Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-first Meeting

Travaux préparatoires, 29 November 1951

Present:

President: Mr. LARSEN
Members:

Australia Mr. SHAW
Austria Mr. FRITZER
Belgium Mr. HERMENT
Brazil Mr. de OLIVEIRA
Canada Mr. CHANCE
Colombia Mr. GIRALDO-JARAMILLO
Denmark Mr. HOEG
Egypt MOSTAFA BEY
Federal Republic of Germany Mr. TRÜTZSCHLER
France Mr. ROCHEFORT
Greece Mr. PAPAYANNIS
The Holy See Archbishop BERNARDINI
Iraq Mr. AL PACHACHI
Israel Mr. ROBINSON
Mr. KAHANY
Italy Mr. del DRAGO
Mr. THEODOLI
Monaco Mr. BICHERT
Baron van BOETZELAER
Netherlands Mr. ANKER
Mr. ARFF
Norway Mr. PETREN
Sweden Mr. SCHÜRCH
Mr. MIRAS
Switzerland (and Liechtenstein) United Kingdom of Great Britain and Northern Ireland Mr. HOARE
Mr. WARREN
United States of America Mr. MONTOYA
Venezuela Mr. MAKIEDO
Yugoslavia Mr. BOZOVIC

(i) Report of the Working Group appointed to study paragraph 13 of the Schedule to the convention relating to the Status of Refugees and the Annex thereto (Specimen Travel Document) (A/CONF.2/95)

The PRESIDENT invited representatives to consider the report of the Working Group on paragraph 13 of the Schedule and on the Specimen Travel Document annexed to that Schedule (A/CONF.2/95).

The Working Group had proposed an alternative text for sub-paragraph 1 of paragraph 13 of the Schedule, and a text to be inserted at the end of paragraph 3 of the Specimen Travel Document. All the members of the Working Group had accepted those two amendments, except the Venezuelan representative, who had reserved his Government's position on the first. The proposed addition to paragraph 3 of the Specimen Travel Document represented a compromise solution, the Italian representative, who had originally proposed the addition, having agreed to make the provision optional instead of mandatory.

In the absence of comment, he put the first of the two proposed amendments to the vote.
The amendment (A/CONF.2/95, paragraph 3) to sub-paragraph 1 of paragraph 13 of the Schedule was adopted by 18 votes to none.

Paragraph 13 of the Schedule was adopted as amended by 18 votes to none.

The Schedule annexed to the draft Convention (A/CONF.2/1, pages 21-23) was adopted as a whole and as amended by 18 votes to none.

Mr. HOARE (United Kingdom) said that, if it were appropriate, he would like to raise a question concerning the Schedule and article 32 (Relation to previous Conventions) of the draft Convention. Reference was made in article 32 to the London Agreement of 15 October 1946, under which travel documents were issued to persons who had been placed under the protection of, inter alia, the Inter-governmental Committee on Refugees and any inter-governmental agency called upon to succeed it. The successor organization was in fact the International Refugee Organization (IRO). Since IRO’s work was due to come to an end shortly certain categories of refugees might have difficulties in future about travel documents.

In those circumstances, he wondered whether the Conference would be prepared to include a recommendation in the Final Act to the effect that governments signatories to the London Agreement of 1946 should continue to issue and recognize travel documents under that instrument until the present Convention came into force. Such a recommendation would be in the interest of refugees, and would also be helpful to administrations, which might otherwise be in some doubt as to the legal position of certain categories of refugees.

If the Conference was prepared to consider his suggestion, he would in due course submit an appropriate text.

Mr. HERMENT (Belgium) wholeheartedly supported the United Kingdom suggestion. He desired, however, confirmation of one point; to his mind, it was a question of a recommendation to States which were not parties to the London Agreement of 1946. States parties to that agreement would in fact remain bound by its provisions.

The PRESIDENT ruled that the subject should be considered when the Conference came to examine the Final Act.

Mr. MONTOYA (Venezuela) said that since the adoption of the Working Group’s report on paragraph 13 of the Schedule and the Specimen Travel Document, the delegations of the three Latin American countries represented at the Conference had met and examined the amendments proposed in that report. He was now in a position to state that he was completely satisfied with those amendments and accordingly withdrew his reservation mentioned in paragraph 4 of the report.

Mr. SCHÜRCH (Switzerland) wished to raise two points of detail in connexion with the Specimen Travel Document. He noted that it was proposed to refer to the draft Convention on the cover of the booklet as well as on the first page. That point might perhaps be left to Contracting States. Further, would the letter be able to make any changes to the proposed text? In the
case of countries, such as his own, where an official document had to be printed in three languages, certain adjustments might be necessary.

The PRESIDENT assumed that the Swiss representative would be satisfied if his observations were reported in the summary record of the meeting, it being stated therein that no representative had objected to them.

Mr. SCHÜRCH (Switzerland) agreed.

The text (A/CONF.2/95, page 2) proposed by the Working Group for insertion at the end of paragraph 3 of the Specimen Travel Document was adopted by 22 votes to none.

The Specimen travel document annexed to the Schedule to the Draft Convention (A/CONF.2/1, pages 24-27) was adopted, as amended, by 22 votes to none.

(ii) New Article proposed by the Yugoslav Delegation (A/CONF.2/96)

Mr. MAKIEDO (Yugoslavia) said that throughout the Conference the Yugoslav delegation had endeavoured to do everything in its power to further the adoption of a convention which would help solve the refugee problem. But, in its view, the best possible convention would not be able to do so unless all possible causes of international friction arising from that problem were eliminated. The Yugoslav proposal (A/CONF.2/96) took into account the difficulties of the present international situation and the urgent necessity for preserving peace. That proposal was to some extent influenced by Yugoslavia's experiences in the recent past and at the present time when, on the one hand, a handful of refugees was being allowed to indulge in activities hostile to their country of origin, while, on the other, Yugoslav nationals were being prevented from returning home. As a result, a special and artificial category of refugees had been created. The Yugoslav delegation was convinced all States earnestly desired to reduce the number of refugees, and would accordingly consider favourably a proposal which sought to provide machinery whereby any policies tending to prevent repatriation might be checked. Nor should the numbers of refugees be unnecessarily swollen by the incitation of the nationals of one country to seek refuge in another. Measures should be taken against such activities.

The carrying-on by refugees of activities hostile to their country of origin inevitably created friction between neighbouring States. It was not the purpose of the proposed new article to forbid all political refugee organizations, but only such as did in fact carry on activities hostile to the refugees' country of origin.

Finally, the Yugoslav Government believed that the preservation of peace was hardly likely to be assisted by the formation of special military units made up of refugees. It therefore proposed that such units be forbidden, since their existence might act as a provocation and, in an atmosphere of strained international relations, lead to conflict. He hoped that his proposal would be sympathetically considered and supported by the Conference.
Mr. FRITZER (Austria) appreciated the intentions of the proposed new article, particularly the principle enunciated in the first sentence. As to the remainder of the text, he must point out that it might give rise to constitutional difficulties in respect of existing guarantees of the freedom of opinion, of the press and of association. Therefore, before it could vote on it, the Austrian delegation would have carefully to consider the constitutional implications of the proposed new article.

Mr. ROCHEFORT (France) did not doubt the excellence of the intentions which had prompted the introduction of the Yugoslav proposal (A/CONF.2/96). He regretted, however, that he was not in a position to accept it. Analysis of its various points showed, in fact, that its inclusion in the draft Convention might entail dangerous consequences. Thus, for example, the proposal laid down that Contracting States should forbid all activity aimed at "inciting the nationals of other countries to seek refuge". It might be asked whether a broadcast which included perfectly objective and truthful news, which demonstrated to refugees that they would find in a certain State more humane and more respectable living conditions than they enjoyed in their own, might not be considered as forming an incitement "to seek refuge", even if the purpose of the broadcast was purely informative. Again, States were called upon not to prevent voluntary repatriation. The French delegation could not agree to such a recommendation, not because it did not approve of its principle, but precisely because if it voted in its favour that would imply that France undertook to abandon practices which it had in fact never indulged in. At Lake Success the French delegation had been accused much too sharply – and how wrongly – of putting obstacles in the way of the repatriation of refugees to be able to accept such a text. Needless to say, the French Government would continue in the future, as it had done in the past, to allow refugees complete freedom in that respect, while still hoping that certain States would grant the same privilege to French nationals in their territory, whose repatriation was unfortunately at present being prevented.

The Yugoslav amendment also forbade all activity designed "to exploit the difficult position of refugees". To adopt such a provision would be tantamount to admitting that such an activity might have existed; such a hypothesis was unacceptable to France.

Mr. HOARE (United Kingdom) said that the United Kingdom's position was identical with that of France, and that his delegation would be obliged to oppose the Yugoslav proposal for the reasons which the French representative had given reasons which were applicable to a great many countries.

There would be real danger in adopting what was in effect a provision prohibiting certain practices which were supposed to exist or to be likely to come into existence in the future. For to do so would amount to yielding before certain forms of propaganda aimed at the western European countries; it was impossible to countenance the inclusion of such a provision in the present Convention.
Mr. MAKIEDO (Yugoslavia) wished to remind the French representative that, as the President had said at the preceding meeting with regard to the Federal State clause, the Conference was legislating for the future. For instance, the inclusion in the draft Convention of article 3, on non-discrimination, did not suggest that discrimination was in point of fact at present being practised. The Yugoslav Government knew from its own experience that the practices referred to in the text of the proposed new article (A/CONF.2/96) existed. If no such article was included in the Convention, he feared that the Yugoslav Government might find it difficult to accede to it.

Mr. THEODOLI (Italy) considered that not only did the criminal codes of most countries cover the point raised in the Yugoslav proposal, but that it was already fully met by article 2 of the draft Convention, which referred to the duties of a refugee towards the country in which he found himself. If the Conference wished to re-affirm the principle laid down in the first sentence of the proposed new article, the appropriate place to do so was surely in the preamble.

Mr. ROCHEFORT (France) recalled that at Lake Success the Yugoslav delegation had succeeded in convincing everyone that refusal to repatriate certain refugees was not a measure of which Yugoslavia could be supposed capable, but that, on the contrary, certain States had forcibly detained Yugoslav citizens in their territories.

The French delegation fully appreciated the anxieties of the Yugoslav Government, and associated itself entirely with the position of the Yugoslav delegation. It wished, however, to point out that the text of the Convention as a whole was to be viewed in the light of decisions taken by the United Nations, particularly in connexion with the Statute of the Office of the High Commissioner for Refugees. That Statute indicated – in a preambular paragraph which the French Government had proposed should be inserted – that the solution of the problem of refugees lay in the voluntary repatriation of the persons concerned, or, if necessary, their assimilation within national communities. To relieve the anxieties of the Yugoslav delegation, the French delegation thought that the first sentence of the Yugoslav proposal might be inserted in the preamble to the draft Convention, together with a provision calling attention to the passage in the Statute of the High Commissioner’s Office to which he had referred.

Such a formula would satisfy the Yugoslav delegation, and would meet the desire of the French people for the repatriation of French nationals at present detained against their will in certain countries.

Mr. THEODOLI (Italy) said that if the French representative made a formal proposal to the effect that the first sentence of the Yugoslav proposal be included in the preamble to the draft Convention, he would be prepared to support it.

Mr. MAKIEDO (Yugoslavia) expressed his thanks to the French representative for his remarks, and asked whether he had any specific proposal to make.
If the Yugoslav proposal was put to the vote, he would ask that each sentence should be voted on separately.

Mr. ROCHEFORT (France) emphasized forcibly how difficult it would be for the Conference to take a decision on the Yugoslav proposal. By voting against it, delegations would seem to be voting against the principles laid down in it, whereas there was in fact no opposition at all to those principles, and the Conference was unanimously agreed that it was essentially a question of good faith.

The French delegation therefore requested the Yugoslav delegation to ponder the difficulties that its proposal presented, and to take action to avert the risk of an unfavourable interpretation being placed on the action of those delegations which would be obliged to vote against it.

Mr. von TRÜTZSCHLER (Federal Republic of Germany) proposed that the vote on the proposed new article be deferred until the Conference took up the Preamble to the draft Convention.

Mr. MAKIEDO (Yugoslavia) agreed to that proposal.

The proposal of the representative of the Federal Republic of Germany was adopted.

(iii) Question of the inclusion of a Federal State Clause (A/CONF.2/90, A/CONF.2/97, A/CONF.2/98) (resumed from the thirtieth meeting)

Mr. CHANCE (Canada) expressed his gratitude to the Israeli representative for his support in the matter of the Federal State clause. The Canadian Government’s position was dictated by constitutional consideration. He would have been able to accept the Israeli proposal (A/CONF.2/90) but he had submitted an alternative text (A/CONF.2/98), because it seemed to meet certain objections that had been raised. He repeated his previous statement that a Federal State clause acceptable to the Canadian Government was essential if that Government was to adhere to the Convention.

With regard to the question of reservations, he had stated at the preceding meeting that at first glance he saw no great objection to the French suggestion that the Federal State clause be qualified by a statement that it should be subject to the provisions of article 36. He feared, however, that such a qualification might weaken the Convention, and might be open to misinterpretation.

There was, unfortunately, nothing else for it but to take the facts as they were, and to rely on the good will of the Federal States in carrying out the provisions of the Convention. He would, however, not oppose the inclusion of a qualifying clause such as that suggested by the French representative if the Conference considered it necessary.

Mr. ROCHEFORT (France) said that the French delegation was casting no doubts at all on the good faith of Federal States. It had been at some pains to emphasize that what was involved was a question, not of good faith, but of reciprocal obligations, which could have repercussions such as the
movement of refugees from one country to another. That was the real problem. The French delegation could not envisage a position in which Federal States would be free to enter whatever reservations they pleased in respect of articles to which unitary States were debarred from entering any reservation at all. Otherwise, what would be the practical scope of a convention, the essential articles of which, such as the one containing the definition of the term "refugee" or the one about which the Israeli representative had spoken at the preceding meeting and which related to fundamental rights belonging to all human beings, were made the subject of far-reaching reservations? The French delegation would therefore like to see the inclusion of a safety clause of a legal nature providing for equality between Federal and unitary States in that respect.

MOSTAFA Bey (Egypt) was under no illusions as to the difficulties which the Federal State clause presented.

He had already expressed his misgivings about the usefulness of a reservations clause, pointing out that such a clause would, in the final analysis, lead to inequalities between the obligations assumed by various Contracting States. To assume unreservedly obligations which other Contracting States undertook only subject to certain reservations would, in the opinion of the Egyptian delegation, be tantamount to signing a blank cheque. The reservations clause would in effect enable certain States to make subsequently reservations capable of affecting the nature of the contractual relationship, or even the implementation of the Convention itself.

The explanations which the Assistant Secretary-General in charge of the Department of Legal Affairs had kindly given at a previous meeting had not convinced the Egyptian delegation. Those explanations might be more accurately described as comments, for the question raised by the Egyptian delegation about the legal treatment of reservations and the possibility of making such reservations at the time of accession remained unanswered.

The Federal State clause created a much more delicate situation. In fact, members of the Conference were being asked to depart from the traditional procedure hitherto followed in the conclusion of multilateral treaties, and to adopt a new one which might amount to interference in the domestic affairs of each Contracting State.

In that connexion, it should be remembered that the Contracting Parties, or to be accurate, the Heads of the States concerned, were listed at the beginning of every treaty; for it was the Heads of States who were bound by the treaty, since the conduct of foreign was usually in their hands. The division of responsibilities for home and for foreign affairs was necessary for legal reasons.

The moment the body responsible for foreign affairs ratified an international treaty, the State was considered duly bound by the provisions of that treaty.
The domestic procedure by which the treaty was handled within each Contracting State was of little importance. Indeed, to go into that would be to exceed the bounds of international relations; it was simply incumbent on each Contracting Party to take the domestic measures required to give effect to properly concluded treaties. It went without saying that if any State ran up against domestic difficulties in the implementation of its international commitments, its international responsibility would be involved.

That was the traditional procedure for concluding treaties, but the Conference was being asked to depart from that procedure without any sound reason being advanced for its doing so. It had been argued that the Conventions negotiated by the International Labour Organisation constituted a precedent. But the methods by which those Conventions were concluded formed an exception in international law, since they were not signed by the representatives who attended the International Labour Conference, since representation there was tripartite, consisting of governmental, employers’ and workers’ representatives. The draft conventions were signed by the President of the Conference and by the Director-General of the International Labour Office, and then transmitted to States for ratification. Thus it was wrong to quote the International Labour Conventions as an example, since they constituted an exception, and did not therefore provide a valid analogy.

In the Egyptian delegation’s opinion, the best solution would be for the Conference to keep to the traditional procedure, the only one which was sound and in accordance with a rational legal approach, and one which had hitherto never been seriously criticized.

Mr. HERMENT (Belgium) shared, to some extent, the Egyptian representative’s concern. In his view, however, it was less a matter of determining the respective advantages that would accrue to federal and unitary States than of establishing the immediate and future scope of the adherence of each Government. That was the unknown quantity which might give rise to certain misgivings, and the Belgian delegation for its part considered that the Conference should proceed in a manner likely to clarify the issue and to result in some certainty about the scope of the instruments of ratification deposited.

Mr. FRITZER (Austria) said that he must reiterate that under the Austrian Constitution a Federal State clause was unnecessary. Neither the Israeli proposal (A/CONF.2/90) nor the United Kingdom amendment thereto (A/CONF.2/97) were acceptable to the Austrian Federal Government as they stood, and he would therefore propose that the following phrase be inserted in sub-paragraph (b) in each case:

"This paragraph shall not apply in a Federal State where the constituent states are, under its constitutional system, obliged to take such legislative action."

The PRESIDENT appreciated the Austrian delegation’s difficulties. It was not opposed to a Federal State clause, which it did not need itself, but was
afraid that a provision expressly referring to provincial authorities could be interpreted as a renvoi to those authorities even in cases where that was not necessary. The same argument might well be voiced by the Governments of the Federal Republic of Germany and of Switzerland. A formula to cover the point was undoubtedly needed.

From the political point of view, only two other possibilities were open: either the Contracting States wished the Federal States to join their community, even though the latter might be unable immediately to obligate themselves to ensure that the Convention would be fully implemented by the provincial authorities, or, alternatively, the Federal States would have to sign only after the necessary internal legislative adjustments had been made in their respective countries.

Mr. ROCHEFORT (France) felt that those delegations which had urged that at least six instruments of ratification should be required to bring the Convention into force had envisaged the application of a fully effective Convention, not the ratification of a text stripped of its substance. Even the deposit of six instruments of ratification would hardly be enough to enable the Convention to be properly applied, if the signatories included one or more States which had adopted the Federal State clause and were not, whether de facto or de jure, able to ensure that the essential provisions of the Convention were applied throughout their territory. Thus, in Europe, for example, a State might play an essential part in the application of the Convention in other territories, on the clear understanding that the Convention would not be implemented in its own territory.

If the Federal State clause were inserted in the Convention, unitary States which were as exposed as France was would have to consider the situation most carefully before they decided to ratify. He emphasized that the question at issue was not that of the application of the Convention within the territory of each State. Most European countries, in fact, already accorded most of the rights stipulated in the Convention. But a situation particularly favourable to refugees would be created in countries which applied the Convention within their territory as the result of an international obligation, and such a situation was likely to attract a host of refugees to that country.

Mr. HOARE (United Kingdom) considered that the Canadian representative’s text was preferable to that of the Israeli proposal, because it kept to the facts of the case and did not attempt to interpret the practice of Governments. He would however wish to consider more closely the implication of the words “legislative jurisdiction” used in both paragraphs of the Canadian amendment.

Turning to the general issue of whether a Federal State clause should or should not be included in the Convention, he would submit that its inclusion would be tantamount to recognition of the fact that by their constitutional structure certain States delegated certain powers to the federal authority and other powers to the provincial authority. If it was desired that Federal States should acceded to the Convention, the Conference must include a Federal State clause in recognition of the fact that the constitutional
position could not be changed. Indeed, that consideration must govern the whole issue.

In his view, the point made regarding reservations was not valid. It was impossible for the Federal States to pledge themselves to the implementation of certain parts of the Convention by the provincial legislatures, since the final decision must rest with the latter. Therefore, conditions stipulating that ratification by the federal authority should be followed by implementation by provincial legislatures could not be imposed.

The articles of the Convention to which reservation were not permitted were few. A federal authority would be fully bound by the definition article as well as by the article on non-discrimination (article 1 and 3), whereas the provincial authorities would not necessarily be so bound. In that connexion, however, he would draw attention to the fact that in the United States of America, for example, the verdicts of State courts on cases of discrimination had occasionally been overruled by the federal courts. The federal authority would also have powers in respect of the article on access to courts (article 11). As to article 28, which was of crucial importance, the question of expulsion was within the responsibility of the federal authority. Thus, there would be very few cases where a provincial authority would be able to take action overriding that of the federal authority.

Summing up, he would submit that it was desirable that Federal States should adhere to the Convention, which should, therefore, include a Federal State clause, drafted along the lines of the Canadian amendment, the Conference relying for the rest on the goodwill of those States.

Mr. KAHANY (Israel) said that the Israeli proposal had been submitted in a spirit of helpfulness, and that he would be only too glad to withdraw it in favour of the Canadian representative’s suggestion if agreement could be thereby reached.

Mr. CHANCE (Canada) thanked the Israeli representative, and said that in the circumstances which had arisen he would submit his text as a formal amendment.

Mr. ROCHEFORT (France) was not entirely convinced by the explanation which the United Kingdom representative had given. One difficulty remained, namely, that signature by unitary States would be subject to certain minimum conditions, in that they would not be permitted to enter reservations to certain article. It clearly followed that the same reservations should be forbidden to all States signing the Convention, if certain of them were not to be granted what would amount to preferential treatment. It had already been pointed out that the Convention could not be applied in practice in the countries of immigration; therefore, in spite on the great advantages which the universal application of the Convention would bring, the importance of ratification by countries for which the problem did not exist, and on whose territory the Convention would not be applied, must not be exaggerated. The French delegation had made an effort to avoid having to vote against the Federal State clause by suggesting that it should be made subject to the conditions stipulated in article 36. As that suggestion
had not been taken up, the French delegation would be unable to vote for the Canadian proposal.

Baron van BOETZELAER (Netherlands) commended the clarity and precision of the United Kingdom representative’s explanation. In his opinion it was inconceivable that a Federal State should ratify the Convention without the intention of applying its main provisions. For his part, he was convinced that the Federal States would apply the Convention in good faith.

Mr. ROCHEFORT (France), replying to the representative of the Netherlands, again pointed out that the question he had raised was not one of good faith; it was simply a matter of all signatories to the Convention starting off on an equal footing.

The PRESIDENT ruled that the discussion was closed, and said that he would first put to the vote the Austrian amendment to the Canadian proposal.

Mr. FRITZER (Austria) asked the Conference to vote for his amendment, for, if it was not adopted, the Austrian Federal Government would have some difficulty in acceding to the Convention.

Mr. HOARE (United Kingdom) suggested that a vote be taken on the principle of the Austrian amendment, the exact drafting thereof being left to the Style Committee.

It was so agreed.

The Austrian amendment to the Canadian proposal (A/CONF.2/98) was adopted in principle by 13 votes to none, with 9 abstentions.

The Canadian proposal for the text of the Federal State clause, as amended in principle, was adopted by 12 votes to 2, with 7 abstention.

Mr. BOZOVIC (Yugoslavia), explaining his vote, said that the Yugoslav delegation had frequently stated its position on the question of the Federal State clause. It was unable to vote in favour of the Canadian proposal, because the latter was not in the interest of refugees, and because it would create two different kinds of obligation as among Contracting States. Furthermore, there would be no means of knowing when the provisions of the Convention would actually be applied in the territory of Federal States. His statement was in no way intended to imply any doubt as to the good faith of those States.

2. CONSIDERATION OF THE DRAFT PROTOCOL RELATING TO THE STATUS OF STATELESS PERSONS (item 5(b) of the agenda) (A/CONF.2/1, A/CONF.2/91 and A/CONF.2/93)

The PRESIDENT requested the Conference to turn to the question of the draft Protocol relating to the Status of Stateless Persons. It had before it an Austrian amendment in document A/CONF.2/91, and the draft final clauses which the Secretariat had prepared (A/CONF.2/93).
Mr. FRITZER (Austria) said that the Austrian Federal Government was prepared to support the draft Protocol relating to the Status of Stateless Persons.

However, the third paragraph laid down that certain clauses of the Convention relating to the Status of Refugees should also be applied to stateless persons. He understood that provision to imply that the system of reservations applicable in the case of the Convention would also hold good for the draft Protocol. He could not, however, agree that article 27 of the Convention should be applied to stateless persons, for he could see no reason why the sovereignty of a State should be restricted to the extent of its not being able to expel a stateless person except on grounds of national security or public order. The question of a stateless person who was expelled but was not admitted to a neighbouring country was another matter; the fact remained that there were no good grounds for a State's renouncing its right to expel a stateless person.

Mr. ROBINSON (Israel) submitted that the real difference between a refugee and a stateless person was that whereas the former might have some sort of travel document, and a particular country might claim his allegiance, the stateless person would have neither a travel document nor a country of allegiance.

Under paragraph 2 of article 28 a refugee could be returned to his own country, but a stateless person could only be expelled, to find his way into another country where he was equally not wanted. To that extent the case of the stateless person was much more serious than that of the refugee, and justified a greater measure of protection from expulsion.

Mr. HERMENT (Belgium) recalled that the draft Protocol had emerged from the first session of the Ad hoc Committee on Statelessness and Related Problems, which had taken place in January and February 1950. It had been the Committee's task to consider means whereby statelessness might be abolished, and to study the desirability of requesting the International Law Commission to prepare a study and make appropriate recommendations. As the Committee had not had sufficient time at its disposal to go into the matter thoroughly, it had merely recommended the Economic and Social Council to call on States Members of the United Nations to review their domestic legislation on the subject with a view to abolishing statelessness. The Committee had also, however, prepared a draft Protocol.

At its second session, as the Ad hoc Committee on Refugees and Stateless Persons, held in Geneva in July and August, 1950, the Committee had been unable, again owing to lack of time, to make a thorough study of the Protocol.

The Belgian delegation wished to make it clear the while the Belgian Government was prepared to grant the maximum possible rights and benefits to refugees, its attitude was somewhat different in the case of stateless persons.

There was a fundamental difference between the two categories of persons.
Refugees deserved special benefits, but stateless persons as a class, although there were deserving cases among them, could not be said to merit privileged treatment. By way of illustration, he would take the case of a national of a State who had been deprived of his nationality as a result of having committed treason. That person would become stateless, and the question would then arise whether he should be accorded treatment more favourable than that enjoyed by aliens in general. The same question would arise in the case of a person who lost his nationality as a result of refusing to do his military service. Those examples would suffice to demonstrate the exaggerated effects which the adoption of the Protocol might produce. The Belgian Government took the view that stateless persons should enjoy the same rights as aliens, but should not necessarily be entitled to the special benefits that accompanied refugee status. He felt that by granting stateless persons the travel document issued to refugees, which was acquiring increased standing and prestige, the value of that document, and thus the interests of refugees themselves, would be jeopardized.

Mr. HOEG (Denmark) said that the Danish Government’s position was similar to that of the Belgian Government. The question of a protocol relating to the status of stateless persons had not been gone into very deeply by the Ad hoc Committee, and the Danish delegation had opposed the draft Protocol that had then been drawn up for the reasons similar to those given by the Belgian representative. Consequently, it would now be obliged to reserve its position on the text as it stood.

Mr. PETREN (Sweden) said that the Swedish Government was in the same position. It had not yet studied the whole question sufficiently closely to enable him to take a position. The Belgian representative’s observations had given the Conference much food for thought. He would add a further note of warning by pointing out that the draft Protocol contained no dateline for the definition of stateless persons.

Mr. ANKER (Norway) said that the Norwegian delegation was in the same position as the other Scandinavian delegations.

Mr. THEODOLI (Italy) stated that Italian law made due provision for stateless persons and sought to limit the causes of statelessness. In those circumstances, the statement in the second paragraph of the draft Protocol that there were many stateless persons not covered by the Convention relating to the status of refugees who did not enjoy any national protection, was not true in the case of Italy.

It would also be necessary for him to enter a reservation on the draft Protocol to ensure that where the treatment accorded to stateless persons already living in Italy was equivalent to that accorded to Italian nationals, it should not be made any less favourable by adoption of the Protocol.

Mr. HERMENT (Belgium) said that, to resolve the difficulties to which the Protocol apparently gave rise, the Belgian delegation would be prepared to introduce an amendment providing that stateless persons should enjoy the treatment given to aliens generally.
Baron van BOETZELAER (Netherlands) stated that the Netherlands Government accorded stateless persons treatment similar to that provided for in the Protocol. But his delegation would have liked to have had a term set to the period of application of that system in order to expedite the assimilation of stateless persons within the national community. It had taken up a similar attitude on a previous occasion, but would not revert to that position in view of the objections which had been raised to the Protocol at the present meeting.

The Netherlands delegation was prepared to vote for the present text of the draft Protocol, but it seemed that no decision could be taken on the matter for the time being; the best solution would therefore be to adopt a recommendation referring the question to the appropriate United Nations organs for further study.

He accordingly proposed the following text:

"The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons,

"Having examined the draft Protocol relating to the Status of Stateless Persons,

"Considering that this question requires further study,

"Decides not to take a decision at the present Conference; and

"Refers the draft Protocol for further study to the appropriate organs of the United Nations."

Mr. PETREN (Sweden) supported the Netherlands proposal. The treatment given to stateless persons in Sweden was extremely favourable, but the Swedish delegation agreed that the problem could not be settled for the time being.

Mr. ROCHEFORT (France) supported the Netherlands proposal. He pointed out that, by virtue of the Protocol taken in conjunction with article 30 of the draft Convention, a category of persons not included by the General Assembly within the mandate of the Office of the High Commissioner for Refugees would be brought inside it.

All the rights provided for in the Protocol were already granted to stateless persons in France. But, in the opinion of the French delegation, the problem of stateless persons was distinct from that of refugees, the former being more of a political and the latter more of a legal nature. At the outset, the "Study on Statelessness" prepared by the Secretariat had advocated that the refugee concept should be replaced by the concept of statelessness. The French delegation had been among those who had been opposed to that procedure, and had stressed the vast differences separating the two problems. The present position of the French delegation in no way meant that the French Government was not most anxious that stateless persons should enjoy a certain status. But that status would have to be the subject of serious study, which the appropriate bodies had so far not undertaken.
Mr. HOARE (United Kingdom) observed that the comments of the Belgian and other representatives revealed that there would be real difficulty in seeking to apply en bloc to stateless persons the articles of the draft Convention referred to in the draft Protocol. He agreed that one of the chief objections lay in the fact that the agreed definition of the term “refugee” could be interpreted as circumscribed both in time and space.

The Netherlands proposal was a possible solution, though it amounted to a confession of failure. In the circumstances, he wondered whether the Belgian suggestion might not command general acceptance. The Belgian representative presumably intended that those clauses of the Convention where the treatment to be given to refugees was either the treatment accorded to nationals or most-favoured-nation treatment, should be applied under the Protocol only to the extent of providing stateless persons with the treatment accorded to aliens generally.

He thought that such an arrangement would appeal to most members of the Conference, particularly as it seemed clear that in the large majority of the countries represented at the Conference stateless persons were being accorded at least the treatment afforded to aliens generally.

Mr. ROCHEFORT (France) requested the High Commissioner for Refugees to clarify a point of interpretation: he wished to know whether, if the Protocol was signed, the High Commissioner would, in his own opinion, be empowered to protect stateless persons by virtue of article 30 of the draft Convention, despite the fact that those persons were not covered by the Statute of the High Commissioner's Office as adopted by the General Assembly.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) pointed out that article 30 was not included in the articles listed in the Protocol.

The reply to the question put by the French representative was therefore in the negative.

Mr. ROCHEFORT (France) accepted that interpretation, but did not regard it as final. The Convention and Protocol could be regarded as constituting a whole, and, wherever article 30 mentioned the Convention, any protocols annexed thereto would be considered as included by implication. There were therefore grounds for believing that, by virtue of article 30, the High Commissioner might find himself responsible for implementing the Protocol.

Mr. van HEUVEN GOEDHART (United Nations High Commissioner for Refugees) pointed out that article 30 referred solely to the Convention. There was therefore no justification for establishing a connexion between the Protocol and the Convention, which was not provided for by article 30.

Mr. ROCHEFORT (France) accepted that interpretation, and asked that it be noted in the summary record of the meeting.
The PRESIDENT stated that the Netherlands proposal, being furthest removed from the original text of the draft Protocol, would be voted on first.

If adopted, it would be included in the Final Act of the Conference, subject to any drafting changes that might be made by the Style Committee.

The draft resolution submitted by the Netherlands representative was adopted by 13 votes to 2, with 8 abstentions.

3. SUPPLEMENTARY REPORT ON CREDENTIALS

The PRESIDENT reported on behalf of the Credentials Committee that the Government of Greece had submitted credentials authorizing its representative to participate in the Conference.


(iv) Preamble (A/CONF.2/96 and A/CONF.2/99)

The PRESIDENT suggested that, as the working hours of the Style Committee would allow the Israeli representative to participate in its work, he should be invited to sit on that Committee.

It was so agreed.

The PRESIDENT invited the Conference to consider the preamble to the draft Convention, since the United Kingdom amendment thereto (A/CONF.2/99) was now before the Conference in both English and French.

Mr. HOARE (United Kingdom), introducing his delegation's amendment, said that, although the preamble was of but slight legal significance and was merely introductory, it was nevertheless important that it should be fairly closely related to the origins of the work with which the Conference had been entrusted, and with the general purposes of the Convention. With that in mind, the United Kingdom delegation had submitted the amendment contained in document A/CONF.2/99, hoping thereby to render the preamble more harmonious and self-consistent.

He would first draw attention to the fact that paragraph 7 of the original text was omitted from the amendment. It seemed to him that, while it was right that the Conference should express such a sentiment as that contained in that paragraph, it would be more proper to include it by way of a recommendation at the end of the Convention, since it went beyond the limits of a general statement on the text of the Convention. The first paragraph of the amendment reproduced paragraph 1 of the original text, with the substitution of the words "have reaffirmed" for the word "establish". That modification would bring the paragraph more into line with the actual facts. The difference between the second paragraph of his amendment and paragraph 2 of the original draft was that he referred to the United Nations' repeated expressions of concern for the need for the international protection of refugees, instead of to its attempts to assure
them the widest possible exercise of fundamental rights and freedoms. It was difficult to say to what extent the Convention made provision for the widest exercise of such rights and freedoms. The essential point, and the main concern of the Conference, was the need for the protection of refugees. Paragraph 3 of the original text had been omitted as being self-evident and unnecessary. Paragraph 4 had been replaced by the fourth paragraph of the amendment, and paragraph 5 had been re-drafted in more general terms as the third paragraph of the amendment.

The last paragraph of the amendment was roughly the same as paragraph 6 of the original preamble. The United Kingdom delegation was not necessarily wedded to the text it had submitted, but merely put it forward as a suggestion for consideration by the Conference.

Mr. ROCHEFORT (France) recognized that the United Kingdom amendment was an improvement on the original Preamble in certain respects, particularly with regard to the amendment to paragraph 1 and the deletion of paragraph 7. He did not attach more than secondary importance to paragraphs 3 and 4, though he felt that the reference to the protection accorded by previous conventions relating to refugees should be retained. He was, none the less, still doubtful about the new United Kingdom wording for paragraphs 2, 5 and 6. In the case of paragraph 2, he preferred the original text, which referred to the widest possible exercise of fundamental rights and freedoms, since that was precisely what the Conference had tried to achieve. Some provisions had been placed in the Preamble which he would have preferred to see in the body of the Convention itself, particularly those stating the need for international co-operation (paragraphs 5 and 6).

Paragraph 5 of the original text, which alluded to the exceptional position of certain countries, was, he felt, indispensable for continental countries liable to be faced with a large-scale influx of refugees. It had been argued that the Convention did not govern the question of admission, but continental countries had no choice in that matter. When faced with a flood of refugees upon their frontiers, they could not help but grant them right of asylum, and possibly refugee status. In the case in point, the normal application of the Convention might be completely invalidated. If, for example, as had already happened, a State was suddenly called upon to take in half a million refugees, certain provisions of the Convention, particularly those relating to housing and the right to work, could not be applied without presenting the country concerned with problems which, temporarily at least, would prove insoluble. In such a case there would have to be international collaboration, and it was therefore not demanding too much of countries of immigration to ask for the implicit appeal contained in paragraph 5 to be retained. He felt, as the United Kingdom amendment stated, that the problems arising in such circumstances should be solved by co-operation between the High Commissioner for Refugees and the States concerned.

Nevertheless, there were cases where the protection of refugees became a problem of assistance, and if there was no international co-operation it
could not be solved. The United Kingdom representative had intimated that he had no very rooted objections to the original text of the Preamble, and the French delegation therefore wondered whether he would agree to paragraphs 5 and 6 being retained, subject to improvement in their drafting. It was its particular wish that the world “international co-operation” should remain in the Preamble.

Mr. THEODOLI (Italy) pointed out that refugees were granted the right of asylum by the Italian Constitution. The Italian delegation, however, had always felt that the refugee problem was an international, and not a national, responsibility, and therefore associated itself with what the French representative had just said, particularly in the case of paragraph 5, which the United Kingdom amendment sought to whittle down. As to paragraph 6, which dealt with the High Commissioner’s part in the application of the Convention, the Italian delegation was prepared to accept the United Kingdom version on the understanding that the co-operation with the High Commissioner’s Office would be covered by an agreement between that Office and the Italian Government.

MOSTAFA Bey (Egypt) observed that some States were giving protection and assistance to a large number of refugees, even though they were not bound to do so by any contractual undertaking. His delegation therefore felt that it was essential to retain in the Preamble the idea of international co-operation contained in the original text, and fully supported what the French representative had said on the subject.

Mr. ROBINSON (Israel) submitted that while the Preamble to the Charter of the United Nations stated that the peoples of the United Nations were determined to reaffirm faith in the fundamental human rights, those rights were mentioned at seven other points in the Charter, that was to say, that the Charter itself went beyond mere reaffirmation of the principle. Again, he wondered how the term “reaffirmed” could apply to the Universal Declaration of Human Rights, which were statement of ideals so be achieved and not of something that already existed.

With regard to the second paragraph of the United Kingdom amendment, he pointed out that there were recent resolutions of the General Assembly on the subject of refugees than resolution 319 (IV) A, and it would seem reasonable to refer to them as well. He had understood from the United Kingdom representative’s statement that it was his intention to include the substance of paragraph 5 of the original text in the third paragraph of the United Kingdom amendment. The Style Committee could therefore be left to include the reference to international solidarity in the most appropriate way.

Mr. SCHÜRCH (Switzerland) said that in the light of the general statement made by the head of his delegation at the third meeting, he warmly supported the French representative’s remarks concerning paragraph 5 of the original text.
Apart from that consideration the Swiss delegation would agree to any to any drafting modifications that were likely to improve the wording of the Preamble.

Mr. von TRÜTZSCHLER (Federal Republic of Germany) said that, as the representative of a country of asylum, he strongly supported the statements of the French and Italian representatives on paragraphs 5 and 6 of the original text of the Preamble.

Mr. PETREN (Sweden) said that he appreciated the force of much of the United Kingdom amendment. At the same time, he endorsed the French representative's views on paragraph 5 of the original text.

Baron van BOETZELAER (Netherlands) also approved the statement of the French representative on paragraph 5 of the original text. He would propose, however, that, in order to avoid all risk of misinterpretation, the words "right of asylum" should be replaced by the words "right to seek and to enjoy asylum in other countries", which was the wording used in paragraph 1 of Article 14 of the Universal Declaration of Human Rights.

The PRESIDENT believed that the difference between the text of paragraph 5 and that of paragraph 1 of Article 14 of the Universal Declaration of Human Rights lay in the fact that in the latter it was a question of the right of the individual to seek and to enjoy asylum, whereas in the former the right of the State to grant asylum was meant.

Baron van BOETZELAER (Netherlands) thought that the point he had made might be referred to the Style Committee.

Mr. CHANCE (Canada) felt that the Conference was too large a body to handle questions of drafting expeditiously in plenary meeting, and that as the differences suggested were slight they could be left to the Style Committee.

Mr. HOARE (United Kingdom) said that in view of the strong support for paragraph 5 of the original text, he would not oppose its retention. The point made by the Netherlands representative was not unimportant; it might, perhaps, be met by the substitution of the word "grant" for the words "exercise of the right" in the first line of paragraph 5.

As to the Israeli representative's comments, he contended that the principle that "human beings shall enjoy fundamental rights and freedoms without discrimination" was a principle that had been accepted long before the Charter of the United Nations had been drafted, and that consequently the Charter had reaffirmed that principle. Again, the Universal Declaration of Human Rights was not a statement of new principles, but a statement in fuller detail of existing principles. To meet the Israeli representative's view, however, he would agree to the use of the word "affirmed" instead of the word "reaffirmed" in the first paragraph of the United Kingdom amendment. He would also have no objection to references in the second paragraph to more recent resolutions of the General Assembly, provided that they were appropriate and absolutely necessary. Lastly, he hoped that the French representative would understand that paragraph 5 of the original draft had
not been omitted from the United Kingdom amendment by way of dissent from the statement of fact which it contained, which everyone fully recognized. The fact was that he (Mr. Hoare) had doubted the value of introducing in a few words the idea that some other form of international action was necessary. If the notion of international solidarity was retained, it would, he felt, be interpreted merely as referring to international solidarity achieved through the signing and ratification of the present Convention. However, if the Conference considered it desirable to retain those words, the United Kingdom delegation would not object.

Mr. ROCHEFORT (France) thanked the United Kingdom representative for his readiness to allow paragraph 5 to stand. He explained that what the French delegation wanted was the recognition of a de facto situation, rather than a statement of a specific obligation. There were, in fact, countries which might be confronted with a situation in that connexion so serious as to exceed the scope of the protection of refugees and come within the field of international assistance.

Furthermore, with regard to the final paragraph of the United Kingdom amendment, the French delegation would prefer it to be specified that cooperation with the High Commissioner might not meet the requirements of all situations. The following phrase might be inserted to cover that point: "and upon a large measure of international co-operation". He felt certain that the Style Committee would be able to find a formula taking the different viewpoints into account and capable of satisfying all delegations.

After some further discussion, the PRESIDENT suggested that the whole question of the drafting of the Preamble should be referred to the Style Committee.

It was so agreed.

The PRESIDENT drew attention to the Yugoslav proposal for a new article (A/CONF.2/96), which, he recalled, it had earlier been decided should be considered in connexion with the Preamble.

Mr. MAKIEDO (Yugoslavia) thought that the members of the Conference would have no difficulty in voting for his proposals as its provisions were largely taken from the Constitution of the International Refugee Organization (IRO).

Mr. ROCHEFORT (France) appreciated the motives underlying the Yugoslav proposal; he wished, nevertheless, to point out that the provisions in question had been inserted in the Constitution of IRO for historical reasons, the need for which might no longer be felt at the present time. He requested the Yugoslav representative not to press his proposal. It might, however, be possible to keep the first sentence, and add a reference to the first article of the Statute of the High Commissioner's Office, in which it was stated that the refugee problem must eventually be settled by the voluntary repatriation of the persons concerned or by their assimilation within national communities.
Mr. HOARE (United Kingdom) observed that there was a vast difference between domestic rules for the conduct of an international organization, and the formulation of a text imposing an obligation on States to prohibit certain activities. If there was any thought of introducing such a clause into the Preamble, most of the wording proposed by the Yugoslav delegation would have to be abandoned, and the same would apply if the idea was to make an article out of it. He would urge the Yugoslav delegation not to press its proposal for, if it did, many members who sympathized with the reasons underlying its submission would find themselves embarrassed.

The PRESIDENT submitted that the instrument that was being drafted was a convention on the status of refugees and that the Conference had been called upon to draw up provisions which would provide refugees with a legal status.

He did not think that the Yugoslav delegation would wish the Conference to vote on a text which, whether adopted or rejected, might be open to an interpretation for which none of those present would care to take responsibility.

Mr. MAKIEDO (Yugoslavia) said that he looked to the Chair to suggest the best means of handling the question. Would it not be possible for a small drafting committee to redraft his proposal with a view to its insertion in the Preamble?

The PRESIDENT thought that the Style Committee might consider the Yugoslav proposal and report back. That solution would enable the Yugoslav delegation to raise the question again at the second reading, if necessary. The Style Committee should invite the Yugoslav delegation to be present when its proposal was under consideration.

Mr. ROCHEFORT (France) considered that in order to facilitate the work of the Style Committee the Conference might take a decision at once on two matters of principle: first, the inclusion in the preamble of a text based in substance on the first sentence of the Yugoslav amendment; and secondly, the inclusion in the preamble of the passage from the Statute of the Office of the High Commissioner for Refugees which he had mentioned earlier.

The PRESIDENT said that he would have no objection to putting to the vote the points mentioned by the French representative. In all the circumstances, however, he believed that the procedure he had suggested would be preferable.

The procedure suggested by the President was agreed.

(v) Statement by the Italian representative on Article 37 of the Draft Convention

The PRESIDENT called upon the Italian representative to make a statement which he had wished to make at the second reading, which, however, he would unfortunately be unable to attend.

Mr. del DRAGO (Italy) said that the statement he wished to make related to article 37 of the draft Convention. The Italian delegation had favoured the
coming into force of the Convention after ten instruments of ratification had been deposited, and in the absence of a better solution had accepted and voted for the figure of six instruments of ratification. His delegation was still of the opinion that those six governments should be governments who had a major interest in the refugee problem. Some delegations had urged that the Convention should come into force at the earliest possible date, and the fear had been expressed that the need for too many instruments of ratification might unduly delay that process. He was sure, however, that of all the governments represented at the Conference there must be at least six that were ready to sign and ratify the Convention forthwith. The Italian Government was keenly interested in the Convention, but considered that it would be wise not to be too precipitate.

The emphasis on urgency was not a compliment to Italy, where the law and administrative arrangements made very full provision for the reception and protection of refugees. He mentioned two welfare centres for refugees in Italy and the amenities provided there, and submitted that, under existing arrangements and even before the Convention came into force or was signed, the lot of refugees in Italy would not be so pitiable, although, of course, it was never at the best of times a particularly enviable one.

(vi) Draft recommendation submitted by the United Kingdom delegation for inclusion in the Final Act of the Conference (A/CONF.2/100)

The PRESIDENT said that the last item before the Conference in the first reading of the draft Convention was the United Kingdom draft for a recommendation (A/CONF.2/100) for inclusion in the Final Act of the Conference. That proposal related to travel documents issued to refugees under the London Agreement of 15 October 1946, and had already been put forward orally by the United Kingdom representative at the beginning of the present meeting. Did the Conference wish to consider the proposal at the present moment?

Mr. HERMENT (Belgium) observed that that proposal had not been included in the agenda. It might give rise to other suggestions, and it would therefore be preferable not to take it up at the present stage.

The Conference agreed to revert to the United Kingdom proposal when it had before it a draft of the Final Act.

The meeting rose at 6.10 p.m.