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CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE ELEVENTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 9 July 1951, at 11 a.m.

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Present:

President: Mr. LARSEN

Members:

Australia	Mr. SHAW
Austria	Mr. FRITZER
Belgium	Mr. HERMENT
Canada	Mr. CHANCE
Colombia	Mr. GIRALDO-JARAMILLO
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. del DRAGO
Monaco	Mr. BICHERT
Netherlands	Baron van BOETZELAER
Norway	Mr. ARFF
Sweden	Mr. PETRÉN
Switzerland (and Liechtenstein)	Mr. ZUTTER
Turkey	Mr. MIRAS
United Kingdom of Great Britain and Northern Ireland	Mr. HOARE
United States of America	Mr. WARREN
Yugoslavia	Mr. MAKIEDO

Observers:

Iran	Mr. KAZEMI

Representatives of specialized agencies and of other inter-governmental organizations:

International Refugee Organization	Mr. SCHNITZER

Representatives of non-governmental organizations:

Category B and Register

Caritas Internationalis	Mr. BRAUN Mr. METTERNICH
Consultative Council of Jewish Organizations	Mr. MEYROWITZ
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Union of Catholic Women's Leagues	Miss de ROMER
League of Red Cross Societies	Mr. LEDERMANN
Pax Romana	Mr. BUENSOD
World Jewish Congress	Mr. RIEGNER

Secretariat:

Mr. Humphrey	Executive Secretary
Miss Kitchen	Deputy Executive Secretary

1. PARTICIPATION OF THE HOLY SEE IN THE WORK OF THE CONFERENCE (resumed from the second meeting)

The PRESIDENT read out a cable received from the Holy See intimating that it was arranging for a plenipotentiary to attend the Conference.

2. 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) (resumed from the tenth meeting):

(i) Article 19 - Labour legislation and social security (A/CONF.2/50, A/CONF.2/51) (continued)

The PRESIDENT requested the Israeli representative to inform the Conference of the results of his research into the history of paragraphs 3 and 4 of article 19.

Mr. ROBINSON (Israel) said that both paragraphs were supposed to cover the problem of the extra-territorial effect of acquired rights and rights in the course of acquisition in the field of social security. That problem might arise in two sets of circumstances. In the first case, a refugee might have accumulated the right to certain social security benefits in his first country of asylum, and an agreement might exist between that country and a second country of asylum for the maintenance of such rights. In the absence of any specific provision in a multilateral convention for the protection of refugees to the effect that the refugee in question should enjoy such benefits, the problem of whether he should enjoy them was one for settlement between the particular Contracting States concerned. At the fourteenth meeting of the Ad hoc Committee, the Belgian representative had cited an agreement of that sort between France and Belgium, applying only to the nationals of those two countries, and a special protocol extending the benefits of that agreement to refugees who had resided in one country and acquired certain social security rights there, and subsequently moved to the other.

It would therefore seem that in respect of such cases, the drafting of paragraph 3 of article 19 was somewhat deficient. The adoption of either the

United Kingdom or the Belgian amendment (A/CONF.2/50 and A/CONF.2/51 respectively) would remove one source of possible misunderstanding. There would, however, remain one further drafting defect. In fact, the decisive point was whether States had concluded agreements, and it appeared that the paragraph would conform more exactly to the United Kingdom representative's intention if it were amended to read:

> "The benefits for the maintenance of acquired rights and rights in the process of acquisition accruing to nationals of the Contracting States under any international agreements which may at any time be in force between them shall be extended to refugees subject only to the same conditions which apply to their nationals."

What would that mean? Taking the case of the social security agreement between France and Belgium, and assuming that there was no additional protocol extending the benefits of that agreement to refugees, and further assuming that both France and Belgium ratified the draft Convention at present before the Conference, refugees moving from France to Belgium and vice versa would enjoy the benefits accruing to nationals, even though there was no special agreement to that effect.

Consequently, benefits enjoyed by nationals would be extended to refugees whose countries of domicile or of habitual residence were parties to the Convention and to a bilateral agreement relating to the maintenance of acquired rights and rights in the process of acquisition for their nationals, provided such refugees were able to fulfil the requirements to which such benefits were subject so far as nationals were concerned.

It was obvious that nothing in paragraph 3 should be interpreted as discouraging States from settling the problem by way of the conclusion of special bilateral agreements. In cases where one or both parties to a bilateral agreement were not parties to the Convention, it was only through such special bilateral agreements that refugees could become entitled to social security benefits contractually accorded to nationals. As the modifications he had proposed with regard to paragraph 3 were of a purely drafting nature, there would appear to be no need to submit a formal amendment embodying them.

The second case in which the problem of the extra-territorial effect of such social security rights might arise was provided for in paragraph 4, the object of which was to protect the national of a particular country who, having accumulated certain social security rights in his home country and having moved to another country which had a social security benefits agreement with the former, then renounced the protection of his country of origin and became a refugee. Under what circumstances the contractual right to the benefits accruing under the bilateral agreement would be forfeited was a matter that could only be determined by the parties to the agreement in the light of its letter and of its spirit. A State, granting asylum to a refugee of the nature just described, would, however, not be prevented from granting benefits of its own free will to a person towards whom it might have no contractual obligations.

The purpose of paragraph 4 was to provide for such a contingency, but, unlike paragraph 3, it took the form, not of a binding provision but of a recommendation. The adoption of the United Kingdom amendment to paragraph 4 (A/CONF.2/50) would enlarge the scope of the recommendation, and was therefore desirable.

Mr. HOARE (United Kingdom) withdrew the United Kingdom amendment to paragraph 3 (A/CONF.2/50) in favour of the Belgian amendment (A/CONF.2/51).

Mr. HERMENT (Belgium) thanked the United Kingdom representative for withdrawing his amendment in favour of the Belgian text. The difference between them was, in fact, only one of form. The intention of the United Kingdom amendment was to enable refugees to benefit not only from existing social security measures, but also from any subsequent arrangements. That was precisely what the Belgian amendment sought to cover.

Turning to the statement made by the representative of Israel, he asked whether that representative thought that the agreements referred to should become automatically applicable to refugees as soon as the Convention had been ratified. His own feeling was that a certain amount of latitude should be allowed, for in the case of certain Contracting States administrative measures would have to be adopted before the provisions of the Convention could be applied. That was why, in its amendment, the Belgian delegation had used the words "the Contracting States shall extend to refugees .....," which left it to the Contracting States to decide exactly how article 19 was to be applied.

Mr. ROBINSON (Israel) believed that, in the English text at least, the use of the words "shall extend" made the Belgian amendment a binding provision, although he recognized there might be some discrepancy in that respect between that text and the French, which merely read "étendront." The question of the necessary administrative measures for extending to refugees, on a reciprocal basis, the benefits accorded under agreements concluded between Contracting States was a problem for solution by each individual State in accordance with the provisions of article 31 of the draft Convention. The intention of paragraph 3 of article 19 was, of course, to extend such benefits to refugees ipso facto, without any special provisions to that end.

Mr. HERMENT (Belgium) accepted the Israeli representative's interpretation.

MOSTAFA Bey (Egypt) stated that Egypt had recently introduced social security legislation, the benefits of which extended to all the inhabitants of the country, nationals, aliens and refugees alike, without any question of reciprocity or bilateral agreements. That legislation, he considered, was more liberal than the provisions of the draft Convention, and it would thus be readily understood that the Egyptian delegation would have no objection to a text which provided the widest possible benefits.

Mr. HOARE (United Kingdom) pointed out that paragraph 3 as drafted would place an obligation on a Contracting State to extend to refugees the benefits accorded to nationals under agreements between it and a non-Contracting State. Under paragraph 4, amended as he had proposed, it would merely be recommended to do so.

The PRESIDENT put the Belgian amendment (A/CONF.2/51) to the vote.

The Belgian amendment to paragraph 3 of article 19 was adopted by 18 votes to none, with 3 abstentions.

The PRESIDENT, speaking as representative of Denmark, believed that all contingencies would be covered by paragraphs 3 and 4, even if the words which the United Kingdom delegation proposed should be added to paragraph 4 were, instead,

substituted for the final phrase, which at present read "which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality." The Danish delegation would therefore move an amendment to that effect.

Mr. HOARE (United Kingdom) appreciated the Danish representative's point, but felt that no harm would be done by adding the words proposed by the United Kingdom delegation to the original text of paragraph 4, if only to avoid drawing attention to the fact that the country of the individual refugee's nationality or former nationality need not be a Contracting State.

Mr. HERMENT (Belgium) felt that the effect of the Danish amendment would be to extend the scope of paragraph 4. So far, nationality had been taken as the deciding factor, but the Danish amendment would result in the benefits of any agreement concluded between a Contracting and a non-Contracting State being extended to all refugees. If, for example, an agreement were signed between the United Kingdom and Hungary - the latter country not being a signatory to the Convention - a Romanian refugee residing in the United Kingdom would then benefit from it. That was not, he thought, the United Kingdom representative's intention.

Mr. HOARE (United Kingdom) observed that the intention of the original text, as well as of the United Kingdom amendment thereto, was to provide for the maintenance of rights acquired in a particular country. Thus, if, under Hungarian social security arrangements, a Romanian had acquired certain rights, the intention was that the United Kingdom would give sympathetic consideration to the recognition of such rights, if that person became a refugee in the United Kingdom. As the provision took the form of a recommendation, he believed that the extension of its scope entailed by the United Kingdom amendment was justified.

Mr. HERMENT (Belgium) said that, as paragraph 4 was not binding, and would only take the form of a recommendation, his delegation would have no objection to it.

Mr. ROBINSON (Israel) thought that the Style Committee might consider the desirability of deleting the word "individual" before the word "refugees" in the

second line of paragraph 4, particularly if there was any risk of the retention of that word leading to discrimination between one refugee and another.

The PRESIDENT put to the vote the Danish proposal that the phrase in paragraph 4 reading "which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality" should be replaced by the words "which may at any time be in force between such Contracting States and non-Contracting States."

The Danish proposal was adopted by 22 votes to none, with 1 abstention.

The PRESIDENT put to the vote paragraph 4, as amended.

Paragraph 4, as amended, was adopted by 21 votes to none, with 2 abstentions.

The PRESIDENT put to the vote article 19 as a whole and as amended.

Article 19, as a whole and as amended, was adopted by 21 votes to none, with 2 abstentions.

The PRESIDENT said that before opening the discussion on article 20, he would call on the representative of Pax Romana, who wished to make a statement on the Chapter of the draft Convention which the Conference had just disposed of.

Mr. BUENSOD (Pax Romana) drew the attention of the Conference to a possible omission which might have serious repercussions. Although the Conference had just examined, under the heading of "Welfare" (Chapter III of the draft Convention, articles 15 to 19), a series of provisions dealing with such different matters as rationing and education, and had evolved solutions with the greatest possible sense of human realities, it had not yet begun consideration of the refugee's right to personal, spiritual, religious and cultural development. It was, of course, true that in a closely related field, that of education, the Conference had adopted an article, the object of which was to enable refugees to benefit by instruction given in the various receiving countries, to attend higher educational establishments, and to take university degrees. He wondered, however, whether those provisions were sufficient to ensure the development of the refugee's

personality. Paragraph 2 of the preamble to the draft Convention expressed the desire to ensure to refugees the exercise of fundamental rights and freedoms. But the draft Convention contained no positive definition of the spiritual and religious freedom of the refugee. The negative principle of non-discrimination as expressed in article 3 could not be considered as constituting such a definition. It should be noted in that connexion that the International Refugee Organization (IRO) had, in carrying out its functions, fully recognized the importance of that moral and spiritual factor, and especially that it had asked various religious authorities to help to bring to the refugees the spiritual assistance they needed. The High Commissioner for Refugees, who would take over, at least in part, the heavy responsibilities of IRO, would undoubtedly have similar ideas on the subject. That was only natural, because, although the provisions designed to ensure that refugees received material assistance and to confer on them a definite legal status were of the first importance, the spiritual and religious factor was of special significance, having regard to the material and moral distress prevailing among the majority of refugees. It was for those reasons that Pax Romana, the views of which were, moreover, shared by other non-governmental organizations, thought it advisable to draw the attention of the Conference to that point, and to suggest that an appropriate article should be embodied in the Convention. That article might be worded as follows:

> "The Contracting States shall grant refugees full freedom to continue to practise and manifest their religion in their territory, individually or jointly, in public and in private, through education, instruction, religious observance, worship and the carrying out of rites."

In conclusion, he thanked the Conference for having given him an opportunity of expressing his views, and recalled the fact that the previous year he had brought the same arguments to the notice of the Council Committee on Non-Governmental Organizations of the Economic and Social Council.

The PRESIDENT pointed out that the suggestion made by the representative of Pax Romana would have to be sponsored by a delegation before the Conference could take action upon it.

Mr. ROCHEFORT (France) thought that representatives might possibly have some difficulty in defining forthwith their views with regard to the suggestion

just thrown out by the representative of Pax Romana. It should, nevertheless, be examined in principle, if necessary by a working party. The best course would therefore be to leave the matter in abeyance for the time being.

It was so agreed.

(ii) Article 20 - Administrative assistance (A/CONF.2/46, A/CONF.2/48, A/CONF.2/52)

Mr. FRITZER (Austria) said that the Austrian Federal Government would be unable to accept article 20 as drafted, since that article sought to impose on Contracting States the obligation either to establish national authorities for delivering documents to refugees, such documents to have the same validity as those delivered by the authorities of an alien's country of origin, or to recognize international authorities as competent to deliver such documents.

Presumably documents pertaining to a refugee's personal status would not be affected by article 20, since article 7 provided that the personal status of a refugee should be governed by the laws of the country of his domicile. Consequently, article 20 would be applicable to documents relating to material and legal rights. It followed, therefore, that the Austrian Federal Government, for instance, would, acting as the national authority, have to provide documents covering legal situations and circumstances unknown to Austrian law and custom. Such a situation might give rise to great juridical difficulties, and Contracting States would, by subscribing to article 20, assume considerable risks.

Accordingly, without wishing to reject article 20, the Austrian delegation felt that the scope of the obligations defined in it should be limited, and had consequently submitted an amendment (A/CONF.2/46) the effect of which would be to make paragraphs 2 and 3 optional.

Mr. PETRÉN (Sweden) supported the Austrian amendment, which fully met the difficulties experienced by the Swedish Government in the matter.

Baron van BOETZELAER (Netherlands) said that the Netherlands delegation had also submitted an amendment (A/CONF.2/48) to article 20 because it, too, had felt that the obligations prescribed therein were too far-reaching, and that

national administrations might be faced with a number of requests for documents which would not perhaps be absolutely necessary. The Netherlands delegation had consequently re-drafted paragraph 2 in such a way as to provide for the delivery of such documents or certifications normally delivered to aliens by their national authorities as were required for the exercise of a right. As a result of discussions between himself and the Office of the High Commissioner for Refugees he had come to the conclusion that that amendment was too restrictive; he now appreciated that the final clause in paragraph 2 - "as would normally be delivered to other aliens ..." - provided adequate safeguards. He would consequently withdraw his own amendment, and would oppose the Austrian amendment, which, he considered, was also too restrictive.

Mr. HERMENT (Belgium) stressed the importance of article 20, which was designed to meet one of the most constant and essential needs of refugees. The Belgian Government regretted that a task of that nature had not been entrusted exclusively to an international authority. Under his mandate, the High Commissioner could protect only groups of refugees, and that was where the tragedy lay in certain cases, where the refugee needed not only the protection which the relations established between the High Commissioner and national authorities afforded him, but individual protection as well. In many European countries refugees were not living in groups but in families, and would like to be able to get into direct touch with someone who was responsible for protecting them, not merely with foreign authorities. The Belgian delegation wished to make it clear that those remarks were not aimed at any particular State; it was fully aware of the good intentions of the authorities of the various countries. Nevertheless, the fact remained that when the authorities of the receiving country were called upon to consider a complaint or a protest from a refugee, they would always be both judge and party to the dispute.

If the terms of article 20 were considered, it would be noted that paragraph 1 only provided for a single case - that of the exercise of a right in the territory of a Contracting State. He did not consider that the obligation on Contracting States to afford refugees the necessary administrative assistance was brought out with sufficient clarity in that paragraph. If a refugee resident in the territory

of country A happened to marry, and so exercised a right in the territory of country B, the question would arise as to which authorities were responsible for giving him the administrative assistance which he required. In the opinion of the Belgian delegation, as expressed in its amendment to paragraph 1 (A/CONF.2/52), the responsibility should be placed squarely on the authorities of the country of residence, who were better able to come to the assistance of refugees.

Another case might well arise, namely, that of a refugee wishing to exercise a right in the territory of a non-Contracting State. The Belgian delegation was of the opinion that in such cases the country of residence should lend its good offices. The concept of territory should, for those reasons, be omitted from the provisions governing the exercise of a right by refugees.

The object of paragraph 2 of article 20 was to enable refugees to procure documents which they could not obtain from the countries which would normally provide them, and to confer on such documents the same validity as, if not at times greater validity than, similar documents which a national of the refugee's country of origin could obtain from his competent national authorities. That was a most important provision, and it was therefore right that it should be safeguarded to the greatest possible extent. His delegation therefore proposed that there should be some control, even if such control merely consisted in the authentication of the signature of those concerned. The Belgian delegation also proposed that the documents or certifications normally supplied to aliens should be issued to refugees either by the national authorities mentioned above, or through their intermediary. It might well be that, to exercise a certain right, a refugee would need a document issued, not by his national authorities but by the authorities of a foreign country. If, for example, a Romanian national born in Hungary wanted to obtain a copy of his birth certificate, he would normally have to apply either to the Romanian representative accredited to his country of residence or to the Romanian Government direct. The documents he needed would therefore be issued through his national authorities. A refugee, on the other hand, had no possibility of applying to his national authorities, even where they merely acted as intermediaries.

Lastly, the Belgian delegation suggested that paragraph 3 should be replaced by some text more easily capable of dispelling any doubts arising out of such documents; that was why it had suggested that they should be regarded as authentic in the absence of proof to the contrary.

Mr. GIRALDO-JARAMILLO (Colombia) supported the Belgian delegation's attitude towards paragraph 1 of article 20; the wording proposed for that paragraph in the Belgian amendment was clearer and more precise.

In the case of paragraph 2, he supported the Austrian amendment.

Mr. HERMENT (Belgium) said that he would like to hear the High Commissioner's views on the subject. He himself could not agree that the administrative assistance which the Contracting States would be required to afford to refugees should be made optional. It was a question of vital importance for refugees, and if governments were permitted to grant or refuse them the necessary documents at their discretion, the rights which the Convention was intended to confer on refugees would be jeopardized.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) said that article 20 was of the greatest importance, since refugees had to be provided, in one way or another, with the documents they required. It did not matter whether such documents were delivered by a national or international authority. What mattered was that refugees should know exactly how they should go about getting them. No difficulties arose in countries of common law, where the affidavit system was applied, but he would very much regret it if the Conference adopted the Austrian amendment, which would so weaken article 20 as to deprive it of all significance. It would be preferable for the Austrian Federal Government to enter a reservation to the article rather than to press its amendment.

The Belgian amendment (A/CONF.2/52) was, in his view, in some respects even better than the original text, and he would have no objection to its adoption.

Mr. FRITZER (Austria) said that, in view of the arguments advanced by the High Commissioner, his delegation would withdraw its amendment, and instead enter a reservation, which it would formulate when it signed the Convention.

Mr. ROCHEFORT (France) asked for an explanation of the words "under their supervision" in the Belgian amendment to paragraph 2 (A/CONF.2/52).

In his opinion, they meant that if the papers and documents concerned were issued by a national authority there would be international supervision, whereas if they were issued by an international authority, there would be national supervision.

If that was indeed the meaning of the text, the French delegation would have no objection.

Mr. HERMENT (Belgium) said that the French representative's interpretation was correct. There was a precedent in the 1928 Agreement between the Governments of France and Belgium, by which an Office responsible for issuing identity papers to Russian refugees had been set up. Such papers were regarded as authentic by the national authorities if the signature of the Director of the Office was attested by the French or Belgian authorities.

The establishment of such national offices would be the best way of solving the problem.

Mr. HOARE (United Kingdom) said that he had taken no part in the discussion for the reason that common law applied in the United Kingdom, and that, as a consequence, the documents referred to in article 20 would not be required to enable refugees to exercise rights in that country. Affidavits would be sufficient. The United Kingdom delegation might have to enter a reservation on article 20 in order to make its position clear, especially since paragraph 2, as at present drafted, would make it mandatory on the United Kingdom authorities to supply the documents which would under Continental systems of law be issued by national authorities. Such an obligation would be unacceptable to the United Kingdom Government. But he wished to emphasize that he was in no way opposed to the general tenor of the article, which would in point of fact have no practical effect in the United Kingdom.

The PRESIDENT declared the discussion closed, and put the Belgian amendment (A/CONF.2/52) to the vote.

The Belgian amendment to article 20 was adopted by 17 votes to none, with 5 abstentions.

Article 20 was adopted, as amended, by 19 votes to none, with 2 abstentions.

(iii) Article 21 - Freedom of Movement (A/CONF.2/31)

Mr. MAKIEDO (Yugoslavia) said that the Yugoslav delegation had submitted an amendment (A/CONF.2/31) to article 21 in order to cover cases where the fact that refugees resided near the frontier of their country of origin might cause friction between two States. Contracting States should be empowered to prescribe zones in which residence would be forbidden to refugees.

Since, however, his delegation intended to submit a general proposal dealing with possible causes of friction between States, the point might be more suitably dealt with therein. He accordingly withdrew his amendment to article 21.

Mr. HERMENT (Belgium) felt that, for the sake of style, it would be preferable to amend the first sentence of the French text of article 21 to read "Les Etats contractants accorderont aux réfugiés se trouvant régulièrement sur leurs territoires .....".

The PRESIDENT said that the Belgian representative's point would be dealt with in due course by the Style Committee.

Mr. SHAW (Australia) said that the Australian Government had no objection to the principle enunciated in article 21, but noted that it would require interpretation in order to make it clear whether it would apply to, for instance, refugees entering Australia under the labour contract system practised there. In his view, article 21, like several others, should be covered by a special interpretative clause in the Convention.

Mr. CHANCE (Canada) said that the Canadian Government's position resembled that of the Australian Government. Persons who came to Canada under group-settlement schemes were frequently required to give a pledge that they would remain in a specific job for a certain period of time. He did not believe that such a requirement conflicted with the principle of freedom of movement, but the point must none the less be borne in mind.

The PRESIDENT declared the discussion closed.

Article 21 was adopted by 19 votes to none, with 2 abstentions.

(iv) Article 22 - Identity papers

Baron van BOETZELAER (Netherlands) drew attention to a point which the High Commissioner for Refugees had already mentioned in his opening speech, namely, the problems which might arise in connexion with the issue of identity papers.

There had already been a case where a refugee who had obtained a ration card in a receiving country, and had later been expelled, had been refused admission to another State, the authorities of which had considered that, by issuing him the ration card, the receiving country had granted him the right to reside there. The High Commissioner had made it clear that the duty imposed on States by article 22 in no way impaired their right to control the admission and sojourn of refugees.

His delegation would content itself with mentioning the point, provided the interpretation given by the High Commissioner was reported in the summary record of the meeting.

Mr. CHANCE (Canada) said that in Canada, where no aliens registration act was in force, identity papers, as the term was generally understood, were not delivered to aliens. The only document which was required was an immigrant's record of landing. Article 22 was entirely acceptable to the Canadian Government on the understanding that the latter would be free to continue to apply its own procedure.

Mr. HERMENT (Belgium) agreed with the Canadian representative's interpretation. Identity papers did not necessarily mean identity cards like those issued in European countries; they might simply consist of a document showing the identity of the refugee.

The PRESIDENT declared the discussion closed.

Article 22 was adopted by 19 votes to none, with 1 abstention.

The meeting rose at 1 p.m.