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SOCIAL COMMITTEE

SUMMARY RECORD OF THE HUNDRED AND SIXTIETH MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 2 August 1950, at 2.30 p.m.

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/Present:

Present:Chairman: Mr. DAVIDSON (Canada), Vice-ChairmanMembers:

Australia

Mr. DESCHAMPS

Belgium

Mr. DELHAYE

Brazil

Mr. PENTEADO

Mr. SILOS

Canada

Miss MEAGHER

Chile

Mr. BERNSTEIN

China

Mr. CHA

Denmark

Mr. FRIIS

France

Mr. ROCHFORD

India

Mr. DESAI

Iran

Mr. KHALATBARY

Mexico

Mr. de ALBA

Mr. CALDERÓN PUIG

Pakistan

Mr. BROHI

Peru

Mr. CABADA

United Kingdom of Great

Britain and Northern Ireland

Mr. FEARNLEY

United States of America

Mr. HENKIN

Representatives of specialized agencies:

International Labour Organisation

Mr. FLORES

International Refugee Organization

Mr. KINGSLEY

Mr. KULMANN

Representatives of non-governmental organizations:Category A

World Federation of Trade Unions

Mr. DESSAU

World Federation of United  
Nations Associations

Mrs. EVANS

/Category B

Category B and Register:

Catholic International Union for  
Social Service

Miss de ROMER

Commission of the Churches on  
International Affairs

Mr. MOURAVIEFF

Consultative Council of Jewish  
Organizations

Mr. TEMKIN

Co-ordinating Board of Jewish  
Organizations

Mr. SARON

Friends' World Committee for  
Consultation

Mr. BELL

International Co-operative  
Women's Guild

Miss ROSSIER

International Federation of  
University Women

Miss BERG

International Union of Catholic  
Women's Leagues

Miss de ROMER

International Union for Child Welfare

Miss DINGMAN

Liaison Committee of International  
Women's Organizations

Miss ROSSIER

World Jewish Congress

Mr. LIBAN

World's Young Women's Christian  
Association

Mrs. BERESFORD FOX

Secretariat:

Mr. Humphrey

Director, Division of Human Rights

Mr. Hogan

Department of Social Affairs

Mr. Alexander

Department of Social Affairs

Mr. Dumontet

Secretary to the Committee

REFUGEES AND STATELESS PERSONS (item 32 of the agenda) (continued)

(b) Report of the Ad hoc Committee on Statelessness and Related Problems (E/1618, E/1618/Corr.1, E/1703, E/1703/Corr.1, E/1703/Add.1-6, E/1704, E/1704/Corr.1 and 2, E/L.79, E/L.79/Add.1, E/L.81, E/L.82, E/AC.7/L.59 and E/AC.7/L.63)

Definition of "refugee" in article I of the draft Convention (continued)

The CHAIRMAN recalled that at its previous meeting the Committee had considered the advisability of choosing a basic working paper for the discussion on the definition of the term "refugee". The choice had been between the text contained in the report of the Ad hoc Committee on Statelessness and Related Problems (E/1618 pages 12-13), and the amendment submitted by the French delegation (E/L.82). He believed that the majority of the Committee had inclined towards the adoption of the French text as the working paper for the discussion.

Therefore, if there were no objections, the French text would be adopted as the working paper for the purpose of formulating the definition of the term "refugee" for insertion in the draft Convention.

It was so agreed.

Mr. CALDERON PUIG (Mexico) said that although he felt in principle that the definition proposed in the report of the Ad hoc Committee had certain advantages over the French text, he wished to pay tribute to the effort made by the French delegation to approach the problem in a logical fashion.

In his opinion, one of the defects of the French proposal was that it omitted any clear reference to Spanish refugees. He suggested therefore the insertion of the words "was or has well-founded fear of being a victim of the Falangist regime in Spain, " at an appropriate place in the definition proposed by the French delegation. Furthermore, the French text seemed to approach the question from a purely European point of view, and might not therefore be entirely suitable for an international convention. He believed that due consideration should be given to refugee problems existing outside the continent of Europe.

/He reserve

He reserved the position of his delegation regarding the proposal to refer the text of the draft Convention to the General Assembly. It might be useful, after the discussion in the General Assembly, to convene a special diplomatic conference, as originally suggested by the Ad hoc Committee, to draft the final text of the Convention for signature by all States, whether members of the United Nations or not.

Finally, his delegation believed that the United Nations should give moral and legal protection to refugees, but wished to reserve its position regarding the financial implications of its doing so.

Mr. ROCHEFORT (France), replying to the Mexican representative, said that Spanish Republicans fulfilled the conditions set forth in section A, paragraph 3, of the French draft amendment, since the Spanish civil War occurred before 1 January 1951. Hitherto, there had been no international convention concerning their protection. While it was true that they came within the mandate of the International Refugee Organization it should be noted that the relevant text was not, properly speaking, a contractual instrument.

The French delegation's primary aim in drawing up its draft amendment had been to place the refugee problem on a strictly technical, social and humanitarian level, that was to say, on a higher level than any problem of a political nature: such a course was absolutely essential in a Europe where political passions still ran high. However, he wished to point out to the Mexican representative that France was not insensitive to the fate of the Spanish refugees, of whom there were still 150,000 on its territory.

Mr. CABADA (Peru) had nothing to add to the French representative's statement, which had been very much to the point. He considered that the formula used in the French draft definition was quite satisfactory, and need not be lengthened inordinately by explicit reference to all classes of refugees.

At the request of Mr. FEARNLEY (United Kingdom), Mr. ROCHEFORT (France) agreed to add the words "any person" after the words "shall apply to" in the first line of section A and to delete them from the beginning of paragraphs 1), 2) and 3) of that section.

Mr. PEARNLEY (United Kingdom) referred to section A, lines 14-17, of the French text, which were so worded as to refer to a person without nationality being unwilling to avail himself of the protection of the government of the country of his nationality. Obviously the word "unwilling" could only be applied to a person who had a nationality, for how could a person without a nationality be unwilling to avail himself of the protection of the government of the country of his nationality? The sentence was clearly in need of re-drafting.

Another defect of the French proposal was that, unlike the definition suggested by the United Kingdom delegation (E/AC.7/L.63), it did not make it clear that persons with dual or even plural nationality would be considered as refugees only after it had been ascertained that they were either unable or unwilling to avail themselves of the protection of the governments of any of their nationalities.

Mr. ROCHEFORT (France) explained that the word "unable" in line 16 of section A referred primarily to refugees having no nationality, but also included refugees who had a nationality but were refused a passport or any other form of protection by their governments. The word "unwilling" referred to refugees who refused to avail themselves of the protection of the government of the country of their nationality, because they had good reason to fear persecution.

As for the last question raised by the United Kingdom representative, the problem would probably prove hard to solve. He was not sufficiently familiar with the work of the Ad hoc Committee to appreciate its reasons for adopting the text which the French delegation had borrowed for its own draft in the belief that it would permit the inclusion of all classes of refugees. He suggested that the question should, in view of its complexity, be re-examined by the Ad hoc Committee.

Mr. HENKIN (United States of America) said that the difficulty was due to the fact that "protection" was a term of art, and meant diplomatic protection, which could only be given by the country of nationality and not by the country of habitual residence. Hence refugees included persons with a nationality who

were unwilling to avail themselves of the protection of the government of the country of their nationality or those who were unable to enjoy such protection because their governments refused it, and persons who had no nationality and were thus unable to avail themselves of the protection of any government.

The second point raised by the United Kingdom representative, namely, the case of persons with dual or plural nationality, was also covered by that consideration; for so long as a person had one nationality and no reason not to avail himself of the protection of the government concerned, he could not be considered as a refugee.

Mr. FLEARNLEY (United Kingdom) said that if the Committee agreed that a person with a dual or plural nationality could not be considered as a refugee until it had been established that he was either unwilling or unable to avail himself of protection under all his nationalities, he would accept the clarification given by the United States representative as an interpretation of the French text, and would not press for the inclusion of a specific mention of such cases in the definition.

Mr. HENKIN (United States of America) thought that the United Kingdom representative was quite right. Section A, paragraph 3, of the French amendment to the text of the draft convention had three aspects; first the person must be a victim of persecution or have well founded fear of persecution; secondly, he must be outside his country of origin; and, thirdly, he must either have no nationality, or technically have a nationality but be unwilling to return to his country.

Mr. ROCHEFORT (France) pointed out that the problem of persons with several nationalities was part of the general problem of conflicting nationalities, which was one of the problems associated with that of statelessness. Since the latter came within the purview of the International Law Commission, he proposed that the problem should be referred to that body for study in conjunction with problems of statelessness proper.

Mr. HENKIN (United States of America) felt that the difficulty might be  
/overcome

overcome by replacing the word "the" before the word "government" in line 17 of section A of the French proposal by the word "a", and deleting the rest of the sentence after the word "government". That would probably meet both the points raised by the United Kingdom representative.

Mr. ROCHEFORT (France) thought it would be difficult to agree to the United States proposal, since any failure to state clearly which government was meant might lead to confusion, in as much as every refugee in practice enjoyed at all times the protection of a government, namely, of that of his host country. In its text, his delegation had wished to make it clear that the government concerned was that of the country of origin. In order to avoid any possible confusion, he proposed that the last phrase in lines 16 and 17 of section A should read: "and is unable to avail himself of the protection of a government, or, owing to such fear, is unwilling to avail himself of the protection of the government of the country of his nationality".

He wished, however, to point out that in making its proposal his delegation had merely reverted to a formula used in previous conventions, which should not therefore prove such as to give rise to difficulties in practice.

The CHAIRMAN considered that the phrase in lines 15 and 17 of section A beginning at the word "unwilling" applied only to those who had nationality, and felt that it should therefore be inserted immediately after the phrase: "or is outside the country" in line 14.

Mr. HENKIN (United States of America) submitted that the difficulty arose in that the protection envisaged was legal protection by the government of the person's country of nationality. The phrase "is unable" in line 16 would cover also those who had no nationality, whereas the words "is unwilling" referred only to those who had nationality.

Mr. FARNLEY (United Kingdom) supported the Chairman's suggestion with regard to the transfer of the last phrase in lines 16 and 17 of section A. He also felt that the Committee should proceed with caution before limiting refugee status to a person with nationality only on the grounds that he was unwilling to  
/avail



avail himself of the protection of the government of the country of his nationality, when he might be in the position of being unable to do so. The paragraph merited very careful examination by the present Committee, by a drafting subcommittee, or by the Ad hoc Committee on Statelessness and Related Problems itself.

Mr. ROCHEFORT (France) pointed out that the various questions raised by the United Kingdom representative were highly technical and complex, and should be studied by the International Law Commission, which was still seized of all problems relating to statelessness.

Mr. HENKIN (United States of America) felt that the discussion had touched on a case which was not covered by the French proposal, and that the Committee should consider whether the intention was to include those who had originally fled from persecution and did not wish to return for emotional and psychological reasons. Such a case was covered by the definition in subparagraph (c) of paragraph 2 of section A of the draft Convention, which referred to any person who was unable or for reasons other than those of purely personal convenience, unwilling etc.

Mr. ROCHEFORT (France) replied that in his opinion section E of the French draft definition made full provision for the case referred to by the United States representative, and provided a solution which should be satisfactory to the latter. That section laid down that a person lost his status of refugee only if he expressly wished to do so and, for that purpose, performed a number of voluntary acts enumerated in that paragraph.

Mr. HENKIN (United States of America) said his delegation would be satisfied if it was recognized by the Committee that such a person as he had described was covered by the Convention. He was not, however, convinced that section E of the French proposal provided for such a person since that section was an exclusion section, and the person in question did not appear to fall within the general definition in paragraph A.

Mr. CHA (China) enumerated the many groups of refugees that had resulted

from events in Europe and elsewhere in the world, and enquired whether section A, paragraph 3, was intended to cover refugees in other parts of the world than Europe.

The CHAIRMAN suggested that as the issue raised by the Chinese representative was a much broader one than that with which the Committee was concerned at the moment, it should be left over for consideration until the drafting problem had been solved.

Mr. CHA (China) agreed.

Replying to the Mexican representative, the CHAIRMAN affirmed that as a result of the Committee's decision to take the French draft definition in document E/T.82 as the basic working paper on the subject of the definition of the term "refugee", the Belgian proposal (E/AC.7/L.59) the United Kingdom proposal (E/AC.7/L.63) and article 1 (Definition of the term "refugee") in the draft Convention would not be voted on. That did not, however, preclude any member of the Committee from proposing any of the provisions in article 1 of the draft Convention as amendments to the French text.

Section A, paragraph 3, of the French text appeared to him to refer to two types of persons, those with nationality and those without it. Was it the French representative's intention that so far as those with nationality were concerned only one case would be covered, namely, that of those who were unwilling to avail themselves of the protection of the government of the country of their nationality?

Mr. ROCHEFORT (France) agreed that the Chairman's interpretation was correct, but thought that it would perhaps be dangerous, from the point of view of the implementation of the Convention, to delete the word "unwilling", as that would make it very difficult to determine what reasons could prevent a person from availing himself of the protection of the government of the country of his nationality.

The CHAIRMAN suggested that the case of a person having nationality

/would be met

would be met if the words "and is unwilling, owing to such fear, to avail himself of the protection of the government of his nationality" were inserted immediately after the word "country" in the phrase "and is outside the country".

The case of the person having no nationality would be adequately covered by continuing the paragraph to read "or, if he has no nationality, has left or wishes to leave the country of his former habitual residence".

Mr. ROCHEFORT (France) agreed with the Chairman's suggestions.

Mr. HENKIN (United States of America) said that the Chairman's proposal left one case uncovered, namely, that of the person who, after becoming a refugee, had lost his nationality, and was living outside his country of origin. That explained in part the manner in which sub-paragraph (c) of paragraph 2 of article 1 of the draft Convention (E/1618, page 12) had been formulated.

The CHAIRMAN said that on further consideration he considered that neither his proposal nor the original text covered the particular case mentioned by the United States representative.

Mr. FEARNLEY (United Kingdom) said that he was becoming more and more convinced that the matter should have been left to an expert body. It was most desirable that the words "is unable" should not be regarded as redundant, because they had presumably been used advisedly by the Ad hoc Committee. For instance, he could imagine the case of a person without nationality living outside the country of his nationality applying at a Consulate of that country for a passport, and being refused it because he would not accept a prior condition that he should first return to the country concerned. To that extent he would be unable to avail himself of the protection of the government of that country for the purposes for which he needed it. There was also the point that people from countries which had been annexed and whose sovereignty was still recognised by some states but not by others, would be unable to avail themselves of the protection of their independent national governments, since the latter existed only in theory, and not in fact.

/Mr. ROCHEFORT

Mr. ROCHEFORT (France) pointed out that the text under discussion was a reproduction of sub-paragraph (c) of paragraph 1 of section A of article 1 of the draft Convention submitted by the Ad hoc Committee. Moreover, the report of the Ad hoc Committee (E/1618) gave, on page 39, what seemed to be an entirely satisfactory interpretation of the sub-paragraph in question - one designed to ensure the adoption of the text without difficulty.

Mr. BROHI (Pakistan) proposed that a drafting committee should be set up to prepare and submit a revised text for section A, paragraph 3, of the French amendment.

Mr. HENKIN (United States of America) suggested that the actual appointment of a drafting sub-committee should be deferred until it was seen whether other points arising out of the consideration of the French proposal should also be referred to it.

Mr. CARADA (Peru) said that, in his view the Chairman's proposed re-arrangement of the last part of Section A, paragraph 3, represented a satisfactory solution of the problem, and the Committee should therefore adopt it.

The CHAIRMAN hoped that his suggestion would solve some of the difficulties, but as there were other points of substance (and he referred particularly to the case last mentioned by the United States representative) it would be premature to proceed to a vote on his suggested amendment. If the Committee agreed, a drafting sub-committee would be set up to prepare a revised text for section A, paragraph 3, and he would commend his suggestion to its special consideration.

It was so agreed.

There being no comments on the final paragraph of section A (lines 18-20), the CHAIRMAN called for comments on section B.

Mr. BERNSTEIN (Chile) recalled the opposition he had expressed on two occasions to the wording of the first paragraph of Section B. He did not believe it could be deleted, but thought that at least all mention of the General Assembly could be suppressed. As Contracting States would be free at any time to modify the text of the Convention by drawing up a protocol, it did not seem necessary to have recourse to the General Assembly. He therefore proposed deletion of all mention of the General Assembly.

Mr. HENKIN (United States of America) urged the retention of the first paragraph of Section B for consistency's sake. Since it had been decided that the draft Convention should first receive the approval of the General Assembly, it was logical that any changes to it should be dealt with by the same procedure. Furthermore, the inclusion of another category in the definition of refugees would amount to an amendment to the High Commissioner's terms of reference, and for that reason, too, should receive the approval of the General Assembly.

Mr. ROCHEFORT (France) remarked that the first paragraph of section B reproduced a clause adopted by the Ad hoc Committee. The sole purpose of the second paragraph, proposed by the French delegation itself, was to supplement the original clause by stipulating that private agreements might be concluded by States, even in the absence of a recommendation from the General Assembly.

The French delegation was unable to accept the first paragraph without the reservation contained in the second. It was, on the other hand, prepared to accept the deletion of the whole of section B, the provisions of which might well be included in the High Commissioner's terms of reference.

Mr. FARNLEY (United Kingdom) thought that the States, Parties to the Convention, particularly as some would be non-Members of the United Nations, should be allowed freedom of action in extending the definition of refugees.

Not only might it be necessary for the Contracting States to wait some time before the approval of the General Assembly could be obtained, but the attitude of the General Assembly might well be very different from the attitude of the group of Contracting States who had voluntarily subscribed to the Convention, and it did not seem reasonable to interpose the General Assembly between them and any desire they might feel to extend the scope of the Convention.

Mr. de ALBA (Mexico) agreed with the views advanced by the representatives of Chile and the United Kingdom. States should be allowed to act at their own discretion in extending political asylum to those not covered by the Convention. Many Latin-American states had subscribed to two conventions on asylum, drawn up at Havana and Montevideo respectively, which had worked well in practice. Other countries might have their own practices regarding asylum, and their freedom of action should be preserved. He agreed, therefore, that the whole of section B should be deleted.

Mr. FRIIS (Denmark) thought that at least the first paragraph of section B should be deleted, since, in its present form it was either unnecessary or misleading.

Mr. HENKIN (United States of America) explained that he did not consider that the first part of section B meant that Contracting States would necessarily have to wait for the General Assembly's approval before extending the definition of refugees. However, as that had been taken as the interpretation of the text, he would accept the French representative's proposal.

Mr. PENTEADO (Brazil) supported the views expressed by the United Kingdom representative.

Mr. BERNSTEIN (Chile) thought that it would be far better if the provisions contained in section B were omitted from the Convention, and included in the High Commissioner's terms of reference, and amplified his previous proposal in that sense.

The CHAIRMAN put to the vote the French proposal that section B of the French draft definition of the term "refugee" (E/L.82, p.2) should be deleted.

The Committee decided to delete section B by 13 votes to none, with 2 abstentions.

There being no comment on section C, the CHAIRMAN asked whether representatives wished to discuss section D.

Miss MEAGHER (Canada) recalled that at the previous meeting she had asked for an explanation of the final phrase of section D, and as no explanation was forthcoming, she proposed that all the words after the expression "International Military Tribunal" that was, the phrase: "or any other act contrary to the purposes and principles of the Charter of the United Nations." should be deleted.

Mr. ROCHEFORT (France) said that the French delegation was opposed to the omission of the phrase in question, which might apply to a person guilty of genocide. The United Nations could not be required to extend protection to people whose activities were contrary to the purposes and principles of the Charter.

Mr. BERNSTEIN (Chile) agreed with the representative of Canada. It was difficult to see how an individual could commit acts contrary to the purposes and principles of the Charter of the United Nations, membership of which was confined to sovereign States.

Mr. HENKIN (United States of America) recalled that there were phrases in the Constitution of the International Refugee Organization and in the Universal Declaration of Human Rights similar to the phrase under discussion. Article 29, paragraph 3, of the latter declared that "these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

Mr. ROCHEFORT (France) pointed out that article 30 of the Universal Declaration stated that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity ... aimed at the destruction of any of the rights and freedoms set forth herein". The Declaration had therefore provided for the possibility of an individual engaging in activities contrary to the principles of the Charter.

Mr. HENKIN (United States of America) recalled that the United States member of the Ad hoc Committee had not taken a position on the inclusion of the phrase, as his Government did not feel strongly on the point. He understood that its purpose was to exclude "collaborators" from the benefits of refugee status. In the annex to the Constitution of IRO, section C, part I, page 29, it was stated that:

"(a) The following shall be considered as valid objections:

- (1) prosecution, or fear .... provided these opinions are not in conflict with the principles of the United Nations, as laid down in the Preamble of the Charter of the United Nations."

Mr. BROHI (Pakistan) recalled that the Canadian representative had originally and rightly pointed out that the words, "or any other act contrary to the purposes and principles of the Charter of the United Nations" were so vague as to be open to abuse by governments wishing to exclude refugees. Very many people had at one time or another committed acts which might be regarded as contrary to those purposes and principles, and to confer on Contracting States the decision as to whether such acts should exclude those who had perpetrated them from the benefits of the Convention might be dangerous.

Mr. ROCHEFORT (France) drew attention to the fact that article 29, paragraph 3, of the Universal Declaration of Human Rights stated that: "Those rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations", whereas article 30 provided that nothing in the Declaration "may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".



The deduction to be drawn from those texts was that it was possible for an individual to commit acts contrary to the purposes and principles of the Charter, and the French delegation did not consider that a government could involve the responsibility of the United Nations by protecting an individual guilty of such acts.

Furthermore, the formula proposed on the point was less severe than that embodied in the Constitution of IRO. The French delegation would be unable to accept a text lacking such provision.

Mr. DESAI (India) opposed the deletion of the phrase "or any other act contrary to the purposes and principles of the Charter of the United Nations," from section D. During the war years, while dealing with refugees who had arrived at Bombay, he had had experience of several cases where individual refugees had committed offences against the national laws and also of one case where a refugee running a licensed hotel had refused to admit coloured people. In such cases, the individual refugee would be acting contrary to the purposes and principles of the Charter and should not enjoy the protection of the Convention. As such acts would constitute violation of the Universal Declaration of Human Rights, or of article 2 of the Convention, which required all refugees to obey the national laws of the country in which they were residing, he suggested that the phrase in section D to which the Canadian representative had taken exception might be reworded to make the disqualifying clause more precise. He did not believe that Governments that ratified the Convention would not administer the disqualifying provisions sympathetically, but they must be precise.

In response to a request by Mr. FEARNSLEY (United Kingdom), Mr. HUMPHREY (Secretariat) told the Committee that section D had been drafted by a working group of the Ad hoc Committee, and that no record had been kept of its deliberations; the paragraph had not been discussed in the Ad hoc Committee when the working group's draft had been adopted.

Mr. BERNSTEIN (Chile) was still not convinced that individuals as such could be guilty of acts contrary to the purposes and principles of the Charter, since the responsibilities under that Charter devolved only upon States. He read certain paragraphs of the Charter in the Charter dealing with purposes and principles, and inquired of the French representative whether his country, for example, would refuse the status of refugee to a person who had at some time expressed opposition to the right of self-determination, which was one of the purposes of the United Nations.

Mr. HENKIN (United States of America) drew attention to article 14, paragraph 2 of the Universal Declaration of Human Rights, which stated that the right it enunciated might not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. Article 14 declared the right of every person to seek asylum from persecution, but the second paragraph showed clearly that such right was deemed not to exist in the case of a person being prosecuted for acts contrary to the purposes of the United Nations.

Mr. ROCHEFORT (France) thought that the discussion was an academic one, since the provision in question would only be applied very rarely.

Chile, or any other State, could, of course, on its own responsibility, grant such persons the treatment it thought fit; but he wished to point out that refugees could enter French territory very easily, and that the French Government could not be obliged to grant its protection to everyone, including persons who pursued a policy contrary to the aims of the Charter.

Mr. FEARNLEY (United Kingdom) pointed out that the parallel drawn by the representative of the United States between the Universal Declaration of Human Rights and an international covenant was not valid. The former was a declaration of aims and principles, while the latter was a binding document defining the obligations of the Contracting Parties.

In general, he agreed that if any provision was to be included in article 1 of the Convention excluding "collaborators" from the benefits of refugee status, it should be more clearly worded. As it stood, he could not support it, and would vote for the proposal of the representative of Canada.

The CHAIRMAN pointed out that article 14, paragraph 2, of the Universal Declaration provided that the right of asylum might not be invoked in the case of prosecutions genuinely arising from acts contrary to the purposes and principles of the United Nations. That wording was far more definite than the wording of section D as it stood in the French draft definition.

Mr. BERNSTEIN (Chile) reminded the representative of France that the text under discussion, which was of French origin, said that Contracting States should not confer the benefits of the Convention on any person who had acted contrary to the purposes and principles of the United Nations. That provision was mandatory, not optative.

Miss MEACHER (Canada) said that her main objection to the last phrase of section D had been prompted by the vagueness of the phrasing. The idea it contained might have a certain value, and she would therefore withdraw her proposal that it be deleted, and propose instead that the drafting sub-committee which was to revise paragraph 3 of section A should also revise section D with a view to making its meaning clearer. She reserved the right, however, to make a similar proposal for amendment when the matter came before the Committee again.

Mr. de ALBA (Mexico), while not questioning the good faith of the representative of France, recalled that there had been instances in which tyrants had imprisoned their political enemies on the pretext that they were enemies of democracy and of the United Nations. In providing for cases of political persecution, therefore, the Committee should avoid restrictive language, which would be open to abuse. He therefore supported the last proposal of the Canadian representative.

Mr. ROCHEFORT (France) observed that for the time being it was not a question of legislating on the right of asylum. Moreover, he would repeat once more, under the terms of article 14 of the Universal Declaration of Human Rights "This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

A refugee who, as in the case cited by the Indian representative, practised racial discrimination, would be thereby abusing the hospitality of the country of refuge. If it were intended to protect such a refugee, the result would be to grant him treatment that placed him above the laws of the receiving country.

If, however, Chile or any other State acceded to the Convention, that would not prevent that country from granting an entry visa to persons who would elsewhere be considered as undesirable; but, by so doing, that State should not be able to engage the responsibility of the United Nations.

Mr. FEARNLEY (United Kingdom) supported the Canadian proposal that the matter be referred to the drafting sub-committee, and expressed the hope that it would be able to reach a satisfactory conclusion on at least some of the very difficult points which were to be referred to it.

Mr. HENKIN (United States of America) also supported the Canadian proposal, and suggested that the drafting sub-committee should bear in mind the Chairman's indication that the drafting of article 14, paragraph 2, of the Universal Declaration was more lucid than the draft of section D under discussion.

It was agreed that section D should be referred to the drafting sub-committee and, on the further proposal of the CHAIRMAN, that the Sub-Committee should be made up of the representatives of: Canada, Chile, France, the United Kingdom and the United States of America.

Speaking to section E, Mr. FLARNIEY (United Kingdom) said he had a proposal to make which would to some extent depend on the final drafting of section A. He suggested that section E, paragraph 1, should be revised to read: "who, having no nationality, has returned to the country of his former habitual residence".

Mr. de ALBA (Mexico) said that if further consideration were being given to section A, he wished formally to propose that the drafting sub-committee should include in it specific mention of refugees from Spain.

The CHAIRMAN requested the Committee to confine its attention to section E, and said that any directive to the drafting sub-committee on section A might be moved at a later stage. However, the suggestion of the Mexican representative seemed to be a substantive one, which would best be raised when the Committee had received a new draft from the Drafting Committee.

Mr. HENKIN (United States of America) called attention to the suggestions he had put forward the previous day in connexion with section E. He asked that those suggestions should also be referred to the drafting sub-committee, which, he moved, should also revise section E.

The CHAIRMAN read out from the summary record the suggestions made by the United States representative on section E, and asked whether there would be any objection to the drafting sub-committee taking them into consideration in revising section E.

Mr. CHA (China) asked whether the phrase "he voluntarily makes a new claim for the protection of the government of his former nationality" in section E, paragraph 1, implied that the refugee in question had lost his nationality. In that case, paragraph 2 was redundant.

Mr. HENKIN (United States of America) recalled that he had expressed the view that the word "former" in that phrase had been included as part of a mistranslation, and should be omitted.

Mr. ROCHEFORT (France) pointed out that the words "du pays dont il a la nationalite" ("of the country of his nationality") should be substituted for the words "du pays dont il avait la nationalite" ("of the country of his former nationality") in paragraph 1, section E.

Replying to Mr. FEARNLEY (United Kingdom), who had enquired the exact meaning of the phrase "when he voluntarily makes a new claim" in the same paragraph, he said that the case might arise, for example, of a refugee asking the government of the country of his nationality for a passport or for protection in a private matter.

Mr. FEARNLEY (United Kingdom) thought the provision did not mean that the mere fact that a refugee sought the protection of his government should be sufficient to deprive him of the status of refugee. It would no doubt be necessary, in addition, for his request to have met with a favourable reception.

Mr. ROCHEFORT (France) was quite unable to accept that interpretation. The French delegation considered that it was for a refugee to make up his mind. He could not run with the fox and hunt with the hounds by seeking to retain his refugee status and yet at the same time claim the protection of the government of his nationality. The very fact that a refugee asked his Consul for protection was proof that he could return to his own country without fear, and such a step should suffice to deprive him of the status of refugee, even if it did not meet with a favourable reception.

Mr. HENKIN (United States of America) thought that section E, paragraph 1, would be clarified if section A were successfully re-drafted. Section E was in effect the obverse of section A. In the latter it was stated that a person was a refugee when he was unwilling to avail himself of the protection of his government, and in section E it was stated that when he willingly re-availed himself of that protection he ceased to be a refugee.

/Mr. FEARNLEY

Mr. FEARNLEY (United Kingdom) asked again what government would be protecting a refugee whose claim to regain his former nationality had been rejected.

Mr. ROCHEFORT (France) affirmed that he knew of no case of any refugee in France who had sought the protection of his Consul in vain. As a matter of fact, the countries from which the refugees originated not only did not refuse to accord their protection to persons claiming it, but on the contrary sought to attract them back to their home territory.

Mr. CHA (China) considered that a refugee who manifested his intention of returning to his country of origin, habitual residence or nationality thereby ceased to be a refugee. An example was provided by the case of the two Russian pilots who had sought United States protection, one of whom had subsequently expressed the desire to return to his native country and had been enabled to do so.

Mr. FEARNLEY (United Kingdom) suggested that if the representative of France believed there were no cases in which a refugee who claimed the protection of his national government would be refused, he (the French representative) might meet the legal scruples of the United Kingdom delegation and agree to re-draft the paragraph so as to provide for the possibility, which could not entirely be ruled out, of the rejection of such a claim for national protection.

The CHAIRMAN recalled that the United States representative had formally proposed the referral of section E to the Drafting Sub-Committee. He ruled that only points which had been discussed in the full Committee should be so referred, namely, the opening sentence of section E and paragraphs 1 and 4 thereof. At the request of Mr. HENKIN (United States of America), he added paragraph 2, which was in need of re-wording.

It was agreed that the passages mentioned by the Chairman should be referred to the Drafting Sub-Committee.

The CHAIRMAN, in reply to a question by the United Kingdom representative on the position with regard to Section A, on which no formal decision had been taken, said he assumed that the Committee had agreed to a re-draft of the first part of Section A on the lines suggested by the United Kingdom representative, but might wish to return to the question after it had received the report of the Drafting Sub-Committee.

Mr. CALDERON PUIG (Mexico) urged that the Committee should complete its discussion of Section A for the guidance of the Drafting Sub-Committee.

It was so agreed.

Mr. DELHAYE (Belgium) recalled that the Belgian delegation had favoured a very broad definition of the term "refugee". Such a definition precluded any enumeration of categories. As the Belgian delegation continued to maintain that general position, it could not lend its support to a text in which, for example, specific political regimes were mentioned.

Mr. HENKIN (United States of America) said his delegation maintained the position it had voiced the previous day with regard to section A, and wished the Drafting Sub-Committee to consider re-wording paragraph 2, and the deletion of the phrase "or circumstances directly resulting from such events" from paragraph 3.

The CHAIRMAN expressed the fear that if the Drafting Sub-Committee had to deal with more than the three specific points already entrusted to it, its work would be unduly protracted. With regard to the United States proposal to delete the phrase from paragraph 3 of section A, he felt, as he had felt about the Mexican proposal relating to Spanish refugees, that a point of principle was involved which should be moved as a formal amendment in the Committee. Having elicited the assent of the United States and Mexican representatives to that view, he proposed that further discussion of the definition of the term "refugee" should be suspended till the Drafting Sub-Committee's report had been received. In the meantime, the Committee should decide whether it wished to



discuss any of the other points raised in connection with the draft Convention, such as the preamble, the reservations clause, the federal State clause and colonial application clause, and the wording of the provision that refugees should receive the same treatment as other aliens or nationals of the country receiving them.

Mr. FEARNLEY (United Kingdom) said his delegation had been opposed to any detailed discussion of the draft Convention. While he had not formally contested the decision to discuss the definition of the term "refugee" and the preamble, he could not agree to carrying the discussion of detail any further. The federal State clause and colonial application clause had been sufficiently discussed in another context, and the final decision was for the General Assembly to take. It would be unfruitful to discuss a reservations clause when the articles to which reservations would apply had not been finally formulated. He therefore formally moved that once the discussion on the definition and the preamble had been concluded, the Committee should refrain from entering into further details of the draft Convention.

Mr. HENKIN (United States of America) supported the United Kingdom proposal, except in respect of the reservations clause, on which the Ad hoc Committee had expressly asked for guidance. With regard to the federal State and colonial application clauses, he would support a formal proposal to refer those questions to the General Assembly for determination of the principles which would apply in the case of the draft Covenant on Human Rights.

Mr. ROCHEFORT (France) thought that the Committee, if it did not draft the clause relating to reservations, should, at least indicate what that clause should contain. For the moment, he proposed that the preamble be considered.

It was so agreed.

## Preamble to draft Convention

The CHAIRMAN invited the meeting to discuss the text of the preamble as given in the Ad hoc Committee's draft (E/1618), and the French amendment thereto (E/L.81).

Mr. ROCHIEFORT (France), analysing the amendment submitted by his delegation (E/L.81), first observed that the principle of the preamble did not appear to be in dispute.

The wording proposed by the French delegation presented the problem of refugees in terms that were equitable both for the refugees themselves and for the countries receiving them.

The ideal would undoubtedly be to place refugees on an equal footing with the citizens of the countries of refuge, in conformity with the principle of non-discrimination set forth in the Universal Declaration of Human Rights. But even in countries which, like France, pursued a very liberal reception policy, it was not possible to grant refugees exactly the same treatment as nationals. Consequently, while the first paragraph of the French amendment recalled the principle of non-discrimination, the second paragraph spoke of assuring refugees "the widest possible exercise of the fundamental rights and liberties.....".

The third paragraph was a mere statement of fact.

The fourth paragraph recalled the need for a collective effort to solve the problem of refugees and to help to distribute them throughout the world. The French delegation thought that immigration countries would recognize the exceptional nature of the burdens assumed by the receiving countries, and would understand that in certain States the pressure of population was such that it was impossible to ensure a satisfactory future for refugees.

The purpose of the fifth paragraph was to provide the necessary link between the Convention and the work of the High Commissioner's Office.

The last paragraph expressed the liberal spirit in which the protection of refugees was contemplated, and explained that the Convention should have a value as an example.

In speaking of the treatment to be granted to persons not covered by the provisions of the Convention, however, the French delegation did not consider that there could be any question of internal refugees. If international assistance measures were to apply to such persons, a new problem would have to be considered.

The last paragraph also brought out that a convention was, above all, an effort demanded of governments. The Convention relating to the Status of Refugees should be considered, not as a measure favouring a particular country or a particular class of refugees, but as the stage now attainable and one which could be followed by others, as private agreements came to be concluded between governments.

The ideas expressed in the preamble formed a complete whole and he urged, in conclusion, that in the examination it was about to undertake the Committee should not lose sight of the exceptional burdens assumed by certain countries, or of the need to submit for signature by the Governments especially concerned a text which they would find equitable.

Mr. DESCHAMPS (Australia) said his Government was considering the question whether the High Commissioner for Refugees should be given supervisory powers in so far as the application of the draft Convention was concerned. Until a decision had been reached by the Australian Government, his delegation could not support the fifth paragraph of the French Amendment.

The meeting rose at 6.10 p.m.

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