

Dual distributionCONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF
REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE THIRTEENTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 10 July 1951, at 11 a.m.

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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
Columbia	Mr. GIRALDO-JARAMILLO
Denmark	Mr. HOEG
Egypt	MOSTAFA Bey
Federal Republic of Germany	Mr. von TRÜTZSCHLER
France	Mr. ROCHEFORT
	Mr. COLEMAR
Greece	Mr. PHILON
Iraq	Mr. AL PACHACHI
Israel	Mr. ROBINSON
Italy	Mr. THEODOLI
Luxembourg	Mr. STURM
Monaco	Mr. SOLAMITO
Netherlands	Baron van BOETZELAER
Norway	Mr. ANKER
Sweden	Mr. PETRÉN
Switzerland (and Liechtenstein)	Mr. ZUTTER
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

Observers:

Iran

Mr. KAFAI

High Commissioner for Refugees

Mr. van HEUVEN GOEDHART

Representatives of specialized agencies and of other intergovernmental organizations:

International Labour Organisation

Mr. WOLF

International Refugee Organization

Mr. SCHNITZER

Council of Europe

Mr. von SCHMIEDEN

Representatives of non-governmental organizations:

Category A

International Federation of
Christian Trade Unions

Mr. EGGERMANN

Category B and Register

Caritas Internationalis

Abbé HAAS
Mr. BRAUN
Mr. METTERNICH

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

Mr. de MADAY

International Union of Catholic
Women's Leagues

Miss de ROMER

Standing Conference of
Voluntary Agencies

Mr. REES

Category B and Register (continued)

Women's International League for
Peace and Freedom

World Jewish Congress

Mrs. BAER

Mr. RIEGNER

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):

(i) Article 25 - Transfer of assets (A/CONF.2/54)

Mr. GIRALDO-JARAMILLO (Columbia), introducing the Colombian amendment to article 25 (A/CONF.2/54), said that so far as paragraph 1 was concerned, his delegation had merely endeavoured to find a clear and simple solution to the complex problem of the transfer of assets.

With regard to paragraph 2, his delegation proposed that it be deleted, in the light of the statements made by many speakers, and particularly by the Netherlands representative, who had emphasized the futility of the wishes, no doubt full of goodwill but not mandatory in character, expressed at various points in the text of the draft Convention.

Mr. HERMENT (Belgium) pointed out that the purpose of article 25 was in fact to lift in the case of the refugee the restrictions imposed in receiving countries on the transfer of assets. The Colombian amendment, however, sought to make the provisions laid down for aliens applicable to refugees, and consequently to subject the refugee to the restrictions prescribed in such provisions.

Mr. GIRALDO-JARAMILLO (Columbia) remarked that, generally speaking, the laws and regulations in force in the various countries enabled aliens to transfer assets more freely than nationals. The Belgian representative's interpretation was correct, but it was nevertheless true that, if the Colombian amendment seemed more restrictive in principle, it would be easier to apply in practice, having regard to the numerous difficulties by which the transfer of funds was usually attended.

Mr. HERMENT (Belgium) thought that the Conference should first decide the question of substance, that was, whether refugees should enjoy favourable treatment, or the treatment accorded to aliens generally.

Mr. GIRALDO-JARAMILLO (Columbia) recalled the fact that when the Conference had taken a decision on the rights laid down in Chapter III of the Convention (Practice of Professions), it had considered the question of the treatment to be given to refugees, as compared with the treatment enjoyed by aliens. It had decided that refugees should be granted the same treatment as aliens in general. It was in that spirit that his amendment had been conceived.

Mr. ZUTTER (Switzerland) supported the Belgian representative. He considered it essential to retain the original wording of article 25, and not to narrow the scope of the rights it granted.

Mr. HOARE (United Kingdom) also supported the views of the Belgian representative. Article 25 had been framed in mandatory terms in the interest of refugees, but paragraph 1 contained the important and necessary proviso "in conformity with its laws and regulations". Thus, any provisions that might be applied by a State with regard to currency control were covered. But if it was explicitly provided that the treatment accorded to refugees in that respect should be the same as that accorded to aliens generally, the discretionary powers of Contracting States to accord refugees better treatment might appear to be limited.

From the point of view of the United Kingdom Government the text of paragraph 1 was perfectly satisfactory as it stood.

Mr. CHANCE (Canada) recalled the fact that article 25 had initially been drafted with specific reference to countries of initial asylum or secondary residence. The purpose of paragraph 1 was to ensure that a refugee who entered a country with the intention and possibility of ultimately settling elsewhere should not be deprived of the material assets he had been able to bring with him, since such assets might be of considerable help to him in settling overseas. The Canadian Government, which represented a country of final settlement for refugees, was opposed to any restriction of the text of paragraph 1.

The PRESIDENT, speaking as representative of Denmark, recalled that article 25 had first been proposed by a European country, and hence a country of asylum, and that members of the Ad hoc Committee had agreed that it was their duty to help a refugee to re-settle permanently.

Furthermore, he would point out that currency restrictions in general made a distinction, not between aliens and nationals but between residents and non-residents. The Colombian amendment (A/CONF.2/54) might give rise to difficulties for that very reason, and the Danish delegation would therefore be unable to support it.

Mr. GERALDO-JARAMILLO (Columbia) regretted that the principle stated in his amendment had evoked no response in the Conference. He emphasized that his concern was not to safeguard the interests of his own country, whose legislation relating to the transfer of assets was reasonably liberal, but to meet the general needs of refugees. As the Conference appeared to think that those needs would be provided for more adequately if the original wording of article 25 were kept, he would not press his amendment.

Mr. van HEUVEN GORDHART (United Nations High Commissioner for Refugees) drew attention to a discrepancy between the French and English texts of paragraph 1, reference to which had been made in the concordance drawn by the Secretariat (A/CONF.2/5, page 6). Whereas the French text read: "transférer les avoirs qu'ils ont fait entrer sur leur territoire", the English read: "assets/ which he has brought with him". The French wording was more liberal than the English, which explicitly referred to the moment of a refugee's entry into the country of asylum. He hoped that the Conference would agree that the English text should be brought into line with the French. That could best be done by deleting the words "with him" from the English text of paragraph 1.

The PRESIDENT said that the intention of the ad hoc Committee had been to allow a refugee to take out of the country of asylum the money and assets that he owned. It would not be fair to interpret the position in terms only of such

assets as a refugee might have in his pocket. On the other hand, cases might arise of persons who had, over a period of time, transferred considerable assets to a foreign country, and who, having subsequently become refugees in that country, wished to emigrate further. Inevitably such assets must be subject to the currency control regulations of the country of asylum. Finally, the point must be borne in mind that during his period of residence in the country of asylum a refugee might earn money. Should he or should he not be allowed to transfer his earnings? There were thus three distinct types of circumstances to be considered. His interpretation was that paragraph 1 of article 25 related to the assets which the refugee brought into the country of asylum as a refugee. Any other assets the refugee might possess in that country would come under paragraph 2 of the same article.

As to the High Commissioner's proposed amendment to the English text of paragraph 1, he would suggest that the words "as a refugee" be substituted for the words "with him", the text then reading: "... to transfer assets which he has brought as a refugee into its territory...."

MOSTAFA Bey (Egypt) said that the interpretation of paragraph 1 which the President had just given - a restrictive interpretation so far as concerned the right of refugees to transfer any assets they might have acquired during their stay in the country of asylum - raised the following problem: would it not be better to grant refugees the rights accorded to aliens generally? In Egypt, for example, aliens had the right to transfer such assets. If that right were withheld from refugees, they would enjoy less favourable treatment than aliens generally, which seemed contrary to the general intentions of the members of the Conference. In that connexion, he considered it necessary to settle once and for all the question whether refugees should be treated on a par with aliens, or should enjoy less favourable or more favourable treatment than that accorded to aliens generally.

The PRESIDENT, speaking as representative of Denmark, said that the attitude of countries towards the export of funds by resident nationals or aliens

inevitably depended on the currency position; for instance, States which suffered from a dollar shortage could not allow the export of dollars. Thus, a refugee who owned property in Denmark would not be able, on emigrating, to change the Danish currency he got from the sale of that property into dollars, but in the Danish Government's view it would be unfair to deprive a refugee of dollars which he had brought into Denmark and wished to take with him on emigrating, even if he had in the meantime sold those dollars in accordance with the Danish currency regulations. That, indeed, had been the attitude taken by the Ad hoc Committee, and it was for that reason, and in order to cover such cases, that paragraph 2 had been included in article 25.

Mr. GIRALDO-JARAMILLO (Columbia) thought that the substantive issue raised by the Egyptian representative was of great importance. He (Mr. Giraldo-Jaramillo) was glad to have submitted an amendment which had given rise to such a constructive exchange of views. The purpose of the Columbian amendment was to accord to refugees the rights enjoyed by aliens generally in respect of the transfer of assets; the amendment had not met with general approval, since it had been considered that refugees should receive more favourable treatment than aliens. But according to the restrictive, and indeed legitimate, interpretation placed on the original text of article 25 by certain representatives, that text would give refugees more limited rights than those enjoyed by aliens in certain countries.

Baron van BOETZELAER (Netherlands) remarked that some of the comments made during the discussion might give a false impression of the position of refugees. Cases of refugees wishing to transfer very large sums were most exceptional. It hardly seemed necessary, therefore, to go very deeply into the consequences that article 25 might have in such cases, especially as it was specifically provided in that article that the transfer of assets should be effected in accordance with the laws and regulations in force in the countries concerned.

Mr. WARREN (United States of America) agreed with the United Kingdom representative that the reference in paragraph 1 to the laws and regulations of Contracting States fully covered the cases mentioned by previous speakers. It was surely only fair that a refugee should be able to take out of the country of asylum whatever assets he had brought into it, as well as any money that he might have earned, within the limits prescribed by national regulations.

As to the textual discrepancy, he was inclined to favour the French version of paragraph 1.

MOSTAFA Bey (Egypt) thought the problem under discussion deserved thorough consideration. The Columbian amendment would make it obligatory for Contracting States to treat refugees on the same footing as aliens. The original text referred the reader to the laws and regulations in force in the country concerned, which might well stipulate that refugees should be given less favourable treatment than that enjoyed by aliens generally. The question to be settled, therefore, was whether the purpose of the Convention was to ensure that refugees should be given more favourable treatment than that enjoyed by aliens.

The PRESIDENT emphasized that the ad hoc Committee had wished to ensure that the conditions imposed on refugees should be less stringent than those imposed on nationals and other aliens. That was why the sole proviso contained in paragraph 1 was that national laws and regulations should be respected; for the rest, the text was mandatory, in that it read: "A Contracting State shall ... permit,..."

Mr. SHAW (Australia) said that Australia was often used by refugees as a place of temporary residence before they re-settled elsewhere. Such refugees brought in money in various currencies. The Australian Government could not interpret article 25 as overruling national laws and regulations in respect of hard currencies.

Mr. CHANCE (Canada) pointed out that paragraph 1 explicitly referred to the transfer of assets to countries where refugees were being admitted for "purposes of resettlement". Once a refugee had been resettled, he could not be treated, with regard to his assets, as if he were still in a country of asylum. Indeed, he (Mr. Chance) was unable to appreciate the objections which had been raised. Surely, if paragraph 1 was acceptable to those who advocated a more restrictive régime, no further problem arose, since there was nothing to prevent countries from giving refugees better treatment than that provided for in article 25.

Mr. HERMENT (Belgium) added that refugees could in no case be treated less favourably than aliens, since that was expressly forbidden by article 4 of the Convention.

The PRESIDENT ruled the discussion closed, and said that he would put to the vote paragraph 1 as drafted in French (the phrase in dispute therefore reading in English: "to transfer assets which he has brought into its territory..") If the Conference rejected that text, he would put the English text to the vote. The adopted text would be subject, if necessary, to re-drafting by the Style Committee.

Paragraph 1, as drafted in the French text, was adopted by 19 votes to 4, with 1 abstention.

Paragraph 2 of article 25 was adopted by 23 votes to none, with 1 abstention.

Article 25 as a whole was adopted unanimously.

(ii) Article 26 - Refugees not lawfully admitted (A/CONF.2/55, A/CONF.2/58, A/CONF.2/62, A/CONF.2/65)

The PRESIDENT drew attention to the amendments submitted by the Columbian, Austrian, French and Swedish delegations (A/CONF.2/55, A/CONF.2/58, A/CONF.2/62 and A/CONF.2/65 respectively).

Mr. FRITZER (Austria) said that the Austrian delegation approved the principle underlying paragraph 1 of article 26, but considered it necessary to provide for the case of a refugee against whom an order of expulsion had been made as a result of an offence which he had committed in the country of asylum. That was the purpose of his delegation's amendment (A/CONF.2/58).

Mr. GIRALDO-JARAMILLO (Columbia) observed that article 26 was intended to provide for an exceptional situation, which raised the fundamental question of whether the granting of territorial asylum was a duty incumbent upon States, or simply a right to be claimed by refugees. It was to meet that point that his delegation had submitted its amendment (A/CONF.2/55), to which it had given a positive, and not merely a negative form like that of the original text of the article.

He further expressed his support for the amendments proposed by the Austrian (A/CONF.2/58) and Swedish (A/CONF.2/65) delegations.

Mr. HERBENT (Belgium) noted that the Colombian amendment read "The Contracting States may grant territorial asylum to a refugee...." He wondered whether the Colombian delegation intended that to be an obligation on Contracting States.

Mr. GIRALDO-JARAMILLO (Columbia) explained that, in his view, territorial asylum could not be regarded as a duty incumbent on States.

In reply to a question by the PRESIDENT, he stated that his amendment referred only to paragraph 1 of article 26.

Mr. CHANCE (Canada) observed that there appeared to be a certain amount of anxiety about the interpretation to be placed on the word "penalties" in paragraph 1 of article 26, an anxiety which centred round the question whether a State would by virtue of that article forfeit its right to expel refugees who had illegally entered its territory. Knowing the background of the previous discussions on the subject, he did not share that anxiety, and would not wish

to suggest any modification to the text. In fact, he would be satisfied if it were made clear that the consensus of opinion was that the right to which he had referred would not be prejudiced by adoption of article 26; indeed, he would even regard silence on the part of the Conference on that point as endorsement of his view.

Mr. COLLETAR (France), introducing the French delegation's amendment to article 26 (A/CONF.2/62), wished first of all to make it clear that, in his opinion, the right of asylum was implicit in the Convention, even if it was not explicitly proclaimed therein, for the very existence of refugees depended on it. If a State were to refuse admission to refugees on the pretext that they had entered its territory irregularly, they would be sent back to their countries of origin, and would no longer be refugees. The French delegation did not believe that article 26 was in any way intended to relieve States of the obligation incumbent upon them, without which the whole Convention would be pointless. On the other hand, while his delegation felt that it was right to exempt from any penalties imposed for illegal crossing of the frontier refugees coming directly from their countries of origin, it did not see any justification for granting them similar exemption in respect of their subsequent movements. The initial exemption was the direct corollary of the right of asylum, but once a refugee had found asylum, article 26 in its present form would allow him to move freely from one country to another without having to comply with frontier formalities. Actually, however, there was no major reason why a refugee should not comply with those formalities, since article 23 provided for the issue of documents to refugees to enable him to travel lawfully. It was to remedy that omission that the French amendment had been submitted.

Mr. del DRAGO (Italy) also felt that exemption from the consequences of irregular entry should only be considered in the case of the first receiving country. There was nothing to prevent a refugee's subsequent movements from being lawful. The Italian delegation accordingly supported the French amendment.

Mr. HERMENT (Belgium) stated that the Belgian Government could not interpret paragraph 1 of article 26 as restricting its right to send back a refugee who had entered Belgian territory illegally. The purpose of paragraph 1 was to exempt refugees from the application of the penalties impossible for the unlawful crossing of a frontier, provided they presented themselves of their own free will to the authorities and explained their case to them. The government concerned would nevertheless retain its right to expel an alien who had entered its territory illegally.

Mr. GIRLDO-JARAMILLO (Columbia) said that, in the light of the foregoing discussion, the Columbian delegation would not oppose paragraph 1 of article 26, especially as the right of asylum had always been upheld by the Latin American countries. Since it seemed to be the general feeling of all delegations that the granting of asylum remained a matter for the discretion of individual States, the Columbian delegation, which shared that view, would not press its amendment to article 26.

Mr. HOARE (United Kingdom) endorsed the Belgian representative's interpretation of paragraph 1. The right of asylum, in the view of the United Kingdom delegation, was only a right, belonging to the State, to grant or refuse asylum, not a right belonging to the individual and entitling him to insist on its being extended to him. Article 26 therefore had nothing to do with the question of the right of asylum. The Belgian, Canadian and United Kingdom delegations interpreted the word "penalties" in paragraph 1 as referring to penalties impossible by law on a charge of illegal entry, and as being in no way concerned with the right of the State to grant or refuse asylum. He hoped that that view would be confirmed by the Conference; otherwise the United Kingdom Government might not be able to support article 26.

He supported the French amendment to paragraph 1.

Mr. COLEMAN (France) thanked the United Kingdom representative for his explanation. In order to illustrate his own point, he would give a concrete

example - that of a refugee who, having found asylum in France, tried to make his way unlawfully into Belgium. It was obviously impossible for the Belgian Government to acquiesce in that illegal entry, since the life and liberty of the refugee would be in no way in danger at the time. The text of Article 26, as at present drafted, would nevertheless permit the refugee to claim immunity from penalties, and the French delegation had therefore submitted an appropriate amendment to that article.

The PRESIDENT, speaking as representative of Denmark, and referring to the French amendment to paragraph 1, said that the Conference should bear in mind the importance of the words "shows good cause" in the last line of that paragraph. A refugee in a particular country of asylum, for example, a Hungarian refugee living in Germany, might, without actually being persecuted, feel obliged to seek refuge in another country; if he then entered Denmark illegally, it was reasonable to expect that the Danish authorities would not inflict penalties on him for such illegal entry, provided he could show good cause for it. The Danish delegation therefore felt that reliance should be placed on the phrase "show good cause". Even if the French amendment were adopted, it would be necessary to replace the words "coming direct from his country of origin", which the French delegation proposed should be added to paragraph 1, by the phrase "coming direct from a territory where his life or freedom was threatened".

Mr. COLEMAN (France) accepted the suggestion made by the President in his capacity as Danish representative.

Mr. HERMENT (Belgium) pointed out that the expression "expulsion or residence order" used in the Austrian amendment (A/CONF.2/58) was incorrect; the words "expulsion order or prohibition of residence" were doubtless what was meant.

Mr. COLEMAN (France), for his part, preferred the wording "expulsion decision or refusal of residence". An order was, in fact, a decision given in a particular form: but the form might not be the same in all countries.

Mr. FRITZER (Austria) thanked the French and Belgian representatives for their suggestions, which he gladly accepted. He added that the word "déjà" should be inserted between the words "il existe" and the words "un arrêt" in the second line of the French text.

Mr. HERMENT (Belgium) observed that there was a very important difference between refusal of residence and prohibition of residence. If the concept of refusal of residence was adopted, the scope of paragraph 1 would thereby be restricted. For example, if a refugee applied for permission to settle in the territory of country A and his application was refused, the refugee would have been refused residence. If he then wished to go to country B, the refusal of residence would be against him, and the authorities of country B would be justified in refusing him the benefit of the provisions of Article 26.

It was decided that further discussion on article 26 should be deferred until the next meeting.