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AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS

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Second Session

Refugees and Stateless Persons

Compilation of the Comments of Governments and Specialized Agencies on the
Report of the Ad hoc Committee on Statelessness and Related Problems
(Document E/1618)

(Memorandum by the Secretary-General)

INTRODUCTION

1. Under resolution 248B (IX) of the Economic and Social Council of 8 August 1949, the Secretary-General, by a note of 10 March 1950, transmitted the Report of the Ad hoc Committee on Statelessness and Related Problems to Member Governments as well as to other Governments and invited their comments upon the Report, in order that these, together with the Report, may be submitted to the eleventh session of the Council.

2. By 6 August 1950, the Secretary-General has received comments from the following Governments:

- | | |
|-----------------------------|----------------------------|
| 1. United Kingdom | (E/1703 and E/1703/Corr.1) |
| 2. Egypt | (E/1703/Add.2) |
| 3. India | (E/1703/Add.2) |
| 4. Israel | (E/1703/Add.2) |
| 5. Lebanon | (E/1703/Add.2) |
| 6. United States of America | (E/1703/Add.2) |
| 7. Austria | (E/1703/Add.4) |
| 8. France | (E/1703/Add.5) |
| 9. Italy | (E/1703/Add.6) |

3. A communication from the Government of Poland (E/1703/Add.1) concerning the report has been circulated upon the request of the Permanent Representative of Poland to the United Nations. The Government of Bulgaria has refused to comment upon the report. The communications from the Permanent Representative of Poland and the Foreign Minister of Bulgaria are reproduced in Annexes I and II respectively of this document.

4. The Secretary-General has also received comments from the Director-General of the International Refugee Organization (E/1704 and E/1704/Corr.1 and Corr.2).

5. The Secretary-General has the honour to present to the Ad hoc Committee on Refugees and Stateless Persons herewith a compilation of the comments of Governments and Specialized Agencies on the report of the Ad hoc Committee.

The paragraph numbers of each comment are the same as in the original document received, and have been retained here for the convenience of cross-reference.

TABLE OF CONTENTS

	<u>Page No.</u>
<u>A.</u> General Comments.	3
<u>B.</u> Detailed Comments on the Articles of the Draft Convention.	24
<u>C.</u> Suggestions Concerning Additional Articles.	65
<u>D.</u> Comments on the Draft Resolution Concerning the Elimination of Statelessness (Document E/1618, paragraph 26).	66
<u>E.</u> <u>Annexes.</u>	
<u>Annex I</u> - Communication from the Permanent Representative of Poland Concerning the Report of the Ad hoc Committee on Statelessness and Related Problems.	67
<u>Annex II</u> - Note of the Foreign Minister of Bulgaria.	69
<u>Annex III</u> - (Annex I of the IRO Comments). Resolution No. 62. Resolution on the Problem of International Protection.	70

A.

General Comments

Austria

"1) The Federal Government of Austria welcomes wholeheartedly the initiative of the United Nations to base the legal status of refugees on an international Convention. It concurs in the opinion that the creation of a legal basis of this kind is required not only by juridical considerations, but also by humanitarian principles. The Austrian Government is, however, of the opinion that complete success can be reached only if the refugee problem itself is solved before or simultaneously with the adoption of such a Convention - a solution which would be highly desirable in the interest of refugees - or if at least, for the time being, the financial burden involved were to be allocated equitably among all the States, according to their financial ability.

"2) The Federal Government of Austria wishes to emphasize at this occasion that it is well aware that the question of refugees is predominantly a humanitarian problem. The Austrian Government is fully prepared to accept its fair share within its economic and, more particularly, financial possibilities (see the Declaration of the Austrian Delegation at the fifth session of the General Council of the IRO in Geneva, on 20 March 1950, IRO Document GC/SR/70 of 23 March 1950), to continue to grant the right of asylum wherever possible and to provide help in the work of settling refugees.

"3) Before presenting its comments based on practical experience, the Federal Government of Austria considers it appropriate to submit a survey of the refugee problem in Austria since 1945, based on a few characteristic facts and figures, and to indicate the Austrian achievements in this field which might not be fully known and understood. The position of the Federal Government of Austria concerning some of the proposed articles can be fully evaluated only against this background.

"4) Three factors determine at present the attitude of Austria toward the refugee problem:

- a) the demographic and economic importance of the refugee problem for the country;
- b) Austria's geographic location as a country of refuge of prime importance;
- c) the restrictions of freedom of action of Austria in the question of refugees.

"Ad a) There are at present (1 April 1950) about 458,000 refugees in Austria. Their number, therefore, amounts to seven per cent (!) of a population of about seven millions. This figure in itself explains why Austria is not able to assume certain financial commitments which various other States can easily assume because, in their case, the number of beneficiaries is limited and can be determined.

"Ad b) Because of its geographical location Austria was in the past years, and still is, a centre of refuge for great masses of people.

"Ad c) Austria has now been occupied for more than five years. The occupying powers are able to prescribe or prohibit measures of the Federal Government in the field of refugee problems.

"5) In spite of the impoverishment as a result of the German occupation, the war and its consequences, and the heavy burden of the Allied occupation and the economic reconstruction undertaken with all available strength against the greatest difficulties, Austria has produced noteworthy results by assisting refugees

- "a) financially (directly and indirectly),
- "b) through naturalization.

"Ad a) The global amount of Austrian expenditures for refugees cannot be ascertained, as they have been borne in part by the Federal Government, and in part by the provinces and municipalities. Only the figures of expenditures of the Federal Government for transportation and camps are available and they are

impressive enough; more than 160 million schillings were spent annually in the last two years. For the period from 1946 to 1949, 500 million schillings (equalling 50 million dollars) were spent while the contributions of IRO amounted to 56 million schillings (equalling 5.6 million dollars).

"These figures illustrate the direct financial burden of the Federal Government, in addition to which, as mentioned above, similar expenditures were made by the provinces and municipalities. But these are not all the economic contributions made by Austria for refugees. It is much more difficult to determine the indirect costs which Austria has to bear. As a characteristic example it may be mentioned that every ninth (!) pupil in the Austrian elementary schools is a refugee child. In other words: eleven per cent of the Austrian expenditures for elementary schools constitute an item of assistance to refugees. Similar conditions exist in other fields.

"This survey of Austria's contributions to the care of refugees cannot be concluded without expressing thanks to the IRO and all other national and international organizations for the efficient help and support which they have given and are giving Austria. The Federal Government of Austria hopes that the collaboration with these organizations will continue in the same friendly and fruitful way in a common effort to help as much as possible suffering human beings who have been so deeply hurt.

"Ad b) Notwithstanding her enormous economic difficulties Austria has granted citizenship to more than 130,000 persons since the end of World War II and has given them a new homeland. Considering the great number of refugees, however, who are in the country and are still coming, Austria cannot be expected to grant a permanent refuge to all those who are now on Austrian territory. The Federal Government of Austria rather expects States which are much larger and economically much stronger to adopt the same generous attitude towards immigration and naturalization of refugees as that shown by Austria.

"6) In examining the Draft Convention in detail the Federal Government of Austria noted with satisfaction that a great number of its provisions are being applied to refugees in this country, irrespective of the question as to whether the refugee was lawfully admitted or not (the latter being the rule for well known reasons)."

Chile

I. New Legislation

Generally speaking, the Draft Convention as a whole only represents the application, in detail and to individual cases, of the legal principles which have formed part of our legislation since the beginning of our national life and which have been reinforced by a number of enactments of our Government. In this connection it is worth recording that, no later than 1812, our Provisional Constitutional Regulations provided that "..... a foreigner shall cease to be such whenever expedient, and any unfortunate seeking asylum in our land shall, provided he be honest, enjoy our hospitality and assistance. No one shall be prevented from entering the country or from leaving it with his possessions should he so desire" (Jurisprudence of the Chilean Chancery up to 1865, by Alberto Cruchoaga Ossa, Page 15).

Our Political Constitution assures to ALL RESIDING within the borders of our republic - whether nationals or foreigners - the enjoyment of the rights specified in Article 10. Furthermore, the provisions of Articles 14 and 57 of the Civil Code reaffirm in the most precise terms the complete equality of Chileans and foreigners, both as to their common subjection to the same laws and as regards the acquisition and enjoyment of civil rights of all kinds. It will therefore be seen that the corpus of guarantees which the draft convention desires to assure to foreign refugees has been permanently in force in Chile ever since it became an independent state not only for one class of foreigner - the so-called refugees - but for all foreigners without distinction as to the circumstances occasioning their presence in the national territory.

Some of the provisions of the draft under consideration, however, set up somewhat different standards from those at present generally applicable to foreigners in Chile, under the existing laws though they do not appear to be in any way superior.

II. Summary

The following conclusions may be drawn from the above analysis:

1. The proposed Convention does not constitute any substantial improvement from the standpoint of the liberality of Chilean legislation applicable to foreigners, whether refugees or not.
2. The modifications contained therein and to which attention has been drawn in Section I, paragraphs 1 to 6, would effect no improvement in the legal position of foreigners in Chile, and would merely involve the introduction of different procedures to arrive at the same end as our own legislation.
3. It follows that acceptance of this Convention would not result in any real improvement in our national legislation. Moreover, Chile has not hitherto found it necessary to accede to any of the conventions on refugees which have been drawn up since 1922. In point of fact, our relations with the International Refugee Organization (IRO), are governed by a special direct agreement between our Government and that organization and not by the provisions of any particular convention.

Egypt

1. Egypt is an overpopulated country, and her population is constantly on the increase. Hence she must unfortunately decline to accept further refugees.
2. During and after the last war, Egypt accepted a large number of refugees, giving them asylum and permission to work. But she cannot undertake to accept any more refugees, nor even undertake specific obligations in respect of the refugees now in Egypt, in view of the many problems she already has to face arising out of the presence in Egypt of Palestine refugees.
3. With regard to stateless persons, the great majority of those in Egypt are former Turkish subjects.

Some of them, by fulfilling certain conditions, have acquired Egyptian nationality, and the Arab League is contemplating a convention for giving asylum

to such stateless persons as have not acquired the nationality of the countries where they are resident. Egypt will therefore give asylum to such of those stateless persons as have not acquired Egyptian nationality.

The Egyptian Government regrets that for the time being it cannot undertake further obligations. It has nevertheless on its own account provided asylum and work for a great many Europeans who had lost their original nationality for political or racial reasons.

France

As a signatory of the earlier international conventions for the protection of refugees, the French Government has always regretted the fact that these conventions have in the past been deprived of a wider field of application as a result of the failure of more than a few States to accede to them. It feels, in fact, that the problems raised by the existence of the refugees cannot be solved in a practical, equitable and humane manner except on a truly international basis. It was for that reason that it regarded the extra-European majority in the ad hoc Committee at Lake Success as evidence that the interest shown in the refugee problem by the establishment of the IRO had some chance of surviving that organization. It is under the impulsion of that hope and from a desire to encourage to the utmost those further accessions that are so necessary, that, after careful examination of the provisions of the text prepared by the Committee, it has formulated the following observations.

".....

The above observations are by no means an exhaustive list. The French Government reserves the right to submit additional proposals later during the discussion in the Economic and Social Council.

As it is anxious not to delay the entry into force of a text which it regards as both urgent and indispensable, it will make every effort to facilitate the establishment of that text in the coming discussions. It wishes however to emphasize that, in view both of the importance it attaches to the refugee question

and of the extent of the burdens and responsibilities it has agreed to assume in this field, it will not be able, despite the earnest wish of the Committee, to sign the Convention without numerous reservations, unless due consideration is given to its views on certain important points."

India

"(i) Having regard to the facts that India is unsuitable for the settlement of European refugees and that it is already faced with the most difficult problem of rehabilitating a very large number of refugees from Pakistan, the Government of India do not find it possible to arrange for the admission or rehabilitation of European refugees. The entry into, sojourn in, and expulsion from, India of "European refugees" will, therefore, continue to be governed by the same regulations as are applicable to all other foreigners in general;

"(ii) the personal status and naturalization of refugees will be governed by the same laws and regulations as are applicable to other aliens; and

"(iii) refugees who are already in India will be treated like other aliens in all matters e.g. employment, education, freedom of movement, etc."

Israel

"The Government of Israel was represented on the Ad Hoc Committee and took an active part in the deliberations of the Plenary Committee and in both working groups. The Government of Israel subscribes to the statement contained in Annex II, paragraph 2, and finds itself in basic agreement with the spirit and the general provisions of the Draft Convention. It will, however, exercise its judgment when the Convention is presented again for final consideration, either in an organ of the United Nations, on which this Government is represented, or in a diplomatic conference which may be called for the purpose of adopting a binding Convention on Statelessness and Related Problems.

"Under these circumstances the Government of Israel does not consider it advisable to enter into the details of the Draft Convention. However, it feels compelled to call attention to one aspect of the Draft. The Government of Israel appreciates the great value of the comments contained in

Annex II. It understands that it was not the purpose of these comments to serve as a "running commentary" but to underline such elements of the provisions of the Convention as are not self-explanatory, or to trace the origin of the provisions of this Draft, or finally to enlarge or to narrow down the meaning of the provisions as they stand.

"At this moment, the Convention is not a self-contained document, since numerous clarifications are contained in the comments, and not in the Convention itself. In the view of this Government a final Convention should be a self-sufficient document, and the precedent of a dual document established by the Ad Hoc Committee should not be followed. Whatever provisions are contained in the comments which either go beyond the text of the Convention or restrict its meaning should, if any of these interpretations are maintained in the final text, be incorporated in the Convention itself.

"To quote a few examples:

"(a) Article 4 (exemption from reciprocity)

"A comparison of the Article with the comment reveals that both by definition and by application there is a disparity between the Article itself and the comments. This Government believes that this disparity can be removed by drafting changes.

"(b) Articles 15 and 17 are examples of language used in a more generous way in the Convention and narrowed down in the comment.

"It will be recalled that both a reservation clause and a federal clause are lacking in the Convention. This Government is in favour of two such clauses and intends to submit its own proposals on these subjects when the final drafting of the Convention takes place."

Italy

The Italian Government warmly welcomes a new Convention intended to embody in a single text all the directives and regulations hitherto codified in the 1933 Convention and in the London Convention of 16/10/1946 with a view to cope with the problems presented by the stateless and by the refugees.

In this connection, it may be recalled that the Italian Delegation had already asked at the III Session of IRO's General Council in July 1949, that the preparation be expedited of an international Convention for the protection of the stateless.

Reserving the right to go into each separate article of the draft Convention now under consideration, the Italian Government has the honour to submit hereafter its comments - of a general but fundamental nature - on the Convention as a whole. These observations will bear on five main aspects of the problem.

I - Recalling that the right of asylum figures as a basic principle in the Italian Constitution, the Italian Government is of the opinion that, in order to be more effective, the better to fulfil the requirements of the present difficult times and to cope with the particular conditions obtaining in Italy, the Convention should take into special consideration those countries representing the very first asylum the refugees find on their way westward.

Western Germany, Austria, Italy, the Netherlands, Belgium and the Scandinavian countries figure in that category although the influx of refugees into the latter named countries is at present far from considerable.

Owing to her natural requirements, we consider France to be in an intermediate position between that of first asylum countries and that of those oversea countries which, having large territories and a small population, are obviously typical resettlement countries.

The reasons, well-known to the United Nations Organization, for which Italy should be considered a first asylum country can best be shown by means of a few dry figures:

- Italian population residing in the country on 30.4.1950.....	46.316.000
- Italy's surface.....Km ²	301.020
- Unemployed on 30.4.1950.....	1.956.261

The latter figure is in fact an understatement since in all public offices, in industry and commerce as well as in agriculture a high percentage of personnel or labour is in excess of requirements owing to dismissals being at present held up and agricultural labour being forced upon employers in excess of actual needs.

Further reasons of a geographical nature should be added which contribute to making this country the natural outlet for all those coming from eastern countries in Europe.

We feel therefore convinced that the Convention would considerably gain in effectiveness and would make adhesion easier on the part of any interested country if it made a clear distinction between:

- a) first asylum countries in Europe;
- b) second asylum countries in Europe and
- c) final resettlement countries overseas.

II - Although reserving, as stated above, the right to examine later each separate article in the Convention and though proposing to deal here only with the general lines thereof, we cannot avoid referring to Article 1 under which any person, to whom the qualification specified under the various subparagraphs in that article, is to be considered a refugee. Under its terms that article only applies to the victims of the events that have occurred in Europe after 3.9.1939 and prior to 1.1.1951.

Assuming that the latter date-line applies to the events themselves and not to the consequences thereof, we cannot help feeling some concern with what may become of those refugees who might have to take shelter in any of the first asylum countries because of events having occurred after 1.1.1951.

Neither we can help wondering whether it will be possible to consider them as refugees for the purpose of applying to them the new Convention.

As regards the definition of the term "refugee", the Italian Delegation would welcome an ampler definition better apt to meet the present situation than the one figuring in IRO's Constitution on which Article 1, in the present draft Convention, defining the "refugee", is obviously based.

The Italian Government feels that a good many of the limitations provided for in IRO's Constitution are to be traced back to the views generally held during the period following immediately after World War II, a period which now belongs to the past. That definition of the term "refugee" should therefore be replaced with some other qualification of easier interpretation.

It seems, as a matter of fact, highly probable that the Governments which will have to apply it will not have at their disposal the screening and control facilities IRO had.

Italy's geographical position opens the country to all refugees arriving clandestinely from the East direct at a rate that is still causing grave concern. Screening for eligibility must necessarily be done on the actual frontier line. For all of these reasons, the Italian Government will insist on some definition capable of avoiding serious malpractice and of allowing, as far as possible, a prompt check on the refugee's statement.

III - The Italian Government begs to remark that the majority of the provisions in the proposed Convention verges on the definition and scope of the term "lawful".

Apart from those in possession of a regular identity card delivered by IRO, the Convention can hardly be made to apply to those refugees who are "lawfully" in the country since the great majority of them has notoriously entered it clandestinely and resides therein without a regular authority to do so or only with a temporary permit.

From a strictly Italian legal point of view, refugees found in the country without any document of any kind are to be considered as clandestine

immigrants and, as such, are to be denied the benefits of the provision under consideration; the same situation will be found in all of the first asylum countries.

IV - As regards the provisions of the Convention relating to the obligation to be undertaken by Italy in respect of refugees, such as naturalisation, giving wage-earning possibilities, etc., the Italian Government cannot possibly accept any clause the enforcement of which could in any way embitter - even slightly - the internal situation at present causing the gravest concern due to over-population and unemployment.

It goes without saying that the Italian Government, confronted as it is with a yearly excess of births of half a million citizens, cannot be expected to commit itself or even to accept recommendations relating to the naturalization of refugees having just entered its territory.

As regards more particularly the right to work, the Italian Government has repeatedly shown its willingness to co-operate in all humanitarian activities originating with the United Nations or with any other association of civilized and democratic peoples. It may therefore accept to enforce in Italy some provision of this kind as soon as unemployment has fallen back to the average figure recorded for a certain number of pre-war years to be determined.

Other measures rendered necessary for public order reasons shall have to be provided for in the Convention, more particularly in respect of freedom of movements mentioned in the draft now being examined.

V - All that has been stated above should make it quite clear that the Italian Government could only adhere to the proposed Convention if the latter is accepted by the majority of the resettlement countries.

The better to explain this concept, I will add that the Italian Government would have to be sure that the refugees, after being allowed into the Italian territory, would have a real possibility - because of their status of refugees under the Convention - to leave Italy again within a

reasonable though possibly generous time limit.

* * *

Finally, the Italian Government is particularly concerned with the institution of the Agency intended to inherit IRO's responsibilities to be known as the United Nations High Commissioner for Refugees and which is expected to enter into operation as from 1.1.1951.

The Italian Government considers the problem of the High Commissioner as very closely connected with that of the new Convention because the former can only derive its authority to operate from the legal provisions contained in the latter.

The High Commissioner would in fact be the executive power of the Convention just as the latter in its turn would be doomed to remain powerless if it were not provided with some adequate agency capable of enforcing its provisions.

Italy, not being a member of the United Nations, the Italian Government has had no opportunity to co-operate from the beginning in devising the provisions relating to the institution of the High Commissioner in question.

It avails itself, however, of the invitation now extended to it to express its views on the matter.

All of the remarks of a general nature made above on the draft Convention under discussion have established in unmistakable terms the prominent role that Italy, owing to her geographical position, plays at present as well as the part still more important that she may be called upon to play in the future in respect of the general refugee problem.

With a view the better to cope with it, both intentionally and nationally, it seems absolutely indispensable that the Italian Government be adequately represented alongside of the High Commissioner by means of suitable personnel in both executive and clerical branches.

But not even this would prove sufficient unless some office representing

the High Commissioner were set up in Italy to maintain a permanent liaison with the Italian Government.

A special Agreement might even have to be entered into - as was done with IRO - to ensure permanent working relations between the representative of the High Commissioner and the Italian Government Agencies concerned.

But, quite apart from whatever relations shall have to be established between the High Commissioner and the Government of the countries in which the former will be called upon to enforce the new Convention, in the opinion of the Italian Government it seems indispensable - if the protection afforded by the High Commissioner is to be really effective - that same be backed up by some form of assistance similar in its main lines - though more modest in the bulk of its activities - to that given by IRO.

The mere protection not accompanied by some form of assistance does not seem to the Italian Government likely to have much practical value.

Lebanon

"The Ministry commends the noble and humanitarian motives which inspired the Draft Convention and the documents in question; but it wishes to emphasize generally that Lebanon, a country which is already quite densely populated, and which for a number of years has shown the greatest liberality and hospitality towards the Palestine refugees, could not safely afford to increase her undertakings in this direction.

"This hesitation applies particularly to certain provisions of the Draft Convention which it is feared might give certain categories of undesirable access to Lebanese territory or asylum there (cf. Articles 26 and 27....). Articles 3, 13, and 14 of the Draft go even further; they make no distinction between such categories of undesirables and, for example, the Palestine refugees now in Lebanon."

United Kingdom

"The law of the United Kingdom, in general, applies to all persons in the United Kingdom alike, whether they are aliens or British subjects. The only important exceptions to this principle are (a) that a few rights (such as the franchise) are reserved to British subjects and (b) that aliens may not enter the United Kingdom without leave, to which conditions (e.g. limiting the length of stay or the occupations which the alien may engage in) may be attached, and that they are subject to deportation. The United Kingdom law does not proceed in relation to aliens on the basis of reciprocity; nor does it contain any reference to refugees. His Majesty's Government do not wish to alter these fundamental principles or to create any specially privileged class of alien, and it is from this general stand-point that they approach the proposals in the draft Convention and Protocol.

"2. In view of the liberal treatment accorded to aliens in the United Kingdom (which, in respect of many of the matters dealt with in the draft Convention, is equivalent to that accorded to British subjects) His Majesty's Government do not consider that a Convention on the lines now suggested is necessary for the protection of refugees in this country. They are, however, in sympathy with the aims of the United Nations in seeking to secure liberal treatment for refugees, and, subject to certain reservations, they would be prepared to give favourable consideration to the question of acceding to the Convention and Protocol.

"3. It is observed that certain articles of the draft Convention deal with the right of association, wage-earning employment, self employment, public relief and labour legislation, which are subjects of special interest to the International Labour Organization. His Majesty's Government consider it important that the Convention should, in its final form, be so framed as to avoid all unnecessary duplication of, or inconsistencies with, the International Labour Convention No. 97 on Migration for Employment and other existing International Labour Conventions.

"5. His Majesty's Government have no comments to offer on the articles not mentioned above, but they reserve the right to seek the amendment, at some future stage, of all or any of the articles of the Convention if this should seem to them to be necessary either in the light of the comments received from other member Governments or for any other reason.

"6. His Majesty's Government have taken note of the recommendation of the Committee that the Council should submit the report and the comments thereon, along with its recommendations, to a diplomatic conference to be convened for the purpose of a further review of the draft Convention and Protocol, and at which these would be opened for signature. His Majesty's Government are of the opinion that it would not be practicable for either the Council or the General Assembly to examine the draft Convention in great detail, and they accordingly agree that the matter might be dealt with by an ad hoc diplomatic conference. If the comments received from Governments suggest that there are wide divergencies of opinion, the Council might come to the conclusion that work of this conference would be simplified and shortened if the ad hoc Committee were to be convened once more for the purpose of examining these comments and revising the text of the Convention in the light thereof, so that a revised draft may be circulated to Governments in advance of the conference.

United States of America

"The United States Government has no comment to offer at this time with respect to the substantive provisions of the draft Convention relating to the Status of Refugees and the Protocol thereto relating to the Status of Stateless Persons; but it reserves the right to comment when the drafts are considered in the Economic and Social Council.

"The United States is of the opinion, however, that the Committee did not go far enough in relating this Convention to General Assembly resolution 319(IV) of December 3, 1949. In that resolution the General Assembly decided to establish a High Commissioner's Office for Refugees and included under his

competence, inter alia, "any persons brought under the jurisdiction of the High Commissioner's Office under the terms of international conventions or agreements approved by the General Assembly". The resolution further provided that the High Commissioner "should provide for the protection of refugees and displaced persons falling under the competence of the Office by:

- "(a) Promoting the conclusion and ratification of international conventions providing for the protection of refugees, supervising the application of the provisions of such conventions, and proposing any necessary amendments thereto".

"The United States is of the opinion that Article 30 of the draft Convention should be revised to take into greater account the High Commissioner's Office.

"Similarly, the United States is of the opinion that the Ad Hoc Committee's recommendation to the Economic and Social Council that the convention be sent to a diplomatic conference does not give sufficient weight to the provisions of the General Assembly resolution quoted above. The provision giving the

High Commissioner's Office jurisdiction of persons brought under its competence by conventions approved by the General Assembly, indicates that it was contemplated that a convention or conventions for the protection of refugees would receive the approval of the General Assembly. Also, if the convention is to impose duties of implementation on the High Commissioner, it must have General Assembly approval, since the Assembly alone has the authority to determine the jurisdiction of the High Commissioner. The United States is also of the opinion that the acceptability of the present convention would be enhanced if the General Assembly considered and approved it. For this reason the United States believes that the Committee's recommendation should be revised and that the Economic and Social Council should be requested to transmit the convention to the General Assembly at its fifth session.

"It might be noted that by approving Article 1 (Definition) of the draft convention and recommending it to the General Assembly, the Economic and Social Council will also be complying with the General Assembly's request, contained in paragraph 4(b) of the resolution of December 3, for "such recommendations as the Council may deem appropriate regarding the definition of the term 'refugee' to be applied by the High Commissioner."

International Refugee Organization

"1. The Director-General of the I.R.O. is of the opinion that the draft Convention relating to the Status of Refugees (Document E/1618) drawn up by the Ad Hoc Committee on Statelessness and Related Problems, which met at Lake Success from 16 January to 16 February, 1950, would in general provide a satisfactory basis for the legal status of refugees in their countries of residence, and, if ratified by a considerable number of States, would constitute a great advance towards a solution of the problem of the legal position of refugees.

"2. The experience of the International Refugee Organization has, in the opinion of the Director-General, illustrated the urgency of the need for regulating the legal position of refugees through a revised and consolidated international convention, and he ventures to express the hope that the competent

organs of the United Nations will be able to decide upon a procedure which will permit a speedy adoption of this Convention.

"3. Although the draft Convention adopted by the Ad Hoc Committee provides a generally satisfactory solution to the problem of the status of refugees, the Director-General wishes to submit certain comments which are derived from the experience of the Organization over three years in dealing with the problem of refugees.

"4. In the first place, the Director-General wishes to point out that one of the fundamental characteristics of the refugee problem produced by the Second World War and its aftermath, has been the continuing influx of refugees into certain countries which have been called upon to bear the brunt of providing first asylum. It would, in his opinion, be opportune for an attempt to be made on the international level to deal with the problem of admission, and also to provide some means whereby the burden imposed upon countries of first asylum might in some degree be shared by the other members of the international community of nations through the inclusion in the international convention relating to the status of refugees of provisions concerning the admission of refugees.

"5. In the second place, the Director-General of the IRO has noted that in certain technical problems the Ad Hoc Committee has abandoned formulae which have stood the test of time in existing conventions. Although it was the intention of the Ad Hoc Committee in abandoning these formulae, as is clearly expressed in the comments annexed to the draft Convention (Document E/1618), merely to attempt to give greater clarity without changing the substance, nevertheless, in the opinion of the Director-General, the new formulae suggested may be open to misinterpretation and defeat the objects which the Ad Hoc Committee itself had in mind. A possible solution to this difficulty might be the incorporation in the text of the Convention itself of certain ideas which are included in the comments prepared by the Ad Hoc Committee, as these comments will have no binding legal force.

"These points will be discussed in detail in the comments on the relevant articles submitted below.

"Admission of Refugees

"6. In its Report to the Economic and Social Council in July 1949 on Future International Action Concerning Refugees (Document GC/91/Rev.1) and in a Memorandum submitted to the Third Session of the General Assembly in November 1949 (Document GC/129/Rev.1) the General Council of the IRO underlined the difficulties confronting a temporary Organisation in facing a problem which in certain aspects appears to be of a permanent character, and emphasized the likelihood that after the end of the lifetime of the IRO there would be new refugees for whom the problems of protection would arise.

"7. In the light of these considerations the Director-General submits that there is an urgent need to attempt to secure international recognition for measures designed to implement the provisions of Article 14 of the Universal Declaration of Human Rights, para. 1, as adopted by the General Assembly of the United Nations in Resolution No. 217 (III) in which it is stated that everyone has the right to seek and to enjoy in other countries asylum from persecution.

"8. If the general right of the individual to seek and enjoy asylum is recognised it is now necessary to attempt to define as far as possible whose responsibility it shall be to give effect to this right.

"9. In the draft Convention submitted by the Government of France (Document E/AC.32/L.3, Article 2) and in the draft submitted by the Secretary-General of the United Nations (Document E/AC.32/2, Article 3) provisions were included dealing with the question of the admission of refugees. After considerable discussion the Ad Hoc Committee decided that the articles relating to the admission of refugees should not be incorporated into the body of the Convention but might find an appropriate context in the Preamble of the Convention or in the Final Act. The main reasons stated were that these articles did not constitute any binding legal obligations, but amounted to little more than declarations of principle. While the force of this argument is admitted, it should nevertheless be pointed out that the existing draft Convention contains similar declarations of principle which undoubtedly derive greater force from the fact that they are incorporated in the Convention itself as opposed to being

included either in the Preamble or in a separated resolution.

"10. Owing to the importance of the problem of the admission of refugees the Director-General of the IRO submits that some article on the lines of those proposed by the Government of France and the Secretary-General of the United Nations should be incorporated in the final text of the Convention.

"11. Both in the draft submitted by the Government of France, Article 2, para. 2, and in the draft submitted by the Secretary-General of the United Nations, Article 3, para. 2, emphasis is laid upon the need for co-operation of states confronted with the refugee problem, and it is proposed that the countries of immigration should, in their policy of admission of immigrants, make some contribution to lighten the burden imposed upon the countries which are called upon to grant first asylum to refugees.

"12. It may be held that one of the most valuable contributions made by the IRO to the solution of the refugee problem has been that in this Specialized Agency of the United Nations countries of immigration have associated themselves with countries of temporary asylum in providing refuge for those fleeing from persecution. In the opinion of the Director-General every effort should be made to continue this association which will make it possible for temporary asylum to continue to be given to the influx of bona fide refugees.

"13. The Director-General of the IRO therefore considers that it is his duty to point out the special need for the inclusion in the draft Convention Relating to the Status of Refugees of provisions concerning admission, and that a failure to include any such provisions will leave a most serious gap in the Convention."

B.

Detailed Comments on the Articles of the Draft Convention

PREAMBLE

("The Contracting States,

"Considering the concern of the United Nations for the protection of human rights without any discrimination, as given expression in the Universal Declaration of Human Rights and especially Articles 6 and 14 thereof: and in particular their profound concern for the rights of refugees as evinced in various resolutions of the General Assembly and of the Economic and Social Council of the United Nations, especially resolution 319 A (IV), 3 December 1949, in which the General Assembly recognized the international scope and nature of the refugee problem and the responsibility of the United Nations for the international protection of refugees; and

"Considering further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees and to increase the protection accorded by these instruments,

"Have agreed")

No comments*

* See comments of France in C, Article 1, p.

Article 1

Definition of the term "refugee"

("A. For the purposes of this Convention, the term "refugee" shall apply to:

"1. Any person who:

"(a) As a result of events in Europe after 3 September 1949 and before 1 January 1951 has well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion; and

"(b) Has left or, owing to such fear, is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence; and

"(c) Is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality.

"This provision shall not include a person who was a member of a German minority in a country outside Germany and who is in Germany.

"2. Any person who:

"(a) (i) Was a victim of the Nazi regime in Germany or in a territory purported to have been incorporated into Germany, or of a regime which took part on its side in the Second World War, or of a regime in a country occupied by Germany which assisted Germany against the United Nations; or

(ii) Was or has well-founded fear of being a victim of the Falangist regime in Spain; and

"(b) Has left or is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence; and

"(c) Is unable or, for reasons other than those of purely personal convenience, unwilling to avail himself of the protection of the government of the country of his nationality.

"3. Any person who in the period between 4 August 1914 and 3 September 1939 was considered to be a refugee.

"B. The Contracting States may agree to add to the definition "refugee" contained in this article persons in other categories recommended by the General Assembly.

"C. No Contracting State shall apply the benefits of this Convention to any person who in its opinion has committed a crime specified in article VI of the London Charter of the International Military Tribunal or any other act contrary to the purposes and principles of the Charter of the United Nations.

"D. This Convention shall cease to apply to any refugee when:

1. He acquires a new nationality, or
2. He returns to the country of his nationality, or if he has no nationality, to the country of his former habitual residence."

Austria

"The time limit of 1 January 1951, provided for under A 1(a), does not seem appropriate as the influx of new refugees still continues and can hardly be expected to come to an end before the mentioned date. It would be advisable, therefore, to insert a later date at the time of the conclusion of the Convention.

France

"Its main observation relates to the problem of the definition of the term "refugee" (Article 1). The French Government has repeatedly, both in the United Nations General Assembly and in the IRO General Council, made clear its preference for a broad and general definition. In this connection it should be noted that, by provisionally maintaining the definitions laid down in Annex 1 of the IRO Constitution, the General Assembly Resolution of 4 December 1949 did not finally settle the question, since it also requested the Economic and Social Council to transmit to the General Assembly at its fifth regular session "such recommendations as the Council may deem appropriate regarding the definition of the term 'refugee' to be applied by the High Commissioner".

"The French Government, despite the fact that the definition proposed by its representative was not adopted, feels justified, in view of its long experience in this field, in re-asserting its standpoint on principle. It does not regard as convincing the arguments adduced in opposition to the French definition, particularly the claim that Governments would find it impossible to accede to a text which did not define their commitments sufficiently clearly.

"The French Government is certainly no more desirous than any of those Governments of undertaking blind commitments and the caution it displays in any undertakings it enters into with regard to refugees is all the greater because France, by reason of its geographical position, is one of the countries most liable to see its already very heavy burden grow still heavier in the future.

"It would point out, however, that a broad definition of the term "refugee" could, by itself, in no way result in involving Governments in commitments beyond those they might formally consent to undertake either by means of a clarifying reservation made at the time of signature of the Convention, or by means of a special agreement with the High Commissioner for Refugees.

"However, thanks to such a definition, the High Commissioner would be in a position to negotiate with those Governments with a view to inducing them to grant the benefit of the protecting Convention to a particular group of refugees towards whom they had not so far undertaken any commitment. Thus, the essence of a broad definition would be to constitute a programme of action for the Representative of the United Nations which he should endeavour to carry out by means of negotiations and bilateral agreements, taking due account of any changes in the situation and acting of course in conformity both with the general principles laid down by the United Nations and with any more detailed instructions that the latter might give him.

"The French Government has the impression that the example of the International Refugee Organization has exerted a decisive influence on the work of the Committee of Experts in that field. As its representative has already remarked on a number of occasions the refugee problem should henceforth be viewed in quite a different perspective.

"Without expatiating in detail on the various aspects of this question, the French Government would point out that the General Council of the International Refugee Organization, at its session last March, after having emphasized that "the undertaking on 1 January 1951 of the function of protection of refugees by the United Nations will transfer to the fifty-nine Government Members of the United Nations who will hereafter participate a function which has been heretofore the responsibility of the eighteen Government Members of the IRO", notes that "the affording of protection will pass into a new and different phase". It calls attention to the fact that the IRO has been preoccupied with the enormous problem of refugees and displaced persons resulting from the war, with the movement of large numbers in repatriation and resettlement, with the overburdening problem of the care and maintenance of such persons, and that these services have been carried forward with financial resources inadequate to the task. "These preoccupations of the IRO", states the Director-General's memorandum of 20 April, 1950, "have naturally influenced its decisions as to eligibility in a manner which should not be controlling in the broader perspective of the function of protection which the United Nations are now undertaking".

"The French Government wishes to stress very strongly the importance of the data furnished by the General Council of the IRO on this subject, and the necessity of taking full account of all the practical conclusions to be drawn therefrom in the text now in course of preparation. It is of the opinion that the ad hoc committee, as a result of keeping too closely to the IRO's original standards of eligibility, has been visualizing a situation that since that time has completely changed.

"It feels obliged to point out that acceptance of a definition such as that contained in Article 1 of the present draft, interspersed as it is with date limits and more concerned with fixing historical milestones than with catering for present and future needs, might, by restricting too narrowly the scope of the High Commissioner's activities, both very seriously impair his usefulness and create a host of practical problems which, with his inadequate staff, he could hardly hope to settle.

"The French Government hopes that the question of definition may be reviewed in the light, more particularly, of the above-quoted memorandum from the Director-General of the IRO. It is of the opinion that it should be possible to reach an acceptable compromise between the two views by including in the preamble to the Convention - which should in any case be expanded - a broad definition which, without committing Governments, would serve as a general indication and as a guide for the High Commissioner for Refugees in his work.

"Apart from these questions of principle, the definition adopted by the ad hoc committee calls for a number of observations on points of detail.

"Article 1. There is some contradiction between paragraph 1 and paragraph 2 of Article 1.A. : it is not clear why the categories mentioned in paragraph 1 should be subject to a date limit - which incidentally conflicts with the whole notion of the right of asylum - while the categories in paragraph 2 are subject to no such restriction. The second sentence of subparagraph A.1(c) is redundant, since Article 138 of the Bonn Constitution lays down that persons resident in Germany who were formerly members of German minorities in other countries shall have German nationality. It would consequently seem desirable to delete from a United Nations document a provision which is both without practical effect, and, from the legal standpoint, infringes the principles of non-discrimination proclaimed by the Universal Declaration of Human Rights.

"Sub-section A.2 (a) (i) of Article 1 extends the status of refugees to persons who obviously are no longer refugees, such as, for instance, victims of the Italian Fascist or the Hitler regimes.

"As regards paragraph A.2 of Article 1, what is needed is a formula which would cover the same categories of persons, without giving rise to protest by the Governments of their countries of origin, and thereby creating difficulties for the countries of reception directly concerned.

"Paragraph A.2 would still serve its full purpose if sub-section (a) (ii) were deleted, thereby avoiding reference by name to a Government with which, incidentally, a number of States entertain diplomatic relations.

"Finally, the second half of paragraph D.(2) contains a restriction which is quite unacceptable. If interpreted literally, it would mean, for example, that if a stateless Russian, resident in France, went to stay in another country and then returned to France, he would lose his refugee status."

Italy

See Section II of Italian comments in A - page 12

United States of America

See last paragraph of United States comments in A - page 12

International Refugee Organization

"14. In connection with Article 1 of the draft Convention relating to the definition of the term "refugees", the Director-General draws attention to Resolution No. 62, adopted by the General Council of the IRO during the Fifth Session at its 71st meeting, held on the 21 March, 1950, a copy of which is annexed hereto. In this Resolution the General Council considered certain aspects of the problem of the definition of refugees and displaced persons in relation to the functions of the High Commissioner on refugees, as defined by the Resolution of the General Assembly of the United Nations, No. 319 (IV) dated 3 December, 1949."

Article 2

General obligations

("In any country in which a refugee finds himself he must conform to the laws and regulations, including measures taken for the maintenance of public order.")

France

"Article 2. As it stands this article is doubtless just a bad translation from the English. It should read: "Tout réfugié doit se conformer à toutes les mesures prises pour le maintien de l'ordre public ainsi qu'aux lois et règlements du pays dans lequel il se trouve."

"But even that wording is rather weak. The French draft defined the obligations of refugees in a less negative manner. Would it not be advisable to add a sentence on the lines of Article 29, paragraph 1, of the Universal Declaration of Human Rights, to the effect that "Everyone has duties to the community in which alone the free and full development of his personality is possible."? Some reference at least should be made to that provision."

Article 3

Non-discrimination

("The Contracting States shall not discriminate against a refugee on account of his race, religion, or country of origin, or because he is a refugee.")

Lebanon

See paragraph 2 of Lebanese comments in A - page 16

Article 4

Exemption from reciprocity

("Where rights and favours are accorded to aliens generally, but are made subject to reciprocity, the Contracting States shall not refuse such rights and favours to refugees")

Austria

"Rights which can be granted generally without difficulty to a small number of aliens on the basis of reciprocity could not be extended, especially in matters of welfare and labour, to the several hundreds of thousands of refugees in Austria (see point 4a above)¹⁾ precisely because of their large number.

"It seems, therefore, advisable to give this article the form of a recommendation."

France

"Article 4. The French Government feels that it could not grant refugees the benefit of the right of pre-emption, which at the present time is reserved to French farmers, unless such right should happen to be granted, whether subject to reciprocity or not, to the nationals of another State."

Israel

"A comparison of the Article with the comment reveals that both by definition and by application there is a disparity between the Article itself and the comments. This Government believes that this disparity can be removed by drafting changes."

United Kingdom

"Article 4. In the light of the explanation given on pages 41 and 42 of the report of the ad hoc Committee, His Majesty's Government would not wish to object to this article."

International Refugee Organization

"15. In the comments annexed to the draft Convention, Document E/1618, pages 41 and 42, the ad hoc Committee referred to the reciprocity clauses contained in the Convention of 28 October 1933, Article 14, and in the Convention of 10 February 1938, Article 17. The Committee thought that it was desirable to clarify the meaning of the clause but stated that no change in substance was intended. (Document E/1618, page 42). The Committee, however, stated that "the Article, as drafted, was not intended to relate to treaty provisions

1) See above, paragraph 2 in A.

concerning preferential treatment of aliens of a particular nationality, as, for example, under a "most favoured nations" clause. Where, however, aliens generally enjoy rights, whether by statute or by treaty arrangements with other countries (i.e. diplomatic reciprocity), these rights would be accorded to refugees also."

"16. The Director-General submits that Article 4 as drafted by the ad hoc Committee may in certain countries result in disadvantage for refugees which were not intended. The inclusion of the word "generally" in the phrase "where rights and favours are accorded to aliens generally", may be subject to misinterpretation. From the comments annexed to Document E/1618, it is clear that the ad hoc Committee intended that refugees should be accorded rights where these are generally enjoyed by aliens as a result of statute or treaty arrangements with other countries. It may, however, be questioned whether the enjoyment of rights by aliens, which is dependent on treaty arrangements with other countries, can really be considered to be a "general treatment". It might be held that the general treatment was the treatment accorded to aliens who were not beneficiaries of treaties. This consideration is

especially relevant in countries whose legal systems are based on the principles of the Napoleonic Code.¹⁾

"17. The main reason why the ad hoc Committee decided to change the wording of the Articles relating to reciprocity in the previous Conventions concerning the status of refugees, was that it did not wish the Article to relate to treaty provisions conferring preferential treatment on aliens of a particular nationality. It is certain that since 1933 there has been a general development in the granting of preferential treatment to aliens of a particular

1) Article 11 of the French Civil Code states:

"An alien shall enjoy in France the same civil rights as are or shall be granted to French citizens by the treaties of the country to which the alien belongs."

The condition of reciprocity required by this Article cannot be said to secure rights for aliens in general but only for those aliens who are beneficiaries of particular treaties.

As an example in illustration of the foregoing remarks we may quote French Law No. 46-2389, of 28 October 1946, on War Damage, Article 11 of which prescribes:

"Subject to international agreements already concluded or yet to be concluded, this Law does not apply to any individuals or legal entities not specified in the previous Article."

Article 10, para. 4, makes the Law, which in theory applies only to French citizens, applicable to aliens who served in the French or Allied Armed Forces during the War.

As reciprocity is the basis for all the Agreements referred to in this Law, France, as a signatory to the Conventions of 1933 and 1938, made the Law applicable to refugees. It was Articles 14 and 17 of these Conventions which made this generous solution possible. The present wording of Article 4 of the Draft would make such a solution legally impossible, and although the Committee's aim was to clarify the meaning of Articles 14 and 15 of the 1933 and 1938 Conventions without altering their basic content (Annex, page 42), the refugees coming under these Conventions would lose, under the new Convention, a right which was made available to them by the earlier ones.

nationality on the basis of customs unions, political and economic associations founded on geographical or historical connections. It may be held that some qualification should be made to the original formula concerning reciprocity, as included in the Conventions of 1933 and 1938, in order to overcome any misinterpretation which may lead to the belief that an article concerning the exemption from reciprocity might have as a consequence the legal entitlement for refugees to the benefits of preferential treatment.

"18. It is suggested that this danger could be overcome by giving each contracting party the possibility of indicating, at the time of signature or subsequently, any rights and benefits accorded to aliens as a result of preferential treatment which shall not be accorded to refugees.

"19. A further point which might be made is that although it is stated on page 41 of the comments that the "exemption from reciprocity relates not only to rights and benefits specifically covered by the draft Convention (Articles 8, 13, 14 and 16)....", nevertheless, in countries where the enjoyment of these rights is specifically subject to treaty arrangements, there may be some doubt whether the wording of Article 4 meets the intention of the Committee.

"20. For all these reasons it is suggested that Article 4 should be amended to read:-

"The enjoyment of certain rights and the benefit of certain favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity."

"This provision applies equally to rights and benefits explicitly referred to in the present Convention, including those specifically referred to in Articles 8, 13, 14 and 16, as well as to rights and benefits not referred to in this Convention."²⁾

2) This second paragraph would only be necessary if the present wording of Articles 8, 13, 14 and 16 were retained.

"Each Contracting State may at the time of its accession to the present Convention indicate, by communication to the Secretary-General, rights and benefits accorded to aliens as a result of preferential treatment to which the provision of paragraph 1 shall not apply."

"Each Contracting State may also indicate, by communication to the Secretary-General, any rights and benefits accorded to aliens as a result of preferential treatment subsequent to their accession to the present Convention to which the provision of paragraph 1 shall not apply."

Article 5

Exemption from exceptional measures

("With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State, solely on account of such nationality.")

United Kingdom

"Article 5. His Majesty's Government would be unable to accept this article unless it were amended to preserve the right of the Contracting States to submit refugees of a particular nationality to detention or any other recognized measure of control in the same way as other aliens of that nationality, if it should be considered necessary to the security of the state to do so in a time of national crisis.

"His Majesty's Government observe that this article is based on article 44 of the Geneva Convention of 12 August, 1949, on "the Protection of Civilian Persons in time of War". His Majesty's Government made it clear to the Geneva Conference that they accepted the provisions of that article on the understanding that it was the intention of the Conference (as stated by the Rapporteur) that the article should be no more than a recommendation and on the basis that it could not in any way affect the right mentioned above."

Article 6

Continuity of residence

("The Contracting States agree that:

"1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is residing there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory;

"2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has subsequently returned there, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.")

Austria

"In accordance with the Austrian nationality law the length of residence as required for the purpose of naturalization is counted from the date of the liberation of Austria, as a rule which applies also to persons who have been forcefully removed from another country and brought to Austria. This finds its well-founded explanation in Austria's special situation since the Federal Government of Austria was not able to exercise its power on Austrian territory before that date."

Article 7

Personal status

("1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

"2. Rights acquired under a law other than the law of the country of domicile or residence of a refugee, more particularly rights attaching to marriage, shall be respected, subject to compliance, if this be necessary, with the formalities prescribed by the law of the country of his domicile, or, if he has no domicile, by the law of the country of his residence.")

Austria

"Experience has shown that it is often not only difficult to ascertain the nationality of a refugee but also to determine his domicile. It is suggested that the provisions of par. 1 of this article be based not on domicile but on "habitual residence", or, failing this, on "residence".

"It will be noticed that the term "habitual residence" is applied also in Art. 11, par. 2 of the Draft Convention."

United Kingdom

"Article 7. His Majesty's Government are of the opinion that paragraph 2 of this article is unsatisfactory, since

- "(a) It is not limited to rights dependent on personal status; and
- "(b) It does not give effect to the ad hoc Committee's intentions as explained on page 45 of the report. It is there made clear that it is not intended that the law of a state which would not have recognized a certain situation had the person not become a refugee should be required to do so on his becoming a refugee.

"His Majesty's Government also observe that as drafted the paragraph does not give protection in the country of refuge to a refugee who has not lost his former domicile."

Article 8

Movable and immovable property

("The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.")

International Refugee Organization

Articles 8, 13, 14, 16

"21. In all these articles the treatment to be accorded to refugees is "treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances",

"22. In the intention of the Ad Hoc Committee as is shown by the comment on Article 8 on page 46 of the Annex to E/1618, it is stated that this formula "is intended to ensure that refugees will, regardless of reciprocity, be treated at least as well as other aliens.....". In the opinion of the Director-General the same difficulties apply to the interpretation of the word "generally" in this formula as have been outlined in the interpretation of the word "generally" in article 4. In countries where the rights of aliens in the matters referred to in these articles depend on reciprocity arising out of treaty arrangements it is doubtful whether the formula as it now stands would ensure any rights for refugees.^{3/}

^{3/} This is especially the case in respect of a number of French laws dealing with the subject matters of these articles.

- | | |
|--|--|
| a) <u>Commercial property:</u> | Law of 30 June 1926 (amended by the Law of 22 April 1927) Art. 19. |
| b) <u>Rent Control:</u> | Law of 28 May 1933, Arts. 1 & 2,
Law of 26 September 1939, Art. 25. |
| c) <u>Agricultural tenancies:</u> | Ordinance of 17 October 1945, Arts. 6, 1
as amended by Law of 13 April 1946. |
| d) <u>Exercise of Commercial and Industrial Occupations and of Crafts:</u> | Decree of 17 June 1938, Art. 1
Decree of 2 February 1933, Arts. 1, 2, 5
Decree of 18 October 1940. |

"23. A further difficulty arising out of the formula "treatment accorded generally to aliens in the same circumstances" is that in many countries it is not possible to speak of general treatment in relation to self-employment, exercise of the liberal professions and housing. These matters are frequently subject to administrative regulations which are often framed with other objects in view than distinction between nationals and aliens, e.g. service in national armies, local residential qualifications, etc., or leave much discretion to the competent authorities.

"24. The Director-General, therefore, is of the opinion that further consideration should be given to the use of the above-mentioned formula in these articles and suggests that a formula should be found for each of the subject matters dealt with in these articles which would take account of the special circumstances relating to the legal regulation of each of these matters. For instance, in many countries aliens have the same property rights as nationals. In view of the desirability that refugees should be assimilated as quickly as possible into the economic life of their country of residence, refugees should be granted the same property rights as nationals subject to any special regulations excluding aliens, based on security considerations, e. g. property in frontier or strategic areas, government or central bank bonds, shares of shipping companies, mines, etc."

Article 9

Artistic rights and industrial property

("In respect of literary, artistic and scientific rights, and of industrial property such as patents, designs, models, licences, trademarks, trade names, etc., the Contracting States shall accord to refugees the most favourable treatment accorded to nationals of foreign countries.")

France

Article 9. This article is less liberal than the French proposal, which provided for the same treatment as accorded to French nationals. Further, it makes no mention of unfair competition or the suppression of false marks of origin. Finally it mentions both brevets and patentes, the latter being apparently given

as the translation of the English word "patent". This is obviously a mistake as a patente in French is a tax and not an industrial property right.

United Kingdom

"Article 9. His Majesty's Government cannot agree to accord to refugees in respect of these matters the most favourable treatment accorded to nationals of foreign countries. They would, however, be prepared to consider sympathetically the possibility of according refugees the same protection as the nationals of the country in which they are resident, subject to the same conditions and formalities as apply to such nationals."

Article 10

Right of Association

("As regards non-profit making associations and trade unions the Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of foreign countries.")

Austria

"The general recognition of the right of refugees to form associations could readily cause strained or aggravated relations between the countries of residence and those of origin. It would be preferable, therefore, to leave as a matter of principle to the administrative authorities of the country of refuge the decision as to the right of refugees to form associations."

Article 11

Access to Courts

"1. A refugee shall have free access to the courts of law in the territory of the Contracting States.

"2. In the country in which he has his habitual residence, a refugee shall enjoy in this respect the same rights and privileges as a national. He shall, on the same conditions as a national, enjoy the benefit of legal assistance and be exempt from cautio judicatum solvi.

"3. In countries other than that in which he has his habitual residence, a refugee shall be accorded in these matters the treatment granted to a national of the country of his habitual residence.")

Austria

"As regards grants of public assistance to indigent persons (Armenrecht) and the exemption from the cautio judicatum solvi mentioned under "Same rights and privileges", it is suggested that these provisions be given the form of a recommendation.

"In this connexion, it may be mentioned that refugees change their residence more frequently than other persons, even if they have their habitual residence on the national territory or in a foreign State which grants reciprocity in this respect."

Article 12

Wage-earning employment

"1. The Contracting States shall accord to refugees lawfully in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

"2. In any case, restrictive measures imposed on aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence;
- (c) He has one or more children possessing the nationality of the country of residence.

"3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees in this regard to those of nationals, and in particular those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.")

AustriaParagraph 1

"The application of the most favoured nation clause in the planned general form would meet, in Austria, with the difficulties indicated in article 4. The number of persons to whom the most favoured nation clause applies is as a rule relatively small. Since Austria has hundreds of thousands of refugees, their automatic inclusion in a most favoured nation clause which Austria would be prepared to grant to another State, would make it impossible for Austria to conclude such agreements in the future.

Paragraph 2

"The great number of refugees in Austria does not permit placing them on an equal footing with Austrian nationals in matters of employment. In the case of Austria periods of residence to be required as a basis for a favourable treatment of refugees would have to be much longer. It should be required, moreover, that the refugees adjust themselves successfully during this period to the economic life of the country of refuge.

"Instead of the proposed form of Article 12 it is suggested, therefore, to leave detailed administrative regulations of matters of employment to the country of refuge, while stressing a most favourable treatment of refugees as a matter of principle."

France

Article 12. As this article stands at present, the French Government would be obliged to reserve the right to apply the law of 1932 providing for the possible limitation to a certain percentage of the number of foreigners working in the same concern.

Italy

See Section IV of Italian comments in A - page 14.

United Kingdom

"Articles 12 and 13. While His Majesty's Government will consider sympathetically the possibility of relaxing the conditions upon which refugees have been admitted to the United Kingdom for employment since the war, they regret that for the reasons which were explained fully to the ad hoc Committee it is not possible to go so far as the articles propose.

"In particular, they would draw attention to the fact that the principle in paragraph 2(c) of article 12 would operate quite differently as between countries whose nationality laws are based on the jus sanguinis and those whose laws are based on the jus soli; in the latter countries its operation would be quite capricious, and even if His Majesty's Government were able, at some time in the future, to accept the general provisions of the article, they could not accept this particular provision."

Article 13

Self-employment

("The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded generally to aliens in the same circumstances, as regards the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies).

Lebanon

See paragraph 2 Lebanese comments in A - page 16

United Kingdom

See comments on Art. 12 - page 44

International Refugee Organization

See comments on Art. 8 - page 39

Article 14

Liberal professions

"1. The Contracting States shall accord to refugees lawfully resident in their territory who hold diplomas recognized by the competent authorities of the country of residence, and who are desirous of practising a liberal profession, treatment as favourable as possible, and in any event, not less favourable than that accorded generally to aliens in the same circumstances.

"2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in their colonies, protectorates or in Trust Territories under their administration."

Lebanon

See paragraph 2 Lebanese comments in A - page 16

International Refugee Organization

See comments on Art. 8 - page 39

Article 15

Rationing

("Where a rationing system exists, refugees shall be treated on the same footing as nationals.")

No comments.

Israel

See paragraph (b) of Israeli comments in A - page 19

Article 16

Housing

("As regards housing, the Contracting States in so far as the matter is regulated by laws or regulations, or is subject to the control of public authorities, shall accord to refugees lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded generally to aliens in the same circumstances.")

International Refugee Organization

See comments on Article 8 - page ,....,

Article 17

Public education

"1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

"2. The Contracting States shall accord to refugees the most favourable treatment accorded to nationals of a foreign country with respect to other education and in particular as regards the remission of fees and charges and the award of scholarships."

Austria

"It is suggested incorporating into the text itself of the Convention the provisions listed in the footnotes, by which this article is restricted to "education provided by public authorities from public funds, and to any education subsidized in whole or in part by public funds, or to scholarships derived from them". This could be done by the addition of a third paragraph, considering, moreover, that the title of the Article "Public education" will not appear in the final text of the Convention.

Israel

See paragraph (b) of Israeli comments in A - page 10.

United Kingdom

"Article 17. In regard to the award of scholarships and the other matters dealt with in paragraph 2 of this article, His Majesty's Government would be prepared (as in the case of other matters dealt with in the Convention), to accord to refugees treatment not less favourable than that accorded generally to aliens in the same circumstances. They cannot, however, bind themselves to accord to refugees the most favourable treatment accorded to nationals of any foreign country."

Article 18

Public relief

("The Contracting States shall accord to refugees lawfully in their territory the same treatment with respect to public relief and assistance as is accorded to nationals.")

Austria

"It would be financially impossible for Austria to place all refugees on an equal footing with Austrian nationals in matters of welfare, because of the extremely large number of refugees, as stated in the comments to article 4. ^{1/}

Article 19

Labour legislation and social security

("1. The Contracting States shall accord to refugees lawfully in their territory the same treatment as is accorded to nationals in respect of the following matters:

"(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours to work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons and the enjoyment of the benefits of collective bargaining;

"(b) Social security (legal provisions in respect of employment injury, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency, which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

"(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

"(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

^{1/} (See above, paragraph 2 in A.)

"2. Contracting States whose nationals enjoy the benefits of agreements for the maintenance of acquired rights and rights in the process of acquisition in regard to social security, shall extend the benefits of such agreements to refugees subject only to the conditions which apply to nationals.

"3. Contracting States will give sympathetic consideration to extending to individual refugees so far as possible the benefits of similar agreements which may have been concluded by such Contracting States with the country of the individual's nationality or former nationality.")

Austria

"1a). As to wages, working hours, overtime, paid vacation, limitation of work performed at home, minimum age, labour of women and minors, and collective bargaining, Austrian labour law and regulations do not discriminate between nationals and aliens.

"As far as the admission of a refugee to apprenticeship is concerned, placing of refugees and nationals on an equal footing cannot be considered as a general rule as long as the number of refugees living in Austria has not substantially decreased. Whenever refugees are admitted to apprenticeship, the same rules and regulations concerning apprenticeship apply to them as to Austrian apprentices.

"1b). The regular benefits of unemployment insurance are given to refugees and nationals without any discrimination. The emergency help (Notstandshilfe), however, which is derived in part from public funds and which can be granted under certain conditions after the right to unemployment payments (Arbeitslosengeld) had expired, is, as a matter of principle, granted to nationals only. Though a few exceptions are made to this provision in favour of refugees, the financial position of Austria does not permit the inclusion of refugees in this category on the basis of equality with nationals.

"The Federal Government of Austria, therefore, suggests replacing in Article 19 1(b) (ii) the phrase "payable wholly out of public funds" by "payable wholly or partially out of public funds"."

United Kingdom

"Article 19. His Majesty's Government are continuing to examine this article with particular reference to their existing international obligations so far as these may have a bearing on paragraphs 2 and 3. They will probably find it necessary to make certain reservations if the article remains in its present form when the Convention is opened for signature".

International Refugee Organization

"25. The Director-General of the IRO notes that in the comment (page 50) on Article 19 the Ad Hoc Committee agree "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".

"26. In view of the difficulties which IRO has experienced in cases of this kind the Director-General suggests that it would be appropriate to include in article 19 of the Convention, a paragraph to this effect. The dispensation of a residential qualification^{4/} is of particular importance to refugees whose families are often split in their search for re-establishment in a country other than their country of origin."

Article 20

Administrative assistance

"1. The Contracting States in whose territory the exercise of a right by aliens would normally require the assistance of the authorities of his country of nationality shall arrange that such assistance be afforded to refugees by an authority or authorities, national or international.

"2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to other aliens by their national authorities.

^{4/} Cf. Article I of Convention No. 19, Equality of Treatment (Accident Compensation) adopted by the International Labour Conference of 1925, which exempts foreigners and their dependents from a residential qualification.

"3. Documents or certifications so delivered shall stand in the stead of and be accorded the same validity as would be accorded to similar instruments delivered to aliens by their national authorities.

"4. Subject to such exceptional treatment as may be granted to indigent refugees, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.")

United Kingdom

"Article 20. Experience has shown that there is no need in the United Kingdom for special arrangements of the kind mentioned in this article."

Article 21

Freedom of movement

("The Contracting States shall accord to refugees lawfully in their territory the right to choose their place of residence and to travel freely within their territory, subject to any regulations applicable to aliens generally in the same circumstances and to the conditions under which such refugees were admitted.")

Austria

"This provision could not be applied in Austria for the time being without the consent of the occupying powers because of the demarcation lines instituted by them.

"It is understood from the text of this article that each of the Contracting States has the right to apply to refugees provisions usually applied as conditions for the admission of foreign workers into the State."

United Kingdom

"Article 21. His Majesty's Government could accept this article only on the basis that it does not in any way affect the right of the Contracting States

to restrict the movement of refugees of a particular class or nationality if it should be considered necessary to the security of the state to restrict the movement of aliens of that class or nationality in a time of national crisis".

Article 22

Identity papers

("The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document issued pursuant to article 23.")

Austria

"The Federal Government of Austria is not, for the time being, in a position to commit itself as regards the application of these provisions, since the authorities of the Federal Republic of Austria would need the unanimous approval of the occupying powers for the establishment of travel documents for stateless persons".

Chile

Article 22 provides that refugees who do not possess a valid travel document, shall be issued with identity papers. Article 23 lays down the form and conditions of issue of these so-called travel documents. Chile, however, already has a special passport which is issued not only to refugees, but to any other foreigner not in possession of the usual documents. This passport is issued for the specific purpose of facilitating travel (see Passport Regulations established by Decree No. 315 of 25 January 1937, Page 336 of Consular Regulations and Legal and Administrative Provisions concerning the Consular Service, Santiago de Chile, 1937). There would in consequence be no advantage in replacing our present legislation by the provisions of the proposed Convention.

Article 23

Travel documents

"1. The Contracting States shall issue, on request, to a refugee lawfully resident in their territory, a travel document for the purpose of travel outside their territory; and the provisions of the Schedule to this Convention shall apply with respect to such document. The Contracting States may issue such a travel document to a refugee not lawfully resident in their territory.

"2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article."

Austria

See comments on art. 22 - page 51 .

Chile

See comments on art. 22 - page 51

Italy

See Section III of Italian comments in A - page 13

Article 24

Fiscal charges

"1. The Contracting States shall not impose upon refugees in their territory duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

"2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents.

"3. The Contracting States reserve the right to impose upon refugees a special duty payable either on identity cards, or residence permits or on travel documents. Revenue accruing from this duty shall be wholly applied to charities for the relief of refugees.")

Chile

It is stated in Article 24 that the Contracting States reserve the right to impose upon refugees a special duty the revenue from which shall be wholly applied to charities for the relief of refugees. It would not appear that any useful purpose would be served by the levy of a special tax for the above mentioned object, since refugees, like any other foreigner, are entitled to the social assistance benefits provided by our domestic legislation.

Article 25

Transfer of assets

"1. A Contracting State shall, in conformity with its laws and regulations, permit a refugee to transfer assets which he has brought with him into its territory to another country where he has been admitted for the purposes of resettlement.

"2. The Contracting States shall give sympathetic consideration to the application of a refugee for permission to transfer assets wherever they may be and which are necessary for his resettlement to another country where he has been admitted.

No Comments.

Article 26

Refugees not lawfully admitted

"1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

"2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country").

Chile

Article 26 provides that the penalties for illegal entry into the territory of a Contracting State shall not apply in the case of refugees. Such a regulation is not only superfluous, but might easily lend itself to abuses of all sorts and, in some cases, prevent the enforcement of special laws, enacted for the protection of public order, and the security of democratic institutions. If the authorities permit a foreigner whose life or liberty is endangered by political, racial or religious persecution, to enter the country in order to escape such persecution, they will unquestionably refrain from imposing penalties or sanctions on him for failure to produce the documents usually required from those entering the territory of the State. However, each case must be judged on its merits and the establishment of a general single principle which might paralyse the enforcement of laws, essential for the defence of the state, public health or good morals, would not be acceptable (see Articles 24, 25, 26, 27 and 28 of the Law for the Permanent Defence of Democracy, "Official Gazette", 18 October 1948)

Lebanon

(See para. 2 of Lebanese comments in A page 16)

United Kingdom

"Article 26. See sub-paragraph (a) of the comment on paragraph 3 of article 27." (page 57)

Article 27

Expulsion of refugees lawfully admitted

("1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law.

"2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

"3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.")

Austria

"It is assumed that "due process of law" covers not only the procedure before the courts, but also before the administrative authorities and the police".

Canada

"It is noted that paragraph 1 of Article 27 states: "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order". The question arises whether the term 'public order' is intended to cover the deportation of aliens convicted of offences under legislation similar to the Opium and Narcotic Drugs Act of Canada. This Act provides for the mandatory deportation of aliens convicted of offences under the Act."

Chile

Article 27 lays down that in the case of the expulsion of a refugee, the Contracting State concerned shall allow such refugee a reasonable period within which to seek legal admission into another country. This provision might give rise to serious difficulties as regards the enforcement or implementation of the decision taken by the competent authority and might even nullify or render it inoperative, should the person to be expelled not be able to find another country willing to accept him in the normal manner. It should also be taken into consideration that article 28 limits the countries to which the expelled person may be sent, since it provides, and rightly so, that he may not be expelled to countries where he might be persecuted for political, racial or religious reasons.

France

Article 27, paragraph 2, first line. The words "due account being taken of" should be substituted for the words "in accordance with". This modification would make the text more flexible and cover urgent cases which might require a simpler procedure.

Lebanon

See paragraph 2 of Lebanese comments in A - page 16

United Kingdom

"Article 27. With regard to paragraph 2 of this article, the established law and procedure in the United Kingdom is, as was explained to the ad hoc Committee, that no alien lawfully resident can be deported save under an Order made personally by the Secretary of State. An alien in respect of whom a Deportation Order is to be made has an opportunity to make representations to the Secretary of State. There is also the remedy of habeas corpus, which is as accessible to the alien as to the British subject and which protects the alien from unlawful action and from mistakes in identity to which the Committee referred. His Majesty's Government could not, however, undertake that any alien should have the right to appear or to be represented before the Secretary of State personally.

"His Majesty's Government accept in principle the provisions of paragraph 3 of the article, but desire to make the following observations:

"(a) In considering the practical interpretation in this paragraph His Majesty's Government will be bound to have regard to the alien's prospects of obtaining admission to another country; and they cannot undertake to defer deportation indefinitely where it is obvious that the alien is not likely to succeed within a reasonable period in obtaining admission to the country to which he seeks to go.

"(b) In any case where a refugee is returnable to a country where he has no reason to fear persecution, His Majesty's Government would not be prepared to defer his deportation beyond the date when his returnability to that country expires."

Article 28

Prohibition of expulsion to territories where the life or freedom
of a refugee is threatened

("No Contracting State shall expel or return, in any manner whatsoever, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or political opinion.")

United Kingdom

"Article 28. His Majesty's Government will continue to act, as they have done in the past, in the spirit of this article. They have in mind, however, certain exceptional cases, including those in which an alien, despite warning, persists in conduct prejudicial to good order and government and the ordinary sanctions of the law have failed to stop such conduct; or those in which an alien, although technically a refugee within the meaning of article 1 of the Convention, is known to be a criminal. In such and similar exceptional cases His Majesty's Government must reserve the right to deport or return the alien to whatever country is prepared to receive him, even though this involved his return to his own country."

Article 29

Naturalization

("The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.")

Austria

"Because of the exceedingly large number of refugees in Austria^{1/} in proportion to Austrian nationals, the "assimilation and naturalization" of all refugees living in Austria cannot be guaranteed."

Chile

Article 29 provides for special facilities for the naturalization of refugees, either by expediting the naturalization proceedings, or by a reduction in the charges and costs of such proceedings. Such exceptional treatment would not appear to be based on a just appraisal of the situation of a foreign refugee as compared with that of a foreigner not in that category. Indeed, a refugee arrives in the country by chance, and in many instances only because he was not able to go anywhere else at the time when he was forced to leave his own country or the country of his former residence. As against this, other foreigners come to the country of their own choice and to contribute their labour or capital. There would not appear to be any justification for placing such people in a position of manifest inferiority as compared with refugees. It would therefore seem more equitable to treat them both on the same basis and to subject them to the provisions of the same laws. Exceptional treatment would in any case infringe the provisions of Supreme Decree No. 3690 of 16 July 1915 on the naturalization of foreigners, the provisions of which have hitherto been enforced without difficulty, and without departure from the strict standards of justice and equality, in all cases to which they are applicable.

^{1/} See above, paragraph 2 in A.

Italy

See Section IV, paragraph 2 of Italian comments in A - page 14 .

Article 30

Co-operation of the national authorities with the United Nations

"1. The Contracting States shall maintain contact with the agencies charged by the United Nations with the international protection of refugees such as the United Nations High Commissioner for Refugees and shall facilitate their work.

"2. In order to enable such agencies to make reports to the competent organs of the United Nations, the Contracting States shall provide them in the form prescribed with date, statistics and information concerning:

- "(a) The condition of refugees,
- "(b) The implementation of this Convention, and
- "(c) All regulations, laws, decrees, etc., made by them concerning refugees."

United States

"Tentatively it is proposed that paragraph 1 of Article 30 be revised to read as follows:

"The Contracting States undertake to co-operate with the United Nations High Commissioner's Office for Refugees, or any successor agency charged by the United Nations with the international protection of refugees, in the function of supervising the application of the provisions of this Convention."

"The beginning of paragraph 2 of this article should be revised to read:

"In order to enable the High Commissioner's Office or any successor agency of the United Nations to make reports to the competent organs of the United Nations, the Contracting States undertake to

provide them in the form prescribed with any date, statistics, and information requested concerning (etc.)."

Article 31

Measures of implementation of the Convention

("Each of the Contracting States shall, within a reasonable time and in accordance with its constitution, adopt legislative or other measures to give effect to the provisions of this Convention, if such measures are not already in effect.")

United Kingdom

"Article 31. It is not the practice of His Majesty's Government to ratify or accede to any Convention unless and until they are satisfied that their legislation and administrative arrangements are in conformity with the provisions of the Convention. In the opinion of His Majesty's Government this is the proper principle to be followed in international relations, and they cannot accept this article."

Article 32

Relation to previous Conventions

"1. Without prejudice to article 23, paragraph 2, of this Convention, this Convention replaces the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 June 1935, the Conventions of 28 October 1933 and 10 February 1938, and the Agreement of 15 October 1946, as between all parties to this Convention.

"2. As between two States parties to a previous instrument mentioned in paragraph 1 of this article, one of which is not party to this Convention, the previous agreement shall continue in force.

"3. Each of the above-mentioned instruments shall be deemed to be terminated when all the States parties thereto shall have become parties to this Convention.")

No comments.

Article 33

Settlement of disputes

("If any dispute shall arise between parties to this Convention relating to its interpretation or application, and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice.")

No comments.

Article 34

Signature, ratification and accession

"1. This Convention shall be open until ... (one year after the Convention is opened for signature) for signature on behalf of any Member State of the United Nations and on behalf of any non-member State to which an invitation has been addressed by the Economic and Social Council.

"2. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. The States mentioned in the first paragraph which have not signed the Convention by the ... (date indicated in the first paragraph) may accede to it.

"Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.")

No comments.

Article 35

Colonial clause

"1. Any State may, at the time of signature, ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall extend to all or any of the territories for the international relations of which it is

responsible. This Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the day of receipt by the Secretary-General of the United Nations of this notification.

"2. Each State undertakes with respect to those territories to which the Convention is not extended at the time of signature, ratification or accession to take as soon as possible the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

"3. The Secretary-General of the United Nations shall communicate the present Convention to the States referred to in article 36 for transmission to the responsible authorities of:

- "(a) Any Non-Self-Governing Territory administered by them;
- "(b) Any Trust Territory administered by them;
- "(c) Any other non-metropolitan territory for the international relations of which they are responsible. "

No comments.

Article 36

Reservations

(Comment of the Committee on this article:)

("It was generally felt necessary to incorporate a reservations article in the draft convention but there was disagreement as to its scope. The Committee decided that in drafting such an article the comments of the Governments must be the determining factor. No text has been provided, therefore, for article 36, which should be drafted and incorporated in the Convention at a later stage after the comments of Governments have been received.

"The Committee hoped that there would be few reservations. It was the opinion of the Committee that Governments might not find it necessary to

reserve an article as a whole when it would be sufficient to reserve exceptional cases or special circumstances in connexion with the application of that article.")

Austria

"Austria's special situation with regard to refugees and the fact that Austria is occupied would render it imperative to utilize to a great extent the right to make reservations as provided for in the first paragraph of this article.

"In the light of the foregoing comments the Federal Government of Austria could hardly consider waiving its right to make reservations to articles 1 and 23."

United Kingdom

"Article 36. Inasmuch as the Convention is not one in which in return for certain benefits a State undertakes certain obligations, but is more in the nature of a declaration made in favour of a third party, the Contracting States should, in the opinion of His Majesty's Government, be enabled to reserve fully their position in relation to any of the articles other than article 1."

United States

"The United States agrees with the decision of the Ad hoc Committee that a reservations provision should be inserted after the governments have indicated which are the provisions with regard to which they may find it necessary to make reservations."

Article 37

Entry into force

("This Convention shall come into force on the ninetieth day following the day of deposit of the second instrument of ratification or accession.

"For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention

shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.")

No comments.

Article 38

Denunciation

"1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations.

"2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

"3. Any Contracting State which has made a declaration under article 35, paragraph 1, may at any time thereafter, by a written notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General."

No comments.

Article 39

Revision

("Any Contracting State may request revision of this Convention at any time by a written notification addressed to the Secretary-General of the United Nations.

"The Economic and Social Council shall recommend the steps, if any, to be taken in respect of such request.")

No comments.

Article 40

Notifications by the Secretary-General

("The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 34:

- "(a) Of signatures, ratifications and accessions received in accordance with article 34;
- "(b) Of the date on which this Convention will come into force in accordance with article 37;
- "(c) Of reservations made in accordance with article 36;
- "(d) Of denunciations received in accordance with article 38;
- "(e) Of requests for revision received in accordance with article 39.

"In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments, and of which the Chinese, English, French, Russian and Spanish official texts are equally authentic.

"Done at _____ this _____ day of _____, in a single copy, which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all the Members of the United Nations and to the non-member States referred to in article 34."

No Comments

C.

Suggestions Concerning Additional Articles

Federal clause (undrafted)

("The Committee agreed that the draft convention should contain a clause relating to the application of the Convention in federal States. It was observed, however, that the problem of drafting an appropriate clause for this purpose continued to engage the attention of various organs of the United Nations. Since, by the time the draft convention would be approved, an appropriate clause might have been agreed upon, the Committee did not consider it necessary to propose one at this stage.") (Comments by the Committee on the Draft Convention Annex II, Doc. E/1618, p.62).

Canada

"The inclusion of a satisfactory Federal State clause is, of course, of vital importance to Canada."

D.

Comments on the Draft Resolution Concerning the Elimination
of Statelessness (Document E/1618, paragraph 26)

United States

With regard to the proposed resolution for the elimination of statelessness, the United States believes that the resolution should be addressed not merely to Member States but to all governments. The laws of several non-Member States also contribute in some degree to the existence of statelessness in certain areas of the world and there would seem to be no objection to requesting these governments to cooperate in this regard.

E.

Annexes

Annex I

Communication from the Permanent Representative of Poland Concerning
the report of the Ad Hoc Committee on Statelessness and Related Problems
dated 14 April 1950

"In reply to your note of March 10, 1950 concerning the report of the 'Ad Hoc Committee on Statelessness and Related Questions' I have been instructed by my Government to transmit to you the following:

"On January 16, 1950 at the meeting of the Ad Hoc Committee on Statelessness and Related Questions the delegate of Poland declared that he will not participate in the work of the Committee as long as the representative of the Kuomintang group will be present. Leaving the meeting of the Committee, because of the refusal of the majority of the Ad Hoc Committee to seat a representative of the Central People's Government of the People's Republic of China, the Polish delegate stated that the Government of the Republic of Poland will consider any decisions of the Committee - taken in the presence of the Kuomintang delegate - to be illegal. He further stated that the Polish Government will not be bound by any resolutions accepted by the Committee in which the Kuomintang delegate will take part.

"The Draft Convention on the Status of Refugees and the Protocol on the Status of Stateless Persons were prepared by the Ad Hoc Committee with the participation of the Kuomintang delegate and, therefore the Government of Poland cannot accept the documents in question as United Nations documents. In view of this the Polish Government will not forward any comments on the draft Convention on the Status of Refugees and the Protocol on the Status of Stateless Persons.

"At the same time the Polish Government takes the opportunity to express its opinion that the Resolution accepted by the General Assembly on November 17, 1947 was not implemented by some Governments which cultivate artificial

the 'problem of refugees' and 'statelessness' for some sinister political purposes. If the above mentioned Resolution would have been adhered to by all Governments -- the so-called 'problem of refugees' and 'statelessness' would not exist any more.

"It is further noted that in spite of the Resolution of November 17, 1947 some governments are still conducting a propaganda in refugee camps against repatriation and use refugee groups as means of exciting hostile propaganda against some Member States of the United Nations. These governments are also supporting fascist organisations which are spreading further and acting openly in refugee camps.

"The Polish Government reserves its right to revert to the whole question in the proper organs of the United Nations, composed in accordance with the principles of the Charter.

"I avail myself of the opportunity to renew to you, Sir, the assurance of my highest consideration."

ANNEX II

Note of the Foreign Minister of Bulgaria

"The Minister of Foreign Affairs of the Bulgarian People's Republic has the honour to acknowledge receipt of the communication dated 30 March 1950 by which the Secretary-General of the United Nations transmitted to him the report of the Ad Hoc Committee on Statelessness and Related Problems. At the same time, and at the request of the said Committee, the Secretary-General requested the Bulgarian Government to send him its comments for submission to the eleventh session of the Economic and Social Council.

The Minister of Foreign Affairs regrets to inform the Secretary-General of the United Nations that the Government of the Bulgarian People's Republic feels obliged to refrain from any comment on this subject since the report in question was adopted by the Ad Hoc Committee with the participation of a representative of the Kuomintang which, in the Bulgarian Government's view, has no power to represent China in her international relations."

ANNEX III

(Annex I of the IRO Comments)

RESOLUTION NO. 62

RESOLUTION ON THE PROBLEM OF
INTERNATIONAL PROTECTION

(Adopted at the 71st Meeting on 21 March 1950)

The GENERAL COUNCIL of the International Refugee Organisation,

HAVING NOTED WITH SATISFACTION

the resolution of the General Assembly of the United Nations of 3 December 1949 concerning the establishment of the Office of a High Commissioner for Refugees as from 1 January 1951, and

HAVING GIVEN FURTHER CONSIDERATION

to the problem of affording protection to refugees, under the auspices of the United Nations,

DESIRES TO ADVISE

the Economic and Social Council of its conclusion, based on IRO experience, that certain sections of Parts I and II of Annex I - Definitions - to the IRO Constitution, such as, for example, sub-paragraphs (c), (d) and (e) of Section D of Part I paragraph 6 of Part II no longer appear to be applicable to the furnishing of protection in the light of the present day situation; and that paragraph 2(b) of Part II should be interpreted taking into account the real reasons which have inspired the persons concerned rather than indications of a purely formal nature and

RESPECTFULLY SUGGESTS

to the Economic and Social Council that it give consideration to the adoption of a recommendation to the General Assembly of the United Nations

that the General Assembly instruct the High Commissioner for Refugees,

(1) not to apply these aforesaid provisions of the Definitions of refugees and displaced persons contained in Annex I to the IRO Constitution in the performance of his function of affording protection to refugees;

(2) not to apply any decisions previously made by the General Council or the Administration of the IRO restricting the services of the organisation to refugees and displaced persons, such as the "freeze order" and the datelines which were adopted by the IRO for purely financial or administrative reasons.