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Eleventh Session

SOCIAL COMMITTEE

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-SIXTH MEETING

Held at the Palais des Nations, Geneva,  
on Monday, 7 August 1950, at 10.30 a.m.

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/Present:

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Present:

Chairman: Mr. DAVIDSON (Canada), Vice-Chairman

Members:

Australia	Mr. DESCHAMPS
Belgium	Mr. DELHAYE
	Mr. de RAEYMAEKER
Brazil	Mr. PENTEADO
Canada	Miss MEAGHER
Chile	Mr. BERNSTEIN
China	Mr. CHA
Denmark	Mr. FRIS
France	Mr. ROCHEFORT
India	Mr. DESAI
Iran	Mr. KHALATBARY
Mexico	Mr. de ALBA
	Mr. CALDERON PUIG
Pakistan	Mr. BROHI
Peru	Mr. CABADA
United Kingdom of Great Britain and Northern Ireland	Mr. STARNLEY
United States of America	Mr. HENAIN

Representatives of specialized agencies

International Labour Organisation	Mr. FLORES
International Refugee Organization	Mr. KULLMAN

Representatives of non-governmental organizations

Category A

World Federation of United Nations Associations	Mrs. EVANS
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/Category B and

Category B and Register

Catholic International Union for  
Social Service

Miss de ROMER

Commission of the Churches on  
International Affairs

Mr. MOURAVIEFF  
Mr. REIS

International Co-operative  
Women's Guild

Miss ROSSIER

International League for the  
Rights of Man

Mr. BEER  
Mr. BALDWIN

International Union of Catholic  
Women's Leagues

Miss de ROMER

Liaison Committee of International  
Women's Organizations

Miss ROSSIER

World Jewish Congress

Mr. LIBAN

World's Young Women's Christian  
Association

Mrs. EBERFORD FOX

Secretariat:

Mr. Humphrey  
Mr. Alexander  
Mr. Giraud  
Mr. Hogan  
Mr. Dumontet

Director, Division of Human Rights  
Department of Social Affairs  
Legal Department  
Department of Social Affairs  
Secretary to the Committee

REFUGEES AND STATELESS PERSONS (item 32 of the agenda) (continued)

- (b) Report of the Ad hoc Committee on Statelessness and Related Problems  
(E/1618, E/1618/Corr.1, E/1703, E/1703/Corr.1, E/1703/Add.1-6,  
E/1704, E/1704/Corr.1 and 2, E/L.79, E/L.79/Add.1, E/L.81, E/L.82  
and E/AC.7/L.66)

Definition of "refugee" in article 1 of the draft Convention (E/1618 and  
E/L.82), (continued)

The CHAIRMAN reminded the meeting that consideration of the definition of the term "refugee" in article 1 of the draft Convention in document E/AC.7/L.66 had been completed, except for section C.

Mr. ROCHEFORT (France) thanked members of the Committee for having, by their votes or abstentions, made it possible to continue the debate on section C. In view of the adoption of the provision concerning war criminals, all that had to be decided was whether the second part of section C, following the words "Military Tribunal", should be removed or retained. While appreciating representatives' motives in wishing to remove those words, he felt that it must be made quite clear that the object was not to specify in the Convention what treatment each country must mete out to individuals who had placed themselves beyond the pale, but only to state whether a country was entitled, in granting refugee status to such individuals, to do so on the responsibility of the High Commissioner and of the United Nations. The sovereign right of States entitled them to do as they wished in their own territory, but not to transcend their frontiers to the extent of committing other States - or compelling them to act as they themselves intended to act.

The phrase, the removal of which was requested, was based on an article of the French draft under which refugee status was denied to persons to whom the provisions of article 14 (2) of the Universal Declaration of Human Rights applied. His delegation held that the phrase in question applied to - and hence excluded - war criminals, ordinary criminals and certain individuals who, though not guilty of war crimes, might have committed acts of similar gravity against the principles of the United Nations, in other words, crimes against humanity. Since the article in the French proposal had not been adopted, its place had been taken by the general

provisions of section C in its present form. Without its second part, that section, expressed in positive terms, would read: "The status of refugee shall be granted to any person fulfilling the conditions set forth in article 1, excepting only a war criminal, including any person genuinely liable to prosecution for an ordinary crime or for acts contrary to the purposes and principles of the United Nations".

With regard, first, to ordinary criminals, the texts of the International Refugee Organization (IRO) contained a clause excluding all ordinary criminals who were extraditable by treaty. Explanatory texts submitted by IRO stressed in particular that, in the event of an increase of crime among refugees and displaced persons, all refugees might have to be warned that serious crimes would be recorded in their dossiers and notified to the selection boards sent by the countries of immigration.

That was clearly an important consideration, not only for the countries of refuge, but also for the countries of immigration. In that connection, he recalled that, at the time of the signature of certain agreements concerning protection, the Government of the United Kingdom had prefaced its signature with a reservation, according to which "Refugees against whom extradition proceedings have been started in the United Kingdom shall not be considered as entitled to the protection which would otherwise be accorded them by virtue of this article". Other signatures had been accompanied by reservations concerning what was tantamount to the same thing, namely the right of expulsion.

The fact that IRO had thought fit expressly to exclude ordinary criminals showed that it had deemed such a provision essential. Not to exclude them expressly was tantamount to including them. That would be an extremely important innovation, which would prejudice the requirements of public order in the various countries, and diminish the moral value attached to the name "refugee".

So far as acts contrary to the purposes and principles of the United Nations were concerned, the first question which arose was whether such acts could be committed by individuals. An affirmative reply to that question was given by articles 14 and 30 of the Universal Declaration of Human Rights.

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While that was the theoretical position, what would happen in practice? The provision was not aimed at the man-in-the-street, but at persons occupying government posts, such as heads of States, ministers and high officials. Either the text of the Universal Declaration meant nothing at all, or it applied to certain forms of political action, to certain acts of oppression etc. If mention was made of refugees, that was to say of victims of persecution, it was because it was assumed that there were also authors of such persecution. By a turn of events, the persecutor might himself become a refugee, and it might be that humanity and charity required that he be given asylum. But there could be no compulsion on a State to provide asylum and in no case could it be provided in the name of the Charter or of the Universal Declaration of Human Rights. Put differently, the question was whether a neo-Hitler, who was not guilty of any war crimes, merely because there had been no war, would have the right to be classified as a refugee after torturing, persecuting and reducing a people to slavery. That was the extreme case of a great tyrant. There might, however, be a larger number of more petty tyrants likewise guilty of acts contrary to the purposes and principles of the Charter, who had by such acts helped to create the fear from which the refugees had fled. The fact that they had themselves become suspect to their superiors and were in their turn a prey to the fear which they had themselves created, would perhaps entitle them to the benefit of extenuating circumstances, but certainly not to the automatic benefit of the international protection granted to refugees.

Even though the principle and the purposes to be achieved might not be in doubt, difficulties of implementation still remained. The words "who in its opinion" were obviously rather vague. It would therefore be preferable to reproduce the exact terms of article 14 (2) of the Universal Declaration. It should, however, be noted that it need not be deemed necessary for proceedings to have been started against the author of certain acts before refugee status could be denied him. It was possible that a petty tyrant, after committing a crime against humanity, might not be prosecuted by his country of origin, where his crime against the United Nations might be considered as a normal act. Conversely, the fact that proceedings had been started should not be regarded as conclusive,

/since they

since they might be instituted by a country on unjust grounds in order to injure a person who had fled from it.

Therefore, in the absence of a world government and of a sovereign international court of justice, that power of discretion, which was an essential safeguard both for the real refugee and for the country of refuge, must, perforce, be left to States. The only practical solution was to trust the countries which were willing to grant hospitality.

In the light of the various arguments he had advanced he proposed the following text for the second part of section C: "No contracting State shall be obliged, under the provisions of this Convention, to grant refugee status to any person whom it has serious reasons to consider as falling under the provisions of article 14 (2) of the Universal Declaration of Human Rights". That text would enable immigration countries, should they so desire - which was highly improbable - to classify any common criminal or political tyrant as a refugee, but on their own responsibility. But countries of refuge, like France, would not be forced to confer the status of refugee on such individuals, and would be given that power of discretion which was indispensable from the point of view of public order, and required by their geographical position.

At least one positive effect of the terrible experiences through which the world had passed had been to produce a clearer statement of certain principles of international law. Account was taken of that step forward in the proposal submitted by the French delegation. Should the text prove unacceptable to the Committee, the work of the Ad hoc Committee on Statelessness and Related Problems might suffer, since the French delegation would be compelled to propose, in connection with the right of expulsion and deportation, the same safeguards as it had failed to get incorporated in the definition of the term "refugee".

Mr. GIRAUD (Secretariat) wished to make two comments: in the first place, it should be remembered that common crimes did not constitute crimes under international law. The formula used in article 14 of the Universal Declaration of Human Rights did not refer to common crimes.

In the second place, it was a fact that an individual could violate the provisions of the United Nations Charter. According to the terms of the Charter and judgment of the Nuremberg Tribunal, and by virtue of the provisions of the Convention on Genocide, an individual could nowadays be held liable under international law, and could be called upon to answer for crimes constituting a violation of such international law.

Mr. ROCHEFORT (France) thanked the representative of the Secretariat for his explanation. He was in entire agreement with him on both points.

Mr. HENKIN (United States of America) felt that the option granted to Contracting States by the French amendment would make it still more difficult to define the functions of the High Commissioner in relation to article 1 of the draft Convention. It might be preferable to declare simply that the Convention did not apply in the cases envisaged, instead of specifying its application by Contracting States.

Mr. ROCHEFORT (France) pointed out that so far as the grant of refugee status was concerned, States fell into two groups. Under IRO operations, France and one or two other countries had delegated their powers of discretion to that Organization, whereas all other countries made the grant of refugee status dependent on examination by their national administration. In view of the small administrative budget allocated to the High Commissioner, the only effective solution would be, at best, a compromise one, under which national administrations would have to bear the main burden, subject to fairly close supervision by some representative of the High Commissioner. It was inconceivable that the High Commissioner, with the small staff at his disposal, could undertake individual screening of refugees.



Mr. GIRAUD (Secretariat), replying to a question put by Mr. CHA (China) as to the categories of crimes covered by article 14 (2) of the Universal Declaration of Human Rights, said he thought that no one could misunderstand the reference in that article to "prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations". The principles referred to were defined in the United Nations Charter and the Universal Declaration of Human Rights. An individual who, without having committed a crime against humanity, had violated human rights, for instance, by the exercise of discrimination, could be considered to have committed "acts contrary to the purpose and principles of the United Nations".

Mr. PROHI (Pakistan) noted that the French amendment allowed States to decide what acts were to be considered as falling under the provisions of article 14 (2) of the Universal Declaration; it therefore failed to clear up the ambiguity which existed in the original text.

Mr. ROCHEFORT (France) pointed out that it was current universal practice to leave such decisions to States. If a person on the territory of a given State was being proceeded against in another country for a common crime, the first State decided whether or not there were good grounds for such prosecution. The fundamental difference between his amendment and the original text was that it allowed States the option of granting refugee status, if they thought fit, to the persons specified. That change had been made to take account of the wishes expressed by the Committee. States, however, could not be compelled to ~~grant~~ refugee status to persons guilty of the acts referred to in article 14 (2) of the Universal Declaration. If, for instance, the citizen of a given State were to return to it after having been arrested, tortured and imprisoned on political grounds in another country, it would be intolerable if, on returning to his own country, he found there, enjoying the status of a refugee, the official who had been responsible for his sufferings.

The CHAIRMAN proposed that the French amendment, being parallel in purport to the provisions in the first half of section C, should open in the same way, namely: "No Contracting State shall be obliged under the provisions of this Convention..", with minor consequential editorial changes to the remainder of the text.

/Mr. ROCHEFORT

Mr. ROCHEFORT (France) accepted the Chairman's proposal.

Mr. BROHI (Pakistan) asked what affirmatory text the negative version of section C was intended to qualify.

The CHAIRMAN said it should be construed as a derogation from the definition of a refugee in section A.

Mr. HENKIN (United States of America) said that, in view of the attitude of his Government on the substance of the question, he would not press the point he had made in his previous intervention, but reserved the right to discuss the obligations of the High Commissioner in relation to the persons covered by the French amendment when the functions of the High Commissioner came up for discussion.

Miss MEAGHER (Canada) appreciated the French proposal that a paragraph be inserted allowing Contracting States to deny the benefits of the Convention to objectionable persons. The Canadian Government would certainly not wish the persons envisaged in the amendment to benefit by the Convention. As had been said, they would be persons who had abused positions of authority by committing crimes against humanity, other than war crimes. She supported the French amendment, with the wording suggested by the Chairman for its opening phrase.

Mr. BERNSTEIN (Chile) said he had intended to challenge the French representative's arguments, which he did not find acceptable either from a legal or from a political standpoint. But he was glad to see that his French colleague had modified his original wording, and had substituted another which the Chilean delegation found quite satisfactory. Hence he would not reply to the French representative's speech, but, in the same spirit of goodwill, would vote for the new French formula. He was glad to see, too, that for the first time an article proclaiming human rights was to take a contractual form.

The CHAIRMAN put to the vote the French amendment to section C of article 1 of the draft Convention relating to the status of refugees (E/1618), which proposed the substitution of the words:

"No Contracting State shall be obliged, under the provisions of this Convention, to grant refugee status to any person whom it has serious reasons to consider as falling under the provisions of article 14 (2) of the Universal Declaration of Human Rights."

for the words:

", or any other act contrary to the purposes and principles of the Charter of the United Nations."

The French amendment was adopted by 7 votes to none, with 8 abstentions.

The CHAIRMAN put to the vote section C, as amended.

Section C, as amended, was adopted by 8 votes to none, with 7 abstentions.

The CHAIRMAN proposed that the full text of the definition of the word "refugee" in article 1 of the draft Convention should be put to the vote.

Mr. FEARNLEY (United Kingdom) said that the votes of his delegation had hitherto reflected its views on the drafting merits of the particular sections on which votes had been taken. He would, however, abstain from voting on the definition as a whole, in order to emphasize that his Government still reserved its position on the form the definition should take.

Mr. BERNSTEIN (Chile) said he had voted in favour of certain of the paragraphs of article 1, but had abstained from voting on the actual definition of the term "refugee". He would therefore feel obliged to abstain from voting on the article as a whole.

Miss MEAGHER (Canada) made a similar reservation. Her delegation favoured a broad type of definition, and though it had wished to help in reaching the best wording for the type of definition preferred by the majority,

/it would

it would abstain from voting in order to reserve its right to move at a later stage the adoption of a different type of definition.

Mr. DELHAYE (Belgium) confirmed his earlier declaration that the text now before the meeting was very remote from that submitted by his delegation in document E/AC.7/L.59. He was obliged to enter a formal reservation in respect of the restrictive interpretation of the word "refugee" entailed by a definition by categories. Since, however, the definition adopted was a step in the direction of the broader definition which he would wish to see eventually adopted, and would enable the needs of at least some refugees to be met, he would abstain from voting, reserving the right at a later stage to advocate a definition of another type.

Mr. EROHI (Pakistan) said his delegation would vote against the definition for the reasons already given by his delegation.

Mr. de ALBA (Mexico) said he would abstain from voting, for reasons which he would explain in the Council.

The CHAIRMAN put to the vote the definition of the word "refugee" in sections A, B and C of article 1 of the draft Convention, as given in the French proposal in document E/AC.7/L.66, as amended.

The definition was adopted by 7 votes to 1, with 7 abstentions.

Preamble to the draft Convention (E/1618, E/L.81) (resumed from the 160th meeting)

The CHAIRMAN called upon the meeting to resume discussion of the preamble of the draft Convention, drawing attention to the French amendment (E/L.81) to the text given in document E/1618.

Mr. ROCHETFORT (France) pointed out that, in preparing the French amendment to the draft preamble he had endeavoured to provide a definition of the refugee problem which would be equitable both to the refugees themselves and to the countries which granted them hospitality. In the latter connexion, it

should be stressed that France was prepared, subject to certain reservations, to regard the provisions of the Convention as binding. But his delegation was obliged to look to the future, since France had not only already granted hospitality to a considerable number of refugees, but was still likely to receive many more. During the Spanish civil war France had had to give asylum to 500,000 refugees from Spain. It would be illusory to claim that the mere existence of an international Convention could solve such a problem, and there was no guarantee that France would not once more be faced with problems of the same magnitude. It was mainly in order to forestall such a danger, and having regard to certain exceptional circumstances existing in Europe, that he had included in his draft preamble a paragraph which not only mentioned exceptional circumstances, but stressed the need of international co-operation to deal with them.

Mr. de ALBA (Mexico) said his delegation had not found the substance of the original preamble acceptable, and considered that the French amendment was more appropriate and more comprehensive. It had the further merit of seeking to awaken a feeling of collective responsibility. He would therefore support it.

Mr. HENKIN (United States of America) said he had not intended to take part in the discussion of the French amendment (E/L.81) to the preamble to the draft Convention; but, in view of some remarks which had been made, particularly by the representative of Mexico, he felt bound to say that he was in general agreement with all the reasons given by the representative of France for the provisions contained in his preamble; his only doubt was whether those provisions should go into a preamble at all. However, while he felt that the original preamble drafted by the Ad hoc Committee would have been perfectly adequate, and that much of what the French representative proposed to add would better be adopted in the form of a General Assembly resolution, the United States Government was too well aware of all that France had done to help refugees to object to any additions proposed by that country to any document on the subject, unless they were objectionable in substance.

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

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

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

Mr. BERNSTEIN (Chile) felt that the terms of the French draft of the preamble were broader and more generous than those drawn up by the Ad hoc Committee, and hoped therefore that the French amendment would be taken as the basic text for discussion.

He felt that on grounds of legal drafting, the reference in the fourth paragraph to the geographical situation of certain countries should be removed, but if the French representative insisted on retaining it he would not formally oppose it. The fifth paragraph referred to the powers of the High Commission~~ers~~, which had not yet been discussed. As it was not certain that

/he would in

he would in fact be empowered to supervise the application of the Convention, it would be better if consideration of that paragraph could be left over. The representative of France would, of course, have no objection to making the necessary adjustment in the final paragraph of the preamble, since the reference to recommendations by the General Assembly had already been removed from article 1 of the draft Convention.

Mr. ROCHEFORT (France) agreed that the small number of suggested improvements to the wording could easily be made. He was also prepared to accept the United States amendment to the first paragraph of the preamble. He had based his own text on the fact that certain discriminations did actually exist.

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

With regard to the fifth paragraph of the preamble, it was clear that the reference to the High Commissioner was based on a decision of principle.

Article 3 of the Annex to General Assembly resolution 319 (IV) read:

"Persons falling under the competence of the High Commissioner's Office for Refugees should be, for the time being, refugees and displaced persons defined in annex 1(a) of the Constitution of the International Refugee Organization and, thereafter, such persons as the General Assembly may from time to time determine, including any persons brought under the jurisdiction of the High Commissioner's Office under the terms of international conventions or agreements approved by the General Assembly".

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

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

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

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

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

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

Mr. DELHAYE (Belgium) wished, before discussing in detail the various paragraphs of the French amendment, to state that Belgium had always based her action on the principle of non-discrimination. He thought that it would be difficult for any country to show greater concern for the problem of refugees than that already manifested by his own country. In the definitions she had adopted, Belgium had given an example of a very broad approach. For that reason, he supported the desire of the United Nations to provide refugees with the widest possible rights in an international convention.

His delegation approved the first three paragraphs of the French amendment.

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



used in the fourth paragraph of the French amendment.

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

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

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

Mr. ROCHEFORT (France) replied that he wished to propose a somewhat different wording, which he thought likely to meet with the Committee's approval, for the fourth paragraph. The text might be worded as follows:

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

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

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

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

Mr. PENTEADO (Brazil) was happy to accept the first three paragraphs of the French amendment to the preamble as modified, but would reserve his position on the last three paragraphs, concerning which he still felt some doubt.

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

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

Mr. DESAI (India), like the United States representative, intervened with some diffidence, recognizing the large practical experience of the representative of France in matters pertaining to refugees.

The intention of the French representative in revising the preamble was apparently to refer, first, to refugees outside the categories laid down in the draft Convention, and, secondly, to governments not parties to the Convention. In effect, an appeal was made to all governments to accord the same treatment to all refugees, in order to reduce the burden on contracting governments whose geographical situation meant that the greater part of the responsibility fell on them. If that interpretation of the French representative's intention was correct, it would be better, instead of amending the preamble to the draft Convention, to draw up a resolution for

the Council to submit later to the General Assembly, pointing out the desirability of all contracting governments' according similar treatment to refugees excluded from the categories laid down by the Convention, and of all non-contracting governments according such treatment to refugees within those categories.

Miss MEAGHER (Canada) said she had had a number of doubts regarding the preamble; those regarding the first three paragraphs had been resolved.

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

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

The last paragraph also seemed inappropriate, with its suggestion that the application of the draft Convention should be regarded as being wider than it in fact was. The Social Committee having rejected the proposal for a broad definition of refugee, it seemed most inconsistent to express the hope in the preamble that the Convention would in fact be applied to all refugees in all countries and not only to the categories included in

/the definition

the definition article. However, as the French representative had indicated his intention to make certain revisions, the Canadian delegation would reserve its position until the text was final.

Mr. de ALBA (Mexico) recalled that the representative of France had said that the fourth paragraph of his amendment was a reference to historical fact, rather than a statement of principle, and had mentioned the 500,000 refugees from Spain who had found asylum in France before the war. In that instance, political sympathy, in addition to geographical distribution, had been instrumental in determining the line which the French Government had taken. In other words, the French Government had recognized moral obligations and met them fully. The obligations referred to in the fourth paragraph had thus already been partly met. As he had already told the Committee, the Mexican Government had been able to accept 50,000 Spanish refugees, for reasons which in that case had been independent of geographical factors, but partly humanitarian and partly political.

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

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

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

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

Mr. HENKIN (United States of America) agreed with the representative of Mexico that a reference to the High Commissioner should be included in the preamble, since, although his functions had not yet been fully defined, it seemed clear that they would include the supervision of the application of the Convention. However, the reference in the French text to "any other United Nations representative who might succeed him" should be deleted, since it was hardly appropriate at the present stage to be thinking already of replacing the High Commissioner. Some such phrase as "any other appropriate body" would be preferable. Furthermore, as the

/representative

representative of Canada had said, the reference to improving the Convention was objectionable, with its implication that the Council was dissatisfied with it, but left it to the High Commissioner to rectify its faults. It would be simpler and more satisfactory merely to include a reference to resolution 319 (IV) of the General Assembly, and another to the necessity for international co-operation. He would later submit an amendment on those lines.

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

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

Recalling once more the undue burden which France had had to bear in the matter of receiving refugees, he thought that all European countries which ran the same risks should be conscious of the need for including such a safety clause in the Convention. It had been contended that the hope expressed in the last paragraph of the preamble was hypocritical. But the situation which he had in mind was in no way theoretical. France was at that very time granting asylum to persons from certain distant countries who did not enjoy international refugee status. The French Government nevertheless granted them not only right of asylum, but rights and advantages equivalent to those granted to refugees who came within the purview of IRO.

/What he hoped

What he hoped was that other countries would do likewise in similar circumstances. In addition, if it had become possible to consider the adoption of an international Convention on European refugees, that was because the problem had been the subject of international agreements for twenty-five years. It was conceivable that by the adoption of special conventions, the way could be paved for the provision of genuinely international protection of other types of refugees in other countries.

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

The meeting rose at 1 p.m.

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