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CONFERENCE OF PLENIPOTENTIARIES  
ON THE STATUS OF REFUGEES AND  
STATELESS PERSONS  
(Item 6 of the agenda)

DRAFT CONVENTION RELATING  
TO THE STATUS OF REFUGEES

Israel : U.K.:

Note on article 3 (B)

1. Article 3 (B) of the Draft Convention reads as follows:

Article 3(B)

For the purpose of this Convention:

(a) The term "In the same circumstances" implies that the refugee must satisfy the same requirements, including the same length and conditions of sojourn or residence, which are prescribed for the national of a foreign State for the enjoyment of the right in question,

(b) In those cases in which the refugee enjoys the "same treatment accorded to nationals" the refugees must satisfy the conditions required of a national for the enjoyment of the right in question.

2. The Australian Delegation submitted on 3 July the following amendment to this Article (A/CONF.2/14) :

The term "discriminate" shall be taken to mean discriminate between refugees and other aliens.

which, however, was withdrawn in the fifth meeting of the Conference.

3. During the debate in the fifth meeting, the delegate of Israel called attention to the fact that in certain cases refugees could not satisfy the same requirements as those prescribed for nationals or "aliens in general". He called for recognition of the particular nature of the refugee and suggested that the Article 3 (B) needs reformulation. He was supported by the delegate of U.K. who expressed the hope that a reformulation of this clause might allay some apprehensions of the Australian Government.

The President asked the delegates of Israel and U.K. to get together and redraft Article 3 (B).

During lunch-time, the two delegates got together for a brief exchange of views which were summarised by the delegate of U.K. as follows:

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

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

Sub-paragraph (a) might indeed serve a useful purpose and might possibly be combined with the Australian proposal for an additional article (A/CONF.2/19).

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

A second consultation between the two delegations took place on July 12. The results of this consultation are summarized in the following paragraphs:

4. A survey of the particular articles of the Convention (A/CONF.2/1 and A/CONF.2/L.12 Add. 1, 2, 3, 4)<sup>1)</sup> reveals that:

a) national treatment is accorded to refugees in Articles 9, 11,<sup>1, 2, 3,</sup> 15, 17<sup>1</sup>, 18 and 19. The languages used in this connection are:

aa) "..... as is accorded to nationals" (Article 9 - Artistic Rights and Industrial Property; Article 17<sup>1</sup>, Elementary education; article 19<sup>1</sup>, Labour Legislation and Social Security);

bb) "..... as is accorded to their nationals (Article 18 - Public Relief);

cc) "..... the treatment granted to a national" (Article 11<sup>3</sup>, Access to Courts);

dd) "Same rights and privileges as a national" "on the same conditions as a national", (Article 11<sup>2</sup>, Access to Courts).

ee) "... treated on the same footing as nationals" (Art. 15, Rationing);

Attention is called to the fact that no uniform language is used in describing "national treatment". In addition, only once (Art. 11<sup>2</sup>) is there any express reference to the same conditions as must be fulfilled by a national, although in all other cases the enjoyment of rights must in fact be subject to certain conditions.

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1) The language referred to in the following pages is that used in the respective Articles as they have been amended by this Conference.

b) treatment accorded to aliens generally in the same circumstances is mentioned in Articles 8, 13, 14<sup>1</sup>, 16, 17<sup>2</sup>, 21). The language used is as follows:

aa) "... accorded generally to aliens in the same circumstances" (Art. 8, Movable and immovable property; Art. 13 Self-employment; Art. 14<sup>1</sup>, Liberal professions; Art. 16, Housing; Art. 17<sup>2</sup>, Education other than elementary);

bb) "... subject to any regulations applicable to aliens generally in the same circumstances" (Art. 21, Freedom of movement);

c) treatment accorded to the most favoured foreigners in the same circumstances is mentioned in Articles 10, 12.<sup>1</sup> The language used is:

"... the most favourable treatment accorded to nationals of a foreign country in the same circumstances".

5. Provided that the language of the Articles mentioned in paragraphs a) and b) above has been uniformly redrafted, it is suggested in regard to Article 3 (B):

(1) to drop paragraph (b) as meaningless: the optimum of this Convention is to give to refugees national treatment but not more than that. This certainly implies that this treatment is given under the same conditions as to nationals in those particular respects, as artistic rights, access to Courts, rationing, elementary education, public relief, labour legislation and social security. The use of the expression "on the same conditions as a national" in art. 11<sup>2</sup>, seems therefore to be undesirable and could be avoided by re-drafting, e.g.:

"... He shall enjoy the same treatment as regards the benefit of legal assistance and exemption from the cautio judicatum solvi as is accorded to a national".

(2) As regards paragraph (a), the following wording is suggested to meet the difficulties raised in the fifth meeting:

The term "in the same circumstances" implies that any requirements (including requirements as to length and

conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

It is thought that the reference to the particular individual will remove a difficulty of the present text - namely that within the general category of "nationals" or "aliens generally" conditions and requirements may not be uniform, and it is not clear which of them would be applicable to the case of a particular refugee. The new wording proposed should therefore assist to meet the points raised by the Australian delegation. The exception is intended to exclude conditions which a refugee, as such, is incapable of fulfilling, as, for instance, the requirement of HEIMATRECHT in certain Central-European countries for enjoyment of social security.

6. It is suggested that if the above redraft of paragraph (a) of article 3 (B) is adopted it should be placed at the end of the Convention, either as the only interpretative provision or along with others whose insertion in the Convention may be deemed by the Conference to be necessary.