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ECONOMIC AND SOCIAL COUNCIL

ELEVENTH SESSION

AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 14 August 1950, at 3 p.m.

CONTENTS:

Present:

Chairman:	Mr. LARSEN (Denmark)
Rapporteur:	Mr. WINTER (Canada)

Members:

Belgium	Mr. HERMENT
Brazil	Mr. PENTEADO
Canada	Mr. BERLIS
China	Mr. CHA
France	Mr. ROCHEFORT Mr. JUVIGNY
Israel	Mr. ROBINSON
Turkey	Mr. NURELGIN
United Kingdom of Great Britain and Northern Ireland	Sir Leslie BRASS
United States of America	Mr. HENKIN
Venezuela	Mr. PEREZ PEROZO

Observers:

Italy	Mr. THECOLI
Switzerland	Mr. CRAMER

Representatives of specialized agencies:

International Labour Organisation	Mr. WOLF
International Refugee Organization	Mr. WEIS

Representatives of non-governmental organizations:

Category B and Register

Commission of the Churches on International Affairs	Mr. MOURAVIEFF
International Co-operative Women's Guild	Miss ROSSIER
Liaison Committee of Women's International Organizations	Miss ROSSIER

Representatives of non-governmental organizations (contd.)

Category B and Register

Women's International League for Peace and Freedom	Mrs. BAER
World Jewish Congress	Mr. BIENENFELD

Secretariat:

Mr. Humphrey	Director, Division of Human Rights
Mr. Giraud	Legal Department
Mr. Hogan	Secretary to the Committee

PROPOSED DRAFT CONVENTION RELATING TO THE STATUS OF REFUGEES (E/1618, E/1618/Corr.1, E/1818, E/AC.32/2, E/AC.32/6, E/AC.32/6/Corr.1, E/AC.32/L.3 and E/AC.32/L.40)

The CHAIRMAN, after giving members time to read the preamble and definition of "refugee" adopted by the Council for submission to the fifth session of the General Assembly (E/1618), called attention to the comments of Governments and specialized agencies (E/AC.32/L.40) on the draft Convention adopted by the Ad hoc Committee on Statelessness and Related Problems, (E/1618, Annex I). He hoped that Governments that had not submitted written comments would take the present opportunity to present their views and attempt first to solve the objections to article 2 raised by the French Government on page 31 of document E/AC.32/L.40.

Article 2: General obligations

Mr. ROCHEFORT (France) said that in its present form article 2 was not very satisfactory either from the point of view of wording or from that of substance. A text which did not lay down obligations but was merely a declaration should at least contain a moral per contra, prescribing certain duties for refugees, particularly in the case of countries like France for which the refugee problem frequently entailed heavy responsibilities. He therefore proposed that the following text should be substituted for the present text of article 2:

"The duties of the refugee towards the community shall include the obligation to conform to all measures taken for the maintenance of public order, and also to the laws and regulations of the country in which he finds himself."

The original French draft had contained a similar provision but it had not been adopted. Nevertheless he regarded such a provision as indispensable. It would have a moral application in all countries where there was no obligation on the immigrant alien to take an oath of loyalty or allegiance or to renounce his former nationality. The purpose of the text he proposed was not to bring about the forcible absorption of refugees into the community, but to ensure that their conduct and behaviour was in keeping with the advantages granted them by the country of asylum.

Mr. PEREZ PEROZO (Venezuela) said that at the ad hoc Committee's first session Venezuela had at first opposed the inclusion of article 2 since it laid down a principle which was already generally accepted and did not need to be re-stated. Later, however, as far as he remembered, he had voted for its inclusion on the ground that it might have some value as a recommendation. The text proposed by the representative of France was an improvement and would receive his support.

Mr. HERMENT (Belgium) supported the text proposed by the French representative.

Mr. CHA (China) wished to know exactly what the French representative meant by the word "community". Some refugees who had come to China, for example the White Russians, had constituted a community in themselves and had never been assimilated. The general feeling in China was that it was undesirable to have a distinct community consisting exclusively of refugees and that anybody who wished to make China his permanent residence ought if possible to adapt himself to the spirit of the country and to conform not merely to its laws but also to its manners and customs. From the Chinese point of view, therefore, the word "community" would not be acceptable if it could be interpreted as referring to the community of the refugees themselves; the word "country" would be preferable. It would of course be unrealistic to expect complete assimilation in less than a generation or two, and the best course would be to allow refugees to preserve their integrity as a community at first and to welcome their assimilation when it became possible. Perhaps, however, the French representative could give some further explanation.

The CHAIRMAN understood that the French representative was willing to replace the word "community" by the words "national community".

Mr. ROCHEFORT (France) said that in drafting his text he had borrowed the terms of article 29, paragraph 1, of the Universal Declaration of Human Rights, which dealt with the duties of the individual to the community. In his view, the term "community" did not refer to special communities of the type mentioned by the Chinese representative, but to a single community, namely, the national community.

Mr. HERMENT (Belgium) thought that, since the term "national community" might lead to confusion, it was preferable to use the expression "community of refuge".

Mr. ROCHEFORT (France) accepted this amendment on the understanding that the expression "community of refuge" should be interpreted as equivalent to the expression "national community" as commonly understood in France.

The CHAIRMAN thought there would be general agreement that any text submitted to the present meeting could be changed later. There would therefore be no objection to adopting for the time being the French text as twice modified.

Mr. ROBINSON (Israel) suggested that the words "national community" in English might raise many difficulties. What, for example, was the national community of the United States of America? Was it the English-speaking part of the population or was it the total population of 150 million? How would one define the national community of the Canton of Berne or of Ireland? As soon as a well-known and well-defined word such as "State" was replaced by a word like "community", such difficulties arose.

Suppose that in periods of civil war persons of every sort were admitted to any country on humanitarian grounds, must such people necessarily be assimilated? Spaniards who had sought refuge in France during the Spanish Civil War had never had any intention of becoming assimilated even in the limited sense of becoming naturalized. It would be unwise in what was a legal document to introduce so many complications which would leave room for so many ambiguities. To read "community of refuge" in place of "national community" would make little difference. The word "community" might be useful for a sociologist but not for a statesman.

Mr. HUMPHREY (United States of America) agreed that "community" was not, properly speaking, a juridical term, though it appeared in the Universal Declaration of Human Rights. He saw no real objection to retaining the

word "country" which appeared in the Committee's previous draft, if the French representative could agree to it. The United States of America had always considered the article as a whole to be superfluous, since the refugees themselves would not be signing the Convention and would not be asked to do any more than anyone else in the country in which they took refuge. However, since the inclusion of the article had been accepted, he would support the French amendment, preferably, as he had said, with the word "country" in place of the word "community".

The CHAIRMAN suggested that since there was clearly no disagreement on substance but only on exact wording, the matter should be referred to the Drafting Committee, the membership of which could be settled later.

Mr. ROCHEFORT (France) agreed with the Chairman's observation. He repeated that he had used the term "community" because it appeared in article 29, paragraph 1, of the Universal Declaration of Human Rights. He had agreed to add the word "national" because he thought it gave a more precise legal value to the word "community". But in view of the comments submitted during the discussion he was ready to accept any amendment provided that it satisfied the real requirements of the situation.

Sir Leslie BRASS (United Kingdom) felt, like the Chairman, that there was no disagreement with regard to the ends to be attained. The United Kingdom, like the United States delegation, would have preferred not to include the article, but, having no positive objections to it, had agreed to its inclusion. He doubted whether the French suggestion would have any effect except to introduce difficulties of interpretation into what, as it stood, was a very clear formulation. However, the question could safely be left to the Drafting Committee.

Mr. ROCHEFORT (France) observed that, so far as the substance of the question was concerned, it should not be forgotten that what to some seemed obvious to others did not, unfortunately, square with the facts. That was proved by France's experience. The obligations of refugees should therefore be

stressed and an appropriate clause inserted. Too often the refugee was far from conforming to the rules of the community. He need only mention the assassination of the head of a State by refugees in France. Often, too, the refugee exploited the community. On all those grounds he felt obliged to insist on the advisability of including in the draft Convention a provision defining the duties of the refugee, although he agreed that the idea might seem somewhat vague.

The CHAIRMAN thought there was general agreement, even among those who considered article 2 superfluous, that, if a number of countries wished to retain it, there was no objection to doing so and that the country which was particularly eager for its inclusion should be allowed to play a part in redrafting it.

Mr. PEREZ PEROZO (Venezuela) sought the opinion of the Chairman on the important question of voting. At its previous session there had been no formal voting and no detailed records of votes had been kept. He felt that at the present session formal votes should be taken and recorded in the report of the Committee, since the purpose of that report would be to tell the General Assembly what had been the majority and minority views of the Committee. A deliberative body like the General Assembly was often obliged to view questions in a different light, according to whether or not there had been a considerable majority in favour of the conclusions contained in the report submitted to it.

The CHAIRMAN agreed with the representative of Venezuela, but felt that formal voting should take place only after the Drafting Committee had completed its work. The only vote that might be necessary before would be a vote on whether or not a question was in fact to be sent to the Drafting Committee.

He reiterated his opinion that the discussion of article 2 could be closed until it had been considered by the Drafting Committee.

It was so agreed.

Article 3: Non-discrimination

The CHAIRMAN called the attention of the Committee to article 3 and the comments of the Lebanese Government thereon (E/AC.32/L.40, page 16). A further comment, which had been addressed in a letter to the Secretary-General from the Australian Government, and which had not yet been circulated in any document, read: "This article has no precise legal content. It might be claimed that because a refugee was obliged to accept a work contract as a condition of entry while another alien was not obliged to do this, discrimination was being exercised. In general, the article could cause considerable misunderstanding and even hardship by arousing false expectations."

Mr. HENKIN (United States of America) regretted that representatives from Lebanon and Australia were not present to explain the comments of their Governments. The exact relation of the Lebanese comment to article 3 was obscure, since the first three reasons on account of which a refugee was not to be discriminated against were covered in the Universal Declaration of Human Rights and the last was quite unrelated to whether a person was "undesirable" or not. He did not know exactly what was meant by the word "undesirable" in the comment of the Government of Lebanon, and without further explanation his views must remain unchanged.

He could understand the point which the Australian Government wished to raise, but still saw no need for a change in the formulation of article 3. He did not know whether any discrimination of the kind referred to in the comment existed in Australia, but thought it unlikely. Again, the article was intended to refer mainly to refugees already resident in a country, and the Australian comment referred only to persons refused entry. In his opinion the present draft was adequate and ought to be retained.

Mr. ROBINSON (Israel) thought that the comment of the Australian Government was probably based on a misunderstanding. Paragraph 3 of article 12 of the draft Convention contained a specific reservation which permitted work contracts of the kind referred to in the comment in spite of article 3.

It was important to clear up the exact place of article 3 in the Convention and its relation to the other articles. It proclaimed a principle, but the exact conditions under which refugees might enjoy the benefits conferred by it were enumerated in later articles. There was nothing abnormal about that. The United Nations Charter itself began by speaking of the "sovereign equality" of all members of the United Nations and then proceeded to divide those members into great Powers and small Powers, permanent and non-permanent members of the Security Council, members with the right of veto and members without. There would be no objection to retaining article 3 as formulated, on the understanding that its function was to establish a principle to which the exceptions would be specified in later articles, as was usual in any legal instrument.

Mr. JUVIGNY (France) noted that the Australian Government's comment on article 3 referred to the discrimination which arose from the fact that a refugee could enter Australia only if in possession of a labour contract. The Australian Government had adopted the measure in question in order to avoid disturbance to its economic life. A rather similar measure was that applied in certain countries limiting the refugee's right to work. In France, limitation of the right to work was not regarded as discrimination. The refugee was free to accept or reject the conditions of work. Article 3 in its present form was clear and unambiguous. The French delegation therefore supported its retention in the draft Convention.

The CHAIRMAN suggested that the discussion of article 3 could be closed and that no vote need be taken, since the article would be sent to the Drafting Committee and there would be in any case a vote when the entire draft received a second reading.

Sir Leslie BRASS (United Kingdom) and Mr. PEREZ PEROZO (Venezuela) were of the same opinion as the Chairman.

It was so agreed.

Article 4: Exemption from reciprocity

The CHAIRMAN reminded the Committee that at the first session many difficulties had arisen with regard to article 4 and drew attention to the numerous comments which had been submitted, not to his surprise, and were contained on pages 32 - 36 of document E/...C.32/L.40.

Mr. JUVIGNY (France) observed that the length of the comments submitted on article 4 showed that its provisions were somewhat confusing. Nevertheless, at its last session the Ad hoc Committee had examined that article with particular care without, however, finding an entirely satisfactory solution. He pointed out that the comment of the International Refugee Organization (IRO) contained numerous references to the French legal system. IRO's study would have been more comprehensive and more conclusive if it had also covered the legislation of other countries.

He recalled that French Government Departments had long considered the problem of exemption from reciprocity. He wished to compare the text of article 4 and the comments thereon with the various hypotheses of national legislation.

The first hypothesis was that in certain matters all aliens had the same rights as nationals. In France, that was the case with social security, with the exception however of certain special allowances. Where French legislation recognized equal rights, no problem arose. France did not wish to create a special category of aliens, that of refugees, who would enjoy less favourable treatment than other aliens.

The second hypothesis, which was entirely contrary to the first, was that aliens had none of the rights enjoyed by nationals. For example, the right to elect and to stand for election were generally refused to aliens. In that case, no difficulty arose.

The third hypothesis was more complex. It was that rights were not granted to aliens unless there was reciprocity. If the French Government and a small State concluded a treaty providing for certain rights to be granted to Frenchmen, and the same rights to be granted to nationals of that State in France, was the advantage granted to the citizens of a single country to be accorded by France to all refugees? As he interpreted it, article 4 did not mean that it was necessary.

to accord that treatment to all refugees. He had observed from the summary records of the Committee that the United Kingdom representative had accepted that article because it contained the word "generally". But where did the general treatment as aliens begin? Was it when there was reciprocal treatment with one or two other States or when there was such treatment with a very large number of other States?

Leaving the sphere of diplomatic reciprocity and entering that of legislative reciprocity, the question became still more complicated. If the legislation of other countries granted aliens the right, for example, of pre-emption, must France recognize that all refugees in her territory were entitled to enjoy that right, regardless of any idea of reciprocal treatment? Thus, if a single country granted a favour to aliens by its legislation, reciprocity would be established. Must France grant that right to all refugees? She might be unable to accept such a result, in many types of case, as it would lay intolerable burdens on her.

He did not wish at that stage to propose any precise wording for the article. He merely wished to draw attention to the various interpretations which might be placed upon it. France was prepared to give refugees the treatment given to aliens generally, but she did not intend to give better treatment to refugees than that given to the majority of aliens. The reciprocity clause was often considered by a State as a means of obtaining from other States favourable treatment for its nationals abroad. There was, in fact, another side to the question. Moreover, the problem did not arise in the same terms in the case of refugees. To stipulate the non-applicability of reciprocity in a draft convention bore no relation to the real situation of refugees, nor to the exceptional charges which fell upon the receiving countries like France.

The CHAIRMAN thanked the representative of France for an exposition of the complexities of the problem, which would assist the Committee in solving it. Since it was too early to send the article to the Drafting Committee, he called for further statements.

Mr. HENRIET (Belgium) thought that one great difficulty was to decide what was meant by rights and favours. Certain rights were recognized, whereas others, such as the right to attend lectures, were debatable. He thought that the Committee would be well advised to try to determine, and even to list, what was to be understood by rights and favours.

Mr. WEIS (International Refugee Organization) said that IRO had tried simply to convey the intentions of the Committee as set forth in its own comments and to find a formula for incorporating those intentions in the draft. He felt that the problem was mainly a legal one, a problem of reaching agreement on meaning and of granting fair treatment to refugees without apparently granting preferential treatment.

The word "generally" would lead to many complications. As had been said, it was necessary to distinguish between cases where the treatment of refugees was subject to diplomatic reciprocity and cases where it was not. But in the latter case, it was not easy to decide exactly what the normal treatment accorded to refugees was. When the question had been raised the previous year, the representative of the Legal Department had said that the treatment accorded could not be judged simply from the laws as they stood, since it depended to a large extent on administrative practice and case law. He was glad that the United Kingdom Government had decided to accept the article as formulated in the light of the explanation given on pages 41 and 42 of the report of the Ad hoc Committee (E/1618), but reciprocity did not play a great role where the treatment of aliens in the United Kingdom was concerned. The present formulation would, however, in the opinion of IRO, not meet the situation in countries with legislation based upon the Napoleonic code or countries which had a mixed system. The task of the Committee was to find a form of words applicable to all legal systems. In the opinion of IRO, it would not be appropriate to call the treatment to be accorded to refugees "preferential treatment", as had been said on several occasions. It was merely intended to grant them either treatment commonly enjoyed by all aliens, or, with regard to certain matters, treatment commensurate with their special situation. For example, certain reciprocity clauses provided that an alien in need of public assistance should receive help from his country of residence which would be reimbursed by the country of nationality, or, alternatively, that he should be returned to his country of origin where he would automatically qualify for assistance. Neither of those courses would be possible in the case of a refugee, and therefore special treatment was required to assimilate

that given to refugees to that given to nationals. If that special treatment were called "preferential", it might easily be interpreted as being privileged treatment.

Article 4 of the present draft Convention was not new, but had existed in a different form in the Conventions of 1933 and 1938 and had served its purpose well enough. Since that time there had been a development in the granting of preferential treatment through most-favoured nation clauses and some countries might wish for such a saving clause as IRO had suggested. IRO had therefore proposed a clause along the lines of the clause contained in the 1933 and 1938 Conventions, with an additional provision designed to include preferential treatment.

With regard to the comments submitted by various countries, the Austrian suggestion that the article be given the form of a recommendation would not meet the situation since the Convention must be binding. The comment of the French Government showed the necessity for reservations to avoid granting to refugees privileges granted only to very few aliens. The comment of the Government of Israel had called attention to the need, which IRO had tried to fill, to embody the comments into the text of the article.

Sir Leslie BRASS (United Kingdom) thought that the attitude of every country towards article 4 must depend on how its laws regarded aliens. It had been said in the discussions at the last session that in some countries aliens had no rights except on a basis of reciprocity. In the United Kingdom, the position was exactly the opposite and the article had therefore no application. He wished to make it quite clear that that was the reason why the United Kingdom delegation had not opposed the inclusion of the article. He had once suggested that the provisions of the article should apply only to countries where the rights of aliens were based on the concept of reciprocity and he still felt that that might be the best approach. He recalled that one representative had said that in his country any alien could own land if a national of his country could own land in the alien's country. He thought that it was for such countries that the article had been included;

such a system did not exist in the United Kingdom.

Mr. ROBINSON (Israel) said that article 4 was a classic example of lack of harmony between an article and the comments on it. The formulation proposed in the IRO comment contained first a statement of the principle underlying the original draft, then an extension of that principle and finally two paragraphs of restrictions.

The word "generally" in the draft produced at the first session proceeded from a theory which had no basis in fact. Most countries had at least four or five statutes on aliens: those based on reciprocity agreements and those not, those based on most-favoured-nation clauses and those based on close connections between countries as in the case of Benelux where there was virtually no difference between aliens and nationals. Therefore since a basis for it existed neither in fact nor in law, the word "generally" must first be removed.

With regard to extending and restricting the provisions of the article, the need for extension could be met by accepting the second paragraph of the IRO draft. The first paragraph also used acceptable language and omitted the word "generally". With regard to restrictions, however, there were certain objections to the last two paragraphs of the IRO draft. The reservations contained in them should be left to the general reservations clause, since the first two paragraphs already contained in effect a warning that reservations were to follow. From the point of view of legal technique, reservations were not to be encouraged, and certainly not reservations of the type mentioned in those last two paragraphs. Therefore, subject to drafting changes, he would accept the first two paragraphs of the IRO draft alone as a substitute for the Committee's formulation.

Mr. HENKIN (United States of America) said that, in the United States of America as in the United Kingdom, problems of reciprocity did not arise but that he, too, had no objection to the inclusion of the article for the sake of countries differently situated.

The exposition given by the representative of France had made it possible

for the Committee to decide on questions of principle at the present meeting and leave the exact formulation to the Drafting Committee. One point, however, had been raised which he had thought was clearly covered by the present text, namely, legislative reciprocity. He had thought that cases where reciprocity clauses existed were exactly the kind of case which it had been intended to cover. The re-draft of the article must, therefore, leave no doubt with regard to that point.

It was also necessary to cover cases where reciprocity treaties existed with many countries and were hence equivalent to legislative reciprocity. The representative of France had raised the question of how many such treaties must exist, whether 5 or 50. He could not himself suggest a draft but the Drafting Committee would have to, so long as it was clear what was desired.

He agreed with the objections raised by the representative of Israel to the last two paragraphs of the IRO draft and with his reason for those objections. He particularly disliked the provision for the making of reservations after signing the Convention. The first two paragraphs appeared acceptable at first sight, but further consideration would be needed. The main object was to ensure that aliens should not be penalized because they had no nationality and that where privileges were generally enjoyed by aliens, through treaties or in any other way, refugees should have the same privileges.

Mr. JUVIGNY (France) said that he did not think that the first two paragraphs of the text submitted by IRO would make it possible to put into effect the idea that had been advanced by the United States representative. There was no doubt that refugees must not be penalized because they were refugees. But the text of the article, as drafted by IRO, gave a sort of automatic character to the favours to be accorded to refugees. The text might mean two things: Either, that if the law said that aliens should only enjoy rights provided there was reciprocity, those rights must nevertheless be granted to refugees; or did not mean that the Committee wanted to approve that interpretation. Or, that if certain rights were granted under national legislation subject to reciprocity, such rights must necessarily be extended

to all refugees, once reciprocal treatment existed with one or more other countries; the French Government could not accept that view. The text of article 4 of the draft Convention was certainly not perfect but he found it in any case less open to criticism than the IRO text, because it did not create an automatic system, which the French Government could not accept.

The Committee decided to refer article 4 to the Drafting Committee.

Article 5: Exemption from exceptional measures.

Sir Leslie BRASS (United Kingdom) said he had little to add to his Government's comments reproduced in document E/AC.32/40 (page 36), which had been written in the spirit that security must be given a primary consideration for the United Kingdom, having regard to its past experience. What was meant by "fifth columnists" was well known. At a time of national crisis a large number of enemy aliens professing to be refugees - whether deprived of their nationality or not and whether they were true refugees or not - might be in a certain territory. He described the situation in 1940 when the United Kingdom had been in grave peril and had deemed it necessary to intern most enemy aliens, whether claiming to be refugees or not. That had been the first general internment measure taken in a time of national peril. Later some had been released and others about whom doubt still existed had been kept in internment. It was not merely a question of internment: in time of war enemy aliens were forbidden to have cameras or wireless apparatus, to reside in certain districts, etc., and the United Kingdom, in times of emergency, might wish to impose such restrictions on all enemy aliens whether refugees or not.

It was owing to a possible future peril that his Government considered it would be unsafe and contrary to the interests of the people of the United Kingdom if it were precluded from taking exceptional measures against refugees. It had no desire to submit anyone to greater inconveniences than the situation warranted and it was with the greatest regret that during the last war the United Kingdom had been compelled to take certain measures.

His Government could not agree to the terms of article 5 as at present drafted unless it had the possibility of taking well recognized measures of

control in a time of national crisis. One way of dealing with the matter would be to have a general article enabling Contracting States to derogate from the provisions of the draft Convention in time of war and to notify other Contracting States of the measures taken in the matter.

The CHAIRMAN asked the Committee if they were willing to hear a statement by the representative of the World Jewish Congress.

It was so agreed.

Mr. BIENENFELD (World Jewish Congress) thanked the Committee for permission to speak on article 5 which he said was of the utmost importance for refugees. Many refugees in the last war who had had to flee their country of origin because they were opposed to the policy of its Government, had been nevertheless treated as if they were genuine nationals of the State from which they had escaped.

His comments were not directed against the United Kingdom Government which had generously given shelter to large numbers of refugees. He recognized that the United Kingdom had been compelled to intern refugees at a certain stage of the last war owing to the great number admitted and because of the uncertainty as to whether some, at least, did not constitute a potential danger at a critical stage of the war. While admitting that, he submitted that the clause suggested by the United Kingdom representative went too far. Everyone would agree that a Government in time of crisis might be forced to intern refugees in order to investigate whether they were genuine or not and therefore a possible danger to the security of the country. He wondered whether it would not be sufficient to add a second paragraph to article 5 to the effect that countries could, in a time of crisis, institute measures of control in order to investigate whether refugees were genuine or not. If the United Kingdom representative's suggestion were to be accepted as it stood, other countries might withhold the protection afforded to refugees and leave them helpless at the very time they most needed protection. He appealed to the United Kingdom representative to restrict his proposal to provisional measures, namely,

investigation for reasons of security. He hoped that his suggestion would be favourably considered, coming as it did from an organization with a vast experience of the matter and anxious that the fate of refugees should not be worsened by any article in the draft Convention.

The CHAIRMAN said that the statement of the representative of the World Jewish Congress would be borne in mind by the Drafting Committee.

Mr. HENKIN (United States of America) recalled that the subject had been discussed at great length at the last session and had been recognized as being of considerable importance.

He sympathized with the problem raised by the representative of the United Kingdom since requirements of national security had to be respected so far as they were real and necessary. He agreed, therefore, that something might have to be done either in the form of a reservation or a change of drafting to cover the kind of situation to which the United Kingdom representative had referred. On the other hand, it would be unjust if a bona fide refugee were penalized and punished by measures applicable to enemy aliens generally, only because he was a national or former national of a country from which he had escaped. In changing the present wording of article 5, the primary aim of the Committee should be to adjust the needs of the refugee in that regard to the requirements of national security.

The United Kingdom representative had touched on one crucial point, namely, as to whether a refugee was bona fide or not. None of the provisions of the draft Convention, however, would apply unless the refugee were genuine.

The problem should be approached with the idea that reservations should be as few as possible. Security was not the only issue. A country might have many provisions concerning aliens which were not based on security reasons alone, including confiscation measures, limitations on trade and so forth, and in such cases the bona fide refugee should not be penalized but be given the opportunity of showing his good faith.

The main problem was to draft a text containing the reservation desired

by the United Kingdom but which would safeguard the rights of bona fide refugees.

Mr. THEODOLI (Italy) noted that the main concern was to know whether at a time of crisis the Contracting State could resort to exceptional measures. He referred to the situation in Italy at the outset of the war when thousands of refugees had flocked to the frontiers of Italy. Would the screening measures and the restrictions on movement imposed at that time be considered as exceptional measures? He hoped that the Drafting Committee would bear the point in mind and find some appropriate wording which would cover the initial stage, at least, of such essential measures.

The CHAIRMAN, thought that the point raised by the last speaker was covered under paragraph 2 of article 26 of the draft Convention.

Speaking as representative of Denmark, he felt that article 5 was sufficient as it stood if more emphasis were placed on the words "solely on account of such nationality". During the last war an allied country had been compelled to intern all German refugees at the outset not solely on account of nationality but because of the suspicion that that nationality might be dangerous to national security.

Mr. HERMENT (Belgium) supported the statement just made by the Chairman in his capacity as Danish representative. It must not be forgotten that article 5 referred to refugees already in the country and regarding whom enquiries had already been made. Hence there was already some guarantee for the State in which such refugees were living.

Mr. Mr. HENKIN (United States of America) was concerned about the interpretation given to article 5 by the Chairman, namely that even in its present form is meant that provisional measures could be taken against refugees in times of national crises.

According to the Chairman's example, refugees would have come within the scope of the exceptional measures taken against German nationals, who were considered <u>ipso facto</u> to be suspicious. In his view that would be a violation of the article unless some exception were made explicit therein. He did not

wish the article to have a different interpretation from the liberal one it now had, and would prefer an explicit but narrow limitation.

He pointed out that some refugees would be stateless and others would technically retain their nationality and there was no reason for treating the latter any worse than those who were stateless. Exceptional measures should not be applied to a refugee merely because of his nationality even though, at a particular time, owing to that nationality he might have been open to suspicion.

There was need for an exception in very special cases and he hoped that any reservation or modification of the present wording would be as narrow as possible and limited to the cases referred to by the United Kingdom representative.

Mr. ROBINSON (Israel) reminded the meeting of references made during the debate at the last session to other cases of exceptional measures, e.g. economic conflict between two countries as a result of which certain retaliations were inflicted against the respective citizens of those countries. Refugees who had originally been nationals of one or other of those countries might be affected by such measures. Such retaliation should not be allowed to happen as a consequence of the fact that a refugee retained his former nationality, though no longer accepting the protection afforded him by it.

What the Chairman had in mind was two kinds of restrictions: (1) general restrictions applying to enemy aliens; and (2) particular restrictions applying to German nationals. The result of the application of article 5 would be that a refugee would fall under the general restrictions but would be excluded from the restrictions imposed upon German nationals, thus acquiring a privileged position.

The question of the bona fide refugee raised that of a new definition. There were two possible courses of action; the general one, that all action under article 5 was considered as being taken in favour of the bona fide

refugee and that there was no need to define such refugees under article 5; or that of stating in article 5 that States had a right to investigate whether a refugee was bona fide or not, since no convention could affect that right. In the drafting of article 5, the question was how to find some way of making it clear that what was in mind was the third type of refugee, namely the bona fide refugee who was not identical with the refugee as defined in article 1.

He wished to make it quite clear that the measures referred to in article 5 were not designed only for times of emergency. A second paragraph should be added to cover the particular case of emergency in which the rights of refugees could be restricted, but then only as little as was absolutely necessary.

Mr. CHA (China) described the situation of China from 1931 to 1945 when it had had to cope with refugees from Manchuria (controlled by the Japanese) where the people were considered to be Chinese but had never been recognized as such on security grounds. His delegation was in favour of more liberal principles being applied to bona fide refugees but would welcome some provision enabling it to take exceptional measures based upon the nationality of refugees.

Mr. HENKIN (United States of America) wished to make it quite clear that his interventions had been directed to exceptional reservations. He believed that the security problem would hardly arise in cases of bona fide refugees. It was essential first to determine whether a refugee was bona fide and whether he actually retained his original nationality.

Mr. WINTER (Canada), Rapporteur, asked whether the representative of the United Kingdom could suggest a suitable wording for the guidance of the Drafting Committee.

Mr. WEIS (International Refugee Organization), in reply to the point raised by the Italian observer, said that the terms of article 5 would not

apply to the situation he had described because the exceptional measures in such cases were not taken against persons on account of their nationality but because they were refugees. That point was covered by paragraph 2 of article 26 which provided specific treatment for such persons.

The meeting rose at 5.30 p.m.