UNITED NATIONS

GENERAL ASSEMBLY

GENERAL

A/CONF.2/SR.8
20 November 1951

ENGLISH
ORIGINAL: ENGLISH AND FRENCH

Dual distribution

# CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS

## SUMMARY RECORD OF THE EIGHTH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 5 July 1951, at 3 p.m.

CONTENTS:

Present:

President: Mr. LARSEN

Members:

| | |
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| Australia | Mr. SHAW |
| Austria | Mr. FRITZER |
| Belgium | Mr. HERMENT |
| Canada | Mr. CHANCE |
| Denmark | Mr. HOEG |
| Egypt | MOSTAFA Bey |
| Federal Republic of Germany | Mr. von TRÜTZSCHLER |
| France | Mr. ROCHEFORT |
| Greece | Mr. PAPAYANNIS |
| Iraq | Mr. Al PACHACHI |
| Israel | Mr. ROBINSON |
| Italy | Mr. THEODOLI |
| Netherlands | Baron van BOETZELAER |
| Norway | Mr. ARFF |
| Sweden | Mr. PETRÉN |
| Switzerland (and Liechtenstein) | Mr. SCHURCH |
| Turkey | Mr. MIRAS |
| United Kingdom of Great Britain and Northern Ireland | Mr. HOARE |
| United States of America | Mr. WARREN |
| Yugoslavia | Mr. MAKIEDO |

Observers:

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| Iran | Mr. KAZEMI |

High Commissioner for Refugees — Mr. van HEUVEN GOEDHART

Representatives of specialized agencies and other inter-governmental organizations:

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| International Refugee Organization | Mr. SCHNITZER |
| Council of Europe | Mr. von SCHMIEDEN |

Representatives of non-governmental organizations:

Category B and Register

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| Caritas Internationalis | Mr. BRAUN<br>Mr. METTERNICH |
| Consultative Council of Jewish Organizations | Mr. MEYROWITZ |
| Co-ordinating Board of Jewish Organizations | Mr. WARBURG |
| Friends' World Committee for Consultation | Mr. BELL |
| International Federation of Friends of Young Women | Mrs. FIECHTER<br>Mrs. GIROD<br>Mrs. van WIRVEKE |
| Pax Romana | Mr. BUENSOD |

Secretariat:

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| Mr. Humphrey | Executive Secretary |
| Miss Kitchen | 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):

1. Article 9 - Artistic Rights and industrial property (A/CONF.2/38, A/CONF.2/39) (resumed from the seventh meeting)

The PRESIDENT drew attention to the Swedish amendment to article 9 (A/CONF.2/39), which had been introduced orally at the preceding meeting.

MOSTAFA Bey (Egypt) said that, with regard to the protection of rights in literary, artistic and scientific works, international rules already existed in the shape of instruments such as the Berne Convention of 1886, the Acts of Paris of 1896, the Berlin Convention of 1908, the Rome Convention of 1928, the Madrid Convention, and so on. The easiest thing would therefore be to state simply that refugees should enjoy the protection of the provisions of those Conventions.

Mr. HERMENT (Belgium) pointed out that in certain cases the Conventions mentioned would not be applicable in the case of refugees. Thus, the Berne Convention of 1886 required of persons wishing to take advantage of its provisions the fulfilment of the requisite formalities in their countries of origin, formalities which refugees clearly could not fulfil.

Mr. PETRÉN (Sweden) said that in practice the problem might arise in three forms: first, an author might have published a work prior to his becoming a refugee, in which case the laws existing at the date of publication would apply to the work. Secondly, a refugee might publish a work in the country of reception; in that case the legislation of that country would protect his rights. Finally, a refugee might publish a work in a country other than that in which he resided. The question then arose whether the fact that the refugee resided in a country of reception would be sufficient to ensure the protection of his rights. In the circumstances, it seemed that mere residence in a receiving country would not be enough, and the Swedish delegation had therefore considered it desirable to introduce the idea of domicile into the text of article 9. Hence the introduction of its amendment (E/CONF.2/39).

Mr. HOEG (Denmark) supported the Swedish proposal.

Mr. FRITZER (Austria) said that a distinction could be made between three kinds of domicile: fixed abode, habitual residence, and temporary residence. A refugee had no fixed or ordinary abode, as he had had to abandon it; in the circumstances, the only kind of residence possible for him was habitual or temporary residence, the latter applying where the refugee moved about or took a holiday. The fact that the refugee possessed a temporary domicile or residence seemed insufficient to ensure the protection of his rights, and could not therefore form a proper basis for article 9. Moreover, certain existing international instruments made use of criteria which could not be applied to refugees. Thus, the Berne Convention laid down as an essential criterion the possession of a nationality, a condition that could not be fulfilled by a refugee. For those reasons, the Austrian delegation had proposed an amendment (A/CONF.2/38) intended to introduce the idea of habitual residence into article 9.

Mr. HERMENT (Belgium) fully agreed with the intention of the Austrian amendment, but observed that its wording did not fully reflect that intention. Two types of residence were indeed recognized: habitual residence and temporary residence. The Austrian Government seemed concerned to avoid just such an admission.

As to the Swedish amendment, he thought that it would not be possible to require of a refugee that he possess a domicile in the sense in which that term was used in the amendment. The Swedish delegation might perhaps be prepared to accept the idea of habitual residence.

Mr. PETRÉN (Sweden) made it clear that the Swedish delegation was mainly concerned with eliminating the idea of residence pure and simple. It had the same objective as the Austrian delegation, and, if its amendment raised difficulties, it could, if necessary, accept the Austrian view.

He pointed out that a conference had recently met at Paris under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to draft a convention relating to copyright. He believed that one of the clauses

discussed at that conference had related to stateless persons. In those circumstances, it would perhaps be desirable to study the texts drawn up at Paris before any decision was taken on article 9.

The PRESIDENT doubted whether the Conference could derive much benefit from the work of the UNESCO Committee of Experts, since the latter's scope had been limited to the consideration of copyright, and the result of its deliberations would not be available for some time.

Mr. FRITZER (Austria) noted that the idea of residence found expression in the Convention in a number of different technical terms, such as country of domicile, residence or habitual residence. It seemed to him preferable that the Conference should restrict itself to two terms, namely: habitual residence and temporary residence.

Baron van BOETZELAER(Netherlands) recalled that he had withdrawn his amendment (A/CONF.2/33) to article 7, on personal status, because it had seemed that the various delegations took the expression "domicile" to mean habitual residence. That word had been chosen, and it would be desirable to keep to it. Indeed, it would seem that the introduction of the expression "habitual residence" would automatically confer a fresh meaning on the term "domicile".

Mr. HOARE (United Kingdom) said the United Kingdom delegation would have been satisfied with the original text of article 9, but would not press for its retention if other delegations considered that it went too far. The use of the well-known and clearly defined term "domicile" was appropriate in article 7, as it constituted a criterion for determining the laws that should apply in respect of the personal status of a refugee. As, however, the restriction aimed at in article 9 was merely in respect of the period of residence in a receiving country, he considered that it would be wrong to introduce the term "domicile" into the text of that article.

Mr. PETRÉN (Sweden) accepted the views of the Conference, and would withdraw his amendment (A/CONF.2/39) in favour of the Austrian amendment (A/CONF.2/38), provided that the words "or, if he has no habitual residence, in which he resides" were deleted.

Mr. FRITZER (Austria) accepted the Swedish amendment to his proposal.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) drew attention to the fact that there might be refugees, for instance, artists, musicians and the like, who had no habitual residence, but travelled from country to country in the course of their work. He believed that their interests would not be covered unless the words "or, if he has no habitual residence, in which he resides" were retained.

Mr. ROCHEFORT (France) disagreed with the High Commissioner. Refugees had to have a place of habitual residence; otherwise it would be impossible for them to proceed from one country to another, in view of the formalities with which they would have to comply in order to cross a frontier.

Mr. HERMENT (Belgium) supported the French representative, whose observation appeared all the more cogent when it was considered that any person proceeding from one country to another was required to have a passport, which was normally issuable only by the authorities of the country in which he resided.

MOSTAFA Bey (Egypt) saw no point in abandoning the concept of domicile, which was both definite and generally understood, and which covered the exercise of specific rights.

The PRESIDENT observed that there was now no proposal before the Conference that the term "domicile" should be inserted in article 9.

Mr. ROCHEFORT (France) suggested that if "domicile" seemed too narrow, and "residence" too wide a concept, "habitual residence" constituted a happy medium. If countries like Austria which harboured a considerable number of refugees were able to accept that concept, it would seem wise to select it in preference to the others.

While it was true that it might lack legal precision, it should be remembered that refugees found themselves in a de facto position before they enjoyed a de jure position.

The PRESIDENT put to the vote the Austrian amendment (A/CONF.2/38), as further amended by the Swedish proposal.

The Austrian amendment, as amended, was adopted by 13 votes to none, with 7 abstentions.

As adopted, it read:

"In respect of the protection of industrial property, such as inventions, industrial designs or models, trade marks, trade names, and of rights in literary, scientific and artistic works, a refugee shall be accorded in the country in which he has habitual residence, the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence."

Baron van BOETZELAER (Netherlands) pointed out that he would have a statement to make in connexion with paragraph 1 of article 5, which would also apply to article 9, when consideration of the former was resumed. That statement would deal with a reservation which the Netherlands Government would require to enter when signing the Convention.

The PRESIDENT put to the vote article 9 as amended.

Article 9 was adopted as amended by 17 votes to none, with 3 abstentions.

2. Article 10 - Right of Association (A/CONF.2/SR.35)

Mr. SCHURCH (Switzerland) said that the Swiss delegation was not opposed to the principle enunciated in article 10. In principle, aliens in Switzerland enjoyed freedom of association as one of the basic rights guaranteed by the Swiss Federal Constitution. However, past experience had shown that the policy of neutrality pursued by Switzerland in implementation of her international obligations made it necessary to impose certain limits on the

political activity of aliens resident in the country. Those limits had been fixed either through provisions in the Constitution or through Orders and Special Instructions. They also applied to political groups of aliens. It had proved necessary to establish slightly stricter regulations in respect of refugees. In principle, the regulations implementing the Federal Law on the residence and establishment of aliens debarred refugees from engaging in any political activity of any kind while in Switzerland: hence refugees had no right to participate in the activity of political groups or to form such groups themselves. That was one of the conditions attached to the granting of asylum, and its justification could not be disputed.

It might be asked whether article 2, which required refugees to conform to the laws and regulations of the receiving country as well as to measures taken for the maintenance of public order there, did not already limit the scope of article 10 in that direction. The reply to that question, in the Swiss delegation's opinion, was in the negative, since no express provision existed on the point. Furthermore, it might be argued that to treat refugees more rigorously than other aliens in that respect would constitute a discriminatory measure. For those reasons, when signing the Convention, the Swiss Federal Government would be compelled to enter a reservation in respect of associations of a political nature. Nevertheless, the Swiss delegation would be most happy to hear the views of other delegations on that point; should other States share its opinion, the appropriate procedure would no doubt be to include an express stipulation in article 10 that political groups were excluded from the benefit of its provisions. That condition, while involving no marked disadvantage so far as refugees requesting asylum were concerned, would give receiving countries some guarantee of security. Impelled by those reasons, the Swiss delegation had submitted an amendment to article 10 on the lines indicated (A/CONF.2/35).

Mr. HERMENT (Belgium) pointed out that article 10 dealt with two aspects of the problem. First, membership of non-profit-making associations and trade unions; secondly, the establishment of such associations. With regard to the second aspect, the Belgian Government was not in a position to accord to

refugees the most favourable treatment accorded to nationals of a foreign country. The treatment of refugees would, in practice, be that accorded to aliens in general.

MOSTAFA Bey (Egypt) said that the Egyptian delegation would support the Swiss amendment. Refugees admitted to a country should not be in a position to engage in political activities prejudicial to the security of that country.

Mr. HOARE (United Kingdom) considered that the drafting of article 10 was not wholly satisfactory, since the meaning of the text depended on the title, which would presumably be deleted from the Convention once it was set out in treaty form. At that stage, the link between the opening words "As regards" and the final words "... treatment accorded to nationals of a foreign country, in some circumstances" would no longer be clear. Nor was it clear whether the article related to joining associations alone, or to forming them also.

Finally, as the United Kingdom delegation had pointed out on previous occasions, it would be necessary to ensure that the terms of article 10 were consistent with the various Conventions of the International Labour Organisation on the subject.

Mr. PETRÉN (Sweden) said that, owing to the regional problem facing his country, to which his delegation had already referred at a previous meeting, the Swedish Government would be under the necessity of entering the same sort of reservation as the Government of Belgium.

The PRESIDENT recalled that the Ad hoc Committee had changed the text of article 10 in order to make it consistent with Article 23 (4) of the Universal Declaration of Human Rights. That was why the words "As regards" had been used.

He ruled that the discussion of article 10 was now closed, and that the Conference should vote first on the Swiss amendment (A/CONF.2/35), to the effect

that the words "non-political and" should be inserted before the words "non-profit-making associations".

The Swiss amendment was adopted by 10 votes to none, with 9 abstentions.

Article 10, as amended, was adopted by 16 votes to none, with 3 abstentions.

3. Article 11 - Access to Courts (A/CONF.2/31)

The PRESIDENT recalled that the Yugoslav delegation had submitted an amendment to paragraph 3 of article 11 (A/CONF.2/31).

Mr. MAKIEDO (Yugoslavia) stated that the purpose of the Yugoslav amendment was to ensure that persons who were not refugees should not be treated as such. For instance, there was resident in Argentina a group of persons who had been pronounced to be war criminals by the United Nations War Crimes Commission, but who were being treated by the Argentine Government as refugees.

The PRESIDENT said that the Yugoslav amendment raised a general problem which related also to articles 7 and 9. It would therefore be difficult to solve the problem of how a refugee should be treated in a country which was not the country of his habitual residence solely in relation to an article dealing with access to courts.

Mr. HERMENT (Belgium) agreed with the President that the question was a very important one, which might, perhaps, be made the subject of a separate article. In addition, the question raised a new problem, namely, the manner in which a decision as to whether an individual did or did not possess the status of a refugee was to be reached in the various countries.

Mr. ROBINSON (Israel) did not consider that the purpose of the Yugoslav amendment was in point of fact valid. Once the Convention had been ratified, it would come into force inter partibus. No Contracting State would be able to make a reservation on article 1, which defined the term "refugee". Consequently, a standard would be readily available to all States signatories,

and it would be easy enough to ascertain whether an individual was a refugee or whether his claim to be considered as such was vitiated by the exclusion clauses of article 1. In the case of States which had not ratified the Convention, the problem would not in any case arise.

Mr. HERMENT (Belgium) pointed out that a refugee might fail to retain that status. A decision taken about him at a given moment might be reversed as the result of an event which occurred or came to light subsequently. It should be clearly indicated whether the State making the second decision would be bound by the first one. A decision arrived at between Contracting States could obviously have no binding force on States that had not signed the Convention. But a second investigation into a refugee's position might become necessary between the Contracting States themselves.

Mr. ROBINSON (Israel) said that the implications of paragraph 3 could best be explained in specific terms. Assuming, for instance, that the Governments of the United Kingdom and Yugoslavia were both parties to the Convention, and that a refugee resident in the United Kingdom wished to sue a debtor in Yugoslavia, the legal authorities in the latter country would ask the United Kingdom authorities whether the claimant was a refugee. If the answer was in the affirmative, the problem would be solved for the Yugoslav Court. It seemed to him that the issue was perfectly straightforward, and that the Conference should guard against creating artificial difficulties.

Mr. MAKIEDO (Yugoslavia) considered that the problem to which his amendment related existed in application to the Convention in general. He would accordingly withdraw his amendment for the time being, and submit a proposal of a more general nature at a later stage.

MOSTAFA Bey (Egypt) said that article 11 dealt with three points: in the first place, it was proposed to accord a refugee free access to the courts of law in his country of residence. That was a provision that the Egyptian

delegation could accept. Secondly, there was the question of according a refugee the benefit of legal assistance. Although that was an arrangement usually subject to reciprocity, the Egyptian delegation would agree to it. On the other hand, it could not vote for the paragraph which provided that the refugee should be exempt from cautio judicatum solvi. That was a question of a principle of continental law, which had proved itself in practice. In Egypt, exemption from cautio judicatum solvi was granted subject to reciprocity, and for that reason the Egyptian delegation could not vote for that provision.

The PRESIDENT pointed out to the Egyptian representative that article 11 stipulated that a refugee should not only have free access to the courts in the country where he resided, but to the courts in the territory of all contracting States.

Mr. HERMENT (Belgium) said that the practice of demanding cautio judicatum solvi was dying out, and that in Belgium, for instance, it was no longer required, except in commercial litigation. Furthermore, exemption from cautio was provided for in one of the first few clauses in all bilateral treaties.

MOSTAFA Bey (Egypt) asked that article 11 be voted on in parts and more especially, that the second paragraph be divided into two parts, a separate vote being taken on the phrase "be exempt from cautio judicatum solvi".

Mr. HERMENT (Belgium) pointed out that exemption from cautio judicatum solvi was already provided for under the first sentence of paragraph 2, which provided that a refugee should enjoy in that respect the same rights and privileges as a national.

The PRESIDENT ruled the discussion closed and put paragraph 1 of article 11 to the vote.

Paragraph 1 of article 11 was adopted unanimously.

The PRESIDENT said that in order to meet the Egyptian representative's difficulty, he would put paragraph 2 to the vote in two parts and in terms of substance.

He would therefore first ask the Conference to decide whether a refugee should enjoy the benefit of legal assistance in the country in which he had his habitual residence.

It was so agreed unanimously.

The PRESIDENT then asked the Conference to decide whether it agreed to the principle that a refugee should be exempt from cautio judicatum solvi on the same conditions as a national in the country in which he had his habitual residence.

It was so agreed, by 19 votes to 1.

Paragraph 2 as originally drafted (A/CONF.2/1) was adopted by 18 votes to none, with 2 abstentions.

Paragraph 3 was adopted by 19 votes to none, with 1 abstention.

Article 11 as a whole was adopted by 19 votes to none, with 1 abstention.

The meeting rose at 4.30 p.m.