THE REFUGEE CONVENTION, 1951

THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS

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FOREWORD

One of the outstanding achievements of the 20th century in the humanitarian field has been the establishment of the principle that the refugee problem is a matter of concern to the international community and must be addressed in the context of international cooperation and burden-sharing. This notion first came into existence after the First World War, under the League of Nations which was called upon to deal with successive waves of refugees. It was further developed and strengthened after the Second World War through continuing action undertaken by the United Nations to address numerous refugee situations in all regions of the world. Such refugee situations remain a tragic feature of our troubled times. International cooperation in dealing with refugee problems presupposes collective action by governments in working out appropriate durable solutions for refugees. Until an appropriate durable solution is found for them and refugees cease to be refugees either through voluntary repatriation or legal integration (naturalization) in their new home country, it is necessary for them to be treated in accordance with internationally recognized basic minimum standards. The formulation and further developments of these standards - and efforts to ensure that they are effectively implemented - have from the outset been an essential component of the collective international approach to the refugee problem. These standards are defined in a series of international instruments (conventions, resolutions, recommendations, etc), adopted at the universal level under the United Nations, or within the framework of regional organizations such as the Council of Europe, the Organization of African Unity and the Organization of American States. In order to ensure their more effective implementation, many of these standards have been incorporated into the national law of a growing number of countries.

At the universal level, the most comprehensive legally binding international instrument, defining standards for the treatment of refugees is the United Nations Convention relating to the Status of Refugees of 28th July 1951. This Convention was adopted in the immediate post-World War II period, when the refugee problems confronting the international community, were mainly those of refugees of European origin. It was for this reason that the Convention contained a deadline which limited its application to the then known groups of refugees, i.e. persons who had become refugees as a result of events occurring before 1st January 1951. It was, however, recognized already at that time that the standards defined in the Convention were of universal applicability, and the Conference which adopted the Convention therefore included in its Final Act, Recommendation E in which it

> "Expressed the hope that the Convention would have value as an example exceeding its contractual scope that all nations would be guided by it in granting as far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention the treatment for which it provides."

After the adoption of the 1951 Convention, refugee situations began to arise in different regions of the world, which were not in any way related to pre-1951 events. This led to efforts to make the Convention fully applicable in all new refugee situations, based on the recognition that the 1951 Convention should become the universal international instrument for the protection of refugees. It resulted in the United Nations Refugee Protocol which removed the 1951 dateline in the Convention and which was opened for accession on 31st January 1967. To date, 114 States in all regions of the world have become parties to the 1951 Convention and/or to the 1967 Protocol.

The author of the present commentary, the late Dr. Paul Weis, played an active part in the work leading to the preparation of the 1951 Convention and the 1967 Protocol and was Director of the Legal Division of my Office for a number of years up to his retirement in 1967. He was a universally recognized expert on International Refugee Law and was the author of numerous articles dealing with the basic international refugee instruments, and a whole spectrum of issues relating to refugee status and asylum. He was also the author of an important work on 'Nationality and Statelessness in International Law'. In October 1991, he was posthumously awarded the Nansen Medal in recognition of his major contribution to the development of international legal standards for the treatment of refugees.

It is a great source of satisfaction to me that Dr. Weis was able to write a commentary on Articles 2 to 37 of the Convention based on the *travaux préparatoires*. In addition to providing useful guidance for the interpretation of specific provisions of the Convention, the *travaux préparatoires* are of considerable historical significance. They illustrate in very graphic form the various issues which the refugee problem presented for the international community at that time and the manner in which these issues were addressed both on the conceptual and on the practical levels. They sometimes display a remarkable similarity to many of the issues arising out of contemporary refugee problems and thus provide a valuable point of reference.

I am certain that the commentary will contribute to a better understanding of the articles discussed and of the Convention as a whole, and will also serve to focus renewed attention on the fundamental importance of recognized international legal standards for the treatment of refugees and their correct application.

The existing body of legal principles for the treatment of refugees forms an essential part of our humanitarian heritage of which we can be justly proud. It therefore gives me particular pleasure to commend the present Commentary to the reader's attention.

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PREFACE

One of the principal objectives of the Research Centre for International Law since its establishment in 1983 has been the provision of basic materials of international law in readily accessible form for the use of scholars and practitioners. To this end the Centre supported the production by Dr Lambert of his systematic commentary on the Hostages Convention. More recently, the Centre has established the Cambridge International Document Series, of which the first three volumes have been devoted to the developments following the Iraqi invasion of Kuwait in 1990 and a fourth has dealt with the international aspects of money-laundering.

Amongst the subjects in which the Research Centre has also interested itself is that of the international protection of refugees. Dr Weis was approached in 1983 with the suggestion that, in view of his unique qualifications in the field, he should prepare a systematic presentation of the records of the negotiations (the *travaux préparatoires*) of the Refugee Convention. Though very willing to use his great knowledge for this purpose, Dr Weis, already then advanced in years, limited himself to the treatment of the Preamble and Articles 2–28.

It seems wrong that, notwithstanding its occasionally incomplete condition, material of such interest and value should not be made generally accessible. At the request of Mr Julian Weis, the son of Dr Weis, the Refugee Studies Programme of Oxford University, upon the initiative of Dr Barbara Haffell-Bond, took over the preparation of the pages left behind by Dr Weis. Dr Chaloka Beyani, HRH Crown Prince El Hassan bin Talal of Jordan Researcher at the Refugee Studies Programme, has written the Introduction. The Refugee Studies Programme has received generous support from Mr Julian Weis so that the publication of this work might serve as a further memorial to the name of his father, already so well known for his writing on this subject.

In view of the largely documentary character of Dr Weis's work, the Research Centre for International Law at Cambridge is now happy to assist in promoting the wider circulation of the material by including it within the Centre's International Documents Series.

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INTRODUCTION

Dr Weis needs no introduction to most scholars and practitioners in the field of refugee protection. That his comments on the preparatory material to the Convention Relating to the Status of Refugees 1951 should have an introduction may be regarded as anachronistic. However, an introduction to this book is necessitated by the fact that Dr Weis's comments did not cover the preparatory work to Article 1 of the Convention. Reasons for this omission are a matter of conjecture. Be that as it may, it is not the aim of this introduction to fill in this gap, as it were. Rather, the purpose is to gently lead the reader into the substance of Dr Weis's book. In doing so, the introduction is intended to acquaint the reader with the most important, and perhaps problematic, aspects of Article 1 which are central to eligibility for refugee protection. The interested reader may have recourse to Dr Weis's other works on this subject.[1]

Dr Weis's present work is in large measure a product of his intimate involvement in the preparation of the Convention Relating to the Status of Refugees. This Convention was adopted by the United Nations Conference on the Status of Refugees and Stateless Persons at Geneva 2-25 July 1951.[2] It entered into force on 22 April 1954, and 102 States have now ratified or acceded to it. Originally, the scope of application of the Convention was limited to events occurring in Europe or elsewhere before 1 January 1951. However, this limitation was removed on 4 October 1967 when the Protocol Relating to the Status of Refugees entered into force. The Protocol itself was adopted by the General Assembly of the United Nations on 16 December 1966, and has attracted 103 States Parties.[3]

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[1] See British Year Book of International Law, Vol 30 (1953), p 478; American Journal of International Law, 48 (1954), p 193; British Year Book of International Law, Vol 42 (1967) p 39.

[2] For Text: United Nations Treaty Series, Vol 189, p 137.

[3] For Text: United Nations Treaty Series, Vol 606, p 267.

A remarkable feature of the Convention is the establishment of a system of international protection to persons who are in need of it. From the perspective of international law, the Convention accords the status of a refugee to a person who has lost the protection of their state of origin or nationality. It is essentially the loss, or failure, of state protection which makes international protection necessary for refugees.

Recognition on the part of states of the necessity to admit as refugees within their territories only persons in genuine need of protection led to the development of international standards providing criteria according to which claims to refugee status are determined.[4] In this respect, Article 1 of the Convention contains the relevant standards, and reads as follows:

A. For the purpose of the present Convention, the term refugee shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the Refugee Organisation;

Decisions of non-eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.

(1) For the purposes of this Convention, the words 'events occurring before 1 January 195 V in Article 1, Section A, shall be understood to mean either

(a) 'events in Europe before 1 January'; or

(b) 'events occurring in Europe or elsewhere before 1 January 1951';

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligation by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He can no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(l) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

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[4] The earliest instruments in this respect defined refugee status in terms of loss of national protection. The Arrangements with Regard to the Issue of Certificates of Identity to Russian Refugees of 5th July 1922 defined Russian refugees as any person of Russian Origin who does not enjoy the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired any nationality. Other similarly worded instruments included the Arrangements with Regard to the Issue of Certificates of Identity to Armenian Refugees of 1923-1924, and the Arrangements Relating to the Legal Status of Russian and Armenian Refugees 1928. For a concise discussion concerning these instruments see Hathaway, The Evolution of Refugee Status in International Law: 1920-1950, International and Comparative Law Quarterly 33 (1984); A Reconsideration of the Underlying Premise of Refugee Law, Harvard International Law Journal, 31 (1990).

(5) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided this paragraph shall not apply to a refugee falling under section A(l) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

In broad terms, Article 1 of the Convention outlines the basis on which protection to refugees is granted, or denied, or discontinued. A well founded fear of persecution based on reasons specified above, and being outside the country of origin, nationality, or habitual residence evidenced by unwillingness to return to such a country, are all significant elements in the definition of a refugee. However, the element of a well-founded fear of persecution is clearly the most important factor concerning the determination of refugee status. The other elements of the definition ie outside the country of origin, nationality, or habitual residence, coupled with unwillingness to return are essentially questions of fact. They constitute evidence of the claimants' fear of persecution in their country of origin, nationality, or habitual residence, as well as of the fact that they have lost the protection of such a country.[5]

By contrast, the criterion of a well-founded fear of persecution is a legal standard whose application is conditioned by the existence of objective facts. Grahl-Madsen[6] noted that the adjective 'well-founded' connoted a fear based on reasonable grounds of persecution. In his view, this term suggests that it is not the frame of mind of the person concerned which is decisive for her or his claim to refugee status, but that this claim should be measured with a more objective yardstick.

Other writers have made propositions of a similar nature. Thus it has been observed that the phrase 'well founded' means there must be sufficient facts to justify the conclusion that the applicant for refugee status would face a serious possibility of being subjected to persecution upon return to the country of origin.[7] Some sources indicate further still that well-founded fear means that the applicant must give a plausible account of why she or he fears persecution, or that the applicant must show good reason to fear persecution by adducing evidence of an objective risk.[8] These views are consistent with certain decisions made by superior courts of record in leading common law jurisdictions.

A consensus of judicial opinion has added content to the meaning of the phrase 'well-founded fear' of persecution in the context of the standards set in the Convention Relating to the Status of Refugees. In the case of I.N.S. v Cardoza-Fonseca[9] the Supreme Court of the United States laid the test of reasonable possibility of persecution as the basis for determining the meaning of the well-founded fear of persecution. In an illustrative opinion, Judge Stevens stated that so

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[5] Although in the latter case other corroborative evidence may be required, such as not being in possession of a passport of their country of origin, nationality, or habitual residence.

[6] Grahl-Madsen, The Status of Refugees in International Law, Vol 1 (Leyden, 1966) p 173, See further, pp 176, 188-189.

[7] Goodwin-Gill, in "Transnational Legal Problems of Refugees" 1982 Michigan Yearbook of International Legal Studies, p 299.

[8] Plender, International Migration, pp 416-417 and the references thereon.

[9] (1987) 467 US 407.

long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.[10]

The House of Lords in England approved this approach in the case of R v Secretary of State for the Home Department, ex parte Sivakuniaran.[11] In this case, the six applicants for asylum were Sri Lankan nationals who belonged to the Tamil ethnic group. The Secretary of State refused to grant the applications on grounds that on the facts known to him, the applicants had no reason to fear if they returned to Sri Lanka.

The House of Lords held that the requirement in Article 1 (A)(2) of the Convention that an applicant for refugee status had to have a 'well-founded fear' of persecution if returned to his or her own country meant that there had to be demonstrated a reasonable likelihood that he or she would be so persecuted. The Court stated that in deciding whether the applicants had made out their claim that their fear of persecution was well-founded, the Secretary of State could take into account facts and circumstances known to him or established to his satisfaction, but possibly unknown to the applicant in order to determine whether the applicant's fear was objectively justified.

Following this reasoning, the Court took the view that since the Secretary of State had before him information which indicated that there had been no persecution of Tamils generally, or any particular group of Tamils, or the applicants in Sri Lanka, he had been entitled to refuse application on the ground that there existed no real risk of persecution.

In Canada, the Federal Court of Appeal considered the approaches taken by the United States Supreme Court and the House of Lords in the cases above. The Canadian Federal Court applied a reasonable chance for fearing persecution as a test for determining the existence of a 'well-founded fear' of persecution.[12]

In general, these cases indicate the type of problems which surround increasingly restrictive interpretations of the criteria governing refugee status. But the consistency of the tests used is significant in providing evidence that the standard of well-founded fear of persecution is one of general application in international law. There is a similarity of content in the tests of reasonable possibility, reasonable likelihood, and reasonable chance, all of which are variously used to determine objectively a well-founded fear of persecution. On good authority, there is no practical difference in the legal application of these tests.[13]

The term 'persecution' is not defined either in the Convention Relating to the Status of Refugees or in the preparatory material to the Convention. There could have been an underlying motive behind this.[14] Whatever the case, the judicial view is that persecution connotes injurious or oppressive action. The problem with such narrow and literal approaches to the meaning of persecution is that the institution of asylum as a whole faces constraints which threaten the humanitarian spirit of the Convention.

Consequently, formidable challenges to broaden the conception of persecution in order to continue to provide sanctuary to refugees have to be faced. One such challenge is the linkage between human rights and the refugee regime. Clearly, the concept of persecution cannot have remained unaffected by subsequent developments in the law relating to human rights. Any meaning that has to be given to the concept of persecution must take into account the existing general human rights standards.

Principles of human rights have considerably widened the ambit of protection afforded to persons generally. Moreover, the Convention is based on humanitarian ideals embellished in the concept of human rights. Indeed the preamble to the Convention Relating to the Status of Refugees affirms the principle enunciated in the Charter of the United Nations that human beings shall enjoy fundamental rights and freedoms without discrimination. The grounds on which persecution is recognised in the Convention, namely, race, religion, nationality, political opinion or membership of a particular social group are identical to those on which discrimination under human rights standards is prohibited in general international law.

At the very least, a connection exists between persecution and the failure on the part of states to observe certain human rights. The reference contained in the Preamble to the Convention concerning the principle that human beings shall enjoy

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[10] Ibid, Per Judge Stevens, at 453.

[11] (1988) 1 All E.R. 193.

[12] Adjei v Minister of Employment and Immigration, Federal Court of Appeal Decision A-676-88, January 25, 1989. at 172, 173.

[13] R v Governor of Pentonville Prison, ex parte Fernandez (1971) 2 A.E.R 691 at 697. In this case, the Court was engaged in a construction of S.4 (1) (c) of the Fugitive Offenders Act 1967 which stated that a person shall not be returned under the Act if it appears that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reasons of his race, religion, nationality, or political opinion. In determining the likelihood of such an eventuality, the Court made reference to reasonable chance, substantial grounds or serious possibility of the likelihood of the detention or restriction of the fugitive on his return.

[14] Hathaway, The Law of Refugee Status, (London, 1991) p 7.

fundamental rights and freedoms may provide a context for advancing the view that the violation of certain rights may either constitute, persecution per se, or evidence thereof.

Thus unjustified discrimination on grounds of race, religion, nationality, political opinion, or membership of a particular social group, may constitute persecution in international law.

It has been suggested that the persecution feared by the refugee is primarily in the nature of a serious disadvantage, including jeopardy to life, physical integrity or liberty within the meaning of Articles 31 and 33 of the Convention Relating to the Status of Refugees.[15] Article 31 relates, threats to life or freedom, to persecution in Article 1 of the Convention.

It establishes a linkage between such threats, and the grounds of race, religion, nationality, membership of a particular social group or political opinion. And these are the grounds on which persecution is determined primarily in the sense of Article 1 of the Convention.

While Article 31 speaks of 'refugees who coming directly from a territory where their life or freedom was threatened' in the sense of Article 1, Article 33 prohibits states to 'expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his (or her) life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'. The conclusion that threats to life and individual freedom generally, or in relation to these grounds, constitute persecution is warranted.

There are further indications emanating from the Convention Against Torture which show a connection between persecution and human rights standards. Article 3 of the Convention prohibits expulsion, return, or refoulement of persons to countries where there is a substantial risk that they will face torture, inhuman or degrading treatment. This is a statement of the principle of non-refoulement, the cornerstone of refugee protection. Inclusion of this principle in a human rights instrument independently of the refugee regime affirms its existence in general international law. Above all, such an inclusion shows that proof of a substantial risk of torture, inhuman or degrading treatment may constitute a well-founded fear of persecution or evidence thereof.

According to Plender,[16] the difference in origins and meaning between persecution in the 1951 Convention and inhuman or degrading treatment in the European Convention on Human Rights is a point of some significance for the asylum seeker who faces ill-treatment short of persecution. Plender suggests that there is no reason in principle why such a person should be unable to rely upon the prohibition of inhuman and degrading treatment of Article 3 of the Convention on Human Rights, and that the European Commission's case law on that Article do not imply that he cannot do so.

The case law of the Human Rights Committee shows that detention, confinement, and banishment on account of political opinions amounts to persecution. It is of some significance that the view of the Committee in at least two cases was made without reference to the standard of persecution contained in the Convention Relating to the Status of Refugees. This means that the concept of persecution is wider in scope and that it is associated with the denial of certain human rights.

In contemporary times, it is evident that massive violations of human rights, serious public disorder, internal strife or armed conflict, acts of aggression and foreign domination, all compel persons to flee across state frontiers in large numbers.[17] As the causes of forced migration beyond state borders have become more complex and intense, the standard of a well-founded fear of persecution by itself is inadequate to providing sanctuary to the mass number of refugees in flight for their lives and safety all over the world.

The plight of women being persecuted for reasons related to their gender as victims of systematic rape, sexual abuse, and discriminatory patterns of traditional customs and behaviour is a matter not addressed directly by the Convention of 1951. The definition of non-discrimination in Article 3 of the Convention does not include the category of sex. It has been left to the practice of the United Nations High Commissioner for Refugees to recognise that 'Women at Risk' are a special category of refugee protection. Some jurisdictions have also come to accept that 'Women at Risk' may constitute membership of a particular social group under Article 1(2) of the Convention.

Although the foregoing are important reflections for the reader, this book will provide an authoritative insight into the process that led to the conclusion of the Convention relating to the Status of Refugees. It is organised in the format arranged by Dr Weis, and it remains his original work. Both scholar and practitioner will find it invaluable.

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[15] Plender, International Migration, 2 ed, (Dordrecht, 1988) pp 417-418.

[16] Ibid, p 259.

[17] See the Convention Governing the Specific Aspects of the Refugee Problems in Africa 1969, and the Cartegana Declaration of South American States 1984 which include these elements in the definition of a refugee.

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BACKGROUND

In 1947 the Commission on Human Rights adopted a Resolution by which it expressed the wish that 'early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation'.[18] In pursuance of this Resolution, the Economic and Social Council requested the Secretary-General at its sixth session:

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

b) to undertake a study of national legislation and international agreements and conventions relevant to statelessness and to submit recommendations to the Council as to the desirability of concluding a further convention on this subject.'[19]

This study was published by the Department of Social Affairs under the title 'A study of statelessness'.[20] In this study the Secretary-General recommended the conclusion of an international convention concerning the legal status of stateless persons, whether *de jure* or *de facto,* which would not entail abrogation of existing agreements.

The Economic and Social Council adopted at its ninth session on 8 August 1949 Resolution 248(IX)B, reading:

> The Economic and Social Council
>
> Takes note of the report of the *ad hoc* Committee on Refugees and Stateless Persons including, in particular, the draft agreements contained therein and of the comments of Governments thereon,
>
> Submits to the General Assembly the report of the *ad hoc* Committee, together with the comments of Governments thereon, and the records of the proceedings of this Council on this subject,
>
> Requests the Secretary-General:

(1) To reconvene the *ad hoc* Committee on Refugees and Stateless Persons in order that it may prepare revised drafts of these agreements in the light of comments of Governments and of specialized agencies and the discussions and decisions of this Council at its eleventh session, which shall include the definition of 'refugee' and the Preamble approved by the Council, making such other revisions as appear necessary: and

(2) To submit the drafts, as revised, to the General Assembly at its fifth session:

> Draws to the attention of the *ad hoc* Committee the fact that, under rules 75 and 77 of the rules of procedure of the Council, the Committee is authorized to hear statements from Member States not members of the Committee and from such specialized agencies as may wish to participate without vote in the deliberations of the Committee;
>
> Decides that, in addition, the *ad hoc* Committee is authorized to hear statements from such non-member States, because of their special interest in the problem, as may wish to participate as observers, without vote, in the deliberations of the Committee; and
>
> Recommends to the General Assembly that it approve international agreements on the basis of the draft agreements prepared by the *ad hoc* Committee, as revised, taking into account comments of Governments and the views expressed at the eleventh session of the Council.

The membership of the *ad hoc* Committee, called *ad hoc* Committee on Statelessness and Related Problems, was increased from 9 to 13 at the 337th meeting of the Council. The following States were elected to be represented on the Committee: Belgium, Brazil, Canada, China, Denmark, France, Israel, Poland, Turkey, Union of Soviet Socialist Republics, the United Kingdom, the United States and Venezuela. The representatives of Poland and the USSR did not take part in the meeting. The Committee elected Mr. Leslie Chance of Canada as Chairman, Mr. Knud Larsen (Denmark) as Vice-Chairman and Mr. Ramiro Sanaiva Guerreiro as Rapporteur. At the second Session Mr. Larsen (Denmark) took

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[18] E/600 paragraph. 46

[19] Resolution 116(VI)D

[20] E/1112 Add. 1, UN Series no. 1949.XIV.2

the chair in the absence of the Chairman; Mr. Penteado (Brazil) was elected Vice-Chairman.[21] The Committee held its first session in New York from 16 January to 16 February 1950. It drew up a draft convention relating to the status of refugees which would supersede existing agreements on the subject.

The Economic and Social Council examined at its 11th session the Preamble of the draft convention and the definition of refugee contained in Article 1 of the draft. It adopted on 16 August 1950 the following Resolution, 319(XI)B I:

> B
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> Draft Convention relating to the Status of Refugees
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> I
>
> REPORT OF THE AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS
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> The Economic and Social Council
>
> Takes note of the report of the *ad hoc* Committee on Refugees and Stateless Persons including in particular the draft agreements contained therein and of the comments of Governments thereon,[22]
>
> Submits to the General Assembly the report of the *ad hoc* Committee, together with the comments of Governments thereon, and the records of the proceedings of this Council on this subject,[23]
>
> Requests the Secretary-General:

(1) To reconvene the *ad hoc* Committee on Refugees and Stateless Persons in order that it may prepare revised drafts of these agreements in the light of comments of Governments and of specialized agencies and the discussions and decisions of this Council at its eleventh session, which shall include the definition of 'refugee' and the Preamble approved by the Council, making such other revisions as appear necessary; and

(2) To submit the drafts as revised, to the General Assembly at its fifth session;

> Draws to the attention of the *ad hoc* Committee the fact that, under rules 75 and 77 of the rules of procedure of the Council, the Committee is authorized to hear statements from Member States not members of the Committee and from such specialized agencies as may wish to participate without vote in the deliberations of the Committee;
>
> Decides that, in addition, the *ad hoc* Committee is authorized to hear statements from such non-member States, because of their special interest in the problem, as may wish to participate as observers, without vote, in the deliberations of the Committee; and
>
> Recommends to the General Assembly that it approve international agreements on the basis of the draft agreements prepared by the *ad hoc* Committee, as revised, taking into account comments of Governments and the views expressed at the eleventh session of the Council.

The Committee, now called the *ad hoc* Committee on Refugees and Stateless Persons, held its second session in Geneva from 14-25 August 1950. Representatives of Switzerland and Italy took part in the meeting as observers. The Committee revised the articles of the Draft Convention other than Article 1.

The Economic and Social Council decided by Resolution 319(XI)B II that the Draft Convention as revised by the *ad hoc* Committee be submitted to the General Assembly. The preamble and Article 1 as drafted by the Economic and Social Council were included in the Resolution.

The third Committee of the General Assembly reviewed at the Assembly's fifth session in 1950 Article 1 as drafted by the Economic and Social Council. The Assembly adopted on 14 December 1950 Resolution 429(V) reading:

> The General Assembly,
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> Considering that, by its resolution 362(IV) of 22 October 1949, it approved the recommendation of the Special Committee on Methods and Procedures that the General Assembly might decide to convene a conference of plenipotentiaries to study, negotiate, draft and possibly sign conventions that had been drawn up by Conferences in which all Members of the United Nations have not been invited to take part,

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[21] Mr. Winter (Canada) was elected Rapporteur

[22] Document E/1618, E/1703, E/1618/Corr.1, E/1703/Corr.1, E/1703/Add.1-7, E/1704, E/1704/Corr.1 and 2

[23] Documents E/AC.7/SR.158 to 161 and 165 to 170, also E/SR.406 and 407

Considering the desirability of enabling the Governments of States not Members of the United Nations to participate in the final stages of the drafting of the Convention relating to the Status of Refugees, as prepared by the *ad hoc* Committee on Refugees and Stateless Persons and the Economic and Social Council.

1. Decides to convene in Geneva a conference of plenipotentiaries to complete the drafting of and to sign both the Convention relating to the Status of Refugees and the Protocol relating to the Status of Stateless Persons;

2. Recommends to Governments participating in the conference to take into consideration the draft Convention submitted by the Economic and Social Council and, in particular, the text of the definition of the term 'refugee' as set forth in the annex hereto;

3. Requests the Secretary-General to take the steps necessary for the convening of such a conference at the earliest possible opportunity;

4. Instructs the Secretary-General to invite the Governments of all States, both Members and non-members of the United Nations, to attend the said conference of plenipotentiaries;

5. Calls upon the United Nations High Commissioner for Refugees, in accordance with the provisions of the Statute of his Office, to participate in the work of the Conference.

The Conference of Plenipotentiaries met at Geneva from 2-25 July 1951. The following 26 states were represented by delegates:

Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Federal Republic of Germany, Greece, Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, Netherlands, Norway, Sweden, Switzerland (the Swiss delegation also represented Liechtenstein), Turkey, United Kingdom of Great Britain & Northern, Ireland (UK), United States of America (US), Venezuela, Yugoslavia

The Governments of Cuba and Iran were represented by observers.[24] The Conference adopted on 25 July the Convention relating to the Status of Refugees. The Final Act was signed on 28 July.

PREAMBLE

The *ad hoc* Committee took as a basis of discussion a preliminary Draft Convention relating to the Status of Refugees (and Stateless Persons) prepared by the Secretariat.[25] This Draft contained the following preamble.

> Considering that Article 6 of the Universal Declaration of Human Rights lays down that: 'Everyone has the right to recognition everywhere as a person before the law' and that Article 15(1) lays down that: 'Everyone has the right to a nationality',
>
> Considering that a refugee whose juridical status has not been determined does not possess a guarantee of the right to recognition everywhere as a person before the law,
>
> Considering that a refugee who has been deprived of his nationality or who no longer enjoys the protection and assistance of the State to which he belongs nominally no longer has the advantages derived from the possession of nationality, to which everyone has the right,
>
> Considering that stateless persons other than refugees are in the same unfavourable position,
>
> Considering that until a refugee has been able either to return to his country of origin or to acquire the nationality of the country in which he has settled, he must be granted juridical status that will enable him to lead a normal and self-respecting life,
>
> Considering that the same status should be given to stateless persons other than refugees,
>
> The High Contracting Parties have decided upon the following provisions:

At its 21st meeting, the Committee established a working group composed of the representatives of Belgium, France, Israel, the United Kingdom, the United States and the Chairman of the Committee, the Representative of Canada, as *ex officio* Chairman. Its terms of reference were:

(a) To polish the drafting and order the articles of the Draft Convention;

(b) to concord the English and French texts;

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[24] Mr. Knud Larsen (Denmark) was elected President, Mr. A. Herment (Belgium) and Mr. Talat Miras (Turkey) were elected Vice-Presidents.

[25] E/AC.32/2

(c) to draft a preamble; and

(d) to consider the possibility of including a provision to the effect that certain articles of the Draft Convention would apply to stateless persons who were not refugees.[26]

The Working Group proposed the following preamble:[27]

> Preamble
>
> The Contracting States,
>
> Considering the concern of the United Nations for the protection of human rights without any discrimination as given expression in the Universal Declaration of Human Rights; and in particular their concern for the protection of the rights of refugees as evinced in various resolutions of the General Assembly of the United Nations, and
>
> Considering further that it is desirable to revise and consolidate existing international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees and to increase the protection accorded by these instruments,
>
> Have agreed

At the 26th meeting of the *ad hoc* Committee, the representative of China drew attention to the phrase 'as evinced in various resolutions of the General Assembly and the Economic and Social Council of the United Nations, especially resolution 319(IV)A, 3 December 1949'. He thought he was correct in stating that the question of the international status of refugees had been raised and discussed in the first place by the Economic and Social Council, but had subsequently been taken over entirely by the General Assembly. He did not think that the Economic and Social Council had adopted any resolutions which had not been approved and endorsed by the General Assembly.

He concluded, therefore, that the phrase he had mentioned could be deleted and it would suffice if explicit reference were made to Resolution 319(IV).

The Chairman pointed out that the Committee was a subsidiary organ of the Economic and Social Council and had been established in accordance with one of the Council's resolutions, which had not been submitted to the General Assembly. He thought, therefore, that it would serve some purpose to mention the resolutions of the Economic and Social Council.

The representative of Venezuela fully agreed with the Chairman. He recalled that the question of the international status of refugees had been raised by one of the functional commissions of the Economic and Social Council, namely the Commission on Human Rights. The work on which the Committee was engaged at the moment was based on several of the Council's resolutions and that fact should be mentioned in the preamble to the Convention.

His delegation attached particular importance to the activities of the Economic and Social Council, for it considered that the Council had thus far accomplished more useful work and achieved more positive results than any other organ of the United Nations. His delegation could not support the Chinese representative's amendment.

The representative of China withdrew his proposal.

The representative of the US proposed two purely drafting amendments, which affected the English text only. The first was the addition of a comma after the word 'discrimination' and the second was the insertion of the word 'of before the words the Economic and Social Council'.

He further proposed that the words 'that problem' should be replaced by the words 'the problem of refugees'.

The three amendments submitted by the US representative were accepted.

The representative of France recalled that the French draft had referred to the right of asylum. At the time of the first reading, the Committee had decided to postpone the question until the text of the Preamble was considered. He would like to hear the views of the Committee on that point; he, for his part, would urge that the right of asylum should be mentioned explicitly together with the reference to the Universal Declaration of Human Rights.

After a brief exchange of views, the Committee decided that the words 'especially in Article 14' should be added after the words 'in the Universal Declaration of Human Rights'.

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[26] E/AC.32/SR.21, p.2

[27] E/AC.32/L.32

The representative of Venezuela was glad that Article 14 had been mentioned but he felt that the same should be done for Article 6, which laid down that everyone had the right to recognition everywhere as a person before the law. That was one of the most important Articles of the Universal Declaration of Human Rights. It was of particular importance for the Convention Relating to the Status of Refugees, for the Convention was in fact based on the principle laid down in that Article.

He proposed, therefore, that the Preamble should read 'especially in Articles 6 and 14'.

It was so agreed.

The Preamble, thus amended, was adopted.[28]

The Preamble as adopted by the Committee read:[29]

> Preamble
>
> > The Contracting States,
> >
> > Considering the concern of the United Nations for the protection of human rights without any discrimination, as given expression in the Universal Declaration of Human Rights and especially Articles 6 and 14 thereof: and in particular their profound concern for the rights of refugees as evinced in various resolutions of the General Assembly and of the Economic and Social Council of the United Nations, especially Resolution 319A(IV), 3 December 1949, in which the General Assembly recognized the international scope and nature of the refugee problem and the responsibility of the Untied Nations for the international protection of refugees; and
> >
> > Considering further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees and to increase the protection afforded by these instruments,
> >
> > Have agreed.

In the Social Committee of the Economic and Social Council at its 11th session the French Government proposed an amendment to the Preamble:[30]

> Preamble
>
> > Considering that neither the Charter of the Untied Nations nor the Universal Declaration of Human Rights tolerate discrimination among human beings, whether they enjoy the protection of their country of origin or being refugees on foreign soil are unable to claim such protection;
> >
> > Considering that by evincing on various occasions, and most recently in General Assembly Resolution 319, its profound concern for refugees the United Nations has endeavoured to assure refugees the widest possible exercise of the fundamental rights and liberties defined in the above texts;
> >
> > Considering that in the light of experience the adoption of an international convention would appear to be one of the most effective ways of guaranteeing refugees the exercise of such rights;
> >
> > But considering that the exercise of the rights to asylum places an undue burden on certain countries because of their geographical situation, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation to help to distribute refugees throughout the world;
> >
> > Considering that the High Commissioner for Refugees, or any other United Nations representative who may succeed him, will be called upon to supervise the application of this present text, and to endeavour to improve it without losing sight of the necessity for wide international cooperation to that end;
> >
> > Expressing furthermore the hope that this Convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make under Article 1 of the present text, Article 1 as adopted by the Social Committee referred to refugees 'as a result of events in Europe before 1 January 1951, or circumstances directly resulting from such events' all nations will be guided by it in granting to persons present in their

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[28] E/AC.32/SR.26 pp.8-10

[29] E/1618,E/AC.32/5,p.11

[30] E/L.81

territory in the capacity of refugees and not covered by the following provisions, treatment affording the same rights and advantages.

In the Social Committee of the Council the French representative said[31] that the chief aim of the Preamble was to state the refugee problem in human and equitable terms. It enabled that problem to be expanded to its true dimensions, and indicated the ideal towards which the United Nations must strive if it was not to rest content with an imperfect and partial solution. That was all the more essential since any convention must of necessity represent a compromise between the ideal and the practicable. It was therefore necessary to find a place in the Preamble for the sacrificed ideal which it had proved impossible to embody in the Convention. It should not be forgotten that, in the ultimate analysis, it was always the mind and the ideal which were right; the very existence of the United Nations was a proof of that.

His delegation considered that the Preamble represented the only return asked of the international community in exchange for the recognition of its right to determine the status of refugees in the reception countries, such return taking the form of a definition, not of the refugee himself, but of the refugee problem, in fair and accurate terms in conformity with reality and the aims pursued.

The Preamble itself was a modest one, simply a compromise which the French delegation thought a sincere one and likely to prove acceptable to all in its entirety, since it formed a coherent whole.

At the 160th meeting, the French representative, analysing the amendment submitted by his delegation,[32] first observed that the principle of the Preamble did not appear to be in dispute.

The wording proposed by the French delegation presented the problem of refugees in terms that were equitable both for the refugees themselves and for the countries receiving them.

The ideal would undoubtedly be to place refugees on an equal footing with the citizens of the countries of refuge, in conformity with the principle of non-discrimination set forth in the Universal Declaration of Human Rights. But even in countries which, like France, pursued a very liberal reception policy, it was not possible to grant refugees exactly the same treatment as nationals. Consequently, while the first paragraph of the French amendment recalled the principle of non-discrimination, the second paragraph spoke of assuring refugees 'the widest possible exercise of the fundamental rights and liberties...'.

The third paragraph was a mere statement of fact.

The fourth paragraph recalled the need for a collective effort to solve the problem of refugees and to help to distribute them throughout the world. The French delegation thought that immigration countries would recognize the exceptional nature of the burdens assumed by the receiving countries, and would understand that in certain States the pressure of population was such that it was impossible to ensure a satisfactory future for refugees.

The purpose of the fifth paragraph was to provide the necessary link between the Convention and the work of the High Commissioner's Office.

The last paragraph expressed the liberal spirit in which the protection of refugees was contemplated, and explained that the Convention should have a value as an example.

In speaking of the treatment to be granted to persons not covered by the provisions of the Convention, however, the French delegation did not consider that there could be any question of internal refugees. If international assistance measures were to apply to such persons, a new problem would have to be considered.

The last paragraph also brought out that a convention was, above all, an effort demanded of governments. The Convention relating to the Status of Refugees should be considered, not as a measure favouring a particular country or a particular class of refugees, but as the stage now attainable and one which could be followed by others, as private agreements came to be concluded between governments.

The ideas expressed in the Preamble formed a complete whole and he urged, in conclusion, that in the examination it was about to undertake the Committee should not lose sight of the exceptional burdens assumed by certain countries, or of the need to submit for signature by the Governments especially concerned a text which they would find equitable.

The representative of Australia said his government was considering the question whether the High Commissioner for Refugees should be given supervisory powers in so far as the application of the draft Convention was concerned. Until a

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[31] E/AC.7/SR.158, p. 11

[32] (E/L.81)

decision had been reached by the Australian Government, his delegation could not support the fifth paragraph of the French amendments.[33]

The discussion of the Preamble to the draft Convention (E/ 1618, E/L. 8 1) was resumed at the 166th meeting.

The French representative pointed out that in preparing the French amendments to the draft Preamble he had endeavoured to provide a definition of the refugee problem that would be equitable both to the refugees themselves and to the countries which granted them hospitality. In the latter connexion, it should be stressed that France was prepared, subject to certain reservations, to regard the provisions of the Convention as binding. But his delegation was obliged to look to the future, since France had not only already granted hospitality to a considerable number of refugees, but was still likely to receive many more. During the Spanish civil war France had had to give asylum to 500,000 refugees from Spain. It would be illusory to claim that the mere existence of an international convention could solve such a problem, and there was no guarantee that France would not once more be faced with problems of the same magnitude. It was mainly in order to forestall such a danger, and having regard to certain exceptional circumstances existing in Europe, that he had intended in his draft Preamble a paragraph which not only mentioned exceptional circumstances, but stressed the need of international cooperation to deal with them.

The representative of Mexico supported the French amendment.

The representative of the US said he had not intended to take part in the discussion of the French amendment[34] to the Preamble to the draft Convention; but, in view of some remarks which had been made, particularly by the representative of Mexico, he felt bound 'to say that he was in general agreement with all the reasons given by the representative of France for the provisions contained in his preamble; his only doubt was whether those provisions should go into a Preamble at all. However, while he felt that the original Preamble drafted by the *ad hoc* Committee would have been perfectly adequate, and that much of what the French representative proposed to add would better be adopted in the form of a General Assembly resolution, the US Government was too well aware of all that France had done to help refugees to object to any additions proposed by that country to any document on the subject, unless they were objectionable in substance.

His Government did find the last paragraph of document E/L.81 objectionable, and, if a formal vote was taken on the French amendment, the US delegation would move the deletion of that paragraph, first, because it contained a reference to recommendations to be made by the General Assembly under Article 1 of the Convention, from which mention of recommendations by the General Assembly had been removed; and, secondly, because of the implication that the Convention was not wide enough in scope. The US delegation had said before, and must say again, that in its opinion all persons in need of protection at the present time were fully covered by the definition provided in Article 1 of the draft Convention.

The drafting of the first paragraph of the French amendment was also unsatisfactory because it seemed to suggest that the Charter of the United Nations dealt with the question of discrimination between people possessing a nationality and people without one, which, to the best of his recollection, was not so. The paragraph would therefore be simpler and clearer if that reference to discrimination between two kinds of nationality were removed, and it read simply:

> 'Considering that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings should enjoy fundamental rights and freedoms without discrimination;'

The representative of Chile felt that the terms of the French draft of the Preamble were broader and more generous than those drawn up by the *ad hoc* Committee, and hoped therefore that the French amendment would be taken as the basic text for discussion.

He felt that on grounds of legal drafting, the reference in the fourth paragraph to the geographical situation of certain countries should be removed, but if the French representative insisted on retaining it he would not formally oppose it. The fifth paragraph referred to the powers of the High Commissioner, which had not yet been discussed. As it was not certain that he would in fact be empowered to supervise the application of the Convention, it would be better if consideration of that paragraph could be left over. The representative of France would, of course, have no objection to making the necessary adjustment in the final paragraph of the Preamble, since the reference to recommendations by the General Assembly had already been removed from Article 1 of the draft Convention.

The French representative agreed that the small number of suggested improvements to the wording could easily be made. He was also prepared to accept the US amendment to the first paragraph of the Preamble. He had based his own text on the fact that certain discriminations did actually exist.

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[33] E/AC.7/SR.160, pp. 26 and 27

[34] (E/L.81)

With regard to the Chilean suggestions, he wished to point out that the reference in the fourth paragraph of the Preamble to the undue burden placed on certain countries was merely a statement of fact, and was in no way designed to create a legal obligation. He was prepared to amend his text so as to make it clear that only a hypothetical case was stated.

With regard to the fifth paragraph of the Preamble, it was clear that the reference to the High Commissioner was based on a decision of principle. Article 3 of the Annex to General Assembly Resolution 319(IV) read:

> Persons falling under the competence of the High Commissioner's Office for Refugees should be, for the time being, refugees and displaced persons defined in annex I (a) of the Constitution of the International Refugee Organization and, thereafter, such persons as the General Assembly may from time to time determine, including any persons brought under the jurisdiction of the High Commissioner's Office under the terms of international conventions or agreements approved by the General Assembly.

Article 4 added that 'the High Commissioner should provide for the protection of refugees and displaced persons falling under the competence of the Office'. He had thought that he would be helping the *ad hoc* Committee by indicating exactly the problems with which it would have to deal.

With regard to the final clause of the Preamble, he thought that a compromise formula could be found.

The Chairman noted that the following chances had been agreed upon by the representative of France. The first paragraph of the preamble was to read:

> Considering that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.

The reference to recommendations made under Article 1 of the Convention would be removed from the last paragraph, which would then read:

> Expressing furthermore the hope that this Convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make for the purpose of inviting Contracting States to add other categories of refugees to those already contained in Article 1 of the present text...

The Belgian representative said that his delegation approved the first three paragraphs of the French amendment.

He noted, with regard to the fourth paragraph, that the Chilean representative had made some very pertinent juridical observations on the geographical situation and the right of asylum referred to therein. His delegation, however, would like to go still further, and insert after Article 26 of the draft Convention another article drawn up in the same terms as those used in the fourth paragraph of the French amendment.

With regard to the fifth paragraph, his delegation supported the views expressed therein, but considered that it would be better to enunciate a principle of that kind in the text of the Convention, rather than in the Preamble.

His delegation hoped that the sixth paragraph would be deleted. It was convinced that the Convention would indeed serve as an example, but the wording of the paragraph was too complicated to serve as a prefatory recommendation.

To sum up, his delegation was in favour of the first three paragraphs, but would like to see the final paragraph of the *ad hoc* Committee's text, which it regarded as especially appropriate, substituted for the last three.

The French representative wished to propose a somewhat different wording, which he thought likely to meet with the committee's approval, for the fourth paragraph. The text might be worded as follows:

> But considering that the exercise of the right of asylum may result in an undue burden, and that a satisfactory solution...

He pointed out that in that way all reference to geographical situation would be removed. He further noted that the adoption of that text would not be regarded as imposing on States any obligation in respect of the right of asylum.

The Belgian proposal to add the last paragraph of the *ad hoc* Committee's text was, in his opinion, not a happy one. The draft Convention which the Committee was in process of drafting itself constituted the revision referred to in the paragraph proposed by the *ad hoc* Committee, which would therefore serve no purpose in the present context.

With regard to the suggestion that the fourth paragraph of his amendment, relating to the undue burden certain countries had to bear, should be inserted in the substantive portion of the Convention, he thought that it would be difficult to find a suitable place for it there.

The Brazilian representative reserved his position on the last three paragraphs, concerning which he still felt some doubt.

The Chinese representative thought that the first paragraph of the French amendment was acceptable in its amended form. The second and third paragraphs required some revision, but for the time being he had no amendments to propose. In connection with the reference in the fourth paragraph to the necessity for international cooperation to help to distribute refugees throughout the world, he wished to make it clear that the Chinese Government was not in a position to accept refugees from other countries, though in the past China had played its full part by giving asylum, particularly to White Russians and Jews. Indeed, those refugees had been accorded virtually the same treatment as Chinese nationals. Many of them had now left, the White Russians for the Philippines and the Jews for Europe, but through no fault of the Chinese Government.

He would reserve comment on the fifth paragraph, and also on the sixth, which were unsatisfactory, despite the modifications already accepted.

The representative of India said the intention of the French representative in revising the preamble was apparently to refer, first, to refugees outside the categories laid down in the draft Convention, and, secondly, to governments not parties to the Convention. In effect, an appeal was made to all governments to accord the same treatment to all refugees, in order to reduce the burden on contracting governments whose geographical situation meant that the greater part of the responsibility fell on them. If that interpretation of the French representative's intention was correct, it would be better, instead of amending the Preamble to the draft Convention, to draw up a resolution for the Council to submit later to the General Assembly, pointing out the desirability of all contracting governments according similar treatment to refugees excluded from the categories laid down by the Convention, and of all non-contracting governments according such treatment to refugees within those categories.

The Canadian representative said she had had a number of doubts regarding the Preamble; those regarding the first three paragraphs had been resolved.

She felt some doubt as to whether the fourth paragraph of the French amendment was appropriate to the Preamble. Presumably, when the French representative had accepted an amendment to the first part of that paragraph, there had been no intention of deleting the last part; yet it seemed irrelevant, since the draft Convention laid down a series of obligations towards refugees in any country, but contained no article regarding the distribution of refugees. The Preamble should surely be directly related to the matter of the Convention. In short, the paragraph amounted to an acceptance of a decision on high policy and was therefore unsuited to form part of a preamble to a convention conferring specified rights on specified categories of refugees.

She also doubted whether the fifth paragraph was appropriate, but if it was to be retained she would request that he words 'to endeavour to improve it' be deleted. Resolution 319(IV)A of the General Assembly made the High Commissioner responsible for the supervision of the application of the Convention and for suggesting any necessary amendments thereto. It would be better to use the actual words of the resolution than to suggest that the High Commissioner himself could personally improve the Convention.

The last paragraph also seemed inappropriate, with its suggestion that the application of the draft Convention should be regarded as being wider than it in fact was. The Social Committee having rejected the proposal for a broad definition of refugee, it seemed most inconsistent to express the hope in the Preamble that the Convention would in fact be applied to all refugees in all countries and not only the categories included in the definition article. However, as the French representative had indicated his intention to make certain revisions, the Canadian delegation would reserve its position until the text was final.

The representative of Mexico felt that the fifth paragraph of the French amendment might well be retained, since the preamble drafted by the *ad hoc* Committee also referred to the High Commissioner, for the excellent reason that the implementation of Article 30 of the draft Convention would be his concern and that his position must be made clear. From the very beginning, the High Commissioner would certainly be called on to deal, with differences arising between countries before the provision in Article 33 for reference of such disputes to the International Court of Justice could be applied. Either the fifth paragraph proposed by the French delegation, or something on the same lines, must therefore be retained.

The Belgian representative noted that the Canadian representative's observations with regard to the fourth and sixth paragraphs were identical with those he had made himself. He supported the Canadian representative's views on those paragraphs, and also in respect of the other paragraphs. In short, he maintained his position on them all.

The representative of Pakistan felt that the sixth paragraph of the French amendment displayed a generous emotion in trying to take stock of the real situation and broaden the definition of 'refugee'; but, with regard to its legal scope, he wished to put forward some criticisms, speaking only as an individual with some knowledge of law.

A preamble to any kind of statute had two functions: first, to provide an account of the historical antecedents of the operative part of the statute: secondly, to provide a key for its interpretation. In interpreting the scope of the articles of the

statute, it could never be permissible to give them an interpretation which they were not in themselves capable of sustaining, even if a preamble encouraged such interpretation. The sixth paragraph of the French amendment went beyond the functions of a preamble according to law, and was therefore open to the charge of hypocrisy. To begin with, it expressed a hope. He had never before heard of any preamble expressing a hope, though the representative of France, who was also a legal expert, would tell him if French law was exceptional in that respect. The hope expressed must be a pious one, because if analyzed it amounted to very little. If the definition of 'refugees' as contained in the articles of the draft convention was substituted for the word 'refugees' in the paragraph in question, the words 'not covered by the following provisions' would be clearly contradictory and without meaning. It was therefore to be hoped that the representative of France would give some explanation of his point of view, but if he remained unconvinced, the Pakistani delegation would vote against the paragraph.

The US representative agreed with the representative of Mexico that a reference to the High Commissioner should be included in the Preamble, since, although his functions had not yet been fully defined, it seemed clear that they would included the supervision of the application of the Convention. However, the reference in the French text to 'any other UN representative who might succeed him' should be deleted, since it was hardly appropriate at the present stage to be thinking already of replacing the High Commissioner. Some such phrase as 'any other appropriate body' would be preferable. Furthermore, as the representative of Canada had said, the reference to improving the Convention was objectionable, with its implication that the Council was dissatisfied with it, but left it to the High Commissioner to rectify its faults. It would be simpler and more satisfactory merely to include a reference to Resolution 319(IV) of the General Assembly, and another to the necessity for international cooperation. He would later submit an amendment on those lines.

Regarding the Preamble as a whole, the critical reasoning of the representative of Pakistan had been most impressive. The fact was that the French text was not so much a Preamble to the Convention as a draft of the resolution with which the General Assembly could introduce it. If it could be presented in that form, the Council might avoid many difficulties, and also secure the additional advantage that it would be addressed not merely to governments adhering to the Convention, but to all nations equally.

The French representative said that he sensed in the minds of certain delegations a fear not merely of the slightest involvement, but of the slightest suggestion of involvement, in some Machiavellian scheme. He assured the Committee that the French amendment contained no dark design and, in particular, that it was not a request to governments, but only a statement of certain obvious truths, with an indication of certain situations which might arise and, in that event, of the conclusions to be drawn from them.

Recalling once more the undue burden which France had had to bear in the matter of receiving refugees, he thought that all European countries which ran the same risks should be conscious of the need for including such a safety clause in the Convention. It had been contended that the hope expressed in the last paragraph of the Preamble was hypocritical. But the situation which he had in mind was in no way theoretical. France was at that very time granting asylum to persons from certain distant countries who did not enjoy international refugee status. The French Government nevertheless granted them not only right of asylum, but rights and advantages equivalent to those granted to refugees who came within the purview of IRO. What he hoped was that other countries would do likewise in similar circumstances. In addition, if it had become possible to consider the adoption of an international convention on European refugees, that was because the problem had been the subject of international agreements for twenty-five years. It was conceivable that by the adoption of special conventions, the way could be paved for the provision of genuinely international protection of other types of refugees in other countries.

The present text might certainly be improved, but the Preamble would become meaningless if the last three paragraphs were deleted. He therefore opposed such deletion because it would destroy the intrinsic value of the whole.[35]

Document E/AC.7/L.71 read:

> Refugees and Stateless Persons
> Amendments proposed to Document E/L.81

1. Substitute for the first paragraph the following:

'Considering that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

2. The second paragraph would read as follows:

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[35] E/AC.7/SR.166, pp. 12-23

'Considering that the United Nations has, on various occasions, and most recently in General Assembly Resolution 319, manifested its profound concern for refugees and has endeavoured to assure refugees the widest possible exercise of the fundamental rights and liberties;'

3. The fourth paragraph should read as follows:

'But considering that the exercise of the right of asylum may result in an undue burden on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation to help to distribute refugees through-out the world;'

4. The fifth paragraph should read as follows:

'Considering that the High Commissioner for Refugees, or other appropriate body of the United Nations designated by the General Assembly, will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention requires the full cooperation of States with the High Commissioner or other appropriate United Nations body;'

5. Last paragraph: Delete the remainder of the paragraph after the words 'to make' and substitute:

'With a view to requesting the High Contracting Parties to extend the benefit of the Convention to other categories of persons, all nations will be guided by it in granting to persons who may happen to be present in their territory in the capacity of refugees and not covered by the following provisions, treatment affording the same rights and advantages.'

The discussion of the Preamble to the draft Convention was continued at the 167th meeting.

The Chairman said that the various amendments to the French proposal had now been circulated as document E/AC.7/L.71. In addition to these amendments, there was also before the Committee a proposal by the Belgian representative that the Preamble consist of the first three paragraphs of the French delegation's draft and the final paragraph of the draft Preamble of the *ad hoc* Committee.

The representative of Denmark was prepared to accept the draft Preamble proposed by the *ad hoc* Committee, which was short and simple. The French delegation's draft Preamble, however, was of the greatest interest, and several paragraphs, particularly the fourth and fifth, commanded his entire support in matters of substance; but some of it, perhaps, went beyond what one would expect to find in a preamble, although the points covered would require consideration sooner or later. As the UK representative had said, a preamble was normally considered after the text of a convention had been established, not before; the circumstances being reversed, the discussion of the draft Preamble ought perhaps to be deferred. If there was a vote on it, his delegation would abstain, but would reserve its right to consider it afresh in the Council when item 3 2 on the agenda came to be considered there.

The representative of Peru pointed out that both the French delegation's draft Preamble and the amendment proposed to it in document E/AC.7/L.71 referred to the 'right of asylum', an expression which, in international law, and particularly in Latin America, was used, not for ordinary refugees, but for political refugees. To avoid confusion, he suggested that the expression 'seeking refuge' should be used in place of the word 'asylum'.

The French representative recognized that there was a difference in meaning between the word *'asile'* (asylum) and the word *'refuge'* (refuge) but pointed out that in practice they amounted to exactly the same thing. When a foreigner sought sanctuary in France, he was first granted the right of asylum, and then accorded the status of refugee. It was therefore impossible to draw a distinction between the two concepts in his country, as could apparently be done in Peru. Furthermore, the word *'asile'* (asylum) was used in Article 14 of the Universal Declaration of Human Rights in the same sense as in the text submitted by the French delegation.

The representative of Chile, alluding to the Peruvian representative's doubts, said that the expression 'asylum' used in the draft Convention was equivalent to the expression 'seeking refuge', and had no connection with the diplomatic right of asylum in vogue in Latin American countries and given legal effect in several international conventions. The latter should properly be called 'diplomatic asylum'; it was called 'asylum' only as a matter of habit. The provisions of the draft Convention in no way interfered with the system of diplomatic asylum which the Peruvian representative was anxious about.

The US representative said that at the morning meeting, in order to meet the objections made to the introduction of certain ideas into the draft Preamble, he had said that his delegation would not oppose the incorporation of those ideas in a resolution, even if the resolution were linked with the draft Convention. He hoped that the French representative would accept that suggestion; if not, he suggested that the Committee vote on the question whether the points which aroused opposition should be included in the draft Preamble and whether the Belgian representative's proposal should be adopted.

The French representative drew attention to the fact that, since a preamble formed an integral part of a convention, it carried greater weight than a General Assembly resolution. Although he did not wish to cast doubts on the value of resolutions adopted by the General Assembly, he ventured to suggest that in practice some of them had had very little positive effect. On the other hand, the Preamble, being bound up with the Convention, would have the same authority as the Convention itself. It was for that reason that the French delegation was pressing for the inclusion in the Preamble of the ideas it had put forward, especially as the Convention itself would entail considerable obligations for the Contracting Parties.

Moreover, the decision taken by the Committee at the beginning the discussion of the question had been adopted on the understanding that the Committee would later consider and take decisions on the Preamble and the definition of the term 'refugee'. Had that not been so, the French delegation would never have supported such a decision. It had, in fact, always considered that it would be pointless to convene a meeting of the *ad hoc* Committee, unless the United Nations indicated, in broad outline, the general principles which should guide it in studying the problem. Unless the Social Committee reached agreement on certain general principles, the *ad hoc* Committee would have great difficulty in winning the support of certain delegations in view of the numerous difficulties raised by certain articles in the draft Convention. The question could, no doubt, be raised again in the General Assembly, but his delegation was convinced that it was essential for the Social Committee to make its own view clear then and there.

The representative of Mexico said that the draft Preamble, if agreed upon, might well be of assistance to the experts in the *ad hoc* Committee in drafting the Convention. Consideration of the Preamble, if left to the Council, would raise many difficulties, and materially add to the work to be done at the end of the session. He accordingly thought that the Committee should attempt to modify the French delegation's draft, and produce a Preamble on which the majority of members could agree. The Preamble, even then, would not be final but the Committee could revert to it later.

The French representative thanked the representative of Mexico for his support.

He would like to emphasize that the French version of the Preamble was really a preliminary draft, and that all representatives, even those who did not entirely share all the views enunciated in the text, might therefore give it their provisional support.

The Chairman put to the vote separately the several paragraphs of the French delegation's draft Preamble (E/L. 81), as amended by the proposals set out in document E/AC.7/L.71.

He pointed out that the first paragraph in document E/AC.7/L.71 had been accepted by the French representative, and would, if adopted, form the first paragraph of the draft Preamble.

The Committee adopted the first paragraph of the French delegation's draft Preamble as amended (E/AC.7/L.71), by 14 votes to none, with 1 abstention.

The Chairman, with the agreement of the US representative, proposed that the final words of the US draft amendment to the second paragraph (E/AC.7/L.71), be altered to read 'these fundamental rights and freedoms', in order to make the language conform with that of the first paragraph. He also said that the resolution number would be changed from '319' to '319(IV)'.

The Committee adopted the second paragraph of the French delegation's draft Preamble (E/L.81), as amended by the US delegation (E/AC.7/L.71), by 14 votes to none, with 1 abstention.

The Committee adopted the third paragraph of the French delegation's draft Preamble (E/ L.81) by 12 votes to none, with 3 abstentions.

After some discussion, the Chairman said that the Belgian representative's proposal would be voted on in the form that the last paragraph of the *ad hoc* Committee's draft Preamble (E/1618, Annex I) should be inserted as the fourth paragraph of the French delegation's amendment.

The Belgian proposal was adopted by 14 votes to 1.

The US representative asked whether it was possible for the Committee to vote on whether the content of the original fourth paragraph of the French delegation's draft Preamble could be placed elsewhere than in the draft Preamble.

The Chairman pointed out that there was no appropriate formal proposal before the meeting. There was, however, a formal proposal that the fourth paragraph be adopted as part of the draft Preamble[36] and that proposal required a decision by vote. If the decision was against the inclusion of the fourth paragraph, no delegation would be excluded from submitting a further formal resolution using the same language.

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[36] E/AC.7/L.71, para. 3

The US representative said that his delegation did not believe that the substance of the former fourth paragraph should properly find a place in the draft preamble. Though not against its content, his delegation would abstain from voting on it, and would reserve the right to raise the question again at an appropriate time.

The Belgian representative associated himself with the view expressed by the US representative. The Belgian delegation had given sufficient proof in the course of discussion that it was not hostile to the ideas contained in the fourth and following paragraphs, but was simply opposed to the inclusion of those paragraphs in the Preamble. His delegation would accordingly abstain from voting when those paragraphs were put to the vote.

The Committee rejected the fourth paragraph of the French delegation's draft Preamble (E/ L.81), as amended by the French delegation (E/AC.7/L.71, paragraph 3) by 5 votes to 5, with 5 abstentions.

The Chairman calling for a vote on the sixth paragraph, reminded the Committee that the fifth paragraph, and the final vote on the draft Preamble as a whole, would be taken up after the discussion on item 32(a) of the agenda had been completed.

The Committee adopted the sixth paragraph of the French delegation's draft Preamble (E/L.81), as amended by the French delegation (E/AC.7/L.71), by 5 votes to 4, with 6 abstentions.

The Belgian and US representatives made the same reservations in respect of the sixth paragraph as they had in respect of the fourth.

The Indian representative explained that his country, while agreeing with the substance of the French delegation's draft Preamble, did not agree that a Preamble should contain ideas which went beyond the terms of the Convention. He thought that, in its incomplete state, with the fifth paragraph left out of consideration, it would make peculiar reading, and that the Belgian representative's original proposal, that it consist of the first three paragraphs of the French delegation's draft Preamble and the final paragraph of the original draft Preamble, would have been preferable.[37]

At the 170th meeting of the Social Committee, the Chairman:

> 'The French representative said that though the Preamble had originally been based on a French proposal, it had emerged from the Committee shorn of a clause which he felt to be essential, and the French delegation would vote against it if it were put to the vote as it stood. Until the question had been taken up again in the Council, the French delegation could not approve the preambular clause now before the Committee. That did not mean that the reference to the High Commissioner should find no place in some other part of the Convention, but he did not feel it necessary to mention in the Preamble the executive powers vested in the High Commissioner under the Convention.'

The US representative believed that the paragraph in question would be a useful addition to the draft Convention. As was clear from General Assembly Resolution 319(IV)A and the paragraph just approved by the Committee concerning the Statute of the High Commissioner's Office, supervision of the application of conventions for refugees was clearly one of the functions of the High Commissioner and should be written into the body of the Convention itself.

The UK representative made the following comments, which he said referred to both texts. He objected both to the words 'or any other United Nations representative who may succeed him', and to the words 'or other appropriate United Nations body', because it was premature to speak about other United Nations bodies before the first High Commission had been actually appointed. In his opinion, the phrase should be deleted in either form, and he would ask for a separate vote to be taken on the point.

There was virtually little difference between the two draft amendments, and it should be possible to reach an agreed text.

His only comment with regard to the French text was one of wording; the phrase 'to endeavour to improve it' might cause some misunderstanding, especially after all the preliminary work which had been necessary in drawing up the draft Convention relating to the status of refugees. Perhaps a form of wording such as 'make any necessary amendments thereto' used in Resolution 319(IV)A might be happier.

The US representative agreed generally with the UK representative. He was ready to delete from the US' amendment the words 'or other United Nations body', which had merely been included in order to conform to the original French version.

He was also in favour of the deletion of the words 'to improve' from the French draft amendment; that view was reflected in the US amendment.

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[37] E/AC.7/SR.167, pp. 3

The words in the US amendment referring to 'the full cooperation of States with the High Commission' were intended as a substitute for the French formula 'wide international cooperation', which seemed less clear.

The French representative suggested that, to allow for the opinions which had been expressed, the first paragraph on page 2 of his amendment should be modified by deleting the words 'or any other United Nations representative who may succeed him', and of the words 'and to endeavour to improve it'. He did not particularly favour the first of those phrases, which had been inserted in deference to the wish expressed by the General Assembly that the High Commission should be appointed for a term of three years only.

The Chairman observed that both the US and French representatives were prepared to omit any reference to a possible successor to the High Commission. The text proposed by the French delegation would then read:

> Considering that the High Commission for Refugees will be called upon to supervise the implementation of this Convention, without losing sight of the fact that the effective implementation of this Convention can only be obtained with the full cooperation of States with the High Commission, and with a wide degree of international cooperation.

The US representative preferred his delegation's phrasing: 'that the effective implementation of this Convention requires' to the French wording 'without losing sight of the fact that the effective implementation of this Convention can only be obtained with', on the grounds that the latter might be taken to mean that it was the High Commission who should not 'lose sight', and not States, as was clearly the French representative's intention. He also asked what was the exact significance of the proposed phrase: 'a wide degree of international cooperation', which was not altogether clear, and for which his delegation could not vote until it knew precisely what the phrase meant.

As to the second point, the term *'solidarité'*, used in the French text ('collaboration' in English) was certainly wider than 'cooperation', which referred to States which would accede to the Convention, whereas the farmer might be extended to cover States which, while not signing the Convention, would be in a position to help in the solution of certain aspects of the problem. The word 'requires' might well be used in connection with the cooperation of States signatory to the Convention, and the formula 'without losing sight of taken in conjunction with international solidarity, so as to produce a composite text acceptable to the US representative.

After some further discussion, the Chairman noted that the French and American representatives were agreed on the formula:

> 'and that the effective implementation of the Convention depends on the full cooperation of States with the High Commission and on a wide measure of international collaboration.'

The French representative agreed.

The US representative also agreed, although he felt that the last phrase added nothing to the meaning of the paragraph and was only confusing. He would not, however, oppose its insertion, but would abstain from voting on it.

The Belgian representative recalled that he had stated on several occasions that the place for a text of that kind was not in the Preamble to the draft Convention, but in the Statute of the High Commissioner's Office. He would therefore vote against it.

The French representative said that in its present state the Convention was a skeleton which would require to be clothed, even if adopted by the General Assembly.

The Committee had before it a model statute for refugees, many points of which actually corresponded to current practice in the various States, but many other points of which represented innovations. Some of the countries which were not signatories to the existing international agreements on the subject were to be invited to apply that statute, which in the main endeavoured to encourage a more liberal policy towards refugees. That being the case, the adoption of the Convention would possibly give rise to no difficulty. If the text were extremely easy to apply and consisted in nothing but more or less vague recommendations, it would cause no country any anxiety, even a country over-crowded with refugees, since such a country would not be called upon to assume any binding obligations. If, on the other hand, the text involved a number of binding clauses, it would at once set a more difficult problem. Certain countries not represented at the present meeting might find that they were not in a position to give effect to every article of the Convention. Investigation would then reveal that the problem was perhaps beyond those countries, and that it could not be considered that everything was cut and dried and that they were therefore failing in their duty by not applying the Convention in its entirety. It was obvious, therefore, that steps should be taken to ensure that the Convention was applicable in their case. Hence he felt the mention of 'international collaboration', which had proved its efficacy, should be retained, so that a State which failed to carry out its obligations under the Convention would not be regarded as at fault if it found itself in a position which was really beyond it.

It was not out of the question that France, for example, would have to deal with a huge influx of refugees. If so, international collaboration would be the only remedy. Without it, the Convention would become quite inapplicable. Such were the reasons for his delegation's attitude.

The Danish representative said that his delegation fully shared the views just expressed by the French representative.

The words referring to possible improvement of the Convention, and to the endeavours of the High Commission to that end, had been deleted from the text before the Committee. He had no particular objection to their omission, but in view of the decision already taken on the High Commissioner's functions, his powers clearly covered that subject. He also felt that the Convention now being prepared might need improvement at a later stage, a statement which must not be taken as in any way derogatory.

The US representative appreciated the concern of the French representative, because the point was one which the French delegation had attempted to have included in another paragraph, but which had been rejected. He nevertheless maintained that the closing words were not appropriate to the particular paragraph of the preamble under consideration, and in the circumstances would propose that a vote be taken on the text in two parts, namely with and without the last sentence.

The Chairman put to the vote the first sentence of the proposed fifth paragraph as amended, reading:

> 'Considering that the High Commission for Refugees will be called upon to supervise the application of this Convention and that the effective implementation of this Convention depends on the full cooperation of States with the High Commission'.

The first sentence of the fifth paragraph of the French delegation's draft Preamble, as amended, was adopted by 9 votes to 1, with 3 abstentions.

The Chairman then put to the vote the words 'and on a wide measure of international collaboration'.

The Committee adopted the above words as an addition to the fifth paragraph by 7 votes to none, with 6 abstentions.

The Committee adopted the whole of the text of the fifth paragraph, as amended, by 9 votes to 1, with 3 abstentions.

The US representative explained that while he would vote in favour of the Preamble as a whole, he wished to place on record the fact that his delegation reserved its rights to take further action elsewhere in respect of certain paragraphs, as indicated in its comments on those paragraphs.

The UK representative said he also would vote for the Preamble on the understanding that his vote concerned only the principles contained in it, and that no decision could be taken on the final form of the Preamble until the substance of the draft Convention had been approved by the General Assembly.

The Canadian representative said her delegation's approval of the text of the draft Preamble should be regarded as tentative for the time being.

The Australian representative said her delegation would abstain from voting pending further consideration of the draft Preamble.

The Danish and Mexican representatives said their delegations would take part in the vote on the same understanding as that expressed by the UK delegation.

The Belgian representative recalled that, from the outset, the Belgian delegation had been in favour of the first three paragraphs of the text now to be voted on, and had suggested the addition of another paragraph, which in fact had been added. Hence it would now support the first four paragraphs, though it would vote against some of the other paragraphs, or abstain on them. In other words, there could be no question of its voting for the text as a whole, but as the Preamble appeared to contain excellent material from the Belgian point of view, he would abstain from voting.

The draft Preamble as a whole, as amended, was put to the vote and adopted by 10 votes to none, with 3 abstentions.[38]

The Preamble as adopted by the Social Committee read:[39]

1. *Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

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[38] E/AC.7/SR.170, pp. 8-14

[39] E/1814, p.3

2. *Considering* that the United Nations has, on various occasions, and most recently in General Assembly Resolution 319A(IV), manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms;

3. *Considering* that, in light of experience, the adoption of an international convention would appear to be one of the most effective ways of guaranteeing refugees the exercise of such rights;

4. *Considering* further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees, and to increase the protection accorded by these instruments;

5. *Considering* that the High Commission for Refugees will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention depends on the full cooperation of States with the High Commission and on a wide measure of international cooperation.

6. *Expressing* furthermore the hope that this Convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make in order to invite the High Contracting Parties to extend to other categories of persons the benefits of this Convention, all nations will be guided by it in granting to persons who might come to be present in their territory in the capacity of refugees and who would not be covered by the following provisions, treatment affording the same rights and advantages.'

In the Council itself the French representative introduced an amendment:[40]

France: Amendment to the report of the Social Committee.[41]

1. Insert the following between paragraphs 4 and 5 of the Preamble:

   'But considering that the exercise of the right of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation;'

2. In paragraph 6 the word 'furthermore' by the word 'finally'.

In the Council the French representative said:[42]

> 'Two of the paragraphs of the Preamble to the French draft constituted safeguarding clauses of this kind. One of them was the paragraph on action by the High Commission with regard to the application of the Convention. It had been retained, amended in an acceptable form. The second had been deleted by the Social Committee by 5 votes to 5, with 5 abstentions. Hence, the French delegation now reverted to that question in the Council and requested the insertion between paragraphs 4 and 5 of the Preamble, of the following text:[43]
>
> > *'But considering* that the exercise of the right of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation;'

It was simply a question of taking note of a concrete situation, which the IRO itself had acknowledged, and which might recur in the future. The French delegation felt that the inclusion of that paragraph was a minor matter compared with the obligations which it was willing to accept.

Viewing the matter on a higher plane, he stressed the great human importance of the refugee problem and said that it should be tackled in a generous spirit and could only be solved on the basis of justice, and not on purely legal considerations. The rights of countries of refuge should be safeguarded, as well as the rights of refugees. That was why the Preamble to the Charter of the United Nations and the Universal Declaration of Human Rights had been mentioned in the first paragraph of the French draft. The fact that a man was deprived of his government's protection should not prevent his enjoyment of the rights fundamental freedoms defined in those texts. But discrimination existed, and it was not easy for a country to replace an alien's homeland. Nationality was a serious matter, and failure to consider it as such might result in precarious naturalization which would only add in the long run to the existing number of stateless persons.

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[40] E/L.94

[41] document E/1814

[42] E/SR.406, paras. 60-63

[43] E/L.94

France, like other countries in Western Europe, had afforded hospitality to hundreds of thousands of refugees without distinction of race, age, political opinion, health or profession, in the name of the most sacred principles of civilization and of the United Nations. The problem of protection arose because naturalization and repatriation could not provide a complete and immediate solution to the refugee problem. Other countries which did not have the same burdens should be grateful to such countries for constituting an advanced line of defence of civilization so far as the cause of the refugees, and therefore of freedom of opinion and religious liberty, was concerned. The Convention would be applied mainly in Western Europe, but it also had its application in other more distant countries.

He pointed out with regard to the sixth paragraph of the Preamble that France had granted to categories of refugees who came from very distant countries and for whose protection no instrument existed, the same rights and advantages as other refugees. His delegation's intention in inserting this paragraph was to secure the extension of the international protection of refugees to all refugees, of whatever category, throughout the world.

The Mexican representative recalled that, when the Social Committee had discussed Article 1, which defined the term 'refugee', his delegation had paid tribute to the remarkable work done by the French Government on behalf of refugees. He had, in connexion with that article, expressed his concern at the deletion of a specific reference to Spanish refugees which had figured in the draft text submitted by the *ad hoc* Committee. He raised that point without in any way wishing to touch upon the political aspects of the problem. The French delegation had explained in the Social Committee that the reference contained in Section A, paragraph (3) of Article 1 to persons who had had to leave their country before 1 January 1951 covered the case of the Spanish refugees. He recalled that during the Spanish Civil War, his country as well as others had given asylum to several thousand Spaniards, irrespective of their political opinions. In order that no misunderstanding should arise in the future, he requested the President to state whether the French delegation's interpretation of Section A, paragraph (3) of Article 1 did in point of fact cover the Spanish refugees.

The President stated that, as President of the Council, he was not competent to interpret the text of any resolution.

The Mexican representative asked whether the Council would decide whether, in the light of the statement made by the French representative in the Social Committee, section A, paragraph (3) of Article 1 did in fact cover Spanish refugees.

The President ruled that, when Article 1 was discussed by the Council, representatives would be able to make any comments and give any interpretations that they wished. But the President was not empowered to request the Council to adopt any specific interpretation.[44]

The Belgian representative stated that so far as the Preamble was concerned, the Belgian delegation had abstained from voting in the Social Committee, since it supported the first three paragraphs and was opposed to the remainder. He added that his delegation had requested the inclusion of a fourth paragraph.[45]

The Danish representative supported the amendment proposed by the French delegation.[46]

The representative of the US said that[47] except in so far as procedure was concerned, he agreed with most of what the French representative had said on the subject of the amendment[48] which he had proposed. It went without saying that there should be international cooperation to alleviate the burden falling on certain countries because their geographical situation was such that an inordinately large number of refugees fled to them; but the inclusion of the text proposed by the French representative in the Preamble to what was to be a binding international instrument would not be appropriate. The US delegation was of the opinion that the substance of the text might be incorporated in a General Assembly resolution, where it would be more proper and effective. Furthermore, in recognition of the difficulties certain countries might encounter owing to the sudden influx of large numbers of new refugees, the US delegation had proposed the insertion in the draft statute for the High Commissioner's Office[49] of the clause:[50]

> 'In his discretion, the High Commission may, after consultation with the Advisory Committee on Refugees, intercede with governments on behalf of new categories of refugees which might arise, pending consideration by the General Assembly as to whether to bring such new categories within the mandate of the High Commission's Office for Refugees.'

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[44] E/SR.406, paras. 66-70

[45] E/SR.406, para. 75

[46] E/SR.406, para. 77

[47] E/SR.406, paras. 84-85

[48] (E/L.94)

[49] (E/AC.7/L. 60)

[50] (E/AC.7/L.73)

Rather than accept the amendment to the draft resolution proposed by the French representative the Council should look forward to the adoption by the General Assembly of an effective resolution on the subject and keep it in mind when drafting the statute for the High Commission's Office.

The US delegation considered furthermore that paragraph 6 of the Preamble should be deleted. The fact that it had been adopted in committee by only 5 votes to 4, with 6 abstentions, made it desirable to re-open the discussion on it. That paragraph would be even more inappropriate in the Preamble to the Convention than the French amendment, to which his delegation was opposed. It would be definitely wrong to include in the preamble to a convention, with its contractual obligations, a hortatory clause which went beyond the provisions of the succeeding articles. He would request the President to put the paragraph to the vote separately.

The representative of Canada,[51] requesting the President to put both the definition and the Preamble to the vote separately, said that he also was very grateful to the French representative for his contribution to the success of the Social Committee's work on the subject. He had agreed with many of the proposals made by the French representative in the Social Committee and he could also agree to the adoption of the amendment he had proposed to the Preamble at the present meeting, for the text of that amendment did not include the words in the corresponding text proposed by the French representative in the committee which had led the Canadian delegation to oppose that text. Indeed, the fact that the problem of refugees was being dealt with by the Council at the international level was tantamount to an admission by the Council that the problem could be satisfactorily solved only if it was dealt with at that level.

On reflection, the Canadian delegation had come to the conclusion that, although the inclusion of paragraph 6 of the Preamble might give rise to discussion as to whether such action was proper, it could agree to its inclusion because it might help to induce the General Assembly to adopt a broad definition of the term 'refugee', such as the Canadian delegation had urged in committee, instead of the narrow definition by category that the Committee had submitted. The timid gesture of expressing a pious hope in paragraph 6 of the Preamble was not as satisfactory as drafting the definition of the term 'refugee' in accordance with that hope, but it was better than nothing at all.

The representative of the UK said that he agreed with the arguments the Canadian representative had presented so ably on the subject of the Preamble. He would support the amendment to it proposed by the French representative, for reasons the UK delegation had stated in committee. He did not see how the possibility of the addition of the text proposed by the US delegation to the draft statute for the High Commission's Office could be considered a reason for the rejection of the French amendment. He would also vote in favour of paragraph 6 in the hope that it would induce the General Assembly to adopt a broad definition of the term 'refugee', instead of the limited definition recommended by the Committee.

The Belgian representative shared the opinion expressed by the US representative on the French amendment (E/L.94) to the Preamble. The Belgian delegation was not opposed to the ideas expressed in the amendment, but considered that they had no place in the Convention. It would therefore vote against the amendment.

The representative of Chile said he would vote in favour of the text submitted by the French delegation, as he thought it preferable to the corresponding text which the Chilean representative had voted for in the Social Committee and which the Committee had rejected.

The representative of India declared that when the amendment to the Preamble proposed by the French representative was put to the vote, he would abstain, because he was opposed to inserting in the Preamble something which went beyond the scope of the definition or something which was not normally considered proper in such a Preamble.[52]

The representative of France[53] thanked the delegations of Brazil, Canada, Chile, Denmark and the UK for their support of the French amendment.

For the benefit of the Chairman of the Social Committee, he pointed out that it was possible to adopt a convention for European countries only because those countries had had twenty-five years' experience in refugee matters. Paragraph 6 of the Preamble expressed the hope that, if the refugee problems submitted to the United Nations could not be solved, their solution should be sought by means of conventions on protection of the kind which the French delegation considered could now be adopted for the countries of Europe. That clause of the Preamble had a very definite object. There were in fact refugees who did not come under the terms of reference of the IRO and to whom the Convention would not apply. France had coined the term *asiles* for that category of refugees. They enjoyed the same rights and the same advantages

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[51] E/SR.406, paras. 88-89

[52] E/SR.406, paras. 91, 95, 98, 102

[53] E/SR.406, paras. 103-194

as persons to whom international conventions applied. The purpose of paragraph 6 was to invite all countries to act in the same manner as France had done.

The representative of the US said that, unlike the UK representative, he considered that the inclusion of paragraph 6 in the Preamble would be illogical, because it was not logical to make provision in the preamble of a convention for which there was no provision in the succeeding articles. He would vote against the adoption of the paragraph, and would abstain when the amendment to the Preamble proposed by the French representative was put to the vote.

The representative of Brazil said that he agreed with all that the US representative had said on the subject of paragraph 6 of the Preamble.

The President put to the vote the text proposed by the French representative for insertion between paragraphs 4 and 5 of the Preamble.

The text was adopted by 9 votes to none, with 6 abstentions. The President asked if there were any objections to the adoption of the consequential amendment proposed by the French representative to paragraph 6 of the Preamble, whereby the word 'finally' would be substituted for the word 'furthermore'.

The amendment was adopted unanimously.

The President put to the vote paragraph 6 of the Preamble as amended.

The paragraph, as amended, was adopted by 7 votes to 5, with 2 abstentions.[54]

The representative of the US said that the words 'and on a wide measure of international cooperation' should be deleted from paragraph 5 of the Preamble, since they were almost an exact repetition of the concluding words of the new paragraph adopted on the proposal of the French representative.

The President said that since the debate on section 4 of the Social Committee's report had been closed, the words could only be deleted from paragraph 5 of the Preamble if no member of the Council raised any objections.

The UK representative said that a reference to international cooperation should be retained in both paragraphs.

The President said that, in view of the objection raised by the UK representative, the suggestion made by the US representative could not be accepted.

He put to the vote the Preamble as amended.

The Preamble, as amended, was adopted by 12 votes to none, with 3 abstentions.[55]

The text of the Preamble adopted by the Economic and Social Council and included in Resolution 319(XI)B.II read:

Preamble

1. Considering that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

2. Considering that the United Nations has, on various occasions, and most recently in General Assembly resolution 319A(IV), manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms;

3. Considering that, in light of experience, the adoption of an international convention would appear to be one of the most effective ways of guaranteeing refugees the exercise of such rights;

4. Considering further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees, and to increase the protection accorded by these instruments;

5. Considering, however, that the exercise of the right of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation;

6. Considering that the High Commissioner for Refugees will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention depends on the full cooperation of States with the High Commissioner and on a wide measure of international cooperation;

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[54] E/SR.406, paras. 109, 111, 113, 115

[55] E/SR.406, paras. 118-122

7. Expressing the hope, finally, that this Convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendation the General Assembly may be led to make an order to invite the High Contracting Parties to extend to other categories of persons the benefits of this Convention, all nations will be guided by it in granting to persons who might come to be present in their territory in the capacity of refugees and who would not be covered by the following provisions, treatment affording the same rights and advantages.

At the Conference of Plenipotentiaries, the UK introduced an amendment:[56]

> UK: Amendment to the Preamble
>
> '(The Contracting States)
>
> Considering that the Charter of the United Nations an the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have reaffirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;
>
> Considering that the United Nations has, on various occasions, and most recently by Resolution number 319A(IV) of the General Assembly, manifested its profound concern for refugees and the need for their international protection;
>
> Considering that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation;
>
> Desiring to revise and consolidate previous international agreements relating to the protection of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement;
>
> Noting that the High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective coordination of measures taken to deal with this problem will depend upon the cooperation of States with the High Commissioner;
>
> Have agreed as follows:

The UK representative, introducing his delegation's amendment, said that, although the Preamble was of but slight legal significance and was merely introductory, it was nevertheless important that it should be fairly closely related to the origins of the work with which the Conference had been entrusted, and with the general purposes of the Convention. With that in mind, the UK delegation had submitted the amendment contained in document A/CONF.2/99, hoping thereby to render the Preamble more harmonious and self-consistent.

He would first draw attention to the fact that paragraph 7 of the original text was omitted from the amendment. It seemed to him that, while it was right that the Conference should express such a sentiment as that contained in that paragraph, it would be more proper to include it by way of a recommendation at the end of the Convention, since it went beyond the limits of a general statement on the text of the Convention. The first paragraph of the amendment reproduced paragraph 1 of the original text, with the substitution of the words 'have reaffirmed' for the word 'establish'. That modification would bring the paragraph more into line with the actual facts. The difference between the second paragraph of his amendment and paragraph 2 of the original draft was that he referred to the United Nations' repeated expressions of concern for the need for the international protection of refugees, instead of to its attempts to assure them the widest possible exercise of fundamental rights and freedoms. It was difficult to say to what extent the Convention made provision for the widest exercise of such rights and freedoms. The essential point, and the main concern of the Conference, was the need for the protection of refugees. Paragraph 3 of the original text had been omitted as being self-evident and unnecessary. Paragraph 4 had been replaced by the fourth paragraph of the amendment, and paragraph 5 had been re-drafted in more general terms as the third paragraph of the amendment. The last paragraph of the amendment was roughly the same as paragraph 6 of the original Preamble. The UK delegation was not necessarily wed to the text it had submitted, but merely put it forward as a suggestion for consideration by the Conference.

The French representative recognized that the UK amendment was an improvement on the original Preamble in certain respects, particularly with regard to the amendment to paragraph 1 and the deletion of paragraph 7. He did not attach more than secondary importance to paragraphs 3 and 4, though he felt that the reference to the protection accorded by previous conventions relating to refugees should be retained. He was, nonetheless, still doubtful about the new UK wording for paragraphs 2, 5 and 6. In the case of paragraph 2, he preferred the original text, which referred to the widest possible exercise of fundamental rights and freedoms, since that was precisely what the Conference had tried to achieve. Some provisions had been placed in the Preamble which he would have preferred to see in the body of the Convention itself, particularly those stating be need for international cooperation (paragraphs 5 and 6). Paragraph 5 of the original

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[56] A/Conf.2/99

text, which alluded to the exceptional position of certain countries, was, he felt, indispensable, for continental countries liable to be faced with a large-scale influx of refugees. It had been argued that the Convention did not govern the question of admission, but continental countries had no choice in that matter. When faced with a flood of refugees upon their frontiers, they could not help but grant them right of asylum, and possibly refugee status. In the case in point, the normal application of the Convention might be completely invalidated. If, for example, as had already happened, a State was suddenly called upon to take in half a million refugees, certain provisions of the Convention, particularly those relating to housing and the right to work, could not be applied without presenting the country concerned with problems which, temporarily at least, would prove insoluble. In such a case there would have to be international collaboration, and it was therefore not demanding too much of countries of immigration to ask for the implicit appeal contained in paragraph 5 to be retained. He felt, as the UK amendment stated, that the problems arising in such circumstances should be solved by cooperation between the High Commissioner for Refugees and the States concerned. Nevertheless, there were cases where the protection of refugees became a problem of assistance, and if there was no international cooperation it could not be solved. The UK representative had intimated that he had no very rooted objections to the original text of the Preamble, and the French delegation therefore wondered whether he would agree to paragraph 5 and 6 being retained, subject to improvements in their drafting. It was its particular wish that the words 'international cooperation' should remain in the Preamble.

The Italian representative pointed out that refugees were granted the right of asylum by the Italian Constitution. The Italian delegation, however, had always felt that the refugee problem was an international, and not a national responsibility, and therefore associated itself with what the French representative had just said, particularly in the case of paragraph 5, which the UK amendment sought to whittle down. As to paragraph 6, which dealt with the High Commissioner's part in the application of the Convention, the Italian delegation was prepared to accept the UK version on the understanding that the cooperation with the High Commissioner's Office would be covered by an agreement between that Office and the Italian Government.

The Egyptian representative observed that some States were giving protection and assistance to a large number of refugees, even though they were not bound to do so by any contractual undertaking. His delegation therefore felt that it was essential to retain in the Preamble the idea of international cooperation contained in the original text, and fully supported what the French representative had said on the subject.

The Israeli representative submitted that while the Preamble to the Charter of the United Nations stated that the Peoples of the United Nations were determined to reaffirm faith in the fundamental human rights, those rights were mentioned at seven other points in the Charter, that was to say, that the Charter itself went beyond mere reaffirmation of the principle. Again, he wondered how the term 'reaffirmed' could apply to the Universal Declaration of Human Rights, which was a statement of ideals to be achieved and not of something that already existed.

With regard to the second paragraph of the UK amendment, he pointed out that there were more recent resolutions of the General Assembly on the subject of refugees than Resolution 319(IV)A, and it would seem reasonable to refer to them as well. He had understood from the UK representative's statement that it was his intention to include the substance of paragraph 5 of the original text in the third paragraph of the UK amendment. The Style Committee could therefore be left to include the reference to international solidarity in the most appropriate way.

The Swiss representative said that in the light of the general statement made by the head of his delegation at the third meeting, he warmly supported the French representative's remarks concerning paragraph 5 of the original text. Apart from that consideration, the Swiss delegation would agree to any drafting modifications that were likely to improve the wording of the Preamble.

The representative of the Federal Republic of Germany said that, as the representative of a country of asylum, he strongly supported the statements of the French and Italian representatives on paragraphs 5 and 6 of the original text of the Preamble.

The Swedish representative said that he appreciated the force of much of the UK amendment. At the same time, he endorsed the French representative's views on paragraph 5 of the original text.

The Netherlands representative also approved the statement of the French representative on paragraph 5 of the original text. He would propose, however, that in order to avoid all risk of misinterpretation, the words 'right of asylum' should be replaced by the words 'right to seek and to enjoy asylum in other countries' which was the wording used in paragraph 1 of Article 14 of the Universal Declaration of Human Rights.

The President believed that the difference between the text of paragraph 5 and that of paragraph 1 of Article 14 of the Universal Declaration of Human Rights lay in the fact that in the latter it was a question of the right of the individual to seek and to enjoy asylum, whereas in the former the right of the State to grant asylum was meant.

The UK representative said that in view of the strong support for paragraph 5 of the original text, he would not oppose its retention. The point made by the Netherlands representative was not unimportant; it might, perhaps, be met by the substitution of the word 'grant' for the words 'exercise of the right' in the first line of paragraph 5.

As to the Israeli representative's comments, he contended that the principle that 'human beings shall enjoy fundamental rights and freedoms without discrimination' was a principle that had been accepted long before the Charter of the United Nations had been drafted, and that consequently the Charter had reaffirmed that principle. Again, the Universal Declaration of Human Rights was not a statement of new principles, but a statement in fuller detail of existing principles. To meet the Israeli representative's view, however, he would agree to the use of the word 'affirmed' instead of the word 'reaffirmed' in the first paragraph of the UK amendment. He would also have no objection to references in the second paragraph to more recent resolutions of the General Assembly, provided that they were appropriate and absolutely necessary. Lastly, he hoped that the French representative would understand that paragraph 5 of the original draft had not been omitted from the UK amendment by way of dissent from the statement of fact which it contained, which everyone fully recognized. The fact was that he had doubted the value of introducing in a few words the idea that some other form of international action was necessary. If the notion of international solidarity was retained, it would, he felt, be interpreted merely as referring to international solidarity achieved through the signing and ratification of the present Convention. However, if the Conference considered it desirable to retain those words, the UK delegation would not object.

The French representative thanked the UK representative for his readiness to allow paragraph 5 to stand. He explained that what the French delegation wanted was the recognition of a de facto situation, rather than a statement of a specific obligation. There were, in fact, countries which might be confronted with a situation in that connection so serious as to exceed the scope of the protection of refugees and come within the field of international assistance. Furthermore, with regard to the final paragraph of the United Kingdom amendment, the French delegation would prefer it to be specified that cooperation with the High Commissioner might not meet the requirement of all situations. The following phrase might be inserted to cover that point: 'and upon a large measure of international cooperation'. He felt that the Style Committee would be able to find a formula taking the different viewpoints into account and capable of satisfying all delegations.

The Style Committee, composed of the President of the Conference and the representatives of Belgium, France, Israel, Italy, the UK and the US, proposed the following wording:[57]

The High Contracting Parties

1. Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948, by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;

2. Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms;

3. Considering that it is desirable to advise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of new agreements;

4. Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation;

5. Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees will do everything within their power to prevent this problem from becoming a cause of tension between States;

6. Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective coordination of measures taken to deal with this problem will depend upon the cooperation of States with the High Commissioner;

Have agreed as follows:

At the 53rd session, the President drew attention to a few minor misprints in the Preamble which required correction. In paragraph 3, the word 'advise' should be replaced by the word 'revise', and the words 'new instructions' by the words 'a new agreement'. In the last line of paragraph 6, the word 'Commissioner' should be substituted for the word 'Commission'. In the third line of paragraph 3 of the French text the words *'qu'ils'* should be substituted for the word *'qui'.*

The US representative, Chairman of the Style Committee, requested that paragraphs 1, 2, 3 and 4 be put to the vote together, as they had been drafted together on the basis of the decisions taken by the Conference. On the other hand, the

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[57] A/Conf.2/102/Add.2

text of paragraph 5 was new to the Conference. It had been devised in an attempt to take into account the Yugoslav proposal,[58] and should therefore be considered separately.

It was so agreed.

Paragraphs 1, 2, 3 and 4 of the Preamble were adopted unanimously.

The Canadian representative suggested that, as a matter of English style, the word 'will' should be substituted for the word 'shall' in the second line of paragraph 5, no change being necessary in the French text.

It was so agreed.

The Yugoslav representative stated that, although paragraph 5 only partly covered the substance of the Yugoslav proposal, and was therefore not fully satisfactory to the Yugoslav Government, his delegation would be prepared to accept it.

Paragraph 5 was adopted unanimously.

Paragraph 6 was adopted unanimously.

The Preamble as a whole was adopted unanimously.[59]

Commentary

The Preamble is, of course, not legally binding but is nevertheless important because it may be used for the interpretation of the Convention.

The first two paragraphs refer to fundamental rights and freedoms. They give expression to the thought that the Convention is designed to ensure for refugees such fundamental rights and freedoms. It implies, on the other hand, that refugees are entitled, apart from and beyond the Convention, to all those fundamental rights and freedoms which have been proclaimed for all human beings.

While the Convention itself does not regulate asylum, the fourth paragraph deals with the consequences of the grant of asylum, i.e. that it may place unduly heavy burdens on certain countries. Countries may, owing to their geographic location, be faced with a mass influx of refugees which may place a heavy burden on them. The Preamble, by referring to the international nature of the refugee problem which has, *inter alia,* been affirmed in General Assembly Resolution 6(I) of 12 February 1946, and the need of international cooperation, proclaims the principle of burden-sharing which has acquired enormous importance in dealing with refugee problems. It is clear from the debate that not only international cooperation in the field of protection but also in the field of assistance, help for States on which the refugee problem places too heavy a burden, was meant.

The High Commissioner has, not only by his task of supervising the application of international conventions for refugees, but also in this field, an important coordinating task and States are, in the last paragraph, called upon to cooperate with the High Commissioner.

ARTICLE 2. GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Travaux Préparatoires

The Secretariat Draft submitted to the *ad hoc* Committee on Statelessness and Related Problems (later called *ad hoc* Committee on Refugees and Statelessness) contained the following provision:

> 'Refugees authorized to reside in a country must conform to the laws in force.[60]

The French Draft contained an Article reading:

'1. Refugees authorized to reside in a country must adapt themselves to the established order in the country of asylum and conform to the laws in force.

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[58] A/Conf.2/96

[59] A/Conf.2/SR.33, pp. 9-10

[60] E/AC.32/2, Article 1

2. The High Contracting Parties reserve the right to restrict the political activity of refugees.'[61]

In the *ad hoc* Committee, the Secretariat Draft and the French Draft were at first discussed together. The Danish representative considered that the Article was unnecessary as it contained nothing which was not obvious; he proposed its deletion. The Brazilian and Turkish representatives agreed.[62]

The French representative stated that he attached great importance to the second paragraph. He was supported by the Turkish representative. They were opposed by the representative of the US who felt the points made by the French and Turkish representatives were already met in the clause recognizing the right to expel refugees for violations of public order. He was supported by the Canadian representative. The Turkish representative then proposed the addition of the words 'and to measures taken for the maintenance of public order' in the Secretariat Draft. It was stated by several representatives that nothing in the draft Convention prevented a State from exercising its authority in respect of the political activities of its residents.

Article 10 as amended was provisionally adopted.

The Belgian representative asked the Rapporteur to note that the Article, as approved by the Committee, while it did not authorize the State to restrict political activity, should not be interpreted as a limitation of its power to do so if it deemed necessary.[63]

In the Report of the *ad hoc* Committee on its first session it was stated:

> 'Article 2 states the obligation upon a refugee to comply with laws and regulations of the country in which he is. The Committee fully appreciated that the provision made in the Article was axiomatic and need not be explicitly stated. However, it was considered useful to include such a provision in order to produce a more balanced document as well as for its psychological effect on refugees and/or countries considering admitting refugees. The representative of France proposed a second paragraph to this Article, explicitly permitting Contracting States to restrict the political activity of refugees. The Committee felt that such a provision was too broad, and might be misconstrued as approving limitations on areas of activity of refugees which are in themselves unobjectionable. The Committee also felt that a provision of this kind was unnecessary and that in the absence of a provision to the contrary any sovereign government retained the right it has to regulate any activities on the part of an alien which it considers objectionable. The failure to include such a provision is not to be interpreted as derogating from the power of governments in this respect. In an effort to meet at least in part the view of the representative of France, the phrase "including measures for the maintenance of public order" was included.[64]

At the second session of the *ad hoc* Committee the French representative proposed a new text reading:

> The duties of the refugee towards the community include the obligation to conform to all measures taken for the maintenance of public order and also to the laws and regulations of the country in which he finds himself.

He was supported by the Belgian and Venezuelan representatives.[65]

The Drafting Committee proposed the text which is now in the Article.

At the Conference of Plenipotentiaries Belgium proposed an amendment reading:

> Article 2. General Obligations. Only such refugees as fulfill their duties towards the country in which they find themselves and in particular conform to its laws and regulations as well as to measures taken for the maintenance of public order, may claim the benefit of this Convention.[66]

Australia proposed the following:

> Every refugee has duties to the country in which he finds himself which require in particular to conform to its laws and regulations and to measures taken for the maintenance of public order and that he observe the conditions upon which his entry into the country was permitted.[67]

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[61] E/AC.32/L.3, Article 8

[62] E/AC.32/SR.11, pp. 10-11

[63] E/AC.32/SR.23, pp. 8-11

[64] E/1618, pp. 40-41

[65] E/AC.32/SR.31, pp. 7-8

[66] A/Conf.2/10

[67] A/Conf.2/12

The Australian representative explained that his amendment purported to cover the obligation undertaken by refugees entering Australia under the Displaced Persons Resettlement Scheme to remain in the employment found for them for a period of up to two years and not to change that employment during that period without the consent of the Department of Immigration. The Belgian amendment was opposed by the Canadian, Israeli, Netherlands, and UK representatives and the High Commission. The Egyptian representative proposed to add the words 'and morality' after 'public order'.[68]

The French representative proposed an amendment reading:

> Any refugee guilty of grave dereliction of duty and who constitutes a danger to the internal or external security of the receiving country may be declared to have forfeited the rights pertaining to the status of refugees, as defined in the Convention.[69]

The amendment was opposed by the Netherlands representative. The Belgian and Australian amendments were withdrawn in favour of the French amendment. It was supported by the Swedish and opposed by the UK representative. A working party consisting of the representatives of Belgium, France, Israel and the UK was appointed.[70] The Style Committee proposed the text which was finally adopted.

Commentary and Judicial Decisions

The term 'public order' does not correspond to the meaning of that term in Anglo-Saxon law but rather to the term *'ordre public'* in French law. Both threats to internal and external security of the country are meant, whether covered by the Criminal Code or not. The passage was mainly introduced to cover restrictions of political activities of refugees. Such restrictions may be restrictions applied to aliens generally or restrictions imposed specifically on refugees. The question of subjecting refugees to military service was discussed but rejected by 4 votes to 3 with 4 abstentions.[71] The Committee's Report stated that the question of subjecting refugees to military service was an example of a matter on which the draft Convention remained silent despite the fact that the Secretariat Draft and the Draft of the French Government offered precise provisions on the subject. The Committee felt that such a provision might be open to misinterpretation and that this problem is covered by rules of general international law and practice. On the other hand, it was not suggested that Governments might not require military service of refugees subject to such law and practice.[72] The laws and practices referred to may be of a general nature or apply specifically to refugees.

Although this is not explicitly stated, refugees may be expected to behave in such a manner, for example, in their habits and dress, as not to create offence in the population of the country in which they find themselves.

The Austrian Administrative Court referred to Article 2 of the Convention in several decisions:

Stojanoff v. Sicherheitsdirektion für das Land Oberösterreich; decision of 21 December 1956. VewGH 1949/55/2.

Grochot v. Sicherheitsdirektion für das Land Steiermark; decision of 23 March 1959, VerwGH 1752/57-3. In this Case an expulsion order against a refugee who had been fined for illegal presence in Austria was upheld. This interpretation would seem to exceed the intentions of the drafters of the Convention.

Decision of 12 November 1956, VerwGH 3018/55-4, Dalloz 1959, p. 848:

> The appellant had the extension of his residence permit refused and had been ordered to leave Austria within a month; he had been sentenced several times for smuggling. The order to leave Austria was confirmed.

Serious criminal acts may justify the expulsion of refugees under Article 32 of the Convention and, in extreme cases, their *refoulement* under Article 33 paragraph 2 (see under these Articles). A refugee who 'has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes' and a refugee who 'has been guilty of acts contrary to the purposes and principles of the United Nations' is excluded from the application of the Convention according to Art. 1 F(a) and (c).

The High Commissioner referred to these clauses in a *Note Verbale* of 16 November 1966 submitted to the Foreign Minister of the Federal Republic of Germany in connection with acts of violence against officials and premises of the

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[68] A/Conf.2/SR.3, pp. 18-23

[69] A/Conf.2/18

[70] A/Conf.2/SR, pp. 4-13

[71] E/AC.32/SR.11, pp. 15-18; SR.12, pp 2-10

[72] E/1618, pp. 36-37

Federal Socialist Republic of Yugoslavia on the territory of the Federal Republic and in which refugees of Yugoslav origin were alleged to have been involved. He stated, *inter alia*:

> 'The Office of the United Nations High Commissioner for Refugees wishes to state explicitly that persons who in their country of refuge have committed acts of violence against another State, its government or against individual officials or premises of that State, can in no way be considered refugees in the sense of the Statute of the United Nations High Commissioner for Refugees and that such persons are excluded from measures of international protection or of material assistance of this Office.'

The High Commissioner further stated in the ESC on 26 July 1976:

> 'It may be useful, in this connection, to recall that it is not the task of the High Commissioner to help or protect those who, as a result of their activities contrary to the aims and principles of the United Nations, have placed themselves outside an action for strictly humanitarian purposes. Article 2 of the Convention mentions, moreover, the duties and obligations incumbent on refugees, in particular to respect the laws of the country which has given them asylum. Every action of the High Commissioner tends, it must be recalled, to reintegrate the refugees in the framework of a community where they can recover the conditions of an active and peaceful life.' (Translation from French).

ARTICLE 3. NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Travaux Préparatoires

In the *ad hoc* Committee the Belgian representative submitted a text reading:

> 'The High Contracting Parties shall not discriminate against refugees on account of race, religion or country of origin, nor because they are refugees.'

He was supported by the US representative.[73] The Article was adopted.[74]

The Australian Government, in its comments, referred to the obligations of refugees to accept a work contract as a condition of entry and expressed misgivings about the Article.[75]

The Article was adopted by the *ad hoc* Committee in the following version:

> 'No Contracting State shall discriminate against a refugee within its territory on account of his race, religion or country of origin, or because he is a refugee.'[76]

At the Conference of Plenipotentiaries Australia proposed the following amendment:

> 'Provided that the Article shall not be deemed as absolving a refugee from observing the conditions under which he was admitted to such territory.'[77]

The Yugoslav representative proposed the addition of the words: 'or for other reasons' to the text adopted by the *ad hoc* Committee. In the discussion it was pointed out that refugees were sometimes subjected to special measures. The Israeli representative proposed the deletion of the words: 'or because he is a refugee'. He was supported by the Egyptian, Greek and Turkish representatives. The proposal was adopted by 18 votes to none, with 3 abstentions.[78] A further additional Article was proposed by Australia reading:

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[73] E/AC.32/SR.24, pp. 11-12

[74] E/AC.32/SR.25, p.4

[75] E/1703 Add.7

[76] E/1850 Annex 1, Art. 3. The Committee made the following comment: 'In Article 3 the Committee decided to clarify the meaning of the Article by adding the phrase 'within its territory', to make it clear that it was not intended to apply to special conditions of immigration imposed on aliens but only to the treatment of aliens within the territory of a Contracting State. (E/1850, p. 11)

[77] A/Conf.2/20 Art.3

[78] A/Conf.2/SR.4, pp. 13-19

> Nothing in this Convention shall be deemed as absolving a refugee from observing the conditions under which he was admitted, or was authorized to stay, in the territory of a Contracting State.[79]

Egypt proposed to add to the text the words: 'subject to the requirements of public order and morality.[80] France proposed the deletion of the words 'within its territory'.[81] The amendment was opposed by the Canadian and US representatives. A drafting Group consisting of the representatives of Belgium, Australia, France, Israel and the US was appointed to submit an approved text for further consideration. The Yugoslav representative proposed to insert the word 'particularly' in front of the words 'on account of race', and to add the words 'or sex' after the words 'country of origin'. He was opposed by the representatives of Austria, Colombia, Italy, Switzerland, Turkey, the UK and the US. The Yugoslav representative withdrew the proposal to add the words 'or sex'. The rest of the amendment was rejected by 17 votes to 1, with 5 abstentions. The Egyptian amendment was rejected by 14 votes to 4, with 4 abstentions. The Australian representative corrected his amendment by the substitution of the words 'to absolve' for the words 'as absolving' and by the addition of the words 'or shall be' after the words 'which he was'. The Australian amendment was supported by the Colombian representative. It was rejected by 6 votes to 5, with 11 abstentions. The Article was adopted as amended, subject to review by the Style Committee.[82]

The Drafting Group offered six choices to the Committee for Article 3.[83] The text contained in the sixth alternative reading:

> 'The Contracting States shall apply the provisions of this Convention to persons defined in Article 1, without discrimination as to race, religion or country of origin', was adopted by 21 votes to none, with 3 abstentions.[84]

The Style Committee proposed the text which is now in the Convention. It was adopted by 21 votes to none, with 1 abstention.[85]

Commentary

The non-discrimination clause is, for the reasons outlined in the debate, limited to the provisions of the Convention. Since, however, the Convention provides, in Article 7 paragraph 1, that except where the Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally, rights accorded to aliens generally must be considered as included. The obligation is incumbent on all Contracting States, not only on the one in which the refugee finds him or herself. The grounds of discrimination are limited to race, religion or country of origin; grounds it was said mainly applied in the countries of origin,[86] and that everything else should be left to the Contracting States. Discrimination on the ground of sex is not excluded nor is discrimination on the ground that the person is a refugee. In the light of the history of the Convention and the intention as expressed in the Preamble one may conclude that Contracting States may not discriminate between different groups of refugees within the obligatory provisions of the Convention. Article 5 provided that nothing in the Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from the Convention. As regards such rights and benefits, whether already granted at the time of entry into force of the Convention or granted in the future, differentiation between various groups of refugees would appear to be permissible. Differentiation explicitly provided for by certain provisions of the Convention (for example, Article 7 paragraphs 2 and 3) is, of course, not excluded.

Contracting States are, moreover, bound by the Charter of the United Nations and may be bound to the principle of non-discrimination beyond the provision in the Convention by other international instruments to which they are Parties, such as the United Nations Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights. The principle of non-discrimination as enunciated in Art. 2 of the Universal Declaration of Human Rights is of general application.

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[79] A/Conf.2/25

[80] A/Conf.2/28

[81] A/Conf.2/29

[82] A/Conf.2/SR.5, pp. 5-18

[83] A/Conf.2/72 paras. 5-6

[84] A/Conf.2/SR.24, pp. 19-21

[85] A/Conf.2/SR.33, p. 7

[86] A/Conf.2/SR.5, pp. 11-12

ARTICLE 4. RELIGION

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Travaux Préparatoires

At the Conference of Plenipotentiaries, following a statement by Pax Romana, the Luxembourg representative proposed a provision reading:

> The Contracting Parties shall grant refugees within their territories complete freedom to practice their religion both in public and in private and to ensure that their children are taught the religion they profess.

He was supported by the representatives of Austria, Belgium, Egypt, France, the German Federal Republic, the Holy See, Netherlands, Sweden, the UK and Venezuela. The Luxembourg representative stated that freedom of worship would be subject to the requirements of the laws and regulations in force in the receiving countries which was emphasized also by other representatives. Some apprehension was expressed that the text proposed would imply that the State would have to provide for the religious education of the children of refugees at its own expense.[87]

The Style Committee proposed the following wording:

> The Contracting States shall accord to refugees within their territories the same treatment as is accorded to nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.[88]

The representative of the Holy See pointed out that there was a danger that in countries where religious liberty was circumscribed, refugees would suffer. He proposed the insertion of the words 'at least' after the words: 'the same treatment' in order to grant refugees a minimum of religious liberty in such countries. The UK representative suggested that the amendment should read 'at least as favourable', the word 'same' being deleted. The suggestion was accepted by the representative of the Holy See.

The proposal of the Holy See was adopted by 20 votes to none, with 1 abstention. Article 4, as amended, was adopted unanimously.[89]

This is the only Article in the Convention where treatment *at least* as favourable (author's italics) as that accorded to nationals of the Contracting States is provided for. As was pointed out, this was intended to cover the situation in countries where there are limitations on religious freedom, particularly countries in which there is a State religion to which the refugees do not belong or where the refugees' religion is not represented in the local population. The Article does not oblige the Contracting States to provide the material or financial means for the exercise of their religion by the refugees or the religious education of their children where such means are not provided for nationals. The provision applies to all refugees 'within the territories' of the Contracting States, whether they are there legally or illegally.

ARTICLE 5. RIGHTS GRANTED APART FROM THE CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

The Drafting Committee of the *ad hoc* Committee proposed at its second session an additional Article reading:

> Nothing in this Convention shall be deemed to impair any rights and benefits granted to refugees prior to or apart from this Convention[90]

This Article was adopted by the *ad hoc* Committee as Article 3(a).[91]

In its Report the Committee stated that the Committee 'thought it advisable to make it clear that the adoption of the present Convention should not impair any greater rights which refugees may enjoy prior to or apart from the Convention.'[92]

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[87] A/Conf.2/SR.30, pp. 10-18

[88] A/Conf.2/102, Art.4

[89] A/Conf.2/SR.33, pp. 7-9

[90] E/AC.32/L.42 Add.1 p. 8

[91] E/AC.32/SR.43, p. 14

At the Conference of Plenipotentiaries the Style Committee proposed the following wording:

> Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to Refugees apart from this Convention.[93]

The Article was adopted by the Conference unanimously in this form.[94]

It resulted from the history of the Article that both rights and benefits granted prior to the Convention and those granted subsequently to its entry into force are meant. Such rights and benefits may be based on national legislation or on treaty, for instance the treaties concluded by the IRO with certain States; such rights are not abrogated by the Convention. Where the rights and benefits are based on municipal legislation, the Contracting States may, however, abrogate them. If they are contractual rights, their length and validity depends on the terms of the treaty.

ARTICLE 6. THE TERM 'IN THE SAME CIRCUMSTANCES'

For the purposes of this Convention, the term 'in the same circumstances' implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Travaux Préparatoires

In the Report on its first session the *ad hoc* Committee stated that the phrase 'in the same circumstances' means that the treatment of refugees should correspond to that granted to other aliens *'ceteris paribus'.*[95]

At the second session a draft Article 3(a) reading:

'a) the term 'in the same circumstances' implies that the refugee must satisfy the same requirements, including the same length and conditions of sojourn or residence, which are prescribed for the national of a foreign State for the enjoyment of the right in question;'

b) in those cases in which the refugee enjoys the 'same treatment as accorded to nationals', the refugee must satisfy the conditions required of a national for the enjoyment of the right in question' was adopted unanimously.[96]

At the Conference of Plenipotentiaries, the representative of Israel said it had to be recognized that in certain cases refugees could not satisfy requirements identical with those provided for nationals. For example, in some Eastern European countries a person had to fulfil certain qualifications relating to residence in order to be eligible for social security.

The same argument applies to sub-paragraph (b). The special circumstances of refugees must be recognized, and while accepting the basic principle underlying the definitions put forward in Article 3(b), he suggested that it be drafted somewhat differently. He was supported by the UK representative. The President suggested that the Israeli and UK representatives might endeavour to work out a satisfactory text between them before the next meeting.[97]

It was said that sub-paragraph (a) might possibly be drafted in such a way to meet the object of an Australian proposal for an additional Article 3(c). This proposal read:

> 'Nothing in this Convention shall be deemed to confer on refugees any rights greater than those enjoyed by other aliens'.[98]

The Belgian representative stated that the proposal conflicted with some of the other provisions of the Convention which conferred on refugees more favourable treatment than that enjoyed by other aliens in respect of, for example, education and employment. He was supported by the representative of Austria and the German Federal Republic. The Australian

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[92] E/1850, p. 11

[93] A/Conf.2/102, Art.5

[94] A/Conf.2/SR 34, pp. 14-16

[95] E/1618, p.46

[96] E/AC.32/SR.43, p. 13

[97] A/Conf.2/SR.5, pp. 18-19

[98] .A/Conf.2/19

amendment was withdrawn on the understanding that his remarks would be reported in the summary record of the meeting.

The Israeli and UK representatives suggested to drop sub-paragraph (b) as meaningless. As regards sub-paragraph (a) they suggested the following wording:

> 'The term 'in the same circumstances' implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of circumstances which by their nature a refugee is incapable of fulfilling. They thought that the reference to the particular individual would remove a difficulty in the present text - namely that within the general category of 'nationals' or 'aliens generally' conditions and requirements may not be uniform, and it was not clear which of them would be applicable in the case of a particular refugee. The new wording proposed should, therefore, assist to meet the point raised by the Australian delegation. The exception was intended to exclude conditions which a refugee, as such, is incapable of fulfilling, as, for example, the requirement of *Heimatrecht* in certain Central-European countries for the enjoyment of social security.[99]

In the ensuing discussion the Australian representative doubted whether the suggested redraft of Article 3(b) would solve the difficulties of the Australian delegation. He had certain doubts about the position of aliens who entered Australia for a particular purpose but who might later conceivably claim refugee status, a point which was connected with the interpretation of the words 'lawfully living in the territory'. He was prepared to agree, instead of his proposed amendment, to make some form of interpretative reservation. On that understanding he would support the redraft of Article 3(b) suggested by the Israeli and UK representative and withdraw his own amendment.

The suggestion that sub-paragraph 9b) be deleted was adopted by 22 votes to none with 2 abstentions. The new wording of sub-paragraph a) was adopted by 23 votes to none, with 1 abstention, subject to any textual amendments that might be made by the Style Committee.[100]

The Style Committee proposed the text which is now in the Convention.[101]

The UK representative subsequently proposed the following amendment:

> 'For the purpose of this Convention the term 'in the same circumstances' implies that any requirements as to length and conditions of sojourn or residence which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him.'

He explained that the parenthesis in the second and third line should be replaced by the words 'as to length and conditions of sojourn or residence', since in point of fact these were the requirements which it was the main purpose of the Article to specify. The wider formula might create difficulties of interpretation from the point of view of the refugee. Further, the UK amendment proposed the deletion of the last clause: 'with the exception of requirements which by their nature a refugee is incapable of fulfilling.' That clause had been included for the sake of refugees who had been assimilated to nationals, but on further consideration it would seem that the issue was disposed of in the Articles in which reference was made specifically to assimilation. The clause was, moreover, unnecessary since the term 'in the same circumstances' did not occur in the Articles which dealt with assimilation to nationals. The Israeli representative, he said, agreed with him that in the present instance the afterthoughts were better thoughts.

The Belgian representative had some hesitations to accept the UK amendment, which might have the effect of restricting unduly the implications of the term 'in the same circumstances'. To give an example, it might be that a refugee might wish to procure a document allowing him to exercise a profession or to ply a trade. The element of sojourn or residence would count, of course, but other considerations might also come into play, such as the kind of trade or profession the refugee wished to engage in.

The UK representative said the Belgian representative's argument most aptly illustrated the point of the UK amendment. He would emphasize that the term 'in the same circumstances' was defined in its implications, not in its meaning. The all-important aspect was that refugees should fulfil the requirements as to sojourn and residence, since for the rest they would be granted the same treatment as aliens generally.[102]

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[99] A/Conf.2/SR.84, pp. 1-5

[100] .A/Conf.2/SR.26, pp. 9-10

[101] A/Conf.2/102, Article 6

[102] A/Conf.2/SR.34, pp. 16-17

After further debate the UK representative withdrew his amendment. Article 6 was adopted by 22 votes to none, with 1 abstention.[103]

Commentary

The words 'in the same circumstances' appear in Article 13 (Movable and Immovable Property) in relation to treatment granted aliens generally, Article 15 (Right of Association) and Article 17 paragraph 1 (Wage-earning employment) in relation to the most favourable treatment accorded to nationals of a foreign country, Article 18 (Self-employment), Article 19 (Liberal Professions), Article 21 (Housing), Article 22 paragraph 2 (Education) and Article 26 (Freedom of Movement) in relation to treatment accorded to aliens generally.

There may be other conditions than those mentioned in the debate which refugees are incapable of fulfilling, e.g. government. the production of a national passport or a nationality certificate. Where the production of certain documents relating to professional qualifications or diplomas is concerned, the refugee who is unable to produce the required documents would be allowed to produce other evidence that he possesses the necessary qualifications.

ARTICLE 7. EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Travaux Préparatoires

The Secretariat Draft contained the following Article 8:

> 'The enjoyment of the rights and favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity.[104]

In its comments the Secretariat referred to Article 14 of the Convention relating to the International Status of Refugees of 28 October 1933 which contains an identical provision. It stated the idea of reciprocity was at the root of the idea of the juridical status of foreigners. The law considered a foreigner to be in normal circumstances, that is to say, a foreigner in possession of a nationality. The requirement of reciprocity of treatment placed the national of a foreign country in the same position in which his own country placed foreigners. By this means, the more liberal countries helped to induce other countries to improve the status of foreigners.

Since a stateless refugee was not a national of any State, the requirement of reciprocity loses, it was said, its *raison d'être* and its application to refugees would be a measure of severity. Refugees would be placed in an unjustifiable position of inferiority.

The French draft contained the following provision:

> 'The enjoyment of certain rights and the benefit of certain privileges accorded to aliens subject to reciprocity shall not be refused to refugees in the absence of reciprocity in the case of those enjoying them at the date of signature of this Convention. As regards other refugees, the High Contracting Parties undertake to give them the benefit of these provisions upon completion of the period of residence referred to in Article 4.'[105]

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[103] A/Conf.2/SR.35, pp. 35-36

[104] E/AC.32/2

[105] E/AC.32/L.3, Article 6

At the first session of the *ad hoc* Committee the representative of Venezuela said that when the Committee had adopted Article 5, it had expressed a preference for granting to refugees the treatment accorded to aliens generally. In the practice of international law there were two types of reciprocity, legislative, diplomatic or regulated by treaty, and *de facto.* Should Article 8 be adopted in its present form, refugees would be in a position to invoke its provisions in order to request the most favourable treatment accorded under treaty, in other words, under diplomatic reciprocity to foreigners.

The US representative supported the Secretariat text. The French representative said the provisions of the Article had a real meaning only when they applied to refugees who had a nationality.

The representative of the Secretariat said that it was obvious that where refugees were granted the most favourable treatment, there would be no point in involving the clause respecting exemption from reciprocity; where refugees were granted the treatment accorded to foreigners generally, it meant that they could not claim the special treatment enjoyed by some foreigners under the condition of reciprocity. The question of exemption from reciprocity did not arise.[106]

The representative of the US said there was nothing to be gained by making the rights subject to reciprocity where a refugee was concerned, and if the refugee was not granted exemption from the requirement of reciprocity he would be placed in an unjustifiable position of inferiority with respect to other foreigners.

According to the Israeli representative the Committee would first have to consider whether the clause on exemption from reciprocity was to apply only to the limited list of rights set forward in the draft Convention or whether its scope was to extend beyond the terms of the draft Convention. In the opinion of the US representative, the question of reciprocity could only arise in cases where the refugee was to be treated in the same way as foreigners generally. He thought that the clause should cover all rights to be granted to refugees and not only those which were actually specified in the draft Convention. The Turkish representative thought that the scope of the Article should be confined to the rights not already covered in the draft Convention. The representative of the IRO said the clause should cover both the rights set forth in the draft Convention and those not actually specified therein. He agreed with the US representative that it was only in those cases where refugees were to be given the same rights as foreigners generally that the need for a clause providing for exemption from reciprocity arose. In the opinion of the Belgian representative refugees could not benefit from reciprocal treatment in cases where the right or privilege in question was granted solely as a result of an international agreement between two countries. The Israeli, UK and US representatives agreed. The UK Government, and most Governments, had been unable to accept the clause on reciprocity in the 1933 and 1938 Conventions. He suggested the following new wording:

> Where rights and favours are accorded to foreigners generally, but are made subject to reciprocity for the purpose of securing corresponding rights and favours for nationals abroad, those rights and favours shall not be refused to refugees.

He agreed to the suggestion of the representative of the IRO to delete the word 'abroad' after 'nationals'.

The Turkish representative suggested that the words: 'Save where otherwise provided in the terms of this Convention' be inserted at the beginning of the Article. He was opposed by the US representative.

Subject to drafting changes, the text proposed by the UK was approved.[107]

The Working Group proposed the following text:

> Where rights and favours are accorded to aliens generally, but are made subject to reciprocity, those rights and favours shall not be refused to refugees.'

The US representative proposed that it should read:

> 'Contracting States shall not refuse such rights and favours to refugees.[108]

Article 4 as amended was adopted.[109]

The representative of the IRO suggested that the wording in the 1933 and 1938 Conventions might be retained. The purpose of the Article was to cover legislative, *de facto* and diplomatic reciprocity, but not necessarily special and preferential rights which were granted to nationals of certain foreign States under treaty provisions.[110]

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[106] E/AC.32/SR. 11, pp. 2-6

[107] E/AC.32/SR.23, pp. 2-6

[108] E/AC.32/L.32, Article 4

[109] E/AC.32/SR.25, p. 4

[110] E/AC.32/SR.25, pp. 2-3

In its Comments the Committee stated:

1. 'In some countries there is at the root of the idea of the juridical status of foreigners the idea of reciprocity. The law considers the foreigner as being in normal circumstances in the possession of a nationality. The requirement of reciprocity of treatment places the national of a foreign country in the same position as that in which his own country places foreigners. Since a refugee is not protected by any State, the requirement of reciprocity loses its *raison d'être* and its application to refugees would be a measure of severity. Refugees would be placed in an unjustifiable position of inferiority. The exemption from reciprocity relates not only to rights and benefits specifically covered by the draft Convention (Articles 8, 13, 14, 16) but also to such rights and benefits not explicitly mentioned in the draft Convention. A reciprocity clause is contained in the Convention of 28 October 1933 and in the Convention of 10 February 1938. The Committee thought it desirable to clarify the meaning of the clause but no change of substance was intended.'

2. 'The Article is not intended to relate to treaty provisions conferring preferential treatment on aliens of a particular nationality, as for example, under a most favoured nations clause. Where, however, aliens generally enjoy rights whether by statute or by treaty arrangements with other countries (that is, diplomatic reciprocity), these rights shall be accorded to refugees also.[111]

Austria suggested in its comments to give the Article the form of a recommendation because rights granted to a small number of aliens on the basis of reciprocity could not be extended to several hundreds of thousands of refugees.[112]

France stated that it could not grant the benefits of the rights of preemption, which at present is reserved to French farmers, unless such rights should happen to be granted, whether subject to reciprocity or not, to the nationals of another State.[113]

The IRO, in its comments, suggested the following wording:

> 'The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity.
>
> 'This provision shall equally apply to rights and benefits explicitly referred to in the present Convention, including those referred to in Articles 8, 13, 14 and 16, as well as to rights and benefits not referred to in the Convention.
>
> 'Each State may at the time of its accession to the present Convention indicate, by communication to the Secretary General, rights and benefits accorded to aliens as a result of preferential treatment to which the provision of paragraph 1 shall not apply.
>
> 'Each Contracting State may also indicate, by communication to the Secretary General, any rights and benefits accorded to aliens as a result of preferential treatment subsequent to their accession to the present Convention to which the provision of paragraph 1 shall not apply.'[114]

At the second session of the ad hoe Committee the French representative compared the text of the Article and the comments with the various hypotheses of national legislation. The first hypothesis was that in certain matters all aliens had the same treatment as nationals. In France, that was the case with national security, with the exception, however, of certain special allowances. Where France recognized equal rights, no problem arose.

The second hypothesis was that aliens had none of the rights enjoyed by nationals. For example, the rights to elect and to stand for election were generally refused to aliens. In that case, no difficulty arose.

The third hypothesis was more complex. It was that rights were not granted to aliens unless there was reciprocity. If the French Government and a small State concluded a treaty providing for certain rights to be granted to Frenchmen, and the same rights to be granted to nationals of that State in France, was the advantage granted to citizens of a single State to be accorded by France to all refugees? As he interpreted it, Article 4 did not mean that it was necessary to accord that treatment to all refugees.

Leaving the sphere of diplomatic reciprocity and entering that of legislative reciprocity, the question became still more complicated. If the legislation of other countries granted aliens the right, for example, of preemption, must France recognize that all refugees in her territory were to enjoy that right, regardless of any idea of reciprocal treatment? Thus, if a single country granted a favour to aliens by its legislation, reciprocity would be established. Must France grant that right

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[111] E/1618, pp. 41-42

[112] E/AC.32/L.40, p. 32

[113] E/AC.32/L.40, p.32

[114] E/AC.32/L.40, p. 36

to all refugees? She might be unable to accept such result, in many types of cases, as it would lay intolerable burdens on her.

France was prepared to give to refugees the treatment given to aliens generally, but she did not intend to give better treatment to refugees than that given to the majority of aliens. The reciprocity was often considered by a State as a means of obtaining from other States, favourable treatment for its nationals abroad. There was, in fact, another side of the question. Moreover, the problem did not arise in the same terms in the case of refugees. To stipulate the non-applicability of reciprocity in a draft convention bore no relation to the real situation of refugees, nor to the exceptional charges which fell upon receiving countries like France.

The representative of the IRO said the word 'generally' may lead to complications. It was necessary to distinguish between cases where the treatment was subject to diplomatic reciprocity and cases where it was not. But in the latter case it was not easy to decide what the normal treatment accorded to refugees was. When the question had been raised the previous year, the representative of the Legal Department had said that the treatment accorded could not be judged simply from the laws as they stood, since it depended to a large extent on administrative practice and case law. The present formulation would, in the opinion of the IRO, not meet the situation in countries with legislation based on the Napoleonic Code or countries which had a mixed system. In the opinion of the IRO, it would not be appropriate to call the treatment to be accorded to refugees 'preferential treatment'. It was merely intended to grant them either treatment commonly enjoyed by all aliens, or, with regard to certain matters, treatment commensurate with their special situation. For example, certain reciprocity clauses provided that an alien in need of public assistance should receive help from his country of residence which would be reimbursed by the country of nationality, or, alternatively, that he should be returned to his country of origin where he would automatically qualify for assistance. Neither of these courses would be possible in the case of refugees, and therefore special treatment was required to assimilate that given to refugees to that given to nationals. If that special treatment was called 'preferential', it might easily be interpreted as being privileged treatment.

The UK representative thought that the attitude of every country must depend on how its law regarded aliens. It had been said in the discussions that in some countries aliens had no rights except on the basis of reciprocity. In the UK the position was exactly the opposite and the Article had therefore no application. He had once suggested that the provisions of the Article should only apply to countries where the rights of aliens were based on the concept of reciprocity and he still felt that might be the best approach.

The Israeli representative said the word 'generally' in the draft produced at the first session proceeded from a theory which had no basis in fact. Most countries had at least four or five statuses of aliens. Therefore, since no basis existed for it in fact or in law, the word 'generally' must first be removed. Subject to drafting changes he would accept the first two paragraphs of the IRO draft.

The US representative said that, in the US and the UK, problems of reciprocity did not arise. One point had been raised which he had thought was clearly covered by the present text, namely, legislative reciprocity. It was also necessary to cover cases where reciprocal treatment existed with many countries and was hence equivalent to legislative reciprocity. He could not himself suggest a draft but the Drafting Committee would have to, as long as it was clear what was desired. The first two paragraphs of the IRO text appeared acceptable at first sight, but further consideration would be needed. The main object was to ensure that aliens should not be penalized because they had no nationality and where privileges were generally enjoyed by aliens, through treaties or in any other way, refugees should have the same privileges.

The French representative did not think the first two paragraphs of the IRO text would make it possible to put the idea that had been advanced by the US representative into effect. There was no doubt that refugees must not be penalized because they were refugees. But the text of the Article, as drafted by the IRO, gave a sort of automatic character to the favours to be accorded to refugees. The present text was certainly not perfect but he found it in any case less open to criticism than the IRO text, because it did not create an automatic system, which the French Government could not accept.

The Committee decided to refer Article 4 to the Drafting Committee.[115]

The Drafting Committee proposed the following text:

'1. Except where these Conventions contain more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. Where aliens enjoy rights subject to reciprocity, a Contracting State shall continue to accord these rights and benefits, without regard to reciprocity, to a refugee who was already entitled to them on the date on which the Convention comes into force in relation to that State.

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[115] E/AC.32/SR.34, pp. 11-17

As regards other refugees a Contracting State shall accord the same rights and benefits to them, without regard to reciprocity, when they shall have been resident in its territory for a certain period.

3. The provisions of paragraph 2 apply equally to rights and benefits referred to in Articles 8, 13, 14 and 16 of this Convention as well as to rights and benefits other than those specified in this Convention.'

The Belgian representative proposed that the words: 'in a Contracting State' be inserted after the word: 'Where' at the beginning of paragraph 2.

The French representative said the effect of the addition would be to limit the scope of the Article. Hence, it would call for preliminary discussion.

The Belgian representative felt that actually the first part of paragraph 2 referred exclusively to cases which might arise in Contracting States.

In reply to a question, the French representative recalled that the chief concern of the Drafting Committee in adopting the wording 'for a certain period' had been to grant new refugees treatment equal to that granted to refugees of long standing. It had not decided on the period because representatives had undertaken to try to obtain details from their Governments, including an indication of a definite period, say, between two and five years.

The IRO representative wondered what treatment was to be accorded to refugees, who, while not resident in a country, had property there. In their case, the question of reciprocity was important, with regard, for example, to compensation for war damage and related matters.

The US representative observed that in the matter to which the IRO representative had referred, the Committee had retreated to some extent from the position it had taken up in first drafting the Article. The report should include a recommendation that Governments should continue, so far as possible, to extend the broader provisions of the earlier draft to aliens generally.

The UK representative pointed out that paragraph 2 was concerned with rights granted generally on the basis of legislative reciprocity, and not with special rights granted by virtue of bilateral treaties. The French representative agreed.

Articles 4 and 5 were adopted.[116]

In its Comments the Committee stated:

> 'A serious question arose with regard to exemption from reciprocity (Articles 4 paragraphs 2 and 3). It was the consensus of the Committee that the requirement of reciprocity in the original text should be revised because it was open to different interpretations in different countries. The revised text approved by the Committee preserved rights based on reciprocity for those refugees who were entitled to enjoy them on the date the Convention came into force in a particular State. The Committee was not unaware of the desirability of extending the same treatment to other refugees. It expressed the hope that States would give sympathetic consideration to extending rights, as far as possible, to all refugees without regard to reciprocity, particularly where the rights have no relation to the requirement of residence, as, for example, compensation for war damages and persecution. However, the Committee felt that a legal obligation in this case could be acceptable only in regard to refugees who had resided in the country for a given period. Because it was impossible to ascertain what period of residence would be acceptable, the Committee used the phrase 'for a certain period' on the understanding that the General Assembly would be better able to prescribe a definite period, if desirable. It was the understanding of the Committee that Article 4 paragraph 2 does not apply to rights conferred by treaty on nationals of a particular country only.[117]

At the Conference of Plenipotentiaries, Belgium proposed an amendment of paragraph 2 reading:

> 'As regards other refugees, a Contracting State shall accord them the rights and benefits subject to legislative reciprocity, when they shall have been resident in its territory for three years.'[118]

The Belgian representative explained that the Belgian Government could not agree to confer on refugees the rights which certain aliens enjoyed in Belgium by virtue of a bilateral treaty concluded between Belgium and another State. Belgium had signed a number of regional agreements, and would find it impossible to grant all refugees the benefit of the rights laid down therein without running the risk of placing herself in a difficult position. Furthermore, not only the rights provided for in existing treaties were involved, but also those which would ensue from treaties signed at some future date. For

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[116] E/AC.32/SR.41, pp. 4-7

[117] E/1850, p. 11

[118] A/Conf.2/11

those reasons, the Belgian delegation felt that all that was necessary was to grant refugees who enjoyed no rights at the date the Convention entered into force, exemption from reciprocity in respect of those rights which were accorded solely on the basis of legislative or administrative reciprocity.

The Egyptian representative felt that the refugee had no appeal to the protection of any State. In that context, the idea of reciprocity seemed to him to lack precision.

The President suggested that the difficulty might be met by some such formula as: 'without the usual reciprocity required in the case of aliens in general'.

The Swedish representative suggested the insertion of the word 'generally' after 'aliens' in the first sentence of paragraph 2 so as to exclude, for example, certain individual rights granted by Sweden to nationals of other Scandinavian countries. The Norwegian representative supported the Swedish representative's remarks.

The French representative supported the Belgian amendment.

The President pointed out that all delegations who found themselves in the same position as the Swedish and Norwegian delegations would inevitably have to make reservations. The necessity of doing so could not be averted by redrafting the Article.

The High Commissioner said the Conference might find it useful to consider the texts of the third and fourth paragraphs in the memorandum submitted by the IRO.[119]

The Austrian representative said that if the time-limit of three years proposed by the Belgian delegation was adopted, Austria would be obliged to enter a reservation on that point. However, the Austrian delegation could accept the Belgian amendment if the time limit was increased to, say, five years.

The French representative submitted, jointly with the Belgian delegation a new text for the Article reading:

> 'Redraft the second paragraph reading:
>
> 'The rights and benefits already enjoyed by certain refugees, without regard to reciprocity, at the date of entry into force of this Convention, shall continue to be accorded to them by the Contracting States.'
>
> 'In future all refugees shall enjoy exemption from legislative reciprocity in the territories of the Contracting States after a period of three years' residence.'[120]

The Luxembourg and Netherlands representatives supported the amendment.[121]

The Observer of the Inter-Parliamentary Union said that the second sub-paragraph of paragraph 2 might give rise to misunderstandings. By 'the same rights and benefits' were meant rights and benefits which certain refugees had been enjoying without regard to reciprocity, which was tantamount to promising to refugees the status of the alien most favoured by the reciprocity clause. The results would accordingly be different in each country, according to the rights and benefits granted to aliens in virtue of such a clause. The Inter-Parliamentary Union considered it essential to draft the reciprocity clause in the most liberal spirit. The question was whether 'treatment as favourable as possible' provided for in certain Articles had any legal weight, or whether its application would be left to the Contracting States. Furthermore, it would be advisable to consider the possibility of granting such exemption forthwith, not only after a certain period.[122]

The Netherlands representative recalled that he had originally supported the Franco-Belgian amendment; however, he had since discovered certain points regarding which he wished some clarification. According to the amendment, new refugees would enjoy exemption from legislative reciprocity only after a period of three years' residence in a receiving country. There were States which visualized the possibility of extending the idea of reciprocity even to non-statutory refugees. He requested the authors of the amendment to delete the word 'legislative'; countries which regarded the retention of that word as indispensable could make appropriate reservations.

Paragraph 3 of the Article was not covered by the amendment.

Finally, he asked the Belgian representative whether he did not agree that it would be useful to add an extra-paragraph relating to the reciprocal regional agreements existing between certain groups of countries, such as Benelux and the Scandinavian countries.

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[119] E/AC.32/L.40, p. 36

[120] A/Conf.2/32

[121] A/Conf.2/SR.6, pp. 11-12

[122] A/Conf.2/SR. 10, pp. 5-6

The Belgian representative did not think a clause relating to regional agreements could be included in the Convention. Countries which wished to do so would always be able to enter a reservation on that point.

As to paragraph 3 of the Article, the Belgian delegation did not wish to see it deleted. The amendment was emphatically not designed to exclude *de facto* reciprocity. As to diplomatic reciprocity he had received precise instructions from his Government to press for its exclusion. If the Franco-Belgian amendment were rejected, he reserved the right to introduce a new proposal on that issue.

The Netherlands representative said he would not press for the inclusion of the extra paragraph relating to regional agreements, but thought that the word 'legislative' should definitely be deleted from the joint amendment.

The French representative asked the Secretariat how many countries had observed exemption from legislative reciprocity under the 1933 Convention. The Executive Secretary pointed out that in the 1933 Convention, reservations to Article 14, which related to exemption from reciprocity, had been entered by Belgium, Czechoslovakia, Denmark, Norway and the UK; none had been entered by Bulgaria, France and Italy. The UK representative explained that the UK reservation had been made simply because the Article in question had no application in the UK.

The Netherlands proposal to delete the word 'legislative' was rejected by 5 votes to 4, with 15 abstentions.

The joint Franco-Belgian amendment[123] was adopted by 9 votes to 5, with 11 abstentions.

Article 4, as amended, was adopted by 20 votes to none, with 4 abstentions.[124]

The Style Committee proposed the following wording:

'1. Except where this Convention contains more favourable provisions a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

'2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territories of the Contracting States.

'3. Each Contracting State shall continue to accord to refugees, the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

'4. The provisions of paragraphs 2 and 3 apply both to rights referred to in Arts 13, 18, 19 and 21 of this Convention and to rights and benefits for which this Convention does not provide.'[125]

Israel and the Netherlands proposed an amendment reading:

'Add the following paragraph:

'5. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.'

'Paragraph 4 to become 5.'

The joint Israeli-Netherlands amendment was adopted by 23 votes to none. The Netherlands representative suggested that, in the former paragraph 4 of Article 7, the words: 'Articles 13, 18, 19, 21 and 22'. (Article 13 Movable and Immovable Property; Article 18 Self-Employment; Article 19 Liberal Professions; Article 21 Housing; Article 22 Public Education),

The Netherlands suggestion was adopted by 21 votes to none, with 2 abstentions. Article 7, as amended, was adopted by 23 votes to none.[126]

Commentary

Paragraph 1 of Article 7 is, in fact, not directly related to exemption from reciprocity. It states the general principle that, where the Convention does not contain more favourable provisions, the Contracting States shall accord to refugees the same treatment as is accorded to aliens generally. This is, by no means, a self-evident principle, considering the precarious situation of refugees in general international law. Aliens are, under international law, entitled to a certain minimum standard of treatment including, at least, protection of their lives and property but it has been doubted whether

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[123] A/Conf.2/32

[124] A/Conf.2/SR.24, pp. 21-24

[125] A/Conf.102

[126] A/Conf.2/SR.34, pp. 36-37

this applies also to refugees and stateless persons since it is only through the State of nationality of the alien that these rights can be protected and, if necessary, enforced. There was much discussion as to the meaning of 'treatment accorded to aliens generally' in the *ad hoc* Committee and the Conference of Plenipotentiaries but there is no doubt that in this connection only minimal treatment is implied. The provision entails that the minimum standards of treatment of aliens under international law apply also to refugees.

Paragraph 2 constitutes a step backward compared with the pre-war agreements and conventions in that only legislative reciprocity is referred to, and that exemption therefrom is to be granted only after a period of residence of three years. The pre-war treaties provided for exemption from reciprocity in general, thus including diplomatic reciprocity. That *de facto* reciprocity is to be deemed to be included in paragraph 2 results from the *travaux préparatoires.*

The relevance of reciprocity differs from country to country. In the Anglo-Saxon countries it plays no role regarding the treatment of aliens, nor in countries of immigration where immigrants have normally the same civil rights as nationals. In France and the countries whose law is based on the Code Napoleon, the treatment of aliens depends on diplomatic reciprocity; in certain continental European countries such as Austria and Germany, on *de facto* or legislative reciprocity. Examples were given in the debate.

In the case of agreements conferring rights not amounting to exclusive privilege, it would seem necessary to determine whether the rights are derived exclusively from the agreement or whether it has its origin in the legislation of the States concerned, the agreement being merely a means of confirming or giving effect to the reciprocity on an international level. In the latter case, reciprocity may be considered as legislative.

Paragraph 3 is designed to maintain the rights and benefits to which refugees were entitled, in the absence of reciprocity, at the date of entry into force of the Convention for the State Party concerned. This includes rights and benefits granted to statutory refugees under pre-war treaties even in the absence of diplomatic reciprocity, and rights granted under municipal law and practice. It thus creates a distinction between 'old' and 'new' refugees. The paragraph does not only apply to rights actually acquired by a refugee in the absence of reciprocity but to the rights and benefits to which the refugee was entitled in the absence of reciprocity under the law of the State concerned.

The calculation of the period of residence in this, and other Articles of the Convention where a period of residence is provided for, is subject to the provisions of Article 10 of the Convention. Article 7 paragraph 2 does not provide for continuous residence. Short absences abroad will not disqualify a refugee from benefiting from paragraph 2. If, however, a refugee moves his residence to another country and stays there for a protracted period, he can hardly claim the benefit of Article 7 paragraph 2 upon his return to his former country of residence. If a refugee has stayed in a second country of residence for a period of three years or more, he has benefited from paragraph. 2 in that country provided it is a Party to the Convention.

Paragraph 4 is the result of the efforts of those who wanted to go further than paragraph 2. It is only a recommendation, but imposes nevertheless a mandatory obligation to consider favourably the granting of wider rights and benefits. Thus, States may grant the rights and benefits even prior to the period of three years' residence, may grant rights and benefits in a Contracting State where the refugee does not reside such as the right to compensation for war damages, to grant rights and benefits even in the absence of diplomatic reciprocity. The question was raised but not answered whether the granting of such rights and benefits to refugees would oblige the Contracting State to grant the same rights and benefits to other aliens on the basis of a most-favoured nations clause. It is defensible to argue that this would not be the case since refugees are aliens *sui generis.* Paragraph 4 should be applied subject to the rules of non-discrimination laid down in Article 3.

Paragraph 5 makes it clear that the provisions regarding reciprocity apply both to the rights and benefits granted by virtue of the Convention where treatment 'in any event not less favourable than that accorded to aliens generally in the same circumstances' is provided for and to rights and benefits accorded apart form the Convention. Article 26 on Freedom of Movement is not mentioned, probably because it provided for freedom of movement in principle, limitations as a result of limitation applicable to aliens generally in the same circumstances being the exception. Paragraph 5 substitutes the treatment provided for in paragraphs 2 and 3 for the 'treatment accorded to aliens generally' regarding the rights mentioned in these Articles.

Judicial Decisions

In France the *Commission speciale de cassation de pensions* had to decide whether the Polish widow of a Polish refugee was entitled to a war pension. According to an Agreement between France and Poland, Polish nationals were entitled to war pensions in France. The Commission, in a decision of 10 February 1954 in *Guerre v. Gutersohn,* followed the

interpretation of the Ministry of Foreign Affairs to the effect that under Article 14 of the 1933 Convention, which exempted refugees from the requirement of reciprocity, the widow was entitled to a war pension.[127]

The French *Cour d'Appel* of *Orléans* decided on 27 April 1967 in *Spouses Waguet v. Agut*, that the denunciation of an agricultural lease of a Spanish refugee was invalid and granted him the right of renewal of his lease for nine years. A law of 28 May 1943 reserved explicitly to foreigners whose law of nationality granted the advantages of analogous legislation as well as to foreigners exempt from reciprocity by international agreement, the right to agricultural leases accorded to French nationals. The Court referred to Article 7 paragraph 2 of the 1951 Convention.[128]

It may be pointed out that the defendant, a Spanish refugee, was, in France, also entitled to exemption from diplomatic reciprocity under the 1933 Convention which had been extended to Spanish refugees by France.

National Measures

Some Parties to the 1951 Convention have explicitly exempted refugees from reciprocity in their legislation or administrative practice. Thus, for example, in Austria, Article 3 paragraph 3 of the Law of 31 March 1964 concerning the medical profession (BGB1. 1964 No. 50) provides that refugees who have been resident in Austria for three years are exempt from the requirement of reciprocity for the exercise of the medical profession.

In Belgium members of Belgian families with four or more children enjoy a reduction of 50% on the price of tickets on the Belgian railways. This benefit is granted to foreigners on the basis of reciprocity. The Ministry of Communications informed UNHCR that the facility extended to all refugees under the mandate of UNHCR.

ARTICLE 8. EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting State shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

ARTICLE 9. PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Travaux Préparatoires

Article 25 of the Secretariat Draft read:

> 'Any exceptional measure which a High Contracting Party may be called upon to take against the person, property or interests of nationals of a foreign State, shall not be applied to refugees who are *de jure* nationals of the said State, solely on account of the fact that they legally belong to that State.'[129]

In the comment it was stated:

> 'After the outbreak of the Second World War, many refugees who had been persecuted by the Governments of the Axis countries were subjected to exceptional measures taken against the nationals of enemy countries (internment, sequestration of property, blocking of assets, etc.) because of the fact that formally they were still *de jure* nationals of those countries. The injustice of such treatment was finally recognized and many administrative measures (screening boards, special tribunals, creation of a special category of 'non-enemy' refugees, etc.) were used to mitigate the practice followed in the first years of the war.

The Diplomatic Conference held at Geneva in 1949 recently introduced into the Convention on the Protection of Civilian Persons in Time of War a clause expressly stating that the exceptional security measures (assigned residence and

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[127] 1954 Dalloz p. 539

[128] *Revue critique de droit international privé vol.* 56-1967, p. 702

[129] E/AC.32/2

internment) shall not be applied to refugees solely on the basis of the fact that they belong to an enemy State. If this rule is to be applied in time of war, a similar rule must *a fortiori* be applied in time of peace.

The object of Article 25 is to remove both the person and property and interests of refugees from the scope of exceptional measures.'[130]

Article 20 of the French Draft read:

> 'Any exceptional measures which a High Contracting Party may be called upon to take in exceptional cases against the person, property or interests of the nationals of a foreign State shall not be applied to refugees who are nationals of the said State solely on account of the fact that they belong legally to that State.'[131]

At the first session of the *ad hoc* Committee the US representative, replying to a question by the Turkish representative, said that in his view the word 'solely' in the last clause of Article 25 indicated that, while exceptional measures could be taken against refugees, they could not be taken on the ground of nationality alone.

On the proposal of the Israeli representative it was agreed to delete the words *'de jure'.*

The UK representative said that, while he had no instructions from his Government on the matter, he felt sure it would be sympathetic to the provisions of Article 25. It might, nevertheless, have some difficulty in accepting them, because of overriding considerations of national security. He recalled the critical days of May and June 1940, when the UK had found itself in a most hazardous position; any of the refugees within its borders might have been fifth columnists, masquerading as refugees, and it could not afford to take chances with them. It was not impossible that such a situation might be reproduced in the future.

The US representative thought that the doubts of the UK representative might be resolved by the fact that the Government would be free to hold that any individual was not a *bona fide* refugee, in which case none of the provisions of the Convention would apply to him.

Article 25, as amended, was adopted.[132]

The Committee made the following comment:

'1. Unless a refugee has been deprived of the nationality of his country of origin he retains that nationality. Since his nationality is retained, exceptional measures applied during war or emergency, or for special reasons, to such nationals would be applied to him. The Article provides therefore that exceptional measures shall not be applied to a refugee where these would be applied on the grounds of his nationality.'

'2. This Article is based upon the wording of Article 44 of the Geneva Convention relating to the Protection of Civilian Persons in Time of War of 12 August 1949.'[133]

The UK made the following comment:

> 'Article 5. His Majesty's Government would be unable to accept this Article unless it were amended to preserve the right of a Contracting State to submit refugees of a particular nationality to detention or any other recognized measure of control in the same way as other aliens of that nationality, if it should be considered necessary for the security of the State to do so in time of national crisis.'[134]

At the second session of the *ad hoc* Committee the UK representative said what was meant by 'fifth columnists' was well-known. At a time of national crisis a large number of enemy aliens professing to be refugees - whether they were deprived of their nationality or not and whether they were true refugees or not - might be in a certain territory. He described the situation in 1940 when the UK deemed it necessary to intern most enemy aliens, whether claiming to be refugees or not. Later some had been released and others about whom doubt still existed had been kept in internment. It was not merely a question of internment; in times of war enemy aliens were forbidden to have cameras or wireless apparatus, to reside in certain districts etc., and the UK in time of emergency, might wish to impose such restrictions on all enemy aliens whether refugees or not. It was owing to a future peril that his Government considered it unsafe and contrary to the interests of the people of the UK if it were precluded from taking exceptional measures against refugees. It had no desire to submit anyone to greater inconvenience than the situation warranted and it was with the greatest regret that during the last war

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[130] E/AC.32/2

[131] E/AC.32/L.3

[132] E/AC.32/SR.4, p. 12

[133] E/1618, P. 42

[134] E/AC.32/L.40, p. 36

the UK had been compelled to take certain measures. His Government could not agree to the terms of Article 5 as at present drafted unless it had the possibility of taking well-recognized measures of control in a time of national crisis.

The UK subsequently proposed alternative amendments:

> 'A. Additional Article to Draft Convention relating to the Status of Refugees.[135]
>
> 'A Contracting State may at the time of national crisis derogate from any particular provisions of this Convention to such extent only as is necessary in the interests of national security.'[136]

The World Jewish Congress submitted a statement in which it was said that Alternative A of the UK went too far in that it allowed the derogation from any provision of the Convention and would thereby defeat its purpose by depriving refugees, at the discretion of any Contracting State, of protection at a time when such protection is most needed. In fact, if the purpose of the Convention shall not be defeated and, on the other hand, security should be the overriding factor, only Article 5 and Article 27 (Expulsion) could be derogated for reasons of security. As to Article 27, the present draft already permitted the expulsion of a refugee, lawfully admitted, on grounds of national security. A general Article as proposed in Alternative A would, in fact, only relate to Article 5.

The World Jewish Congress suggested the following wording:

> 'With regard to exceptional measures which may be taken against the person, property or interests of a national of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality; provided, however, that in the case of a state of emergency officially proclaimed by the authorities in the case of public disaster, a Contracting State may apply provisionally any such measures to a refugee on account of his nationality, until it is determined within a reasonable time that the measure is no longer necessary in the interests of national security. The refugee concerned shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.'

It suggested a second paragraph reading:

> 'If a Contracting State applies measures which may be taken against the person, property or interests of nationals of a foreign State, to refugees on the basis of the foregoing paragraph, they shall immediately inform the other Contracting States through the Secretary General of the United Nations of any such measures and of the date of the termination thereof.[137]

The representative of the World Jewish Congress said his comments were not directed against the United Kingdom which had generously given shelter to large numbers of refugees. He submitted that the clause suggested by the UK went too far. Everyone could agree that Government in a time of crisis might be forced to intern refugees in order to investigate whether they were genuine or not and therefore a possible danger to the security of the country. He wondered whether it would not be sufficient to add a second paragraph to Article 5 to the effect that countries could, in a time of crisis, institute measures of control in order to investigate whether refugees were genuine or not. If the UK suggestion were to be adopted as it stood, other countries might withhold the protection afforded to refugees and leave them helpless at the very time they most needed protection. He appealed to the UK representative to restrict his proposal to provisional measures, namely investigation for reason of security.

The US representative sympathized with the problem raised by the UK representative. He agreed, therefore, that something might have to be done either in the farm of a reservation or a change of drafting to cover the list of situations to which the UK representative had referred. On the other hand, it would be unjust if a *bona fide* refugee were penalized and punished by measures applicable to enemy aliens generally, only because he was a national of a country from which he had escaped. In changing the present wording of Article 5, the primary aim of the Committee should be to adjust the needs of the refugees in that regard to the requirements of national security.

The UK representative had touched on a crucial point, namely, as to whether a refugee was *bona fide* or not. None of the provisions of the draft Convention, however, would apply unless the refugees were genuine.

Security was not the only issue. A country might have many provisions concerning aliens which were not based on security reasons alone, including confiscation measures, limitations on trade and so forth, and in such cases the *bona fide*

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[135] E/1618

[136] E/AC.32/L.41

[137] E/AC.32/NGO 1, pp. 1-3

refugee should not be penalized but be given the opportunity of showing his good faith. The main problem was to draft a text containing the reservation desired by the UK but which would safeguard the rights of *bona fide* refugees.

The Chairman, speaking as representative of Denmark, felt that Article 5 was sufficient as it stood if more emphasis were placed on the words 'solely on account of such nationality.' During the last war an allied country had been compelled to intern all German refugees at the outset, not solely on account of nationality but because of the suspicion that that nationality might be dangerous to national security.

The Belgian representative agreed. It must not be forgotten that Article 5 referred to refugees already in the country and regarding whom enquiries had already been made. Hence there was already some guarantee for the State in which such refugees were living.

The US representative was concerned about the interpretation given by the Chairman, namely that in its present form, the Article meant that provisional measures could be taken against refugees in time of national crisis. According to the Chairman's example, refugees would come within the scope of the exceptional measures taken against German nationals, who were considered ipso facto to be suspicious. In his view, that would be a violation of the Article to have a different interpretation from the liberal one it now had, and would prefer an explicit but narrow limitation.

Some refugees would be stateless and others would technically retain their nationality and there was no reason for treating the latter any worse than those who were stateless. Exceptional measures should not be applied to a refugee merely because of his nationality even though at a particular time, owing to that nationality, he might have been open to suspicion.

He hoped that any reservation or modification of the present wording would be as narrow as possible and limited to cases referred to by the UK representative.

The Israeli representative reminded the meeting of other cases of exceptional measures, for example, economic conflict between two countries as a result of which certain retaliations were inflicted against the respective citizens of those countries. Such retaliation should not be allowed to happen as a consequence of the fact that a refugee retained his former nationality, though no longer accepting the protection afforded him by it.

What the Chairman had in mind was two kinds of restrictions: (1) general restrictions applying to enemy aliens, and (2) particular restrictions applying to German nationals. The result of the application of Article 5 would be that a refugee would fall under the general restrictions but would be excluded from the restrictions imposed upon German nationals, thus acquiring a privileged position.

The question of *bona fide* raised that of a new definition. There were two possible courses of action: the general one, that all action taken under Article 5 was considered as being taken in favour of the *bona fide* refugees and that there was no need to define such refugees under Article 5, or that of stating in Article 5 that States had a right to investigate whether a refugee was *bona fide* or not, since no convention could affect that right. In the drafting of Article 5, the question was of how to find some way of making it clear that what was in mind was the third type of refugee, namely the *bona fide* refugee who was not identical with the refugee defined in Article 1.

He wished to make it quite clear that the measures referred to in Article 5 were not designed only for times of emergency. A second paragraph should be added to cover the particular case of emergency in which the rights of the refugee could be restricted, but then only as little as was absolutely necessary.

The Chinese representative said his delegation was in favour of more liberal principles being applied to *bona fide* refugees but would welcome some provision enabling it to take exceptional measures based upon the nationality of refugees.

The US representative wished to make it quite clear that his interventions had been directed to exceptional circumstances. He believed that the security problem would hardly arise in the case of *bona fide* refugees. It was essential first to determine whether a refugee was *bona fide* and whether he actually retained his original nationality.

The Belgian representative fully appreciated the right of the UK to take all necessary steps for its security. He wondered however whether it was really necessary to insert a specific provision regarding the right of Governments to intern all refugees originating from a given country. In 1940, the refugees had not been real refugees who had been screened previously, but individuals fleeing their countries, who did not enjoy the status of refugees. Article 5, on the other hand, concerned refugees who had the status of refugees, not candidates for that status. It would be extremely harsh to deprive such people of all the privileges and guarantees they had obtained as *bona fide* refugees. It would, in fact, amount to penalizing them for not having become stateless, as the UK suggestion would not cover stateless persons. He felt that it was essential that the Article was retained as it was, and that Governments who were in the same position as the UK should make reservations in respect of it.

The French representative felt that the difficulty of the Belgian representative might be partly overcome by making a distinction between two types of exceptional measures, measures taken in peace-time or during a crisis of a non-military type, such as economic or financial crises, and also retaliatory measures, and, on the other hand, measures taken in exceptional circumstances which affected peace or national security. The provision relating to the latter type of measures would naturally be more severe than the former. Article 5 might state what 'exceptional circumstances' were and that they would be the only ones under which the provisions of the Article could be suspended. The circumstances of war were unforeseeable, and in extremity Governments which had accepted the Convention unreservedly might be obliged to intern citizens of enemy countries. In spirit, Article 5 was an invitation to States, should exceptional circumstances arise, to keep *bona fide* refugees in internment camps only for as short a time as possible. The interests of the national community and of the refugees had, in fact, to be harmonized.

The US representative felt that the scope of any limitation on Article 5 ought to be defined more precisely than had been proposed. He would like the limitations to be as narrow as possible to make the Article acceptable.

The Chairman, speaking as representative of Denmark, agreed that provision should be made for former nationals of an enemy country and suggested that the penultimate phrase of the Article should read: 'to a refugee who is or has been a member of the said State, solely on account of such present or former nationality.' It was difficult to be certain whether a person was really a refugee since it did not always appear on his passport.

The UK delegation proposed the following alternative amendments:

'A. Add Article

1. A Contracting State may at a time of national crisis derogate from any particular provision of this Convention to such extent only as is necessary in the interests of national security.'

2. The Contracting State shall immediately inform the other Contracting States through the Secretary General of the United Nations of any such derogation and of the date of the termination thereof.'

Or B. Add the following to Article 5:

> 'Provided however that at a time of national crisis a Contracting State may apply provisionally any such measure to a refugee on account of his nationality until it is determined that the measure is no longer necessary in the interests of national security.'[138]

In introducing his amendments the UK representative stated that it would be better to deal with the question of security specifically in the text rather than leave it to individual reservations on the part of Governments. His Government desired a general provision exonerating States from complying with the Committee's provision in time of crisis. During the war British subjects and non-enemy aliens had been interned in cases where there had been grounds for suspecting their loyalty. Many, though not all, enemy aliens had also been interned in 1940 simply because they were enemy aliens; after internment they had been screened and within a year only a very small proportion had remained in detention. He was definitely of the opinion that it was necessary to apply exceptional measures to refugees of enemy nationality. It was impossible to give all persons entering the country as refugees a thorough security examination, which had to be deferred until exceptional circumstances made it necessary.

He wished to explain that the term 'exceptional measures' covered not only internment but such measures as restrictions on the possession of wireless apparatus, in order to prevent the reception of code messages and the conversion of receiving into transmitting apparatus.

His Government desired a provision along the lines of alternative A. It would be for the Committee to decide to what Articles the exemption provided for in it would apply: he suggested, for example, Article 21 regarding freedom of movement.

The Belgian, Canadian, Chinese, Turkish and Venezuelan representatives supported alternative A.

The Israeli representative felt that at the present stage it was not possible to discuss a general Article such as alternative A; he considered that it could only apply to Articles 5 and 2 1, and that it ought to be more specific.

The Venezuelan representative proposed that in paragraph 1 of alternative A the words: 'and of public order' be inserted after the words: 'national security'. The reason for the adoption of those words in Article 27 (Expulsion) had been that exceptional measures would be necessary not only during an external emergency but during an internal one such as a revolution; it would be unjust for refugees to be protected from such measures while nationals of the country concerned were not.

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[138] E/AC.32/L.41

The US representative felt that alternative A was drafted in somewhat wide terms and was in favour of alternative B, without prejudice to the addition of some other general provision later.[139]

Article 5 was adopted in the following wording:

> 'Without regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality.'

The Drafting Committee proposed the following text for a second paragraph:

> 'Nothing in this Article shall prevent a Contracting State, in time of war or national emergency, from taking provisionally measures essential to the national security in the case of any person, pending the determination that such a person is in fact a refugee and that such measures are still necessary in his case in the interest of national security.'[140]

The French representative proposed that the words: 'measures essential to' should be replaced by the words: 'any measure essential to'; in consequence the words: 'such measures are' would be replaced by the words: 'such measure is'. He explained that it was quite possible that new and serious facts might be brought to the knowledge of the authorities, in which case the wording he proposed could not exclude the possibility of internment, for example. 'Any measure' meant both any particular measure and any measure whatsoever.

The French representative's proposal was adopted.

The Venezuelan representative withdrew the reservation he had made to submit an amendment relating to public order.

The second paragraph of Article 5 was adopted as amended.[141]

The Committee made the following comment:

> 'In Article 5 the Committee thought it advisable to add a paragraph in order to clarify the application of this Article in regard to measures related to national security in time of war and national emergency.'[142]

At the Conference of Plenipotentiaries, Australia proposed an amendment to paragraph 2 of Article 5 reading:

> 'Nothing in this Article should prevent a Contracting State in time of war or national emergency or in the interest of national security, from taking provisionally essential measures in the case of any person, pending a determination that the particular person is in fact a refugee and that such measures are still necessary in his case in the interest of national security.'[143]

The UK proposed to delete paragraph 2 and to add a new Article in the following terms:

> 'Nothing in this Convention shall prevent a Contracting State, in time of war or national emergency, from taking provisionally measures which it considers to be essential in the interests of national security in the case of any person, pending a determination by the Contracting State that the particular person is in fact a refugee and that such measures are still necessary in the interests of national security.'[144]

The Australian representative said that his amendment simply proposed that the words: 'are in the interest of national security' be inserted in paragraph 2, its purpose being to allow a latitude to Contracting States to take the exceptional measures provided for in Article 5 during periods immediately preceding a time of war or national emergency when they might prove necessary. He proposed to withdraw his amendment in favour of the UK amendment and to submit a proposal to that amendment consisting in the insertion of the words 'or in the interests of national security' after the word 'emergency'.

The UK representative recalled the earlier discussion on Article 3 when consideration had been given to the question of whether Article 5 was consistent with it. Article 3 enunciated a general position, and Article 5 had been regarded as an

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[139] E/AC.32/SR.34, pp. 4-11

[140] E/AC.32/L.42 Add.3

[141] E/AC.32/SR.42, p. 4

[142] E/1850, p. 12

[143] A/Conf.2/15

[144] A/Conf.2/16

exception thereto. Another exception was Article 21. It was not therefore enough to provide in paragraph 2 an exception to paragraph 1 of the same Article; the exception should also be to the other Articles of the Convention.

On the proposal of the Swiss representative the words 'any person' were replaced by the words 'a particular person'.

The UK representative felt that there might be reasonable grounds for objecting to the Australian proposal since it would enable a State to take exceptional measures at any time, and not only in time of war or national emergency. He was supported by the representatives of Canada, Israel, the Netherlands and Switzerland.

The French representative pointed out that, although the expression 'national emergency' seemed unduly restrictive, the words 'in the interests of national security' seemed equally to give an unduly wide scope to the text. Between the two ideas there was an intermediate area which neither phrase delimited exactly: there could be cold war, approximating to a state of war, tension, a state of emergency or an international crisis calling for certain internal precautions. A working group might be asked to devise a formula.

The Swiss representative recalled that the problem had arisen at the Diplomatic Conference for the revision of the Red Cross Conventions in Geneva in 1949, when it had been discussed at great length. The Conference had not adopted a provision analogous to the one before the meeting. To meet the objections expressed by certain delegations, he proposed that the words: 'in time of national emergency' be replaced by the words: 'in case of grave emergency'.

The French representative suggested the wording: 'in time of war or in time of grave national or international tension'.

The President recalled that the question had been raised as to the action to be taken in respect of refugees on the declaration of a state of war between two countries, when it would be impossible for a State to make an immediate distinction between enemy nationals in the country, supporting the enemy Government, and those persons who had fled form the territory of that enemy country. The *ad hoc* Committee had come to the conclusion that, while a Government should not be in a position to treat persons in the latter category as enemies, it would need time to screen them. He was therefore afraid that the discussion was drifting away from the original intention of Article 5.

The Israeli representative believed that as the phrase 'national emergency' in English had a definite legal connotation, and the phrase *'crise grave nationale'* had no such juridical meaning, it would be necessary to define the French phrase.

The Australian representative said he would agree that the words 'national emergency' be replaced by the words 'time of grave tension, national or international'.

That wording was rejected by 7 votes to 3, with 9 abstentions.

The Netherlands representative proposed that the words should read 'other grave and exceptional circumstances'.

That phrase was adopted by 16 votes to none, with 4 abstentions.

The UK amendment, with the aforementioned change, was adopted by 16 votes to none, with 4 abstentions.[145]

It was agreed that this text be inserted before Article 6, and provisionally numbered Article 5(A).[146]

Sweden subsequently proposed the following amendment to Article 5:

> 'With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality, or shall provide for appropriate exemptions in respect of such refugees.'[147]

The UK proposed the following new paragraph:

> 'Nothing in this Article shall prevent a Contracting State from exercising any rights over property or interests which it may acquire or has acquired as an Allied or Associated Power under a treaty or other agreement for the restoration of peace which has been or may be concluded as a result of the Second World War. Furthermore, the provisions of this Article shall not affect the treatment to be accorded to any property or interests which at the date of this Convention are under the control of such Contracting State by reason of a state of war which exists or existed between it and another State.'[148]

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[145] A/Conf.2/SR.6, pp. 12-16

[146] A/Conf.2/SR.7, p. 4

[147] A/Conf.2/37

[148] A/Conf.2/83

The Swedish representative recalled that the Conference had already adopted Article 5(A). If Article 5 was compared with Article 5(A) it seemed that in the last resort Contracting States would have to decide whether or not such exceptional measures were still required in the interest of national security. The Swedish delegation felt that the matter should be mentioned at the beginning of Article 5. However, the Swedish delegation felt some doubt whether that way of settling the problem would be the best. One could easily imagine cases in which it would appear fully justified to maintain the confiscation of property of a refugee even if that property, in his hands, did not constitute a menace to national security. A person might, for example, have fled from Nazi Germany at a very late state of the Second World War after having been a militant Nazi up until then. It would have to be left to the administration of the State concerned to decide whether refugees from the country in question should be exempt from such measures. Under Swedish legislation, for example, the decision on such matters would rest with the Government. The further idea advanced by Sweden was designed to meet the case of legislative systems similar to that of Sweden; it provided that the States concerned would be empowered to determine whether a refugee was subject to such measures or whether he could be exempt from them. It might be argued that the word 'appropriate' was rather vague, but the existing text of Article 5 was equally vague.

The UK representative agreed that the new Article 5(A) would not solve the problem raised by Sweden since the measures to which it referred must be determined solely by considerations of national security. The Peace Treaties required the Allied Powers to place a charge on the property of the nationals of the ex-enemy States though they also made provision whereby a refugee from one of those countries who had been a refugee in time of war, could secure the return of property that had been sequestrated by the country of asylum. The effect of Article 5 would be to oblige the UK, for example, to return such property also in the case of persons who had become refugees as a result of events before 1 January 1951, and who had property in the UK which had been sequestrated. Such persons might have been sympathizers with the wartime enemy regime, and might have been compelled to flee their country because of a change of regime that had supervened since the war.

The matter was one which concerned a number of States, and for that reason the UK delegation had made the point in the form of an amendment, although it recognized that it could also be dealt with by way of a reservation. The purpose of the second sentence was similar, namely, to give States more latitude in respect of property belonging to German and Japanese nationals.

The Israeli representative observed that the UK amendment was of a highly technical nature. He believed that the purpose would be better served by reservations.

In reply to a point raised by the High Commissioner the Swedish representative confirmed that States would be entirely free either to exempt refugees from certain measures taken against aliens of the same country, or to exempt them entirely from such measures.[149]

The Swedish representative pointed out that paragraph 1 of Article 5 dealt with exceptional measures taken against the person, property or interests of nationals of a foreign State, whereas Article 5(A) spoke of measures against a particular person. He believed that it was somewhat illogical to restrict the provisions of Article 5(A) to measures which might have to be taken in the interests of national security. He was faced with two problems in connexion with paragraph 1 of Article 5, the first being in connexion with the retroactive effect of that Article. He agreed that it could be dealt with by appropriate reservations. His second preoccupation was that paragraph 1, as at present drafted, prevented Governments from taking even provisional measures against refugees solely on account of nationality. Such a clause might well conflict with the existing domestic legislation of certain States. It was with that consideration in mind that he had introduced his amendment.

The Norwegian representative said that, according to Norwegian law, all ex-enemy property had been sequestrated; however, the law was not strictly applied. For example, such property had been restored to German nationals after the Second World War in cases where the owners had not actively worked against Norwegian interests. He supported the Swedish amendment. The Norwegian Government would then only have to make a reservation concerning the retroactive effect of paragraph 1. The Danish representative said the Swedish amendment was acceptable to his delegation.

The Netherlands representative said that the Netherlands Government would have to make a reservation on Article 9 (Artistic and Industrial Property) to the effect that the provisions of that Article could not affect legislation concerning enemy property. His Government would have to make a similar reservation to Article 5.

The UK representative reminded representatives that it had been decided to make a separate Article of the former paragraph 2 of Article 5 because there might otherwise be a conflict between other Articles such as Article 3 (Non-Discrimination), and 21 (Freedom of Movement), and Article 5. The saving clause in the original paragraph 2 applied only to Article 5, and not to those other Articles, moreover, it was not clear that action which might have to be taken in an

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[149] A/Conf.2/SR.27, pp. 28-32

emergency would always come within the wording of paragraph 1 of Article 5. It had therefore been decided to have a blanket provision whereby, in strictly defined circumstances of emergency, derogation from the provisions of the Convention would be permitted in the interests of national security. Thus Article 5 was now only one of the Articles covered by the provisions of Article 5(A). He therefore could not agree to the Swedish representative's suggestion that Article 5(A) was too limited. He would be most reluctant to extend the scope of that Article to cases other than those connected with national security. The kind of action which he envisaged States could take under Article 5(A) would be, for example, the wholesale internment of refugees in time of war, followed by a screening process, after which many could be released; that had occurred in the UK at the outbreak of the Second World War.

The Swedish amendment would dangerously weaken paragraph 1 of Article 5. He recognized that in some respects the provisions of that paragraph could not be fully applied, particularly in the case of enemy property, but, so far as the UK was concerned, that difficulty could be met by allowing for reservations.

The Swedish representative said the UK representative's remarks had already demonstrated that there was no very close connection between paragraph 1 of Article 5 and Article 5(A). Nevertheless, in connection with paragraph 1 of Article 5, he must point out that certain measures which had nothing to do with the interests of national security, involving the property of refugees, might have to be taken. Paragraph 1, as at present drafted, did not enable States to take even provisional measures either against persons or their property. He had therefore to press his amendment.

The French representative said that the Conference was faced with a text, the formulation of reservations to which would lead to an avalanche. Governments would not agree to sign the Convention without entering reservations to Article 5, as thus amended, since the friends of today might well be the enemies of tomorrow. A text was needed which would not call for reservations at all.

The Swedish representative quoted a hypothetical example in support of his argument. Two German nationals might possess property in Sweden. No difficulties would arise in the case of the first, who had taken up residence in Sweden as a refugee prior to the outbreak of hostilities. The second, on the other hand, might have reached Sweden after the end of the war and claimed the status of refugee. Should his property be restored to him if he could satisfactorily prove that he had never been a member of the Nazi party and had, in fact, worked against it? That question would clearly have to be determined by the Swedish Government. Either legislation could be passed exempting certain categories of aliens from the application of the Enemy Property Act, or some arrangement could be made to enable such persons to claim the return of their property provided they could substantiate their right to restoration. Those two possibilities must be allowed for, or administrative difficulties would arise.

The Belgian representative feared that the adoption of the Swedish amendment would result in a regime of arbitrary decisions, since countries of residence would be at liberty either not to apply to refugees the exceptional measures, or to grant certain exemptions in the case of such refugees. Refugees would therefore have no absolute right to exemption from the application of those measures.

The UK representative agreed that the example quoted by the Swedish representative was entirely relevant, but pointed out that such cases could be covered by reservations. They related to action arising out of the war, but not actually taken during a time of war or emergency, and were therefore in no sense governed by considerations of national security. He was at present unable to conceive of any cases - apart from those connected with enemy property - which would arise in connexion with paragraph 1 in time of peace.

The Swedish representative reaffirmed his view that it was impossible to legislate for future possible contingencies and that it was, therefore, important that paragraph 1 of Article 5 should be made as flexible as possible.

The Belgian representative observed that the Swedish amendment was intended to provide for possible future events. The paragraph in question, however, related to events before 1 January 1951. The French representative agreed but said that there was also the question of the interpretation of the term 'events'. Did not the words imply all the consequences of such events, consequences which could not be foreseen?

The French text of the Swedish amendment was adopted by 9 votes to 3, with 13 abstentions.

Paragraph 1 of Article 5, as amended, was adopted by 23 votes to none, with 2 abstentions.[150]

The Style Committee proposed the following wording:

> 'Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers essential to the national security in the case

[150] A/Conf.2/SR.28, pp. 4-10

of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interest of national security.'

'With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality, or shall, in appropriate cases, grant exemptions in favour of such refugees.'[151]

The UK proposed the insertion of the words: 'if they do so' between 'or' and 'shall' in the second paragraph.

The Canadian representative said that the text was guilty of the unhappy fault of, so to speak, taking away with one hand what it gave with the other. He could not but advocate, even at the present late stage, that the final clause be dropped. If a State had legislative difficulties, it could enter appropriate reservations to that Article.

He was supported by the Belgian representative.

The UK representative agreed with the Canadian representative on the point of substance, and emphasized that his own amendment was purely grammatical in intent. It would certainly be preferable to retain the text in its original form and allow for the possibility of reservations, rather than to make the final clause alone operative. That, in point of fact, would be the undesirable effect of the text as at present drafted.

The Swedish representative proposed the use of the formula 'either/or' in the second paragraph He was supported by the Austrian representative.

The US representative agreed that the insertion of the words proposed by the UK representative was necessary, but felt that the text, whether thus amended or not, gave rise to doubts as to the meaning of the word 'shall' in almost any Article of the Convention. Should the term be interpreted as being mandatory or permissive? He fully agreed with the Canadian representative's observations on the general issues raised by the Article.

The French representative submitted that the last clause of Article 8 was very far from suggesting measures of an illiberal nature. It laid upon States the obligation to grant certain exemptions at times when they were unable to observe the general principle enunciated in that Article. He would interpret the words *'ou accorderont'* as an obligation to grant exemptions. He would recall that nationality was a live issue in the first or second country of residence, but ceased to be one once a refugee had gone to an overseas country of resettlement.

The Norwegian representative supported the arguments of the French and Swedish representatives. He thought that the difficulty could be circumvented by making the alternative perfectly clear and using the 'either/or' formula.

The US representative suggested that the text might be amended to read:

'(The Contracting States shall not) *as a general rule* apply such measures... (on account of such nationality) and, *if they do apply such measures,* shall, in appropriate cases...'

The Swedish representative was unable to agree to such an amendment.

The French representative felt that the discussion was somewhat superfluous, since in point of fact there existed no true alternative in the Article, the second provision being subordinate to the first, in which the principle was enunciated. He could not but reiterate that, in his view, the French text meant that if States could not apply the principle they must grant exemption *('accorderont').*

The Venezuelan representative suggested that the text might be amended to read, after the words 'such nationality', 'or, if they apply them, will undertake'.

The President suggested the following emendation of the second clause of the Article:

'(The Contracting States shall) in *the administration of such measures avoid applying them to a refugee* who is formally a national of the said State'.

The Swedish representative was unable to accept the President's suggestion.

The UK representative said that, in so far as form was concerned, the insertion of the word 'either' after 'Contracting States' would alleviate the difficulty.

The representative of the Friends' World Committee for Consultation said that he was authorized by a number of non-governmental organizations attending the Conference to state that the retention of the final clause in Article 8 would, in

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[151] A/Conf.2/102, Articles 8 and 9

their view, be a retrograde step. The alternative which now had been added seemed, in their view, to vitiate a principle which had been laid down and accepted. The non-governmental organizations accordingly hoped that Article 8 would not be weakened by the inclusion of the final clause.

The Canadian representative suggested that the text be amended as follows: a full stop should be inserted after the words 'such nationality', and the final clause be amended to read: 'Contracting States which under their legislative system are prevented from applying the general principle expressed in this Article shall, in appropriate cases, grant exemptions in favour of such refugees.'

The Swedish representative believed that the Canadian amendment might be acceptable, but asked for more time to consider it in both languages.

The French representative was prepared to accept the Canadian amendment. He protested against the erroneous interpretation placed by certain non-governmental organizations on the French, and also on the Swedish position with regard to the final clause in dispute. Contrary to what might appear from a superficial interpretation, that clause was a liberal provision. Obviously, no Government would be willing to amend its legislation in a field in which national security might conceivably be at stake. The final clause had the advantage of obliging Governments which were unable to apply the general principle at least to be prepared to grant exceptions and exemptions.

The President stated that Article 9 (formerly Article 5(A)) had originally been entitled 'Provisional Measures'. Article 9 was adopted by 29 votes to none.

The Swedish representative, in reply to a point made by the French representative, proposed that the words 'legislative systems' in the Canadian amendment should correctly read 'legislations'. It was so agreed.

With this amendment Article 8 as a whole and as amended, was adopted by 19 votes to none.[152]

Commentary

The first sentence of Article 8 follows Article 44 of the Geneva Convention on the Protection of Civilian Persons in Time of War. It does not exclude measures taken not solely on account of nationality, for example, measures based on suspicion in particular cases. Wholesale measures against enemy nationals are meant. The second sentence was added on a Swedish proposal against strong opposition. It was felt better to insert the sentence than to envisage numerous reservations on the principle. The Swedish intention was to permit States whose legislation leaves it to the Government to decide what measures to apply and to define the person to whom it applies, to do so. The measures envisaged are internment, restriction of movement, prohibition of the possession of wireless apparatus or cameras, sequestration of property, etc. The words 'who is formally a national of the said State' would seem to imply that no such measures may be applied to refugees who possessed enemy nationality but lost it, for example, by deprivation, although in the discussion reference was made to such cases. It may be pointed out that certain Allied countries did not recognize the German legislation, enacted during the Second World War, by which Jews abroad were deprived of German nationality. It is certain that the text excludes measures taken solely on account of such former nationality. As to the second sentence it is clear that it imposes a mandatory obligation to grant exemptions in favour of refugees 'in appropriate cases'. Article 8 relates to measures taken in the future and to the continuation of measures initiated prior to the entry into force of Convention, for example, sequestration of property.

In the case of parties to both the Red Cross Convention of 1949 and the 1951 Convention, it can be argued that they remain bound by the former Convention which does not contain the exception contained in the second sentence of Article 9, as the *lex specialis,* where measures envisaged by the 1949 Convention, internment and assigned residence, are concerned.

Article 9 is designed to allow for the imposition of measures in the interests of national security pending the screening of the persons concerned whether they are in fact *bona fide* refugees and whether the continuance of the measures is still necessary in their case. As to the latter, persons who had become refugees after the Second World War but had collaborated with the enemy States during the war were mentioned. In their case, their property would not necessarily have to be restored to them. The words 'other grave and exceptional circumstances' constitute a compromise between those who wanted to limit the Article to situations of war and national emergency as agreed upon by the *ad hoc* Committee and those who wanted the provisional measures to be applicable whenever necessary in the interests of national security. They would thus appear to include a state of emergency or grave international crises short of war. They do not include economic measures, retaliation or retortion not taken in 'grave and exceptional circumstances', in the

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[152] A/Conf.2/SR.35, pp. 4-5

absence of an international crisis. The words 'in his case' indicate that such measures may not be taken against all or certain categories of refugees but may only be taken on the merits of the individual case.

ARTICLE 10. CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Travaux Préparatoires

The Secretariat Draft contained the following Article 29:

> 'Persons deported from their country or origin or regular residence by the Nazi authorities during the Second World War and present in the territory of one of the Contracting Parties shall be deemed to satisfy the requirement of regular residence for the purpose of the present Convention in respect of the time during which they resided in the country to which they were deported.'

In the comment it was stated:

> 'A number of provisions in the preliminary draft make the enjoyment of certain rights subject to the condition of regular residence. In order to eliminate any doubts regarding the case of displaced persons, that is to say persons introduced by force into another country, it should be expressly laid down that the time spent in the country to which they were deported is reckoned as regular residence.'[153]

In the *ad hoc* Committee the representative of the IRO did not think that the adjective 'regular' which qualified the word 'residence' in the text of the Article limited its application to refugees authorized to reside in the territory. The Article equally applied to *bona fide* refugees who had lived in a country for a sufficiently long time. That should be made clear as Germany and Austria, for example, could refuse to recognize as a period of regular residence the time spent by deported persons who according to law, had not been admitted for regular residence in those countries.

The Belgian representative observed that there were two quite distinct questions. The first concerned the situation of a deported person *vis-à-vis* the authorities in the territory to which he had been deported. The second was related to the situation of the deported person vis-à-vis the authorities of territories other than that to which he had been deported.

He thought that the requirement of 'regular residence' meant an ordinary requirement of *permanent* residence, such as that laid down in Article 13 for the exemption of refugee wage-earners from certain restrictions on their freedom to work. The point at issue was therefore continuous residence, not legal residence.

The US representative said the first problem hardly seemed to raise difficulties. With regard to the principle underlying the second problem, he feared there might be strong opposition.

The French representative believed that the French authorities in most cases were willing to consider the time spent in France by a deported person when calculating the period of residence. He could not, however, state categorically that his Government was prepared to give a general undertaking in this connection. The fact that no such clause was included in the French draft indicated that the author had not considered that it would be particularly valuable.

The Danish representative observed that the only Article of the Convention which included a condition of residence was that referred to by the Belgian representative. As more than three years had passed since the Germans had left, all deported persons had been able to complete their period of residence in the country of reception itself. Consequently it would not apparently be necessary to apply Article 29, which therefore became superfluous.

The Belgian representative pointed out that there were other conditions of residence which were not included in the Convention but which followed either from various international instruments or general regulations applicable to foreigners. In Belgium, for example, a foreigner could engage in a liberal profession only after the completion of ten years' residence. Article 29 was therefore not entirely redundant.

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[153] E/AC.32/2

In practice, the Belgian Government had no objection to adding the years spent in Belgium during the occupation to the period of regular residence, on condition that the person concerned had been authorized to reside regularly in Belgium after the end of the war.

In reply to a question he said that Article 29 would apply to naturalization.

He was unable to agree to the second principle. If a deportee were to return to the country in which he had previously resided, his period of residence in that country might be considered to have been uninterrupted by the fact of his deportation. That was the only privilege which could be granted to a deportee in that respect. Hence, in determining the period of residence required for naturalization which, in principle, should have been uninterrupted, the time he had spent in the country prior to deportation would be added to the period subsequent to his return.

The representative of the IRO proposed the following text:

> 'If persons who were deported from their country of origin or regular residence by the Nazi authorities during the Second World War are living in the territory, of the High Contracting Parties, their residence in the territory of the High Contracting Party to which they were deported shall be considered as regular residence for the purpose of this Convention.'

The US representative agreed but pointed out that the recognition of the length of time spent as a deportee as part of the uninterrupted period of residence might also be considered.[154]

The Working Party proposed the following wording:

'1. When a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is residing there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.'

'2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has subsequently returned there, the period before and after such displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.[155]

This text was adopted by the Committee.[156]

The Austrian Government made the following comment:

> 'In accordance with the Austrian nationality law the length of residence as required for the purpose of naturalization is counted from the day of the liberation of Austria, as a rule which applies also to persons who have been forcibly removed from another country and brought to Austria. This finds its well-founded explanation in Austria's special situation since the Federal Government was not able to exercise its power in Austrian territory before that date.[157]

At the second session of the *ad hoc* Committee the Drafting Committee proposed the same wording as adopted at the Committee's first session.

At the Conference of Plenipotentiaries, Yugoslavia proposed an amendment reading:

> 'Article 6 paragraph 2. After the words 'and has subsequently returned there' insert:
>
> > '...until the date of entry into force of this Convention.'[158]

The Belgian representative suggested that the Yugoslav amendment would be more clearly expressed if the words 'prior to' were substituted for the word 'until'. The Yugoslav representative accepted that change.

The Yugoslav amendment was unanimously adopted, as amended.

Article 6 was unanimously adopted as amended.[159]

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[154] E/AC.32/SR.22, pp. 4-8

[155] E/AC.32/L.32, Article. 6

[156] E/AC.32/SR.25, p. 4

[157] E/AC.32/L.40, p. 37

[158] A/Conf.2/24

[159] A/Conf.2/SR.7, pp. 4-5

The Observer of the Inter-Parliamentary Union urged that if an attempt was to be made to place refugees in different categories, such classification should be based essentially on human and psychological principles. There were some refugees who neither hoped nor desired ever to return to their own countries, and others who regarded their exile as merely temporary. The former aspired above all to shed their refugee status and become naturalized, thus being part of the nation which had received them. Many of them were stateless persons, whose main hope, so far as the Conference was concerned, was that it would adopt provisions facilitating naturalization. The provisions of Article 6 merely remedied an occasional situation caused by the Second World War without providing any solution in respect of the first category of refugees to which he had referred. Accordingly, the Inter-Parliamentary Union trusted that the Conference would consider reducing the period required for naturalization.[160]

The Style Committee proposed the following wording:

'1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.'

'2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purpose for which uninterrupted residence is required.'[161]

This text was adopted by 21 votes to none.[162]

Commentary

The provisions of this Article were of some topicality at the time when the Convention was drafted but are hardly topical any more. It will be noted that the Article applies not only to the provisions of the Convention but to all provisions of national law where lawful or uninterrupted residence is required.

Certain rights provided for in the Convention are dependent on a certain length of sojourn, in particular Article 7 paragraph 2, Article 17 paragraph 2, and in conjunction with Article 6, may be dependent on a certain length of sojourn. (Articles 13, 15, 17 paragraph. 1, 18, 21, 22; paragraph 2, 26). The Article is particularly relevant for the purpose of naturalization (Article 34) since, according to most nationality laws, a period of lawful and, in some instances, uninterrupted residence is required for that purpose.

The second paragraph applies only to refugees who have returned 'prior to the date of entry into force of this Convention' without the additional words 'for that State' as in Article 7 paragraph 3, and it can, therefore, be assumed that the date of entry into force of the Convention, that is, 22 April 1954, is meant.

ARTICLE 11. REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Travaux Préparatoires

At the Conference of Plenipotentiaries the Observer of the International Labour Organization (ILO) said that he wished to refer, in connection with Article 23 (Travel Documents), to the position of seamen whose labour conditions had been the concern of the ILO for the last thirty years. Refugees who were continuing in that calling, or who had adopted it after leaving their country of origin, might not be very numerous; in fact, the ILO did not possess any accurate statistics on the matter. However, even if only a few might be involved, that should not prevent them from being accorded equitable treatment; yet it was known that refugees did not always enjoy the same working conditions as other members of a ship's crew who benefited by the proper protection of their Government.

The question had been brought to the attention of the ILO by the IRO at the end of 1950, and had been placed on the agenda of the Joint Maritime Commission of the ILO. That Commission had decided that the question deserved

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[160] A/Conf.2/SR.10, pp. 6-7

[161] A/Conf.2/102, Article 10

[162] A/Conf.2/SR.34, p. 23

consideration, and had adopted a resolution for transmission to the Governing Body of the ILO, which had approved it at a recent meeting. Under that resolution the Director General of the ILO had been instructed to bring the matter to the notice of the High Commissioner and of Governments, urging them to take measures to alleviate the situation of such refugee seamen. It was also suggested that the time spent by a seaman serving on a ship belonging to a given country should count towards the period of residence necessary to secure the right to travel documents. He realized that it might be difficult for many Governments represented at the Conference to enter into a specific commitment of that kind; if so, perhaps the suggestion might be incorporated in a separate recommendation. He would, however, tentatively put forward for consideration the following text:

> 'For the purpose of paragraph 1 of this Article, Contracting States shall give sympathetic consideration, in the case of a refugee who is a *bona fide* seafarer, to the possibility of allowing such a refugee to reckon any period spent as a crew member on board a ship flying the flag of a Contracting State as residence in the territory of that State.'

There was no need to emphasize that that provision was, of course, intended to benefit only genuine seamen and not refugees who were escaping by sea from their countries.[163]

The ILO subsequently submitted this suggestion in a written Note.[164]

The Observer of the ILO said that the suggestion had been submitted in pursuance of a decision of the Governing Body of the ILO, and its aim was to draw the attention of the Conference to the problem with a view to the Conference possibly including the suggested text in Article 23 or, alternatively, adopting, on the conclusion of its work, a recommendation of this nature.

The President said, in his view, the suggestion raised was wider than that dealt with in Article 23, and should perhaps form the subject of a special general Article. Speaking as representative of Denmark, he added that the Danish Government already applied such a provision.

The French representative thought that the question raised by the representative of the ILO was much too general to fit happily into Article 23. In his opinion, the text supported by the Organization should be inserted in Article 6, which dealt with continuity of residence, or drafted as a new Article, to be inserted immediately after Article 6.[165]

The French delegation subsequently proposed an Article reading:

> 'For the purpose of this Convention, the Contracting States shall give sympathetic consideration, in the case of a refugee who is a *bona fide* seafarer, to the possibility of allowing such a refugee to reckon any period spent as a crew member on board a ship flying the flag of a Contracting State as residence in the territory of that State.'[166]

The French representative, in introducing his text, said that refugees serving in ships flying the flag of a Contracting State enjoyed no permission to stay anywhere except on board the ship they were in. The number of such refugees was undoubtedly fairly small, but their position was nevertheless of special interest. It was, indeed, precarious, since they could not even go ashore in ports of call and they were, in fact, permanently afloat. The question could hardly be settled by a contractual undertaking, for the countries concerned were willing to grant such refugees the status of seafarers, but were unwilling to grant them the status of refugees in their territories. For that reason, and in the absence of contractual obligations, it would be desirable to introduce into the Convention a recommendation in favour of refugees who were *bona fide* seafarers. It would be logical to insert such a recommendation after Article 6, which dealt with continuity of residence, for the problem raised by refugee seamen was somewhat similar.

The Norwegian representative said that Norway had been one of the first seafaring nations to accept refugee seafarers from IRO camps in Germany and Italy, and to allow them to join Norwegian crews. They had been issued with travel documents in accordance with the London Agreement of 15 October 1946, and their families had been granted entry permits to Norway.

He did not think the problem was as small as had been suggested. It often happened that such refugees were obliged to land in Scandinavian ports; they were then unable to proceed further, because of their refugee status, until another suitable help arrived.

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[163] A/Conf.2/SR.12, pp. 4-5

[164] A/Conf.2/67

[165] A/Conf.2/SR.17, pp. 15-16

[166] A/Conf.2/89

Many Norwegian merchant ships went to sea for long periods, and called at Norwegian ports only infrequently. It was therefore difficult to establish whether the refugee seafarers were technically refugees, as they themselves claimed, because there was no method of verifying their statements; neither the ILO nor IRO could apparently decide whether they were *bona fide* refugees. He therefore wondered whether it would be advisable for one country alone to confer benefits upon such alleged refugees unless the same benefits were also granted by other seafaring nations, because seamen tended to sign on in ships which gave them the best social security status.

The Norwegian Government was giving the matter every consideration, and would adopt generous measures in respect of refugee seamen who had worked with the merchant navy for a long time, and who were domiciled in Norway; it nevertheless reserved its right to decide each individual case after appropriate investigation.

There were, moreover, numbers of *bona fide* refugee seamen in Norwegian ships who had become stateless because of prolonged absence from their countries of origin. That class would also have to be taken into account.

Although the subject was not yet ripe for decision, he would not vote against the French proposal, but would urge that the matter be carefully studied by the International Labour Office in close collaboration with the Office of the High Commissioner.

He considered that the French delegation's text was somewhat wide in scope, in particular in respect of the words 'to reckon any period spent as a crew member on board a ship flying the flag of a Contracting State as residence in the territory of that State', the effect of which would be to bestow upon such seafarers all the benefits that the Convention accorded to refugees.

When refugees were employed in a Norwegian merchant ship, sole authority for selecting or refusing them lay with the master of the vessel; the Norwegian authorities had no powers in the matter.

The UK representative agreed with the Norwegian representative's exposition of some of the difficulties arising from the problem.

The resolution of the Joint Maritime Commission of the ILO suggested that Governments should facilitate the acquisition of a country of residence and of a travel document by *bona fide* seafarers who were refugees, 'more especially by enabling them to reckon any period spent on board ships as residence in the territory of the country whose flag the ship flies.' He subscribed to the first part of the resolution, but felt that the phrase he had quoted raised considerable difficulties, because many such seafarers, though they might be *bona fide* refugees, might transfer to ships of other flags, thus interrupting the period which would qualify for residence.

The UK had ships plying throughout the world, and a ship working the China Coasts, for example, might pick up refugees who never set foot on British soil. To reckon their service as qualifying period of residence would therefore be unjustifiable. It would be advisable to word the recommendation in terms more appropriate to the actual situation and more acceptable to States.

States should be as liberal as possible in facilitating the settlement of *bona fide* refugee seamen in their territories. Such seamen would be given shore leave, and might want to marry and to settle down, and States should give them every chance to establish a home on their soil. In such circumstances, the seamen should be looked upon as residents and supplied with travel documents.

Since, in dealing with the question, the Conference could go no further than make a recommendation, it would be better not to include the French proposal in the Convention itself, but rather to append it as a recommendation.

The Observer of the International Conference of Trade Unions pointed out that a record was kept of the working time spent aboard ship by seamen. Seafaring nations might therefore be recommended to reckon such periods as contributing towards the refugees' qualifying period of residence on their territories.

The French proposal relating to a new paragraph 6(A) was adopted by 22 votes to none, with 2 abstentions, subject to textual emendation by the Style Committee.[167]

The Style Committee proposed the following text:

> 'In the case of refugees who are regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory, particularly with a view to facilitating their establishment in another country.'[168]

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[167] A/Conf.2/SR.30, pp. 6-10

[168] A/Conf.2/102, Article 11

On the proposal of the representative of the UK Article 11 was entitled 'Refugee Seamen'.

Article 11 was adopted by 21 votes to none.[169]

Commentary

Although merchant ships and private vessels are, in a way, considered parts of the flag State, service on such vessels is not necessarily considered as residence in the territory of that State. The terms 'sympathetic consideration' has the same meaning as the term 'favourable consideration' in Article 7 paragraph 4 of the Convention. While only a recommendation, it nevertheless imposes by the word 'shall' an obligation on the Contracting States to consider the situation of such refugee seamen favourably and not to deny them the benefits mentioned without good reason.

Subsequent to the Conference of Plenipotentiaries the Netherlands Government convened a Conference on Refugee Seamen. As a result of the two sessions an Agreement on Refugee Seamen was concluded at the Hague on 23 November 1957.[170] It stipulated, that is, a period of service of 600 days within 3 years as qualifying period for the issuance of a Convention travel document by the flag State. Following the abolition of the dateline of 1 January 1951 in Article 1 of the Convention by the Protocol relating to the Status of Refugees of 31 January 1967,[171] a Protocol on Refugee Seamen was opened for signature on 12 June 1973[172] which extends the benefits of the Agreement to persons who became refugees as a result of events subsequent to 1 January 1951.

ARTICLE 12. PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Travaux Préparatoires

Article 4 of the Secretariat Draft read:

'1. The personal status of refugees shall be governed by the law of their country of domicile, or, failing such, by the law of their country of residence.' (Same text as Article 14, first paragraph of 1933 Convention)

'2. Family law, in particular the celebration and dissolution of marriages of refugees and the law respecting successions, whether *ab intestato* or under a will, shall be governed by the rules concerning substance, form and competence of the law of the country of domicile, or failing such, by the law of the country of residence.' (See Article 5, 1933 Convention)

'3. Rights acquired under a law other than the law of the country of domicile or present residence of the refugee, more particularly rights attaching to marriage (matrimonial system, legal capacity of married women, etc.) shall be respected, subject to compliance with the formalities prescribed by their country of domicile, or, failing such, by the law of their country of residence, if this be necessary.' (See Article 4 paragraph 3, of the 1933 Convention)

'4. Wills made by refugees in countries other than the reception countries, in accordance with the laws of such countries, shall be recognized as valid.'

In the comment it was stated:

'Paragraph 1

'Two ideas are embodied in this paragraph:

'1) In the first place it establishes that the personal status of refugees shall be governed by the law of their country of domicile, or failing this, by the law of their country of residence. In so doing, it confirms the practice followed. In

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[169] A/Conf.2/SR.34, p. 23

[170] U.N. Treaty Series vol. 506, p. 125

[171] U.N. Treaty Series vol. 606, p. 267

[172] U.N. Registration No. 13928

fact, the laws and jurisprudence regarding the personal status of stateless persons are nowadays practically uniform.

'The law of the country of domicile, or in default of domicile, of the country of residence, is applicable. It may be noted that in certain legislations the notion of domicile, which is not always easily definable and is differently regarded in the various countries, has been eliminated; the personal status of stateless persons is determined by the law of the country of their regular residence. The rule has great advantages and consideration might well be given to its adoption in the present Convention. Nevertheless, in view of the practice so far followed in the Conventions, the dual formula of the 1933 and 1938 Conventions has been retained in the preliminary draft.

'Paragraphs 3 and 4 make certain exceptions to the rule laid down in paragraph 2.

'Paragraph 3 is concerned with safeguarding rights and applies the general rule regarding acquired rights to a particular case. It merely reproduced provisions contained in the Convention of 1933 and 1938.

'It would be undesirable to modify the capacity of married women or the matrimonial regime and to impose on the spouses new rules which they did not envisage when they contracted the marriage. Nevertheless, to protect the interest of third parties, refugees are required to comply with the formalities prescribed by the law of the country of residence.

'Paragraph 4 deals with wills made by refugees. It frequently happens that refugees have made a will in their country of origin in accordance with the provisions of the law of that country and are convinced that the will they brought away with them remains valid. The will may, however, not conform to the rules as regards form and substance of the country of residence. As a result, persons who believe that they have taken the necessary steps to protect the interests of their next of kin die intestate. Paragraph 4 provides against this danger.

'2) In the second place paragraph 1 introduces an innovation. It makes no distinction between refugees who are stateless deportation *jure* and those who are stateless deportation facto. In point of fact, persons of either category no longer enjoy the protection of their countries of origin. Moreover, it is sometimes difficult to determine with certainty whether the refugee is or is not stateless deportation *jure* and even to establish his former nationality. This simplification has advantages for the nationals of the country of asylum. Their law will be applied in any legal relations they may establish with refugees. Courts will be freed from the frequently very difficult task of deciding which law is applicable and of discovering what are the provisions of the foreign law which in present circumstances is subject to frequent and substantial changes.

There are precedents to support the solution advocated. Thus, the French Government by a decree of 15 March 1945, extended to all Spanish refugees, whether stateless deportation *jure* or deportation *facto*, Article 4 of the 1933 Convention's law of the country of domicile or, failing this, law of the country of residence. Similarly, an Ordinance now being drafted by the Allied High Commission in Germany adopts the principle that the law of the country of regular residence should be applied to all refugees and displaced persons.

'Paragraph 2

'This paragraph applies the principle established in the preceding paragraph It expressly lays down that personal status includes family law (that is to say filiation, adoption, legitimation, parental authority, guardianship and curatorship, marriage and divorce) and the law concerning successions. The authorities of the country of residence will therefore be competent to celebrate marriage in accordance with the rules regarding form and substance of the place where the marriage is celebrated. Similarly courts will be competent to decree divorces in accordance with the *lex fori* establishing the conditions for divorce.'[173]

Article 3 of the French draft was as follows:

'(a) The personal status of refugees who have retained their original nationality shall be determined in accordance with the rules applicable to aliens possessing a nationality. Refugees without nationality shall, in the absence of evidence to the contrary, be governed by the law of their country of domicile, or in default thereof, by that of their country of residence.

(b) The acts of religious authorities to whom refugees are amenable, if performed in countries admitting the competence of such authorities, shall be recognized as valid by the States parties to the present Convention.

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[173] E/AC.32/2

(c) In countries where such questions are governed by the national law of the parties, rights acquired under the former national law of the refugee, particularly those arising from marriage, such as the matrimonial regime, the legal capacity of married women, etc. shall be respected, subject to fulfilment of the requirements prescribed by the law of the country of domicile or, in default thereof, by the law of the country of residence where necessary.'[174]

At the first session of the *ad hoc* Committee the UK representative observed that in the UK, jurisprudence always subjected foreigners to the law of domicile in matters governed by private international law. The distinction made in the French text between refugees who had retained their nationality and those who were stateless would therefore not apply there.

The Turkish representative thought the Secretariat text simplified the question in a satisfactory manner. In practice, the application of their own national law to refugees would involve great difficulties. Even if they had kept their nationality, the authorities of their countries of origin were unfavourably disposed towards them, and if a State of reception were to apply to those authorities for information needed to establish their personal status, it would probably have difficulties in obtaining such data. Furthermore, the application of the refugee's national law might be contrary to his own interests in the matter of legal capacity, when that capacity was wider under the law of the reception country than under the national law of the country of origin.

Whereas in normal times, when there were few foreigners in a country, the application of the national law should not cause insurmountable difficulties, the courts would be inundated with work if, at a time when the number of refugees amounted to hundreds of thousands, they had to refer in each case to a national law with which they were unfamiliar.[175]

The Danish representative did not approve of the French proposal.[176] To the effect that the personal status of refugees who had retained their original nationality should be determined in accordance with the rules applicable in each country to aliens possessing a nationality. Refugees should not be treated by the host country in accordance with the very laws - such as the Nuremberg laws - that might have caused them to become refugees. He preferred Article 4 paragraph 1 as drafted by the Secretariat, especially as it was identical with provisions contained in earlier conventions.

The Chinese representative agreed with the Secretariat proposal that refugees shall be treated in accordance with the laws of the countries which had given them asylum. His own country could never agree to return to the practice of extra-territoriality, with which it had had better experience. He did not think, however, that a distinction should be made between the country of domicile and the country of residence. Domicile presupposed that a person was normally living and working in a country and had the intention to remain there, whereas the refugees who would fall within the scope of the Convention would be persons whose present and future were as yet unsettled and who at best might be resident in the country which had given them shelter. He therefore felt that the reference to the law of the country of domicile should be deleted.

The French representative pointed out that under the first sentence of Article 3 of the French draft only refugees who had retained their nationality would be subject to the laws of their country of nationality; the laws to be taken into account would be those in force before the refugee's departure. The proposal was prompted by the desire to respect as much as possible the national traditions of the refugees.

The Israeli representative said the distinction made in the French proposal was based on two fictions: first, that each person carried their nationality with them; secondly, that ignorance of the law was no excuse.

Furthermore, no refugee should be forced to accept the laws of the country of which he or she was a national, for under that system the Nuremberg laws, for instance, would have been applicable to German Jews who had fled abroad. The only recourse left to the courts of the country which recognized the law of the country of nationality was to invoke the clause of *ordre public,* which they were not always ready to do, since in so doing they would seem to be casting an adverse reflection on the legal system of a friendly State.

The French proposal would unduly complicate matters and would probably defeat the purpose of the draft convention. He preferred the text proposed by the Secretariat.

He drew attention to the ambiguity of the term 'domicile'; it was quite possible for a person to have their residence in one country and their domicile in another.

The representative of the Secretariat said the criterion of domicile and residence had been chosen because a refugee was characteristically a person who had broken with their home country and who no longer liked its law. Furthermore, it

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[174] E/AC.32/L.3

[175] E/AC.32/SR.7, pp. 13-14

[176] E/AC.32/L.3 Article 3 paragraph (a)

would make for more harmonious relations if the laws of the country in which the refugee had established domicile or residence were applied to him or her. Domicile and residence were not simply juxtaposed; the law of the country of domicile was to be applied in the first instance, the law of the country of residence only if the refugee's domicile was unknown or in doubt.

The French representative explained that the French proposal was a combination of Article 6 of the Convention of 10 February 1938 from which the first sub-paragraph was taken, and the corresponding Article of the 1933 Convention from which the other two sub-paragraphs were taken. He did not think that his Government would insist and was willing to support the Secretariat text.

The representative of the IRO noted that the paper submitted by his Organisation[177] contained a survey of national jurisprudence. He cited recent legal documents to show that there was a general tendency to use the criteria of domicile and residence rather than nationality in the determination of personal status of refugees and stateless persons. The IRO had experienced great difficulties in cases where the principle of domicile and residence had not been applied. The distinction made was due to the Convention of 1938. To draw a distinction between refugees who were deportation jure and deportation facto stateless was entirely artificial.

The Brazilian representative said his Government would be prepared to accept Article 4 with slight reservations. Paragraph 1 corresponded to the provisions of the Brazilian civil code. Brazilian courts would have no particular hesitation invoking the public order clause in order to set aside the national law of a foreign country.

The French representative noted that paragraph 1 was broader in scope than paragraph 2, which dealt with family law. In paragraph 2, he suggested the addition of the word 'especially' or the phrase 'above all' after 'shall be governed'.

The Belgian representative favoured the retention of the two concepts: domicile and residence. When the country of domicile differed from the country of temporary residence, the law of the former should be applied. If the person was not domiciled in any country, obviously the law of the country of residence would apply.

Paragraph 1 of Article 4 of the Secretariat text was approved.

As to paragraph 2 the Danish representative suggested that celebration and dissolution of marriage should be dealt with as two distinct matters; dissolution could be effected only if just one party was present in the country.

The Israeli representative noted that the problem was of a general nature and was normally solved by the laws in force in the country where the marriage was to be celebrated or dissolved.[178]

The Chinese representative thought it should be specified how long a refugee was required to reside in a country in order to be considered as domiciled there. The application of the law of domicile seemed to raise difficulties.

The Chairman said the concept of personal status should be defined more precisely. The Secretary General's Study on the Position of Stateless Persons[179] said that personal status determined (a) a person's capacity; (b) his family rights; (c) the matrimonial regime insofar as that was not considered as part of the law of contracts; (d) succession and inheritance in regard to movable and in some cases to immovable property.

The representative of the IRO said paragraph 2 added nothing to paragraph 1: its purpose was to develop and explain the general principle contained in that paragraph. The list in paragraph 2 was incomplete: it provided solely for cases in which the application of the principle might give rise to disputes. Thus it had seemed advisable to lay down that the rules of substance, form and competence of the law of the country of domicile and of the country of residence applied to the law of marriage, since it was above all in that sphere that the legislation of the various countries differed most. The problem did not arise in regard to celebration of marriage, which in all countries was governed by local law. On the other hand, the right to contract marriage raised difficulties: countries which had so far applied the national law in that respect did so only in so far as it did not conflict with their public policy. It might therefore happen that the same considerations of public policy might be raised in deciding the capacity of the refugee to contract marriage under the law of the country of his domicile or residence. Moreover, the dissolution of marriages raised a question of competence: the courts of many countries refused to decree a dissolution of marriage if the national law of the person concerned was not obliged to recognize the validity of their ruling. Such difficulties would be definitely eliminated if paragraph 2 were adopted by the Committee. Paragraphs 3 and 4 merely laid down exceptions to the general rule laid down in paragraph 1.

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[177] E/AC.32/L.5

[178] E/AC.32/SR.8, pp. 2-8

[179] E/1112

The French representative felt it would be dangerous for the *ad hoc* Committee to undertake the task of defining personal status in civil law. Indeed, it was unlikely that such a definition would be in harmony with the various legislations of the States signatories.

The Danish representative agreed with the French representative. The same differences arose in respect of the word 'domicile' and indeed could arise in connection with many other juridical expressions in the Convention, each one having a generally recognized meaning in different legislations. It would be for each State which signed the Convention to interpret the expressions used in it within the framework of its own legislation and in the light of the concept which was most akin to its own juridical system.

The UK representative associated himself with the views expressed by the Danish and French representatives.

The Brazilian representative objected to the inclusion in the Convention of the details listed in paragraph 2. Many States might be reluctant to sign a convention which would oblige them to change the traditional principles according to which their legislation settled legal disputes. In Brazil, for instance, the obstacles to marriage were a matter of public policy which applies to all persons whose marriage was celebrated in that country. In matters of succession too, the transfer of real estate was carried out in accordance with the legislation of the country where the real estate was, and not in accordance with that of the refugee's country of domicile.

The French representative said the objections raised by the Brazilian and UK representatives clearly indicated the delicate character of the problem. It seemed that in every country the rules of form governing the celebration of marriage were those of the country where the celebration took place, while the dissolution of marriage was governed by the rules of *jus soli*. There was no reason, therefore, for any reference to be made to the rules concerning form and competence, which were not mentioned in the 1933 Convention; consequently, the words 'form and competence' should be deleted from paragraph 2.

On the other hand, it would be well to add the words 'in particular' after the words 'shall be governed' in the same paragraph; that would indicate the connection, to which the IRO representative had drawn attention, between paragraphs 1 and 2 of Article 4.

Lastly, he would like the Secretariat to state whether it considered that the law of succession was part of family law and whether it should therefore be understood that the rules of substance of the law of the country of domicile or of residence applied both to family law, particularly to the celebration and dissolution of marriage, and the law of succession. If that were the case, he would propose no further amendment to the text of paragraph 2.

The representative of Israel said that in practice, all details of form in the matter of marriage were governed in civilized countries by the *lex loci*. There was no reason, therefore, why the explanation given on that point in paragraph 2 should not be omitted. The principle of *locus regit actum* in reality merely sanctioned a privilege granted by the State which determined the validity of the proceedings to the State where the legal instruments had been drawn up. The matter should therefore be left to the various States concerned.

There could be no question about the application of the rules concerning substance of the law of the country of domicile or residence, since the principle of paragraph 1 had been adopted.

The rules of competence, however, raised serious problems concerning qualification and very difficult questions involving public policy. For example, certain countries recognized civil divorce only and it was for that reason that the French delegation was proposing the inclusion of an Article concerning the validity of rulings of religious authorities in the matter.

All the Convention could say was that personal status, and family law in particular, would be governed by the law of the country of domicile or residence. It was not even advisable to mention the law respecting succession, which was linked with the law of property as much, if not more, than it was with the question of personal status.

The representative of the IRO thought if a clear, balanced text which was not open to differences of interpretation was to be drawn up, the rules concerning competence should at least be mentioned. That question would undoubtedly raise special difficulties in those countries which apply their national law to foreigners. It would be for those countries, in full knowledge of the facts, either to accept all the provisions of the Convention or to make reservations on that point.

The French representative thought the Committee could decide whether, on the one hand, the rules concerning substance, form and competence, or only some of those rules should be mentioned in paragraph 2; and, on the other hand, whether it was necessary to quote only family law, or also the law relating to successions, as an example. As French legal tradition had always considered the law respecting succession to form part of personal status, the French delegation saw no objection to those laws being mentioned in paragraph 2.

The Israeli representative considered that the best procedure would be to abide by paragraph 1, as adopted, and to agree that the Secretariat study[180] was an adequate exposé of the concept of personal status. It was for the contracting parties to decide finally upon the elements of that status, in the light of the interpretation given by the Secretariat and of the records of the Committee's meetings without, however, being bound by those texts. In the circumstances, the details in paragraph 2 were superfluous and he proposed that the paragraph 2 should be deleted.

The UK representative agreed that the definition given in the Secretariat study gave only a very vague idea of the concept of personal status. Each of the elements mentioned in paragraphs (a), (b), (c) and (d) was again subdivided in numerous sub-elements. The law of the UK varied according to whether it was applied to one or the other of those sub-elements. It therefore appeared that every attempt to define the concept of personal status must, in practice, encounter insurmountable difficulties.

The Turkish representative supported the Israeli representative's suggestion. In point of fact, the concept of personal status would be determined by the law and customs of each country, with due regard to the preparatory work of the Convention.

The representative of the IRO emphasized that the main object of paragraph 2 was to prevent any future application of national law in the matter of marriage or succession of refugees.

The French representative agreed with the representative of Israel and Turkey.

The UK representative pointed out that the main purpose was to regulate the position of those countries where aliens were subject to their own national law, for in other countries there would be no difficulty with regard to the enforcement of paragraph 1. In his view, it would be sufficient if it could be understood that the law respecting family matters was to be governed by the law of the country of domicile or of residence, and there was no need to mention the rules concerning substance, form and competence.

The French representative pointed out that under paragraph 1 the law of the country of domicile or residence was to apply in every case and in every country. None of the difficulties referred to by the representative of the UK could therefore arise in the future, even in those countries where their own national law was applied to aliens. As had been pointed out by the representative of Belgium, a marriage might be celebrated outside the country of domicile; that was a point that needed clarification. In any event, there could be no further question of applying national law to the personal status of refugees and there was no distinction to be made between the various countries.

The Israeli representative felt that to prevent any misunderstanding it should be specified that the juridical scope of paragraph 1 would vary according to whether a country applied national law to aliens or the law of the country of domicile. In the latter case, the Convention could be put into effect without the Government having to adopt special measures. On the other hand, countries which applied national law to aliens would have to take steps to bring their legislation into line with the provisions of the Convention. The object of paragraph 1 was to ensure unification on this point.

The US representative suggested that it might satisfy the delegations of France and the UK if it was specified in paragraph 1 that the personal status of refugees should be governed not by their national law but by the law of their country of domicile or of residence.

The French representative saw no need to amend the wording of paragraph 1. The only question left for the Committee to decide was whether to retain paragraph 2 listing cases covered by the general principle set forth in paragraph 1. He personally felt that there was no need for it.

The UK representative explained, in order to avoid any misunderstanding, that his suggestion was merely to draft Article 4 in such a way that its provisions would apply only to those States which at present applied national law to the personal status of refugees.

The Danish representative pointed out that the Committee had decided that the personal status of refugees should be governed by the law of their country of domicile or, failing such, by the law of their country of residence. That being the case, all other criteria had been abandoned. Consequently, in those States where the law of the country of domicile or of residence was applied, refugees would receive the same treatment as other aliens; in other countries they would be granted a special status.

He proposed the following wording of paragraph 1, to make the fact clear:

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[180] E/1112

'In countries where the personal status of a person is governed by the national law of his country, the personal status of refugees shall be governed by the law of their country of domicile, or failing such, by the law of their country of residence.'

The representative of the IRO again urged the Committee to agree to the following wording:

'shall be governed by the rules concerning substance, form and competence of the law...'

The French representative noted with regret that the Committee did not hesitate to impose on certain States a rule which differed from the rule normally applied, yet it made no attempt to ensure uniformity, desirable as that was, in the application of the same rule by the States which were already applying it. The Committee was, in fact, trying to bring about the application of a new rule in countries having a French legal tradition. In return for the concession he had made, he would appreciate it if nothing was said to imply that the provisions of Article 4 concerned only those countries which, like France, were at present applying the law of national status.

As to the suggestion that it should be specified that the personal status of refugees would be governed by the rules concerning substance, form and competence of the law of the country of domicile or residence, he thought it would be better to refrain from making rigid stipulations and to refer merely to the question of substance. In his opinion, a State in the territory of which an act was performed by a refugee would not be compelled to adapt its rules of form and competence to those of the country of domicile or of residence.

The US representative agreed with the French representative.

The UK representative was not opposed to retaining paragraph 1 in its present form, although that depended, in his opinion, on the action taken on paragraph 2. It was decided to retain the wording of paragraph 1 as adopted.

The Belgian representative called for the deletion of paragraph 2 which did not appear in the 1933 and 1936 Conventions.

The proposal to delete paragraph 2 was adopted unanimously.

The representative of the IRO asked whether it would be possible to include in the Committee's report a paragraph explaining that paragraph 2 had been deleted because, in the opinion of the Committee, paragraph 1 fully covered the points raised in paragraph 2 and also because the law differed considerably in various States, particularly with regard to the questions referred to in paragraph 2. The report might then state that the Committee had unanimously agreed that the questions dealt with in paragraph 2 ought not to be governed by the rules concerning substance, form and competence of the national law, even in the countries where such questions were usually covered by that law.

The French representative proposed that a new paragraph 2 reproducing the substance, if not the text, of paragraph (b) of Article 3 of the French proposal[181] should be inserted between paragraph 1 and 3. The provisions of that paragraph appeared in the 1933 Convention. It would seem that all countries should recognize the validity of the acts of religious authorities to whom refugees were amenable, if performed in countries admitting the competence of such authority.

He was supported by the Belgian representative.

The Chairman explained, after consultation with the representative of the Secretary General, that the Secretariat had considered that the provisions of paragraph 3 covered all acquired rights, including those resulting from acts of religious authorities.

The US representative agreed with the representatives of Belgium and France. He thought, however, that paragraphs (b) and (c) of the French draft might be combined into a single paragraph stating that 'rights acquired under former national law of the refugees shall be respected...' This would include all acquired rights, including those which had been acquired by church marriages.

The French representative simply asked that the Committee's report should mention the fact that the provisions of Article 3 paragraph (b) of the French draft had not been included because they were covered by the general terms of paragraph 3 of the Secretariat draft.

On the proposal of the Israeli representative the words in brackets (matrimonial system, legal capacity of married women, etc.) were deleted.

On the proposal of the same representative the words 'failing such' in paragraph 3 were, as in paragraph 1, replaced by the words 'if they have no domicile'.

It was also agreed to use the word 'refugee' in the plural in paragraph 3 as in paragraph 1.

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[181] E/AC.32/L.3, p. 4

Paragraph 3 was adopted.

As to paragraph 4, on the proposal of the US representative it was agreed to replace the words 'reception country' by the phrase 'the country of domicile, or if they have no domicile, of residence'.

The Danish representative did not see why the paragraph should be drafted in such terms as to grant the refugees, after their arrival in the country of domicile or residence, the privilege of making a will in other countries in accordance with the laws of those countries. The text should stress the fact that it applied only to wills made before arrival in the country of domicile or of residence.

The UK representative pointed to some difficulties in connexion with paragraph 4 and proposed its deletion.

The representative of the Secretariat explained that the purpose of paragraph 4 was to guarantee the validity of a will made by a refugee in his country of origin if he died in his country of reception without making another will. In reply to the objections raised, he said the Secretariat had intended to refer to the form of the will rather than to its provisions, for example, the validity of a will made by a Russian refugee in France would have to be determined according to the local law or, in the case of landed property, according to the law of the country in which the property was situated.

The Belgian representative felt that if the only purpose of paragraph 4 was to recall the principle *locus regit actum*, the provision was wholly unnecessary.

The French representative thought that the distinction made by the Secretariat between the form and the substance of a testament was unduly subtle. A refugee who had made a will in his or her country of origin or in transit thought that their will was valid with respect to both form and substance, and that it would so remain. That was what the text of the paragraph said and what should be said.

The Chinese and UK representatives doubted whether they would be able to accept paragraph 4.[182]

The Chairman, speaking as representative of Canada, proposed the following amendment:

> 'Wills made by refugees before their arrival in their countries of residence shall be recognized as valid if such wills were valid in the countries in which they were made.'

The UK representative thought the proposal would actually permit the refugee, by his will, to alter the law of the reception country. He favoured the deletion of paragraph 4.

The Belgian representative noted that there seemed to be general agreement regarding the validity of wills made by refugees in their countries of origin, in so far as the form was concerned. The problem consisted in determining whether the substance conformed to the legislation of the reception country. If nothing was said in the matter, the position of the refugee would be largely protected.

Paragraph 4 was rejected by 7 votes to 2, with 2 abstentions.

The French representative noted that the vote should not be interpreted as weakening in any way the force of paragraph 4 dealing with acquired rights.

The Chairman confirmed his interpretation of the vote.[183]

The representative of the IRO asked the Rapporteur to note further that the status of children of refugees, even if they had been born after the outbreak of the war, be determined by that of their fathers or, if they were illegitimate, by that of their mothers, provided that they themselves had not acquired a nationality.[184]

The Working Group proposed the following text:

> 'The personal status of a refugee shall be governed by the law of the country of his domicile, or, if he has no domicile, by the law of the country of his residence.'
>
> 'Rights acquired under a law other than the law of the country of domicile or residence of a refugee, more particularly right attaching to marriage, shall be respected, subject to compliance, if this be necessary, with the formalities prescribed by the law of the country of his residence.'[185]

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[182] E/AC.32/SR.9, pp. 2-19

[183] E/AC.32/SR.10, p. 2-4

[184] E/AC.32/SR.17, p. 8

[185] E/AC.32/L.3, Article 7

Article 7 was adopted on the understanding that it would be further studied by the Governments.[186]

The representative of the IRO said the second paragraph had been deleted because it had been considered that it was fully covered by the first paragraph. That was true, but a distinction had to be made between the question of the law which was to be applied with regard to substance, and the question of competence. When the Committee had taken its decision it had been stated that countries which applied the law of nationality did not apply that law if it was contrary to public order. Experience had shown, however, that laws restricting the right of marriage, for instance, were considered by some countries to be inconsistent with public order, while other countries applied those laws.

Moreover, in certain countries courts could exercise jurisdiction with regard to aliens only if their decisions were recognized by the courts of the aliens' country of nationality.

The adopted Article meant, with regard to both questions, that it was not the law of the country of nationality, but that of the country of domicile, or failing such, the law of the country of residence, which would be applied, regardless of the question of recognition.[187]

In its report, the Committee made the following comments:

'Paragraph 1

Two ideas are embodied in this paragraph:

(1) In the first place it establishes that the personal status of refugees shall be governed by the law of their country of domicile or, failing such, by the law of their country of residence. In so doing, it confirms existing practice. In fact, the laws and jurisprudence regarding the personal status of stateless persons are now practically uniform. This double formula exists in the Conventions of 1933 and 1938.

(2) In the second place, paragraph 1 introduced an innovation. It makes no distinction between refugees who are stateless and those who formally still retain a nationality. In point of fact, persons in either category no longer enjoy the protection of their countries of origin. Moreover, it is sometimes difficult to determine with certainty whether the refugee is or is not stateless or even to establish his former nationality. In these circumstances it was considered advisable to apply to the legal status of a refugee the law of his domicile or of his residence. Such a solution would be to the advantage of the refugees, and would be welcomed also by the inhabitants of the country who may have legal proceedings with refugees, and by the courts of the country. Courts will be freed from what is frequently the very difficult task of deciding which law is applicable and of discovering what are the provisions of foreign law in a particular regard. Moreover, in some countries, courts may exercise jurisdiction with regard to aliens only if their decisions are recognized by the Courts of nationality of the alien. The present provisions would, by applying the law of domicile or of residence, eliminate this limitation with regard to refugees. Finally, refugees would by this provision be freed from the application of the laws of the countries which they left.

This solution was applied by Article 4 of the Convention of 1933. The French Government, by a decree of 15 March 1945, extended to all Spanish refugees, whether stateless *de facto* or *de jure,* Article 4 of the 1933 Convention, which applies the law of the country of domicile or, failing this, the law of the country of residence. Similarly, an Ordinance now being drafted by the Allied High Commission in Germany adopts the principle that the law of the country of regular residence should be applied to all refugees and displaced persons.' In a footnote, Article 4 of the 1933 Convention was quoted which, it was said, was repeated in substance. Article 6 of the 1938 Convention was also quoted which subjects only refugees having no nationality to the law of their domicile or residence.

'Paragraph 2

'The second paragraph embodies the principle of respect for the acquired rights of refugees, and mentions a particularly important case of the application of prescribed formalities, i.e. the rights attaching to marriage. It is not intended that the law of a State which would not have recognized a certain situation had the person not become a refugee, should be required to do so on his becoming a refugee.

'The Committee decided that it was not necessary to include in this Article specifically a reference to wills made by refugees prior to their arrival in the country of asylum, it being understood that the Courts of the various countries should, wherever possible, give effects to the wishes of the testator.

'The Committee decided that it was not necessary to include a specific reference to family law, as this was covered by paragraph 1.'

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[186] E/AC.32/SR.25, pp. 4-5

[187] E/AC.32/SR.31, p. 3

Article 4 paragraph 3 of the 1933 Convention and Article 7 of the 1938 Convention were quoted in footnotes.

Austria made the following comment:

> 'Experience has shown that it is not only difficult to ascertain the nationality of a refugee, but also to determine his domicile. It is suggested that the provisions of paragraph 1 of this Article be based not on domicile but on 'habitual residence', or, failing this on 'residence'.'

It will be noticed that the term 'habitual residence' is applied also in Article 1 I paragraph 2 of the Draft Convention.[188]

The UK made the following comment:

> 'His Majesty's Government are of the opinion that paragraph 2 is unsatisfactory, since (a) it is not limited to the rights dependent on personal status; and (b) it does not give effect to the *ad hoc* Committee's intention as explained on p. 45 of the report. It is there made clear that it is not intended that the law of a State which would not have recognized a certain situation, had the person not become a refugee, should be required to do so on his becoming a refugee.'
>
> 'His Majesty's Government also observe that as drafted the provision does not give protection in the country of refuge to a refugee who has not lost his former domicile.'[189]

At the second session of the *ad hoc* Committee the Belgian representative wondered whether to meet the first objection raised by the UK, it would not be sufficient to alter the wording 'right acquired' to 'rights previously acquired' in paragraph 2.

As regards the second point raised by the same country, cases certainly did arise where there was no formality to enable the country of reception to recognize acquired rights.

In such cases the first point made by the UK could be met if the following words were added at the end of paragraph 2: 'where the absence of such formalities constitutes the sole obstacle to recognition of the rights in question.'

As regards the third observation of the UK Government, the intention of paragraph 2 could be made quite clear by the insertion before the word 'domicile' of the word 'new'.

The Chinese representative understood the term 'domicile' to mean the place where a person desired to live and carry out his business while 'place of residence' means any place which he casually visited but not with the idea of residing there permanently. He noted that neither the Convention of the IRO nor the Convention concerning Displaced Persons made any reference to domicile but referred to 'former habitual residence', and he wondered whether it was necessary to refer to domicile in this Convention.

The Israeli representative observed that under British jurisprudence on conflict of laws it was possible that a person might have lost the nationality of a foreign country and yet retain their domicile there. On the other hand, British jurisprudence was not so rigid as to deny the possession of more than one domicile. The Constitution of the IRO had not attempted to solve the problem on a strictly legal basis, it had been drafted on humanitarian grounds and in an attempt to solve the problem either by repatriation or resettlement.

If the suggestion of the Austrian Government were to be adopted and the principle of domicile dropped, no court would be in a position to decide the legal status of refugees. It had been considered wise for the same reason to include mention of 'residence' so as to cover the case of refugees who had not established a domicile. Decisions should, however, be based whenever possible, on 'domicile' and only exceptionally on 'residence'. In his opinion, the Committee should adhere to the text as it stood.

The US representative said it should be considered that a refugee might in some circumstances have their domicile in another country as the one in which they were living, and where the laws of domicile placed them at a disadvantage. He stressed that the word 'domicile' should be interpreted to mean the new domicile which had been acquired or was about to be acquired, and that personal status should be determined by the law of the country in which the refugee had resettled himself or herself.

The Article did, however, raise certain issues because a refugee might be in a transit camp with neither domicile nor residence.

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[188] E/AC.32/L.40, p. 38

[189] E/AC.32/L.40, p. 38

The representative of the IRO said what was meant in the Article was the place where the refugee had the centre of his or her existence, and it was important to find some wording which would cover the case of those refugees who had not yet found such a centre.

The Law of the Allied High Commission mentioned had meanwhile been promulgated. Article 1 of the law read:

> 'In every case in which the Introductory Law to the German Civil Code provides that the national law shall apply, the status of displaced persons or refugees shall be determined with reference to the law of the State in which he had his ordinary residence at the relevant time or, in the absence or ordinary residence, the law of the State in which he is, or was at the relevant time.'

The Israeli representative expressed the view that what was meant in the law by 'ordinary residence' covered the term 'domicile' in Article 7 of the draft Convention.

The Belgian representative said it was for the countries themselves to determine whether the personal status of the refugee should be governed by the law of the country of their domicile or of their residence. In any case, the refugee would always have a link with the country in which he or she was living and that would be sufficient to enable the provisions governing their personal status to be determined.

The UK representative replied that the text provided that rights determined by an individual personal status and acquired before he or she became a refugee should be respected. If the Belgian law did not recognize any particular right, it would not be required to recognize the right merely because a person had become a refugee.

The Belgian representative wished to reiterate that cases might occur in which there would be no formality enabling the personal status of a refugee who had become a refugee to be determined. Article 7, paragraph 2 did not appear to cover such cases.

It was decided to refer Article 7 to the Drafting Committee.

The representative of the IRO expressed his doubt, whether there was not a question of substance involved in the observations of the representative of the UK. In his view, paragraph 2 provided for exceptional treatment for refugees in a narrow field. The provision which had been taken from the pre-war conventions mainly concerned property rights connected with marriage, in respect of which it would be difficult for refugees to comply with the law of their country of domicile. Paragraph 2 was intended to provide for minor de rogations from the principle set forth in paragraph 1.

He wondered whether the point made by the representative of the UK could be met by making those rights dependent not only on compliance with the formalities prescribed by the law of the country of domicile or residence of refugees but also on the exigencies of public order.[190]

The Drafting Committee proposed the following wording:

'1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights dependent on personal status, more particularly rights attaching to marriage, previously acquired by a refugee, shall be respected by a Contracting State, subject to compliance if this be necessary, with the formalities prescribed by the law of the country of his domicile, or, if he has no domicile, by the law of the country of his residence.'[191]

The UK representative observed that Article 7 had given considerable trouble to the Drafting Committee. It had been finally agreed that the Article did not require rights previously acquired by a refugee to be recognized by a country if its laws did not recognize them on grounds of public order or otherwise. It had been decided that the provisions of the Article were in any case subject to that general reservation, which was implied and need not therefore be written into it.

Article 7 was adopted.[192]

At the Conference of Plenipotentiaries, Austria proposed the following amendment:

> 'Delete paragraph 1 and substitute the following text:

1. The personal status of a refugee shall be governed by the law of the country of his habitual residence (see Article 11 paragraph ?), or if he has no habitual residence, by the law of the country of his residence.'[193]

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[190] E/AC.32/SR.36, pp. 4-9

[191] E/AC.32/L.42, Article 7

[192] E/AC.32/SR.41, p. 8

Yugoslavia proposed the following:

> 'Article 7 paragraph 1. The personal status of a refugee having a nationality shall be determined in accordance with the regulations applicable in each country to aliens who are nationals of another country. The personal status of refugees having no nationality shall be governed by the law of the country of his domicile, or, if he has no domicile, by the law of the country of his residence.'

Paragraph 2. After the word 'Rights' insert the words 'and duties'.[194]

The Netherlands proposed the following:

> 'In view of the fact that the meaning of the words 'domicile' and 'residence' is completely different under Anglo-Saxon law from what continental law understands by these terms, it is proposed to redraft Article 7 as follows:

'1. The personal status of a refugee shall be governed by the law of the country of his *habitual residence,* or, if he has no habitual residence, by the law of the country of his residence.

2. Rights dependent on personal status, more particularly rights attaching to marriage, previously acquired by a refugee shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities prescribed by the law of the country of his *habitual residence,* or, if he has no habitual residence, by the law of the country of his residence.'[195]

The UK proposed:

> 'Amend Article 2 of this Article to read as follows: (the amendment is italicized) Rights dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by *that State,* provided the right is one which would have been recognized by the law of that State, had he not become a refugee.'[196]

A Swiss amendment read:

> Amend Article 7 paragraph 2 as follows:
>
> > '...shall be respected by a Contracting State, subject to the provisions of public order and to compliance, if this be necessary with the formalities prescribed by the law of the country of his domicile, or....'[197]

The Netherlands representative said, in conformity with the Hague Treaty on Private International Law, the situation of an alien was governed by the law of the country of which he was a national. A large number of countries had ratified that Treaty, and if Article 7 was adopted, the Convention would have to be regarded as a departure from it. That raised a difficulty, since a number of countries which might not accede to the Convention, but which were a party to the Hague Treaty, would still be bound by obligations the latter. Admittedly, it was not a highly important matter, since refugees settled in countries which did accede to the Convention obviously would not return to countries which did not become parties thereto.

The Austrian representative said the application of Article 7 would be both simplified and made of greater benefit to refugees if the word 'domicile' were replaced throughout that Article by the words 'habitual residence'. Such an amendment would bring Article 7 into line with Article 11 paragraph 2.

The Yugoslav representative said that under Yugoslav law the personal status of an alien was governed by the law of the country of which he was a national. Actually, the general principle recognized by most European countries was that the law to be applied in determining the personal status of aliens was the domestic law. The Yugoslav delegation was proposing a compromise.

With regard to Article 7 paragraph 2 the Yugoslav amendment would ensure respect not merely for those rights, but for obligations undertaken previously by refugees towards either his next-of-kin or other persons. After all, how could one protect the rights of one category of individuals and not at the same time prejudice the rights of another? That was a question which the Conference must not ignore.

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[193] A/Conf.2/30

[194] A/Conf.2/11

[195] A/Conf.2/33

[196] A/Conf.2/36

[197] A/Conf.2/34

The Belgian representative was somewhat hesitant to accept the Netherlands amendment. Paragraph 1 of Article 7 was directly inspired by the 1933 Convention, ratified by the UK. Care must be taken not to set the concepts of 'residence' and 'habitual residence' against each other. That would be a somewhat risky procedure, since then the former might cover a stay lasting a few days only. In the UK, everyone acquired, at birth, a domicile of origin which he retained until he established a domicile of his own choice. If the concept of 'habitual residence' was introduced, certain countries might find themselves in difficulties because that concept had not formerly existed in their legal system and would require interpretation by the courts. The concept of domicile, on the other hand, was well known.

The Netherlands representative withdrew his amendment.

The French representative remarked that it was sometimes difficult to decide whether a refugee had a nationality. The types of personal status obtaining in some countries might be incompatible with human dignity, and it could be argued that they were one of the reasons which had led to a person fleeing his country. It would not be just for Contracting States to apply them. For that reason France could not support the Yugoslav amendment to paragraph 1. The Swiss amendment to paragraph 2, however, might allay certain justified anxieties. He saw no objection to the Yugoslav amendment to paragraph 2.

The Austrian representative withdrew his amendment.

The Egyptian representative said, the majority of the Egyptian population was Mohammedan, its personal status being governed by Koranic law, whereas the personal status of other sections of the population was governed by the law of their respective religions or faiths.

The status of aliens (other than Mohammedan) was governed by their personal status under the law of their own country, reference to that being made by Egyptian law. If the refugee was established in Egypt there would be difficulty in deciding which of the various types of personal status of domicile or residence should be granted to him, as there were several such types of status. It would, therefore, be desirable for the Convention to define what was meant by personal status.

The representatives of the Federal Republic of Germany and of Israel opposed the Yugoslav amendment.

The Yugoslav representative withdrew his amendment.

Article 7 paragraph 1 was adopted by 20 votes to none, with 3 abstentions.

The Swiss representative said that Swiss law recognized acquired rights but only subject to provisions of public order. If his amendment met with opposition, the Swiss delegation was prepared to withdraw it, but would be compelled to enter appropriate reservations.

The UK representative said by proposing the substitution of the words 'that State' for the words 'the country of his domicile, or if he has no domicile, the country of his residence' he wished to make it clear that the formalities to be complied with must be those prescribed by the law of the country where they were to be exercised. A refugee domiciled in Italy might wish to assert rights in France, even without being personally present there. It was surely not to be supposed that in such a case the formalities should be those prescribed by Italian law.

The second part of the UK amendment was introduced to meet the point raised by the Swiss representative, namely that States should not be required to respect rights previously acquired by a refugee where they were contrary to their own legislation. A state could not protect a right which was contrary to its own public policy.

The UK amendment was supported by the representatives of Canada, Columbia and Switzerland.

With regard to the Yugoslav amendment the French representative suggested to insert the words 'with its dependent rights and duties' after 'The personal status of a refugee' in paragraph 1 of the Article.[198]

The Observer of the Inter-Parliamentary Union pointed out that a large number of the countries of continental Europe had shown a tendency to determine the personal status of aliens in accordance with their national law. That a political refugee who had a horror of his country of origin, and had no intention whatsoever of returning to it, should find himself given the personal status prescribed by the legislation of his host country seemed reasonable. But would it be unreasonable to impose on refugees who were still attached to their country of origin and lived only in the hope of returning to it, a personal status which might vary considerably according to their country of residence and to adopt that measure, according to changes in circumstances in the country of domicile, without the person affected having an opportunity of expressing his own desires on the matter? Incidentally, the opinion expressed in paragraph 2 of Article 7, referring to respect for previously acquired rights, was somewhat ambiguous. For instance, a refugee married under the system of separate estate without contract who came to Belgium would be subject, under that country's legislation, to the system of joint

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[198] A/Conf.2/SR.7, pp. 5-18

estate in the absence of a contract. If such a refugee inherited personal estate, the question would arise whether the possession of such property was governed by the rights attaching to the marriage in the country of origin, or by the system obtaining in the receiving country. The courts might find that in contracting marriage the refugee had not acquired a right in the property, but only the capacity to acquire a right, and that, by virtue of his change of status, the property must revert to joint conjugal estate. It seemed preferable to limit the withdrawal of national personal status to stateless persons only.[199]

The French representative asked, in connection with the UK amendment, for clarification of the position of a divorced refugee who had obtained their divorce in a country the national legislation of which recognized divorce, but was resident in a country, like Italy, where divorce was not recognized. In that case, he submitted, the right to divorce acquired by the refugee could not be recognized by the receiving country.

The UK representative said the second part of paragraph 2 was merely a requirement that certain formalities should be complied with, and in his delegation's opinion, they should be the formalities in the State where the rights were to be exercised.

The Belgian representative remarked that in principle States which forbade divorce did so only to their own nationals. It was solely for reasons of public order that a State might decide not to recognize divorces between foreigners or not to authorize them to divorce in its territory. As the UK representative had pointed out, the question of a divorce granted by the authorities of a country other than that of residence was a matter of the jurisprudence of the State concerned. The purpose of the UK amendment was to place refugees on the same footing as aliens in respect of rights dependent on personal status. Moreover, in the case cited by the French representative, the courts of the receiving country would have to decide whether they would have recognized a divorce granted in the same circumstances to two aliens who were not refugees.

The Yugoslav representative withdrew his amendment to paragraph 2.[200]

The French representative suggested, in order to meet the point made by Yugoslavia, that the following should be added to paragraph 2:

> 'The refugee shall be required to respect obligations he has contracted by reason of his personal status in so far as he is not prevented from doing so by reason of his becoming a refugee.'

He cited the case of a refugee with an obligation to maintain a relative. If both the relative and the refugee found asylum in the same country of reception, it would be correct for the refugee to comply with their obligations. But if the beneficiary remained in the country of origin, it might be difficult for the refugee to comply with the obligations.

The UK representative said that while he sympathized with the Yugoslav delegation he was unable to support its amendment. He endorsed the Belgian representative's view that, if it was merely a moral obligation to support relatives in another country, the refugee could not be compelled by the authorities of the country of his or her residence to fulfil such an obligation, Convention or no Convention. Again, enforcement in one country, of judgments pronounced in another, depended on the law of the forum or on treaties relating to such matters. The UN had under consideration a draft multilateral convention concerning just such cases, and it would be premature for the conference to attempt to deal with the subject. Obligations devolving upon refugees in respect of relatives, who both resided in the same country of asylum, would be left to the law of the land.

The French representative said he would not press his proposal.

The Israeli representative said that if paragraph 2 was left as it was and there was no provision in favour of refugees, a judge would take action in accordance with the law of the land as it applied to aliens. The concern of the Yugoslav delegation seemed to him somewhat unjustified, for there need be no fear of abuse of the status of refugee. The absence of any special provision would not mean that the refugee would be exonerated from fulfilling their obligations, since they would continue to be subject to the law of the country of refuge.

The first element of the UK amendment was adopted by 18 votes to none, with 3 abstentions.

Paragraph 2 of Article 7, as amended, was adopted with 20 votes to none, with 2 abstentions.

Article 7 as a whole, as amended, was adopted with 20 votes to none with 1 abstention.

The Italian representative said the Italian delegation had votes in favour of Article 7, subject to any reservation it might have to enter after consultation with the Italian Government.[201]

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[199] A/Conf.2/SR.11, pp. 8-9

[200] A/Conf,2/31

The Style Committee proposed the text which is now in the Convention as Article 12.[202]

Article 12 was adopted by 19 votes to none, with 2 abstentions.

The Italian representative said he had abstained from voting on Article 12 in accordance with the statement made at the 25th meeting to the effect that the Italian delegation reserved its position on that Article.[203]

Under the Allied High Commission Law No. 23 mentioned by the representative of the IRO, marriages between displaced persons or refugees solemnized in Germany between 8 May 1945 and 1 August 1945 before a minister of religion in accordance with the rites of their religion which are invalid because the formalities prescribed by German law or Control Council legislation were not observed, were declared to have had been celebrated in accordance with Sections 11-15 of Control Council Law No. 16, upon registration at the Chief Register Office at Hamburg.[204]

Judicial Decisions

There are numerous judicial decisions in connection with Article 12. A few may be cited:

English courts have held that refugees have acquired a domicile of choice in the country of reception: *May v. May* (1943) 2 All E.R. 146.

In France the *Tribunal de grande instance de la Seine* decided on 18 April 1966 in *Cismiuglu v*. *Dame Seicaru* on the matrimonial regime of a Romanian refugee couple who had been divorced in France in 1964. At the time of their marriage the regime of separation of property had been in force under Romanian law. By a law of 25 January 1953, in conjunction with a Decree of 31 January 1953, the regime of community of acquisition was introduced in Romania. The wife had been recognized as a refugee by OFPRA in 1957, the husband in 1964. The Court held that while the recognition by OFPRA had no retroactive effect, the parties had the quality of refugee since October 1948, in any case prior to the Law of 31 January 1953, and that law could not, therefore, change the matrimonial regime under which they got married and which had to be protected by the French authorities in application of Article 12 of the Convention of 1951.[205]

This principle had already been affirmed by the Court of *Fort-de-France* on 21 June 1962 in *Bracescu v. Bercovici.*[206]

In the Netherlands the Court of Haarlem had to decide on 2 February 1960 which was the applicable law for a divorce of refugees considering that there was a conflict between the Hague Treaty of 12 June 1902, according to which the law of the country of nationality is applicable, and the 1951 Convention. The Court held that Netherlands law was to be applied.

In Austria the Supreme Court decided on 4 April 1956 that the Austrian courts were competent for the divorce of refugees. The Court held that all conflict rules of the Contracting States, whether of substance or of procedure, had to yield to Article 12 of the 1951 Convention where the personal status of refugees is concerned. It would contradict the meaning and the purpose of the Convention if in matters of personal status the law of the country of domicile or residence was to be applied, but if there was no forum in Austria. It could be deduced from Article 16 paragraphs 1 and 22 of the Convention that a Convention refugee was not to be denied access to Austrian courts either because he is a refugee or because of the foreign nationality which he still possesses.[207]

In Switzerland the Federal Tribunal had to decide, on 20 October 1975, in *Dax* v. *Dax* on the validity of the marriage of two Hungarian refugees. They were married in Hungary in 1945. In 1973 the husband obtained a decree of divorce in Budapest, although the wife refused any participation in the proceedings. The wife asked that the marriage should be held to be still existent. The Tribunal decided in this sense.

In its reasons the Tribunal stated that a refugee may sue for divorce at the place of his Swiss domicile on the basis of Swiss law without having to prove that law or judicial custom of his country of nationality admit the grounds for divorce and recognize the competence of the Swiss courts. The purpose of the Convention was to fill the vacuum created by the refugee's rupture with his country of nationality by assimilating the position of refugees regarding their personal status and access to courts to that of Swiss nationals. The Convention does not consider that the refugee may pursue his right in the

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[201] A/Conf.2/SR.25, pp. 4-10

[202] A/Conf.2/102, Article 12

[203] A/Conf2/SR.34, p. 24

[204] Article 6

[205] *Revue critique de droit international prive* 1967, pp. 324

[206] *ibid.* 1963, p. 724, Clunet 1962, p. 1010

[207] 3 Ob 70

country of his nationality and if he does so he is no longer a refugee within the meaning of the Convention. It is true that a refugee may have good reasons to sue for divorce before the courts of his country of nationality, e.g. because of the status of minor children left behind in that country, the matrimonial regime or the subsequent rights of succession. When the courts of the country of nationality claim exclusive competence, as in the case of Hungary, he may be compelled to appeal to them if he is interested in the recognition of the judgment in that State.

In the present case, however, not only the status of the plaintiff, but also that of the defendant is involved. The competence of the Hungarian courts may not be based simply on the fact that a refugee may renounce his rights following from the Convention if in this way the right of the defendant spouse, equally based on the Convention, would be annihilated. A Swiss spouse living in Switzerland may be divorced from her Swiss husband only in Switzerland. The present plaintiff (the wife) cannot be expected to enter into a divorce suit in her country of nationality. If she has reason to fear persecution, she cannot be expected to appear in person before the courts of that country or to be represented there. Moreover, the plaintiff risks losing her refugee status if she enters divorce proceedings in Hungary. On the other hand, the defendant does not need the forum of the country of his nationality since he has the possibility of suing in his Swiss domicile. He is all the more likely to do this since both spouses have lived in this country for many years and the forum of the joint conjugal domicile is actually the natural forum for a divorce. Thus, divorce obtained in the country of nationality is not to be recognized if the defendant who equally has domicile in Switzerland has not entered the divorce proceedings. The Hungarian judgment is therefore not to be recognized in Switzerland.[208]

Commentary

The arrangement relating to the Legal Status of Russian and Armenian Refugees of 30 June 1928[209] recommended that the personal status of Russian and Armenian refugees shall be determined in countries in which the previous law of their respective countries is no longer recognized, either by reference to the law of their country of domicile or of usual residence, or, failing such, by reference to the law of the country in which they reside. It has established a dual regime.

The 1933 Convention[210] subjects the refugees to the law of their country of domicile or, failing such, to the law of their country of residence. It must be pointed out, however, that most refugees falling under that Convention were stateless although it was extended by France to Spanish refugees the majority of whom were not stateless.

The Provisional Agreement concerning the Status of Refugees Coming from Germany of 4 July 1936[211] and the Convention concerning the Status of Refugees Coming from Germany of 10 February 1938[212] subjected the personal status of refugees who have retained their original nationality to the rule applicable in the country concerned to foreigners possessing a nationality, save as otherwise previously provided by treaty, the personal status of refugees having no nationality to the law of their country of domicile, or, failing such, to the law of their country of residence.[213]

The 1951 Convention adopted the solution of the 1933 Convention. Most refugees falling under the 1951 Convention are not stateless. There is an increasing trend to subject foreigners to the law of the country of their habitual residence. The term 'domicile' used in Article 12 has different meanings in different countries. In the Anglo-Saxon countries it means the place where a person resides with the intention of remaining there. In the continental European countries it means habitual residence. In Anglo-Saxon law everyone acquires, at birth, a domicile of origin which may be lost by the acquisition of a new domicile by choice, so-called domicile of choice. Thus, under Anglo-Saxon law everybody has a domicile and there can be no absence of domicile. If a refugee has not acquired a domicile of choice, he would still be subject to the law of his domicile of origin which may be that of the country of his nationality. It cannot, however, have been the intention of the drafters of the Convention, to subject refugees, by this reference, to the law of the country of their nationality. In the discussions, reference was made to the 'new' domicile and this was obviously the intention. Where no such new domicile exists, the law of the country of residence would apply. The main intent of the provision is, indeed, to subtract the refugee from the application of the law of the country of his nationality, considering that they have left that country and that that law may have undergone changes with which the refugees do not agree. The question arises whether the law of the country of domicile or of residence applies including its conflict rules which may refer to another law *('renvoi').* According to the prevailing opinion, where a treaty provides for the application of a particular law, *renvoi* is excluded. *Renvoi* to the law of the country of nationality is, in any case, excluded. In legal relationships between refugees

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[208] ATF 105 II 1, cf. on this decision A. Bucher in *Revue de droit suisse* 101-1982, pp. 1-19

[209] L. of N.Tr.S. vol. 89, No. 2005

[210] Article 4

[211] L. of N.Tr.S. vol. 131, No. 3952

[212] L. of N.Tr.S. vol. 192, No. 4461

[213] Article 6

and other aliens it depends on the law of the country of domicile or of residence which law is to be applied (e.g. that of the plaintiff or of the defendant).

The term 'personal status' is not defined. Its scope differs from country to country. It includes, in any case, legal capacity (age of majority, the rights of persons underage, capacity to marry, capacity of married women, the question of loss of legal capacity (guardianship and curatorship)). It also includes family rights (adoption, legitimation, marriage, divorce, the powers of parents over their children, right to and duty of support of relatives). It does not include the matrimonial regime e.g. in France, but in view of the specific reference to rights attaching to marriage in para 2 of Article 12 it must be deemed to be included. The law of succession and inheritance does not belong, in all countries, to personal status. The paragraph on wills proposed by the Secretariat was not adopted.

The second paragraph of the Secretariat draft reading:

> 'Family law, in particular the celebration and the dissolution of the marriages of refugees and the law respecting succession, whether *ab intestato* or under a will, shall be governed by the rules of substance, form and competence of the law of the country of domicile, or failing such, of the law of the country of residence.'

was deleted by the *ad hoc* Committee. It was said that it was superfluous.

The statement of the representative of the IRO that the report might state that it had been unanimously agreed that the questions dealt with in paragraph 2 ought not to be governed by the rules concerning substance, form and competence of the law of the country of nationality in countries where such questions were usually covered by that law, remained uncontradicted. So remained his statement that laws restricting the right of marriage, for example, were considered by some countries to be inconsistent with public order, while others applied those laws. Moreover, in certain countries courts could exercise jurisdiction with regard to aliens only if their decisions were recognized by the authorities of the alien's country of nationality. The Article meant, that with regard to both questions, it was not the law of the country of nationality but the law of the country of domicile or, failing that, the law of the country of residence, which would be applied regardless of the question of recognition.

As to form, this is in practically all countries regulated by the principle *'locus regit actum'.*

As to competence, there is a problem in those countries where courts assume jurisdiction over aliens only if their decisions are recognized in the country of the alien's nationality. Courts have assumed jurisdiction in the case of refugees regardless of such recognition. In the decisions and in literature[214] reference was made, in this connection, to Article 16 of the Convention which provides that refugees shall have free access to the courts.

In the second paragraph of Article 12 the words in brackets after 'marriage', that is, 'matrimonial regime, legal capacity of married women, etc.' which are to be found in the Secretariat draft, and also in the 1933 and 1938 Conventions were deleted. No change of substance was intended. The end of the paragraph differs from the text in these instruments by the proviso that the right in question is one which would have been recognized by the law of that State (that is, the Contracting State in which it has to take effect) had he not become a refugee. This was meant to cover, as it was stated, objections on the grounds of public policy *('ordre public')* but would seem to go further, allowing also for other grounds in the law of the country which would not permit the respect for the acquired right concerned, although such grounds are difficult to imagine.

The Secretariat draft also contained a paragraph concerning wills of refugees. No difficulty arises normally with wills of refugees made by them in their country of origin although the implementation of the will depends on the law of the country in which the will is to take effect.

ARTICLE 13. MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Travaux Préparatoires

The Secretariat draft contained the following text:

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[214] G. Beitzke 'Divorce of Refugees' in *Thessaloniki Law Review* 1966.

'The High Contracting Parties undertake to accord to refugees who are regular residents in their countries the most favourable treatment accorded under treaty to foreigners with regard to the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.'

In the comment it was stated:

'The difficulties which may be encountered by foreigners relate principally to the acquisition of immovable property and securities (stocks) and to the lease of dwelling accommodation or premises for the purposes of carrying on an occupation.

There are two solutions:

1. The first would be to accord to refugees the most favourable treatment accorded by treaty to foreigners.

It may be noted that in certain countries foreigners are not covered by national laws for the protection of tenants, save by virtue of treaty. If, therefore, refugees who are usually destitute, are not to enjoy the treatment accorded under treaty to foreigners, they will be debarred from the benefits of such laws, which will spell disaster for them.

2. The second solution would be to accord to refugees the treatment accorded to other foreigners generally, thus waiving the condition of reciprocity, which cannot be satisfied by refugees.'[215]

The French draft contained the following:

'The High Contracting Parties shall give favourable consideration to the possibility of granting after a certain period to refugees permanently settled in their territories treatment similar to that accorded to nationals in respect of:

(a) the possession, acquisition, occupation and renting of all movable and immovable property and

(b) the establishment of non-profit-making associations.'[216]

At the first session of the *ad hoc* Committee the French representative pointed to the difference between the Secretariat and the French text. The Secretariat draft committed the countries of residence. He would not press for the adoption of his own text.

In reply to a question the Chairman, on the advice of the Secretariat, said that the phrase 'most favourable treatment' corresponded to the most-favoured-nation treatment as used in treaties of friendship.

The Turkish representative observed that some countries extended reciprocal treatment to aliens as a matter of course, while others set down the conditions of reciprocity in formal treaties, and specified the categories of foreigners to which they applied. In view of the difficulties arising in countries which had no reciprocity treaties, he preferred the phrase 'the treatment accorded to foreigners generally'. Otherwise, the refugees, under the proposed text, would get preferential treatment compared to other aliens.

The Belgian representative, pointing out that Belgium, for instance, placed nationals of the Benelux countries for certain purposes on a quasi-equal footing with Belgian citizens, wishes to amend Article 5 to read: 'under treaty, except those establishing economic or customs unions'.

The Danish representative observed that the Belgian amendment would not be applicable to the Scandinavian countries, although the latter did accord special favourable treatment to Scandinavian nationals which they would not be prepared to give to other foreigners, including refugees. Such special cases, however, could be dealt with by reservations.

The Israeli representative described the difficulties confronting the Committee in the absence of uniform formal or practical statutes governing the property of aliens. In fact, the statutory status did not exist, in as much as there was no code of law applicable to aliens as such. In numerous countries, the rights of aliens were mentioned only in exceptional clauses lost in a mass of legal provisions. Further, it was almost impossible to determine the categories of aliens which were not provided for in the various treaties binding States. The Committee should follow the practice of many nations and fix a permanent status for the refugees in matters of movable and immovable property which would be equal and not inferior to that enjoyed by foreigners under most-favoured-nations clauses.

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[215] E/AC.32/2, Article 5

[216] E/AC.32/L.3

The Chinese representative said he would prefer the criterion of most-favoured nation to be used rather than that of the 'most favourable treatment'. The former was a well-known concept with which most nations, including his own, were thoroughly familiar.

The Chairman suggested the deletion of the words 'under treaty'.

The French representative could not accept the most-favoured-nation clause in Article 5 because it would be tantamount to granting refugees practically the same treatment as nationals.

The UK representative stated that while the Committee was trying to protect refugees against discrimination, it should not go to the other extreme of establishing discrimination in favour of refugees.

The representative of the IRO stated that there was no question of granting special privileges to refugees but rather of exempting them from reciprocity clauses.

The Committee rejected alternative (1) (most-favoured-nation treatment) by 5 votes to 1, with 5 abstentions.

Article 5 was put to the vote in the following form:

> 'The Contracting States undertake to accord to refugees whose regular residence is in their territories the treatment accorded to foreigners generally with regard to acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.'

The Article was adopted by 7 votes to none, with 2 abstentions.[217]

The Working Group proposed the following wording:

> 'The Contracting States shall accord to refugees the most favourable treatment possible, in any event treatment not less favourable than that accorded generally to aliens in the same circumstances as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.[218]

This text was adopted.[219]

The representative of the IRO said with regard to the clause contained in Articles 8, 13, 14 and 16 it seemed to him that it was often difficult to determine what was the law applicable to aliens generally, in view of the fact that it was based on procedure and administrative practice or was prescribed by law. In the latter case, the authorities were not free to choose: they had to grant a certain treatment unless there was a more favourable treatment granted by treaties. The clause adopted suggested that 'more favourable treatment' be granted but did not make it mandatory. It seemed doubtful whether the wording adopted would have the effect of granting 'more favourable' treatment to refugees. It would seem that the clause adopted had little meaning, in so far as it provided that refugees should receive the treatment accorded generally to aliens. A provision to that effect was already contained in Article 4. To secure 'more favourable ' treatment for refugees it would have been better to adopt a different wording (for instance, most-favoured-nation treatment). Reservations would have been possible for exceptional cases.[220]

The Committee made the following comment:

> 'The formula used in the Article and in several others is intended to ensure that refugees will, regardless of reciprocity, be treated at least as well as other aliens, and to encourage countries to give them better treatment where this is possible. The phrase 'in the same circumstances' means that the treatment shall correspond to that granted to other aliens *'ceteris paribus'.*[221]

The IRO made the following comment:

> 'In the attention of the *ad hoc* Committee the formula is intended to ensure that refugees will, regardless of reciprocity, be treated as well as other aliens. In the opinion of the Director General the same difficulties apply in the interpretation of the word, generally' in Article 4. In countries where the rights of aliens in the matters referred to in these Articles depend on reciprocity arising out of treaty arrangements, it is doubtful whether the formula as it now stands could ensure any rights for refugees.'

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[217] E/AC.32/SR.10, pp. 4-8

[218] E/AC.32/L.32, Article 8

[219] E/AC.32/SR.25, p. 5

[220] E/AC.32/SR.31, p. 4

[221] E/1618, p. 46

> 'A further difficulty arising out of the formula is that in many countries it is not possible to speak of general treatment in relation to self-employment, exercise of the liberal professions and housing. These matters are often subject to administrative regulations which are often framed with other objects in view of distinction between nationals and aliens, for example, service in national armies, local residence qualifications etc. or leave much discretion to the competent authorities.'
>
> 'The Director General, therefore, is of the opinion that further consideration should be given to the use of the above-mentioned formula in these Articles and suggests that a formula should be found for each of the subject matters which would take account of the special circumstances relating to the legal regime of each of these matters. In view of the desirability that refugees should be assimilated as quickly as possible into the economic life of their countries of residence, refugees should be granted the same property rights as nationals subject to any special regulations in excluding aliens based on security considerations, for example, property in frontier or strategic areas, government or central bank bonds, shares of shipping companies, mines, etc.[222]

At the second session of the *ad hoc* Committee the French representative said his delegation accepted Article 8 subject to the following reservations:

> Firstly, the words 'The Contracting States shall accord to a refugee treatment as favourable as possible' should be understood to constitute a recommendation and secondly the words 'in any event not less favourable than that accorded generally to aliens in the same circumstances' were interpreted by the French Government as making the ordinary law concerning aliens applicable to refugees.

In France, the majority of the legal provisions governing the acquisition of immovable property contained no restrictions for aliens. France wished to accord refugees the same treatment in that field as was enjoyed by aliens. The French Government did not want the text of the Article to oblige countries which had granted reciprocity to another State, to accord the benefit of such reciprocal rights to all refugees. In any event, France would not be prepared to accord the benefit of reciprocity to all refugees.

The US representative felt the Committee was getting involved in a question which applied not only to Article 8 but to a good many other Articles. He noted that agreement had been reached in the Committee that refugees should, as a minimum, be granted the same treatment as other aliens, a provision which was important in those countries which did not give any status to persons without nationality. It had been felt that in certain respects a refugee should be given an added advantage, namely treatment under the most-favoured-nation clause. For some purposes, representatives had wished refugees to be treated in the same way as nationals, so that they would be more rapidly assimilated. His delegation believed that refugees should be treated better than aliens in some respects, and that the provisions which accorded better treatment to refugees were not of such major importance to create grave problems for many countries.

The representative of the IRO felt that some of the rights mentioned in Article 8 should be dealt with separately; at the present stage of legal development the right to acquire property was often granted to aliens under the same conditions as to nationals. There were, however, specific laws which had developed since 1914 and under which rights were restricted for emergency reasons and a distinction was made between nationals and aliens for such questions as rent control, etc. It would be worth while considering whether the same provisions should cover all those rights, or whether a distinction should be made with regard to the treatment which aliens would have with regard to certain rights.

On the question of drafting he felt that the phrase 'treatment accorded generally to aliens' was ambiguous and possibly misleading.

The French representative agreed that the regime generally applied to aliens should be accorded to refugees. To make that quite clear, he proposed that in Article 8 the words 'accorded by the ordinary law regarding aliens' be substituted for the words 'accorded generally to aliens in the same circumstances'. In certain cases, France was in fact prepared to accord to refugees rights wider than those generally accorded to aliens. Article 8 deals with a special case and, on that point, France accepted the provision of equal rights but could not accept the automatic application of reciprocity.

The UK representative said, with regard to the UK comments, that they were limited to Article 9 which dealt with the highly specialized subject of patent and copyright law. The UK was quite satisfied with Article 8 in its present form.

The IRO representative said the remarks of the French representative reflected the intention of the Committee as expressed at its first session as well as the view of IRO, but it could not be claimed that the sense of those remarks was fully met by the wording of the Article. It would be well, since the Convention was, after all, intended to be legally binding, if the Drafting Committee could find a form of words which would avoid a situation in which some Governments, though willing to grant more favourable treatment, might be unable to do so on legal grounds. The problem was to find a

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[222] E/AC.32/L.40, pp. 39-40

formulation to ensure that the treatment to be accorded under Articles 8, 13, 14 and 16 should depend less on interpretation.

The French representative said the legal obligation established under Article 13 was that the treatment accorded to refugees should be not less favourable than that accorded to aliens generally. The opening words amounted to no more than a recommendation which went beyond the standards laid down for the treatment of aliens generally, but did not establish a strict legal obligation. Each State would interpret the provision in its own way, and could accord more favourable treatment if it wished.

He asked whether he could interpret Articles 7-19 as not raising the question of reciprocity. If it were stated in any of the Articles that the treatment accorded to refugees was that accorded to aliens generally, it was to be understood that such treatment applied in cases where national legislation provided the same rights for refugees as for aliens. If, conversely, the law stipulated that aliens had no right to benefit from any particular provision subject to certain reservations, it was to be taken that those provisions did not apply to refugees.

The representative of the Secretariat explained that the question of reciprocity no longer arose or came into consideration. It had been settled by Article 4. Reciprocity could not be required from refugees, since that would be tantamount to taking away with one hand what was given with the other. When there was ordinary law for aliens it applied also to refugees, although the latter were unable to perform reciprocal obligations. In cases, however, where a special treaty had been concluded between two States making provisions in favour of certain aliens, that treatment would not apply to refugees if they were subject to the ordinary law treatment for aliens.

The Chairman, speaking as representative of Denmark, said that it was true reciprocity agreements might be so numerous that almost all aliens had the same rights; in that case it was unlikely that those rights would be denied to refugees.

The Chairman noted that whereas Articles 10, 12 and 13 included the words 'lawfully in their territories', Article 8 apparently made no distinction between refugees in countries adhering to the Convention and refugees residing elsewhere.

The UK representative thought the possibility of according different treatment for resident and non-resident refugees was provided for by the words 'in the same circumstances'. A refugee abroad would presumably receive the same treatment as an alien abroad.

Article 8 was referred to the Drafting Committee.[223]

The Drafting Committee proposed the following text:

> 'The Contracting States shall accord to refugees the most favourable treatment possible and, in any event, not less favourable than that accorded to aliens in the same circumstances regarding the acquisition of movable and immovable property and the rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.'[224]

This text was adopted.[225]

At the Conference of Plenipotentiaries Article 8 was at its first reading unanimously adopted.[226]

The Style Committee proposed the following wording:

> 'The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.'[227]

This text was adopted by 21 votes to none.[228]

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[223] E/AC.32/SR.36, pp. 9-20

[224] E/AC.32/L.42, Article 8

[225] E/AC.32/SR.41, p. 8

[226] A/Conf.2/SR.7, pp. 18-19

[227] A/Conf.2/102, Article 13

[228] A/Conf.2/SR.34, p. 24

Commentary

The standard of treatment 'treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances' occurs in this Article and in Articles 18 (self-employment), 19 (liberal professions), 21 (housing) and 22 paragraph 2 (education other than elementary education). It constitutes a binding obligation to grant the treatment accorded to aliens generally in the same circumstances and a recommendation for more favourable treatment. (As to treatment accorded to aliens generally see Article 7 paragraph 1; as to the meaning of the term 'in the same circumstances' see Article 6).

The question of reciprocity which was raised in the debate is settled in Article 7. Where a refugee enjoys exemption from reciprocity he will receive more favourable treatment. Otherwise, the apprehension expressed in the debate, that the provision would probably lead to general aliens treatment, which is in any case provided for in Article 7, paragraph 1, is probably well-founded in as much as more favourable treatment may require special legislative measures in favour of refugees.

Laws relating to the protection of tenants are of special importance.

Property includes not only tangible property but also securities, monies, bank accounts, etc. It does not include artistic and industrial property which is regulated in Article 14.

As to rights pertaining to property, this includes sale, exchange, mortgaging, income, compensation for expropriation, apart from leasing which is specially mentioned.

The provision applies to all refugees, whether resident in the territory of the Contracting State or not.

Restrictions exist in some countries for the acquisition of immovable property by aliens or for the acquisition of such property in certain areas. General restrictions apply frequently only to aliens resident abroad and in that case the restriction applies also only to refugees residing elsewhere than in the territory of the Contracting State.

Other treaties may be relevant in this connection. Thus the International Covenant on Civil and Political Rights provides in Article 17: 'Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.'

Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms provides in Article 1:

> 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.'
>
> 'The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interests or to secure the payment of taxes or other contributions or penalties.'

The European Convention on Establishment[229] provides in Article 4:

> 'Nationals of any Contracting Party shall enjoy in the territory of any other Party treatment equal to that enjoyed by nationals of the latter Party in respect of the possession and exercise of private rights, whether personal rights or rights relating to property.'

Article 5 provides, however, that

> 'Any Contracting Party may, for reasons of national security or defence, reserve the acquisition, possession or use of any categories of property for its own nationals or subject nationals of the Parties to special conditions applicable to aliens in respect of such property.'

According to Article 6, a list of any other restrictions including conditions of reciprocity on the acquisition, possession or use of certain categories of property have to be transmitted to the Secretary General of the Council of Europe. After the entry into force of the Convention no further restrictions are to be imposed unless a Contracting Party finds itself compelled to do so for imperative reasons of an economic or social character or in order to prevent monopolization of the vital resources of the country.

Each Party shall also endeavour to grant to nationals of other Parties exemptions from the general regulations concerning aliens as are prescribed for in its own legislation.

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[229] Eur.Tr.S. No. 19

ARTICLE 14. ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literacy, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Travaux Préparatoires

The Secretariat Draft contained the following Article 6:

> 'In respect of industrial and intellectual property (copyright, industrial property, patents, licences, trademarks, designs and models, trade names, etc.) refugees shall enjoy the most favourable treatment accorded to nationals of foreign countries.'

In the comment it was stated:

> 'The condition of reciprocity mentioned in the commentary on the preceding Article cannot be applied in respect of intellectual and industrial property in the case of refugees who are stateless. The requirement of reciprocity must therefore be ruled out in all cases.'
>
> 'However, it would appear that in this field it is not sufficient merely to grant stateless persons equality of treatment with foreigners in general and that it is desirable that they should be accorded the treatment enjoyed by nationals of the most-favoured nation, since intellectual and industrial property is the creation of the human mind and recognition is not a favour.'[230]

Article 5 of the French draft read:

> 'Intellectual and Industrial Property,
>
> 'In respect of intellectual property (copyright, scientific property, industrial property, patents, trademarks, designs and models, trade names) refugees shall enjoy the most favourable treatment accorded to nationals of foreign countries.[231]

At the first session of the *ad hoc* Committee, the Danish representative stated that the apprehension which he had felt regarding the operation of the most-favoured-nation clause in connexion with Article 5 did not apply to the operation of that clause in Article 6. Consequently, he could accept the Secretariat's draft of the Article.

The UK representative reserved the position of his Government regarding the copyright provisions in that Article.

Article 6 was adopted unanimously.[232]

The Working Group proposed the following text:

> 'In respect of literary, artistic and scientific rights, and industrial property such as patents, designs, models, licences, trademarks, etc. a refugee shall enjoy the most favourable treatment accorded to nationals of foreign countries.[233]

This text was adopted by the Committee.[234]

The Committee made the following comment:

'1. This Article refers to the creations of the human mind. The recognition of rights in this field is not a favour and it is proper therefore to grant a refugee the most favourable treatment accorded to nationals of foreign countries.

2. Whenever the words 'the most favourable treatment accorded to nationals of foreign countries' are used in the draft Convention, they mean the best treatment which is given to nationals of another country by treaty or usage. It is contemplated that should some Contracting States find it necessary, they might reserve with regard to preferential

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[230] E/AC.32/2

[231] E/AC.32/L.3

[232] E/AC.32/SR.10, p. 8

[233] E/AC.32/L.32, Article 9

[234] E/AC.32/SR.25, p. 5

treatment accorded to nationals of certain countries under special agreements or by established tradition, for instance, among the Scandinavian countries or the Benelux countries.'[235]

France made the following comment:

> 'Article 9. This Article is less liberal than the French proposal which provided for the same treatment as is accorded to French nationals. Further, it makes no mention of unfair competition or the suppression of false marks of origin.'[236]

The UK commented:

> 'His Majesty's Government cannot agree to accord to refugees in these matters the most favourable treatment accorded to nationals of foreign countries. They would, however, by prepared to consider sympathetically the possibility of according to refugees the same protection as the nationals of the country in which they are resident, subject to the same conditions and formalities as apply to such nationals.[237]

At the second session of the *ad hoc* Committee the Chairman said he had received a treatise by an expert on literary rights which showed that the Committee's draft was inconsistent with existing conventions, including the Bern Convention on Intellectual Property provisions of which bore closely on the nationality of the author and the place where the book was published. That treatise enumerated four possible situations: taking Denmark as an example, any Dane who wrote a book had the Danish copyright wherever the book might be published. The same was true if the author was a national of a country adhering to the Bern Convention. If the author was a national of a country not adhering to the Bern Convention, his rights were safeguarded in Denmark only if the book was first published there. Finally, the rights of a stateless author had no protection anywhere. With regard to the last of those situations, a change was certainly needed; but supposing a national of a country not adhering to the Bern Convention became a refugee and fled to another country not adhering to that Convention it would be unfair if merely by becoming a refugee he were to receive better treatment than a citizen of his country of refuge. The problem was whether a refugee residing in a third country was to receive the same treatment as a refugee in a signatory country.

The Belgian representative reminded the Committee that the Bern Convention on Intellectual Property had been amended in 1948 by the Brussels Conference. Furthermore, negotiations were in progress for convening a fresh conference in Washington that autumn to try to reach agreement on a single convention on the question applicable to both continents.

The Italian representative thought that the interpretation of Article 9 would depend on the value given to the expression 'lawfully residing'. Those refugees who were in possession of the regular cards issues by IRO, the High Commissioner or any future authority, would enjoy the same privileges as other aliens in Italy, but the word 'preferential' should not be applied to such treatment.

He felt that the formulation used in Article 8 was particularly felicitous and should be applied also in Article 9 as well as in Articles 10 and 11, and possibly a number of others.

The UK representative gathered that the position of the UK Government was that it was necessary to regard two distinct possibilities. If a book were first published in the UK, any author could secure the UK copyright; if it were published in a country adhering to the Bern Convention, the author could also secure that copyright. The UK proposal was therefore that refugees in their country of residence should receive the rights normally accorded to nationals of that country. The rights they would receive for books first published in other countries would depend on whether those countries were signatories to the Convention or not.

The Belgian representative thought that the difficulty could perhaps be avoided by according refugees 'national treatment'. That treatment should not, however, apply to the refugees residing in a country not a signatory to the Convention.

The Chairman observed that the provisions of the Bern Convention had been devised for the protection of the rights of publishers and of authors. If a refugee residing in a country not adhering to the Bern Convention published a book, there could be no objection, if the book proved to be a bestseller, to any British publisher copying it, but if the book was first published in the UK, the rights of the British publisher would, in such a case, not be safeguarded. The fairest solution would be to provide for 'national treatment' in the country where the publisher was resident, and in other countries for the same treatment as was normally accorded to citizens of that country, and also to provide for protection of the copyright in any country where the book might first be published.

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[235] E/1618, p. 46, Article 5

[236] E/AC.32/L.40, pp. 40-41

[237] E/AC.32/L.40, p. ?

On the suggestion of the Israeli representative further consideration was deferred to obtain clarifications from the Legal Department.[238]

Sweden proposed to replace the same words by the words 'in which he has his domicile'.[239]

The Drafting Committee proposed the following text:

> 'In respect of the protection of industrial property, such as inventions, designs or models, trade marks, tradenames, etc., and of rights on literary, scientific and artistic works a refugee shall be accorded in the country in which he is resident, the same protection as is accorded to nationals of that country. In the territory of another Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he is resident.'[240]

The French representative wished to know why the word 'patents' had been omitted.

The US representative felt that the words 'such as' in the first line made 'etc.' redundant in the English text.

With regard to another issue, he did not wish to reopen the struggle, lost in the Drafting Committee, to insert the word 'habitually' but noted for the purposes of the record that the US delegation understood the word 'resident' in Article 9 to mean 'habitually resident'.

Article 9 was revised to bring this provision into conformity with existing Conventions on the subject.[241]

At the Conference of Plenipotentiaries Austria proposed to replace the words 'in which he is resident' by the words 'in which he has his habitual residence or, if he has no habitual residence, in which he resides'.[242]

The Austrian representative felt that Article 9, as at present worded, was somewhat too wide in scope. Under the existing text, a refugee would be entitled to enjoy the protection referred to even if he only stayed in the country for a few days. In the opinion of the Austrian delegation, it was necessary to specify in the text that a refugee must be more than a temporary visitor.

The Colombian representative thought the introduction of the new concept of 'habitual residence' would be a risky procedure.

The French representative was afraid that the Austrian amendment was contrary to that delegation's intentions. If it were adopted, a refugee residing in that country, even for a few days, would enjoy the benefit of the provisions of the amendment in the same way as if he habitually resided there. On the other hand, the introduction of the concept of domicile involved difficulties.

The Colombian representative considered that the concept of 'residence' was preferable. Refugees and stateless persons always found themselves in a *de facto* position before finding themselves in a *de jure* position.

The President, speaking as representative of Denmark, said the idea originally contemplated had not been fully reproduced. The question of nationality entered into the matter, in as much as the recognition, for instance, of a person's right in his literary, scientific or artistic works depended on whether the country of which he was a national or in which he resided had signed the relevant international convention. To quote an example, it might reasonably be asked why a refugee from a country which had not acceded to such a convention and who resided in a country of asylum which had also not signed the Convention should, when residing in Switzerland, that is, a few days, be given the same protection in that respect as Swiss nationals.

He therefore appreciated the force of the Austrian and Swedish representatives' argument that the refugee should have closer ties than Article 9 at present provided for.[243]

The Swedish representative said the problem might arise in three forms: first, an author might have published a work prior to his becoming a refugee, in which case the laws existing at the date of publication would apply to the work. Secondly, a refugee might publish a work in the country of reception; in that case, the legislation of that country would protect his rights. Finally, a refugee might publish a work in a country other than that in which he resided. The question then arose

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[238] E/AC.32/SR.36, pp. 20-23

[239] A/Conf.2/39

[240] E/AC.32/L.40, Article 9

[241] E/AC.32/SR.41, pp. 8-9

[242] A/Conf.2/38

[243] A/Conf.2/SR.7, pp. 19-21

whether the fact that the refugee resided in the country of reception would be sufficient to ensure the protection of his rights. In the circumstances, it seemed that mere residence in a receiving country would not be enough.

He was supported by the Norwegian representative.

The Austrian representative said that a distinction could be made between three kinds of domicile: fixed abode, habitual residence and temporary residence. A refugee had no fixed or ordinary abode; the only kind of residence possible for him was habitual or temporary residence. The fact that a refugee possessed a temporary domicile or residence seems insufficient to ensure the protection of his rights. For these reasons, the Austrian delegation had proposed an amendment intended to introduce the idea of habitual residence in Article 9.

The Belgian representative fully agreed with the intention of the Austrian amendment, but observed that its wording did not fully reflect that intention.

As to the Swedish amendment, he thought it would not be possible to require a refugee to possess a domicile in the sense in which that term was used in the amendment.

The Swedish representative said his delegation's amendment had the same objective as the Austrian delegation, and if its own amendment raised difficulties, it could, if necessary accept the Austrian amendment. He then withdrew his amendment in favour of the Austrian amendment provided that the words 'or, if he has no habitual residence, in which he resides' were deleted.

The Austrian representative accepted the Swedish amendment to his proposal.

The High Commissioner drew attention to the fact that there might be refugees, for instance, artists, musicians, and the like, who had no habitual residence.

The French representative disagreed. Refugees had to have a place of habitual residence; otherwise it would be impossible for them to proceed from one country to another, in view of the formalities with which they would have to comply in order to cross a frontier.

The Belgian representative supported the French representative.

The French representative suggested that 'habitual residence' constituted a happy medium between 'domicile' and 'residence'.

The Austrian amendment, as amended, was adopted by 13 votes to none, with 7 abstentions.

Article 9 was amended was adopted by 17 votes to none, with 3 abstentions.[244]

Commentary

Article 14 embraces all property created by the human mind as distinct from ordinary property. This is the only case where the standard proposed by the Secretariat (most-favoured-nation treatment) was raised to national treatment.

In the country in which the refugee has his or her habitual residence, he or she is accorded the same treatment as is accorded to nationals of the country of their habitual residence. The scope of the rights depends on the municipal law of the country concerned and the international conventions to which it is a Party. There are numerous such treaties such as the Bern Convention on Intellectual Property of 1886, the Paris Additional Act and Imperative Declaration of 1896, the Berlin Convention of 1908, the Brussels Convention of 1948, the European Convention on Establishment[245] and the Paris Universal Copyright Convention of 1952 which in Protocol No. 1 explicitly assimilates refugees and stateless persons to the nationals of the country of their habitual residence. It has since been replaced by the Paris Universal Copyright Convention of 24 July 1971 whose Protocol No. 1 equally assimilates refugees and stateless persons to the nationals of the country of their habitual residence.

Thus the rights of the refugee will depend as to whether the country of his habitual residence is a Party to any of these treaties.

The term 'habitual residence' was introduced to distinguish it from purely temporary residence. It was felt that every refugee would have a country of habitual residence. In those cases where they have not, or if they are illegally in the country, they would only receive the treatment accorded to aliens generally under Article 7, paragraph 1. In the rare case where a refugee has several countries of habitual residence, they would be entitled to the same rights as nationals in

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[244] A/Conf.2/SR.8, pp. 4-8

[245] Articles 4, 5, 6, 22, 23 and Protocol sec. 1

those countries. In third countries, it is reasonable to claim that they should receive the treatment which is the most favourable, under the laws of several countries of habitual residence.

ARTICLE 15. RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Travaux Préparatoires

The Secretariat draft contained the following Article 7:

> 'Refugees shall have the right to join non-profit-making associations, including trade unions'

In the comment it was stated:

> 'The ordinary law of democratic countries includes freedom of association which, in principle, is enjoyed by foreigners as well as by nationals, and Article 20 of the Universal Declaration of Human Rights lays down that: 'everyone has the right to freedom of peaceful assembly and association.' In these circumstances, there can be no objection to stateless persons joining non-profit-making associations. There are associations pursuing cultural, sports, social or philanthropic aims, as distinct from associations for pursuing gain, whose aim is the making of profits. In not a few countries, particularly in Europe, the law is based on the distinction between these two categories of associations, which are subject to different regimes. It is therefore advisable to include a special provision relating to non-profit-making associations in the Convention. Profit-making associations are covered by the provisions dealing with the exercise of the professions.[246]
>
> 'It will be noted that the text expressly refers to trade unions, in order that there should be no doubt with respect to them.[247]

The French draft contained the following Article 4 paragraph (b):

> 'The High Contracting Parties shall give favourable consideration to the possibility of granting after a certain period to refugees permanently settled in their territories treatment similar to that accorded to their nationals in respect of:
>
> (b) the establishment of non-profit-making associations.'[248]

At the first session of the *ad hoc* committee, the French representative feared that the Article as drafted went too far in granting certain rights to refugees regardless of whether foreigners in general enjoyed the rights in question.

The Turkish representative agreed. Taken in the context of the Secretariat's comments, the Article might even imply that refugees were to enjoy the unqualified right to political activities.

The French representative said the French Government, like many other Governments, had special provisions in connexion with foreign associations, which it did not possess in connexion with French associations. In France, refugees could join trade unions, but they could not assume leadership or assume executive positions.

The Chairman, speaking as Canadian representative, said that he could support Article 7 if it read: 'Refugees shall enjoy the same rights to join non-profit-making association, including trade unions, as are accorded to foreigners generally.' He was supported by the French, Turkish and UK representatives.

The Danish representative proposed to insert the words 'to form and' after the words 'the right' and to add at the end of the Article: 'The High Contracting Parties reserve the right to restrict or prohibit political activity on the part of refugees.'

The US representative felt it would be unwise to adopt the second amendment, which did not seem in keeping with the principles of the UN and might, in fact, be interpreted as forbidding refugees even to express political opinions, and would certainly deny them access to an area of human activity in which they should at least have as much right to engage in as any other aliens.

The Chairman, speaking as Canadian representative, agreed.

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[246] See Article 13 - Self-Employment

[247] E/AC.32/2

[248] E/AC.32/L.3

The French representative felt that some such clause as proposed by the Danish representative was necessary. He felt refugees were under an obligation to refrain from taking part in internal politics until they had become naturalized citizens. He did not think the provision in question should be inserted in Article 7, as the question of political activities included much more than the right of association.

It was agreed to consider the provision in connection with Article 10 of the Secretariat Draft.

The Belgian representative supported the Danish amendment to add the words 'to form and'.

The Observer of the American Federation of Labour said that giving the refugees the right to form trade unions was of course unobjectionable in principle; in practice, however, it might well work to their disadvantage, as the existing trade unions in various countries might grow suspicious and even hostile. In some countries, while aliens were permitted to join trade unions, only nationals could be members of the executive councils.

The French representative supported the Chairman's text.

The Danish amendment was rejected by 5 votes to 1, with 5 abstentions.

The French representative suggested that the Danish representative's point might be met if the Chairman's text were amended to read:

> 'Refugees shall enjoy the same rights with regard to non-profit-making associations, including trade unions, as are accorded to foreigners generally.'

That text was adopted unanimously.[249]

The Working Group proposed the following text:

> 'As regards non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of foreign countries.'[250]

Article 10 was adopted.[251]

The Committee made the following comment:

'1. This Article refers only to non-profit-making associations. Profit-making associations are covered by Ch. III of the Draft Convention.

2. The Committee agreed that, although not expressly stated, this Article recognizes the right of refugees to form as well as to join associations on the same terms as other aliens. Except as herein provided, the power of governments to regulate the joining or formation of associations is not restricted.

3. In this Article and elsewhere in the Convention the obligations undertaken by Governments refer to matters governed by legislation or within public control. In most countries associations and trade unions would, that is, still regulate their membership by their own rules.

4. The expression 'lawfully within their territory' throughout this Draft Convention would exclude a refugee who while lawfully admitted has overstayed the period for which he was admitted or was authorized to stay, or who has violated any other conditions attached to his admission or stay.' Article 11 of the 1933 Convention and Article 13 of the 1938 Convention were quoted.'[252]

The Austrian Government made the following comment:

> 'The general recognition of the right of refugees to form associations could readily cause strained or aggravated relations between the countries of residence and those of origin. It would be preferable, therefore, to leave as a matter of principle, to the administrative authorities of the country of refuge the decision as to the right of refugees to form associations.'[253]

At the second session of the *ad hoc* Committee the Belgian representative said his Government would like the words 'nationals of foreign countries' to be replaced by the words 'aliens in general'.

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[249] E/AC.32/SR.10, pp. 9-12

[250] E/AC.32/L.32, Article 10

[251] E/AC.32/SR.25, p. 5

[252] E/1618, p. 47

[253] E/AC.32/L.40, p. 41

The representative of the ILO drew attention to the comments submitted by the Director General of the ILO.[254]

Attention was drawn there to the fact that although Article 19 paragraph 1 of the Draft Convention reproduced most of the rules contained in Article 6 paragraph 12 of the Migration for Employment Convention, the latter also dealt with the question of member-ship of trade unions. In that Convention, the question had been solved by according migrant workers equality of treatment with national workers. In the draft Convention relating to the Status of Refugees, however, Article 10 provided that refugees should be accorded the most favourable treatment accorded to nationals of foreign countries. The *ad hoc* Committee had linked the right to belong to trade unions with the right to take an active part in their administration and organisation. He wished to point out how desirable it was to have the question of membership of trade unions dealt with in Article 10 of the Convention on the basis of equality of treatment with nationals.

The Israeli representative saw a notable disparity between Article 10 and the comment of the Convention. If that comment correctly set forth the intention of the Article, the words 'As regards non-profit-making associations' should be replaced by the words 'As regards the rights to form or join non-profit-making associations'. The observations of the Austrian Government should receive consideration by the Committee.

The US representative recalled that the representative of the American Federation of Labour had said that such a formulation might harm the cause of refugees by advertising the possibility that they might organise labour unions to compete with those already existing. In his opinion it would be undesirable to amend the wording of the Article, which in any case covered that type of activity.

He noted that the Austrian Government would prefer no reference to rights of association and the Italian observer had indicated that his Government would prefer a minimum formula. The ILO wished to go in the opposite direction and proposed to remove the right to join trade unions to Article 19. Great attention should be paid to the views of countries like Austria, Belgium and Italy which had many refugees. The proposal of the ILO would receive serious consideration by the US Delegation.

The Belgian representative said his Government was tied to certain countries, such as the Benelux countries, and would not accord to refugees the preferential treatment it accorded to Benelux nationals.

The representative of the Secretariat said that Article 10 provided for most-favoured-nation treatment. If a State was a party to the Migration for Employment Convention, a number of aliens would come within the scope of that Convention. If it were not a party, the Convention would clearly not apply. Article 10 solved the problem.

The French representative observed that migrant workers should not be confused with refugees. Some migrant workers were not refugees; some refugees were not employed. The very general formula used left open the question whether membership or organisation of trade unions was meant.

The US representative said it was true that migrant workers and refugees were not identical, though they overlapped. If an international organisation affiliated to the UN had decided to give special treatment to migrant workers, the Committee should consider whether refugees might be in even greater need.

The Italian representative said with regard to Article 10, as with Article 9, the Italian Government felt that refugees should not receive preferential treatment but the same treatment normally accorded to aliens in general. It might be well to add some words to the effect that Article 10 was subject to the provisions of Article 2.[255]

The Swiss representative wanted to know whether Article 10 also covered associations with definitely political aims and, if so whether Contracting States could still ban such associations either under Article 2 or perhaps under the general Article proposed by the UK representative.

Switzerland could only offer first asylum to refugees. She was desirous of according refugees who had been given the right of permanent residence all the advantages offered by the text before the Committee, but it might not be possible for her to accord the same advantages to refugees not granted the right of permanent residence.

The Venezuelan representative said it was common knowledge that some countries did not allow aliens to engage in any kind of political activity, and in such countries the Article would either not apply at all or it would mean that, refugees were to receive the best treatment accorded to aliens generally, but as aliens generally were not allowed to engage in political activity, refugees would also be forbidden to engage in it. The non-profit-making associations might often be political in character.

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[254] E/AC.32/7

[255] E/AC.32/SR.36, pp. 23-27

A second question arising from Article 10 concerned the membership of trade unions. Some countries forbade trade unions to engage in political activities and in such countries any refugee who joined a politically active trade union and took part in its activities would be subject to the sanctions of the law of the country.

There was no need to provide for most-favoured-nations treatment since the privileges granted would only very rarely be made subject to reciprocity, even more rarely to treaty reciprocity. He therefore proposed that the Article be amended so as to provide for the same treatment as was generally accorded to foreign nationals.

He was supported by the Belgian representative.

The US representative emphasized that when the Convention gave refugees the same privileges as aliens in general, it was not giving them very much. He questioned whether, with regard to the right of association, most governments were really not prepared to grant better treatment to refugees. The Committee would recall that the representative of the ILO had proposed that refugees should receive national treatment regarding membership as was provided under the Migration for Employment Convention.

The UK representative said that Article 10 was one of those about the necessity for which the UK Government felt some doubt. If the Committee agreed that the provisions were already sufficiently covered by ILO conventions, it would clearly be undesirable to write the same provisions in to a number of conventions. If, on the other hand, it was thought necessary to include the provisions in the draft convention, consistency was essential.

The French representative did not consider that the matter could be left to the ILO alone since its activities in that domain did not entirely cover the field of application of Article 10. The right to form a trade union and the right of association were two different things. Article 10 had its place in the Convention.

The US representative emphasized the importance of making the Convention as liberal and independent as possible, since he hoped it would receive more ratifications than the ILO Conventions had received in the past.

The representative of the ILO said that the right to form non-profit-making associations was of the highest importance, particularly in the case of refugees, and should certainly be covered by the Convention. The Migration for Employment Convention covered only migrant workers.

The Belgian representative said there were associations other than trade unions involved whose activities might give rise to legitimate concern.

The Chairman said the comments put forward since the Committee had adopted the Article had left him unconvinced of the need for any change in the wording.

The proposal that refugees should receive the most-favourable treatment accorded to nationals of foreign countries with regard to non-profit-making associations was adopted by 7 votes to none, with 4 abstentions.[256]

The Drafting Committee proposed the following text:

> 'As regards non-profit-making associations and trade unions the Contracting States shall accord to refugees the most favourable treatment accorded to aliens generally.'[257]

The Chairman put to the vote the proposal that the words 'The most favourable treatment accorded to nationals of foreign countries' be replaced by the words 'the treatment accorded to aliens generally'.

The proposal was rejected by 6 votes to 5, with no abstention.

Article 10 was adopted.[258]

The Committee made the following comment:

> 'In articles 10 and 12, the Committee considered carefully suggestions for changes and reservations in the light of particular problems facing certain States, but decided that the previous provision should be retained as the general standard.'[259]

At the Conference of Plenipotentiaries, Switzerland proposed the following amendment:

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[256] E/AC.32/SR.37, pp. 4-11

[257] E/AC.32/L.42, Article 10

[258] E/AC.32/SR.41, pp. 9-11

[259] E/1850, p. 12

'As regards *non-political* and non-profit-making associations and trade unions...'[260]

The Swiss representative said that in Switzerland certain limits were imposed on the political activity of aliens resident in the country. Refugees were debarred from engaging in any political activity in Switzerland.

His amendment was supported by the Egyptian representative.

The Belgian representative said as regards the establishment of associations and trade unions, the Belgian Government was prepared to grant to refugees the treatment accorded to aliens in general.

The UK representative said it was not clear whether the Article related to joining associations alone, or to forming them also. It was necessary to ensure that the terms of the Article were consistent with ILO Conventions.

The Swiss amendment was adopted by 10 votes to none, with 9 abstentions.

Article 10 as amended was adopted by 16 votes to none, with 3 abstentions.[261]

The Style Committee proposed the text which is now in the Convention.[262]

That text was adopted by 20 votes to none, with 1 abstention.

Commentary

The 1933 and 1938 Conventions referred particularly to associations for mutual relief and assistance. The term 'lawfully staying' is explained later. It does not include refugees who have overstayed the period for which they were admitted or authorized to stay or who infringed the conditions of their admission or stay. The French term is '*résidant régulièrement'.* Political associations are excluded; regarding them, refugees are, according to Article 7, paragraph 1, accorded the treatment accorded to aliens generally in the same circumstances. Most favourable treatment means the best treatment which is accorded to nationals of another country by treaty or usage. It also includes rights granted under bilateral or multilateral treaties on the basis of special provisions or the 'most-favoured-nation' clause. The Article includes both the right to form and to join associations and trade unions. Where trade unions are concerned, they may, of course, engage in political activities unless this is prohibited under the law of the country concerned. There is, on the other hand, no obligation to admit refugees.

ARTICLE 16. ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Travaux Préparatoires

Article 9 of the Secretariat draft reads:

'1. Refugees shall have, in the territories of High Contracting Parties, free access to the courts of law.

2. In the countries in which they have their domicile or regular residence, refugees shall enjoy the same rights and privileges as nationals. They shall, on the same conditions, enjoy the benefit of legal assistance. They shall be exempt from *cautio judicatum solvi*.

3. In the matters referred to in paragraphs 1 and 2 above, refugees shall be treated, in the countries of the High Contracting Parties in which they do not reside, as nationals of the country where they have their domicile or regular residence.'

In the comment it was stated:

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[260] A/Conf.2/35

[261] A/Conf.2/SR.8, pp. 8-11

[262] A/Conf.2/102, Article 15

Paragraphs 1 and 2

'Although in principle the right of a refugee to sue and to be sued is not challenged, in practice there are insurmountable difficulties to the exercise of this right by needy refugees: the obligation to furnish *cautio judicatum solvi* and the refusal to grant refugees the benefit of legal assistance make the right illusory. In many countries legal assistance is available solely to nationals and only foreigners who can invoke a treaty of reciprocity are granted the benefit of legal assistance.'

'Refugees shall therefore be exempted, as was done in the Conventions of 1933 and 1938, from the obligation to furnish *cautio judicatum solvi* and should enjoy the benefit of legal assistance on the same conditions as nationals.'

Paragraph 3

'Refugees are to have free access to justice, not only in the country of residence but in any other country party to the Convention. They would be entitled in this respect to benefit under the system applied to nationals of the country of asylum in pursuance of treaties in force.'[263]

The French draft contained the following:

'Article 7. Right to appear before the courts as plaintiff or defendant.

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

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

3. In the matters referred to in paragraphs 1 and 2 above, refugees shall be treated, in the countries of the High Contracting Parties in which they do not reside, as nationals of the country where they have their domicile or regular residence.'

At the first session of the *ad hoc* committee the UK representative proposed to delete the words 'domicile or' because the aim was to give refugees the right to sue and to be sued in the country of their residence whether it was the country of their domicile or not. Secondly, it would be better amending the words 'and shall be exempt' to read 'and to be exempt' so as to emphasize that refugees were subject to the same conditions as nationals regarding to both the benefit of legal assistance and exemptions from *cautio judicatum solvi.*

As to the first paragraph of the French draft 'free and ready access' he preferred the text of the first paragraph of the Secretariat text since the words 'free' and 'ready' were synonymous if used alone, but used in conjunction, 'free' might mean without the payment of fees.

The Israeli representative thought there would be no objection to saying 'free and ready access' in the French version, while using the expression 'free access' in the English version.

It was so decided.

The French draft as amended was adopted.[264]

The Working Group proposed the following wording:

'1. A refugee shall have free access to the courts of law in the territories of the Contracting States.

2. In the country in which he has his habitual residence, a refugee shall enjoy in this respect the same rights and privileges as a national. He shall, on the same conditions as a national, enjoy the benefit of legal assistance and be exempt from *cautio judicatum solvi*.

3. In countries other than the one in which he has his habitual residence, a refugee shall be accorded in these matters the treatment granted to a national of the country of his habitual residence.'[265]

The Chairman remarked that the word 'territories' in paragraph 1 should be changed to 'territory'.

It was so decided.

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[263] E/AC.32/2

[264] E/AC.32/L.42, Article 11

[265] E/AC.32/L.42, Article 11

The US representative pointed out that persons who had only recently become refugees and therefore had no habitual residence were not covered by the provisions of paragraphs 2 and 3, but only by those of paragraph 1.

Article 11, as amended, was adopted.[266]

The Committee made the following comment:

Paragraphs 1 and 2.

> 'These paragraphs reproduce the substance of the 1933 Convention, Article 6 and the 1938 Convention, Article 8'.[267]

Austria made the following comment:

> 'As regards grants of public assistance to indigenous persons *(Armenrecht)* and the exemption from *cautio judicatum solvi* mentioned under 'Same rights and privileges' it is suggested that these provisions be given the form of a recommendation.

In this connection, it may be mentioned that refugees change their residence more frequently than other persons, even if they have their habitual residence on the national territory or in a foreign State which grants reciprocity in this respect.'[268]

At the second session of the *ad hoc* Committee the Drafting Committee proposed the same text as adopted at the first session.[269]

This text was adopted.[270]

At the Conference of Plenipotentiaries Yugoslavia proposed an amendment reading:

> 'After habitual residence' insert the following words: 'and if he is considered as a refugee under the terms of this Convention'.[271]

The Yugoslav representative stated that the purpose of the amendment was to ensure that persons who were not refugees should not be treated as such i.e., there was resident in Argentina a group of persons who had been pronounced war criminals by the UN War Crimes Commission, but who were treated by the Argentine Government as refugees.

The President said the Yugoslav amendment raised a general problem which related also to Articles 7 (Personal Status) and 9 (Artistic and Industrial Property).

The Belgian representative said the question raised a new problem, namely, the manner in which a decision as to whether an individual did or did not possess the status of refugee was to be reached in various countries.

The Israeli representative did not consider that the purpose of the Yugoslav amendment was in point of fact valid. Once the Convention had been ratified, it would come into force *inter paribus.* No Contracting State would be able to make a reservation on Article 1. Consequently, a standard would readily be available to all States signatories, and it would be easy enough to ascertain whether an individual was a refugee or whether his claim to be considered as such was vitiated by the exclusion clause of Article 1. In the case of States which had not ratified the Convention, the problem would in any case not arise.

The Belgian representative pointed out that a refugee might fail to retain that status. It should be clearly indicated whether the State making the second decision would be bound by the first one. A decision arrived at between Contracting States would obviously have no binding force on States that had not signed the Convention. But a second investigation into a refugee's position might become necessary between the Contracting States them-selves.

The Israeli representative said that, assuming the Governments of the UK and Yugoslavia were both parties to the Convention, and that a refugee residing in the UK wished to sue a debtor in Yugoslavia, the legal authorities in the latter country would ask the UK authorities whether the claimant was a refugee. If the answer was in the affirmative, the problem would be solved for the Yugoslav court.

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[266] E/AC.32/SR.25, pp. 5-6

[267] E/1618, p.48

[268] E/AC.32/L.40, p. 42

[269] E/AC.32/L.42, Article 11

[270] E/AC.32/SR.41, p.11

[271] A/Conf.2/31, Article 11, paragraph 3

The Yugoslav representative considered that the problem to which his amendment related existed in the application of the Convention in general. He would accordingly withdraw his amendment for the time being, and submit a proposal of a more general nature at a later stage.

In connection with a reservation by the Egyptian representative the Belgian representative said the practice of demanding *cautio judicatum solvi* was dying out, and that, in Belgium, for instance, it was no longer required, except in commercial litigation. Furthermore, exemption from *cautio judicatum solvi* was provided for in one of the first few clauses in all bilateral treaties.

Paragraph 1 of Article 11 was adopted unanimously.

At the request of the Egyptian representative paragraph 2 was voted on in two parts. The provision concerning legal assistance in the country of residence was agreed unanimously.

The provision regarding exemption from *cautio judicatum solvi* was adopted by 19 votes to 1.

Paragraph 2 as originally drafted was adopted by 18 votes to none, with 2 abstentions.

Article 11 as a whole was adopted by 19 votes to none, with 1 abstention.[272]

The Style Committee proposed the text which is now in the Convention.[273] This text was adopted by 21 votes to none.[274]

Commentary

Paragraph 1

> 'Free access' to courts does not mean that a refugee is free from the payment of any fees or charges such as court fees which nationals have to pay in the same circumstances. In conjunction with Article 29 such fees and charges may not be higher than those levied on nationals. Free access is provided for to courts only, not to administrative authorities, but other Articles of the Convention such as Article 32 provide for access to administrative authorities. The provision applies to all refugees wherever resident and whether the residence is lawful or not. According to Article 42 no reservation may be made to this provision.

Paragraph 2

> The provision regarding legal assistance applies only in so far as legal assistance is provided for by the State or under a State support scheme. In some countries legal assistance is provided for by Bar associations. *Cautio judicatum solvi* is the security for costs which foreigners have sometimes to furnish for the costs of the other party in civil proceedings provided the plaintiff loses the lawsuit. As to meaning of habitual residence see Article 14.

Paragraph 3

> This paragraph, too, applies also to refugees who have their habitual residence in a non-Contracting State. Refugees who have not yet established habitual residence in any country will not benefit from the provisions of paragraphs 2 and 3.

Other treaties to which the Contracting State is a party may be relevant in this connection such as the International Covenant on Civil and Political Rights (Articles 14, 16), the European Convention for the Protection of Human and Fundamental Freedoms (Articles 4, 6 paragraphs 1 and 3). That Convention provides, in particular, for the free assistance of an interpreter, if necessary. Further, the Hague Convention on Civil Procedure and the European Convention on Establishment and its Protocol are relevant. According to Article 7 of that Convention, nationals of the parties shall have access to the judicial and administrative authorities of the other States Parties and shall have the right to obtain the assistance of any persons of their choice who is qualified by the law of the country concerned. Article 8 provides for free legal assistance in another State party on the same basis as nationals of the State concerned. Article 9 provides for exemption from *cautio judicatum solvi* for nationals of the States Parties. It further provides that when a person has been exempted from *cautiojudicatum solv*i an order to pay the expenses of proceedings shall be enforceable in the country of the person's residence.

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[272] A/Conf.2/SR.8, pp. 11-14

[273] A/Conf.2/102, Article 16

[274] A/Conf.2/SR.34, p.24

Judicial Decisions

In Austria, the Supreme Court had to decide on 24 July 1957 in a divorce case of Hungarian refugees on a claim that the wife had not her habitual residence in Austria because she wanted to emigrate as quickly as possible.

The Court held 'habitual residence is the place in which a person uses to sojourn during some time even if not uninterruptedly. The intention to remain permanently is not relevant but only whether a person makes, in fact, a place the centre of their life, their economic existence and their social relations. This is also the case of the refugee who establishes residence in a place in order to clarify his or her future fate. Even if no permanent residence is planned, nevertheless residence until a definite settlement of his or her life can be carried out. Until such time, the place of residence of the refugee is the centre of their life, their economic existence and their social relations. It cannot be said of the plaintiff that she does not have her habitual residence in Austria.'[275]

In France, the *Tribunal de la Seine* decided on 14 May 1954 in *Ilitsch* v. *Banque Franco-Serbe* that the Franco-Yugoslav Convention was applicable to refugees not deprived of nationality and that they were therefore exempt from *cautio judicatum solvi*.[276]

In the Federal Republic of Germany the Federal Court held, on 10 June 1982[277], concerning the maintenance compensation of a Yugoslav wife living in Yugoslavia who had been divorced from her refugee husband living in the Federal Republic, that since the spouse had the status of refugee according to the 1951 Convention and had his habitual residence in the Federal Republic he had, according to Article 16 paragraph 2 of the Convention, the same access to courts as German nationals and was accordingly as to international competence in the same position as a German national. From the international competence concerning the divorce procedure, followed that for the procedure concerning maintenance.[278]

In Switzerland the Federal Tribunal had to decide, in *Grundul v. Bryner* on whether the appellant resident in Sweden was entitled to exemption from *cautio judicatum solvi.* He was born in Latvia, then part of Russia; he emigrated to China in 1913, acquired Latvian nationality in 1918; in 1949 Latvia was occupied by the Soviet Union; in 1955 he emigrated to Norway. He had been recognized by the IRO.

While he was thus a refugee under Article 1A(1) of the Convention the Court held that he was also a refugee under Article 1A(2). His former habitual residence was China where he had a well-founded fear of persecution. The Court referred to the Hague Convention on Civil Procedure of 17 July 1905 and Article 16 of the 1951 Convention and held that he was exempt from *cautio judicatum solvi.*[279]

ARTICLE 17. WAGE-EARNING EMPLOYMENT

'1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse.

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schernes.'

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[275] Ev. Bl.Nr. 357/57

[276] Dalloz 1954 Somm. p. 71

[277] ATF 83 (1951) I p.16

[278] Nb ZB 626/80

[279] BGHZ 75,241,243 f.

Travaux Préparatoires

The Secretariat draft contained the following provision:

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

2. The restrictions to which paragraph last preceding refers shall be automatically suspended in favour of refugees domiciled or regularly resident in the country, to whom one of the following circumstances applies:

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

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

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

3. The High Contracting Parties reserve the right to accord the treatment given to national wage-earners to specified categories of refugees.'

In the comment it was stated:

> 'This Article is of particular importance. Because of their limited resources and their status, wage-earning employment is the only type of employment to which most refugees can aspire.

The first two paragraphs repeat the provisions of the 1933 and 1938 Conventions. The third paragraph is new.[280]

The French draft contained the following provision:

> 'The High Contracting Parties undertake to accord refugees regularly resident in their territory the most favourable treatment given in the country in question to nationals of a foreign country as regards the right to engage in wage-earning employment.

In any case, the restrictive measures ensuing from the application of laws and regulations for the protection for the national labour market shall be automatically suspended in favour of refugees who fulfil one of the following conditions:

(a) having completed at least three years' residence in the country;

(b) having a spouse possessing the nationality of the country of residence;

(c) having one or more children possessing the nationality of the country of residence.'[281]

At the first sessions of the *ad hoc* Committee the representatives of Israel and the US declared themselves in favour of the first paragraph of the French text as more liberal than the Secretariat draft.[282]

It was decided to take the French draft as the basis of discussion.

The Belgian representative said that if the Committee approved the clause providing for the most favourable treatment, he would be obliged to make reservations.

The US representative supported the French text.

In reply to a statement by the representative of the IRO the French representative said he saw no objection to the deletion of the expression 'at least'.

The representative of the IRO recalled that IRO had concluded agreements with certain countries of reception providing for a mass influx of refugees into those countries under a scheme for manpower recruitment. Those agreements stipulated that after the completion of their original contracts, refugees would be entitled to the same conditions as nationals as regards the right to engage in wage-earning employment. He proposed to add after Article 13 a supplementary Article dealing with that special category of refugees reading as follows:

'1. The High Contracting Parties undertake to accord to refugees admitted to their territory under a scheme for the recruitment of foreign manpower, the same treatment accorded to their nationals in respect of access to paid employment, provided they have fulfilled the obligations of their original contract.

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[280] E/AC.32/2, Article 13

[281] E/AC.32/L.3, Article 12

[282] E/AC.32/SR.12, pp. 10-12

2. Refugees admitted to the territory of the High Contracting Parties under an immigration scheme shall also be accorded the same treatment as nationals with respect to paid employment.'

The French representative thought the supplementary Article would go beyond the intentions of his Government. A provision of this kind would be unfavourably received by the trade unions. There was no reason for including in a general convention a special provision which related only to certain particular territories.

The Belgian representatives shared the views of the French representatives.

The US representative wondered whether a provision reproducing the gist of paragraph 3 of Article 13 of the Secretariat draft might not be added to the French text; it should, however, be amended to read that the High Contracting Parties would give favourable consideration to the possibility of according the treatment given to national wage-earners to specified categories of refugees instead of merely stating that 'they reserve the right' to do so.

The rightful place of the suggestion of the representative of the IRO was in the agreements which IRO and the countries concerned had concluded or would conclude. It did not seem that Governments which would conclude such agreements in the future should be committed in advance.

The UK representative said the 1933 and 1938 Conventions had concerned only a limited group of refugees. Since then, the economic situation of the UK has changed. The total number of refugees had risen by 250,000 since 1939. It was not a question of refusing to give refugees the most favourable treatment regarding wages or working conditions proper; the restrictions which the UK could not lift was that concerning access to paid employment of their own choice. The UK was therefore unable to accept the first paragraph of the French text.

Regarding the second paragraph, he believed that the length of residence provided for in sub-paragraph (a) was inadequate.

As regards sub-paragraph (c), all children born on British territory were automatically British subjects; the application of that sub-paragraph would lead to a capricious discrimination between refugees, by favouring those who had children born after their arrival.

The Chairman, speaking as representative of Canada, said that his country could easily accept the text of the Article proposed by the French delegation.

The Danish representative said that his country's position was much like that of the UK. He has no serious objections to the solution proposed by the French representative but was not in a position to express his Government's opinion at the existing juncture.

The Chinese representative supported the provision giving refugees the most favourable treatment possible. He suggested, however, that the expression 'a favourable treatment' be substituted for 'the most favourable treatment'. His delegation saw certain objections to the adoption of sub-paragraphs (a), (b) and (c) of the second paragraph. For the same reasons as those stated by the UK representative it could not accept the fixing of the time of residence at three years. There was no reason in law to favour a refugee who married a person of Chinese nationality.

The US representative remarked that the Committee could choose between two solutions: either to provide only minimum measures in favour of refugees or to lay down measures more favourable to them and to permit reservations. In his opinion the latter solution should be adopted.

The Belgian representative observed that the French text comprised a first part which represented an advance upon previous conventions on the subject and a second part which merely reproduced the stipulations of the 1933 and 1938 Conventions. While it was understandable that some delegations should hesitate to accept the innovation in the first paragraph, it would be surprising if the Committee should wish to retract from the results obtained by the previous Convention.

The French representative observed that the restrictions referred to in the second paragraph were certainly not those stipulated in agreements between certain countries and the IRO. They were restrictions deriving from the domestic law of various countries. Like the representative of Belgium, he thought that the Committee should not take a retrograde step.

The representative of the IRO supported the solution recommended by the US representative. With regard to refugees in special categories it was because the existence of the IRO would be terminated shortly that the Organisation would like to see a clause safeguarding the position of these refugees in the future.

The Chairman appealed to all members to accept the French text of the first paragraph; every delegation would have the right to make whatever reservations it deemed fit.

The UK representative said that in the circumstances he would not oppose the French draft.

The Israeli representative suggested that the words 'shall not be applied to refugees...'.

His proposal was accepted by the French representative.

The Belgian representative suggested that in the first paragraph of the French text the expression *'réfugiés résidants habituellement'* should be replaced by the words *'réfugiés résidants régulièrement'.*

The representative of the IRO asked the French representative whether in the first line of the second paragraph, he would agree to the substitution of the following phrase, taken from recommendation 86 of the ILO: 'In countries in which employment of migrants is subject to restrictions, those restrictions shall not apply to refugees'.

The US representative suggested that the word 'migrants' should be replaced by 'aliens'.

The French representative had no objection.

The UK representative thought that the term 'protection of national workers' could be substituted, which might satisfy the representative of the ILO as well as of the American Federation of Labour.

The French draft was, in principle, unanimously adopted on the understanding that its final drafting would be done at a later date.

The US representative submitted an additional paragraph, based on the supplementary Article suggested by the IRO, reading:

> 'The High Contracting Parties shall give sympathetic consideration to assimilating the rights of refugees in this regard as far as possible to those of nationals, particularly with regard to refugees who enter pursuant to programs of labour recruitment or pursuant to immigration schemes.'

It was decided in principle to insert that paragraph after the French text.[283]

The Working Group proposed the following text:

'1. The Contracting States undertake to accord to refugees lawfully in their territory the most favourable treatment given to nationals of a foreign country in the same circumstances as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of the Convention for the Contracting State concerned, or who fulfil one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees in this regard to those of nationals, and in particular of those refugees who have entered their territory pursuant to programs of labour recruitment or under immigration schemes'.[284]

The Group made the following comment:

> 'The expression 'in the same circumstances' is intended to mean throughout the Convention that the same treatment would be given to refugees as to other aliens admitted to the country for the same purposes and under the same conditions.
>
> Nothing in this Article is intended to restrict the power of governments to attach conditions to the admission of refugees, to demand that they fulfil these conditions or to remove such conditions. This Article is not intended to remove conditions made prior to the entry into force of the Convention.'[285]

The UK representative remarked that, while wishing to be as liberal as possible, his Government was unable to accept without reservation the provisions of Article 12. However, it hoped and intended to relax as soon as possible the restrictions which, at the present time, it was compelled to impose.

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[283] E/AC.32/SR.13 pp. 2-13

[284] E/AC.32/L.32

[285] E/AC.32/L.32, Add. 1, p. 8

The Danish representative said the UK representative's remarks applied also to the position of his Government.

The US representative suggested that the words 'undertake to' in the first line of paragraph 1 should be replaced by 'shall', and that the word 'give' in the second line should be replaced by 'accorded'.

It was so decided.[286]

The Committee made the following comment:

Paragraph 1

> 'As indicated in the comment to Article 8, the phrase 'in the same circumstances' refers to the purpose for which the refugee is in the country and the conditions imposed on his presence there. There is no intention to restrict the power of governments to attach conditions to the admission of refugees or to demand that they fulfil these conditions. Nor is the provision intended to remove any such conditions imposed prior to the entry into force of this Convention.'

Article 7 paragraph 1 of the 1933 Convention and Article 9 paragraph 2 of the 1938 Convention were quoted.[287]

Austria made the following comment:

> 'The application of the most-favoured-nation clause in the planned general form would meet in Austria with the difficulties indicated in Article 4. The number of persons to whom the most-favoured-nations clause applies is, as a rule, relatively small. Since Austria has hundreds of thousands of refugees, their inclusion in a most-favoured-nation clause which Austria would be prepared to grant to another State, would make it impossible for Austria to conclude such agreements in the future.'

Paragraph 2

> 'The great number of refugees in Austria does not permit placing them on an equal footing with Austrian nationals in matters of employment. In the case of Austria periods of residence required as a basis for a favourable treatment of refugees would have to be much longer. It should be required, moreover, that the refugees adjust themselves successfully during this period to the economic life of the country of refuge.'
>
> 'Instead of the proposed form of Article 12 it is suggested, therefore, to leave detailed administrative regulations of matters of employment to the country of refuge, while stressing the most favourable treatment as a matter of principle.'[288]

France made the following comment:

> 'Article 12. As this Article stands at present, the French Government would be obliged to reserve the right to apply the law of 1932 providing for the possible limitation to a certain percentage of the number of foreigners working 'in the same circumstances'.[289]

The UK commented:

> 'Articles 12 and 13. While His Majesty's Government will consider sympathetically the possibility of relaxing the conditions upon which refugees have been admitted to the UK for employment since the war, they regret that for the reasons which were explained fully to the *ad hoc* Committee it is not possible to go as far as the Article proposes.'
>
> 'In particular, they would draw attention to the fact that the principle in paragraph 2(c) of Article 12 would operate quite differently between countries whose nationality laws are based on the *jus sanguinis* and those whose laws are based on the *jus soli*: in the latter case its operation would be quite capricious, and even if His Majesty's Government were able, at some time in the future, to accept the general principles of the Article, they could not accept this particular provision.'[290]

Italy stated in its comments:

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[286] E/AC.32/SR.25, pp. 6-7

[287] E/1618, p. 49

[288] E/AC.32/L.40, p. 43

[289] E/AC.32/L.40, p. 43

[290] E/AC.32/L.40, p. 44

'As regards more particularly the right to work, the Italian Government has repeatedly shown its willingness to cooperate in all humanitarian activities within the UN or with any other associations of civilised and democratic peoples. It may therefore accept to enforce in Italy some provisions of this kind as soon as unemployment has fallen back to the average figure recorded for a certain number of pre-war years to be determined.'[291]

Australia made the following comment:

'In paragraph 1, the expression 'lawfully in their territory' is not explained. An explanation is given in the notes on Article 10 but these notes are not an integral part of the Convention. The explanation indicates that the expression would exclude a refugee who, while lawfully admitted, had overstayed the period for which he was admitted or who had violated any other conditions attaching to his entry or stay. It is noted that the words 'subject to the conditions under which such refugees were admitted' are specifically included in Article 21.

'Concerning paragraph 2, in the Commonwealth and State Government service, the employment of other than natural-born or naturalized Australian subjects is prohibited or severely circumscribed. These restrictions would apply to all refugees, including those who fulfil any one of the conditions specified. Australia maintains these conditions on security grounds and not for the protection of the 'national labour market. It is presumed that this case has been envisaged and is not affected.

'The notes to Article 12 which, it is pointed out again, are not a part of the text, state that the phrase 'in the same circumstances' in paragraph 1 refers to the purpose for which the refugee is in the country and the conditions imposed on his presence there. It is said that there is no intention to restrict the power of governments to attach conditions to the admission of refugees. However, paragraph 2 is prefaced by the words 'in any case' and appears to apply quite apart from paragraph 1 and any conditions of entry. The question is of primary importance to Australia.

'A condition of entry for refugees is the acceptance of a two-year work contract which involves direct employment. IRO has accepted this condition of entry by a formal agreement with the Australian Government which includes clauses guaranteeing the rights of refugees to equal pay with local workers and other protective clauses.'

'No difficulty would arise in the case of condition (a); Australia could not accept points (b) and (c) owing to the work contract.'[292]

At the second session of the *ad hoc* Committee the US representative wished to stress that without the right to work all other rights were meaningless. In view of that he felt that perhaps the provisions of Article 12 did not go far enough.

The French representative said that if Article 12 remained as it stood, France would be obliged to express reservations with regard to that part of paragraph 2 beginning with the words: 'or who fulfils one of the following conditions' because of existing labour regulations. First there was the Law of 1932 which authorized the fixing of a maximum percentage of aliens employable in each branch of activity. Then there was a flexible regulation issued in 1946 concerning aliens' identity cards which laid down different conditions on which the holder might accept employment. These provisions did not have the effect of denying refugees the right to work.

The question was whether to retain paragraph 2 of Article 12, and thereby run the risk of having a considerable number of reservations, or whether to delete the paragraph and leave those States which were more favourably placed, some latitude to go further than the text.

The UK representative mentioned the example of a woman who had come to the UK with a permit to engage in one particular sort of employment and had given birth to a child two days after her arrival. Such a woman would be free from all the restrictions imposed by her work permit. That was why it was fair to say that in countries whose nationality laws were based on *jus soli* the provision in paragraph 2(c) would operate very oddly.

The Belgian representative said his Government accepted Article 12. With regard to the first paragraph he would, however, like to express a reservation relating to countries members of regional unions.

The IRO representative hoped that any reservations countries found necessary to make would be specific and not apply to the Article as a whole.

The Chinese representative said he would prefer an amendment to the present wording of Article 12, but should the majority of the Committee wish to retain it, his Government might have to make a reservation to it.

The French representative suggested transforming the second part of paragraph 2 into a recommendation.

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[291] E/AC.32/L.40, p. 14

[292] E/1703, Add. 7, Article 12

The UK representative proposed the deletion of paragraph 2(c).

This proposal was rejected by 6 votes to 2, with 5 abstentions.[293]

The Drafting Committee proposed the following wording:

'1. The Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case restrictive measures imposed on aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting States concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence;

(c) He has one or more children possessing the nationality of country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees in this regard to those of nationals, and in particular those refugees who entered their territory pursuant to programmes of labour recruitment or under immigration schemes.'[294]

The UK representative called attention to a misprint in the text of the Article. In the fourth line of the second paragraph, the words 'Contracting States' should be in the singular.

The Chinese representative thought that in the second line of the first paragraph the words 'nationals of a foreign country' should be replaced by the word 'aliens'.

He was opposed by the US representative.

Article 12 was adopted.[295]

In Articles 10 and 12, the Committee considered carefully suggestions for changes and reservations noted in the light of particular problems facing certain States, but decided that the previous provisions should be retained as the general standard.'[296]

At the Conference of Plenipotentiaries Australia proposed to add the following new Article which might either precede Article 12 or be placed with other interpretative Articles:

> 'Articles 12, 13, 14 and 21 of this Convention shall be read subject to the proviso that a Contracting State shall have the right in the interests of public welfare to impose reasonable conditions as to the type and place of employment, for a limited period, upon any immigrant who seeks admission to its territory, for the expressed purpose of taking up permanent residence there.'[297]

Belgium proposed to amend paragraph 2(b) as follows:

> 'He has a spouse possessing the nationality of the country of residence and resides with that spouse.'[298]

The UK proposed to substitute in paragraph 2(a) the word 'four' for the word 'three' and to delete paragraph 2(c).[299]

Yugoslavia proposed:

> 'As regards the right to engage in wage-earning employment, the Contracting States shall accord to refugees lawfully in their territory the same treatment as they accord to their nationals.'[300]

The representative of the Federal Republic of Germany supported the Yugoslav amendment.

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[293] E/AC.32/SR.37, pp. 11-20

[294] E/AC.32/L.42, Article 12

[295] E/AC.32/SR.41, pp. 12-13

[296] E/1850, p. 12

[297] A/Conf.2/41

[298] A/Conf.2/47

[299] A/Conf.2/40

[300] A/Conf.2/31

The Colombian representative submitted that if the Yugoslav amendment to paragraph 1 was adopted, paragraphs 2 and 3 would obviously become pointless.

The Swedish representative said while his delegation was not opposed to the Yugoslav amendment, it would have to enter a reservation should that amendment be adopted and, indeed, as far as paragraph 2 was concerned, even if the Yugoslav amendment was not adopted. It would also be obliged to enter a reservation to paragraph 1, as it could not undertake to extend to refugees the preferential treatment granted to nationals of the Scandinavian countries under existing special treaties.

The Swiss representative said his country could not undertake to apply the provisions of paragraph 2(a) and (b) for an indefinite period.

The Danish representative said his delegation would also have to enter a reservation relating to the whole of Article 12.

The Austrian representative said he was instructed to enter a reservation concerning Article 12 which his Government could accept as a recommendation but not as a binding provision.

The Belgian representative submitted his amendment to paragraph 2. He said Belgium was prepared to accept Article 12 but would have to enter reservations in respect of paragraph 1 in view of the economic and customs agreements existing between Belgium and certain neighbouring countries.

The Italian representative said the Italian Government could do no more than allow refugees to benefit by the laws and regulations concerning work, employment, salaried professions, insurance and so on, which at the moment applied to all aliens residing in Italy.

The French representative opposed the Yugoslav amendment and the UK amendment to paragraph 2(a).

The Australian representative gave the reasons for his amendment.

The Norwegian representative said Norway accepted the principle laid down in Article 12 but would have to enter a reservation regarding regional agreements. He opposed the Yugoslav amendment.

The UK representative withdrew his amendment.

The representative of the Federal German Republic said he would abstain from voting on the Yugoslav amendment.

The Yugoslav amendment was rejected by 16 votes to 1, with 4 abstentions.

The French representative suggested adding to Article 2(b): 'Should a refugee have abandoned his spouse, he should not be entitled to benefit by this provision.'

The Belgian representative accepted the French suggestion.

The Belgian amendment to sub-paragraph 2(b), as amended by the French representative, was adopted by 6 votes to 5, with 9 abstentions, subject to appropriate drafting changes by the Style Committee.

Article 12 as amended was adopted by 16 votes to none, with 4 abstentions.[301]

The Style Committee proposed the wording which is now in the Convention.[302]

That wording was adopted by 19 votes to none, with 4 abstentions.

The Yugoslav representative said he had abstained because of the restriction measures referred to in paragraph 2.[303]

Regional and National Measures

The OECD, by its Decision on liberalization of manpower movements of 30 October 1953 as amended by Decision Convention(56)258 and adopted on 30 September 1961[304], decided to grant employment permits to workers who are nationals of other Member countries if suitable labour, forming part of the regular labour force, is not available. For the purpose of the Decision, the authorities of each Member country are required to treat refugees recognized as such in another Member country as if they were nationals provided they have the right to return there.

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[301] A/Conf.2/SR.9, pp. 6-18

[302] A/Conf.2/102, Article 17

[303] A/Conf.2/SR.34, p. 24

[304] OECD/C(61)41

By recommendation Convention(58)196 (Final) and Convention(60)65 (Final), also adopted in Decision Convention(61)41, refugees recognized as such by Member countries proceeding to take up employment in another Member country are, subject to certain conditions, to be granted the right to return, valid for a period of at least two years dating from the time of departure. They are also to be granted visas free of charge, where these are required, and are to be issued with appropriate residence and work permits.

The Council of Ministers of the Member States of the EEC adopted a Declaration of Intention concerning Refugee Workers.[305] According to the Declaration, each Member State will give particularly favourable consideration to the admission to its territory, for the purpose of taking up wage-earning employment, of refugees recognized as such according to the 1951 Convention, and established in the territory of another Member State, particularly with a view to granting such refugees as favourable treatment as possible.

In Belgium, according to a Circular of the Ministry of Employment and Labour:

'1. Work permits 'A' or 'Convention' (valid for an unlimited period and issued without regard to the national labour market) are to be issued to refugees fulfilling the conditions of Article 17 paragraph 2 of the Convention and also to refugees who have been employed in Belgium for two years and whose families are residing with them.

'2. Work permits 'B' (valid for one year and issued having regard to the national labour market) are to be issued to refugees for whom Belgium is the first country of asylum and to refugees recognized as such in a Member country of the OECD (with the exception of Portugal and Turkey), provided they have a right of return to that country valid for at least 18 months. If these conditions are fulfilled refugees may also be issued with work permits 'B' for priority industries (mining, quarries, metallurgy and agriculture), without regard to the national labour market.'

In Austria, by Order of the Federal Ministry of Social Administration of 28 February 1968[306] refugees are assimilated to nationals as regards the right to work by automatic deferment of the appointed Day. The appointed Day is the day when they have completed three years' residence in Austria.

In the Federal Republic of Germany, according to the Ordinance concerning Worker Permits of 2 March 1971,[307] persons entitled to asylum are entitled to unlimited work permits.

In the Netherlands, by a Decree of 14 January 1966, persons who have been admitted as refugees by the Minister of Justice do not require an employment permit, nor do aliens who hold a 'residence permit' or a 'settlement permit' and who are in possession of a mandate certificate issued by the UNHCR Representative, in the Netherlands.

The Ministry of Social Affairs and Public Health informed UNHCR that refugees are to be considered as Netherlanders for the purpose of an Arrangement between Musicians and employers that there must be a fixed relation between the number of Netherlanders and aliens employed as musicians in any cafe, restaurant, etc.

In Senegal by Law No. 88-027 of 24 July 1968, the beneficiaries of refugee status are assimilated to aliens who are nationals of a country which has passed with Senegal the most favourable agreement on establishment concerning the activity concerned. Refugees are exempt from reciprocity and the provisions for the protection of the national labour market are not applied to them.

In Switzerland, Article 2 of the Implementing Ordinance of the Federal Department of Economy of 4 March 1965 relating to the decision of the Federal Council of 26 February 1965 concerning the reduction of foreign manpower provides: 'Refugees recognized as such in Switzerland by the Federal authorities are not to be taken into account when computing the number of foreign workers employed.'

Commentary

Article 17 is one of the most important of the Convention. A recommendation concerning wage-earning employment can already be found in the Arrangement concerning the legal status of Russian and Armenian refugees of 30 June 1928 (Rec. 6) and the rule that the provisions for the protection of the national labour market shall not be applied in all their severity to refugees may also be found in the 1933 and 1938 Conventions. Paragraph 2 of Article 17 has been taken from these Conventions.

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[305] J.O. de la CEE Nr.78-22 May 1964, p.1225

[306] Z1.III/109 of 17 January 1968

[307] BGB1.I, 1971, p. 152

The term 'wage-earning employment' has to be understood in its widest sense, covering every case of a person having paid employment. Only self-employment and the liberal professions are excluded but not persons assisting members of the liberal professions (such as doctors, lawyers, etc.) and employed by them.

As to the meaning of the term 'lawfully staying' see below.

As to the meaning of the 'most favourable treatment accorded to the nationals of a foreign country' see Article 15.

As to the meaning of the term 'in the same circumstances' see Article 6.

The second paragraph does not mean that refugees must be granted national treatment. In many countries aliens require a work permit and in this case, it is required of refugees, too, unless they have been specifically exempted from it, but it has to be accorded to them *ex officio* if they fulfil any of the conditions stipulated in paragraph 2. It does not exclude conditions attached to the admission of refugees or their stay. Measures for the protection of the national labour market are either measures imposed on aliens such as restrictions in time or space or concerning employment in certain occupations, or restrictions on the employment of aliens such as fixing a certain number or percentage of aliens in general or in certain occupations or enterprises, or the provision that aliens may only be employed if no nationals are available for the job in question. As the Article provides that refugees shall be 'exempt from restrictions' it would seem not to exclude the imposition of restrictions in the future. Only restrictions for the protection of the national labour market are excluded, not measures taken in the interest of national security such as the prohibition of employment of aliens in defence industries. The prohibition of the employment of aliens in the civil service or in certain categories of the civil service which exists in many countries, is also not excluded.

The term 'residence' in paragraph 2 is not qualified and might, therefore, include residence which may have been illegal for a certain time but was subsequently legalized; short absences should not be taken into account.

Paragraph 2(b) covers even cases where a husband and wife do not live together or are separated, but not if they are divorced; it seems reasonable, however, as was stated in the debate, to also apply the provision in this case if the husband has to pay alimony to the wife. It seems, on the other hand, reasonable to exclude pure marriages of convenience.

The term 'children' in paragraph 2(c) covers illegitimate as well as legitimate children. Here too, it seems reasonable to exclude the father of an illegitimate child who never cared for the child.

Paragraph 3 covers refugees admitted under agreements with the IRO even after its demise, or independently under special schemes. The preoccupation of Australia about refugees who had been admitted with a work contract obliging them to perform specific work for two years was not well-founded. This is covered by the conditions of admission, but after the two years the refugees should, according to the recommendation in paragraph 3, be granted national treatment.

A number of States made reservations to Article 17. They either withdrew them later, however, or put its provisions into force in spite of the reservation. Thus, the provisions of Article 17 can today be regarded as the general standard as regards the right of refugees to engage in wage-earning employment.

ARTICLE 18. SELF-EMPLOYMENT

'The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'

Travaux Préparatoires

The Secretariat draft contained the following provision:

> 'The High Contracting Parties undertake to accord to refugees regularly resident in their territory the most favourable treatment given to foreigners by various treaties (or the treatment given to foreigners generally) as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'

In the comment it was stated:

> 'It should be noted that a certain number of refugees are handicraft workers with special knowledge and occupational skills or manufacturers familiar with manufacturing processes peculiar to their country of origin.
>
> 'There are two possibilities:

1. The first would be to offer refugees the most favourable treatment given to foreigners by virtue of treaties.

2. The second would be to given refugees the treatment given to foreigners generally. 'It will be for the Committee to decide between the two possibilities.'[308]

The French draft contained the following:

> 'The High Contracting Parties undertake to accord to refugees regularly resident in their territory the most favourable treatment given to nationals of a foreign country as regards the right to engage in commerce, industry and handicrafts and to establish commercial and industrial companies.'[309]

At the first session of the *ad hoc* Committee the Chairman announced that the French delegation had withdrawn its draft Article 11.

The UK representative said that his remarks with regard to Article 13 also applied to some extent to Article 14. The UK consequently might have to make the same reservation with regard to Article 14 as to Article 13. He thought Article 14 would be more acceptable if it were to read: 'The High Contracting Parties undertake to accord to refugees regularly resident in their territory the treatment given to foreigners generally, under the same circumstances, as regards...'

The amendment was motivated in part by the fact that foreigners arriving in the UK were required not to engage in self-employment without permission for a certain time, after which they were free to engage in any profession they choose.

The Turkish representative said under Turkish law, only nationals could be self-employed, and Turkey would consequently have to reserve its position on that Article, no matter what its wording. He thought the most acceptable solution would be to accord to refugees the treatment given to foreigners generally.

The Belgian representative was also in favour of according to refugees the treatment given to foreigners generally.

The US representative felt that solution would confer no real benefits on refugees, and wondered whether it might not be possible to find a third solution, whereby refugees would be granted not the most favourable treatment, but a treatment more favourable than that given to foreigners generally.

The Brazilian representative thought the Committee should adopt the first Secretariat solution and accept the fact that several signatories would make reservations with regard to certain professions.

The Turkish representative proposed the following text:

> 'The High Contracting Parties undertake as far as possible to accord to refugees regularly resident in their territory the most favourable treatment possible, which shall in no case be less favourable than the treatment given to foreigners generally...'

The IRO representative suggested that the Committee should adopt the form of words which accorded refugees the most favourable treatment given to foreigners by virtue of treaties, specifying that such treaties must not conflict with restrictions laid down in national legislation in regard to the exercise of certain professions.

The text submitted by the Turkish representative was adopted.[310]

The Working Group proposed the following wording:

> 'The Contracting States shall accord to a refugee lawfully in their territory the most favourable treatment possible and, in any event, treatment not less favourable than that accorded to foreigners generally in the same circumstances, as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.[311]

This text was adopted.[312]

The Lebanese Government made the following comment:

> 'The Ministry commends the noble and humanitarian motives which inspired the Draft Convention and the documents in question, but it wishes to emphasize generally that Lebanon, a country which is already quite

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[308] E/AC.32/2, Article 14

[309] E/AC.32/L.3, Article 11

[310] E/AC.32/SR.13, pp. 13-16

[311] E/AC.32/L.32, pp. 6-7

[312] E/AC.32/SR.25, p. 7

densely populated, and which for a number of years has shown the greatest liberality and hospitality towards the Palestinian refugees, could not safely afford to increase her undertakings in this direction.

'This hesitation applies particularly to certain provisions of the Draft Convention it is feared might give certain undesirables access to Lebanese territory or asylum there.[313] Articles 3, 13 and 14 of the Draft go even further; they make no distinction between such categories of undesirables and for instance, the Palestinian refugees now in the Lebanon.'[314]

At the second session of the *ad hoc* Committee the French representative said the French Government was quite prepared to accept the text of Articles 13 and 14 to the extent that by the expression 'treatment...accorded generally to aliens' was understood the ordinary law treatment of aliens, but not to the extent that, by the operation of a reciprocity clause, France would be lead to extend to refugees in general the reciprocity agreed upon with one or more countries on a particular point.[315]

The Drafting Committee proposed the following text:

'The Contracting Parties shall accord to refugees lawfully in their territory treatment as favourable as possible and in any event, not less favourable than that accorded generally to aliens in the same circumstances, as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'[316]

That text was adopted.[317]

At the Conference of Plenipotentiaries the UK representative suggested to insert the words 'on his own account' after the word 'engage'.

The Australian representative said he was abstaining on Articles 12, 13 and 14 pending the decision yet to be taken on his paper[318] relating to the addition of an interpretative Article.

Article 13 as amended was adopted by 20 votes to none, with 2 abstentions.

The Style Committee proposed the text which is now in the Convention.

That text was adopted by 20 votes to none, with 1 abstention.[319]

Commentary

No corresponding provision existed in the pre-war treaties and arrangements.

As to the meaning of 'treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally' see Article 13.

The Article applies to refugees 'lawfully in the territory' of the Contracting States. Thus, physical presence, even a temporary stay or visit are sufficient, in distinction to 'lawfully staying', the terminology used in other Articles. To a refugee who is not lawfully in the country but who lives elsewhere, on the other hand, Article 7 paragraph 1 applies, that is, the treatment accorded to aliens generally. The refugee must, of course, fulfil the conditions required for the exercise of the activity in question, such as specific qualifications, licences or concessions.

ARTICLE 19. LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

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[313] of. Articles 26 and 27

[314] E/AC.32/L.40, p. 16

[315] E/AC.32/L.40, p. 16

[316] E/AC.32/L.42, Article 13

[317] E/AC.32/SR.41, p. 13

[318] A/Conf.2/41

[319] A/Conf.2/SR.34, p. 24

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Travaux Préparatoires

The Secretariat draft contained the following Article 15:

'1. The High Contracting parties shall accord the most favourable treatment given to foreigners by virtue of treaties (or the treatment given to foreigners generally) to refugees who hold diplomas recognized as equivalent to the diploma required by the country of asylum and are desirous of practicing a liberal profession.

'2. They shall promote, to the fullest extent compatible with their national laws, the settlement of such refugees in their colonies, protectorates and overseas territories and mandated or trust territories.'

In the comment it was stated:

> 'Access to the liberal professions, which are the most highly regulated of all and generally speaking, overcrowded in European countries, is, in principle, barred to foreigners to some extent.
>
> 'There are two possible solutions:
>
> '1. The first would be to accord to refugees the most favourable treatment given to foreigners by virtue of treaties.
>
> 2. The second would be to accord to refugees the treatment given to foreigners generally.
>
> 'This latter solution would in practice be of little help to refugees, since in point of fact access to the professions is accorded only to foreigners - and even then with reservations - by virtue of treaty provisions.'[320]

The French draft contained the following Article 13:

'1. The High Contracting Parties shall accord as favourable treatment as possible to refugees who hold diplomas recognized by the competent authorities of the country of asylum and who are desirous of practicing a liberal profession.

'Overseas territories.

2. The High Contracting Parties shall as far as possible facilitate the settlement of these refugees in their overseas territories and Trust territories.'[321]

At the first session of the *ad hoc* Committee the French representative pointed out that Article 13 of the French draft had been amended by the addition of the words 'and which would be in no case inferior to the treatment accorded to foreigners generally.'

Paragraph 1 of Article 13 of the French draft, as amended was adopted.

The UK representative preferred the deletion of paragraph 2.

The French representative thought it would be preferable to delete paragraph 2 and insert a separate Article applying to all professions.

The US representative proposed to replace the word 'promote' in the English text by the word 'encourage'. On his suggestion it was decided to consider a separate Article to be drafted by the Belgian and French representative.[322]

The UK representative, although still in favour of the deletion of the paragraph, put forward an alternative text as he had been requested:

> 'The High Contracting Parties shall use their best endeavours, consistently with their laws and constitutional practices, to secure the settlement of such refugees in their colonies, protectorates and Trust Territories.'

The Israeli representative pointed out that such a provision might be made to apply only to Article 15, or, alternatively, it might be included in the broader context of the colonial clause (Article 36). In his opinion, the provision should remain as a special paragraph of Article 13. Many countries were under pressure not to admit to their metropolitan territories refugees

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[320] E/AC.32/2, Article 5

[321] E/AC.32/L.3

[322] E/AC.32/SR.13, pp. 16-20

who might compete with professional workers resident there. In some colonial areas, however, there was an urgent need for qualified persons, and nationals of the metropolitan country were often reluctant to respond to that need.

The Brazilian representative agreed.

The UK representative accepted a suggestion of the Belgian representative to replace the words 'constitutional practices' by 'constitutional usage'.

The Danish representative said the Danish Government might be willing to accept Article 15 with certain reservations. The US representative was prepared to accept the provision as part of Article 15.

The UK text of paragraph 2 of Article 15, as amended, was approved.[323]

The Working Group proposed the following text:

'1. The Contracting States shall accord to refugees lawfully resident in their territory who hold diplomas recognized by the competent authorities of the country of residence, and who are desirous of practicing a liberal profession, the most favourable treatment possible and, in any event, treatment not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours, consistent with their laws and constitution, to secure the settlement of such refugees in their colonies, protectorates or in trust territories under their administration.'[324]

That text was adopted.[325]

At the second session of the *ad hoc* Committee the Italian representative reiterated the reservations of his Government with regard to granting permission to refugees lawfully resident in Italy to accept employment.[326]

The Drafting Committee proposed the text adopted at the first session.[327]

There ensued a discussion on the correct equivalent of the term 'lawfully in their territory' in French.

Article 14 was provisionally adopted.[328]

At the Conference of Plenipotentiaries the Netherlands representative questioned whether Article 14 paragraph 2 which dealt with the reinstallation of refugees, was in fact an appropriate provision for the Convention, the aim of which was to provide them with a legal status. He also pointed out that the words 'colonies, protectorates or in Trust Territories under their administration' were not consistent with the wording of Article 34, the 'Colonial Clause'.

Article 14 paragraph 1 was adopted by 19 votes to none, with 2 abstentions.

Article 14 paragraph 2 was adopted by 16 votes to none, with 5 abstentions, subject to drafting changes by the Style Committee.[329]

Egypt proposed a provision reading:

> 'After Article 14, and the following, which might possibly form a new Article:
>
> 'It is understood that the provisions of Articles 12, 13 and 14 above refer only to the right to engage in any form of industry or commerce, or to practice any trade or profession, which the laws of the country concerned do not or may not in future reserve for its nationals or which are not covered by special regulations.'[330]

The Belgian representative wondered whether the Egyptian amendment was really essential to the safeguarding of such rights. The UK representative agreed.

The Egyptian proposal was rejected by 13 votes to 2, with 5 abstentions.[331]

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[323] E/AC.32/SR.14, pp. 2-4

[324] E/AC.32/L.32, Article 15

[325] E/AC.32/SR.25, p. 7

[326] E/AC.32/SR.37, pp. 20-21

[327] E/AC.32/L.42, Article 14

[328] E/AC.32/SR.41, pp. 13-18

[329] A/Conf.2/SR.9, pp. 19-20

[330] A/Conf.2/43

The French representative suggested that instead of 'in their colonies, protectorates or in Trust Territories under their administration' the words 'territories for the international relations of which it was responsible' might be used.

The drafting changes were left to the Style Committee.[332]

The Style Committee proposed the existing wording.[333]

The French representative proposed 'the territories for whose international relations they are responsible'.

The UK representative proposed the addition of the words 'other than the metropolitan territory'. The French representative had no objection.

The French amendment in this form was adopted by 19 votes to none, with 2 abstentions.

Paragraph 1 was adopted by 21 votes to none, with 1 abstention.

Paragraph 2 was adopted by 19 votes to one, with 2 abstentions.

Article 19 as a whole and as amended was adopted by 20 votes to none, with 2 abstentions.[334]

Regional and National Measures

The question of equivalence of diplomas has often been regulated by treaties. The Inter-Universities Bureau of UNESCO delivers opinions on the equivalence of diplomas.

The Committee of Ministers of the Council of Europe adopted Recommendation 253 (1960) to the effect that Governments should consider reviewing, whenever possible, statutory rules applicable to refugee doctors and dentists so as to enable them to exercise their profession in the country in which they live.

In Austria, the Practice of Medicine Act of 30 September 1949[335] as amended by the Acts of 18 July 1952[336] and of 15 December 1954[337] provides that persons of German ethnic origin (*'Volksdeutsche*') who entered Austria before 31 December 1951 (or at a later date as former prisoners-of-war or for purposes of family reunion) are allowed to practice medicine provided they possess an Austrian diploma of doctor of medicine, or an equivalent diploma recognized in Austria not later than on 31 December 1955 and have practiced their profession in their country of origin. Dental surgeons ('*Zahnärzte'*) are included.

Under a law of 31 March 1964,[338] foreigners including refugees who do not have an Austrian medical degree or who have not passed a qualifying examination in Austria may be granted special permission for purposes of studying in a university clinic, medical institution or hospital. Special permission may also be granted to foreign nationals as regards the independent exercise of the medical profession if they possess equivalent medical training, and subject to reciprocity. Refugees are expressly exempted from the condition of reciprocity if they have been resident in Austria for three years.[339]

In Belgium, an Act of 13 May 1955[340] concerning the equivalence of diplomas in the case of political refugees, allows refugee doctors and dentists who have a Belgian '*diplome scientifique'* to obtain the *'titre légal*' (that is, the official qualification which is required in order to practice) provided they pass a test before the '*Jury Central'* appointed by the Minister of Education. This applies to refugees within the mandate of UNHCR and who entered Belgium before 1 January 1953.

According to the Act of 21 May 1929,[341] persons holding foreign medical or dental diplomas entitling them to practice in the country where the diploma was delivered may, with the consent of the *Jury Central* be exempted from having obtained a

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[331] A/Conf.2/SR.9, pp. 20-21

[332] A/Conf.2/SR.25, p. 10

[333] A/Conf.2/102, Article 19

[334] A/Conf.2/SR.34, pp. 24-26

[335] B.G.BI.1949 Nr. 92

[336] B.G.I.1952 Nr. 169

[337] B.G.I.1955 Nr. 17

[338] B.G.B1.1964 Nr. 50

[339] Article 3(a) sub-paragraph 3

[340] Mon.Belge 1955 No.154

[341] Mon.B.1929 Nr.145

Belgian diploma in order to practice in Belgium. According to Royal Decree of 13 February 1933[342] the *Jury Central* may require candidates to sit for an examination in order to obtain an exemption.

In the Federal Republic of Germany, the Federal Medical Practice Act ('*Bundesärzteordnung*') of 2 October 1961[343] provides that homeless foreigners within the meaning of the Homeless Foreigners Law of 25 April 1952,[344] that is, refugees and displaced persons under the protection of the IRO who were on Federal territory before 1 July 1950, are entitled to practice medicine on the same basis as German nationals. Examinations passed abroad shall be recognized provided they are deemed by the highest Land authority to be equivalent to German examinations.[345] There are special provisions for hardship cases. Equal provisions apply to dentists.

Aliens who do not come within the provisions of the Homeless Foreigners Law may, pursuant to the Dental Practice Act ('*Gesetz über die Ausübung der Zahnheilkunde*') of 1952,[346] the authorized to engage in dental practice in the Republic.

In Switzerland, according to the Federal Decree of 24 June 1960,[347] Hungarian refugees who fled to Switzerland in connection with the events of November 1956 and who are students of the medical profession or who have been trained in Hungary as doctors, dental surgeons, pharmacists or veterinarians are allowed to sit for the Federal Professional Examination and to obtain the corresponding Federal diploma entitling them to practice their profession in Switzerland on an equal footing as Swiss nationals.

Hungarian refugees attending a Swiss university may sit for the Federal Medical Examination at the level which they have attained at the time of entry into force of the Decree without having to furnish a Swiss Matriculation Certificate. Hungarian refugees who, prior to the entry into force of the Decree, have already completed their studies at a Swiss university, are required to sit for the Federal Professional Examination in order to obtain the Federal diploma.

Hungarian refugee doctors, dental surgeons, pharmacists and veterinarians who completed their studies in Hungary prior to leaving the country must also pass the Federal Professional Examination in order to obtain the Federal diploma.

In order to be granted the Federal diploma, refugees who have passed the Federal Professional Examination must have worked in Switzerland as a professional assistant for a period of two years.

According to the Ordinance of the Federal Ministry of the Interior of 21 February 1979, refugees are admitted to the Professional Examinations if they possess a matriculation or equivalent certificate. Refugees having obtained a medical or pharmacy degree before obtaining asylum are admitted to the Federal Professional Examination only after one year's study at a Swiss university. The diploma is delivered to them only after three years' practical or scientific activity at a Swiss university.

In Australia, refugees with recognized qualifications are generally eligible to practice their profession.

Commentary

No corresponding provision existed in the pre-war treaties and arrangements.

The term 'liberal professions' may have a different meaning in different countries. It includes, in any case, lawyers, doctors, dentists, veterinarians, engineers and architects working on their own account. It may also include pharmacists, artists and accountants. The term 'liberal' means that the persons must possess certain qualifications or a special licence. The word 'diploma' includes any degree or certificate required to exercise a particular profession. Salaried assistants to members of the liberal professions fall under Article 17. As to the recognition of diplomas see Article 22.

Paragraph 2 is in the nature of a recommendation. The words 'consistent with their laws and constitution' were inserted in order not to offend local authorities which may have a certain autonomy in the matter.

ARTICLE 20. RATIONING

'Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.'

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[342] Mon.B.1933 No.56

[343] B.G.I.1961, p. 269

[344] B.G.B1 1951, p. 269

[345] Article 15, *Homeless Foreigners Law*

[346] B.G.B1.1952 I, p. 26

[347] Feuille Fédéral No.26 of 30 June 1960, p. 185

Travaux Préparatoires

The Secretariat had proposed the following provision:

> 'Where a rationing system exists, refugees shall be treated on the same footing as nationals'

It made the following comment:

> 'Where it exists, rationing is intended to ensure that the inhabitants of a country receive some items of prime necessity. It is therefore essential that refugees should be admitted to the benefits of the rationing system.'[348]

At the first session of the *ad hoc* Committee the Article was, after some discussion on its wording and the question of housing, adopted on the understanding that the text could be amended during the second reading.[349]

The Working Group proposed the Secretariat text.[350]

That text was adopted.[351]

The Committee made the following comment:

> 'This Article applies to the generally recognized systems of rationing, which apply to the population at large and regulate the general distribution of products in short supply'.[352]

The Israeli Government made the following remarks in its comments:

> 'It (the Israeli Government) feels compelled to draw attention to one aspect of the Draft. The Israeli Government appreciates the great value of the comments contained in Annex II. It understands that it was not the purpose of these comments to serve as a running commentary but to underline such elements of the provisions of the Convention as are not self-explanatory, or to trace the origin of the provisions of this Draft, or finally to enlarge or to narrow the meaning of the provisions as they stand.
>
> 'At this moment, the Convention is not a self-contained document, since numerous clarifications are contained in the comments, and the precedent of a dual document, established by the *ad hoc* Committee, should not be followed. Whatever provisions are contained in the comment which either go beyond the text of the Convention or restrict its meaning should, if any of these interpretations are maintained in the final text, be incorporated in the Convention itself.
>
> 'In the view of Government, Articles 15 and 17 are examples of language used in a more generous way in the Convention and narrowed down in the comment.'

At the second session of the *ad hoc* Committee the Drafting Committee proposed the following text:

> 'Where a rationing system exists, which applies to the population at large and regulates the general distribution of goods in short supply, refugees shall be treated on the same footing as nationals.'[353]

The US representative presumed that the mention of 'refugees' without any qualifying phrase was intended to include all refugees, whether lawfully or unlawfully in the territory.

The Chairman said his presumption was correct.

The UK representative explained that the expression 'on the same footing' incorporated the notion in the expression 'in the same circumstances'.

The US representative said that the expression also took account of the possibility of different rations for different categories of persons, for example, for children. The words 'in the same circumstances' were intended to refer principally to the state of sojourn, the words 'on the same footing' referred also to other circumstances.

Article 15 was adopted.[354]

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[348] E/AC.32/2, Article 18

[349] E/AC.32/SR.15, pp. 3-5

[350] E/AC.32/L.32, Article 15

[351] E/AC.32/SR.25, p. 7

[352] E/1618, p. 50

[353] E/AC.32/L.42, Article 15

[354] E/AC.32/SR.41, pp. 18-19

At the Conference of Plenipotentiaries the Article was adopted at first reading by 17 votes to 9, with 1 abstention.[355]

The Style Committee proposed the text which is now in the Convention.[356]

That text was adopted by 19 votes to none.[357]

Commentary

This provision too is an innovation. It applies to all refugees in the territory, whether lawfully or unlawfully there. It follows from the debate that it refers to consumer goods in short supply, not to commodities for commercial or industrial use. Petrol was also mentioned as not being included. The provision does not apply to products available in sufficient quantities but which are allocated to certain groups, for example, indigent or old persons, or at more favourable prices or conditions. In these cases, Article 7 paragraph 1 applies.

The words 'on the same footing as nationals' imply that a refugee does not have to comply with requirements applied to other aliens such as the production of a national passport in order to obtain a ration card.

ARTICLE 21. HOUSING

'As regards housing, the Contracting States, in so far as the matter is regulated by law or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.'

Travaux Préparatoires

At the first session of the *ad hoc* Committee the US representative proposed during the discussion of Article 16 (Labour Relations and Industrial Accidents) that in sub-paragraph 1(a)(i) of the ILO text reading:

'1. Each member for which this Convention is in force undertakes to apply without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to control by the administrative authorities:

(i) remuneration including family allowances, where these form part of the remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on hours of work, minimum wage for employment, apprenticeship and training, women's work and the work of young persons.[358]

The words 'enjoyment of the benefits of collective bargaining and housing accommodations' should be added at the end of the sub-paragraph.[359]

The UK representative expressed doubts regarding any reference to the question of housing. In his own country it would be difficult to guarantee exactly equal treatment for refugees on the matter of housing, since the housing shortage was acute and the matter had to be dealt with on the basis of need.

The Chinese representative agreed but felt that Governments were protected by the terms of sub-paragraph 1(a).

The French representative was in favour of equal treatment with nationals.

The Danish representative said that in the absence of instructions from his Government, he would be forced to abstain from endorsing the inclusion of housing accommodations.

The Chinese representative was in favour of deleting the mention of housing. The UK representative agreed.

The Committee decided, by 5 votes to 2, with 4 abstentions, not to include a reference to housing accommodations in Article 16.

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[355] A/Conf.2/SR.10, p. 10

[356] A/Conf.2/102, Article 20

[357] A/Conf.2/SR.34, p. 5

[358] E/AC.32/L.9, p. 2

[359] E/AC.32/SR.14, p. 8

The US representative explained that he had abstained from voting because, although he did not think the reference to housing should be inserted at that point in the draft Convention, he felt it should be considered at a later stage. It might form the subject of a separate Article. The logical course would be to insert it after Article 20.

The Chairman said, in the opinion of the representative of the Secretary General, the provisions adopted in Article 5 might be considered to cover that question in a certain sense.

The US representative said Article 5 dealt with the rights in immovable property and leases. The problem, however, was to decide whether refugees might benefit under any social welfare measures taken by States with a view to providing housing accommodation for certain categories of persons.[360]

He submitted the following draft Article:

> 'The High Contracting Parties undertake to accord to refugees who are lawfully admitted to their territory the most favourable treatment possible and, in any event, not less favourable than that given to foreigners generally as regards housing accommodations, in so far as this question is regulated by laws and regulations or is subject to the control of Government authorities'.

The Chairman, speaking as representative of Canada, stated that he was ready to accept that provision on condition that it was compatible with the federal laws in force in his country.

The French representative wondered whether the text concerning non-discrimination did not have some bearing on the special question of housing.

The Belgian representative pointed out that the US text was not redundant, in as much as it required the High Contracting Parties not merely not to discriminate against refugees, but to ensure them 'the most favourable treatment possible'.

The UK representative was doubtful about accepting a text which would impose special obligations on Governments in a field which was very often outside their control.

The Chairman suggested the addition of the words: 'in so far as it lies within the discretion of local government authorities.'

That text was adopted.[361]

The Working Group proposed the following text:

> 'As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations, or is subject to the control of public authorities, shall accord to refugees lawfully in their territory the most favourable treatment possible and, in any event, treatment not less favourable than that accorded generally to aliens in the same circumstances.'[362]

That text was adopted.[363]

At the second session of the *ad hoc* Committee the Drafting Group proposed the text which is now in the Convention.[364]

Thai text was adopted.[365]

At the Conference of Plenipotentiaries Yugoslavia proposed an amendment reading:

> 'As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations, or is subject to control by public authorities, shall accord to refugees settled in their territory the same treatment as they accord to their own nationals.'[366]

The Yugoslav representative said that unless refugees were given national treatment, it would be impossible for them to secure accommodation.

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[360] E/AC.32/SR.15, p. 11

[361] E/AC/32/SR.24, pp. 12-13

[362] E/AC.32/L.32, Article 16

[363] E/AC.32/SR.25, p. 7

[364] E/AC.32/L.42, Article 16

[365] E/AC.32/SR.41, p. 24

[366] A/Conf.2/31, Article 16

The Yugoslav amendment was rejected by 9 votes to 1, with 7 abstentions.

Article 17 was adopted by 17 votes to none, with 1 abstention.[367]

The Style Committee proposed the text which is now in the Convention.[368]

That text was adopted by 19 votes to none.[369]

Commentary

This Article, too, is new. It relates to rent control and allocation of flats and premises. The matter falls frequently within the competence of local authorities and they are equally bound by the provision.

Article 6 of the Migration for Employment Convention 1949 provides that each Contracting Party 'undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to migrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals in respect of...accommodation...'. There may thus be a conflict when a refugee is also a migrant worker and the State concerned is a Party to both Conventions. The Chairman states that in such a case the refugee would be accorded whichever was the better treatment.[370]

The term 'housing' may have a wider connotation than 'accommodation'; it includes housing schemes and allocation of premises for the exercise of one's occupation.

ARTICLE 22. PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Travaux Préparatoires

The Secretariat draft contained the following Article 20:

1. Refugees shall enjoy, in the territory of the High Contracting Parties, the same treatment as nationals in regard to elementary education.

2. In the case of other education, refugees shall enjoy the most favourable treatment accorded to nationals of a foreign country, in particular as regards the remission of fees and the award of scholarships.'

In the comment it was stated:

Paragraph 1

> 'Elementary education is to be provided for refugees in the same manner as for nationals, because elementary education satisfies an urgent need (it is for this reason that most States have made it compulsory), and because schools are the most rapid and effective instrument of assimilation.
>
> 'Article 26 of the Declaration of Human Rights lays down that:
>
> > (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Paragraph 2

The other grades of education are, generally speaking, open to foreigners; refugees will therefore receive the benefit of this circumstance if they are placed on the same footing as other foreigners.

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[367] A/Conf.2/SR.10, pp. 10-11

[368] A/Conf.2/102, Article 21

[369] A/Conf.2/SR.35, p. 5

[370] E/AC.32/SR.38, p. 15

Since refugees are in a precarious economic position and the Government of their country of origin takes no interest in them, it would be desirable to do more than merely accord them the ordinary treatment enjoyed by foreigners; otherwise in practice although secondary and higher education is open to them, they will be unable for want of money, to take advantage of it. For this reason it is proposed to grant refugees the most favourable treatment granted to nationals of a foreign country.'[371]

The French draft contained the following:

'Article 15.

1. Refugees shall enjoy, in the territory of each of the High Contracting Parties, the same treatment as nationals with respect to primary education.

'2. With regard to secondary and higher education, refugees shall enjoy the most favourable treatment accorded to nationals of a foreign country. In particular, they shall benefit, to the same extent as the latter, from the total or partial remission of fees and charges and the award of scholarships.'[372]

At the first session of the *ad hoc* Committee the French representative withdrew Article 15 of his draft in favour of the Secretariat draft.

Paragraph 1 of Article 20 was adopted.

The UK representative recalled with regard to paragraph 2, that his Government had made reservations to the corresponding Articles of the 1933 and 1938 Conventions. In the UK, higher education was in the hands of schools and universities, which were for the most part private institutions. If it was understood that paragraph 2 applied to public education only, his delegation would see no objection to accepting that text.

The Israeli representative proposed that ch. IX should be entitled 'Public Education', to avoid any misunderstanding.

The Belgian representative recalled that certain countries had set up a system of exchange of scholarships under the auspices of UNESCO. Those scholarships were financed from the public funds of the State concerned and they were based on the principle of reciprocity. Since, under Article 8, the enjoyment of rights subject to reciprocity should not be refused to refugees, it seemed that, under Article 20, they would be entitled to claim the benefit of that category of scholarship. That, however, would not correspond to the intentions of the States concerned or of UNESCO.

It was decided to state in the report that the provision would not apply to such bilateral agreements.

Paragraph 2 of Article 20 was adopted on the understanding that the chapter would be entitled 'Public Education'.[373]

The Working Group proposed the following text:

'1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees the most favourable treatment accorded to nationals of a foreign country with respect to other education and, in particular, as regards the remission of fees and charges and the award of scholarships.'[374]

Article 17 was adopted.[375]

The Committee made the following comment:

'Public Education. The Committee intended this provision to apply only to education provided by public authorities from public funds and to any education subsidized in whole or in part by public funds or to scholarships derived therefrom.

Paragraph 1. Article 26 of the Declaration of Human Rights lays down that:

'(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...'

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[371] E/AC.32/2

[372] E/AC.32/L.3

[373] E/AC.32/SR.15, pp. 9-10

[374] E/AC.32/L.32, Article 17

[375] E/AC.32/SR.25, p. 7

> Paragraph 2. The Committee agreed that paragraph 2 was not intended to prejudice reciprocal arrangements for scholarships granted by governments including those encouraged by UNESCO or other organizations. However, it was the intention of the Committee to obtain for refugees as generous educational opportunities as possible.

Article 12 of the 1933 Convention was quoted and Article 14 of the 1938 Convention referred to.

Austria made the following comment:

> 'It is suggested incorporating in the text itself of the Convention the provision listed in the footnotes, by which this Article is restricted to 'education provided by *public* authorities from *public* fund and any education subsidized in whole or in part by public funds, or to scholarships derived from them'. This could be done by the addition of a third paragraph, considering, moreover, that the title 'Public Education' will not appear in the final text of the Convention.'[376]

Israel made the same comments as on Article 15.[377]

The UK commented:

> 'Article 17. In regard to awards of scholarships and the other matters dealt with in paragraph 2 of this Article, His Majesty's Government would be prepared (as in the case of other matters dealt with in the Convention) to accord to refugees treatment not less favourable than that accorded to aliens in the same circumstances. They cannot, however, bind themselves to accord to refugees the most favourable treatment accorded to nationals of any foreign country.'[378]

At the second session of the *ad hoc* Committee the Belgian representative said that his Government could not accord the most favourable treatment accorded to aliens where secondary and university education was concerned. The question involved was that of admission to studies which was conditional on previous studies having been completed; the latter had to be verified before the person concerned could be admitted to certain schools or universities. To this end his Government would sign conventions with certain countries but could not accord that treatment to refugees in general.

The Venezuelan representative said he could not agree that refugees be given the most favourable treatment in regard to higher education or to diplomas. Venezuela granted certain facilities in those respects to a number of neighbouring countries, the so called 'Bolivar countries'; those facilities it would probably be unable to extend to refugees.

The IRO representative felt that the treatment to which the Venezuelan representative had referred was preferential treatment. Of course, a reservation could be made to make it clear that preferential treatment was not meant to be covered by the most-favoured nation clause.

The US representative did not think that preferential treatment had been excluded from the most-favoured-nation clause and would not like that interpretation adopted.

The Belgian representative said reservations should be avoided even if it meant having to adopt a regime which was less favourable but did nevertheless constitute a basic statute for refugees.

The French representative was prepared to accept Article 17 as it stood.

The Belgian representative saw no objection to retaining Article 17, subject to reservations.

The Chairman said the question of education and degrees covered by Article 17 should not be combined with the exercise of the liberal professions dealt with in Article 14.[379]

The Belgian representative suggested that the words 'access to education' be inserted after the words 'and in particular as regards' in paragraph 2.

The Belgian representatives amendment was adopted.[380]

The Drafting Committee proposed the following text:

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[376] E/AC.32/L.40, p. 46

[377] E/AC.32/L.40, p. 46

[378] E/AC.32/L.40, p. 46

[379] E/AC.32/SR.7, pp. 23-28

[380] E/AC.32/SR.8, p. 4

'1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with regard to elementary education.

'2. The Contracting States shall accord to refugees the most favourable treatment accorded to nationals of a foreign country with respect to education other than elementary education and as regards for example, access to studies, the remission of fees and the award of scholarships.'[381]

Article 17 was adopted.[382]

At the Conference of Plenipotentiaries Yugoslavia proposed the following amendment.

> 'The Contracting States shall accord the same treatment to refugees as to their own nationals with regard to elementary education and also to education other than elementary education, particularly, as regards access to studies, the remission of fees and the award of scholarships.'[383]

The German Federal Republic proposed:

'1. The Contracting States shall accord to refugees the same treatment as accorded to nationals with regard to all types of education including access to studies. They shall let refugees participate in the award of scholarships and in remissions of fees and charges.

'2. The Contracting states shall accord to refugees the right to pass examinations, recognized by the state, on the same conditions as accorded to nationals.'[384]

The Yugoslavian representative withdrew his amendment in favour of that submitted by the delegation of the Federal Republic of Germany.

The representative of the German Federal Republic said such generosity as he proposed would not only benefit refugees, but also the countries in which they resided. Moreover, although assimilation was difficult for the elderly, everything should be done to make it possible and easy for young people to share fully in the life of the country of their adoption. They should consequently be allowed access to all educational opportunities in their new homeland. It was with that principle in mind that the IRO had established universities, which had done excellent work for refugees.

It should not be forgotten that in the past emigrants had made fruitful contributions to the culture of their countries of adoption.

Refugees should not only be permitted to sit for examinations, but should also be granted the appropriate diplomas. If it proved impossible to provide for the granting of diplomas, refugees should at least be allowed to pass examinations which would prove of help to them in their careers.

The Observer of the World Jewish Congress drew attention to the proposal put forward by the World Jewish Congress.[385] Speaking in his personal capacity as Vice-Chairman of the World University Service he said that Article 17 was not satisfactory. The question of scholarships was of utmost importance to students but under Article 17 refugees would not be granted the most favourable treatment accorded to aliens, because that treatment derived from bilateral agreements.

The inquiry carried out by the World University Service had proved that the mechanism of bilateral agreements would be inapplicable to refugees. As regards the recognition of diplomas, he was afraid that the wording of paragraph 2 as submitted by the German Federal Republic might in practice operate to the disadvantage of refugee students.

The UK representative said that Article 17 raised issues of some difficulty for the UK Government. He considered it desirable to make it perfectly clear that paragraph 1 was intended to refer elementary education, admission to which was controlled by the State.

As to paragraph 2, most-favoured-nation treatment raised the problem of such special arrangements as might be made between various countries. It might be that schemes for the exchange of students and for scholarships would be developed. There again, such special arrangements would be inapplicable to refugees. He suggested the use of a general phrase such as 'treatment no less favourable than that accorded generally to aliens in the same circumstances.'

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[381] E/AC.32/L.42, Article 17

[382] E/AC.32/SR.41, p. 19

[383] A/Conf.2/31, p. 2

[384] A/Conf.2/45

[385] A/Conf.2/NGO.1

The Austrian representative supported the point that explicit reference should be made in paragraph 1 to 'public elementary education'.

The Austrian, Belgian, Italian, Netherlands and Swedish representatives supported the UK representative.

The French representative said the French delegation was not opposed to Article 17. The reservation made by his delegation concerned the award of scholarships to aliens.

The amendment of the German Federal Republic was rejected by 10 votes to 3, with 6 abstentions.

The UK amendment was adopted by 12 votes to 1, with 5 abstentions.

Article 17 as amended was adopted by 16 votes to none, with 2 abstentions.[386]

The Style Committee proposed the following text:

'1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

'2. The Contracting States shall accord to refugees treatment no less favourable than that accorded to aliens generally in the same circumstances with regard to education other than elementary education and, in particular, as regards access to studies, the remission of fees and charges and the award of scholarships.'[387]

The High Commissioner for Refugees said in Article 22 the Conference was introducing a fourth type of treatment by omitting the words 'as favourable as possible', thus further detracting from the treatment to be accorded under paragraph 2. He therefore hoped that the Conference would agree to restore the same provision as was made in Articles 13, 18, 19 and 21 by adding the words 'as favourable as possible and, in any event', between the words 'treatment' and 'no less' in paragraph 2.

The second point he wished to raise concerned the recognition of school certificates, diplomas and degrees, which was of special importance to refugees and which was dealt with in Article 19 ('Liberal Professions'). It would be to the advantage of refugees if the Conference would agree to add after the words 'access to studies' in paragraph 2 some such words as 'the recognition of foreign school certificates, diplomas and degrees.'

The representative of the German Federal Republic sponsored the amendment proposed by the High Commissioner.

The first amendment was adopted by 22 votes to none.

The Venezuelan representative said the question was whether the phrase 'recognition of diplomas' was to be interpreted as meaning that refugees holding diplomas would have the right to practice in the country of refuge the professions covered by such diplomas. He had to reserve his position with regard to the origin of such degrees and diplomas.

The second amendment to paragraph 2 of Article 22 suggested by the High Commissioner was adopted by 19 votes to none, with 3 abstentions.

Paragraph 2 of Article 22 as amended was adopted by 19 votes to none, with 3 abstentions.

Article 22 as amended and as a whole was adopted by 22 votes to none.[388]

The President suggested that the Conference was now in a position to take a decision on a suggestion by the Israeli representative, namely that the following sentence be inserted in the Final Act:

> 'The titles of the chapters and the articles of the Convention are included for practical purposes and do not constitute an element of interpretation.'

The Israeli suggestion was adopted by 17 votes to 3, with 3 abstentions.

It was agreed that the term 'Gainful Employment' should be used as heading for Chapter III.[389]

As regards the various suggestions to make it clear in the Article itself that it referred to public education the President repeated that the report of the *ad hoc* Committee on its first session made it clear that the present Article was intended to cover education subsidized in whole or in part from public funds.

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[386] A/Conf.2/SR.10, pp. 11-18

[387] A/Conf.2/102, Article 22

[388] A/Conf.2/SR.5, pp. 5-8

[389] A/Conf.2/SR.35, pp. 40-41

The Austrian representative said that in view of the President's interpretation the Austrian delegation would have to enter a reservation in respect of Article 22.

National Measures

In Austria, refugees are exempt from university fees.

The procedure for the recognition of diplomas in Belgium by a Jury Central has been mentioned under Article 19.

In Italy, it was held that the condition contained in Agreements with other States for the granting of scholarships, that candidates must apply to the authorities of the country of their nationality who refer the request to the Italian authorities, was a condition which refugees were 'incapable of fulfilling' in the sense of Article 6 of the 1951 Convention.

In Senegal, refugees are assimilated to nationals also as regards higher education.

Commentary

The 1933 Convention (Article 12) and the 1938 Convention (Article 14) provided that refugees shall enjoy in schools, courses, faculties and universities of each of the Contracting parties treatment as favourable as other foreigners in general, and that they shall benefit in particular to the same extent as the latter by the total or partial remission of fees and charges and the award of scholarships.

In the case of this Article the title 'Public Education' is important. As was said in the debate and is stated in the comment of the *ad hoc* Committee, it applies to education provided by public authorities and to any education subsidized in whole or in part by public funds and to scholarships derived therefrom.

The Article refers to 'refugees' without qualifications such as 'lawfully stay'. It is, in fact, of importance particularly to children of refugees. In this connection, Recommendation B of the Final Act of the Conference of Plenipotentiaries is important whereby the Conference 'noting with satisfaction that, according to the official commentary of the *ad hoc* Committee on Statelessness and Related Problems[390] the rights granted to a refugee are extended to members of his family'. They may also, of course, have greater rights, particularly if they have the nationality of the country of residence as will be the case for the children born in the country in *jus soli* countries.

The recognition of foreign school certificates, diplomas and degrees is mentioned here in connection with the admission to schools of higher learning and universities, not regarding the exercise of professions.

There frequently exist bilateral agreements on the mutual recognition of degrees and diplomas. On a multilateral basis there exists the European Convention on the Equivalence of Diplomas leading to admission to universities of 11 December 1953.[391] It provides that each Contracting State shall recognize for the admission to the universities situated in its territory, admission to which is subject to State control, the equivalence of the diplomas accorded in the territory of each other Contracting Party which constitutes a requisite qualification for admission to similar institutions in the country in which the diploma has been awarded. Where admission is outside the control of the State, the Contracting Parties shall use their best endeavours to obtain the acceptance of this principle by the universities (Article 1).

According to the European Convention on the Equivalence of Periods of University Study of 15 December 1956,[392] Contracting Parties where the authority competent to deal with matters pertaining to the equivalence of periods of university studies is the State, shall recognize a period of study spend by a student of modern languages in a university of another member country of the Council of Europe as equivalent to a similar period spent in his home country provided that the authorities of the other university have issued to such a student a certificate attesting that he has completed the said period of study to their satisfaction (Article 2). The Contracting Parties shall consider the means to be adopted in order to recognize a period of study spent in a university of another member country by students of disciplines other than modern languages and especially by students of pure and applied sciences (Article 3). In as much as the admission is not subject to State control the Contracting Parties shall encourage the favourable consideration and application of these principles by the university authorities concerned (Articles 5 and 6).

Further, there exists the European Convention on the Academic Recognition of University Qualifications of 14 December 1959.[393] It provides that the Contracting Parties in which the authority competent to deal with matters pertaining to the

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[390] E/1618, p. 40

[391] Eur.Tr.S.No. 15

[392] Eur.Tr.S.No. 21

[393] Eur.Tr.S.No. 32

equivalence of university qualifications is the State, shall, subject to certain conditions, grant academic recognition to university qualifications conferred by a university institution in the territory of another Contracting Party (Articles 3 and 4). Where the competent authority is not the State, the Contracting Parties shall encourage the favourable consideration and application of these principles by the university authorities (Articles 5 and 6).

Similar Conventions exist between the Latin American and Caribbean, Arab, and European States bordering the Mediterranean, and between African States.

ARTICLE 23. PUBLIC RELIEF

'The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.'

Travaux Préparatoires

The Secretariat draft contained the following Article 19:

> 'The High Contracting Parties shall grant the relief and assistance accorded to nationals to refugees who are regularly resident in their territory and are unemployed, suffering from physical or mental disease and incapable because of their condition or age of earning a livelihood for themselves and their families, and also to children without support.'

In the comment it was stated:

> 'In countries where there is a highly developed social security system public relief is of secondary importance and is intended mainly to fill in the gaps of the social security system. Public relief can hardly be refused to refugees who are destitute because of infirmity, duress or age.'
>
> Most of the conventions dealing with public assistance contain certain stipulations which cannot be satisfied in the case of refugees, such as the requirement that the State of which the recipient is a national should either repatriate him or assume the liability for the cost of assistance.
>
> In view of the impending termination of IRO the welfare and relief of refugees is particularly urgent.'[394]

At the first session of the *ad hoc* Committee, the French representative pointed out that the French draft did not contain a separate Article on relief, because the question was dealt with in Article 14 of the French draft which referred to both social security and public relief. From the point of view of substance, the only difference between the two texts was that France had not intended to include the unemployed in any of the categories of persons eligible for public relief. He considered that the provisions of Article 19 proposed a considerable step forward.

The Belgian representative fully agreed. He proposed that any reference to unemployment should be deleted because in Belgium, for instance, unemployment was covered by insurance rather than by assistance.

The UK representative supported Article 19. There was good reason to include the unemployed in that Article. Unemployment insurance did not take effect until a certain number of contributions had been paid and it was granted for a specified period after which the unemployed persons would, if necessary, receive assistance from public relief.

The US representative thought there should be reference to the unemployed in the Article on labour.

The representative of the IRO pointed out that the UN was studying the question of assistance to destitute workers and that the Secretary-General had prepared a report in which it was recommended that foreigners, and therefore refugees, should be placed on equal footing with nationals. He suggested the following text: 'In respect of public relief and assistance, the High Contracting Parties shall grant to refugees regularly resident in their territory the treatment accorded to nationals.'

The representative of the ILO warmly supported the suggestion of the representative of the IRO. An enumeration of categories of persons was of necessity incomplete.

The French representative preferred the text submitted by the IRO representative. Certain points should be mentioned in the Committee's report. When the unemployed were not eligible for social security, they should not be excluded from the benefit of public relief.

The IRO text was adopted.[395]

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[394] E/AC.32/2

The Working Group proposed the following text:

> 'The Contracting States shall accord to refugees lawfully in their territory the same treatment with respect to public relief and assistance as is accorded to nationals.'[396]

The text was adopted.[397]

Austria made the following comment:

> 'It would be impossible for Austria to place all refugees on an equal footing with Austrian nationals in matters of welfare, because of the extremely large number of refugees, as stated in the comment on Article 4.'[398]

At the second session of the *ad hoc* Committee the Italian representative said that his Government had, to its regret, to make a reservation on that Article. Italian hospitals were anyhow inadequate to meet the need of a constantly growing population. The reservation did not apply to emergency relief, which was always accorded as generously as possible.

The Canadian representative said while his Government would support the principles of Articles 18 and 19, it would not, as a federal Government, undertake the public relief and assistance that would be accorded to refugees, as legislation in that field fell within the scope of the provinces and municipalities.

The IRO representative called the attention of the Committee to ECOSOC's resolution regarding assistance to indigent aliens, which appealed to States to grant such aliens the same treatment as was accorded to nationals and not to return them to their own countries only for the reason of indigency.[399]

The Drafting Committee proposed the text adopted at the first sessions.[400]

That text was adopted.[401]

The Committee made the following comment:

> 'With regard to Article 18, the Committee noted that the provisions in the draft Convention conform fully to the provisions of the resolution on migrants adopted by ECOSOC on 13 July 1950. In regard to this Article, the Committee expressed its understanding that, despite the provisions of Article 3(b), refugees should not be required to meet any conditions of local residence of affiliation which may be required of nationals.[402]

At the Conference of Plenipotentiaries the Italian representative said that the Italian Government might find that it had to make a reservation on the Article.

Article 18 was unanimously adopted.[403]

The Drafting Committee proposed the text which is now in the Convention.[404]

That text was adopted by 22 votes to none, with 1 abstention.[405]

National Measures

In Austria the Tuberculosis Act[406] provides that refugees with three years' uninterrupted residence are assimilated to nationals regarding assistance to tubercular persons.

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[395] E/AC.32/SR.15, pp. 5-8

[396] E/AC.32/L.32, Article 18

[397] E/AC.32/SR.25, p. 7

[398] E/AC.32/L.40, p. 47

[399] E/AC.32/SR.38, pp. 4-7

[400] E/AC.32/SR.41, p. 19

[401] E/1850, p. 13

[402] A/Conf.2/SR.10, pp. 18-19

[403] A/Conf.2/102, Article 23

[404] A/Conf.2/SR.35, p. 8

[405] A/Conf.2/SR.35, p. 8

[406] B.G.B1. 1968, Nr. 127

Protocol Nr. 1 of the European Convention on Social and Medical Assistance of 1968 provides that refugees within the meaning of the 1951 Convention resident in countries parties to the Convention are entitled to the same treatment as nationals of the State Party regarding social and medical assistance.

In Article 2(a)(1) of the Convention social and medical assistance is defined 'in relation to each Contracting Party all assistance granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition, other than non-contributory pensions and benefits paid in respect of war injuries or injuries due to foreign occupation.'

In the Federal Republic of Germany, the Administrative Tribunal of Cologne held on 7 August 1981 that social assistance may not be refused to a refugee who did not find work in spite of all his efforts but who does not want to perform compulsory work useful to the community.

Commentary

The pre-war Convention provided for most-favoured-nation treatment regarding relief and assistance.

As was stated in the report of the *ad hoc* Committee, refugees are not required to meet any conditions of local affiliation or residence which may be required of nationals. In the case of nationals the community of origin (*'Heimatgemeinde'*) is frequently responsible for relief and assistance.

What is meant by public relief and assistance depends on national law, but the concept should be interpreted widely. It was mentioned that it includes hospital treatment, emergency relief, relief for the blind and also the unemployed, where social security benefits are not applicable.

ARTICLE 24. LABOUR LEGISLATION AND SOCIAL SECURITY

'1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.'

Travaux Préparatoires

The Secretariat draft contained the following Articles 16 and 17:

'Article 16.

1. Subject to the provisions of Article 13, the Contracting States shall apply to refugees all the labour regulations applicable to nationals (wages, salaries and family allowances, working hours, holidays, benefits of collective agreements, guarantees of employment, age of admission to employment, employment of women and young persons, apprenticeship and vocational training, home work, health and safety in employment etc...)

2. They shall accord to the victims of industrial accidents or their beneficiaries the same treatment as is granted to their nationals.'

The Secretariat made the following comment:

> 'Generally speaking, labour regulations and the laws regarding industrial accidents are applied in the same fashion to foreigners and to nationals. The placing of foreigners and national workers on the same footing not only met the demands of equity but was in the interest of national wage-earners who might have been afraid that foreign labour, being cheaper than their own, would have been preferred.
>
> 'In these circumstances, equality between refugees and nationals, which is an accomplished fact in many countries, will not give rise to any objections.
>
> 'The text of the Article enumerates the main elements of the labour regulations, all of which are to be applicable to refugees, subject to the provisions of Article 13 regarding the access of refugees to wage-earning employment.
>
> Article 17. The High Contracting States shall accord to refugees regularly resident in their territory the same treatment in respect of social security as to nationals (sickness, maternity, old-age insurance, insurance against the death of the breadwinner and unemployment insurance).'

In the comment it was stated:

> 'A number of bilateral treaties and certain international treaties, notably those under the auspices of the International Labour Organisation, place foreigners who are nationals of State Parties to the Agreements on the same footing as nationals in respect of social security. The legislation of some States accord the same treatment to nationals and to foreigners.

In these circumstances, the same treatment should be accorded to refugees.[407]

The French draft provided:

> 'Article 14. While regularly resident in the territory of one of the High Contracting Parties, refugees shall receive the same treatment as nationals in respect of insurance and social security (including accident compensation) and all forms of public relief.[408]

At the first session of the *ad hoc* Committee the representative of the ILO thought it desirable to combine under a single heading the Articles of the Secretariat draft dealing with labour regulations and industrial accidents, and social security respectively. Present day legislation and treaties made no distinction between industrial accidents and social security and it would be difficult to discuss the two matters separately. Moreover, the ILO in its Convention on Migration for Employment, had dealt with them under the general heading of social security. He introduced the text of several provisions of that Convention.[409] Article 6 of the Convention covered the subject matter of Articles 16 and 17 of the Secretariat draft. There was no divergence in substance between the two texts and the Committee might wish to coordinate them.

The Belgian representative, as Chairman of the Commission of the ILO Conference which had drafted the text, and as Belgian representative, recommended the adoption of Article 6 of the ILO text in place of Articles 16 and 17 of the Secretariat craft with the minor drafting changes required to make it applicable to refugees.

There was an important difference between the two texts. Paragraph 1 (a) of the ILO text stipulated that refugees would have equal treatment with nationals only 'in so far as such matters are regulated by laws or regulations, or are subject to the control of administrative authorities'; i.e. the State could not intervene where agreement existed between employers and employees.

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[407] E/AC.32/2

[408] E/AC.32/L.3

[409] E/AC.32/L.9

The Danish representative noted that Article 6 applied only to migrant workers and would have to be adapted to cover refugees.

The Belgian representative said if the Committee decided to separate the two texts, it ran the risk of leaving refugee workers entirely unprotected.

The representative of the ILO added that the ILO Convention could be ratified only by members of that Organisation, whose membership was not the same as that of the UN.

The representative of the ILO pointed out that the Secretariat draft was more specific on the question of industrial accidents. Difficulties had arisen in the case of fatal accidents to refugees whose beneficiaries were not regular residents of the country where the accident had occurred and had therefore not received regular benefits.

The representative of the ILO said such cases were covered by the ILO Convention.

The Observer of the American Federation of Labour thought that the Committee would avoid difficulties if it adopted the Secretariat text for Article 16. He did not feel, moreover, that industrial accidents should be dealt with in the same Article as social security.

The US representative thought it would be undesirable to refer to an Article in the Migration for Employment Convention. He saw no harm, however, in repeating the substance of the ILO text with such modifications as appeared desirable.

Article 6 of the ILO Convention reads:

'1. Each member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities:

(i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

(ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

(iii) accommodation;

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;

(c) employment taxes, dues or contributions payable in respect of the person employed; and

(d) legal proceedings relating to the matters referred to in this Convention.

2. In the case of a federal State the provisions of this Article shall apply in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities. The extent and manner in which these provisions shall be applied in respect of matters regulated by the law or regulations of the constituent States, provinces or cantons, or subject to the control of the administrative authorities thereof, shall be determined by each Member. The Member shall indicate in its annual report upon the application of the Convention, the extent to which the matters dealt with in this Article are regulated by federal law or regulations or are subject to the control of federal administrative authorities. In respect of matters which are regulated by the law or regulations of the constituent States, provinces or cantons, or are subject to the control of the administrative authorities thereof, the Member shall take the steps provided for in paragraph 7(b) of Article 19 of the Constitution of the International Labour Organisation.'[410]

[410] E/AC.32/L.9, pp. 2-3

In discussing Article 6 of the ILO text, the US representative suggested that the opening clause of the Article concluding with the words 'within its territory' should be deleted and an appropriate phrase substituted.

The Belgian representative suggested the deletion of sub-paragraph 1 (a)(iii), the subject matter of which was covered elsewhere in the new draft convention, and of sub-paragraph 1 (a)(ii).[411]

The US representative agreed but proposed the words 'enjoyment of the benefits of collective bargaining, and housing accommodations' should be added at the end of subparagraph 1(a)(i).

The UK representative expressed doubts regarding any reference to the question of housing. In his own country it would be difficult to guarantee exactly equal treatment for refugees in the matter of housing.

The Chairman agreed but felt that the Governments were protected on that point by the terms of sub-paragraph I(a).

The French representative shared the view that the question of industrial accidents should be dealt with in Article 17 in connection with social security.

The UK representative did not think that the ILO text entirely covered, or could be made to cover, the situation of refugees.[412]

Sub-paragraph (a) was adopted.

As to sub-paragraph (b), the representative of the ILO said modern social services had often started with accident insurance. In many countries of western Europe the term social security had come to embrace accident insurance. He felt sure that, even in those countries where accident insurance was not administered under the general social security system, the words 'legal provisions in respect of employment injury' would be considered satisfactory. Replying to the representative of the IRO he confirmed that the wording of sub-paragraph (b) would enable the beneficiaries of refugees to receive compensation in the event of an accident resulting in death, even if they were not regular residents of the country where the accident occurred.

The representative of the IRO hoped that this important point would be mentioned in the Committee's report.

In reply to a question by the French representative the ILO representative explained that the phrase 'there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition' referred to bilateral international agreements. Agreements were often concluded in order to enable workers who moved from one country to another to accumulate the insurance benefits earned in both countries. It was difficult to see how such agreements could benefit a refugee who had lost the protection of their Government and had cut themselves off from the social security system of their country of origin.

The Belgian representative mentioned the agreement concluded between France and Belgium on that subject; a protocol had been added in order to extend the benefits of the agreement to refugees. Nevertheless, it was essential to maintain the first limitation in subparagraph (b) because the arrangements were always the result of special agreements and refugees could not expect to receive any insurance benefits from their countries of origin.

The Observer of the American Federation of Labour said, while this was true, some of them had acquired rights in Germany before moving to some other country for resettlement. Arrangements were being made to obtain recognition of these rights.

The Committee decided to retain the first limitation mentioned in sub-paragraph (b).

On the suggestion of the Chairman the words 'regulations of immigration countries' were changed to read 'regulations of the country of residence'.

Sub-paragraph (b) as amended was adopted.

It was decided to defer consideration of Article 6 paragraph 2 concerned with the federal clause.[413]

The Observer of the American Federation of Labour reiterated, as regards sub-paragraph (b), his objection that accident insurance was not covered by a social security scheme in some countries. Furthermore, he thought that sub-paragraph (ii) should mention reciprocal agreements concluded between States to safeguard social security benefits for refugees. For example, a Polish refugee, working as a miner in France, should receive benefits obtained both in Poland and in France, in accordance with the reciprocity agreements between the two States.

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[411] E/AC.32/SR.14, pp. 4-8

[412] E/AC.32/SR.14, pp. 4-8

[413] E/AC.32/SR.15, p. 2

The US representative said that question was covered in sub-paragraph (i). However, even in the absence of bilateral agreements, the refugee's acquired rights would be safeguarded.

The Belgian representative said a Polish miner residing in France would usually receive the insurance benefits he had accumulated in both countries. However, a refugee who refused to recognize the governments of his country of origin could not expect to enjoy benefits earned there.[414]

The Observer of the American Federation of Labour suggested that the phrase 'including rights acquired under agreements on reciprocity' should be added at the end of subparagraph (b)(i).

The Belgian representative thought the amendment was covered by sub-paragraph (a). If a Polish miner, for example, had worked 10 years in Poland and 20 in France, under the existing bilateral agreement Poland would pay one-third and France two-thirds of his pension. If the miner became a refugee, Poland could hardly be asked to pay its share or France to pay the share which normally ought to have been paid by Poland.

The Observer of the American Federation of Labour was satisfied with the explanation of the Belgian representative.

The Working Group proposed the following text:

'1. The Contracting States shall accord to refugees lawfully in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency, which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) national laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension.

2. Contracting States whose nationals enjoy the benefits of agreements for the maintenance of acquired rights and rights in the process of acquisition in regard to social security, shall extend the benefits of such agreements to refugees subject only to the conditions which apply to nationals.

3. Contracting States will give sympathetic consideration to extending to individual refugees so far as possible the benefits of similar agreements which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality.[415]

The Chairman pointed out that paragraphs 2 and 3 were based on a proposal originally made by the representative of the American Federation of Labour and accepted in principle by the Committee. They had been formally introduced by the representative of Belgium in the working group.[416]

Article 19 was adopted.

The French representative resumed the position of his Government concerning subparagraph (b) of Article 19 in so far as that paragraph included within the sphere of social security legal provisions regarding unemployment. In the French legislative system, assistance to the unemployed was not included within the framework of social security. It was, in principle, reserved for nationals, and aliens could not benefit from it except under certain conditions.[417]

The Committee made the following comment:

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[414] E/AC.32/SR.23, p. 12

[415] E/AC.32/L.32, Article 19

[416] E/AC.32/SR.25, pp. 7-8

[417] E/AC.32/SR.31, p. 14

Paragraph 1

Paragraph 1 of the Article reproduces in general Article 6 of the Migration for Employment Convention (Revised) 1949, adopted by the International Labour Conference at its 32nd session on 1 July 1949.'

'Sub-paragraph (a)

This deals with labour regulations which in most countries are applied in the same manner to aliens as to nationals. The placing of aliens and of national workers on the same footing not only meets the demands of equity but is in the interests of national wage-earners who might otherwise be afraid that foreign labour, being cheaper than their own, would be preferred.'

'Sub-paragraph (c)

'A certain number of States already grant to aliens treatment equal to that accorded to nationals. States which would normally be prevented by the operation of national laws from incorporating aliens into their social security systems would be able to assume obligations under this sub-paragraph by providing that refugees should be dealt with under special schemes.'

This Article includes provisions for payment in cases of employment injury even if in a particular country such payments do not constitute part of a social security system.

It was also agreed that in cases of fatal employment injuries the beneficiaries of the injured person should receive benefits even if they are not resident in the country where the injury occurred.

The Committee approved the Article though aware of the fact that the ILO would prefer the term 'invalidity' in place of 'disability'. This was merely a linguistic preference and was intended to cover the same situations.

Articles 8 and 9 of the 1933 Convention were quoted and Articles 10 and 12 of the 1938 Convention referred to.[418]

Austria commented as follows:

'1(a) As to wages, working hours, overtime, paid vacation, limitation of work performed at home, minimum age, labour of women and minors, and collective bargaining, Austrian labour law and regulations do not discriminate between nationals and aliens.

'As far as admission of refugees to apprenticeship is concerned, placing of refugees and nationals on an equal footing cannot be considered as a general rule as long as the number of refugees in Austria has not substantially decreased. Whenever refugees are admitted to apprenticeship, the same rules and regulations apply to them as to Austrian apprentices.

'1(b) The regular benefits of unemployment insurance are given to refugees and nationals without distinction. The emergency help (*Notstandshilfe*), however, which is derived in part from public funds and which can be granted under certain conditions after the right to unemployment payments (*Arbeitslosengeld*) had expired, is, as a matter of principle, granted to nationals only. Though a few exceptions are made to this principle in favour of refugees, the financial position of Austria does not permit the inclusion of refugees in this category on the basis of equality with nationals.

'The Federal Government of Austria suggests, therefore, replacing in Article 19 1 (b)(ii) the phrase 'payable wholly out of public funds' by 'payable wholly or partly out of public funds'.[419]

The UK Government made the following comment:

'Article 19. His Majesty's Government is continuing to examine this Article with particular reference to their existing international obligations, in so far as they may have a bearing on paragraphs 2 and 3. They will probably find it necessary to make certain reservations if the Article remains in its present form when the Convention is opened for signature.'[420]

The IRO commented:

'The Director General of the IRO notes that in the comment (p. 50) on Article 19, the *ad hoc* Committee stated that in case of fatal employment injuries, the beneficiaries of the injured person should receive benefits even if they are not resident in the country where the injury occurred.

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[418] E/1618, pp. 51-52

[419] E/AC.32/L.40, p. 48

[420] E/AC.32/L.40, p. 49

'In view of the difficulties which IRO has experienced in cases of this kind, the Director General suggests that it would be appropriate to include in Article 19 of the Convention a paragraph to this effect. The dispensation of a residence qualification (cf. Article 1 of Convention no. 19, Equality of Treatment (Accident Compensation) adopted by the International Labour Conference of 1925, which exempts foreigners and their dependents from a residence qualification) is of particular importance to refugees whose families are often split in their search for re-establishment in a country other than their country of origin.'[421]

The International Labour Organisation had made the following observations:

'3. First of all, it must be pointed out that under the Migration for Employment Convention and Recommendation adopted at the 32nd session of the International Labour Conference (Geneva, June-July, 1949) refugees were accorded the benefit not only of the guarantees provided for other migrant workers, but also of special protection since, by reason of their refugee status it is impossible for them to return to their country of origin.

'With regard to the provisions relating to this special protection, Articles 27 and 28 of the draft Convention Relating to the Status of Refugees contain regulations similarly inspired.

'On the other hand, with regard to certain aspects of the labour and living conditions of refugees in the country of residence, the draft Convention provides solutions which differ from those incorporated in the Migration for Employment Convention. Moreover, the wording of the draft does not, in certain cases, appear to correspond exactly with the intentions and decisions of the *ad hoc* Committee.

'4. Article 19, paragraph 1 of the draft Convention reproduces most of the rules contained in Article 6, paragraph 1 of the Migration for Employment Convention. It should be noted, however, that under the latter Convention the principle of equal treatment extends to membership of trade unions (paragraph 1(a)(ii)) and to accommodation (paragraph 1(a)(iii)), whereas Article 19 of the draft Convention under consideration makes no mention of these two points. In the field of trade union freedom, Article 10 provides that refugees shall be accorded the most favourable treatment accorded to nationals of foreign countries; the question of housing is dealt with in Article 16, under which refugees are accorded treatment not less favourable than that accorded generally to aliens in the same circumstances.

'In drawing attention to such differences, emphasis must be placed on the desirability of bringing Article 19 of the draft Convention into harmony with the relevant provisions of the Migration for Employment Convention. The application of the principle of equal treatment as compared with nationals, in respect of membership of trade unions and housing, within the framework of Article 109 of the draft Convention would also have the advantage of providing a more uniform definition of the obligations assumed by governments in these fields. According to Article 19, such obligations are limited 'in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities,' and according to Article 16, 'in so far as the matter is regulated by laws or regulations, or is subject to the control of public authorities.' Article 10 makes no mention of any such limitation, although it was borne in mind by the *ad hoc* Committee.

'5. In the comments annexed to the Draft Convention (document E/1618, page 52) it is stated that 'It was also agreed that in cases of fatal employment injuries the beneficiaries of the injured person should receive benefits even if they are not resident in the country where the injury occurred'. In this connection it must be pointed out that the present draft of Article 19 makes no such provision. Consequently, if the *ad hoc* Committee considered that the beneficiaries should receive the benefits in question even in the case contemplated, an express provision to that effect should be included in the body of the article itself.

'6. Finally, it is pointed out that in the English text of Article 19 the word 'invalidity' which was used in the Migration for Employment Convention, has been replaced by the word 'disability'. The definition of the term 'invalidity' given in the Income Security Recommendation, 1944 (paragraph 11) shows that these two terms have a different connotation and that it is not merely a matter of linguistic preference as stated in the *ad hoc* Committee's comments: the term 'invalidity' means permanent disability, while 'disability' also covers temporary disability. Moreover, the term 'invalidity' is used not only in the Migration for Employment Convention, but also in Convention Nos. 37 and 38 on Invalidity Insurance, and in Convention No. 48 concerning the Establishment of an International Scheme for the maintenance of Rights under Invalidity, Old Age and Widows' and Orphans' Insurance. Consequently, it would be desirable for the *ad hoc* Committee to consider, in the light of the foregoing comments, the advisability of inserting the word 'invalidity' in the English text in place of the word 'disability'.'

At the second session of the *ad hoc* Committee the Chairman, speaking as representative of Denmark, said his Government would most probably give old-age and disability pensions to alien refugees in the way it did to its own

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[421] E/AC.32/L.40, p. 49

nationals. It would, however, be prepared to sign the Convention on the understanding that it would vote the same amounts for assistance to refugees as to nationals, but the funds would be voted under a different head and would be disbursed through different channels.

The US representative said the question of trade union membership which had already arisen during the discussion of Article 10, deserved further consideration under Article 19. In Article 10, provision had been made for the most favourable treatment accorded to nationals of foreign countries; Article 19 required national treatment. If the countries most concerned were prepared to accept the suggestion made in the ILO comments, his delegation would also be prepared to accept it. It was worth noting that paragraph 3 of Article 19 was recommendatory, not mandatory. A similar provision regarding sympathetic consideration for better treatment in respect of trade union rights might well be added to the Article.

In connection with paragraph 3 he suggested to the UK representative that as it was merely a recommendation, it did not seem one in respect of which a reservation was justified.

He proposed formally the insertion of a paragraph concerning the beneficiaries of insured persons as suggested by the ILO.

1. 'The contingency for which invalidity benefit should be paid is inability to engage in any substantially gainful work by reason of a chronic condition, due to disease or injury, or by reason of the loss of a member or function.'[422]

As regards the terms 'invalidity' and 'disability', as the latter was in any case wider in its meaning, he saw no reason why the ILO should object to it.

The Belgian and French representatives spoke in favour of retaining the wording of Article 10 as regards trade unions.

The Swiss representative said that with regard to old-age, widows and orphans insurance, refugees were treated as favourably as aliens generally. They were entitled to a grant only if they had paid contributions for at least ten years, and the grant they received was only two-thirds of that received by Swiss nationals. In addition, aliens were not entitled to temporary grants. Only the nationals of States which had concluded treaties with Switzerland on the basis of reciprocity were entitled to a larger measure of old-age insurance benefits. In those conditions, his Government would probably be compelled to make a reservation on that provision.

With regard to unemployment insurance, refugees were also treated in the same way as Swiss nationals but, in addition, were required to reside in the country for not less than five years before they could join an unemployment insurance scheme.

On reply to a question by the US representative whether any class of refugees came under the Migration for Employment Convention the representative of the ILO gave the definition of migrant worker in Article 112 of the Convention which defines a migrant worker as a person who migrates from one country to another with a view to being employed otherwise than on his own account. It had been understood that the Convention would also apply to refugees and displaced persons. Article 6 provided for national treatment only as regards membership of trade unions.

The French representative wished to reassure the representative of the ILO that even if the Migration for Employment Convention applied to wage-earning refugees and provided for the same treatment as that accorded to nationals, any State which ratified that Convention and also the Convention relating to the status of refugees would not find themselves faced with a contradiction, since the latter provided only for minimum treatment. If the Migration for Employment Convention provided for better treatment that State would, in so far as it accepted migrants who were refugees, apply for preference the provisions of the Migration for Employment Convention.

The UK representative said that his Government did not particularly like the duplication of provisions in two conventions, but would not press for its removal.

The Chairman said a person covered by both conventions would receive whichever treatment was better, and a person covered by only one would receive the treatment conferred by that Convention.

On the question of beneficiaries of injured persons the representative of Canada, Denmark and the UK supported the US proposal for a special paragraph. The Danish and UK representatives said their support was without prejudice to the requirements of exchange control.

The French representative associated himself with these comments and agreed to the insertion of the provision in the Article, subject to consideration by the technical departments concerned.

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[422] E/AC.32/7, pp 2-3

On the Austrian proposal to replace the phrase 'payable wholly out of public funds' by 'payable wholly or partially out of public funds' in paragraph 1 (b)(ii) the representative of the ILO said the word 'partially' meant that part was paid out of the contributions of the refugees themselves. Paragraph 1(b)(ii) referred to 'benefits or portions of benefits payable wholly out of public funds'. If the word 'wholly' were qualified in any way, the insured person would lose certain rights.

The French representative said if the Austrian proposal were accepted, in countries where the system was financed partly by the State but mainly by contributions from the persons insured, wage-earning refugees would be deprived of all rights to benefits, that was to say, of the counterpart of the contributions they had paid.

The UK representative thought the intention of the Austrian Government might be covered by employing the words 'to such extent as they are payable out of public funds.'

The US representative suspected that the Austrian Government's problem would be covered largely by paragraph 3 of Article 19 and that it was either a very special problem or covered a very narrow field.

The UK representative said he could agree to paragraph 2 only if it were put into the form of a recommendation.

The Belgian representative did not agree with the UK representative but the matter should be regulated by bilateral treaties.

The French representative said paragraph 2 was inspired by the Convention relating to the unification of the social security legislation of the signatories of the Brussels Pact. The best procedure for those five countries, including the UK, Belgium and France, would be to study the scope of that provision in the agencies set up by virtue of the Brussels Pact. He felt that the text should be retained.

The UK proposal was rejected by 3 votes to one, with 6 abstentions.[423]

The Drafting Committee proposed the following text:

'Article 19

1. The Contracting States shall accord to refugees lawfully in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency, which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of such beneficiary is outside the territory of the Contracting State.

3. Contracting States whose nationals enjoy the benefits of agreements for the maintenance of acquired rights and rights in the process of acquisition in regard to social security, shall extend the benefits of such agreements to refugees subject only to the conditions which apply to nationals.

4. Contracting States will give sympathetic consideration to extending to individual refugees so far as possible the benefits of similar agreements which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality.'

Article 19 was adopted.[424]

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[423] E/AC.32/SR.28, pp. 7-20

At the Conference of Plenipotentiaries Belgium proposed the following amendment:

> 'Substitute the following for paragraph 3:
>
> 'The Contracting States shall extend to refugees the benefits of agreements concluded between them or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in process of acquisition in regard to social security, subject only to conditions which apply to nationals of the State signatory to the agreement in question.'[425]

The UK proposed the following:

> 'Paragraph 3. Substitute for the words 'such agreements', the words: 'any agreements which may at any time be in force between Contracting States.
>
> Paragraph 4. Add at the end of this paragraph the words: 'or which may at any time be in force between Contracting States and non-Contracting States.'[426]

The President, speaking as representative of Denmark, said in Denmark an insured person only made a formal contribution to the social security scheme, and that it was in reality the State that contributed to the various funds. The Danish Government proposed to extend social security to refugees, but under the Danish system, it would be necessary for the benefits to be paid to refugees on that count to come from funds other than the old-age fund and the like. Subject to the understanding that such an arrangement would not be regarded as failure to conform to the provisions of the paragraph of Article 19, the Danish Government would not require a reservation on that point.

The UK representative observed that a similar situation arose in the UK.

The Swiss representative said the Swiss delegation could not wholly subscribe to the provisions of Article 19. It was obliged to reserve its position to some extent so far as apprenticeship and training were concerned. Refugees would be subject to no restrictions only if they held a permit to settle in Switzerland.

As to national treatment regarding unemployment and old-age insurance, foreign workers could normally insure against unemployment only if they were allowed to accept work. Aliens who had been living in Switzerland for a fairly short period, and therefore did not have a permit to settle there, were subject to such restrictions and were, consequently, not insurable. Nevertheless, there was a growing tendency to lift restrictions on refugees in respect of employment, and most of them could insure against unemployment. On the other hand, the Swiss Federal Government could not formally undertake to accord them the same treatment as it accorded to nationals, and therefore would be obliged to enter a reservation to the effect that the treatment accorded to refugees in the matter of unemployment insurance would be the same as that accorded to aliens generally.

As to old-age insurance and allowances paid to next-of-kin of a deceased, the existing Swiss regulations were still more complex. Although aliens, and hence refugees, were insured, they were subject to certain special provisions. The Swiss Federal Government did not see its way at that juncture to amend the law relating to old-age insurance and allowances paid to next-of-kin of deceased, and would therefore be obliged to enter a reservation on Article 19(1)(b) to the effect that in those matters refugees would enjoy, not the treatment accorded to nationals, but that accorded to aliens generally.

The Canadian representative observed that in Canada some matters dealt with in Article 19 were under federal and others under provincial legislation. No distinction was made between nationals and aliens, although there were differences between the laws of the various provinces. Subject to the acceptance of this position, the Canadian delegation could support Article 19 without difficulty.

The Swedish representative said that, generally speaking, the Swedish delegation could accept Article 19. He would point out, however, that, as far as sub-paragraph 1(b) was concerned, although most of the social security benefits in Sweden were granted to aliens and nationals alike, in some cases, especially with regard to old-age pensions, the actual form of assistance was different as between aliens and nationals. It might therefore be necessary for the Swedish Government to enter certain reservations on that paragraph.

The President, speaking as representative of Denmark, said that the Danish Government would have no difficulty in assuming the obligations laid down in paragraph 1, but it might be necessary to make certain reservations on paragraph 2. Danes were not allowed to draw pensions when resident abroad, so that it might not be possible, for instance, to allow the compensation payable on the death of a refugee to be transferred to his widow resident outside the country.

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[424] E/AC.32/SR.41, p. 19

[425] A/Conf.2/51

[426] A/Conf.2/50

The UK representative doubted whether the UK could comply with the provisions of paragraph 2, for the same reason as that given by the Danish representative.

The representative of the Federal Republic of Germany said that his delegation's position was similar. He had, however, not considered that the phrase 'the right to compensation' implied the transfer of such compensation outside the territory of a Contracting State.

The Netherlands representative stated that the Netherlands delegation would be obliged to make a reservation on paragraph 2, because of the possibility of transfer of compensation, which would be governed by the existing foreign currency rules and regulations.

The Norwegian representative said Norway's position was the same as that of Sweden and Denmark. Some Norwegian social security schemes applied to all inhabitants of the country; old-age pensions, for example, were paid to all inhabitants, subject to a minimum period of residence in the country. Other schemes, however, applied only to Norwegian nationals. The Norwegian Government could not, therefore, accept the provisions of subparagraph 1(b) without amending its legislation, and would have to enter a reservation on that sub-paragraph, although, of course, it was its intention to work towards equality of treatment between nationals and refugees.

The UK representative observed that paragraph 3 seemed to apply to refugees the benefit of agreements made between States to permit the nationals of one country to retain in another country one or all of the social security rights acquired in their own country. He had no objection to the principle that those agreements, of which there were many, should apply equally to refugees and to nationals, but the text of paragraph 3 as drafted would appear to permit the possibility that, under a bilateral agreement between a State Party to the Convention and a State non-Party to the Convention, the former would be obliged to apply to refugees from the latter the same conditions as it would apply to its own nationals. Such a unilateral obligation would be an unjustifiable burden on the State Party to the Convention, and he doubted whether it would be practicable without the cooperation of the non-Contracting State. He believed the original intention had been that when such agreements existed between Contracting States, they should be automatically applied to refugees from both countries. In the circumstances, he proposed that the words 'such agreement' in the third line of paragraph 3 should be replaced by the words 'any agreement which may be in force between Contracting States'.

The Israeli representative considered that the meaning of paragraph 3 was narrower than that suggested by the UK representative.

The Belgian representative said such an agreement existed between Belgium and France which covered persons who had paid contributions with a view to drawing social insurance benefits later, and who had subsequently transferred their residence from one country to the other. The agreement provided that, from the standpoint of admission to social security benefits, contributions Paid in the first of the two countries would be considered as if they had been paid in the second country of residence, irrespective of which of the two countries the worker was a national.

A codicil had subsequently been concluded between France and Belgium extending the benefits of the agreement to refugees who had paid social insurance contributions in either country.

The UK representative thought the Israeli representative might have had in mind the provisions of paragraph 4, rather than the provisions in paragraph 3. He endorsed the observations of the Belgian representative.

The Belgian representative fully agreed with the UK representative's interpretation. Such agreements included a signed undertaking between the Contracting States. In the present case the High Commissioner for Refugees might approach the Contracting States with a request that they extend to refugees the benefits of the treaty arrangements applied to nationals of both countries. But it should be noted, in that connection, that there would be no question of an obligation, but only of a recommendation.

Paragraphs 1 and 2 of Article 19 were adopted by 17 votes to none, with 1 abstention.[427]

After explanation given by the Israeli representative the UK representative withdrew his amendment in favour of the Belgian amendment.

In reply to a question of the Belgian representative, the Israeli representative said that, in the text at least, the use of the words 'shall extend' under the Belgian amendment was a binding provision, although he recognized there might be some discrepancy in that respect between that and the French text, which merely read ‘é*tendront'.* The intention of paragraph 3 of Article 19 was of course, to extend such benefits to refugees *ipso facto,* without any special provisions to that end.

The Belgian amendment to paragraph 3 of Article 19 was adopted by 18 votes to none, with 3 abstentions.

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[427] A/Conf.2/SR.10, pp. 14-19

The Chairman, speaking as representative of Denmark, proposed that the words to be added to paragraph 4 should read 'which may at any time be in force between such Contracting States and non-Contracting States'.

The Israeli representative thought that the Style Committee might consider the desirability of deleting the word 'individual' before the word 'refugee' in the second line of paragraph 4, particularly if there was a risk of the retention of that word leading to discrimination between one refugee and another.

The Danish proposal was adopted by 22 votes to none, with 1 abstention.

Article 19, as a whole and as amended, was adopted by 21 votes to none, with 2 abstentions.[428]

The Style Committee proposed the text which is now in the Convention.

That text was adopted by 22 votes to none, with 1 abstention.[429]

Regional and National Measures

As regards paragraph 1 (b) the principle of equality of treatment of aliens in general and of refugees in particular as regards social security has been laid down in several treaties. The ILO Equality of Treatment (Social Security) Convention of 1962[430] provides explicitly that the provisions of the Convention 'apply to refugees and stateless persons without any condition of reciprocity'. (Article 10 paragraph 1)

The Appendix to the European Social Charter of 18 October 1961[431] provides that each Contracting Party will grant to refugees as defined in the 1951 Convention and lawfully staying in its territory, treatment as favourable as possible and, in any case, not less favourable treatment than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to refugees.

The European Convention on Social Security of 14 December 1972[432] provides explicitly that its provisions shall be applicable to refugees or stateless persons resident in the territory of a Contracting Party as well as to members of their families and their survivors (Article 4 paragraph 1(a)). The term 'refugee' has the meaning assigned to it in Article 1 of the 1951 Convention and in Article 1 paragraph 2 of the 1967 Protocol relating to the Status of Refugees, without any geographical limitation (Article 1(o)).

Regulations 3 and 4 of the European Economic Community[433] provide that the provisions regarding social security apply to workers who are nationals of the Contracting Parties or stateless persons or refugees residing in the territory of one of the Contracting Parties, as well as to members of their families and their survivors.

In countries which are Parties to the 1951 Convention and to one of these treaties the provisions more favourable to refugees will apply.

Several countries have enacted legislation or issued regulations regarding the entitlement of refugees to social security benefits.

In Luxembourg, according to the Decree of the Minister of Labour, Social Security and Mines of 25 May 1955,[434] refugees unemployed for reasons beyond their control are assimilated to unemployed Luxembourg nationals for admission to unemployment benefits if they are permanent residents in the territory of the Grand Duchy and are in possession of a travel document issued by the Ministry of Foreign Affairs under Article 28 of the 1951 Convention.

In Switzerland according to the Federal Decree of 4 October 1962[435] persons having asylum in Switzerland and their survivors are entitled to ordinary pensions under the Old-Age and Survivors Scheme under the same conditions as Swiss nationals provided they have their legal domicile in Switzerland and have paid contributions for at least one year. They are entitled to extra-ordinary pensions if they have resided in Switzerland uninterruptedly for five years immediately prior to filing the application for pension (Article 1).

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[428] A/Conf.2/SR.11, pp. 4-9

[429] A/Conf.2/SR.35, p. 8

[430] ILO Convention No. 118

[431] Eur.Tr.S.No. 35

[432] Eur.Tr.S.No. 78

[433] J.O. 16 December 1958 No. 30, p. 562

[434] J.O. 5030.87

[435] A.J. 1963, p. 37

As regards invalidity insurance refugees are entitled to rehabilitation measures if they have paid contributions for at least one year prior to the disability (Article 2).

As regards paragraph 3 several countries have explicitly extended bilateral social security agreements to refugees resident in their territories. Thus by a mutual decision reached in August 1948, Belgium and France extended the benefits of the General Convention on Social Security concluded between the two countries on 17 January 1948, to refugees.

Article 8 of the First Protocol to the Social Security Agreement between the Federal Republic of Germany and the UK extends the provisions of the Agreement to refugees who have their habitual residence in either country.

In Switzerland, in as much as refugees are not entitled to benefits under social security agreements concluded by Switzerland, the contributions paid by them and their employers are refunded to them.

As to paragraph 4 in the Federal Republic of Germany's *Fremdrenten Gesetz* (Law on Foreign Pensions) on 7 August 1953[436] provides that homeless foreigners within the meaning of the Homeless Foreigners Law of 25 April 1951[437] shall benefit from rights which they acquired or were in the process of acquisition.

Italy has declared that refugees will benefit from bilateral agreements with States non-Parties to the 1951 Convention in so far as the provisions of the agreements can be unilaterally applied.

Commentary

The principle of equality of treatment between nationals and aliens as regards labour law can be regarded as universally accepted. The same principle as regards social security is becoming more and more widely accepted. Several States made reservations on Article 19 paragraph 1(b) but most of them were later withdrawn.

The question arises whether the term 'lawfully staying' extends also to refugees who were lawfully staying in the territory of a Contracting State and subsequently left it. The answer probably is that such refugees are entitled to social security benefits in as much as nationals are entitled to such benefits.

Paragraph 1 applies to labour law and social security 'in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities'. It applies to the benefits for agreements between employees and employers only to this extent.

Paragraph 2 gives the dependents of victims of fatal industrial accidents resident abroad a right to compensation even if nationals have no such right. As to the actual transfer of the compensation, currency regulations are preserved but they should, as far as possible, be interpreted in such a way as to make transfer possible.

Paragraph 3 takes care of the reservation in paragraph 1 (b)(i) 'there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition'. On the multilateral level there exists the European Convention on Social Security and Maintenance of Migrants' Pension Rights Convention 1935.[438] Furthermore, the Migration for Employment Recommendation (Revised) 1949 provides that bilateral agreements should be framed with due regard to the principles laid down in the Migration for Employment Convention. There exist numerous bilateral agreements in the field of social security. They provide for the recognition of rights to social security benefits acquired in the other country and for the accumulation of periods of contributions which in themselves are not sufficient for the grant of benefits. In such instances, normally each Party pays its share according to the period of work and contribution spent in his territory. Such agreements are *ipso facto* to be applied to refugees in the same way as to nationals of the Parties. Whether the provision of Article 3 is self-executing depends on the national law of the Contracting State concerned. Where the provision is not self-executing, the Contracting State is obliged to take the necessary measures to extend the benefits of the agreement to refugees, be it by an arrangement with the other Party to the agreement or by measures on the national level.

Paragraph 4 applies to similar agreements with non-Contracting States, in particular with the countries of origin of the refugees. It is in the nature of a recommendation.

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[436] BGB1.I, p. 898

[437] BFBL.I, 1951, p. 269

[438] ILO Convention No. 48

ARTICLE 25. ADMINISTRATIVE ASSISTANCE

‘1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to Articles 27 and 28.’

Travaux Préparatoires

The Secretariat draft contained the following Article 23:

'1. In all cases in which the exercise of a right by a foreigner requires the assistance of the authorities of his country (in particular of the consular authorities) the High Contracting Parties shall designate an authority which shall furnish assistance to refugees (Arrangement of 30 June 1928).

2. The authority so designated shall deliver or cause to be delivered to refugees unable to procure them by other means documents:

(a) certifying the identity and the position of refugees;

(b) certifying their family position and civil status, in so far as these are based on acts performed or facts which occurred in the refugee's country of origin;

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

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

(e) testifying to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications and to his university degrees or academic diplomas, etc.;

(f) recommending refugees to the competent authorities, particularly with a view to their obtaining visas, permit to reside in the country, admission to schools, libraries, etc.

3. The certificates so delivered shall take the place of the original acts and documents and shall be accorded the same validity.'

The Secretariat made the following comment:

> 'Paragraph 1
>
> 'Refugees do not enjoy the protection and assistance of the authorities of their country of origin. Consequently, even if the Government of the country of residence grants the refugee a status which ensures him treatment equivalent to or better than that enjoyed by foreigners, it does not follow that on that account alone he will be allowed to enjoy the rights granted to him. If the refugee is actually to enjoy these rights, he must obtain the assistance of an authority which will perform for him the services performed by national authorities in the case of persons with a nationality. In the absence of an international authority, the High Contracting Parties must appoint a national authority which will furnish its assistance to refugees and deliver the documents they require.
>
> 'Paragraph 2
>
> 'In order to perform the acts of civil life (marriage, divorce, adoption, settlement of succession, naturalization, acquisition of immovable property, constitution of associations, opening of bank accounts, etc.) a person must produce documents to certify his identity, position, civil status, nationality, etc., and if he is a foreigner, to testify to

the provisions of his former or present national law and the conformity of instruments executed in his country of origin with the legislation of that country, etc.

It is easy for a foreigner to obtain such documents. He has merely to apply to the national services which operate in his country of origin or which are accredited abroad and they will deliver the documents which he requires. A refugee whose links with his country of origin are broken cannot obtain such papers from the authorities of that country. In the absence of any international authority, a national authority designated for the purpose will be required to issue to refugees all the documents of which they stand in need. Paragraph 2 of Article 21 gives a list of these documents.'[439]

The French draft contained the following:

'1. In all cases in which the exercise of a right by the foreigner normally requires the assistance of the administrative authorities of his country of origin or of its representatives abroad, the High Contracting Parties undertake either to appoint a national authority or, failing that, to empower the High Commissioner for Refugees to furnish assistance to refugees.

2. The national authority so designated or, in default thereof, the High Commissioner for Refugees shall be empowered to deliver to refugees unable to procure them by other means documents:

(a) certifying the identity and the position of refugees;

(b) certifying their family position and civil status, in so far as these are based on acts performed or facts which occurred in the refugee's country of origin;

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

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

(e) testifying to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications and to his university degrees or academic diplomas, etc.;

3. The certificates so delivered shall rank as authentic documents and shall take the place of the acts and documents issued in the refugee's country of origin.'[440]

At the first session of the *ad hoc* Committee the French representative noted that the French text, which included a reference to the High Commissioner for Refugees, would leave each State free to decide whether administrative assistance should be furnished by its own authorities or by an international authority, if such authority existed. It was not intended to impose duties upon the High Commissioner nor to give him exclusive competence in the matter.

The US representative found that a reference to an international authority might create difficulties. The High Commissioner had not yet been appointed, the nature of his functions was not known, and it was still not clear whether he would administer them through offices in various countries or through a central agency. There was a danger that some countries might seek to relieve their own agencies of administrative responsibility by referring refugees to an international authority which in fact had not yet been established, and might not ultimately be required to deal with the matters discussed in Article 23. In order to eliminate the risk of leaving refugees unprotected, it seemed advisable to make it mandatory upon Governments to assume responsibility except when an international authority functioning in their territory was in a position to do so. In the latter event, States should retain the option of accepting the authority of an international organ.

The UK representative felt that it was beyond the competence of the Committee to attribute functions to the High Commissioner or to imply that his office would exercise functions in various countries. Such exercise was not contemplated by the UK Government. The point raised in the French text might be noted in the Committee's report with the comment that if the General Assembly, in defining the functions of the High Commissioner, should decide that his office could deal with administrative assistance to refugees, it might authorise it to do so by arrangement with individual Governments. In any case, the question of administrative assistance to refugees did not constitute a problem in the UK, and the provisions of Article 23 did not appear applicable in that country.

The Chairman, speaking as representative of Canada, and the Venezuelan representative supported the solution proposed by the UK representative.

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[439] E/AC.32/2

[440] E/AC.32/L.3

The representative of the IRO observed, in connection with the applicability of Article 23, that it depended on the legal system in force in a given country. In common law countries like the UK, no new legislation or administrative procedures were required to protect refugees. In other countries, however, like France or Belgium, special provision had to be made.

The Israeli representative pointed out that the language of Article 23 was mandatory, rather than permissive. It placed upon Governments the obligation to furnish administrative assistance to refugees. In some countries, such as the UK, no special machinery had to be set up. In others, however, special offices had been established for that purpose. In fact the provision was based on the practice of France and Belgium.

On the proposal of the Brazilian representative it was decided to delete the phrase 'in particular the consular authorities'.

The US representative thought that the point raised by several representatives might be met by some such formula as the following:

> 'In all cases in which the exercise of a right by a foreigner requires the assistance of the authorities of his country and where no other provision is made for giving such assistance to refugees, the High Contracting Parties shall designate an authority or authorities which shall furnish such assistance.'

The Venezuelan representative believed that the US suggestion did not meet the point raised by the Israeli representative and that the draft could still be interpreted as requiring a State to establish a special authority. He wondered whether the problem could not be met by a phrase to the effect that the High Contracting Parties 'shall take measures as are required to provide refugees with assistance'.

The Israeli representative stated that the reference to the Arrangement of 30 June 1928 would in itself appear to make the creation rather than the mere designation of a special authority mandatory; as that was not the intention of the Committee, the reference to the Arrangement of 1928 should be deleted.

The suggestion of the Israeli representative was adopted without objection.

The representative of the Secretariat drew the Committee's attention to the fact that the provision spoke of 'a right by a foreigner' and he stressed the word 'foreigner' rather than by a 'refugee'. Seen in that context, the word 'country' referred to the country of nationality or origin.

The UK representative asked whether the provision would impose upon his Government the obligation to provide a refugee resident in the UK with the document that he might require. For example, if a Spanish refugee currently in England required a birth certificate, would the UK be obliged to attempt to procure the certificate for him, although in such a case the refugee might presumably obtain the desired document simply by requesting it from the Spanish Government's Registrar of Births?

The Belgian representative stated that the hypothesis just mentioned by the UK representative automatically fell outside the scope of paragraph 1 which would operate only in the case of a refugee unable to secure the necessary documents from the authorities of his country.

At the invitation of the Chairman, the representatives of Belgium, France and Israel submitted the following draft of Article 23, paragraph 1:

> 'In all cases in which the exercise of a right by a foreigner requires the assistance of the authorities of his country, the High Contracting Parties shall designate the authority or authorities, national or international, which shall furnish assistance to refugees.'

As to paragraph 2, the Chairman, speaking as representative of Canada, proposed that the words 'as far as possible' be inserted after the word 'shall'.

The Belgian representative wondered whether it was wise to enumerate specific categories of documents in paragraph 2 and suggested that the paragraph should limit it self to a general statement to the effect that issue of the necessary documents should be facilitated by the designated authority.

The representative of the IRO stated that the list of documents was to be found both in the Arrangement of 30 June 1928 and in the French Agreement of 30 January 1948 with the IRO, and that it had served a useful purpose in many cases as experience had shown.

The UK representative thought that it was unnecessary to incorporate the provisions of paragraph 2 into the Convention at all. They were inapplicable in his country.

The Danish representative suggested the following wording:

'In so far as refugees may be required to produce documents regularly issued to foreigners by the authorities of their own countries, the authority or authorities mentioned in paragraph 1 shall deliver or shall cause such documents to be delivered to refugees.'

The Belgian representative expressed general support for that wording, but thought that it should be made clear that the documents referred to were only those required in the performance of acts of civil life.

The Chairman, speaking as representative of Canada, proposed that the words 'where possible' should be inserted at the appropriate place in the Danish proposal.

The text submitted by the Danish representative, as amended by the Chairman, was adopted subject to drafting changes.

As regards paragraph 3 the French representative explained that, in inserting the provision that the certificates delivered should rank as authentic documents, his delegation had intended to give them the highest possible value. On considering the type of certificates envisaged, however, he had come to the conclusion that they could not all rank as authentic documents in the accepted meaning of that term under French law. Moreover, the term might not have quite the same connotation in other countries. He therefore withdrew the French version of paragraph 3 in favour of the Secretariat draft.

The Secretariat draft of paragraph 3 was adopted subject to drafting changes.

The Chairman, speaking as representative of Canada, proposed the insertion of a clause providing that the fees charged for the documents issued should not be higher for refugees than they were for nationals.[441]

It was decided to refer Article 23, in its existing form, to the working group, subject to certain drafting of amendments.[442]

The Working Group proposed the following text:

1. The Contracting States in whose territories the exercise of a right by an alien would normally require the assistance of the authorities of his country of nationality shall arrange that such assistance is afforded to refugees by an authority or authorities, national or international.

2. The authority or authorities mentioned in paragraph 1, shall, so far as possible, deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to other aliens by their national authorities.

3. Documents or certifications so delivered shall stand in the stead of and be accorded the same validity as would be accorded to similar instrument delivered to aliens by their national authorities.

4. Subject to such exceptional treatment as may be granted to indigent refugees, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.[443]

At the proposal of the Chairman the words 'so far as possible' in paragraph 2 were deleted.

Article 20, as amended, was adopted.[444]

The Committee made the following comment:

'Refugees do not enjoy the protection and assistance of the authorities of their country of origin. Consequently, even if the Government of the country of asylum grants the refugee a status which ensures him treatment equivalent to or better than that enjoyed by aliens, he may not in some countries be in a position to enjoy the rights granted to him. Often he will require the assistance of an authority which will perform for him the services performed by national authorities in the case of persons with a nationality.

'In this Article, Governments undertake to assure that refugees obtain the required assistance. A Government may provide itself such assistance by creating an authority to do so or by assigning the task to an existing national authority, or a country may prefer to make arrangements for an international authority to render such assistance. If, for example, the UNHCR should deal with administrative assistance, a country may arrange with the High Commissioner to have such assistance rendered to refugees in its territory. In any event, however, there is an obligation on the Contracting State to see that such assistance is provided.[445]

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[441] E/AC.32/SR.19, pp. 2-9

[442] E/AC.32/SR.24, pp. 5-6

[443] E/AC.32/L.32, Article 20

[444] E/AC.32/SR.25, p. 8

[445] E/1618, p. 53

The UK commented:

> 'Experience has shown that there is no need in the UK for special arrangements of the kind mentioned in this Article.'[446]

At the second session of the *ad hoc* Committee the Swiss representative found it difficult to understand paragraph 3, since everything depended on the nature of the document held by the refugee. To take the case of a passport, by issuing a passport to one of its nationals a State guaranteed his return to his country of origin. That was not the case with the other documents issued to refugees in place of a passport.

The US representative was grateful to the Swiss observer for pointing out that Article 20 might appear to cover travel documents, which was properly the subject of Article 23.

The Belgian representative suggested that in order to clarify the issue the words 'of identity' should be inserted after the word 'certifications', since it was mainly certificates of identity that were referred to.[447]

The Drafting Committee proposed the following text:

'1. The Contracting States in whose territories the exercise of a right by an alien would normally require the assistance of the authorities of his country of nationality shall arrange that such assistance be afforded to refugees by an authority or authorities, national or international.'

'2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to other aliens by their country of nationality.''

'3. Documents or certifications so delivered shall stand in the stead of and be accorded the same validity as would be accorded to similar documents delivered to aliens by their national authorities.'

'4. Subject to such exceptional treatment as may be granted to indigent refugees, fees may be charged for the services mentioned therein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.'

'5. The provisions of this Article shall be without prejudice to Articles 22 and 23'.[448]

That text was adopted.[449]

At the Conference of Plenipotentiaries Austria proposed the following amendment:

> 'Amend paragraphs 2 and 3 of Article 20 to read:

'2. The authority or authorities mentioned in paragraph 1 shall, *as far as possible,* deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to other aliens by their national authorities.

'3. Documents and certifications so delivered *may* stand in the stead of and be accorded the same validity as would be accorded to similar instruments delivered to aliens by their national authorities.'[450]

Belgium proposed:

> 'Replace paragraphs 1, 2 and 3 by the following:

'1. When the exercise of a right by a refugee would normally require the assistance of authorities in a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.'

'2. The authorities mentioned in paragraph 1 shall deliver or cause to be delivered *under their supervision* to refugees such documents or certifications as would normally be delivered to other aliens *by or through* their national authorities.'

'3. Documents or certifications so delivered shall stand in the stead of official documents delivered by or through their national authorities, and shall be regarded as authentic in the absence of proof to the contrary.[451]

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[446] E/AC.32/L.40, p. 50

[447] E/AC.32/SR.38, pp. 20-21

[448] E/AC.32/SR.41, p. 19

[449] E/AC.32/L.42, Article 20

[450] A/Conf.2/46

The Netherlands proposed:

Readapt the second paragraph to read:

'2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered to refugees such documents or certifications *as are required for the exercise of a right and which would normally* be delivered to other aliens by their national authorities.'[452]

The Austrian representative said that the Austrian Federal Government would be unable to accept Article 20 as drafted. Presumably documents pertaining to the refugee's personal status would not be affected by Article 20, since Article 7 provided that the personal status of a refugee should be governed by the law of the country of his domicile.

Consequently, Article 20 would be applicable to documents relating to legal and material rights. It followed, therefore, that the Austrian Federal Government, for instance, would, acting as national authority, have to provide documents concerning legal situations and acts unknown to Austrian law and custom. Such a situation might give rise to great juridical difficulties, and Contracting States would, by subscribing to Article 20, assume considerable risks.

The Swedish representative supported the Austrian amendment, which fully met the difficulties experienced by the Swedish Government in the matter.

The Netherlands representative said that, as a result of discussions with the Office of the HCR, he withdrew his amendment. He would also oppose the Austrian amendment, which he considered was also too restrictive.

The Belgian representative regretted that a task of that nature had not been entrusted exclusively to an international authority. Under his mandate, the High Commissioner could protect only groups of refugees, and that was where the tragedy lay in certain cases where the refugee required individual protection as well. In many European countries refugees would like to be able to get into direct touch with someone who was responsible for protecting them, not merely with foreign authorities. The fact remained that when the authorities of the receiving country were called upon to consider a complaint or a protest from a refugee, they would always be both judge and party to the dispute.

If a refugee who resided in the territory of country A happened to marry, and so exercised a right in the territory of country B, the question would arise as to which authorities were responsible for giving him the administrative assistance he required. In the opinion of the Belgian delegation, as expressed in its amendment, the responsibility should be placed squarely on the authorities of the country of residence, who were better able to come to the assistance of refugees.

Another case might well arise, namely, that of refugees wishing to exercise a right in the territory of a non-Contracting State. The Belgian delegation was of the opinion that in such cases the country of residence should lend its good offices. The concept of territory should, for these reasons, be omitted from the provisions governing the exercise of a right by a refugee. His delegation proposed that there should be some control, even if such control existed merely in the authentication of the signature of those concerned.

The Belgian delegation also proposed that the documents normally supplied to aliens should be issued to refugees either by the national authorities or their intermediary. If, for instance, a Romanian national born in Hungary wanted to obtain a copy of his birth certificate, he would normally have to apply to the Romanian representative accredited to his country of residence or to the Romanian Government direct. A refugee, on the other hand, had no possibility of applying to his national authorities even when they acted merely as intermediaries.

Lastly, the Belgian delegation suggested that paragraph 3 should be replaced by some text more easily capable of dispelling any doubts arising out of such documents.

He could not agree that the administrative assistance which the Contracting States would be required to afford to refugees should be merely optional.

The Colombian representative supported the Belgian delegation's attitude towards paragraph 1 of Article 20. In the case of paragraph 2, he supported the Austrian amendment.

The HCR said no difficulties arose in countries of common law, where the affidavit system applied but he would very much regret if the Conference adopted the Austrian amendment, which would so weaken Article 20 as to deprive it of all significance. It would be preferable for the Austrian Federal Government to enter a reservation to the Article rather than to press its amendment. The Belgian amendment was, in his view, in some respects even better than the original text and he would have no objection to its adoption.

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[451] A/Conf.2/52

[452] A/Conf.2/48

The Austrian representative withdrew his amendment and said the Austrian Federal Government would instead enter a reservation.

The French representative said, in his opinion, the words 'under their supervision' meant that if the papers and documents concerned were issued by a national authority there would be international supervision, whereas if they were issued by an international authority, there would be national supervision.

The Belgian representative said the French representative's interpretation was correct. There was a precedent in the 1928 Agreement between the Government of France and Belgium by which an Office responsible for the issuing of identity papers to Russian refugees had been set up. Such papers were considered as authentic by the national authorities if the signature of the Director of the Office was attested by the French or Belgian authorities. The establishment of such national offices would be the best way of solving the problem.

The UK representative said in the UK affidavits would be sufficient. The UK delegation might have to enter a reservation in order to make its position clear, especially since paragraph 2, as at present drafted, would make it mandatory on the UK authorities to supply the documents which would, under the Continental system, be issued by the national authorities. But he wished to emphasize that he was in no way opposed to the general tenor of the Article which would in point of fact, have no practical effect in the UK.

The Belgian amendment to Article 20 was adopted by 17 votes to none, with 5 abstentions.[453]

The style Committee proposed the text which is now in the Convention.[454]

That text was adopted by 22 votes to none.[455]

Regional and National Measures

The Recommendations concerning the Issuance and Recognition of Documents Issued to Refugees in Application of the 1951 Convention adopted by the General Assembly of the International Commission on Civil Status at Luxembourg on 8 September 1969 (Rec. No. 1), suggests that in the conditions provided for in Article 25 of the 1951 Convention, authorities should be authorized to issue documents in place of acts of civil status; that in order to facilitate their task, direct contact should be established between these authorities; and recommends to member States to recognize, at least with the probative value provided for in paragraph 3 of Article 25, the documents issued by the authorities in the member States.

The member States of the International Commission on Civil Status are Austria, Belgium, France, the Federal Republic of Germany, Greece, Luxembourg, Italy, the Netherlands, Switzerland and Turkey.

According to Article 2 of the Convention concerning the Issue of Certificates of Capacity to Marry, refugees and stateless persons whose civil status is determined by the law of a Member State are assimilated to nationals of that State for the application of the Convention. The Convention provides that the State of domicile is obliged to issue the Certificates of Capacity to Marry. Such certificates are exempt from legalization or any other formality in the other States Parties.

Several States Parties to the 1951 Convention have designated authorities competent to render administrative assistance to refugees. In Belgium the *Direction Générale de la Chancellerie et des Contentieux* of the Ministry of Foreign Affairs has been so designated. No legalization of the documents issued by the country of origin is required.

In France, Article 4 of the OFPRA Law of 25 July 1952[456] provides:

> 'L'office est habilité à délivrer, après enquête s'ily a lieu, aux réfugiés et apatrides visés à l'article 2 les pièces nécessaires pour leurpermettre soit d'exécuter les divers actes de la vie civile, soit de faire appliquer les dispositions de la législation interne or des accords internationaux qui intéressent leur protection, notamment les pièces tenant lieu d'actes d'état civil. '

The Director of the Office authenticates such documents, if necessary on the basis of a *'procès-verbal de témoignage'* by two witnesses.

In Algeria the *Bureau pour la Protection des Rifugids et Apatrides* renders administrative assistance to refugees.

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[453] A/Conf.2/SR.11, pp. 11-16

[454] A/Conf.2/LO2 Add.1, Article 25

[455] A/Conf.2/SR.35, p. 9

[456] J.0. No. 52-893

In the Federal Republic of Germany the *Personenstandsgesetz* (Law on civil Status) of 17 July 1970[457] provides for the issuance of personal status documents for refugees.

In Italy a certificate of marital status issued by HCR based on a statement supported by witnesses before an Italian magistrate was recognized by the Court of Milan in *Farber Siegfried v. Pacca Mariraelliena* on 13 May 1968 and also by an inter-ministerial note by the Ministry of Justice of 9 April 1974.

A special problem exists as regards Certificates of Capacity to Many. In Austria the administrative authorities grant refugees exemption from such certificates. In the German Federal Republic the *Oberlandesgerichte* are competent to grant such exemption.

Although HCR has nowhere been designated as the competent authority to render administrative assistance to refugees, certificates issued by HCR are frequently accepted.

Commentary

Historically, the question of administrative assistance to refugees arose with the establishment of the Soviet Union. As long as the Soviet Union was not recognized, the Czarist consuls continued to render administrative assistance to Russian nationals and refugees. With the recognition of the Soviet Union, these consuls lost their official character. They continued, however, to render assistance to refugees and it was then required that the documents and certifications issued by them should be countersigned by the local representative of the League of Nations High Commissioner for Refugees.

The Arrangement concerning the Legal Status of Russian and Armenian Refugees of 30 June 1928[458] recommended that the League of Nations High Commissioner for Refugees shall, by appointing representatives in the greatest possible number of countries, render the services enumerated in the Arrangement, in so far as such services do not come within the exclusive competence of the national authorities (Article 1).

The Belgian and French Governments concluded on the same day a legally binding Agreement empowering the local representative of the High Commissioner to issue the documents enumerated in Article 1 of the Arrangement. In these two countries, the representatives of the High Commissioner received the consular exequatur. Other countries acted on the recommendations of the Arrangement. These services have become known as quasi-consular functions.

According to the Convention relating to the International Status of Refugees of 28 October 1933,[459] Committees for Refugees could be entrusted with the powers enumerated in Article 1 of the Arrangement of 30 June 1928 in so far as these powers were not exercised by the representatives of the Secretary General of the League of Nations (Article 15).

According to paragraph 1 of Article 25, administrative assistance to refugees is to be rendered in cases where they cannot have recourse to the authorities of the foreign country concerned. Where this is the country of origin or a country with a similar regime, the refugee cannot be expected to have recourse to the authorities of these countries. Where third countries are concerned, the refugee may, however, well be expected to apply to the authorities of the country concerned but where such assistance requires a request through official channels, the designated authority is obliged to channel the request.

The assistance is to be provided by the authorities of the Contracting State in whose territory the refugee is residing, also in cases where the assistance is required in order to exercise a right in another country, for example, in order to enable him to marry in another country. Administrative assistance is not limited to the territorial authorities of the country of residence. Diplomatic or consular authorities may be designated to render this assistance to refugees while abroad or they may render such assistance provided it is furnished 'under the supervision' of the designated authority.

The term 'administrative assistance' is wider than the functions enumerated in the Arrangement of 1928. It may include investigations, counselling and personal assistance. It includes the functions normally exercised by consuls, thus, according to the Vienna Convention on Consular Relations Article 5 '(f) acting as notary and civil registrar and in capacities of a similar kind' and '(j) transmitting judicial and extra-judicial documents or executing letters rogatory' but also documents issued by or through national authorities.

According to paragraph 2 documents or certifications are to be delivered by the designated authority or authorities or be caused to be delivered under their supervision. Thus, where the documents are not delivered by the authorities concerned themselves such as *'certificats de coutume'* or *'certificats de notoriété'* they are to be legalized by the competent authority.

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[457] BGB1.I p. 1099

[458] LoN Tr.S. vol 89 No. 2005

[459] LoN Tr.S. vol. 159 No. 366

In common law countries the documents may be replaced by affidavits, that is, statements sworn before a Commissioner of Oaths. When they must have effect in other countries they would, however, as was stated by the UK representative, be attested or legalized by a public authority.

As to paragraph 3, the evidentiary value of the documents or certifications is the same in the country where the document was issued and in other Contracting States.

According to paragraph 5, identity and travel documents are not covered by Article 25 as they are regulated elsewhere in the Convention.

ARTICLE 26. FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Travaux Préparatoires

At the first session of the *ad hoc* Committee the Belgian representative proposed the text of Article 2 of the 1938 Convention which read:

> 'Without prejudice to the power of any High Contracting Party to regulate the right of sojourn and residence, a refugee shall be entitled to move about freely, to sojourn or reside in the territory to which the present Convention applies, in accordance with the laws and internal regulations applying therein.'

The US representative suggested that in order to avoid any misinterpretation of the first part of the Article it should be drafted to read: 'Without prejudice to the right of the High Contracting Party to regulate the right of entry for permanent residence in the country'.

The representative of the Secretariat informed the Committee of the reasons Mr. Giraud of the Secretariat had given for the omission of the Article from the draft Convention. The Secretariat had had in mind the case of the Spanish refugees who had presented themselves in large numbers at the French frontier at the end of the Spanish Civil War and for whom it had been necessary to set up reception camps before regularizing their position and arranging for their dispersal throughout the country. Such a practice, which was clearly a considerable limitation of the right of movement, might prove essential in certain circumstances.

The US representative pointed out that the Spanish refugees raised a very different problem since they had not been officially granted the right of residence.

The Turkish representative pointed to the existence in many countries of frontier or strategic zones, access to which was forbidden to aliens. He wondered whether the formula presented by the US representative would permit the reception country to apply that regime to refugees.

The Belgian representative said that was a question of the internal regulations of the movement and residence of individuals, certain provisions of which sometimes even applies to nationals of the country concerned.

The US representative thought that it would be preferable to clarify the text by inserting 'subject to any general provisions applicable to aliens in general'.

The Venezuelan representative drew attention to the problem with which the authorities of a signatory State might be faced in the event of the Article's adoption, if, for example, refugees admitted as agricultural workers were to leave the farms to which they had been assigned and engage in trade in town. Although the refugees would thereby have infringed the conditions of their admission to the territory, the reception State might find itself powerless to take any action against them by virtue of the provisions of the Article.

The French representative thought that the problem would be seen more clearly if it were divided into three different aspects: the first would be the treatment of refugees before they had reached an understanding with the authorities of the recipient countries; the second referred to their right to have their situation regularized and the conditions in which that was to be done; the third dealt with their rights after they had been lawfully authorized to reside in the country, which meant, in the case of France, after they were in possession of a residence card and a work card.

The last part of the problem was the easiest to solve: it would be sufficient to apply to refugees the rules in force for aliens in general.

The question raised by the Venezuelan representative would be solved by the application of the internal regulations, which certainly provided penalties for the case of a foreigner who left the region in which he was permitted to reside or

changed his occupation without authorization. The other two aspects of the problem presented difficulties which were much less easy to overcome.

The Danish representative cited, in support of the observations of the Venezuelan representative, two cases in which the limitation of the right to circulate freely appeared to be indicated with respect to certain categories of refugees. The first case was that of States in which minorities lived: Denmark and Czechoslovakia, for instance, would undoubtedly have hesitated to admit German refugees in 1938 if they had been obliged to allow them to settle in areas already inhabited by minorities, whose ranks would, in the first place, been swelled by the refugees and in whose political activities against the unity of the country the refugees might subsequently have participated. The other case was that of Denmark, which had admitted to its territory certain young German Jews on condition that after they had completed their agricultural training, they would leave for other countries, for example, Israel. Those refugees had thus been admitted provisionally, which was of course an indirect limitation of the right of residence.

In the opinion of the Danish delegation, Article 2 of the 1938 Convention in no way prevented the residence country from making rules concerning the right of residence of refugees, if it so desired.

The US representative suggested the following amendment:

> 'Subject to the right of the High Contracting Parties to admit refugees on condition that for a given period they confine themselves to specified occupations or specified regions of the country, a refugee admitted for regular residence shall be entitled to move about freely and to sojourn or reside in the place of his choice.'

The French representative suggested a new text reading:

> 'Refugees once authorized to reside within a territory shall have the right to fix the place of their residence and to move freely, subject to regulations governing foreigners in general.'

The US representative could accept the text proposed by the French representative but thought that certain provisions should also be included for refugees who had not yet been regularly admitted into a country.

The UK representative reserved his position in the matter, for he considered that everything depended on the interpretation of the expression 'regularly admitted'. That term was also of the greatest importance in connection with the provisions dealing with working conditions.

The IRO representative thought the French text was acceptable, but that it was essential to include provisions concerning refugees who had not yet been regularly admitted.

The Turkish representative had no objection in principle to the French proposal, but he wondered what the position would be in the case of States which, having adopted a very liberal attitude with regard to aliens who were subject to no restrictions of time or place, received refugees and wished in some way to restrict the conditions of residence of those refugees.

The Brazilian representative saw no objection to the adoption of the French text.

The Chairman wondered whether it would not be desirable to complete the text by a supplementary guarantee and to add: 'subject to the conditions under which they were admitted.'

The UK representative feared that with such an addition the text would provide few safeguards for refugees.

The French representative shared the doubts of the UK representative.

The Belgian and Brazilian representatives were not in favour of the addition proposed by the Chairman.

The Chairman said that he was ready to accept the French representative's text, with certain reservations.

The French text was adopted.[460]

> The Working Group proposed the following text:
>
> 'Freedom of Movement.

The Contracting States shall accord to refugees lawfully in their territory the right to choose their place of residence and to travel freely within their territory, subject to any regulations governing aliens generally and the conditions under which such refugees were admitted.'

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[460] E/AC.32/SR.15, pp. 13-22

The US representative proposed that the words 'governing aliens generally' should be replaced by 'applicable generally to aliens in the same circumstances'.

Article 21, as thus amended, was adopted.[461]

Austria made the following comment:

> 'This provision could not be applied in Austria for the time being without the consent of the occupying powers because of the demarcation lines instituted by them.
>
> 'It is understood from the text of this article that each of the Contracting States has the right to apply to refugees whatever restrictions it usually applies as condition for the admission of foreign workers into the State.'[462]

The UK commented:

> 'Article 21. His Majesty's Government could accept this Article only on the basis that it does not in any way affect the right of the Contracting States to restrict the movement of refugees of a particular class or nationality if it should be considered necessary to the security of the state to restrict the movement of aliens of that class or nationality in a time of national crisis.'[463]

At the second session of the *ad hoc* Committee the UK proposed an amendment:

> 'Additional Article to Draft Convention Relating to the Status of Refugees:[464]

A.

1. A Contracting State may at a time of national crisis derogate from any particular provision of the Convention to such extent only as is necessary in the interests of national security.
2. The Contracting State shall immediately inform the other Contracting States through the Secretary General of the UN of any such derogation and of the termination thereof.

B. Proposal to add the following to Article 5:

> 'Provided, however, that at a time of national crisis a Contracting State may apply provisionally any such measures to a refugee on account of his nationality until it is determined that the measure is no longer necessary in the interests of national security.'[465]

The representative of Canada said the UK comment on Article 21 covered the position of his own Government.[466]

The Drafting Committee proposed the following text:

> 'The Contracting States shall accord to refugees lawfully in their territory the right to choose their place of residence and to travel freely within their territory, subject to any regulations applicable to aliens generally in the same circumstances.'[467]

Article 21 was adopted.[468]

At the Conference of Plenipotentiaries Yugoslavia submitted an amendment:

> 'Delete the full stop at the end of the paragraph and add the words: and to the conditions under which the said refugees were admitted.'[469]

The Yugoslav representative said the amendment had been submitted in order to cover cases where the fact that the refugees resided near the frontier of their country of origin might cause friction between two States. Contracting States

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[461] E/AC.32/SR.25, p. 8

[462] E/AC.32/L.40, p. 50

[463] E/AC.32/L.40, pp. 50-51

[464] E/1618

[465] E/AC.32/L.41

[466] E/AC.32/SR.38, pp. 22-23

[467] E/AC.32/L.42, Article 21

[468] E/AC.32/SR.41, p. 19

[469] A/Conf.2/31, Article 21

should be empowered to prescribe zones in which residence would be forbidden to refugees. Since, however, his delegation intended to submit a general proposal dealing with possible causes of friction between States, the point might be more suitably dealt with therein. He accordingly withdrew his amendment to Article 21.

The Belgian representative felt that, for the sake of style, it would be preferable to amend the first sentence of the French text to read*: 'Les Etats Contractants accorderont aux réfugiés se trouvant régulièrement sur leurs territories...*'

The Australian representative said that the Australian Government had no objection to the principle enunciated in Article 21, but noted that it would require interpretation in order to make it clear whether it would apply to, for instance, refugees entering Australia under the labour contract system practiced there. In this view, Article 21, like several others, should be covered by a special interpretative clause in the Convention.

The Canadian representative said that the Canadian Government's position resembled that of the Australian delegation.

Article 22 was adopted by 19 votes to none, with 2 abstentions.[470]

The Style Committee proposed the text which is now in the Convention.[471]

Article 26 was adopted by 23 votes to none.[472]

Judicial Decisions

In Austria the High Administrative Court held on 11 February 1957,[473] in the case of a refugee who had to leave a camp and to whom assistance had been denied, that the refugee had no right of accommodation in a camp or the grant of assistance in a particular place.

In France the *Commission de Recours* held in *Recours* No. 7.313 of 8 February 1973, in the case of a refugee who had been assigned to reside in a specified area, that the object of the Convention was to protect refugees. Article 26 had to be interpreted as authorizing measures of *general* application only, as opposed to restrictions aimed at any one individual. Any restrictions imposed on the appellant by virtue of his status of a refugee should not be of such a nature as to deprive him of his right to express his opinions, unless it could be shown - which it was not - that such opinions, if freely expressed, would constitute a threat to public order or national security. The Ministry of the Interior was advised to revoke the order of assignment.

Commentary

Article 26 applies to refugees lawfully in the territory. It does not affect the conditions imposed on refugees for their admission. Special measures taken in time of war or other grave and exceptional circumstances are covered by Article 9. Subject to this, Contracting States may not discriminate between refugees in applying Article 26. Inasmuch as a refugee is restricted in his freedom to seek employment, this may also entail a restriction to choose his place of residence.

ARTICLE 27. IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Travaux Préparatoires

The Secretariat draft contained the following Article 21:

> 'The High Contracting Parties undertake to issue identity papers (residence card, identity card, etc.) to refugees authorized to reside in their territory.'

It made the following comment:

> 'It is the practice to issue identity papers, under various designations, which serve both as identity card and as residence permit.

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[470] A/Conf.2/SR.11, pp. 16-17

[471] A/Conf.2/102 Add.1, Article 26

[472] A/Conf.2/SR.35, p. 9

[473] Nr. 1197/56/6, Dalloz 1959, p. 848

'This practice, which meets an essential requirements, should be generalized.'[474]

The French draft contained the following Article 16:

> 'The High Contracting Parties undertake to issue identity papers (residence card, identity card, etc.) to refugees authorized to reside in their territory.'[475]

At the first session of the *ad hoc* Committee the Belgian representative remarked that the Secretariat draft dealt with residence papers, although it contained no provision relating to the right of residence.

He was supported by the French representative. The residence card was only secondarily an identity card; it primarily constituted permission to reside in the residence country.

The Working Group proposed the following text:

> 'Identity papers.
>
> The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document issued pursuant to Article 23.'[476]

This text was adopted.[477]

The Committee referred in its comment to Article 2 paragraph 1 of the 1933 Convention reading: 'Each of the Contracting Parties undertakes to issue Nansen certificates, valid for no less than one year, to refugees residing regularly in its territory.[478]

Austria made the following comment:

> 'The Federal Government of Austria is not, for the time being, in a position to commit itself as regards the application of these provisions, as the authorities of the Federal Republic of Austria would need the unanimous approval of the occupying powers for the establishment of travel documents to stateless persons.'[479]

Chile commented:

> 'Article 22 provides that refugees who do not possess a valid travel document, shall be issued with identity papers. Article 23 lays down the form and conditions of issue of these so-called travel documents. Chile, however, has already a special passport which is issued not only to refugees, but to any other foreigner not in possession of the usual documents. This passport is issued for the specific purpose of facilitating travel. (See Passport Regulations and Legal and Administrative Provisions concerning the Consular Services, Santiago de Chile, 1937). There would in consequence be no advantage in replacing our present legislation by the provisions of the proposed Convention.'[480]

At the second session of the *ad hoc* Committee, the Canadian representative said that Article 22 was a matter of concern to his Government which had not been accustomed to issue documents guaranteeing re-admission to its territory except in the case of returning Canadians, but which a few months ago had concluded a reciprocal agreement with the US Government to receive back US citizens returning to Canada within twelve months.

The Belgian representative asked whether the authors of the draft Convention would have any objection to the insertion of the word 'lawfully' before the words 'in their territory'. He assumed that the text referred to refugees who had been granted permission to reside in a country.

The US representative believed that at the invitation of the IRO the Committee had agreed to extend the provision of Article 22 to all refugees, so that a refugee illegally present in any country, though still subject to expulsion, would be free from the extra hardships of a person in possession of no papers at all.

The representative of the IRO confirmed. A person without papers was a pariah subject to arrest for that reason alone.

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[474] E/AC.32/2

[475] E/AC.32/L.3

[476] E/AC.32/L.32, Article 21

[477] E/AC.32/SR.25, p. 8

[478] E/1618, p. 55

[479] E/AC.32/L.40, p. 51

[480] E/AC.32/L.40, p. 51

The French representative agreed. Where an alien whose position was irregular entered a country and the authority of that country decided not to expel him immediately, he would be given a provisional document which he could produce if, say, he was stopped in the street. That did not prejudice the application of the other Articles of the Convention or of the national regulations concerning the grant of rights to aliens.

The Italian representative had no objection to Article 21, since identity cards for refugees had been issued in Italy for the last two years, in full agreement with the IRO.[481]

The Drafting Committee proposed the same text as adopted at the first session.[482]

Article 22 was adopted, with the substitution in the French text of the heading: *'Pièces d'identité'* for the heading: *'Cartes de légitimation'.*[483]

At the Conference of Plenipotentiaries the Netherlands representative mentioned a case where a refugee who had obtained a ration card in a reception country, and had later been expelled, had been refused admission to another State, the authorities of which had considered that, by issuing him with a ration card, the reception country had granted him a right to reside there. The High Commissioner had made it clear that the duty imposed on States by Article 22 in no way impaired their right to control the admission and sojourn of refugees. His delegation would content itself with mentioning the point, provided the interpretation given by the High Commissioner was reported in the summary record of the meeting.

The Canadian representative said that in Canada, where no aliens registration card was in force, identity papers, as the term was generally understood, were not delivered to aliens. The only document which was required was an immigrant's record of landing. Article 22 was entirely acceptable to the Canadian Government on the understanding that the latter would be free to continue to apply its own procedure.

The Belgian representative agreed. Identity papers did not necessarily mean identity cards like those issued in European countries; they might simply consist of a document showing the identity of the refugee.

Article 22 was adopted by 19 votes to none, with 1 abstention.[484]

The Style Committee proposed the following wording:

> 'The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document issued pursuant to Article 28'.[485]

The Belgian representative, supported by the French representative, suggested that the words 'issued pursuant to Article 28' should be deleted from Article 27.

Article 27, as amended, was adopted by 22 votes to none, with 1 abstention.[486]

Commentary

An old Russian saying states: 'A man without a passport is a man without a soul'. (Passport here meaning the internal passport issued in Russia as an identity document). The practice of States regarding identity documents varies. In some States, such as the UK, Canada, and the US, an identity document is not required while in others it is compulsory and its lack exposes the person to penalties, apart from inconvenience. In the UK aliens receive an Aliens Registration Certificate; refugees settled in the UK receive an Aliens Registration Exemption Card. In the Federal Republic of Germany resident refugees receive the Convention travel document as identity document.

The provision applies to all refugees physically present in the territory, whether legally or illegally there. Its purpose is not to expose refugees to hardship owing to their inability to prove their identity. It does not prejudice the right of the State to expose them to other measures, such as expulsion. The provision applies only if the refugee does not possess a valid travel document, whether issued by the State in which he or she finds themself or by another State; it may even be in their national passport. It must, however, be considered as valid by the authorities of the country in whose territory the refugee is present.

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[481] E/AC.32/SR.38, pp. 23-25

[482] E/AC.32/L.42, Article 22

[483] E/AC.32/SR.41, p. 20

[484] A/Conf.2/SR.11, p. 17

[485] A/Conf.2/102 Add.1, Article 27

[486] A/Conf.2/SR.35, pp. 9-10

ARTICLE 28. TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.'

Schedule

Paragraph 1

'1. The Travel document referred to in Article 28 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of Article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of Article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue, if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with Article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue and does not confer on these authorities a right of protection.'
Annex

Special Travel Document

'The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words 'Convention of 28 July 1951' be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

No .....

(1)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

This document expires on .....

unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by…… child, (children)

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to

[state here the country whose authorities are Issuing the document] on or before unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which Issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.)[487]

This document contains .... pages, exclusive of cover.)

Place and date of birth .....

Occupation .....

Present residence .....

*Maiden name and forename(s) of wife .....

*Name and forename(s) of husband .....

Description

Height .....

Hair .....

Colour of eyes .....

Nose .....

Shape of face .....

Complexion .....

Special peculiarities .....

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[487] The sentence in brackets to be inserted by Governments which so desire.

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

* Strike out whichever does not apply

(This document contains pages, exclusive of cover).

---

(3)

Photograph of holder and stamp of issuing authority
Finger-prints of holder (if required)

Signature of holder .....

(This document contains pages, exclusive of cover)

---

(4)

1. This document is valid for the following countries:

.....

2. Document or documents on the basis of which the present document is issued:

.....

Issued at

Date

Signature and stamp of authority issuing the document

Fee paid:

(This document contains pages, exclusive of cover).

---

(5)

Extension of renewal of validity

Fee paid:

From .....

To

Done at

Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid:

From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains pages, exclusive of cover.)

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(6)

Extension of renewal of validity

Fee paid: From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid: From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains pages, exclusive of cover.)

(7-32)
Visas

The name of the holder of the document must be repeated in each visa.

(This document contains pages, exclusive of cover.)'

Travaux Préparatoires

The Secretariat draft contained the following Article 22:

'1. The High Contracting Parties undertake to issue, on request to refugees regularly resident in their territory, travel documents valid for not less than one year. The travel document shall entitle the holder to leave the country of issue and to return thereto throughout the period of validity of the document. The High Contracting Parties reserve the right, in exceptional cases, to limit the period during which the refugees may return, provided that the said period is not less than three months.'

'2. The provisions regarding the issue of Nansen Certificates contained in the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and in the Convention of 28 October 1933, and the provisions of the Inter-Governmental Agreement concluded in London on 15 October 1946 are not rescinded by paragraph 1 of the present Article.'

The Secretariat made the following comment:

'Under present conditions any person wishing to travel abroad is generally required to be in possession of a national passport and in most cases must request the country to which he wishes to travel to issue an entry visa. Refugees who do not enjoy the protection of the authorities of their country of origin do not have national passports. They would therefore be unable to leave the initial reception country if a document replacing the passport had not been established for their benefit.

The documents which replace passports are:

(a) the Nansen certificate;

(b) the travel document established by the London Agreement of 15 October 1946;

(c) the various travel documents issued by the administrative authorities of the various countries.

The Nansen certificate and the document established pursuant to the London Agreement are completely satisfactory while the other documents mentioned in (c) above are not accepted by many countries and have not the same advantages as travel documents established in accordance with international agreements (documents (a) and (b)).

It would therefore be desirable that the delivery of travel documents authorized by an international agreement should become a general practice. In these circumstances the *ad hoc* Committee might consider the inclusion in the Convention of a clause requiring States to accede to the London Agreement of 15 October 1946.'[488]

The French draft contained the following Article 17:

'1. Each of the High Contracting Parties undertakes to issue, on request, to refugees regularly resident in their territory, travel documents valid for not less than one year. The travel document shall entitle the holder to leave the country of issue and to return thereto throughout the period of validity of the document. The High Contracting Parties reserve the right, in exceptional cases, to limit the period during which he may return, provided that the said period is not less than three months.

2. The High Contracting Parties shall endeavour to unify, both as regards form and substance, the conditions governing the issue and validity of the travel document referred to in the paragraph last preceding.

Each High Contracting Party shall recognize the documents issued by the other High Contracting Parties.'[489]

At the first session of the *ad hoc* Committee the UK representative said that he in general agreed with the purport of Article 22 of the draft Convention. He submitted an amendment reading:

'1. The High Contracting Parties undertake to issue, on request for purposes of travel outside their territory, to refugees regularly resident in their territory, travel documents and the provisions of the Schedule to this Convention shall apply with respect to such documents.

2. As in the Secretary-General's draft except that the words after '1946' shall be deleted and there shall be inserted the words 'shall be superseded by paragraph 1 of the present Article; but documents issued under the said instruments shall be recognized and treated by the High Contracting Parties in the same way as if they had been issued under the said paragraph'.

Schedule

Paragraph 1(3)[490]

1. The travel document referred to in Article 22 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages - French, and the national language or languages of the authority which issues it.

Paragraph 2(4)

Subject to the regulations obtaining in the country of issue, children may be included in the document of an adult refugee.

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[488] E/AC.32/2

[489] Article E/AC.32/L.3

[490] The numbers in brackets refer to the Articles of the London Agreement of 15 October 1946 set out on page 154 of document E/1112.

Paragraph 3(5)

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4(6)

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5(7)

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6(8)

The renewal or extension of the validity of the document is a matter for the authority which issued it so long as the holder resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

Paragraph 7(9)

The High Contracting Parties shall recognize the validity of the documents issued in accordance with the provisions of Article 22 (1) of this Convention.

Paragraph 8(10)

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him, affix a visa on the document of which he is the holder.

Paragraph 9(11)

The High Contracting Parties undertake to issue transit visas to refugees who have obtained visas for the territory of final destination.

Paragraph 10(12)

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11(13)

When a refugee has lawfully taken up residence in the territory of another High Contracting Party, the power to issue a new document will be transferred to the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12(14)

The authority issuing a new document shall withdraw the old document.

Paragraph 13(15)

1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject only to those laws and regulations which apply to the bearers of duly visaed passports.

2. The High Contracting Parties reserve the right, in exceptional cases, in cases where the refugee's stay is authorized for a specific period only, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14(16)

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the High Contracting Parties.

Paragraph 15(17)

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16(18)

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

'The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words 'Convention of be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)
TRAVEL DOCUMENT
(Convention of)

No .....

(1)
TRAVEL DOCUMENT
(Convention of)

This document expires on .....

unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by…… child, (children)

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to .....

[state here the country whose authorities are issuing the document] on or before unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. This document contains .... pages, exclusive of cover.)

(2)

Place and date of birth .....

Occupation .....

Present residence .....

*Maiden name and forename(s) of wife .....

*Name and forename(s) of husband .....

Description

Height .....

Hair .....

Colour of eyes .....

Nose .....

Shape of face .....

Complexion .....

Special peculiarities .....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....……..	.....…….	.....……..	.....…….
.....……..	.....…….	.....……..	.....…….
.....……..	.....…….	.....……..	.....…….
.....……..	.....…….	.....……..	.....…….

*Strike out whichever does not apply

(This document contains pages, exclusive of cover).

---

(3)

Photograph of holder and stamp of issuing authority

Finger-prints of holder (if required)

Signature of holder .....

(This document contains pages, exclusive of cover)

---

(4)

1. This document is valid for the following countries:

.....

2. Document or documents on the basis of which the present document is issued:

.....

Issued at

Date

Signature and stamp of authority issuing the document

Fee paid:

(This document contains pages, exclusive of cover).

---

(5)

Extension of renewal of validity

Fee paid:

From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid: From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains pages, exclusive of cover.)

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(6)

Extension of renewal of validity

Fee paid: From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid: From .....

To

Done at Date

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains pages, exclusive of cover.)

(7-32)
Visas

The name of the holder of the document must be repeated in each visa.

(This document contains 32 pages, exclusive of cover.)'

At the proposal of the Chairman it was decided to take the UK draft as a basis of discussion.

The UK representative noted that the three drafts all had the same end in view, namely to enable a refugee who had no passport to return within a given period to the country that issued the travel document. Without that provision, the refugee would probably not be allowed to enter other countries, for they would hesitate to admit him for fear that they might be obliged to keep him permanently on their territory.

In sub-paragraph 2 of paragraph 13 of the Schedule the words 'in cases where the refugee's stay is authorized for a specific period only' had been added. That case required special mention among those in which the period during which the refugee was allowed to return might be less than the period of validity of the document, which paragraph 5 set at one or two years; the return period could not, in any case be less than three months.

Paragraph 2 of the UK draft of Article 22 was based on a principle which was directly opposed to the principle of the corresponding provision of the Secretariat draft. The latter provided that the earlier agreements and Conventions should remain in force, but the UK draft substituted the provisions of the Convention for the provisions of earlier instruments, with the stipulation that the contracting parties would recognize the validity of earlier documents and treat them in the same way as if they had been issued under paragraph 1.

It was to be hoped that all parties to earlier agreements and conventions would sign the new instrument; if that should not be the case, however, the new Convention would not replace earlier conventions for those countries which had not signed it. Hence the need for the final clause of paragraph 2.

The French representative wished to confine his statement to three remarks of a general nature. In the first place, it appeared to him highly desirable that the new Convention should replace all previous instruments. He did not consider, however, that it was necessary to include in a general document the detailed provisions contained in the schedule to the UK draft.

There was another reason why the French delegation had not tried to solve the problem by referring to the 1946 Agreement. France itself had not thought it possible to implement that Agreement in view of the fact that the US was not implementing it. The position taken by the US had given rise to serious difficulties of a practical nature. If the insertion of the provisions of the 1946 Agreement in the new Convention were to prove sufficient reason for a change in the attitude of the US, the French delegation would have no objection to their being included in the Convention.

The US representative admitted that, in the past, the US had not adhered to any convention or agreement relating to travel documents for refugees, nor had it issued documents of that type. Nevertheless, the Government of the US had, on the one hand, admitted aliens bearing Nansen passports or documents issued under the provisions of the 1946 Agreement and, on the other hand, had allowed aliens residing in the US to leave that country, guaranteeing their right of return by a special document, which corresponded to the return clause in the 1946 Agreement.

He reserved his Government's attitude with regard to the issue of travel documents such as those proposed for refugees. He was, however, in a position to assure the Committee that refugees resident in the US would ordinarily be able to leave the country and to return to it.

The UK representative reminded the Committee that the 1946 Agreement related to refugees who were the concern of the Inter-Governmental Committee for Refugees, which was no longer in existence. The Agreement itself could therefore be considered as null and void and there was no point in refer Ting to it. It was for that reason that the UK was proposing the provisions of the Agreement be included in the Convention.

There was no need to stress the practical advantages which would result from the standardization of travel documents for refugees. The work of passport, customs and immigration officials would be considerably simplified if all such documents were based on a single model. In that case, he felt that the text proposed by the Secretariat was too general to be acceptable.

In reply to the question of the US representative the representative of the Secretariat replied that the Secretariat had thought it desirable that diplomatic instruments subscribed by a relatively large number of States should remain in effect.

The Chairman, speaking as representative of Canada, was inclined to share the point of view of the UK delegation. Canada was not a party to the London Agreement, but it had officially recognized it and it admitted the validity of documents issued under that Agreement. It did not, however, issue documents of that kind itself.

The French representative supported the UK representative's remarks on the advisability of adopting a single model for travel documents, which would prevent the bearers being asked to produce special credentials during the journey.

Paragraph 1 of Article 22 of the UK text was approved with the substitution of a full stop instead of the word 'and'.

The Israeli representative thought that paragraph 2 was a temporary provision which would be better placed in chapter XV. The Committee would see when it examined Article 31 of that chapter whether the advantages granted to certain refugees by former conventions should be retained or not.

The Belgian representative emphasized that paragraph 2 had a double scope. On the one hand, it provided for the recognition of the validity of travel documents which would continue to be issued by countries signatory to previous conventions which were not parties to the new Convention; that was a provision of a lasting nature. On the other hand, the

provision rendered valid, up to their date of expiry, documents already delivered under previous conventions by future signatories of the new Convention; that provision, taken by itself, was of a temporary nature.

The Brazilian representative said that, whether it was so stipulated in Article 22 or not, the new system should automatically apply to all documents issued after the entry into force of the Convention.

The Israeli representative pointed out that the maximum validity of documents issued under the former conventions had never exceeded one year.

The Belgian representative said the fact remained that the States Parties to the former conventions which had not adhered to the new Convention would be able to continue issuing such documents indefinitely. The provision was not, therefore, a transitory one and should appear in Article 22.

The French representative agreed. The French delegation thought that the new Convention should replace the 1933 and 1938 Conventions. The real question, therefore, was whether the validity of the documents issued under the former treaties by States would be recognized by the signatories of the new Convention. The answer was to be found in paragraph 2.

The UK representative emphasized that the States signatory to the 1946 Agreement which did not adhere to the new Convention would in fact issue, in future, documents identical with those under the new Convention which, according to the UK proposal, would be modelled on the 1946 Agreement.

The problem arose only in connection with documents issued under the 1933 and 1938 Conventions, which were of a different type. It was to be hoped, however, that the majority of the signatories to those Conventions would adhere to the new one. Issuance of the documents of the former type, by the remainder, would not cause much inconvenience, since the provisions of those Conventions had many points in common with those in the UK proposal.

The US representative thought that, in the interests of greater clarity, it would be better to insert the words 'so far as the High Contracting Parties to this Convention are concerned' before the semicolon in paragraph 2.

Paragraph 2, as so amended, was adopted.

The Danish representative pointed out that the Committee had not examined the question of travel documents for refugees not regularly resident in the territory of one of the Contracting Parties, for instance, those who had just arrived in the initial reception country. He took as an example the hypothetical case of a German refugee arriving clandestinely in Denmark, without identity papers, and anxious to travel to the US for family or other reasons.

He therefore proposed that Article 22 be so amended that the High Contracting Parties would be able to grant travel documents to all refugees in their territory, whatever their status in the eyes of the law, with the sole stipulation that they be not regularly resident in another country.

The US representative referred to Article 2 of the 1946 Agreement which provided that the travel document might be issued to refugees who were not staying lawfully in the territory of the Government concerned.

The UK representative explained that Article 2 of the 1946 Agreement had not been embodied in the UK proposal for the sole reason that it had applied exclusively to refugees not regularly resident in the countries concerned at the time when the Agreement had come into force.

He had no objection to the proposal that States should be authorized to issue travel documents to all refugees, even those not regularly resident in the State concerned. It would, however, be going too far to make such a thing obligatory, since to do so would involve States in the further obligation of readmitting refugees who might have spent only a few weeks in their territory, if they were unable to remain in the country to which they went.

The Danish proposal read as follows:

> 'The High Contracting Parties reserve the right to issue the documents referred to in paragraph 1 to refugees not residing in their territory.'

The Israeli representative did not think that the text conveyed what its author had intended. The point at issue was not whether the High Contracting Parties were empowered to issue travel documents but whether such documents would be recognized by the countries of destination.

The Danish representative said that the travel documents, whether issued under paragraph 1 or under the paragraph proposed by Denmark, would be subject to the provisions of paragraph 13 of the Schedule which entitled the holder to return without a visa to the country which had issued the travel document. That provided the country in which the refugee wished to travel with a safeguard which would apply in all cases.

The IRO representative supported warmly the Danish proposal.

The UK representative proposed that the phrase 'reserve the right to' should be replaced by the word 'may'.

The text proposed by the Danish representative, as amended by the UK representative, was adopted provisionally. It became paragraph 2 of Article 22, the former paragraph 2 becoming paragraph 3.

Schedule paragraph 1 sub-paragraph 2

The Chairman inquired why the use of English as well as French was not provided for. Such a provision would be in keeping with the practice of the United Nations.

The Turkish representative pointed out that in the matter of passports, the French language was a custom which was still observed in many countries.

Sub-paragraph 2 was adopted without change.

Paragraphs 2, 3, 4 and 5 were adopted.

Paragraph 6 sub-paragraph 1

The Danish representative pointed out that sub-paragraph 1 should be amended to take into account the adoption of the Danish proposal in connection with Article 22. The phrase 'so long as the holder resides lawfully in the territory of the said authority' should be replaced by the phrase 'so long as the holder has not established his lawful residence there'.

Sub-paragraph 1 of paragraph 6 was adopted without change.

Sub-paragraph 2 of paragraph 6 was adopted.

Paragraph 7 was adopted with the amendment that the words 'Article 22(1)' were replaced by the words 'Article 22'.

Paragraph 8 was adopted with the addition of the words 'if a visa is necessary'.[491]

Paragraphs 9 to 12 were adopted.

As regards paragraph 13, the French representative reserved his position with regard to the final wording of sub-paragraph 1 of paragraph 13 since in some countries a re-entry visa was necessary even for nationals.

Sub-paragraph 1 of paragraph 13 was adopted.

As to sub-paragraph 2 the representative of the IRO agreed with the UK text in as much as refugees who were permitted to stay for a limited period only should be obliged to return before that period expired. It was feared, however, that some countries might make a general rule of that exception and immediately limit the time during which the refugees were permitted to return, to three months, on the pretext that their permits were issued for a limited period. It might be necessary to define exactly what were the exceptional cases, so as to avoid that limitation becoming a general rule.

Sub-paragraph 2 of paragraph 13 was adopted with the omission of the word 'only' after the words 'for a specific period'.

Paragraphs 14 and 15 were adopted.

On paragraph 16 there was some discussion whether it should be deleted or to make a full stop after 'country of issue'.

At the suggestion of the Israeli representative, the paragraph was provisionally adopted pending information by the Secretariat on the real reasons for its adoption at the London inter-governmental conference.

Annex

The specimen travel document was adopted.

Discussion was reopened on paragraph 13 sub-paragraph 1 on the ground that in some countries even nationals required a re-entry visa; in those countries refugees should, in view of the Turkish representative, also require a re-entry visa as a formality. Other representatives pointed out that the right of the refugee to return to the issuing country must not be affected, not only in the interests of the refugees but also in order to give the countries the refugees wished to visit, some guarantee.

It was decided to leave the provision unchanged, subject to the second reading.[492]

The representative of the Secretariat gave the reasons for paragraph 18 of the London Agreement. Some Governments had expressed doubts whether their consular services would be able to give protection - even if only implicitly - to

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[491] E/AC.32/SR.16, pp.2-20

[492] E/AC.32/SR.18, pp. 11-21

refugees to whom they had issued travel documents. The third general conference on communications and transit in 1927 had stated in its report that the consuls who had the right to issue and renew travel documents did not *ipso facto* have the right to protect the persons concerned. The refugees, for their part, had no right to claim such protection. The specimen travel document drawn up in 1946 had stated that it in no way prejudged or affected the nationality of the holder. The countries which in 1927 had insisted most strongly on the above-mentioned provision had been the Netherlands and the UK.

The Israeli representative said that paragraph 16 contained two important ideas: (1) it indicated that the Contracting Parties wished to avoid disputes over protection; (2) it gave certain guarantees to holders of travel documents. That was why it would be better to reproduce that paragraph in the travel document itself rather than insert it in the Annex to Article 22 of the Convention.

It was decided to refer that proposal regarding paragraph 16 of the Annex to Article 22 to the Working Group, for study.[493]

The Working Group proposed the following text:

'1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document and the provisions of the Schedule to this Convention shall apply with regard to such documents. The Contracting States may issue such a document to a refugee not lawfully resident in their territory.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States as if they had been issued pursuant to this Article.'[494]

The US representative pointed out that the term 'lawfully resident' not used in the draft convention elsewhere, appeared in Article 23 because it was used in the corresponding section of the London Agreement, on which that Article was based. The Working Group had decided to delete part of paragraph 2, referring to previous arrangements and agreements, and to include it in Article 32.

Article 23 was adopted.[495]

Schedule

The Chairman said the only change in the text as adopted at the first reading had been the insertion of sub-paragraph 2 of paragraph 13.

The US representative suggested that paragraphs 1 and 2 of paragraph 13 should be merged into one paragraph, since sub-paragraph 2 was merely a reservation on the general principle set out in paragraph 1.

The Schedule, as amended, was adopted.[496]

The texts adopted at the first session read:

Article 23, the Schedule and the Annex as adopted by the Committee at its first session read:

Article 23

Travel Documents

'1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such document. The Contracting States may issue such a travel document to a refugee not lawfully resident in their territory.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.'

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[493] E/AC.32/SR.24, pp. 4-5

[494] E/AC.32/L.32, Article 23

[495] E/AC.32/SR.25 pp. 8-9

[496] E/AC.32/SR.26 pp. 7-8

Schedule
(see Article 23)

Paragraph 1(3)[497]

'1. The travel document referred to in Article 23 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages - French and the national language or languages of the authority which issues it.

Paragraph 2(4)

Subject to the regulations obtaining in the country of issue, children may be included in the document of an adult refugee.

Paragraph 3(5)

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4(6)

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5(7)

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6(8)

1. The renewal or extension of the validity of the document is a matter for the authority which issued it so long as the holder has not established lawfully residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

Paragraph 7(9)

The High Contracting Parties shall recognize the validity of the documents issued in accordance with the provisions of Article 23 of this Convention.

Paragraph 8(10)

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9(11)

The High Contracting Parties undertake to issue transit visas to refugees who have obtained visas for the territory of final destination.

Paragraph 10(12)

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11(13)

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[497] The numbers in brackets refer to the Articles of the London Agreement of 15 October 1946, set out on page 154 of document E/1112, which correspond in substance.

When a refugee has lawfully taken up residence in the territory of another High Contracting Party, the power to issue a new document will be transferred to the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12(14)

The authority issuing a new document shall withdraw the old document.

Paragraph 13(15)

1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject to those laws and regulations which apply to the bearers of duly visaed passports. Where a visa is required of a returning national a visa may be required of a returning refugee but shall be issued to him on request and without a delay.

2. The High Contracting Parties reserve the right, in exceptional cases, where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14(16)

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15(17)

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16(18)

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX TO THE SCHEDULE

Specimen Travel Document

'The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words 'Convention of be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)
TRAVEL DOCUMENT
(Convention of)

No .....

(1)
TRAVEL DOCUMENT
(Convention of)

This document expires on .....

unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by……. child, (children)

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to [state here the country whose authorities are issuing the document] on or before unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. This document contains .... pages, exclusive of cover.)

(2)

Place and date of birth .....

Occupation .....

Present residence .....

*Maiden name and forename(s) of wife .....

*Name and forename(s) of husband .....

Description

Height .....

Hair .....

Colour of eyes .....

Nose .....

Shape of face .....

Complexion .....

Special peculiarities .....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....……..	.....…….	.....…….	.....…….
.....…….	.....…….	.....…….	.....…….
.....……..	.....…….	.....…….	.....…….
.....…….	.....…….	.....…….	.....…….

*Strike out whichever does not apply

(This document contains pages, exclusive of cover).

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(3)

Photograph of holder and stamp of issuing authority
Finger-prints of holder (if required)

Signature of holder .....

(This document contains pages, exclusive of cover)

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(4)

1. This document is valid for the following countries:

.....

2. Document or documents on the basis of which the present document is issued:

.....

Issued at

Date

Signature and stamp of authority issuing the document

Fee paid:

(This document contains pages, exclusive of cover).

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(5)

Extension of renewal of validity

Fee paid:

From .....

To

Done at

Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid:

From .....

To

Done at

Date

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains pages, exclusive of cover.)

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(6)

Extension of renewal of validity

Fee paid:

From .....

To

Done at

Date

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid:

From .....

To

Done at Date

Signature and stamp of authority
extending or renewing the
validity of the document:

(This document contains pages, exclusive of cover.)

(7-32)
Visas

The name of the holder of the document must be repeated in each visa.

(This document contains 32 pages, exclusive of cover.)'[498]

The Committee made the following comment:

Article 23 paragraph 1

> 'Under present conditions any persons wishing to travel abroad is generally required to be in possession of a national passport and in most cases must request the country to which he wishes to travel to issue an entry visa. The travel document mentioned will take the place for refugees of a national passport for travel purposes.
>
> The Schedule annexed to this report states the conditions under which the travel document shall be delivered and used. It also states what the document must contain. This schedule and model travel document follow closely the provisions of the London Agreement of 15 October 1946.
>
> The Committee agreed that in general the travel document would be accepted by other Governments only if the refugee was assured of the right to return to the issuing country. Upon his return, however, the refugee need be accorded no better status in the country than he had before he left. That is, a refugee authorized to remain in a country for a limited period who leaves that country with a travel document could, on his return, claim to remain only for the unexpired period granted in the original permission, unless the Government concerned decided to extend the period.'

The term 'lawfully resident' in this Article is taken from the London Agreement of 1946 on the Issue of a Travel Document for Refugees and is used in the sense intended there.

Article 2 of the 1933 Convention and Article 3 of the 1938 Convention were quoted and the lists of ratifications of the earlier agreements given.[499]

Italy commented as follows:

> 'III. The Italian Government begs to remark that the majority of the provisions in the proposed Convention verges on the definition and scope of the term 'lawful'.
>
> Apart from those in possession of a regular identity card delivered by IRO, the Convention can hardly be made to apply to those refugees who are 'lawfully' in the country since the great majority of them has notoriously entered it clandestinely and resides therein without a regular authority to do so or only with a temporary permit'.
>
> From a strictly Italian legal point of view, refugees found in the country without any document of any kind are to be considered as clandestine immigrants and, as such, are to be denied the benefits of the provisions under consideration; the same situation will be found in all first asylum countries'.[500]

Austria and Chile made the same comments as on Article 22.

Austria commented:

> 'The Austrian Government may be obliged to enter a reservation on this Article. It could not undertake to issue travel documents in the form contemplated therein, but would be prepared to recognize as valid travel documents issued by other states'.[501]

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[498] E/1618

[499] E/1618, pp. 55-58

[500] E/AC.32/L.40, pp. 13-14

At the second session of the *ad hoc* Committee the Chairman observed with regard to the Chilean comment that the Government was not the only one having instituted a special passport for refugees, but that even if all Governments had accepted such a practice, it would be an advantage to adopt the unified system provided for in Article 23. Furthermore there was no reason why the majority of countries should not adopt the system even if one preferred to retain its national legislation.

The US representative hoped that countries like Chile would accept the provisions of Article 23 both for the reason given by the Chairman and because he doubted whether the kind of document provided by such countries contained any provision permitting the holder to re-enter the country.

Article 23 was adopted.

The US representative thought he was not alone in wondering why the French language had been singled out for use in addition to that of the authority issuing the travel document. He felt that English should also be required since the two languages were equally working languages of the UN.

The UK representative agreed. He thought the reasons why French alone had been mentioned were historical.

The Belgian representative agreed but considered that it would be preferable to retain provisionally the French language only, in order to use up the stocks of travel documents already printed in French. The new documents could include an English translation.

The Chairman recalled that during the previous discussions he had been unable to see why it should be obligatory to make out future travel documents in the national language of the issuing authority; French and English would cover international requirements. He therefore proposed, as the representative of Denmark, that the words 'at least two languages - French and the national language of the authority which issued it' should be replaced by the words 'at least two languages, English and French'.

The representative of the IRO recalled that the form of travel document adopted at the first session was that in use under the London Agreement, with some minor changes. If a further language was to be required it would be necessary to print new documents, which would involve waste of time and expenditure.

The US representative favoured the formulation proposed by the Chairman, modified slightly so as to read 'at least two languages, which shall include French and English'. In the hope of reaching a compromise, he proposed that in paragraph 1 of the Schedule the words 'at least two languages - French and the national language or languages of the authority which had issued it' be replaced by the words 'at least two languages, one of which shall be English or French'.

Paragraph 1 of the Schedule, as thus amended, was adopted unanimously.

Paragraph 2 of the Schedule was adopted unanimously without discussion.

The Belgian representative wondered whether, at least at first sight, paragraph 3 did not contradict Article 24. The special duty provided for in Article 24 might make the charge for issuing travel documents higher than the lowest scale of charge for national passports.

The French representative said the two provisions were not incompatible; paragraph 3 supplemented Article 24 paragraph 3.

The Israeli representative suggested that the Belgian objection might be met by amending paragraph 3 of the Schedule to read 'Subject to the provisions of Article 24 paragraph 3, the fees charged...'

The UK representative observed that paragraph 3 of the Schedule and paragraph 3 of Article 24 referred to entirely separate matters.

After further discussion, it was agreed that paragraph 3 of the Schedule be amended to read 'subject to the provisions of paragraph 3 of Article 24, the fees charged...'

Paragraph 3 of the Schedule was adopted as amended.

Paragraphs 4 and 5 of the Schedule were adopted without discussion.

The US representative wondered why six months was specified in paragraph 6 as the period for which diplomatic or consular representatives were to be empowered to extend the validity of travel documents. There was no reason why discretion should not extend to a period of a year.

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[501] E/1073, Add.7, p. 3

He was also afraid that situations might arise in which one country was not willing to extend any longer the validity of a travel document of a refugee while the country of his new residence was not yet prepared to issue him one for the first time. To prevent the refugee from falling between two stools, he proposed to add to paragraph 6(1) the words 'No travel document shall be cancelled or its prolongation refused so long as a refugee shall not have received a new one from the country of his new residence.'

The UK representative feared that the US proposal went too far. One object of a travel document was to allow a refugee to go out and find his feet in another country. If the country of his first residence was forced to wait until a document had been issued by the country of new residence before cancelling its own document, it would probably never be relieved from its obligations. He felt that it was for the second country to take over the responsibility of the first as soon as it had accepted the refugee as a resident.

The Chairman concurred.

The US representative also generally agreed.

The representative of the IRO agreed that the difficult situation depicted by the US representative might arise. A further difficulty might result from the fact that the diplomatic and consular authorities were not obliged to make an extension. The problem was also clearly connected with the validity of the provision in paragraph 13 for return without a visa. It would be remembered that the period during which a refugee might be returned could be reduced in exceptional cases to three months.

The French representative considered that it would be possible to insert the US proposal in the form of a recommendation.

The Belgian and Canadian representatives supported the objections of the UK representative to the US proposal.

The US proposal was rejected by 5 votes to 4, with 2 abstentions.

Subject to this decision, paragraph 6 of the Schedule was unanimously adopted.

In reply to a remark by the Israeli representative the UK representative said that the provisions of paragraph 1 of Article 23 and paragraph 7 of the Schedule were complementary. Paragraph 1 of the Article referred to the issue of Documents in the future; paragraph 7 of the Schedule provided for the recognition of such documents by the States.

The Israeli representative felt that the provisions of paragraph 7 of the Schedule should be incorporated in paragraph 1 of Article 23 which ought to read 'The Contracting States shall issue and mutually recognize....'

The representative of the IRO thought that, though from a purely legal point of view paragraph 7 was perhaps unnecessary, it might have psychological value in stimulating recognition of travel documents under the present and previous agreements.

Paragraph 7 of the Schedule was adopted.

Paragraph 8 of the Schedule was adopted without discussion.

The United States representative suggested that the words 'the territory' in paragraph 9 be replaced by the words 'a territory'.

Paragraph 9 of the Schedule was adopted as amended.

Paragraph 10 of the Schedule was adopted without discussion.

Following a suggestion by the US representative the Chairman suggested amending the words 'will be transferred to the competent authority' in paragraph 11 to read 'shall be in the competence of that authority'.

Paragraph 11 of the Schedule was adopted as amended.

Paragraph 12 of the Schedule was adopted without discussion.

The Chairman, speaking as representative of Denmark, feared that paragraph 13 in its present form might lead to something in the nature of a mental reservation on the part of authorities issuing travel documents. Any country which admitted an alien who was in possession of a national passport knew that as long as the passport remained valid, it was in its power to return him to the country from which he came, even if he was not in possession of the re-entry visa which some countries required of their own nationals for fiscal and security reasons. When a refugee, on the other hand, travelled out of his country of residence, the first question which arose in the minds of the authorities of any country which admitted him was whether it would be possible to get rid of him. As long as his travel document was valid he would be admitted on the understanding that at least one country would accept him again. If that last protection for countries

admitting refugees was removed, entry visas would be supplied only after careful study of the probability of a refugee being permitted to return to his country of residence.

If the countries in which refugees travelled were deprived of this only safeguard, his travel document would become worthless. The Danish delegation wished therefore to delete from paragraph 13 the words 'subject to those laws and regulations which apply to the bearers of duly visaed passports'. If those words were deleted, a country which permitted a refugee to travel abroad but did not wish to allow him to re-enter would be obliged to furnish him with a special paper making the position clear and duly warning any countries which might visa that paper.

The Belgian representative said if, indeed, the travel document contained nothing to the contrary, it gave the holder the right to re-enter the issuing country during the period of its validity. Moreover, if a country wished to reduce that period it could do so by appending a restrictive visa to the travel document. That was done by certain countries, even in the case of their own nationals.

The Chairman, speaking as representative of Denmark, felt that the words which he proposed to delete could not support the interpretation the Belgian representative wished to give them.

According to Danish law, an alien not able to support himself would not be admitted even if his passport was valid and duly visaed. Paragraph 13 would have placed the holder in the same position, whereas in his opinion the holders of travel documents, even if they were penniless or suffering from infectious diseases, ought to be received back by the country which had issued the document on trust of which other countries had admitted them.

He also wished to delete the second sentence of paragraph 13(1). A refugee would not take out a travel document unless he intended to travel abroad and there was no reason why the return visa should not be supplied when the document was issued. If the refugee was obliged to apply for the visa after leaving the country, his passport might have expired before the visa was issued, and again the responsibility would pass to another country.

The representative of the IRO said that the second sentence of paragraph 13(1) had been added to take account of the special situation in Turkey, where a visa had been required for the return of nationals. As Turkey had now abolished that requirement in respect of its nationals, and as the provision was not to be found in the London Agreement he thought that the second sentence might be deleted.

The UK representative favoured the deletion of the second sentence.

His Government might also be prepared to accept the deletion of the last clause of the first sentence. The restriction had been considered as important by many countries in the London Agreement. If it were omitted, the omission might lead to reservations on the part of such countries. It had to be remembered that States, in order to safeguard their position, preferred to have the powers in reserve even though they did not use them. For that reason, therefore, he considered it desirable to retain this clause.

The Venezuelan representative said that nationals returning to his country required visas from consulates abroad. If the second sentence were deleted his Government would probably enter a reservation in respect of that provision.

The Chairman, speaking as representative of Denmark, pointed out that the question whether a person entering a country required a visa or not was a purely internal one for States. If a national entered his own country, that country was obliged to admit him, whether or not he had a visa for entry or even a passport. In the case of refugees, however, no country was in the same way obliged to admit him. He was anxious to avoid such a situation arising and had therefore proposed that the last clause of the first sentence be deleted.

The Belgian representative observed that under the second sentence of paragraph 13(1), a visa requested by a returning refugee was to be issued without delay.

The UK representative considered that, as it was clear that at least one country regarded the second sentence as important, and as the sentence was merely procedural and mandatory in intention, as the Belgian representative had said, it was better in the interests of the refugees, to retain it.

The second sentence of paragraph 13(1) was adopted by 17 votes to 1, with 3 abstentions.

The last clause of the first sentence of paragraph 13(1) was adopted by 4 votes to 2, with 5 abstentions.

Paragraph 13(1) of the Schedule was adopted.

The representative of the IRO said that in the experience of his organization the right reserved to a State for exceptional cases in paragraph 13(2) had, in some cases, in fact been exercised as a rule. He appealed to States to exercise it only as laid down in paragraph 13(2), in exceptional cases, or in cases where the refugee's stay was authorized for a specific period.

His appeal was supported by the UK and US representatives.

Paragraph 13(2) of the Schedule was adopted.

Paragraphs 14, 15 and 16 of the Schedule were adopted without discussion.

The representative of the IRO said that Article 23 was of the utmost importance; not only did it provide for rights for refugees of the greatest value, but it also created relations between States. He had been struck by the fact that some of the Governments concerned had said they would not be in a position to accept Article 23 and the Schedule without reservations and had not always given reasons for making such reservations. He appealed to Governments to accept Article 23 and the Schedule. If accepted, they would create uniformity, and introduce the so-called return clause that was not always to be found in national documents.

The Chairman pointed out that in paragraph 2 of the introduction to the specimen travel document,[502] no mention had been made of the possible need for a visa. It seemed to him essential, at least in the case of countries which did not authorize the unconditional return of refugees, that the provision should be changed to enable the inclusion of a reference to special visa regulations.

After further discussion it was decided to leave the question to the Drafting Committee.[503]

The Drafting Committee proposed the following text:

'1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such a document. The Contracting States may issue such a travel document to a refugee not lawfully resident in their territory.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.'

Schedule
(see Article 23)

Paragraph 1(3)[504]

'1. The travel document referred to in Article 23 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages - one of which should be English or French, and the national language or languages of the authority which issue it.'

Paragraph 2(4)

'Subject to the regulations obtaining in the country of issue, children may be included in the document of an adult refugee.'

Paragraph 3(5)

'Without prejudice to the provisions of Article 24, paragraph 3 of this Convention the fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.'

Paragraph 4(6)

'Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.'

Paragraph 5(7)

'The document shall have a validity of either one or two years, at the discretion of the issuing authority.'

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[502] E/1618 p 32

[503] E/AC.32/SR.39 pp 4-20

[504] The numbers in brackets refer to the Articles of the London Agreement of 15 October 1946, set out on page 154 of document E/1112, which correspond in substance.

Paragraph 6(8)

'1. The renewal or extension of the validity of the documents is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

'2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

'3. Renewal or extension of the validity of a travel document or the issue of a new document should not be refused unless the Contracting State which issued the original document is reasonably satisfied that the holder has acquired a new lawful residence.'

Paragraph 7(9)

'The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of Article 23 of this Convention.'

Paragraph 8(10)

'The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.'

Paragraph 9(11)

'The Contracting States undertake to issue transit visas to refugees who have obtained visas for the territory of final destination.'

Paragraph 10(12)

'The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.'

Paragraph 11(13)

'When a refugee has lawfully taken up residence in the territory of another Contracting State, the power to issue a new document will be in the competent authority of that territory, to which the refugee shall be entitled to apply.'

Paragraph 12(14)

'The authority issuing a new document shall withdraw the old document.'

Paragraph 13(15)

'1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject to those laws and regulations which apply to the bearers of duly visaed passports. Where a visa is required of a returning national a visa may be required of a returning refugee but shall be issued to him on request and without delay.

'2. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.'

Paragraph 14(16)

'Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.'

Paragraph 15(17)

'Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.'

Paragraph 16(18)

'The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.'

The US representative proposed, on a suggestion by the representative of the IRO, to add at the end of the first paragraph of Article 23 'and should give sympathetic consideration in particular to applications for travel documents for refugees unable to obtain such documents in the country of their residence'. Such an amendment would cover the cases where the inability was due to the countries not being Contracting States as well as to other cases.

The Chairman had pointed out that the expression 'lawfully resident in' had been translated into French in the same way as the expression 'lawfully in'. Whatever the solution to the question to terminology raised under Article 14(1), it should be borne in mind that two different concepts in English had been rendered into French by the same phrase.

The US proposal was referred to the Drafting Committee.

Paragraphs 1 to 5 of the Schedule were adopted without comment.

The US representative proposed the deletion of paragraph 6(3).

The question was deferred until a final draft of Article 23 had been prepared.

Paragraphs 7 to 12 were adopted without comment.

The Chairman proposed the deletion of the final clause from the first sentence of paragraph 13(1).

The US representative said that the existence of that clause weakened, if it did not destroy, a refugee's right to return to a country which had issued a travel document to him. In some countries a visa did not constitute a right to enter, but merely the right to apply for entry. If the Committee decided not to delete the clause, he considered that it should be re-drafted to explain exactly what was intended, namely that the refugee should have a right to reenter, and would propose, therefore, that the words 'returning national' be substituted for the words 'the bearers of duly visaed passports'. If the words referred to foreign passports, no protection would be given to refugees if the clause was adopted as it stood. In his country and, so far as he understood, in Canada the possession of a visa on a foreign passport did not confer an absolute right of entry into those countries.

The Chairman claimed that States issuing travel documents should be obliged to act on them as if they were passports presented by their own nationals.

The Belgian representative explained that he himself had taken part in the negotiations which had resulted in the 1946 Agreement. He had therefore always interpreted paragraph 13 as necessarily granting the right to return. In addition, he thought that a travel document which did not, at least in principle, accord the right of return would be meaningless.

After further discussion it was decided to refer the question to the Drafting Committee.

Paragraphs 14 to 16 were adopted.[505]

The Drafting Committee proposed the following new texts:

The Drafting Committee subsequently prepared a new text for Article 23, and paragraphs 6 and 13 of the Schedule.

'1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such document. The Contracting States may issue such a travel document to any other refugee (in their territory) who is not in possession of such a document, and shall give particular consideration to refugees in their territory who are unable to obtain any travel document in the country of their lawful residence.

'2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.'

Paragraph 6(3)

[505] E/AC.32/SR.41, pp 20-24

'The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.'

Paragraph 13(15)

'1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject only to those regulations which apply to returning resident aliens bearing duly visaed passports or other re-entry permit. Where a visa is required of a returning national a visa may be required of a returning refugee but shall be issued to him on request and without delay.'

'2. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.'[506]

At the 42nd session the Chairman said that a division of opinion had been discovered in the Drafting Committee regarding the interpretation of the text adopted at the previous session of the Committee. The first sentence of the first paragraph of that text referred to 'a refugee lawfully resident' in the territory. Some delegations had understood the second sentence to cover unlawful residence; but not to cover non-residence. The question before the Committee, therefore, was whether travel documents could also be issued to non-residents.

His own Government considered that non-residents might in certain circumstances be granted travel documents; in the case, that is, of a refugee fleeing to a third country who was perhaps married to a Danish national or had perhaps formerly had Danish nationality. The question was not extremely difficult to solve, as, on the one hand, no State could prevent another State from granting travel documents to any one person, and, on the other hand, it was in their own interests for States not to issue such documents freely, as they contained a return clause.

The Committee was required to decide whether the new version of Article 23 should be adopted with or without the addition of the bracketed words 'in their territory'.

The US representative spoke in favour of the deletion of words in brackets.

The UK representative thought that the Article would be weakened if it were framed so as to permit Contracting States to issue travel documents to refugees who were in no way connected with them. Deletion of the words would involve the risk of having a considerable number of States making a reservation and he favoured their retention.

The Committee decided to retain the words 'in their territory' in Article 23 by 5 votes to 4, with 2 abstentions.

Article 23 was adopted.

Schedule Paragraph 6(3)

The Chairman said that because of the decision taken by the Committee on Article 23, a State could no longer issue a travel document to a non-resident refugee. The new draft of paragraph 6(3) of the Schedule, however, permitted Contracting States to give sympathetic consideration to issue new documents to refugees no longer lawfully resident in their territory. There was thus a discrepancy between the two provisions which he thought should be remedied.

The UK representative understood 'new documents' in paragraph 6(3) to mean new documents replacing old documents.

The representative of the IRO thought that if the new draft of paragraph 6(3) was adopted it would be to some extent in conflict with paragraph 6(2) inasmuch as a Government might well extend a travel document beyond six months, so that action would in all cases have to be taken by the central authorities. Thus, paragraph 6(2) would lose much of its meaning.

The Belgian representative felt chat there was no possible doubt: paragraph 6(3) referred to refugees who, after residing lawfully in a territory, continued to reside in that territory unlawfully. It did not, in his view, refer to a refugee who was no longer in the territory in question.

Paragraph 6(3) of the Schedule was adopted.

The representative of the IRO pointed out that paragraph 6(2) of the Schedule contained mandatory provisions, which had not always been observed in the past.

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[506] E/AC.32/L.42/Add.3

The Belgian representative said, in reply, that in his view the provisions of paragraph 6(3) could not be considered as mandatory.

The representative of the IRO thought that the point raised by the Belgian representative was extremely important. It was understood that the authorization could be restricted to certain diplomatic or consular authorities, but was individual authorization sufficient or must it be an authorization of a general character?

The Chairman said the provision mentioned nothing about the number of diplomatic or consular authorities which might be specially authorized, but it was clear that a number must be so authorized.

The representative of the IRO thought that the Chairman's interpretation differed from that originally adopted. There had been great difficulties in the past, and there would continue to be considerable delay, if diplomatic or consular authorities had, in each case, to approach the central Government for an extension of the validity of a refugee's travel document.

The UK representative pointed out that the use of the words 'specially authorized' indicated that not all diplomatic or consular authorities would be authorized. In effect, the words 'shall be' must be read in the sense of 'may be'.

The US representative thought that the UK representative's interpretation went a trifle too far. According to the sub-paragraph it was obligatory for States to empower some diplomatic or consular authorities.

The Chairman said that the commentaries on the London Agreement made it clear that in the similar provision in the Agreement, States had the sole right to determine the number of diplomatic or consular authorities to be authorized. Paragraph 13 of the Schedule was adopted.[507]

The Schedule and Annexe as adopted by the Committee read:

'1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such document. The Contracting States may issue such a travel document to any other refugee in the territory who is not in possession of such document, and shall give sympathetic consideration to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

'2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.'

Schedule
(See Article 23)

Paragraph 1(3)[508]

'1. The travel document referred to in Article 23 of this Convention shall be similar to the specimen annexed hereto.

'2. The document shall be made out in at least two languages - one of which shall be English or French.'

Paragraph 2(4)

'Subject to the regulations obtaining in the country of issue, children may be included in the document of an adult refugee.'

Paragraph 3(5)

'Without prejudice to the provisions of Article 24, paragraph 3, of this Convention the fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.'

Paragraph 4(6)

'Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.'

Paragraph 5(7)

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[507] E/AC.32/SR.42 pp 5-11

[508] The numbers in brackets refer to the Articles of the London Agreement of 15 October 1946, set out on page 154 of document E/1112, which correspond in substance.

'The document shall have a validity of either one or two years, at the discretion of the issuing authority.'

Paragraph 6(8)

'1. The renewal or extension of the validity of the documents is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

'2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

'3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.'

Paragraph 7(9)

'The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of Article 23 of this Convention.'

Paragraph 8(10)

'The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.'

Paragraph 9(11)

'The Contracting States undertake to issue transit visas to refugees who have obtained visas for the territory of final destination.'

Paragraph 10(12)

'The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.'

Paragraph 11(13)

'When a refugee has lawfully taken up residence in the territory of another Contracting State, the power to issue a new document will be transferred to the competent authority of that territory, to which the refugee shall be entitled to apply.'

Paragraph 12(14)

'The authority issuing a new document shall withdraw the old document.'

Paragraph 13(15)

'1. The document shall entitle the holder to leave the country where it has been issued and, during the period of validity of the document, to return thereto without a visa from the authorities of that country, subject only to those regulations which apply to returning resident aliens bearing duly visaed passports or re-entry permits. Where a visa is required of a returning national a visa may be required of a returning refugee but shall be issued to him on request and without delay.

'2. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.'

Paragraph 14(16)

'Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.'

Paragraph 15(17)

'Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.'

Paragraph 16(18)

'The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.'[509]

At the Conference of Plenipotentiaries Belgium, France, Italy, the Netherlands and Yugoslavia proposed amendments. The Belgian amendment read:

> 'Subject to the requirements of national security and public order, the Contracting States shall issue to refugees lawfully resident in their territory travel documents for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory and shall give sympathetic consideration to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.'[510]

France proposed: Paragraph 13 sub-paragraph 1. Delete the words 'without a visa from the authorities of that country'.[511]

Italy proposed: Insert a new paragraph 2 worded as follows: 'As a purely exceptional measure, the Contracting States may reserve the right to withhold the issue of the travel document to refugees suspected on reasonable grounds of engaging in illicit traffic'.[512]

It proposed further: Specimen travel document page 24. The fifth line of the travel document to be amended to read:

> 'Accompanied by.... child (children) under 16 years of age.'
>
> Pages 24/25. Add the following sentence to paragraph 3: 'The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.'[513]

The Netherlands proposed: Redraft the first paragraph as follows:

> 'The Contracting States shall issue, on request to a refugee lawfully resident in their territory a travel document for the purpose of travel outside their territory, *subject to the conditions which apply to their nationals,* and the provisions…'[514]

Yugoslavia proposed: Paragraph 1. Substitute the word 'may' for 'shall' in line 1.

Paragraph 2. Substitute the following text:

> 'Travel documents issued to refugees under previous international agreements by parties thereto shall be replaced within one year, by travel documents issued in accordance with this Convention.'

Paragraph 3. Replace the present text by the following:

> 'The fees charged for the issue of the document shall not exceed the lowest scale of charges for national passports.'

Schedule paragraph 5. Replace the words 'of either one or two years' by 'of between six months and two years'. The text will thus read:

> 'The travel document shall have a validity of between six months and two years, at the discretion of the issuing authority.'

Paragraph 9. Insert a new paragraph to read as follows:

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[509] E/1850

[510] A/Conf.2/69

[511] A/Conf.2/59

[512] A/Conf.2/56

[513] A/Conf.2/63

[514] A/Conf.2/44

'The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien. A visa may also be refused to any person regarded by the State for which the visa is requested as its own national.'

Paragraph 12. Delete the full stop at the end of the text and add: '... and return to the country of issue.'.[515]

The representative of the ILO said that he wished to refer, in connection with Article 23, to the position of seamen, whose labour conditions were the concern of the ILO for the last 30 years. Refugees who were continuing in that calling or had adopted it after leaving their country of origin, might not be very numerous; in fact, the ILO did not possess any accurate statistics on the matter. However, even though only few might be involved, that should not prevent them from being accorded equitable treatment; yet it was true that refugees did not always enjoy the same working conditions as other members of a ship's crew who benefited by the proper protection of their government.

The question had been brought to the notice of the ILO by IRO at the end of 1950, and had been placed on the agenda of the Joint Maritime Commission of the ILO. That Commission had decided that the question deserved consideration, and had adopted a resolution for transmission of the Governing Body of the ILO, which had approved it at a recent meeting. Under that resolution the Director General of the ILO had been instructed to bring this matter to the notice of the High Commissioner for Refugees and of Governments, urging them to take measures to alleviate the situation of such refugee seamen. It was also suggested that the time spent by seamen serving on a ship belonging to a given country should count towards the period of residence necessary to secure the right to travel documents. He realized that it might be difficult for many governments represented at the Conference to enter into a specific commitment of that kind; if so, perhaps the suggestion might be incorporated in a separate recommendation. He would, however, tentatively put forward the following text:

'For the purpose of paragraph 1 of this article, Contracting States shall give sympathetic consideration, in the cases of a refugee who is a *bona fide* seafarer, to the possibility of allowing such a refugee to reckon any period spent as a crew member on board a ship flying the flag of a Contracting State as residence in the territory of that State.'

There was no need to emphasize that that provision was, of course, intended to benefit only genuine seamen and not refugees who were escaping by sea from their country.

The President suggested that the phrase 'in their territory' which occurred several times in paragraph 1 of Article 23, was unnecessarily restrictive. He failed to understand why Contracting States should be prevented from issuing a travel document to a refugee outside its borders, that is, the Danish Government might issue a travel document to enable a refugee to emigrate overseas. There was no valid reason why it should not, if it wished, issue a similar document to that refugee's wife, even though she happened to be in another country at the particular time. Any difficulty arising from the deletion of that phrase was, in his opinion, met by the word 'may' in the second sentence of paragraph 1.

The Netherlands representative said that, in the Netherlands, the issue of a passport was a favour, not a right. The object of his amendment had been to apply the same treatment to refugees as to Netherlands nationals but, after mature consideration, he thought that the amendment was unnecessary and would therefore withdraw it. The Netherlands delegation would enter a reservation when it signed the Convention.

Referring to the Italian amendment, he felt certain that Governments of Contracting States would refuse to issue a travel document to refugees engaging in illicit traffic and that therefore there was no need to mention the point specifically in the draft Convention.

The French representative wished to make a reservation of substance on paragraph 1 of Article 23. Under paragraph 13 of the Schedule annexed to the draft Convention, refugees would not require entry and exit visas from the country issuing the travel document. France already granted facilities to refugees covered by the 1933 Convention and could enter into no formal undertaking for the future, since circumstances might make it necessary for her to keep a check on the movement of refugees and aliens. She could therefore accept Article 23 only subject to reservations on paragraph 13 of the schedule.

The Swedish representative stated that the Swedish Government had acceded to the London Agreement. However, it had found that there were certain disadvantages in allowing freedom of movement to refugees in and out of Sweden without control of any sort. In the interests of national security, the Swedish Government wished to reserve its right to exercise some supervision on the movement of such persons; and he might, at a later stage, have to enter a reservation to that effect.

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[515] A/Conf.2/31 pp 2-4

The Italian representative said that the position of the Italian Government was similar to that of the French and Swedish Governments.

The Australian representative said that the Netherlands representative had raised an extremely pertinent point. It would be anomalous to the extreme if a refugee were entitled to be issued with a travel document while a passport might, for good reason, be refused to a national. He believed that some change in the sense of the Netherlands amendment was necessary.

The Belgian representative fully understood that there must be certain limitations on the issue of travel documents to refugees and aliens, but such persons could not be required to conform to the same conditions as nationals, who were subject, for example, to certain restrictions by reason of their military status. Some other wording must therefore be found for paragraph 13 of the Schedule. The Belgian delegation was unable to accept the Yugoslav amendment for Article 23.

The Canadian representative stated that the position of his Government was similar to that of the Australian Government. The issue of a passport could be refused in certain circumstances. It was obvious that refugees could not be given preferential treatment, and he might be obliged to enter some kind of reservation on the point unless Article 23 was appropriately amended.

Article 23

The Belgian representative proposed that the words 'in their territory' be deleted, for Contracting States should clearly be in a position to issue travel documents to refugees outside their territory.

The UK representative contended that this would weaken Article 23 by making it no longer the primary obligation of the Contracting State of residence to issue travel documents.

The French representative agreed.

The President said he would not press his suggestion.

The Belgian representative suggested that the words 'and subject to the requirements of national security' should be inserted after the words 'lawfully resident in their territory' in the second line of paragraph 1 of Article 23. That proviso should allay the fears expressed by certain representatives.

The President suggested that the difficulty was met by the provisions of paragraph 14 of the Schedule.

The High Commissioner for Refugees emphasized the vital importance of Article 23. The issue of travel documents was one of the most important aspects of the treatments of refugees. Any proposals for changes in Article 23 should be approached with the greatest caution. However, he realized the cogency of the objections raised by certain representatives concerning the mandatory obligation imposed by the first sentence of Article 23. They might be disposed of by substituting the words 'undertake to issue to refugees' for the words 'shall issue, on request to a refugee'. The acquisition of a travel document would thus not be defined as a right belonging to the individual. In conclusion, he earnestly appealed to representatives to refrain from weakening the Article as a whole.

The Australian representative agreed.

The representative of the German Federal Republic also agreed and supported the High Commissioner's amendment. The objections raised to the wording of Article 23 should be met by the provisions of paragraph 14 of the Schedule.

The Swedish representative doubted whether the mandatory terms of paragraph 13 of the Schedule were consistent with paragraph 14.

The President, too, saw no objections to the High Commissioner's amendment. A suitable proviso, recognizing the right of Contracting States to refuse or to withdraw travel documents, could be inserted in the Schedule.

The Canadian representative supported the High Commissioner's amendment.

The Australian representative suggested that the High Commissioner's amendment would not substantially alter the implications of Article 23. The refugees might thus be in a position to claim something which was denied to nationals. His principal objection to the original text of Article 23 still remained valid.

The Swiss representative agreed.

The Belgian representative thought that the words *'s'engagent'* should be used in the French text of the High Commissioner's amendment and not *'s'engagegeront'.*

He drew the attention of the Conference to the fact that the London Agreement had been signed by 19 States and no difficulties had arisen in its applications.

The Israeli representative reminded representatives that the Schedule had been drafted by experts in 1946. Its provisions had stood the test of six years application. It was true that the situation had changed somewhat since the 1946 Agreement had been signed, and that at present many governments were more keenly aware of the requirements of national security. However, he believed that such pre-occupations would be fully met by the addition of a provision such as that proposed by the Italian amendment.[516]

The UK representative believed that it would be regrettable to attempt substantial amendments of an Article which embodied a principle accepted by the signatories of the 1946 Agreement. The arguments put forward in the discussion probably reflected the fact that the situation had deteriorated since that time. If Governments, while accepting in principle Article 23, had to enter certain reservations to it, those reservations might be wider in scope than any amendment the Conference might devise. If modifications were to be introduced, he believed that their proper place was in Article 23, and not in the Schedule. It should be made clear that the purpose of any modification was to cover purely exceptional cases in which refugees would be treated on the same footing as nationals. He would suggest a provision based on the Italian proposal and reading as follows: 'As a purely exceptional measure a Contracting State may withhold the issue of a travel document to a refugee if its issue is for a purpose for which the issue of a passport to a national of that State would be refused.'[517]

An amendment was introduced by Australia and Canada:

> 'Add the following: 'as an exceptional measure a Contracting State may withhold the issue of a travel document to a refugee if the circumstances are such that the issue of a passport would be withheld from a national of that State'.[518]

The Yugoslav representative withdrew his amendment in favour of the Belgian amendment. The Canadian representative declared the willingness of his and the Australian delegation to withdraw their amendment in favour of the Belgian amendment although the Belgian amendment introduced the somewhat troublesome aspect of public order.

The Belgian representative explained that the limiting clause in the Belgian amendment did not mean that the issue of a travel document would categorically by refused. It was merely intended to allow for the temporary discontinuance of the issue of such documents. That action would no longer be necessary once the considerations of national security or public order which had led States to suspend the issue of travel documents, had ceased to hold.

The Danish, Norwegian and UK representatives were more in favour of the joint Australian-Canadian amendment.

The French and Swedish representatives spoke in favour of the Belgian amendment.

On his own amendment the French representative said that, in practice, the French Government granted the right referred to in sub-paragraph 1 of paragraph 13 of the Schedule to aliens covered by the 1933 Convention, since they were persons who since long had been settled in France and were well known to the French Government. On the other hand, it reserved the right to impose controls on the movement of other refugees, although it would have recourse to such controls only if it considered it absolutely necessary to do so.

The Belgian representative said that his delegation was convinced that the Belgian amendment was more in the interests of the refugees than the joint amendment. A national passport could be refused if the person had not paid their taxes or had not done their military service. Hence it was clear that the text of the joint amendment allowed a very wide interpretation. The Belgian delegation therefore preferred its own text.

The French representative said travel documents were valueless unless accompanied by an entry visa for another country. The refugee to whom the French Government would feel obliged to refuse a travel document were precisely those to whom none of the countries represented at the Conference would grant an entry visa. What counted, therefore, was not the travel document but the visa.

The Swiss representative thought that the Belgian proposal could be made acceptable to all delegations by deleting the words 'or public order'.

The Belgian representative could not accept the Swiss suggestion. The Belgian intention had been to cover the case of a refugee who was being persecuted for an offence under civil law; he would be refused a travel document for reasons of public order.

He was supported by the French representative.

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[516] A/Conf.2/56

[517] A/Conf.2/SR.12, pp. 4-13

[518] A/Conf.2/66

The Australian representative said that the joint amendment was to reduce exceptions to a minimum. In Australia, the withholding of a passport was a very exceptional measure.

The UK representative was somewhat alarmed by the extent to which the amendments implied a departure from the standing arrangements whereby refugees were provided with travel documents enabling them to travel. The widely supported London Agreement contained no such limitations, and although conditions had since changed, the deviation from the existing arrangements should be as slight as possible. He could not understand why the French representative laid greater emphasis on the travel document; there would be little point in his seeking an entry visa into another country.

The Danish representative said that it might well be that a refugee suspected of having committed a crime in a particular country would be able to obtain a visa from the Consul of another country without the Consul being aware of the facts of the case. It would consequently be undesirable to issue a travel document to such a person before the alleged offence had been fully investigated. Such cases were admittedly covered by the Belgian amendment, but the latter appeared to go much further than was necessary in actual practice.

The French representative explained that the fact that a French citizen expressed extremist views did not prevent him from holding a passport. It might, however, be necessary in certain cases to treat refugees differently.

The UK representative felt that to refuse a travel document to a refugee on the grounds mentioned by the French representative would be tantamount to discrimination on the grounds of political opinion.

The French representative said refugees holding extremist political opinions would certainly not be able to obtain an entry visa into any of the countries represented at the Conference. It was obvious, therefore, that the travel document would only be of service to them if they were proceeding to a country other than those represented at the Conference and it was precisely that situation which the French Government was anxious to avoid.

The UK representative was mainly concerned with the question of principle. If the holding of extremist views was accepted as valid ground for not issuing travel documents, certain States might take advantage of that facility in order to put obstacles in the way of legitimate travel on the part of the refugees.

The President observed that for the past twenty years arrangements had existed for the issue of travel documents to refugees. He was sure that all States had delivered such documents, and also that, when the exceptional case had turned up, the competent authorities had known what action to take. He was reluctant to see the Conference give world public opinion the impression that it was seeking to deprive refugees of facilities that had been accorded by all previous agreements, and consequently wondered whether any amendment of paragraph 1 of Article 23 was necessary.

The UK representative suggested, to avoid any abuse of the formula finally adopted, that the phrase in the Belgian amendment should be replaced by the words 'Except when imperative reason of national security of public order otherwise require'.

The Belgian representative accepted the suggestion.

The Australian and Canadian representatives withdrew their amendment in favour of the Belgian amendment as thus modified.

The French representative also accepted the UK amendment.

Article 23 paragraph 1 as amended by the UK was adopted by 22 votes to none, with 3 abstentions.

Article 23 paragraph 2

The Yugoslav representative asked whether a State which was not a party to previous international agreements would be obliged to recognize travel documents issued under those agreements. His delegation had submitted its amendment in the belief that once the Convention had come into force, all travel documents should be delivered in accordance with it, and not under previous international agreements.

The President drew attention to paragraph 1 and 2 of Article 32 in which provision was made for the situation which would arise once the Convention had come into force. In the case of Contracting States who were also parties to previous international agreements, the latter would be replaced by the Convention. As between two States parties to the previous international agreements, once of which was not a party to the present Convention the previous agreements would remain in force. Thus, the old travel documents would become null and void for parties to the Convention once their validity had expired.

The Yugoslav Government, which was not a party to the previous international agreements, had no obligation *vis-à-vis* other States with regard to travel documents. If and when it signed and ratified the present Convention, it would assume

the obligation laid down in Article 23. That meant in effect that the Yugoslav government would have to recognize the validity of travel documents issued by, say, the Danish Government under the previous international agreements.

The Belgian representative thought that the point raised by the Yugoslav representative might be met by inserting in Article 23 paragraph 2 the word 'previously' after the word 'travel documents'. That would make it clear that a Contracting State could not continue to supply refugees with travel documents based on previous agreements. It should, nevertheless, be noted that it ought, in any case, to be possible for refugees to continue to use such travel documents, in order to avoid practical difficulties. A refugee might, that is, apply for a travel document in order to enter various States, only some of which were parties to the Convention. In such a case, the refugee would either have to have two different travel documents, or continue to use travel documents issued under agreements prior to the present Convention.

The President agreed that it was essential to take into account the possibility that travel documents might have to continue to be issued under the previous agreements.

The Egyptian representative considered that paragraph 2 of Article 23 raised a series of legal problems, such as that of the relative value of previous travel documents. Members of the Convention were, in fact, asked to sign a blank cheque, and his delegation, for its part, could not vote for paragraph 2.

The UK representative did not share the Egyptian representative's misgivings, and maintained that the travel documents issued under previous agreements were well-known and easily identifiable.

The US representative drew the attention of the Yugoslav representative to paragraph 5 of the Schedule in which it was laid down that a travel document should have validity for a limited period of time. It was reasonable to assume that a State party to the Convention would issue a new travel document of the type proscribed in the Schedule, once the validity of an old one had expired. Thus, the Yugoslav representative's point would undoubtedly be met in practice.

The Yugoslav representative said that he was now prepared to withdraw his amendment and to vote for paragraph 2, provided the Belgian amendment was adopted.

The President said what mattered from the point of view of Governments was, that at least for some time to come, certain States party to the previous international agreements would not be party to the present Convention, and it was always preferable for an individual to hold only one travel document, and not several.

Paragraph 2 was adopted by 23 votes to none.

The representative of the ILO drew attention to the recommendation on refugee seamen which had been proposed by his Organisation.

The President said that the Conference could take no decision on the suggestion unless it was sponsored by a delegation. In his view, the issue was wider than that dealt with in Article 23, and should perhaps form the subject of a separate general Article.

The French representative thought that the question was much too general to fit happily into Article 23. In his opinion, the text suggested by the ILO should be inserted in Article 6, dealing with continuity of residence, or drafted as a new Article to be inserted immediately after Article 6.

The representative of the ILO said that would be perfectly satisfactory.

Article 23 as a whole and as amended was adopted by 22 votes to none, with 3 abstentions.

Paragraph 1 of the Schedule was adopted without change by 23 votes to none, with 1 abstention.

Paragraph 2

The Belgian representative thought that the Italian amendment to the text of the travel document shown in the annex should be reproduced in paragraph 2 of the annex as the two provisions were related.

The Italian representative agreed. The age limit laid down in that connection was 16 years in Italy, but the words 'subject to the regulations obtaining in the country of issue' in paragraph 2 would leave Contracting States a certain amount of latitude in the matter.

The Venezuelan representative felt that it would be better to lay down a definite age limit.

The Belgian representative proposed that paragraph 2 be worded as follows: 'Subject to the regulations obtaining in the country of issue, the children of a refugee may be included in the document of an adult refugee provided they are under 16 years of age'.

The Danish representative considered that it would be wiser to take a liberal attitude in the matter. As to age, the Danish authorities issued individual travel documents to children over 15.

The Australian representative supported the Danish representative.

The Canadian representative suggested the following wording:

> 'Subject to the regulations of the country of issue, children may be included in the document of a parent, or, in exceptional circumstances, of another adult refugee.'

The Italian representative supported the Canadian amendment.

The Canadian amendment was adopted unanimously.

Paragraph 2 was adopted unanimously, as amended.

Paragraph 3 was adopted unanimously, subject to a drafting change consequential to the deletion of paragraph 3 of Article 24.

Paragraph 4 was adopted unanimously without comment.

Paragraph 5

The Belgian representative proposed a minor amendment to the Yugoslav amendment, namely the replacement of the word 'for six months to two years' by the words 'from three months to two years'.

The Yugoslav representative accepted the Belgian amendment.

The Swiss representative spoke in favour of the original wording.

The representative of the German Federal Republic pointed out that the Belgian amendment might also work to the disadvantage of the refugees. For, if it were adopted, issuing authorities might supply a travel document which was valid for three months only, even thought the applicant would have preferred one valid for a longer period.

The Yugoslav amendment, as amended by the Belgian representative, was rejected by 15 votes to 4 with 6 abstentions.

Paragraph 5 was adopted unanimously.

Paragraphs 6, 7 and 8 were adopted unanimously, without comment.

Paragraph 9

The Yugoslav representative withdrew the second sentence of his amendment.

The Egyptian representative proposed that the words 'subject to the exigencies of national security and public order' be added at the end of the paragraph.

The Yugoslav amendment,[519] minus the second sentence, was adopted by 11 votes to 6, with 7 abstentions.

The Egyptian representative withdrew his oral amendment.

Paragraph 9, as amended, was adopted by 22 votes to none, with 3 abstentions.

Paragraphs 10 and 11 were adopted unanimously, without comment.

Paragraph 12

The Belgian representative considered that the Yugoslav amendment to paragraph 12 should be taken together with the Italian amendment[520] to paragraph 3 of the specimen travel document.

The Italian representative said, in reply to the UK representative, that experience had shown that refugees very frequently claimed that they had lost their documents in order to get possession of new documents. No country wished a document it had issued to be in circulation after its validity had expired.

The Yugoslav amendment was adopted by 3 votes to 1, with 20 abstentions.

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[519] A/Conf.2/31, p. 4

[520] A/Conf.2/64

Paragraph 12, as amended, was adopted unanimously.

Paragraph 13

The French representative, explaining his amendment to paragraph 13[521] said that the regulation in force in France was that, in application of Article 2 of the 1933 Convention and by virtue of a decree promulgated by the French Government, Nansen refugees, refugees from Germany and Austria and Spanish refugees under the mandate of the IRO did not need a visa. As to other refugees, France was free to insist upon their having a visa, if it wished.

If the existing text of paragraph 13 was retained, the French Government would be obliged to enter reservations, or to deal with the matter under the procedure for the issue of travel documents; that might have the effect of placing those concerned in a less favourable position than they enjoyed at the present time. The final outcome would be that, instead of a visa being refused, a travel document would be refused. France wished to exercise supervision over the comings and goings of refugees in their territory, whom it was sometimes unwise to trust blindly.

The Lebanese and Venezuelan representatives agreed.

The President, speaking as representative of Denmark, said that the point which was causing him concern was that a country might admit a refugee on the understanding that his travel document which gave him the right of return, had been issued in good faith by the country from which he had come. What was the position of the former country if the refugee had failed to comply with the regulations of the country that had issued the document? The document should clearly state the rights to which the holder was entitled.

So far as Denmark was concerned, a travel document was implicitly understood to confer the right of re-entry. He was not sure whether that condition held for countries which required entry and exit visas.

The French representative said paragraph 13 would raise no difficulty, in as much as its wording referred to the exit and re-entry of the holder of a travel document. The French amendment aimed solely at making possible supervision of the comings and goings of the numerous refugees who had entered France illegally.

The Canadian representative suggested that the points raised during the discussion might be met by the insertion of the words 'with/without a re-entry permit' after the words 'The holder is authorized to return to...' in paragraph 2 of the specimen travel document.

The US representative thought the objection raised was based on the fact that under the provisions of paragraph 13 sub-paragraph 1 the French Government would have to permit the holder of a document issued by it to re-enter France, even if he had no visa, throughout the period of validity of that document. If the French Government was anxious to stipulate that refugees should return within a three-month period, it might be possible to meet its desire by inserting the words 'and of authorized return' after the words 'during the period of validity of the document'. Without such a provision the issuing country would be obliged to admit a refugee without a visa after the three-month period had elapsed. He feared, however, that the adoption of the French amendment proposing that the words 'without a visa from the authorities of that country' be deleted from sub-paragraph 1 would raise doubts as to whether a holder of a travel document could, in fact, return within the three-month period.

The French representative said, so far as France was concerned, it was not so much a question of controlling the re-entry of a refugee into French territory as of controlling his exit. Obviously, exit implied subsequent return. As things were at present, a travel document which had no return clause would be completely meaningless. A visa accorded to a refugee would obviously imply his right of return.

The President believed that the points raised would be fully met by the Canadian representative's amendment to paragraph 2 of the specimen travel document. It would then be perfectly clear what the possession of a travel document entailed.

The French representative said that the existing wording of the specimen travel document, as amended by the Canadian proposal, was acceptable.

The UK representative thought the Conference should consider further the implications of the French amendment. He was anxious that the basic principle that States issuing travel documents would bind themselves to allow such refugees re-entry should not be tampered with. It must be recognized that Governments might wish to exercise supervision over the movement of refugees. They could do so by making exit and entry visas obligatory. There was, however, the case of refugees who failed to comply with such formalities but would have to apply from the country in which they were situated,

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[521] A/Conf.2/59

for a return visa, during which time the validity of their travel document might expire. What, in such cases, would be the position of the government of the country in which the refugee was temporarily situated?

The High Commissioner for Refugees emphasized the great importance of travel documents containing a return clause for both the refugees and the State. He would suggest that the French representative's anxiety that governments should be in a position to supervise the movement of certain refugees would be satisfied by the insertion in sub-paragraph 2 of paragraph 13, after the words 'in exceptional cases' of some such wording as 'to subject the return of the refugee to the issue of a return visa'; sub-paragraph 1 would be left unchanged.

The French representative said the High Commissioner's proposal failed to meet the points which were causing concern to the French Government, and was more limitative in character, since it made the re-entry of the refugee dependent on a return visa. The French amendment related solely to a visa establishing the refugee's exit.

The Colombian representative considered the French amendment was preferable to the High Commissioner's suggestion. The visa formalities which existed in certain States were an additional guarantee of re-admission to that provided by the travel document.

The Turkish representative suggested that if the French amendment was adopted, it would be advisable to delete the second sentence of sub-paragraph 1.

The Venezuelan representative pointed out that refugees temporarily situated in a country might engage in activities which would necessitate the withdrawal of their travel documents. Were such persons to be assured re-admittance by the issuing country?

The President said that issuing countries could impose any regulations they wished covering the exit and entry of refugees, but what he was concerned to ensure was that they would assure an unconditional commitment to re-admit holders of their own travel documents. He did not think that such a principle was incompatible with a certain amount of supervision, but care should be taken to ensure that countries admitting refugees for short periods were not penalized or placed in difficulties by the regulations of the States issuing the travel documents.

The UK representative pointed out that sub-paragraph 1 of paragraph 13 as at present drafted assimilated refugees without a visa to foreigners who held a visa. However, if the French amendment was accepted, it might be necessary to make it clear that such refugees are not being assimilated to resident aliens who required a visa as condition of admission.

It was decided to entrust a Working Group consisting of the representatives of Canada, France, Italy, the UK, the US and Venezuela with the task of re-drafting paragraph 13.

Paragraphs 14, 15 and 16 were adopted on the understanding that any consequential changes necessitated by amendments to other parts of the Convention could be made in the course of the second reading.

Annex to the Schedule-Specimen Travel Document

The UK representative suggested that the Italian amendment in A/Conf.2/64 was superfluous. Holders of old travel documents would not fail to be aware of the necessity of retaining them, and producing them to the authorities should they have taken up residence in another country and applied for a new travel document, since when the old document was given up they might have difficulty in obtaining a new one.

The Italian representative said that occasions had been known when refugees had sold their old travel documents on acquiring a new one. The insertion of the instruction in the travel document itself was essential to prevent refugees from holding two travel documents issued by different countries.

The UK representative expressed doubt whether the insertion in the travel document itself of a statement about what the authorities had to do with the travel document, would in fact prevent refugees from disposing of their travel documents illicitly. A provision as to what the authorities had to do was already incorporated in paragraph 12 of the Schedule.

The Italian amendment was adopted on the understanding that the Working Group would be instructed to examine the specimen travel document, as well as paragraph 13 of the Schedule, by 12 votes to none, with 13 abstentions.[522]

The report of the Working Group read:

1. At its 18th meeting, the Conference appointed a Working Group consisting of the representatives of Canada, France, Italy, UK, US and Venezuela, together with the High Commissioner for Refugees, to reformulate paragraph 13 of the Schedule to the Convention and to examine the Annex (Specimen Travel Document) to the Schedule.

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[522] A/Conf.2/SR.18, pp. 4-18

2. The Committee held two meetings, on 18 and 19 July 1951, under the chairmanship of the President of the Conference.

3. The Working Group agreed to propose that paragraph 13 sub-paragraph 1 of the Schedule be replaced by the following text:

'1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with Article 23 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.'

Sub-paragraph 2 of paragraph 13 of the existing text of the Schedule would then become sub-paragraph 3.

4. In agreeing to the text, the French representative withdrew his amendment[523] to paragraph 13(1) of the Schedule. The representative of Venezuela reserved the position of his Delegation on the question of the proposed change in paragraph 13.

5. The Working Group decided to recommend the insertion after paragraph 3 of the Specimen Travel Document, of an indication that each Contracting State may add at that point of a Travel Document issued by it, the following phrase: 'The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.'

6. Subject to this proposed addition the Annex to the Schedule was approved.[524]

The amendment[525] to sub-paragraph 1 of paragraph 13 was adopted by 18 votes to none.

Paragraph 13 of the Schedule, as amended, was adopted by 18 votes to none.

The President said that the proposed addition to paragraph 3 of the Specimen Travel Document represented a compromise solution, the Italian representative who had originally proposed the addition having agreed to make the provision optional instead of mandatory.

The text[526] proposed by the Working Group or insertion at the end of paragraph 3 of the Specimen Travel Document was adopted by 22 votes to none.[527]

The text of the Schedule and the specimen travel document adopted read:

Text of the Schedule and Travel Document adopted on 20 July 1951

Schedule

Paragraph 1(3)[528]

'1. The travel document referred to in Article 23 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2(4)

'Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances of another adult refugee.

Paragraph 3(5)

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[523] A/Conf.2/59

[524] A/Conf.2/95

[525] A/Conf.2/95, paragraph 3

[526] A/Conf./95, p. 2

[527] A/Conf.2/SR.31, pp. 4-6

[528] The numbers in brackets refer to the Articles of the London Agreement of 15 October 1946, set out on page 154 of document E/1112, which correspond in substance.

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4(6)

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5(7)

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6(8)

1. The renewal or extension of the validity of the documents is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7(9)

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of Article 23 of this Convention.

Paragraph 8(10)

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9(11)

The Contracting States undertake to issue transit visas for refugees who have obtained visas for the territory of final destination. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10(12)

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11(13)

When a refugee has lawfully taken up residence in the territory of another Contracting State, the power to issue a new document will be in the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12(14)

The authority issuing a new document shall withdraw the old document and return it to the country of issue.

Paragraph 13(15)

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with Article 23 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding paragraph, a Contracting state may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14(16)

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from the territories of the Contracting States.

Paragraph 15(17)

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder particularly as regards nationality.

Paragraph 16(18)

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

These texts were adopted by the Style Committee unchanged.

The US representative drew attention to the text of paragraph 12 of the Schedule, which required the authorities issuing a document to withdraw the old one and to return it to the country of issue. If the provision in the travel document was optimal, it would no longer tally with paragraph 22.

The President suggested that the difficulty might be solved by adding to paragraph 12 the following phrase: 'if so requested in the travel document; otherwise it should cancel the old document'.

Paragraphs 1 to 8 of the Schedule were adopted without comment, by 22 votes to none.

The High Commissioner for Refugees recalled that the second sentence of paragraph 9, reading: 'the issue of a visa may be refused on grounds which would justify refusal of a visa to an alien', had been added at the first reading. The interpretation, therefore, was that any laws applied to aliens in respect of the issue of transit visas would also be applicable to refugees. It seemed to him that paragraph 14 fully covered that point, and he therefore suggested that the second sentence of paragraph 9 be deleted.

The Venezuelan representative suggested that it was not the second sentence of paragraph 9 but paragraph 14 that was superfluous. It merely reiterated and amplified the content of paragraph 13, especially sub-paragraph 2 thereof.

The President rules that consideration of paragraph 9 be deferred until the Conference had finished its examination of paragraph 14.

The UK representative proposed the following wording for paragraph 12: '(The authorities... shall withdraw the old travel document and) shall return it to the country of issue *if it is stated in that travel document that it shall be so returned, otherwise it shall be cancelled'.*

Replying to the President, he said he would not object if the second part of his amendment was modified to read: 'otherwise it shall withdraw and cancel the document.'

The UK amendment to paragraph 12 was adopted by 18 votes to 2, with one abstention, in the form finally suggested by the UK representative.

The Austrian representative considered that the text of paragraph 12 as just modified would be clearer if the words 'or cancel' were inserted after the word 'withdraw' in the first clause, the last clause reading 'otherwise it shall withdraw and cancel the document' being deleted.

The President considered that the minor technical point raised by the Austrian representative could well be left to the discretion of the administrative authorities. The main point, namely the withdrawal of the old document, had been satisfactorily disposed of.

Paragraph 12 was adopted unanimously, as amended.

The French representative said that although paragraph 11 had been adopted, he felt it necessary to point out that it did not appear to be altogether consistent with the provisions of Article 23. The latter imposed an obligation on Contracting States to issue a travel document to refugees lawfully resident in their territory but did not restrict the issue of such a

document to the State in which the refugee was lawfully resident. Paragraph 11 of the Schedule, on the other hand, laid down that when a refugee had lawfully taken up residence in the territory of another Contracting State, the power to issue a new document would be in the competent authority of that territory; it therefore implied that in those particular circumstances no competent authority in another territory could issue the document. If the Conference agreed to reopen the question, he would propose that paragraph 12 be redrafted to read: 'when a refugee has lawfully taken up residence in the territory of another Contracting State, *the obligation to issue a new document will thereafter devolve upon the competent authority of that State,* to which the refugee shall be entitled to apply.'

The Venezuelan representative could not accept the French representative's suggestion. In the Working Group he had agreed to the wording of paragraph 13 subject to the conditions set forth in Article 23. That provision would not be met if it was made obligatory in all cases for the State in which a refugee took up residence to issue a new document. He considered that paragraph 11 was satisfactory as it stood. If a Contracting State refused to issue a new document to a refugee who had taken up residence in its territory, that person would not be able to leave the country concerned. He would therefore accept the suggestion that once a particular country received a refugee on a one-way ticket, that country should issue a document to enable the refugee to travel. Certain safeguards, however, were necessary and that was the purpose of the special provision laid down in Article 23.

The UK representative suggested that the difficulty of the Venezuelan representative might be met if paragraph 11 was reworded to read:

> 'When a refugee has lawfully taken up residence in the territory of another Contracting State, the obligation to issue a new document under the terms of Article 23, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.'

The French representative agreed.

Paragraph 11, as thus amended, was adopted by 18 votes to none, with 3 abstentions.

Turning to paragraph 13, the President pointed out that, in order to avoid any misunderstanding, the word 'paragraph' in the first line of sub-paragraph 2 should be amended to read 'sub-paragraph'.[529]

Paragraph 13 was adopted unanimously.

Paragraph 14 was adopted by 19 votes to none, with 1 abstention.

Paragraph 9 was adopted unanimously.

Paragraphs 15 and 16 were adopted unanimously, without comment.

On reopening the discussion on paragraph 11 the Venezuelan representative said he was unable to accept the word 'obligation' in the amended text of paragraph 11. He considered that the provision should be so worded as to indicate that it was the responsibility of the State in which the refugee had taken up residence to issue such a document.

The UK representative said that he would be prepared to meet the Venezuelan representative's point by modifying the amendment adopted at the previous meeting to read: 'the responsibility for the issue of a new document, under the terms and conditions of Article 23, shall be that of the competent authorities...'

The Venezuelan representative pointed out that the word *'désormais'* after *'incombera'* had been retained in the French text. He believed that it might be deleted as redundant.

The Belgian representative disagreed. The retention of the word was necessary to indicate that there would be a transfer of responsibility under the terms of paragraph 11.

The word *'désormais'* was retained.

Paragraph 11, as amended by the UK representative, was adopted unanimously.

The Specimen Travel Document was adopted unanimously.[530]

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[529] A/Conf.2/SR.32, pp. 5-12

[530] A/Conf.2/SR.33, pp. 4-6

Regional and National Measures

A number of European countries have concluded agreements on the abolition of visas in the case of temporary travel of refugees holding London or Convention travel documents. Within the Council of Europe a European Agreement on the Abolition of Visas for Refugees[531] was concluded on 20 April 1959.

It provided for the visa free travel of refugees holding London or Convention travel documents and lawfully resident in the territory of a Contracting Party for visits not exceeding three months (Article 1). Refugees who have entered the territory of a Contracting Party by virtue of the Agreement shall be re-admitted at any time to the territory of the Contracting Party by whose authorities the travel document was issued at the simple request of the Contracting Party whose territory the refugee has entered, unless this Party has authorized him to settle in its territory (Article 5).

The Consultative Assembly of the Council of Europe adopted a resolution (No. 375/63) which invited Governments:

'1. If not yet parties to the European Agreement on the Abolition of Visas to Refugees, to accede to that Agreement;

2. In the meantime to issue visas to refugees free of charge and to speed up procedures for the issue of such visas; and

3. Not to apply any measures of frontier control to refugees which are not applied to nationals of Member States.'

Paragraph 6 of the Schedule to the Convention provides that the renewal or extension of the travel document is a matter for the authority which issued it so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. Paragraph 11, on the other hand, provides that when a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of Article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

A number of European countries have concluded bilateral or plurilateral agreements on the transfer of responsibility for refugees who move lawfully from one country to another.

Within the Council of Europe a European Agreement on the Transfer of Responsibility for refugees was concluded on 16 October 1980.[532] It provides in principle the responsibility for the issue of the Convention travel document shall be considered as transferred on the expiry of a period of two years of actual and continuous stay in the second State with the Agreement of its authorities or earlier if the second State has permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document (Article 2).

In Austria the Ministry of the Interior issued on 22 September 1958 the following instructions on Article 28 and the Annex:

> Lawfully staying
>
> 'A refugee is considered as lawfully staying in the Federal territory if he either enters the Federal territory directly from a territory where his life or freedom was threatened in the sense of Article 1 of the Convention and is granted the right of asylum to its full extent or who enters the Federal territory by reason of a Convention travel document issued by another State and his residence is permitted beyond the period of validity of the return clause in this travel document.
>
> 'Not only is the holder of a foreign travel document admitted to permanent residence in Austria by an unlimited visa, but also every permission to reside for a period which exceeds, however little, the period of validity of the return clause has in practice the effect of a permanent residence's permit, there being no possibility of expulsion.'

Compelling reasons of national security or public order

> 'Refusal of a travel document is only justified if the *journey* or *journeys* outside the country give rise to fear of endangering national security or public order, for example, if the person is suspected of using the journey outside the country for action connected with intelligence or contrary to the customs or currency regulations.'

Special or exceptional cases

> 'According to paragraph 4 of the Schedule the travel document is to be made valid for the greatest possible number of countries. 'Special or exceptional cases' are only considered to exist if there are objections for reasons of national security or public order to the journey of a refugee into *a particular* country'.

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[531] Eur.Tr.S.No. 31

[532] Eur.Tr.S.No. 107

Competence for the extension of the validity of Convention travel documents

> Convention travel documents will always be prolonged by the competent Austrian authorities unless the holder has obtained lawful residence in another State. Such lawful residence will be understood by the Austrian authorities to be granted if the other State has authorized the refugee's residence within its territory beyond the validity of the clause allowing him to return to Austria'.

(In the German Federal Republic the Supreme Federal Administrative Court decided on 12 January 1956, in the case *Mankowsky,*[533] a Polish refugee who had gone to Israel, then to France before coming to the Federal Republic, that his London travel document could not be extended since there had been no final decision on his refugee status which had been refused in the first instance. He was offered an aliens passport.)

In the US, the Department of Justice ruled on 23 October 1973[534] that lawful presence (for the purpose of the travel document) does not include brief presence as a transient or crew member, or any other presence so brief as to not signify residence even of temporary duration.

Commentary

The question of a travel document for refugees was the first problem which arose when Fridtjof Nansen was appointed High Commissioner for Russian Refugees of the League of Nations. The first Arrangement adopted on his initiative on 5 July 1922 dealt with travel documents. The travel document issued under this and subsequent Arrangements and Agreements has become known as the Nansen passport. The travel document issued according to Article 28 of the 1951 Convention has become known as the Convention travel document. It has been agreed that it be issued with a stiff United Nations-blue cover. UNHCR places stocks of travel documents at the disposal of Contracting States which are developing countries.

Article 28 paragraph 1 refers to refugees 'lawfully staying' in the territory of a Contracting State. As to the meaning of the term 'lawfully staying'. Article 28 paragraph 1 imposes a mandatory obligation on Contracting States to issue the document. Although the words ‘on request' have been omitted, it is clear that it will only be issued if requested for the purpose of travel outside the territory. (The German Federal Republic where the travel document is issued as an identity document, is an exception). On the other hand, if the applicant is a refugee within the meaning of Article 1 of the Convention or the 1967 Protocol, the Contracting State must issue him or her with a Convention travel document and not with any other document such as an aliens passport. There is thus a difference between nationals and refugees in favour of the latter. While the issuance of a passport to a national is often a matter of discretion, the issue of the travel document is an obligation, unless *compelling* reasons of public security or public order justify a refusal. There is good reason for this distinction between nationals and refugees, since refugees may have to travel, for example, from the country of first asylum to a country of resettlement.

When a Contracting State has chosen, under Article 1B, the alternative 'events in Europe', that State is only entitled to issue Convention travel documents to refugees as a result of events in Europe. On the other hand, it should, and normally will, recognize travel documents issued by Contracting States which have chosen the alternative 'events in Europe or elsewhere' to refugees as a result of events outside Europe. With the entry into force of the Protocol relating to the Status of Refugees of 31 January 1967[535] the dateline of 1 January 1951 in Article 1A2 has been abolished. As the parties to the Protocol undertake the obligations of Articles 2-34 of the 1951 Convention, they are also obliged to issue Convention travel documents also to post-dateline refugees and other States Parties to the Protocol are obliged to recognize such documents; but States non-parties to the Protocol are not so obliged.

As to the exception in paragraph 1 of Article 28, the word 'imperative' was changed into compelling' by the Style Committee. Thus, not any grounds of national security or public order may be invoked but only *compelling* grounds. The wording was adopted after much discussion. The proposal that the travel document may be refused on the same grounds on which a national passport may be refused was not adopted. It would seem to cover cases where a refugee seeks to escape prosecution or punishment for a criminal offence or where the refugee is suspected of travelling in order to engage in criminal or espionage activities. It does not cover, according to the debate, cases in which a national passport may be refused, such as insolvency, failure to pay taxes or to comply with military obligations. It was also stated that this may allow for the 'temporary discontinuance of the issue of such documents' but did not mean that the issue would categorically be refused. The temporary discontinuance of issuance 'would no longer be necessary once the

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[533] BVerwGt 309

[534] CFR Pan1.223 a.3

[535] U.N.Tr.S. vol. 606, p. 267

considerations of national security or public order which had led to suspend the issue of travel documents had ceased to hold.'[536]

The second sentence of paragraph 1 of Article 28 contains an authorization and a recommendation; travel documents may be issued to refugees in the territory who are not lawfully staying, be it that they are illegally in the country or purely temporarily. The recommendation refers to refugees physically present in the territory who are unable to obtain a travel document from the country of their lawful residence, for example, because it is not a party to the Convention or issues travel documents to refugees as a result of events in Europe only. The Contracting States are obliged to consider sympathetically the application of such refugees. The second sentence may also be applied to refugees subject to an expulsion order since without a travel document they would be unable to go to another country. To extend the authorization to refugees not physically present in the territory was rejected but under paragraph 6 sub-paragraph 3 of the Schedule the Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees who are unable to obtain a travel document from the country of their lawful residence'. In this case, physical presence is apparently not necessary.

Under the second paragraph of Article 28 the Contracting States are obliged to recognize documents issued to refugees under previous international agreement, by States parties thereto and to treat them in the same way as Convention travel documents even if they were issued by States not party to the 1951 Convention. Although the term 'agreements' is used this includes the Nansen passports issued under the Arrangements of 1922, 1924, 1926, 1928, 1935 and 1936.

As to paragraph 2 of the Schedule it is up to the Contracting State concerned to determine the age limit up to which children may be included in the travel documents of an adult.

As to paragraph 4 some Contracting States exclude the country of origin of the refugee and countries with a similar regime from the validity of the travel document.

As to paragraph 5 some Contracting States issue the travel document for a longer period and this has not been objected to.

As to paragraph 6 sub-paragraph 1 there is a slight discrepancy between the wording of the sub-paragraph which provides for renewal or extension 'so long as the holder has not *established* lawful residence in another territory and resides lawfully in the territory of the said authority' and paragraph 11 according to which the responsibility for the issue of a new document shall be that of the competent authority of the territory in which the refugee has taken up lawful residence. The idea is that only one country should be responsible and that there should be no interruption regarding the responsibility for issuance. As has been seen, several Contracting States have concluded agreements for the transfer of responsibility for the issue of travel documents to refugees who move lawfully from one country to another.

As to paragraph 9, while the first paragraph contains an obligation to issue transit visas the second paragraph limits this obligation in cases where refusal of a visa to any alien would be justified. Paragraph 9 applies also where the State of final destination does not require a visa but where the refugee can show that he or she will be admitted by that State.

The provisions of paragraph 10 do not preclude the levy of the Nansen stamp.

Paragraph 13 paragraph 2 relates to the exit and entry visas required by some States. As it is subject to paragraph 1 of Article 28, this may not affect the absolute obligation of the issuing State to re-admit the holder of a travel document.

Paragraph 14 goes further by referring to the laws and regulations of the Contracting State concerned but may also not affect the duty of re-admission.

Paragraph 16 contains a self-evident provision since, under international law, States are entitled to protect their own nationals abroad only. It does not preclude the State which has issued the travel document to grant such protection to a refugee, provided the State *vis-à-vis* which this protection is to be exercised, admits such protection. The Protocol to the European Convention on Consular Functions[537] provides for the protection of refugees by the State of residence but this Convention is not in force.

As to the specimen travel document, withdrawal of the old document and return to the authority which issued it is optional, according to the decision of the Conference.

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[536] A/Conf.2/SR.17, pp. 5-7

[537] Eur.Tr.S. No.61

ARTICLE 29. FISCAL CHARGES

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Travaux Préparatoires

The Secretariat draft referred to Article 13 of the 1933 Convention and proposed:

'1. The High Contracting Parties undertake not to impose upon refugees residing in their territory duties, charges or taxes of any denomination whatsoever, higher than those which are or may be levied on their nationals in similar situations.

'2. Nothing in the foregoing provisions shall prevent the application of the provisions of the laws and regulations concerning charges in respect of the issue to foreigners of administrative documents or the extension of the validity of such documents.

'3. The High Contracting Parties reserve the right to impose upon refugees of the various nationalities, according to their country of origin, a stamp duty payable either on identity cards or residence permits or on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees of the various nationalities.'

In the comment it was stated that the first paragraph reproduced word for word the provisions of the 1933 Convention.

As to paragraph 2 it was said that it reproduced the text of Article 13 paragraph 1 of the 1933 Convention with the omission of the reference to the Nansen stamp.

As to paragraph 3 it was stated that this empowered Governments to resume and extend the former Nansen stamp system.

From the financial point of view it could only yield limited but not negligible results. From the moral point of view, it had a definite value since it affirmed the solidarity of refugees.[538]

The French draft was identical.[539]

At the first session of the *ad hoc* Committee paragraphs 1 and 2 were adopted.

As to paragraph 3 the representative of the IRO said the operation of the Nansen stamp system was left entirely to the discretion of the signatory countries.

The Belgian representative thought that the clause should be retained. If that was not done, the States concerned, under the terms of paragraph 1 of the Article, could not impose upon refugees higher taxes than those levied for the issue of travel documents to their own nationals.

The representatives of the US and the IRO agreed that any reference to the country of origin of the refugees should be deleted.

The French representative said that his delegation attached great importance to the problem of relief being mentioned in the Convention.

Paragraph 3 was adopted in the following wording:

> '3. The High Contracting Parties reserve the right to impose upon refugees a special stamp duty payable either on identity cards or on residence permits or on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees.[540]

Chile made the following comment:

> 'It is stated in Article 24 that the contracting States reserve the right to impose upon refugees a special duty, the revenue of which shall be wholly applied to charities for the relief of refugees. It would not appear that any useful

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[538] E/AC.32/2

[539] E/AC.32/L.3, Article 9

[540] E/AC.32/SR.11, pp. 11-15

purpose would be served by the levy of a special tax for the above-mentioned object, since refugees, like any other foreigners, are entitled to the social assistance benefits provided by our own legislation.'[541]

The Working Group proposed the following text.

'1. The Contracting States shall not impose upon refugees in their territory duties, charges or taxes of any description whatsoever, other higher than those which are or may be levied on their nationals in similar situations.

'2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents.

'3. The Contracting States reserve the right to impose upon refugees a special duty payable either on identity cards, or on residence permits on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees.'[542]

That text was adopted.[543]

The Committee made the following comment:

> Paragraph 2. It should be noted that Article 20 paragraph 4 allows a Contracting State to charge for Administrative Assistance rendered to refugees. The charge mentioned in Article 20 is applied to refugees only, whereas the charges mentioned in Article 24(2) are imposed on aliens, refugees or otherwise.
>
> Paragraph 3. This provision does not refer to any tax which would accrue to the Government but refers to a special duty the proceeds of which would benefit relief organisations serving refugees. The Convention of 28 October 1933, Article 13 'paragraph 2, contains a provision concerning the so-called Nansen stamp, the proceeds of which were to go to refugees. This provision would authorize a country to impose a fee of the same nature, which would be regulated differently, the proceeds of which would be used for the benefit of refugees.[544]

At the second session of the *ad hoc* Committee the Chairman said the Nansen stamp cost five gold francs. He suggested that the words 'not exceeding five gold francs' be inserted after the words 'special duty'.

The Venezuelan representative maintained that paragraph 3, although designed to provide relief for refugees, nevertheless constituted an imposition on individual refugees. He supported the proposal that paragraph 3 should be deleted.

The French representative said he was prepared to accept a limitation in the form of a reference to the Nansen stamp. He proposed the insertion of the words 'of a moderate amount' after the words 'a special duty' in the second line of paragraph 3 of Article 24.

The US representative suggested that the duty should be described as either 'nominal' or 'limited'. He thought that the desired purpose might well be achieved by adding the words 'to continue' after the word 'might'.

The Belgian, Chinese, Turkish and Venezuelan representatives spoke in favour of the deletion of the paragraph.

The Chinese representative said that his delegation was prepared to vote in favour of limitation, provided that the imposition of the duty remained on a national and not on an international basis.

The Committee decided in favour of the limitation of the special duty referred to in Article 24 paragraph 3 by 8 votes to none, with 3 abstentions.

The Committee decided to retain paragraph 3 of Article 24, as amended, by 4 votes to 3, with 4 abstentions.

The Working Group proposed that paragraphs 1 and 2 should remain unchanged and that paragraph 3 should read:

> '3. The Contracting States reserve the right to impose upon refugees a special duty, of a moderate amount, payable either on identity cards, or on residence permits or on travel documents. Revenue accruing from the duty shall be wholly applied to charities for the relief of refugees.'[545]

That Article was adopted.[546]

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[541] E/AC.32/L.40, p. 53

[542] E/AC.32/L.32, Article 24

[543] E/AC.32/SR.25, p. 9

[544] E/1618, p. 59

[545] E/AC.32/L.42, Article 24

At the Conference of Plenipotentiaries Yugoslavia proposed the deletion of paragraphs 2 and 3.[547]

The Turkish representative opposed the deletion of paragraph 2 but spoke in favour of the deletion of paragraph 3.

The Yugoslav representative withdrew his proposal to delete paragraph 2.

The Austrian, Swedish and UK representatives supported the deletion of paragraph 3.

In reply to a question by the Swedish representative the President said he would interpret paragraph 2 to as applying to all the documents referred to in the Convention, not required by nationals.

The Swedish representative said in Sweden aliens were treated differently from nationals in the matter of certain taxes. Sweden would be obliged to enter a reservation in that respect, the scope of which, however, would be considerably reduced if paragraph 1 of Article 24 was amended to refer to refugees lawfully residing in the territory of a Contracting State.

The Yugoslav proposal to delete paragraph 3 was adopted by 15 votes to 3, with 4 abstentions.

Article 24, as amended, was adopted by 19 votes to none, with one abstention.

The Style Committee proposed the text which is now in the Convention.[548]

That Article was adopted by 23 votes to none.[549]

Judicial Decisions

In Austria, the Supreme Administrative Court decided in the case of a refugee who had a wife and nine children in his country of origin, that they could be considered as deductible for income tax purposes.

Commentary

Article 29 is modeled on Article 8 of the 1928 Arrangement and Article 13 of the 1933 Convention.

Paragraph 1 refers to refugees regardless of their residence. In fact, tax legislation usually distinguishes between residents and non-residents rather than between nationals and aliens. Non-resident refugees are subject to the same taxation as nationals 'in similar situations'. They are, on the other hand, not obliged to pay taxes or other charges levied on aliens only.

Paragraph 2 must be read in conjunction with Article 25 paragraph 4 and paragraphs 3 and 10 of the Schedule. The documents referred to are those mentioned in Articles 25 and 27 but also other documents required under the Convention.

The term 'aliens' must be understood to apply to alien in the same circumstances.

As paragraph 3 was not adopted, the Nansen stamp system has been abolished.

ARTICLE 30. TRANSFER OF ASSETS

1. Contracting States shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Travaux Préparatoires

At the first session of the *ad hoc* Committee Belgium proposed a new Article reading:

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[546] E/AC.32/SR.41, p. 24

[547] A/Conf.2/31, p. 3

[548] A/Conf.2/102 Add.1, Article 29

[549] A/Conf.2/SR.35, p. 10

'Subject to the formalities prescribed by the legislation to the export and import of currencies, the High Contracting Parties undertake to authorize refugees to take with them any funds which belong to them and which they may require for the purpose of settlement in the territory of one of the High Contracting Parties'.

'The periodic transfer of savings and of sums of money which a refugee settled in the territory of one of the High Contracting Parties desires to transfer to members of his family settled in the territory of one of the other High Contracting Parties shall be authorized under the same conditions.'[550]

The UK representative said that the word 'formalities' in the first paragraph of the Belgian proposal would seem to imply that a refugee need only to apply, in accordance with the formalities prescribed by law, for authorization to export funds belonging to him, for the Government concerned to be obliged to grant him such authorization. Although he had not received instructions from his Government, he felt sure that it would be reluctant to give refugees undertakings which it did not generally grant to foreigners residing in its territory.

Extremely rigid currency control had been established in the UK not only to consolidate the country's economy, but in the interests of all countries. A person leaving the UK to settle in another country could transfer funds belonging to him up to a specified amount. In view of the serious financial implications of the question referred to in the Belgian proposal it would be difficult to deal with it in the Convention.

The Chairman, speaking as Canadian representative, said that the restrictions on the transfer of capital were one of the main obstacles to British emigration to Canada. Adoption of the Belgian proposal might give the impression that the Committee had wished to obtain more favourable treatment to foreign refugees than to nationals of the State signatory to the Convention. The Committee could, of course, point out that in some cases, at least, restrictions on the export of currency considerably influenced migratory movements. But it would be difficult to include a special provision on the transfer of funds belonging to refugees in the Convention.

The Turkish representative agreed with the UK representative that the word 'formalities' was ambiguous, and suggested that it be replaced by the word 'measures'. The Belgian proposal provided for two categories of refugees: (1) those entering a country with their capital; (2) those already owning property in the country in which they had settled or acquiring property during their sojourn in that country. In regard to the first category of refugees, it would appear to be in order to authorize a refugee to export the capital he had brought with him; in regard to the second category, however, Governments would be reluctant to permit a refugee to export a larger sum that he had brought in for fear of injuring the general economy of the country and of encouraging illegal export of capital.

His delegation was therefore unable to support the Belgian proposal in so far as it concerned the second category.

The Belgian representative said the second category should be divided into two sub-groups; refugees who had property in the country before their arrival in that country, and those who increased their possession during their residence there. It was obviously impossible to ask that the latter should be authorized to export their capital in its entirety. The case of the former, however, few as they might be, must be regarded with particular interest. They usually had lost the greater part of their possessions when fleeing the country in which they had been victims of persecution, and it seemed unfair to prevent them from enjoying the small property which they did possess abroad by restrictions on the export of currency.

He appealed to the Committee to retain at least the idea on which the Belgian proposal had been based.

The French representative feared that adoption of the Belgian proposal might permit a somewhat artificially stimulated export of capital. There was the further difficulty that it was not always easy to distinguish between genuine cases and others. Moreover, there was no apparent reason why refugees who had been able to go to a country in which they possessed property before settling in the country of final resettlements should be accorded treatment differing from that of refugees who had gone to a country other than that in which their property was.

The US representative drew attention to that fact that the Article proposed by the Belgian delegation covered only currency belonging to refugees, whereas they might have other forms of property. The wording of the Article should, therefore, be amended.

As the Committee seemed to agree that refugees who were, so to speak, in transit through a country could export the possessions they had brought with them to the country of final settlement, a special provision to that effect might be inserted in the Convention.

The Belgian representative supported the US representative's suggestion. With regard to property refugees had had in a country before their arrival or had acquired during their residence there, the Committee might request Governments to

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[550] E/AC.32/L.24

show the greatest possible latitude in certain exceptional cases, in order to prevent refusal based on the strict letter of existing law.

The Danish representative proposed the following text:

> 'The High Contracting Parties shall consider favourably the question of authorizing the transfer of currency, which refugees desire to transfer to another country for the purpose of settlement in the territory of such country.'

The French representative observed that the recommendation should also cover cases in which a High Contracting Party withheld property belonging to a foreigner who, whatever the country in which he was, has acquired refugee status and had made an application in accordance with a procedure to be determined.

The Danish representative replied that he had deliberately used the expression 'which refugees desired to transfer'.

On the proposal of the US representative it was decided to request the Secretariat to prepare the draft of an additional Article which would then be examined by the Working Group.

The Belgian representative suggested that it should be divided into two parts, the first laying down the principle that the refugee could take with him any property he had brought with them, and the second incorporating the recommendation to the High Contracting Parties.[551]

The Working Group proposed a new Article 25 reading:

'1. A Contracting State shall, in accordance with its laws and regulations, permit a refugee to transfer assets which he has brought with him in its territory to another country where he has been admitted for the purpose of resettlement.

'2. The Contracting State shall give sympathetic consideration to the application of a refugee to permit the transfer of assets wherever they may be and which are necessary for his resettlement to another country where he has been admitted.'[552]

It made the following comment:

> 'In the second paragraph the Committee intended to provide for the transfer of assets and currency which the refugee did not bring into the country with him but acquired after his entry. This paragraph is also intended to cover the assets of a refugee in the territory of any Contracting State other than that in which the refugee is living.'

The Brazilian representative stated that his Government might wish to enter reservations in respect of Article 25.

The US representative said that it was to be hoped that Contracting States would make appropriate changes in their laws and regulations so as to accord protection to refugees in the matter of transfer of assets.

Article 25 was adopted.[553]

At the second session of the *ad hoc* Committee there were no comments on Article 25 at the first reading.[554]

The Contracting Committee proposed the following text for paragraph 1:

'1. A Contracting State shall, in conformity with its laws and regulations, permit a refugee to transfer assets which he has brought with him into its territory to another country where he has been admitted for the purposes of resettlement.'

The second paragraph was left unchanged.[555]

Article 25 was adopted.[556]

At the Conference of Plenipotentiaries, Colombia proposed the following amendment: 'Substitute the following for the existing text:

> 'A Contracting State shall permit a refugee to import and export assets under the same conditions as those imposed by its law on other aliens.' Delete paragraph 2.'

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[551] E/AC.32/SR.24, pp. 7-11

[552] E/AC.32/L.32

[553] E/AC.32/SR.25, p. 9

[554] E/AC.32/SR.39, p. 26

[555] E/AC.32/L.42, Article 25

[556] E/AC.32/SR.41, p. 24

The Belgian representative pointed out that the purpose of Article 25 was in fact to lift, in the case of the refugees, the restrictions imposed in receiving countries on the transfer of assets.

The Swiss and UK representatives supported the views of the Belgian representative.

The Canadian representative spoke in favour of paragraph 1.

The President speaking as representative of Denmark, pointed out that currency restrictions in general made a distinction not between aliens and nationals but between residents and non-residents.

The Colombian representative said he would not press his amendment.

The High Commissioner for Refugees drew attention to a discrepancy between the French and English texts of paragraph 1. Whereas the French text read: *'Transférer les avoirs qu'ils ont fait entrer dans leur territoire',* the English text read: (the assets) *which he has brought with him'.* The French was more liberal and he hoped that the English text would be brought in line with the French text.

The President said that it was his interpretation that paragraph 1 related to the assets which the refugee had brought into the country of asylum as a refugee. Any other assets the refugee might possess in that country would come under paragraph 2. As to the High Commissioner's proposal, he would suggest that the words 'as a refugee' be substituted for the words 'with him'.

The Netherlands representative remarked that cases of refugees wishing to transfer very large sums were most exceptional. It hardly seemed necessary, therefore, to go very deeply into the consequences Article 25 might have in such cases, especially as it was specially provided that the transfer of assets should be effected under the laws and regulations in force in the countries concerned.

The President emphasized that the *ad hoc* Committee had wished to ensure that the conditions imposed on refugees should be less stringent that those imposed on nationals and other aliens. That was why the sole proviso contained in paragraph 1 was that national laws and regulations should be respected; for the rest, the text was mandatory in that it read: A Contracting State *shall...* permit...'

Paragraph 1, as drafted in the French text, was adopted by 19 votes to 4, with one abstention.

Paragraph 2 of Article 25 was adopted by 23 votes to none, with one abstention.

Article 25 as a whole was adopted unanimously.[557]

The Style Committee proposed the text which is now in the Convention.[558]

Article 30 was adopted by 23 votes to none, subject to editorial changes.[559]

Commentary

Although the term 'refugees' is not qualified, paragraph 1 is meant to apply to assets brought by a refugee into the country of his residence. It contains a mandatory obligation. The words 'in conformity with its laws and regulations' does not mean that the application of these laws and regulations, particularly currency regulations, may frustrate the mandatory obligation. They have to be applied in such a way as to make the transfer possible, but there may be limitations such as, as was mentioned in the debate, that the transfer shall take place in instalments or not in hard currency. It also applies to assets which a person has brought into the country concerned before he became a refugee.

Paragraph 2 applies to all other assets, that is, those the refugee has acquired in the country of residence or those which he possesses in the territory of other Contracting States.

The Article applies only to transfer into resettlement countries. With regard to other transfers, Article 7 applies.

ARTICLE 31. REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article

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[557] A/Conf.2/SR.13, pp. 5-11

[558] A/Conf.2/102 Add.1, Article 30

[559] A/Conf.2/SR.35, p. 10

1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Travaux Préparatoires

The Secretariat Draft contained a provision on expulsion and non-admittance reading:

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

2. The penalties enacted against foreigners entering the territory of the Contracting Party without prior permission shall not be applied to refugees seeking to escape from persecution, provided that such refugees present themselves without delay to the authorities of the reception country and show good cause for their entry.

3. Each of the High Contracting Parties undertakes in any case not to turn back refugees to the frontiers of their country of origin, or to territories where their life or freedom would be threatened on account of their race, religion, nationality or political opinions.

4. A refugee (or stateless person) authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save in pursuance of the decision of a judicial authority.

5. Each of the High Contracting Parties reserves the right to apply such internal measures as it may deem necessary to refugees (or stateless persons) whose expulsion has been ordered and who are unable to leave its territory because they have not received, at their request or through the intervention of Governments or through the High Commissioner for Refugees or non-governmental agencies, the necessary authorizations and visas permitting them legally to proceed to another country.

Paragraph 1

The sovereign right of a State to remove or keep from its territory foreigners regarded as undesirable cannot be challenged.

Nevertheless, expulsion or non-admittance at the frontier are serious measures in any event; they are especially serious in the case of a refugee who cannot be sent back to his country of origin and whom no other State can be compelled to accept. There is little likelihood that a foreign country will consent to receive a refugee whose expulsion has been ordered and who is thereby stamped as an undesirable. As every frontier is barred to a refugee whose expulsion has been ordered, only two possibilities are open to him, either not to obey the order and to go into hiding to avoid being caught or to cross a frontier illegally and clandestinely enter the territory of a neighbouring country. In that country too he must go into hiding to avoid being caught. In either case, after a certain time he is discovered, arrested, prosecuted, sentenced and escorted to the frontier after serving his sentence. Caught between two sovereign orders, one ordering him to leave the country and the other forbidding his entry into the neighbouring country, he leads the life of an outlaw and may in the end become a public danger.

In this way measures of expulsion or non-admittance at the frontier, intended to protect law and order, achieve opposite results when an attempt is made to apply them to refugees without taking into account their peculiar position.

Paragraph 1, while not preventing the expulsion of refugees, specifies that their expulsion must be dictated by grave reasons of national security or public order.

Paragraph 2

A refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum and is recognized as a *bona fide* refugee.

Paragraph 3

The turning back of a refugee to the frontier of the country where his life or liberty is threatened on account of his race, religion, nationality or political opinions if such opinions are not in conflict with the principles set forth in the United Nations Charter, would be tantamount to delivering him into the hand of his persecutors.

The text of paragraph 3 reproduces that of the 1933 Convention (Article 3, paragraph 2) but with an addition which takes into account not only the country of origin, but also the other countries where the life or freedom of the refugee would be threatened for the same reasons.

Paragraph 4

Experience has shown that a large number of expulsion orders are due to false accusations and the malice of ousted competitors. Sometimes the orders are due to an error *de persona.* So long as expulsion proceedings are secret and so long as the expelled person is deprived of any means of presenting his case, mistaken decisions are inevitable. There are two possible solutions:

The first solution, embodied in the text of the proposed article, would be to prohibit expulsions save in pursuance of a decision of the judicial authority. It may be noted that the Commission on Human Rights including the following provision (Article 12) into the Draft International Covenant on Human Rights which it adopted at its fifth session:

> 'No alien legally admitted to the territory of a State shall be expelled therefrom except on such ground and according to such procedure and safeguards as are provided by law'.[560]

The second and less far-reaching solution, representing the minimum guarantee which could be accorded to refugees, would be to adopt the following text:

> 'Before any measure of expulsion is decided or carried out, the refugee should be informed of the grounds for his expulsion and shall have the right to be heard to state his case'

The French draft contained the following Article 26:

1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such a refugee a reasonable period and all the necessary facilities to obtain admission into another country.[561]

At the first session of the *ad hoc* Committee the Observer of the Agudas Israel World Organization said that there were four main aspects to the problem of refugees and stateless persons. First, there was the admission of a refugee to a country where he could settle; secondly, his position had to be regularized and his rights and duties established; thirdly, there was the question of his possible naturalization; and lastly, the possibility of his being expelled before obtaining naturalization. The draft Convention had thus far followed that pattern, but Article 24 dealing with expulsion should logically come after the chapter on naturalization, since expulsion should be considered as an exception from the general rule of the absorption of a refugee into his country of settlement.

He emphasized the dire consequences of expulsion for any refugee. Return to the country of origin meant almost certain death, and as was pointed out in the Secretariat's comment to paragraph 1, there was little likelihood that any country would admit a refugee once he had been expelled from another country. Thus, he would have no alternative but to go into hiding. As an example of the type of fate awaiting refugees after expulsion, Mr. Lewin mentioned the occasion in 1946 when a whole trainload of refugees had been stopped between Hungary and Austria because they had been permitted neither to advance nor to go back.

According to paragraph 1 of Article 24, expulsion was to be permitted if it was dictated by reasons of national security or public order. In the French draft, the words 'public order' were omitted, but even so the expression 'dictated by reasons of national security' was extremely broad. The Nazis might quite well have claimed that their national security had

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[560] Economic and Social Council, Official Records: fourth year, ninth session; Supplement No.10, Report of the Fifth Session of the Commission on Human Rights, page 20.

[561] E/AC.32/L.3

necessitated the expulsion of the Jews, although the whole world had been shocked at that brutal act. Thus, the inclusion of such a phrase would leave all refugees open to expulsion at the slightest provocation.

If a refugee were suspected of spying it would surely serve the interests of national security better to imprison him rather than to expel him. If he committed criminal acts, he should be punished according to the normal laws of the country. He should not, however, be additionally penalized by the terrible threat of expulsion.

In his opinion, the best way to safeguard both the national security and the rights of the refugee would be to state that a refugee could not be expelled save in pursuance of the decision of a judicial authority. That provision was contained in paragraph 4 of the Secretariat draft and he did not think it necessary to include the special provisions contained in paragraph 1. If the Committee decided that it was essential to mention national security, the words 'on guards of national security' could be added at the end of paragraph 1.

He was not quite clear as to the real meaning of paragraph 1. If the 'police measures' referred to were measures ordered by the administration as opposed to the judicial authority, then the provision appeared to be in contradiction with paragraph 4. If, however, paragraph 1 refer Ted simply to the implementations of decisions taken by the judicial authority, then it should be combined with paragraph 4.

Paragraph 4 of the French draft contained a very valuable idea which he thought should be incorporated into the Secretariat draft. In his opinion, paragraph 2 of the Secretariat draft should be deleted since its proper place was either in the article on admission or in that on the right of asylum.

In conclusion, he submitted the following re-draft of Article 24 for the Committee's consideration:

'1. Each of the High Contracting Parties undertakes not to turn back refugees to the frontiers of their country of origin, or to the territories where their life or freedom would be threatened on account of their race, religion, nationality or political opinions. (Original paragraph 3).

'2. A refugee authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save in pursuance of the decision of a judicial authority (on grounds of national security). (Original paragraph 4).

'3. A refugee whose expulsion has been ordered shall be entitled to submit evidence to clear himself, and to be represented before the competent authority. (Paragraph 3 of the French draft).

'4. Each of the High Contracting Parties reserves the right to apply such internal measures as it may deem necessary to refugees whose expulsion has been ordered, and who are unable to leave its territory because they have not received, at their request, or through the intervention of the Government or Governments concerned or through the competent organ of the United Nations or of the non-governmental agencies dealing with them, the necessary authorizations and visas permitting them legally to proceed to another country.[562]

Denmark proposed an amendment:

Add the following paragraphs to the draft article:

6. The High Contracting Parties agree that any measures taken under the preceding paragraph which impose restrictions of movement on refugees shall be limited as to extent and duration to those which are absolutely necessary.

7. The High Contracting Parties agree that in the case of refugees provisionally admitted to their territories as an emergency measure, but who have not been authorized to reside therein, restrictions of movement shall be limited to those which are absolutely necessary.

8. The High Contracting Parties agree that if they should consider it necessary to order the internment of refugees or the restriction of their residence to specific areas such orders shall be made only on the merits of each individual case and solely where such measures are absolutely necessary, and that the conditions of internment and the treatment of interned refugees shall, both morally and materially, be consistent with human dignity and shall not be less favourable than those accorded

[Alternative 1: to civilian internees in time of war according to the provisions of the Geneva Convention for the Protection of Civilian Persons in Time of War of 12 August 1949 (Articles 78 *et seq.)*]

[Alternative 2: to persons temporarily deprived of their liberty pending investigation by law enforcement agencies.][563]

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[562] E/AC.32/SR.19, pp. 9-12

[563] E/AC.32/L.15

In the Social Committee of the Economic and Social Council the Agudas Israel World Organization proposed a text of Article 24 reading:

1. Each of the High Contracting Parties undertakes not to turn back refugees to the frontiers of their country of origin, or to territories where their life or freedom would be threatened on account of their race, religion, nationality or political opinions.

2. A refugee authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save in pursuance of the decision of a judicial authority. (Alternative: on grounds of national security).

3. A refugee whose expulsion has been ordered shall be entitled to submit evidence to clear himself, and to be represented before the competent authority.

4. Each of the High Contracting Parties reserves the right to apply such internal measures as it may deem necessary to refugees whose expulsion has been ordered, and who are unable to leave its territory because they have not received, at their request, or through the intervention of the Government or Governments concerned or through the competent organ of the UN or of the non-governmental agencies dealing with them, the necessary authorizations and visas permitting them legally to proceed to another country.[564]

The Committee decided to consider the draft submitted by the Agudas Israel World Organization[565] paragraph by paragraph.

Paragraph 1

The UK representative proposed that the words 'to the frontiers of territories' should be substituted for the phrase 'to the frontiers of their country of origin, or to the frontiers...' The amendment would not alter the purport of paragraph 1.

The UK proposal was adopted.

The French representative drew attention to the fact that paragraph 1 of the text under discussion was practically the same as paragraph 3 of the text proposed by the French delegation, the only difference being that in the French proposal the provision ended with the stipulation 'provided that these opinions are not contrary to the principles of the United Nations as set forth in the Preamble to the United Nations Charter'; it would be worth considering whether paragraph 1 should not be completed in some such manner.

The UK representative wondered whether it would not be well to stipulate in the text of paragraph 1 that the provision would not have to be applied when national security was involved.

National security was a consideration which took precedence over all others. States should not, of course, invoke that provision except when circumstances absolutely justified their doing so, but it must be recognized that such circumstances could arise and provision must be made for them. He therefore proposed that the following phrase should be added at the end of the paragraph: 'unless the said measures are dictated by reasons of national security'.

The Belgian representative said that the addition of the phrase would nullify the desired effect of paragraph 1. He pointed out that even if it were essential to refuse admission to a refugee for reasons of national security, for example, it would always be possible to direct him to territories where his life or his freedom would not be threatened.

The US representative supported the Belgian representative's view, even where there were urgent reasons of national security, a State could easily avoid turning back a refugee to a territory in which he would be in danger.

The Israeli representative drew the UK representative's attention to the provisions of paragraph 4, which permitted States to apply whatever measures they deemed necessary with regard to refugees, when, for example, their national security was at stake.

If the amendment proposed by the French representative was adopted, he thought that the words as set forth in the Preamble of the UN Charter should be deleted since the principles of the UN were outlined chiefly in Article 2 of the Charter, and not in the Preamble.

The US representative did not think it was really wise to adopt the French amendment. It was unlikely that any country would in reality refuse admittance to a person obliged to leave his own country on account of opinions which were not wholly in accord with the UN Charter. The reservation proposed by the French representative was therefore unnecessary and might even be dangerous.

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[564] E/C.2/242

[565] E/C.2/242

The French representative pointed out that his amendment did not entail the compulsory refusal of refugees. There was no reason to grant any privilege to persons whose political opinions were in conflict with the principle of the UN.

The UN representative drew the French representative's attention to the fact that Article 1 of the draft excluded from the benefits of the draft Convention any person who had committed acts contrary to the principles of the UN. It therefore seemed unnecessary to repeat the same idea in Article 24, in different form and in relation to a specific question.

The representative of the IRO pointed out that the Agreement of 15 October 1946 included the principle stated in paragraph 1 but did not include the reservation proposed by the French representative.

The French representative said that if his proposal was not adopted he would ask for a statement in the report to the effect that the reservation had not been included in Article 24 for the sole reason that, in the opinion of the Committee, it was clearly stated in Article 1.

The UK representative said he would not insist on his amendment but reserved the matter.

Paragraph 1 as amended was adopted.

Paragraph 2

The Chairman, speaking as representative of Canada, said that in his country, expulsion orders were issued by the administrative and not by the judicial authorities, even when the first decision was subject to appeal. When a writ of *habeas corpus* had been obtained, the judge dealing with the case decided whether the expulsion order had been legal or not; in the event of the judge declaring it illegal, it was necessary for expulsion proceedings to be initiated anew before the administrative authority.

In order to cover every case, it would be advisable to amend Paragraph 2 to read: 'the decision of a judicial or administrative authority'.

The US representative felt that the adoption of such an amendment would deprive the refugee of the safeguard which every individual was entitled to expect from a judicial authority. He would be left to the discretion of police measures.

As he had already emphasized on a number of occasions, the problem did not arise in the US. He nevertheless felt bound to draw to the Committee's attention that the proposed amendment might weaken the scope and usefulness of Article 24 as a whole.

The Turkish representative supported the Canadian amendment.

The Chairman, speaking as representative of Canada, proposed the following alternative for the final phrase of paragraph 2: 'in pursuance of a decision reached by due process of law'.

The French representative stated that it was impossible to give the judicial authorities sole powers with regard to measures of expulsion; in France such measures could only be taken by the prefects and the Ministry of the Interior. He gave his unqualified support to the Canadian proposal.

The Belgian representative agreed. He asked whether it would not be possible to state specially that the order to expel a refugee should be without appeal. That would be equivalent to saying that the refugee could not be expelled except by a decision of the highest authority.

The US representative could accept the last solution proposed by the Chairman. He agreed with the Belgian representative that it would be well to state specially that it was to be a final decision.

The Venezuelan representative stated that he found it difficult to support Article 24 if the idea of public order was not mentioned in it.

There were certain young countries which were subject to internal upheavals and revolutions, sometimes obtained by violence. They sometimes found themselves in exceptional situations which obliged them to take emergency measures which might involve the suspension of constitutional guarantees. The Committee should not give refugees guarantees and privileges which would not be enjoyed by the nationals of the country concerned in such exceptional circumstances.

Venezuela had experienced disturbances, accompanied by violence, in which refugees of various countries had taken part. It should be possible to expel all aliens whether refugees or not, from the territory of a State immediately that public order was threatened.

In conclusion, he stressed that there should be some reference to public order, and some provision to ensure that the protection granted to refugees under the Convention would not apply in certain exceptional circumstances.

The US representative wondered whether the Venezuelan representative wished the reference to public order to be inserted in Paragraph 1 which had already been adopted in principle, or in Paragraph 2. The Committee had already agreed that even for reasons of national security or public order, refugees should not be turned back to countries where their life or freedom would be threatened.

The French representative said that it was important to mention the idea of national security and public order at the very beginning of the Article.

The representative of the Secretariat attempted to explain three principal factors of the rather complex problem facing the Committee. The first, lay in the exceptional limitation of the sovereign right of States to turn back at the frontier of the country of origin. That was the purpose of Paragraph 1 of Article 24 proposed by the Agudas Israel World Organization. The second, was the expulsion of refugees to territories where neither their lives nor their freedom would be threatened. Paragraph 2 provided a purely formal, procedural guarantee in favour of the refugees. States would have to undertake not to resort to the *ultima ratio* of expulsion except for very grave reasons, namely matters endangering national security or public order. Finally, refugees who did not come within the framework of the Convention were the third factor. It was they, and they alone, whom non-admittance measures should concern. It did not seem necessary to include those measures in a Convention which was to apply only to refugees authorized to reside regularly in the reception country. There should either be no mention of non-admission in the Article or, if it were considered necessary to retain the provision, it should be made clear that it would not apply to the refugees regularly admitted to residence.

The US representative said, whether or not a refugee was in a regular position, he must not be turned back to a country where his life or freedom would be threatened. No considerations of public order should be allowed to overrule that guarantee, for if the State concerned wished to get rid of the refugee at all costs, it could send him to another country or place him in an internment camp. In order that there should be no doubt that paragraph 1 applied to all refugees, he proposed that the words 'undertakes not to expel or to turn back' should replace the word 'not to turn back' in paragraph 1.

Concerning paragraph 2, those measures were certainly taken in accordance with a procedure provided by law. Consequently, the guarantee contained in paragraph 2 was safeguarded. Whether it was necessary to supplement the guarantee by limiting measures of expulsion to those dictated by national security or public order was a delicate matter.

The French representative was willing to accept the US amendment to paragraph 1. The Article should include a first paragraph dealing with non-admission in general, a second on expulsion in general, a third one on non-admittance at the frontier and expulsion to territories where the life and liberty of the refugees might be threatened, and a last paragraph on the special measures to be applied in connection with refugees unable to obey the expulsion order.

The UK representative stated that it was difficult for him to agree that the provisions of paragraph 1 should be extended to cover the question of expulsion. When a refugee obstinately refused to abide by the laws of the country which had granted him hospitality, the Government must have the right to expel him to the only country which would admit him, and which was, in fact, the country where his life or liberty might be in danger. The Government would take care that such extreme measures were applied only in very rare circumstances.

In reply to the French representative, who referred to the measures indicated in paragraph 4, which were intended to meet most cases of this kind, the UK representative objected that the measures laid down in paragraph 4 seemed to him inadequate. The prospect of imprisonment would not have the same deterrent effect as the risk of being expelled to the country of origin.

The representative of the IRO wondered whether it was advisable, through consideration of concrete cases which were completely exceptional, to undermine a generally acceptable principle. Turning back refugees to their country of origin, if considered for extreme cases, would, moreover, raise a question of a local nature. It was certain that the country of origin would only accept a refugee who was one of its nationals. It was true that an international protocol of 1930 stipulated that in the case of a destitute person or a criminal, the country of origin must receive the expelled person, even if he had renounced his nationality. That protocol had, however, never come into effect.

The Danish representative was not satisfied with the text as it should be made clear that an expulsion order against a refugee could be issued only on grounds of national security and public order, and that social considerations, such as destitution, should not come under the heading of public order.

The Belgian representative pointed out that a refugee who broke the laws of the country also undermined public order. On the other hand, it was naturally impossible to expel a refugee for economic reasons, as in the case of destitution. If that was the correct interpretation of the reservation regarding national security and public order, his delegation would accept that provision as it stood.

The French representative agreed. The Draft Convention should merely state that a refugee could be deported only for reasons of national security.

The Danish representative reminded the Committee that the 1933, 1936 and 1938 Conventions contained the same restrictions.

The Chairman said that, practically speaking, there was nowhere a refugee could be sent. Even without paragraph 1, the reception country would perforce have to keep such a refugee as it could not possibly return him to a country where his life was in danger.

The US representative was in favour of the addition supported by the Danish representative.

The UK representative was prepared to accept the words 'save on grounds of national security or public order'. In the UK deportation was ordered on grounds of national security or public order only, which included offences against the law.

The Chairman suggested that paragraph 2 should be amended by the addition of the following words: 'save on grounds of national security or public order and in pursuance of a final decision reached by due process of law'.

In reply to the question of the French representative the Chairman said that the word 'final' had been inserted in the text in order to avoid the possibility of a person being expelled by the decision of a mere policeman, for example.

The French representative said he was obliged to reserve his Government's position. It appeared from the preceding discussion that the expression 'public order' was not interpreted in the same way in all countries. In France, for example, it was certainly given a different definition than in the UK. Consequently, the inclusion of that expression would not, in his view, restrict the right of expulsion to any considerable extent. He therefore preferred the words 'national security' which was more precise in meaning.

The US representative suggested that the words 'for a violation of the law' or some similar expression might be added to the text.

The Venezuelan representative preferred that preference should be made to public order. In his country, 'public order' was synonymous with internal order while 'national security' implied 'international order', for the two ideas complemented each other and were closely linked.

The Israeli representative proposed the adoption of the words 'internal and external national security' as the words 'public order' could in fact give rise to different interpretations.

The representative of the IRO advised the Committee that if it had in mind criminal offences, it should say so clearly. The appropriate phrase would then be something as follows: 'For reasons of national security or if the refugees concerned have been convicted for a criminal offence'.

The Turkish and Venezuelan representatives preferred the phrase 'on grounds of national security or public order'.

The Belgian representative shared that point of view. He asked that the discussion should be recorded in the summary record of the meeting so as to make clear what the Committee understood by the concept of public order.

The following text was adopted:

> 'A refugee whose expulsion has been ordered shall be entitled to submit evidence and to clear himself, and to be represented before the competent authority in accordance with the established law and procedure of the country'.

Paragraph 3

The UK representative did not fully agree with the provisions of the paragraph. In the UK aliens could not appear before the Home Secretary, nor be represented before him. He proposed therefore that either the second part of paragraph 3 be deleted, or that such words as 'like all other aliens' should be added.

The Belgian representative proposed that the phrase 'in conformity with the existing provisions regarding aliens in general' should be added to paragraph 3.

The French representative remarked that the text had a slightly different meaning. It provided, in fact, for the case of a refugee who had already received an expulsion order and was contesting the action taken against him and had grounds for so doing.

The Israeli representative considered that paragraph 3 applied, in fact, solely to countries which allowed an appealed to be made against an expulsion order.

Paragraph 3 was adopted, with the addition of the words 'in accordance with the established laws and practices of the country concerned', proposed by the US representative.

Paragraph 4

The Chairman said it would be advisable to lighten the text by deleting all the text after the word 'territory'.

He was supported by the Danish representative who said a refugee might be prevented from complying immediately with an expulsion order for reasons other than the more or less legal reasons given in paragraph 4, for example a pregnant wife or a sick child.

The French representative agreed. A refugee could not be sent back to a country where his life would be threatened. But a refugee expelled from one country had little chance of being admitted elsewhere. The Committee had decided that paragraph 4 would apply in that case.

The Belgian representative thought that, in the circumstances, it might be as well to delete the whole of paragraph 4 as it offered no guarantee to refugees.

The representative of the IRO thought that paragraph 4 should stipulate that the High Contracting Parties would delay the application of internal measures until the refugee received permission to proceed to another country. So far the High Commissariat and the voluntary organizations had been kept informed regarding expulsion orders which enabled them to help the refugee to find another reception country. That explained the provision in that part of paragraph 4 to which objection had been raised.

The representative of the US stated that, in practice, before a foreigner was expelled from the US, he was given the option of leaving voluntarily or of being interned until he found another reception country. The benefit of such measures might also be extended to refugees.

The Danish representative thought the Chairman's amendment would not have any grave practical consequences.

The US representative asked whether the Committee thought it advisable to include in Article 24 certain words which, without placing an obligation on the High Contracting Parties, would express the hope that any refugee regularly residing in a signatory country who might be under an expulsion order, could have the opportunity of trying to obtain legal admission into another country, before the expulsion order was put into effect. In the meantime the High Contracting Parties could take the appropriate national measures in his case.[566]

The text adopted read:

'1. Each of the High Contracting Parties undertakes not to expel or to turn back refugees to the frontier of territories where their life or freedom would be threatened on account of their race, nationality or political opinions.

'2. A refugee authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save on grounds of national security or public order and in pursuance of a decision reached by the process of law.

'3. A refugee whose expulsion has been ordered shall be entitled to submit evidence to clear himself, and to be represented before the competent authority in accordance with the established law and procedure of the country'.[567]

The US proposal read:

> 'The High Contracting Parties shall allow any refugee whom they have ordered expelled a reasonable period within which to seek admission into another country. During that period the High Contracting Parties reserve the right to apply such internal measures as they deem necessary'.[568]

The new paragraph 4 of Article 24 was adopted, subject to drafting changes.

The Danish representative said his amendment has been submitted at the suggestion of the IRO representative and was based on the practical experience of that organization.

The IRO representative explained the additional paragraphs primarily concerned the position of refugees admitted provisionally as an emergency measure. He recognized that it was sometimes impossible for Governments to allow such refugees full freedom of movement and the provision proposed was intended to define the restrictions which might be necessary and to reduce them to a minimum.

Paragraph 2, Article 24 (Secretariat draft)

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[566] E/AC.32/SR.20, pp. 2-23

[567] E/AC.32/L.22

[568] E/AC.32/L.23

The representative of the Secretariat explained that the original draft of Article 24 had been based on Article 3 of the 1933 Convention. The reference to non-admittance at the frontier in paragraph 1 *(refoulement)* applied only to refugees who had already been authorized to reside in the territory in question. The practice known as *refoulement* in French did not exist in the English-speaking countries. In Belgium and France, however, there was a definite distinction between expulsion, which could only be carried out in pursuance of a decision of a judicial authority, and *refoulement,* which meant either deportation as a police measure or non-admittance at the frontier.

The Belgian representative agreed and added that the term 'expulsion' was used when the refugee had committed a criminal offence, whereas the term *'refoulement'* was used in cases where a refugee was deported or refused admittance because his presence in the country was considered undesirable, even though he was a person of good character.

The UK representative concluded from the discussion that the term *'refoulement'* would apply to (a) refugees seeking admission; (b) refugees illegally in the country; (c) refugees admitted temporarily or conditionally. In the UK refugees who had been allowed to enter the UK could be sent out only by expulsion or deportation. There was no concept in these cases corresponding to that of *'refoulement'.*

The French representative considered that the exclusion of the concept of *'refoulement'* from the Draft Convention would place countries like France and Belgium in a very difficult position.

The US representative suggested that the Committee should study to what extent it would be desirable to provide for the application of the principle in paragraphs 2, 3 and 4 of Article 24 to refugees (a) illegally present in the country; (b) that paragraph 1 of Article 2 in the country; (b) that paragraph 1 of Article 24 as approved should form a separate Article, followed by an Article containing paragraphs 2, 3 and 4, which in turn would be followed by a further new Article embodying the result of the Committee's examination of this question.

The French representative proposed the insertion of the words 'or *refoule'* in paragraph 2 of Article 24.

The US representative stated that in the English text the word 'expelled' covered all cases, so that there was no need to modify it in that respect.

The Chairman declared that, in the absence of any objection, the French text should be so modified.

The IRO representative wondered whether it would be necessary to single out, in a special category, refugees admitted temporarily or conditionally, since it might be argued that such refugees were legally in the country as long as they observed the conditions governing their stay there; if they violated those conditions, their position would of course be that of refugees illegally present in the country.

The Belgian representative did not think it would be reasonable to extend the benefits of provisions of paragraphs 2, 3 and 4 of Article 24 to 'legal' and 'illegal' refugees alike, since the latter would be persons who had violated the laws of the recipient country. Their case ought to be dealt with separately.

The Brazilian representative did not think that Article 24 need be changed much; paragraph 1 covered the fundamental aspect of the problem and applied to all refugees. The following provisions contained special conditions regarding the expulsion of refugees lawfully admitted. Concerning other categories of refugees it would not be practicable to regulate the conditions of their expulsion or non-admission *('refoulement').* Their case could, however, be covered by some humane provision, along the lines of the Danish amendment.[569]

The Observer of the World Jewish Congress noted that in the UK, for example, there was no recourse against a deportation order, the Home Secretary having discretionary power to issue such orders. He was fully aware that the Home Secretary had invoked that provision most sparingly and with the utmost discretion and had, in fact, saved the lives of tens of thousands of people. While he was absolutely certain that the power would never be abused in the UK, it was nevertheless objectionable that a refugee or stateless person could be expelled - theoretically, at least - in an arbitrary manner against which he had no legal protection. A common procedure to remedy that effect should be established.[570]

The text as adopted read:

> First Article
>
> Each of the High Contracting Parties undertakes not to expel or return, in any manner whatsoever, refugees to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality or opinions.

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[569] E/AC.32/SR.21, pp. 3-7

[570] E/AC.32/SR.23, p. 32

Second Article

1. A Refugee who is lawfully in the territory of any of the High Contracting Parties may not be expelled save on grounds of national security or public order and according to such procedure and safeguard as are provided by law.

2. Such refugees shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear themselves and to be represented before the competent authority.

3. The High Contracting Parties shall allow such refugees a reasonable period within which to seek legal admission into another country. During that period the High Contracting Parties reserve the right to apply such internal measures as they may deem necessary.

Third Article

1. The High Contracting Parties undertake not to impose penalties, on account of their illegal entry or residence, on refugees who enter or who are present in that territory without prior or legal authorization and who present themselves without delay to the authorities.

2. The High Contracting Parties undertake not to apply to such refugees restrictions of movement other than those which are necessary and such restrictions shall only be applied until such time as it is possible to make a decision regarding their legal admission to the reception country or to another country; the High Contracting Parties shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.[571]

The Chairman remarked that the word 'political' should have appeared before the word 'opinions' in the First Article.

The Danish representative drew the attention of the Committee to the words '...such restrictions shall only be applied until such time as it is possible to make a decision...' contained in sub-paragraph 2 of the Third Article, and cited, in that connection, the hypothetical case of a group of refugees which a country had placed in a concentration camp. He wondered whether such a country would be obliged to release the refugees as soon as they had obtained entry visas to another country. Some refugees might possibly use such an opportunity to remain in the country illegally.

The Chairman agreed and proposed that the passage should be replaced by the following: 'until such time as their position in the reception country has been regularized or they have obtained admission to another country'.

The UK representative thought that sub-paragraph 1 required clarification. That Article should not apply to a person who had become a refugee in 1914, and had left his reception country in 1950 without a valid reason, to enter the territory of another country clandestinely.

The Chairman thought that the Committee was agreed on their interpretation.

The IRO representative suggested adding the following words at the end of that paragraph '...and producing valid reasons to justify their illegal entry'..

The US representative proposed that the words 'illegal entry' be replaced by 'entry without authorization'. He also suggested that the words 'according to such procedures and safeguards as are provided by law' should be replaced by 'in pursuance of a decision reached in accordance with the process of law'.

It was decided to refer Article 24 and the amendments thereto to the Working Group.[572]

The Working Group proposed the following texts:

Article 26 (24 Third Article)

Refugees not lawfully admitted

1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

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[571] E/AC.32/L.26

[572] E/AC.32/SR.24 pp. 6-7

Article 27 (24 Second Article)

Expulsion of lawfully resident refugee

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law.

2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 28 (24 First Article)

Prohibition of expulsion to territories where the life or freedom of the refugee is threatened

Each of the Contracting States shall not expel or return, in any manner whatsoever, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.

Article 26

The UK representative made a reservation with regard to exceptional cases.

Article 26 was adopted.[573]

The Committee made the following comment:

Refugees not lawfully admitted.

'It is in the nature of asylum to exempt from penalties a refugee who is escaping from persecution but who after crossing the frontier clandestinely presents himself as soon as possible to the authorities of the country of asylum and shows good reason for his entry without authorization.'[574]

Australia commented that 'The term 'penalties' should be clarified.'[575]

Chile made the following comment

'Article 26 provides that the penalties for illegal entry into the territory of a Contracting States shall not apply in the case of refugees. Such a regulation is not only superfluous, but might easily lend itself to abuses of all sorts and, in some cases, prevent the enforcement of special laws, enacted for the protection of public order, and the security of democratic institutions. If the authorities pen-nit a foreigner whose life or liberty is endangered by political, racial or religious persecution, to enter the country in order to escape such persecution, they will unquestionably refrain from imposing penalties or sanctions on him for failure to produce the documents usually required from those entering the territory of the State. However, each case must be judged on its merits and the establishment of a general single principle which might paralyze the enforcement of laws, essential for the defence of the State, public health or good morals, would not be acceptable (see Arts 24, 25, 26, 27 and 28 of the Law for the Permanent Defence of Democracy, 'Official Gazette', 18 October 1948)'.[576]

Lebanon made the following comment:

'The Ministry commends the noble and humanitarian motives which inspired the Draft Convention and the documents in question; but it wishes to emphasize generally that Lebanon, a country which is already quite densely populated, and which for a number of years has shown the greatest liberality and hospitality towards the Palestine refugee, could not safely afford to increase her undertakings in this direction.

'This hesitation applies particularly to certain provisions of the Draft Convention which it is feared might give certain categories of undesirables access to Lebanese territory or asylum there (cf. Articles 26 and 27…). Articles

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[573] E/AC.32/SR.25, pp. 9-12

[574] E/1618, p. 59

[575] E/1703, Add.7, p. 3

[576] E/AC.32/L.40, p. 54

3, 13 and 14 of the Draft go even further; they make no distinction between such categories of undesirables and, for example, the Palestine refugees now in Lebanon.'[577]

The UK made the following comment:

'Article 26. See sub-paragraph (a) of the comment on paragraph 3 of Article 27.'[578]

At the second session of the *ad hoc* Committee, the Belgian representative wanted it to be clearly understood that the words 'who enters or is present in their territory without authorization;' did not cover refugees who had gained access to a territory illegally, after authorization had been refused. Nor should they cover illegal presence, even though it had lasted for months or even years.

He was, nevertheless, prepared to accept the paragraph, so long as it was understood that it referred only to a very brief stay. In other words, the reasons which might justify illegal entry or an unauthorized stay for a few days must on no account be reasons recognized as valid for a longer stay. He also wanted it to be fully understood that the word 'penalties' meant internment only. After all, expulsion was also penalty and the Belgian Government did not wish to be deprived under Article 26 of the right to expel a refugee in such circumstances.

He also proposed two slight drafting changes, affecting the French text only: in paragraph 1 replace the words *'les raisons reconnues valables'* by *'des raisons reconnues valables',* and in paragraph 2, delete the semi-colon after the word *'admission'* and insert it after the words *'dans un autre pays'.*

The French representative said that the penalties mentioned in the Article should be confined to judicial penalties only. But in so far as non-admission or expulsion had to be regarded as sanctions, they were in the vast majority of cases administrative measures, especially where they were applied at very short notice.

The text of Article 26 stated 'A refugee who presents himself without delay....'; it did not apply therefore to unauthorized refugees who had been in a territory for a very long time.

The Belgian representative wished to put on record the interpretation which the Belgian authorities would like to give to the Article.

With regard to the presence of a refugee in a given territory, a case might arise of a refugee who had been on foreign soil for a certain length of time being discovered by the authorities. The moment he was discovered he could present himself to the local authorities, explaining the reasons why he had taken refuge in that territory. In such cases, the text would not necessarily cover the case of prolonged illegal presence.

The French representative said the Belgian representative had also put forward the view that the words 'without authorization' might refer to a refugee who had made application and had been refused authorization, and still persisted in trying to remain in the country. Such a case was provided for by paragraph 2 of Article 26 which stated that the status of a refugee entering a country illegally must be 'regularized'. Hence, cases of such refugees would require investigation. If, as a result, it was decided for various reasons not to admit a refugee, and the refugee persisted in trying to remain in the territory, he would no longer come under Article 26, but under the ordinary national law.

If persons entering a country without authorization were sent to camps, they would no longer be covered under the terms of Article 26.

The first paragraph of the Article involved a voluntary act. A person who presented himself to the authorities after he had been discovered, could no longer benefit by the provisions of Article 26.

The Swiss representative said the Swiss Federal law contained a provision similar to the provision laid down in the first paragraph of Article 26. Moreover, the Swiss Federal laws did not regard any person assisting him as liable to being punished, provided his motive was above board. The provision was of some importance for voluntary agencies providing aid to refugees. He thought that omission in Article 26 should be made good.

The French, US and Venezuelan representative suggested that the Swiss comments should be recorded in the minutes of the meeting.

It was so agreed.

Article 26 was referred to the Drafting Committee.[579]

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[577] E/AC.32/L.40, p. 16

[578] E/AC.32/L.40, p. 54

[579] E/AC.32/SR.40, pp. 4-9

The Drafting Committee proposed the following text:

> Article 26
>
> Refugees not lawfully admitted

1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cases for his illegal entry or presence.

2. The Contracting States shall not apply to such refugees restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.[580]

Article 26 was adopted.[581]

The Committee made the following comment in its report:

> With regard to Article 26, the Committee decided not to incorporate any change in the text. It noted that in some countries, freedom from penalties on account of illegal entry is also extended to those who give assistance for humanitarian reasons to such entrants.[582]

Pakistan made the following comment: The Government of Pakistan are of the opinion that Article 26 of the Convention should be revised as follows:

> 'The Contracting States may at their discretion exempt from penalties on account of his illegal entry or presence a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.'
>
> 'As regards Article 35 they think that the Convention should be made binding on all Contracting Parties both in regard to their metropolitan as well as Colonial possessions. If this is accepted, paragraphs 2 and 3 of this Article will disappear.[583]

At the Conference of Plenipotentiaries, amendments were introduced

by Austria: Add at the end of paragraph 1:

> 'This shall not apply, however, to a refugee against whom an expulsion or residence order has been issued under a judicial or administrative decision of the State in which he seeks asylum.'[584]

by Colombia: Substitute the following for the existing text:

'1. The Contracting States may grant territorial asylum to a refugee who enters or is present in their territory without authorization, who presents himself without delay to the authorities, and who is classifiable as a political refugee.'[585]

by France: Amend paragraph 1 to read as follows:

'1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee *coming direct from his country of origin,* who enters or who is present in their territory without authorization, *provided he* presents himself without delay to the authorities and shows good cause for his illegal entry or presence.'[586]

and by Sweden: Amend paragraph 2 to read as follows:

'2. The Contracting States shall not apply to such refugees restrictions of movement other than those which are necessary and, *except for reasons of national security,* such restrictions shall only be applied until his status in the country

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[580] E/AC.32/L.42/Add.2

[581] E/AC.32/SR.41, p. 24

[582] E/1850, p. 13

[583] A/Conf.2/6, Add.1

[584] A/Conf.2/58

[585] A/Conf.2/55

[586] A/Conf.2/62

is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.'[587]

The Austrian representative said the Austrian delegation approved the principle underlying paragraph 1 of Article 26 but considered it was to provide for the case of a refugee against whom an expulsion order had been made as a result of an offence which he had committed in the country of asylum.

The Colombian representative expressed his support for the amendments proposed by the Austrian and Swedish delegations.

The Canadian representative said he would be satisfied if it was made clear that the word 'penalties' did not cover expulsion.

The French representative wished to make it clear first that, in his opinion, the right of asylum was implicit in the Convention, even if it was not explicitly proclaimed therein, for the very existence of refugees depended on it. On the other hand, while his delegation felt it right to exempt from any punishment refugees coming directly from their country of origin, it did not see any justification for granting them similar exemption in respect of their subsequent movements. The initial exemption was the direct corollary to the right of asylum.

The Italian representative also felt that exemption from the consequences of illegal entry should only be considered in the case of the first reception country. The Italian delegation accordingly supported the French amendment.

The Colombian representative said he would not press his amendment.

The UK representative endorsed the Belgian representative's interpretation of paragraph 1. The right of asylum, in the opinion of the UK, was only a right, belonging to the individual and entitling him to insist on its being extended to him. Article 26 therefore had nothing to do with the question of the right of asylum. He hoped that the view that paragraph 1 was in no way concerned with the right of the State to grant or refuse asylum, would be confirmed by the Conference. He supported the French amendment.

The President, speaking as representative of Denmark, and referring to the French amendment, said that the Conference should bear in mind the importance of the words 'shows good cause' in the last line of that paragraph. A Hungarian refugee living in Germany, for example, might, without actually being persecuted, enter Denmark illegally; it was reasonable to expect that the Danish authorities would not inflict penalties on him for such illegal entry, provided he could show good cause for it. Even if the French amendment were adopted, it would be necessary to replace the words 'coming direct from his country of origin' by the phrase 'coming direct from a territory where his life or freedom was threatened.'

The French representative accepted the suggestion.[588]

The High Commissioner for Refugees thought the text of the Article as modified by the French amendment might give rise to difficulties. There were two main categories of refugees. First, refugees who, after leaving a country of persecution, arrived in another country where they possibly might remain unmolested for a certain period, but would then again be in danger of persecution. If, as a result, they moved on and reached a country of true asylum, it might be claimed that they had not come direct from their country of origin. For example, he himself had, in 1944, left the Netherlands on account of persecution and had hidden in Belgium for five days. As he had run the risk of further persecution in that country, he had been helped by the resistance movement to cross into France. From France he had gone to Spain, and then to Gibraltar. He considered that it would be very unfortunate if a refugee in similar circumstances was penalized for not having proceeded direct to the country of asylum. In his opinion, it would be an improvement if, instead of referring to the refugee's country of origin, the wording of Article 28 was followed in Article 26.

Secondly, there were refugees who fled from a country of persecution direct to a country of asylum; they might not, however, be granted the right to settle there, even though the country in question was a Contracting State. Thus a refugee might suffer if he did not arrive in a country which displayed a generous attitude. Such refugees might possibly be covered if the words 'and shows good cause' were amended to read 'and shows other good cause'. The fact that a refugee had fled from a country of persecution in itself constituted good cause for his entry or presence in the country of asylum.

The French representative said the French delegation was quite prepared to consider changing the text of its amendment, for example, by replacing the words 'coming direct from his country of origin; by the words 'having been unable to find even temporary asylum in a country other than that in which his life or freedom would be threatened.' Such a change would meet the point which was causing the High Commissioner concern.

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[587] A/Conf.2/65

[588] A/Conf.2/SR.16, pp. 11-16

The UK representative stated that, while he appreciated the object of the French amendment, he had been impressed by the arguments advanced by the High Commissioner for Refugees. He wondered whether the original text of Article 26 would not allow countries such as France, which received refugees in great numbers, sufficient latitude.

According to paragraph 1, States must refrain from imposing penalties on refugees who presented themselves without delay to the authorities and showed good cause for their entry or presence. The fact that a refugee was fleeing from persecution was already a good cause. But, as the High Commissioner had pointed out, there might be cases where a refugee could show good cause even though he had not fled direct from a country where his life or freedom was threatened.

He therefore thought that it would be sufficient for Contracting States to accept Article 26 as originally drafted, since they themselves would be free to decide whether a refugee had indeed good cause for his entry or presence.

The Netherlands representative also had certain misgivings about the interpretation of the words 'good cause'. It seemed to him that Article 26 excluded the possibility of a refugee being allowed to enter another country when a member of his family, for example, was sick. He agreed with the UK representative that it would be difficult to define briefly what was meant by 'good cause'. The words *'reconnues valables'* in the French text rendered the idea intended correctly as they implied that the State could use its discretion in judging individual cases, while the English text provided no such criterion.

The French representative regretted that he must press his amendment.

To admit that a refugee who had settled temporarily in a reception country was free to enter another, would be to grant him a right of immigration which might be exercised for reasons of mere personal convenience. It was not true that Article 26 did not refer to immigration, but only to asylum.

The UK representative felt that it would be difficult to define the refugees in question more precisely than they were defined in the original text. If the latest suggestion by the French representative and supported by the High Commissioner was adopted, a refugee would have to establish not merely his refugee status, but also that he was unable to find asylum in any country other than the one in which he applied to settle. Thus the onus of proving a negative would be placed on the refugee himself.

The Swiss representative supported the French amendment in its latest form.

The Greek representative thought there could be no doubt that the case where a country prescribed temporary residence for a refugee and thus deprived him of his freedom of residence did constitute a case where no penalty could be imposed on him.

The Belgian representative suggested that the words 'being unable to find asylum' should be substituted for the words 'having been unable to find asylum' in the French representative's latest version of his amendment. The second expression would exclude from the benefit of the provision any refugee who had managed to find a few days asylum in any country through which he had passed.

The French representative accepted the Belgian representative's suggestion.

The following text was adopted by 15 votes to none, with 8 abstentions:

> 'The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who, being unable to find asylum even temporarily in a country other than the country in which his life or freedom would be threatened, enters or is present in their territory without authorization, provided he presents himself without delay to the authorities and shows good cause for his illegal entry or presence'.

The Austrian representative pointed out that the words 'expulsion order or residence' in his amendment should be modified to read 'order of expulsion or refusal of residence'.

The UK representative wondered whether there was any need for such an amendment, since the original text stated that the refugee must show good cause for his illegal entry or presence. A refugee who had been expelled from a country and who knew that an expulsion order had been issued and that he was subject to penalties, could not ordinarily show 'good cause'.

The Belgian representative pointed out that there were cases where an order of expulsion or of refusal of residence could not be held against a refugee, for example, when the order was 20 or 25 years old.

The Austrian amendment was rejected by 9 votes to 2, with 10 abstentions.

The Swiss representative, speaking on his amendment said that paragraph 2 of Article 26 made a distinction between the periods before and after regularization of the refugee's status. However, it might so happen that, even after the status of a

refugee had been regularized, that reasons of national security could require the imposition of restrictions on his movements. Paragraph 2, as it stood at present, precluded such action.

After clarification by the President, he withdrew his amendment. The Style Committee should, however, go over the present text which lacked clarity. There was a definite contradiction between the wording of Articles 21 and 26.

The President said that by inserting the words 'other than those which are necessary', the *ad hoc* Committee had intended to cover considerations of security, special circumstances, such as a great and sudden influx of refugees, or any other reasons which might necessitate restriction of their movement.

The US representative suggested that the substitution of the words 'is assimilated to that of a lawfully admitted refugee' for the words 'in the country is regularized' might meet the Swiss representative's point.

Paragraph 2 was adopted by 22 votes to none, with two abstentions, subject to textual amendments to be made by the Style Committee.

Article 26 as a whole and as amended was adopted by 20 votes to none, with 4 abstentions.[589]

The Style Committee proposed the following wording:

1. *Les Etats contractants n'appliqueront pas de sanctions pénales, dufait de leur entrée ou de leur séjour irréguliers, aux réfugiés qui, nepouvant trouver un asile, même provisoire, dans un pays autre que celui ou ceux dans lesquels leur vie ou leur liberté serait menacée, entrent ou se trouvent sur leur territoire sans autorisation, sous le resérve qu'ils se présentent sans délai auz autorités et leur exposent des raisons reconnues valables de leur entrée our presence irrégulière.*

2. Les Etats contractantes n'appliqueront aux déplacements de ces réfugiés d'autres restrictions que celles qui sont nécessaires; ces restrictions seront appliquées seulement en attendant que le statut de ces réfugiés dans le pays d'accueil ait eté régularisé ou qu'ils aient réusi à se faire admettre dans un autre pays. En vue de cette dernière admission les Etats contractants accorderent à ces réfugiés un delai raisonnabl ainsi que toutes facilités nécessaires.[590]

(This text is available in French only.)

The Observer of the International Federation of Trade Unions and the High Commissioner for Refugees felt unhappy about the wording of paragraph 1 of Article 31. It would place on the refugee the very unfair onus of proving that he was unable to find even temporary asylum anywhere.

The High Commissioner suggested that paragraph 1 be amended to read:

'1. The Contracting States shall not impose penalties on account of his illegal entry or presence, on a refugee who enters or is present in their territory without authorization, provided he presents himself without delay to the authorities and shows good cause for believing that his illegal entry or presence is due to the fact that his life or freedom would otherwise be threatened.'

The French representative said his Government's aim in the question under discussion was that their authorities should be able to detain for a few days completely unknown persons unattached to any territory.

The UK representative said he would sponsor the High Commissioner's amendment. He thought that all would agree that the reference in paragraph 1 to penalties did not rule out any provisional detention that might be necessary to investigate the circumstances in which a refugee had entered a country, but simply precluded the taking of legal proceedings against them.

The French representative could not agree with the UK representative's interpretation.

The UK representative suggested that the French representative's difficulties might be met by further amending the English text to read:

> 'The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who, coming directly from the country of his nationality or habitual residence (those being the words used in paragraph A of Article 1), presents himself without delay to the authorities and shows good cause for his illegal entry or presence'.

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[589] A/Conf.2/SR.14, pp. 4-17

[590] A/Conf.2/102/Add.1, Article 31

The French representative suggested the existing text could be amended to read 'coming directly from a territory where his life or freedom would be threatened within the meaning of Article 1, paragraph A of this Convention', so as to cover the three factors.

The President preferred the words *'arrivent directement d'un territoire ou leur vie où leur liberté seraient menaciée'* to the words *'pays d'origine'.* The latter were unsatisfactory because, to give an example, a Polish refugee living in Czechoslovakia, whose life or liberty was threatened in that country and who proceeded to another country, would not be considered as having coming direct from his country of origin.

The French representative suggested that the French amendment might be further amended by replacing the words 'country of origin' by the words 'in which he is persecuted'.

The UK representative said he would withdraw his amendment if the French representative found it unacceptable. He thought, however, that his amendment allowed for a certain amount of flexibility in the case of refugees coming through intermediary countries.

The revised version of the French amendment of paragraph 1 was adopted by 19 votes to none, with 4 abstentions. It read:

> 'The High Contracting Parties shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.'

Article 31 as a whole and as amended was adopted by 20 votes to none, with 2 abstentions.[591]

National Measures

In Austria, according to the Law concerning the Residence of Convention Refugees of 7 March 1968,[592] an asylum-seeker may, if it is necessary for the determination of the relevant facts, until the termination of the recognition procedure, but for not more than two months, be obliged to reside in the designated part of the refugee camp *Traiskirchen* and may be subject to such movement restrictions as are necessary for his transfer there. The appeal has no suspensive effect.

In Belgium, the Aliens Law of 15 December 1980[593] prescribes in Article 50 that an alien shall within 15 working days of his entry claim his refugee status from the competent authority or present himself to a competent authority. The Ministry of Justice may decide not to admit for residence or settlement a person claiming refugee status if the request is made with an unjustifiable delay or if since his departure from his country he has resided for more than three months in a third country and has left it without constraint (Article 52).

A person who has asked for refugee status and to whom stay has not been refused may not be *refoulé* or removed or be the subject of penal proceedings on account of his illegal entry or presence in as long as his request has not been decided negatively (Article 53).

The Ministry of Justice may assign an illegal entrant to residence pending examination of his request. In exceptionally grave circumstances, if this is necessary in the interests of national security, he may be placed at the disposal of the Government (that is, detained) (Article 54).

A refugee in another country who is obliged to leave must present his application within eight working days from entry. Authorization may not be refused save on grounds of national security or public order (Article 55).

In the Federal Republic of Germany, according to an instruction of the Federal Ministry of the Interior of 19 December 1967,[594] proceedings on account of illegal entry are to be suspended pending examination of an asylum request.

In Switzerland the Federal Law of 8 October 1948[595] amending the Federal Law on the Sojourn and Establishment of Aliens of 31 March 1931, provides in Article 23: 'Persons who fled in to Switzerland shall not be punished, if the form and seriousness of the persecution justifies the illegal entry; assistance is equally not punishable if it is rendered for respectable motives'.

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[591] A/Conf.2/SR.35, pp. 10-20

[592] BGB1.55/1955

[593] M.B.1980 p.14584

[594] Az VII 6-125.423-a/15

[595] O.G.1949, p. 221

Judicial Decisions

In France it was held by the *Cour de Cassation* in the *Herdia-Mendez* case on 23 June 1939 (Sirey 1940 I p.45), to whom an identity card had been refused, that, with reference to the Decree of 14 May 1938, if present in France after eight days he could be the object of an expulsion order.

It has also been held by the *Cour de Cassation* in the case *Rozoff* c. *Ministère Public* on 8 February 1936 (Dalloz 1936 I p. 44) that the condemnation of an alien for violation of an expulsion order was legally justified and the objection of *vis major* had been rejected rightly by the decision that the appellant gave evidence that he has been successively returned to France by the governments of all the neighbouring countries. This evidence was in fact not relevant because it did not prove that the appellant was unable to proceed to other than neighbouring countries.

In the Federal Republic of Germany it was held by the Supreme Federal Administrative Court on 12 January 1956[596] that the Law on Homeless Foreigners accords to persons covered by it the right to residence in the Federal Republic without requiring a residence permit on the basis of the Decree of the Aliens Police.

Commentary

Article 31 refers to 'penalties'. It is clear from the *travaux préparatoires* that this refers to administrative or judicial convictions on account of illegal entry or presence, not to expulsion. The term 'coming directly' refers, of course, to persons who have come directly from their country of origin or a country where their life or freedom was threatened, but also the persons who have been in an intermediary country for a short time without having received asylum there.

The term 'coming directly' has acquired considerable importance because, while it relates in Article 31 to penalties only, Contracting States frequently use it as the criterion for entertaining an asylum request. The words 'where their life or freedom was threatened' may give the impression that another standard is required than for refugee status in Article 1. This is, however, not the case. The Secretariat draft referred to refugees 'escaping from persecution' and to the obligation not to turn back refugees 'to the frontier of their country of origin, or to territories where their life or freedom would be threatened on account of their race, religion, nationality or political opinion'. In the course of drafting the words 'country of origin', 'territories where their life or freedom was threatened' and 'country in which he is persecuted' were used interchangeably.[597] The reference to Article 1 of the Convention was introduced mainly in order to refer to the dateline of 1 January 1951 but it also indicated that here was no intention to introduce more restrictive criteria than that of 'well-founded fear of persecution' used in Article 1 A(ii).

The term 'good cause' has not been defined. The French term *'raisons reconnue valables'* is more precise. 'Good cause' exists if the refugee could not have entered legally any country in order to escape persecution. The wording proposed 'being unable to find asylum even temporarily in a country other than the country in which his life or freedom would be threatened' was not adopted. It cannot be expected of a refugee to prove that he sought or could have sought asylum in another country.

Paragraph 1 does not impose an obligation to regularize the situation of the refugee nor does it prevent the Contracting States from imposing an expulsion order on him. However, a refugee may not be expelled if no other country is willing to admit him; he may not be put over the 'green border'.[598] On the other hand, the Article does not provide what should happen to a refugee whose situation is not regularized and who is unable to comply with an expulsion order. Article 3 of the 1933 Convention provided that in such a case the Contracting Parties reserve the right to apply such internal measures as they deem necessary. This would also seem to apply now and as regards such internal measures paragraph 2 of Article 31 applies.

Paragraph 1 also applies to a refugee who had been authorized to stay in a country for a limited period and who remains illegally in the country beyond that period.

In the case of asylum-seekers proceedings on account of illegal entry or presence should be suspended pending examination of their request.

Paragraph 2 speaks of restrictions to the movement of refugees which are necessary but does not define what restrictions may be considered as necessary. Restrictions for reasons' of national security were mentioned. The question whether one

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[596] BVerwGE 77

[597] A/Conf.2/SR.35, p. 20

[598] cf. E/AC.32/SR.20 and A/Conf.2/SR.16 p.10

could keep a refugee in custody, who had entered illegally, was raised by the President of the Conference but not answered.[599]

It results from the history of the provision that refugees should not be kept behind barbed wire. A short period of custody may be necessary in order to investigate the identity of the person. Refugees may also be placed in a camp, particularly in cases of mass influx. The restrictions shall only be applied until the status of the refugee has been regularized or he has obtained admission into another country. Regularization of status means the grant of a residence permit, even if of a temporary character. 'A reasonable period' to obtain admission to another country means the period necessary to obtain a visa by a refugee who makes all efforts to obtain such a visa, possibly with the help of UNHCR or voluntary organizations. 'The necessary facilities' means that he should not be restricted in his movement as not to enable him to see foreign consulates, the representatives of UNHCR or voluntary agencies.

ARTICLE 32. EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with the process of law.

2. Each refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.[600]

Travaux Préparatoires

The Committee had made the following comment:

Expulsion of Refugees Lawfully Admitted[601]

Paragraph 1

While other aliens can, in cases of expulsion, be returned to their country of nationality, this is not possible in the case of refugees. In consequence the expulsion of a refugee is an especially serious measure.

Paragraph 2

Expulsion orders may sometimes be due to false accusations and the malice of ousted competitors. It may even happen that such orders are due to errors in identity. For these reasons paragraph provides that a refugee shall be permitted to clear himself and to be represented before the competent authority.

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[599] A/Conf.2/SR.14, p.15

[600] E/1618

[601] The Commission on Human Rights in the Draft Covenant on Human Rights adopted at its Fifth Session (E/1371 page 12 - French) included the following provision: 'no alien legally admitted to the territory of a State shall be expelled therefrom except on such grounds and according to such procedure and safeguards as are provided by law.' The Convention of 28 October 1933, Article 3, paragraph 1, reads:
'Each of the Contracting Parties undertakes not to remove or keep from its territory be applications of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order....'

The Convention of 10 February 1938, Article 5, paragraph 2, reads:

'1.....

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

Paragraph 3[602]

Austria made the following comment on Article 27: 'It is assumed that 'due process of law' covers not only the procedure before the courts, but also before the administrative authorities and the police.'[603]

Australia made the following comment: 'Restriction of grounds for expulsion to the grounds of national security and public order might result in preferential treatment of refugees over other immigrants which the Australian Government would regard as undesirable. For instance, Australian immigration legislation recognizes certain types of disease, and lunacy, as grounds for the lawful deportation of immigrants. The grounds specified in the Article should therefore be enlarged.'[604]

Canada commented: 'It is noted that paragraph 1 of Article 27 states: 'The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order'. The question arises whether the term 'public order' is intended to cover the deportation of aliens convicted of offences under legislation similar to the *Opium and Narcotic Drugs Act* of Canada. This Act provides for the mandatory deportation of aliens convicted of offences under the Act.'[605]

Chile commented: 'Article 27 lays down that in the case of the expulsion of a refugee, the Contracting States concerned shall allow such refugee a reasonable period within which to seek legal admission into another country. This provision might give rise to serious difficulties as regards the enforcement or implementation of the decision taken by the competent authority and might even nullify or render it inoperative, should the person to be expelled not be able to find another country willing to accept him in the normal manner. It should also be taken into consideration that Article 29 limits the countries, to which the expelled person may be sent, since it provides, and rightly so, that he may not be expelled to countries where he might be persecuted for political, racial or religious reasons.[606]

France commented: 'Article 27, paragraph 2, first line. The words 'due account being taken of should be substituted for the words 'in accordance with'. This modification would make the text more flexible and cover urgent cases which might require a simpler procedure.[607]

The UK commented: 'Article 27. With regard to paragraph 2 of this Article, the established law and procedure in the UK is, as was explained to the *ad hoc* Committee, that no alien lawfully resident can be deported save under an Order made personally be the Secretary of State. An alien in respect of whom a Deportation Order is to be made has an opportunity to make representations to the Secretary of State. There is also the remedy of *habeas corpus,* which is accessible to the alien as to the British subject and which protects the alien from unlawful action and from mistakes in identity to which the Committee referred. His Majesty's Government could not, however, undertake that any alien should have the right to appear or to be represented before the Secretary of State personally.

> 'His Majesty's Government accept in principle the provisions of paragraph 3 of the Article, but desire to make the following observations:

(a) In considering the practical interpretation in this paragraph His Majesty's Government will be bound to have regard to the alien's prospects of obtaining admission to another country; and they cannot undertake to defer deportation indefinitely where it is obvious that the alien is not likely to succeed within a reasonable period in obtaining admission to the country to which he seeks to go.

(b) In any case where a refugee is returnable to a country where he has no reason to fear persecution, His Majesty's Government would not be prepared to defer his deportation beyond the date when his returnability to that country expires,'[608]

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[602] Convention of 28 October 1933, Article 3, paragraph 3, reads:
'It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them the necessary authorizations and visas permitting them to proceed to another country.'
Convention of 10 February 1938, Article 5, paragraph 1 reads:
'1. In every case in which a refugee is required to leave the territory of one of the High Contracting Parties to which the present Convention applies, he shall be granted a suitable period to make the necessary arrangements.' (E/1618, p. 60)

[603] E/AC.32/L.40, p. 55

[604] E/1703, Add.7, p. 3

[605] E/AC.32/L.40, p. 55

[606] E/AC.32/L.40, p. 55

[607] E/AC.32/L.40, p. 56

[608] E/AC.32/L.40, p. 56

At the second session of the *ad hoc* Committee the representative of Canada said that Article 27 would not easily prove acceptable to his country, because it was contrary to the provisions of the *Immigration Act* and the *Narcotic Drugs Act.* Under the *Immigration Act* lunatics and similarly undesirable persons could be deported; under the *Narcotic Drugs Act* deportation was mandatory. In practice, the law took account of three considerations: first, that the country of origin of the alien might refuse to receive him on deportation; secondly, that the punishment might be out of all proportion to the offence; and thirdly, that deportation to another country might endanger the life of the deportee. The third consideration was covered by Article 28. Seen from the point of view of the Draft Convention, it might of course be considered that refugees who committed offences punishable by deportation would either no longer be lawfully resident in Canada or, under paragraph 1 of Article 27, could be expelled on grounds of national security. If such an interpretation was not accepted, his Government could not easily contemplate the grant to refugees of privileges not accorded to ordinary aliens.

The question was of great importance, as it arose in regard to other Articles of the Draft Convention. The meaning of the term 'public order' might be discussed by the Drafting Committee.

The US representative confessed that his delegation still felt concern at the use of the term 'public order', partly because of its ambiguity, partly because it found that it embraced too much. At the same time, he thought, when the Article had been drafted, it had not been the intention to prevent the expulsion of refugees for most reasons of general law applicable to aliens. The intention should, however, be clearly expressed, and he considered that a better formula might be found.

The Belgian representative did not think it feasible to define the concept of 'public order'. Although there was clearly some danger in so general a concept, the clause was nevertheless a safeguard which Contracting Governments might wish to retain. If a refugee was convicted of a fairly serious offence, his presence might well be considered undesirable. On the other hand, the political activities of refugees might also be regarded as undesirable for reasons of 'public order'. He would like the term to be retained in Article 27.

The French representative said, with regard to the observations of the Canadian representative, he would suggest that Article 27 gave implicit satisfaction to them. From a practical standpoint, it was obvious that the authors of Article 27 had been anxious that the provisions favourable to refugees should not cover ordinary offences punishable by law, and should not confer on ordinary offenders, who happened to be refugees, rights not even enjoyed by the country's own nationals.

The US representative said that the Belgian representative's explanation had not dispelled his doubts, but had in fact increased them because of the examples given. It seemed that the term 'public order' could be used as a pretext for getting rid of any refugee on the ground that he was, for one reason or another, an undesirable person.

The Venezuelan representative said that so far as his country was concerned, 'public order' was directly related to the peace and stability of the State. If they were threatened, the Government was enabled, on grounds of public order, to take certain measures; they would be applicable to aliens as well as to nationals, and no exception could or should be made for refugees. In fact, the reference to public order could be considered as a warning to refugees not to indulge in political activities against the State.

The UK representative thought that the grounds for the deportation of refugees should not be wider than, but be exactly the same as for the deportation of aliens. His Government found it difficult to accept paragraphs 1 and 2 of Article 27, and thought it possible and desirable to substitute for them something on the lines of Article 9 of the Draft Covenant on Human Rights.

The Canadian representative accepted the UK representative's suggestion which he had been about to make himself.

The US representative was doubtful whether a substitution of an Article of the Draft Covenant on Human Rights would be desirable. His main fear was that the term 'public order' might mean much more than it appeared to mean on the surface. He felt that refugees should not be expelled on the grounds not specified in law, or because they had been sick or indigent; they should be expelled only on the grounds that they had committed crimes, which should be as explicitly defined as possible.

The representative of the Secretariat, replying to the suggestion that refugees should be treated on a par with aliens, pointed out that under existing international law aliens enjoyed no safeguards.

The representative of the IRO said the question of expulsion was of the greatest importance to refugees. The term 'public order' had been used in previous convictions, and, however it was defined, he considered that in practice it had on the whole tended to restrict the expulsion of refugees by comparison with that of other aliens.

He submitted that there were strong grounds for granting privileges to refugees, above all the ground that aliens possessed an effective nationality and could return to their country of nationality in case of expulsion, whereas for a refugee it was a matter of life and death, as he had no other country to go to. A more explicit wording than in Article 9 of the Draft Convention on Human Rights was required.

The Israeli representative said the basic question was whether the Committee was prepared to treat the expulsion of refugees on a par with the expulsion of other aliens. The question would arise in what respects the refugees should be assimilated to aliens and in what respects not. In the first case, inasmuch as States had a right to require good behaviour of all persons resident in it, it had good grounds, subject to certain reservations, for assimilating refugees to other aliens. In the second case, it had to be remembered that considerations of national security and public order were interpreted differently in different countries. In the case of a narrow interpretation, however, there should be no argument in favour of treating refugees differently from other aliens.

The third case was different, and there should be a great distinction between the treatment of aliens in general and the treatment of refugees. In the case of aliens, their own country was responsible for social cases; in the case of refugees, the answer was, no country. It seemed to him that countries should accept refugees as human beings, with all the infirmities and weaknesses inherent in the human condition, and should treat them accordingly when they had offended against national laws.

He suggested that paragraphs 1 and 2 of Article 27 be combined, and that the material problem of the grounds for expulsion and the procedural question should be dealt with together; that the grounds for expulsion be limited, and that the necessary provisions be inserted regarding procedure with all due process of law. Even so, refugees would still be in a worse position than aliens. The solution lay in paragraph 3 of Article 27.

The French representative said with regard to the term 'public order', administrative and judicial case law had developed in countries governed by the principle of the supremacy law. For example, French legislation with regard to the deportation of aliens provided for a special appeal procedure through an Appeals Board under the authority of the Minister of the Interior. That administrative procedure was in no way discretionary since aliens had the right to resort, if necessary, to courts of appeal in administrative matters just as had French nationals. The notion of public order had thus been defined and the retention of the term, to which the French Government for certain reasons was attached, involved no risk for refugees.

The US representative proposed the following text:

'The Contracting State shall not expel a refugee lawfully in their territory save on grounds established by law which relate to national security or are based on the commission of illegal acts'.

That formulation would cover serious crimes but would not cover what the representative of Israel had called 'social cases'.

The Chairman was not altogether satisfied with the words 'commission of illegal acts'. Illegal acts ranged from riding bicycles the wrong way on footpaths, to the gravest of crimes. It might be better to change the term 'public order' to 'public safety' which would not cover both extremes and would permit the deportation of any refugee who had committed the smallest illegal act.

The representative of the IRO thought the US proposal was to be taken in combination with Article 9 of the Draft Covenant on Human Rights which provided that an alien could be expelled only for illegal acts established on grounds for expulsion.

The Belgian representative wanted to urge that the long-accepted notion of public order should not be set aside.

The French representative spoke in the same sense.

The US representative thought that the only solution would be to retain the present text of paragraph 1 of Article 27 and perhaps to add thereto a number of specific exclusions, stating, for example, that a refugee might not be expelled on grounds of indigence or ill health.

The French representative was prepared to accept the introduction of some limitations on the lines suggested by the US representative.

He would, however, like to warn the Committee that if restrictions were introduced limiting the scope of the clause to two or three categories of cases, certain jurists would interpret the text a *contrario* as allowing the possibility of expelling refugees for all the reasons except those specified. In short, he considered that, however vague the notion of public order might be, it did, at least under the case law of certain countries, offer greater safeguards to refugees than would be given by a hastily drafted formula which would not cover all possible cases and which could, moreover, lend itself to interpretation a *contrario*.

The Israeli representative thought that the objection of the French representative might be met by a reference to Article 20. He suggested that the Committee tentatively accept the present formulation of paragraph 1 and ask the Drafting Committee to seek a formulation for the exclusion of 'social cases'.

The French representative said he was prepared to agree to a new provision being inserted in Article 27 to deal with the social cases.

The Chinese representative said the Chinese delegation would accept the proposal to combine the first two paragraphs in order to employ the words used in Article 9 of the Draft Covenant on Human Rights. He would prefer, however, to retain the concept of 'public order'. The concept of due process would be easily acceptable to the Chinese delegation.

The representative of the Secretariat observed that 'social cases' were dealt with in a special Article on which States might submit reservations. In any event, he did not believe that 'social cases' came within the concept of 'public order'.

The proposal that a specific reservation with regard to 'social cases' be included in paragraph 1 of Article 27 was rejected by 5 votes to 2, with 4 abstentions.

It was agreed that the question raised with regard to the term 'public order' should be referred to the Drafting Committee.

Paragraph 2

The UK representative said that paragraph 2 presented a difficulty, because it provided for the alien or his representative to appear personally before the Secretary of State. Every method of making representations was open to him under English law except that chosen in the Draft Convention.

The US representative said that while it was understandable that the Secretary of State could not grant a personal interview to every refugee threatened with expulsion, perhaps it might be possible in view of the scope of the term 'competent authority' for some other competent authority to grant a hearing to the refugee. If such an interpretation appeared acceptable in the case of the UK, it might at the same time meet the needs of the refugees in other countries. If, on the other hand, it proved impossible to make such an arrangement, the US delegation would like to see the words 'in accordance with the established law and procedure of the country' deleted, if those words could be interpreted to mean 'except where the established law and procedure of the country provides that there shall be no hearing'. If that was not the meaning of those words, they could be retained in the hope of reaching a compromise.

The UK representative felt that such a compromise might be reached with the help of the appropriate passages in the Draft Covenant on Human Rights.

The French representative requested that the Drafting Committee should take the French Government's comments into account and substitute the phrase 'with regard for' for the phrase 'in accordance with'.

The Chairman thought that the comment of the Austrian Government could be covered by a remark in the report of the Committee.

It was agreed to refer paragraph 2 of Article 27 to the Drafting Committee.

Paragraph 3

The UK representative said the UK Government objected to the wording rather than to the substance of paragraph 3. It was obvious that if the travel document of a refugee returnable to another country had almost expired, he could not be given the same opportunity to find another country willing to receive him as a refugee whose travel document was still valid for a considerable period. The problem was one of drafting only.

It was agreed to refer paragraph 3 of Article 27 to the Drafting Committee.

The Drafting Committee proposed the following text:

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such refugee shall be only in pursuance of a decision reached in accordance with due process of law. The refugee shall have the right to submit evidence to clear himself and the right to appeal to and be represented before competent authority.

3. The Contracting States shall allow such refugees a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.[609]

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[609] E/AC.32/L.42

The Article was adopted.[610]

It read:

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such refugee shall be only in pursuance of a decision reached in accordance with due process of law. The refugee shall have the right to submit evidence to clear himself and to appeal to be represented before competent authority.

3. The Contracting States shall allow such refugees a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.[611]

The Committee made the following comment:

> 'in regard to Article 27, the Committee decided, after long discussion, to maintain the present text of the first paragraph. While several members expressed dissatisfaction with the vagueness of the term 'public order', and with the different interpretations given to the term in different countries, it was felt necessary to take into account the jurisprudence which this term had acquired in certain systems of law. The Committee felt that this provision would permit the deportation of aliens who had been convicted of certain serious crimes where in that country such crimes are considered violations of 'public order'. The phrase 'public order' would not, however, permit the deportation of aliens on 'social grounds' such as indigence or illness. The procedural safeguards accorded to refugees were clarified and are now contained wholly in paragraph 2.[612]

At the Conference of Plenipotentiaries, amendments were introduced by:

Belgium: Amend the second sentence of paragraph 2 to read:

> 'In so far as national security permits, the refugee shall be allowed to submit evidence to clear himself and to appeal to and be represented before a competent authority.'[613]

Egypt: Delete paragraphs 1 and 2 of this Article and substitute the following text:

(1) The Contracting States shall not expel a refugee lawfully in their territory save on one of the following grounds:

(a) because he has been convicted of a crime or offence punishable by more than three months' imprisonment;

(b) because he has engaged in activities of a subversive nature or which are prejudicial to public order, the internal or external security of the State, public morals or health;

(c) because he is indigent and is a charge on the State.

(2) In every case, expulsion shall apply solely to individuals. Expulsion may only be effected by a ministerial order communicated to the person to be expelled.

(3) No change.[614]

France: Amend the second sentence of paragraph 2 to read as follows:

> 'The refugee shall as far as possible be allowed to submit evidence to clear himself and to appeal to and be represented before competent authority.'[615]

Italy: Delete the second sentence of paragraph 2.[616]

UK: At end of paragraph 2 add the words: 'or a person or persons specially designated by the competent authority.'[617]

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[610] E/AC.32/SR.41, p. 24

[611] E/1850

[612] E/1850, p. 13

[613] A/Conf.2/68

[614] A/Conf.2/44

[615] A/Conf.2/63

[616] A/Conf.2/57

At the Conference of Plenipotentiaries the Canadian representative said the Canadian Government found some difficulty with regard to the expression 'public order', which was a term which had a more precise legal connotation in certain countries than in common law countries. It had been generally agreed in the *ad hoc* Committee that specifications of grounds for deportation must be left to the jurisdiction of the States concerned. A second difficulty also confronted the Canadian Government. The costs of public relief and medical assistance were borne by the provincial authorities, and it might be difficult for the Canadian Government to enter into commitments on their behalf involving financial expenditure.

The Egyptian representative, introducing his amendment to Article 27, explained that its object was to liberalize the procedure in respect of expulsion, and to provide the refugees with the maximum guarantee against arbitrary expulsion. The Egyptian delegation felt that the present text of paragraph 1 failed to provide refugees with adequate protection against abuse of the right of expulsion. The terms of that paragraph were, in fact, too general, and, moreover, were subjective in character. Paragraph 1 of the Egyptian amendment listed the grounds on which a refugee could be expelled. Paragraph 2 specified that in any case the expulsion order would apply only to the refugee himself, and not to members of his family; to expel the latter would be an obvious injustice. So far as the ministerial order serving notice on the refugee of his expulsion was concerned, that could only be taken in execution of a Court decision. The provisions proposed in the Egyptian amendment would provide the refugee with all necessary safeguards.

The Executive Secretary read out from a Memorandum on the term 'public order' prepared by the Secretariat.[618]

> 'The Secretary General considers that the use of this expression raises serious questions of substance and consequently feels obliged to draw the attention of the Council to the following legal considerations.
>
> 'First, it should be observed that the English expression 'public order' is not the equivalent and is indeed substantially different from - the French expression *'l'ordre publique'* (or in Spanish, *'orden publico').* In civil law countries the concept of *'l'ordre publique' is* a fundamental legal notion used principally as a basis for negating or restricting private agreements, the exercise of police power, or the application of foreign law.
>
> 'The common law counterpart of *'l'ordre publique' is* not 'public order' but rather 'public policy'. It is this concept which is employed in common law countries to invalidate or limit private agreements of the application of law. In contrast to this concept of public policy, the English expression 'public order' is not a recognized legal concept. In its ordinary English sense it would presumably mean merely the absence of public disorder. This notion is obviously far removed from the concept of *'l'ordre publique'* or 'public policy'.
>
> 'Since the Covenant should undoubtedly contain equivalent concepts in English and French, the question arises as to whether the notion of *'l'ordre publique'* or, in English, 'public policy' should be retained as an exception to the rights in Articles 13-16. In the Secretary-General's opinion, this is a most important question since the concept of *'l'ordre publique/*public policy' is in most jurisdictions, a broad and flexible principle, often characterized by legal commentators as vague and indefinite. It is true that in regard to certain situations public policy or *'l'ordre publique'* has been given a technical and fairly well-defined meaning, but at the same time the concept is sufficiently wide and fluid to permit its application in a variety of new situations. Accordingly, it could hardly be doubted that by introducing it as an exception to fundamental human rights, it may well constitute a basis for far-reaching derogations from the rights granted.'
>
> The Greek representative said that, to judge from the report of the *ad hoc* Committee, the phrase 'grounds of national security or public order' was intended to cover the application of certain legitimate measures by the administration. The explanation provided by the Executive Secretary did not clarify the situation. To solve the difficulty, it would seem sufficient to add the word 'legitimate' after the words 'save on' in paragraph 1 of the existing text of Article 27, without otherwise amending that paragraph.
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> The Swedish representative agreed with the Greek representative. The difficulty, however, lay chiefly in the expression 'refugees lawfully in the territory'. Swedes distinguished between aliens to whom a right of establishment had been granted, and aliens possessing only a right of temporary residence. The question did not arise in the case of the former; but, in respect of the latter, the Swedish Government wished to be able to expel them if it decided the authorization granted had expired. Thus, if the term 'refugee' in Article 27 applied without distinction to all refugees established in a territory, his country would have to enter reservations to Article 27.
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> The representative of the Holy See thought the original wording of Article 27 covered every case. It was difficult for the Holy See to accept in particular sub-paragraph(1) of paragraph 1 of the Egyptian amendment. The Convention on Migration for Employment laid down in Article 8 that migrants admitted into a country for

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[617] A/Conf.2/60

[618] E/L.68 para. 83

employment could not be returned to their territory of origin unless they so desired or were unable to follow their occupation by reason of illness. Conformity was necessary between the text of the Convention on Migration for Employment and that of the Convention relating to the Status of Refugees.

He was supported by the French representative. French procedure in the matter of expulsion laid down in fact that when expulsion was contemplated, the alien must be notified in advance. The person affected was given one month in which to prepare his defence and to appear before a committee made up of magistrates. There was one exception, however: the case of aliens guilty of espionage.

The President pointed out that Articles 18 and 19 contained provisions relating to indigence.

The Australian representative pointed out that, as the French and English texts of paragraph 1 of Article 27 were not entirely consistent in respect of the term 'public order', some amendment was clearly necessary. Either the expression could be replaced by another, or the words 'public policy' could be used in the English text. The latter course might be the better one.

The Egyptian representative said his delegation was prepared to withdraw sub-paragraph(c) of its amendment.

The Italian representative, introducing his amendment said his delegation could not accept the second sentence of paragraph 2 and therefore proposed that it be deleted. It should be added, however, that, in Italy, refugees under order of expulsion could appeal to the competent authorities.

The Netherlands representative hoped the Conference would not adopt the Egyptian amendment which introduced somewhat indefinite concepts. He found that the adoption of such an amendment would excessively restrict the freedom of refugees.

The Canadian representative stated that he would accept the French and UK amendments to Article 27. In Canada persons who were suspected of having entered the country illegally could be summoned to present themselves before a Board of Inquiry of three members, set up on instruction of the Minister concerned. The suspect could appear himself or be represented by counsel, and he had the fullest opportunity of presenting his case. The finding of the Board was then forwarded to the Federal Authorities in Ottawa, and if an order of deportation was found necessary, it was issued on the authority of the Minister. No appeal could be made against his decision for obvious reasons. He believed the position was similar in the UK.

The UK representative stated that the expression 'public order' presented definite difficulties in common law countries which did not possess the same legal connotation it had in continental jurisprudence. Unfortunately, the expression 'public policy' was somewhat narrower in scope; it did not, as did *'l'ordre publique'* cover police measures or criminal legislation.

He agreed with the objections raised by the Egyptian representative. With regard to paragraph 2, he was faced with the same difficulty as that indicated by the Italian representative. In the UK, while it was possible for courts dealing with aliens charged with criminal activities to recommend their deportation, the power of deportation lay with the Home Secretary. The second sentence of paragraph 2 seemed to suggest the possibility of some kind of appeal. There was no appeal tribunal in the UK, nor did the UK Government wish to institute one. The purpose of the UK amendment was to make it clear that in submitting evidence about themselves in connection with an expulsion order, refugees could do so before persons specially designated by the competent authority.

The Egyptian representative withdrew his amendment.[619]

The Observer of Caritas International said a refugee should only be liable to expulsion if he made himself unworthy of asylum, by becoming truly dangerous either to the State which had received him or to the community of which he formed part. It should be borne in mind that a refugee could not return to his country of origin and that a refugee might sometimes be treated more severely than his case deserved. If an expulsion order was made against him, he would be unable to find any country that was prepared to grant him the necessary entry visa. He would have to choose between staying in the country and going underground, and returning to his own country and facing the certain death that awaited him there.

During the Second World War, a party of Jewish refugees sailing on a 'ghost ship' had scuttled itself after it had been turned away from any port at which it had sought refuge. He also referred to an Italian who, as a result of having to serve a sentence of 24 hours of imprisonment, had been served with notice of expulsion, but had remained there clandestinely. He had subsequently been sentenced 29 times to periods of imprisonment amounting in all to 9 years and 8 months,

The proviso relating to 'national security' and especially that relating to 'public order' seemed to his organization far too vague, and consequently harmful to the interests of refugees. Those provisions should be very clearly defined; it was

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[619] A/Conf.2/SR.14, pp. 18-25

capable of serving as justification for glaring abuse.[620] Expulsion on the ground of indigence would be contrary to Article 18 of the Draft Convention, to point XII of the 'Common Principles concerning the Protection of Migrants', Articles 8, 11 of Annex 2 of the Migration for Employment Convention (Revised) 1948 and to ch.VI, and particularly Article 18 of the ILO Recommendation concerning Migrants for Employment (1949) as well as Article 25 of the Standard Agreement on Migrant Workers.

If the execution of the order meant that the refugee must be delivered up to his country of origin, the sentence might be commuted to imprisonment, transportation or internment, either for life or until such time as an opportunity presented itself to the refugee to leave the country of asylum without damage to his life.

He referred to a meeting at which a resolution had been adopted calling for the intervention of the High Commissioner for Refugees.

The Egyptian representative wondered whether there was any ground for retaining paragraph 2 of the Article.

The Canadian representative stated that Canadian law - and probably the law of other countries too - provided discretionary clauses for the deportation on the ground that the person had become a public charge or was an inmate of a mental asylum or of public charitable institutions. It would be appreciated that considerable technical and political problems attached to the amendment of the Canadian laws in question. If the Conference could not concede that Canadian law did not infringe the provisions laid down in paragraph 1 of Article 27, his delegation might be obliged at some stage to enter a reservation.

The French representative observed that the French delegation was obliged to enter a formal reservation on any interpretation of the term 'public order' which would permit the expulsion of refugees on grounds of indigence. If there was neither the desire nor the courage on the part of Governments to embark on the necessary legislative changes required by the application of the Convention, it seemed pointless to draft it.

The President drew attention to resolution 309(XI)B adopted by ECOSOC on 13 July 1950 in which the Council recommended to all Governments that, pending consideration of the possibility of drafting an international Convention or model Agreement, they should consider making available to indigent aliens the same measures of social assistance as those accorded to their own nationals, and refrain from removing them from their territories for the sole reason of indigency. He also quoted the first two paragraphs of the resolution adopted by the Social Committee on 5 April 1951.[621]

The Belgian representative expressed his full support for the views of the French representative. Expulsion on the ground of indigence would also conflict with Article 18 of the Draft Convention dealing with Social Assistance.

The UK representative agreed with the observations of the Belgian and French representatives.

The Australian representative said Australian law prescribed certain circumstances in which a Minister could order the expulsion of an alien, for instance, when he had been an inmate of a charitable institution or a mental asylum. Such grounds were not regarded as indigency, and the provisions in question were not mandatory. The Australian delegation regarded the provisions as covered by the term 'public order' on the assumption that the definition of that term given by the UK representative had been accepted.

The Australian provisions resembled closely that of the UK. The Australian delegation considered that the position of its Government was clearly covered by the term 'process of law'.

The French representative said that, in the view of his Government, the fact that a refugee was penniless should most certainly not constitute one of the reasons which, taken together with other considerations of a different kind, would justify the expulsion of a refugee.

He nevertheless wished to emphasize that the French delegation had no intention of concluding a one-sided bargain which, for the French Government, would mean the assumption of multilateral obligations with regard to countries which would not grant to refugees rights equivalent to those which the French Government would undertake. It was by no means a theoretical consideration, since France very frequently had to take in refugees who had been expelled from other countries simply because they were penniless or possibly stateless.

Paragraph 1 of Article 27 was adopted unanimously.

The Belgian representative understood the motives which had prompted the French and Italian delegations to submit their amendments to paragraph 2 of Article 27. He nevertheless felt that the terms of their amendments went further than their authors had intended. He therefore wondered whether the reservation concerning national security would not meet the

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[620] See doc.E/CN.4/528, pp. 71-76

[621] E/CN.4/L.151

points which the French and Italian delegations had in mind; that was precisely what the Belgian amendment sought to do.

The French representative accepted the Belgian amendment to paragraph 2 and withdrew his own.

The Italian representative said his delegation would accept the Belgian amendment, provided that the word 'and' in the second line was replaced by 'or', and withdraw its own.

The Belgian representative accepted the Italian suggestion.

The French representative observed that the suggestion made by the Italian representative would restrict the scope of the Belgian amendment. If a refugee appealed, it did not necessarily follow that he would be heard and legally represented. The notion of the appeal and that of representation were complementary. He wondered whether, in the light of these circumstances, the Italian representative would agree not to press his amendment.

The UK representative appreciated the pertinence of the Italian representative's remarks. The position of the UK was similar, since there was no specially constituted tribunal. But the reference to the procedure, at least in the English text of the Belgian amendment, was not so specific as to make the text unacceptable to the UK Government. What mattered was that a refugee should have full opportunity of presenting his case to the competent authorities. He felt that the use of the formula 'either...or' would introduce a dichotomy into the procedure, and hence weaken the text.

The Italian representative accepted the UK representative's explanation. He hoped, however, that it would be possible to find a French wording which would faithfully translate his interpretation.

The French representative suggested that the end of the Belgian amendment might read as follows: '....to submit evidence to clear himself and to lodge an appeal *(présenter un recours)* and be represented before a competent authority.

The Luxembourg representative could support the French proposal, provided the words 'for the purpose' were added after the words 'or be represented'.

The Italian representative accepted the French and Luxembourg suggestions.

The UK representative stated that the new text was acceptable to his delegation; but he was not sure about the correct rendering in English of the term: *'présenter un recourse'.* His impression was that it was in point of fact equivalent to the English word 'appeal'. He suggested to amend the Belgian text to read: 'Except when national security does not permit....'.

The President, speaking as representative of Denmark, wondered how an appeal would be possible if the decision was taken by the King in Council. He assumed that the meaning of the text was that, in the event of a sentence of expulsion pronounced by the highest authority, the refugee would be given the chance of having his case re-examined. In countries where such a sentence would have been passed by a local authority, the appeal would be addressed to the court of higher instance.

The Netherlands representative proposed that the word 'imperative' be used to qualify the reference to national security.

The Netherlands proposal was adopted.

The Belgian amendment to paragraph 2[622] was adopted by 24 votes to none.

The High Commissioner for Refugees assumed that a refugee would not be expelled while his case was *sub judice.*

The Australian, Belgian, Netherlands and UK representatives stated that that was the practice in their countries, and such the interpretation they placed on paragraph 2.

Paragraph 2 was adopted, as amended, by 24 votes to none.

Paragraph 3 was adopted by 23 votes to none, with one abstention.

Article 27 as a whole and as amended was adopted by 23 votes to none, with one abstention.[623]

The Style Committee proposed the following text:

1. *Les Etats contractants n'expulseront un réfugié se trouvant régulièrement sur leur territoire que pour des raisons de sécurité nationale ou d'ordre publique.*

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[622] A/Conf.2/60

[623] A/Conf.2/SR.15, pp. 4-17

2. L'expulsion de ce réfugié n 'aura lieu qu'en exécution d'une décision rendue conformément à la procédure prévue par la loi. Le réfugié devra, sauf si des raisons impérieuses de sécurité nationale s 'y opposent, étre admis à fournir des preuves tendant àle disculper, à présenter un recours et à se faire représenter à cet effet devant une autorité compétente ou devant une ou plusieurs personnes spécialement désignées par l'autorité compétente.

3. Les Etats contractantes accorderont à un tel réfugié un délai raisonable pour lui permettre de chercher à se faire admettre régulièrement dans un autre pays. Les Etats contractantes peuvent appliquer, pendant ce délai, telle mesure d'ordre interne qu'ils jugeront opportunes.[624]

(This text is available in French only)

The Swedish representative drew attention to a discrepancy between the English and French titles of Article 32, the former using the words 'lawfully admitted', and the latter the words *'residant régulièrement au pays d 'accueil'.* In that connection, he drew attention to paragraph 5 of the report of the Style Committee[625] and said that he was prepared either to accept the phrase *'se trouvant régulièrement'* or the phrase *'residant régulièrement'.* But he felt it would be wise to delete the title.

On the suggestion of the President the title 'Expulsion' was adopted.

On the proposal of the UK representative, it was agreed that the phrase 'such a refugee' should be used in both paragraphs 2 and 3 in the English text.

Article 32, as amended, was adopted by 21 votes to none, with one abstention.[626]

Conclusions of the Executive Committee of the High Commissioner's Programme

The Committee adopted at its 28th Session in 1977 the following conclusion on Expulsion:

The Executive Committee

'(a) *Recognized* that, according to the 1951 Convention, refugees lawfully in the territory of a Contracting State are generally protected against expulsion and that in accordance with Article 32 of the Convention expulsion of refugees is only permitted in exceptional circumstances;

(b) *Recognized* that a measure of expulsion may have very serious consequences for a refugee and his immediate family members residing with him;

(c) *Recommended* that, in line with Article 32 of the 1951 Convention, expulsion measures against refugees should only be taken in very exceptional cases and after due consideration of all circumstances, including the possibility for the refugee to be admitted to a country other than his country of origin;

(d) *Recommended* that, in cases where the implementation of an expulsion measure is impracticable, States should consider giving refugee delinquents the same treatment as national delinquents and that States examine the possibility of elaborating an international instrument giving effect to this principle;

(e) *Recommended* that an expulsion order should only be combined with custody or detention if absolutely necessary for reasons of national security or public order and that such custody or detention should not be unduly prolonged.'

National Measures

In Algeria the Government replied that an expulsion order against a refugee may be suspended. He may be assigned to residence.

In Belgium, according to Article 56 of the *Aliens Act,* an alien recognized as a refugee may not be removed from the kingdom except after a decision of removal *(renvoi)* taken on the advice of the Consultative Committee on Aliens or by an expulsion order taken in accordance with Articles 21 and 26 of the *Aliens Law.*

In no case may an alien be removed to the country which he has fled because his life or liberty was threatened.

In France according to the Ordinance of 2 November 1945 (No.45.2658) as amended by the Law of 3 July 1965 (No.65-5260), Article 27, the sanctions taken against an alien who infringes an expulsion order are not applied if it is shown that

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[624] A/Conf.2/102/Add.1, Article.32

[625] A/Conf.2/102

[626] A/Conf.2/SR.35, p. 20

the alien finds himself in the impossibility of leaving French territory. The impossibility shall be considered to be shown if the alien proves that he cannot return to his country of origin nor proceed to another country. He may be assigned to residence.

In the German Federal Republic according to 11 (2) of the Aliens Law of 28 April 1965,[627] an alien who enjoys political asylum, a homeless foreigner and an alien refugee may, if they reside lawfully in the Federal Republic, be expelled only for grave reasons of public order and security.

Judicial Decisions

There exist numerous court decisions. A few may be cited:

The European Court of Justice upheld in *Van Duyn v. The Home Ounce* (1975 Ct 357) the exclusion of an alien national of the European Community on the ground that he intended in the UK to attend the College of Scientology, the freedom of movement of workers under Article 48 of the Treaty of Rome notwithstanding.

In Austria the Supreme Administrative Court held on 6 May 1957[628] in the case of a person who had come to Austria as a refugee in 1949, then emigrated to Brazil and entered Austria with a Brazilian travel document and visa valid until 2 January 1954 and then again with a travel document and visa valid until 15 April 1955, and who had asked for extension as a refugee under the 1951 Convention, that he was not entitled to stay beyond that period as he was resident in Brazil and had to be treated like an ordinary alien.

The Supreme Court held on 20 October 1958[629] that the expulsion of a Hungarian refugee does not conflict with the Geneva Convention because such a decision of a Court means only the expulsion of an alien from federal territory but not expulsion or refoulement to a certain foreign territory. The administrative authority may suspend the execution of a decision to leave federal territory for valid reasons (§§ 6/2 and 7 of the Law on the Aliens Police). The decision of the Court does not conflict with the Convention, only in its execution the Convention has to be taken into account.[630]

The Supreme Administrative Court had, on 11 January 1955,[631] to decide on an appeal of an alien who had been recognized as a displaced person, and against whom an unlimited residence ban had been issued and confirmed on appeal. The appellant had been sentenced on 6 December 1949 to four years prison according to § 128, *Criminal Code;* the residence ban had been pronounced on 27 November 1953. The appellant claimed that he had conducted himself in an orderly way since his conviction. The residence ban was upheld. (Similarly, and with reference to Articles 2 and 32 of the Convention, the same Court on 12 December 1956.)[632]

The Constitutional Court had, on 2 June 1962,[633] to decide on the case of a Yugoslav refugee against whom an unlimited residence ban had been pronounced according to § 3(1) of the *Aliens Police Law* and Article 32, paragraph 3 of the Convention; the decision had been confirmed on appeal. The suspension had been subjected to the condition that the appellant refrains from any activities which may lead to disturbing the peaceful relations of Austria with other States or are directed to interfere with the internal conditions of another State. In 1960, the appellant had participated in Munich in a Congress of a Croat organization and had been elected to the Board of the Central Executive Committee and member of the Council for Austria of that organization. The organization intended, it was claimed, to overthrow the present Government of Yugoslavia and to separate Croatia from Yugoslavia. According to § 3 of the *Aliens Police Law* a residence ban may be pronounced against an alien whose residence in Austria endangers public peace, order or security, or is contrary to other public interests.

The Court held that the decision did not violate § 5(2) of the *Constitutional Law for the Protection of Personal Freedom* nor article 13(1) of the *Basic Law.* According to the latter, freedom of expression exists within the limits established by law. The decision had been based on law. If the decision had at all infringed on freedom of expression, such infringement was not unconstitutional. The decision was upheld.

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[627] BGBI.I, p. 953

[628] Z.36815612, Dalloz 1959 p. 830

[629] (1958) XXIX OGH (S) 258

[630] similarly OGH 25 May 1959 (Convention 1959 XXX (S) 144, Supreme Administrative Court 19 December 1955 (1617/55-3), 11 January 1955 (403/54-2)

[631] Z.403/54

[632] Verf GH 126/56

[633] Verf GH B 251/61

In Belgium the Court de Cassation held on 16 February 1970, that the possession of a travel document entitles the holder to return to Belgium, notwithstanding an expulsion order.

In France the Conseil d'Etat held on 24 October 1952[634] that the existence of a violation of *'l'ordre public' is* not to be discussed by the *Conseil d 'Etat.* (Likewise, *Conseil d 'Etat* 2 May 1938).[635]

In the Federal Republic of Germany, the Federal Constitutional Court held on 25 February 1981[636] that measures for the termination of stay may not be taken against asylum-seekers before the termination of the procedure.

The Supreme Federal Administrative Court held, on 14 July 1959,[637] in the case of a Polish refugee who had emigrated to Australia and had returned to the Federal Republic with an Australian travel document and whose residence permit had been renewed several times but who had stayed beyond that period, and to whom a residence ban had been issued, that he was no longer lawfully in the territory and was not protected by Article 32 of the Convention, only by Article 33; a residence ban may be issued against him, but only with the limitations of Article 33, paragraph 1.

The same Court held on 30 September 1958,[638] that the establishment of sojourn and domicile of an alien who entered illegally became legal, for example by the grant of a residence permit. The immediate execution of a residence ban against a homeless foreigner or an alien refugee is not possible, except in the case of Article 33, paragraph 2 of the Convention. Expulsion on the grounds of Article 32 paragraph 1 is no longer possible if the refugee has lived for years in the Federal Republic. Not every offence justifies expulsion on the grounds of public order. Expulsion may not be executed before it has been decided finally.

The same Court held on 16 October 1975,[639] in the case of a refugee who had been convicted for theft and receiving and who had been ordered to be expelled according to § 10(1) of the *Aliens Act,* that the principle of proportionality had to be applied; there was danger of repetition of the offence and the order was confirmed.

The principle of proportionality was also emphasized in BVerwGE (55)8-133.

The same Court held on 14 December 1970[640] that an alien against whom a residence ban had been pronounced but who could not leave the Federal territory because he could not enter another country, resides in Federal territory without culpable delay.

Commentary

Paragraph 1

Expulsion means any measure which obliges the refugee to leave the territory of a Contracting State, for instance, a residence ban. The decision may be taken by an administrative or judicial authority, but not simply by a police of ricer. Article 32 does not apply to a refugee who was admitted for a limited period but stays in the territory beyond the authorized period. To refugees unlawfully in the territory Articles 31 paragraph 2 and 33 apply. As to the grounds of national security and public order, it results from the discussions that they do not include 'social causes' such as indigence, illness or disability. They include convictions for criminal offences but the offence must be sufficiently serious as to constitute a violation of public order. Minor offences and, in particular, infractions of the aliens legislation, are not included. The principle of proportionality must be observed, that is, the expulsion must, in the circumstances, be the appropriate measure; the seriousness of the measure has to be weighed against the interests of public order and national security.

Paragraph 2

The term 'due process of law' is used in Anglo-Saxon law and occurs in amendments to the American Constitution. In these countries there exists, therefore, a jurisprudence as to its meaning. It has a procedural and a substantial aspect.

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[634] Sirey 1953 III p. 51

[635] Sirey 1941 III p. 24, 3 April 1940, Sirey 1941 III p.6

[636] NJW 1981 p.1436

[637] BVerwGE I C 174.58

[638] BVerwGE 231

[639] BVerwGE 1020-75

[640] BVerwGE I B 54-70

Procedurally, it means a decision reached in accordance with a procedure established by law, and containing the safeguards which the law provides for the class of cases in question, in particular equality before the law and the right to a fair hearing. Substantially, it means that the decision must be based on law, that it may not be unreasonable, arbitrary or capricious and must have a real and substantive relation to its object.[641]

'Compelling reasons of national security' has a similar meaning as in Article 28 of the Convention. The exception may be invoked, in particular, when it is not in the public interest that the reasons for the decisions should be divulged, for example, in espionage cases.

'Appeal' includes a request for reconsideration by the same authority where no appeal to a higher authority is provided for under national law, for example, when the decision is taken by the highest authority.

'A person or persons designated by the competent authority' applies in those cases where the decision is taken by the Minister; he may appoint certain officials or a board to hear the refugee or his representative.

Paragraph 3

It must be assumed that, as in Article 31 paragraph 2, this requires that the refugee be given the necessary facilities to find admission into another country. While in Article 31 paragraph 2 the Contracting States may apply the restrictions which *are* necessary, that is, an objective standard, paragraph 3 of Article 32 speaks of such internal measures as the Contracting State *deems* necessary, that is, in the view of the competent authority.

Some Contracting States do not, in fact, execute expulsion orders but take internal measures such as assignment to residence. No expulsion order may be carried out unless another country is willing to admit a refugee. Expulsion to a country where the refugee has well founded fear of persecution is excluded, except under the circumstances of Article 33 paragraph 2.

ARTICLE 33. PROHIBITION OF EXPULSION OR RETURN ('REFOULEMENT)

1. No Contracting State shall expel or return *('refouler')* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Travaux Préparatoires

The Draft Convention as adopted by the *ad hoc* Committee at its first session contained the following Article 28:

> No Contracting State shall expel or return, in any manner whatsoever, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.[642]

The Committee made the following comments:

> 'The turning back of a refugee to the frontiers of a country where his life or freedom would be threatened on account of his race, religion, nationality or political opinion would be tantamount to delivering him into the hands of his persecutors.
>
> 'The Convention of 1933 contains a provision of this kind.[643] In the present text reference is made not only to the country of origin but also to other countries where the lift or freedom of the refugee would be threatened for the reasons mentioned. This Article does not imply that a refugee must in all cases be admitted to the country where he seeks entry.[644]

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[641] cf. Black *Law Dictionary,* 5th ed.

[642] E/1618

[643] The Convention of 28 October 1933, Article 3, paragraph 2, reads: 'It undertakes in any case not to refuse entry to refugees at the frontiers of their countries of origin.'

[644] E/1618, p. 61

The UK commented:

> 'Article 28. His Majesty's Government will continue to act, as they have done in the past, in the spirit of this Article. They have in mind, however, certain exceptional cases, including those in which an alien, despite warning, persists in conduct prejudicial to good order and government and the ordinary sanctions of the law have failed to stop such conduct; or those in which an alien, although technically a refugee within the meaning of Article 1 of the Convention is known to be a criminal. In such and similar exceptional cases His Majesty's Government must reserve the right to deport or return the alien to whatever country is prepared to receive him, even though this involved his return to his own country.'[645]

'(a) In considering the practical interpretation in this paragraph His Majesty's Government will be bound to have regard to the alien's prospects of obtaining admission to another country; and they cannot undertake to defer deportation indefinitely where it is obvious that the alien is not likely to succeed within a reasonable period in obtaining admission to the country to which he seeks to go.

'(b) In any case where a refugee is returnable to a country where he has no reason to fear persecution, His Majesty's Government would not be prepared to defer his deportation beyond the date when his returnability to that country expires.'

At the second session of the *ad hoc* Committee, the UK representative said the difficulty was simply that the UK Government did not know exactly how to deal with cases where a refugee was disturbing the public order of the UK. He referred not to ordinary crimes, but to such acts as inviting disorder. In such cases, without a declaration of a state of emergency, the presence of a refugee might still be deemed to be highly undesirable. The UK Government had not thought of acting harshly in such cases and hoped indeed that the mere existence of the power to expel a man making trouble might serve to keep his behaviour within reasonable bounds. Every assistance would be provided to such a refugee to enter another country, even to the extent of helping him to obtain an entry permit. No deception would, of course, be practised on other countries, the position would be fully explained, but it might happen that such an individual would be more at home in some other country. If, however, all the efforts of the Government to obtain permission for a refugee to enter another country proved unavailing, a provision making it illegal to expel him might prove embarrassing. The power to expel him would not, of course, be employed if it would endanger his life, but if the persecution to which he would be subjected in his country of origin was not very serious, the Government of the country where he had taken refuge might feel a little more inclined to send him there if he refused to mend his ways and could not find another country to receive him. It should be recollected that under Article 2 a refugee owed duties to the country of hospitality.

The Israeli representative wondered whether the solution might not be to introduce into Article 28 something on the lines of the second sentence of paragraph 3 of Article 27. He realized that the UK Government would be unable to accept such a proposal unless its legislation provided for the internal measure referred to, but even so it might provide a solution for other countries faced with the same problem.

The US representative was sure that the UK representative would not wish to impair the provisions of Article 28. He felt that it would be highly undesirable to suggest in the text of that Article that there might be cases, even highly exceptional cases, where a man might be sent to death or persecution. There could be no objection to accepting the suggestion of the representative of Israel, though it appeared unnecessary, since all rights which Governments did not specifically give up in Article 28 were naturally reserved.

The Swiss representative said that his Government had at all times applied the principle stated in that Article. But the Swiss Government wished to have the right, in quite exceptional circumstances, to expel an undesirable alien, even if he was unable to find another country than the country from which he had fled.

In addition, he presumed that the Article did not mean that a refugee who reported to the authorities at the frontier of a country should be admitted solely because he could not be returned to the country where his life would be threatened. In his understanding, Article 28 covered only refugees residing lawfully in a country and not those who applied for admission or entered the country without authorization. An extraordinary influx of refugees into Switzerland might make it impossible for the Federal authorities to accept them all, despite their desire to receive as many as possible.

The Israeli representative said the Swiss observer was apparently under a misapprehension with regard to the application of Article 28. In the discussions at the first session it had been agreed that Article 28 applied both to refugees residing lawfully in a country and those who were granted asylum for humanitarian reasons. He feared that the Swiss Government might find its interpretation in conflict with the general feeling which had prevailed in the Committee when it drafted the Article.

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[645] E/AC.32/L.40, p. 57

The representative of the IRO wished to add that Article 28 meant exactly what it said. It imposed a negative duty forbidding the expulsion of any refugee to certain territories but did not impose the obligation to allow the refugee to take up residence.

The French representative considered that any possibility, even in exceptional circumstances, of a genuine refugee being returned to his country of origin would not only be absolutely inhuman, but was contrary to the very purpose of the Convention. Reference to the definition of 'refugee' in Article 1 would suffice to show how psychological factors had been taken into account in a legal text. To take such factors into consideration and to allow for the possibility, even in exceptional circumstances, of returning a refugee to his country of origin, on the other hand, was obviously quite contradictory. There was no worse catastrophe for an individual who had succeeded after many vicissitudes in leaving a country where he was being persecuted than to be returned to that country, quite apart from the reprisals awaiting him.

The Chairman felt that if the work of the Committee resulted in the ratification of Article 28 alone, it would have been worth while. He himself would regret any change in the wording but suggested that it should be left to the Drafting Committee to decide whether to seek a compromise which would satisfy the objections of the UK representative without affecting the provision, or whether to adopt the suggestion of the representative of Israel.

It was so agreed.[646]

The Drafting Committee proposed the following text:

> 'No Contracting State shall expel or return, in any manner whatsoever, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.'[647]

Article 28 was adopted.[648]

It read:

> 'No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.'[649]

The Committee made the following comment:

While some question was raised as to the possibility of exceptions to Article 28, the Committee felt strongly that the principle here expressed was fundamental and that it should not be impaired.[650]

At the Conference of Plenipotentiaries, an amendment was introduced by Sweden:

> Redraft Article 28 as follows:
>
> 'No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, *membership of a particular social group,* or political opinion, *or where he would be exposed to the risk of being sent to a territory where his life or freedom would thereby be endangered.*
>
> *'By way of exception, however, such measures shall be permitted in cases where the presence of a refugee in the territory of a Contracting State would constitute a danger to national security or public order.'*[651]

And one jointly by France and the UK:

Add a new paragraph 2 worded as follows:

> 'The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is residing, or who, having been lawfully convicted in that country of particularly serious crimes of offences, constitutes a danger to the community thereof.'[652]

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[646] E/AC.32/SR.40, pp. 30-34

[647] E/AC.32/L.42, Add.2

[648] E/AC.32/SR.41, p. 24

[649] E/1850

[650] E/1850, p. 13

[651] A/Conf.2/70

[652] A/Conf.2/69

The representative of Sweden said that the first part of the Swedish amendment was intimately linked with Article 1 of the Draft Convention. The remainder of the first paragraph of Article 28 as amended by his delegation was intended to cover cases where refugees were expelled to a country where their life would not be directly threatened, but where they would be threatened by further expulsion to a country where they would be in danger.

The French representative entertained certain misgivings as to the implications of the second of the two changes, namely the addition of the words 'or where he would be exposed to the risk of being sent to a territory where his life....'. In the first place, it called for a necessarily subjective decision by Contracting States. Secondly, and more importantly, if the countries adjoining contracting States were not parties to the Convention and decided, as might well prove to be the case, to refuse the right of residence in their territory to all refugees, the Contracting State might find itself in a very difficult situation, as the Swedish amendment would not allow it to expel refugees at all.

The UK representative said that his attitude was very similar to that of the French representative.

The representative of the Holy See said that while the Swedish amendment was undoubtedly inspired by honourable motives, the use of the phrase 'By way of exception' to introduce the second paragraph might expose refugees to certain risks. He preferred the amendment submitted jointly by the delegations of France and the UK which afforded greater safeguards to refugees. It would appear, however, that the original text of Article 28 was in itself sufficient to furnish those safeguards, as no exceptions were provided for. A State would always be in a position to protect itself against refugees who constituted a danger to national security or public order.

The Swiss representative said the Swiss Federal Government saw no reason why Article 28 should not be adopted as it stood, for the Article was a necessary one. He thought, however, that its wording left room for various interpretations, particularly as to the meaning to be attached to the words 'expel and return'. In the Swiss Government's view, the term 'expel' applied to a refugee who had already been admitted to the territory of a country. The term *'refouler'* on the other hand, had a vague meaning; it could not, however, be applied to a refugee who had not yet entered the territory of a country. The word 'return' used in the English text, gave that idea exactly. Yet, Article 28 implied the existence of two categories of refugees: refugees who were liable to be expelled, and those who were liable to be returned. In any case, the States represented at the Conference should take a definite position regarding the meaning to be attached to the word 'return'. The Swiss Government considered that in the present instance the word applied solely to refugees who had already entered a country, but were not yet resident there. According to that interpretation, States would not be compelled to allow large groups of persons seeking refugee status to cross its frontiers. He would be glad to know whether the States represented at the Conference accepted his interpretations of the terms in question. If they did, Switzerland would be willing to accept Article 28, which was one of the Articles in respect of which States could not, under Article 36 of the Draft Convention, enter a reservation.

The French representative agreed with the views expressed by the Swiss representative. Referring to the joint amendment, he observed that the Draft Convention admitted the principle that a State could refuse the right of asylum. It was therefore only just that States which granted that right should be able to withdraw it in certain circumstances. If they could not do so, they would think twice before granting an unconditional right.

He agreed that the right of asylum was sacred, but people should not be allowed to abuse it. France and the UK, however, had no intention of opposing the right of asylum on the ground of indigence. Reasons such as the security of the country were the only ones which could be invoked against that right.

The right of asylum rested on moral and humanitarian grounds which were freely recognized by receiving countries, but which had certain essential limitations.

The representative of the Holy See felt that the drafting of Article 28 called for some comments. Besides the grounds already stated in Article 28, on which the life or freedom of refugees might be threatened, the Swedish amendment sought to add the further ground of membership of a social group. Further grounds of the same kind could be found, but the enumeration might have dangerous consequences. In order to avoid such a contingency, he considered that it would be preferable to amend Article 28 to read: 'where his freedom would be threatened on account of the reasons which compelled him to seek refuge.'

With regard to the joint amendment, it was admittedly very difficult to avoid exceptions to any rule. What was meant, for example, by the words 'reasonable grounds'? He considered that the wording 'may not, however, be claimed by a refugee *who constitutes* a danger to the security of the country' would be preferable.

The UK representative associated himself with the remarks made by the French representative. It must be left to the State to decide whether the danger entailed to refugees by expulsion outweighed the menace to public security if they were permitted to stay. It must be borne in mind that the climate of opinion had altered since Article 28 had been drafted, and that each government had become more keenly aware of the current dangers to its national security. Among the great mass of refugees it was inevitable that some persons should be tempted to engage in activities on behalf of a foreign

Power against the country of their asylum, and it would be unreasonable to expect the latter not to safeguard itself against such a contingency. To condemn such persons to lifelong imprisonment, even if that were a practical course, would be no better solution.

As to the objections of the representative of the Holy See to the words 'reasonable grounds' the reason for doing so was that it must be left to States to determine whether there were sufficient grounds for regarding any refugee as a danger to the security of the country.

The Canadian representative associated himself with the remarks made by the French and UK representatives, and supported the joint amendment. Since the time of drafting Article 28 the international situation had deteriorated, and it must be recognized, albeit with reluctance, that at present many governments would find it difficult to accept unconditionally the principle embodied in Article 28.

The Swedish representative said the amendment of the representative of the Holy See would not cover the case of refugees expelled to a country which in turn might forcibly return them to their country of origin.

He would be grateful for enlightenment on the precise implications of Article 28. For instance, would it cover the situations when a refugee found himself either in a country which, without directly threatening his safety, was disposed to accede to demands for extradition to the country of origin or in a country which was not prepared to extradite but tended to expel them for reasons of its own?

The second paragraph of the Swedish amendment was intended to meet the case of refugees engaged in subversive activities threatening the security of their country of asylum, refugees who, after having been accepted as residents, were found to have been fugitives from justice in their own country, and refugees who failed to comply with the conditions of residence.

The President said he was not competent to provide the clarification requested by the Swedish representative, but he would like to point out that the interpretation of the phrase 'or where he would be exposed to the risk...' in the Swedish amendment presented certain difficulties. A government expelling a refugee to the territory of another State could not foresee how that State would act. The Danish Government would consider that if such expulsion presented a threat of subsequent forcible return to the country of origin, the life and liberty of the refugee were endangered. But the relative importance of the various considerations involved was a matter which would have to be decided by the government concerned.

The French representative pointed out that a State had not the right to return a refugee without a visa to another country than to his country of origin or of his lawful residence. Admittedly, it did sometimes happen, but the practice was illegal.

The Belgian representative said that Article 28 did not in fact provide for any of the cases mentioned by the Swedish representative.

Referring to the joint amendment, he asked for explanation of the words 'lawfully convicted' and wondered whether the word 'lawfully' meant that the authorities which had passed the sentence on a refugee had to provide full legal guarantees, or that the sentence must be final. If a refugee had been convicted by a court of first instance, could he nevertheless claim the benefit of Article 28?

The Danish representative said if the country of origin, which might perhaps be a great Power, demanded the return of a refugee, to refuse the demand might provoke a political crisis. He did not imagine that it was the intention of the Swedish and the joint amendment to cover such a case by the use of the words 'reasonable grounds for regarding as a danger to the security of the country in which he is residing' and 'constituted a danger to national security or public order' respectively, but he wished to be assured that there was no possibility of the text being interpreted in that manner.

The Netherlands representative supported the Swiss representative's observations. He appreciated the importance of the basic principles underlying Article 28 but, as a country bordering on others, the Netherlands was somewhat diffident about assuming unconditional obligations so far as mass influx of refugees was concerned, unless international collaboration was sufficiently organized to deal with such a situation.

The Italian representative associated himself with the statements of the Swiss and Netherlands representatives. He would like some clarification of the words 'expel or return'. Under Article 28, no Contracting State was to expel or return a refugee to a territory where his life or freedom would be in danger. On the other hand, he personally felt that a State could not commit itself not to expel or to return large groups of refugees who presented themselves on its territory, and who might endanger national security. The Italian delegation would reserve its position on Article 28, unless some satisfactory explanation was forthcoming.

The Swedish representative agreed with the Swiss, Netherlands and Italian representatives. He said he would withdraw the second additional phrase in the first paragraph of his amendment, stressing, however, that, as the President had also

observed, the text of the Article should be interpreted as covering at least some of the situations envisaged in that part of the amendment.

The representative of the Federal Republic of Germany supported the observations of the Netherlands representative concerning countries subject to a large influx of refugees.

The Belgian representative drew attention to the fact that in Article 28 the prohibition on returning refugees to the frontier could be construed as applying to individuals, not to large groups. Such was the interpretation placed on it by the Belgian Government.

The French representative pointed out that the joint amendment referred to the country in which the refugee was residing. The hypothesis of a large influx of refugees did not therefore enter into the question.

The President asked the authors of the joint amendment why they had included the words 'in which he is residing'. He recalled that Article 28 was to apply to refugees who had entered the country of residence unlawfully (Article 26) and lawfully (Article 27). He wondered whether the phrase 'in which he is residing' was to be interpreted in the broadest sense, namely 'in which he finds himself'.

The UK representative replied that the President's interpretation was correct as far as the English text was concerned. It might very occasionally be necessary to return the refugee almost immediately to the country of origin. Generally, however, the amendment would affect people who had been resident in the country for a considerable time, and it was for that reason that the word 'residing' had been used.

With regard to the Belgian representative's earlier remark, he agreed that the word 'lawfully' could be deleted. It was, in fact, final conviction that was meant, that was after any appeal had been heard and after the time of appeal had expired. There were certain discrepancies between the English and French texts. The French text referred to *'crimes ou délits'* while in English the word 'crime' was sufficient.

He considered that the Danish representative's point that refusal to return a refugee might cause political disturbance did not fall within the scope of Article 28. The matter of extradition treaties between countries of refuge and countries of persecution was outside the purview of the Convention. Most treaties of that kind specified that not only the facts should be established *prima facie* to the satisfaction of the country receiving the request for extradition but also that the crime for which the criminal was to be returned should not be of a political nature; at least, such was the case as far as the extradition treaties signed by the UK were concerned. It was further provided in most such treaties that, if a person was so returned, he should not be sentenced for any other offence until he had been given the opportunity of leaving the country.

The President considered that the Provisional Agreement concerning the Status of Refugees coming from Germany (signed at Geneva on 4 July 1936) would be of interest to the Conference. Article 4 paragraph 3 of that instrument read as follows:

> 'Even in the last-mentioned case the Governments undertake that refugees should not be sent back across the frontiers of the Reich unless they have been warned and have refused to make the necessary arrangements to proceed to another country or to take advantage of the arrangements made for them with that object.'

The French representative pointed out that that safeguard was provided in Article 27 of the Draft Convention. In 1951 the problem presented itself otherwise than it had done in 1936.

The President could not agree with the French representative, as Article 27 dealt only with refugees who had been lawfully admitted.

In reply to an observation by the Israeli representative the UK representative said that he had no objection to an addition to the text to show quite clearly that final conviction was meant. The words 'or offences' should be deleted from the English text.

The French representative, referring to the President's example of refugees in transit, remarked that the best solution would be to speed up their transit.

The Belgian representative said that it seemed agreed that the words 'in which he finds himself' should be substituted for the words 'in which he is residing', and the word 'finally' for the word 'lawfully' in the joint amendment. He thought it would be preferable to retain both the words *'crimes'* and *'delits'* in the French text.

The President pointed out that the French and English text were not intended merely for French and English speaking countries respectively; they might later have to be translated into other languages, including Chinese, Russian and Spanish, as provided for in Article 40 of the Convention. Other countries might interpret the words 'crimes or offences' in different ways. Since the words had a general sense in all countries, each individual legal system would have to place its own interpretation on them.

The French representative suggested that, in order to simplify matters, 'convicted because of particularly serious acts' could be substituted.

The Belgian representative could not accept those words, which he thought could be interpreted in an arbitrary manner.

The Israeli representative suggested that the Style Committee could bring the two texts into concordance. It would be useful in that event for the Style Committee to submit a report which could be used as a basic interpretative document for the authorities which would have to apply the provisions of the Convention. The joint amendment was undoubtedly intended to be applied by a given country in the light of its national legislation, provided that a convicted refugee had been convicted for some serious act. He was somewhat puzzled by the French representative's suggestion that the concept should be reduced to the word 'acts' because an act was not criminal unless legally designated as such.

The Swiss representative thought that if both the word *'crimes'* and the word *'délits'* were retained in the French text, but only the word 'crimes' in the English text, interpretation would be needed. It would be preferable to adopt the French provision in view of the difficulty of finding adequate translations of the words *'crimes'* and *'délits'.* The word 'acts' was doubtless not perfect, but if it were used the difficulties he had mentioned would be avoided.

The Netherlands representative stated that the same difficulty had recently arisen in connection with the revision of the Red Cross Convention. It had been resolved by the use of the word 'offence' in English and the word *'infraction'* in French.

The Italian representative proposed that the words 'or having been declared by a court an habitual offender' should be inserted in the joint amendment, in order to provide for the case of habitual criminals.

The UK representative hoped that the scope of the joint amendment would not be unduly widened. Although he appreciated the intention behind the Italian proposal, he pointed out that in order to be classified by a court as a hardened or habitual criminal, a person must either have committed serious crimes, or an accumulation of petty crimes. The first case could be covered by the joint amendment, and he was quite content to leave the second case outside the scope of the provision.

The Swedish representative withdrew the second part of his amendment[653] and proposed that the words 'in that country' be deleted from the joint amendment.

The Swedish proposal was adopted by 6 votes to 4, with 12 abstentions.

The joint French-UK amendment,[654] as amended, was adopted by 19 votes to none, with 3 abstentions.

Article 28, as amended, was adopted by 19 votes to none, with 3 abstentions.[655]

The Style Committee proposed the following text:

1. *Aucun des Etats contractants n'expulsera ou ne refouler, de quelque manière que ce soit, les réfugiés sur les frontières des territories où leur vie ou leur liberté serait menacée en raison de leur race, de leur religion, de leur nationalité ou de leurs opinions politiques.*

2. Le bénéfice de la présente disposition ne pourra toutefois être invoqué par un réfugié qu'il y aura des raisons sérieuses de considérer comme un danger pour la sécurité du pays où il se trouve ou qui, ayant été l'objet d 'une condamnation déf nitive pour un crime ou délit particulièrement grave, constitue une menace pour la communauté dudit pays.[656]

(The text is available in French only)

The Swedish representative pointed out that the words 'membership of a particular social group' should be inserted before the words 'or political opinion' in paragraph 2 to bring it into conformity with sub-paragraph (ii) of paragraph A of Article 1.

The French representative saw no objection to the insertion of those words, but requested that the Summary Record of the meeting should state that Article 33 was without prejudice to the right of extradition.

The Netherlands representative recalled that at the first reading the Swiss representative had expressed the opinion that the word expulsion' related to a refugee already admitted into a country, whereas the word return' *('refoulement')* related

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[653] A/Conf.2/76

[654] A/Conf.2/69

[655] A/Conf.2/SR.16, pp. 4- 17

[656] A/Conf.2/102/Add.1, Article. 33

to a refugee already within the territory but not yet resident there. According to that interpretation, Article 28 would not have involved any obligation in the possible case of mass migration across frontiers or of attempted mass migration.

He wished to revert to that point, because the Netherlands Government attached very great importance to the scope of the provision now contained in Article 33. The Netherlands could not accept any legal obligation in respect of large groups of refugees seeking access to its territory.

At the first reading, the representatives of Belgium, the Federal Republic of Germany, Italy, Netherlands, and Sweden had supported the Swiss interpretation. From conversations he had had since with other representatives, he had gathered that the general consensus of opinion was in favour of the Swiss interpretation.

In order to dispel any possible ambiguity and to reassure his Government, he wished to have it placed on record that the Conference was in agreement with the interpretation, that the possibility of mass migration across frontiers or of attempted mass migrations was not covered by Article 33.

There being no objection, the President *ruled* that the interpretation given by the Netherlands representative should be placed on record.

The UK representative remarked that the Style Committee had considered that the word 'return' was the nearest equivalent in English to the French term *'refoulement'.* He assumed that the word 'return' as used in the English text had no wider meaning.

The President suggested that in accordance with the practice followed in previous Conventions, the French word *'refoulement' ('refouler'* in verbal use) should be included in brackets and between inverted commas after the English word 'return' wherever the latter occurred in the text.

He further suggested that the French text of paragraph 1 should refer to refugees in the singular.

The Swedish suggestion that the words 'membership of a particular social group' be inserted in paragraph 1 after the word 'nationality' was adopted unanimously.

The two suggestions made by the President were adopted unanimously.

The UK representative said that the word 'trial' in paragraph 2 should read 'final'.

It was so agreed.

The UK representative observed that paragraph 2 spoke of refugees 'convicted by a final judgment of a particularly serious crime'. In the original version that clause had been limited to the country of residence. The existing text was the result of the Swedish amendment. He suggested that it might be more consistent to revert to the original wording, and say 'convicted by a final judgment in that country', since under what was now paragraph F of Article 1, a person who had committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee was excluded from the categories of refugees; he should therefore be considered as being also outside the scope of Article 33.

The Swedish representative explained that his amendment had been introduced to cover cases such as, for example, that of a Polish refugee who had been allowed to enter Sweden and who, in passing through Denmark, had committed a crime in that country.

The Belgian representative proposed that in order to meet the Swedish representative's point the words 'in a Contracting State' should be inserted after the words 'being convicted by final judgment'.

The French representative wondered whether the UK representative's reference to Article 1 really justified his amendment. Article 1 actually related to the examination to be undergone at the frontier by persons desirous of entering the territory of a Contracting State, whereas Article 33 was concerned with provisions applicable at a later stage. The coexistence of those two provisions was perfectly feasible.

The UK representative said that he understood paragraph F of Article 1 to refer, not to the place where the person had been convicted, but rather to the place where he had committed the crime in question. If he had committed a serious non-political crime outside the country of refuge before being admitted to it, he was disqualified from the protection of refugee status in the sense of both Article 1 and Article 33.

The Israeli representative asked whether the insertion of the words 'committed outside his country of origin' after the words 'particularly serious crime' would satisfy the Swedish representative.

The Swedish representative said that so far as he personally was concerned, the text was acceptable as it stood. He maintained that States would be free to expel convicted criminals and send them back to their country of origin.

The French representative agreed with the Swedish representative. Once the possibility had been recognized by Article 1 that the status of refugee could be denied to a person who had committed a crime in his country of origin, there could be no objection to allowing the expulsion of a refugee if it transpired that after his admission to the country of asylum that he had committed a crime in his country of origin. Moreover, the possibility of a refugee committing a crime in a country other than his country of origin or his country of asylum could not be ignored. No matter where a crime was committed, it reflected upon the personality of the guilty individual and the perpetrator was always a criminal. What was required was that a distinction should be made between real criminals and genuine refugees.

The President pointed out that paragraph 2 afforded a safeguard for States, by means of which they could rid themselves of common criminals or persons who had been convicted of particularly serious crimes in other countries.

The UK representative stated that in the light of the views expressed he would withdraw his amendment, the only purpose of which had been to clarify the meaning of the text.

The point of principle mentioned by the Belgian representative had already been abandoned by the decision of the Conference on the terms of sub-paragraph (b) of paragraph F of Article 1.

The President pointed out that, apart from the minor drafting changes, which had already been mentioned, the only other change in Article 33 would be the deletion of the words 'or return to territories where the life or freedom of the refugee would be threatened' from the title.

Paragraph 1 was adopted by 21 votes to none, with 2 abstentions.

Paragraph 2 was adopted by 20 votes to none, with 3 abstentions.

Article 33 as a whole and as amended, was adopted by 20 votes to none, with 3 abstentions.[657]

The United Nations Declaration on Territorial Asylum

The General Assembly of the UN adopted unanimously, on 14th December 1967 by Resolution 2312 (XXII), the Declaration on Territorial Asylum. It reads *inter alla:*

'Article 3.

1. No person referred to in Article 1, paragraph 1 (that is, persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism) shall be subjected to measures such as rejection at the frontier, or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

'2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.'

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of the Article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Conclusions of the Executive Committee on the High Commissioner's Programme The Committee adopted at its 28th Session in 1978 Resolution No.6 on Non-Refoulement which reads:

The Executive Committee

(a) *Recalling* that the fundamental humanitarian principle of non-refoulement has found expression in various international instruments adopted at the universal and regional levels and is generally accepted by States;

(b) *Expressed* deep concern at the information given by the High Commissioner that, while the principle of non-refoulement is in practice widely observed, this principle has in certain cases been disregarded;

(c) *Reaffirms* the fundamental importance of the observance of the principle of non-refoulement - both at the border and within the territory of a State - of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees.

At its 31st Session in 1981 the Committee adopted Resolution No. 17 on Problems of Extradition Affecting Refugees, which reads:

The Executive Committee

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[657] A/Conf.2/SR.35, pp. 20-25

(a) *Considered* that cases in which the extradition of a refugee or of a person who may qualify as a refugee is requested may give rise to special problems;

(b) *Recognized* that refugees should be protected in regard to extradition to a country where they have well-founded reasons to fear persecution on the grounds enumerated in Article 1 (A)(2) of the 1951 UN Convention Relating to the Status of Refugees.

(c) *Recognized* the fundamental character of the generally recognized principle of nonrefoulement;

(d) *Called upon* States to ensure that the principle of non-refoulement is duly taken account in treaties relating to extradition and as appropriate in national legislation on the subject;

(e) *Expressed the* hope that due regard be had to the principle of *non-refoulement* in the application of existing treaties relating to extradition.

(f) *Stressed that* nothing in the present conclusions should be considered as affecting the necessity of States to ensure, in the basis of national legislation and international instruments, punishment for serious offences, such as the unlawful seizure of aircraft, the taking of hostages and murder;

(g) *Stressed that* the protection in regard to extradition applies to persons who fulfil the criteria of the refugee definition and who are not excluded from refugee status by virtue of Article 1 (F)(b) of the 1951 UN Convention relating to the Status of Refugees.'

Regional and National Measures

The European Convention on Extradition of 13 December 1957[658] provides in Article 3:

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that person's position may be prejudiced for any of these reasons.

Similar provisions can be found in the Belgian-German Extradition Agreement of 17 December 1958[659] and the Austro-German Extradition Agreement of 22 September 1958.[660]

The Committee of Ministers of the Council of Europe adopted on 29 September 1967 Resolution No. (67) 14 on Asylum to Persons in Danger of Persecution which reads *inter alia:*

2. They (i.e. the Member Governments) should in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

3. If, in order to safeguard national security or protect the community from serious danger, a Member Government contemplates taking measures which might entail such considerations, it should, as far as possible accord to the individual concerned the opportunity of going to a country other than that where he would be in danger of persecution.

Resolution Refugee(80)9 adopted by the Committee of Ministers on 27 June 1980 provides:

The Committee of Ministers, under the terms of Article 159 of the Statute of the Council of Europe,

'Recommends Governments of Member States:

1. Not to grant extradition when a request for extradition emanates from a State not party to the European Convention on Human Rights and when there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person concerned on account of his race, religion, nationality or political opinion, or if his position may be prejudiced for any of these reasons;

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[658] Eur.Tr.S. No.24

[659] U.N. Tr.S.vol.324 No. 4735, p.173

[660] BGBI of the GFR 1966 II, p.1341

2. To comply with any interim measures which the European Commission of Human Rights might indicate under Rule 36 of its Rules of Procedure, as, for instance, a request to stay extradition proceedings pending a decision on the matter

The Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969[661] provides in Article II paragraph 3:

> No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I paragraphs 1 and 2.

The Commonwealth Law Ministers adopted at a meeting held in London from 26 April until 13 May 1966, a Scheme relating to the Rendition of Fugitive Offenders within the Commonwealth and recommended that effect be given to the Scheme in each Commonwealth country. It provides in Article 9:...

(2) The return of a fugitive offender will be precluded by law if it appears to the competent judicial or executive authority

(a) that the request for his surrender, although purporting to be made for a returnable offence, was in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions, or

(b) that he may be prejudiced at his trial or punished, detained or restricted in his personal liberty by reasons of his race, religion, nationality or political opinions.....

The American Convention on Human Rights adopted at Costa Rica on 22 November 1969[662] provides in Article 23:

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinion.

In Austria the Law of 7 March 1968 concerning the Right of Residence of Refugees according to the 1951 Convention provides in § 4:

> The Provincial Governor is further competent to declare whether a refugee constitutes for serious reasons a danger to the security of the Republic of Austria or whether he constitutes, after having been convicted by final judgment for a crime for which a prison sentence of more than five years is provided, a danger to the community.

These functions of the Provincial Governor are at present exercised by the Security Directorate of the Province concerned.

The Law concerning Extradition and Legal Assistance of 4 December 1979[663] provides in § 19:

> 'Extradition may not take place if it is to be feared that:

1. The criminal proceedings in the requesting State would not correspond or have not corresponded to the provisions of Articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.'[664]

2. The punishment inflicted or to be expected or the preventive measures would not be executed in a manner corresponding to the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[665]

3. The person to be extradited would be prosecuted or otherwise severely prejudiced for reasons of his origin, race, religion, membership of a particular social group, nationality or political opinions in the requesting State (Extradition asylum).'

In Australia, the *Extradition Act* 1966 prohibits extradition on the same grounds as stipulated in the European Convention on Extradition.

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[661] U.N.Tr.S. No. 14691

[662] Int.Legal Materials (1970) p.673

[663] BGB1.1979 Nr.183

[664] BGB1.Nr.201/1958

[665] BGB1.No.210/1958

In the Federal Republic of Germany, the *Aliens Act* of 28 April 1965 provides in § 14:

(1) An alien may not be removed to a State in which his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinions. This does not apply to an alien who for serious reasons constitutes a danger to security, or who constitutes a danger to the community because he has been finally convicted for a particularly serious crime.[666]

(2) In the case of these aliens an announcement must be made of their removal and an adequate period must be set. If the removal of an alien to certain States is not admissible, this has to be indicated in the announcement.

Judicial Decisions

The European Commission of Human Rights has held that expulsion or extradition of a person may, in certain exceptional cases, be contrary to the European Human Rights Convention and particularly Article 3 (which prohibits cruel or inhuman treatment) if in the country to which the person is to be sent, due to the very nature of the regime of that country or to a particular situation in that country, basic human rights such as are guaranteed by the European Convention might be either grossly violated or entirely suppressed.[667]

The European Commission had in August 1974 to deal with the case of *Amerakane v. UK* Amerakane had taken part as an Air Force officer in an attempt on the life of the King of Morocco. Amerakane fled to Gibraltar, whence he was forcibly returned to and executed in Morocco. The widow was granted an *ex gratia* payment for damages in the amount of £375,000.

There exist a number of decisions in which extradition was refused on the ground that the offence had been of a political character because it was held that the requested person might be disproportionately punished or persecuted for political reasons in the requesting State.[668]

In Austria the Supreme Court had, on 29 May 1958, to decide on an extradition requested for various crimes against property by Yugoslavia. It was held that extradition be refused because the requested person had well-founded fear of persecution in the requesting State. The Court referred to the principle of Universal Criminal Law *(Weltstrafrechtsprinzip)* which enabled the Austrian courts to try the offender. The extradition request was refused on the basis of Article 33 of the 1951 Convention. It was held that extradition had to be refused, in particular if the internationally recognized rights of refugees could be violated by the extradition; in this case the subsidiary right of prosecution in Austria should be used. This also applied in the same Court on 30 December 1959.[669]

In the Federal Republic of Germany the Federal Constitutional Court had, on 4 February 1959,[670] to decide on an extradition request by Yugoslavia on a charge of embezzlement and other offences. Yugoslavia had undertaken to observe the principle of speciality. The requested person had applied for asylum in the Federal Republic on the ground that the Yugoslav Consul had accused him of decorating a Yugoslav pavilion at Munich inadequately and of having been in contact with Yugoslav emigrés. He claimed to have been employed in the Mixed Service Organization of the British Forces in Germany and of having been a member of the Serbian National Union, and also of having assisted the Germans during the war in a Labour Service Unit.

The Court held that the definition of political persecution in Article 16(2) of the *Basic Law* had to be interpreted widely. It also applied to non-political prosecution if the requested persons were, for political reasons, exposed to measures of persecution endangering their lives or restricting their personal liberty after extradition.

In criminal proceedings, the promises of speciality had lost their former value and the distinction between criminal and political acts had disappeared in certain States, in which criminal law was applied to further political ends; such promises could scarcely keep political considerations from determining the scope of the punishment. Extradition was refused.

The same Court had, on 17 November 1979,[671] to decide on the extradition of a person to Yugoslavia on a charge of embezzlement. The appellant had been recognized as a refugee in France where his extradition had been refused. The

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[666] Article 32 paragraph 2 of the 1951 Convention

[667] Decision of 26 March 1963 on Application 1802/1962, Yearbook of Human Rights 1963 vol.6 p.462, Decision No. 2143/64, Yearbook of Human Rights 1964 vol.7 p.341, at p.328, 330

[668] Switzerland, Federal Tribunal 30 April 1952 (BGE vol.78(52), p.99, UK High Court of Justice Reg. v. Governor of Brixton Prison ex P.K. and others, (1955) 2 WLR 116.

[669] Os 303/58, 15 June 1950, 3 Os 100150

[670] BVerfGE 193/57, NJW 1959 p.763

[671] BVerfGE 654/79

Court held that the German Federal Republic had the right to re-examine his refugee status, but that the recognition in France constituted a 'weighty item of circumstantial evidence indicating that the person concerned is in fact politically persecuted'. The case was referred back. Similarly Higher Court of Cologne on 11 August 1980.[672]

In Italy, extradition of a refugee to his country of origin was refused by the Naples Court of Appeal, Investigating Section[673] and by the Naples Court of Cassation on 19 November 1958.

In the US, the District Court of the Northern District of Illinois had, on 23 November 1938, in *US ex ret. Weinberger v. Schlotfeldt,*[674] to decide on the deportation of a Jew to Czechoslovakia. The Court held that it was common knowledge that at that time in Central Europe the Jews were being persecuted, their property being confiscated, and that they were obliged to seek sanctuary in other countries.

A Jewish alien who had always supported himself, had never been arrested except for once being fined for a traffic violation, and had never been guilty of a crime involving moral turpitude, could not be deported to Czechoslovakia because at the time of entry he was not in possession of an unexpired immigration visa. Deportation would be cruel and inhuman punishment. *Habeus corpus* was granted.

Commentary

Paragraph 1

The words 'to the frontiers of territories where his life or freedom would be threatened' have the same meaning as in Article 31 paragraph 1, that is, the same meaning as 'well-founded fear of persecution' in Article 1 A(2) of the Convention. It applies to the refugee's country of origin and any other country where he also has a well-founded fear of persecution or risks being sent to this country of origin. The question arises whether the provision applied to non-admittance at the frontier and to extradition. The words 'in any manner whatsoever' would seem to indicate that this is the case. It was ruled by the President of the Conference that the Article does not apply to mass migrations.[675] In the course of drafting, other words such as 'not to turn back' were used. In Belgian and French law *'refoulement'* also covers rejection at the frontier. The argument that this entails a right to asylum is not correct. The State admitting the refugee is not obliged to grant him asylum, and may even expel him to another country willing to admit him (Article 31).

As to extradition it would also seem to be covered by the words 'in any manner whatsoever'. The French representative at the Conference asked, however, that it should be put in the Summary Record that the Article was without prejudice to the right of extraditions[676] The UK representative claimed that the matter of extradition treaties between countries of refuge and countries of persecution was outside the purview of the Convention. Most treaties of that kind specified that not only should the fact be established *prima facie* to the satisfaction of the country receiving the request for extradition, but also that the crime for which the criminal was to be returned was not of a political nature. At least, such was the case as far as the extradition treaties signed by the UK were concerned. It was further provided in most such treaties that, if a person was so returned, he should not be sentenced or imprisoned for any other offence until he had been given the opportunity of leaving the country.[677]

These arguments are hardly convincing. The question arises in cases where extradition is requested for a non-political offence and the requested person is in fear of disproportionate punishment or of persecution apart from punishment for one of the reasons mentioned in Article 1 of the Convention. The Convention supersedes, in any case, extradition treaties concluded previously by the same parties. It appears that the question has been clarified by the European Convention on Extradition and by court decisions. Article 33 should be applied to extradition, at least by analogy.

Paragraph 2

As to paragraph 2 it constitutes an exception to the general principle embodied in paragraph 1 and has, like all exceptions, to be interpreted restrictively. Not every reason of national security may be invoked, the refugee must constitute a danger to the national security of the country. If he engages in espionage for his country of origin, he will

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[672] Aus1. 11/80-3/80

[673] File Nr.119 of 15 September 1953

[674] 26 FSuppl. 283

[675] A/Conf.2/SR.35 p.21

[676] A/Conf.2/SR.3 5 p. 11

[677] A/Conf.2/SR.16, p.13

rarely be a *bona fide* refugee; if he spies for another country, it is difficult to see why he should, on this ground, be returned to his country of origin. As to criminal activities, the word 'crimes' is not to be understood in the technical sense of any criminal code but simply signifies a serious criminal offence. Two conditions must be fulfilled: the refugee must have been convicted by final judgment for a particularly serious crime, and he must constitute a danger to the community of the country. What crimes are meant is difficult to define since the principle that the criminal, not the crime, is to be punished applies. Certainly, capital crimes such as murder, rape, armed robbery and arson are included. However, even a particularly serious crime, if committed in a moment of passion, may not necessarily constitute the refugee as a danger to the community. On the other hand, a refugee who has committed a particularly serious crime and many minor offences may well, as a habitual criminal, constitute a danger to the community. The principle of proportionality has to be observed, that is, in the words of the UK representative at the Conference, whether the danger entailed to the refugee by expulsion or return outweighs the menace to public security that would arise if he were permitted to stay.[678] In the Federal Republic of Germany refugees sentenced to long-term prison sentences are given the choice either to serve their sentence or to return to their country of origin.

To make the refugee serve his sentence and then to repatriate him, almost amounts to double jeopardy. The words 'in that country' in the joint French-United Kingdom amendment were deleted. Persons who have committed a serious non-political crime prior to their admission to the country of asylum as refugees are, however, excluded from the application of the Convention under Article 1 F(b). Thus, only crimes committed in the country in which the refugee finds himself and crimes committed in another country to which he had been admitted as a refugee, are included.

The provisions of Article 31 paragraph 2 and Article 32 paragraph 3 apply also to Article 33 paragraph 2, that is, the refugee should be allowed a reasonable period within which to seek admission in another country than a country of persecution and the necessary facilities to obtain such admission. The Office of the UN High Commissioner for Refugees is frequently informed of such cases so as to enable it to try and find another country for the refugee concerned.

ARTICLE 34. NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Travaux Préparatoires

The Secretariat Draft contained the following Article 28:

1. The High Contracting Parties shall facilitate the assimilation and naturalization of refugees (and stateless persons) to the fullest possible extent. They shall make every effort *inter alla to* reduce the charges and costs of naturalization proceedings for destitute refugees (and stateless persons).

Comment

The decision of the State granting naturalization, in this respect, is absolute. It cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalization confers on the naturalized citizen a series of privileges, including political rights.

Nevertheless, without establishing formal obligations in this respect, States can be requested to facilitate to the fullest possible extent, the naturalization of refugees, *inter alla* by giving favourable consideration to requests for naturalization received from refugees and by reducing the financial obstacles which procedural charges and costs may represent to destitute refugees.

Observations on Article 28

In connection with this Article the idea has been suggested that after a fairly long lapse of time (for example, 15 years) the authorities of the country in which the refugee or stateless person had settled might propose to him that he should apply for naturalization. If he failed to do so within a year, or did not give valid reasons for such failure, the Contracting Party would be entitled to consider itself as released from the obligations of the Convention.

1. In favour of this idea the following arguments may be advanced: the position of a *de jure* or *de facto* stateless refugee is abnormal and should not be regarded as permanent. If after fifteen years the refugee is unwilling or unable to return to his country of origin and the country where he is established is prepared to grant him its nationality, he should

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[678] A/Conf.2/SR.16

become naturalized. If, indeed, it is recognized that an individual has the right to a nationality, as a counterpart it should be the duty of the stateless person to accept the nationality of the country in which he has long been established - the only nationality to which he can aspire - if it is offered him.

If a political change subsequently occurred in the refugee's country of origin nothing would prevent him from returning and regaining his first nationality. The fact that it was not he who had taken the initiative would make it all the more difficult to reproach the refugee with his change of nationality.

In conclusion, if this idea were adopted it would no longer be possible to excuse certain refugees - as has been done in the past - of 'settling down in a condition of statelessness'.

2. The following arguments may be advanced against this proposal: even after fifteen years a refugee may remain fundamentally attached to his country of origin and cherish the hope of returning. For example, the Italians who sought asylum abroad after the establishment of the Fascist regime in 1922 were able to return to their country twenty years after. Nationality should not be imposed on a refugee in violation of his inmost feelings.

Compulsory naturalization would be particularly inappropriate in the case of persons who have been prominent politically and represent a cause or a party.

Finally, it is not always true that after a change of regime the Government of the country of origin will at once reinstate in their original nationality refugees who have in the meantime acquired a new one. This may necessitate formalities and entail delays. In some cases the new Government may keep political opponents at a distance by preventing or delaying reinstatement.[679]

The French draft contained the following Article 23:

> The High Contracting Parties undertake as far as possible to facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

At the first session of the *ad hoc* Committee, the French representative stressed the differences between the two texts. According to the terms of the French draft, the High Contracting Parties undertake not only to reduce the charges and costs of naturalization, but also to expedite the proceedings for the benefit of the refugees. It would not seem that that addition, to which the French Government attached some importance, should give rise to any difficulties.

The Turkish representative preferred the French text.

The UK representative did not consider either text to be completely satisfactory. He did not think, in fact, that his Government would be prepared to undertake either to reduce the period of length of residence expressly provided for by the law as a condition for naturalization, or to expedite the proceedings, a step which would entail giving priority to the applications of refugees over those of other foreigners. The procedure caused no undue delay. Moreover, the charges and costs of naturalization were so low in the UK that they could hardly be further reduced.

For these two reasons, he would prefer that the Committee should retain only the first sentence of the Article, perhaps adding to it the idea that destitute refugees should not be refused naturalization owing to inability to meet the costs.

The Belgian representative pointed out that in certain countries the process of naturalization was neither as rapid nor as inexpensive as in the UK. It might be desirable, therefore, to include in the Article an appeal to such countries to accelerate their procedure and agree to reduce the charges for refugees.

The French representative explained that the expression 'to expedite...proceedings' did not apply to the duration of the period of residence, but only to the administrative formalities taking place between the submission of the application and the decision.

Article 28 (Article 23 of the French text) was adopted.

The representative of the IRO recalled the suggestion made in the observations of the Secretariat. If the suggestion was adopted in principle, it should be included in the Convention itself, since it would have a direct bearing on the field of application of that instrument.

The Chairman felt that the question was part of the problem of the elimination of statelessness, which did not fall within the scope of the Convention which was intended to give refugees a minimum number of advantages which would permit them to lead a tolerable life in the country of reception.[680]

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[679] E/AC.32/2

[680] E/AC.32/SR.22 pp. 2-4

The Belgian representative pointed out that there were either conditions of residence which were not included in the Convention but which followed either from various international instruments or general regulations applicable to foreigners. In Belgium, for example, a foreigner could engage in a liberal profession only after the completion of ten years residence. Article 29 was therefore not entirely redundant.

In particular, the Belgian Government had no objection to adding the period spent in Belgium during the occupation to the period of regular residence, on condition that the person concerned had been authorized to reside regularly after the end of the war.

The Belgian delegation was therefore not opposed to the first principle enunciated in Article 29.

The Turkish representative wondered whether Article 29 would apply in the case of naturalization, that is, whether the time spent in countries to which they had been deported would be included in the total period of residence imposed by law upon foreigners who wished to become nationals of the country of residence.

The Belgian representative thought the reply was in the affirmative.

The Chairman thought the Committee seemed to agree on the principle that the country to which a person had been deported should accept the period spent there as a deportee as a period of regular residence. The next question was whether a country other than that to which deportation had taken place should also take the deportation period into account and should add that time to the subsequent period of residence in its own territory.

The Belgian representative was unable to agree to the second principle. The result of its application to naturalization would be that, in determining the period of residence, the time spent in a foreign country would be taken into consideration. That would be contrary to the whole purpose of the requirement of residence prescribed by law and to the practice followed in that respect by the Belgian Government.

If a deportee were to return to the country in which he had previously resided, his period of residence in that country might be considered as uninterrupted by the fact of his deportation. That was the only privilege which could be granted to a deportee in that respect. Hence, in determining the period of residence required for naturalization which, in principle, should have been uninterrupted, the time he had spent in the country prior to deportation would be added to the period of residence subsequent to his return.

The Chairman agreed with the opinion expressed by the Belgian representative. In determining the period of residence, a State could not be required to take into account time spent outside the country.

The UK representative was entirely in agreement with the Chairman. Article 29 could not be accepted if it were to go further than that.[681]

The Working Group proposed the following text:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.[682]

That text was adopted.[683]

Austria made the following comment:

> Because of the exceedingly large number of refugees in Austria in proportion to Austrian nationals, the 'assimilation and naturalization' of all refugees living in Austria cannot be guaranteed.[684]

Chile made the following comment:

> Article 29 provides for special facilities for the naturalization of refugees, either by expediting the naturalization proceedings, or by a reduction in the charges and costs of such proceedings. Such exceptional treatment would not appear to be based on a just appraisal of the situation of a foreign refugee as compared with that of a foreigner not in that category. Indeed, a refugee arrives in the country by chance, and in many instances only because he was not able to go anywhere else at the time when he was forced to leave his own country or the country of his former residence. As against this, other foreigners come to the country of their own choice and to

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[681] E/AC.32/SR.22 pp. 6-8

[682] E/AC.32/L.32, Article 29

[683] E/AC.32/SR.25, p. 12

[684] E/AC.32/L.40, p. 58

> contribute their labour or capital. There would not appear to be any justification for placing such people in a position of manifest inferiority as compared with refugees. It would therefore seem more equitable to treat them both on the same basis and to subject them to the provisions of the same laws. Exceptional treatment would in any case infringe the provisions of Supreme Decree No. 3690 of 16 July 1915 on the naturalization of foreigners, the provisions of which have hitherto been enforced without difficulty, and without departure from the strict standards of justice and equality, in all cases to which they are applicable.[685]

Italy made the following comment:

> 'As regards the provisions of the Convention relating to the obligation to be undertaken by Italy in respect of refugees, such as naturalization, giving wage-earning possibilities, etc., the Italian Government cannot possibly accept any clause the enforcement of which could in a any way embitter - even slightly - the internal situation at present causing the gravest concern due to over-population and unemployment.'
>
> It goes without saying that the Italian Government, confronted as it is with a yearly excess of births of half a million citizens, cannot be expected to commit itself or even to accept recommendations relating to the naturalization of refugees having just entered its territory.[686]

At the second session of the *ad hoc* Committee, the Israeli representative wondered whether there was a legal definition of the word 'assimilation'. The word 'naturalization' was well known and had a distinct meaning, but the word 'assimilation', well-known in sociology, bore a rather unpleasant connotation vaguely related to the notion of force. If it was merely intended to mean the making accessible of facilities for learning the language of the country, there could be no objection to it. If, however, assimilation were voluntary, there would be no need for any mention of it, and if it were not voluntary, it would be an attack on the spiritual independence of the refugees. It had to be remembered that the real refugees were the political refugees, such as the Spanish republicans. It appeared that France did not intend to assimilate the Spanish republicans who had fled into that country, nor did the republicans themselves wish to be assimilated. In view of these considerations, he proposed that the word 'assimilation' be deleted from Article 29.

The Venezuelan representative quoted a provision of one of his country's laws on resettlement and immigration, in which the word 'assimilation' contained no suggestion of compulsion. Venezuela hoped that immigrants and refugees would be absorbed within the national community and not remain isolated; it hoped, in other words, that they would be assimilated. The word 'assimilation', however vague legally, had thus in practice much meaning; he thought that it should be retained.

The French representative supported the remarks of the Venezuelan representative. He considered that the term 'assimilation' closely corresponded to the conditions which the refugees should fulfil in order to qualify for naturalization.

As regards the term having a legal significance, it occurred several times in the new nationality code adopted in France, not only in the preamble but in the actual provisions themselves. It was employed in particular with reference to the automatic acquisition of nationality. In the opinion of the French delegation, not only was there no objection to using the term in Article 29, the final aim of which was the naturalization of the refugees and which, he might add, was only a recommendation, but there might be an advantage in doing so.

The Israeli representative suggested that the words 'adaptation' or 'adjustment' were preferable to assimilation. He suggested, however, that the matter be left as it stood, and that the Drafting Committee be asked to consider the introduction of a more suitable word; it was clear that all were agreed on the concept.

The Chinese representative thought that the word 'assimilation' should be retained, as it expressed exactly the intention of the Article.

The Canadian representative also favoured the retention of the word.

The Swiss representative stated that Swiss Federal legislation did not provide for any different treatment of refugees in the matter of nationality. They were treated in the same way as other aliens who were required to have resided lawfully in Switzerland six years during the twelve years preceding their application, before they could submit a valid application for naturalization. Sojourn in Switzerland as a refuge counted as lawful residence. In point of fact, a longer period of residence was required in order to ensure that the applicant had been sufficiently assimilated, and for that reason the preliminary draft of the new nationality law considerably lengthened the minimum period of lawful residence required.

The Italian representative said he wished to reaffirm the reservations already expressed by his Government with regard to Article 29. As a matter of fact, the question of naturalization did not generally arise in his country which, by reason of its geographical position and of certain other special considerations, could only offer temporary hospitality.[687]

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[685] E/AC.32/L.40, p. 58

[686] E/AC.32/L.40, p. 14

The Drafting Committee proposed the following text:

> 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.[688]

The Article was adopted.[689]

At the Conference of Plenipotentiaries the Italian representative said he wished to reserve the position of his Government on Article 29.

The UK representative felt Article 29 should be considered as a recommendation rather than as a binding legal obligation, particularly in view of the use of the words 'as far as possible' and 'make every effort'.

Article 29 was adopted by 20 votes to none, with 1 abstention.

Article 34 was adopted by 23 votes to none, with 1 abstention.[690]

The Italian representative announced that in signing the Convention the Italian Government intended to enter a reservation on Article 34.

The Style Committee proposed the text which is now in the Convention.[691]

Regional and National Measures

The Consultative Assembly of the Council of Europe by Recommendation 564(1969):

> 'Recommended that the Committee of Ministers, with a view to avoiding any perpetuation of the problems of European refugees, invite Member Governments:

(1) to facilitate naturalization:

(a) by a liberal interpretation of the legal requirements in respect of assimilation of refugees, taking particularly into account their total period of residence in the host country and the fact that most of them have adopted the way of life of the community which has welcomed them;

(b) by making every effort to remove or at least reduce, legal obstacles to naturalization such as the minimum period of residence when it exceeds five years, the costs of naturalization when it exceeds the financial possibilities of the majority of refugees, the length of time elapsing between the receipt of applications for naturalization and their consideration, and the requirement that refugees should prove the loss of their former nationality.

(ii) to accede to the UN Convention of 1961 on the reduction of statelessness and to treat *de facto* stateless refugees as thought they were stateless *de jure,* in accordance with the resolution of the Conference of Plenipotentiaries which adopted the afore-mentioned Convention;

(iii) to adopt provisions in national legislation with a view to enabling refugee children, born in a country to which their parents came as refugees, to obtain the nationality of that country at birth and refugee youths to obtain the nationality of their country of residence at their request, at the latest at their coming of age;

(iv) to grant refugees married to a national of the country of residence special facilities for acquiring the nationality of their spouse.'

The Committee of Ministers of the Council of Europe adopted on 26 January 1970 in reply to this Recommendation, Resolution 7092, which reads *inter alla:*

3. Considering that the acquisition by refugees of the nationality of the country of residence would effectively contribute to solving problems still raised in many States by the perpetuation of their present status...;

5. Resolves: to transmit Recommendation 564 to governments, inviting them to take such action as is possible for them.

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[687] E/AC.32/SR.34, pp.16-29

[688] E/AC.32/L.42, Add.2

[689] E/AC.32/SR.41, p. 24

[690] A/Conf.2/SR.35, p.25

[691] A/Conf2/102 Add.1, Article.34

In Austria refugees are not required to prove loss of previous nationality for the purpose of naturalization (Nationality Law of 15 July 1965, BGB1.1965 No.250 paragraph 10 subparagraph 8(2)(a)). Refugee status is considered as a ground specially to be taken into consideration in the sense of paragraph. 10 sub-paragraph.3 of the Law in order to shorten the period of residence required for naturalization from ten to four years, in certain Provinces to six years.

In Belgium, refugees according to the Convention, may request ordinary naturalization after three years of residence (instead of 6) and full naturalization after five years of residence (instead often). Refugees under the mandate may apply to the Ministry of Foreign Affairs, *Direction Générale de la Chancellerie et des Conentieux,* to obtain documents and certificates that they would not be able to obtain from their national authorities.

The children of refugees, like all minor aliens, may from the age of 16 acquire Belgian nationality by choice, or by ordinary naturalization, if they satisfy the required conditions.

In Denmark the requirements of the mastery of the Danish language and integration into Danish society for naturalization are modified for refugees. While the normal residence period required for naturalization is seven years, it is six years for refugees.

In Finland release from the former nationality is not required for naturalization in the case of refugees. A child born in Finland is a Finnish citizen by birth if the child would otherwise be stateless.

In France children born in France and resident in France at the age of majority and during the previous five years automatically acquire French nationality unless they decide against such acquisition in the course of the year preceding their majority. Refugee status is a favourable factor for naturalization.

In the Federal Republic of Germany refugee status is regarded as positive factor in the case of discretionary naturalization. While, as rule, a period of residence of at least ten years is required, residence for seven years is regarded as adequate in the case of refugees. Refugees are not required to secure release from their former nationality if this would constitute an unreasonable hardship. Naturalization proceedings for refugees are expedited. The naturalization fee is reduced by 25% for refugees.

In the Netherlands favourable account is taken of refugee status when considering applications for naturalization. While the normal period of residence required is five years, refugees are normally required to have resided in the Netherlands for only four years. Refugees are not required to renounce their former nationality.

In Sweden where the period of residence required for naturalization is generally five years, refugees can obtain naturalization after four years of residence. In the case of refugees consent of the State of former nationality for loss of its nationality is not required.

In Switzerland refugees are, in practice, not required to renounce their former nationality. A facilitated federal naturalization of refugees is under consideration.

Judicial Decisions

In the Federal Republic of Germany the *Homeless Foreigners Law*[692] provides in § 21:

> The general provisions concerning naturalization apply to homeless foreigners. When examining the applications for naturalization, the special fate of the homeless foreigners shall be taken into consideration. In determining the fees for naturalization the economic situation of the applicant shall be considered.

The Federal Supreme Administrative Court held, on 27 February 1958,[693] that a homeless foreigner, when he applies for naturalization, has to show that he is capable of supporting himself and his family.

The Bavarian High Administrative Court held that there exists a public interest in the naturalization of refugees and that their applications have to be examined with sympathy.[694]

Commentary

Article 34 is in the form of a recommendation. It contains, nevertheless, the obligation to facilitate the assimilation and naturalization of refugees as far as possible and to make, in particular, every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. The term 'naturalization' covers also other

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[692] BGB1.1951 I p. 269

[693] BVerwGE 207/58 Nr.58

[694] D.Oe.V.1975 p. 578, likewise Fed.Supr.Adm.Court BVerwGE 49,49(48)

forms of acquisition of nationality. In several Contracting States the period of residence required has in fact been shortened for refugees and naturalization fees may be reduced in their case. The Office of the High Commissioner for Refugees may assist refugees in the payment of naturalization fees and charges under its Legal Assistance Scheme. In a number of States applicants for naturalization are required to prove that they will lose their former nationality on naturalization. Refugees are often unable to comply with this condition; they have, in law or in practice, been dispensed from this requirement by Contracting States.

ARTICLE 35. CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the UN which may succeed it, to make reports to the competent organs of the UN, the Contracting States undertake to provide them in the appropriate form with information and statistical date requested concerning:

(a) the condition of refugees,

(b) the implementation of this Convention, and

(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Travaux Préparatoires

The Secretariat draft contained the following provisions, Articles 26 and 27:

> Article 26
> The High Contracting Parties undertake to facilitate the work of the UN High Commissioner for Refugees and to maintain constant relations with him as long as a UN High Commissioner's Office for Refugees exists.

Comment

It is essential that there should be close and constant cooperation and trust between the High Commissioner and Governments; to achieve this, continuous relations between Governments and the High Commissioner are necessary.

It should be noted that the High Commissioner's Office for Refugees is not a permanent institution, but is to remain in existence for three years, as from 1 January 1951. It may be dissolved on 31 December 1953; equally, it may last a fairly long time. In any case, however, the fact that the Office is not a permanent institution should be taken for granted.

The temporary nature of the High Commissioner's Office should not, however, preclude the Convention from providing for systematic cooperation between the High Contracting Parties and the High Commissioner. Such cooperation would continue throughout the existence of the High Commissioner's Office.

It should be understood, nevertheless, that save only for the provisions regarding the High Commissioner, the termination of the High Commissioner's Office would not render the Convention inapplicable.

Article 27
The High Contracting Parties undertake to designate a national authority to compile and to communicate to the High Commissioner:

(a) statistics concerning refugees (and stateless persons) and the laws and regulations concerning the status of refugees;

(b) all information regarding the condition of refugees (and stateless persons) and the application of the present Convention.

Comment
As has been remarked above (Article 23), in the absence of an international authority there should be, in every country of asylum, a national authority responsible for refugees, and maintaining contact with the various national services dealing with refugees. This authority would be responsible for liaison with the High Commissioner.[695]

The French draft contained the following:

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[695] E/AC.32/2

Chapter XI
Cooperation with the United Nations High Commissioner for Refugees.

Article 21

1. The High Contracting Parties undertake to facilitate the work of the High Commissioner for Refugees.

2. In order to enable the High Commissioner for Refugees to prepare and submit his annual report to the competent organs of the UN, and High Contracting Parties undertake to provide him, in the form required by the Economic and Social Council, with data and information concerning the condition of refugees and the implementation of the present Convention.

Article 22

Each of the High Contracting Parties undertakes to designate a national authority:

(a) to centralize statistics on refugees, together with information relating to their condition;

(b) to maintain constant relations with similar authorities in other countries;

(c) to maintain constant relations with the High Commissioner for Refugees;

(d) to communicate to the High Commissioner for Refugees all regulations, laws, decrees etc. relating to the condition of refugees.[696]

At the first session of the *ad hoc* Committee, the UK representative expressed a preference for the suggestions by the French delegation in its Article 21.

The Israeli representative was not sure it would be proper for the Committee to adopt the text of Article 21, inasmuch as by providing that it should receive information on the implementation of the Convention, it ascribed to the High Commissioner for Refugees greater powers than those granted to him by General Assembly resolution 319A(IV). It might be preferable not to go beyond that resolution until the Economic and Social Council and the General Assembly had dealt further with the matter and had definitely established the High Commissioner's terms of reference.

The representative of the IRO replied that the annex to the General Assembly resolution authorized the High Commissioner to supervise the application of the Conventions providing for the protection of refugees, concluded under his auspices.

The Chairman felt that the Committee was free to adopt the text if it wished, since the General Assembly would in any case review the Draft Convention and would consider the Article in question in the light of the decision which by then it would have taken on the High Commissioner's terms of reference.

The Danish representative suggested that, since the Convention might be expected to outlive the temporary office of High Commissioner, it might be advisable to re-draft Articles 21 and 22 of the French proposal so that reference would be made throughout the UN agencies charged with the international protection of refugees rather than to the High Commissioner as such.

That suggestion was adopted.

The Venezuelan representative said he had the same objection to the words 'to designate a national authority' in Article 22 of the French draft that he had had to a similar phrase in Article 23 of the Secretariat draft; signatory States should not be obliged to establish a new and special authority for the purposes outlined in the Article. He thought, furthermore, that Articles 21 and 22 of the French draft might be combined into a single Article, as they were directed to the same end.

The Chairman remarked that paragraph (b) of Article 22 seemed superfluous.

The French representative did not insist on this retention, as signatory States would in any case find themselves obliged to maintain constant relations with authorities dealing with refugees in other countries, as that provision recommended.

Paragraph (b) of Article 22 of the French draft was deleted.

After a brief discussion, the Chairman suggested that the Secretariat might be asked to re-draft Articles 21 and 22 of the French proposal, combining them into a single Article as proposed by the Venezuelan representative and meeting the latter's objection by some such words as 'designate the authority which shall' perform the functions outlined. That would make it clear that those functions could, if desired, be entrusted to some authority already in existence.

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[696] E/AC.32/L.3

It was so agreed.[697]

The Working Group proposed the following Article 30:

1. The Contracting States shall facilitate the work of the agencies charged by the UN with the international protection of refugees such as the UN High Commissioner for Refugees.

2. In order to enable such agencies to make reports to the competent organs of the UN, the Contracting States shall provide them in the form prescribed with data, statistics and information concerning:

(a) the condition of refugees,

(b) the implementation of this Convention, and

(c) all regulations, laws, decrees etc. made by them concerning refugees.[698]

The Chairman pointed out that the Articles should stress the need for contact between the Contracting States and the agencies charged by the UN with the international protection of refugees.

He suggested that paragraph 1 be amended to read as follows: 'The Contracting States shall maintain contact with the agencies charged by the UN with the international protection of refugees such as the UN High Commissioner for Refugees, and shall facilitate their work.'

Article 30, as amended, was adopted.[699]

The US made the following comment:

> 'Tentatively it is proposed that paragraph 1 of Article 30 be revised to read as follows:
>
> The Contracting States undertake to cooperate with the UN High Commissioner's Office for Refugees, or any successor agency charged by the UN with the international protection of refugees, in the function of supervising the application of the provisions of this Convention.
>
> 'The beginning of paragraph 2 of this Article should be revised to read:
>
> In order to enable the High Commissioner's Of lice or any successor agency of the UN to make reports to the competent organs of the UN, the Contracting States undertake to provide them in the form prescribed with any data, statistics, and information requested concerning (etc.).[700]

At the second session of the *ad hoc* Committee, the US representative thought that the Committee in drafting Article 30 had been hesitant to bind Contracting States too definitely to cooperate with the UN High Commissioner for Refugees. Since, however, the Economic and Social Council had recognized the important link between the provisions of the Convention and the functions of the High Commissioner, there was no reason for that hesitancy. Paragraph 6 of the preamble to the Draft Convention, as approved by the Council (E/1618) read: *'Considering* that the High Commissioner will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention depends on the full cooperation of States with the High Commissioner and on a wide measure of international cooperation'. He hoped that that link would be recognized when the General Assembly approved the statute of the High Commissioner's Office.

The amendment proposed in the US representative's comment was therefore designed to remove the hesitant tone of Article 30. Some slight modification was required in the amendment as contained in document E/AC.32/L.40, since in the deliberations of the Committee it had been considered inappropriate to speak of a successor to a functionary who was on the point of taking office. The words 'or any other agency' and the words 'or any successor agency' in paragraph 2 by the words 'or any other appropriate agency'.

The Israeli representative supported the US amendment, on the understanding that it would be subject to further change if the High Commissioner's terms of reference were modified by the General Assembly.

The French representative saw no objection to accepting the wording just proposed by the US representative. But he thought it would be preferable to substitute the phrase 'in the requisite form' for the phrase 'in the form prescribed', since the latter might suggest that the High Commissioner had some powers *vis-à-vis* States, while the intention was merely to

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[697] E/AC.32/SR.21, pp. 9-10

[698] E/AC.32/L.32

[699] E/AC.32/SR.25, p. 12

[700] E/AC.32/L.40, pp. 59-60

ensure that States would submit information supplied in a manner sufficiently uniform to facilitate the work of the High Commissioner's Office.

The US representative suggested that the matter also be left to the Drafting Committee.

Article 30 as a whole was referred to the Drafting Committee.[701]

The Drafting Committee proposed the following text:

1. The Contracting States undertake to cooperate with the Office of the UN High Commissioner for Refugees, or other agencies charged by the UN with the international protection of refugees, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the High Commissioner's Office or other appropriate agencies of the UN to make reports to the competent organs of the UN, the Contracting States undertake to provide them, in the form requested, with any data, statistics and information requested concerning

(a) the conditions of refugees

(b) the implementation of this Convention, and

(c) all regulations, laws, decrees etc. made by them concerning refugees.[702]

Article 30 was adopted.[703]

The Committee made the following comment in its report:

> Article 30 was rewritten to take account of the terms of the Statute of the High Commissioner, approved by the General Assembly at its Fourth Session and amplified by the Economic and Social Council at its Eleventh Session.[704]

At the Conference of Plenipotentiaries, Australia introduced an amendment:

> Replace the words... 'with any data'...etc. by '...with any *necessary* data...' etc.[705]

Yugoslavia proposed:

> Delete the words 'or other agency charged by the UN with the international protection of refugees.'[706]

The Yugoslav representative, introducing his amendment, said the Yugoslav Government questioned the desirability of imposing on Contracting States the obligation of cooperation with some unknown agency of the UN that might be established in the future. Only after something was known of such an organization would it be possible to take a decision of that sort. Moreover, it was somewhat premature at the present stage to consider what would be the position on termination of the High Commissioner's activities.

The Australian representative believed that the Australian amendment was self-explanatory. Many Governments shared the Australian Government's concern about the growing burden of supplying documentation required by a large number of international organizations. While he was sure that the High Commissioner would not make many unnecessary demands, some formal limitation should, he thought, be imposed; hence his suggestion that the word 'necessary' should be inserted before the word 'data' in the fourth line of paragraph 2.

The Belgian representative drew the Conference's attention to a divergence between the French and English versions of paragraph 2 of Article 30, where the French text made use of the words *'toute institution...qui lui succédera';* the last three words did not appear in the English text.

The President believed that the presence of the words *'qui lui succédera';* might be due to an oversight in translation from the English.

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[701] E/AC.32/SR.40, pp. 34-36

[702] E/AC.32/L.42 Add.2, Article. 30

[703] E/AC.32/SR.41, p. 25

[704] E/1850, p. 13

[705] A/Conf.2/71

[706] A/Conf.2/31, p. 3

The Italian representative wondered whether the Yugoslav delegation fully appreciated the implications of its amendment to Article 30. The Convention would remain in force so long as the Contracting States adhered to it and it was unlikely that a new convention on the status of refugees would be entered into within the next ten years. The Office of the High Commissioner had been set up for a period of three years, and if it was replaced by some other organization of the UN, a new conference of plenipotentiaries would have to be convened for the purpose if the Yugoslav amendment was adopted.

As to the Australian amendment, the question arose who would decide what information was 'necessary'. The insertion of the word might even give rise to controversy. Limitations on the information that could be requested was provided under (a), (b) and (c) of paragraph 2, and if the information requested by the High Commissioner did not fall under any of those heads, governments would be in a position to regard it as unnecessary.

The French representative appreciated the concern which had inspired the Yugoslav amendment, but it did not think that the amendment was essential. The French delegation wished to draw attention to the fact that Article 30 represented an innovation by comparison with the provision of earlier conventions, and in particular those of the 1933 Convention, which had operated without any responsibility by an international organization to supervise its implementation; yet it could hardly be maintained that it had not given good results for that reason. His delegation had not submitted an amendment to Article 30, but it considered that the Article should be dealt with in connection with the Article on reservations (Article 36). The French Government considered that Article 30 was of those to which it might be obliged to enter a reservation.

The Italian representative said the Italian Government supported Article 30 in principle, subject to the conclusion of an agreement between it and the High Commissioner for Refugees.

The Australian representative believed that his delegation's point might alternatively be met by the deletion of the word 'any' from the fourth line of paragraph 2. The Australian delegation would also be interested to learn how supervision of the application of the provisions of the Convention, referred to in paragraph 1, would be carried out. Was it the intention that refugees should appeal to the High Commissioner against alleged contraventions of the Convention and that he should hear such appeals?

The Yugoslav representative said that, in the light of the comments made on the Yugoslav amendment, he would withdraw it.

The Belgian representative asked whether the English-speaking representatives would agree that the words *'qui lui succédera'* occurring in the French text of paragraph 2 should be reinstated in the English text.

The French representative preferred the expression *'qui lui succéderait'* which he thought would be safer.

The Belgian representative agreed.

The US representative said that at first sight he had no objection to the insertion of the words 'which may succeed it' but felt handicapped through not knowing why the phrase had been consistently omitted from the English text.

The President explained that Article 22 of the draft prepared by the Secretary General had laid down that the Contracting States should facilitate the High Commissioner's work, and that the succeeding Article had made provision for liaison between national authorities and the High Commissioner. The discussion had been based on the English text only, and it would appear that the phrase '*qui lui succédera'* should not have been retained in the French version.

The representative of the German Federal Republic submitted that if the phrase was reinstated in paragraph 2, it should also be included in paragraph 1.

The Belgian representative said his delegation could not agree to the vague expression *'toute institution'* which was used in the French text of paragraph 2.

The UK representative suggested that the words 'or other appropriate agency' in paragraph 2 be replaced by the words 'or other such organization', the link between the two paragraphs thus being made perfectly clear.

The Egyptian representative asked whether the reinstatement of the words 'which may succeed it' would imply that Contracting States might withhold their cooperation from existing organizations.

The representative of the German Federal Republic believed that there would be a discrepancy between paragraphs 1 and 2 if the latter was amended as proposed by the UK representative and a reference made to an agency which might succeed the Office of the High Commissioner. As the text stood at present there was at least the theoretical possibility that another UN agency, apart from the Office of the High Commissioner, could benefit from the cooperation of the Contracting States. If the UK amendment was adopted it would mean that as long as the Organization existed, it would be the only agency with which the Contracting States would be obliged to cooperate.

The French representative asked for clarification of the relation between paragraph 1 of Article 30 and paragraph C of Article 1. The two clauses contradicted one another, since paragraph C excluded from the benefits of the Convention

persons receiving protection or assistance from other organs or agencies of the UN, whereas paragraph 1 of Article 30 constituted an appeal to Contracting States to cooperate with those very agencies.

The representative of the German Federal Republic again urged that the reference in paragraph 1 to another agency should be qualified by the phrase 'which might succeed it'. No one could foresee the nature of future agencies and the scope of their responsibilities.

The French representative pointed out that States represented at the Conference, like States not represented there, would have every reason to refuse the cooperation called for in paragraph 1, especially since there was a question of cooperation with agencies not yet in existence. Moreover, paragraph 1 was in effect only a recommendation.

The Belgian representative considered that the French text conveyed the point of view that there was one organization competent to request the information referred to in paragraph 2, namely the Office of the High Commissioner, whereas the English text might give rise to a different interpretation.

The French representative considered that paragraph 1 carried with it an obligation on the part of the contracting States to cooperate, for example, with the UN Relief and Works Agency for Palestine refugees in the Middle East (UNRWAPRME) which, by paragraph convention of Article 1, were excluded from the benefits of the Convention. The French Government, which was a member of that Agency, could not understand why, under Article 30, Contracting States should undertake to cooperate with agencies responsible for refugees to whom the Convention would not apply. The obligations to be assumed by States should be clearly defined.

The UK representative recalled that paragraph convention of Article 1, unless amended by the Conference, would exclude the Arab refugees from Palestine from the definition of refugees. Consequently, the agency instituted for the protection of this group would not be covered by Article 30. He believed the simplest solution would be to reinstate in the English text the words 'which may succeed it'.

The French representative felt that there were cases where an Article could hardly be examined absolutely independently of the preceding and succeeding Articles. Article 30 was followed at little distance by the Article providing for possible reservations. So far as the French delegation was concerned, it was unable to come to a decision on Article 30 without first knowing whether it would be possible for it to enter reservations on that Article by virtue of Article 36. It had been somewhat surprised by the statement made by various delegations which, while accepting the amendment suggested by the representative of the Holy See to sub-paragraph (2) of Article 1, 'events occurring in Europe' or 'in Europe or elsewhere', had reserved the right to reconsider their decision, should the subsequent Articles of the Convention necessitate, in their view, certain changes to Article 1. The French delegation would like to know, whether in the opinion of the delegations which took that position - which, indeed, it was somewhat at a loss to understand - the possibility of entering a reservation on Article 30 was compatible with their expressed agreement to the text suggested by the representative of the Holy See.

The US representative said it must be made perfectly clear that the supervision of the present Convention must devolve upon the UN High Commissioner for Refugees Office or to the agency which succeeded it. He thought that the French text sought to entrust the supervision duty only to the High Commissioner's Office or its successor, and consequently supported the proposal that the French text of Article 3 0 be adopted. Thus any doubt about the role of future agencies would be removed.

The Belgian representative formally moved his earlier suggestion that the English text of Article 30 be brought onto line with the French text, particularly in the case of the words *'qui lui succéderait'.*

The Egyptian representative said that in Article 30 as now drafted, the word 'cooperate' did not imply direct action, and the Egyptian Government was unable to accept an implicit negation of cooperation with other agencies. The President said any international arrangement, whatever its form, created a community of the participating States. It went without saying that certain States might belong both to the community created by the Convention and another community, which also operated under the aegis of the UN. The Convention did not and could not prohibit the members of one community from cooperating with organizations entrusted with the application of arrangements set up by another.

The Danish representative proposed that the Australian amendment to paragraph 2[707] be further amended by deleting the words 'any necessary' from the proposed phrase 'with any necessary data'. The text of paragraph 2 would then read: '(The Contracting States undertake to provide them in the appropriate form) with data...'

The Australian representative agreed to the Danish proposal.

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[707] A/Conf.2/71

The French representative said the solution to the difficulty, so far as the French delegation was concerned, would be to adjourn the present discussion, thus permitting the conference to examine Article 30 at the same time as Article 36 on reservations. In the circumstances, and in view of the fact that it had not received the information for which it had asked, his delegation would not take part in the vote on Article 30.

The Belgian amendment reading: 'the Office of the UN High Commissioner for Refugees or any agency of the UN which may succeed it...' was adopted by 17 votes to 2, with 3 abstentions.

The Australian amendment, as further amended by the Danish representative, and consisting therefore of the deletion of the word 'any' from before the word 'data' in the fourth line of paragraph 2, was adopted by 18 votes to 2, with 2 abstentions.[708]

The Venezuelan representative, speaking on a point of order, announced that the Brazilian, Colombian and Venezuelan delegations, which, by coincidence, had all been absent the previous day when Article 30 had been discussed, had authorized him to state that they would reserve their position until it was reconsidered at the second reading.

The Style Committee proposed the following text:

1. *Les Etats contractants s 'engagent à coopérer avec le Haut-Commissariat des Nations Unies pour les réfugiés, ou toute autre institution des Nations Unies qui lui succéderait, dans l'exercice de ses fonctions et en particulier à faciliter sa tâche de surveillance de l'application des dispositions de cette Convention.*

2. Afin de permettre Haut-Commissariat ou à toute autre institution des Nations Unies qui lui succéderait de présenter des rapports aux organes compétents des Nations Unies, les Etats contractants s'engagent à leur fournir dans la forme appropriée les informations et les données statistiques demandées relatives:

(a) Au statut des réfugiés

(b) A la mise en oeuvre de cette Convention, et

(c) Aux lois, règlements et décrets, qui sont ou entreront en vigueur en ce qui concerne les réfugiés.[709]

(This text is available in French only)

The Netherlands representative pointed out that the English and French texts of Article 35 were not entirely concordant. He suggested that the discrepancy could be eliminated by the insertion in the English text of the word 'other' after the words 'High Commissioner for Refugees, or any' in paragraph 1, and the substitution of the words 'any other agency' for the words 'other appropriate agency' in paragraph 2.

It was so agreed.

The Venezuelan representative stated that the Venezuelan Government would have to enter a reservation in respect of the final phrase of paragraph 1, beginning with the words 'and shall in particular facilitate'.

Article 36 was adopted by 17 votes to none, with 7 abstentions.[710]

Commentary

The Statute of the High Commissioner's Office mentions in point 8 among the functions of protection of refugees:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

Resolution 428(V) of 14 December 1950 of the General Assembly of the UN by which the Statute, which is annexed to the Resolution, was adopted, calls upon Governments to cooperate with the UN High Commissioner for Refugees in the performance of his functions concerning refugees falling under the competence of his Organization, especially by 'Becoming parties to international conventions for the protection of refugees and taking the necessary steps of implementation under such conventions'.

The Preamble to the Convention says:

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[708] A/Conf.2/SR.25, pp.10-22

[709] A/Conf.2/102/Add.1, Article. 35

[710] A/Conf.2/SR.35, pp. 25-26

'Noting that the UN High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective coordination of measures taken to deal with this problem depends upon the cooperation of States with the High Commissioner.'

Under Article 35, cooperation with the Office of the UN High Commissioner for Refugees or any other agency of the UN which may succeed it, in the exercise of its functions and in particular the facilitation of its duty of supervising the application of the provisions of the Convention becomes, for the first time, a contractual obligation of the Contracting States. In spite of the remark made at the Conference, paragraph 1 contains an obligation, not a recommendation. No Contracting State has made a reservation on Article 35.

The High Commissioner exercises his task of supervising the application of the provisions of the Convention from his headquarters at Geneva and, in particular, through his branch offices in the various countries. He has sent a questionnaire to Contracting States asking them for information on the implementation of certain provisions of the Convention.

ARTICLE 36. INFORMATION ON NATIONAL LEGISLATION

The Contracting States shall communicate to the Secretary General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Travaux Préparatoires

At the second reading of Article 31[711] the representative of the US proposed that Article 31 should be amended to read: 'Each of the Contracting States shall, within a reasonable time and in accordance with its constitution, adopt legislation or other measures to give effect to the provisions of this Convention, if such measures are not already in effect'.

Article 31, as amended, was adopted.[712]

The Committee made the following observation in its report:

Article 31

Measures of implementation of the Convention

> The Convention for the Suppression of the Traffic in Persons and of Exploitation of the Prostitution of Others adopted by the General Assembly. Resolution 317(IV), 2 December 1949, Article 27 reads:
>
> Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure its application of the Convention.[713]

The UK made the following comment:

> 'Article 31. It is not the practice of His Majesty's Government to ratify or accede to any Convention unless and until they are satisfied that their legislation and administrative arrangements are in conformity with the provisions of the Convention. In the opinion of His Majesty's Government this is the proper principle to be followed in international relations, and they cannot accept this Article.'[714]

The UK representative said that the purpose of the UK comment on Article 31 was that his Government would prefer a text for that Article based on the principle that ratification or accession to the Convention implied that a State was already in a position to give effect to its provisions.

The Drafting Committee proposed the following text:

> ('Each of the Contracting States shall, within a reasonable time and in accordance with its constitution, accept legislative or other measures to give effect to the provisions of this Convention, if such measures are not already in effect.')[715]

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[711] See Article 35

[712] E/AC.32/SR.25, p. 12

[713] E/1618, p. 61. Footnote 2

[714] E/AC.32/L.40, p. 60

[715] E/AC.32/L.42, Add.1, Article 31

Article 31 was adopted, with the substitution in the French text of the heading 'Application' for the heading *'Mise en exécution de la Convention'.*[716]

At the Conference of Plenipotentiaries, the UK proposed to delete Article 31.[717]

The UK representative said the UK amendment proposed the deletion of Article 31 on the ground that it constitutes an innovation in international treaties. Such a provision already figures in one international instrument which had not been generally adopted, and also in a draft instrument where the propriety of its inclusion had been disputed. It was an accepted principle of international law that once a Convention had been ratified, it immediately came into force in the territory of the Contracting State concerned. Advantage was taken of the interval which elapsed between signature and ratification to make any adjustments necessary in domestic legislation. The same applied to accession. In the present case, however, it was provided that the Contracting State should, within a reasonable time, and in accordance with its constitution, adopt legislative or other measures, it being therefore pre-supposed that ratification would take place before the appropriate domestic legislation had been introduced. It was further pre-supposed that such measures could be taken at the discretion of the State within a reasonable time. Such latitude constituted a departure from existing practice. Moreover, he considered the Article superfluous, since the Convention laid down provisions which, in the case of most countries, were already covered by domestic law. If any legal adjustments had to be made, they should not be left for an undetermined interval after ratification of the Convention. The Article should therefore be deleted, since it would not only create a bad precedent, but would also have harmful effects in practice.

The Belgian representative completely shared the views expressed by the UK representative.

The Israeli representative said the UK representative had started out from the assumption that there existed only one method of implementing international conventions, namely, the method used by such countries as the UK and Israel. In point of fact, that was not so. There were two other types of methods, namely: the automatic type used, for example, under the US Constitution, and the type where ratification or accession preceded the taking of appropriate domestic legislative measures.

He agreed that in the case of those countries which applied the procedure followed by the UK, as well as in the case of those which used the procedure of automatic application, Article 31 was unnecessary. But for other countries and there were many of them in South America and some in Europe - the inclusion of the Article was essential, the more so inasmuch as the Convention sought to legislate for the whole world.

It was true that the expression 'within a reasonable time' was somewhat vague, but if its legal effectiveness was small, it at least carried certain psychological weight.

Nor was he able to agree with the UK representative's point that the provisions of the Convention already existed in all national legislations. The Swiss representative had realised a point pertinent to that issue in connection with Article 7, on personal status. But Article 7 was not the only one which raised that issue. He believed it would be very risky to ignore in the Convention, the practice applied by the third group of States which legislated after ratification.

The drafting of Article 31 was not satisfactory, and he would consequently suggest the insertion of the words 'if and where necessary' after the word 'adopt' in the second line. In that way, the first two types of countries would be covered, and the Article would be mandatory for the third type.

The UK representative was unable to agree with the Israeli representative. He accepted the definition of the first two types of procedure, but considered that it would be going too far to accept the third kind of procedure as recognized constitutional practice.

If allowance was made for such a practice, no Contracting State would know just what the position was with regard to the enforcement of a multi-lateral treaty. States would be in a position of inequality vis-a-vis one another. He conceded the difficulties of Federal States but those would be covered by the appropriate Federal State clause. The Convention must come into force on ratification.

There was no doubt that the current doctrine was that once the Convention had been ratified, the rights prescribed therein must be granted.

The Israeli representative agreed with the UK representative's criticism of the third class of countries, but maintained that it was impossible to eliminate that category by deleting Article 31. Without that there would be no hold over such countries. It would be in the best interests of the Convention and of refugees to retain Article 31.

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[716] E/AC.32/SR.41, Article 31

[717] A/Conf.2/85

The Belgian representative considered that the Israeli representative's very interesting statement dealt with a purely theoretical situation. So far as he knew, there existed no case where a country had ratified a convention without putting it into effect.

If the Israeli proposal was adopted together with Article 31 it would be impossible to know definitely whether the Convention was being effectively applied by the signatories, since the latter would always be able to invoke the excuse of the 'reasonable delay' required to bring their domestic legislation into harmony with the provisions of the Convention.

The Belgian delegation, for one, preferred the practice so far followed but wanted to be certain that ratification would be followed by effective implementation.

The Swiss representative said the necessity of modifying national legislation would involve the Swiss Federal Government in certain difficulties, since Swiss legislation provided, in the event of the country's accession to an international instrument, for the incorporation of that instrument in its national legislation. He therefore supported the UK proposal that the Article be deleted.

The Israeli representative said, on the point raised by the Belgian representative, that the term 'ratification' had a clear and generally accepted meaning. There was no implication that ratification must follow the adoption of appropriate domestic legislation. If the Belgian and UK conception that ratification must follow domestic legislative adjustment was reflected in Article 31, the difficulty would be solved, and he would have no further objection to raise.

The Netherlands representative stated that States which ratified a convention were obliged to apply it. If they could not do so because their national legislation was not adapted to the needs of the Convention, they were in default. The adoption of Article 31 would mean that defaulting States would be allowed to invoke the excuse of a reasonable delay in order to avoid applying the Convention in their territories. The Netherlands delegation therefore considered that it would be of greater service to substitute for Article 31 a clause which would make it obligatory for Contracting States to notify the Secretariat of the texts of the laws and regulations which they had adopted with a view to implementing the Convention. With such a clause there would be some check on the position.[718]

The Netherlands submitted the following amendment:

> 'Each of the Contracting States shall communicate to the Secretary General of the UN the laws and regulations which it may adopt to ensure the application of the Convention.'[719]

In reply to a question by the Belgian representative, the Netherlands representative admitted that there was a certain amount of overlapping between his amendment and Article 30 as amended, but thought it would nevertheless be useful to retain his amendment as a separate Article. His amendment was in conformity with the other Articles of the Convention. Sub-paragraph 2(b) of Article 30 might be consequentially revised at the second reading; if it was to be retained as it stood, he would reconsider the matter.

The President thought that the obligation which the Netherlands amendment sought to impose on Contracting States should be supplemented by an obligation of the Secretary General to communicate to Contracting States information on developments connected with the Convention occurring in other Contracting States. He therefore submitted that the idea underlying the Netherlands amendment might logically be considered in connection with Article 40 (Notifications by the Secretary General).

The Netherlands representative had no objections to the President's suggestion. With regard to the comment of the Belgian representative, he remarked that Article 30 specified that Contracting States should provide appropriate agencies of the UN with any data, statistics and information requested concerning the implementation of the Convention, whereas the Netherlands amendment provided that Contracting States should communicate the entire texts of the relevant laws and regulations.

He had originally introduced his amendment on the assumption that the UK proposal would be adopted, that the original text of Article 31 would thereby de deleted, and that his amendment would then take its place. His amendment should therefore be considered as a new Article.

Article 31 was rejected by 17 votes to 3, with 4 abstentions.

The Netherlands proposal for a new Article relating to measures of implementation was adopted by 7 votes to 3, with 13 abstentions.[720]

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[718] A/Conf.2/SR.25, pp. 22-27

[719] A/Conf.2/106

[720] A/Conf.2/SR.26, pp. 6-7

Commentary

It is true that every State ratifying or acceding to the Convention is obliged to put it into effect. In practice, implementation measures are sometimes taken after ratification or accession. Under Article 35 the Contracting States undertake to provide the High Commissioner with information on the implementation of the Convention and of laws, regulations and decrees which are, or may thereafter be, in force relating to refugees. Under Article 36 the Contracting States are obliged to communicate to the Secretary General of the UN the laws and regulations which thy may adopt to ensure the application of the Convention. This provision is designed, as was said at the Conference, to keep a check on the fact that Contracting States effectively implement the Convention.

ARTICLE 37. RELATION TO PREVIOUS CONVENTIONS

Without prejudice to Article 28, paragraph 2 of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Travaux Préparatoires

The Secretariat draft contained the following Article 31:

> 'In the case of Parties to the Conventions of 28 October 1933 and 10 February 1938 the present Convention shall not apply to refugees covered by those Conventions.'[721]

The Secretariat made the following Comment:

> Provision must be made for this eventuality, since Parties to both the 1933 and 1938 Conventions and the present new Convention would be subject to different obligations with respect to the same persons by reason of the effects of these two categories of Conventions.

The solution embodied in the above draft Article is that described in the Introduction (see page 9, Solution B), that is, the co-existence of the former and the new Convention.

At the first session of the *ad hoc* Committee, the French representative said that, in the opinion of France, one of the primary purposes of the Convention was to clarify as far as possible a very confused situation. France considered that a fresh start should be made in connection with refugees and stateless persons in the spirit of the UN Declaration of Human Rights.[722]

He was of the opinion that all conventions and agreements made between the two wars should be abrogated and replaced by the new Convention.[723]

The Belgian representative pointed out that, since it began to examine the Draft Convention, the Committee had favoured the idea that the new Convention should exist alongside the previous Conventions, the new Convention to represent the *lex generalis* and the previous Conventions the *lex speciali.* Article 31 of the Secretariat's draft was therefore no longer suitable.

The majority of States Parties to the Conventions of 1933 and 1938 would doubtless wish to ratify the new Convention. But as long as they had not denounced the previous Conventions they would be bound by those Conventions *vis-à-vis* the States which had ratified them but which had not become Parties to the new Convention. States Parties to the two classes of Conventions would therefore have two classes of obligations towards the same categories of refugees.

The US representative said if Article 31 was retained, it should be drafted in terms such as to make clear that for the High Contracting Parties to the new Convention the latter would replace the former Conventions, but that it did not affect former Conventions so far as Parties to those Conventions who did not become Parties to the new Convention were concerned.

In reply to a remark by the Belgian representative the US representative wondered whether the denunciation of a convention did not generally require some time. For example, Article 37 of the existing draft provided that the denunciation would only take effect one year after the Secretary General had been notified.

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[721] E/AC.32/2

[722] E/AC.32/SR.3, pp. 6-7

[723] E/AC.32/SR.9, p. 11

The Belgian representative pointed out that there was no difficulty about the time necessary for the denunciation to take effect; there was no major objection to the two Conventions being in force for a short time.

The UK representative was in favour of the new Convention replacing previous Conventions and wished to support the opinion of the Danish representative who considered it inadvisable for States to denounce the former Conventions.

The Israeli representative thought it was the practice of the UN not to terminate a convention until all the Parties had become Parties to the new instrument which was to supersede it.

In his opinion, a similar solution might well be adopted for the Draft Convention under discussion. In that way, it would be unnecessary to denounce the former Conventions because they would be automatically superseded when all Contracting Parties had become Parties to the new Convention.

The Chairman proposed the following text:

> The present Convention replaces the Arrangements of 5 July 1922,31 May 1924,12 May 1926, 30 June 1928 and 4 July 1936, and the Conventions of 28 October 1933 and 10 February 1938 and the Agreement of 15 October 1946, as between the Parties to the present Convention.
>
> It does not affect the operation of those arrangements for Parties thereto who are not Parties to the present Convention.

The Israeli representative thought that the text he had proposed, namely Article 28 of the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was the most appropriate.

In his opinion, the second sentence of the text submitted by the Chairman was unnecessary because it followed naturally from the first sentence.[724]

The Working Group proposed the following text:

1. Without prejudice to Article 23 paragraph 2 of this Convention, this Convention replaces the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, and the Conventions of 28 October 1933 and 10 February 1938 and the Agreement of 15 October 1946, as between all Parties to the Convention.

2. As between two States Parties to a previous instrument mentioned in paragraph 1 of this Article, one of which is not Party to this Convention, the previous Agreement shall continue in force.

3. Each of the above-mentioned instruments shall be deemed to be terminated once all the States Parties thereto shall have become Parties to the present Convention.

It was so decided.

The US representative proposed the deletion of the word 'and' each time it appeared in the third line of paragraph 1. Moreover, the word 'Agreements' in the last line of paragraph 2 should not be capitalized.

Article 32, as amended, was adopted.[725]

The Committee made the following observations:

> 'Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative and other measures necessary to ensure the application of the Convention.
>
> 'Paragraph 3 reproduces the last part of Article 28 of the Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.'

At the second session of the *ad hoc* Committee Article 32 was adopted unchanged.[726]

At the Conference of Plenipotentiaries Belgium proposed an amendment reading:

> 'Substitute the following for paragraph 2:
>
> As between two States Parties to a previous instrument mentioned in paragraph 1 of this Article, if one of the States is not Party to this Convention, the previous agreement shall continue in force between the two States in respect of the subject with which it deals.[727]

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[724] E/AC.32/SR.22, pp. 14-19

[725] E/AC.32/SR.25, p. 12

[726] E/AC.32/SR.41, p. 24

The Belgian representative said his amendment was purely textual. The existing wording of paragraph 2 seemed to imply that there could be only two States Parties to a previous instrument. His amendment corrected this drafting error.

The UK representative felt that since the Belgian amendment did not affect the English text and merely aimed at improving the wording of the French text, it might be referred to the Style Committee.

The President added that the English text was also somewhat defective from the point of view of style. He asked the Belgian representative whether he would withdraw his amendment, on the understanding that the text of Article 32 would be referred to the Style Committee.

The Belgian representative withdrew his amendment on that understanding.

Article 32, subject to textual modifications by the Style Committee, was adopted unanimously.[728]

The Style Committee proposed the text which is now in the Convention.[729]

Article 37 was adopted by 24 votes to none.[730]

Commentary

The introductory phrase means that, although the agreements concerned are superseded, the travel documents issued under them shall be continued to be recognized.

All pre-war treaties are superseded between Parties to them who have become Parties to the 1951 Convention. The Provisional Arrangement relating to the Status of Refugees coming from Germany of 4 July 1936[731] is not mentioned as it was replaced by the Convention of 10 February 1938. The additional Protocol to the Provisional Arrangement of 4 July 1936 and the Convention of 10 February 1938 concerning the Status of Refugees from Germany of 14 September 1939[732] which extended the application of those treaties to refugees from Austria must equally be regarded as superseded by the Convention between Parties thereto.

As regards the Arrangements, this goes without saying, as they were not legally binding. Although not mentioned in the text, the previous treaties remain in force between States not Parties to the 1951 Convention or if one State is a Party, the other not. Article 37 abrogates implicitly the denunciation provisions of the previous agreements as between Parties to the Convention: the previous agreements are superseded without formal denunciation, and without the waiting period prescribed for the denunciation to take effect.

The term 'Résidant Régulièrement' *('Lawfully Staying')*

Travaux Préparatoires

At the second session of the *ad hoc* Committee the French representative pointed out that the Convention contained various Articles concerning particularly fundamental rights of refugees, in which the expression *'résidant régulièrement'* did not appear at all. In other Articles different expressions were used according to the situations contemplated. He pointed out that the Articles in which that expression was used implied, in nearly all their provisions, that the presence of the refugees was more or less permanent. The expression *'se trouvant régulièrement'* which had been suggested instead, had already been used at least once in connection with the issue of identity papers. In that particular case, deliberate use had been made of a very wide term applicable to any refugee, whatever his origin or situation. It was therefore a term having a very broad meaning, which was unsuitable as substitute for the term *'résidant régulièrement'.*

He wished to remind the Committee that the expression was the result of a concession by the French delegation. At the first session, the ad hoc Committee had simultaneously examined the text prepared by the Secretariat and the text of the French proposal. In the Article in question, the term used in the French text had been 'résidence habituelle' which implied some considerable length of residence. As a concession, the French delegation had agreed to substitute the words 'résidant régulièrement' which were far less restrictive in meaning. He explained that this was not a purely formal

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[727] A/Conf.2/53

[728] A/Conf.2/SR.26, p. 8

[729] A/Conf.2/102/Add.1, Article 37

[730] A/Conf.2/SR.35, p. 26

[731] L.of N.Tr.S.vol. 181 No. 3952

[732] L.of N.Tr.S.vol. 192, p. 59

concession. In France, indeed, the word 'résidant' was understood to mean not only a privileged resident or ordinary resident, but also a temporary resident; the term 'résidant' which had those three connotations, was therefore very wide in meaning. Of course, the three meanings did not include certain cases very difficult to define, such as those refugees who might be in a certain territory for a very short period. But such cases would not, in fact, raise any problems since an examination of the various Articles in which the words 'résidant régulièrement' appeared would show that they all implied a certain settling down, and, consequently, a certain length of residence.

On considering Article 10 (right of association), for instance, it was difficult to imagine, in the most extreme cases, that a person who was in a territory only for a very short period would make use of the right of association. The other Articles using the phrase in question related to wage-earning employment and self-employment, and there was no need to say that they implied at least temporary residence. In that respect, he was prepared to make an exception in the case cited by the US representative, who had mentioned the possibility that a barrister might in exceptional circumstances come to plead before foreign courts. But he emphasized that in practice such cases were rare, at least in France. With regard to the Article on housing, it was obvious that where there was no residence, no housing problem could arise. Finally, the other Articles which also made use of that expression were those relating to labour legislation, public relief and freedom of movement.

Consequently, he considered that in all those Articles the only concrete cases that could arise were cases implying some degree of residence, if only temporary residence, and temporary residence would be covered by the present wording, at least as far as the French was concerned. He therefore strongly urged that the words 'résidant régulièrement' should be retained in the French text of the Convention.

The US representative thought that in the light of the exposition given by the French representative there might prove to be a distinction between the English and French texts. He would offer a suggestion for that distinction, but first, it would be necessary to settle the difference. It appeared that 'résidant' covered persons temporarily resident, except for a very short period, whereas according to English law he understood the word 'résidant' was to be retained in the French text, it would be necessary to find an English equivalent. Since he could think of no English equivalent, perhaps the French representative would be willing to eliminate the concept, and employ in the Articles with regard to which the problem arose terms meaning either 'habitually resident' or 'lawfully in their territory' - whichever was appropriate.

The French representative said that in the case of the Articles which referred both to a lawful resident and to the treatment of aliens generally, the problem of substance which might arise was not serious, since however residence was regarded, the refugees enjoyed the same treatment as accorded to aliens generally. On the other hand, grave and complicated problems might arise in connection with the Articles containing the most-favoured-nation clause, since it would be necessary to determine the force and scope of that clause. Consequently, he thought it advisable to stipulate that there was to be parallel application of the most-favoured-nation clause, but in respect of persons whose situation implied residence, if only of a temporary character.

The US representative thought the French representative was overlooking the existence of the phrase 'in the same circumstances', the effect of which was to provide that if an alien present in a country for a six week period was not to be granted a certain right, that right would not be granted to a refugee either, while if a certain right was to be granted to an alien in transit, the same right would be granted to a refugee. It was precisely in the case ofthose Articles which prescribed for refugees the same treatment as for aliens generally that it was necessary to apply a narrower term like 'resident'.

The Chairman quoted Article 6 of the 1933 Convention, the corresponding Article of the 1938 Convention, Article 37 of the 1933 Convention, and Article 9 of the 1938 Convention to show that the term 'résidant régulièrement' had been considered equivalent to 'regularly resident'. 'Résidant régulièrement' had clearly been thought to mean more than merely 'present in a country'.

The US representative thought that the phrase 'regularly resident' was ambiguous and would either mean 'lawfully resident' or 'habitually resident'. If it meant either, it certainly did not mean the same as 'résidant régulièrement'. He could not accept the phrase 'regularly resident'. He still felt that the phrase 'in the same circumstances' filled the need.

He thought that the English 'reside' and the French 'réside' were perhaps exact equivalents, but felt that 'lawfully resident' was not the same as 'résidant régulièrement' as was suggested by the French representative. The intention of the Committee had been, he thought, to include all refugees lawfully in a territory, even if they were not 'resident' in the English sense of 'résidant' in the French sense.

The Chairman felt that the essence of the problem was that a small part of the area covered by the English term was left uncovered by the French term. He hoped that in the light of the broad approach in an earlier Convention, the Committee might be able to decide whether it was necessary to leave the gap uncovered. If it was so decided, it would remain to find an English term corresponding to the French one.

The first Article in connection with which the problem arose was Article 10 in which the English text spoke of 'refugees lawfully in their territory' and the French text 'tout réfugié qui réside régulièrement sur leur territoire'. Some members might say that the problem was academic and not practical, but suppose a musician was staying for one or two nights in a country where the musical trade unions were powerful and would not allow nonmembers to perform? Why should such a musician, if he was a refugee, not have the same opportunity as aliens in general of joining the trade union if necessary?

Replying to the Chairman, the Belgian representative argued that a refugee need not necessarily be granted the right of association because he was lawfully in a given territory.

The representative of the IRO noted that in Switzerland, among other countries, an alien required a residential permit only after a stay of three months. He welcomed the French representative's broad interpretation of 'résidant régulièrement', but felt it might equally be interpreted so as not to apply to a person who, having stayed for less than three months, was not yet in possession of a resident's permit.

The French representative explained that the term would hardly apply the other way round, that is, it could not be argued that where there was no residence, the situation would be irregular.

The Israeli representative felt that the discrepancy between the English 'lawfully resident' and the French 'résidant régulièrement' was important only in the case of 3 or 4 Articles; if it was agreed that where the enjoyment by a refugee of a certain right was concerned, or the enjoyment of the same right by aliens in the same circumstances, all those Articles which provided for most-favoured-nations treatment could be excluded. It would of course be necessary in those cases to delete the words 'lawfully resident'. In that way the field of disagreement would be narrowed down to 4 or 5 Articles.

The French representative said he was prepared as a compromise to accept the Israeli representative's suggestion on the understanding, however, that his Government might have reservations to make on certain Articles. He agreed that the word 'régulièrement' should be kept in the Articles for which the Committee might decide to omit 'résidant'.

The Chairman thought the French representative’s explanation of how the word 'régulièrement' was to be understood showed that it was exactly equivalent to the English 'lawfully'.

The Israeli representative suggested that the Committee proceed to eliminate the source of friction in the 6 Articles, namely Articles 10, 12, 13, 14, 16 and 21, in which he had shown that it could be removed.

He therefore proposed that Article 10 be amended to read:

> As regards non-profit making associations and trade unions, the Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of foreign countries in the same circumstances.
>
> The phrase 'in the same circumstances' means with the same time limit and other conditions of residence as the corresponding category of refugees.

The US representative thought the final words of the definition should read 'as are required of other aliens for the enjoyment of the same privileges'.

It was so agreed.

The US representative said he could not accept *'résidant régulièrement'* if it was to be translated by 'lawfully resident', which would not cover persons who were not legally resident in the English sense. It would not, for example, cover persons staying in the US on a visitor's visa and perhaps it might not even cover persons who had worked for the UN for five years in Geneva. The word 'residence' in English, though not exactly equivalent to 'domicile' since it was possible to have more than one residence, had much the same flavour.

He did not understand the exact connotation of the French word *'résidant'* but apparently it could be applied to persons who did not make their home in a certain place, but stayed there for a number of months. Such persons would apparently be *'résidant régulièrement',* but they would not, in the US at least, be lawfully resident. To be lawfully resident a man must make his home there; it need not be his only home but it must be substantial home.

The US representative thought that the word 'sojourn' which was a neutral term, could be employed with the word 'lawfully'.

With regard to Article 12 (wage-earning employment) he thought a case could be made out for requiring some residence qualification. He would not propose any form of words, but merely pointed out that the ILO's Convention on Migration for Employment, in which Article 12 had been modelled, employed the words 'lawfully resident'.

The UK representative thought it was impossible to make the two texts completely identical. The phrase 'lawfully resident' in English was ambiguous, and he therefore suggested the words 'lawfully resident (temporarily or otherwise)'. Perhaps

the word 'temporarily' would cover rather more than what was meant in the French text, but the only other solution would be to include a page-long definition of residence.

The Israeli representative wondered whether the English-speaking representatives would not accept 'regularly resident', since those words had been employed in former Conventions as a translation of *'résidant régulièrement',* and since he understood that in Canada, where both English and French were official languages, the two phrases were considered equivalent.

The US representative thought 'regularly resident' would involve all the difficulties of both 'lawfully resident' and 'habitually resident'. He would prefer one or the other of those last two phrases.

The Israeli representative considered it preferable to leave the English version of Article 13 (self-employment) as it is and to omit the word *'résidant'* from the French.

The French representative agreed. He suggested, however, that the word 'lawfully' be kept in the present Article.

The Committee decided to maintain the English text of Article 13 and to delete the word *'résidant'* from the French text.

The Committee decided to maintain the English text of Articles 14 (liberal professions) and 16 (housing) and to delete the word *'résidant'* from the French text.

The French representative said the position with regard to Article 18 (public relief) was rather more complex, since it was not a question of most-favoured-nations treatment or even of the treatment of aliens generally, but of the treatment of nationals. He asked whether, that being so, it was formally proposed to delete the word *'résidant'.*

The representative of the IRO thought the English text should be retained and the word *'résidant'* deleted from the French version as, if it was retained, it might be interpreted by the authorities of the country applying the Convention to mean that residence qualification was required. Refugees, by reason of their refugee status, would not normally fulfil qualifications of local residence which were sometimes found in laws dealing with public assistance.

The French representative said that he would say frankly that if a country considered the concept of domicile - a very widespread notion in the laws of relief - as an absolutely essential condition, and did not provide any supplementary provision for persons not domiciled in their territory, the deletion of the word *'résidant'* would not in any way change the problem. At the same time, whatever protection was to be given to refugees, in principle there must be no suggestion - and it was in the interests of the refugees themselves - that they should not receive more favourable treatment than nationals.

The US representative thought that countries would have provision in their regulations for public relief for nationals without residence; the same provisions would apply to refugees. Clearly, better treatment could not be required for refugees than was given to nationals. Nevertheless, however short a time a man had been in a country, if he were starving he would, or should, be given public relief or assistance. He considered, therefore, that the word *'résidant'* should be deleted from the French text.

The French representative said that in view of certain comments, for example, those of the Austrian Government, he wondered whether deletion of the word *'résidant'* might not give rise to an interpretation by which Contracting States would place the financial burden on small localities. The problem might arise in Switzerland, for instance. So as not to complicate the task, the word *'résidant'* might be left, though he did not make it a matter of principle. He was thinking of the number of ratifications and reservations.

He thought there were two alternatives: either to say *'résidant régulièrement'* and 'lawfully resident', or to say 'lawfully' in which case *'résidant'* must be omitted. A number of reservations had been made by various Governments. The example already given where a State might invoke the Convention it had signed in order to shift onto municipalities expense which it should itself bear, was not entirely hypothetical. To keep the word *'résidant'* would prove an adequate safeguard.

The Committee agreed to maintain the English text of Article 18 and to delete the word *'résidant'* from the French text.

With reference to Article 19 (labour legislation and social security) the US representative pointed out that the Convention on Migration for Employment contained in the French version the words *'qui se trouvent légalement'.*

The French representative said it would be better to say *'régulièrement'* since *'légalement'* seemed too decidedly legal, whereas the regulations were of course issued by administrative authorities and would not be in the nature of laws.

The Belgian representative thought that the advantages accorded in the text were too important for the idea of lawful residence to be discarded.

The representative of the ILO said his Organization had come up to the same difficulty as the Committee had experienced during the last few days, and the word 'resident' had been deleted for the same reasons. The practical formula 'lawfully

within' had been used; 'lawfully' was understood to mean in conformity with the legal provisions enacted to bring the Convention into force.

The representative of the IRO did not think that the problem presented by the wording in Article 19 was serious as the rights referred to were applicable only to residents, and were granted under certain conditions, such as the payment of a certain number of contributions. It was the intention of the Committee to permit the refugees to receive those rights, provided they fulfilled the various other conditions required. Clearly they should enjoy them regardless of residence qualifications.

It was decided to delete the word *'résidant'* in the French text and to maintain the English text without change.

As regards Article 21 (freedom of movement), reference had been made to the problem that would be raised by a large influx of refugees, to whom temporary restrictions on freedom of movement would be applied for reasons of health. As the measures were of a special nature by reason of the persons they applied to, it might be thought that in that case, the disparity between the provisions of the Convention and the measures which would be taken might cause a difficulty.

There would be no reason to apply such measures to aliens generally and to other refugees. He asked whether the Article would limit the possibility of adopting such measures.

The Israeli representative said that the hypothetical case mentioned by the French representative would be covered by the second paragraph of Article 26 (refugees not lawfully admitted), not by Article 21.

The Committee agreed to delete the word *'résidant'* in the French text of Article 21 and to maintain the English text unchanged.

The Committee also agreed to delete the word *'résidant'* from the French text of Article 27 (expulsion of refugees lawfully admitted) and to maintain the English text unchanged.[733]

Commentary

It results from the *travaux préparatoirs* that any refugee who, with the authorization of the authorities, is in the territory of a Contracting State otherwise than purely temporarily, is to be considered as 'lawfully staying' *('résidant régulièrement').* Performing artists on a *tournée* in a country other than their country of residence may be regarded as being purely temporarily in the country.

Matters Not Included in the Convention

The Report of the ad hoc Committee on its first session contains the following passages:

> 'The Draft Convention contains provisions on a number of subjects. The fact that the Draft Convention is silent on a subject means that in this matter the Committee believed that a special provision was not necessary and that Governments would be free to decide upon it at their discretion in accordance with international law.
>
> 'The question of subjection of refugees to military service is an example of a matter regarding which the Draft Convention remains silent despite the fact that the Secretariat draft and the draft of the French Government offered precise provisions on the subject. The Committee felt that such a provision might be open to misinterpretation and that this problem is covered by general rules of international law and practice. On the other hand, it was not intended to suggest that Governments might not require military service of refugees subject to such law and practice.'[734]

THE FINAL ACT

Travaux Préparatoires

At the Conference of Plenipotentiaries the UK representative said under the London Agreement of 1946 travel documents were issued to persons who had been placed under the protection, *inter alia,* of the inter-governmental Committee for Refugees and any intergovernmental agency called upon to succeed it. The successor organization was in fact the IRO. Since IRO's work was due to come to an end shortly, certain categories of refugees might have difficulties in future with travel documents.

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[733] E/AC.32/SR.42, pp. 11-36

[734] E/1618, pp. 36-37

In those circumstances, he wondered whether the Conference would be prepared to include a recommendation in the Final Act to the effect that governments signatories to the London Agreement of 1946 should continue the issue and recognition of travel documents under that instrument until the present Convention came into force.

The Belgian representative wholeheartedly supported the UK representative's suggestion. He desired, however, confirmation on one point; to his mind it was a question of recognition by States which were not Parties to the London Agreement of 1946. States Parties to that agreement would in fact remain bound by its provisions.

The UK and Belgium submitted draft recommendations for inclusion in the Final Act:

The UK recommendation read:

> *Considering* that the issue and recognition of travel documents is necessary to facilitate the movement of refugees, and in particular their resettlement,
>
> *Urges* Governments which are Parties to the Inter-Governmental Agreement on Refugee Travel Documents signed in London on 15 October 1946, or which recognize travel documents issued in accordance with the Agreement, to continue to issue or to recognize such travel documents, and to extend the issue of such documents to refugees as defined in Article 1 of the Present Convention or to recognize the travel documents so issued to such persons, until they shall have undertaken obligations under Article 23 of the present Convention.[735]

The Belgian recommendation read:

> *The Conference,*
>
> Having Recognized that it might be useful and expedient, should there be any differences of opinion relating to the interpretation or application of the Convention which cannot be resolved by other means, to allow the United Nations High Commissioner for Refugees to approach the International Court of Justice directly rather than wait until a Contracting State takes the initiative of submitting the matter to it in application of the relevant Article of the Convention,
>
> Expresses the Hope that the General Assembly of the United Nations will authorize the United Nations High Commissioner for Refugees, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of his activities.[736]

The Holy See submitted a recommendation:

I

> *Considering* that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened by a variety of measures relating either to admission to the receiving country, or to other circumstances connected with the refugee's life,
>
> *The Conference*
>
> *Recommends* governments to take the necessary measures for the protection of the refugee's family, especially with a view to:

1) ensuring that the unity of the refugee's family is maintained, particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country;
2) extending the rights granted to the refugee to cover all the members of his family; and
3) providing special protection for refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

II

> *Considering* that in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate non-governmental organizations;
>
> *The Conference*

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[735] A/Conf.2/100

[736] A/Conf.2/101

Recommends governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations.

III

Considering that at the present time a great many refugees leave their country of origin for political reasons and are entitled to special protection on account of their special position,

The Conference

Recommends governments in the countries of first refuge to grant the right of asylum within their territories with the utmost liberality, and

Recommends all governments to undertake jointly with the countries of first reception to bear the costs arising out of the right of asylum in respect of refugees whose lives are in danger.[737]

The representative of the Holy See said those recommendations were naturally not of a contractual nature, but merely took the form of directives to Contracting and other States with a view to ensuring that the maximum possible assistance was extended to refugees. Assistance to refugees automatically implied assistance to their families, but, although that proposition was an obvious one, it would be wise to include specific reference to the families.

Turning to the second group of recommendations, he remarked that the part that non-governmental organizations had played and would continue to play, particularly in cases of emergency involving a large number of refugees, was fully recognized.

As to the third group of recommendations, he observed that the right of asylum was one of the oldest of human rights.

The representative of the German Federal Republic supported the recommendations submitted by the representative of the Holy See. The principle of the right of asylum was embodied in its Constitution.

The US representative said that the US delegation wholeheartedly supported the first two groups of recommendations. He did not think it necessary to stress the US Government's difficulties, which were well-known, in accepting the recommendations in the third group, and as he could not hold out hope that it could assume further financial commitments after the termination of the IRO, as was suggested in the last part of section III of the recommendations, the US delegation would be obliged to abstain from voting on that section.

The Israeli representative proposed that, in order to reconcile item 2) of the first group of recommendations with the comments of the *ad hoc* Committee,[738] it should be amended to read:

'making sure that all members of the refugee's family are accorded the rights granted to refugees'.

The Belgian representative believed the recommendations submitted by the representative of the Holy See would command general support. He felt it would be desirable, however, to insert the word 'still' after the word 'refugees' in the first line of section III, in order to bring out the fact that the situation in question already existed and was a continuing one.

The representative of the Holy See accepted both the Israeli and Belgian amendments.

The UK representative shared the view that the recommendations submitted by the delegation of the Holy See were both useful and desirable. The UK delegation, however, found itself in the same difficulty as the US delegation with regard to the third group of recommendations. While recognizing the validity of the expression therein of the ideal principle that the financial burden and heavy responsibilities of countries of first refuge should be equally shared by all governments, he felt that it was essential that the Conference should bear in mind the difficulties which, under present conditions, governments experienced in committing themselves to such an undertaking as that contemplated in the last paragraph. It would, indeed, be undesirable to make such a recommendation if governments were not in a position to implement it.

He doubted whether the wording proposed by the Israeli representative's suggestion for paragraph 2 of the first group of recommendations would actually achieve the desired objections. Drafted in such terms, the paragraph might well implicitly undermine the more categorical view of the *ad hoc* Committee that governments were under an obligation to take such action in respect of the refugee's family. In his opinion, it would be regrettable if governments were to take the action therein proposed only when they considered that circumstances enabled them to do so. In fact, he doubted whether it would not be best to delete it.

The Italian representative wholeheartedly supported the recommendations of the delegation of the Holy See.

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[737] A/Conf.2/103

[738] E/1618, p.40

The representative of the Holy See said that in order to give general satisfaction, he would suggest that the first group of recommendations should be revised to read:

The Conference

Considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and

Noting with satisfaction that, according to the official comments of the ad hoc Committee,[739] the rights granted to the refugee are extended to the members of his family,

Recommends governments to take the necessary measures for the protection of the refugee's family, especially with a view to:

1) ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country;

2) providing special protection to refugees who are minor, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

At the suggestion of the Belgian representative it was agreed to insert in the text proposed by the representative of the Holy See the full name of the *ad hoc* Committee.

The UK representative accepted the revised text proposed by the representative of the Holy See for section 1 of the recommendations. At the same time, in order to make it quite clear that the intention was not to recommend that special laws and regulations should be enacted for the protection of refugees who were minors, but rather that they should be given the full protection afforded by existing legislation, he considered that the last paragraph should begin 'the protection of refugees who are minors...' *('assurer la protection des réfugiés mineurs...')*

The representative of the Holy See accepted the UK representative's amendment.

Section I as amended was adopted unanimously.

Section II was adopted unanimously.

The US representative wondered whether the representative of the Holy See would agree considering the revision of the third group of recommendations somewhat along the lines of paragraph 4 of the Preamble to the Draft Convention, and thus make it possible for the Conference as a whole to accept it.[740]

The President, referring to section III of the draft recommendations submitted by the representative of the Holy See,[741] said that he had understood that, at the suggestion of the Belgian representative, it had been agreed to insert the word 'still' before 'leave' in line 1.

The representative of the Holy See suggested that the following text be substituted for section III:

The Conference

'Considering that many refugees still leave their country of origin for reasons of persecution and are entitled to special protection on account of their position,

Recommends that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement.

The French representative doubted whether it was correct to speak of 'many refugees leaving their country of origin'; the right term would be 'a certain number' of refugees. He also wondered whether it was correct to speak (in the first paragraph) of 'refugees leaving their country of origin'; it would be more appropriate to use the word 'persons', since, at the time of leaving their country of origin, they would not yet be refugees.

The representative of the Holy See agreed that the word 'persons' should be substituted for the word 'refugees' in the first line of this revised recommendation.

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[739] E/1618, p.40

[740] A/Conf.2/SR.34, pp.49

[741] A/Conf.2/103

The revised draft recommendation submitted by the representative of the Holy See was adopted, as amended, by 23 votes to none.[742]

The UK subsequently submitted a further recommendation:

> *Expresses* the hope that this Convention will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons present in their territory as refugees and who would not be covered by the terms of paragraph A of Article 1 the treatment for which this Convention provides.[743]

The UK representative explained that he had submitted the draft recommendation in order to cover the contents of former paragraph F of Article 1. He had taken the wording from paragraph 7 of the Preamble to the original text of the draft Convention, a paragraph which, he understood, had first been drafted by the French delegation.

[742] A/Conf.2/SR.35, p.42

[743] A/Conf.2/107