step towards a future possible unification. These two means are important and full of meaning. But one not less important is to formulate such nationality legislation or sign such nationality agreements and conventions as will bring the Arab inhabitants nearer to one another by abolishing that legal aloofness and strict separatism which has immediately followed the establishment of separate, independent political entities.

At this present moment the inhabitants of the different Arab states are not only treated as aliens in the respective countries, but in certain cases an alien stands ~~with~~ more privileges in Syria,[1] for example, than a citizen of a neighboring Arab state. There are many possible improvements upon the present nationality status which could be affected in order to bring about closer relationship. When a citizen of one Arab state comes to have the same civil rights of circulation and of profession in another as those of the latter's citizens, when he is granted the same freedom of speech, when he can more easily acquire the nationality of a state he resides in, when these and many other changes are made, then the Arab people will become less conscious of their differences and more conscious of their similarities, then they will be on the way to a closer, better, stronger national collaboration and union. So far the preaching of this has been the task of un-official enthusiasts. Our suggestion necessitates the formal intervention of governments in the different states.

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1. See chapter VI.

C O N C L U S I O N

Laws do not create a nationality; they only protect it and give it the right orientation. This is a fact which often escapes the intelligence of jurists and law makers and drive them into putting the ~~plough~~ cart before the horse.

Nationality is older than state. People lived together as a nation before they set themselves up as political entities called states. Relationships among human beings existed before there were any rules to determine those relationships. Such rules of conduct, taking the name of laws under a formal system of statehood, came only later to sanction, to recognize, to legalize whatever rules a community had developed. Those that did not harmonize with the practices of the group died; those that did not meet its needs and peculiar situation became obsolete. Nationality laws, like other laws, have to meet the desires of the natural grouping of men. They have to sanction, recognize and legalize the natural affinities of men.

It is often repeated that the spirit of the law is more important than the letter of the law. The decadence of the age of formalism in law is a sign of a tendency to approach the spirit of the rule and elude the strict formalism of a text which lacks harmony with human tendencies.

As Syria is seemingly approaching a stage in its political development when it will be called upon to determine its own national destiny the question of nationality must occupy the fore-

most place among the scores of other questions it is going to tackle. The nationality law of 1925, work of a French High Commissioner, result of unavoidable political and social conditions following the world war, has proved inadequate, after seventeen years experience, in many of its parts. On more than one occasion governments have tried to amend it. On more than one occasion they failed. Conditions have changed since then, experience has given many lessons, several problems promised a solution have not been solved. The new government or the succeeding governments must take the matter up seriously, give it much attention and make a study of the nationality law stressing such points as the acquisition of nationality by naturalization, mass naturalization, the national status of the Syrian emigrants and the cleansing of the country of undesirable elements who have benefitted of the existing facilities to enter the national fold.

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APPENDIX I

Loi sur la Nationalité Ottomane du 19 janvier 1869.

Art. 1.---Tout individu né d'un père ottoman et d'une mère ottomane, ou seulement d'un père ottoman, est sujet ottoman.

Art. 2.---Tout individu né sur le territoire ottoman, de parents étrangers peut, dans les trois années qui suivront sa majorité, revendiquer la qualité de sujet ottoman.

Art. 3.---Tout étranger majeur, qui a résidé durant cinq années consécutives dans l'Empire Ottoman, peut obtenir la nationalité ottomane, en adressant directement, ou par intermédiaire sa demande au Ministère des Affaires Etrangères.

Art. 4.---Le Gouvernement Impérial pourra accorder extraordinairement la nationalité ottomane à l'étranger qui, sans remplir les conditions de l'article précédent, serait jugé digne de cette faveur exceptionnelle.

Art. 5.---Le sujet ottoman qui a acquis une nationalité étrangère avec l'autorisation du Gouvernement Impérial, est considéré et traité comme sujet étranger; si, au contraire, il s'est fait naturaliser étranger sans l'autorisation préalable du Gouvernment Impérial, sa naturalisation sera considérée comme nulle et non avenue, et il continuera à être considéré et traité en tous points comme sujet ottoman.

Aucun sujet ottoman ne pourra, dans tous les cas, se faire naturaliser étranger qu'après avoir obtenu un acte d'autorisation délivré en vertu d'un iradé impérial.

Art. 6.---Néanmoins, le Gouvernement Impérial pourra prononcer la perte de la qualité de sujet ottoman contre tout sujet ottoman qui se sera fait naturaliser à l'étranger ou qui aura accepté des fonctions militaires près d'un gouvernement étranger, sans l'autorisation de son Souverain. Dans ce cas, la perte de la qualité de sujet ottoman entraînera de plein droit l'interdiction, pour celui qui l'aura encourue, de rentrer dans l'Empire Ottoman.

Art.7.----La femme ottomane qui a épousé un étranger peut, si elle devient veuve recouvrer sa qualité de sujette ottomane, en faisant la déclaration dans les trois années qui suivront le décès de son mari. Cette disposition n'est toutefois applicable qu'à sa personne; ses propriétés sont soumises aux lois et règlement généraux qui les régissent.

Art. 8.---L'enfant, même mineur, d'un sujet ottoman qui s'est fait naturaliser étranger ou qui a perdu sa nationalité ne suit pas la condition de son père et reste sujet ottoman. L'enfant même mineur, d'un étranger qui s'est fait naturaliser ottoman ne suit pas la nationalité de son père et reste étranger.

Art. 9.---Tout individu habitant le territoire ottoman est réputé sujet ottoman et traité comme tel jusqu'à ce que sa qualité d'étranger ait été régulièrement constatée.

APPENDIX II

Traité de paix de Lausanne du 24 Juillet 1923

Section II -- Nationalité

Art.30.---Les ressörtissants turcs établis sur les territoires qui, en vertu des dispositaons du présent traité sont détachés de la Turquie deviendront de plein droit et dans les conditions de la législation locale, ressortissants de l'Etat auquel le territoire est transféré.

Art.31.---Les personnes âgées de plus de 18 ans perdant leur nationalité turque et acquérant de plein droit une nouvelle nationalité en vertu de l'article 30, auront la faculté, pendant une période de deux ans à dater de la mise en vigueur du présent traité, d'opter pour la nationalité turque.

Art.32.---Les personnes âgées de plus de 18 ans qui sont établies sur un territoire détaché de la Turquie en conformité du présent traité et qui y diffèrent par la race, de la majorité de la population dudit territoire, pourront dans le délai de deux ans à dater de la mise envigueur du présent traité, opter pour la nationalité d'un des Etats où la majorité de la population est de la même race que la personne exerçant le droit d'option et sous réserve du consentement de cet Etat.

Art. 33.--Les personnes ayant exercé le droit d'option conformément aux dispositions des articles 31 et 32 devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté.

Elles seront libres de conserver les biens immobilliers qu'elles possèdent sur le territoire de l'autre Etat où elles auraient eu leur domicile antérieurement à leur option.

Elles pourront emporter leurs biens meubles de toute nature, Il ne leur sera imposé, de ce fait, aucun droit ou taxe soit de sortie soit d'entrée.

Art.34.---Sous réserve des accords qui pourraient être nécessarires entre les Gouvernements exerçant l'autorité dans les pays détachés de la Turquie et les Gouvernements des pays où ils sont établis, les ressortissants turcs, âgés de plus de 18 ans, originaires d'un territoire détaché de la Turquie en vertu du présent traité, et qui au moment de la mise en vigueur de celui-ci, sont établis à l'étranger, pourront opter pour la nationalité en vigueur dans le territoire dont ils sont originaires, s'ils se rattachent par leur race à la majorité de la population de ce territoire et si le Gouvernement y exerçant l'autorité y consent. Ce droit d'option devra être exercé dans un délai de deux ans à dater de la mise en vigueur du présent traité.

Art.35.---Les puissances contractantes s'engagent à n'apporter aucune entrave à l'exercice du droit d'option prévu par le présent traité ou par les traités de paix conclus avec l'Allemagne, l'Autriche, la Bulgarie ou la Hongrie, ou par un traité conclu par lesdites puissances autres que la Turquie, ou l'une d'elles, avec la Russie, ou entre elles-mêmes et permettant aux intéressés d'acquérir toute autre nationalité qui leur serait ouverte.

Art. 36.--Les femmes mariées suivront la condition de leurs maris et les enfants âgés de moins de 18 ans suivront la condition de leurs parents pour tout ce qui concerne l'application des dispositions de la présente section.

APPENDIX III

Arrêté No. 2825[1]

SUR LA NATIONALITE DES ANCIENS RESSORTISSANTS TURCS

Le Haut-Commissaire de la République Française en Syrie et au Liban,

Vu le décret du Président de la République en date du 23 Novembre 1920;

Vu le traité de Paix signé à Lausanne le 24 Juillet 1923 entre la France, la Grande-Bretagne, l'Italie, le Japon, la Grèce et la Roumanie, d'une part, et la Turquie, d'autre part, et notamment les articles 30 à 36 et 143 du dit Traité;

Vu les procès-verbaux dressés les 1er. et 6 Août 1924, constatant le dépôt des ratifications de la Turquie, de l'Empire Britannique, de l'Italie et du Japon;

Vu le dépôt des ratifications de la France effectué le 30 Août 1924;

ARRETE:

Art.1.----Sont confirmés de plein droit dans la nationalité libanaise et réputés avoir désormais perdu la nationalité turque les ressortissants turcs établis sur le territoire du Grand-Liban à la date du 30 Août 1924.

Art.2.----Les personnes âgées de plus de 18 ans, ayant perdu la nationalité turque et acquis de plein droit la nationalité libanaise en vertu de l'article précédent ont la faculté, pendant une période de deux ans à dater du 30 Août 1924, d'opter pour la nationalité turque.

Art.3.----Les personnes âgées de plus de 18 ans, ayant perdu la nationalité turque en vertu de l'article 1er. et qui diffèrent par la race de la majorité de la population du territoire de Grand-Liban peuvent, dans le délai de deux ans, à dater du 30 Août 1924, opter pour la nationalité d'un des Etats auquel est transféré un territoire détaché de la

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1. Arrêté 2825 bis for Syria is the same except that Syria is substituted for Lebanon.

Turquie par le Traité de Paix du 24 Juillet 1923, si dans cet Etat la majorité de la population est de même race que la personne exerçant le droit d'option. Si cet Etat accorde sa nationalité à la personne ayant exercé cette option, cette autorisation entrainera la perte de la nationalité.

Art.4.----Les personnes ayant, conformément aux dispositions des articles 2 et 3 du présent arrêté, exercé le droit d'option pour une nationalité autre que la nationalité libanaise devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté. Les personnes tenues, aux termes de l'alinéa précédent, de transporter leur domicile hors du territorie du Grand-Liban seront libres d'y conserver les biens immobiliers qu'elles possèdent. Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé de ce fait aucun droit ou taxe de sortie.

Art.5.----Les ressortissants turcs âgés de plus de 18 ans, orginaires du territoire du Grand-Liban et se trouvant au 30 Août 1924 établis hors du dit territoire de la Turquie, ont la faculté d'opter pour la nationalité libanaise, s'ils se rattachent par la race à la majorité de la population du Grand-Liban. Ce droit d'option devra être exercé, dans le délai de deux ans à dater du 30 Août 1924, auprès des agents diplomatiques et consulaires du Gouvernement français mandataire et, dans les territoires soumis à la souveraineté française, auprès des autorités administratives désignées à cet effet par le Gouvernement français. L'option entrainera l'acquisition de la nationalité libanaise, si le dit Gouvernement mandataire y consent.

Art.6.----Pour tout ce qui concerne l'application des dispositions du présent arrêté, les femmes mariées suivront la condition de leur mari et les enfants âgés de moins de 18 ans suivront la condition de leurs parents.

Art.7.----Le Secrétaire Général et le Gouverneur du Grand-Liban sont chargés, chacun en ce qui le concerne, de l'exécution du présent arrêté.

Alep, le 30 Août 1924.

(Signé) Weygand.

A P P E N D I X IV

Arrêté No. 16/S

SUR LA NATIONALITE SYRIENNE

Le Général Sarrail, Haut-Commissaire de la République française auprès des Etats de Syrie, du Grand-Liban, des Alaouites et du Djebel Druse,

Vu le décret du 23 Novembre 1920,

Vu l'arrêté No. 2825 bis du 30 Août 1924,

Sur la proposition du Secrétaire Général:

A R R E T E:

Art. 1.---Les ressortissants des Etats de Syrie, des Alaouites et du Djebel Druse ont, au point de vue extérieur, un seule et même nationalité, qui est la nationalité Syrienne.

---Les ressortissants des dits Etats ont respectivement la qualité de citoyen de chacun de ces Etats, dans les conditions et avec les attributs politiques qu'il appartient à ces Etats de déterminer.

SONT SYRIENS:--

1. Les individus nés de père Syrien,
2. Les individus nés sur le territoire des Etats de Syrie, des Alaouites ou du Djebel Druse, qui ne justifient pas avoir, à leur naissance, acquis par filiation une nationalité étrangère.
3. Les individus nés sur le territoire de Syrie, des Alaouites ou du Djebel Druse, de parent inconnue ou dont la nationalité est inconnue.

Art. 2.---L'enfant naturel dont la filiation est établie pendant sa minorité prendra la nationalité Syrienne, si celui de ses par ents à l'égard duquel la preuve de sa filiation a été faite en premier lieu est lui-même Syrien. Si cette preuve résulte pour le père et la mère du même acte ou du même jugement,

l'enfant prendra la nationalité du père, si ce dernier est Syrien.

Art. 3.---Peuvent être naturalisés, après enquête et sur leur demande, par arrêté du chef de l'Etat où ils résident au moment où leur demande est formulée,

1. L'étranger qui justifiera d'une résidence non interrompue de cinq ans sur les territoires de l'Etat de Syrie, des Alaouites ou du Djebel Druse.
2. L'étranger qui a épousé une Syrienne et qui justifiera d'une résidence non interrompue d'un an sur les territoires de Syrie, des Alaouites ou du Djebel Druse depuis son mariage.

L'étranger qui aura rendu des services importants à l'un des Etats de Syrie, de Alaouites ou du Djebel Druse, pourra être naturalisé, après enquête et sur sa demande, par arrêté motivé du chef de cet Etat.

Art. 4.---La femme mariée à un étranger qui se fait naturaliser Syrien, et les enfants majeurs de l'étranger naturalisé pourront, s'ils le demandent, obtenir la nationalité Syrienne sans condition de résidence, soit par l'arrêté qui confère cette nationalité au mari, ou au père ou à la mère, soit par arrêté spécial. Deviennent Syriens les enfants mineurs d'un père ou d'une mère survivante qui se font naturaliser Syriens, à moins que, dans l'année qui suivra leur majorité, ils ne déclinent cette qualité.

Art. 5.---La femme étrangère qui épousera un Syrien deviendra Syrienne.

Art. 6.---La femme Syrienne qui épousera un étranger perdra sa nationalité, à condition toutefois que la loi nationale de son

mari lui confère la nationalité de celui-ci, si non elle restera Syrienne.

Art. 7.---La femme qui aura perdu la nationalité Syrienne par l'effet de son mariage avec un étranger pourra, après la dissolution de son mariage, et pourvu qu'elle réside sur les territoires des Etats de Syrie, des Alaouites ou du Djebel Druse, ou qu'elle y rentre en déclarent qu'elle veut s'y fixer, recouvrer la nationalité Syrienne par arrêté du chef de l'Etat sur le territoire duquel elle réside ou rentre en déclarant qu'elle veut s'y fixer.

Art. 8.---Perdent la qualité de Syrien:

1. Le Syrien qui a acquis une nationalité étrangère, si cette acquisition a été préalablement autorisée par arrêté du chef de l'Etat dont il est ressortissant.
2. Le Syrien qui, ayant accepté des fonctions publiques conférées par un gouvernement étranger, les conserve nonobstant l'injonction du Gouvernement de l'Etat dont il est le ressortissant de les résigner dans un délai déterminé.

Art. 9.---Les contestations en matière de nationalité relèvent exclusivement des tribunaux civils.

DISPOSITIONS TRANSITOIRES

Art.10.---Sous réserve des facultés d'option prévues par la Traité de Paix signé à Lausanne, le 24 juillet 1923, sont Syriens les individus nés sur le territoire des Etats de Syrie, des Alaouites ou du Djebel Druse d'un père qui y est lui-même né

et possédait au 1er Novembre 1914 la nationalité ottomane.

Art.11.---Les enfants et les femmes mariées qui auront acquis une nationalité étrangère par application de l'article 36 du Traité de Paix de Lausanne, peuvent en faisant une déclaration dans l'année qui suit leur majorité ou la dissolution du mariage et s'ils son établis sur le territoire des Etats de Syrie, de Alaouites ou du Djebel Druse, être, après enquête, naturalisés Syriens par arrêté du chef de l'Etat sur le territoire duquel ils sont établis.

Art. 12.--Sont abrogées toutes disposition contraires à celles du présent arrté.

Art. 13.--Le Secrétaire Général, le Président de l'Etat de Syrie, le Gouverneur de l'Etat des Alaouites, le Gouverneur de l'Etat du Djebel Druse, sont chargés, chacun en ce qui le concerne, de l'Exécution du présent arrêté qui entrera en vigueur le jour de sa publication au Bulletin Officiel des Actes du Haut-Commissariat.

Beyrouth, le 19 Janvier 1925.

Le Haut-Commissaire,
Signé: Sarrail.

BIBLIOGRAPHY

Abi-Ghahla	L'Extinction des Capitulations en Turquie Paris, Picart, 1924.
Abi-Khater	La Condition des Etrangers en Syrie et au Liban. Paris, Librairie Générale de droit et de Juris-prudence, 1933.
Bourbousson	La Nationalité dans les Cinq Parties du Monde. Paris, Académie diplomatique internationale,1931.
Engelhardt	La Turquie et le Tanzimat. Paris, Cotillon, 1882.
Ghali	Les Nationalités détachées de l'Empire Ottoman. Paris, Les Editions Domat--Montchrestien, 1934.
Hauser	Le Problème du Régionalisme. Paris, Les Presses universitaires de France, 1924
Hayes	Essays on Nationalism. New York, The Macmillan Company, 1926.
de Jehay	La Situation Légale de sujets ottomans non-Musulmans. Bruxelles, Soc. Belge, 1906.
Johannet	Le Principe des Nationalités. Paris, Nouvelle librairie nationale, 1923
Le Fur	Races, Etats, Nation.
Lybyer	The Government of the Ottoman Empire in the time of Suleiman. Cambridge, Harvard University Press, 1913.
Naim	Les Frontières de la Syrie. Paris, Naim, 1934.
Nicholas	La Nationalité libanaise d'après le Traité de Lausanne.
Noradounghian	Recueil d'actes internationaux de l'Empire Ottoma Paris, Cotillon, 1897.
d'Ohsson	Tableau général de l'Empire Ottoman. Paris, (Privé), 1788.
Pillet	Traité pratique de Droit International Privé.
Samné	La Syrie. Paris, Bossard, 1920.
Seba	L'Islam et la Nationalité. Paris, Librairie de jurisprudence ancienne et moderne, 1931.

B I B L I O G R A P H Y (CONTINUED)

Sheikh Ibrahim el Halabi — Moultaqa el Abhour. Cairo, Ali Bey Press, 1291 h.

Soltau — Essay on Nationalism (Not published)

de Testa — Recueil des Traités de la Porte Ottoman avec les puissances étrangères. Paris, Testa, 1864 - 1901.

Tritton — The Caliphs and their non-Moslem subjects. London, Oxford University Press, 1930.

Weiss — Manuel de Droit International Privé. Paris, Tenin, 1925.

Young — Corps de Droit Ottoman. Oxford, Clarendon, 1905.

Zangwill — The Principle of Nationalities. New York, the Macmillan Company, 1917.

Zimmern — Nationality and Government. London, Chatto and Windus, 1919.

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American Journal of International Law, Vol. 23, 1929.

Bulletin officiel du Haut Comissariat en Syrie et au Liban, 1924-194[illegible]

Dalloz Périodique, 1908.

High Commissioner's Report to the League of Nations, 1922-1938 (Abreviated by H.C.R.)

Journal officiel de la Republique Libanaise, 1936 - 1941.

Recueil des Actes Administratifs du Haut Commissariat 1920 - 1938.

Revue de Droit International Privé, 1908, 1926.

Survey of International Affairs, 1924 and 1925.

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