

# CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

## Its History and Interpretation

A COMMENTARY by NEHEMIAH ROBINSON

INSTITUTE OF JEWISH AFFAIRS

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### **PREFACE**

As will be seen from the discussion regarding the preparation of the Convention dealt with in this volume, it was largely modelled on the Convention Relating to the Status of Refugees (called the Refugee Convention for short): in many instances the relevant articles of the Refugee Convention were taken over bodily by substituting the words "stateless person" for "refugee". In other instances, however, the text was modified with the result that the treatment accorded stateless persons differs from that of "refugees". Obviously, Article 1 has no connection with the Refugee Convention at all.

Despite the close relationship between the two Conventions, both of them are formally and materially independent international treaties: they apply to different groups of persons and grant divergent benefits to them. On the other hand, the circumstance that many provisions were either taken over from the Refugee Convention or are modified versions thereof makes the understanding of the Convention dependent on an analysis of the relevant articles of the Refugee Convention and of the reasons for the changes. It is for these reasons that the Commentary to this Convention makes frequent references to the discussion on the preparation of the Refugee Convention and deals in greater detail with the genesis of the articles of the present Convention.

The Commentary to the Convention contains frequent references to stateless persons, *de jure* and *de facto*. These terms were introduced in a study on statelessness which was prepared by the United Nations Secretariat and were used in both conferences. At bottom, however, nationality is a legal concept; therefore *de facto* statelessness is a somewhat illogical term.

Nehemiah Robinson

May, 1955

### **PART ONE**

#### **THE PREPARATION OF THE CONVENTION**

As will be seen below, the Convention is for the most part the application to stateless persons of the provisions of the Convention Relating to the Status of Refugees. In order to understand the genesis of this Convention we have thus to refer to the history of the United Nations efforts in the field of legal protection for stateless persons and refugees.

The Human Rights Commission, in its second session (December 2-17, 1947), took cognizance of the lack of international agreements relating to the protection of post - Second World War refugees and the necessity for adapting existing conventions to the new conditions created after that war and to the developments of international law under the auspices of the United Nations. As a result, the Human Rights Commission requested the Economic and Social Council to initiate action to the above effect.

On March 2, 1948, the Council adopted Resolution 116 (VI) (D), requesting the Secretary-General of the United Nations, *i.a.*, to undertake a study of the existing situation in regard to the

protection of stateless persons and to make recommendations on the interim measures which may be taken by the United Nations to further this objective. As a result of the Secretary-General's Study,<sup>1</sup> the Economic and Social Council on August 8, 1949, adopted Resolution 248 (IX) (B) appointing an Ad Hoc Committee on Statelessness and Related Problems consisting of representatives of 13 governments. Among its tasks was consideration of the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if it so decided, the preparation of a draft of such a convention. The Ad Hoc Committee convened on January 16, 1950, in Lake Success and on February 16 completed its work with the adoption of a Draft Convention Relating to the Status of Refugees and a Protocol thereto Relating to the Status of Stateless Persons.<sup>2</sup> The report the Ad Hoc Committee was considered by the Economic and Social Council (in its Social Committee and the plenary meetings) during its eleventh sessions. The Council decided to reconvene the Ad Hoc Committee so that it might revise its draft in the light of the comments made by governments and the discussions and decisions of the Council. It was asked to submit the draft, as revised, to the General Assembly at its fifth session. The Council recommended to the Assembly to approve international agreements on the basis of the drafts prepared by the Ad Hoc Committee. In pursuance of this resolution, the Ad Hoc Committee met in Geneva from August 14 to August 25, 1950, and prepared a revised version of its original draft.<sup>3</sup>

The fifth session of the General Assembly did not deal with the substance of the draft convention. Instead it decided to convene a conference of plenipotentiaries in Geneva to complete the drafting of such a convention and a protocol on the status of stateless persons. The Assembly recommended to the governments which would participate in the conference to take into consideration the draft convention prepared under the auspices of the Economic and Social Council.

The Conference of plenipotentiaries met in Geneva from July 2 to 25, 1951. Twenty-six states were represented by delegates and two governments by observers. The conference adopted by 24 votes to none, a Convention relating to the Status of Refugees (hereafter referred to as the "Refugee Convention") and a Final Act containing, *i.a.*, five recommendations to the respective governments. It resolved, however, to refer the draft protocol on the status of stateless persons who are not refugees, to the appropriate organs of the United Nations.

The General Assembly, by resolution 629 (VII) on the Draft Protocol Relating to the Status of Stateless Persons, decided to request the Secretary-General to communicate the Draft Protocol to all governments which participated in the aforesaid conference with a request for their comments, in particular on those provisions of the Refugee Convention which they would be prepared to apply to the various categories of stateless persons. At the same time the Economic and Social Council was requested to study the text of the Protocol and the comments received and, in the light of these comments, to take action which seemed useful in order that a text might be opened for signature after the Refugee Convention had entered into force.

Comments were received from the following states: Belgium, Dominican Republic, Finland, Japan, France, United States, Sweden, Yugoslavia, Iran, Union of South Africa, Pakistan, Great Britain, Switzerland, Netherlands, Norway. They appeared as Doc. E/2373 with 14 addenda.

Since the Refugee Convention came into force on April 22, 1954, the Economic and Social Council resolved to convene a Second Conference of Plenipotentiaries with the following agenda:

- (i) The revision of the draft Protocol Relating to the Status of Stateless Persons, in the light of the provisions of the Convention Relating to the Status of Refugees and the observations made by the governments concerned.

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<sup>1</sup> Document E/1392.

<sup>2</sup> The Report of the Committee was distributed as Doc. E/1618, E/AC.32/5. The Draft Protocol is contained in Appendix I.

<sup>3</sup> The Report of the Committee was distributed as Doc. E/1850, E/AC.32/8. The revised Draft Protocol is contained in Appendix II.

(ii) Adoption of a revised Protocol and opening of the Protocol for signature by all States Members of the United Nations and by non-Member States invited to attend the first Conference of Plenipotentiaries.

Invitations to the conference were sent to all states which attended the first conference.

The Secretary-General prepared for the conference a memorandum on the Draft Protocol Relating to the Status of Stateless Persons,<sup>4</sup> Draft Rules of Procedure,<sup>5</sup> and some other memoranda.<sup>6</sup>

The conference met in New York from September 13 to September 23, 1954, and was attended by representatives of 27 states: five other states were represented by observers. The states are listed in the Final Act of the conference.

The conference worked in the main in full sessions.<sup>7</sup> In addition, it appointed a Drafting Committee on the definition of "Stateless Persons",<sup>8</sup> an Ad Hoc Committee to present proposals concerning the question of travel documents<sup>9</sup> and a Style Committee which was concerned not only with the style but also proposed extensive changes in some of the articles (Arts. 1 and 35).<sup>10</sup> Various delegations submitted proposals and amendments which appear as documents E/CONF.17/L.1 to L.10); L.12 to L.14; L.16 to L.21; L.25 to L.28.

As we have seen, the conference was called to revise the Draft Protocol which provided for the *mutatis mutandis* application of a number of provisions of the Refugee Convention to Stateless Persons. It soon became clear that such a Protocol would hardly be an appropriate document. The drafters of the Protocol had thought of it as an appendix to the Refugee Convention rather than as an independent document and expected that both the Convention and the Protocol would be approved and opened for signature at the same time, and that both would be adopted by the same states. In such case there would be no need to repeat the same provisions twice. However, as mentioned, the first Conference of Plenipotentiaries adopted only the Refugee Convention and did not deal with the Protocol. It therefore appeared quite possible that the Parties to the Refugee Convention and to the document on stateless persons might be different states; in particular, some parties to the stateless persons agreement might not be parties to the Refugee Convention. This would create an awkward situation because it would force non-parties to the Refugee Convention which accepted the Draft Protocol to apply provisions which they had not adopted and might not have wanted to. Another expectation by the drafters of the Protocol was that the States would accord to both groups the same rights, except insofar as the basic difference between them might result in certain insignificant deviations - this was the essence of the reference to *mutatis mutandis* application of the provisions of the Refugee Convention. However, as will be seen from the discussion of the various articles of the Convention, many of the participants desired deviations from the text of the Refugee Convention, changes which could not be justified by a *mutatis mutandis* application. As will be seen, certain articles were substantially changed. The third point was that the expression *mutatis mutandis*, while common in practice, leaves considerable leeway in application, which would mean that the provisions of the Refugee Convention would in practice have different meanings in different states, so that there would be no uniformity in application - in effect, there would be as many agreements as there were parties to the document.<sup>11</sup> Finally, the draft Protocol was, as an independent document, incomplete

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<sup>4</sup> E/CONF.17/3.

<sup>5</sup> E/CONF.17/2

<sup>6</sup> E/CONF.17/4 plus addendum.

<sup>7</sup> The deliberations of the full Conference appear in Summary Records (SR) 1-15.

<sup>8</sup> The report appears as Doc. E/CONF.17/L.6

<sup>9</sup> Its report appears as Doc. E/CONF.17/L.15.

<sup>10</sup> The report appears as Doc. E/CONF.17/L.22, 23 and 24 (plus two addenda).

<sup>11</sup> See on this point the World Jewish Congress submission E/CONF.17/NGO/1.

because it lacked totally the final clauses, i.e. the provisions regarding the coming into force of the document reservations thereto etc. For all these reasons the conference decided to redraft or at least review all the articles of the Refugee Convention which were to be applied to stateless persons and to adopt, instead of a protocol, a separate convention. There were doubts whether such a procedure would be in accordance with the terms of reference of the conference as expressed in the above resolution of the Economic and Social Council and the powers granted to the delegates by their governments some of whom had full powers to sign a protocol only. It was pointed out, however, that there were precedents of this nature and the doubts were solved in the sense that the credentials issued to sign a protocol were no bar to signing a convention. The Credentials Committee was of the opinion (and the conference adopted this view) that a government, in authorizing its representative to sign a protocol, did not intend to restrict him to a particular form of international instrument, but only intended to describe the contents of the instrument.<sup>12</sup> The decision to have a convention instead of a Protocol was taken by 12 votes to none, with 3 abstentions.<sup>13</sup>

There was also the question whether the document should be linked with the Refugee Convention. The decision to have a totally separate instrument was taken by the same votes as above.<sup>14</sup>

As already mentioned, the Ad Hoc Committee proposed to apply to stateless persons only some of the provisions of the Refugee Convention as it was drafted by the Ad Hoc Committee. Since the text of the proposed Refugee Convention was revised by the Conference of Plenipotentiaries, the Stateless Persons Conference discussed the final provisions of the Refugee Convention not the draft; it also referred in the discussion to the articles in the final text, instead of referring to the articles in the draft.<sup>15</sup>

The draft Protocol had omitted reference to the following articles of the Refugee Convention:

- (a) Article 4 relating to the freedom of religion;
- (b) Article 8 and Article 9, concerning exceptional measures;
- (c) Article 11, relating to refugee seamen;
- (d) Article 17, paragraphs 2 and 3, dealing with particular aspects of employment;
- (e) Article 30, relating to transfer of assets;
- (f) Article 31, relating to illegal entry or sojourn by refugees;
- (g) Article 33, relating to prohibition of expulsion or return of refugees;
- (h) Article 35, relating to cooperation of national authorities with the United Nations.

The conference included Articles 4, 8, 9, 11, 17 (3), 30 and 31. The work of the conference was concluded, as is usual in diplomatic conferences with the adoption of the Final Act. The Convention was opened for signature on September 28, 1954, at 2.30 p.m.

It should, in conclusion, be mentioned that the conference at first discussed mainly the advisability of incorporating a certain Article 1n the Convention and its broad aspects. Final decision on the article was taken at the second reading only.<sup>16</sup>

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<sup>12</sup> SR. 10, p. 3.

<sup>13</sup> SR. 12, p. 9.

<sup>14</sup> *Ibid.*

<sup>15</sup> The afore-mentioned memorandum by the Secretary-General included references to the final text of the Refugee Convention.

<sup>16</sup> SR.15, p. 5 ff.

## **PART TWO**

### **THE INTERPRETATION OF THE CONVENTION**

#### Article 1

##### Definition of the term “stateless person”

1. For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.
2. This Convention shall not apply:
  - (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.
  - (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
  - (iii) To persons with respect to whom there are serious reasons for considering that:
    - (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
    - (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
    - (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

1. This Article 1s quite simple in its wording but raises a number of problems. One of them is the relation between this Convention and the Convention Relating to the Status of Refugees. Formally, this Convention completely ignores the Refugee Convention, i.e., it does not contain either references thereto or a provision delimiting the application of both instruments.

The necessity of a delimitation may appear to arise from the circumstance that the Refugee Convention, while formally dealing with “refugees” as defined in its Article 1, treats in practice largely of stateless persons because many of the refugees do not possess a nationality. It is therefore probable that, if one and the same state adheres to both Conventions, one and the same person would fall under both of them. It is true that the difference between the two Conventions regarding their substantive provisions is not very great, but nonetheless the present Convention omitted certain provisions of the Refugee Convention and amended a few others. It is also true that, by restricting its application as a rule to *de jure* stateless persons, the possibility of double application was to a certain extent reduced. But the probability of one and the same person being eligible under both Conventions remains. In law and in fact, however, this would create no difficulty: if one and the same person qualifies as a “refugee” (under the terms of the Refugee Convention) and as a “stateless person” (in accordance with this Convention) the state must apply to him (or her) the more favourable provisions of the Refugee Convention. This follows from the purpose of the Stateless Persons Convention to cover such persons to whom the Refugee Convention is not applicable. The maxim of *lex posterior is* not applicable here because the two conventions are not consecutive but parallel instruments. Therefore the circumstance that this Convention came into force subsequently to the Refugee Convention would not justify the application of its more restrictive provisions to a person who is eligible under the Refugee Convention to broader rights, just because the “refugee” is at the same time also a “stateless person”. The same rule should also apply to countries which ratified the 1932 or 1938 Conventions but have not adhered to the Refugee Convention and will accede to this Convention.

2. The total separation of the two related Conventions and the wording of Article 1 simplified one of the problems which the acceptance of the Draft Protocol would have created and to which reference was made both in observations of governments on the Draft Protocol and in discussions during the Conference: should this Convention apply only to such stateless persons who are not “refugees” within the meaning of Article 1 of the Refugee Convention, or to all stateless persons who do not in fact enjoy the status of a refugee under the Refugee Convention (because they are not refugees or because the state of their residence is not a Party to that Convention)? The first alternative was suggested in the observations of Finland<sup>1</sup> and apparently also in those of Great Britain<sup>2</sup> and the suggestion by the United Kingdom of September 13, 1954,<sup>3</sup> while the second was stated in the observations of Japan<sup>4</sup> and may have been implied in the Australian proposal of September 14, 1954.<sup>5</sup> The British proposal said that the Protocol (there was no intention at that time to have a separate Convention) “shall apply to stateless persons who are not refugees within the meaning of Article 1 of the (Refugee) Convention”. The Australian proposal suggested that the Protocol be applied to stateless persons who are “not covered by the Convention relating to the Status of Refugees dated 28 July 1951” - the words “not covered” were apparently used not in terms of an abstract definition but of a practical application, although the representative of Ecuador understood it to mean that under the Australian proposal the Protocol was to deal with such stateless persons only who do not come under the definition of a refugee in accordance with the Refugee Convention.<sup>6</sup>

The adoption of the first alternative would in practice mean that if a state adhered only to this Convention but not also to the Refugee Convention, a stateless person who theoretically qualified as a refugee within the meaning of the Refugee Convention would not be eligible for protection under this Convention because of his theoretical eligibility under the Refugee Convention. To avoid such a possibility the Israel proposal of September 15, 1954,<sup>7</sup> suggested that the Protocol (or Convention) be applied to all stateless persons who do not enjoy in the Contracting State the status of a refugee under the 1932, 1938 or 1951 Conventions.

The question of “stateless persons” versus “refugees” was discussed in detail in the Conference. The British representative pointed out<sup>8</sup> that it would be impossible to apply both Conventions to one and the same person and that the afore-mentioned British proposal was drafted with this end in view. But when most of the delegates opposed the definition of a “stateless person” contained in the suggestion of Australia as restrictive, he agreed to consider deleting his own restrictive definition, explaining that it was drafted at a time when he thought that a single instrument would be prepared relating to both refugees and stateless persons<sup>9</sup> (he apparently meant that the same states would adhere to both documents).

It became clear to all concerned that the most advisable course was not to deal, in the definition of a “stateless person”, with “refugees” at all, rather than to draft a definition which would exclude those stateless persons who are or could become eligible under the Refugee Convention. This point of view was accepted by the Drafting Committee which was set up to draft a definition of a “stateless person”. The British representative sought, in

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<sup>1</sup> E/2373/Add.2.

<sup>2</sup> E/2373/Add.11.

<sup>3</sup> E/CONF.17/L.1.

<sup>4</sup> E/2373/Add.3.

<sup>5</sup> E/CONF.17/L.2.

<sup>6</sup> SR.3, p. 7.

<sup>7</sup> E/CONF.17/L.4. see also the statement of the Israel representative in SR. 3, p. 11.

<sup>8</sup> SR.3, p. 3.

<sup>9</sup> *Ibid.*, p. 14

his proposal of September 21, 1954,<sup>10</sup> to revert to the exclusion of “refugees” (his proposal read: “This Convention shall not, however, be applied to any person in the above category(ies) to whom the Convention of July 1951 Relating to the Status of Refugees is being applied”) but the Conference as a whole disregarded this addition, so that the present article does not refer to “refugees” at all. In other words, this Convention *per se* covers all “stateless persons” within the definition of this term in the Convention, regardless of whether the person is, in addition, a “refugee” in the terms of the Refugee Convention or earlier agreements or not. Thus in states which adhere to this Convention only, all stateless persons within the adopted definition will be covered by its provisions. If a state adhered to both Conventions it would - as stated above - treat all refugees, within the definition of the Refugee Convention, in accordance with its provisions, regardless of whether they are “stateless persons” (within the definition of this Convention) or not and apply the provisions of this Convention to such stateless persons only who are not at the same time “refugees” within the meaning of the Refugee Convention.<sup>11</sup>

3. Article 1 deals with the question basic to the whole Convention, viz., who is a “stateless person” to whom the Convention should apply. The Draft Protocol simply referred to “stateless persons” as if this term had an established meaning. The real difficulty in establishing who is a “stateless person” is that statelessness, which is the reverse of nationality, is a negative concept and therefore difficult to prove and define. In simple words, a stateless person would be a person who possesses no nationality, but the lack of nationality must be provable and proven. It may be easy if the person was born of, or married to, a stateless person and did not acquire a nationality by birth, or lose it by marriage. It is somewhat more difficult but still possible if the person possessed a nationality but lost it, particularly if he possesses or may obtain proof of expatriation; still missing would be the proof that between the expatriation and the time of eligibility he has not acquired another nationality. Quite different is the position of persons who have no proof of expatriation and cannot obtain such evidence and those who have not, either in law or in fact, lost or been deprived of their nationality but refuse to avail themselves of the protection of their former home country for whatever reason. The first category of persons (i.e. those who actually lack a nationality) are called stateless persons *de jure*. The others are, in fact, in the same position as *de jure* stateless persons because they have no state to turn to for protection, but legally they are nationals of a certain state although they do not derive any benefits therefrom. These persons are called *de facto* stateless persons. There may be an intermediate case of statelessness, viz., when the person does not have a nationality, but - as mentioned above - proof of loss or lack of nationality cannot be adduced for whatever reason. While formally this person is stateless *de jure*, he may not qualify under this definition for lack of proof.

One of the most debated questions in connection with Article 1 was whether only stateless persons *de jure* or also stateless persons *de facto* should be eligible for benefits under the Convention. As mentioned, the Draft Protocol contained no definition of “stateless person” at all. This would have left it to the various states to decide who comes under the Convention as a “stateless person” and who does not. It would have meant that the Convention would be differently applied by different Parties.<sup>12</sup> It was for this reason that the French in their observations on the Draft Protocol<sup>13</sup> suggested that it would be advisable to include a definition of the term “stateless person” in the preamble to the Protocol and that the afore-mentioned British and Australian proposals contained definitions of a “stateless person” for the purposes of the Protocol. The Secretary-General in his memorandum on the Draft Protocol Relating to the Status of Stateless Persons, submitted to the Conference,<sup>14</sup> drew the attention of the conference to a definition of the term “stateless

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<sup>10</sup> E/CONF.17/L.21. For the discussion on this proposal see SR.13, p. 5 ff

<sup>11</sup> The President held that the most advantageous provisions were to apply (SR.13, p. 11).

<sup>12</sup> See on this question the statement by the Israel representative in SR.3, pp. 10-11.

<sup>13</sup> E/2373/Add.4.

<sup>14</sup> E/CONF.17/3.

person” in a report on *Nationality, Including Statelessness*<sup>15</sup> submitted by a Special Rapporteur of the International Law Commission, which read as follows: “Stateless persons in the legal sense of the term are persons who are not considered as nationals by any state according to its law”. The wording used by the Special Rapporteur was also adopted in the British and Australian proposals. This definition clearly referred to *de jure* stateless persons only, because if a person was only stateless *de facto* he was still considered a national by a state. The definition also had the disadvantage that it may not have taken into consideration those cases where the government was given latitude in the application of the law, particularly where it was authorized to deprive a person, under certain conditions, of the nationality at its own discretion.

The opposition toward the inclusion of *de facto* stateless persons in the definition of a “stateless person” to be inserted in the Convention came in the main from the British, Yugoslav, German, Belgian, and Norwegian representatives. The British representative argued that the Refugee Convention defined the extent to which the Contracting Parties were willing to accord the benefits of the Convention to persons who, owing to fear of persecution, refused to avail themselves of the protection of their national authorities. The inclusion of all *de facto* stateless persons under the Protocol (Conventions) would be tantamount to granting certain persons benefits from which they were excluded as refugees.<sup>16</sup> The Belgian representative was most concerned because the inclusion of *de facto* stateless persons *per se* would benefit persons who renounced their nationality for personal reasons.<sup>17</sup> On the other hand, most of the representatives to the conference were conscious of the fact that *de facto* stateless persons were in most instances legally in the same position as *de jure* stateless persons and required a firm legal status. Thus the Belgian representative was prepared to consider as “stateless persons” those “who invoke reasons recognized as valid by the State in which they are resident for renouncing the protection of the country of which they are nationals”.<sup>18</sup> This would, in fact, grant every state the right to extend the provisions of the Convention to certain *de facto* stateless persons, such inclusion making them subject to all the provisions of the Convention, including those which go beyond the authority of the state of their residence. Somewhat broader, although within the same “optional” category, was the suggestion of the German representative to include a clause giving the Contracting States the option of granting the benefits accorded to *de jure* stateless persons to any person who renounced his nationality.<sup>19</sup>

The restriction to *de jure* stateless persons in the formal sense of the word could mean that many persons who were actually regarded as stateless in a certain state under domestic rules might not acquire this status under the Convention when the Convention was acceded to by that state, if they did not fit the *de jure* test. To alleviate such a situation (and to simplify proof of statelessness, as described below), the Israel representative proposed a definition which consisted of two parts: one a “conservative” (covering all persons who, on the effective date of the Convention, were treated as stateless by a Contracting State) and another a legal (relating to persons who lost their nationality under the operation of the national laws applicable to them).

The conference decided to apply the Convention, as a rule, to *de jure* stateless persons only and to provide the possibility of extending its benefits to *de facto* stateless persons.

The Drafting Committee made several alternative proposals regarding *de facto* stateless persons all of which were in substance based on the Belgian proposal, viz.:

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<sup>15</sup> A/CN.4/50

<sup>16</sup> SR.3, pp. 2-3.

<sup>17</sup> SR.4, p. 3.

<sup>18</sup> Belgian proposal concerning the definition of the term “stateless person” E/CONF.17/L.3; *cf.* also SR.4, p. 2.

<sup>19</sup> SR.4, p. 4.



Alternative A:

For the purpose of this Protocol (Convention), the term “stateless person” shall also include a person who invokes reasons recognized as valid by the State in which he is a resident, for renouncing the protection of the country of which he is a national.

Alternative B:

A Contracting State may, at the time of signature, ratification or accession make a declaration extending the provisions of this Protocol (Convention) to any person living outside his own country who, for reasons recognized as valid by the State in which he is a resident, has renounced the protection of the State of which he is, or was, a national.

Any Contracting State which has not made a declaration at the time of signature, ratification or accession may at any time extend its obligations by means of a notification addressed to the Secretary-General of the United Nations.

Alternative C:

Nothing in this Protocol (Convention) shall be construed to mean that its provisions cannot be made applicable to any person living outside his own country who, for reasons recognized as valid by the State in which he is a resident, has renounced the protection of the State of which he is, or was, a national.

The conference at the first reading, adopted the following definition:<sup>20</sup>

1. For the purpose of this Protocol (Convention) the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.
2. Nothing in this Protocol (Convention) shall be construed to mean that its provisions cannot be made applicable to any person living outside his own country who, for reasons recognized as valid by the state in which he is a resident, has renounced the protection of the State, of which he is, or was, a national.

The definition was, in part, changed by the Style Committee<sup>21</sup> which took over in part the “legal” definition of the Israel proposal and a modified version of the Belgian proposal. The British representative<sup>22</sup> sought to improve on the “facultative” clause, particularly by granting the states the right to apply the Convention to persons who have been refused protection and assistance by the state of which they are nationals.

Upon the suggestion of Denmark,<sup>23</sup> the “facultative” clause was transferred from Article 1 to the Final Act where it now appears as a recommendation reading as follows:

The Conference

*Recommends* that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he

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<sup>20</sup> E/CONF.17/L.11/Add.2. For the discussions on the proposals of the Drafting Committee see SR.10, p. 9 ff. Cf., also SR.14, p. 2 ff.

<sup>21</sup> E/CONF.17/L.22.

<sup>22</sup> E/CONF. 17/L.21/Rev.1.

<sup>23</sup> E/CONF.17/L.25. For the discussion on the “obligatory” force of the decision by the state of residence for other states see SR.14. p. 2 ff.

is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons,

*Recommends* further that, in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention.

Since the facultative provision of the draft of Article 1 was, by its very nature, not obligatory, the transfer to the Final Act did not change its character: it is not a binding provision but only a suggestion and an appeal to the states to extend the benefits of the Convention to *de facto* stateless persons.

4. As pointed out, the range of *de jure* stateless persons (and thus the extent of the *de facto* statelessness) depends in part on the definition. The definition of the Special Rapporteur was purely objective: to qualify as stateless, a person must not be considered as a national by any state. Objectively, this is a correct definition because if a person is regarded as a national by any country in the world he could not be legally stateless. But translated into actuality and taken literally, it could mean that the person would have to prove that none of the existing states of the world recognizes him as its national or all these states would have to declare so—a rather impossible undertaking. The aforementioned Israel proposal sought to alleviate this negative aspect of the definition by reducing the proof to the “nationality law applicable to him”, which would mean the law of the country of origin and/or permanent residence.

The Norwegian representative thought that Article 1 could be drafted so that the term “stateless person” should be interpreted as meaning persons not found to be nationals of any state<sup>24</sup> (meaning that if the state of residence has no proof that the person seeking recognition as a “stateless person” actually possessed a nationality); he was supported by the Yugoslav representative.<sup>25</sup>

These proposals were not adopted and the “universal” definition and the negative aspect (“not considered as a national by...”) were maintained, although the members of the conference were aware of the difficulties involved in proving this negative characteristic. The German representative said<sup>26</sup> that no country of residence could dispute the declaration of a country of origin that it has deprived a person of its nationality—these cases are clear; the difficulty arose where no definite resolution of the question of the status existed, owing to the unwillingness of the country of origin to reply to inquiries or for other reasons. He felt, however, that it would be dangerous to define such persons as stateless.

The records do not show in detail how the conference viewed the question of proof.<sup>27</sup> The only explanation given was that by the President who said that the word “operation” had been used to cover the cases both of persons who lost their nationality automatically as a result of the application of the law, and of those who lost it through the application of a rule, i.e., by an act of the executive authorities.

In general, all the definitions suggested during the conference were regarded as liberal,<sup>28</sup> apparently in the sense that all that was required was lack of nationality; consequently, whenever proof is available that the person in question does not possess the nationality of any state, he is a “stateless person” within the meaning of the Convention. As said, the conference did not deal with proofs. Nor does the Convention establish how statelessness

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<sup>24</sup> SR.4, p. 7.

<sup>25</sup> *Ibid.*

<sup>26</sup> SR.4, p. 4.

<sup>27</sup> SR.10, p. 14. This is what the Israel proposal sought to achieve. See above.

<sup>28</sup> See, for instance, the statement by the British representative that “when the members of the conference had discussed the definition of a stateless person they had shown a liberal spirit and had been prepared to extend the benefits of the proposed instrument to as many persons as possible”. (SR.7, p. 3.)

is to be proven. Thus it is left to the government of the state of residence to decide whether the person in question has proven the lack of nationality. Although the definition on its face may appear to have such a meaning, it certainly was not the intention of the conference to require a formal proof from states with which the person had no intimate relationship. This would reduce the proofs to the country of origin and/or former permanent residence. Once these countries have certified that the person is not a national of theirs, he would come within the definition of Article 1. If, however, no such certification could be obtained because the relevant authorities refuse to issue it or do not reply to inquiries, the state of residence is expected to accept other proofs, either documentary (for instance, papers showing that the person lived as a foreigner in the country of his origin) or reliable witnesses. The liberal definition follows particularly from the above-quoted recommendation contained in the Final Act. As may be seen, this recommendation relates exclusively to persons who have renounced (obviously, freely) the protection of the state of which they were nationals. If the definition of Article 1 were not to cover all instances in which the person involved actually lost or was deprived of nationality but has no official confirmation, the Convention would contain a discrimination against those persons whose claims to the status of a "stateless person" is stronger than that of persons who gave up the protection freely-an alternative for which no basis exists. It must therefore be assumed that the definition contained in Article 1 covers, in substance, all persons who either never possessed or lost their nationality; the question of proof is to be adjusted to this intention.

5. The Convention does not provide for a supranational body to pass upon the eligibility of a person as a "stateless person". Thus the determination must ordinarily be made by the authorities of the country where the person resides. As will be seen, the determination may have extra-territorial effects (see, for instance, Art. 14, Art. 16 (3), Art. 28). The question may properly be asked whether the other Contracting States are bound by the determination made. In regard to travel documents, para. 7 of the Schedule attached to Article 28 clearly establishes the obligation of all Contracting States to recognize the validity of the documents issued in accordance with the provisions of that Article, i.e., the states may not question the eligibility of a person to enjoy the status of a stateless person so far as his right to possess the travel document goes, except insofar as the problem may arise whether the document was issued in accordance with the provision of Art. 28. (For further details see comments to Article 28 below.)<sup>29</sup> It would appear that, although this is not stated explicitly, the same principle must apply to the determination insofar as the rights accruing from Articles 14 and 16 (3) are concerned: it is a general rule of international courtesy that acts of one government are given credence elsewhere except when there are valid reasons to assume an error or abuse.<sup>30</sup>

This principle also follows from the above quoted recommendation: only in regard to *de facto* stateless persons are the other Contracting States requested to recognize the eligibility decided upon by the state of residence of the person. However, if such a stateless person changes his residence from one country to another, he may be subjected to a new eligibility determination because it could hardly be assumed that any state is bound forever by the determination made by another State, although the State of his new residence is expected not to challenge the former determination, except for valid reasons.

As said, no state is prohibited from extending the rights accorded to *de jure* stateless persons under the Convention to *de facto* stateless persons; on the contrary, they are asked to do so. Therefore, every State may, at its own discretion, grant these rights to persons not coming within the purview of Article 1, but falling within the purview of the recommendation of the Final Act. However, this assimilation to *de jure* stateless persons has not the same effect outside the country of assimilation, as a determination in accordance with Article 1. The recommendation only suggests that other Contracting

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<sup>29</sup> The question of who decides the eligibility was raised in the Ad Hoc Committee in connection with war criminals but no decision was taken. The United States representative's view was that the interpretation of that clause would be a matter to be decided eventually by the reception States (SR.18, para. 3).

<sup>30</sup> This view was taken by the Israel representative at the Refugee Conference and was not challenged (SR.8, p. 12).

States should accord him the same treatment. A difficulty may arise if a country should issue a travel document to a person other than those coming under Article 1, but failing within the definition of the recommendation. It could be argued that the provision of Article 28, containing an obligation of the Contracting States to recognize documents issued under the Convention, refers to stateless persons within the meaning of Article 1 (i.e. *de jure* stateless persons) only. However the other Parties to the Convention are expected to recognize the validity of this travel paper on the basis of the recommendation contained in the Final Act.

6. The right of the Contracting States to define the status of a person as a “stateless person” is limited by the generally accepted right of every Contracting State to follow up the implementation by others, and especially by the provision of Article 34.

7. Under the recommendation contained in the Final Act, the Contracting States are encouraged to grant *de facto* stateless persons (in the terminology of the Final Act, persons who renounced the protection of the state of which they were nationals) “the treatment which the Convention accords to *de jure* stateless persons”. The Convention speaks of “the treatment”, which would mean all the rights or none. There is, however, no reason why states which find it impossible to accord *de facto* stateless persons the whole treatment may not grant them some of these rights, or all the rights for a limited period. However, only if a *de facto* stateless person is granted the full treatment of the Convention is he a “stateless person” within the meaning of the Convention.

It is obvious, from the wording and the nature of the clause, that the state is free to decide when the reasons are valid and, if so, whether it wishes to accord to a particular person, whose reasons were found valid, the rights under the Convention. The only condition is that there must be objectively valid reasons for renouncing the protection of one’s state. In other words, if such reasons do not exist, a person may not be accorded the rights under the Convention, although there is no prohibition to accord him any rights outside the Convention. As a corollary, it must be stated that objectively valid reasons cannot be declared invalid, which, however, leaves the state free not to accord to the person the Convention treatment for any other reason.

8. There was one question of definition which does not appear in Article 1 but which was seriously debated - that of a deadline in analogy with the definition of a “refugee” in the Refugee Convention. The Australian representative said that his Government believed (obviously by analogy with that definition of a “refugee”) that it was of the utmost importance that any definition should be subject to the proviso that a stateless person should be considered as such if he had become stateless as a result of events occurring before 1 January 1951.<sup>31</sup> However, this proposal was strongly opposed by the representative of Belgium, who contended that stateless persons were not at all in the same position as refugees and pointed, in particular, to children born after January 1, 1951 of stateless persons.

This point of view was supported by *the* French and German representatives.<sup>32</sup>

No such limitation appears in either of the definitions adopted by the conference.

9. Following the example of the Refugee Convention, this Convention contains certain grounds for exclusion, i.e., it does not apply to all persons who would qualify as “stateless persons” under paragraph 1 of Article 1. There are basically three exclusion grounds:

- (a) Because the person receives protection and assistance from United Nations organs other than the High Commissioner for Refugees (Para. 2 (i)).<sup>33</sup>

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<sup>31</sup> SR.2, p. 6.

<sup>32</sup> *Ibid.*, p. 7. The above mentioned British proposal also contained the date of January 1, 1951, but this was apparently based on a misunderstanding, viz., the applicability of the “refugee” definition to stateless persons.

<sup>33</sup> For the discussion on this provision see *i.a.* SR.15, p. 2 ff.

This refers mainly to the Palestine Arab refugees and Korean refugees.

- (b) Because the person enjoys in the country of refuge such broad rights that a status of a "stateless person" would not add anything - Para. 2 (ii).

This refers mainly to the German expellees, now living in West Germany.

- (c) Because the person is regarded as unworthy of international protection - Para. 2 (iii).

To become unworthy of protection, the person need not be proven to have been found guilty of actually having committed any act described in Article 1; it suffices that there are serious reasons for considering that he did so. What reasons are "serious", will obviously be decided by the authorities of the country of residence of the stateless person accused of having committed or being guilty of the relevant act.<sup>34</sup>

It is perfectly possible that one country will regard available data as sufficient to declare a person a criminal while another will not. Thus it is not improbable that a person falling under this provision may be treated as a "stateless person" in one country and later be excluded from the benefits of the Convention in another state or *vice versa*. Furthermore, he may be declared a "stateless person" at a certain time and lose his status later, and *vice versa*, if his case is reviewed.

The Convention distinguishes three reasons of unworthiness:

- (aa) the person is supposed to have committed a crime against peace, a war crime, or a crime against humanity;
- (bb) he is alleged to have committed a serious non-political crime outside the country of his residence prior to the admission to that country;
- (cc) he is assumed to be guilty of acts contrary to the purposes and principles of the United Nations.

Paragraph 2 is couched in categorical language ("This Convention shall not apply"). It follows that, once a determination is made that there are sufficient reasons to consider a certain person as coming under this paragraph, the country making the determination is barred from according him the status of a "stateless person". It must be assumed that this refers not only to the status accorded under the Convention but also to rights which may be granted to the "criminal" under the Final Act because of the nature of the exclusion.<sup>35</sup>

These provisions were copied from Article 1 of the Refugee Convention with a few minor changes (plural instead of singular, omission of the word "refugee", substitution of the words "country of residence" for "country of refuge"). The reasons given for exclusion from the benefits of the Refugee Convention are therefore also valid here:

Ad (aa). The person is assumed to have committed a crime against peace, a war crime, or a crime against humanity. At first (in the ECOSOC and General Assembly) only crimes defined in the Charter of the London International Military Tribunal were considered sufficient grounds for exclusion. However, the conference on the Refugee Convention used a broader frame of reference. One reason was that in the meantime the International Law Commission had started work on a Code of Offences which, in its final version, may deviate from the text of the London Charter; the conference rightly reasoned that this text, whenever it becomes final, should govern exclusion rather than the one which was drawn up for special purposes. The change, however, prompts the question whether, as of the present time, only the London Charter or also Control Council Law No. 10 may be regarded as an "international instrument

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<sup>34</sup> The draft of the relevant provisions of the Refugee Convention, as adopted by the Economic and Social Council, stated that it referred to persons who, in the opinion of the competent authorities of the state concerned committed the crime or act.

<sup>35</sup> Cf. in this regard E/AC.32, SR.18, paras. 3 and 4.

drawn up to make provisions in respect of such crimes". All the Nuremberg trials, except the one conducted by the International Military Tribunal, were based on Law No. 10; under this law come all "crimes against humanity" whether committed in time of war or peace. It would seem that the law is undoubtedly an "international instrument" as it was agreed upon by the Big Four Powers and used in courts which considered themselves to be international tribunals.

Ad (bb). The person involved is assumed to be a common criminal. It is a moot question whether the word "crime" was used in its broader sense (every punishable act) or in its narrower meaning (a felony or grave offence, as distinguished from a misdemeanour). The epithet "serious" was apparently inserted to denote that the word "crime" was used in the broader sense; it was then qualified by the addition of the word "serious". Thus, only grave infractions (murder, theft and like) would come under this provision while lesser crimes and administrative infractions (for instance, traffic violations and the like) could not be regarded as a reason for exclusion.<sup>36</sup>

Ad (cc). The "stateless person" is considered to have acted against the purposes and principles of the United Nations.<sup>37</sup> What the purposes and principles are, is established in Articles 1 and 2 of the United Nations Charter.<sup>38</sup>

## Article 2

### General obligations

**Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.**

1. This article was taken over literally (with the substitution of the term "stateless person" for "refugee") from the Refugee Convention. There was no discussion on, and no objection to, this Article in the Conference. Its meaning and purpose must thus be assumed to be the same as that of Article 2 of the Refugee Convention.

2. The article, as explained in the Comments of the Ad Hoc Committee, does not contain anything which requires detailed explanations:<sup>39</sup> it is a general rule of international law that foreigners fall under the territorial supremacy of the State which they enter;<sup>40</sup> they must conform to the laws and regulations valid in the country of their residence.<sup>41</sup> The reason for including this

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<sup>36</sup> The British representative had introduced in the Refugee Conference an amendment (A/CONF.2/74) to the Ad Hoc Committee's version to ensure that refugees who committed such crimes as petty thefts would not be deprived of the benefits of the Convention.

<sup>37</sup> A reference to the principles of the United Nations was contained in Part I Section C of the Constitution of the International Refugee Organization, dealing with exclusion of certain persons from protection.

<sup>38</sup> The British representative in the Refugee Conference thought (SR.24, p. 5) that acts contrary to the purposes and principles were such acts as war crimes, genocide, and subversion or overthrow of democratic regimes. However, war crimes fall under subpara. (a). There is obviously some overlapping between subparas. (a) and (c), because "crimes against peace" are also acts contrary to the purposes and principles of the United Nations. In the view of the French representative in the Social Committee of the ECOSOC, this clause might refer to persons guilty of genocide (E/AC.7/SR.160, p. 15) while the United States representative thought it referred to "collaborators" (*ibid.*, p. 16). The representative of the Secretariat declared the reference to be to persons violating human rights without committing a crime (E/AC.7/SR.166, p. 9). The vagueness of these words was noted by many representatives in the Social Committee of the Economic and Social Council (see, for instance, SR.159, p. 12, SR.160, p. 15 ff). Because of this vagueness the Social Committee had replaced it with a reference to Article 14 (2) of the Universal Declaration of Human Rights, which, however, is no more precise.

<sup>39</sup> See *i.a.* SR.3, p. 21 (statement by the Israel representative).

<sup>40</sup> See E/AC.32, SR.11, para. 49 ff; L. Oppenheim, *International Law*, Seventh edition, Vol. I, p. 626

<sup>41</sup> The question of the advisability of subjecting refugees to military service was discussed in the Ad Hoc Committee but it was felt that the decision should be left to the various governments. In the Stateless Persons Conference the Belgian representative proposed the inclusion of a new article (Doc. E/CONF.17/L.12) under which stateless persons could be subjected to military service under the same conditions as nationals. This proposal was debated in the conference

article was the desire of the membership of the Ad Hoc Committee “to produce a more balanced document” and the “psychological effect” which such a proviso would have on the refugees, making them conscious of the necessity to comply with the requirements of the existing law<sup>42</sup> and on the countries of reception, which would not be frightened by the prospect of accepting refugees, since the latter, being obliged to submit to existing legislation, could not represent a menace to the country.

The expression “measures taken for the maintenance of public order” was introduced to meet a French suggestion to restrict the political activity of refugees.<sup>43</sup> The Ad Hoc Committee did not agree that all such activity ought to be prohibited but felt that, unless the contrary was explicitly stated, every country was entitled to exercise control over political activities of foreigners which it considered objectionable. It included the just quoted words in order to meet the French view at least in part.

3. Thus Article 2 must be construed to mean that stateless persons not only must conform to the general laws and regulations of the country of their residence but are also subject to whatever curbs their reception country may consider necessary to impose on their political activity in the interest of the country’s “public order”.

“Public order” is the translation of the French “ordre public” which has acquired a particular meaning in French and is also being used in international documents, for instance, in Article 29 (2) of the Universal Declaration of Human Rights, the draft Covenant of Human Rights. It covers everything essential to the life of the country, including its security.

Article 2 does not deal explicitly with the consequences of a breach of the obligations incumbent upon the stateless persons under Article 2. Amendments introduced in the Refugee Conference sought to make this article, to some extent at least, a condition for the exercise of the rights granted under the Convention. However, none of these amendments was accepted on the theory that when a refugee failed to comply with his obligations under Article 2 he would be subject to penalties as any other alien and gross violations could lead (on the basis of Article 32) to expulsion. The same is true of a “stateless person”. Within these limitations he continues to enjoy the status of a “stateless person”.<sup>44</sup>

## Article 3

### Non -discrimination

#### **The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.**

1. This article repeats the exact wording of Article 3 of the Refugee Convention. The Yugoslav representative sought to expand the catalogue of non-discrimination by reference to sex, stating that the reference to the three grounds in the Article may be interpreted as authorizing discrimination on other grounds. He suggested to reword the article to read “without discrimination, especially as to race, sex, religion or country of origin”. The President pointed out that the prohibition of one type of action does not imply that another type was permitted, and referred to the unsuccessful attempt of the Yugoslav representative to have his proposal adopted in the Refugee Conference.<sup>45</sup> The prevailing view in the conference was that for a practical consideration (time) they should not engage in rewording the text of the Refugee Convention,

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(SR.10, pp. 8-9; SR.11, p. 3 If and SR.12, p. 6) and rejected by a vote of 7 to 3 with 6 abstentions.

<sup>42</sup> For the attempts to amend Article 2 so as to transform it into a provision relating to “conditions of admission” see the Belgian amendment (A/CONF.2/10), the Australian proposal (SR.3, p. 21), and the statement by the representatives of Israel (SR.3, p. 21) and Great Britain (*ibid.*, p. 22) thereto, as well as the French amendment (A/CONF.2/18).

<sup>43</sup> Concerning “political activity”, see also the French amendment to Article 2, Doc. A/CONF.2/18.

<sup>44</sup> For the discussions on this question in the Refugee Convention, see SR.3 and 4.

<sup>45</sup> See below.

except when this was justified by the difference between the two groups (refugees vs. stateless persons). The text was therefore adopted as drafted by the Refugee Conference subject to amendments on second reading,<sup>46</sup> which never came.

The meaning and implication of this article must thus be derived from that of the Refugee Convention.

2. The wording of the relevant article in the Refugee Convention underwent certain changes. The first draft of the Ad Hoc Committee contained a non-discrimination article of formally wider implications, viz., it required the states not to discriminate against a refugee "because he is a refugee". This would mean that the special status of a person as a "refugee" could not be used as a reason for refusing to accord him rights which are enjoyed by other persons (nationals or aliens). The second session of the Ad Hoc Committee decided that the obligation not to discriminate against a refugee because of his special status might be construed to include the prohibition to apply "special conditions of immigration imposed on aliens". For this reason they added the phrase "within its territory" to indicate that the non-discrimination clause referred to the treatment of aliens within the territory of the Contracting States.<sup>47</sup>

The Refugee Conference excluded the words "within the territory" to denote that the obligation to avoid discrimination was incumbent upon every Contracting State, not only the State in which the refugee resides.<sup>48</sup>

The Refugee Conference adopted a wording which excluded the "status of a refugee" as a basis for non - discrimination, thus making it clear that the only prohibited discrimination is among the refugees themselves,<sup>49</sup> and that the Contracting States did not undertake by this article the obligation to treat refugees in the same manner as other aliens. The assimilation of refugees to aliens was done in Article 7 (1) of the Refugee Convention. Thus Article 3 is to be interpreted in the sense that it prohibits only discrimination among stateless persons" but not between aliens and such persons.

3. As stated, Article 3 does not contain a full non-discrimination clause; it lists only three bases for non-discrimination: race, religion, and country of origin. There are, however, other reasons for discrimination such as sex, political opinion, social origin.<sup>50</sup>

The amendments by the Yugoslav representative to Article 3 of the Refugee Convention suggesting the addition of the words "or for other reasons" or "particularly"<sup>51</sup> were rejected. On the basis of the history of Article 3 of the Refugee Convention we have to conclude that it was the intention of the drafters of that Convention and of this Convention to restrict the non-discrimination clause to these three "bases", although this would be contrary to the first recital of the Preamble and the intent of this Convention to create a uniform basis for the treatment of all refugees except when specifically provided for in the Convention. The Refugee Conference held that Article 3 ought to deal only with such grounds of discrimination as were applied in the countries of persecution,<sup>52</sup> and that everything else

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<sup>46</sup> SR.5, pp. 2-8.

<sup>47</sup> E/1850, para. 21. The United States representative stated in the Conference that "the history of the drafting of Article 3 showed that if the words 'within its territory' were deleted the Convention would affect the whole field of immigration policy". (SR.5, p. 5.)

<sup>48</sup> See the statement by the Israel representative in SR.5, p. 7, as well as the written statement by the World Jewish Congress (Doc. A/CONF.2/NGO/1) and the oral statement of the World Jewish Congress representative to Article 2 in SR.4, p. 13.

<sup>49</sup> The United States representative interpreted Article 3 to mean that it prohibited "denying to one category of persons (viz., refugees) rights and privileges enjoyed by others in identical circumstances" (SR.5, p. 4).

<sup>50</sup> Article 3 (1) of the Geneva Convention Relating to the Protection of Civilians in Time of War to which reference was made in the Conference (SR.5, p. 9) contains a "full" non-discrimination clause.

<sup>51</sup> A/CONF.2/22 and SR.5, p. 9.

<sup>52</sup> SR.5, pp. 11-12.



should be left to the law of the country of refuge.<sup>53</sup> On the basis of the discussion in the Stateless Persons Conference we must accept that the same view is also valid here.

4. The problem of equality goes further than Article 3 would imply: the Convention does not contain explicit provisions covering all spheres of life of a stateless person. It must therefore also be decided whether the non-discrimination clause relates only to the rights explicitly stated in the Convention or covers implied rights as well. The answer lies in Article 7 (1) which is, undoubtedly, part of the Convention, but as will be seen below this is true only of the minimum rights.

5. Article 3 is of considerable importance beyond the question raised in (3) above in the light of Articles 4, 7 (4), 13, 17 (2), 18, 19, 21, 22 (2), 24 (3), 24 (4), 30 (2), and 32 which give the Contracting States considerable leeway in treating stateless persons. The question which arises is whether the non-discrimination clause refers only to the obligatory provisions of the Convention (minimum rights, firmly established obligations of the State) or also to rights which a state may grant beyond these fixed privileges. If Article 3 is construed as an absolute prohibition of treating the various groups differently, the Contracting States would have to accord, if they so desire, benefits beyond the minimum to *all* stateless person or to decide to withhold them from all stateless persons. The clue to the solution lies in the words "the provisions of this Convention", i.e., whether "the provisions" are to be understood in the broader sense of the word, including all permissible and desired extensions of the minimum rights, or in the narrower sense - the obligatory stipulation. On the basis of the history of Article 3, as stated above, and the intention of the drafters as expressed in the Preamble, we must reach the conclusion that no state may discriminate among the different groups of stateless persons on the grounds stated in this Article, i.e., treat one more favourably than the other, within the obligatory provisions of the Convention, but beyond that the states are free to grant any right they wish to any group they desire.

6. The problem of the non-discrimination clause arises further in connection with Article 5. Certain groups of stateless persons may at present enjoy, under the laws or regulations of some countries, rights going beyond what Article 5 prescribes as binding obligations of the Contracting States. Since Article 5 prescribes that these rights are not impaired by the provisions of the Convention, the conclusion is inescapable that, even if they relate to certain groups only, they should be maintained,<sup>54</sup> thus establishing *de facto* a certain inequality in the treatment of stateless persons which, however, is not contrary to Article 3 as defined above. Somewhat more difficult is the question of rights not yet in existence at the time when the Convention comes into force for the state granting these rights: is it compatible with the equality clause to grant special rights to certain groups in the future? It would seem that the answer is in the affirmative because the rule of Article 3 relates only to the provisions of the Convention and not to extra-Conventional rights.

7. The equality clause is explicitly circumvented by the Convention in certain cases, as for instance in Article 7 (3), but also in other cases, such as length of sojourn (Article 7 (2)), and the conditions which are implied in the expression "in the same circumstances" (Article 6 and its application in Articles 13, 15, 17, 18, 19, 21, 22 (2), 26). A differentiation of the stateless persons on these bases is not only permissible but even indicated.

8. The rule of equality may not hold in regard to Article 4. Under that article, a Contracting State undertakes the obligation to treat stateless persons at least as favourably as its own nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children. The words "at least as favourably" are nowhere else used in connection with "national treatment" because such treatment ordinarily is the ideal of every stateless person. However, there is a possibility that a state may differentiate in the treatment of its own citizens and there may be persons of such religious denominations which are not granted

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<sup>53</sup> The representatives of Yugoslavia and Egypt considered the wording of Article 3 as not covering every type of discrimination (SR.24, p. 21). It was pointed out, for instance, that "discrimination" on the basis of sex in regard to salaries, insofar as refugees are concerned, could not be prohibited on the grounds of Article 3 if it was generally practiced in the country (SR.5, p. 10).

<sup>54</sup> Concerning this question, see the comments to Article 5 below.

the same facilities for a proper exercise of religion or religious education as the most favoured group (for instance, in countries which have a State Church). To give Article 4 a real meaning, a state would be required to treat stateless persons of a certain religious denomination in the same way as its own citizens of the same religion in regard to religious practice and education.

## Article 4 *Religion*

**The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.**

1. This article did not appear in the Draft of the Refugee Convention and there was therefore no reference to it in the Draft Protocol. On the suggestion of the representatives of Sweden and Switzerland, the conference agreed to include it in the Convention on the first reading, subject to any amendment on second reading. None were made.
2. In view of the stipulation of Article 7 (1), stateless persons would enjoy, without an explicit obligation by the state to grant them the same treatment as it accords to its own nationals, only the status accorded to aliens generally. This treatment might not have proved sufficiently liberal since, according to the generally accepted rules of international law, an alien must be granted equality with a national only as far as the security of his person and property is concerned but, apart from protection of person and property, every state may treat aliens (except when international treaties provide otherwise) at their discretion.

Under Article 4, a Contracting State is obliged to afford to stateless persons, regardless of their religion<sup>55</sup> at least the same freedom of practicing their religion and teaching their children their religion which it accords to its own nationals of the same religion.<sup>56</sup> As explained in the comments to Article 3, this may involve a differentiation of treatment between the refugees depending on their religion.

## Article 5 Rights granted apart from this Convention

**Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.**

1. This article repeats the exact wording of Article 5 of the Refugee Convention.  
There was some doubt in the conference as to whether this article, which was justified in the case of refugees, would be appropriate in an instrument on stateless persons. The reasons given (by the French representative), viz., that a stateless person is an individual without protection and can therefore possess no other or better rights than those granted by the Convention, were not accepted by the representatives of Belgium and Great Britain, who rightly pointed out that in certain countries certain stateless persons possess rights going beyond those accorded to them by virtue of this Convention.<sup>57</sup>

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<sup>55</sup> The words "at least as favourable" were introduced in the Refugee Conference in a motion of the representative of the Holy See, who declared at first that "national treatment" would not do in countries where religious liberty was circumscribed; he asked for the inclusion of the words "at least" to guarantee refugees a minimum of religious liberty in such countries (SR.33, p. 7). At a later occasion, the same representative asserted that his only concern was that refugees should be given the same treatment as nationals (*ibid.*, p. 8).

<sup>56</sup> This was the construction put on Article 4 by the Swedish representative in the Refugee Conference (SR.33, p. 8). He agreed that Article 4 "merely provided a general guarantee that refugees should enjoy the same freedom to practice their religion and in the choice of religious education for their child as did nationals of the country concerned", i.e., it does not deal with material facilities and economic assistance in these fields (SR.33, p. 9).

<sup>57</sup> SR.5, p. 9.

2. In substance, Article 5 is a self-evident rule because the purpose of the Convention is to grant stateless persons as many rights as possible, not to restrict them. In certain instances (e.g., Article 7 (3) of the Convention) the Contracting States are obliged to maintain special, already existing, rights of stateless persons, and generally they are encouraged to grant them rights beyond the minimum prescribed. The Ad Hoc Committee on the Refugee Convention included the relevant provisions because it “thought it advisable to make it clear that the adoption of the present Convention should not impair any greater rights which refugees may enjoy prior to or apart from this Convention”.<sup>58</sup>

As is evident from its wording, the sense of this Article is that if all or certain groups of stateless persons enjoy under the domestic law of a given country, or under international treaties, broader rights than are prescribed by the Convention, accession to the Convention need not result in the abolition of these broader rights. Nor should the Convention prevent any state from granting stateless persons such rights in the future. It is, however, a question whether Article 5 could be construed as meaning an unconditional obligation on the part of the respective state to maintain the already existing broader rights or as a “freeze” on such rights. The answer would be that Article 5 works within the general framework of the right in question: if the right was granted by a unilateral action of the state, it depends on the decision of the latter as to how long it would be maintained; if it is a conventional right, the length of its validity depends on the terms of the agreement. Under Article 5, the Convention cannot be construed as either a *lex posterior* which automatically supersedes previous law or treaty provisions or as a superior law to domestic legislation automatically nullifying domestic law. Any other interpretation would make Article 7 (3) superfluous and result in “penalizing” liberal states as against those which are less liberal. Consequently, Article 5 is to be interpreted in the sense that while it need not result in the abolition or restriction of the special rights, existing or to be granted, the state may abolish them, except when they rest on a contractual basis.

## Article 6

The term “in the same circumstances”

**For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.**

1. This article reproduces in full the wording of Article 6 of the Refugee Convention. The French representative objected to the inclusion of this article and stated that, if it were adopted, France would have to make a relevant reservation to this Convention. The Australian representative also objected to it, claiming that it had no place in a document dealing with stateless persons and that it would cause difficulties in its application. The representatives of Great Britain and the Netherlands supported the inclusion of the article on the ground that, under the Convention, stateless persons, if placed on the same footing as other foreigners, would be obliged to fulfil certain requirements (for instance, produce evidence of nationality) which they could not fulfil. The article was adopted by a vote of 14 to 2, with 2 abstentions.<sup>59</sup>

2. Art. 6 is a definition of a term, incorporated in international conventions, in order to avoid repetition of what the term implies, in all cases where it was used.

Stateless persons are treated under Art. 7 (1) and some other articles of the Convention in the same way as other foreigners or as nationals. The words “in the same circumstances” were introduced by the drafters of the Refugee Convention as a clarification of this

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<sup>58</sup> E/1850, para. 19.

<sup>59</sup> SR.5, pp. 9-10.

“assimilation” because the treatment of foreigners or nationals need not necessarily be uniform but depends in many instances upon the special status of the person.<sup>60</sup> the length of stay, the conditions of admission or the possession of certain documents by an alien,<sup>61</sup> or certain qualifications of the national.<sup>62</sup>

## Article 7

### Exemption from reciprocity

1. **Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.**
2. **After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.**
3. **Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.**
4. **The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.**
5. **The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.**

1. This article is an incorporation of the same article of the Refugee Convention.

The article was seriously challenged by many representatives in the conference. The Swedish representative said that Swedish law did not allow Sweden to accept all the obligations of the article. The main objection was that a stateless person was not a national of any state that could guarantee the same treatment to nationals of the state in which the stateless person was living; therefore, the question of reciprocity could not arise in their case. The French representative thought that it seemed difficult to accept a situation where a stateless person would enjoy more favourable treatment than an alien, whose treatment was entirely dependent on the attitude adopted by his own government on the subject. It was, however, pointed out that Article 7 dealt with legislative, not diplomatic, reciprocity arising out of a unilateral decision taken by each government; the fact that no government was responsible for a stateless person was therefore irrelevant. It was also admitted that the benefits granted subject to reciprocity, such as legal aid or exemption from the payment of *judicatum solvi*, were in fact slight and in way prejudicial to the country or the exercise of its judicial or administrative powers.

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<sup>60</sup> The Ad Hoc Committee stated that the phrase "in the same circumstances" means that the treatment of refugees should correspond to that granted to other aliens *ceteris paribus* (E/1618, Comments to Art. 8), and the Chairman suggested the inclusion of a special article stating that the phrase meant "aliens who have the same right to stay in the country with respect to duration, place and employment" (SR.36, p. 9). Later the Committee agreed to understand the words "in the same circumstances" to mean "with the same time-limit and other conditions as are required of other aliens for the enjoyment of the same privileges" (SR.42, pp. 24, 27).

<sup>61</sup> For the Refugee Convention, see *i.a.*, SR.5, p. 22 (British representative). The same representative contended that the "all-important aspect was that refugees should fulfil the requirement as to sojourn or residence, since for the rest they would be granted the same treatment as aliens generally" (SR.34, p. 17).

<sup>62</sup> The Israel-U.K. document on Article 3 (b) of the draft of the Refugee Convention (A/CONF.2/84) cited as an example the requirement of *Heimatrecht* in certain Central-European countries for enjoyment of social security. *Cf.* also the statement by the representative of Israel in SR.5, p. 19.

The article was adopted by a vote of 12 to 2, with 4 abstentions.<sup>63</sup>

2. The article consists of two parts which are not interrelated. It might even be said that para. 1 has nothing to do with reciprocity or exemption therefrom. The inclusion of para. 1 under "exemption from reciprocity" was taken over by the Refugee Conference from the draft of the second session of the Ad Hoc Committee on the Refugee Convention and thence into this Convention.

3. Paragraph 1 was included in the Refugee Convention because, after having considered the discussion in the Economic and Social Council and the observations of governments to the first draft, the Ad Hoc Committee decided to retain the pattern established in the first draft, viz., that refugees should enjoy at least the same treatment as aliens generally in regard to most provisions and that a preferred treatment - either that of nationals of the most favoured foreign nation or that of nationals of the Contracting State - be established as regards certain rights.<sup>64</sup> This argument is also valid here.

The reference "to aliens generally" is that to foreigners who do not enjoy any specific privileges, either on the basis of the domestic law of the given country or on that of an international agreement between the home state of the foreigner and the state of his residence. In other words, the "treatment accorded to aliens generally" is the least favourable treatment which foreigners enjoy in the country of the residence of the stateless person.<sup>65</sup> Although para. 1 does not sound very impressive,<sup>66</sup> it still represents a step forward in securing to stateless persons an acceptable legal status. As stated above, every alien possessing a nationality must be afforded protection for his person and property while it is generally recognized that a state may treat stateless persons at discretion, i.e., it need not afford them the rights which it grants aliens possessing a nationality, either on the basis of accepted international law or domestic legislation. In stipulating that stateless persons must be treated at least as favourably as aliens in general, the Convention confers upon them rights which, theoretically at least, they would not have enjoyed otherwise, although in practice these basic rights are hardly being denied them anywhere. But this provision is not intended to establish a uniform treatment of stateless persons in the various countries. On the contrary, it leaves it to the domestic law of the country, by legislating for aliens, to set the scope of the rights of stateless persons, except for more favourable provisions explicitly established in the Convention.

Paragraph 1 prescribes that, except when more favourable treatment is explicitly provided for, stateless persons shall be treated in the same way as "aliens generally". This paragraph does not contain any reference to stateless persons "lawfully staying" or "lawfully" in the country where the rights are to be accorded, nor does it refer to the stipulation of "in the same circumstances". The reason is that the term "aliens generally" contains in itself all restrictions which could result from either of the aforementioned requirements.<sup>67</sup> If an "alien generally" is accorded certain rights without the requirement of residence (permanent or temporary) in the country concerned, a stateless person will enjoy these same rights; if, to be accorded a right, the "alien generally" must fulfil certain requirements which are contained in the expression "in the same circumstances", a stateless person not fulfilling them cannot enjoy them under the treatment accorded by para. 1 because he is not supposed to be treated more favourably than the hypothetical

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<sup>63</sup> SR.5, pp. 11-15.

<sup>64</sup> E/1850, para. 19.

<sup>65</sup> It was pointed out in the Ad Hoc Committee (SR.34, pp. 13 ff) that the treatment of "aliens generally" is ambiguous because in many countries it was based less on law than on administrative practice. Nonetheless the expression was retained for lack of a better one.

<sup>66</sup> The U.S. representative in the Ad Hoc Committee rightly stated that where the Convention granted refugees the same treatment as aliens generally it was not giving them too much (SR.37, p. 7).

<sup>67</sup> See the concurring view of the British representative in the Ad Hoc Committee in SR.36, p. 20.

“alien generally”. The same must be true of “illegal” stateless persons: if an alien illegally in a country enjoys certain rights, the same rights must be accorded to a stateless person.

Paragraph 1 deals with “stateless persons”, i.e., with persons enjoying the status accorded to a group of aliens under the Convention. To enjoy the status a determination must be made. If the stateless person is in a country where he is to enjoy the rights granted under Article 7 (1), no difficulties will arise; the authorities know who is and who is not a “stateless person”. If the case involves a person not residing in the country concerned, the question will be how to establish his status. The Contracting States, as we have seen, will in practice have to decide by themselves (except for the rights of other states to follow up the implementation of the Convention) whether the person concerned meets the requirements of Article 1, but that, except where serious grounds exist to challenge this determination, it must also be recognized by other Contracting States.<sup>68</sup>

4. Paragraph 2 of Article 7 of the Refugee Convention underwent rather considerable changes in the process of framing the Convention. At first the Ad Hoc Committee adopted a text similar to the one which was used in the pre-Second World War arrangements.<sup>69</sup> This version was changed in the second session because it was the “consensus of the Committee that the requirement of reciprocity in the original text should be revised because it was open to different interpretations in different countries”.<sup>70</sup> The conference again changed the text.

Paragraph 2 deals with an important element in the legal status of stateless persons.<sup>71</sup> As stated above, aliens enjoy only the most elementary rights (protection of person and property) on the basis of accepted international rules. In all other instances every state is free to treat them as it pleases. Generally, a state is inclined to grant aliens broader rights if its own citizens will be treated in the same way. This is the meaning of “reciprocity” - “I treat your citizens as you treat mine”.

“Exemption from reciprocity” means that a person is to be granted rights which ordinarily are accorded on the basis of reciprocity, without requiring reciprocity. The justification for applying the exemption from reciprocity to stateless persons lies in the fact that they do not enjoy the protection of a foreign country. Consequently, they could not qualify under the rule of reciprocity.

According to the aforementioned Study of the Secretariat, present-day practice distinguishes three kinds of reciprocity: (a) *de facto*, (b) diplomatic, and (c) contractual. The first is established on the basis of a law granting certain rights to foreigners in *general* provided the home state of the foreigner does the same in regard to the citizens of the state enacting the law.<sup>72</sup> The second is also based on law but provides that a foreigner shall enjoy in country A the same rights as granted to nationals of A by the nation to which the foreigner belongs,<sup>73</sup> and the third refers to rights specified in particular conventions among states. While the pre-Second World War conventions on refugees spoke of “reciprocity” without reference to its kind, the Ad Hoc Committee’s drafts treated of “reciprocity” accorded to aliens generally, whether by statute or by treaty arrangements with other countries.<sup>74</sup> This was obvious from the statement of the Ad Hoc Committee that “where .... aliens generally enjoy rights whether by statute or by treaty arrangements with

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<sup>68</sup> See the comments to Article 1 above.

<sup>69</sup> Article 14 of the 1933 and Article 17 of the 1938 Conventions. See also para. 4 of the 1928 Arrangement.

<sup>70</sup> E/1850, para 22.

<sup>71</sup> It must be pointed out that in some countries (United States, Great Britain) the problem of reciprocity does not arise because aliens are generally granted all (non-political) rights (E/AC.32/SR.34. pp 14, 15).

<sup>72</sup> Well-known cases relate to compensation for war damages, the right to be exempt from *cautio iudicati solvi*.

<sup>73</sup> A *Study of Statelessness* by the United Nations Secretariat, August, 1949, pp. 17 ff, 24, and 54 ff.

<sup>74</sup> E/1618, Comments to Article 4. The IRO representative interpreted Article 4 as referring to legislative *de facto* and diplomatic reciprocity (SR.31. para. 4).

other countries (diplomatic reciprocity) these rights would be accorded to refugees also". This view was also expressed by the Ad Hoc Committee in its second session, stating that "it was the understanding of the Committee that Article 4, para. 2, does not apply to rights conferred by treaty on nationals of a particular country only".<sup>75</sup>

The provision of Article 4 of the Ad Hoc Committee's draft was, however, considered inappropriate by the Refugee Conference and two amendments were introduced,<sup>76</sup> restricting the exemption from reciprocity to "legislative" reciprocity. In introducing his amendment, the Belgian representative stated that there were two kinds of reciprocity:

"diplomatic", established by a bilateral treaty, and "legislative" the principle of which was embodied in the national legislation of the various countries.<sup>77</sup> He stated that his government could not agree to confer on refugees the rights which certain aliens enjoyed in Belgium by virtue of a bilateral treaty concluded between Belgium and another state; exemption from reciprocity should be confined to rights which were accorded solely on the basis of legislative or administrative reciprocity.<sup>78</sup>

The privilege of exemption from reciprocity (having regard to Article 10) is granted stateless persons who have resided in the country for three year<sup>79</sup>

5. Paragraph 3 of Article 7 of the Refugee Convention was introduced in the second session of the Ad Hoc Committee in accordance with the general tendency not to impair already existing rights. It makes it obligatory upon states to continue to grant to stateless persons rights ordinarily accorded on the basis of reciprocity only. This relates to rights granted not only on the basis of domestic law but also on other bases.

6. Paragraph 4 of Article 7 of the Refugee Convention (which is now para. 4, of the present Convention) was the result, on the one hand, of the contention of the framers of the Convention that exemption from reciprocity is a very important condition for enjoying a tolerable status, and, on the other, of the contention that some state may not be willing to grant all refugees exemption from all kinds of reciprocity. This contention is also valid as regards "stateless persons".

Paragraph 4 stipulates that the states shall consider favourably the possibility of granting broader exemptions than are obligatory under paras. 2 and 3. This extension could be done in several ways: (a) the states might apply to "old" stateless persons also the exemption from all kinds of conventional reciprocity or from some of them; (b) they might do so, too, in regard to all stateless persons covered in paras. 2 and 3, or to some of them; (c) they might extend the exemption from legislative reciprocity to other groups than those referred to in para. 2.

The second Ad Hoc Committee draft of the Refugee Convention did not contain a proviso similar to this paragraph, but the Committee expressed the hope that states would give

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<sup>75</sup> E/1850, para. 22. The idea was that if reciprocity treaties existed with many countries the situation was equivalent to legislative reciprocity (E/AC.32/SR.34, p. 16 and *ibid.* SR.36, p. 19). For Belgian opposition toward granting refugees rights resulting from special conventions see E/AC.7/SR.156, p. 13.

<sup>76</sup> Belgium (A/CONF.2/11) and Belgium and France (A/CONF.2/32).

<sup>77</sup> On another occasion he admitted the existence of *de facto* reciprocity (SR.24, p. 22 and E/AC.32, SR.36, p. 18). The Dutch representative distinguished three kinds of reciprocity: "legislative", "diplomatic", and "*de facto*" (SR.24, p. 21): so did the representative of Venezuela in the Ad Hoc Committee (SR.11, para. 8).

<sup>78</sup> SR.6, pp. 7-8. Cf. the identical statement by the French representative (*ibid.*, p. 9).

<sup>79</sup> The Convention deals in detail with exemption from reciprocity in favour of stateless persons, but does not clarify a problem which may be of great practical importance for their treatment, viz., whether a state can accord them certain rights without involving its obligation to afford the same right to foreigners with a functioning nationality, on the basis of the most favoured nation clause. The question was raised in the Ad Hoc Committee by the Chinese and Belgian representatives but never answered. It is obvious that the reluctance of a state to be liberal toward stateless persons would increase if the answer were in the affirmative. However, this assumption would be incorrect because "stateless persons" are not treated as foreigners with a nationality but *sui generis* aliens, independent of nationality. Therefore, the special treatment accorded to them is not something which comes within the scope of the most favoured nation clause.

sympathetic consideration to extending rights, as far as possible, to all refugees without regard to reciprocity, particularly where the rights have no relation to the requirements of residence.<sup>80</sup> This "hope" was transformed by the Refugee Conference<sup>81</sup> into a special clause which was also incorporated in this Convention which must have more meaning than "hope". It is a recommendation to the Contracting States. The Convention uses the word "shall" to indicate that it requires the states to consider favourably the possibility of according such rights. In other words, a state cannot be forced to accord these rights, but there must be a well-founded reason for refusing their accordance. The "stateless persons" to whom para. 4 refers are not only those residing in the Contracting States but also those residing outside these states.<sup>82</sup>

7. Paragraph 5 clarifies the rights to which the obligatory exemption from reciprocity should apply. These are rights whereby the Convention explicitly, or by reference to Article 7 (1), grants stateless persons obligatorily only the same treatment as is accorded aliens in general.<sup>83</sup>

The only provision which was not included in this catalogue in the Refugee Convention, was freedom of movement, provided for in Article 26. The present Convention took over the wording of the Refugee Convention without a change. This could not have been an oversight because the same was done in the draft of the Ad Hoc Committee. The reason for not including this article was apparently that it was worded differently from those enumerated in para. 5, establishing as a rule, freedom of movement and sojourn.

## Article 8

### Exemption from exceptional measures

**With regard to exceptional measures which may be taken against the person, property or interests of nations or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemption in favour of such stateless persons.**

1. This article reproduces, with certain changes, Article 8 of the Refugee Convention. There was serious opposition to the inclusion of this provision in the Convention. There was, first of all, a feeling (by the President) that the inclusion depends on whether the document would apply to *de jure* stateless persons only or its benefits would also accrue to *de facto* stateless persons. The British and Belgian representatives thought that the article could not be applied to *de jure* stateless persons; this view was apparently based on the wording of Article 8 of the Refugee Convention which spoke of "nationals of a foreign country" - a *de jure* stateless person was not a national of a foreign country, while a refugee and a *de facto* stateless person is or may be such a national. On the other hand, the Yugoslav representative was of the opinion that if it was to apply to *de facto* stateless persons, it would be better to exclude it altogether; if, on the other hand, it

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<sup>80</sup> E/1850, para. 22.

<sup>81</sup> Upon an Israel/Netherlands amendment proposal (A/CONF.2/106).

<sup>82</sup> Reference was made in the Ad Hoc Committee to war damage compensation in favour of refugees non-residents of the state where the property was located (SR.41, p. 6).

<sup>83</sup> There was a certain confusion in the Ad Hoc Committee about the instances in which exemption from reciprocity was to be applied. The IRO representative thought at first that this provision should be invoked whenever an article did not contain specific provisions as to the treatment to be given to a refugee (such a possibility does not exist under Article 7 (1) any more), but later agreed that it refers to all instances where a refugee is treated as an alien generally. The representative of the Secretariat was of the same opinion and added that there would be no point in invoking the exemption when "most favourable treatment" was accorded while if "treatment accorded to foreigners generally" was granted, refugees could not claim special treatment enjoyed by some foreigners under the conditions of reciprocity (SR.11, paras. 19-23). The Refugee Conference correctly assumed (and this assumption is also valid here) that exemption is required when the latter treatment is accorded, to provide in certain cases broader rights than those enjoyed by the least favoured aliens (see comments to Article 7 (1) above).



was to apply to *de jure* stateless persons, the article (of the Refugee Convention) could be retained and applied *mutatis mutandis* to stateless persons. His contention was that there was no reason why a stateless person who was formerly a national of a certain state should be refused the protection which was granted to a refugee who was a national of the same state. The President suggested to amend the text of the Refugee Convention so as to refer to the previous nationality of the stateless person,<sup>84</sup> but no decision was reached on the first reading<sup>85</sup> and the question was deferred. The discussion was resumed at a later date. The British representative suggested a drafting change<sup>86</sup> to the President's proposal and after a short discussion a decision was made by a vote of 10 to 2, with 8 abstentions to include in the document an article of this kind, subject to possible changes.<sup>87</sup> In the "Articles adopted by the Conference, in first reading, for inclusion in a Protocol or Convention relating to the Status of Stateless Persons",<sup>88</sup> Article 8 appeared in the following wording:

With regard to exceptional measures which may be taken against the person, property or interests of nationals *or former nationals* of a foreign State, the Contracting States shall not apply such measures to a *stateless person* solely on account of *having previously possessed the nationality of the foreign State in question*. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such *stateless persons*.

The words in italics represent the amendments to Article 8 of the Refugee Convention.

The Style Committee<sup>89</sup> adopted the present wording, which differs from the just quoted version in the addition of a single word (his).

2. The Ad Hoc Committee, in its first session, included in the draft an article providing for the exemption of refugees from exceptional measures taken against nationals of the country of which the refugee is formally a citizen. The Committee based the inclusion on the precedent of Article 44 of the Geneva Convention of August 12, 1949, relating to the Protection of Civilian Persons in Time of War<sup>90</sup> and the view that formal nationality ought not to be considered a reason for imposing such measures.

3. Article 8 deals with exceptional measures, without defining them in detail. In the main, these are measures which, in time of war or threat of war or severance of diplomatic relations or other tension between two states, are taken by a state to curb the rights of the citizens of the state against whom these measures are directed. They may involve imitation of the freedom of movement, of the right to a free press, assembly or association, of disposing of assets (freezing, blocking or even sequestration) or using certain means of communications (for instance, radio).<sup>91</sup> These measures were widespread during the last war and were, as a rule, applied not only to "active" nationals of the enemy country but also to persons who had been deprived of or had lost their nationality. The purpose of Article 8 is to prevent the reoccurrence of such practices in regard to persons whom the Convention declares as "stateless persons". However, the second sentence considerably restricts the import of this article.

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<sup>84</sup> His amendment read as follows: "...the Contracting State shall not apply these measures to a stateless person solely on account of his previous nationality."

<sup>85</sup> SR.5, pp. 15-16.

<sup>86</sup> He suggested to replace the words "solely on account of such nationality" with the words solely on account of having previously possessed the nationality of the foreign State in question".

<sup>87</sup> SR.9, pp. 5-6.

<sup>88</sup> E/CONF.17/L.11

<sup>89</sup> E/CONF.17/L.24.

<sup>90</sup> E/1618, Comments to Article 5.

<sup>91</sup> See E/AC.32/SR.35, p. 8.

4. Under its first sentence, Article 8 does not preclude the application of exceptional measures to stateless persons, it only prohibits (within the limitation of the second sentence) their application to a stateless person solely on account of his having previously possessed the nationality ..... In other words, a state is free to apply to a stateless person exceptional measures if they are taken on grounds other than his former nationality. Thus Article 8, sentence one, would not hinder the application of exceptional measures on account of the economic or political activity or special unwanted contacts of a stateless person, if such activity or contacts are, in general, a reason for applying all or some of the exceptional measures. The first sentence as it stands, is applicable to "stateless persons" only who meet the test of Article 1, i.e., have no nationality. As we have seen, however, *de facto* stateless persons (persons who have a nationality) may also be granted the status of a "stateless person" under the Convention. Since the recommendation does not provide for derogations from this status, it must be assumed that they would also benefit from the provisions of Article 8, despite its wording.

The second sentence which was taken over from the Refugee Convention makes an exception in favour of states which, "under their legislation, are prevented from applying" the first sentence. In accordance with accepted practices, international conventions take precedence over national legislation. Therefore, the existence of legislation to which the second sentence refers could not legally justify a narrower application of the contractual rule, if the second sentence were not included. It is obvious that the sentence was included in order to "appease" states which are not or would not be willing to accept the general rule as expressed in the first sentence.<sup>92</sup> The exception was based on a Swedish<sup>93</sup> and British<sup>94</sup> amendment to the draft of the Refugee Convention which differed in their aims: the Swedish desired to permit states whose legislation leaves it to the government to decide what measures should apply to whom, to continue doing so;<sup>95</sup> the British amendment was concerned with assets belonging to nationals of satellite countries who might become refugees, but who, during the war, were collaborators of the enemy régime.

The inclusion of the second sentence of Article 8 in the Refugee Convention was based on the assumption of some representatives that no government would be willing to amend its national legislation in a field in which national security might conceivably be at stake and that, since Article 8 was subject to reservations, it was in the interest of refugees that it should be cast in a form which was acceptable to governments, thus inducing them to accept at least certain commitments should they not be in a position to subscribe to the general principle.<sup>96</sup> The same is obviously true of the present Convention.

5. There will undoubtedly be states which are parties both to this Convention and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Unless they enter a reservation to Article 44 of the latter Convention, they will have to adhere to it regardless of the limitation permitted under this Convention, although the present Convention is a later act, because the parties to the Geneva Convention may be different from the Contracting States of this Convention. This would not hinder any state from applying the second sentence of Article 8 in cases not covered by the Geneva Convention, although it is rather difficult to find a logical application for the lesser liberality in less threatening situations.

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<sup>92</sup> The Canadian representative in the Refugee Convention not incorrectly characterized Article 8 by saying that what the article gave with one hand, it took away with the other (SR.34, p. 22).

<sup>93</sup> A/CONF.2/37.

<sup>94</sup> A/CONF.2/83.

<sup>95</sup> Article 8 uses the word "legislation" (not "legislative system") to denote that the second sentence is applicable to countries where the national laws preclude the application of the principle established in the first sentence; it is not necessary that its application be excluded on the basis of the country's national system of legislation (SR.35, p. 4, of the Refugee Conference).

<sup>96</sup> SR.34, pp. 22-23. The French representative stated clearly that "there was no doubt that the general principle would not be observed by countries in case of national emergency, such as war" (*ibid.*, p. 21). There was a strong opposition in the Conference to this restriction (SR.34, pp. 18 ff), but the restrictive view prevailed.

The second sentence speaks of “their legislation” without stating that this refers to laws in existence at the time when the Convention becomes binding upon the states concerned. If, as seems to be the case, “legislation” refers not only to past but also to future laws, the second sentence is an “invitation” to enact such legislation wherever it does not yet exist. From the viewpoint of a state, it is undoubtedly more prudent not to be bound by a general rule of exemption.

6. In states where legislation, such as is referred to in the second sentence exists, the state is to grant exemption “in appropriate cases”. What these cases are depends in part on what the law provides; in other words, by domestic legislation the state can fix the instances in which exemption is granted, but the limits cannot be such as to refuse exemption when it would not threaten the proper application of the measures and their contemplated effects.

7. The second sentence uses the word “shall [grant exemptions]. There was some difference of opinion in the Refugee Conference as to what this word means (here and in other articles): should it be interpreted as a mandatory or permissive provision?<sup>97</sup> The French equivalent for “shall grant” is “accorderont”, which is undoubtedly of a mandatory, not permissible nature.<sup>98</sup>

8. Article 8 deals with “exceptional measures which may be taken...” the question may arise whether Article 8 relates to measures to be taken in the future or also to measures which, although initiated earlier, continue to be applied after the Convention becomes effective in the particular state, for instance, legislation involving measures against the property of former or present nationals of former enemy countries. It would appear that the rights contained in Article 8 as in all other provisions of the Convention, takes effect upon the coming into force of the Convention and must apply to every law or regulation regardless of when it was initiated. This view was also held by some representatives in the Refugee Conference.<sup>99</sup>

## Article 9

### Provisional measures

**Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.**

1. This article repeats literally the wording of Article 9 of the Refugee Convention. As in the case of Article 8, considerable doubt was expressed in the Conference regarding the inclusion of this Article in the proposed document. The opposition came mainly from the British and French representatives, while the Belgian representative favoured its inclusion, provided the article said explicitly that the provisional measures might be taken “even if he (the person involved) is stateless”. The Belgian amendment was at first defeated by a vote of 6 against 6, with 6 abstentions and at the second vote by 7 in favour, 7 against, and 7 abstention. The inclusion of the article was adopted by a vote of 14 to 2, with 5 abstentions.<sup>100</sup>

2. The respective provision was included in the Refugee Convention (as a paragraph to the then Article 5) by the Ad Hoc Committee in its second session to “clarify the application of this

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<sup>97</sup> See SR.34, p. 19.

<sup>98</sup> The French representative in the Refugee Convention interpreted the word as “imposing an obligation to grant exemptions” (SR.34, p. 20).

<sup>99</sup> See the views of the British representative (SR.27, p. 29) and of the Swedish representative (SR.28, p. 5).

<sup>100</sup> SR.5, pp. 16-18 and SR.6, p. 2.

Article in regard to measures relating to national security in time of war or national emergency".<sup>101</sup>

As stated, Article 8 precludes the application (within the limitations of the second sentence) of exceptional measures to stateless persons if they are based solely on their former nationality. The contention of the Ad Hoc Committee was that while the government should not be authorized to treat refugees as enemies, it would take time to screen them. In the case of an outbreak of war or of a similar event, it might be impossible for a state to make an immediate distinction between enemy nationals supporting the enemy state and refugees from that state, especially if they carried national passports. The purpose of Article 9 of the Refugee Convention was to permit the wholesale provisional internment of refugees in time of war, followed by a screening process.<sup>102</sup> This reasoning may also be applicable to "stateless persons". There may also be cases where the status of a person not possessing a nationality is not clear, i.e., the authorities may have certain doubts whether he is a *bona fide* stateless person, despite the previous determination to this effect. In such instances the states are authorized to apply exceptional measures on a provisional basis to a stateless person. Such measures may be taken only in time of war or other grave and exceptional circumstances and only if they are necessary in the interests of national security. The measures are provisional because they have to be suspended if the person involved can prove conclusively his status of a *bona fide* stateless person, or that, in his case, they could not be justified by the interests of national security.<sup>103</sup>

The instances of application of Article 9 are described in this article as "time of war or other grave or exceptional circumstances". The last words were put in by the Refugee Conference instead of "national emergency" agreed upon by the Ad Hoc Committee. They were decided upon as a compromise between the wording of the Ad Hoc Committee, which was considered by some delegates as too restrictive, and the British proposal to add a third case to the two agreed upon by the Ad Hoc Committee, namely, "in the interests of national security", which would in effect have enabled a state to take exceptional measures at any time.<sup>104</sup> On the basis of the history of this article in the Refugee Convention and its inclusion in this Convention, it must be assumed that the words "other grave and exceptional circumstances" include intermediate areas between war and national security, such as grave instances of cold war, internal crises calling for certain international precautions, or a state of emergency.

3. Article 9 grants the Contracting States the authority to determine for themselves what measures are essential to their national security and whether the person involved is a stateless person. This authority does not prevent the application of Article 34 (settlement of disputes).

## Article 10 Continuity of residence

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

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<sup>101</sup> E/1850, para 23.

<sup>102</sup> SR.6, p. 15, SR.26, p. 6; see also E/AC.32/SR.35, p. 6.

<sup>103</sup> The Yugoslav representative in the Stateless Persons Conference expressed his view on the meaning of the last clause in the following words: "A state could adopt provisional measures in respect of a person and then, when it is established that the said person was stateless, it could either abolish these measures or maintain them if it considered them necessary for its national security" (SR.5, p. 17).

<sup>104</sup> For the discussion see SR.6, pp. 13 ff.

**2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, 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.**

1. This Article is a repetition of Article 10 of the Refugee Convention. The inclusion of this article did not provoke any discussion. It was approved by 21 votes to none, with 1 abstention.<sup>105</sup>

The intent and import of this Article is thus the same as was intended by the framers of the Refugee Convention.

2. Article 10 is the consequence of the provisions of the Convention making the enjoyment of certain rights dependent on a certain length of sojourn in the receiving country: either explicitly (Article 7 (2)) or in cases to which Article 6 is applicable, viz., Articles 13, 15, 17, 18, 21, 22(2), 26.

The authors of the Refugee Convention sought to mitigate the results of interruption of residence not due to the free will of the refugee, and to provide a remedy for a stay without “animus” and without permission, which are usually required to transform one’s “being” in a certain place into “residence”.

Its wording was, however, not restricted to cases explicitly covered by the Convention and must be assumed to have also a general application, for instance, where a certain period of residence is required under the law of the country for naturalization.<sup>106</sup>

3. The first paragraph deals with the lack of “legal entry” and “animus”, which is the essence of enforced sojourn. It stipulates that enforced residence in a Contracting State due to displacement during the last war of a stateless person, who was brought there without proper documents or the desire to be there, should not militate against considering such sojourn as part of the period of “residence” required for the enjoyment of certain rights.

The second paragraph requires a state to consider as one two periods between which there was an enforced interruption.<sup>107</sup> The only requirement is that the stateless person return to his former residence before the entry of the Convention into force for the state of his residence.

## Article 11

### Stateless seamen

**In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory, particularly with a view to facilitating their establishment in another country.**

1. This article reproduces the full text of the same Article in the Refugee Convention. There was neither a discussion of nor opposition to its inclusion. It was adopted unanimously.<sup>108</sup> Its import and interpretation must therefore be judged on the basis of the history of the relevant Article in the Refugee Convention.

2. The relevant Article in the Refugee Convention was the result of the peculiar position of refugees serving on ships flying the flag of a Contracting State: they do not enjoy permission to

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<sup>105</sup> SR.6, p. 2.

<sup>106</sup> The French representative in the Ad Hoc Committee made reference to such a possibility (SR.35, p. 12).

<sup>107</sup> A case in point is a stateless person residing in France who, during the war was deported to Germany and some time thereafter returned to France.

<sup>108</sup> SR.6, p. 2.

stay anywhere except on board the ship on which they serve and cannot go ashore in a port of call. In this regard, the position of vessels under customary international law must be considered. Public vessels (i.e., merchant vessels belonging to a state) and private vessels are in most respects considered as though they were floating parts of the state under whose flag they sail. But this fiction does not go so far as to consider crew members as having residence in the territory of the flag state. The situation thus created imposed on the state, in the view of the framers of the Refugee Convention, an obligation to consider sympathetically requests of refugees, crew members, for their establishment in, or their temporary admission to, the territory of the flag state. The same consideration obviously motivated the conference to incorporate the provision in this Convention.

3. "Sympathetic consideration" is more or less the same as "favourable consideration" (used, for instance in Article 7 (4) of the Convention).

It means an obligation to deal with such requests: and not to refuse them without proper reason, although the provision is of a discretionary, not a mandatory nature.

## Article 12

### Personal status

**1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile of the country of his residence.**

**2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State subject to compliance, if this be necessary, with the formalities required by the law of that State provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.**

1. This article reproduces literally the wording of Article 12 of the Refugee Convention. Its inclusion was not questioned and it was adopted unanimously.<sup>109</sup> The interpretation of this article must be based on the intentions and interpretation put on the relevant article of the Refugee Convention.

2. This article deals with the "personal status" of stateless persons, i.e., their legal capacity (age of majority, the rights of persons under age, capacity to marry, capacity of married women, the instances when a person may lose his legal capacity), their family rights (marriage, divorce, recognition and adoption of children, the powers of parents over their children or of husband over his wife and their mutual rights to support), the matrimonial régime (the mutual rights of spouses to property, for instance), and succession and inheritance (who succeeds whom, what are the consequences of a will, who is considered to have survived in case of unknown date of death, etc.). This has been a problem, which, in the case of foreigners and particularly persons possessing no nationality, created difficulties in many instances. Two tendencies can be distinguished in the existing domestic law: (a) The "Anglo-Saxon" rule which subjects foreigners to the law of their domicile; (b) the law in other countries where the personal status of a foreigner is governed by his (present or former) national law. In the first group of countries, a person without a nationality will encounter little difficulty in establishing his personal status if he has a domicile there; in the other case, a person without nationality (particularly if he never possessed one) does not possess, in theory, any status whatsoever, unless the law contains special provisions for stateless persons (as, for example in Germany, Italy, Switzerland).<sup>110</sup> The Convention on Private International Law stipulates that the status of an alien is to be governed by the law of the country of which he is a national.

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<sup>109</sup> SR.6, pp. 2-3.

<sup>110</sup> For a survey of existing legislation relating to stateless persons, see the IRO document submitted to the Ad Hoc Committee (E/AC.32/L.5).

3. The uncertainty about the specific rules which govern the personal status of an alien creates difficulties not only for the alien but also for all persons who maintain legal relations with him (for instance, in making a contract with a married woman or a person under age). For these reasons, all pre-Second World War conventions dealing with refugees contained a specific rule defining their personal status.

4. The applicable law need not necessarily be that of the country where the stateless person finds himself at a given moment or where his status must be determined: if a stateless person is settled in country A but is either temporarily in country B or has dealings there, his status will be governed by the law of country A, not of country B. But if he establishes a permanent domicile in another country, his personal status changes. It may not always be easy to determine when the former domicile was given up and a new one established because domicile is usually characterized by one objective (residence) and one subjective (intention of remaining indefinitely in a given place) element. The same difficulty may arise if it cannot be established with certainty whether the stateless person has a domicile or none. Furthermore, "domicile" does not mean the same thing in various legal systems, especially in Anglo-Saxon and in continental law.<sup>111</sup> There is therefore a possibility of having a domicile in several countries or a domicile in one country and a residence in another.<sup>112</sup> In order to avoid these difficulties, at least in part, Art. 12 provides that the law of the country of domicile is to be applied in the first instance and the law of the country of residence only if the country of the refugee's domicile was unknown or the refugee has no domicile. The notion of residence was introduced because residence is often easier to establish than domicile.<sup>113</sup>

As a rule, each state will decide, in accordance with its own law, when a domicile exists and when it does not.<sup>114</sup>

The difference between the various concepts of domicile may provoke certain conflicts, especially when a stateless person moves from the area of one concept to that of another or when the personal status of a stateless person residing in one area is to be established in another. In doubtful cases, the law of the country of the habitual residence of the stateless person must be decisive.

5. Article 12 does not deal with cases where there exist different laws governing the personal status of a person in one and the same state based on either geographical units (federal or other states with different civil codes) or on the religious law of the person involved (for instance, the Moslem countries). The first category of cases does not represent any difficulty because domicile or residence is established in a certain locality and the status of a stateless person would depend on the locality of domicile. More difficult is the second contingency, which could be resolved on the basis of the religious affiliation of the stateless person, provided this particular religious faith prevails in the given country.<sup>115</sup>

6. Despite all the possible difficulties, the principle applied in this Article is the most simple because in the majority of cases a stateless person adopts the country of residence as his domicile and thus the personal status will easily be established and reference to foreign law will be avoided. It also has the advantage of freeing stateless persons from the application of the law of the country of whose nationality they were deprived or whom they have repudiated (in the case of *de facto* stateless persons).

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<sup>111</sup> Under British law every person has a domicile (E/AC.32/SR.8, para. 19) because domicile in English law is equivalent to permanent residence (SR.9, para. 2 of the Refugee Conference).

<sup>112</sup> The representative of Israel in the Ad Hoc Committee (SR.8, para. 19) pointed this out in connection with the Secretariat's draft and the French proposal (E/AC.32/L.3).

<sup>113</sup> E/AC.7/SR.8, para. 14.

<sup>114</sup> This view was held by the framers of the Refugee Convention (E/AC.32/SR.9, paras. 2 and 10).

<sup>115</sup> This problem was touched upon by the Egyptian representative in the Refugee Conference, but, owing to its complexity, was not even discussed (SR.7, p. 10).

7. The second paragraph is an exception to the first, inasmuch as it decrees the validity of certain rights acquired under another law (very often the law of the former home country of the stateless person).

Paragraph 2 is the result of the generally accepted validity of “acquired [or vested] rights” which ought not be disturbed, except in specifically described cases where the acquired right of the stateless person would not have been recognized by the law of the given state if he had not become stateless. Such is the case where certain rights are contrary to the “public order” of the state where they are claimed;<sup>116</sup> for example, rights resulting from polygamy invoked in a country where it is prohibited, divorce in countries in which divorces are not recognized, etc.

Paragraph 2 speaks of “the law of that state”, meaning the law of the Contracting State where the right is to be exercised. Since there may be a difference between the “public order” of the various Contracting States, the acquired rights may be recognized in some cases and not be recognized in others.

Paragraph 2 speaks of “rights previously acquired by a stateless person and dependent on personal status, more particularly rights attached to marriage”.<sup>117</sup> These “rights attaching to marriage” are the matrimonial régime, the legal capacity of married women, and the right to succession.<sup>118</sup>

To safeguard these rights, the stateless person may have, if the domestic law so prescribes, to comply with certain formalities. For instance, the law of the country in which recognition is sought may prescribe that foreign adoptions have to be confirmed by local court or that the special matrimonial regime (separation of property or the right of the husband to administer the property of his wife) have to be registered in certain records.

8. Article 12 deals with the law governing the personal status of stateless persons not with the law governing the conclusion or dissolution of legal acts. Thus it refers to the capacity to contract a marriage, but does not deal with the celebration or dissolution of marriage, wills, etc. This is left to the law of the country where such action is performed.<sup>119</sup>

## Article 13

### Movable and immovable property

**The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally 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.**

1. This article reproduces literally the provision of the same article in the Refugee Convention. It provoked no discussion in the conference nor any outright opposition, except that the representatives of the Latin American countries abstained from voting because, in their view,

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<sup>116</sup> Reference to public order or other grounds of non-recognition (in the case of refugees) was made in the Ad Hoc Committee (SR.41, p. 8) as something which need not be written into the Convention.

<sup>117</sup> The Ad Hoc Committee considered that this paragraph (in regard to refugees) also included rights resulting from acts of religious authorities if performed in countries recognizing the competence of such authorities (SR.9, para. 61 ff). This rule must also be considered as applicable here.

<sup>118</sup> The question was raised in the Refugee Conference (SR.7, p. 18) whether the right of children to obtain support from their parents was also an acquired right in the sense of para. 2. Although no decision was reached, it would appear that the view was held that this might be the case if the law of the state in question regarded such right as part of the personal status.

<sup>119</sup> It must be noted that, while the problem of celebration of marriages, produces no difficulty because the law in the place of celebration is applicable, the question of dissolution of a marriage is complicated by the fact that many countries refuse to grant a divorce if the national authorities of the persons involved do not recognize the decision.



its acceptance would abridge the complete equality with nationals that aliens enjoy under Latin American law, with the exception of certain restrictions in frontier areas. The vote was 18 to none with 3 abstentions.<sup>120</sup>

The interpretation of this provision, as of most of the others, is therefore based on that of the relevant article of the Refugee Convention.

2. Article 13 does not contain a requirement of domicile or residence for the enjoyment of the rights conferred by it on stateless persons. In other words, it applies to stateless persons regardless of whether they have their domicile or residence in the country in which they wish to acquire property or elsewhere.
3. Article 13 does not add much to the rights which stateless persons enjoy on the basis of Art. 7 (1). The only difference consists in the recommendation to the Parties to give stateless persons better treatment in this respect than that accorded "aliens generally", wherever this is possible. This was the meaning attached by the Ad Hoc Committee to the words "treatment as favourable as possible".<sup>121</sup>
4. For the explanation of the words "aliens generally", see the comments to Article 7; and for those "in the same circumstances", the comments to Article 6.
5. The rights covered by Article 13 are fully enumerated: acquisition of movable and immovable property, other rights pertaining to movable or immovable property (for instance, sale, exchange, mortgaging, pawning, administration, income), and leases and other contracts relating to such property.

Article 13 speaks of "rights pertaining" to property, not of "rights" as such. It must be assumed that the word "property" is used in the broad sense of the word, including not only tangible property but also the so-called "property rights", for instance, securities, moneys, bank accounts.

## Article 14

### Artistic rights and industrial property

**In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.**

1. This article reproduces the exact wording of the same Article in the Refugee Convention. Although the article was adopted by 21 votes to none, which 1 abstention (Belgium), the representative of Denmark thought that his government might have to make a reservation to this article, the representative of Sweden doubted that his government would be in a position to apply it unless the Swedish law was amended.<sup>122</sup>
2. The article differentiates between two groups of states: (a) the state of habitual residence of the stateless person who claims the right, and (b) all other Contracting States. In the first country he is accorded the same protection as nationals of the country: in the second, he is granted the rights accorded to nationals of the country of his habitual residence. The scope of

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<sup>120</sup> SR.6, p. 3.

<sup>121</sup> F/1618, Comments to Article 8. The Chairman of the Ad Hoc Committee expressed the idea in saying that the states are invited to do their best (SR.13, para. 82). The French representative explained that the words constitute a recommendation (SR.36, p. 10). The Ad Hoc Committee stated that the formula applied was "intended to assure that refugees will, regardless of reciprocity, be treated at least as well as other aliens and to encourage countries to give them better treatment where this is possible".

<sup>122</sup> SR.6, p. 3.

rights enjoyed is made dependent on domestic law or international conventions, such as the Bern Convention on Intellectual Property of 1889, the Acts of Paris of 1896, the Berlin Convention of 1908, the Rome Convention of 1928, etc.<sup>123</sup> Thus the rights enjoyed by a stateless person under Article 14 (especially, in countries other than that of his habitual residence) may change if he moves from one country to another, depending on the domestic law of the country and its adherence to international conventions.

3. Article 14 of the Refugee Convention introduced the concept of “habitual residence” as a requirement for the exercise of the rights to which it refers, contrary to the Ad Hoc Committee draft, which spoke of “resident(s)”. The change was made to denote that a stay of short duration was not sufficient. On the other hand, the exercise of the right was not made dependent on “permanent residence” or on “domicile” because it was felt that it was a too far-reaching concept for the enjoyment of civil rights.<sup>124</sup> “Habitual residence” means residence of a certain duration, but it implies much less than permanent residence.<sup>125</sup> Thus, to enjoy the rights stipulated in Article 14, a stateless person need not have in the country a permanent residence but only a residence of sufficiently long duration to consider him as locally connected with the country. A stateless person may have several such residences (although such instances would be rather rare in view of their specific status). In that case they would enjoy in every one of them the same rights as a national of each of these countries. The difficulty will arise if a stateless person claims rights outside these countries: which habitual residence of the several should be taken as a basis? The proper solution would be to grant the stateless person the most favourable treatment under the choice of several statuses.

A stateless person possessing no habitual residence in any Contractual State is entitled to the protection within the limitations of Article 7 (1). i.e., to the same extent as aliens generally are accorded such rights.

4. The scope of the application of Article 14 does not create any doubts: it is the totality of creations of the human mind.<sup>126</sup> These rights have lately become differentiated from the ordinary property rights.<sup>127</sup> Since they have a broader international circulation than ordinary property, a number of international conventions have been concluded to protect the rights of the creators of these products, to which reference was made above.

5. Neither Article 14 nor the convention as a whole deals with the rights which a stateless person illegally in a Contracting State would enjoy under a provision requiring lawful stay or habitual residence.<sup>128</sup> It would seem that the only rights such stateless persons could claim are those to which Article 7 (1) refers.<sup>129</sup>

## Article 15

### Right of association

**As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory**

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<sup>123</sup> A difficulty may arise if, under the relevant convention, rights granted to foreigners are conditional on the possession of a nationality (for instance, the Bern Convention). It would seem that Art. 14 is clear in its purpose, i.e., the lack of a nationality cannot be a reason for denying him any rights which a national of the country of the habitual residence of the stateless person enjoys, otherwise the whole article would be meaningless.

<sup>124</sup> SR.7, p. 20; SR.8, p. 6.

<sup>125</sup> SR.23, p. 26 of the Refugee Conference.

<sup>126</sup> E/1618, Comments to Article 9

<sup>127</sup> Cf. Article 27 (2) as contrasted with Article 17 of the Universal Declaration of Human Rights.

<sup>128</sup> The question was raised in connection with access to courts but no decision was taken thereon (SR.5, p. 16).

<sup>129</sup> See the Comments to this provision.

**treatment as favourable as possible, and in any event, not less favourable than that accorded to foreigners in general in the same circumstances.**

1. This article was the object of considerable discussion at the conference.

The relevant article of the Refugee Convention grants refugees the most favourable treatment accorded to nationals of a foreign country in the same circumstances. These words mean “the best treatment which is given to nationals of any other country by treaty or usage”. Most favourable treatment includes also rights granted under bilateral or multilateral conventions whether on the basis of specific conventional provisions or on that of the “most favoured nation” clause. It should, however, be considered that the treatment afforded under Article 15 of the Refugee Convention is qualified by the words “in the same circumstances”. This qualification means that refugees lawfully staying in the country are not granted the most favourable treatment accorded any foreigners but only the most favourable treatment granted a specific kind of foreigner. In other words, refugees may claim only such rights as are granted the most favoured aliens of the same qualification (length of stay, etc.)

2. The main opposition to the article as included in the Refugee Convention was based on the contention that, under it, a stateless person would enjoy more favourable treatment than nationals of other countries - a position which the opponents did not want to accept. When the President (rightly) stated that this principle, which was adopted regarding refugees, was equally applicable to stateless persons, the Belgian representative countered that before an individual is granted the status of a refugee a careful study is made of his life, etc. while such study may not find application regarding stateless persons. The Scandinavian, Benelux, and Latin American countries thought that they could not apply the provisions without a reservation regarding the special treatment accorded to nationals of their regions, although this problem, as the President properly pointed out, was also thrashed out in the Refugee Convention. Another objection was raised by the Yugoslav representative, who feared that this article would not serve to encourage stateless persons to acquire the nationality of their country of residence.

The German representative proposed to replace the words “the most favourable treatment accorded to nationals of a foreign country” with the words “to treatment accorded to aliens generally”. But the British representative pointed out that stateless persons should be accorded more favourable treatment than nationals of other countries because they had no government to protect them. If they were granted only the rights accorded to aliens in general, the provision of the Convention would not improve their position, at least in most countries. As regards regional privileges, reservation could be entered by the respective governments.

To meet both points the Belgian representative suggested to grant stateless persons the most favourable treatment possible, and, in any case, not less favourable than that accorded to foreigners in general, in the same circumstances.<sup>130</sup> The Turkish representative also introduced an amendment. Although it was correctly pointed out by the British and Australian representatives that both amendments were equivalent in practice since both provided for the same minimum treatment and that, in the case of countries which do not at present accord stateless persons a more favourable treatment than the minimum provided by the Convention, it would in fact be difficult to induce the competent authorities to exceed that minimum, the Belgian amendment was adopted by 17 votes to 1, with 1 abstention. The amended provision was adopted unanimously.<sup>131</sup>

This article provides for a much less favourable treatment of stateless persons than refugees enjoy under Article 15 of the Refugee Convention.

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<sup>130</sup> E/CONF.17/L.7.

<sup>131</sup> SR.6, pp. 4-7; SR.7, pp. 2-5; SR.9, pp. 6-8

3. Political associations are not covered by Article 15 but would come under Article 7 (1).<sup>132</sup> It reproduces in essence the provisions of the 1933 and 1938 Conventions.

Profit making associations come under Article 18.

4. Article 15 speaks of "associations" and "trade unions". It includes the right of stateless persons to form their own associations and unions or to join associations or unions established by others. However, the provisions of Article 15 cannot impose on associations or trade unions the obligation to admit stateless persons to their ranks: it only provides for the obligation of the state to permit stateless persons to form or join associations and unions on the same conditions as are granted aliens generally, except when more favourable rights are accorded under the facultative clause.

5. Article 15, like a number of others (Articles 17, 18, 19, 21, 23, 24, 28), refers to "stateless persons lawfully staying (which is the English translation of French "résidant régulièrement")<sup>133</sup> in their territory". The expression "lawfully in the country" which was used in the draft of the Ad Hoc Committee was understood to refer to refugees either lawfully admitted or whose illegal entry was legalized but not to refugees who, although legally admitted or legalized, have overstayed the period for which they were admitted or were authorized to stay or who have violated any other conditions attached to their admission or stay.<sup>134</sup>

It is to be assumed that the expression "lawfully in the country" as used in this Convention has the same meaning as the one in the Refugee Convention.<sup>135</sup> If Article 15 is juxtaposed with Article 7 (1), it will follow that the "treatment as favourable as possible" under this Article is granted only to such stateless persons as live in the country on a more or less permanent basis, i.e., have there some kind of residence, even if temporary, while refugees on brief stay are entitled only to the rights under Art. 7 (1), i.e., to the extent aliens generally in the same conditions are accorded the rights enjoyed under Art. 15.

## Article 16

### Access to courts

**1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.**

**2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.**

**3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.**

1. This article reproduces literally the provisions of the same Article in the Refugee Convention.

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<sup>132</sup> The inclusion of the words "non-political" in the Refugee Convention was due to a Swiss motion (A/CONF.2/35) which maintained that it was necessary to debar refugees from engaging in political activity (SR.8, pp. 99 ff). It should be pointed out that there was agreement in the Ad Hoc Committee that the article does not explicitly refer to political activities of refugees and that nothing in the Convention prohibits a state from exercising its authority over the political activities of its residents (SR.23, paras. 46, 48). Although the French proposal to write into the Convention a positive right to restrict such activities (E/AC.32/L.3, Art. 8) was not adopted, the Belgian representative asked the Rapporteur to note that the article should not be interpreted as a limitation of the power of the state to restrict political activity if deemed necessary, although it did not authorize the state to do so. (SR.23, para. 54; cf. also the statement by the Chairman in SR.37, p. 9.) These considerations are undoubtedly also applicable as regards "stateless persons".

<sup>133</sup> For the discussion of the meaning of this word, see especially E/AC.32, SR.42, p. 11 ff.

<sup>134</sup> E/1618, Comments to Article 10; see also the discussion in the second session (SR.41, pp. 13 ff). It should be added that the French text was "résidant régulièrement" and was understood to imply a lengthy stay (*ibid.*, p. 17).

<sup>135</sup> For the discussion on this term see Article 31 below.

There was some opposition to the inclusion of this provision in the Convention, particularly to the exemption from *cautio judicatum solvi* and to the third paragraph. The representative of Guatemala feared that the exemption would put stateless persons in a more favourable position than certain nationals.<sup>136</sup> The Yugoslav representative opposed the inclusion of the third paragraph on the ground that it would establish discrimination in the case of a country which recognized the most-favoured-nations clause: in that case, stateless persons residing in a country which did not recognize such a clause would be treated worse than those in countries which recognize the clause.<sup>137</sup> The British representative admitted that discrimination of this nature would be possible but he contended that the value of the clause has been proven in international practice and saw no reason why stateless persons should not be accorded the advantage which has been accorded refugees.

The three paragraphs were voted and adopted separately. The whole article was adopted by 21 votes to none, with 2 abstentions.<sup>138</sup>

2. Under present-day practice foreigners are usually granted the right to appear before courts of law as plaintiffs or defendants. Thus, stateless persons would generally have access to courts on the basis of Article 7 (1) of the Convention. To avoid difficulties in such countries where free access to courts is not granted all foreigners, the Convention explicitly imposes such an obligation on the Contracting States.

The Ad Hoc Committee considered that para. 1 also applied to such persons who had no habitual residence anywhere.<sup>139</sup> In this respect, para. 1 may represent a special case in favour of stateless persons, i.e., it may grant stateless persons in this respect more rights than they would enjoy under Article 7 (1).

3. The scope of the rights accorded to stateless persons under para. 2 is the same as in Article 14. See the Comments to that article also for the definition of "habitual residence".

4. The difficulties which foreigners usually encounter are mainly due to the requirement of a deposit to cover the court expenses of the other party in the event that the foreigner loses the case (*cautio judicatum solvi*), and the absence of free legal assistance to indigent foreign claimants. In order to alleviate the difficulties which stateless persons may meet with, para. 2 explicitly assimilates stateless persons, habitual residents of the country where the court is located, to nationals insofar as access to court in general and the requirement of *cautio judicatum solvi* and free legal assistance in particular are concerned. The reference to *cautio judicatum solvi* has a psychological effect only, because nationals of the country where the court is located are not required to pay the *cautio*; therefore once a stateless person is assimilated to a national he could not be required to pay *cautio judicatum solvi*.

In Contracting Countries other than those of their habitual residence stateless persons are assimilated to nationals of the country of their habitual residence, under paragraph 3.<sup>140</sup>

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<sup>136</sup> This opposition was, in part at least, based on the contention that since not all stateless persons were indigent, it would be well to make a distinction based on their means.

<sup>137</sup> The President pointed out that the Yugoslav proposal, if adopted, might deprive stateless persons of the possibility of benefitting from the exemption of *cautio judicatum solvi* if there was no assurance that a Court decision handed down in another Contracting State would have effect in the state of residence and that there could only be assurance when there was an agreement to that effect between the two states. (The records must be incorrect in this respect and the President must have had in mind the reverse situation, namely, when a court decision in the country of residence were not recognized in another state.)

<sup>138</sup> SR.7, pp. 6-8.

<sup>139</sup> SR.25, para. 19.

<sup>140</sup> This is the same principle as set forth in Article 14. See the Comments to that article for whatever complication may arise in its implementation.

## Article 17

### Wage-earning employment

**1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.**

**2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.**

1. The Ad Hoc Committee suggested to apply to stateless persons only the first paragraph of the relevant article of the Refugee Convention. In the conference the opposition to this Article (which provided, as did Article 15 of the Refugee Convention, for the “most favourable treatment”) was based on the same grounds as explained with reference to Article 15 above. There was also objection to the two other paragraphs of Article 17 of the Refugee Convention, particularly on the part of the French representative, who claimed that France could not accept them in her concern to protect the labouring masses and in view of existing French law. In general, a number of speakers (including the Swedish, Swiss, British, Belgian, French representatives) expressed the view that their governments would have to enter a reservation to Article 17, paragraph 1, in order to protect their nationals. The Turkish representative even suggested, in view of the reservations made to Article 17 of the Refugee Convention, to consider whether Article 17 should be included at all in the new instrument.

The Turkish representative suggested <sup>141</sup> to insert after the words “to nationals of a foreign country” the words “or at least that accorded in the same circumstances, to foreigners in general” and the Belgian repeated his amendment to Article 15. The Belgian amendment was adopted.

Since paragraphs 2 and 3 of the respective Article of the Refugee Convention did not appear in the Draft Protocol, the representative of Great Britain formally proposed to include paragraph 3 (now appearing as paragraph 2), contending that only paragraph 2 was the subject of reservation, while paragraph 3 would be merely a recommendation to states to accord the best possible treatment to stateless persons and would not bind them in any way. The inclusion of the second paragraph of Article 17 of the Refugee Convention (with a five-year period instead of three years) was proposed by the German representative and was supported by the British representative, but opposed by others, in part because the five-year period was too long, and in part because, under paragraph 1 as amended, stateless persons would enjoy the same treatment as foreigners in general. The German amendment (together with the proposal to include paragraph 2) was rejected and the British proposal to include paragraph 3 was adopted.

The whole Article was adopted by 17 votes to none, with 1 abstention. <sup>142</sup>

2. As in the case of Article 15, this Convention provides fewer rights to stateless persons than the Refugee Convention accords.

3. Article 17 is as such one of the most important in the Convention, possibly the most important, since without the right to work all other provisions are practically meaningless.

Paragraph 1 is in its application exactly the same as Article 15. All the elements involved were discussed in the comments to that article. <sup>143</sup>For the significance of “in the same circumstances”, see Article 6.

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<sup>141</sup> E/CONF.17/L.7.

<sup>142</sup> SR.7, pp. 8-10; SR.9, pp. 9-12.

<sup>143</sup> In the Refugee Conference, para. 1 was considered by Australia and Canada insufficient to meet the conditions of

4. The Convention does not define “wage-earning employment”. It should be taken in its broadest sense.

5. In the Refugee Conference the Australian representative held that persons holding a visa for a temporary stay (he called them “lawfully living” or “sojourning”) should not be entitled to engage in wage-earning employment (Article 17 of the Refugee Convention dealing with this right also refers to refugees “lawfully staying”). This problem was not discussed in detail, but the President held that it was obviously only fair that refugees temporarily visiting a country for special reasons and for a specific period should not be accorded the right to engage in wage-earning employment to any greater extent than other aliens whose sojourn was governed by special conditions were allowed to.<sup>144</sup> This view would also seem to be correct as regards stateless persons.

6. See the Comments to Article 11 for the meaning of the expression “shall give sympathetic consideration”.

## Article 18

### Self-employment

**The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.**

1. The incorporation of the provisions of Article 18 of the Refugee Convention in this Convention provoked no debate and met with no opposition in the conference. The proposal was adopted by a vote of 13 to none with 2 abstentions.<sup>145</sup> Its purpose and import is thus exactly the same as of the corresponding article of the Refugee Convention.

2. The structure of this Article is the same as that of Article 13 (except for the reference to “lawfully in their territory”). For the meaning of the terms involved, see that article.

A treatment less liberal than in the case of wage-earning employment was provided in the Refugee Convention because some of the representatives in the Ad Hoc Committee contended that in their country self-employment was reserved to nationals, that this was a serious middle-class problem, etc.<sup>146</sup>

3. The right to engage in industry and other branches of the economy on the stateless person’s own account is granted, on the basis of Article 18, on condition of being lawfully in the country. Thus Article 18 is not applicable to stateless persons residing outside the country where the self-employed activity is to be exercised; applicable in such cases is Article 7 (1), i.e. stateless persons not residing in the country in which they want to engage in self-employment or establish commercial or industrial companies will be permitted to do so only if, under the laws of the country, aliens in general, residing abroad, are authorized to do so under the same conditions. In short, the Parties to the Convention are requested to accord treatment more favourable than that accorded aliens generally, only to refugees “lawfully” in the country concerned.

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obligatory employment in a certain branch of economy for a certain period, as stipulated in the schemes of admission of refugees under IRO auspices (see SR.3, pp. 23-24). It would seem that Art. 17 deals with the right of employment in general, not with the specific conditions under which a stateless person was admitted. Once he agreed to these conditions, he could hardly claim that they were superseded by any provision of the Convention (see, *i.a.*, the statement by Mr. Van Heuven Goedhart in SR.4, p. 4).

<sup>144</sup> SR.9, pp. 10 and 14.

<sup>145</sup> SR.7, p. 10.

<sup>146</sup> SR. 13, para. 54 ff.

The expression “lawfully (in French “se trouvant régulièrement”) in their country” cannot be only verbally different from “lawfully staying (in French “résidant régulièrement”) in the country” (see for instance, Articles 15, 17). It must mean in substance something else, viz., the mere fact of lawfully being in the territory, even without any intention of permanence, must suffice. In other words, wherever “lawful stay” is required, a stateless person just temporarily in the country would not enjoy the right granted under the condition of “lawfully staying”, on the other hand, where “lawfully being” is sufficient, stateless persons temporarily in the country would enjoy the relevant rights. As explained by the Ad Hoc Committee, it was decided that in most instances the provision in question should apply to all refugees whose presence in the territory was lawful, if it applied also to other aliens in the same circumstances. Wherever higher requirements were made (e.g., Articles 15, 17, 19, etc.) the Committee used the expression “lawfully staying”.<sup>147</sup>

In both instances general restrictions on aliens and special requirements concerning licences, etc. apply.

## Article 19

### Liberal professions

**Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.**

1. Article 19 of the Refugee Convention consists of two paragraphs, but the Ad Hoc Committee suggested to apply to stateless persons the first paragraph only.

Paragraph 2<sup>148</sup> is in the nature of an appeal to the Contracting States to provide employment for refugee professionals in their dependent territories. It imposes upon them the moral obligation to try to secure such employment but only within the limits of existing legislation and the special rules governing the rights of the Contracting State in the dependent territory. The question of applying this provision to stateless persons was raised in the conference, but none of the representatives ever formally proposed to insert it in the document relating to stateless persons.

The inclusion of paragraph 1 was decided by a vote of 21 to none, with 2 abstentions without debate.<sup>149</sup>

2. This article grants the same treatment as Article 17 except for one additional restriction: the diplomas must be recognized (i.e., considered as meeting the requirements of the state for the exercise of the specific profession) by the competent authorities of the state.<sup>150</sup>

3. The term “liberal profession” is not quite precise. It usually embraces physicians, dentists, veterinarians, pharmacists, lawyers, teachers, self-employed engineers, architects, artists. There is no clear-cut distinction between certain liberal professions (for instance, pharmacists, engineers) and either self-employment (owner of an engineering firm or a pharmacy) or wage-earner (non-self employed engineer, pharmacist, chemist), except when a special diploma is required for the exercise of the work. But even here the rule is not absolute: nobody has ever required a diploma of an artist. The local authorities will decide in each case whether a person

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<sup>147</sup> E/1850, para. 25.

<sup>148</sup> "2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories other than the metropolitan territory for whose international relations they are responsible."

<sup>149</sup> SR.7, pp. 10-11.

<sup>150</sup> This is not a specific provision relating to refugees, but one which is usual in regard to all foreign diplomas.



falls under the rubric “liberal profession” or any other heading. In practice, it will make little difference (except for the diploma) whether a person is labelled “professional” or “self-employed” or a “wage-earner”, because the treatment is the same.

4. For the meaning of the term “lawfully staying” see Article 18 above.

## Article 20

### Rationing

**Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.**

1. The inclusion of Article 20 of the Refugee Convention in this Convention was agreed upon in the conference without debate and without opposition. The vote was 21 to none, with 2 abstentions.<sup>151</sup>

2. It is rather unusual to treat aliens in the matter of rationing differently from nationals. Thus, the Convention only sanctions the general usage but, at the same time, strives to prevent a less favourable trend in any Contracting State.

The words “which applies to the population at large and regulates the general distribution of products in short supply” were used by the Ad Hoc Committee to denote “rationing”.<sup>152</sup> Article 20 does not refer to all products in short supply but only to those which are allocated to the general population. This would indicate that Article 20 treats of consumer goods only.

Article 20 is not applicable to allocation of certain items in favour of restricted groups or to products which are generally available in sufficient quantities but are allocated to certain groups, for instance, indigent persons, large families, at or on more favourable prices or conditions. In such instances, Article 7 (1) would apply.

Article 20 deals with “stateless persons” without any qualification. This can only mean all persons coming under Article 1 whether legally or illegally in the country.<sup>153</sup> As a specific provision of the Convention, it excludes the application of Article 7 (1), i.e., the possibility of according “illegal” stateless persons the treatment granted to illegal aliens in general.

## Article 21

### 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 stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.**

1. The decision to include Article 21 of the Refugee Convention in the document relating to stateless persons was made by a vote of 23 to none, with 2 abstentions. No debate took place.<sup>154</sup>

This article has thus the same significance as Article 21 of the Refugee Convention.

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<sup>151</sup> SR.7, p. 12.

<sup>152</sup> Comments to Article 15. The French representative in the Ad Hoc Committee was of the opinion that this article refers to essential goods for individual use but not to products for industrial use (SR.15, para. 16).

<sup>153</sup> This was the view taken in the Ad Hoc Committee concerning refugees (SR.41, p. 18).

<sup>154</sup> SR.7, p. 12.

2. Article 21 of the Refugee Convention was modelled on the provisions of the Migration for Employment Convention adopted by the International Labour Conference on July 1, 1949.<sup>155</sup> It deals with rent control and assignment of apartments and premises. The system applied here is the same as in Article 20: it is an obligation incumbent not only on the state but also on all other public authorities (municipalities, regional self-governments).

As in other cases where the same problem is dealt with in more than one international agreement (in this instance, as regards Article 24 of the Migration for Employment Convention), there is a possibility that one and the same state will be a party to both this Convention and the other agreement. It is possible that one and the same person will come under two agreements, for instance, as a migrant worker under the special convention and as a stateless person under this Convention. Since the parties to the special agreement and to this Convention may be different, they will have to apply the most liberal provisions because they would fulfil both obligations.<sup>156</sup>

## Article 22

### Public education

**1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.**

**2. The Contracting States shall accord to stateless persons treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education, and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.**

1. The Yugoslav representative at the conference proposed to apply to the stateless persons the "national" treatment in all educational matters, but he found no support in the Conference. There was no further debate on the provisions of this article. At the request of the representative of Philippines the two paragraphs of the Refugee Convention were voted on separately. The first was adopted by a vote of 22 to none, with 3 abstentions, and the second by 20 votes to none, with 1 abstention. The whole article was approved by a vote of 22 to none, with 1 abstention.<sup>157</sup>

2. The heading of this article, taken over from the Refugee Convention, is of considerable importance despite the decision of the Refugee Conference that the titles of the Chapters and of the Articles of the Conventions are included for practical purposes and do not constitute an element of interpretation,<sup>158</sup> because para. 1 speaks simply of "elementary education", which could be construed to include public and private elementary schools. The heading of this article, "Public education", restricts its application rather considerably, excluding private schools. This is in line with the intention of the Ad Hoc Committee that this provision should "apply only to education provided by public authorities from public funds and to any education subsidized in

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<sup>155</sup> *International Labour Conference, Conventions and Recommendations, 1919-1949*, p. 863.

<sup>156</sup> This question arose in the Ad Hoc Committee, but the consensus was that it was impossible to foresee future developments in the field of international social agreements which might affect the Convention. (See the statement of the Israel representative in SR.38, p. 10). The position taken by the Chairman was that a refugee would receive whichever was the more favourable treatment (SR.38, p. 14).

<sup>157</sup> SR.7, pp. 12-13.

<sup>158</sup> Final Act, Section II. The decision was made on the basis of a suggestion by the representative of Israel, who sought to retain the headings and at the same time pointed out that they do not form an integral part of the Convention (SR.34, p. 15). It is worth noting that the President did not feel there could be any question of the interpretation to be placed on headings, except in the case of Article 22 "Public education" (SR.35, p. 37).

whole or in part by public funds or to scholarships derived from them".<sup>159</sup> What is "elementary" education and what is higher education depends on the definition applied in the given country.

3. Paragraph 1 of Article 22 of the Refugee Convention was inspired by Article 26 (1) of the Universal Declaration of Human Rights, which proclaimed that elementary education should be compulsory and free.<sup>160</sup> It was obvious that in compulsory and free education refugees cannot be treated differently from nationals.

Paragraph 1 assimilates stateless persons in regard to public elementary education to nationals. In regard to schools other than those referred to in para. 1 of this article they are to enjoy only treatment in accordance with Article 7 (1).

4. Paragraph 2 treats of all grades of education other than elementary, including recognition of school certificates and diplomas acquired abroad.<sup>161</sup>

The aforesaid restriction to public schools is valid here, too.<sup>162</sup>

5. As in the case of Article 20, no explicit reference is made to either lawful stay or habitual residence. In this respect, paragraph 2 does not constitute a problem because the treatment accorded to stateless persons is anyhow not too favourable. It must be assumed that paragraph 1 is equally applicable to both resident and non-resident stateless persons, in view of the generally accepted nature of public elementary education, as discussed above.

## Article 23 Public relief

**The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.**

1. This article provoked some discussion in the conference. The French representative explained that his instructions from his Government did not provide for the inclusion of Article 23 of the Refugee Convention in the instrument to deal with stateless persons because in matters of public relief France did not accord to all foreigners the same treatment as to nationals. For this reason, he did not feel that "national" treatment should be accorded to stateless persons. The German representative said, on his part, that there were in his country slight differences between the treatment accorded, in this field, to aliens and to nationals and that these differences would compel him to make a reservation on Article 23. A decision to incorporate Article 23 of the Refugee Convention in the instrument dealing with stateless persons was adopted by 17 votes to none, with 6 abstentions.<sup>163</sup>

2. This article of the Refugee Convention was drafted by the Ad Hoc Committee on the basis of the resolution on Migration adopted by the Economic and Social Council on July 13, 1950. In drafting this article the Ad Hoc Committee expressed its understanding that refugees

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<sup>159</sup> E/1618, Comments to Article 17. The British representative in the Refugee Conference interpreted this article as referring only to those matters of treatment in respect of elementary education over which the Contracting State concerned had direct control, whether financial or other (SR.35, p. 8).

<sup>160</sup> *Ibid.*, Comments to Article 17.

<sup>161</sup> There was no unanimity in the Refugee Conference on whether the provision of Article 22 relating to the recognition of school certificates referred to admission of refugees to educational institutions only or also the exercise of professions (SR.35, pp. 6-7). The wording of Article 19 (1) leaves no doubt that the first interpretation is correct.

<sup>162</sup> See the statement by many representatives in the Ad Hoc Committee (SR.15, para. 43 ff). Para. 2 does not relate to bilateral agreements concluded under the auspices of UNESCO based on the principle of reciprocity; in this case Art. 7 is to be applied (*ibid.*, para. 48 ff.)

<sup>163</sup> SR.7, p. 13

should not be required to meet any conditions of local residence or affiliation which might be required of nationals.<sup>164</sup> The same must apply to stateless persons.

As the Convention does not contain a definition of “public relief and assistance” it will depend on the special situation in every Contracting State how much assistance a stateless person is to receive.<sup>165</sup> No difficulties will, as a rule, arise in practice concerning the delimitation between public relief and assistance on the one hand, and social security on the other, because the Convention provides for the same treatment, in both instances, except for the cases enumerated in Article 24 (1) (b) (i) and (ii).

## Article 24

### Labour legislation and social security

**1. The Contracting States shall accord to stateless persons lawfully staying 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 of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of 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, occupational diseases, 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.**

**2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.**

**3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.**

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<sup>164</sup> E/1850, para. 27.

<sup>165</sup> It was the view of certain members of the Ad Hoc Committee that this article did not deal with assistance to unemployed (SR.15, para. 21 ff) because in some countries unemployment benefits are part of social security while in others they are granted as part of the relief programme. The provision of Article 24 (1) (b) covers only such assistance to unemployed as results from social security benefits. For these reasons the French representative in the Ad Hoc Committee requested that a special reference to unemployment benefits not covered by insurance be included in the report, (*Ibid.*, para. 34). Although this was not done it must be assumed that Article 23 covers these cases since they are part of the relief programme.

**4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.**

1. In the conference a number of states (Sweden, Switzerland, Norway and Denmark) pointed to their domestic legislation which would not permit them to apply this article to stateless persons and would require them to enter reservations to the first three paragraphs. Similarly, the French representative pointed out that, although France made no reservations to the relevant article in the Refugee Convention, he did not feel that his country would accept it as regards stateless persons because of the complexity of the local legislation and the requirement of reciprocity. On the other hand, the Belgian representative stated that the first paragraph of this article was almost identical with a provision in Convention No. 97 of the ILO (Migration for Employment Convention) which many states had already ratified.

At the request of the representative of Ecuador a vote was taken on the inclusion of the article paragraph by paragraph. The vote varied from 12 to 17 for inclusion, none against, and 6 to 9 abstentions. The inclusion of the whole article was decided by a vote of 17 to none, with 6 abstentions.<sup>166</sup>

The provisions of this Article insofar as para. 1 is concerned reproduce as mentioned Article 6 of the Migration for Employment Convention.

3. As may be seen from the text, this article covers the whole range of official employment regulations and social security. It does not, however, apply to agreements between employers and employees.<sup>167</sup> In most cases aliens are anyhow treated on the same footing as nationals in regard to remuneration and other conditions of work because otherwise they would constitute serious competition to local labour. The same is more or less true of social security also. However, since there are states which do not provide for the inclusion of foreigners in the social security system, para. 1 subpara. (b) provides for two limitations which would permit the state to deal with stateless persons under special schemes.<sup>168</sup>

The first limitation relates to the lack of obligation by the state of residence of the stateless person to maintain the rights which he has acquired elsewhere or which he was about to acquire there. These rights may either be disregarded or recognized in part only. The second limitation relates to such portions of the social security benefits which are payable wholly out of public funds (i.e., to which the employee does not contribute) and to allowances which are paid instead of pensions (i.e., when pensions have not yet been earned under the law or regulation). In both of these instances the Contracting States are free to apply in part to stateless persons or not to apply at all the usual laws and regulations.

4. Paragraph 2 affects many foreign labourers: generally, if the beneficiaries in fatal accidents are not permanent residents of the country where the accident occurred, they may not receive the benefits. To remedy this difficulty, as regards stateless persons, this paragraph stipulates explicitly that the foreign residence of the beneficiary shall be no reason for refusing payment. However, paragraph 2 cannot be interpreted as derogating from the existing currency regulations; in other words, it establishes the right of the foreign beneficiary to the payment but leaves the decision as to the transferability of these benefits to the regulations in force in the country concerned.

5. Paragraphs 3 and 4 are the result of paragraph 1, subpara. (b) (ii): they try to remedy it in certain instances. Maintenance of "acquired rights" relates to rights to social security benefits acquired in one country and to be recognized, within the existing accumulation, by another country: maintenance of "rights in the process of acquisition" refers to a partial accumulation of

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<sup>166</sup> SR.7, p. 15.

<sup>167</sup> See the remarks of the Belgian representative in the Ad Hoc Committee in SR. 14, para. 17.

<sup>168</sup> E/1618, Comments to Article 19.

rights which in itself is not sufficient to grant benefits and which represents part of the necessary amount of accumulation required for the enjoyment of benefits.<sup>169</sup>

The wording of paragraph 3 is somewhat obscure because it does not specify where the rights acquired or in the process of acquisition were acquired: in the home country of the stateless person or in a Contracting State, whence the stateless person moved to another Contracting State. The history of paragraphs 3 and 4 of Article 19 of the Ad Hoc Committee's draft on the Refugee Convention makes it obvious<sup>170</sup> that paragraph 3 refers only - as regards refugees - to rights which a refugee accumulated in a Contracting State where he first found asylum and which he would like to make use of in another such country. In such cases he would enjoy, under paragraph 3, the same treatment as a national of his first country of refuge. The same rule is to be applied to stateless persons.

Paragraph 4 deals with rights accumulated in a stateless person's country of residence, a non-Contracting State, to be exercised in his second country of residence, a Contracting State. In such instances the Convention does not impose on the Contracting State an obligation to treat the stateless person as if he were a national of the non-Contracting State, but only recommends such a treatment to the parties to the Convention.

## Article 25

### Administrative assistance

- 1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.**
- 2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.**
- 3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.**
- 4. Subject to such exceptional treatment as may be granted to indigent persons, 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.**
- 5. The provisions of this article shall be without prejudice to articles 27 and 28.**

1. There was, in the Conference, some disagreement regarding the incorporation of this Article in the Convention. The representatives of Sweden and Great Britain referred to the reservations which their governments entered to this article of the Refugee Convention. The British representative favoured, however, the inclusion of the article because the United Kingdom did not want to prevent other governments from applying its provisions and the article set a goal which Great Britain would seek to attain. The French representative pointed to the office for the legal and administrative protection of refugees and stateless persons established in France which issues all the documents these persons require to perform acts of civil life, replacing documents which the authorities of their country of origin fail to provide.

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<sup>169</sup> The agreements to which para. 3 refers are bilateral treaties by which states agree to enable workers who move from one country to the other to accumulate the insurance benefits earned in both countries. In such cases it is usually agreed that each country pays its share according to the period of work in its territory (E/AC.32/SR.14, para. 55). An example of the application of such agreements is afforded by the French-Belgian treaty on this subject (*Ibid.*, para. 56).

<sup>170</sup> See the statement of the representative of Israel in SR.11, pp. 4-5.

The inclusion of the Article in the Convention was approved by a vote of 17 to none, with 3 abstentions.<sup>171</sup>

2. Paragraph 1 deals with a number of services which nationals of a country ordinarily receive from their judicial, administrative, or consular authorities, such as delivery of documents relating to their family position (birth, marriage, adoption, death, or divorce certificate) or their special position (school or professional certificates) certifications (copies or translations of documents, regularity of documents or their conformity with the law of the country), identity.

<sup>172</sup>Since stateless persons cannot expect to receive such assistance from the authorities of their former nationality or residence, the country of residence of the stateless persons undertakes to arrange that these services be rendered by its own authorities.

Paragraph 2 does not, in substance, contain any provision which is not implicit in paragraph 1. It cannot, on the other hand, be construed as restricting the application of paragraph 1, although paragraph 1 speaks of "authorities of a foreign country" to whom the stateless person can have no recourse (which may include not only his former country but - because of his former residence - also other countries), while paragraph 2 explicitly refers only to the "national authorities" of an alien. The seeming discrepancy is overcome by the use of the word "through" (their national authorities). Under this provision, Contracting States would be called upon to deliver also documents and certifications which are to be supplied by authorities other than those of the country of the former nationality of the stateless person (for instance, if he was born outside the country of his former nationality or married there) because in such instances the documents and certifications are usually provided through the authorities of a person's home country, which act as intermediaries.<sup>173</sup>

The words "by or through" (their national authorities) also indicate that it is either the local authority which ordinarily renders the service or the consular authorities through which the documents or certifications are procured or delivered.

Paragraph 2 deals with documents delivered or caused to be delivered "under their [of the authorities] supervision". The quoted words were inserted in the Refugee Convention to indicate that if a document is not directly delivered by the authorities of a Contracting State, their attestation will be required in order to make them authentic. The attestation was, in particular required to legalize the signature of the representative of the international body which, under the Refugee Convention was given authority to deliver documents referred to in Article 25.<sup>174</sup> It is doubtful whether the quoted words have any substantive importance

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<sup>171</sup> SR.7, p. 16.

<sup>172</sup> The Arrangement of 1928 and the Ad Hoc Committee (in its Comments to Art. 20, para. 2) listed the following services (the latter as an indication of the types of documents which a refugee may require):

- (a) Certifying the identity and the position of the refugees;
- (b) Certifying their family position and civil status, in so far as these are based on documents issued or action taken in the refugees' country of origin;
- (c) Testifying to the regularity, validity, and conformity with the previous law of their country of origin, of documents issued in such country;
- (d) Certifying the signature of refugees and copies and translations of documents drawn up in their own language;
- (e) Testifying before the authorities of the country to the good character and conduct of the individual refugee, to his previous record, to his professional qualifications, and to his university or academic standing;
- (f) Recommending the individual refugee to the competent authorities, particularly with a view to his obtaining visas, permits to reside in the country, admission to schools, libraries, etc.

It is rather doubtful whether point (f) listed by the Ad Hoc Committee has anything to do with the "exercise of a right"; nor could such service properly be called delivery of a document or certification.

<sup>173</sup> See the statement of the Belgian representative in the Refugee Conference, SR.11, p. 13.

<sup>174</sup> See the statement of the French and Belgian representatives in SR.11, p. 15.

here. It is not improbable that - as is the case with the word "authority" (to which no reference is made in paragraph 1) - they were not excluded from the text by omission.

Article 25 is of importance mainly in countries of Continental law, since in common law countries such documents are replaced by affidavits.<sup>175</sup> it is however noteworthy that the British representative regarded the provision of this article as worth while emulating by Great Britain.

The provisions of Article 25 are incumbent upon the state of residence of the stateless person who is in need of the document or certification, even if the right is to be exercised elsewhere,<sup>176</sup> whether it be Contracting or non-Contracting State. The word "habitual" (Articles 14, 16 (2)) is not used, indicating that permanent residence is not required.

3. The purpose of paragraph 3 is to define the import of documents or certifications delivered or caused to be delivered by virtue of paragraphs 1 and 2. The Ad Hoc Committee pointed out that "the purpose of this clause is to have the Contracting States give documents issued to refugees the same validity as if the documents had been issued by the competent authority of the country of nationality (within the country or by a consular agent abroad) of an alien or as if the act had been certified to by such authority. Such documents would be accepted as evidence of the facts or acts certified, in accordance with the law of the country in which the document is presented."<sup>177</sup> The Refugee Conference amended the Ad Hoc Committee's text by providing that such documents be given, not the "same validity" as instruments issued by the national authorities, but only credence in the absence of proof to the contrary". In other words, such documents or certifications possess a lesser degree of validity than ordinary documents (which is inherent in the circumstance that their delivery is often based on insufficient proofs) and may be annulled or modified by contrary evidence. However, as long as such contrary evidence is not available, the documents and certifications are to serve the same purpose as official instruments of the national authorities. The words "stand in the stead of the official documents . . ." mean that the Parties to the Convention are under no obligation to deliver authentic documents (which they could not do) but only documents which in practice replace them and would allow stateless persons to perform acts of Civil life.<sup>178</sup>

Although paragraph 3 does not say so, it must be assumed that such documents and certifications are valid in all Contracting States even if delivered by the authorities of one Contracting State.

4. It is rather unusual to make a permissive reservation to a permissive provision. The meaning of paragraph 4 is, apparently, that it is within the discretion of the proper authority in every single case to charge fees, except in regard to indigent persons, who may be exempt from the fees in a general way.

5. The issuance of identify papers and travel documents is ordinarily included in "administrative assistance". Since special articles deal with these matters, paragraph 5 makes it clear that Article 25 is not applicable to these two services.

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<sup>175</sup> Refugee Conference, SR.11, pp. 14-15. The British representative made it clear that paragraph 2 would not require the UK to introduce a system of supplying documents of the type which would be furnished by other countries. The UK would, however, see to it that the affidavits, if used abroad, be duly legalized (SR.35, p. 9).

<sup>176</sup> Refugee Convention, SR.11, p. 13.

<sup>177</sup> E/1618, Comments to Article 20.

<sup>178</sup> SR.7, p. 16.



## Article 26

### Freedom of movement

**Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.**

1. This article did not provoke any particular discussion in the Conference. However, the Dutch representative indicated that his Government wishes to reserve the right, for purposes of public order, to assign certain places of residence to stateless persons, while the representative of Turkey stated that the right of stateless persons to choose the place of their residence was contrary to Turkish law and his Government might therefore enter a reservation.

The inclusion of this article was adopted by 16 votes to none, with 1 abstention.<sup>179</sup>

2. The intent of Article 26 is to assimilate stateless persons to "aliens in general". This was considered sufficient because free residence and movement are ordinarily granted all aliens but in some cases certain restrictions may exist (for instance, they may need a special licence to move to overcrowded places or to go to restricted areas).

As in the case of Article 18, the only requirement is that of being in the country legally, but, as explained in connection with Article 18, it depends on the status of aliens in the state concerned as to what rights stateless persons will enjoy under Article 26.

A question which was raised in connection with Article 21 of the Ad Hoc Committee's draft (which corresponds to this article) related to refugees who entered a country under a labour contract system or group settlement scheme which frequently required the refugees to give a pledge that they would remain in a particular job for a certain period of time.

<sup>180</sup>The view was expressed that such requirements do not conflict with freedom of movement.<sup>181</sup> It is to be assumed that the same is applicable to stateless persons who are not refugees.

## Article 27

### Identity papers

**The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.**

1. There was quite a lively discussion in the conference on Article 27. Opinions differed regarding the persons to whom the papers should be issued, what these papers actually were and what their nature was. Some representatives felt that identity papers should not be issued to every stateless person but only to those having a residence in the country. Others thought that a distinction should be made between identity papers which could be issued to anyone who happens to be staying in the country and travel papers which should be given to residents only. Still others felt that Article 27 referred to provisional identity papers only, as contrasted with final identity papers. There was no definite decision one way or another,<sup>182</sup> but the Australian and French representatives felt that the article as drafted by the Refugee Conference should not be changed and that it referred to both provisional and final papers.

The article was approved by 18 votes to none with two abstentions.<sup>183</sup>

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<sup>179</sup> SR.8, p. 2.

<sup>180</sup> E/AC.32/SR.15, para. 80. Cf. Footnote 143 above.

<sup>181</sup> SR.11, p. 16. The provision of Article 26 would also not conflict with the special situation where stateless persons have to be accommodated in special camps or in special areas even if this does not apply to aliens generally

<sup>182</sup> The Yugoslav representative thought that it should be left for each country to interpret it according to its own legislation

<sup>183</sup> SR.8, pp. 2-4.

2. The “identity papers” with which Article 27 deals are for internal use, as contrasted with the “travel documents” to be used for journeys abroad. It is a paper certifying the identity of a stateless person (certificate of identity) and, in countries with a passport system, a substitute for a “domestic” passport.

Contrary to other articles, Article 27 deals with “any stateless person in their territory”, thus indicating verbally that neither residence nor even lawful presence is required. All that is necessary, is that the stateless person be physically in the territory of the given state.<sup>184</sup>

It was made clear in the Refugee Conference that this Article in no way impaired the right of Contracting States to control the admission and sojourn of refugees;<sup>185</sup> in other words, the issuance of an identity paper does not obligate the state to keep the stateless person within its borders.

The Convention does not prescribe the nature of the identity papers. As said, they may be temporary or final; they need not be official papers in the sense used in Europe and may simply consist of a document showing the identity of the refugee. In countries where no identity papers are required or issued, Article 27 would not impose on stateless persons an obligation to possess one because its purpose is only to safeguard the interests of the stateless persons, and not to stigmatize them in any way.

## Article 28

### Travel documents

**The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.**

1. There have been ample precedents for international arrangements regarding the issuance of travel documents to refugees. In fact, the problem of travel documents was the one with which the concern of the comity of nations for refugees actually began. The July 5, 1922, Arrangements concerning the so-called Nansen certificates for Russian refugees; that of May 31, 1924, for Armenian refugees; the Arrangements of May 12, 1926, June 30, 1928, and July 30, 1935, dealt exclusively with travel documents. The 1933 and 1938 Conventions also imposed on the Contracting Parties the obligations to issue travel documents, and the first post-Second World War agreement, that of October 15, 1946, again treated of travel documents only. But there has been no international convention regarding travel documents for non-refugee stateless persons. This may account for the difficulties with which the conference was confronted as regards this article.

2. There was considerable opposition in the conference to the inclusion of this article.<sup>186</sup> Several reasons were given: one, that the relevant countries provide anyhow for the issuance of travel documents to stateless persons (France, Australia); another, that it would be confusing to issue to stateless persons travel documents modelled on a document for refugees; a third, that Article 28 created a mandatory obligation, while the states wish to be free to refuse the issuance

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<sup>184</sup> This was made clear in the Ad Hoc Committee, where it was the consensus that every refugee should be provided with some sort of document certifying to his identity without prejudice to the application of other articles of the Convention or the domestic regulations concerning the grant of rights to aliens (SR.38, p. 24).

<sup>185</sup> See the opening speech by the High Commissioner for Refugees (SR.2, p. 16) and the statement by the Dutch representative (SR.11, p. 17).

<sup>186</sup> SR.8, pp. 5-7.

of such documents; a fourth, that it would not be possible to recognize documents issued on the basis of a treaty to which the state was not a party (reference was made to the second paragraph of Article 28 contained in the Refugee Convention, referring to the 1946 Agreement on travel documents to refugees). On the other hand, the British representative rightly stated that Article 28 was one of the most important in the whole Convention and that its elimination would be highly undesirable. The President pointed out that - in order to alleviate the difficulties envisaged - differences between the two documents (for "refugees" and "stateless persons") could be introduced, independently of the identity or near-identity of their validity and contents.

At the suggestion of the Yugoslav representative the words "and the provisions of the Schedule to this Convention shall apply with respect to such documents" were at first eliminated. This elimination created considerable confusion. The President interpreted the deletion as meaning that the conference had refused to include, or to refer to, the provisions of the Schedule to the Refugee Convention in the document relating to stateless persons, and that the conference still had to decide whether it would lay down or recommend to the Parties relevant regulations and, if so, of what kind.<sup>187</sup> The Yugoslav representative at first maintained that the purpose of his proposal was that some states did not wish to modify their right to regulate the movement of stateless persons in their territory and that by way of compromise he suggested to exclude that clause,<sup>188</sup> but thereafter admitted that his amendment (meaning the exclusion of that clause) had referred only to the form of the document,<sup>189</sup> and that his intention had been to leave the conference free to deal as it chose with the schedule, on the understanding that the matter would be discussed at a later time. The British representative maintained that without a schedule Article 28 would hardly be of any use, and he proposed, at a later meeting, to reconsider the previous decision, and to reinsert the excluded phrase in Article 28. By 11 votes to none and 3 abstentions the phrase was reinstated.<sup>190</sup>

3. Under sentence 1, the Contracting States assume the obligation to issue a travel document to every stateless person lawfully staying in their respective territory, if he applies for it and needs it for a journey abroad;<sup>191</sup> It contains, however, a restriction of the obligation, viz., that it is not to apply if compelling reasons of national security or public order militate against the issue of a travel document. Since ordinarily a stateless person cannot leave the country without a travel document (except on the basis of special arrangements between neighbouring states, if they apply to foreigners in general) this means in essence that every Contracting State may forbid the egress of a stateless person if the prohibition appears to be in the interest of national security or public order. Although para. 14 of the Schedule attached to Article 28 explicitly states that the provisions of the Schedule (which govern in detail the issuance of the travel document and are part of Article 28) do not in any way affect the laws and regulations governing the conditions of departure from the territories of the Contracting States, this rule (as regards the Refugee Convention) was not considered to be an additional restriction of the obligation to issue a travel document to every refugee lawfully staying in a Contracting State. The same must apply here, i.e., the obligation is unconditional, except as Article 28 itself states otherwise.

The restriction regarding national security and public order was introduced in the Refugee Convention on a Belgian motion which was explained to allow of a temporary

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<sup>187</sup> SR.9, p. 15.

<sup>188</sup> SR.9, p. 12

<sup>189</sup> SR.9, p. 16 and SR.11, p. 10.

<sup>190</sup> SR.11, pp. 10-11.

<sup>191</sup> Despite the clear wording of Article 28 of the Refugee Convention the representative of Venezuela, while dealing with para. 11 of the Schedule attached to this article, maintained that states like his own could not admit that it was mandatory for them to issue a travel document to refugees while a similar obligation did not exist in respect of their own nationals (SR.33, p. 5). On the strength of his opposition, the conference replaced the words "the obligation" (to issue a document) proposed in para. 11 of the Schedule with the words "the responsibility" (SR.33, p. 6). This change, cannot, however, modify the clear wording of Article 28.

discontinuance of the issue of such documents as well as of refusal to issue a document to particular refugees if this was due to compelling reasons of national security and public order (including refugees prosecuted for offences under civil law). The word “compelling” is to be understood as a restriction upon “reasons of national security and public order”, i.e., not every case which would ordinarily fall under the latter concept could be used to refuse a document but only very serious cases.

4. Besides the obligatory issue of travel documents, there is a facultative issue: sentence two authorizes and leaves it to the discretion of the Contracting State whether or not to issue documents to stateless persons who are in their territory but are not lawfully staying there, i.e., are there on a temporary basis only or even illegally. Special consideration is to be given to stateless persons who need such a document but are unable to obtain it from the country of their lawful residence. It could hardly be the intention of the Convention to request one state to issue a travel document to a resident of another state if the latter refuses to issue the document for compelling reasons of national security or public order.

## **SCHEDULE TO ARTICLE 28**

### **Paragraph 1**

1. The travel document referred to in article 28 of this Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.
2. The document shall be made out in at least two languages, one of which shall be English or French.
3. The Contracting States will consider the desirability of adopting the model travel document attached hereto.

### **Paragraph 2**

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.

### **Paragraph 3**

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

### **Paragraph 4**

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

### **Paragraph 5**

The document shall have a validity of not less than three months and not more than two years.

### **Paragraph 6**

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.
2. Diplomatic or consular authorities may be authorized to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to stateless persons no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

### **Paragraph 7**

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

### **Paragraph 8**

The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

### **Paragraph 9**

1. The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.
2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

### **Paragraph 10**

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

### **Paragraph 11**

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28 shall be that of the competent authority of that territory, to which the stateless person shall be entitled to apply.

### **Paragraph 12**

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

### **Paragraph 13**

1. A travel document issued in accordance with article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months except when the country to which the stateless person proposes to travel does not insist on the travel document according to the right of re-entry.
2. Subject to the provisions of the preceding subparagraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

## Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

## Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

## Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not *ipso facto* confer on these authorities a right of protection.

Many of the provisions of the Schedule are self-explanatory. Comments are in order regarding the following paragraphs:

(1) Paragraph 1 (3) - There was considerable discussion in the conference regarding the desirability of a uniform travel document. Some representatives contended that their governments had been anyhow issuing travel documents to stateless persons, and that there was need to change the practice; others emphasized the advantages of a uniform travel document for all parties to the Convention. The representative of Yugoslavia proposed, as a compromise, to make the form of the document a recommendation rather than an obligation.<sup>192</sup> The Ad Hoc Committee on the Travel Documents proposed<sup>193</sup> the existing version and the conference accepted it. It will be noted that subpara. (3) uses the word "will" (consider) not "shall" to denote that they are requested but not bound to consider the advisability of adopting the model document. Thus, it is left to the various Parties to use or not to use the model document, but they are encouraged to do so and could hardly refuse it unless there are compelling reasons for not doing so.

(2) Paragraph 2 leaves it to the individual countries to define the word "children", i.e., to prescribe the age at which a person may obtain his own document and below which he may be included in the travel document of another, adult refugee.<sup>194</sup>

(3) Paragraph 5 provoked a considerable discussion in the conference. The Ad Hoc Committee on the Travel Documents had omitted this paragraph on the ground that it was difficult to lay down any rules for the length of the validity of the travel document, particularly since many countries generally issued passports valid for a specified period of time, with the possibility of extension, and it would not be desirable to force them to make an exception for stateless persons. It was also explained that the fees for a long-term document (the Schedule to the Refugee Convention provided for a one or two-year validity) were high and the persons involved were reluctant to pay them if the journey was of short duration. The difficulties were finally resolved by the present wording.<sup>195</sup>

(4) Paragraph 6 (1) deals with both the renewal of the document and its extension (beyond the period for which it was issued in accordance with para. 5).<sup>196</sup> This paragraph establishes the

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<sup>192</sup> SR.8, pp. 5-7.

<sup>193</sup> E/CONF.17/L.15 and L.18.

<sup>194</sup> For the same provision in the Refugee Convention, see SR.17, pp. 17-18.

<sup>195</sup> SR.11, pp. 8-9 ff.

<sup>196</sup> It was pointed out in the Ad Hoc Committee that there was hardly any real difference between "renewal", "extension", and "issuance of a new document". There might be a slight difference in form between "renewal" and "extension", but none between "renewal" and "issue of a new document". Nevertheless, these expressions were retained because of the strictness of the services concerned in the matter of form (SR.16, para. 17). The present Convention took over para. 6 (1) without change.

principle that only the authority which issued the document is authorized to renew, extend, or exchange it for another document, provided the refugee is still considered to be a resident of the country of the said authority.

Paragraph 11 provides that once a refugee has taken up lawful residence in another country, it is up to the authority of that country to issue a new document. Para. 11 does not provide for either renewal or extension, on the assumption that only the state which issued a travel document may do it and, when another state becomes competent for the refugee, the only thing to do is to issue a new document.

Paragraph 6 establishes two exceptions to the rules of its first subparagraph.

The first (subpara. 2) provides for the possibility of extension by the consular or diplomatic authorities of the issuing state but not for more than six months, provided they are authorized by their Government to do so. It was pointed out in the conference that this provision had hardly any real meaning: every Government could anyhow authorize their representatives abroad to act for them. There were three reasons for its inclusion: (a) it was not clear whether paragraph 1 referred to the central authorities only or also to representatives abroad;<sup>197</sup> (b) it was not only a matter of granting authorization to these representatives but also of ensuring that this authorization be recognized by other states; and (c) it was feared that without this provision it might be thought, in view of para. 16 that consular and diplomatic representatives were denied the right to take action on behalf of stateless persons.<sup>198</sup>

The second (subpara. 3) authorizes and requests the state which issued a document to renew, extend, or exchange it for a new document, in regard to stateless persons who no longer are lawfully resident in the issuing country and are unable to obtain such a document from the country of their lawful residence. This provision may refer either: (1) to stateless persons mentioned in the last phrase in Article 28 (1), i.e., to stateless persons who lawfully resided earlier in the respective country and now reside in another country but are temporarily again in the territory of their former residence at a time when the validity of their document expires and they are unable - because of absence from the country of their new residence or for some other reason - to obtain an extension of the document from that country; (2) to persons who have left the country with a valid travel document and are unable to obtain a document because the country of their present residence is not a Party to this Convention or for other reasons; or (3) to stateless persons who have forfeited their lawful residence in the country by overstaying the period for which they were admitted. The same question arose in connection with the identical provision in the Refugee Convention. There was no agreement in the Ad Hoc Committee as to which category of persons the provision envisaged. The Belgian representative thought that it could refer only to refugees who after having resided lawfully in the country, continued to reside there unlawfully.<sup>199</sup> The French text (which speaks of refugees who are "no longer lawful residents in their territory"), would tend to confirm the Belgian view. There is, however, no reason not to apply it also to the two other groups; the first group is anyhow covered by the explicit provision of Article 28 (1), second sentence.

(5) Paragraph 7 prescribes the obligatory recognition by all parties of travel documents issued by one of them under the provisions of Article 28 and the Schedule.<sup>200</sup>

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<sup>197</sup> In fact, the Belgian representative contended that para. 1 related to the central authorities only (SR.11, p. 14).

<sup>198</sup> SR.11, pp. 14-15.

<sup>199</sup> SR.42, pp. 8-9.

<sup>200</sup> There was no clarity in the Ad Hoc Committee concerning the import of this provision. The British representative pointed out that the issue of a travel document imposed an obligation on the state of issue only and that no other state assumed any obligation whatsoever until it affixed a visa to that document (SR.16, para. 55).

The recognition provided for in para. 7 is the result of the common agreement to recognize mutually such documents for what they are -substitutes for national passports, in which case no other obligation is usually assumed than to consider the person who carries it as the bearer of a document which, if properly issued, authorizes him to travel. Paragraph 8 of the Schedule takes care of the problems of admission. In other words, other parties cannot question the right of a Contracting State to issue a document if this is done under the powers granted to it by Article 28, even if, in their estimation, the person is not a "stateless person" in the sense of the Convention, as long as the document was issued legally.

(6) Under para. 9 any Contracting State is obligated to issue to stateless persons transit visas through their territory, once the travel document carries an entry visa to a country which the stateless person can reach through that state. It is doubtful whether para. 9 goes so far as to obligate a state to issue a transit visa if the country of final destination can be reached more easily through another country. On the other hand, the possession of a visa for a territory of final destination cannot always be requested, as para. 8 explicitly states that such a visa is to be affixed only if required; therefore, if the country of final destination does not require a visa, the transit country must issue a transit visa, once the stateless person can prove admission to the country of final destination.<sup>201</sup>

Subpara. 2 of para. 9 assimilates stateless persons, in regard to the issuance of transit visas, to "any alien". The wording is different from Article 7 (1) of the Convention, but the sense is apparently the same: the assimilation is to the alien enjoying the least privileges.

(7) Paragraph 11 is an extension of the provisions of Article 28 relating to the issuance of travel documents. Under Article 28, first sentence, the obligation to issue a travel document rests upon the stateless person's state of residence; therefore, when a stateless person changes his residence, he changes the state which, under Article 28 is called upon to issue his travel document. The purpose of para. 11 is to turn this logical conclusion into an explicit provision so as to prevent the issue of several travel documents to one and the same stateless person by different authorities of different countries, and to make clear on which authority the duty to issue the document devolves.<sup>202</sup> If the state of the new residence refuses to issue a travel document, the stateless person may turn to that of his old residence under para. 6 (3) of the Schedule.

(8) In deviation from the wording of para. 13 of the Schedule attached to the Refugee Convention under which the issuance of a travel document obligates the issuing state to readmit the refugee within the period of the validity of this document, the Ad Hoc Committee on Travel Documents has set no specific time limit during which the right to return was ensured. It was done on the basis of a practice by some states which issue travel documents without mentioning the right to readmission.<sup>203</sup> The conference changed the proposal on the strength of a British amendment,<sup>204</sup> which sought to grant the stateless persons a period of no less than three months during which the holder of the travel document would be guaranteed the right to return to the country of his residence; an exception to this guarantee would be permitted, when the country to which the stateless person proposes to travel does not insist on such guarantee. This is the meaning of para. 13.

Paragraph 13 may, on the face of it, create a problem in the instance dealt with in the second sentence of Article 28 (1) and in para. 6 (3). In these cases the issuing state is not the one in which the stateless person lawfully resides; therefore, it is ordinarily not under any obligation to readmit him. However, under para. 13, this state by issuing a document with a guaranteed period of return would undertake to readmit the refugee, at least within three months. This was not an oversight on the part of the conference. The same provision

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<sup>201</sup> Paragraph 9 in the Refugee Convention was copied from Article 11 of the 1946 Agreement whose Article 10 provided for an obligatory entry visa.

<sup>202</sup> Refugee Conference, SR.32, p. 10.

<sup>203</sup> SR.11, p. 16.

<sup>204</sup> E/CONF.17/L.18.



is contained in the Refugee Convention. In connection with the latter, an amendment was suggested by the Danish representative in the Ad Hoc Committee who had in mind the case of a refugee who arrived in Denmark clandestinely and was anxious to go elsewhere but could not obtain a visa without a travel document. Under the Danish proposal, the state of "illegal stay" should be able to issue to such a refugee a travel document which would be valid under Article 28 and would, in turn, impose on the issuing state an obligation to readmit the refugee if he was not permitted to stay in the country to which he proceeded.<sup>205</sup> This view was accepted by the Committee because it was discretionary with the state of "illegal" or temporary stay to issue or not to issue such a document: therefore, it did not impose on them any obligation which they were not willing to assume in the specific case. While sentence 2 thus creates advantages for the stateless persons, it also may result in disadvantages: if applied literally, this may induce governments to refuse the issuance of travel documents under Article 28 (1), second sentence and para. 6 (3) of the Schedule for fear that the stateless person may decide to return, even if he is authorized to remain in the country to which he is seeking admittance. There would, however, seem to be no reason why the stateless person could not renounce the return guarantee or why, under separate agreements with the admitting state, the obligation of the issuing state to readmit the refugee could not be excluded.

(9) Paragraph 14 permits Contracting States to apply to stateless persons their laws and regulations concerning departure from, admission to, sojourn in, and transit through their territory. Under this paragraph, these laws and regulations prevail except that a stateless person, holder of a valid travel document, must be readmitted, if his travel document so states. Obviously, para. 14 cannot be in contradiction to Article 28, i.e., no other conditions for the issuance of travel documents can be laid down than prescribed in Article 28 (1). In other words, para. 14 cannot be interpreted as extending to stateless persons the specific legislation or regulations governing the issuance of national passports, including instances . which issuance of a passport may be refused.<sup>206</sup> However, if under existing laws, other requirements are prescribed for exit (for instance, compliance with the tax laws, police certificates, etc.), they may be applied to stateless persons in the same way as to others.

In substance, para. 14 covers much the same grounds as do paras. 13 (2) and 9. Nonetheless, it was considered by the Refugee Conference to be wider in scope than the latter, because the words "laws and regulations" are of far broader application than "formalities".<sup>207</sup>

It is doubtful whether the words "subject only to the terms of para. 13" are in keeping with the real situation. It is obvious that, insofar as transit is concerned, para. 9 is a restriction on para. 14.

(10) Paragraph 16, first phrase, does not appear to confer any rights upon the refugee, nor take away anything from him because the rule laid down there is of universal acceptance.<sup>208</sup>

Paragraph 16 deviates from the same paragraph in the Refugee Convention - the words *ipso facto* in the second phrase were added by the Stateless Persons Conference. This was done on the basis of a Belgian amendment<sup>209</sup> which sought to eliminate the words

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<sup>205</sup> SR. 16, para. 44; Cf. *ibid.* paras. 47, 54, 55.

<sup>206</sup> This was made clear by the Belgian representative in the Refugee Conference, who refused to accept the Australian-Canadian amendment (A/CONF.2/66) because it would have permitted a state to refuse the issuance of a travel document for the same reasons as allowed it to withhold a passport from a national (SR.17, p. 6).

<sup>207</sup> SR.33, p. 4. The contention of the High Commissioner in the Refugee Conference that para. 9 (2) was redundant in view of para. 14 was valid, but his suggestion to omit it was not acted upon for fear that para. 9 (1) could be construed as an unconditional obligation to issue transit visas (SR.33, pp. 4-5).

<sup>208</sup> The reason why the Ad Hoc Committee seemed to have originally retained it was that it did not wish to eliminate it without knowing what its actual purpose was (SR.18, para. 55 ff). Later it was accepted by that Committee to allay the fears expressed by some governments and to avoid disputes over protection (SR.24, paras. 16-20).

<sup>209</sup> SR.11, p. 18.

“and does not confer on the authorities a right of protection” and, as an alternative, to insert the words “*ipso facto*”. The first amendment was rejected and the alternative accepted. The meaning of the second phrase is that, while the issue of a travel document by the authorities of a state does not *per se* authorize the consular or diplomatic representatives of that state to provide protection to the stateless person abroad during his travel, there is no prohibition to do so, if these authorities so desire and the states in which the stateless person travels do not object thereto.

The import of para. 16 is evident from the discussion in the conference in connection with the Belgian proposal for a new article (Doc. E/CONF 17/L. 13) which read as follows:

Each Contracting State shall be entitled to ensure the protection of both the property and the person of stateless persons domiciled or resident in its territory.

The Belgian representative explained that this proposal was designed to grant the protection of the country of residence to a stateless person even if he was travelling abroad; this would be no obligation on the state but only an authorization which the other Parties would have to respect. There was some support in the conference for the Belgian proposal (for instance, by the representative of Turkey), but the majority were of the opinion that the proposal might lead to serious difficulties, particularly in connection with the protection of *de facto* stateless persons and interfere with bilateral consular conventions. This proposal was rejected by a vote of 5 to 4, with 4 abstentions.<sup>210</sup>

## Article 29

### Fiscal charges

**1. The Contracting States shall not impose upon stateless persons 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 stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.**

1. This article did not provoke any discussion in the conference, which simply decided to take over the relevant provisions of the Refugee Convention.<sup>211</sup>

2. Although in principle aliens are generally subject to the general tax laws of the country of their residence, there are (or may be) certain deviations aimed against aliens. To eliminate such higher or special taxes the Convention puts stateless persons on the same footing as nationals in the same conditions, i.e., deriving a certain amount of income, having special income sources, etc.

3. Article 29 deals with stateless persons in general; in other words, to enjoy equal status with nationals, “in similar situations” of the country where the fiscal charges are payable, the stateless person need not reside in either the state concerned or in another Contracting State (within limitations of the “in similar situations”, as explained in the Comments to Article 7 (1)). This is important because duties and charges are levied not only on residents and they may refer not only to taxes on income, property, etc., but also to duties on imports or exports.

4. The expression “duties, charges or taxes”, taken in the context of “fiscal charges”, must refer to every kind of public assessment, be it of a general nature (taxes and duties) or for specific services rendered by the authorities to a given person (charges).

5. In para. 2 the word “aliens” is apparently taken to mean “aliens in the same circumstances”, i.e., stateless persons are not to pay higher or other charges of the nature

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<sup>210</sup> SR.8, p. 8.

<sup>211</sup> SR.8, p. 7.

described in para. 2 than those imposed on aliens generally in the same position, for the same services.

The documents to which para. 2 refers are those described in Articles 25 and 27, but may also include other documents if their issuance is permissible or required under the provisions of the Convention, for instance, proof of indigence under Article 16.

## Article 30

### Transfer of assets

**1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.**

**2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.**

1. This article was not among those which the Ad Hoc Committee had recommended for inclusion. Opposition toward the inclusion was raised by the Belgian representative who thought its provisions concerned primarily refugees and were not applicable to stateless persons. The British representative, however, pointed out that the words "in conformity with its laws and regulations" protected Contracting States from abuse; on the other hand, there may be instances where stateless persons would benefit from such a provision. He was supported by the Swiss and Norwegian representatives. The article was included in the Convention by a vote of 15 to none, with 5 abstentions.<sup>212</sup>

2. This Article imposes an obligation upon the Contracting States to permit the transfer of assets of stateless persons, provided these assets have been brought in by him and the transfer is made to another country where he has been admitted for resettlement. Thus no such obligation exists in cases where the stateless person leaves the country of his residence for a temporary stay abroad.

The obligation is qualified by the words "in conformity with its laws and regulations". These words do not free a Contracting State from its obligation to permit the transfer of assets referred to in para. 1, even if it generally prohibits transfers in favour of other aliens or nationals, since the obligation is of a categorical nature. These words were inserted to regulate the manner of the transfer. The above-quoted statement by the British representative referred to "abuses" only, meaning that the laws and regulations provide sufficient guarantee that only such assets will be exported which were actually brought in by the stateless person. In other words, the words just quoted require a stateless person to obtain a licence if such a document is required; they may militate against total transfer at once if amounts of such magnitude cannot generally be exported in one lump sum; the transfer in certain currency may be subject to restrictions or the transfer can be made only through the intermediary of a certain agency or a payment union, if this is a general rule, etc. A state, however, cannot refuse to permit the transfer if all such formalities are complied with, on the grounds of lack of foreign exchange or that other aliens or their own nationals do not enjoy the right of transfer.<sup>213</sup>

Paragraph 1 speaks of assets which a stateless person brought into the country of his residence. It is not necessary that the assets be brought in when the stateless person took up residence in the given country. The funds may have been sent into that country before he became a stateless person or before or after he took up residence there as such a person. In fact, the Refugee Conference dropped the words "with him" (in connection with

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<sup>212</sup> SR.8, pp. 7-8.

<sup>213</sup> The Belgian representative in the Refugee Conference correctly stated that the purpose of this article was in fact to lift in the case of refugees the restrictions imposed on the transfer of assets (SR.13, p. 5).

“bringing in”), which cannot but mean that the refugee may have sent the assets to the country before he personally came there or thereafter. The same must be true as regards “stateless persons”.

3. The second paragraph uses the same expression “sympathetic consideration” as Article 11. For the meaning of these words, see the Comments to Article 11.

4. It is obvious from Article 7 (1) that in the case of transfers not covered by Article 30 (1), a stateless person enjoys the same rights as granted aliens generally in the same circumstances; Article 7 (2) and ff. are also applicable. Paragraph 2 recommends more favourable treatment wherever possible.

## Article 31 Expulsion

**1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.**

**2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where**

**compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.**

**3. The Contracting States shall allow such a stateless person 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.**

1. This article reproduces the wording of Article 32 of the Refugee Convention without any changes. At first there was considerable opposition in the conference to the inclusion of such a provision in the Convention. The representatives of several states indicated that their Governments would have to make a reservation to this article if adopted. The difficulties which they envisaged related in the main to the question of the interpretation of “public order”<sup>214</sup> and of the word “lawfully” (in their country). Similarly there was opposition to the second sentence of the second paragraph as conflicting with the regulation of certain countries. It was also pointed out that the provisions enacted to implement the Refugee Convention could not be applied to stateless persons because of lack of co-operation with the High Commissioner for Refugees. Various proposals were submitted regarding replacement of the words “public order” and “lawfully in the country” (for instance, with “habitually resident”), but finally the Belgian-Israel suggestion to leave the article as it was drafted by the Refugee Conference prevailed.

The different parts of the article were then adopted with varying majorities and the whole article was agreed upon by a vote of 16 to 1, with 4 abstentions.<sup>215</sup>

2. For an understanding of the importance of this provision it is necessary to state that, under international law, every state is, in principle, competent to expel at any moment any alien who has been admitted into its territory. It does not matter whether the alien is there on a temporary basis or has settled down for professional or business purposes.<sup>216</sup> In practice, expulsion is mostly governed by the special law governing the status of aliens.

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<sup>214</sup> For instance, the Swedish representative pointed out that under Swedish law an alien who failed to support himself honestly or contumaciously did not fulfil his duties toward the state or private persons and could be expelled. If the expression “public order” did not cover such instances, there would be a question whether Sweden could ratify the Convention without a reservation (SR.10, p. 5). Cf. the Swedish amendment E/CONF.17/L.10.

<sup>215</sup> For the discussion, see SR.8, pp. 8-13; SR.10, pp. 4-7.

<sup>216</sup> L. Oppenheim, *International Law*, seventh edition, London, New York, Toronto, vol. 1, p. 631. Cf. also the statement of the representative of the UN Secretariat in the Ad Hoc Committee in SR.40, p. 14.

3. Paragraph 1 deals with the expulsion of stateless persons lawfully in the country, which means that no such safeguards exist in favour of stateless persons unlawfully in the territory of the state, except those which may result from the application of the Resolution of the Final Act discussed below. In other words, while, as a rule, stateless persons lawfully in a country may not be expelled except on the grounds and in the manner prescribed in Article 31, illegal stateless persons may be expelled without such grounds, and without the guarantee of para. 2, except insofar as the aforesaid Resolution may apply.

The prohibition of the expulsion of stateless persons lawfully in the country means in substance that, once a stateless person has been admitted or legalized, he is entitled to stay in the country indefinitely and can forfeit this right only by becoming a national security risk or by disturbing public order and provided these grounds are established in accordance with the procedure prescribed in para. 2.

4. There was no unanimity in the Stateless Persons Conference regarding the interpretation of the word "lawfully". The representative of Sweden thought that this word was open to two interpretations: stateless persons who had lawfully entered a country whose permission to stay had not elapsed or those who has entered the country unlawfully and had subsequently obtained permission to stay. On the other hand, the representative of Denmark thought that overstaying the period for which a stateless person who entered the country lawfully was admitted might be deemed for convenience to constitute a breach of "public order", meaning that such a person could not *per se* be regarded as "lawfully" in the country.<sup>217</sup> It is to be assumed that the interpretation put on the word "lawfully" by the Swedish representative is correct and that it cannot be considered expulsion if a stateless person, who was admitted to a Contracting State on a temporary basis with a travel document issued by another Contracting State, is refused permission to stay there beyond the authorized period. Technically he would be a refugee "unlawfully" in the country.

5. The meaning of "national security or public order" is the same as elsewhere in the Convention (e.g. Article 28). There was some dissatisfaction in the Ad Hoc Committee and the Refugee Conference with the vagueness of the expression "public order" and the different interpretations given to the term in different countries, because of the existing divergencies in the social systems or legal prohibitions.<sup>218</sup> The Committee felt that it was necessary to take into account the meaning which this term had acquired in certain systems of law. It was of the opinion that the deportation of aliens who had been convicted of certain serious crimes would be permissible under this article,<sup>219</sup> if such crimes are considered in that country as violations of "public order". The Refugee Conference felt that specification of grounds for deportation must be left to the Jurisdiction of the state concerned<sup>220</sup>. On the other hand, "public order" would not in the view of the Ad Hoc Committee, permit the deportation of aliens on "social grounds", such as indigence or illness or disability.<sup>221</sup> Deportation on the basis of indigence would also conflict with Article 23 of the Convention.

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<sup>217</sup> It was this contention which induced the British representative in this conference to propose the substitution of the words "habitually resident" for the expression "lawfully". A lively exchange of views for and against the change ensued, which resulted, as stated above, in the decision to leave the article unchanged.

<sup>218</sup> For a discussion of this term and its meaning in French and common law, see *i.a.* Document E/L.68 (a paper submitted to the ECOSOC by the UN Secretariat in connection with the draft Covenant on Human Rights) and E/CN.4/528, pp. 71-76.

<sup>219</sup> For the view of the Refugee Conference on expulsion of common criminals, see *i.a.* SR.3, p. 15 (the British representative). See also the unchallenged statement by the British representative in SR.14, p. 24 of the Refugee Conference that "public order" was deemed to include matters relating to crime and public morals.

<sup>220</sup> SR.14, p. 18.

<sup>221</sup> E/1850, para. 29. *Cf.* also the statement by the French, Canadian and British representatives, who summed up the discussion in the conference as "making it clear that the words 'public order' could not be construed as including mere indigency" (SR.15, pp. 8 ff). See also Resolution 309 (XI) B of the ECOSOC and E/AC.32/SR.20, para. 75 ff. and E/AC.32/SR.40, pp. 23 and 28. Such a reservation appeared advisable because in many continental states destitute aliens are, without formalities, arrested by the police and reconducted to the frontier (Oppenheim, *op.cit.*, p. 634).

The expression “public order” was also discussed quite extensively in the Stateless Persons Conference. As mentioned above, the Danish representative implied that overstaying the period of admission and some similar reasons could be considered administratively as equivalent to a breach of “public order”, but the British representative doubted that in the normal course of events, a stateless person could be expelled for failure to comply with regulations. On the other hand, the German representative proposed to replace the words “public order” with “serious grounds of public order” if a more restrictive interpretation was desired. The conference finally abandoned all efforts to change anything in this respect so that the words are to be interpreted in the same sense as the Article was originally drafted (by the Refugee Conference).

As regards the question of who is entitled to interpret the term, there was almost unanimous agreement that it should be left to each Contracting State. However, this cannot do away with the general obligation of the Parties to fulfil their obligations under the conference in a fair spirit or with the rights of other states resulting from the application of Article 34.

6. Paragraph 2 provides for procedural guarantees in case of permitted expulsion. One of them is the requirement of a “decision reached in accordance with due process of law”. This does not necessarily mean a court decision because the law may provide for an administrative procedure.<sup>222</sup> “Due process of law” means in substance only that in no case may a decision be reached except as provided for in the law in force in the given country. This is clearly expressed in the French text of the Refugee Convention which deals with a *décision rendue conformément à la procédure prévue par la loi* (“a decision reached in conformity with the procedure prescribed by law”). The next procedural guarantee is that the stateless person, who is accused of being a menace to national security or public order, must be given the necessary facilities to submit evidence that the accusation is unfounded, that there is an error in identity or any other evidence required to clear him of the accusation. He must furthermore be granted the right to appeal to and be represented by counsel before the authority which, under domestic law, is either called upon to hear such appeals or is the body superior to the one which has made the decision; if the decision is made by authorities from whose decision no appeal is permitted, a new hearing instead of appeal must be provided.<sup>223</sup> The authority in question may assign officials to hear the presentation. However, these guarantees may be obviated by “compelling reasons of national security”, for instance, when a decision must be reached in the interests of national security in such a short time as does not permit the authority to allow the stateless person the necessary time to collect evidence or to transport him to the required place; or where a hearing may be prejudicial to national security (for instance, in case of espionage). Since para. 2 speaks of “compelling” reasons, they must really be of a very serious nature and the exception to sentence one cannot be applied save very sparingly and in very unusual cases.

7. Paragraph 3 deals with the status of the stateless person after a final decision of expulsion has been taken.<sup>224</sup> It does not permit the state to proceed to actual expulsion at once but enjoins it to grant him sufficient time to find a place to go. Although para. 3 does not say so explicitly, it must be assumed that the stateless person must be granted the necessary facilities to find admission to another country.<sup>225</sup> They must be of such a nature as to make it possible for the stateless person to secure admission elsewhere because the Convention considers expulsion a measure to be taken only if the stateless person is unable to leave the country on his own motion.

8. The German representative stated correctly that an expulsion order against a stateless person could rarely be executed. However, the Convention does not provide, except implicitly, for

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<sup>222</sup> See, for instance, SR.15, pp. 8-9 of the Refugee Conference and E/AC.32/SR.40, p. 15.

<sup>223</sup> SR.15, pp. 13 ff of the Refugee Convention.

<sup>224</sup> It was agreed in the Refugee Conference that a refugee would not be expelled while his case was *sub judice* (SR.15, p. 16).

<sup>225</sup> Art. 31 (2) of the Refugee Convention provided explicitly for such facilities.

the measures which the states may take in such instances: the second sentence of para. 3 deals only with the period granted to the stateless person to seek legal admission to another country, not with the subsequent time. The Convention, as could not be expected otherwise, imposes on the stateless person only the obligation to seek *legal* admission to another country. It must be assumed that the same is true of expulsion: the expelling state could not be authorized to expel the stateless person to a country which does not agree to accept him.<sup>226</sup> Thus if no country is found which is willing to accept the stateless person, he will have to remain in the country of his "unlawful" stay, but that country may apply to him such restrictions as are necessary in his case to safeguard the interests of the state.

9. The Ad Hoc Committee's draft Protocol did not propose to apply to stateless persons Article 33 of the Refugee Convention dealing with the prohibition to expel refugees to countries where their life and liberty would be threatened. Under the rules which governed the procedure in the Stateless Persons Conference, a formal proposal was required to have such a provision included in the instrument which it was drafting, but no such suggestion was forthcoming, and it was agreed at first that Article 33 of the Refugee Convention would fall.<sup>227</sup> The President, speaking as representative of Denmark, felt, however, that if on account of events in his or a third country, subsequent to his entry, a threat to the life or freedom of the stateless person would arise if he were to return there, no country would be so inhuman as to expel him to such a country.

The Swedish representative submitted a draft recommendation<sup>228</sup> to deal with the problem, and amended the proposal to be a resolution: he also changed the wording to the present text. The proposal was approved unanimously and appears at present in the Final Act in the following words:

### The Conference

*Being of the opinion* that Article 33 of the Convention Relating to the Status of Refugees of 1951 is an expression of the generally accepted principle that no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,

*Has not found it necessary* to include in the Convention Relating to the Status of Stateless Persons an article equivalent to Article 33 of the Convention Relating to the Status of Refugees of 1951.

The legal force of this resolution is unclear. Ordinarily the states ratify the text of a Convention, not the Final Act; therefore, technically the resolutions incorporated in the Final Act do not become formally binding upon the Parties. Furthermore, the resolution only states that, in the view of the representatives, the prohibition of expulsion to territories where the life or freedom of a person would be threatened on account of certain characteristics, has become a generally accepted principle. The representatives of the various governments in the Conference have no legal title to proclaim what is or is not a generally accepted rule of international law. However, it is to be hoped that this resolution will be really regarded by the Parties as an expression of an existing rule of international law and none of them will expel a stateless person to any territory where his life or freedom would be jeopardized.

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<sup>226</sup> See, for instance, the statement of the French representative in the Refugee Convention (SR.16, p. 10) and of the Chairman of the Ad Hoc Committee (SR.20, para. 80).

<sup>227</sup> SR.10, p. 8.

<sup>228</sup> E/CONF.17/L.27.

## Article 32 Naturalization

**The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. 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.**

1. This article did not provoke any discussion in the conference: its inclusion was agreed upon by a vote of 17 to none, with 2 abstentions.<sup>229</sup>
2. Art. 32 consists of two parts: One is a recommendation to or a general moral obligation on the Contracting States to facilitate as far as possible the naturalization and assimilation of the stateless person residing in their countries. The other is a more specific obligation, viz., to expedite proceedings whenever an application for naturalization can be or has been made and to reduce the costs involved.

The word "assimilation" is not used in the usual meaning of loss of the specific identity of the persons involved but in the sense of integration into the economic, social and cultural life of the country.<sup>230</sup>

## Article 33 Information on national legislation

**The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.**

1. There was some disagreement in the conference regarding the inclusion of this Article in the Convention. The Ad Hoc Committee had suggested to apply Article 31 of the draft Convention,<sup>231</sup> which differed from Article 36 of the Refugee Convention: the British representative first advocated the final wording while the Belgian was for Article 31 of the draft Convention. There was so some whether it would visa e to Secretary-General with the information to be supplied under the relevant article of the Refugee Convention. Finally, there was objection to the inclusion of the Article based on the title of the Article (Information on national legislation), viz., that it would require every Contracting State to transmit information regarding all the laws and regulations which they may adopt generally regarding stateless persons. The Belgian proposal was withdrawn and the inclusion of the article decided by a vote of 18 to 1, with 1 abstention.<sup>232</sup>
2. Article 33 stems from the right of every party to a convention to be informed about its application by other parties. In order to facilitate such information, Article 33 obligates the Contracting States to communicate to the Secretary-General of the United Nations the laws and regulations adopted by them in applying the Convention, which will be available to all Contracting States.

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<sup>229</sup> SR.8, p. 13.

<sup>230</sup> The French representative in the Ad Hoc Committee considered "assimilation" to mean "the intermediate stage between the establishment of a refugee on a particular territory and his naturalization" (SR.39, p. 28).

<sup>231</sup> "Each of the Contracting States shall, within reasonable time and in accordance with its Constitution, adopt legislation or other measures to give effect to the provisions of this Convention, if such measures are not already in effect." The Refugee Conference did not adopt this proposal because it was assumed that Contracting States would anyhow enact the necessary legislation and because of the differences in the constitutional structure of the various states: in some of them ratified international agreements automatically become part of the domestic legislation, in others implementary legislation is required (see statement by the Israel representative in SR.9, p. 3).

<sup>232</sup> SR.8, pp. 13-14; SR.9, pp. 2-4.



## Article 34

### Settlement of disputes

**Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.**

There was in the conference no discussion regarding this article and its inclusion was approved unanimously.<sup>233</sup>

This Article is now a standard provision in treaties concluded under United Nations sponsorship. See *i.a.* the Genocide Convention, the Convention on the Declaration of Death of Missing Persons.

## Article 35

### Signature, ratification and accession

- 1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.**
- 2. It shall be open for signature on behalf of:**
  - (a) any State Member of the United Nations;**
  - (b) any other State invited to attend the Conference of Plenipotentiaries on the Status of Stateless Persons; and**
  - (c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.**
- 3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.**
- 4. It shall be open for accession by the states referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.**

The article represents the text of Alternative A of a working paper submitted by the Danish delegation (E/CONF. 17/L. 14). This alternative was approved unanimously.<sup>234</sup>

This article reproduces the now standard practice of treaties under United Nations sponsorship providing for two ways of becoming a party to a convention (a) by signature and subsequent ratification (paras. 2 and 3) and (b) by accession, i.e. adherence without prior signature (para. 4). There is no difference in the circle of states which may use the one or the other method. The only restriction on the selection of the method of becoming a Party to the Convention is contained in para. 1. viz., that no signature is permitted after December 31, 1955; i.e., after that date adherence to the Convention may be made only by means of accession. This is being done in order to cut down on doubtful cases, i.e., states which sign the Convention but may not ratify it. However, once a state has signed the Convention before December 31, 1955, there is no time limit for ratification as long as the convention is in force.

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<sup>233</sup> SR.12, p. 10.

<sup>234</sup> SR. 12, p. 10.

## Article 36

### Territorial application clause

- 1. Any State may, at the time of signature, ratification or accession declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.**
- 2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.**
- 3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking 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.**

This article provoked certain discussion in the conference, in connection with a Dutch proposal (E/CONF.17/L.6) which sought to amend the corresponding article of the Refugee Convention so as to permit dependent territories to make, through the metropolitan government, reservations to the substantive article of the Convention in order to bring them in accord with their local legislation. The proposal was withdrawn when it was explained<sup>235</sup> that the reservation clause (Article 38) refers also to the territorial application of the Convention.

The inclusion of this Article in the Convention was approved by 13 votes to one, with 3 abstentions.<sup>236</sup>

This Article is more or less a standard provision under the United Nations.<sup>237</sup> Paragraph 1 permits variations in the geographical application but only insofar as dependent territories are concerned. States may not restrict it to parts of their metropolitan territory, neither under Article 36 nor under Article 38.

Paragraph 2 is the result of the freedom granted to states regarding the geographical application of the Convention: once it is left to their discretion to extend it to any of their dependencies, they may do so at any time by unilateral notification.

Paragraph 3 is an innovation introduced by the Refugee Conference. It is a moral obligation on the part of the Contracting States to extend the application of the Convention wherever possible.

## Article 37

### Federal clause

**In the case of a Federal or non-unitary State the following provisions shall apply.**

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

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<sup>235</sup> See the statement by the Israel representative (SR.13, p. 3).

<sup>236</sup> SR.13, pp. 2-4.

<sup>237</sup> For a survey on the United Nations practice in regard to the "colonial clause", see Yuen-li Liang "Notes on Legal Questions Concerning the United Nations" (Colonial Clauses and Federal Clauses in United Nations Multilateral Instruments)", 108, *American Journal of International Law* 45; see also A/CONF.2/21.

**(b) With respect to those articles of this Convention that come within the legislative jurisdiction of Constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment.**

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

1. There were no considerable differences in the conference regarding the advisability of including such a clause or its wording. The Yugoslav representative said he could not accept it unless it was understood that federal states would have the same obligation as other Contracting States (meaning that he could not accept para. (b)), but found little support in the conference. The article, as incorporated in the Refugee Convention was approved by 12 votes to none, with 3 abstentions.<sup>238</sup>

2. The reason for this Article is that the implementation of the provisions of the Convention may fall within the jurisdiction of the component parts of a Federal State. Its purpose is to facilitate adherence by Federal States and so avoid the necessity of making reservations to articles which the Federal States cannot implement under its Constitution.

Under Article 37 the provisions of the Convention are divided into two groups: (a) provisions for which the federal legislative authority is competent, and (b) provisions over which the legislatures of the component parts have jurisdiction. However, there exists a third case, viz., when, under the Constitution, the component parts are competent for certain of the provisions of the Convention, but are obliged under the Constitution to implement, by legislative measures, the provisions of a treaty to which the Federal State has adhered.<sup>239</sup> Article 37 puts into one group the first and third cases: in respect to them there exists no difference between the obligations assumed, under the Convention, by a unitary state or a Federal State. Only with respect to the second group is there a distinction: in the case of a Federal State these provisions do not automatically enter into force upon completion of the formal requirements for adherence to the Convention. The Federal State undertakes only the obligation to recommend them, at the earliest possible time, to its component parts for adoption. If the component parts adopt the recommendation (all relevant provisions or some of them) they become valid; otherwise they are not applicable.

Component parts of a Federal State cannot be authorized to enter reservations to international treaties. But the Federal State could do so for them.<sup>240</sup> The conclusion would therefore be that Article 37 would prevent the component parts from adopting “blocked” provisions (i.e. provisions of the Convention to which no reservations are permitted) with modifications, but there is nothing in the Convention which would preclude their adoption of modifications in “free” articles (i.e., articles to which reservations may be made) if this is done formally by the Federal State by way of a reservation.<sup>241</sup> This means that in a Federal

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<sup>238</sup> SR.12, pp. 10-11.

<sup>239</sup> This is the case in Austria (SR.30, p. 22 of the Refugee Conference), Germany (SR.30, p. 26, *ibid.*), and Switzerland (*ibid.*)

<sup>240</sup> See Article 36 above.

<sup>241</sup> In the Refugee Conference the problem was discussed in detail. The French representative thought that a Federal State could, through the provisions of Article 41 (identical with Article 37 of this Convention) make reservations on articles to which no reservations were permissible. This was supported by the British representative as regards provincial authorities. However, the French representative agreed later (SR.35, p. 29) that this clause would not be used as a basis for reservations to articles to which no reservations were permitted in general. The Danish representative believed that

State the Convention need not be applied uniformly either between the Federation and its component parts or among the latter.

4. Paragraph (c) is more or less of the same character as Article 33

## Article 38 Reservations

**1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33 to 42, inclusive.**

**2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.**

1. There was quite a considerable discussion in the Conference regarding this article. The main opposition came regarding the provision (as contained in the Refugee Convention) to permit no reservations to Article 1. However, it was pointed out<sup>242</sup> that the reason for not permitting reservations to the basic provisions of the Convention (including Article 1) was not to permit the essence to be undermined: if Contracting States were permitted to express reservations to the essential articles they would, in effect, have freedom to veto the Convention. The Austrian proposal to exclude Article 1 from the articles which were not subject to reservations was rejected by a vote of 13 to 3, with 1 abstention. This article was adopted on first reading by 19 votes to none, with 1 abstention.<sup>243</sup>

2. Following the recent United Nations practice, Article 38 divides the articles of the Convention into such parts to which reservations by States are permissible and such which have to be accepted as they stand or no adherence to the Convention by the State may take place at all. This is the result of the contention that several of the provisions of the Convention are so fundamental that, if they are not accepted by a state, the Convention could not fulfil its purpose.<sup>244</sup>

The number of substantive provisions to which no reservations are permissible is small. They comprise only the definition of the term "stateless person", the non-discrimination clause, freedom of religion, and access to courts. The rest of the "blocked" provisions concern procedure, the settlement of disputes, territorial application, etc.

Despite the wording of Article 38 reservations to the "blocked" provisions would seem to be possible, viz., if all parties to the Convention should agree, because there is nothing in a convention (even the question of what is indispensable therein) which could not be amended with the consent of all parties involved. The question, however, will arise as to who "all parties" are: those which - at the given time - have become a Contracting State in accordance with Article 39; the Contracting States plus the potential parties, i.e., those which have signed it at that time, or all states which drafted the text. It would seem that states which participated in drafting the text but themselves neither adhered to it nor showed any serious intention of doing so, by official signature, could not prescribe to others what they ought or ought not to accept. As a matter of law, participation in drafting does not mean anything; on the other hand, signature signifies the existence of an agreed-upon text. Therefore, agreement on the text exists only among the states which have

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provincial governments might apply the provisions for a shorter time than the period to which the Federal Government agreed. The point of view of the Israel representative was that there could be no two systems of reservations: one for unitary and another for Federal States; this view seems to have commanded general approval in the Conference. (For the discussion, see SR.30, pp. 23 ff.)

<sup>242</sup> See in particular the statement by the Israel representative.

<sup>243</sup> For the discussion see SR.12, pp. 11-15 and SR.14, p. 12.

<sup>244</sup> See above.

signed it. A state which did not participate in the drafting but affixed its signature subsequently, signified its agreement to the text and must have the same rights as the original signatories. The conclusion would therefore be that a reservation to a “blocked” provision could be made only with the consent of all states which at the time the reservation is deposited are either parties or signatories to the Convention.<sup>245</sup>

3. The provisions of the Convention on reservations undoubtedly represent a departure from traditional practices relative to reservations which require that every reservation must be formally accepted by other signatories before it becomes valid.<sup>246</sup> Under the provision of Article 38 states do not need such consent insofar as the non-blocked articles are concerned.

Assistant Secretary-General Karno stated correctly in the Refugee Convention that “Article 36 (of the draft - at present Article 42 of the Refugee Convention) gave states, so to speak, a blanket authorization to make any reservations they wished except in respect of certain specific articles.”<sup>247</sup> This view was even more clearly stated by Mr. Giraud (Secretariat) in the Second Session of the Ad Hoc Committee when he suggested a departure from the traditional practice and establishing a system of “free reservations” valid even without the agreement or acquiescence of the other Contracting Parties.<sup>248</sup>

4. Since the right of making reservations is a privilege, they may be withdrawn at the pleasure of the reserving state.

Article 38 does not state when a notification concerning the withdrawal of a reservation becomes valid. It may be assumed that the usual ninety-day period is also applicable here.

## Article 39

### Entry into force

1. **This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.**
2. **For each State ratifying or acceding to the Convention after the deposit of the sixth 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.**

The article was taken over from the Refugee Convention without any change.

This article deals with two dates of coming into force of the Convention: (a) the original date (para. 1) and (b) the subsequent dates (para. 2). The original date relates to the entry of the Convention into force among the states which are the first to comply with the requirements of Article 35. Article 39 requires that at least six states must legally become parties to the Convention, before it enters into force among them. It stipulates as a prerequisite for it, that at least six ratifications or accessions be deposited with the Secretary-General. It further prescribes that 89 days must have elapsed since the sixth (or if several ratifications or accessions are deposited at the same day, those following the

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<sup>245</sup> The International Court of Justice held in its Advisory Opinion concerning the Genocide Convention that signature without ratification creates only a provisional status for provisional objections, which only come into effect upon ratification. It may appear unreasonable, in such instances, to have a reservation to a blocked provision agreed to, only to revoke this agreement after the signatory state, which objected to the reservation, has ratified the Convention.

<sup>246</sup> For the international practices on reservations to multilateral agreements see International Organization, V (1951), 167 ff. The aforementioned Advisory Opinion of the International Court of Justice undoubtedly established a new approach to reservations by contending that if a state ratified the (Genocide) Convention, with a reservation which is compatible with the purpose and object of the Convention, it became a party thereto even if the reservation was objected to by one of the parties. In the view of the Court, in such cases the Convention is in force between the state which made the reservation and those which objected to it, except for the clauses affected by the reservations.

<sup>247</sup> SR.21, p. 19.

<sup>248</sup> SR.33, p. 16.

fifth) instrument of ratification or accession was duly deposited. Once these requirements are fulfilled, the Convention is considered to have become “initially” valid. Additions to the circle of states bound by the Convention are made on the basis of paragraph 2.

## Article 40 Denunciation

- 1. Any Contracting State may denounce this Convention at any time by a 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 State which has made a declaration or notification under Article 36 may, at any time thereafter, by a 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.**

This Article is an exact reproduction of the respective Article in the Refugee Convention.

1. Under Article 40, the Contracting Parties are not bound to any specified period of their adherence to the Convention. In other words, the

Convention is concluded *sine die* and may be denounced at any time. However, such denunciation takes effect not immediately but only one year after the notification is received by the Secretary-General of the United Nations.

Similarly, states which extend the application of the Convention to their dependencies do not do so forever or for a fixed period. They may denounce the extension at any time with the same effect as prescribed for a general denunciation.

2. Ordinarily, with the expiration of the validity of a treaty all the obligations incumbent upon a state by virtue of the treaty expire. An exception must, however, be made for rights acquired under the treaty. It was therefore the view of the Ad Hoc Committee that denunciation did not affect the period of validity of travel documents issued by the state denouncing the Refugee Convention nor would it affect the provision for re-admission contained in these documents issued while the state was a party to the Convention.<sup>249</sup> It should be emphasized that this view must also be valid as regards the present Convention and that these are not the only cases of acquired rights under this Convention. For instance, a stateless person enjoying the rights set forth in Article 16 (2) could not be deprived of them if the court case in which he was involved continued after the denunciation became effective.

## Article 41 Revision

- 1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.**
- 2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.**

This Article is an exact reproduction of the relevant Article in the Refugee Convention.

This is now a standard provision in the United Nations Treaties.

A revision of the Convention could be effected at any time with the consent of all parties despite the provision of this article. The provision of Article 45 of the Refugee Convention (corresponding to this Article) were interpreted by the Refugee Conference in the sense

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<sup>249</sup> SR.26, paras. 23, 24.

that the consent of the General Assembly was required in order to provide the financial means necessary to hold a conference under United Nation auspices. The president interpreted Article 45 officially to mean that the Contracting States, would if necessary, be entitled to take action independently of the United Nations making themselves financial provisions for holding the Conference.<sup>250</sup> The same must be assumed to be true of the present Convention.

## Article 42

### Notifications by the Secretary-General of the United Nations

**The Secretary-General of the United Nations shall inform all Members of the United Nations and non-Member States referred to in article 35:**

- (a) Of signatures, ratifications and accessions in accordance with article 35;
- (b) Of declarations and notifications in accordance with article 36;
- (c) Of reservations and withdrawals in accordance with article 38;
- (d) Of the date on which this Convention will come into force in accordance with article 39;
- (e) Of denunciations and notifications in accordance with article 40;
- (f) Of requests for revision in accordance with article 41.

This article reproduces the exact text of the relevant articles in the Refugee Convention (except for the notification regarding the geographical application of the Refugee Convention). This Article is self-explanatory.

## **APPENDIX I**

### ***Draft Protocol Relating to the Status of Stateless Persons Prepared by the Ad Hoc Committee on Statelessness and Related Problems***

#### During its First Session

The Contracting States,

Considering that the Convention Relating to the Status of Refugees dated - deals only with refugees, whether stateless or not, who are the special concern of the United Nations, as evinced in numerous resolutions of the General Assembly, and

Considering, moreover, that there are many stateless persons not covered by the said Convention who do not enjoy any national protection and, pending a more special solution of the problem of such persons, it appears desirable to improve the status of these persons;

Now therefore undertake to apply, *mutatis mutandis*, the provisions of Articles 2 to 4, 6 to 11, 12 (para. 1), 13, 14 (para. 1), 15 to 23, 24 (paras. 1 and 2), 27, 29 and 31 of the Convention Relating to the Status of Refugees, to stateless persons to whom that Convention does not apply.

This Protocol shall not apply to a person who was a member of a German minority in a country outside Germany and who is in Germany.

The standard final clauses follow.

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<sup>250</sup> SR.35, pp. 33-34.

## **APPENDIX II**

### ***Draft Protocol Relating to the Status of Stateless Persons Prepared by the Ad Hoc Committee on Statelessness and Related Problems***

During its Second Session

The Contracting States,

Considering that the Convention Relating to the Status of Refugees dated - deals only with refugees, whether stateless or not, who are the special concern of the United Nations, as evinced in numerous resolutions of the General Assembly, and

Considering, moreover, that there are many stateless persons not covered by the said Convention who do not enjoy any national protection and, pending a more special solution of the problem of such persons, it appears desirable to improve the status of these persons;

Now therefore undertake to apply, *mutatis mutandis*, the provisions of Articles 2 to 4, 6 to 11, 12 (para. 1), 13, 14 (para. 1), 15 to 23, 24 (paras. 1 and 2), 27, 29 and 31 of the Convention Relating to the Status of Refugees, to stateless persons to whom that Convention does not apply.

This Protocol shall not apply to persons referred to in paragraph 5 of part B of Article 1 of the said Convention.

The standard final clauses follow.

## **APPENDIX III**

### ***Final Act of the United Nations Conference on the Status of Stateless Persons***

1. The Economic and Social Council, on 26 April 1954 at its seventeenth session, by resolution 526 A (XVII) decided that a second conference of plenipotentiaries should be convened to revise in the light of the provisions of the Convention Relating to the Status of Refugees on 28 July 1951 and of the observations made by Governments the draft Protocol relating to the Status of Stateless Persons prepared by an *Ad Hoc* Committee of the Economic and Social Council in 1950 and to open the instrument for signature.

The Conference met at the Headquarters of the United Nations in New York from 13 September to 23 September 1954.

The Governments of the following twenty-seven States were represented by delegates all of whom submitted satisfactory credentials or other communications of appointment authorizing them to participate in the Conference:

Australia	Iran
Belgium	Israel
Brazil	Liechtenstein
Cambodia	Monaco
Colombia	Netherlands
Costa Rica	Norway
Denmark	Philippines
Ecuador	Sweden
El Salvador	Switzerland



France	Turkey
Federal Republic of Germany	United Kingdom of Great Britain and Northern Ireland
Guatemala	Yemen
Holy See	Yugoslavia
Honduras	

The Governments of the following five States were represented by observers:

Argentina	Indonesia
Egypt	Japan
Greece	

A representative of the United Nations High Commissioner for Refugees participated, without the right to vote, in the deliberations of the Conference.

The Conference decided to invite interested specialized agencies to participate in the proceedings without the right to vote. The International Labour Organisation was accordingly represented.

The Conference also decided to permit representatives of non-governmental organizations which have been granted consultative status by the Economic and Social Council as well as those entered by the Secretary-General on the Register to submit written or oral statements to the Conference.

Representatives of the following non-governmental organizations were present as observers:

Category A:

- International Confederation of Free Trade Unions
- International Federation of Christian Trade Unions

Category B:

- Agudas Israel
- Commission of the Churches on International Affairs
- Consultative Council of Jewish Organizations
- Friends' World Committee for Consultation
- International Conference of Catholic Charities
- International League for the Rights of Man
- World Jewish Congress
- World Alliance of Young Men's Christian Associations
- Organizations on the Register
- Lutheran World Federation

The Conference elected Mr. Knud Larsen of Denmark as President and Mr. A. Herment of Belgium, and Mr. Jayme de Barros Gomes of Brazil as Vice-Presidents.

The Conference adopted as its agenda the Provisional Agenda drawn up by the Secretary-General (E/CONF. 17/2) excepting rule 5, which it decided to delete (E/CONF. 17/2/Add. 1). At its 12<sup>th</sup> meeting the Conference decided to amend rule 7 (E/CONF. 17/Add.2).

The Conference appointed (i) a Drafting Committee on the Definition of the Term "Stateless Person", which was composed of the President of the Conference and the representatives of Australia, Belgium, Brazil, the Federal Republic of Germany, France, Israel and the United Kingdom of Great Britain and Northern Ireland; (ii) an *Ad Hoc* Committee on the Question of the Travel Document for Stateless Persons composed of the President of the Conference and the representatives of Belgium, Brazil, France, the Federal Republic of Germany, the United Kingdom and Yugoslavia; and (iii) a Style Committee composed of the President of the Conference and the representatives of Belgium, France, Guatemala and the United Kingdom.

The Conference used as the basis of its discussions the Draft Protocol Relating to the Status of Stateless Persons prepared by the *Ad Hoc* Committee of the Economic and Social Council on Refugees and Stateless Persons at its second session held in Geneva in 1950 and the provisions of the Convention Relating to the Status of Refugees adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva from 2 to 25 July 1951. The main working document for the Conference was a memorandum by the Secretary-General, document E/CONF. 17/3.

The Conference decided by 12 votes to none with 3 abstentions, to prepare an independent convention dealing with the status of stateless persons rather than a protocol to the 1951 Convention Relating to the Status of Refugees.

The Convention was adopted on 23 September 1954 by 19 votes to none with 2 abstentions, and opened for signature at the Headquarters of the United Nations.

The English, French and Spanish texts of the Convention, which are equally authentic, are appended to this Final Act.

2. The Conference unanimously decided that the titles of the chapters and of the articles of the Convention are included for practical purposes and do not constitute an element of interpretation.

3. The Conference adopted the following recommendation by 16 votes to 1 with 4 abstentions:

"The Conference

*Recommends* that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons; and

*Recommends* further that, in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention."

4. The Conference unanimously adopted the following resolution:

"The Conference,

"Being of the opinion that Article 33 of the Convention Relating to the Status of Refugees of 1951 is an expression of the generally accepted principle that no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,

*Has not found it necessary* to include in the Convention Relating to the Status of Stateless Persons an article equivalent to Article 33 of the Convention Relating to the Status of Refugees of 1951."

IN WITNESS WHEREOF the President, the Vice-Presidents and the Executive Secretary of the Conference have signed this Final Act.

DONE at New York this twenty-eighth day of September one thousand nine hundred and fifty-four in a single copy in the English, French and Spanish languages, each text being equally authentic. Translations of this Final Act into Chinese and Russian will be prepared by the Secretary-General of the United Nations, who will, on request, send copies thereof to each of the Governments invited to attend the Conference.

## ***Convention Relating to the Status of Stateless Persons***

### **Preamble**

*The High Contracting Parties,*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

*Considering* that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951 and that there are many stateless persons not covered by that Convention,

*Considering* that it is desirable to regulate and improve the status of stateless persons by an international agreement,

*Have agreed* as follows:

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1**

#### **Definition of the term "stateless person"**

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operations of its law.
2. This Convention shall not apply:
  - (i) to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance.
  - (ii) to persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.
  - (iii) to persons with respect to whom there are serious reasons for considering that:
    - (a) they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
    - (b) they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

- (c) they have been guilty of acts contrary to the purposes and principles of the United Nations.

## **Article 2**

### **General obligations**

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

## **Article 3**

### **Non-discrimination**

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

## **Article 4**

### **Religion**

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

## **Article 5**

### **Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

## **Article 6**

### **The term “in the same circumstances”**

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

## **Article 7**

### **Exemption from reciprocity**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

## **Article 8**

### **Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nations or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemption in favour of such stateless persons.

## **Article 9**

### **Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

## **Article 10**

### **Continuity of residence**

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

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, 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.

## **Article 11**

### **Stateless seamen**

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

## **CHAPTER II**

### **JURIDICAL STATUS**

## **Article 12**

### **Personal status**

1. The personal status of a stateless person 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 previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State subject to

compliance, if this be necessary, with the formalities required by the law of that State provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

### **Article 13**

#### **Movable and immovable property**

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally 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.

### **Article 14**

#### **Artistic rights and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

### **Article 15**

#### **Right of association**

As regards non-political and non-profit making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to foreigners in general in the same circumstances.

### **Article 16**

#### **Access to courts**

1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.
2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

## **CHAPTER III**

### **GAINFUL EMPLOYMENT**

### **Article 17**

#### **Wage-earning employment**

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

### **Article 18**

#### **Self-employment**

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

### **Article 19**

#### **Liberal professions**

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

## **CHAPTER IV**

### **WELFARE**

### **Article 20**

#### **Rationing**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

### **Article 21**

#### **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 stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### **Article 22**

#### **Public education**

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

## **Article 23**

### **Public relief**

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

## **Article 24**

### **Labour legislation and social security**

1. The Contracting States shall accord to stateless persons lawfully staying 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 of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of 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, occupational diseases, 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 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.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## **CHAPTER V**

### **ADMINISTRATIVE MEASURES**

## **Article 25**

### **Administrative assistance**

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.



2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, 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.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

## **Article 26**

### **Freedom of movement**

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

## **Article 27**

### **Identity papers**

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

## **Article 28**

### **Travel documents**

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

## **SCHEDULE TO ARTICLE 28**

### **Paragraph 1**

1. The travel document referred to in article 28 of this Convention shall indicate that the holder is a stateless person under the terms of the Convention of 28 September 1954.
2. The document shall be made out in at least two languages, one of which shall be English or French.
3. The Contracting States will consider the desirability of adopting the model travel document attached hereto.

### **Paragraph 2**

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.

### **Paragraph 3**

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

#### Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

#### Paragraph 5

The document shall have a validity of not less than three months and not more than two years.

#### Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities may be authorized to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to stateless persons no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### Paragraph 7

The contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

#### Paragraph 8

The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

#### Paragraph 9

1. The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

#### Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

#### Paragraph 11

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28 shall be that of the competent authority of that territory, to which the stateless person shall be entitled to apply.

## Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

## Paragraph 13

1. A travel document issued in accordance with article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months, except when the country to which the stateless person proposes to travel does not insist on the travel document according the right of re-entry.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

## Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

## Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

## Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not *ipso facto* confer on these authorities a right of protection.

## **Article 29**

### **Fiscal charges**

1. The Contracting States shall not impose upon stateless persons 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 stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

## **Article 30**

### **Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

## **Article 31**

### **Expulsion**

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a stateless person 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.

## **Article 32**

### **Naturalization**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. 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.

## **CHAPTER VI**

### **FINAL CLAUSES**

## **Article 33**

### **Information on national legislation**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

## **Article 34**

### **Settlement of disputes**

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

## **Article 35**

### **Signature, ratification and accession**

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.
2. It shall be open for signature on behalf of:
  - (a) any State Member of the United Nations;
  - (b) any other State invited to attend the Conference of Plenipotentiaries on the Status of Stateless Persons; and
  - (c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.
3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## **Article 36**

### **Territorial application clause**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking 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.

## **Article 37**

### **Federal clause**

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

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

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

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

## **Article 38**

### **Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

## **Article 39**

### **Entry into force**

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth 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.

## **Article 40**

### **Denunciation**

1. Any Contracting State may denounce this Convention at any time by a 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 State which has made a declaration or notification under article 36 may, at any time thereafter, by a 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.

## **Article 41**

### **Revision**

1. Any contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

## **Article 42**

### **Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-Member States referred to in article 35:

- (a) Of signatures, ratifications, and accessions in accordance with article 35;
- (b) Of declarations and notifications in accordance with article 36;
- (c) Of reservations and withdrawals in accordance with article 38;
- (d) Of the date on which this Convention will come into force in accordance with article 39;
- (e) Of denunciations and notifications in accordance with article 40;
- (f) Of requests for revision in accordance with article 41.

*In faith whereof* the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

*Done* at New York, this .....day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non

Member States referred to in article 35.

# MODEL TRAVEL DOCUMENT

it is recommended that the document be in booklet form (approximately 15 x 10 centimetres), that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 28 September 1954" be printed in continuous repetition on each page, in the language of the issuing country.

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(Cover of booklet)

## TRAVEL DOCUMENT

(Convention of 28 September 1954)

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No.....

(1)

## TRAVEL DOCUMENT

(Convention of 28 September 1954)

This document expires on.....unless its validity is extended or renewed.

Name .....

Forename(s) .....

Accompanied by.....child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to ..... (state here the country whose authorities are issuing the document) on or before ..... unless some later date is hereafter specified. (The period during which the holder is allowed to return must not be less than three months except when the country to which the holder proposes to travel does not insist on the travel document according the right of re-entry.)

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. (The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.)<sup>1</sup>

(This document contains 32 pages, exclusive of cover.)

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(2)

Place and date of birth .....

Occupation .....

Present residence .....

\* Maiden name and forename(s) of wife .....

.....

\* Name and forename(s) of husband .....

.....

### Description

Height .....

---

<sup>1</sup> The sentence in brackets to be inserted by Governments which so desire.

Hair .....  
 Colour of eyes .....  
 Nose .....  
 Shape of face .....  
 Complexion .....  
 Special peculiarities .....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

\*Strike out whichever does not apply.

(This document contains 32 pages, exclusive of cover.)

(3)

Photograph of holder and stamp of issuing authority Finger-prints of holder (if required)

Signature of holder.....

(This document contains 32 pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:

.....  
 .....  
 .....  
 .....

2. Document or documents on the basis of which the present document is issued:

.....  
 .....  
 .....  
 .....

Issued at .....

Date .....

Signature and stamp of authority issuing the document:

Fee paid:

(This document contains 32 pages, exclusive of cover.)

(5)

Extension or renewal of validity



Fee paid: From .....  
To .....  
Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid: From .....  
To .....  
Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains 32 pages, exclusive of cover.)

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(6)

Extension or renewal of validity

Fee paid: From .....  
To .....  
Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

Extension or renewal of validity

Fee paid: From .....  
To .....  
Done at ..... Date.....

Signature and stamp of authority extending or renewing the validity of the document:

(This document contains 32 pages, exclusive of cover.)

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(7-32)

Visas

The name of the holder of the document must be repeated in each visa.

This document contains 32 pages, exclusive of cover.)