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ORIGINAL: ENGLISH

AD HOC COMMITTEE ON STATELESSNESS

COMMENTS OF THE COMMITTEE ON THE DRAFT CONVENTION

Article 1

Sub-paragraph A 1 (a) - Definitions

The expression "events in Europe" is intended to apply to happenings of major proportions involving territorial and profound political changes as well as their after-effects including those cases where these after-effects occur after 1 January 1951.

The Committee decided that the Convention must contain a time limit after which any new refugees would not be included in the categories defined in the Convention. The Convention provides in paragraph 13 for the addition of other categories of refugees. January 1, 1951 was inserted only because it coincides with the assumption of office by the United Nations High Commissioner for Refugees.

Sub-paragraph A 1 (b)

"Former habitual residence" of a refugee for the purposes of this convention means the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned.

Sub-paragraph A 1 (c)

The Committee did not feel it necessary to describe in this paragraph the method by which members of German minorities formerly outside Germany had reached Germany. It intended, however, to include those who had returned to, sought refuge in or were expelled to Germany. Such persons would not be covered by this Convention even if they returned to Germany and subsequently left or may leave.

The Committee agreed that in this Article the term "Germany" was to be interpreted as the area of the German Reich as of December 1937.

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The Committee agreed that for the purposes of this Convention, "unable" refers to stateless refugees and "unwilling" to refugees who refuse to accept the protection of the government of their nationality.

Sub-paragraph A 3 was intended to include all such persons as were covered by previous Conventions on the subject, or were considered by governments to be refugees. It is also intended to include the children of such refugees, even in cases where such children were born after 3 September 1939, and provided they are without nationality.

Article 2 (10)

General obligations

The Committee decided not to include in this article a proposal of the Government of France explicitly permitting governments to restrict the political activity of refugees. Consequently the representative of France stated that his Government reserved its position.

It was the opinion of the majority of the Committee that a provision to this effect was unnecessary since every sovereign government retains the right to regulate the objectionable activities of aliens. The failure to include such a provision should not be interpreted as derogating from the power of a government in this respect.

The Committee fully appreciated that the provision made in this article was an acknowledged fact and did not have to be explicitly stated. It was considered useful for its psychological effect on refugees as well as for the purpose of producing a balanced document to include a provision outlining the general obligations of refugees. It was considered advisable to do so since the obligations of the receiving countries were stated in the Convention in comprehensive terms.

Article 4 (8)

Exemption from reciprocity

This Article is intended to meet the situation in various countries where certain rights are accorded to aliens subject to reciprocity. In such cases there is no objection on the part of the State to aliens enjoying these rights, and the purpose of conferring them subject to reciprocity is merely to obtain similar rights for its nationals in foreign countries. The Article will confer

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these rights on refugees; they would otherwise be prevented from having them in view of their lack of nationality.

The Article is not intended to relate to rights specifically conferred by bilateral treaty and which are not intended to be enjoyed by aliens generally.

Article 7 (4)

Personal status

The Committee decided not to include in this article any specific provision covering wills made by refugees and agreed that it was not its intention to weaken by this omission the force and scope of Article 7 so far as acquired rights were concerned. The omission was agreed to only because of a desire to avoid conflict with the laws of the country where the will is probated. The Committee agreed that courts should, and would where possible, give effect to the wishes of testators.

The Committee decided to delete a reference to Family Law since this subject is in effect covered by the article and also because the laws of the various countries differ widely with regard to it.

There was unanimity, however, that with regard to refugees, these matters should not be regulated as to substance, form, and competence by the laws of the country of nationality even in countries where these matters are, in regard to aliens generally, so regulated.

Article 9 (6)

Artistic rights and industrial property

It should be noted that wherever the words "the most favourable treatment" is used in the Convention it means the treatment accorded to nationals of another country by treaty or usage. A reservation could be made, should it prove necessary, concerning preferential treatment accorded by a country to certain aliens under "firmly established international usages" as provided for in Article 36 of this Convention.

Article 10

Right of association

The Committee agreed that though the Article did not specifically mention the right of refugees to form as well as to join associations it did not intend to deny them this right. The power to regulate the formation of associations

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remains with governments and is not restricted by the Convention except in so far as this is contained in the provision according to refugees the most favourable treatment accorded to nationals of foreign countries.

Article 12

Wage-earning employment

The expression "in the same circumstances" is intended to mean throughout the Convention that the same treatment would be given to refugees as to other aliens admitted to the country for the same purposes and under the same conditions.

Nothing in this Article is intended to restrict the power of governments to attach conditions to the admission of refugees, to demand that they fulfil these conditions or to remove such conditions. The Article is not intended to remove conditions made prior to the entry into force of the Convention.

Article 14 (15)

Liberal professions - paragraph 2

The Committee intended that the extension to stateless persons of provisions concerning refugees (who in fact enjoy, under the terms of the draft Convention, treatment equal to and in some respects favourable to that accorded to other aliens) shall not be interpreted as excluding stateless persons from the operation of any quotas governing the admission of aliens to certain types of paid and unpaid professional work.

Article 15 (18)

Rationing

It was the intention of the Committee that the provision for the granting of ration privileges to refugees would apply only to the usual necessities of life.

Article 17 (20)

Public education

The Committee agreed that paragraph 2 was not intended to prejudice reciprocal arrangements for scholarships granted by governments including those encouraged by UNESCO or other organizations. However, it was the intention of the Committee to obtain for refugees as generous educational opportunities as possible.

/The Committee

Article 23 (22)

Travel documents

The Committee agreed that one of the purposes of the Travel Document was to assure a refugee he would have the same status on return to the country issuing the Travel Document as he had before he left it.

The term "renewal" of a visa, permit or document means granting it another full term of validity; "extension" of the same covers a limited period of validity.

Should a refugee be given permission to remain in a country for a limited period, and then leave that country with the travel document he could, on his return, be permitted only to remain for the unexpired period granted in the original permission unless the government concerned decided to extend the period.

The term "lawfully resident" in this article is taken from the London Agreement of 1946 of the Inter-Governmental Committee on Refugees and is used in the sense intended there.

Article 24 (11)

Fiscal charges - paragraph 2

It should be noted that Article 20, paragraph 4 allows a Contracting State to charge for Administrative Assistance rendered a refugee. The charge mentioned in Article 20 is applied to refugees only whereas the charges mentioned in Article 24 are imposed on all aliens, refugees or otherwise.

Article 25 (new)

Transfer of assets

In the second paragraph the Committee intended to provide for the transfer of assets and currency which the refugee did not bring into the country with him but acquired after his entry. This paragraph is also intended to cover the assets of a refugee in the territory of any Contracting State other than that which the refugee is leaving.

Article 26 (24 third article)

Refugees not lawfully admitted

The delegate of the United Kingdom reserved the position of his government as concerns Articles 26, 27 and 28.

The Committee intended this provision to apply to education conducted by public authorities with public funds and to any education subsidized in part or whole by public funds. It does not apply to private educational activities.

Article 19 (16 and 17)

Labour legislation and social security

The Committee agreed that the term "social security" includes provision for payment in cases of employment injury regardless of differences in national administrative practices.

It was also agreed that in cases of fatal employment injuries the beneficiaries of the injured person should receive benefits even if they are not resident in the country where the injury occurred.

Article 20 (23)

Administrative Assistance - paragraph 1

The Committee noted that if the General Assembly in defining the functions of the United Nations High Commissioner for Refugees should decide that his office should deal with administrative assistance to refugees, it would do so by arrangements with individual governments. Should no international authority provide necessary assistance governments are required to furnish it.

The representative of the United Kingdom stated that the question of administrative assistance to refugees did not constitute a problem in that country and therefore the provisions of Article 20 did not appear to apply there.

Administrative Assistance - paragraph 3

While the Committee in no way intended to reduce the value which such a document had under previous arrangements, it felt that the language of both the French and the Secretariat drafts was unsatisfactory. It is difficult to speak of a document or certification as standing in the stead of an original document, since in some instances there is no original document. Similarly it is impossible to speak of a document as having the same validity as the act to which it certifies.

The purpose of this clause is to have the Contracting States give documents issued to refugees the same validity as if the documents had been issued by the competent country of nationality of an alien, or as if the act had been certified to by such authority. Such documents would be accepted as evidence of the facts or acts certified, in accordance with the laws of the country in which the document is presented.

Article 28 (24 first article)

Expulsion to country of persecution

It was the opinion of the Committee that the obligation not to return a refugee to the country where he was persecuted did not imply an obligation to admit him to the country where he seeks entry. The return of a refugee-ship, for example, to the high seas could not be construed as a violation of this clause.

Article 35 (36)

Colonial clause

The Committee has not included in this Article "trust territories under the administration of the United Nations" on the understanding that possible provision for the extension of the benefits of the Convention to such territories would be provided before it is opened for signature.

Article 36 (35)

Reservations

The formula "Firmly established international usages" refers, to privileges mutually granted to citizens of a group of countries, as in Scandinavia where these are granted not by virtue of a written instrument but on the basis of ancient practice, geographic proximity, or religious and cultural unity. In these cases the benefits and privileges are not granted to the citizens of countries enjoying the status of most favoured nations.

The Committee expressed the hope that the number of reservations to the Convention would be limited. This Article was not intended to limit the right of a Contracting State to accept the Convention subject to reservations which are agreeable to other Contracting States.
