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THE PRINCIPLE OF NON-DISCRIMINATION AS APPLIED
IN THE CONVENTION RELATING TO THE STATUS
OF REFUGEES

Memorandum by the Secretary-General

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THE PRINCIPLE OF NON-DISCRIMINATION AS APPLIED IN THE
CONVENTION RELATING TO THE STATUS OF REFUGEES

(Memorandum by the Secretary-General)

INTRODUCTORY NOTE

1. At its second session the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution requesting the Secretary-General, inter alia, to furnish the members of the Sub-Commission with data on the activities of all organs of the United Nations and its specialized agencies in the field of the prevention of discrimination and the protection of minorities.^{1/} The present memorandum contains such information concerning the Convention relating to the Status of Refugees adopted and opened for signature by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva, Switzerland, from 2 to 25 July 1951.
2. The action resulting in the adoption of the Convention was initiated by the Economic and Social Council which during its ninth session, passed resolution 248 B (IX) for the appointment of an Ad Hoc Committee; under its terms of reference this committee was to consider whether it was desirable to prepare a convention relating to the international status of refugees and stateless persons and, if the Committee considered such a course desirable, to draft the text of such a convention.
3. The Ad Hoc Committee held a session at Lake Success from 16 January to 16 February 1950 and prepared a draft Convention relating to the Status of Refugees (Annex I to E/1618).

^{1/} Resolution B, Report of the Second Session of the Sub-Commission (document E/CN.4/351, paragraph 15). This memorandum is one of a series to be prepared in response to the request of the Sub-Commission.

4. The Economic and Social Council, after having examined the report of the Ad Hoc Committee at its eleventh session, adopted resolution 319 B (XI) requesting the Secretary-General to convene the Ad Hoc Committee for a second session in order that it might prepare revised drafts of the agreements drawn up during its first session, and submit the drafts, as revised, to the General Assembly at its fifth session. The Council adopted also new texts of the Preamble and of Article 1 (Definition of the term "Refugee") and decided that these texts shall be inserted in the draft Convention to be revised by the Ad Hoc Committee.
5. The Ad Hoc Committee was reconvened in Geneva for its second session and revised the draft Convention as requested (Annex I, E/1850).
6. The General Assembly at its fifth regular session adopted resolution 429 (V), by which it requested the Secretary-General to convene in Geneva a conference of plenipotentiaries "to complete the drafting and to sign... the Convention relating to the Status of Refugees ...".
7. The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons met at Geneva from 2 to 25 July 1951. It adopted and opened for signature the Convention relating to the Status of Refugees. The text of the Convention will be found in document A/CONF.2/108.^{1/}
8. The principle of non-discrimination is referred to in the Preamble of the Convention and in its Article 3. In addition, references to the principle were made in connexion with the drafting of certain provisions in Article 1, dealing with the definition of the term "refugee".

SECTION I. REFERENCE TO THE PRINCIPLE OF NON-DISCRIMINATION
IN THE PREAMBLE OF THE CONVENTION RELATING TO THE
STATUS OF REFUGEES

9. Although in the process of the elaboration of the Convention the Preamble has undergone several changes, the inclusion of a reference to the principle has never been questioned.

^{1/} The Conference, according to General Assembly resolution 429 (V), was also requested to complete the drafting and to sign a Protocol relating to the Status of Stateless Persons, the draft of which had been also prepared by the Ad Hoc Committee appointed by the Council. However, the Conference, considering that the subject still required more detailed study, decided not to take a decision on the subject and to refer the draft Protocol back to the appropriate organs of the United Nations for further study.

10. The draft of the Preamble prepared by the Ad Hoc Committee appointed by the Economic and Social Council (see paragraph 3 above) contained the following text:

"Considering the concern of the United Nations for the protection of human rights without any discrimination, as given expression in the Universal Declaration of Human Rights and especially Articles 6 and 14 thereof ..."

11. The text of the Preamble as approved by the Economic and Social Council at its eleventh session (see paragraph 4 above) starts as follows:

"1. 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;

2. Considering that the United Nations has, on various occasions, and most recently in General Assembly resolution 319 A (IV), manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms;"

12. The final text of the Preamble as adopted by the Conference and inserted in the Convention which the Conference opened for signature states as follows:

"Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

"Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms".

SECTION II. THE NON-DISCRIMINATION CLAUSE IN ARTICLE 3 OF
THE CONVENTION RELATING TO THE STATUS OF REFUGEES

13. Article 3 of the Convention as adopted by the Conference reads as follows:

"Article 3

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin."

The origin and evolution of this text may be described as follows:

A. First session of the Ad Hoc Committee on Statelessness and Related Problems

14. The inclusion of an article on non-discrimination was first proposed at the first session of the Ad Hoc Committee by the representative of Belgium, who submitted the following text (E/AC.32/SR.24):

"The High Contracting Parties shall not discriminate against refugees on account of race, religion or country of origin, nor because they are refugees".

The Ad Hoc Committee decided on the proposal of the representative of the United States of America that such a clause should be in the convention, but postponed until later any decision as to where it should be inserted (ibid. paragraphs 56 to 58).

15. After the first reading, the adopted articles were referred to a Working Group for revision and editing. The Working Group recommended that the text should be revised to read:

"The Contracting States shall not discriminate against a refugee on account of his race, religion, or country of origin or because he is a refugee".

and numbered as Article 3 (new) under the title "Non-discrimination" (E/AC.32/L.32).

16. Article 3 was adopted by the Ad Hoc Committee at the twenty-fifth plenary meeting (E/AC.32/SR.25). The Ad Hoc Committee did not insert any comment on this Article in Annex II (containing comments on the draft Convention) to its Report (E/1618).

B. Second session of the Ad Hoc Committee on Refugees and Stateless Persons ^{1/}

17. Reconvened for its second session, the Ad Hoc Committee at its thirty-fourth meeting took up Article 3, together with comments submitted by the Governments of Lebanon and Australia. After an exchange of views, the Committee referred the Article to its Drafting Committee without a formal vote (E/AC.32/SR.34).

18. The Drafting Committee proposed in its report (E/AC.32/L.42) the following text for Article 3:

"No Contracting State shall discriminate against a refugee within its territory on account of his race, religion, or country of origin, or because he is a refugee".

^{1/} The name of the Ad Hoc Committee was changed by the Economic and Social Council (resolution 319 B (XI)).

19. The Ad Hoc Committee adopted the above text proposed by the Drafting Committee without debate (E/AC.32/SR.41, page 4).

20. The report of the second session of the Ad Hoc Committee contains the following comment on the new wording of Article 3: "In Article 3, the Committee decided to clarify the meaning of the article by adding the phrase 'within its territory' to make it clear that it was not intended to apply to special conditions of immigration imposed on aliens, but only to the treatment of aliens within the territory of a Contracting State" (E/1850, paragraph 21).

C. United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

I. Preliminary discussion of Article 3 (non-discrimination)

21. The text of Article 3 of the draft Convention was first discussed during the fourth and fifth plenary meetings of the Conference (Provisional Summary Records of the fourth and fifth meetings).^{1/} Several points were raised during the discussion.

(1) Should qualifications of the principle of non-discrimination be mentioned in Article 3?

22. The Australian delegation introduced an amendment (A/CONF.2/20) to Article 3 the effect of which would have been to qualify the principle of non-discrimination in so far as a refugee would be bound to observe the conditions under which he was admitted to the receiving country. The representative of Belgium stated that the problem of discrimination was entirely different from that of the conditions of admittance and suggested that the Australian amendment would be better made a separate provision. This suggestion was accepted by the representative of Australia.^{2/}

23. The Egyptian delegation introduced an amendment for the introduction of the words "subject to the requirements of public order and morals" in the text of Article 3. The idea underlying the amendment was supported by a number of

^{1/} The final Summary Records, documents A/CONF.2/SR.4 and 5, are not yet available at Headquarters.

^{2/} At its fifth meeting the Conference examined and rejected the Australian proposal (A/CONF.2/25) for an additional article to precede Article 3.

representatives. Other representatives opposed the restriction of the scope of Article 3 and the representative of the United Kingdom thought that there was no need to safeguard the inherent right of any State to impose restrictions on any person within its territory in the interest of public order, security or even morals. The Conference rejected the Egyptian amendment by 14 votes to 4 and 4 abstentions.

24. The representative of Switzerland felt that Article 3 lacked clarity. Switzerland recognized the need on occasion to subject groups of refugees pouring into a State to special control, to house them in camps, if no other accommodation was available, or to put them to special work in the event of their finding it impossible to obtain employment. If Article 3 was intended to prohibit enactment of measures of that kind, it would conflict with the provisions of Article 5, concerning exceptional measures. Some representatives shared the views of the representative of Switzerland; others admitted also that the principle of Article 3 was not unqualified and that Article 5 provided an exception to this principle, but held that it would be unnecessary to amend Article 3.

25. The representative of Israel suggested the deletion of the final words of Article 3 "or because he is a refugee". Without them the meaning of the Article was perfectly clear: it provided that all refugees, whatever their race, religion or country of origin, should have the same treatment. On the proposal of the representative of Switzerland the Conference decided by 18 votes to none with 3 abstentions to delete the words "or because he is a refugee".

(ii) Should discrimination be prohibited between refugees only, or also between refugees and other persons?

26. When the representative of Israel gave his interpretation of Article 3 while suggesting the deletion of the final words (see paragraph 25 above), certain representatives expressed their disagreement and held that it was the aim of this Article to prevent discrimination between refugees and other aliens. The delegation of Australia submitted an amendment (A/CONF.2/14) in order to clarify the meaning of the word "discriminate", which might be taken as referring to discrimination between refugees and nationals, between refugees and other aliens, or between various types of refugees. The representative of Australia suggested that it should be taken to mean discrimination between refugees and other aliens. After some discussion, the Conference decided to refer the text to a drafting committee (see paragraph ? below).

/(iii) Should

(iii) Should discrimination be prohibited a
Contracting State, or also outside such

27. The President drew the attention of the Conference to a discrepancy between the English and the French texts of Article 3 of the draft Convention: while the English text forbade discrimination against refugees only within the territory of a Contracting State, the French text forbade discrimination against them even if they happened to be outside the territory of such a State. In this connexion, the President drew attention to paragraph 21 of the Report of the second session of the Ad Hoc Committee (E/1850) which explains the reasons for which the words "within its territory" had been inserted in Article 3 (see paragraph 20 above).

28. The delegation of France introduced an amendment (A/CONF.2/29) to delete the words "within its territory". The amendment was opposed by the representatives of Canada and the United States of America as the deletion would be acceptable for immigration countries where admission of aliens as immigrants was based on the principle of selection.^{1/}

29. Although the French amendment had been withdrawn, the Conference could not reach agreement on the question whether the French text should be brought into line with the English text, or vice versa. The Conference decided to refer the problem to a drafting committee (see paragraph 32 below).

(iv) Grounds on which discrimination should be prohibited

30. The text of Article 3 of the draft Convention mentioned the following grounds on which discrimination was to be prohibited: "... race, religion, or country of origin, or because he is a refugee". As mentioned above (paragraph 25) the Conference decided to delete the words "or because he is a refugee".

31. The Yugoslav delegation proposed an amendment (A/CONF.2/22) to add at the end of Article 3 the words "or for other reasons". Although this

^{1/} The representative of the World Jewish Congress had also suggested the deletion of the words "within its territory" as these words may be interpreted as allowing discrimination against refugees outside the territory of a Contracting State in matters other than immigration. In order to reserve the question of immigration it would be sufficient, said the representative of the World Jewish Congress, to state in the Final Act that Article 3 was not intended to apply to immigration (Provisional Summary Records of the fourth meeting, page 17; see also A/CONF.2/NGO/1, page 4).

amendment had been withdrawn, the representative of Yugoslavia, referring to it and also to Article 2 of the Universal Declaration of Human Rights, which mentioned other reasons on which discrimination should be prohibited, orally proposed to include the word "particularly" before the words "on account of his race ..." and the words "or sex" after the words "country of origin" in Article 3. Several delegations opposed the first Yugoslav amendment, pointing out that the inclusion of the word "particularly" would extend the meaning of discrimination and the grounds listed in Article 3 would then become mere examples. Other delegations opposed the inclusion of a reference to sex. After the withdrawal of the second amendment, the first Yugoslav amendment was put to a vote and rejected by 17 votes to 1 with 5 abstentions.

II. Report of the Committee appointed to study Article 3
(non-discrimination)

32. The Conference being unable to reach a decision on certain points in connexion with the drafting of Article 3, decided to refer it to a committee consisting of the representatives of Australia, Belgium, France, Israel, United Kingdom and United States of America under the chairmanship of the President of the Conference. The Committee dealt primarily with the question of the discrepancies between the English and the French texts in connexion with the words "within its territory" (see paragraphs 27 - 29 above). In its report (A/CONF.2/72) the Committee stated that as a result of the discussion it was faced with six choices, which it enumerated. Choice (6) alone did not meet with any objection, although some members raised the problem of the connexion between the non-discrimination clause and the final text of Article 3 of the Convention. This choice in the report, reads as follows:

"(6): a new Article which would replace Article 3 and would immediately follow Article 1 reading as follows:

'The Contracting States shall apply the provisions of this Convention to persons defined in Article 1, without discrimination as to race, religion or country of origin'".

III. Discussion of the report of the Committee by the Conference
and adoption of Article 3

33. The report of the Committee appointed to study Article 3 came before the Conference at its eighteenth meeting. However, the representative of France requested that the discussion of it should be deferred until Article 1 had been disposed of (Provisional Summary Records of the eighteenth meeting).

/After the

After the adoption of certain sections of Article 1, the Conference resumed the consideration of Article 3 at its twenty-fourth meeting. Although all the representatives who took the floor supported choice (6) in the Committee's report (see paragraph 32 above), the representative of France wanted the text to be clarified by a reference to the possibility of a choice provided for Contracting States in Article 1^{1/}, while certain other representatives were opposed to such an amendment. After the President had stated that representatives would be free to revise their position in the light of the texts prepared by the Style Committee, the text as amended in choice (6) of the Committee's report was adopted by 21 votes to none, with 3 abstentions (Provisional Summary Records of the twenty-fourth meeting).

34. After the first reading the adopted Articles were referred to the Style Committee which proposed the following wording for Article 3:

"Article 3

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin".

1/ The representative of France was referring to a provision in Article 1 which reads as follows: (final text adopted by the Conference)

- "B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either
- (a) 'events occurring in Europe before 1 January 1951'; or
 - (b) 'events occurring in Europe or elsewhere before 1 January 1951';

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations."

/The Conference adopted

The Conference adopted this text in its thirty-third meeting by 21 votes to none with 1 abstention^{1/} (Provisional Summary Record of the thirty-third meeting).

SECTION III. REFERENCES TO THE PRINCIPLE OF NON-DISCRIMINATION
IN CONNEXION WITH THE DRAFTING OF THE DEFINITION
OF THE TERM "REFUGEE" (ARTICLE 1 OF THE CONVENTION)

35. During the process of elaboration of the Convention relating to the Status of Refugees, the question arose whether the definition of the term "refugee" should be of a general nature, covering all classes of present and future refugees, or the definition should refer to specific categories of refugees only. The latter course having been adopted, a further question was to decide which categories of refugees should enjoy the status established by the Convention and which categories should not come under its provisions. In connexion with the drafting of several provisions relating to the definition of the term "refugee" references to the principle of non-discrimination were made in respect of clauses the effect of which would have been to exclude from the Convention German, Palestinian, Indian, Pakistani and some other refugees. The same problem also arose in connexion with the question whether the Convention should apply only to persons having become refugees as a result of events which occurred in Europe before 1 January 1951, or also as a result of events which occurred elsewhere.

36. The successive stages of the elaboration of the provision of Section E of Article 1 will be of particular interest for the Sub-Commission. The texts proposed at early stages for this provision contained clauses which were described as discriminatory by certain representatives, and efforts were made by different organs which had to deal with this provision to draft it in a manner which would not be contrary to the principle of non-discrimination.

^{1/} Speaking during the discussion, the representative of the International Confederation of Free Trade Unions wondered why sex was not mentioned among the other grounds on which discrimination was prohibited in Article 3.

(i) Ad Hoc Committee on Statelessness and Related Problems,
first session

37. In a memorandum on the definition of the term "refugee" (E/AC.32/L.4) the delegation of the United States of America suggested that "a person of German ethnic origin residing in Germany" should not fall under the definition. The representative of Israel felt that the exception should be extended to persons of German origin residing abroad (E/AC.32/SR.5, paragraph 44). The representative of France declared the exception to be unfortunate as classification along racial lines surely had no place in a definition of refugees (E/AC.32/SR.4, paragraph 25). Replying to the French representative, the representative of the United States said that the United States Government had simply retained, and this only in part, one of the exceptions listed in paragraph 4 of part II of Annex I of the IRO Constitution (E/AC.32/SR.5, paragraph 13). Before the text of Article 1 was finally adopted by the Ad Hoc Committee, the representative of the United Kingdom recalled that his delegation had presented another draft for the definition of the term "refugee" (E/AC.32/L.2 and Rev.1), which he still preferred, inter alia, because it would not have excluded members of former minority groups who were in Germany. The text which was adopted by the Ad Hoc Committee and which forms the last subparagraph of paragraph 1 of Section A of Article 1 reads as follows (E/1618, Annex I):

"This provision shall not include a person who was a member of a German minority in a country outside Germany and who is in Germany".

(ii) Economic and Social Council, eleventh session

38. When the report of the Ad Hoc Committee came before the eleventh session of the Economic and Social Council and was discussed in its Social Committee (see paragraph 4 above), the French delegation tabled an amendment (E/L.82) according to which the text under consideration, in a redrafted form, would be transferred as paragraph 4 to Section E, dealing with the loss of refugee status. The representative of the United States endorsed strongly such a transfer as that change would make it clear that there was no intention of discriminating against a particular racial group (E/AC.7/SR.159, page 10). The Economic and Social Council eventually approved the inclusion of the following text as paragraph 5 of Section B of the definition of the term "Refugee" (Article 1 of the draft Convention):

"B. This Convention shall not apply to any refugee enjoying the protection of a government because
.....

(5) As a former member of a German minority, he has established himself in Germany or is living there."

(see Council resolution 319 B (XI)).

(iii) General Assembly, fifth session

39. The Third Committee of the fifth regular session of the General Assembly discussed together, during the general debate, the definition of the term "refugee" to be applied by the High Commissioner for Refugees (point (b) of Item 32) and the draft Convention relating to the Status of Refugees (point (d) of the same item).

The representative of the United Kingdom, referring to paragraph 5 of Section B of the text of Article 1 adopted by the Council, said that it was actually a flagrant example of the spirit of discrimination against which the United Nations was supposed to be fighting (A/C.3/SR.324, paragraph 42). The representative of the United States, on the other hand, supported the Council's definition as in determining the persons to whom the United Nations should grant its protection, it should be noted that the main purpose of such protection was to prevent the persons from becoming a liability to the international community (*ibid.*, paragraph 47). The representative of Israel also pointed out that German refugees in Western Germany were not considered by the Federal Republic of Germany as refugees and were therefore not in need of international protection (A/C.3/SR.328, paragraph 26). The various proposals for the definition of the term "refugee" were thereafter considered by a working party composed of the representatives of Belgium, Canada, France, Israel, Turkey, the United Kingdom, the United States of America and Venezuela which, after reaching an agreement, submitted joint amendments (A/C.3/L.131/Rev.1 and Corr.1) for the definition of the term "refugee" both in the Statute of the Office of the High Commissioner and in the draft Convention. These amendments contained, among others, the following provision:

- "C. (1)
- (2) This Convention shall not apply to a person who has entered a country with whose nationals he has close ties of ethnic and cultural kinship and, because of such kinship, enjoys the rights and privileges usually attached to the possession of the nationality of such country".

/When the

When the Third Committee discussed, in its 332nd meeting, the part of the joint amendment concerning the definition of the term "refugee" in the draft Convention, several delegations criticized on different grounds paragraph (2) of Section C and the representative of Saudi-Arabia moved its deletion which was approved by 14 votes to 6, with 18 abstentions (A/C.3/SR.332, paragraph 78).

40. The joint amendments sponsored by the members of the informal working group contained a similar provision (sub-paragraph 2 (b) of Section C of Chapter III) to be included in the Statute of the High Commissioner's Office. This provision was also criticized in the course of the debate; however, the Third Committee finally adopted by 33 votes to none, with 9 abstentions the following wording proposed by the delegation of New Zealand and accepted by the sponsors of the joint text (A/C.3/SR.334, paragraph 83):

"(b) A person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of this country".

41. When the report of the Third Committee (A/1682) came before the General Assembly in its 325th plenary meeting, the delegations of France, the United Kingdom and United States of America moved an amendment (A/1685) to insert the following text as a new paragraph D in the Annex (containing the definition of the term "refugee" to be inserted as Article 1 in the draft Convention) to resolution B:

"D. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country".

The amendment was adopted by 38 votes to 6, with 10 abstentions (General Assembly, Official Records of the 325th Plenary Meeting, paragraph 35).

(iv) Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

42. The provision in section D of Article 1 did not give rise to any objection at the Conference and the Belgian amendment to it (A/CONF.2/72) concerned only the French wording of this provision. The amendment was therefore referred to the Style Committee after the adoption of the section by the Conference in first reading by 19 votes against and 2 abstentions (Provisional Summary Records of the twenty-third meeting, pages 28-30). The United Nations High Commissioner, speaking during the discussion, expressed his approval of section D of

Article 1 which, in his view, meant that a person enjoying the status of de facto citizenship, or, in other words, having really the rights and obligations of a citizen of a given country, should not be granted the status of refugee (ibid., page 13).

43. The Style Committee proposed in its report (A/CONF.2/102/Add.2) that section D of Article 1 should be called section E of the same article, the English text of the provision remaining unchanged.^{1/} The Conference adopted unanimously the text of section E of Article 1 of the Convention reproduced above in paragraph 41 (Provisional Summary Records of the thirty-fourth meeting, page 13).

^{1/} The French text was amended in order to bring it in line with the English text.