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REFUGEES AND STATELESS PERSONSSUMMARY RECORD OF THE SEVENTH MEETING
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on Thursday, 5 July 1951, at 10.30 a.m.CONTENTS:pages

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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 TRÜTZSCHLER
France	Mr. ROCHEFORT
Greece	Mr. PAPAYANNIS
Iraq	Mr. AL PACHACHI
Israel	Mr. ROBINSON
Italy	Mr. del DRAGO
	Mr. THEODOLI
Luxembourg	Mr. STURM
Monaco	Mr. SOLAMITO
Netherlands	Baron van BOETZELAER
Norway	Mr. ARFF
Sweden	Mr. PETRÉN
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
	Mr. BOZOVIC

Observers:

Cuba	Mr. DUSSAG-FISHER
Iran	Mr. KAFAI

High Commissioner for Refugees

Mr. van HEUVEN GOEDHART

Representatives of specialized agencies and
other inter-governmental organizations:

International Refugee Organization

Mr. STEPHENS

Representatives of non-governmental organizations:

Category B and Register

Caritas Internationalis

Abbé HALLS
Mr. METTERNICH
Mr. BRAUN

Catholic International Union for
Social Service

Miss de ROMER

Commission of the Churches on
International Affairs

Mr. REES

Consultative Council of Jewish
Organizations

Mr. MEYROWITZ

Co-ordinating Board of Jewish
Organizations

Mr. WARBURG

Friends' World Committee for
Consultation

Mr. BELL

International Council of Women

Mrs. FIECHTER

International Federation of Friends
of Young Women

Mrs. FIECHTER

International League for the Rights
of Man

Mrs. BAER

International Union of Catholic
Women's Leagues

Miss de ROMER

Women's International League for
Peace and Freedom

Mrs. BAER

World Jewish Congress

Mr. RIEGNER

Secretariat:

Mr. Humphrey

Executive Secretary

Miss Kitchen

Deputy Executive Secretary

1. 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):

(i) Article 5 - Exemption from exceptional measures (continued)

The PRESIDENT observed that, when it had decided at the preceding meeting to adopt the United Kingdom amendment to Article 5, paragraph 2, the Conference had not decided where the new text should be placed. He would suggest that it should be inserted before article 6, and provisionally numbered article 5(A).

It was so agreed.

The PRESIDENT then invited the Conference to consider article 5, paragraph 1. He understood that the United Kingdom representative had an amendment to propose to it.

Mr. HOARE (United Kingdom) said that he had not yet drafted the text to his own satisfaction, and would accordingly request that further discussion on article 5, paragraph 1, be deferred until his amendment had been circulated.

It was so agreed.

(ii) Article 6 - Continuity of residence (A/CONF.2/24)

Mr. MAKIEDO (Yugoslavia), drawing attention to the Yugoslav amendment (A/CONF.2/24) to article 6, said that he was not opposed to the purpose of that article, but believed that a time limit in respect of the return of refugees should be set for purposes of calculating their period of residence.

The PRESIDENT observed that in drafting article 6 the Ad hoc Committee on Refugees and Stateless Persons had been concerned to ensure that, when their period of residence was being calculated, refugees should not be penalized for enforced displacement from a country. The matter was of particular importance in those countries where residential qualifications were required for naturalization. Although the Yugoslav representative's amendment seemed consonant with that intention, he considered it superfluous, as several years had elapsed since

the end of the war, and as article 6 already used the phrase "has subsequently returned",

Mr. CHANCE (Canada) and Mr. HERMENT (Belgium) suggested that the Yugoslav amendment would be more clearly expressed if the words "prior to" were substituted for the word "until".

Mr. MAKIEDO (Yugoslavia) accepted that change.

The PRESIDENT put to the vote the amended Yugoslav proposal that the words "prior to the date of the entering into force of this Convention" should be inserted after the words "and has subsequently returned there", in article 6, paragraph 2.

The Yugoslav amendment was unanimously adopted, as amended.

Article 6 was unanimously adopted as amended.

(iii) Article 7 - Personal Status (A/CONF.2/30, A/CONF.2/31, A/CONF.2/33, A/CONF.2/34, A/CONF.2/36)

The PRESIDENT drew attention to the Austrian, Yugoslav, Netherlands and Swiss amendments to article 7 (A/CONF.2/30, A/CONF.2/31, A/CONF.2/33 and A/CONF.2/34 respectively). A United Kingdom amendment would also be circulated shortly.

Baron van BOETZELAER (Netherlands), introducing his amendment (A/CONF.2/33) to article 7, said that it was no doubt desirable, as the High Commissioner for Refugees had pointed out, for the Conference to adopt the provisions of article 7 - the article which dealt with the personal status of refugees. But it must be remembered that the word "domicile" did not mean the same thing in Anglo-Saxon law as in continental law. Hence it would be better to replace the word by the expression "habitual residence", which left no room for misinterpretation.

Moreover, in conformity with the Hague Treaty relating to private international law, the status 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 were 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 party to the Hague Treaty, would still be bound by obligations under the latter. The question must be looked into. 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.

Mr. FRITZER (Austria), introducing his amendment (A/CONF.2/30), said that the provisions of article 7 would bring about a change in international private law, since up to the present time the personal status of aliens had been governed by the law of the country of which they were nationals. The Austrian Government would be prepared to accept article 7, but believed that its application 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 the wording of paragraph 2 of article 11.

The PRESIDENT observed that the Austrian amendment was virtually identical with the first part of the Netherlands amendment (A/CONF.2/33).

Mr. MAKIEDO (Yugoslavia) 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. Hence Yugoslavia would find it rather difficult to apply the provisions of article 7 in the form in which they now appeared in the draft Convention.

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. That explained Yugoslavia's anxiety to see article 7 modified on those lines. However, Yugoslavia was fully aware of the difficulties created by the position of refugees with no nationality; and in its desire to make its full contribution to the preparation of a Convention capable of commanding the maximum number of accessions, the Yugoslav delegation was proposing a compromise (A/CONF.2/31) which would enable each Contracting State to grant to refugees

possessing a nationality the status prescribed by the law of the Contracting State, and to refugees who were stateless persons a status governed by the law of the country of their domicile, or if they had no domicile, by the law of the country of their residence.

With regard to article 7, paragraph 2, which dealt with the rights dependent on personal status which must be respected by Contracting States, the Yugoslav amendment would ensure respect not merely for those rights, but for obligations undertaken previously by a refugee towards either his next of kin or other persons. After all, how could one protect the rights of one category of individuals and at the same time prejudice the rights of another? That was a humanitarian question which the Conference must not ignore.

Mr. SCHURCH (Switzerland) observed that the provisions laid down in paragraph 1 of article 7 were already applied in Switzerland to aliens whose nationality could not be established. However, the status of aliens possessing a specific nationality was governed by the legislation of their country of origin. Switzerland's accession to the Convention would have the effect, therefore, of modifying the policy it had hitherto pursued in respect of the personal status of aliens. In principle, the Swiss Federal Government was prepared to make such a change in favour of refugees, and thus did not question the basic principle of article 7. In the light of article 31, however, relating to measures for the implementation of the draft Covenant, the Federal Government wondered whether that modification would result automatically from its accession to the Convention, seeing that article 7 laid down a specific and concrete principle, or whether it would be necessary to introduce new legislation, and whether it should in that case make reservations on the point. The Swiss experts who had been consulted on the matter had expressed the view that the Federal Government could drop the idea of entering such reservations. He limited his remarks for the moment to paragraph 1 of article 7, while reserving the right to revert later to paragraph 2. Indeed, he assumed that the Conference was for the moment discussing only paragraph 1.

The PRESIDENT confirmed that only paragraph 1 of article 7 was under discussion for the moment.

Mr. HERMENT (Belgium) was somewhat hesitant about accepting the Netherlands amendment. Paragraph 1 of article 7 was directly inspired by the Convention relating to the Status of Refugees of 28 October, 1933, ratified by the United Kingdom; and the latter country seemed to have raised no objection to the use in the text of the Convention of the two words "domicile" and "residence". On the other hand, 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 United Kingdom, everyone acquired, at birth, a domicile of origin which he retained until he established a domicile of his own choice, which then constituted his legal domicile.

Mr. GIRALDO-JARAMILLO (Colombia) regarded the original text of paragraph 1 as more technically adequate, from the legal standpoint, than the Netherlands and Austrian amendments. In point of fact, the concept of domicile implied a legal relation between a person and his domicile, whereas that of residence implied simply a stay in a place, without any legal relation between the person and the place in question. It would be very dangerous to embody the new concept of "habitual residence" in the draft Convention, and the Colombian delegation would accordingly vote against the Netherlands and Austrian amendments.

Moreover, Chapter II of the draft Convention, which related to juridical status, represented an innovation, in that it made no distinction between stateless refugees on the one hand, and refugees possessing a nationality on the other. That fact would entail rather serious difficulties for some countries, including, possibly the need to amend their legislation. For that reason, the Colombian delegation was prepared to support the Yugoslav amendment, despite the fact that the drafting of the first sentence could, it felt, be improved upon.

Mr. HOARE (United Kingdom) confirmed that the Belgian representative's remarks concerning United Kingdom law on domicile were perfectly correct.

In Anglo-Saxon law there were two concepts: the domicile of origin, and the domicile of choice. The former might or might not be the place of birth; the latter was acquired by the personal choice of the person concerned. He believed that the technical difficulties arising out of the application of article 7 had been exaggerated. It would be very exceptional if a refugee, fleeing from his country of origin, did not adopt the country of asylum as his domicile of choice. On the other hand, 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. He therefore preferred the original wording of paragraph 1.

Baron van BOETZELAER (Netherlands) pointed out that habitual residence was already mentioned in article 11. The Netherlands amendment did not, therefore, introduce any new concept into the draft Convention. As, however, everyone, including the United Kingdom representative, seemed to be in agreement as to the meaning of the English word "domicile", he would not press his amendment, and accordingly withdrew it.

Mr. PETRÉN (Sweden) accepted the principle proclaimed in article 7, and hoped that it would not be necessary for Sweden to make any reservations in respect of it, when signing the Convention.

Mr. ROCHEFORT (France) remarked that it was sometimes difficult to decide whether a refugee had a nationality, or whether he was a stateless person. That depended on decisions, taken by the countries of origin, which might often be arbitrary, for instance, in cases of forfeiture of nationality.

On the other hand, 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's 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 (A/CONF.2/34), however, might allay certain justifiable anxieties.

Finally, as to the Yugoslav amendment to paragraph 2, the French delegation saw no objection to the insertion of the words "and duties", which usually accompanied the mention of rights in legal texts.

Mr. FRITZER (Austria) said that he would withdraw his amendment (A/CONF.2/30) in the light of the arguments advanced in the meeting.

The PRESIDENT stated that in that case only the Yugoslav amendment to article 7, paragraph 1, remained to be considered.

MOSTAFA Bey (Egypt) wished to describe the system in force in Egypt with regard to personal status, as a knowledge of that system might influence the attitude of some delegations to the question.

The problem of personal status gave rise to serious difficulties in Egypt, owing to the country's geographical position and the diversity of its population. 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. Moreover, each of those legal systems conceived the principle of personal status in different ways. Again, the status of aliens (other than Mohammedan aliens) in Egypt was governed by their personal status under the law of their own country, reference to that law being made by Egyptian law. If the personal status of a refugee was governed by the law of his country of domicile, or, if he had no domicile, by the law of his country of residence, and if that refugee was established in Egypt, there would be difficulty in deciding which among the various types of personal status of domicile or residence should be granted to him, as there were, as had been said, several such types of status.

It would, therefore, be desirable for the Convention to define what was meant by personal status. The question was undoubtedly a very complex one, and might involve lengthy discussion. For that reason, the Egyptian delegation would for the time being do no more than bring the question to the Conference's notice, and ask representatives to give it their serious consideration.

Mr. ROBINSON (Israel) appealed to the Yugoslav representative to reconsider his position in the light of the views expressed by the majority of representatives.

Mr. MAKIEDO (Yugoslavia) again emphasized that, for the reasons he had already given, Yugoslavia would find it difficult to accede to the Convention if article 7 were maintained in its existing form. He would be compelled to reserve his Government's position in the matter.

His amendment imposed no rigid rule. It drew its inspiration from the 1938 Convention relating to the Status of Refugees coming from Germany. There did not, indeed, seem to be any great difficulty in determining the nationality of refugees; but in the case of refugees whose nationality could not be determined, the provisions of his amendment were identical with those of paragraph 1 of article 7.

Mr. ROCHEFORT (France) said that the wording of the Yugoslav amendment would leave contracting States no option. Only in the case of refugees whose nationality could not be determined would personal status be governed by the law of the country of their domicile. Contrary to what the Yugoslav representative thought, it was often very difficult to know, as he (Mr. Rochefort) had already indicated, whether a given refugee still had a nationality.

The rule proposed in article 7 of the draft Convention was simpler than the one proposed in the Yugoslav amendment. It had been elaborated by the Ad hoc Committee after lengthy discussion, and it would be desirable to keep to it.

Mr. von TRUTZSCHLER (Federal Republic of Germany) associated himself with the French representative's remarks. There were grave technical objections to applying the law of the country of origin.

Mr. ROBINSON (Israel) suggested that it would be quite wrong on moral grounds for refugees to be made subject to the laws of a country which they had repudiated. The right of a person to choose freely his own nationality was a paramount consideration. Furthermore, there were grave practical objections to such a course. Taking, by way of example, the case of a person whose place of

origin was Vilna, and who had sought asylum in a country where in matters of international private law the courts applied the law of the country of origin, the courts would have to establish whether they should apply the Polish Civil Code, that of Lithuania before its annexation by the Soviet Union, or the Soviet Civil Code for the constituent Republics of the Union. Such a decision would involve political considerations, and courts in some countries might be unwilling to go into such matters. Furthermore, if courts required advice as to the interpretation of the law of any particular country, they had sometimes to apply to its legal experts. Thus, innumerable complications might arise. He would suggest that the procedure proposed in the Yugoslav amendment was to all intents and purposes impracticable, and would make refugees the victims of interminable legal processes.

The Swiss representative had raised the important question of the relation between articles 7 and 31 of the draft Covenant, but perhaps the question of whether the provisions of article 7 would have to be introduced into the national legislation of Contracting States in order to make it automatically applicable might be discussed in connexion with article 31.

Mr. MAKIEDO (Yugoslavia) said that, in order to simplify matters, he would withdraw his amendment, while reserving his Government's position on the matter.

The PRESIDENT said that as all the amendments submitted to article 7, paragraph 1, had been withdrawn, he would proceed to put it to the vote as it stood in document A/CONF.2/1.

Article 7, paragraph 1, was adopted by 20 votes to none, with 3 abstentions.

The PRESIDENT drew the attention of representatives to the United Kingdom and Swiss amendments to article 7, paragraph 2 (A/CONF.2/36 and A/CONF.2/34 respectively.

Mr. SCHURCH (Switzerland) said that Swiss law recognized acquired rights, but only subject to provisions concerning public order. The Swiss Federal Government was accordingly unable to accept paragraph 2 of article 7 unless such a

reservation was included in it. That was why his delegation's amendment (A/CONF.2/34) had been introduced. If that amendment met with opposition, the Swiss delegation was prepared to withdraw it, but would then be compelled to enter appropriate reservations. He understood that the United Kingdom representative proposed to submit an amendment, but it had not yet been circulated in French. That amendment might perhaps meet the Swiss delegation's objection, in which case he might withdraw his own amendment in its favour.

Mr. HOARE (United Kingdom), introducing his amendment (A/CONF.2/36) to paragraph 2, stated that it included two distinct elements, which might be put to the vote separately. By proposing the substitution of the words "that State", for the words "the country of his domicile or, if he has no domicile, by the law of the country of his residence", he wished to make clear that the formalities to be complied with in connexion with the assertion of rights dependent on personal status must be those prescribed by the law of the country where they were to be exercised. For instance, a refugee who was domiciled in Italy might temporarily find himself in France, where he wished to assert certain rights. He might even wish to assert such rights in France without being personally present in that country, for example, by making testamentary dispositions. It was surely not to be supposed that in such a case the formalities should be those prescribed by Italian law, as would seem to be the implication of the original wording of paragraph 2.

The second part of the United Kingdom amendment, which proposed the addition of the words "provided that the right is one which would have been recognized by the law of that State had he not become a refugee" was intended to meet the point raised by the Swiss representative, namely, that States should not be required to respect rights previously acquired by a refugee when they were contrary to their own legislation. A State could not protect a right which was contrary to its own public policy or, as the Swiss representative had expressed it in French, to "l'ordre publique". If any representative could suggest a more satisfactory wording, he would be prepared to give it careful consideration.

Abbé HAAS (Caritas Internationalis), speaking at the invitation of the PRESIDENT, asked the latter for clarification of the meaning of the words "dependent on personal status" and "more particularly" in paragraph 2 of article 7, as originally drafted. Did the rights in question include those dependent on family status?

The PRESIDENT regretted that he was not in a position to reply to the question. That would necessitate a knowledge of private international law which he did not pretend to possess. The answer to that question would, ultimately, lie with the International Court of Justice.

Mr. CHANCE (Canada) stated that he had a very clear recollection of the discussions held in the Ad hoc Committee on article 7. He believed that the United Kingdom representative's amendment to paragraph 2 would bring the wording more closely into line with what had originally been intended, and he would accordingly support it.

Mr. GIRALDO-JARAMILLO (Colombia) agreed with the United Kingdom representative's views, and supported his amendment.

Mr. SCHURCH (Switzerland), adopting the same view, withdrew his amendment to paragraph 2.

Mr. ROCHEFORT (France) asked the United Kingdom representative to clarify his amendment. From what had been said before, it seemed to follow that the word "domicile" bore a different meaning in English from that generally accepted by those taking part in the present Conference. Did the United Kingdom amendment in fact mean that the United Kingdom would confer on refugees certain elements of the personal status deriving from the law of their country of origin? If such were the case, would it not be preferable to abandon the idea of domicile in favour of the idea of habitual residence? The question seemed sufficiently complex to merit close study.

Mr. HOARD (United Kingdom) pointed out that paragraph 2 was concerned with the formalities arising from the assertion of rights dependent on personal status; personal status itself was defined in paragraph 1. The United Kingdom amendment was designed to remove the anomaly which he believed to exist in paragraph 2.

Baron van BOETZELAER (Netherlands) supported the French representative's view. Hitherto, the status of an alien had been governed by the law of his country of origin. The original intention had been to give refugees the status of the country of their domicile. If it was now desired to give them the status of their country of residence, great confusion would result. It was desirable that the question should be gone into more carefully.

The PRESIDENT said that the operative words were "previously acquired". It was essential to make some provision ensuring that such rights did not conflict with the legislation of the country in which the refugee became domiciled.

Mr. ROCHEFORT (France) requested that further consideration of the United Kingdom amendment be deferred, in order to enable representatives to seek advice on its legal implications.

It was so agreed.

Mr. MAKIEDO (Yugoslavia) defended his amendment (A/CONF.2/31) to paragraph 2 of article 7. That article spoke of the rights of refugees. The intention of the Conference was undoubtedly to protect the interests of refugees, but there was another aspect to the question. It was also essential to protect the rights of persons in respect of whom a refugee had contracted duties or obligations dependent on his personal status. It was therefore desirable to insert the words "and duties" after the word "rights" in paragraph 2.

Mr. HERMENT (Belgium) would like the Yugoslav representative to quote a concrete case in support of his view. How could an obligation contracted by a refugee be respected by a Contracting State? In particular, with regard to rights attaching to marriage, a spouse who considered himself or herself injured in

law could approach the competent courts. It was not for a Contracting State to ensure observance of duties and obligations contracted by a refugee.

Mr. ROCHEFORT (France) thought that the difficulty could be overcome by introducing the idea of duties into another part of paragraph 2, for example, after the words "formalities prescribed by the law of the country of his domicile", using the following wording: "and with respect for duties dependent on personal status". In that way satisfaction would be given to the Yugoslav representative, and the Belgian representative's objection would also be met.

Mr. MAKIEDO (Yugoslavia) thought that the French suggestion should meet the Belgian representative's objection, especially with regard to duties attaching to marriage.

Mr. HERMENT (Belgium) was unable to see in what way the recognition of a right could be made subject to the recognition of a duty. There was no legal connection between the two things.

Mr. ROCHEFORT (France) thought that the difficulty could be removed by introducing the idea of duties, not into paragraph 2 of article 7, but into paragraph 1, by re-drafting that paragraph to read:

"The personal status of a refugee, with its dependent rights and duties, 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".

Mr. MIRAS (Turkey) thought such an addition was perhaps unnecessary, for did not personal status ipso facto imply rights and duties ?

Mr. ROCHEFORT (France) thought that such indeed was the case. The introduction of the words in question into paragraph 1, however, would satisfy the Yugoslav representative, and would be unobjectionable in itself.

Mr. GIPALDO-JARAMILLO (Colombia) considered that the original text of the article was preferable on technical grounds. It seemed pointless to mention specifically in article 7 duties and obligations contracted by the refugees, for it

was clear that rights dependent on personal status involved duties. A more satisfactory formula could no doubt be found.

Mr. MAKIEDO (Yugoslavia) thought that only a question of style was involved; he would be pleased if the French-speaking delegations would help him to solve the difficulty. The essential thing was that the text of the draft Convention should embody recognition of the refugee's duties and obligations, and that the Contracting State in whose territory he resided should be in a position to ensure their observance.

Mr. ROCHEFORT (France) thought that, even though, from the legal point of view, it was not absolutely necessary to introduce the idea of duties into the text, such a course would nevertheless satisfy the Yugoslav representatives. Certain concessions had to be made, provided that the rights of refugees were not thereby impaired, to facilitate the accession of States to the Convention.

Mr. ROBINSON (Israel) said that, since the general wish, which had just been re-echoed by the French representative, was to enable as many States as possible to accede to the Convention, and since the Yugoslav representative attached importance to his amendment, the Conference should try to accept it.

The PRESIDENT remarked that in the new form just suggested by the French representative the amendment related to paragraph 1, which had already been voted upon. He suggested that the Conference should nevertheless revert to paragraph 1, in order to get over the difficulty, and asked the Yugoslav representative whether his point would be met if the words "with its dependent rights and obligations" were inserted after the words "The personal status of a refugee".

Mr. BOŽOVIĆ (Yugoslavia) pointed out that it was a question of rights already acquired.

He agreed to the inclusion in paragraph 1 of article 7 of the amendment previously submitted by the Yugoslav delegation to paragraph 2 of that article, but he felt it necessary to specify that what was intended thereby was rights

previously acquired and duties previously contracted.

The PRESIDENT said that it was a difficult matter to decide what constituted a right or obligation. To revert to the example of family obligations cited by the Yugoslav representative, it might be asked whether the obligation of a father to support his children implied the right of the children to such support in the event of the personal status of the father changing. In Norway, for instance, so far as he knew, a father was obliged to support his children until they had reached the age of 21, as compared with 18 in Denmark. He therefore wondered whether, if a Norwegian father transferred his residence to Denmark, it would be right to speak of an acquired right of the children to be supported beyond the age of 18. The problem depended on various circumstances, such as national legislation, and raised a number of legal points. Since the text had already been adopted by a number of States in previous conventions, and since it had not been claimed that those conventions had given rise to difficulties, representatives should give the matter every consideration before deciding to change the wording of article 7 as originally drafted. He also recalled that the text had been drafted by the legal experts of the United Nations Secretariat, and that it had been adopted by the Ad hoc Committee at both its sessions.

He requested delegations to ponder the point, and, since there were certain difficulties connected with both the Yugoslav and the United Kingdom amendments, proposed that the Conference should defer its decision on article 7, taking up article 8 in the meantime.

It was so agreed.

(iv) Article 8 - Movable and immovable property

The PRESIDENT announced that no amendments had been submitted to article 8.

Article 8 was unanimously adopted without comment.

Baron van BOETZELAER (Netherlands) explained that his affirmative vote did not mean that he accepted the words "in the same circumstances" without reservation.

The PRESIDENT replied that there were certain general points in connexion with the various articles, including article 8, which had still to be settled. He therefore suggested that there should later be a second reading of the entire text of the draft Convention.

It was so agreed.

(v) Article 9 - Artistic rights and industrial property (A/CONF.2/38, A/CONF.2/39)

Mr. FRITZER (Austria) considered that it was only right and fair that refugees resident in a given country should be accorded the same protection as nationals of that country in respect of the protection of industrial property and of rights in literary, scientific and artistic works; but he 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. He was therefore proposing that the words "in which he is resident" should be replaced by the phrase "in which he has his habitual residence or, if he has no habitual residence, in which he resides" (A/CONF.2/38).

The PRESIDENT announced that the Swedish delegation wished to introduce an amendment to article 9, which would be circulated in French that afternoon.

Mr. PETREN (Sweden) introduced his amendment (A/CONF.2/39) to article 9 of the draft Convention. It was more or less the same as the Austrian amendment, except that the concept of "habitual residence" was replaced by that of "domicile". That difference was an important one, and he would therefore press his amendment.

Mr. GIRALDO-JARAMILLO (Colombia) recalled his earlier observations concerning the new concept of "habitual residence", the introduction of which into the Convention, to his mind, would be a risky procedure. What length of stay did that concept involve in actual fact? Under Colombian legislation, aliens were accorded the same rights as Colombian nationals, without any restriction based on length of stay. The original text of article 9 was in harmony with that practice, and his delegation would accordingly vote for it.

Mr. ROCHEFORT (France) was afraid that the Austrian amendment ran counter to that delegation's intention. If it were adopted, a refugee residing in a 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 at the present stage, as proposed in the Swedish amendment, of the concept of "domicile", entailing as it did certain disadvantages from the legal point of view, involved difficulties. Perhaps the Austrian representative's point could best be met by retaining the text of article 9 as it stood, on the understanding that "residence" meant "habitual residence", or by inserting the word "habitual" before the word "residence".

Mr. PETRÉN (Sweden) observed that if the word "domicile" was accepted elsewhere in the draft Convention, it could also be accepted in article 9.

Mr. FRITZER (Austria) pointed out that the words "habitual residence" had already been used in paragraph 2 of article 11.

Mr. GIRALDO-JARAMILLO (Colombia) pointed out that article 11 had not yet been adopted. The fact that the word "domicile" had been accepted in certain articles of the draft Convention did not mean that it should be accepted everywhere. There was a difference between rights dependent on personal status and other civil rights, for example, property rights such as those under discussion. In the former case, the concept of "domicile" might be suitable, but the concept of "residence" was preferable so far as artistic rights and industrial property were concerned.

As the French representative had rightly stated, 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, explained that the existing text of article 9 was based on a Danish proposal submitted in the Ad hoc Committee, and supported there by the United Kingdom delegation. However, the idea originally contemplated had not been fully reproduced. The question of nationality entered into the matter, inasmuch as the recognition, for example, of a person's rights 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 for a few days, be given the same protection in that respect as a Swiss national.

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 with the country in which he wished to assert his rights. He added that the Danish delegation intended to table an appropriate amendment later.

2. CREDENTIALS OF REPRESENTATIVES

The PRESIDENT drew the attention of the Conference to rule 2 of the rules of procedure, relating to the credentials of representatives. He recalled that the Conference was a conference of plenipotentiaries called upon by General Assembly resolution 429 (V) to sign such instruments as it might draft.

It should be remembered that not only for the purpose of signing diplomatic instruments but also for participating in a conference of plenipotentiaries, representatives required credentials to that effect executed either by the Head of a State, or by the Head of a Government, or by a Minister for Foreign Affairs. If a plenipotentiary was empowered not only to participate in the conference but also to sign the documents drawn up, the credentials should expressly state that he was authorized to sign in the name of the country which he represented.

So far, the representatives of five States only, namely, Austria, Belgium, Denmark, Luxembourg and Norway, had submitted credentials authorizing them both to participate in the proceedings of the Conference and to sign the diplomatic instruments which it was preparing. The representatives of Israel and of Switzerland had furnished credentials authorizing them to participate in the Conference, but making no mention of the right to sign the instruments that would result from its work. The Swiss delegation had also submitted credentials authorizing it to represent the Principality of Liechtenstein and to sign, in its name, the decisions and protocols drafted by the Conference.

The remaining delegations had not yet submitted the requisite credentials. In accordance with rule 3 of the rules of procedure, those representatives were entitled to sit provisionally in the Conference. In a few days, however, the officers of the Conference proposed to complete their report to the Conference on the credentials of representatives, and it was indispensable that those representatives who had not already done so should submit their credentials in proper form to the Secretariat before 14 July.

Mr. CHANCE (Canada) pointed out that his credentials had been handed to the Deputy Executive Secretary the morning the Conference opened.

MOSTAFA Bey (Egypt) said that he was in the same position as the Canadian representative. Credentials authorizing him to participate in the Conference, but not to sign the Convention, had been communicated to the Secretary-General of the United Nations two months previously.

Mr. ROCHEFORT (France) said that if representatives needed special credentials to sign the instrument, and not merely credentials to participate in the proceedings of the Conference, it would appear that only five States had complied with the requirements, and that, in those circumstances, the representatives of the other States would only be participating in the Conference as observers.

The PRESIDENT pointed out that it was a matter of formal international diplomatic procedure. He was not criticizing in any way the basis on which any

member was participating in the work of the Conference, but merely referring to the necessity for their producing the relevant credentials signed by an appropriate authority. As he had said, the credentials of the representatives of Israel and Switzerland were also in order so far as participation in the work of the Conference was concerned, as they were signed either by the Minister for Foreign Affairs, or by the Head of the State, although they did not confer the right to sign the instruments which would be prepared.

Mr. THEODOLI (Italy) said that the Italian delegation was empowered to participate in the proceedings of the Conference, but that the credentials granting full powers were still awaiting the signature of the Head of the State.

MOSTAFA Bey (Egypt) wished to be informed whether the communication addressed to the Secretary-General of the United Nations in the name of the Egyptian Government was adequate.

Mr. ROCHEFORT (France) asked whether there were no Credentials Committee to take the matter in hand.

Mr. CHANCE (Canada) suggested that the Secretariat should look into the matter. He moved the adjournment of the meeting.

The motion for the adjournment was adopted.

The PRESIDENT added that representatives who had doubts concerning the form of their credentials should consult either himself or the Secretariat, which was well acquainted with such matters.

The meeting rose at 1.10 p.m.