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Dual DistributionCONFERENCE OF PLINIPOTENTIARILS ON THE STATUS OF
REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE SIXTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 4 July 1951, at 3 p.m.CONTENTS:pagesConsideration of the draft Convention on the
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Present:

President:

Mr. LARSEN

Members:

Australia	Mr. SHAW
Austria	Mr. FRITZER
Belgium	Mr. HERMENT
Canada	Mr. CHANCE
Colombia	Mr. GIRALDO-JARAMILLO
Denmark	Mr. HOEG
Egypt	MOSTAFA Bey
Federal Republic of Germany	Mr. von TRUTZSCHLER
France	Mr. ROCHEFORT
Greece	Mr. PAPAYANNIS
Iraq	Mr. AL PACHACHI
Israel	Mr. ROBINSON
Italy	Mr. THEODOLI
Luxembourg	Mr. STURM
Netherlands	Baron van BOETZELAER
Norway	Mr. ANKER
Sweden	Mr. PETREN
Switzerland (and Liechtenstein)	Mr. SCHURCH
Turkey	Mr. MIRAS
United Kingdom of Great Britain and Northern Ireland	Mr. HOARE
United States of America	Mr. WARREN
Yugoslavia	Mr. MAKIEDO

Observers:

Cuba	Mr. FISHER
Iran	Mr. KAFAI

High Commissioner for Refugees

Mr. van HEUVEN GOEDHART

Representatives of specialized agencies and other intergovernmental organizations:

International Refugee Organization
Council of Europe

Mr. STEPHENS
Mr. von SCHMIEDEN

Representatives of non-governmental organizations:

Caritas Internationalis

Abbé HAAS
Mr. BRAUN
Mr. METTERNICH

Catholic International Union
for Social Service

Miss de ROMER

Consultative Council of
Jewish Organizations

Mr. MEYROWITZ

Co-ordinating Board of
Jewish Organizations

Mr. WARBURG

International Council of Women

Miss FIECHTER

International League of Red
Cross Societies

Mr. LEDERMANN

International Social Service

Miss FERRIERE

International Union for Child Welfare

Mr. de THELIN

International Union of Catholic
Women's Leagues

Miss de ROMER

Standing Conference of
Voluntary Agencies

Mr. REES

World Jewish Congress

Mr. RIEGNER

World's Young Women's
Christian Association

Miss ARNOLD

Secretariat:

Mr. Humphrey
Miss Kitchen

Executive Secretary
Deputy Executive Secretary

CONSIDERATION OF THE DRAFT CONVENTION ON THE STATUS OF REFUGEES (item 5 (a) of the agenda) (A/CONF.2/1 and Corr.1, A/CONF.2/5) (continued)

1. Article 3 (B) (continued)

Mr. CHANCE (Canada) recalled that a suggestion had been made at the close of the preceding meeting that the representatives of Israel and the United Kingdom should try to establish a text for article 3 (B) which would be generally satisfactory and would cover the point of view expressed by the Australian delegation. He believed that such a procedure would be the most satisfactory and that it would save time.

Mr. HOARE (United Kingdom) said that the Israeli representative and he had been unable to do more than consider the issues involved in article 3 (B). The first point was whether it was indeed necessary to define the terms "In the same circumstances" and "same treatment accorded to nationals". It could be argued that those were not the only terms which would require interpretation, and that other terms, such as "lawfully and habitually resident", which were used throughout the text of the draft Convention should also be defined. If the Conference were to embark on a study of definitions, however, it would have to extend the scope and length of its work.

The second question was, did sub-paragraph (b) of article 3 (B) serve any useful purpose? The Israeli representative had rightly pointed out at the preceding meeting that a refugee might not be able to satisfy the "conditions required", precisely because he was a refugee and not a national. It would be very difficult to redraft that sub-paragraph so as to exclude those conditions which a refugee was incapable of fulfilling. The provision consequently seemed to be of doubtful utility.

Sub-paragraph (a), on the other hand, might be thought to serve a useful purpose and might possibly be drafted in such a way as to meet the object of the Australian proposal for an additional article 3 (C) (A/CONF.2/19).

Such definitions as were retained should, in his view, be included in the final clauses. He therefore believed that the wisest method would be to defer further consideration of article 3 (B).

The PRESIDENT assumed that if further consideration of article 3 (B) was deferred, the representatives of Israel and the United Kingdom would continue their work on the text. Meanwhile the Conference could take up the Australian proposal for an additional article 3 (C) (A/CONF.2/19).

It was agreed to defer further consideration of article 3 (B) on the above understanding.

2. Proposed article 3 (C) (A/CONF.2/19)

Mr. HERMENT (Belgium) contended that the Australian proposal (A/CONF.2/19) 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. If such benefits were to be ruled out, there would be no point in drawing up a Convention; all that would be necessary would be a simple statement to the effect that refugees would receive treatment equal to that enjoyed by aliens domiciled in the territories of the various countries.

Mr. SHAW (Australia) said that the Australian delegation had submitted its proposal because there seemed to be a gap in the draft Convention, the purpose of which was to confer certain rights on refugees. The Australian Government fully supported that purpose, and accepted the general principle of non-discrimination laid down in article 3. None the less, it would seem erroneous to regard the Convention as an instrument whereby refugees would be given more extensive rights than those accorded to aliens generally. That point should be admitted; otherwise practical difficulties might arise. He was aware that his proposal was in contradiction with the first paragraph of article 4, but he was in any event obliged to point out that the Australian delegation would in due course have to reserve its position on the latter.

Mr. FRITZER (Austria) supported the Belgian representative's viewpoint. If it were to be posited that refugees should not have rights greater than those enjoyed by other aliens, the Convention seemed pointless, since its object was precisely to provide for specially favourable treatment to be accorded to refugees.

MOSTAFA Bey (Egypt) pointed out that the term "other aliens" lacked precision. In actual fact, aliens of various nationalities resident in one and the same State received unequal treatment according, for example, to whether or not a bilateral treaty of establishment existed between their country of residence and their country of nationality, or to whether or not they had been granted a permanent or temporary residence permit. It would therefore be advisable to establish exactly what was meant by "other aliens".

Mr. von TRUTZSCHLER (Federal Republic of Germany) supported the Belgian and Austrian representatives. The Convention on the Status of Refugees was being negotiated because refugees were unable to benefit from the protection of their countries of origin, and were accordingly obliged to live in a foreign country, not from choice but in order to escape persecution. He opposed the Australian proposal.

Mr. SHAW (Australia) pointed out that Australia's position was rather a special one, since the country had a large-scale migration programme and was annually admitting some 40,000-50,000 alien immigrants. It would be very awkward if aliens who entered the country in accordance with duly negotiated agreements were granted less favourable treatment than refugees.

The Australian point of view was, indeed, shared by other Governments. He drew attention to the comments submitted by the Government of New Zealand (A/CONF.2/6/Add.2), in which it was stated that:

"the New Zealand Government could not contemplate the acceptance of any provisions in the draft Convention or the draft Protocol which would require discrimination in favour of refugees or stateless persons as against other aliens."

In view, however, of the views expressed by other representatives he would be prepared to withdraw his proposal on the understanding that his remarks would be reported in the summary record of the meeting.

Mr. HERMENT (Belgium) pointed out that Belgium was harbouring 400,000 aliens, compared with a total population of 9 millions. Despite their great number, Belgium's policy was to give refugees more favourable treatment than other aliens in view of the particularly tragic plight in which they found themselves.

The PRESIDENT said that as the Australian proposal for a new article 3 (C) (A/CONF.2/19) had been withdrawn, the Conference should next take up article 4.

3. Article 4 - Exemption from reciprocity (A/CONF.2/11, A/CONF.2/32)

Mr. HERMENT (Belgium), introducing his amendment (A/CONF.2/11) to paragraph 2 of article 4, pointed out that it was stipulated in the second sub-paragraph of paragraph 2 of article 4 that refugees should continue to be accorded those rights and benefits which they enjoyed at the date when the Convention came into force, even if those rights and benefits had been granted to them without regard to reciprocity. However, the fact was that the term "reciprocity" had not been defined. It might therefore refer either to diplomatic reciprocity as established by a bilateral treaty, or to legislative reciprocity, the principle of which was embodied in the national legislation of the various countries. In so far as it was the intention of the second sub-paragraph to maintain respect for the rights acquired by refugees, the Belgian delegation found it acceptable. However, it raised other problems.

As it stood the text stipulated that refugees not enjoying the rights referred to at the date on which the Convention came into force should be granted those rights, without regard to reciprocity, on condition that they should have been resident in the territory of the State concerned for a certain period. The first point to be noted was that the concept of "a certain period" was somewhat vague, and the Belgian delegation accordingly proposed that it be fixed at three years:

in that way, the Convention would include a firm statutory provision, and the fate of refugees in that particular direction would not be dependent on the goodwill of the receiving country. Further, 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, in fact, 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, by acting otherwise, Belgium would be assuming unknown commitments, since 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 those reasons, the Belgian delegation felt that all that was necessary was to grant refugees who enjoyed no rights at the date of entry into force of the Convention exemption from reciprocity in respect of those rights which were accorded solely on the basis of legislative or administrative reciprocity. That was the sense of the Belgian amendment.

MOSTAFA Bey (Egypt) pointed out that reciprocity was established through the medium of a convention or bilateral treaty concluded between individual States. However, the persons involved in the present case, namely, the refugees, had no appeal to the protection of any State. In that context, the idea of reciprocity seemed to him to lack precision.

The PRESIDENT, recalling that the rights and benefits enjoyed by aliens in certain countries depended on reciprocity, and that a refugee who was placed outside the framework of reciprocal agreements and arrangements was thus ipso facto reduced to the position of a stateless person, suggested that the difficulty might be met by some such formula as: "without the usual reciprocity required in the case of aliens in general".

MOSTAFA Bey (Egypt) thought that the words "without regard to reciprocity" should be deleted from the second sub-paragraph of paragraph 2 of article 4.

Mr. PETREN (Sweden) said that Sweden, too, had certain misgivings about the text which were not dissimilar to those felt by the Belgian delegation. Swedish legislation included provisions granting certain individual rights to nationals of other Scandinavian countries. He asked whether, in order to take account of that particular situation, the words "where aliens enjoy rights and benefits", in the first sentence of paragraph 2 of article 4, could be replaced by the words "Where aliens generally enjoy rights and benefits". The addition of the word "generally" would enable the Swedish Government to reserve its position in the special case he had mentioned.

Mr. HERMENT (Belgium) would not oppose such an amendment. He thought, however, that the Swedish Government could enter a reservation to that effect at the time when the Convention was signed.

Mr. ROCHEFORT (France) recalled the fact that the text of article 4 had been discussed at length in the Ad Hoc Committee; the French delegation had submitted no less than three different formulas, none of which had commanded majority support. In his opinion, the wording of the text before the Conference was unsatisfactory. Even though France was prepared to grant to refugees the rights in question in the absence of legislative reciprocity, it could not adopt the same attitude towards rights granted on the basis of diplomatic reciprocity. In the latter case, it could hardly do more than preserve such rights for those who already enjoyed them, and to grant them to others at its discretion. The French delegation accordingly supported the Belgian amendment, which had the merit of making clear that in the given context only exemption from legislative reciprocity was involved.

Mr. ANKER (Norway) supported the Swedish representative's remarks. He himself preferred the amendment proposed by the Swedish representative to the entry of a reservation at the time of signing the Convention, in order to avoid procedural complications and to obviate the confusion that might otherwise arise.

The PRESIDENT pointed out that the same problem might be raised by other groups of countries, such as the Benelux group, or by any who applied the most-favoured-nation principle. Consequently, all delegations that found themselves in the same position as the Norwegian and the Swedish delegations would inevitably have to make reservations. The necessity for doing so could not be averted by redrafting article 4.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) said that it was clear from the discussion that the situation varied greatly from country to country, and that an agreed formula would consequently be difficult to find. The Conference might perhaps find it useful to consider the text of article 4 as given in the memorandum submitted by the Secretary-General to the Ad Hoc Committee at its second session (E/AC.32/L.40), based on the Committee's report on its first session and the comments of governments and specialized agencies thereto.

The suggested formula read as follows:

"Each Contracting 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." (E/AC.32/L.40, page 36).

Mr. ROCHEFORT (France) said that, although the French Government saw no objection to communicating the official journals in which the laws were published, it would be impossible for it to communicate the text of certain treaties.

Mr. HERMENT (Belgium) agreed with the French representative. He pointed out, moreover, that the refugees would not thereby be kept conversant with their rights: for the notifications referred to would be addressed to the Secretary-General, whereas the refugee would consult the Convention to ascertain the status to which he was entitled.

Mr. FRITZER (Austria), reverting to the Belgian amendment, said that the Austrian delegation intended to limit to the minimum the reservations it would enter when signing the Convention. Nevertheless, 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. The acceptance of that provision might, in fact involve injustice towards those aliens who, after a very long period of residence in the territory of a given State, would still not enjoy the rights granted to refugees after only three years' residence. However, the Austrian delegation could accept the Belgian amendment if the time-limit were increased to, say, five years; it could not support it in its present form.

Mr. ROCHEFORT (France) suggested that the difficulties to which the reciprocity clause had given rise were due to the fact that an attempt had been made to construct a juridical system out of a concept which, in reality, could only serve as a point of reference. The objective in view was very clear, and a more precise wording might possibly have been found had certain countries, in whose cases the problem did not arise, not opposed the attitude of other delegations at the meetings of the Ad Hoc Committee. France, for its part, could agree to maintain the rights acquired by refugees; she could also accord certain rights to refugees not already enjoying them, even without regard to legislative reciprocity, providing in that case that such exemption would be granted only after a period of three years' residence. He would emphasize that that attitude corresponded exactly to his formal instructions from the French Government.

To meet the points raised at the meeting, the French delegation, after consultation with the Belgian delegation, was submitting, jointly with the latter, a new text for article 4, which was to be found in document A/CONF.2/32.

The PRESIDENT drew attention to the fact that the Conference could not take a decision on the text proposed by the High Commissioner unless it were sponsored by a delegation to the Conference.

Mr. STURM (Luxembourg) explained that the juridical conceptions prevailing in his country were similar to those in France and Belgium. His delegation would accordingly support the joint amendment.

Baron van BOLTZELAER (Netherlands) also supported the French-Belgian amendment.

MOSTAFA Bey (Egypt) proposed that further consideration of article 4 be deferred to give representatives time to study the new proposal.

It was so agreed.

4. Article 5 - Exemption from exceptional measures (A/CONF.2/15, A/CONF.2/26)

The PRESIDENT drew attention to the amendments to article 5 proposed by the Australian and United Kingdom delegations (A/CONF.2/15 and A/CONF.2/26 respectively).

Mr. HOARE (United Kingdom) observed that both the Australian and the United Kingdom amendments related to paragraph 2 of article 5, and that in addition he wished to propose an amendment to paragraph 1. He therefore suggested that paragraph 1 be passed over until that amendment had been circulated.

The PRESIDENT suggested that the Conference deal at that stage only with paragraph 2 of article 5, and the amendments thereto.

Mr. HERMENT (Belgium) accepted the President's suggestion on condition that any amendments which the United Kingdom representative might make to paragraph 1 of article 5 would not entail consequential changes to paragraph 2.

The President's suggestion was adopted.

Mr. SHAW (Australia) said that his amendment simply proposed that the words "or in the interests of national security" be inserted in paragraph 2, its purpose being to allow 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 felt that in the light of the way in which the remainder of paragraph 2 was phrased, no exception could be taken to his amendment.

However, as he supported the drafting amendments proposed by the United Kingdom representative in document A/CONF.2/26, he proposed to withdraw his own amendment (A/CONF.2/15) and to submit an amendment to the United Kingdom proposal consisting in the insertion of the words "or in the interests of national security" after the word "emergency" in the second line.

Mr. HOARE (United Kingdom) 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 proposition, and article 5 had been regarded as constituting an exception thereto. Another exception was article 21. It was not therefore enough to provide in paragraph 2 of article 5 an exception to paragraph 1 of the same article; the exception should also be to the other articles of the Convention. The other amendments he proposed in document A/CONF.2/26 were simply drafting changes.

MOSTAFA Bey (Egypt) did not oppose the substance of the United Kingdom amendment. He pointed out, however, that it was not very satisfactorily drafted; first, mention was made of "any person", thus making the text very general in character, whereas later it reverted to the idea of "a refugee".

After an exchange of views in which Mr. HERMENT (Belgium) and Mr. ZUTTER (Switzerland) took part, Mr. ZUTTER (Switzerland) proposed that the words "any person" be replaced by the words "a particular person".

The Swiss proposal was accepted.

Mr. HOARE (United Kingdom) felt that there might be reasonable grounds for objecting to the Australian proposal that the phrase "or in the interests of national security" should be inserted, since it would enable a State to take exceptional measures at any time, and not only in time of war or a national emergency.

Replying to the PRESIDENT, Mr. SHAW (Australia) confirmed that, although he had withdrawn his original amendment (A/CONF.2/15), he would press for the inclusion of the phrase "or in the interests of national security" in the text of the United Kingdom amendment. He emphasized that it was never his delegation's intention to open the way to an indefinite extension of the circumstances in which a State could take exceptional measures.

Mr. CHANCE (Canada) submitted that the phrase might be interpreted much more widely than was desirable, and he would therefore prefer that it should not be incorporated in the United Kingdom amendment.

Baron van BOETZELAER (Netherlands) was also afraid, despite the assurance given by Australian representative, that the phrase might be too widely interpreted, and hence open to abuse. He therefore took the same position as the Canadian representative,

Mr. ROBINSON (Israel) supported the Canadian and Netherlands representatives; the United Kingdom amendment was broad enough as it stood.

Mr. ROCHEFORT (France) 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. Such being the case, a working group might be asked to devise a formula which would meet the objections of the Australian delegation without raising those that other representatives had levelled against the phrase that that delegation had itself proposed.

Mr. AL PACHACHI (Iraq) said that the aim of paragraph 2 of article 5 was presumably to enable Contracting States to adopt, in respect of refugees, exceptional measures required by national security. If that was so, it would be better to say so clearly.

Mr. ZUTTER (Switzerland) agreed with the views of the United Kingdom and Canadian representatives, and, like them, considered it undesirable to introduce the phrase proposed into the Convention. It had to be remembered that the aim of the Convention was primarily to protect refugees. The danger of the Australian text was that certain countries might interpret it much more widely than was contemplated at the present Conference. He recalled that the problem had arisen at the Diplomatic Conference for the Revision of the Red Cross Conventions in Geneva in 1949, where it had been discussed at great length. That Conference had not adopted a provision analagous to the one before the meeting, for the reasons that several speakers at the present meeting had already given. However, 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".

After an exchange of views in which Mr. ROCHEFORT (France), Mr. HERMENT (Belgium), Mr. SHAW (Australia) and Mr. ZUTTER (Switzerland) took part, Mr. ROCHEFORT (France) suggested the following wording: "in time of war or in time of grave national or international tension"

The PRESIDENT recalled that when article 5 had first been discussed by the Ad Hoc Committee, there had been no doubt that dangerous persons, such as spies, had to be dealt with under national laws. The question had then 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 particular State to make an immediate distinction between enemy nationals, in the country, supporting the enemy government, and those persons who had fled from 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.

Mr. ROBINSON (Israel) believed that as the phrase "national emergency" in English had a definite legal connotation, and the phrase "crise grave nationale" had no such precise juridical meaning, it would be necessary to define the French phrase.

Replying to the PRESIDENT, Mr. SHAW (Australia) said he would agree to the words "national emergency" in the second line of the United Kingdom amendment (A/CONF.2/26) being replaced by the phrase "time of grave tension, national or international".

The PRESIDENT put that wording to the vote.

The phrase in question was rejected by 7 votes to 3, with 9 abstentions.

Baron van BOETZELAER (Netherlands) proposed the phrase "in case of grave and exceptional circumstances".

Mr. HOARE (United Kingdom) suggested, and Baron van BOETZELAER (Netherlands) agreed, that the phrase should read "other grave and exceptional circumstances".

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

The PRESIDENT put to the vote the United Kingdom amendment, as amended.
The text read:

"Nothing in this Convention shall prevent a Contracting State in time of war or other grave and exceptional circumstances, from taking provisional 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 such measures are still necessary in his case in the interests of national security".

The United Kingdom amendment was adopted in the above form by 16 votes to none, with 4 abstentions.

The meeting rose at 5.55 p.m.