

Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fourth Meeting

By General Assembly | 30 November 1951

Present:

President: Mr. LARSEN

Members:

Australia	Mr. SHAW
Austria	Mr. FRITZER
Belgium	Mr. HERMENT
Brazil	Mr. de OLIVEIRA
Canada	Mr. CHANCE
Colombia	Mr. GIRALDO-JARAMILLO
Denmark	Mr. HOEG
Egypt	MOSTAFA Bey
Federal Republic of Germany	Mr. von THUTZSCHLER
France	Mr. ROCHEFORT
Greece	Mr. PAPAYANNIS

The Holy See	Monsignor COMTE
Israel	Mr. ROBINSON
Italy	Mr. ARCHIDIACONO
Monaco	Mr. BICHERT
Netherlands	Baron van BOETZELAER
Norway	Mr. ANKER
Sweden	Mr. PETREN
Switzerland (and Leichtenstein)	Mr. SCHÜRCH
Turkey	Mr. MIRAS
United Kingdom of Great Britain and Northern Ireland	Mr. HOARE
United States of America	Mr. WARREN
Venezuela	Mr. MONTOYA
Yugoslavia	Mr. MAKIEDO Mr. BOZOVIC.
High Commissioner for Refugees	Mr. van HEUVEN GOEDHART
Representatives of specialized agencies and of other inter-governmental organizations:	
International Refugee Organization	Mr. SCHNITZER
Representatives of non-governmental organizations:	
Category A	
International Confederation of Free Trade Unions	Miss SENDER

Category B and Register

Caritas Internationalis	Mr. BRAUN Mr. METTERNICH
Catholic International Union for Social Service	Miss de ROMER
Commission of the Churches on International Affairs	Mr. REES
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
Friends' World Committee for Consultation	Mr. BELL
International Committee of the Red Cross	Mr. OGLIATI
International League for the Rights of Man	Mr. de MADAY
International Union of Catholic Women's Leagues	Miss de ROMER
Pax Romana	Mr. BUENSOD
Standing Conference of Voluntary Agencies	Mr. REES
World Jewish Congress	Mr. RIEGNER
Secretariat:	
Mr. Humphrey	Executive Secretary
Miss Kitchen	Deputy Executive Secretary

1. DRAFT RECOMMENDATIONS SUBMITTED BY THE DELEGATION OF THE HOLY SEE FOR INCLUSION IN THE FINAL ACT OF THE CONFERENCE (A/CONF.2/103)

The PRESIDENT invited the Conference to consider the draft recommendations (A/CONF.2/103) submitted by the delegation of the Holy See for inclusion in the Final Act of the Conference.

Msgr. COMTE (The Holy See) said that, in the light of the frequently expressed desire that the Convention should afford as ample protection as possible to refugees, the delegation of the Holy See had submitted the draft recommendations contained in document A/CONF.2/103 with the object of filling certain gaps in the present text of the Convention.

The recommendations were arranged in three groups, the first of which dealt with the maintenance of the unity of the refugee's family, the extension of the rights granted to the refugee to cover all members of his family, and the protection of refugee minors, and in particular of unaccompanied children and girls. 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 help for their families, but, although that proposition was an obvious one, it would be wise to include explicit reference to the families. The Israeli representative had pointed out to him that the records of the discussions in the Ad hoc Committee revealed that, in the view of that Committee, the children of refugees, even if born after 3 September 1939, should also enjoy the status of refugee provided they were without a nationality, and, moreover, that members of the immediate family of a refugee should in general be considered as refugees if the head of the family was a refugee within the terms of the definition in the Convention. The Ad hoc Committee had in fact considered that, even in cases where the head of the family was not a refugee, such persons should be regarded as refugees if the conditions set forth in paragraph A of article I applied to them. None the less, the delegation of the Holy See believed that there could be no harm in emphasizing the need for measures for the protection of the refugee's family.

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. At the same time, governmental machinery was notoriously slow in getting under way, and it had therefore seemed to his delegation that the more specially qualified non-governmental organizations could do extremely valuable work on behalf of refugees at the time of their arrival in a country of refuge. It would be noted that provisions for the intervention of non-governmental bodies had been made in the Geneva Conventions 1949, negotiated under the auspices of the International Committee of the Red Cross, not in the form of a recommendation, but as articles in the body of the Conventions themselves.

As to the third group of recommendations, he observed that the right of asylum was one of the oldest of human rights. In recommending that governments should grant that right with the utmost liberality, the delegation of the Holy See was thinking more particularly of the unaccompanied refugee labouring under all sorts of handicaps. It was true that the Institute of

International Law had defined the right of asylum, but the action it had taken in the matter had not extended to the practical application of the principle, which the proposed recommendation was designed to ensure.

Adoption of his delegation's proposals would, he believed, provide more effective protection for refugees, and enable the appropriate non-governmental organizations to contribute to that protection.

The PRESIDENT informed the Conference that the comments of the Ad hoc Committee to which the representative of the Holy See had referred were to be found on page 40 of document E/1618.

Mr. von TRÜTZSCHLER (Federal Republic of Germany) supported the recommendations submitted by the representative of the Holy See. He felt it appropriate that the Conference should emphasize the principle of the unity of the refugee's family, a principle of particular importance in a country like Germany where, by force of political circumstance, many German families had been split asunder. The German Federal Government was making every effort to facilitate the reunion of such families.

Much had been seen in the Federal Republic of Germany of the extremely useful work done by the non-governmental organizations, particularly in the immediate post-war years, and it would provide some recognition of the endeavours of the International Committee of the Red Cross, the international church organizations and other agencies of the same kind if the Conference adopted the second group of recommendations.

As to the third group of recommendations, he believed that Germany was one of those countries on which had fallen the onerous obligation of receiving large numbers of new refugees. The principle of the right of asylum was enshrined in its Constitution. Acceptance of that group of recommendations would rightly proclaim the desire for international solidarity in the discharge of responsibilities relating to the protection of political refugees.

Mr. WARREN (United States of America) said that the United States delegation wholeheartedly supported the first two groups of recommendations. He did not think it necessary to stress the United States 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 would assume further financial commitments after the termination of the International Refugee Organization (IRO), as was suggested in the last paragraph of section III of the recommendations, the United States delegation would be obliged to abstain from voting on that section.

Mr. ROBINSON (Israel) proposed that, in order to reconcile item 2) of the first group of recommendations with the comments of the Ad hoc Committee, it should be reworded to read:

“making sure that all the members of the refugee’s family are accorded rights granted to the refugee”.

Mr. HERMENT (Belgium) believed that 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.

Msgr. COMTE (The Holy See) accepted both the Israeli and the Belgian amendments.

Mr. HOARE (United Kingdom) shared the view that the recommendations submitted by the delegation of the Holy See were both useful and desirable. The United Kingdom delegation, however, found itself in the same difficulty as the United States 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 suggestion for paragraph 2 of the first group of recommendations would actually achieve the desired objective. 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. The paragraph deserved further consideration. In fact, he wondered whether it would not be best to delete it.

Mr. ARCHIDIACONO (Italy) wholeheartedly supported the recommendations of the delegation of the Holy See. They represented a reaffirmation of all the views expressed by the Italian delegation throughout the Conference.

Msgr. COMTE (The Holy See) said that, in an attempt 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 (E/1618, page 40), 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 for refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.”

The PRESIDENT requested the Conference to confine its attention for the time being to section I of the recommendations.

At the suggestion of Mr. HERMENT (Belgium), it was agreed to insert in the text proposed by the representative of the Holy See the full name of the Ad hoc Committee.

Mr. HOARE (United Kingdom) accepted the revised text proposed by the representative of the Holy See for section I 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.....”).

Msgr. COMTE (The Holy See) accepted the United Kingdom representative’s amendment. The PRESIDENT put to the vote the text of section I of the recommendations, as amended. Section I, as amended, was adopted unanimously.

The PRESIDENT put to the vote the text of section II of the recommendations. Section II was adopted unanimously.

Mr. WARREN (United States of America) said that he was reluctant to oppose, or even to abstain from voting on, the general principle contained in the third group of recommendations, but, as he had said, the United States delegation would be unable to support the text in its present form. He wondered whether the representative of the Holy See would agree to considering its revision 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. If so, the matter might be left over for further consideration at the next meeting.

Msgr. COMTE (The Holy See) having signified his acceptance of the United States suggestion, *it was agreed* that further consideration of section III of the recommendations should be deferred until the next meeting.

2. SECOND READING OF THE DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES (item 5(a) of the agenda) (A/CONF.2/102 and Add.1 and 2 thereto, A/CONF.2/104, A/CONF.2/105, A/CONF.2/106) (resumed from the thirty-third meeting):

(i) Article 1 - Definition of the term “Refugee” (continued):

The PRESIDENT requested the Conference to resume its second reading of the draft Convention relating to the status of refugees, continuing the discussion on article 1. The relevant documents were A/CONF.2/102/Add.2 and A/CONF.2/105. If the new text (A/CONF.2/105) to replace paragraph B (formerly paragraph F) of article 1 was adopted, it would be necessary to delete the words “in Europe or in Europe and other continents, as specified in a statement to be made by each High Contracting Party at the time of signature, accession or ratification” from subparagraph (2) of paragraph A of article 1. A decision on substance having been taken at the preceding meeting, the Conference had now to decide only the form of new paragraph B.

Baron van BOETZELAER (Netherlands) approved the text (A/CONF.2/105) proposed by the Drafting Group appointed the previous day, but submitted that if former paragraph F, which dealt with the extension of the scope of the Convention to new categories of refugees arising as a result of events occurring after 1 January, 1951, were deleted from article 1, a new clause would have to be inserted to take care of such an extension of the scope of the Convention. Mr. REES (Standing Conference of Voluntary Agencies), speaking at the invitation of the PRESIDENT, said that he had been requested by a number of non-governmental organizations to make the point just taken by the Netherlands representative. Everyone welcomed the new paragraph B as it stood, and recognized that former paragraph F had become a dead letter, largely as a result of the looseness of its drafting. It would be realized, however, that former paragraph F was the only ray of hope for those persons who might become refugees as a result of events occurring after 1 January 1951. Since it had frequently been said that a new convention relating to the status of refugees was unlikely to be negotiated within the next ten years, and since it would be unduly optimistic to assume that no events likely to create new groups of refugees would occur within that period, he urged that the Netherlands proposal should be given the most serious consideration.

Mr. HOARE (United Kingdom) submitted that the Conference was at that moment dealing with the drafting of a text to give effect to a decision taken at the preceding meeting, and that the point raised by the Netherlands representative was entirely different and should accordingly be dealt with separately. The United Kingdom delegation was averse to the introduction of such a provision in the Convention. The text before the Conference (A/CONF.2/105) represented a

compromise both as to time and as to space which his delegation had come to accept, after having initially favoured a definition unlimited both in time and in space, and after having later agreed, in a spirit of compromise, to accept a restriction of the definition of the term “refugee” to those persons who became refugees as a result of events occurring before 1 January 1951. The argument he had advanced in support of his delegation’s position, namely, that it was undesirable to afford States the facility of deciding unilaterally to extend the limitation in space as and when they pleased, applied with equal force to a like facility in respect of the extension in time. There were, of course, no technical difficulties in the way of deleting the reference to a date from the text, but that would be to re-open a controversy which had been settled by the compromise that had been reached. On the other hand, serious technical difficulties would arise if Contracting States were allowed unilaterally to adapt the Convention so as to extend its scope to persons who became refugees as a result of events occurring after 1 January 1951. The whole definition would have to be reviewed, and consideration would have to be given to the extent to which paragraph E of article 1 and other sections of the definition which were of a limitative character would apply, and to the question of the restriction which such provisions might involve on the sovereign rights of States.

Baron van BOETZELAER (Netherlands) requested that the point he had raised should be left aside for the time being. He would endeavour to find a formula capable of commanding general approval.

The PRESIDENT declared the discussion on document A/CONF.2/105 closed. He then put to the vote the text of new paragraph B of article 1 contained in that document. The adoption of that text would involve the consequential amendment to sub-paragraph (2) of paragraph A of article 1 to which he had already drawn attention.

The text of new paragraph B of article 1 (A/CONF.2/105) was adopted by 16 votes to none, with 1 abstention.

The PRESIDENT believed that the Conference was now ready to proceed to vote on the other parts of article 1.

Mr. HOARE (United Kingdom) drew attention to the anomaly, which was really a drafting point, in sub-paragraph (2) of paragraph A resulting from the omission of a reference to events occurring before 1 January 1951 from the last phrase of the paragraph, which dealt with the person who had no nationality and was outside the country of his former habitual residence. He could not imagine that those who had drafted the compromise text in question had intended to make any difference between persons having a nationality and stateless persons. He therefore proposed that the words “as a result of such events” should be inserted after the word “residence” in the penultimate line of sub-paragraph (2) of paragraph A.

Mr. HERMENT (Belgium) agreed that it could not have been the intention of the drafters to make such a discrimination, and supported the United Kingdom proposal. The PRESIDENT put the United Kingdom proposal to the vote.

The United Kingdom proposal was adopted by 17 votes to none, with 3 abstentions.

The PRESIDENT put paragraph A of article 1, as amended, to the vote.

Paragraph A of article 1, as amended, was adopted by 16 votes to none, with 3 abstentions.

Mr. ROBINSON (Israel) suggested that for the sake of consistency the word “former” should be inserted before the word “habitual” in the last line of sub-paragraph (6) in paragraph C (formerly paragraph B).

The PRESIDENT said that if there was no objection, he would consider the Israeli suggestion as adopted. He then put paragraph C to the vote.

Paragraph C of article 1 was adopted unanimously.

The PRESIDENT put paragraph D (formerly paragraph C) to the vote.

Paragraph D was adopted by 16 votes to none, with 3 abstentions.

The PRESIDENT put paragraph E (formerly paragraph D) to the vote.

Paragraph E was adopted unanimously.

The PRESIDENT put paragraph F (formerly paragraph E) to the vote.

Article 1, as a whole and as amended, was adopted by 19 votes to none, with 2 abstentions.

Mr. ROCHEFORT (France), explaining why he had taken no part in the voting, said that article 1 formed a whole and, since no reservations were permitted to it, must be considered as a whole. One defective provision inevitably affected the entire text. The French delegation was still unable to understand either from the point of view of form or from that of substance the reasons which had dictated the insertion of the words: “in Europe or elsewhere”.

Mr. ROBINSON (Israel) said that he would be failing in his duty if he failed to call attention, even at the present late stage, to a number of drafting defects in article 1. He would confine himself to three observations.

In the first place, there was no justification for retaining separately the three disqualification or exclusion clauses contained in paragraphs D, E and F, all of which began with the same words: “This Convention shall not apply...”. There was no particular obstacle to combining those three sections in a single disqualification or exclusion clause covering the three categories of refugees who would otherwise qualify under paragraph A, namely: those who were plus quam refugees (paragraph E); those who were minus quam refugees (paragraph F); and those who were, either temporarily or permanently, “assisted” refugees (paragraph D).

Secondly, the various paragraphs of article 1 did not follow each other in any logical sequence. The exclusion sections merely qualified the definition sections, which laid down when and under what conditions a person became a refugee. Their place therefore was immediately after

paragraphs A and B. The section dealing with cessations should follow those dealing with exclusions, instead of preceding it. The order should therefore have been: paragraph A, paragraph B, paragraphs D, E and F and finally paragraph C.

Thirdly, the heading of article 1 was narrow and misleading. Paragraph A was the only one that defined the meaning of the notion “refugee”; the other paragraphs dealt with three distinct questions (declaration on the geographical scope of the Convention, exclusions and cessation) which could by no stretch of the imagination be considered as constituting definitions. In his opinion, the proper heading for article 1 should have been: “The scope of application of the present Convention *ratione personae*”.

Mr. HOARE (United Kingdom) hoped that he would not be ruled out of order if he said that he shared the misgivings of the Israeli representative concerning the form and structure of article 1. The shortness of the time available, as well as the reluctance of several delegations to change a text which had been adopted by the General Assembly, had alone prevented him from supporting the Israeli representative’s position more positively.

The PRESIDENT hoped that the Israeli representative would appreciate that the statement of the United Kingdom representative defined the position of many other delegations also. Recalling that articles 2, 3 and 4 had been adopted at the preceding meeting, he invited representatives to turn to article 5.

(ii) Articles 5 to 19 inclusive

Article 5 (formerly article 3(a))

The PRESIDENT suggested that article 5 might appropriately be entitled: “Acquired Rights”.

Mr. HERMENT (Belgium) expressed doubt as to the stability of that title, since the convention contained other articles which dealt specifically with acquired rights.

Mr. MONTOYA (Venezuela) proposed the title: “Droits accordés indépendamment”.

The PRESIDENT thought that a better formula might be: “Rights granted apart from this Convention”.

Mr. MIRAS (Turkey) and Mr. GIRALDO-JARAMILLO (Colombia) suggested: “Other Rights”, while Mr. CHANCE (Canada) proposed: “Existing Rights”.

Mr. HERMENT (Belgium) supported the President’s second suggestion.

Mr. ANKER (Norway) considered that a reference in the title to either acquired or existing rights would not entirely cover the conception of “rights and benefits” contained in the text of the article. The difficulty which had arisen in the present case provided further support for the suggestion he had already made that all headings and titles should be suppressed.

Mr. ROBINSON (Israel) thought that there was an easy way out of the difficulty. Titles only really mattered when they formed an integral part of a convention, that was, when they had been

voted on and were therefore subject to interpretation in the future. The present Conference could not possibly undertake the task of devising titles of that type, and must needs leave the task to a future meeting. On the other hand, it would not be advisable to omit titles altogether, since they served a useful purpose, particularly in the collation of the various drafts of the Convention. He believed that the proper course would be to add an explanation of the nature of the titles and headings in, for instance, paragraph 17 of the Final Act of the Conference (A/CONF.2/L.4). He would therefore suggest that a second sentence be added to that paragraph, reading as follows: “The titles of chapters and articles are included for practical purposes, and do not constitute an element of interpretation”.

The PRESIDENT suggested that the Conference might decide on any titles that were needed, deferring for the time being the decision on the question of principle raised by the Israeli representative.

Mr. ROBINSON (Israel) expressed his agreement with the procedure suggested by the President.

It was so agreed.

Mr. HOARE (United Kingdom) said that in the light of the President’s procedural proposal he was prepared to support his second suggestion that article 5 be entitled: “Rights granted apart from this Convention.”

The PRESIDENT said that in the absence of objections he would rule that the Conference accepted that title.

Article 5 (formerly article 3(a)) was adopted unanimously.

Article 6 (formerly article 3(b))

The PRESIDENT drew attention to the United Kingdom amendment to article 6 (formerly article 3(b)) contained in document A/CONF.2/104.

Mr. HOARE (United Kingdom) said that the United Kingdom amendment would have exactly the same effect as the text of article 6. The changes, however, would make the article more satisfactory from the legal point of view. The parenthesis in the second and third lines should be replaced by the words: “as to length and conditions of sojourn or residence”, since in point of fact those were the requirements which it was the main purpose of the article to specify. The wider formula, which read: “... any requirements (including requirements as to length and conditions of sojourn or residence)”, might cause difficulties of interpretation from the point of view of the refugee.

Further, the United Kingdom amendment proposed the deletion of the last clause of article 6 reading: “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 that issue was disposed of in the articles in which reference was specifically made 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.

He must apologise for introducing an amendment at so late a stage, but the Israeli representative, who had joined him in sponsoring the original text, agreed that in the present instance the afterthoughts were better thoughts.

As to the title, he could only suggest the term: “Interpretation”. It was not entirely apt, since the interpretation was confined to one expression only. Indeed, he believed that it would be more appropriate for article 6 to be placed at the beginning of Chapter II or Chapter III, since it was there that articles which made use of the phrase: “in the same circumstances” appeared.

Mr. HERMENT (Belgium) had some hesitation in accepting the United Kingdom 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 would 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.

Mr. HOARE (United Kingdom) said that the Belgian representative’s argument most aptly illustrated the point of the United Kingdom 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 requirement as to sojourn or residence, since for the rest they would be granted the same treatment as aliens generally.

But since the Belgian representative had certain doubts, and since the amendment had been submitted at the eleventh hour, he would suggest that further consideration of it be deferred in order to give representatives a chance of acquainting themselves better with it.

The PRESIDENT ruled that further consideration of article 6, together with the United Kingdom amendment thereto (A/CONF.2/104), should be deferred, on the understanding that when it was taken up again the work of the Conference would not be delayed by protracted discussion.

Article 7 (formerly article 4) - Exemption from reciprocity.

The PRESIDENT ruled that consideration of article 7 (formerly article 4) be deferred pending the submission of an amendment by the delegations of Israel and Netherlands jointly.

Article 8 (formerly article 5)

The PRESIDENT recalled that in its original form the article had been entitled: “Exemption from Exceptional Measures”.

Mr. HOARE (United Kingdom) said that the English text of the article was unsatisfactory, and that the Style Committee had also expressed doubts about the French text. He would therefore propose the insertion of the words: “if they do so” in the penultimate line so that the last clause would read: “on account of such nationality, or, if they do so, shall, in appropriate cases, grant exemptions in favour of such refugees”. That amendment had at least the merit of correcting the bad ellipsis in the text.

Mr. CHANCE (Canada) agreed with the United Kingdom representative that the text needed improvement, but did not consider that the amendment he had proposed resolved the apparent contradiction in it. He had already had occasion to criticize the article on grounds of substance and form. It was guilty of the unhappy fault of, so to speak, taking away with one hand what it gave with the other. In its original form, and before an attempt had been made to take into account the circumstances and laws of a certain country, the article had consisted of a simple and straightforward statement. 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.

Mr. HERMENT (Belgium) agreed wholeheartedly with the Canadian representative.

Mr. HOARE (United Kingdom) also agreed with the Canadian representative on the point of substance, and emphasized that his own amendment was purely grammatical in intention. 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.

Mr. PETREN (Sweden) hesitated to re-open a debate on the substance of the article, but recalled that it was of considerable importance to a number of countries. Although prepared in principle to accept the United Kingdom amendment, he believed that syntactically the text would be improved by the use of the formula “either/or” - in French “soit/soit”.

Mr. FRITZER (Austria) supported the Swedish representative’s suggestion.

The PRESIDENT said that the problem turned on the question whether the application of certain measures should be ensured by means of automatic legislation or by means of exemptions. In either case the obligations of the State would be the same.

Mr. HERMENT (Belgium) pointed out that the President’s interpretation did not hold for the French text, which read: “accorderont dans des cas appropriés”.

The PRESIDENT, replying to Mr. PETREN (Sweden), said that he had not intended to re-open the substantive discussion.

Mr. WARREN (United States of America) agreed that the insertion of the words proposed by the United Kingdom 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 every article of the convention. Should that tense be interpreted as being mandatory or permissive?

He fully agreed with the Canadian representative’s observations on the general issues raised by the article.

Mr. ROCHEFORT (France) agreed that it was difficult to discuss questions of substance at the second reading of the Convention, after a decision had already been taken on the text. But he would submit 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 the article. If that principle was not acceptable to States, they would enter a general reservation on the article. He would interpret the words “ou accorderont” as imposing an obligation to grant exemptions.

He would recall that nationality was a live issue in the first or the second country of residence, but that it ceased to be so once a refugee had gone to an overseas country of resettlement.

Mr. ANKER (Norway) supported the arguments of the French and Swedish representatives. He also thought that the difficulty could be circumvented by making the alternative perfectly clear and using the “either/or” formula.

Mr. WARREN (United States of America) 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,.....”

Mr. PETREN (Sweden) considered that the amendment proposed by the United States representative modified the text considerably. It would mean that all States would have to have both legislation excluding the application of the general principle, and a regime of exemptions. He would be unable to agree to such an amendment.

Mr. ROCHEFORT (France) felt that the discussion was somewhat superfluous, since in point of fact there existed no true alternative in the article, the second proviso 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 exemptions (“accorderont”). That interpretation surely met the Swedish representative’s point.

Mr. MONTROYA (Venezuela) suggested that the text might be amended to read, after the words “such nationality,” - “or, if they apply them, will undertake” (“ou, s’ils les appliquent, s’engageront”).

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...”.

Mr. ROCHEFORT (France) wished to emphasize that from the point of view of refugees, the most important clause of the article was the final one. There was no doubt that the general principle would not be observed by countries in cases of national emergency, such as war, but even in those circumstances, the conception of possible exemptions remained by virtue of the final clause. That was why it was valuable.

Mr. PETREN (Sweden) was unable to accept the President's suggestion, since it would weaken the general premise on which the article rested, and would not improve the alternative. He would be prepared to accept either the United Kingdom amendment, or that proposed by the Venezuelan representative; he would also be content with the "either/or" formula. He did not see that there was any point in submitting amendments which affected the substance of the text. Mr. HOARE (United Kingdom) said that, in so far as form was concerned, the insertion of the word "either" after the words "The Contracting States" in the second line of the article would alleviate the difficulties.

The PRESIDENT assumed that the Conference would have no objection to hearing a very brief statement from the representative of the Friends' World Committee for Consultation.

It was so agreed.

Mr. BELL (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 their view, be a retrograde step. The wording of the original article 5 was to be preferred. The alternative which had now been added seemed in their view, to vitiate a principle which had once been laid down and accepted. The non-governmental organizations concerned accordingly hoped that article 8 would not be weakened by the inclusion of the final clause.

Mr. CHANCE (Canada) considered that none of the amendments proposed got over the main difficulty to which he had drawn attention when he had said that what the article gave with one hand it took away with the other. Yet he believed that the meeting was on the brink of agreement. There was no objection to the general principle that no exceptional measures should be applied to a refugee solely on account of his nationality. In order, however, to take into account the legislative difficulties experienced by certain States, he would suggest that the text be amended as follows: a full stop should be inserted after the words "such nationality", and the final clause amended to read: "Contracting States which under their legislative systems are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exceptions in favour of such refugees."

Mr. PETREN (Sweden) believed that the Canadian amendment might be acceptable, but asked to have more time to consider it in both languages. It might perhaps be possible for a small drafting committee to draft the amendment in its final form at the close of the meeting.

Mr. ROCHEFORT (France) was also prepared to accept the Canadian amendment, but feared that it was hardly expedient to set up drafting committees, in view of the shortage of time. He must protest 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 national 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. In general, he would request the non-governmental organizations to consider each particular clause in its context before criticizing the positions taken up by delegations. In the present instance they would have done better to concentrate their attention on the question of reservations. The article under discussion was in fact one of those to which reservations could be made; if it were not, it would clearly prove an insuperable obstacle to certain governments' acceding to the Convention. As the article was subject to reservations, it was clearly in the best interests of refugees that it should be cast in a form which would be acceptable to governments, thus inducing them to accept at least certain commitments, should they not be in a position to subscribe to the general principle. Otherwise, they would be obliged to enter reservations which would probably exclude even those minimum commitments. Liberalism which was blind to the facts of reality could only beat the air. The PRESIDENT ruled the discussion closed, and that further consideration of article 8 should be deferred until the interested delegations had had an opportunity of examining and re-drafting the Canadian amendment.

Article 9 (formerly article 5(a))

The PRESIDENT stated that article 9 had originally been entitled "Provisional measures". There being no comments, he ruled the discussion closed.

Article 9 was adopted by 21 votes to none.

Article 10 (formerly article 6) - Continuity of residence

Article 10 was adopted by 21 votes to none.

Article 11 (formerly article 6(a))

Mr. HOARE (United Kingdom) suggested that article 11 might be entitled "Refugee Seamen". It was so agreed.

Article 11 was adopted by 21 votes to none.

Article 12 (formerly article 7) - Personal status

Article 12 was adopted by 19 votes to none, with 2 abstentions

Mr. ARCHIDIACONO (Italy) said that he had abstained from voting on article 12 in accordance with the statement made by the Italian representative at the twenty fifth meeting (see document A/CONF.2/SR.25, page 9) to the effect that the Italian delegation reserved its position on that article.

Article 13 (formerly article 8) - Movable and immovable property.

Article 13 was adopted by 21 votes to none.

Article 14 (formerly article 9) - Artistic rights and industrial property

Article 14 was adopted by 21 votes to none.

Article 15 (formerly article 10) - Right of association

Article 15 was adopted by 20 votes to none, with 1 abstention.

Article 16 (formerly article 11) - Access to Courts

Article 16 was adopted by 21 votes to none.

Article 17 (formerly article 12) - Wage-earning employment

Article 17 was adopted by 19 votes to none, with 4 abstentions

Mr. ARCHIDIACONO (Italy) said that the Italian Government's reservation to article 12 (formerly article 7) also applied to article 17 and to articles 18 and 19 (formerly articles 13 and 14 respectively).

Mr. BOZOVIC (Yugoslavia) said that he had abstained from voting on article 17 because of the restrictive measures referred to in paragraph 2.

Article 18 (formerly article 13) - Self-employment

Article 18 was adopted by 20 votes to none, with 1 abstention.

Article 19 (formerly article 14) - Liberal professions

Mr. HOARE (United Kingdom) drew attention to the footnote on page 10 of document A/CONF.2/102, which indicated that the Style Committee had not adopted a text for paragraph 2 of article 19. The text in that Committee's report was that adopted by the Conference.

Mr. ROCHEFORT (France) said that the only thing the Style Committee had failed to adopt was the word "colonies". He would propose the substitution for that word on the following phrase: "the territories for whose international relations they are responsible."

Replying to the PRESIDENT, he pointed out that the use of the formula "non-metropolitan territories" was impossible, since there were non-metropolitan territories, for instance, Algeria, which were not subject to the distinction. The formula he had suggested was the usual one. It went without saying that the recommendation contained in paragraph 2 would have to be interpreted in a reasonable spirit, as the territories to which reference was made included desert areas where the settlement of refugees was impossible.

The PRESIDENT wished, before putting the French amendment to the vote, to draw attention to the fact that a slightly different formula for those territories was used in the French text of article 40 (formerly article 35).

Mr. HOARE (United Kingdom) said that he had no objection in principle to the French representative's amendment. It raised a difficulty however. It should be noted in relations to article 40, that a State could sign on its own behalf and on behalf of other territories. But the formula "territories for the international relations of which they are responsible" clearly included metropolitan territory. In the case of the United Kingdom it would also mean adjacent territories, like the Channel Islands where the settlement of refugees must of necessity be governed by the same conditions as those obtaining in the United Kingdom itself. He would therefore prefer that the reference to territories should be qualified by the insertion of the words "other than the metropolitan territory".

Mr. ROCHEFORT (France) had no objection, especially in view of the fact that paragraph 2 was only a recommendation.

The PRESIDENT said that he would put to the vote the French amendment, as further amended by the United Kingdom representative, and therefore reading as follows:

"in territories, other than the metropolitan territory, for whose international relations they are responsible".

The French amendment was adopted in the above form by 19 votes to none, with 2 abstentions.

Mr. BOZOVIC (Yugoslavia) asked that a separate vote be taken on each paragraph of article 19.

Paragraph 1 was adopted by 21 votes to none, with 1 abstention.

Paragraph 2 was adopted as amended by 19 votes to 1, with 2 abstentions.

Article 19 as a whole and as amended was adopted by 20 votes to none, with 2 abstentions.

The PRESIDENT wished to express the thanks of the Conference to the Canadian representative, who was unfortunately obliged to leave Geneva before the end of the Conference. As a former Chairman of the Ad hoc Committee, the Canadian representative had made a valuable contribution to the work of the Conference, and had earned the gratitude of all his colleagues.

The meeting rose at 1.15 p.m.