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CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE THIRTIETH MEETING

held at the Palais des Nations, Geneva,
on Friday, 20 July 1951, at 9.30 a.m.

CONTENTS:

Present:

President: Mr. LARSEN

Members:

Australia	Mr. SHAW
Austria	Mr. FRITZER
Belgium	Mr. HERMENT
Brazil	Mr. de OLIVEIRA
Canada	Mr. CHANCE
Columbia	Mr. GIRALDO-JARAMILLO
Denmark	Mr. HOEG
Egypt	MOSTAFA Bey
Federal Republic of Germany	Mr. von TRUTZSCHLER
France	Mr. ROCHEFORT
Greece	Mr. PAPAYANNIS
The Holy See	Monsignor COMTE
Iraq	Mr. Al PACHACHI
Israel	Mr. ROBINSON
Italy	Mr. THEODOLI
Luxembourg	Mr. STURM
Monaco	Mr. SOLAMITO
Netherlands	Baron van BOETZELAER
Norway	Mr. ARFF
Sweden	Mr. PETREN
Switzerland (and Liechtenstein)	Mr. SCHURCH
Turkey	Mr. MIRAS
United Kingdom of Great Britain and Northern Ireland	Mr. HOARE
United States of America	Mr. WARREN
Venezuela	Mr. MONTOYA
Yugoslavia	Mr. MARINKO

High Commissioner for Refugees	Mr. van HEUVEN GOEDHART

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

International Refugee Organization	Mr. SCHNITZER

Representatives of non-governmental organizations:

Category A

International Confederation of Free Trade Unions	Miss SENDER

Category B and Register

Caritas Internationalis	Mr. BRAUN Mr. METTERNICH
Catholic International Union for Social Service	Miss de ROMER
Commission of the Churches on International Affairs	Mr. REES
Consultative Council of Jewish Organizations	Mr. MEYROWITZ Mr. BRUNSCHWIG
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Council of Women	Dr. GIROD
International League for the Rights of Man	Mr. de MADAY
International Relief Committee for Intellectual Workers	Miss SILBENSTEIN
International Union of Catholic Women's Leagues	Miss de ROMER
Pax Romana	Mr. BUENSOD
Standing Conference of Voluntary Agencies	Mr. REES
World Jewish Congress	Mr. RIEGNER

Secretariat:

Mr. Humphrey	Executive Secretary
Miss Kitchen	Deputy Executive Secretary

1. REPORT ON CREDENTIALS (A/CONF.2/87) (resumed from the twenty-eighth meeting)

The PRESIDENT announced that the Netherlands representative had received from the Netherlands Government full powers to sign the Convention. The Netherlands should therefore be added to the list of States in the Report on Credentials (A/CONF.2/87, paragraph 4), the representatives of which had full authority to sign the final instrument on behalf of their respective governments.

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 and Corr.1) (resumed from the twenty-ninth meeting):

(i) Article 1 - Definition of the term "refugee" (A/CONF.2/78, A/CONF.2/79) (continued)

The PRESIDENT drew attention to the amendments to paragraph F submitted by the Belgian and Yugoslav delegations (A/CONF.2/78 and A/CONF.2/79 respectively).

Mr. HERMENT (Belgium) explained that paragraph F of article 1 contemplated the extension of the term "refugee" to other categories of persons but failed to indicate with sufficient precision the procedure that States should follow in making such extension. The procedure suggested in his amendment left Contracting States entirely free, and would obviate the necessity of summoning a conference to decide on the application of the term "refugee" to other categories of persons.

Mr. MAKIEDO (Yugoslavia) suggested that, if paragraph F were included as a special section before paragraph B, there would be no need for the Yugoslav amendment. Otherwise, it should be maintained in order to avoid any possible misunderstanding.

Mr. HOARE (United Kingdom) appreciated the intention of the Belgian amendment, and at first sight had no objection to it. He presumed that the meaning of the words "accept that extension" was that Contracting States should inform the Secretary-General whether they were prepared to make extensions to other categories of refugees similar to those communicated to them from other

signatories. If that were so, the English text might require some drafting changes.

Mr. HERMENT (Belgium) agreed with the United Kingdom representative's interpretation of the Belgian amendment. The issue was that of the acceptance by a Contracting State of the extension of the term "refugee" decided upon by another State. To avoid misinterpretation, the words "insofar as concerns them" might be added after the words "accept that extension" in his amendment.

Mr. HOARE (United Kingdom) pointed out that there was a certain difficulty in the case of the English text, but, since the intention was clear, the Style Committee should be able to harmonize the two versions.

Mr. FRITZER (Austria) understood that the purpose of the notification mentioned in the Belgian amendment was not to invite other States to grant similar extensions, but to request their assent to the extension granted by the State making the notification.

Mr. HERMENT (Belgium) replied that the Austrian representative's interpretation was not correct, since other States would not be entitled to veto the unilateral extension granted by the notifying State.

The Belgian amendment (A/CONF.2/78) to paragraph F was unanimously adopted.

The PRESIDENT said that, if it was agreed to insert paragraph F as a special provision before paragraph B, there would be no need to vote on the Yugoslav amendment.

Mr. HOARE (United Kingdom) was not convinced that the proposed transfer of paragraph F would bring about the effect desired by the Yugoslav representative, namely, to make paragraph E applicable to any subsequent extension of the definition of the term "refugee" effected under paragraph F.

Mr. ROBINSON (Israel) felt that there was no logical sequence in the structure of article 1, which could in any case be reduced to four sections. He suggested that the Yugoslav representative should re-introduce his amendment at the second reading.

Mr. MAKIEDO (Yugoslavia) agreed to the Israeli representative's suggestion.

The PRESIDENT concurred.

Article 1, as a whole and as amended, was adopted by 22 votes to none, with 1 abstention.

(ii) New article 6(a) proposed by the French delegation (A/CONF.2/89)

Mr. ROCHEFORT (France) said that his text (A/CONF.2/89) had originally been suggested by the representative of the International Labour Organisation, and dealt with the special position of refugees serving in ships flying the flag of a Contracting State. That category of refugee enjoyed no permission to stay anywhere except on board the ship they were in. The number of such refugees was undoubtedly fairly small, but their position was nevertheless of special interest. It was, indeed, precarious, since they could not even go ashore in ports of call. They were, in fact, permanently afloat. The question could hardly be settled by a contractual undertaking, for the countries concerned were willing to grant such refugees the status of seafarers, but were unwilling to grant them the status of refugees in their territory. For that reason, and in the absence of contractual obligations, it would be desirable to introduce into the Convention a recommendation in favour of refugees who were bona fide seafarers. It would be logical to insert such a recommendation after article 6, which dealt with continuity of residence, for the problem raised by the case of refugee seamen was somewhat similar.

Mr. HERMENT (Belgium) asked the French representative exactly what he meant by the words "a bona fide seafarer". Did they mean that the refugee had to be a sailor by profession?

Mr. ROCHEFORT (France) was unable to explain that point. The wording had been suggested and adopted by the International Labour Organisation.

He proposed that a vote should be taken on the substance of the proposal and that the Style Committee should be left to find a suitable form of words.

Mr. ARFF (Norway) said that the Norwegian Government had for some time been paying considerable attention to the question of refugee seafarers. Norway had been one of the first seafaring nations to accept refugee seafarers from International Refugee Organization (IRO) camps in Germany and Italy, and to allow them to join Norwegian crews. They had been issued with travel documents in accordance with the London Agreement of 15 October 1946, and their families had been granted entry permits to Norway.

Such refugees were employed as crew members in Norwegian ships throughout the world, and their number was difficult to assess. As the representative of the International Labour Organisation had remarked at the twelfth meeting, their number was small, so far as could be estimated by the International Labour Office and IRO; however, he personally did not believe that it was as small as had been suggested. It often happened that such refugee seafarers were obliged to land in Scandinavian ports; they were then unable to proceed further, because of their refugee status, until another suitable ship arrived. It was difficult to form an opinion as to the number of such seafarers at present employed on Norwegian ships, and the whole matter was being studied by the Norwegian Government.

Many Norwegian merchant ships went to sea for long periods, and called at Norwegian ports only infrequently. It was therefore difficult to establish whether the refugee seafarers were technically refugees, as they themselves claimed, because there was no method of verifying their statements; neither the International Labour Office nor IRO could apparently decide whether they were bona fide refugees. He therefore wondered whether it would be advisable for one country alone to confer benefits upon such alleged refugees unless the same benefits were also granted by other seafaring nations, because seamen tended to sign on in ships of the nation which gave them the best social security terms.

It should also be noted that the shipping trade was very sensitive to fluctuations in world conditions, and was thus particularly susceptible to unemployment. In that respect, a small nation like Norway, although it possessed the third largest merchant navy in the world, was particularly vulnerable, since it carried a large volume of foreign cargoes. It therefore

found the burden of supporting a large number of foreign seamen in its ships onerous. But, as the leader of his delegation had already remarked, the Norwegian Government was giving the matter every consideration, and would adopt generous measures in respect of refugee seamen who had worked with the merchant navy for a long time, and who were domiciled in Norway; it nevertheless reserved its right to decide each individual case after appropriate investigation.

There were, moreover, numbers of bona fide refugee seamen in Norwegian ships who had become stateless because of prolonged absence from their countries of origin. That class would also have to be taken into account.

Although the subject was not yet ripe for decision, he would not vote against the French proposal, but would urge that the matter should be carefully studied by the International Labour Office or IRO in close collaboration with the Office of the High Commissioner for Refugees.

He considered that the French delegation's text was somewhat wide in scope, particularly in respect of the words "to reckon any period spent as a crew member on board a ship flying the flag of a Contracting State as residence in the territory of that State", the effect of which would be to bestow upon such seafarers all the benefits that the Convention accorded to refugees.

He added that when refugee seamen were employed in a Norwegian merchant ship, sole authority for selecting or refusing them lay with the master of the vessel; the Norwegian Government authorities had no powers in the matter.

Mr. HOARE (United Kingdom) agreed with the Norwegian representative's exposition of some of the difficulties arising from the problem.

The resolution adopted by the Joint Maritime Commission of the International Labour Organisation suggested that Governments should facilitate the acquisition of a country of residence and of a travel document by bona fide seafarers who were refugees, "more especially by enabling them to reckon any period spent on board ship as residence in the territory of the country whose flag the ship flies". He subscribed to the first part of the resolution, but felt that the phrase he had quoted raised considerable difficulty, because many such seafarers, though they might be bona fide refugees, might transfer to ships of other flags, thus interrupting the period which would qualify as residence.

The United Kingdom had ships plying throughout the world, and a ship working the China Coast, for example, might pick up refugees who never set foot on British soil. To reckon their service aboard as a qualifying period of residence would therefore be unjustifiable. It would be advisable to word the recommendation in terms more appropriate to the actual situation and more acceptable to States.

States should be as liberal as possible in facilitating the settlement of bona fide refugee seamen in their territories. Such seamen would be given shore leave, and might want to marry and settle down, and States should give them every chance to establish a home on their soil. In such circumstances, the seamen should be looked upon as residents and supplied with travel documents.

Since, in dealing with the question, the Conference could go no further than make a recommendation, it would be better not to include the French proposal in the Convention itself, but rather to append it thereto as a recommendation. The Netherlands representative had already suggested that some articles might more suitably be dealt with in that way. Moreover, the representative of the International Labour Organisation had not raised any objection to such procedure in the specific case under discussion.

Mr. ROCHEFORT (France) was prepared to agree to any procedure which would enable the recommendation to be included in the draft Convention in one form or another. The question of exactly where it was included was of slight importance, provided that the object in view was achieved.

Miss SENDEF (International Confederation of Free Trade Unions), speaking at the invitation of the PRESIDENT, pointed out that a record was kept of the working time spent aboard ship by seamen. Seafaring nations might therefore be recommended to reckon such periods aboard ship as contributing towards the refugee's qualifying period of residence on their territory.

Mr. HOARE (United Kingdom) replied that there were difficulties in accepting such residence automatically, but if the recommendation was drafted in the sense he had suggested States would certainly take into account the time spent by refugee seafarers aboard ship.

If a seaman was accepted as a resident and applied for naturalization, his period of service aboard British ships would count. The same did not apply in the case of a seaman who had spent a long time in British ships but who had never set foot on British soil.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) felt that the proposed new article 6 (a) was extremely important, and should be included in the Convention for the benefit of refugee seamen, many of whom were in a tragic plight. He was gratified that the French representative had taken the initiative in that matter, and that the Norwegian representative, who represented a country with generous traditions in the field, would refrain from voting against the proposal, although it raised certain difficulties for him.

Certain delegations had pointed out the difficulties inherent in the text, and, since the French representative had stated that he did not insist on the existing wording, it was therefore to be hoped that the delegations interested in the matter would collaborate and devise a suitable formula.

Mr. HERMENT (Belgium) thought that in drafting the recommendation, the important thing was to fix the time from which the duration of the refugee's stay in the territory of a Contracting State would be reckoned.

The PRESIDENT felt that there was general agreement with the purport of the French proposal, and suggested that it should be put to the vote subject to textual emendation by the Style Committee.

The French proposal (A/CONF.2/89) relating to a new paragraph 6(a), was adopted by 22 votes to none, with 2 abstentions, subject to textual emendation by the Style Committee.

(iii) New article 17(a) proposed by the delegation of Luxembourg (A/CONF.2/94)

Mr. STURM (Luxembourg) introduced his proposal for a new article (A/CONF.2/94), which was based on the statement made at the eleventh meeting by the representative of Pax Romana. The proposal envisaged the insertion into the draft Convention of a new article guaranteeing to refugees the freedom to practise

their religion. Hitherto, as the representative of Pax Romana had emphasized, attention had been focussed on ensuring the material welfare of refugees and nothing had been done to guarantee them the exercise of their spiritual rights, which were just as important as their material rights. Refugees, who were often in a very distressed state, must be allowed to benefit from the moral support which their religion was able to give them, not merely in their own interest, but also in that of the receiving country. Nevertheless, some slight limitation should be placed on those rights: freedom of worship should be subject to the requirements of the laws and regulations in force in the different receiving countries.

He hoped that the democratic countries attending the Conference would accept his proposal.

Msgr. COMTE (The Holy See) reminded representatives that the Conference was drafting a convention the purpose of which was to guarantee refugees a substantial measure of protection and the exercise of inalienable rights. It would be dangerous to make it too restrictive in scope. It was inevitable that differences should arise among the many delegations to the Conference in studying the distressing problem of refugees. But it did not seem that the proposal of the delegation of Luxembourg need occasion any divergence of opinion. The Conference's work would be incomplete if it failed to provide in the Convention for the right of refugees freely to practice their religion. That right was, indeed, as essential as the right to sustenance and shelter. Everyone knew what comfort the practice of religion could bring to the suffering. Moreover, it must not be forgotten that the Geneva Conventions of 1949 concluded under the auspices of the International Committee of the Red Cross recognized the right to freedom of worship. The new article proposed by the Luxembourg delegation should therefore find a place in the draft Convention. It seemed, however, that it would be better placed in article 3 (non-discrimination), of which it might form the second paragraph. Article 3 would then comprise a negative and a positive element. That was, however, a matter of secondary importance, and the Holy See would raise no objection if the proposed new text were inserted after article 17. The essential thing was that the text should impose a contractual obligation on States.

Mr. MONTOYA (Venezuela) warmly supported the new proposal. Full freedom in the practice of religion was an inalienable human right, and was amply safeguarded in the Venezuelan Constitution.

He submitted that a provision of such great spiritual significance would be out of place in a chapter dealing with rationing, housing, public relief and other physical aspects of human welfare. He was therefore pleased that the representative of the Holy See had suggested that it should be inserted after article 3. Alternatively, it could be placed in article 7, dealing with the personal status of refugees.

Mr. von TRÜTZSCHLER (Federal Republic of Germany) considered that the proposal of the delegation of Luxembourg filled a noticeable gap in the Convention, and gave it his wholehearted support.

Mr. HERMENT (Belgium) strongly supported the Luxembourgeois proposal. He considered, however, that it would most appropriately be placed among the general principles enunciated in the Convention. It might, for example, form the subject of a new article 4.

Mr. PETRÉN (Sweden) also supported the Luxembourgeois proposal, but suggested that the final word, "convictions", in the French text should be replaced by the word "confessions". Primary education was compulsory in Sweden, and parents who could not afford to send their children to a private school were obliged to send them to a State school, where religious instruction was given according to the Lutheran faith. If a refugee belonged to a church other than the Lutheran church, he had full freedom to withdraw his children from the classes in religious instruction, but that only applied to parents of a specific religious persuasion; refugees who were atheists, for example, could not refuse to allow their children to take religious instruction in the State schools.

Mr. STURM (Luxembourg) agreed to the suggestions made by the representatives of the Holy See, Venezuela and Belgium, and said he would have no objection to his proposal forming the subject of a new article 4.

Mr. ROCHEFORT (France) gladly supported the Luxembourgeois proposal. The difficulty, however, lay in the precise form to be given to such a declaration of principle. In certain States the question was linked with the provisions of the Constitution. That was not so in the case of France, and the inclusion of the proposal in the draft Convention would cause France no trouble whatever. The problem also had a bearing on the question of the national church. Finally, for a State to give an assurance that children should be taught the religion professed by their parents would be tantamount to a grant of a State subsidy to free schools; the French delegation was not at present in a position to accept such a provision. Thus, although gladly accepting the principle of the proposal, when it came to the application of the principle stated therein, France would be faced with the problem of what phraseology should be used.

Msgr. COMTE (The Holy See) said that the reason why the expression "leurs convictions" had been used in the French text instead of the words "leur confession", was that the former words were used in the Universal Declaration of Human Rights. The Holy See had no objection, however, to the use of the words "leur confession", as suggested by the Swedish representative.

In reply to the French representative, he said that the points of special concern to France had not escaped his notice. He did not think, however, that France's fears were well-founded. There was, in fact, a difference between external acts of worship and public worship. Public worship was not necessarily performed by external acts; while it did not exclude external acts of worship, it did not necessarily imply them, but it was possible to bring the two together. The Holy See hoped that France, which practised freedom of worship on so frank and generous a scale, would not object to that principle being stated in the Convention. He would like to reassure the French representative concerning the financial consequences which the ensuring of religious education to children might entail for Contracting States. It would in fact be incumbent on families to ensure their children's religious education out of their own resources, without seeking Government aid for the purpose.

MOSTAFA Bey (Egypt) congratulated the Luxembourgeois representative on his happy proposal. In Egypt, freedom of worship was guaranteed by the Constitution, but it was nevertheless limited by the requirements of national law. The Luxembourgeois representative had himself recognized that necessity; in the circumstances, would he not agree to add to his proposal a clause expressing the principle of such limitation?

Baron van BOETZELAER (Netherlands) was in full agreement with the Luxembourgeois proposal, but, as the Egyptian representative had pointed out, it should be understood that the right in question was subject to the requirements of national legislation. The proposed new article would undoubtedly be governed by the general obligations dealt with in article 2 of the draft Convention, but, to forestall any possible misunderstanding, he suggested that some such phrase as "subject to the laws and regulations and measures adopted to maintain public order" should be inserted after the words "to practise their religion".

Mr. HERMENT (Belgium) thought that the phrase suggested by the Netherlands representative might prove restrictive. Laws might be promulgated or regulations applied which would nullify the provisions of the proposed new article. He would prefer the formula "subject to the requirements of public or[illegible]r".

Msgr. COMTE (The Holy See) also thought the Belgian suggestion preferable to that of the Netherlands representative. It covered the points which were causing the French representative concern.

Baron von BOETZELAER (Netherlands) agreed to the Belgian representative's suggestion.

Mr. FRITZER (Austria) supported the Luxembourgeois proposal, but agreed with the French representative that it would be going rather far to stipulate that Contracting States should grant refugees freedom "to ensure that their children were taught the religion they profess". He agreed that that phrase implied that the State would be committed to providing at its own expense

facilities for teaching the religion of the refugees. He therefore suggested that those words should be replaced by some such phrase as "to allow the religion of their children to conform to their own".

Mr. GIRALDO-JARAMILLO (Columbia) was in general agreement with the observations so far made on the new proposal. He preferred the Belgian amendment, which was shorter and more suitable, to that originally proposed by the Netherlands representative. He added that complete freedom in the practice of religion was provided for in the Constitutions of the Latin American Republics. He would, however, like to add to the Belgian representative's formula the words "et de bonnes moeurs" ("and of public morality").

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) felt that the Austrian representative might be labouring under a misunderstanding. The new article would not impose upon Contracting States the obligation to ensure that the children of refugees were taught the religion of their parents. States would merely be required to grant refugees freedom to practice their religion and freedom to ensure that their children were taught the religion they professed.

Mr. HERMENT (Belgium) shared the High Commissioner's view. So far as Contracting States were concerned, it was not a question of their ensuring the religious education of the children of refugees, but merely one of permitting the parents to ensure it.

Mr. FRITZER (Austria) accepted the Belgian representative's interpretation.

Mr. HOARE (United Kingdom) was in full sympathy with the aim of the Luxembourgeois proposal, but felt that there would be great difficulty in finding a satisfactory legal formula for such a provision. The text would have to be couched in such terms as would make allowance for the constitutional procedures providing for religious liberty in each country. It would be difficult to find a suitable English rendering of the Belgian amendment, as further amended by the Columbian representative. The Luxembourgeois representative had put forward a text laying down a principle, rather than a contractual obligation to be

imposed on Contracting States, and it should be drafted to the satisfaction of all the countries concerned. With regard to the High Commissioner's interpretation, he had some doubt whether the text was not open to a wider construction.

He suggested that the Conference might vote on the substance of the proposal, on the understanding that the Style Committee should redraft it to meet the requirements of Contracting States.

Msgr. COMTE (The Holy See) said that he had listened with much interest to the United Kingdom representative's remarks. He nevertheless thought that the text proposed by the Luxembourgeois representative was acceptable from the legal point of view. If it was the word "ensure" that was raising difficulties, that word could be replaced by some such phrase as "to teach their children or to have them taught the religion they profess", to make the text less imperative.

Mr. ROCHEFORT (France) thought it would be undesirable to introduce into the text the words "et de bonnes moeurs" ("and of public morality"), proposed by the Columbian representative, for clearly the practice of religion went hand in hand with morality. The proposed addition would imply a somewhat liberal definition of religion. In any case, France could only accept the Luxembourgeois amendment if it did not impose upon it the obligation to authorize refugees to set up certain chapels of national allegiance. The addition of the words "subject to the requirements of public order" proposed by the Belgian representative would not be enough to obviate that danger, which was grave.

Mr. REES (Commission of the Churches on International Affairs), speaking at the invitation of the PRESIDENT, said that the discussion had shown that there was no need for him as representative of the Commission of the Churches on International Affairs to press for the inclusion of an article such as that proposed by the representative of Luxembourg. Countries granting asylum to refugees in the past had been noted for the assistance they had given in religious matters. The inclusion of such an article in the Convention would have the effect of strengthening the moral leadership of refugees who were showing steadfast loyalty to their faith.

It was to be hoped that the text of the provision as finally drafted would make it clear that freedom of religious instruction was permissive on parents and not mandatory on governments.

Mr. CHANCE (Canada) thought that there was no need for him to affirm the Canadian Government's support of the principle of religious freedom, but shared the anxiety of certain other representatives as to the way in which the principle should be given legal recognition in the Convention. Perhaps the best solution would be to adopt the United Kingdom representative's proposal that its precise drafting should be entrusted to the Style Committee. He would put forward for consideration by that Committee the suggestion that the provision might be drafted negatively in such terms that Contracting States would undertake not to restrict in any respect the freedom of refugees within their territories to practise their religion both in public and in private, and to ensure that their children were taught the religion they professed. Such a formula might dispose of some of the objections raised. He shared the United Kingdom representative's doubts concerning the inclusion of the words "l'ordre public et les bonnes moeurs". It was well known that certain sects often committed in the name of their religion acts contrary to "l'ordre public et les bonnes moeurs".

The PRESIDENT reminded representatives that other provisions in the Convention aimed at assimilating refugees to other persons. He suggested that the present provision might be so drafted that States would undertake to extend the same treatment in respect of religion and religious education to refugees as to their own nationals.

Msgr. COMTE (The Holy See) thought it unnecessary to include the words "subject to the requirements of public order". Article 2 of the draft Convention already laid down that a refugee had the particular duty of conforming with measures taken for the maintenance of public order in the country of refuge; that provision was of a general nature, applicable to all the succeeding articles.

Mr. ROCHEFORT (France) thought that the President's suggestion deserved consideration. It might be more advantageous to refugees to be ensured the

same treatment as nationals of the country of residence. It was unlikely that a State would grant a refugee more favourable treatment in that respect than it ensured to its own nationals.

Mr. van BOETZELAER (Netherlands) suggested, for the consideration of the Style Committee, that the new article might begin with the words:

"The fullest latitude shall be left to refugees in the territory of Contracting States to practise in complete liberty ..... and to ensure that their children ....."

Mr. GIRALDO-JARAMILLO (Columbia) considered that the President's suggestion was preferable to the Netherlands proposal.

Mr. ROCHEFORT (France) proposed that the principle of the new article should be put to the vote. Then, when the Conference came to the second reading of the draft Convention, it would have before it the definitive text of the amendment drafted by the Style Committee.

The PRESIDENT suggested that the substance of the Luxembourgeois proposal might be considered as adopted, the Style Committee being charged with the drafting of the new clause, taking into account for that purpose all the technical and legal considerations raised during the discussion. The new text could then be studied again at the second reading.

The President's suggestion was adopted unanimously.

(iv) Question of the inclusion of a Federal State clause (A/CONF.2/21, A/CONF.2/90, A/CONF 2/97, E/1721)

The PRESIDENT invited the Conference to turn to the consideration of the Israeli proposal (A/CONF.2/90) for the inclusion of a Federal State clause in the draft Convention, and to the United Kingdom proposal (A/CONF.2/97) that a new paragraph c) be added to that text. The report of the Human Rights Commission on federal and colonial clauses (E/1721) gave a very full account of discussions on the subject in various organs of the United Nations, together with the texts so far adopted for inclusion in international instruments.

Mr. ROBINSON (Israel) said that, although he was the representative of a unitary State, he had, following similar action taken by the Israeli delegation at the first session of the Ad Hoc Committee, introduced a proposal for the inclusion of a Federal State clause, without which Federal States might find difficulty in signing the Convention, since the implementation of its provisions might to some extent fall within the jurisdiction of the provincial governments. The whole problem had been considered in the General Assembly, the Economic and Social Council and the Commission on Human Rights, and, indeed, the General Assembly in its resolution 421 (V) C had requested the Commission to study a Federal State clause for inclusion in the draft International Covenant on Human Rights. It was clear from the discussions on the subject that there might be compelling constitutional reasons for the inclusion in international instruments of a Federal State clause. For example, there was the famous case of the Attorney-General of Canada v. the Attorney-General of Ontario, which turned on the question of whether the Canadian Federal Government had authority, by ratifying a Convention of the International Labour Organisation concerning working hours, to compel the Provincial Government to implement it, the subject matter of the Convention being the responsibility of the latter Government. The new Constitution of the International Labour Organisation included a Federal State clause (article 19).

As the draft Convention on the Status of Refugees involved to some degree interference in the domestic jurisdiction of States, the peculiar constitutional problems of Federal States must be taken into consideration. It would be quite wrong to give any weight to one argument which had sometimes been put forward, namely, that such States pressed for the insertion of such a clause so as to have an excuse to delay the enactment of necessary legislation. International personality belonged to the Federal State as such, and it was therefore appropriate that the federal government should decide whether action entailed in discharging the provisions of any international instrument involved the participation of its constituent provincial governments. It was with that consideration in mind that he had drafted his proposed new article.

Mr. ROCHEFORT (France) was in favour of any wording which would give the text the necessary flexibility. It was, however, indispensable that unitary contracting States should be told as soon as possible what matters were reserved in Federal States for federal legislative action, and what for legislative action by the constituent States, provinces or cantons. Unitary states were faced with the danger of being left in a state of uncertainty as to the scope of their reciprocal obligations. To take the case of the Federal Republic of Germany as an example: on the assumption that the Federal State clause would allow the Government of the Federal Republic of Germany to treat nine-tenths of the Convention as being outside its competence but within the competence of the Länder, the Federal Republic of Germany, by signing the Convention, would only commit itself to compliance with one-tenth of the obligations laid down in the Convention, whereas unitary contracting States would commit themselves to compliance with the whole series. Thus refugees would enjoy only incomplete rights in some countries. That was a point of great importance, since it would influence the international movement of refugees, who would tend to direct their steps towards the States affording the most liberal treatment.

Mr. HOARE (United Kingdom) fully recognized the difficulties experienced by Federal States in signing multilateral conventions, and was quite prepared to accept the inclusion of a Federal State clause. Speaking subject to correction, he believed that the draft Convention would be the first international instrument of the kind to contain such a clause. One had been proposed for inclusion in the draft International Covenant on Human Rights, but no final decision had yet been taken as to its insertion or on its precise wording.

There were two forms in which a Federal State clause could be drafted, one being very similar to that followed by the Israeli proposal. The other, which was slightly different but, in his opinion, preferable, would run somewhat as follows:

> "With respect to any article of this Convention, the implementation of which is, under the constitution of the Federation, in whole or in part within federal jurisdiction, the obligations of the federal government shall to this extent be the same as those of Parties which are not federal States."

The difference between the two forms might be considered slight, but it was, perhaps, of some importance. The question whether certain action fell within the jurisdiction of the federal government, or within that of the provincial governments was a constitutional one, and sometimes had to be decided by the courts. He did not believe it would be desirable to provide that federal authorities should have discretion to determine what appropriately belonged to their own legislature and what to provincial legislatures. The second possible formulation of the Federal State clause seemed to be more consistent both with constitutional law and with constitutional practice. He accordingly proposed the substitution of the words "the implementation of which is, under the constitution of the federation, wholly or in part within federal jurisdiction" for the words "which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for federal legislative action" in paragraph a) of the Israeli proposal.

With regard to the point raised by the French representative, he agreed that the effect of the Federal State clause must not be to penalize unitary States. It was essential that they should be fully cognizant of the extent to which the international instrument concerned was in full force in a Federal State. That could be achieved either by making it obligatory on the latter to report to the Secretary-General, or by making it possible for States to address their enquiries concerning the application of any particular provision or provisions of the Convention in any other State through the Secretary-General. The second might be the less onerous alternative, and one which would ensure the most accurate information possible, since the situation might change in Federal States. A direct enquiry would therefore elicit information on the exact position at any one time. That was the object of his amendment (A/CONF.2/97) to the Israeli proposal.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) said that the French representative had raised a very pertinent point. It was clearly imperative that unitary Contracting States should know the extent to which the Convention was being applied in Federal States. The memorandum prepared by the Legal Department of the United Nations Secretariat (A/CONF.2/21)

summarized, on page 17, the arguments advanced by the Netherlands representative at the fifth session of the General Assembly in connexion with the proposal to include a Federal State clause in the draft International Covenant on Human Rights, when he had suggested that Federal States should report annually to the Secretary-General of the United Nations on the progress made by their constituent units with regard to implementation. Perhaps a similar course might be followed in the case of the present Convention. Such reports would then be transmitted to other Contracting States by the Secretary-General.

Mr. FRITZER (Austria) stated that it would be difficult for the Austrian Federal Government to agree to the Israeli proposal, since the text would entail amendment of the Austrian Constitution, which would be extremely difficult to achieve, as it required the consent of all four Occupying Powers. At present, the Länder had to apply the provisions of international instruments ratified by the Central Government, which had full jurisdiction in international affairs. The terms of paragraph b) of the Israeli proposal would therefore conflict with the existing constitutional relations between the central and provincial governments.

Mr. ROBINSON (Israel) said that the United Kingdom representative was perfectly correct in thinking that no Federal State clause had as yet been included in any international instrument drawn up under the auspices of the United Nations, and that no final decision had been taken as to its inclusion in the draft International Covenant on Human Rights.

He (Mr. Robinson) believed that the point raised by the French representative was largely a matter of drafting, and he would be prepared to accept an amendment to his proposal in order to meet it. But he would point out that it was extremely difficult to define with any great precision the extent of the division of powers between federal and provincial governments. It was a field in which recourse often had to be had to the interpretation of the courts.

The amendment moved orally by the United Kingdom representative was based on the wording proposed by the Indian delegation in the Commission on Human Rights, and at the present stage he would hesitate to accept it.

He wondered whether the objection raised by the Austrian representative to the Israeli proposal might not have been provoked by a misunderstanding. There was no intention of requiring governments to make constitutional changes as a result of the introduction of a Federal State clause. The purpose of paragraph b) of the Israeli proposal was merely to cover those cases where the Federal Government concerned had no power to constrain provincial governments to enact legislation involved in applying an international instrument.

Mr. CHANCE (Canada) said that the whole question of a Federal State clause was a most delicate one, which required very careful handling. The Canadian Government's legal experts had decided that its inclusion in the draft Convention was necessary if Canada was to be able to accede to that instrument. He very much hoped that the United Kingdom representative would not press his oral amendment. A text such as that proposed by the Israeli representative would not be the Canadian Government's first choice, but nevertheless could be accepted. He had no objection to the kind of procedure outlined in the United Kingdom amendment in document A/CONF.2/97, which proposed the addition of a new paragraph c) to the Israeli text.

Mr. ROCHEFORT (France) wondered whether, through the operation of the Federal State clause, it would not be possible for a Federal State to paralyse the application of the provisions of article 36 and thus to make reservations on articles to which no reservations were permissible. If that was so, there would be two categories of Contracting States: States which were unable to make reservations to certain articles, and States which were able to make, in respect of every article, reservations which their Constitutions allowed them to make. Similarly, a Federal State would be able to sign the Convention, and then argue that it could not apply some of the articles because of its national legislation. Nevertheless, that State's signature would count towards the minimum number required to bring the Convention into force.

Mr. FRITZER (Austria) explained, in reply to the Israeli representative, that his objection was unfortunately not connected with the object of the Israeli proposal, but arose from the form in which it had been drafted. Paragraph b)

as it stood would conflict with the provisions of the Austrian Constitution. He hoped that in the course of the discussion it would be possible to find a satisfactory formula.

Mr. HERMENT (Belgium) doubted whether all Federal States represented at the Conference wanted the Federal State clause to be inserted. Would it not be possible for Federal States to defer ratifying the Convention until they could ratify it on the same conditions as unitary States? Otherwise unitary States would, when they ratified it, have insufficient information about the commitments that would be undertaken by Federal States.

Mr. Miras (Turkey), Vice-President of the Conference, took the Chair.

Mr. LARSEN (Denmark) said that the French representative had quite rightly raised the problem of the relation between the Federal State clause and article 36. He himself wished to raise another problem, namely, that of the possibility that provincial governments might apply the provisions of an international instrument for a limited period of time, and one which did not coincide with the period of application practised by the Federal Government. He believed that if an international instrument was to be ratified by a Federal State, that State must ratify on the same conditions as a unitary State. Obligations should be binding, apart from reservations made at the time of accession.

Mr. LARSEN, President of the Conference, resumed the Chair.

Mr. SHAW (Australia) believed that the Israeli text should be prefaced by some such introductory words as "In the case of a Federal or non-unitary State the following provisions should apply".

In supporting the inclusion of a Federal State clause, he did so simply because of the federal character of the Australian Constitution. He was not at the present stage casting any doubts on the powers of the Commonwealth Government to implement the Convention should it ratify. With a federal constitution, however, one could not foresee the possibility of legal decisions regarding the extent of

the legislative powers of the federal and state units. It was simply to provide for the possible contingency of a judicial decision concerning the powers of the Commonwealth to implement, that Australia was supporting the inclusion of a Federal State clause in the present Convention. He regarded such a clause as desirable, but not as an essential pre-requisite to the consideration of the Convention by Australia.

A Federal State clause had been inserted in a number of Conventions drawn up by the International Labour Organisation, and he had been surprised that so many substantive issues should have been raised in the course of the present debate, although he agreed that the drafting of such a clause presented certain difficulties. Constitutional issues in Federal States often called for settlement by the courts, and it was difficult to foretell what problems might arise in future in respect of the delimitation of functions between federal and provincial governments. He doubted whether the situation would be met by the United Kingdom representative's amendment. Perhaps the Conference might consider the wording proposed by the United States delegation for a Federal State clause for inclusion in the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which was to be found in the report of the Commission on Human Rights on federal and colonial clauses (E/1721). In order to meet the French representative's misgivings as to the possibility of inequality of obligations between Federal and unitary States, section 7 of article 19 of the Constitution of the International Labour Organisation might be taken as a model.

Mr. ROBINSON (Israel) suggested that the Austrian representative's difficulties might perhaps be overcome by drafting changes, which could be entrusted to the Style Committee.

Turning to the French representative's point concerning reservations, he said that there was no possibility whatever of the draft Convention giving rise to two systems of reservations, since all countries were free to enter reservations on every substantive article which embodied specific obligations laid upon States. Both Federal and unitary States would be able to take advantage of that right.

He did not believe that provision need be made to meet the point, though it was a valid one, mentioned by the President speaking as representative of Denmark. It would be most unusual for provincial governments to apply an international instrument for a different period from that adopted by the central government.

He could not agree with the Australian representative that the Federal State clause contained in the Constitution of the International Labour Organisation or in the Conventions adopted by that agency should be taken as a model. Such conventions embodied recommendations of a quite different nature from the obligations which would be imposed on States by the draft Convention. In including a Federal State clause the Conference would be breaking new ground, and it should take the risks inherent in all pioneering work. At a later stage, legal perfectionists would have an opportunity of framing better texts for inclusion in other instruments.

Mr. von TRÜTZSCHLER (Federal Republic of Germany) said that the Israeli proposal would present no difficulties for the German Federal Government, which had full powers in international affairs. In fact, its position was very similar to that of the Austrian Federal Government, and he failed to understand the Austrian representative's objections. He would draw his attention to the words "which the Federal Government regards as appropriate" in paragraph a) of the Israeli text, which should meet the point raised by the Austrian representative.

Mr. ROCHEFORT (France) thought that the conclusion to be drawn from the Israeli representative's analysis of the situation was that a Federal State would not be able to make reservations to an article where the possibility of making reservations had not been foreseen in article 36.

Mr. SCHURCH (Switzerland) said that Switzerland was in the same position as the Federal Republic of Germany. It had no need of the Federal State clause, but was nevertheless inclined to support those other Federal States which were seeking its inclusion in the Convention.

Baron van BOETZELAER (Netherlands) said that he would support the United Kingdom representative's oral amendment to the Israeli proposal, as it would get round the difficulty caused by the fact that the determination of the delimitation of powers as between federal and provincial governments was not within the discretion of the former.

Mr. WARREN (United States of America), making it clear that he was not competent to comment on the legal aspects of the proposal before the Conference, said that the United States Government was in favour of the inclusion of a Federal State clause, which would in its judgment facilitate the adherence of more States to the Convention. He believed that the text proposed by the United States delegation in the case of the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, contained in document E/1721, very closely resembled that proposed by the United Kingdom representative, and thought that it should be carefully considered.

Mr. HOARE (United Kingdom) said that, although the Canadian representative had appealed to him to withdraw his amendment, he must point out that it had found favour both with the Netherlands and with the United States representatives. He would be interested to learn precisely which text the Canadian Government would wish to see adopted.

His own objection to the Israeli proposal was not only that it left the decision as to what action fell within the jurisdiction of the federal governments and what within the jurisdiction of provincial governments to the decision of the central government, but also that it opened up the possibility of a conflict between the provisions of the Convention and the internal legislation of States, in the event of a decision by the federal government as to the delimitation of jurisdiction being reversed by the courts. That possibility would be particularly dangerous in cases where the delimitation of powers between central and provincial governments was hotly contested. The text quoted on page 6 of the report of the Human Rights Commission on federal and colonial clauses (E/1721) would avoid that danger, and would leave the decision on delimitation of powers to the proper constitutional processes.

Mr. CHANCE (Canada) said that the Canadian delegation would be able to accept the Israeli proposal as amended by the United Kingdom delegation. However, as that text did not appear to meet with complete approval, he suggested the following:

"In the case of a Federal or non-unitary State the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority the obligations of the Federal Government shall to this extent be the same as those parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states, provinces or cantons, the Federal Government shall bring such articles with favourable recommendation to the notice of appropriate authorities of states, provinces or cantons at the earliest possible moment;

(b) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action."

Mr. SHAW (Australia) considered that the choice of the final text should be left so far as possible to those Federal States for which the inclusion of the Federal State clause was essential. He could subscribe either to the text contained in the report of the Commission on Human Rights (E/1721) or to that just submitted by the Canadian representative.

Perhaps the difficulties connected with the Federal State clause had been exaggerated. It should be remembered that the purpose of the Convention was not so much to prescribe mutual obligations between States as to accord certain rights to refugees. Hence, the goal to be aimed for was to ensure that as many States as possible were able to implement its provisions.

In conclusion, he stated that the United Kingdom amendment (A/CONF.2/97) proposing the addition of a new paragraph c) to the Israeli proposal was acceptable to him.

Mr. ROCHEFORT (France) observed that, according to the interpretation given by the Israeli representative, the Federal State clause could not impede the operation of the article (article 36) concerning reservations. If that were so, it should be made quite clear in the Federal State clause itself. Otherwise, the point, which had its importance, would be left in some doubt.

Mr. CHANCE (Canada) said that he was not a lawyer; he therefore had neither the knowledge nor the authority to go into some of the detailed difficulties raised by representatives. He would, however, state in reply to the French representative that he did not believe that the inclusion of a Federal State clause would in any way jeopardise the effect of article 36, or that Federal States would take advantage of the Federal State clause to formulate special reservations.

Mr. HOARE (United Kingdom) said that the text just submitted by the Canadian representative was very close in substance to his own amendment, and was acceptable to the United Kingdom delegation.

Mr. ROCHEFORT (France) said that he had never assumed that the Canadian Government would try to take refuge behind the Federal State clause in order to enter reservations which the unitary Contracting States would be unable to make. In certain cases, however, it might happen that the Constitution of a State would in practice prove a hindrance to the application of one of the articles to which that State could enter no reservation. Would the signature of such a State still be valid, despite the fact that it would imply a reservation to articles to which no reservation was permissible? That would constitute a problem of fact and of law of which other Contracting States might long remain ignorant.

Mr. CHANCE (Canada) said that the French representative had mentioned a possibility which he personally had not contemplated. Surely, the application of the Convention would be a question of goodwill, and all Contracting States would undoubtedly try to carry out its provisions in the spirit in which they had signed it. In the final analysis no contract - and least of all one, such as the present, which was contemplated as an act of humanitarian importance - would be of any value without the element of trust and goodwill between the parties.

The PRESIDENT, speaking as representative of Denmark, reaffirmed his concern that the provincial governments of a Federal State might make special reservations to certain articles of the Convention independent of those made by the federal government. For example, the Nazi movement had started in one German province. It was conceivable that had the draft Convention been in force at that time the government of that particular province might have entered a reservation on article 3, enabling it to pass discriminatory legislation. That was the kind of contingency which, he believed, ought to be taken into account. The question probably savoured of the academic at the present moment, but it was necessary to legislate for possible eventualities.

Mr. CHANCE (Canada) thought that the question just raised went beyond the scope of the present discussion. He felt that it could only serve to complicate further an already complicated matter, and appealed to the Danish delegation not to pursue the point.

The PRESIDENT, speaking as representative of Denmark, said that it was far from his intention to introduce irrelevant difficulties, but he must maintain that the application of a convention by provincial governments must be consistent with the action taken by the federal government of the same State. Otherwise, the provincial governments might seize the opportunity to evade some of their obligations.

Mr. CHANCE (Canada) said that he did not feel qualified to enter into a discussion on an issue so delicate as the relations between the central government and constituent governments in a Federal State.

Mr. ROCHEFORT (France) felt that the question of reciprocal obligation was of greater importance than the Australian representative seemed to think. If unitary States wished to have complete information on the Federal State clause, it was because the question was a serious one. Inequalities of obligations would result in inequalities in status for refugees, and hence in a drift of refugees from certain countries to others. Would the States which had an interest in the Federal State clause have any objection to the introduction into that clause, at an appropriate point, of the words, "without prejudice to the application of the provisions of article 36"?

At the suggestion of the PRESIDENT,

it was agreed to defer further consideration of the Federal State clause until the next meeting.

The meeting rose at 1 p.m.