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CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE TWENTY-IGHTH MEETING

held at the Palais des Nations, Geneva, on Thursday, 19 July 1951, at 11 a.m.

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Present:

President: Mr. LARSEN

Members:

Yugoslavia

Venezuela

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	Australia	Mr. SHAW
	Austria	Mr. FRITZER
	Belgium	Mr. HERMENT
	Brazil	Mr, de OLIVEIRA
	Canada	Mr. CHANCE
	Columbia	Mr. GIRALDO-JARAMILLO
	Denmark	Mr. HOEG
	Egypt	Mr. MAHER
	Federal Republic of Germany	Mr. von TRUTZSCHLER
	France	Mr. ROCHEFORT
	Greece	Mr. PAPAYANNIS
	The Holy See	Archbishop BERNARDINI
	Iraq	Mr. Al Pachachi
	Israel	Mr. ROBINSON
	Italy	Mr. del DRAGO
	Luxembourg	Mr. STURM
	Monaco	Mr. BICHERT
	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
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Mr. BOŽOVIĆ

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High Commissioner for Refugees

Mr. van HEUVEN GOEDHART

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

International Refugee Organization

Mr. SCHNITZER

Council of Europe

Mr. TALIANI de MARCHIO

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions

Miss SENDER

Category B and Register

Caritas Internationalis

Organizations

Mr. BRAUN Mr. METTERNICH

Catholic International Union for Social Service

Miss de ROMER

Commission of the Churches on

Mr. REES

International Affairs
Consultative Council of Jewish

Mr. MEYROWITZ
Mr. BRUNSCHWIG

Co-ordinating Board of Jewish Organizations

Mr. WARBURG

Friends' World Committee for

Mr. BELL

Consultation

Miss de ROMER

International Union of Catholic Women's Leagues

Mr. BUENSOD

Pax Romana Standing Conference of Voluntary

,

Mr. REES

agencies

Mr. RIEGNER

World Jewish Congress

Secretariat:

Mr. Humphrey

Executive Secretary

Miss Kitchen

Deputy Executive Secretary

1. CONSIDERATION OF THE REPORT ON CREDENTIALS (A/CONF.2/87)

The PRESIDENT announced that credentials, fully authorizing the representatives of Columbia and Israel to participate in the Conference and to sign the instruments eventually drafted, had now been received. Paragraph 4, in Section B of the report should therefore be amended by changing the figure "11" to the figure "13", and by inserting the names "COLUMBIA" and "ISRAEL" in the list of countries. In paragraph 5, the name "ISRAEL" should be deleted, as should also the second sub-paragraph.

Baron van BOETZELAER (Netherlands) stated that on 17 July he had received a cable from the Netherlands Government informing him that his credentials had been signed and despatched, although he had not yet received them.

Mr. PAPAYANNIS (Greece) said that the delay in the arrival of his credentials was probably due to technical causes, since the Greek public services, including the Post Office, had recently been on strike.

The PRESIDENT remarked that, according to rule 3 of the rules of procedure, the Conference had to take a decision on the report on credentials.

The report on credentials (A/CONF, 2/87), as amended, was adopted unanimously.

- 2. CONSIDERATION OF THE DRAFT CONVENTION ON THE STATUS OF REFUGEES (item 5(a) of the sgenda) (A/CONF.2/1 and Corr.1, A/CONF.2/5 and Corr.1) (resumed from the twenty-seventh meeting):
 - (i) Article 5 Exemption from exceptional measures (A/CONF.2/1.1) (continued)

The PRESIDENT, inviting the Conference to continue its consideration of article 5, on exemption from exceptional measures, said that he hoped that it would be possible to conclude the first reading of the draft Convention in two meetings.

Mr. PETREN (Sweden) pointed out that paragraph 1 of article 5 in the original draft of the Convention (A/CONF.2/1, page 1) dealt with exceptional measures which might be taken against the person, property or interests of nationals of a

foreign State, whereas article 5(a) (A/CONF.2/L.1, page 1), already adopted by the Conference, spoke only of measures against a particular person. Was that difference of terminology intentional?

He believed that it was somewhat illogical to restrict the provision of article 5(a) to measures which might have to be taken in the interests of national security. Other circumstances could conceivably arise which would demand similar action by governments.

He was faced with two problems in commexion with paragraph 1 of article 5, the first being that mentioned by the United Kingdom representative at the previous meeting in connexion with the retroactive effect of that article. The Swedish Government shared that representative's view that it would not be convenient that that point should be disposed of by amending the draft Convention itself at the present late stage, but that it could be dealt with by appropriate reservations. His (Mr. Petren's) second preoccupation was that paragraph 1, as at present drafted, debarred governments from taking even provisional measures against refugees solely on account of their nationality. Such a clause might well conflict with the existing domestic legislation of certain States, and he considered that it should impose a lesser degree of restriction on the freedom of action of States. It was with that consideration in mind that he had introduced his amendment (A/CONF.2/37). If that amendment was not acceptable as it stood, he would be perfectly willing, provided its substance was adopted, for its drafting to be entrusted to the Style Committee.

Mr. ARFF (Norway) said that, according to Norwegian law, all ex-enemy property had to be sequestrated; however, the law was not very strictly applied. For example, such property had been restored to German nationals after the second world war in cases where the owners had not actively worked against Norwegian interest Although there was no contradiction between the provision embodied in paragraph 1 of article 5 and Norwegian practice, it would none the less be desirable to bring it into line with the letter of the law. That could be achieved by adopting the Swedish amendment, which he would accordingly support. The Norwegian Government would then only have to make a reservation concerning the retroactive effect of paragraph 1.

Mr. HOEG (Denmark) said that the Swedish amendment was acceptable to the Danish delegation.

Baron van BOETZELAER (Netherlands) said that, as he had already stated, the Netherlands Government would have to make a reservation on article 9 (artistic rights and industrial property) to the effect that the provisions of that article would not affect legislation concerning enemy property. His delegation would have to make a similar reservation to article 5, for reasons similar to those adduced by the United Kingdom representative in the statement he had made at the previous meeting when introducing his amendment to that article.

Mr. HOARE (United Kingdom) reminded representatives that it had been decided to make a separate article of the former paragraph 2 of article 5 because there might otherwise have been a conflict between other articles, such as articles 3 and 21, and article 5. The saving clause in the original paragraph 2 applied only to article 5, and not to those other articles; moreover, it was not clear that action which might have to be taken in an emergency overriding the provisions of those other articles would always come within the wording of paragraph 1 of article 5 (measures taken against "the person, property or interests" of a refugee). It had therefore been decided that there should be a blanket provision whereby, in strictly defined sircumstances of emergency, derogation from any of the provisions of the Convention would be permitted in the interests of national security. Thus, article 5 was now only one of the articles covered by the provisions of article 5(a). could not agree with the Swedish representative's suggestion that article 5(a) was too limited. He believed the scope of that article to be extremely wide in allowing derogations from all the provisions of the Convention on grounds of national security. He would be most reluctant to extend the scope of that article to cases other than those connected with national security. The kind of action which he envisaged States might take under the provisions of article 5(a) would be, for example, the wholesale immediate internment of refugees in time of war, followed by a screening process, after which many could be released; that had occurred in the United Kingdom at the outbreak of the second world war,

The Swedish amendment would dangerously weaken paragraph 1 of article 5. He recognized that in some respects the provisions of that paragraph could not be fully applied, particularly in the case of enemy property, but, so far as the United Kingdom Government was concerned, that difficulty could be met by allowing for reservations to be made to the paragraph in question. He would hesitate to extend the scope of paragraph 1 to make it embrace a special class of case which could be quite well covered by reservations.

Mr. PETRÉN (Sweden) said that the United Kingdom representative's remarks had clearly demonstrated that there was no very close connexion between paragraph 1 of article 5 and article 5(a). He would not, therefore, move an amendment to the latter. Nevertheless, in connexion with paragraph 1 of article 5, he must point out that certain measures, which had nothing to do with the interests of national security, involving the property of refugees, might have to be taken. Paragraph 1 as at present drafted did not enable States to take even provisional measures either against persons or their property. It was impossible to foresee what circumstances might arise in the future which would necessitate the introduction of such measures, and he believed that States must be left free in that respect. He must therefore press his amendment.

Mr. ROCHEFORT (France) said that the Conference was faced with a text, the formulation of any reservations to which would lead to an avalanche. Governments would not agree to sign the Convention without entering reservations to article 5 as thus amended, since the friends of today might well be the enemies of tomorrow. A text was needed for article 5 which would not call for any reservations at all on the part of States.

Mr. PETRÉN (Sweden) quoted a hypothetical example in support of is argument. Two German nationals might possess property in Sweden. No difficulty would arise in the case of the first, who had taken up residence in Sweden as a refugee prior to the out break of hostilities. The second, on the other hand, might have reached Sweden after the end of the war and claimed the status of refugee. Should his property be restored to him if he could satisfactorily prove that he had never been

a member of the Nazi party, and had, in fact, worked against it? That question would clearly have to be determined by the Swedish Government. Either legislation could be passed exempting certain categories of aliens from the application of the enemy property act, or some arrangement could be made to enable such persons to claim the return of their property provided they could substantiate their right to restoration. Those two possible alternatives must both be allowed for, or administrative difficulties would arise.

Mr. HERMENT (Belgium) appreciated the motives which had prompted the submission of the Swedish amendment. It was, nowever, to be feared that its adoption would result in a régime of arbitrary decisions, since countries of residence would be at liberty either not to apply to a refugee the exceptional measures which they might be obliged to take against the person, property or interests of other nationals of his country of origin, or to grant certain exemptions in the case of such refugees. Refugees would therefore have no absolute right to exemption from the application of those measures, and decisions as to the cases in which exemption was appropriate would be left to Governments.

As to the methods of implementing the provisions of the Convention, it should be noted that those provisions would in due course be approved by national parliaments, and would in consequence have the force of law. There was thus no need to contemplate the introduction of any special provisions in domestic legislation,

Mr. PETRÉN (Sweden) stated that, so far as the constitutional position of Sweden was concerned, the Convention could not be ratified by the Swedish Parliament without the prior introduction of a bill bringing domestic legislation into line, where necessary, with the provisions of the Convention. Therefore, certain difficulties might arise unless paragraph 1 of article 5 was amended in the sense he had proposed.

Mr. HOARE (United Kingdom) agreed that the example quoted by the Swedish representative was entirely relevant, but pointed out such cases could be covered by reservations. They related to action arising out of a war, but not actually taken during a time of war or emergency, and were therefore in no sense governed by considerations of national security. He failed, however, to understand the administrative difficulties which appeared to be troubling the Swedish representative. Surely each State would have to determine by normal administrative processes whether a person was a refugee and was covered by the provisions of paragraph 1 of article 5?

He was at present unable to conceive of any cases - apart from those connected with enemy property - which would arise in connexion with paragraph 1 in time of peace, and which did not involve considerations of national security. It was difficult to envisage a situation in which action would have to be taken in peacetime against a whole class of aliens or their property merely on grounds of nationality.

Mr. PETRÉN (Sweden) reaffirmed his view that it was impossible to legislate for future possible contingencies and that it was, therefore, important that paragraph 1 of article 5 should be made as flexible as possible in order not to restrict unduly the freedom of States.

Mr. ROCHEFORT (France) said that allowance should be made for the fact that in certain cases it would be impossible for a government to pursue a liberal policy towards refugees who were nationals of a State which did not recognize the principle of reciprocity. It was for that reason that reservations made by one State to the provision in question would inevitably provoke a spate of reservations by other States.

Mr. HERMENT (Belgium) observed that the Swedish amendment was intended to provide for possible future events. The paragraph in question, however, related to events occurring before 1 January 1951. Consequently, the fears of the Swedish delegation had no basis in fact.

Mr. MOCHEFORT (France) agreed with the Belgian representative on that point. It should not, however, be forgotten that there was also the question of the interpretation of the term "events". Did not the words "events occurring before I January 1951" imply all the consequences of such events, consequences which could not be foreseen?

Mr. HERMENT (Belgium) drew attention to a discrepancy between the English and French texts of the Swedish amendment. The French text, unlike the English text, implied a certain latitude or choice.

Mr. PETRÉN (Sweden) stated that the French version of his amendment was the authentic text, and that the English text should accordingly be brought into harmony with it.

The PRESIDENT put to the vote the French text of the Swedish amendment (A/CONF.2/37), it being understood that the English text would be revised by the Style Committee.

The Swedish amendment to paragraph 1 of article 5 was adopted by 9 votes to 3, with 13 abstentions.

Paragraph 1 of article 5, as amended, was adopted by 23 votes to none, with 2 abstentions.

ii) Article 1 - Definition of the term "refugee": Paragraph B (A/CONF.2/9, A/CONF.2/81, A/CONF.2/82, A/CONF.2/82/Rev.1) (resumed from the twenty third meeting)

The PRESIDENT drew attention to the Swedish and Israeli amendments to article 1, on the definition of the term "refugee", contained in documents A/CONF.2/9, A/CONF.2/81, A/CONF.2/82 and A/CONF.2/82/Rev.1.

Mr. PETREN (Sweden) said that, although his instructions from the Swedish Government on the matter were very precise, he might be able to accept the Israeli amendment without prejudice to his Government's final decision. He suggested that the word "compelling" should be inserted before the words "reasons arising out of" in the Israeli amendments to sub-paragraphs B(5) and (6) (A/CONF.2/81, A/CONF.2/82/Rev.1).

Mr. ROBINSON (Israel) accepted the Swedish suggestion.

Mr. ROCHEFORT (France) said that the French delegation had already made known its interpretation of the words "reasons other than personal convenience" in sub-paragraph (2) of paragraph A of article 1. The purpose of those words which had been inserted at the instance of the Israeli delegation, was to avert the possibility that Israeli refugees of German or Austrian origin living in other countries might be deprived of their refugee status as a result of the restoration of

a democratic régime in their country of origin. If that interpretation was incorrect, he would be grateful if the Israeli representative would put him right.

In any event, the French delegation had already made it clear both in the Third Committee of the General Assembly and in the Economic and Social Council, that that was the restrictive interpretation placed by France on the words in question. France would adhere to that view, but was anxious to avoid the possibility that the texts in question might be interpreted in such a way as to give rise to an extension, in favour of other groups of refugees, of a very liberal clause which it regarded as applying only to a category of refugees who were the victims of exceptional circumstances.

What exactly did the Israeli representative mean by the words "compelling family reasons" used in his amendments? Could the family attachments which a refugee might have contracted in his country of residence be regarded as compelling reasons? And was separation from his family to be regarded for that purpose as a compelling family reason?

Mr. ROBINSON (Israel) said that the history of the phrase under consideration had, been accurately related by the French representative, but the latter's apprehensions were unfounded. The Israeli amendments were intended to exclude precisely such cases as those of the Polish refugees in France, to whom the French representative had alluded. It was for that reason that the amendments referred to sub-paragraph A(1) of article 1; the case of the Polish refugees in France was covered by sub-paragraph (2). The words "compelling family reasons" were meant to cover, for example, the case of an aged woman refugee in France who had no members of her family still living in the land where she had formerly suffered persecution, and to which she would therefore have no desire to return. His text had in fact been drafted to meet the difficulties in which the Swedish and Israeli delegations found themselves.

Mr. ROCHEFORT (France) said that in that case the words "for reasons other than personal convenience" should be deleted from sub-paragraph A(2) of article 1. He was not convinced that compelling family reasons provided sufficient justification also, he must point out that, if an immigrant was deprived of his refugee status, that would not compel him to return to his country of origin.

The Israeli amendment (A/CONF.2/81) to sub-paragraph (5) of paragraph 13 of article 1 was adopted by 7 votes to 3, with 14 abstentions.

The PRESIDENT said that he intended to adjourn the meeting until 3 p.m.

Mr. ROBINSON (Israel) thought that, since sub-paragraphs (5) and (6) of paragraph B were virtually identical, although the former related to refugees with a nationality and the latter to refugees with no nationality, they might be voted on forthwith.

Mr. ROCHEFORT (France) considered the question was too important not to merit thorough discussion. It would not be proper to precipitate the vote on the various parts of article 1.

The PRESIDENT replied that he was not pressing the Conference to take a decision. He did not object to an exhaustive discussion on article 1, but had certain duties as President in seeing that the Conference ke t to the time-table. The Conference should either adjourn or, if it could do so without prolonged discussion, proceed to vote, as the Israeli representative had suggested.

It was decided to adjourn.

The meeting rose at 1,10 p.m.

country which gave shelter to 350,000 refugees making a case out of a handful of exceptions.

Mr. ROCHEFORT (France) said that the Israeli representative's argument applied to refugees from Austria and Germany. Most refugees belonging to the hard core came within the purview of sub-paragraph (1) of paragraph A. But France was still affording shelter to some ten to twelve thousand refugees without any means of existence, thrown up by successive waves of emigration. She was quite prepared to continue to assist such refugees so long as such assistance was necessed but if their country of origin reverted to a democratic régime, the obligation to assist them should not fall perforce upon the French Government.

The Israeli amendments, as drafted, excluded from the benefit of the Convention only refugees coming within the scope of sub-paragraph (2) of paragraph A. France, however, was chiefly concerned with the refugees defined in sub-paragraph (1).

Mr. ROBINSON (Israel) wondered why the French representative had not enter a reservation to article 18 (public relief) the previous day. He (Mr. Robinson) he supported the French representative's proposal that reservations to article 30 should be permitted, and had voted - although only after serious hesitation - for it because he felt that everything should be done to encourage France to accede to the Convention. Since article 30 (co-operation of the national authorities with the United Nations) which was much more crucial than article 19 (labour legislation and social security), and article 18 could be made the subject of reservations, it might be the best solution for the French representative to recommend to the French Government that it adopt paragraph B of article 1 as amended by the Israeli proposal on the understanding that it could make a reservation with regard to the application of article 19 if the number of refugees affected by the Israeli amendment proved too large.

A second possibility would be to request the Style Committee, of which France was a member, to limit the application of the Israeli amendment and of the whole of sub-paragraphs (5) and (6) of paragraph B to the refugees covered by the arrangements and Convention of 1926, 1928, 1933, 1938 and 1939. He was prepared make that great concession in order to meet the French representative's difficultie but hoped that the latter would choose the first solution.

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Mr. ROCHEFORT (France) thought that the Israeli representative's first suggestion would work to the disadvantage of refugees. It would be an inhuman act to withdraw from them the right to assistance unless they were assured of receiving it from their country of origin.

With regard to the Israeli representative's second suggestion, it should be pointed out that the refugees defined in the Constitution of the International Refugee Organization (IRO) were often covered by other international arrangements.

had at first said that France did not wish to continue assisting the refugees in question, the old French tradition had none the less come to the front and impelled him to remark that they would nevertheless be assisted. He therefore wondered why the French delegation found it dangerous or difficult to accept the Israeli amendments.

The Constitution of IRO covered many articles of the Convention, and its

Mr. ADBINSON (Israel) observed that, although the French representative

definition of the term "refugee" was better than the definitions contained in the instruments enumerated in sub-paragraph (1) of paragraph A of article 1. That might provide a solution to the difficulties experienced by the French delegation in respect of the Israeli amendments. Those difficulties were hard to understand, because the French representative had been extremely co-operative in the Drefting Committee of the Third Committee at the General assembly, and had helped to draft the existing text.

The Israeliamendments were based on the assumption that the reference to "personal convenience" in paragraph A would disappear. At great sacrifice, that reference had been dropped from paragraph A, and reduced in paragraph B to a few categories of refugee.

Mr. ROCHEFORT (France) did not think that there was any contradiction between the two positions described by the Israeli representative. France had merely said that she did not wish to be under an obligation to continue to provide assistance to refugees who could seek the protection of their country of origin. In the case, for example, of the Spanish refugees, the latter were bound, under

the terms of the Constitution of IRO, to return to Spain when a democratic regime had been restored in that country. Should the choice of the assistance they wanted be left to those refugees? If the Israeli representative considered that the existing draft did not protect the refugees with whom he was concerned, it was open to him to propose another, but not one that applied to all categories of refugees.

Mr. ROBINSON (Israel) asked whether the French representative could agree to the Conference's adopting the substance of the two Israeli amendments, on the understanding that the Style Committee would word the final text in such a way as to remove that representative's apprehensions regarding the possible extension of their field of application.

The PRESIDENT suggested that the Israeli amendments should be voted on as they stood. If the Style Committee could devise a better solution, it should be authorized to do so, even though that was somewhat outside its province. There would also be no objection to any delegation submitting further amendments at the second reading of the draft Convention.

Mr. PETRÉN (Sweden) said that the French representative's main objection to the original text seemed to be that it was very broad in scope and would allow of all kinds of interpretation. He (Mr. Petren) would like to point out that the Israeli amendments did not cover any point not in the original text of the Convention.

Mr. HOARE (United Kingdom) added that he read the Israeli proposal in the same way as the Swedish representative, but considered that it was more restrictive than the original text, because it translated the words "grounds other than those of personal convenience" into two specific reasons. There was no great objection to using the more specific wording of the Israeli amendments, especially since, as the Swedish representative had indicated, it was desirable to establish criteria which national legislatures would not find it difficult to interpret.

The second restriction in the Israeli proposal lay in the reference to subparagraph (1) of paragraph A, which limited the refugees affected to a smaller
number of categories than were covered by the original text. He regretted that
limitation, although he appreciated the motives that had prompted the Israeli
amendment and the Swedish representative's attitude. He would therefore be
obliged to abstain from voting, because he did not wish to put States which
experienced certain difficulties on the subject in a position where they would be
obliged to accept a text which did not meet those difficulties, and to which they
could not make reservations.

Mr. ROCHEFORT (France) was not certain whether the text of the Israeli amendments was more restrictive than the existing text of the draft Convention. It applied not to new refugees, but to the whole mass of old refugees, in respect of whom the problem of assistance arose in a particularly acute form.

As to compelling family reasons, every sort and kind of such reason could be found. Could not the fact of no longer having a family also be a compelling reason? The phrase opened the door to every sort of interpretation.

Mr. PETRÉN (Sweden) suggested that, as in the case of other articles, the way might be left open for reservations in respect of reasons other than those of personal convenience.

Mr. ROCHEFORT (France) did not think that the position was appreciably changed by reverting from sub-paragraph (2) to sub-paragraph (1) of paragraph A. The majority of the refugees falling within the scope of sub-paragraph (1) would be able to claim the benefit of the provisions of sub-paragraph (2). Sub-paragraph 1 had been retained solely in order to save the old refugees from having their position re-examined and seeing their status as refugees called in question. The anxieties felt by the Israeli representative for that category of refugees were, therefore, groundless.

Mr. HERMENT (Belgium) proposed that the debate be closed and a vote taken.

It was so agreed.

The Israeli amendment (A/CONF.2/81) to sub-paragraph (5) of paragraph 13 of article 1 was adopted by 7 votes to 3, with 14 abstentions.

The PRESIDENT said that he intended to adjourn the meeting until 3 p.m.

Mr. ROBINSON (Israel) thought that, since sub-paragraphs (5) and (6) of paragraph B were virtually identical, although the former related to refugees with a nationality and the latter to refugees with no nationality, they might be voted on forthwith.

Mr. ROCHEFORT (France) considered the question was too important not to merit thorough discussion. It would not be proper to precipitate the vote on the various parts of article 1.

The PRESIDENT replied that he was not pressing the Conference to take a decision. He did not object to an exhaustive discussion on article 1, but had certain duties as President in seeing that the Conference ke t to the time-table. The Conference should either adjourn or, if it could do so without prolonged discussion, proceed to vote, as the Israeli representative had suggested.

It was decided to adjourn.

m.در The meeting rose at 1,10 .m.