THE PROTECTION OF PRIVATE PROPERTY UNDER THE MINORITIES PROTECTION TREATIES.

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I.

The Problem of Minorities.

The problem of minorities is one of the most delicate and perhaps the most difficult of those problems which the League of Nations has inherited from the War. In the Europe of to-day, which was to be based on the right of self-determination of the nations, there are living more than forty-eight million people in countries to which they are belonging neither in tongue nor, for some part at least, in heart.

Perhaps they would have been less numerous if certain frontiers had been traced with more prudence. But nobody can suppress the fact that in certain territories the nationalities are so closely mingled that no partition could succeed in disentangling them. Every conceivable frontier would necessarily have left on one side or the other a large number of heterogeneous people; for instance, great numbers of Germans live in Poland, side by side with large numbers of Poles, and so it is with many other races. Short of carrying out enormous exchanges of population, which would have been impossible in Central-Europe (we know that in one single instance—Turkey-Greece—a wholesale transference of the population was carried out), considerable foreign minorities had to be left resident in the new States.

The problem, therefore, cannot be suppressed. It must be solved.

Most of the wars of modern times have arisen through dis-

satisfied minorities. This was the case in the Balkan War of 1912, and upon a more thorough investigation we find that the same applies to the World War of 1914. We think of the Slav question in Austria-Hungary, of Alsace-Lorraine. Both questions have been amongst the real causes of the War.

In future it will not be different, whatsoever precautions one may take against aggressions. How are we to prevent a nation helping its compatriots to revolt against an intolerant and oppressive Government of a neighbouring State? Is its cause not likely to be espoused by the Government of the nation from which the minority has been severed? To assure permanent peace it is after all not sufficient to establish arbitrage and disarmament. This is a matter of course, but it is also necessary to suppress as much as possible the known causes of war, and amongst them the most dangerous of all are the irredentist aspirations. That is what the peace treaties have aimed at in assuring to the minorities the newly-created or much enlarged protective powers of the League of Nations. The so-called Minorities Protection Treaties contained the arrangements which were entered into, namely, that any minorities with a grievance should not need to appeal for help to their fellow-nationals on the other side of a frontier, but should get justice and fair treatment in the State in which they find themselves.

II.

Minorities Protection Treaties.

The Note of 1919, in which the representatives of the then Allied and Associated Powers laid down the basis and aims of the first Minorities Treaties, stated that the new form of protection for minorities was an important result of and a vital factor in the new system of international relations inaugurated by the League of Nations, and was a guarantee for the carrying through of such decisions as the League was now entrusted with. This system was established in consideration of the profound changes coming from the War, in the form of homogeneous treaties, as said above, between the Allied and certain Powers of Eastern Europe (Austria, Bulgaria, Hungary, Turkey, Poland, Czecho-Slovakia, Yugoslavia, Rumania, Greece), and further

declarations were made before the Council of the League by Albania, Estonia, Finland, Latvia and Lithuania, and finally there is the German-Polish Convention for Upper Silesia and the Convention relating to the Memel territory. In these treaties each minority severed from its own race and culture was promised full political rights, liberty of worship and education and freedom to use its own language in private and to a large extent in official affairs. Further the complete equality with the majorities before the law was secured to minorities.

III.

The Protection of Private Property under the Minorities Protection Treaties.

The Minorities Protection Treaties of 1919 say accordingly in Art. 2: "The Government in question (*e.g.*, Poland or Rumania) undertakes to assure full and complete protection of life and liberty to all inhabitants, without distinction as to birth, nationality, language, race or religion. All inhabitants shall be entitled to the free exercise, whether public or private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals."

In Art. 7: "All Polish nationals (Serb-Croat-Slovene nationals, etc.) shall be equal before the law and enjoy the same civil and political rights, without distinction as to race, language or religion"; and in Art. 8: "Polish nationals (Czecho-Slovak nationals, etc.) belonging to a national, religious or linguistic minority shall enjoy the same treatment and the same security in law and in fact as the other nationals."

The notion "private property" is not expressly set down in the treaties, but the latter all contain, in the aforementioned Art. 7, the notion "equal civil and political rights, without distinction as to race, language or religion," and it is self-evident that the so-called private rights are comprised in the civil rights.

See the opinion of the Cour Permanente No. 6 of October 10, 1923, concerning the Polish domain-lessees of German descent, where it is expressly said:

> " By the Minorities Treaty Poland has agreed that all Polish nationals shall enjoy the same civil and political rights and the same treatment and security in law as well as in fact. The action taken by the Polish authorities under the law of July 14, 1920, and particularly under Art. 5, is undoubtedly a virtual annulment of the rights which the settlers acquired under their contracts and therefore an infraction of the obligation concerning their civil rights. It is contrary to the principle of equality in that it subjects the settlers to a discriminating and injurious treatment to which other citizens holding contracts of sale or lease are not subject."

Of all private rights property is one of the most important and, therefore, difficulties have arisen just with respect to this right since the coming into force of the treaties of 1919. The minorities justly complain that in many countries they are subjected to a land legislation which in many cases leads to actual confiscation. Now there arises the question : To what extent can the State by domestic land legislation do away, in full or in part, with the rights of its minority members?

As already set out in the Report of the International Law Association, Vienna Conference of 1926, the right of property is contained in the Declaration of Human Rights of 1789, as in all Constitutions of civilised States; it is, so to say, a component part of the human being and, accordingly, a fundamental right of the citizen. Thus it appears strange that this right is not firmly fixed also as a fundamental right of the members of a minority in the said Minorities Protection Treaties. It must be maintained that, in view of the fact that the right to life and liberty is recognised and guaranteed in the Minorities Protection Treaties, the same must apply to the right of property. It may be called to mind that the Peace Treaties of St. Germain (Arts. 78, 267) and of Trianon (Arts. 250 and 63) (Annex 1, *post*) determine with respect of those former enemies who have not, like the " present members of a minority," acquired the nationality of the signatory Powers *ipso iure* by the conclusion of the peace treaties have by virtue of exercising their right of option the right of retaining their real property (" sont libres de conserver leur biens immobiliers "). If a corresponding right to their

property were not granted to the minorities, they would in so far be treated worse than the optants, which cannot have been the sense (object) of the Minorities Protection Treaties, for the sole reason that the respective States, as they repeatedly have pointed out, were not prepared to treat their own nationals worse than their former enemies.

In view of the fact that the guarantee of property, as such, is not expressly contained in the Minorities Protection Treaties one must admit that the social land legislation, as such, do not violate the actual words of Minorities Protection Treaties. But, *this admission must not lead to the effect that States may make use of their land legislations for directly violating in this manner such rights as are expressly set down in the Minorities Protection Treaties, that is to say, the right to justice and equality before the law.*

Among the rights which in the first line are protected under the Minorities Protection Treaties there stand in the foreground (1) the right to justice and (2) the right to equality before the law.

Right to Justice.—(1) Therefore, restrictions with respect to the property of members of minorities, in particular by way of land legislation, may be effected, but they are subject to the principles of justice being maintained as guaranteed to the minorities under the Minorities Protection Treaties. This postulate, which exists in all civilised States, leads to the effect that expropriations are admissible only against payment of an equitable indemnification. In this sense, the International Law Association passed in the year 1926 at Vienna the following resolution :—

> " It is contrary to the principles of International Law to deprive *a member of a protected minority* of the fundamental rights to which he is entitled as owner, through indirect ways which, though not in law, but in fact, lead to an expropriation without real compensation."

This principle has repeatedly been violated, in particular on the part of some bordering States and in States of the Little Entente. Some States have deemed it sufficient to grant the members of the minority the same compensation as to those of the majority. In the well-known arrêt 7, concerning some

German interests in Upper Silesia, the Cour Permanente, with reference to the Geneva Convention Minority Conventions (between Germany and Poland), expressed the inadmissibility in principle of this treatment :—

> " une mesure défendue par la Convention ne saurait devenir légitime au regard de cet instrument du fait que l'Etat l'applique aussi à ses propres ressortissants " (Annex 2, *post*).

Consequently, States having minorities cannot refer to the fact that they treat the nationals of the majority equally unjustly. A fair treatment of the members of a minority can only be seen in " equitable " compensation, that is to say, a compensation corresponding to the approximate and respective market value, which is set down in the entire International Expropriation Legislation.

In contravention thereof, *Rumania*, within the scope of the land legislation for the newly-conquered Transylvania, fixed as compensation for expropriation the price in gold crowns of the real estate in 1913, but pays the same only in paper lei, the value of which is only about one-fortieth of the value of the gold crown. At this equalisation of gold lei and paper lei the compensation amounts to only $2\frac{1}{2}$ per cent., and even this $2\frac{1}{2}$ per cent. is further reduced by payment of the compensation in State annuities, bearing only 5 per cent. interest and being repayable only in fifty years' time. These annuities are quoted at only 30 per cent. of their nominal value, so that the compensation actually only amounts to 0.80 per cent. of the value, thus being in reality something like nul (see Annex 3, *post*).

In *Czecho-Slovakia*, too, the compensation is based on the value for the years 1913—1915, fixed in gold crowns, the same, however, being taken as equal to Czecho-Slovakian crowns. The depreciation of the Czecho-Slovakian crown appears not to be taken into account in any way. Considering that the value of a Czecho-Slovakian crown is about one-seventh of the value of a pre-war crown, the indemnification amounts to only one-seventh of the value, deductions being even made from this amount, for hitherto, as a rule, the claim is paid only in annuities which must be calculated at 40 per cent. of the nominal value.

Consequently the parties prejudiced, as a rule, receive less than 7 per cent. of the actual value.

In *Jugoslavia* the compensation is not fixed yet by law; Art. 31 of the Constitution however says that expropriation of private property is admissible only against a just compensation.

In *Poland* the compensation varies between 30 and 60 per cent. of the pre-war value.

Also as regards the States of the Little Entente, it is to be hoped that the termination of the optant dispute by The Hague Conference will lead to the members of the minorities, as well as the optants, being paid a reasonable compensation in future. As is known, the optants are to receive a more equitable compensation out of a fund of about 219,5 millions Swiss francs (about 207 gold crowns per cadastral jugar).

In *Czecho-Slovakia* the German nationals from a recent date receive more adequate compensation. The increased standard of this compensation gradually has its effect also upon the treatment of the members of the minority.

On the other hand, the indemnifications in Estonia, value of the compensation 1s. 9d.; in *Livonia* and in *Lithuania* 0.4 per cent. to 0.9 per cent. of the pre-war value of the landed property are really confiscatory. In *Estonia*—we are informed—negotiations are pending to increase the amount of indemnification.

In consideration of these facts, it must be maintained that the promulgation of land legislation free from anti-minority claims is permissible, but that the taking over of landed property is only permissible if it takes place " conformément au principe de justice, que moyennant une juste indemnité " (see Annex 4, *post*).

IV.

Equality Before the Law.—Art. 8 of the Minorities Protection Treaties contains the principle of equality before the law. Unfortunately this principle has repeatedly been violated in the past :—

(a) By provisions which consciously and also from their tenor differentiate. *Differential measures.*

(b) By measures which in form and expression do not

represent any violation of the principle of equality, but the provisions of which are worded so that their terms in reality only affect the minorities or, at least, prejudice the latter more than the members of the majority. *Concealed differentiations.*

(c) Finally, the principle of equality is violated by provisions " which confer upon the administrative authorities such discretionary powers " that they are in a position to treat the minorities " arbitrarily." This tendency is partly facilitated by the members of the minority being denied the so-called " due process of law," *i.e.*, the absence of a sufficient legal and judicial control. *Discretionary powers conferred upon the administrative authorities.*

(d) Frequently the principle of equality is violated in the allocation of divisible property. The expropriation is effected in the same manner as regards members of the majority and members of the minority, but nevertheless the economic equilibrium between the various nationals is violated by the best of the property expropriated being assigned exclusively to the members of the majority on its new allocation. *Allocation of land in favour only of members of the majority.*

(a) *Differential measures.*—Characteristic of the violation of the principle of equality in the sense of (a) was, *e.g.*, the abrogated provision in para. 9 of the Czecho-Slovakian Land Reform Seizure Act (now unenforceable under the Treaty of Versailles), which was worded as follows :—

> " By a special law the principle will be carried through that the property of former enemy nationals will be taken over without compensation."

In a similar manner legislation even to-day violates the principle of equality in *Estonia* and *Livonia*. In both countries only the domains (Rittergüter) belonging to the members of the minority are expropriated entirely (in Livonia with the exception of 50 ha.), whereas the farms (Bauerngüter) belonging to the members of the majority *are exempted from any expropriation without regard to their size.* The domain was free private property just as well as the farm. All estates had passed by purchase into the ownership of the present proprietors and/or their predecessors. Instead of choosing a maximum size as a guiding rule in the sense of purely economic considerations,

points of differentiation were chosen which were in nowise connected with the social and economic object of the reform.

Something similar is to be found in the Rumanian Land Legislation. Within the *territory of the old Kingdom* twice the area is exempted from expropriation as in the newly annexed parts of the country. In particular, the forests are not affected by the expropriation, whereas in the conquered parts they are subject to taking over.

In the old Rumania the proprietor retains a residue of each one of his estates, no matter how many estates he possesses.

In the conquered parts of the country only one single residuary estate is left him.

(b) *Concealed differentiations.*—In this relation a gross example is furnished by the notorious Art. 6 of the Rumanian Land Legislation for Transylvania. Under this provision the State is entitled to deprive the so-called absentees of their entire property against compensation of not even 1 per cent., which is equivalent to confiscation. All those proprietors who between September 1, 1918, and March 21, 1921, the date of promulgation of the Act, were absent from Rumania are considered absentees. It is well known that on the occupation of Transylvania by the Rumanian armies the Hungarian nationals were expelled, and until March 21, 1921, were unable to get any visa for Rumania even in special cases (in case of death of relations, etc.). It is obvious that this provision exclusively served the purpose of expropriating proprietors of Hungarian nationality by a measure which externally observed the principle of equality, but in reality procured the expropriation of the former enemies without any indemnification. There is no doubt whatever that such a provision embodies a concealed differentiation and therefore contravenes the Minorities Protection Treaties (see Annex 5 and Annex 6, *post*). It may be observed that in old Rumania the expropriation of absentees is effected on quite a different basis, namely, only if their absence lasted five years, and if double taxation has been imposed during this time on account of their absence. Whereas, accordingly, in old Rumania the treatment of absentees is based on a normal rule, the interpretation of absenteeism in the newly-annexed parts of Rumania serves exclusively nationalistic, anti-minority objects.

(c) *Discretionary powers conferred upon the administrative authorities.*—More complicated is the case if externally no differentiation has been made in the treatment of the members of the majority and of the minority, but the treatment on the part of the administrative authorities is an outspoken anti-minority one. How great is the danger of violations to the detriment of the minorities through arbitrary treatment on the part of the administrative authorities is shown by the procedure in Transylvania as well as formerly in Czecho-Slovakia.

In Transylvania the Government has the right to expropriate landed property by land reform Act, not only for the purpose of a land legislation, but, over and beyond that, for promoting the development of domestic industry, the mining centres, etc., as well as all objects which are in the general public interest, be they cultural, economic or pedagogic. It is evident that such extension of competence enables the administrative authorities to get hold of the minority property at their discretion, which may well become arbitrariness.

A further example is furnished by the Czecho-Slovakian Land Legislation which, at the time when the minorities were not yet represented in the Government, showed tendencies to expropriate even the spas by way of land legislation. Marienbad, belonging to a monastery of German race, was going to be allocated to a Czech company by way of land reform. The superior sent one urgent petition to the League of Nations, and if it had not had the support of the English and Swedish Delegation at Geneva, Marienbad would have been taken over by the Czech Land Office in March 1926.

I remember that it was Sir Cecil Hurst and Dr. Unden (they being together with Signor Scialoja members of the so-called " Committee of Three ") who asked Dr. Colban to communicate with Dr. Benes and induce him to stop every measure of expropriation.

Dr. Benes agreed; so the Committee of Three declared, according to confidential information which we obtained in Geneva, that it takes notice of the information given by Dr. Benes, according to which the Czecho-Slovakian Government abstains from all measures of practical order and confines itself to purely academical measures, which means that the Czecho-

Slovakian Government will leave matters as they are now and will not proceed to any transfer of the Marienbad property or any depossession until judgment of the Supreme Administrative Court shall have been rendered.

So it was only by the intervention of Minister Benes, on the suggestion of the League of Nations, that the compulsory expropriation in favour of a national Czecho-Slovakian joint stock company in 1926 was avoided.

By Art. 5 of the Polish Land Legislation the allocation of plots supplementary to a normal residuary estate free from exemption is left to the discretion of the Agrarian Reform Minister to such extent that he gives his decision without adducing any grounds.

It need not be pointed out that the principle of equality is violated if this principle is observed in legislation but is not observed by the administrative organs in its execution.

In particular, this applies to those cases in which the lack of legal control (due process of law) facilitates such measures. In Livonia, as well as in Lithuania, there is no " due process of law," nor in Czecho-Slovakia is a protest to the Land Office admissible against the decision of the district offices. An appeal against the amount of the compensation may however be lodged with the ordinary Court of law, which however examines the decisions only in their formal aspects; they may not change them materially. As regards allocation following expropriation, a protest against the decision of the Czecho-Slovakian Land Office lies to the Supreme Court of Administration, but the latter is bound by the representation of facts given by the Land Office. Nor has the Supreme Court of Administration a right of examining the exercise of the " so-called discretion." The lack of legal control shows the intention to keep open the possibility of violating the interests of the minority without being hindered by the legal organs of control.

(d) *Allocation of land in favour only of members of majority.* —In some States the violation of the principle of equality in expropriation is not provable, but notwithstanding that legislation aims at a gradual shifting of the equilibrium in the economic position of the various nationalities by expropriating the members of the majority in the same manner as the members

of the minority, as set out above, but granting the former the right of a new allocation of landed property, whereas the members of the minority in practice are excluded from such allocation. This applies to Rumania as well as to Jugoslavia and to Czecho-Slovakia. In Czecho-Slovakia it has been calculated that the members of the minority have received not even 10 per cent. of the newly-allotted landed property which would have been apportionable to them in case of allocation according to numbers (see Annex 7, *post*).

In Poland matters are still worse.

In accordance with all that has been said above, it must be maintained that the promulgation of normal Land Legislation, as such, when effected on a social basis, does not violate the Minorities Protection Treaties, but that such violation appears if the principles of justice and equality before the law are insufficiently observed. The fact that the greatest part of the expropriated landed property originally belonged to members of the minorities, as is the case, *e.g.*, in Livonia, would not by itself suffice to substantiate a violation of the minorities' rights; on the other hand, however, a violation of the Minorities Protection Treaty is apparent if the nature of the expropriation infringes the compensation principles or the principles of equality of all citizens before the law, as customary in all civilised States. This was expressed very clearly by Professor René Brunet, *loc. cit.*, p. 294, in the words :—

> " Nous pensons qu'une mesure de quelque nature qu'elle soit qui frappe exclusivement ou presque exclusivement une minorité, doit, pour être considéré comme violant le traité des minorités, s'accompagner d'un autre trait qui ait pour but d'aggraver ou qui aggrave en fait ses effets à l'égard des minorités. Tel est le cas, par exemple, s'agissant du droit de propriété qui seul nous intéresse ici, d'une mesure qui, d'apparance égale, opère entre majoritaires et minoritaires une discrimination déguisée, ou qui, par la manière dont elle est effectivement appliquée, pèse plus lourdement sur les minoritaires que sur les majoritaires, ou qui permet que les biens expropriés, bien que provenant en majorité des minoritaires, soient répartis entre les seuls majoritaires ou encore et surtout, qui, refuse aux propriétaires expropriés

l'indemnité qui conformément au principe de justice leur est due."

IV.

All these rights of minorities mentioned above were placed under the general guarantee of the League acting through its Council and its Assembly (section 1 of Art. 12). The provisions governing this status constitute obligations of international interest; besides, in section 2, special powers of protection were conferred on the Council, every Member thereof having the right to draw its attention to any infraction or danger of infraction of a Minorities Treaty which can only be brought to the notice of the Council by a State Member thereof. The clause (in Art. 12 of the Polish Treaty) placing the obligations defined in the treaty under the guarantee of the League is not limited in this way, and there would appear to be nothing contrary to the treaty in the Council taking whatever steps it thinks suitable to inform itself as to the working of the treaties.

For this purpose it would be suitable to have a Permanent Minorities Commission. This Commission would have to deal with all questions of principle arising from minority treaties. It could also form an advisory body for the Committee of Three. The Permanent Commission might further form sub-committees in such a way that its members may be able to specialise on minorities' questions and also hear, as far as it would seem desirable, experts and other personalties most suited for work in the Committee of Investigation, as was first suggested by Dr. Stresemann.

This is important, because it is physically impossible for the Members of the Council, Foreign Ministers with the gravest international questions on their hands, to deal with each petition. They cannot do it. They ought to have people who can, because one never knows in what petition a matter of very important principle may come up. That Commission should therefore be composed not of Government representatives, but of people chosen for their personal ability; they should be paid, and their expenses should be met not by national Governments, but from the funds of the League as a whole. The protection of minorities is not a matter which concerns certain States only. It

does not concern the Council of the League as individual States, but it concerns them as the representatives of the Society of Nations as a whole. It would be perfectly possible without going outside the scope of the present treaties to set up a Commission of Study and Investigation and to make it purely advisory to the Council. *Senator Dandurand was right when he suggested that the examination of disputes submitted to the Council should be made accessible to all Members of the Council, that is to say, as M. Benes suggested in October, 1924, with regard to questions of the Conference for the reduction of armaments, the whole Council should sit as Committee.*

Another point is of tremendous importance, namely, full publicity. If there were full publicity of all that passes between the League and the Governments and the minorities, if there were published every year a complete dossier of what really happens in each case, as Mr. P. J. Noel Baker said in his address at the Conference of the Women's International League (see Annex 8, *post*), it will in any case achieve the purpose of allaying the anxieties of minorities that they are not getting justice; it will put a very effective restraint upon any Government which might have a desire not to fulfil its full obligations.

V.

General Review.

Mr. Noel Baker illustrated the present situation when he suggested " I do believe we need a change of spirit."

Undoubtedly certain countries which have accepted the intervention of the Council in the consideration of Minority Treaties, and feel this exceptional legislation to be an impairment of their sovereignty towards other States, will wish to apply it in the most restricted possible way.

They should however not forget that by this acceptation they have contributed to the consolidation of a world with new ways and habits, based upon those Treaties of Paris which they desire in their own interest to see maintained in full.

They should therefore not insist on the point that the International Protection of Minorities runs counter to the evolution of human society, as likely to bring about the result

of continually creating new racial or better national groups; "it accentuates nationalism instead of toning them down." The minorities are an actual fact, and they have since the conclusion of peace become aware of their importance and their peculiar character. If they are dissatisfied, then they form a threat to international peace. In certain countries, moreover, they actually need protection, and the relations between Government and minority are not everywhere of such a character that the minorities can dispense entirely with the international protection, as was indeed recognised by Mello Franco in his Report on the Resolution of the Sixth Assembly with the words :—

> "It is a necessary duty to protect racial or religious minorities against oppression or the consequence of prejudice and disguised ill-will to which they may be exposed."

On the other hand, to these rights of the minority there correspond their duties of loyalty and submission to their Government, as Professor Gilbert Murray declared at the Meeting of the Third Assembly as early as 1922. The chief object is and remains, as Poland once stated, that the securing of a normal existence of minorities is based on the principles of freedom and equality, without however it being permissible for the minority to be a State within a State.

This object cannot be achieved by means which are a hindrance to the consolidation of the State. This object can however be secured by a wise application of the Minority Treaties, making equal allowance for the mentality and the difficulties of Government and minority.

If these endeavours are to succeed, then it is necessary that the League of Nations should gain more in political power and strike deeper root in the heart of the nations. The part which the League of Nations is called upon to play as guarantor in the minority questions is not that of the international policeman, whose only duty it would be to take action against refractory States. Its task lies before all else in furnishing guidance, advice and aid in the sense of the Resolution adopted unanimously by the Third Assembly.

Minister Zalewski was not quite wrong when he said that if one wished to be of use to the minorities it was necessary to

confine oneself to practically attainable measures. The best method of protection, he said, consisted in harmonising the different interests.

Deputy Hassbach (German Minority in Poland) obviously was of the same opinion when, at the International Minority Congress of 1925, he stated emphatically : " The way to Geneva lies via Warsaw." This utterance of the German-Polish politician proves that the solidarity and mutual understanding of the majorities and minorities of Europe, in order to become a reality, must not only be embodied in formal treaties between the States of Europe, but must rest on open and cordial relations within the countries themselves.

Only when the States themselves are penetrated in their entirety and in the innermost depths of the feeling of the nation, by the necessity and the value of solidarity and mutual understanding, will the difficulty of the minority question have really been removed and collaboration between majorities and minorities be secured.

Switzerland has proved that despite diversity of language, race and religion, the love of the all-embracing mother country, rooted for centuries in its population, has remained unshakable.

It is to be hoped that in the new States, likewise, development will proceed in this direction in the interests of cultural peace, which can only be secured by the exercise of justice towards everyone who steps forward in defence of the right to live, granted to him for his language, his soul and his faith.

SURVEY OF ANNEXES.

Annex 1.

Arts. 78 and 267 of the Peace Treaty of St. Germain:

Art. 78.—Persons over eighteen years of age losing their Austrian nationality and obtaining *ipso facto* a new nationality under Art. 70 shall be entitled within a period of one year from the coming into force of the present treaty to opt for the nationality of the State in which they possessed rights of citizenship before acquiring such rights in the territory transferred.

Art. 267.—Notwithstanding the provisions of Art. 249 and

the Annex to Section IV, the property rights and interests of Austrian nationals or companies controlled by them situated in the territories which formed part of the former Austro-Hungarian Monarchy shall not be subject to retention or liquidation in accordance with these provisions.

Such property rights and interests shall be restored to their owners freed from any measure of this kind, or from any other measure of transfer, compulsory administration or sequestration, taken since November 3, 1918, until the coming into force of the present treaty, in the condition in which they were before the application of the measures in question.

The property rights and interests here referred to do not include property which is the subject of Art. 208, Part IX (Financial Clauses).

Nothing in this Article shall affect the provisions laid down in Part VIII (Reparation), Section I, Annex III, as to property of Austrian nationals in ships and boats.

Arts. 63 and 250 of the Peace Treaty of Trianon:

Art. 63.—Les personnes âgées de plus de 18 ans, perdant leur nationalité hongroise et acquérant de plein droit une nouvelle nationalité en vertu de l'article 61, auront la faculté, pendant une période d'un an à dater de la mise en vigueur du présent traité, d'opter pour la nationalité de l'Etat dans lequel elles avaient leur indigénat avant d'acquérir leur indigénat dans le territoire transféré.

L'option du mari entraînera celle de la femme et l'option des parents entraînera celle de leurs enfants âgés de moins de 18 ans.

Les personnes ayant exercé le droit d'option ci-dessus prévu 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 immobiliers 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. 250.—Nonobstant les dispositions de l'article 232 et de l'Annexe de la Section IV, les biens droits et intérêts des ressortissants hongrois ou des sociétés contrôlées par eux, situés sur les

territoires de l'ancienne monarchie austro-hongroise ne seront pas sujets à saisie ou liquidation en conformité de ces dispositions.

Ces biens droits et intérêts seront restitués aux ayants droit, libérés de toute mesure de ce genre ou de toute autre mesure de disposition, d'administration forcée ou de séquestre prises depuis le 8 novembre, 1918, jusqu'à la mise en vigueur du présent traité. Ils seront restitués dans l'état où ils se trouvaient avant l'application des mesures en question.

Les réclamations qui pourraient être introduites par les ressortissants hongrois en vertu du présent article, seront soumises au Tribunal-arbitral mixte prévu à l'article 289.

Les biens droits et intérêts visés par le présent article ne comprennent pas les biens soumis à l'article 191, Partie IX (Clauses financières).

Rien dans le présent article ne portera atteinte aux dispositions de l'Annexe III à la Section I de la Partie VIII (Réparations) relativement à la propriété des ressortissants hongrois sur les navires et bateaux.

ANNEX 2.

The Permanent Court of International Justice. Series A. Collection of Judgments Nr. 7. Case concerning certain German interests in Polish Upper Silesia, pp. 32—33 (extract from judgment) :

" Even if it were proved—a point which the Court does not think it necessary to consider—that, in actual fact, the law applies equally to Polish and German nationals, it would by no means follow that the abrogation of private rights effected by it in respect of German nationals would not be contrary to Head III of the Geneva Convention. Expropriation without indemnity is certainly contrary to Head III of the Convention, and a measure prohibited by the Convention cannot become lawful under this instrument by reason of the fact that the State applies it to its own nationals."

ANNEX 3.

Hungarian Property Rights under the Treaty of Trianon, by the Right Hon. Sir Frederick Pollock, Bart., K.C., and Roland E. L. Vaughan-Williams, K.C., p. 7 :

" In our view when the terms contained in this Agrarian Law (*i.e.*, of Transylvania) are considered it will be found that adequate compensation is not given and therefore the taking of property under that law is not according to the accepted juridical principles in civilized States, and the execution of the law therefore involves a confiscation.

" In the first place compensation is given not for the present value of the land but for the estimated value in 1913, whereas in order to assure adequate compensation, the value of the land at the time when it is taken, and not what is estimated to have been its value many years before, should be the test.

" In the next place the nominal compensation to be given for the property taken is fixed by an arbitrary standard which bears no relation to the present circumstances. The paper Lei is assumed to be of the same value as the gold Lei of 1913, though it is notorious that at the present moment the depreciation of the paper Lei is so great that it can scarcely be compared to the gold Lei. Their values in truth bear no practical relation to each other.

" Further, this sum arrived at in paper Lei is not to be paid at once, but at some future date, and nothing which could be held as security for its payment is given or pretended to be given : for the right to receive this money at this future time has no market value and cannot be negotiated : in other words it is not an exchangeable commodity.

" The same remarks apply to the interest which is payable in the meantime. In the first place it is at a quite inadequate rate (the Rumanian Government itself could not possibly borrow money at such a rate anywhere) and in the second place, as we are informed, it is not paid in fact.

" The man, therefore, who has his property taken away from him is in a far worse position than Glaucus, whom Zeus deprived of his wits in that he exchanged his armour with Diomede, son of Tydeus, gold for bronze, the worth of a hundred oxen for the worth of nine."

Annex 4.

Le Statut des minorités nationales au point de vue du droit international privé, par René Brunet, Professor à la Faculté de

Droit de Caen, Avocat à la Cour de Paris, p. 288, *Extrait du Journal du Droit International*, 1926 :

" D'où il résulte que, pour respecter comme elles doivent l'être les prescriptions des traités, les Etats doivent s'abstenir de toute mesure injuste à la fois à l'égard des ressortissants de la majorité, et à l'égard de ceux de leurs ressortissants qui appartiennent à une minorité de race; en particulier, s'ils croient devoir procéder à une expropriation sous la forme, par exemple, d'une réforme agraire, ils ne peuvent prendre possession des terres, conformément au principe de justice, que moyennant une juste indemnité."

Annex 5.

The Treaty of Trianon and the Claims of Hungarian Nationals with regard to their lands in Transylvania. Opinion of the Right Hon. Sir Leslie Scott, K.C., M.P., p. 9 :

" If I were asked to select any one point of fact which is more strongly in favour of the Hungarian contention than the others, I should select the provision of the Agrarian Law itself in Art. 6, that the land of all absentee landlords (above 50 jugars) is to be subjected to total expropriation. In the light of the statutory and subsequent administrative definitions of the word ' absent ' it seems to me quite impossible to avoid the inference that this section of the law was directed against Hungarians as such (see, for instance, the reasoned statement by M. Charles Dupuis, Recueil edited by M. Lapradelle, p. 73, and the history of the previous legislation traced by Mr. Bellot, Recueil, pp. 538-540)."

Annex 6.

Opinion of Hugh H. L. Bellot, Barrister-at-Law, Docteur of Civil Law in the University of Oxford, Associé de l'Institut de Droit International, Professeur à l'Academie de Droit International de La Haye, Hon. Secretary of the International Law Association, formerly Acting Professor of Constitutional Law in the University of London, as to the Rights of Hungarian Subjects with regard to their Lands situated in Territories transferred to Rumania, p. 9 :

" Art. 6 (c) has been interpreted to mean a continuous presence of the Hungarian optants and other Hungarian nationals in later Rumanian territories respectively during the whole of the prescribed period. Absence for a single day may constitute absenteeism.

" It is alleged that during this period many Hungarian nationals (and among them future optants) were driven out of the territory during the occupation by the Rumanian forces, a period which coincides with the critical time when the frontiers between the two States, Rumania and Hungary, had not been determined, and when persons in the territories subsequently ceded to Rumania were uncertain of their nationality. It is further alleged that when such Hungarian nationals desired to return to their properties, they were refused visas by the Rumanian authorities and were thus unable to do so.

" Whatever the truth of these allegations may be, there remains the serious fact that this law is retrospective. No notice was given to these Hungarian land owners, prior to the coming into force of the law of July 30, 1921, that their properties would be expropriated if they had absented themselves after December 1, 1918, nor in fact could such notice be legally given, since the territories in which they resided then belonged, and continued to belong, to Hungary until July 26, 1921, when the transfer by the Treaty of Trianon took place."

Annex 7.

De la Protection des Minorités par la Société des Nations. Mémoire par le Professeur René Brunet, Paris, et le Docteur Erwin Loewenfeld, Berlin, p. 1 :

" Le traitement des minorités dans les divers pays où elles existent est tel qu'il mérite d'appeler l'attention éveillée de tous les Etats civilisés. Ce traitement, spécialement l'oppression des minorités au moyen de la législation agraire, attaque la population paysanne des minorités à un point vital et menace véritablement leur existence.

" Les chiffres suivants, tirés à titre d'exemple de ce qui se passe en Tchéco-Slovaquie, montrent avec quelle rapidité la

législation agraire qui tend à transférer la terre exclusivement entre les mains des races de la majorité, occasionne une misère sans cesse croissante des minorités et diminue leur propriété.

" En 1921, 6,074 hectares (14,500 acres) ont été distribués ;

" En 1922, 38, 991 hectares (93, 580 acres) ont été distribués ;

" En 1923, 94,404 hectares (238,570 acres) ont été distribués ;

" En 1924, 238,757 hectares (569,912,95 acres) ont été distribués.

" Et en 1925, d'après des communications officielles, 370,000 hectares (883,190 acres) doivent être divisés parmi les solliciteurs appartenant aux races de la majorité.

" Les bois et forêts ne sont pas compris dans ces statistiques.

" Une grande partie des terres mises en distribution et attribuées presque exclusivement aux populations de race tchèque ou slovaque, appartient à des ressortissants des minorités nationales.

" D'une façon générale, on peut dire que l'expropriation des propriétaires appartenant aux minorités de races suit la même courbe dans les autres pays (Pologne, Roumanie, Serbie, etc.).

" En réponse aux plaintes élevées par les minorités, les gouvernements intéressés expliquent que les mesures prises par eux ont pour but de consolider l'existence de l'Etat lui-même et que celui-ci, en vertu de sa souveraineté, est libre de prendre toutes les mesures qu'il considère comme nécessaires pour la sécurité des races de la majorité."

Annex 8.

Minorities and the League of Nations. A Discussion on the Present Situation. Being a Report of Speeches at a Conference called by the Women's International League in London in March, 1929. *A General Review by Professor P. J. Noel Baker*, p. 38 :

" I believe another point is one of tremendous importance, namely, full publicity. If you have full publicity of all that passes between the League and the Governments and the minorities, if you publish every year a complete dossier of what happens in each case, you may spend some money for the benefit of a very restricted circle of readers, you may publish a good deal

of mere rubbish, but you will in any case achieve the purpose of allaying the anxieties of minorities that they are not getting justice, and I believe you will put a very effective restraint upon any Government which might have a desire not to fulfil its full obligations.

" Lastly, I do believe we need a change of spirit. We do need to take this out of the sphere of politics into the sphere of law."

Mr. BEWES said that it was clear that those responsible for drafting the minority clauses were well aware that they might be needed. Minorities which were not so protected were not protected at all in certain countries where the science of government was not understood and in some countries where the new majorities had themselves suffered in the past. The elementary rights of man, including the inviolability of property, were apt to be disregarded by the modern theory of the omnipotence of sovereignty, which was another name for irresponsible force. A better theory was that of the social contract which limited the all-might of the State. It was well known that in at least one of the new States there was an immense difference between the prices paid to dispossessed owners and those charged to new allottees. This difference had not all been accounted for, nor was there any explanation of the rapid enrichment of certain persons there prominent.

Mr. FRASER observed that the members of the Grotius Society were constrained to think of law as Turgot defined it in his *dictum* that " It was not for man to make law which was the exclusive province of the Deity, but to observe it." He further referred to the statement in Lord Bryce's " Studies in History and Jurisprudence " on the law of nature : " There is far less of a vague and merely abstract character in the conception than has sometimes been attributed to it . . . it had a pretty definite meaning to the Roman jurists; and they used it in a thoroughly practical spirit." Tried by these standards it was, he contended, inconsistent for the Council of the League of Nations to refuse the right of audience to minorities unless presented through the State incriminated; and he urged that it

should rest with the well-wishers of countries represented on the League of Nations to address themselves to the study of the natural rights of man and to urge on their respective Governments the duty of bringing their influence to bear on the Council of the League to afford minorities the opportunity of presenting to the League cases for judicial determination.