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AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS

Second Session

SUMMARY RECORD OF THE FORTIETH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 August 1950, at 2.30 p.m.

CONTENTS:

Present:

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

Members:

Belgium	Mr. HERMENT
Brazil	Mr. PENTEADO
China	Mr. CHA
France	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. MALFATTI
Switzerland	Mr. SCHÜRCH

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

Category B and Register

Friends' World Committee for Consultation	Mr. Colin BELL
International Co-operative Women's Guild	Miss ROSSIER

Representatives of non-governmental organizations: (continued)

Category B and Register (continued)

Liaison Committee of Women's International Organizations	Miss ROSSIER
Women's International League for Peace and Freedom	Mrs. BAER
World Jewish Congress	Mr. BIENENFELD Mr. LIBAN

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.32/7, E/AC.32/L.3, E/AC.32/L.40, E/AC.32/L.41 and E/AC.32/NGO/1)
(continued)

The Committee continued consideration of the draft Convention contained in Annex I to its first report (E/1618).

Article 26: Refugees not lawfully admitted

Mr. HERMENT (Belgium) said that a provision such as was contained in article 26 must naturally interest countries like France, Luxembourg and Belgium, which were particularly exposed to illegal entry by refugees. Early in the discussions, the French representative had intimated that between four and five thousand refugees entered France illegally every month. It was true that the number of clandestine entries into Belgian territory amounted to no more than three to four hundred a month. But they constituted a real danger, on both economic and security grounds. Hence, acceptance of the provisions of article 26 called for sober reflection.

At all events, he would like it to be clearly understood that the words "who enters or who is present in their territory without authorization" did not cover refugees who had gained access to a territory illegally, after authorization had been refused. Nor should they cover illegal presence, even though it had lasted for months or even years.

He was, nevertheless, prepared to accept the provision, so long as it was understood that it referred only to a very brief stay. In other words, the reasons which might be held to justify illegal entry or an unauthorized stay of three or four days must on no account be recognized as valid for a longer stay. He also wanted it to be fully understood that the word "penalties" meant internment only. After all, expulsion was also a penalty, and the Belgian Government did not wish to be deprived under article 26 of the right to expel a refugee in such circumstances.

He also proposed two slight drafting changes affecting the French text only: in paragraph 1, replace the words "les raisons reconnues valables" by "des raisons reconnues valables"; and in paragraph 2, delete the semi-colon after the word "admission", and insert it after the words "dans un autre pays".

Mr. JUVIGNY (France) thought that a careful perusal of the text of article 26 would satisfy the Belgian representative on the points of substance he had just raised.

The Belgian representative had urged that the penalties mentioned in the article as not to be imposed on refugees entering without authorization, should be confined to judicial penalties only. Surely that was precisely what the article stated. A judicial penalty, at least as interpreted in the code law of the Latin countries, was a penalty pronounced by the courts, not an administrative penalty. But, in so far as non-admission or expulsion could be regarded as sanctions, they were in the vast majority of cases administrative measures, especially where they were applied at very short notice.

The Belgian representative also asked that the provision should not apply to unauthorized refugees who had been in the territory a long time. But that was precisely what the text of article 26 stated: "A refugee .... who presents himself without delay ....".

Mr. WINTER (Canada) said that article 26 and the succeeding two articles had been much discussed by the authorities in his country, as under Canadian law the illegal entry of aliens was punishable by arrest and deportation. Obviously, as the Belgian and French representatives had said, there must be some control over illegal entry. His Government was prepared, however, to accept the article in principle, as the Minister of Immigration had the discretionary right to consider individual cases, and as the article stipulated that the refugee must show good cause for his illegal entry or presence.

Mr. HERMENT (Belgium) recognized the cogency of the interpretation given by the French representative; but wished to put on record the interpretation which the Belgian authorities would like to be given to the article.

With regard to the illegal presence of a refugee on a given territory, the case was conceivable of a refugee who had been on foreign soil for a certain length of time being discovered by the authorities. The moment he was discovered, he could present himself to the local authorities, explaining the reasons why he had taken refuge in that territory. In such instances, the text would not necessarily cover the case of prolonged illegal presence.

Mr. JUVIGNY (France) said he would like to clear up a further point. The Belgian representative had also put forward the view that the words "without authorization" might refer to a refugee who had made application and been refused authorization, and still persisted in trying to remain in the country. Such a case was provided for by paragraph 2 of article 26, which stated that the status of refugees entering a country illegally must be "regularized". Hence, cases of such refugees would require investigation. If, as a result, it was decided for various reasons not to admit a refugee, and the refugee persisted in trying to remain in the territory, he would no longer come under article 26, but under the ordinary national law, i.e., the penalties laid down under the domestic law would be applicable.

The provisions of paragraphs 1 and 2 of article 26 taken in conjunction should therefore allay the Belgian representative's misgivings. The reference to a refugee "who enters or who is present in their territory without authorization" covered persons who, owing to outside pressure, had been obliged to enter or re-enter particular countries illegally. Once the cases of such persons had been examined, they would be either accepted or expelled. If they were forced to leave, they would not of course be sent back to the countries from which they had escaped; alternatively, if special measures were taken in regard to them, e.g. if they were sent to camps, they would no longer come under the terms of article 26.

Mr. HENKIN (United States of America) thought that the Belgian representative had been under a misapprehension, as paragraph 1 contained no indication that a refugee could remain in a country for a period of time and not be required to present himself "without delay" until he was caught. His interpretation of the words "without delay" was that the refugee should present himself to the authorities immediately on entry into a country.

Mr. JUVIGNY (France) thought there was still another reason why his interpretation should be regarded as self-evident, as article 26 now stood. The first paragraph of the article involved a voluntary act. A person who presented himself to the authorities of a country after crossing its frontiers without authorization, was performing a voluntary act; whereas, in the case mentioned by the Belgian representative, the act was no longer voluntary, since the refugee who had entered illegally had been brought before the authorities by the police who discovered him. The refugee could therefore no longer benefit by the provisions of article 26.

Mr. HERMENT (Belgium) did not see why, in such circumstances, the words "who presents himself" need be kept, since they implied that the refugee was already in the territory.

The CHAIRMAN quoted as an example the hypothetical case of a refugee entering a country with permission to remain there for three months pending departure overseas. It was quite possible that such a refugee might not be able to obtain the necessary papers to enable him to depart within the three months period, and on the expiry of that period he would, under paragraph 1 of article 26, be in the position of a person present in the territory without authorization, and he should, in those circumstances, present himself without delay to the authorities.

Mr. WINTER (Canada) thought that it was clear that paragraph 1 referred only to voluntary acts on the part of refugees, as the French representative had said. If a refugee presented himself to the authorities involuntarily, namely, only when he had been detained, he would naturally come under the law of the country.

Mr. SCHÜRCH (Switzerland) said that the Swiss federal laws contained a provision similar to the principle laid down in the first paragraph of article 26. A refugee who had crossed the frontier illegally for reasons recognized as valid was not liable to punishment. Moreover, the Swiss federal laws did not regard any person assisting him as liable to punishment, provided his motives were above board. The provision was of some importance for voluntary organizations for aid to refugees.

Article 26 did not include any such provision, and he thought the omission should be made good. It was quite possible that in domestic law, assistance to a foreigner crossing a frontier illegally might be regarded as a separate offence punishable even if the refugee was not.

Mr. HENKIN (United States of America) thanked the Swiss observer for noting a possible oversight in the drafting of the article. He did not think that the Committee had considered the point, and he did not suggest that the article be re-drafted to include it, but that the Swiss observer's comments be given due attention in the record of the meeting, and he hoped that countries would take them into consideration.

Mr. JUVIGNY (France) agreed with the United States representative's remarks.

The CHAIRMAN thought that if the Committee accepted the Swiss observer's proposal it might be referred to the Drafting Committee.

Mr. PEREZ-PEROZO (Venezuela) preferred the United States and French representatives' suggestion that the comments of the Swiss observer be recorded in the minutes of the meeting.

Mr. JUVIGNY (France) explained that the reason why he had supported the United States representative's proposal was not that he was opposed to any mention whatsoever of the matter in the text of the Convention. But it would have to be done with the greatest care. It was an entirely new issue, and in France the problem of penal responsibility of corporate bodies was an

extremely delicate question on which case law was not always concordant. Hence, a provision of any sort on the subject would inevitably raise extremely difficult problems of interpretation in France. That was the reason why he had not formally proposed its insertion in the text of the Convention.

If, however, the idea were adopted, two types of assistance by refugee organizations must be singled out. He entirely agreed that a refugee organization should not be penalized for having helped a refugee applying to it. That was an obvious humanitarian duty. But assistance to refugees might go beyond the national territory, and in certain circumstances refugee organizations might literally become organizations for the illegal crossing of frontiers. He wondered whether it would be in the interests of the refugees themselves that organizations of the kind, whose activities were likely to come under very much more general laws, should exist inside national territories.

For those reasons, and in view of the many legal problems which would inevitably arise, he considered that it would be sufficient to make mention of the problem in the summary record of the meeting, in the hope that Governments would take note of the very liberal outlook embodied in the Swiss federal laws and follow that example.

The CHAIRMAN thought that, if the Committee agreed that the only action required was to insert the Swiss observer's comments in the records, no further action need be taken.

It was so agreed.

Mr. HENKIN (United States of America) said that the Committee was under a special obligation to consider the comments of Governments not present. He disagreed with the comments of the Chilean Government on article 26 (E/AC.32/L.40, page 54), however, as he considered that the article would not affect refugees adversely, and that there was no harm in including it even if it did not have the same application in different countries.

The Committee decided to refer article 26 to the Drafting Committee.

Article 27: Expulsion of refugees lawfully admitted

The CHAIRMAN pointed out that paragraph 1 of the article dealt with the substance of the issue, paragraph 2 with procedure and paragraph 3 with the period allowed to refugees to seek legal admission to another country. He proposed therefore that the paragraphs be considered separately.

Mr. WINTER (Canada) said that article 27 would not easily prove acceptable to his country because it ran counter to the provisions of the Immigration Act and the Opium and Narcotic Drugs Act. Under the Immigration Act lunatics and similarly undesirable persons could be deported; under the Opium and Narcotic Drugs Act deportation was mandatory. In practice, the law was modified to take account of three considerations: first, that the country of origin of the alien might refuse to receive him on deportation; secondly, that the punishment might be out of all proportion to the offence; and thirdly, that deportation to another country might endanger the life of the deportee. The third consideration was covered by article 28. Seen from the point of view of the draft Convention, it might of course be considered that refugees who committed offences punishable by deportation would either no longer be lawfully resident in Canada, or, under paragraph 1 of article 27, would be expellable on grounds of national security. If such an interpretation were not accepted, his Government could not readily contemplate the grant to refugees of privileges not accorded to ordinary aliens.

The question was of great importance, as it arose in respect of many other articles in the draft Convention. His country had two types of refugees: those who had entered for a short time, were not naturalized, and were treated on a par with other aliens; and those who were immigrants. His Government desired to treat the latter class of refugees well, but it did not consider it possible to give them better treatment than that accorded to immigrants from countries such as the United Kingdom, the United States of America or France. It desired that refugees should be assimilated into the community and should not remain isolated; when admitted, they were given the status of legal residents within the country and received all the rights and privileges of their fellow-countrymen, but not any special rights or privileges.

It had also to be remembered that if special privileges were accorded to refugees, the effect might well be to foster the adoption of an unfavourable attitude towards them by other residents of the country in which they sought refuge. It would be desirable to avoid such a possibility.

The meaning of the term "public order" might be discussed by the Drafting Committee.

Mr. HENKIN (United States of America) confessed that his delegation still felt concern at the use of the term "public order", partly because of its ambiguity, partly because it feared that it embraced too much. At the same time, he thought, when the article had been drafted, it had not been the intention to prevent the expulsion of refugees for most reasons of general law applicable to aliens. The intention, however, should have been clearly expressed, and he considered that a better formula might be found.

Mr. HERMENT (Belgium) did not think it feasible either for the Committee or for national authorities themselves to define the concept of "public order". Although there might clearly be some danger in so general a notion, the clause was nevertheless a safeguard which contracting Governments should be allowed to retain. If a refugee were convicted of a fairly serious offence, his presence might well be considered undesirable. On the other hand, the political activity of a refugee might also be regarded as undesirable for reasons of "public order".

He felt that it would be useless for the Committee to attempt to define the term. He would, however, like it to be retained in article 27. It was an expression to be found in a number of international law treaties, where its interpretation had always been left to contracting States.

Mr. JUVIGNY (France) said that although lengthy theses had been written on the concept of public order, it had not yet been clearly defined.

With regard to the observations of the representative of Canada, he would suggest that article 27 did give implicit satisfaction to them. Article 27, in fact, stipulated that "the contracting States shall not expel a refugee

lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law". Now, Canadian law, to which the representative of Canada had referred, did provide for the automatic deportation of aliens convicted of specific offences. That being so, it was open to the courts to pass an additional sentence of expulsion in such cases. Such action would be a judicial decision in accordance with the terms of article 27. It might also be the case that Canadian law authorized or even obliged the administration to take action as a result of conviction, without the intervention of the court. In such cases, there was a legal check on the powers of the administration, and such an act would be "a decision reached in accordance with due process of law".

From a practical standpoint, it was obvious that the authors of article 27 had been anxious that the provisions favourable to refugees should not cover ordinary offences punishable by law, and should not confer on ordinary offenders, who happened to be refugees, rights not even enjoyed by the country's own nationals. He therefore considered that unless one tried to read too much into the provisions of article 27, the fears expressed by the Canadian representative were groundless.

Mr. HENKIN (United States of America) said that the Belgian representative's explanation had not dispelled his doubts, but had in fact increased them, because of the examples he had given. It seemed that the term "public order" could be used as a pretext for getting rid of any refugee on the ground that he was, for one reason or another, an undesirable person. He wondered whether it would be sufficient merely to say "on grounds provided by law for the expulsion of aliens".

Mr. PEREZ PEROZO (Venezuela) did not desire to enter into a discussion of the definition of the term "public order". As the Belgian and French representatives had pointed out, it had appeared in various international instruments and gained wide acceptance; it had appeared, for example, in the Conventions of 1933 and 1938, and in article 29 of the Universal Declaration of Human Rights.

So far as his own country was concerned, "public order" was directly related to the maintenance of the peace and stability of the State. If they were threatened, the Government was enabled, on grounds of public order, to take such measures as the suspension of certain constitutional guarantees, the banning of public meetings, or the imposition of restrictions on movement. If such measures were taken, they would be applicable to aliens as well as to nationals, and no exception could or should be made in the case of refugees. In fact, the inclusion of the reference to public order in paragraph 1 of article 27 could be construed as a warning to refugees not to indulge in political activities against the State. It was essential that the term should be retained.

The instances quoted by the Canadian representative came under common law. Penalties were established for certain offences, and refugees should not be given the privilege of special legislation simply by virtue of being refugees.

Sir Leslie BRASS (United Kingdom) thought that the grounds for the deportation of refugees should not be wider than, but exactly the same as, those for the deportation of other aliens. His Government found it difficult to accept paragraphs 1 and 2 of article 27, and thought it possible and desirable to substitute for them something on the lines of article 9 of the draft Covenant on Human Rights. The adoption of some such phraseology would give some effect to the proposal of the United States representative that the treatment of refugees should be the same as for aliens generally; it would ensure that there should be no deportation except in accordance with established law and procedure; and it would provide necessary safeguards.

Mr. WINTER (Canada) supported the United Kingdom representative's suggestion, which he had been about to make himself. Article 9 of the draft Covenant on Human Rights was more explicit than article 27, and contained safeguards for refugees not included in the latter.

In reply to the Venezuelan representative, he pointed out that the reasons for deportation were clearly and explicitly defined in his country's Immigration Act, and were not left to common law.

Mr. HENKIN (United States of America) was doubtful whether the substitution of an article from the draft Covenant on Human Rights would be desirable. When he had said earlier that refugees should be deported only on the same grounds as other aliens, he had meant that those grounds should be in accordance with established law. His main fear was that the term "public order" might mean much more than what it appeared to mean on the surface. He felt that refugees should not be expelled on grounds not specified in law, or because they had become sick or indigent; they should be expelled only on the grounds that they had committed crimes, which should be as explicitly defined as possible. At the same time, they should not be expelled under any provision of law which permitted expulsion for reasons such as that they were sick or indigent. He thought that an attempt should be made to draft an article covering such considerations.

Mr. GIRAUD (Secretariat), referring to the suggestion that refugees should be treated on a par with aliens, pointed out that under existing international law, aliens enjoyed no safeguards. International law imposed no obligation on States to expel aliens only on legal grounds. A State could expel an alien by exercise of its discretionary powers, and because it considered the alien undesirable. Although certain States did provide some legal safeguards for aliens, it was not because they were obliged to do so under international law.

Mr. PEREZ PEROZO (Venezuela) thought that as the United States representative questioned the use of the term "public order", he might be able to explain the rather similar term "public emergency" used in the United States of America.

Mr. HENKIN (United States of America) said that the term "national emergency" was applied to an emergency declared as such by the Head of the State.

He explained that his delegation had not objected to the use of the term "public order" in article 2, although it had not fully understood its meaning. The use of the term in article 27 was different, however, as the question of a general obligation for the refugee to conform to measures for the maintenance of public order was entirely different from permitting expulsion of a refugee on the grounds of public order, if "public order" included the concept of undesirability. He objected to the use of the term only in its particular application to expulsion.

Mr. WEIS (International Refugee Organization) said that the question of expulsion was of the greatest importance to refugees. The term "public order" had been used in previous conventions, and, however it was defined, he considered that in practice it had on the whole tended to restrict the expulsion of refugees by comparison with that of other aliens.

Several representatives had said that there was no reason for granting special privileges to refugees. He submitted that there were strong grounds for doing so, above all the ground that aliens possessing an effective nationality could return to their country of nationality in cases of expulsion, whereas for a refugee it was a matter of life and death, as he had no other country to go to.

The term "due process of law", used in paragraph 1 of article 27, was applied to processes, usually juridical but also administrative, attended by certain safeguards. Safeguards were laid down in paragraph 2. The terminology in the draft Covenant on Human Rights made it clear that such safeguards must be provided by law. A more explicit wording was required in article 27; article 9 of the draft Covenant was very general in scope, but a convention on refugees was required to be more detailed and to interpret such terms as "procedure" and "safeguards".

Mr. ROBINSON (Israel) noted that from the beginning of the discussions of the Committee in Lake Success up to very recently there had been no tendency to assimilate refugees to aliens, but that that tendency had now

begun insidiously to make itself felt: it was now desired to accord to refugees the minimum rights accorded to aliens. It was surely not inequitable, however, to take also into account the fact that no country was prepared to accept refugees as belonging to it, whereas aliens had their own country of nationality.

The basic question was whether the Committee proposed to treat the expulsion of refugees on a par with the expulsion of other aliens. When that question had been decided, the further question would arise, in what respects the refugee should be assimilated to aliens and in what respects not. There were three grounds laid down in article 27 on which contracting States might consider the expulsion of refugees. In the first case, inasmuch as a State had a right to require good behaviour of all persons resident in it, it had good ground, subject to certain reservations, for assimilating refugees to other aliens. It was to be noted that article 2 required them to conform to the laws and regulations of the country sheltering them.

In the second case, it had to be remembered that considerations of national security and public order were interpreted differently in different countries. In the case of a narrow interpretation, however, there could be no argument in favour of treating refugees differently from other aliens.

The third case was different, and there should be a great distinction between the treatment of aliens in general and the treatment of refugees. The stage had now been reached in social legislation when social cases could be spoken of, and the great problem was, who was responsible for the social cases represented by the refugees. In the case of aliens, the answer was their own country; in the case of refugees, the answer was no country. If refugees were not nationals in the political sense of the country where they were resident, however, they were in a moral sense. It seemed to him that countries should accept refugees as human beings, with all the infirmities and weaknesses inherent in the human condition, and treat them accordingly when they offended against national laws.

The question of guarantees for refugees was one which provoked serious conflict with national legislation. He sympathized with the remarks of the representative of the International Refugee Organization, but felt that countries would not accept the idea of a review of their laws or administration merely to meet the special case of refugees. Countries must be accepted as they were, and the Committee should reconcile itself to the position and have confidence that countries where the rule of law reigned would do their best for refugees. The only kinds of guarantees that could be secured would not be those involving a change in the administrations or constitutions of countries, but merely extensions of existing guarantees.

He suggested therefore that paragraphs 1 and 2 of article 27 be combined, and that the material problem of the grounds for expulsion and the procedural question be dealt with together; that the grounds for expulsion be listed; and that the necessary provisions be inserted regarding procedure with all due process of law. Even so, something would still be owed to the refugees, and it was impossible not to foresee that refugees would still be in a worse position than aliens. The solution lay in paragraph 3 of article 27. The principles enunciated would be clear and precise, would take consideration of refugees, not of aliens, and would give guarantees. If the Committee reached an agreement on the basic concepts, the Drafting Committee could redraft the article in such a way as to eliminate ambiguities.

Mr. JUVIGNY (France) said he had been deeply impressed by the brilliant statement made by the Israeli representative.

He admitted the contention of the United States representative that the notion of public order might stir up unpleasant memories, since it was on that notion that certain totalitarian States had based their claim to absolute discretionary powers not only in respect of refugees and aliens, but also with regard to their own nationals.

However, in countries governed by the principle of the supremacy of law, an administrative and judicial case-law had been developed such as enabled

jurists and even public opinion to know what was meant by "public order". For example, French legislation relating to the deportation of aliens provided for a specific appeal procedure through an Appeals Board under the authority of the Minister of the Interior. That purely administrative procedure was in no way discretionary, since aliens had the right of resort, if necessary, to courts of appeal on administrative matters just as had French nationals. The notion of public order had thus been defined and limited and the retention of the term, to which the French Government was for certain reasons attached, involved no risk for refugees. As a matter of fact, the latter were in the same situation in relation to the notion of public order as were French nationals with regard to police powers which were, in certain cases, based on the same notion.

Mr. HENKIN (United States of America) noted that, contrary to the impression he had formed in earlier discussions in the Committee, the term "public order", which in British and American law was more or less equivalent to "public policy", was not so understood in certain other countries.

The representative of Venezuela, who had implied that "public order" in his country meant something related to national emergency, could feel assured that in the opinion of the United States delegation, the requirements of national emergency were taken into account in the term "national security". There was no intention of excluding the possibility of expulsion in circumstances such as the representative of Venezuela had had in mind. It had been argued that the provisions of laws relating to public order applied to nationals as well as to aliens. There was, however, the important difference that nationals, unlike aliens, were not liable to expulsion on such grounds. He was glad to hear that, vague though the concept of public order was, it was not liable to abuse, at least in France, Belgium and Venezuela. He would make no invidious remarks about the possibility of a less liberal application of the term in other countries, but would merely point to the importance of defining legal notions exactly in a legal instrument.

He therefore proposed the following text, which he hoped would be acceptable to the countries whose legislation was based on the concept of public order, and which would take note of the distinction ably drawn by the representative of Israel between different grounds for expulsion:

> "The Contracting States shall not expel a refugee lawfully in their territory save on grounds established by law which relate to national security or are based on the commission of illegal acts."

That formula would permit the expulsion of a refugee who had committed any serious crime but would not cover what the representative of Israel had called "social cases".

The CHAIRMAN was not altogether satisfied with the words: "based on the commission of illegal acts". Illegal acts ranged from riding bicycles the wrong way on footpaths, to the gravest of crimes. It might be better to change the term "public order" to "public safety", which was also a vague term, and would fail to cover extreme cases on both sides, but would not, like the wording proposed by the representative of the United States of America, cover both extremes and permit the deportation of any refugee who had committed the smallest illegal act.

Mr. WEIS (International Refugee Organization) had understood that the United States proposal was to be taken in combination with article 9 of the draft Covenant on Human Rights, which provided that an alien could be expelled only for illegal acts established as ground for expulsion. It was unlikely that such acts as riding a bicycle on a footpath would be legally established as grounds for expulsion in any country.

Mr. HENKIN (United States of America) regretted that he had not made his proposal sufficiently clear. He had not, of course, intended that any illegal act should provide grounds for expulsion. He had intended to make a double safeguard by providing, first, that grounds for expulsion must be grounds established as such by law, and, secondly, that "social cases" must be excluded.

With regard to the Chairman's suggestion, in the United States of America the term "public safety" was closely related to the term "national security", and could therefore not be made to cover even such serious offences as larceny.

The CHAIRMAN thought that the formula proposed by the United States representative would in certain countries make any expulsion impossible. On the other hand, in countries where expulsions were at the discretion of the Minister of Justice or his equivalent, and there were no other legal provisions, a refugee sentenced to expulsion would have no redress at all. Where expulsion was not automatically coupled with various punishments, the Minister of Justice must decide in each case whether the punishment for a crime should also entail expulsion.

Mr. HERMENT (Belgium) pointed out that expulsion being a royal prerogative in Belgium, the law did not specify in what cases it might take place.

He wondered whether the discussion was not animated by a spirit of mistrust of Governments. After all, the States which would sign and ratify the Convention would undoubtedly have the intention of according reasonably favourable treatment to refugees.

He would like to urge that the long accepted notion of public order should not be set aside, for, if the Ad hoc Committee departed from established case law and the accepted interpretation, far from improving matters, it might run the risk of producing a less satisfactory alternative. Powers of expulsion should be left to Governments, even in cases the circumstances of which could not be foreseen, since such might in fact arise. If that were not done, the article would only be accepted with a number of reservations which would deprive it of all value.

Mr. JUVIGNY (France) feared that the proposal of the United States representative was partly inspired by the desire to put an end to a discussion that need never have arisen.

There were laws in existence in which threats or actions prejudicial to public order were explicitly cited as grounds for expulsion. It was naturally not the intention of the Committee that States should be required to alter their legislation on so important a subject, especially at the present time.

Accordingly, whatever formula was adopted, the notion of public order would inevitably raise its head in those code law countries where it was traditionally accepted. Any other formula the Committee might endeavour to evolve would therefore run the risk of proving illusory.

Mr. HENKIN (United States of America) thought that since it appeared that in certain countries there was a provision of law that an alien could be expelled on grounds of public order, the only solution to the present difficulties of the Committee would be to retain the present text of the first paragraph of article 27, and perhaps to add thereto a number of specific exclusions, stating, for example, that a refugee might not be expelled on grounds of indigency or ill health.

The CHAIRMAN thought that since such exclusions were already provided for in the draft Covenant on Human Rights, it would be undesirable for the Committee to suggest to the Governments signatory to the Covenant and to the Convention that it expected them to evade the provisions of the Covenant.

The form of words employed in paragraph 1 of article 27 had appeared in former conventions, and he felt that Governments would be reluctant to accept any that differed greatly from it. The criticisms put forward had not convinced him of the necessity of changing wording to which certain traditions and certain regular interpretations in Courts of law had become attached, and which to the best of his knowledge had never given rise to any public criticism or public debate.

Mr. JUVIGNY (France) was prepared to accept the introduction of some restrictions in article 27 on the lines suggested by the representative of the United States of America.

He would, however, like to warn the Committee that if restrictions were introduced limiting the scope of the clause to two or three categories of case, certain jurists would interpret the text a contrario as allowing the possibility of expelling refugees for all the reasons except those thus specified. That was certainly not the aim of the Committee. It was, in any case, always undesirable to leave a text open to interpretation a contrario.

If, on the other hand, a country really had the intention of expelling refugees because, by reason of their state of health, for instance, they were a burden on the public purse, such a country would of necessity be obliged, when ratifying the Convention, to make reservations with regard to the article relating to public relief. To formulate reservations with regard to article 18 did not of course, strictly speaking, amount to the same thing as making reservations with regard to article 27, yet the dividing line between the two types of reservation was not very clear.

In short, he considered that however vague the notion of public order might be, it did, at least under the case law of certain countries, offer greater safeguards for refugees than would be given by a hastily drafted formula which would not cover all possible cases and which, moreover, would lend itself to interpretation a contrario.

The CHAIRMAN observed that paragraph 1, which had been repeatedly adopted in other Conventions and had now again been the object of study by Governments, had called forth only two comments from them. The only possible reply to the Canadian comment (E/AC.32/L.40, page 55) was that the term "public order" would certainly cover the deportation of aliens convicted under the Opium and Narcotic Drugs Act. In view of the public injury which resulted from traffic in drugs, there could be no possible objection to that interpretation. The only other comment was that of the Australian Government (E/1703/Add.7, page 3) which suggested that restriction of grounds for expulsion to the ground of national security and public order might result in preferential treatment for refugees. Such preferential treatment was exactly what the Committee had intended. The opinion of the Committee was precisely that the refugee should

not be expelled, for example, on grounds of mental or physical disability. Those two comments therefore provided insufficient reason for arousing the suspicions of Governments with regard to the intentions of the Committee by adopting a modification of the form of words which had served well since 1920.

Mr. ROBINSON (Israel) noted that the debate had narrowed to a sharp division between what might be called the conservative element and those who wished for some change in paragraph 1. Speaking for those who wished to make some change, he thought that the objection of the representative of France might be met by including a reference to article 20. The essence of the argument was, whether it was necessary to include some guarantee to exclude "social cases" and whether article 20 would provide that guarantee. That was a matter for interpretation, but he thought that the intention of the Committee would be made sufficiently clear by such a reference.

He therefore suggested that the Committee accept tentatively the present formulation of paragraph 1 and ask the Drafting Committee to seek a formulation for the exclusion of "social cases".

Mr. JUVIGNY (France) said he was prepared to agree to a new paragraph being inserted in article 27 to deal with the social cases which had been mentioned in the discussion.

Sir Leslie BRASS (United Kingdom) thought it should be possible for the Committee to agree provisionally to the combined suggestions of the representatives of Israel and France and to refer the question of finding a satisfactory formula to the Drafting Committee.

Mr. HERMENT (Belgium) thought that the Committee should first decide whether the article should be modified or not. If the Committee decided that the article should be left as it stood, it would still be desirable to refer it to the Drafting Committee.

The CHAIRMAN, replying to a question by Mr. WEIS (International Refugee Organization), said that the words "due process," which appeared in both the first and the second paragraphs of article 27, would be discussed when the Committee considered the second paragraph.

Mr. CHA (China) thought that the Committee was ready to take a decision on several questions. There was the question of whether to combine the first and second paragraphs, which the representative of the United Kingdom wished to do in order to employ the words in article 9 of the draft Covenant on Human Rights; there were also the questions raised with regard to the terms "public order" and "due process." The Chinese delegation could accept the proposal to combine the first two paragraphs, if the majority of the Committee wished to do so. He would prefer, however, to retain the concept of "public order", which was important in China where manners and customs differed greatly from those of other countries, and also differed from one region to another. He himself came from a mountainous area where husbands were obliged to travel great distances to work, and were able to visit their wives only once in three years. Wives generally remained extremely faithful to their absent husbands, and if any one were to receive a visit from a stranger it would cause a considerable sensation. The concept of public order was important in relation to such peculiarities of circumstance and custom.

The concept of due process, familiar to those who understood Anglo-American common law, would be easily acceptable to the Chinese delegation.

Mr. JUVIGNY (France) remarked that the observation of the representative of China showed what different interpretations might be given to the notion of public order. The example mentioned by the Chinese representative would, in France, come within the field of private law.

The CHAIRMAN thought that there would be general agreement that, owing to differences of custom, what would be questions of public order in one country would not be in another. For example, illegal distillation of spirits was in some countries merely a fiscal problem, but in others a problem of public order.

Again, to take the example referred to in the Canadian comment, there might possibly - although he hoped not - be countries where it was considered to be a man's private affair if he chose to poison himself with drugs. It would be impossible therefore to define precisely questions of public order for all countries.

He felt that the Committee might dispatch its business more rapidly if it referred the question to the Drafting Committee, on the understanding, not only that a second reading would be given to the article, but also that the first reading was merely adjourned, so that all representatives would have the opportunity to discuss the matter fully twice.

Mr. PEREZ PEROZO (Venezuela) accepted the Chairman's suggestion, but felt at the same time that a vote should be taken on the retention of the term "public order". If the matter was left to the Drafting Committee and if it decided to exclude the term, the present discussion might be renewed at the second reading.

Sir Leslie BRASS (United Kingdom) felt that the inclusion or exclusion of the term "public order" should be left entirely to the Drafting Committee. If the vote resulted in a directive to the Drafting Committee to employ the term, it would be precluded from seeking, and possibly finding, a satisfactory solution without it.

The CHAIRMAN agreed that it would be preferable to give no directive to the Drafting Committee.

Mr. JUVIGNY (France) recognized that the Chairman was actuated by the desire to leave as much latitude as possible to the Committee and to the Drafting Committee; but in view of the deadline the Committee had set for conclusion of its work, he thought it inadvisable to provoke a series of discussions on the question and therefore considered that the Committee should take an immediate vote, first, on whether a new paragraph should be added indicating those social cases which should not be regarded as covered by the

notion of "public order", such cases to be defined by the Drafting Committee, and, secondly, on whether the term "public order" should be retained in paragraph 1 of article 27. He considered that a decision by the Committee on those two questions might be of assistance to the Drafting Committee in its work.

Mr. GIRAUD (Secretariat) observed that "social cases" were dealt with in a special article, on which a State might submit reservations. At all events he did not believe that "social cases" came within the concept of "public order".

Mr. JUVIGNY (France), agreeing with the representative of the Secretariat, said he had only accepted that possibility on the assumption that social reasons might be included under "public order" in the legislation of certain States. Such was not the case in French law, and France had recently admitted a large number of refugees belonging to the "hard core".

Mr. HERMENT (Belgium) said he had intended to take the same line as the French representative and, accordingly, he saw no necessity to include such a paragraph in article 27.

The CHAIRMAN feared that the Committee might be considering the inclusion in an international convention of a provision which appeared to suggest that "social reasons" were a question of public order. To make an express reservation with regard to the terms "national security" and "public order" might constitute a dangerous precedent.

Mr. HENKIN (United States of America) felt that since there was obvious agreement that "social reasons" should not be grounds of expulsion, the only question which remained was whether to provide specifically for such exclusion, or to let the records of the Committee indicate that interpretation of "public order". He felt that the Drafting Committee should take that decision.

The CHAIRMAN put to the vote the proposal that a specific reservation with regard to "social cases" be included in paragraph 1 of article 27.

The proposal was rejected by 5 votes to 2 with 4 abstentions.

Mr. HENKIN (United States of America), explaining his abstention, said that he did not think the Committee should decide how the Drafting Committee was to express an idea on which all were agreed. He felt that no vote should have been taken, and that it was still open to the Drafting Committee to find a form of words expressing the intentions of the Committee.

Mr. WINTER (Canada) agreed that no vote ought to have been taken.

The CHAIRMAN said that the Drafting Committee, and members of the Committee present at its deliberations, would not be precluded from making any proposals they wished.

Mr. HERMENT (Belgium) said he had understood that the precise effect of the vote that had been taken was to prevent the Drafting Committee from including such a paragraph.

Mr. GIRAUD (Secretariat) said that the policy to be adopted should nevertheless be decided; when an indigent alien was expelled he was returned to his country of origin, but that could not be done in the case of a refugee.

The CHAIRMAN explained that while the Drafting Committee would receive no express orders to find a form of words for the exclusion of "social cases", any member who wished to take up the question would be able to do so. The result of the vote was no more than a guiding directive.

Mr. HERMENT (Belgium) thought that the Drafting Committee could only deal with an article which had been expressly referred to it for redrafting.

Mr. ROBINSON (Israel) felt that the result of the voting was inconclusive, since all those who, like himself, had voted against the proposal had

done so, not because they did not wish to exclude "social cases", but because they thought that such cases were already sufficiently excluded by the wording of article 27 or article 20. So long as any uncertainty remained in the minds of those who had voted for the proposal as to whether articles 20 and 27 guaranteed the exclusion of "social cases", the question could still be raised in the Drafting Committee.

The CHAIRMAN hoped that the Committee could accept the view of the representative of Israel. He felt that the work of the Committee had gained from the fact that in the past its directives to the Drafting Committee had not been unduly strict.

Mr. HERMENT (Belgium) accepted the view of the Chairman.

The CHAIRMAN suggested that the question raised with regard to the term "public order" be referred to the Drafting Committee and that no vote be taken in the Committee. He further suggested that the Committee proceed to consider paragraph 2 of article 27, which provided for remedies against decisions taken.

It was so agreed.

Sir Leslie BRASS (United Kingdom) said that, as stated in the United Kingdom comment on paragraph 2 of article 27 (E/AC.32/L.40, page 56), the deportation of aliens was a matter for the personal decision of the Secretary of State. The Secretary of State was, however, directly responsible to Parliament, which was quick to criticize any appearance of harshness. Public opinion was also perpetually on the alert. An alien under threat of deportation could communicate with his friends, with his legal advisers, and with members of Parliament, who could make representations on his behalf and visit the Home Office. If the alien was in prison, which of course in many cases he would not be, he would be precluded from visiting the Home Office in person, but could avail himself of all the other methods of making representations. He could also apply for habeas corpus.

Paragraph 2 presented a difficulty, because it provided for the alien or his representatives to appear personally before the Secretary of State. Every method of making representations was open to him under English law except that chosen in the draft Convention.

Mr. HENKIN (United States of America) felt sure that the procedure for making representations to which the United Kingdom representative had referred did not begin at the level of the Secretary of State, though the final decision might be taken by him. While it was understandable that the Secretary of State could not grant a personal interview to every refugee threatened with expulsion, perhaps it might be possible in view of the scope of the term "competent authority" for some other competent authority to grant a hearing to the refugee. If such an interpretation proved acceptable in the case of the United Kingdom, it might at the same time meet the needs of the refugee in other countries. If on the other hand it proved impossible to make such an arrangement, the United States delegation would like to see the words "in accordance with the established law and procedure of the country" deleted, if those words could be interpreted to mean "except where the established law and procedure of the country provide that there shall be no hearing". If that was not the meaning of those words, they could be retained in the hope of reaching a compromise.

Sir Leslie BRASS (United Kingdom) felt that such a compromise might be reached by the Drafting Committee with the help of the appropriate passages in the draft Convention on Human Rights.

The CHAIRMAN approved the suggestion of the United Kingdom representative.

Mr. JUVIGNY (France) requested that the Drafting Committee take the French Government's comment into account and substitute the phrase "with regard for" for the phrase "in accordance with".

The CHAIRMAN thought that the comment of the Austrian Government, which also referred to paragraph 2, could be covered by a remark in the report of the Committee.

It was agreed to refer paragraph 2 of article 27 to the Drafting Committee.

The CHAIRMAN noted that the comments of the Chilean and United Kingdom Governments contained references to paragraph 3.

Sir Leslie BRASS (United Kingdom) said that the United Kingdom Government objected to the wording rather than to the substance of paragraph 3. It was obvious that if the travel document of a refugee returnable to another country had almost expired, he could not be given the same opportunity to find another country willing to receive him as a refugee whose travel document was still valid for a considerable period. The problem was one of drafting only.

It was agreed to refer paragraph 3 of article 27 to the Drafting Committee.

Article 28: Prohibition of expulsion to territory where the life and freedom of a refugee is threatened.

The CHAIRMAN drew attention to the observations of the United Kingdom Government on article 28 (E/AC.32/L.40, page 57).

Sir Leslie BRASS (United Kingdom) said he did not wish to go again over ground covered at the first session. The difficulty was simply that the United Kingdom Government did not know exactly how to deal with cases where a refugee was disturbing the public order of the United Kingdom. He referred not to ordinary crimes, but to such activities as inciting disorder. In such cases, without the declaration of a state of emergency, the presence of a refugee might still be deemed highly undesirable. The United Kingdom Government had no thought of acting harshly in such cases and hoped indeed that the mere existence of the power to expel a man making trouble might serve to keep his behaviour within reasonable bounds. Every assistance would be provided to enable such a refugee to enter another country, even to the extent of helping him to obtain an entry permit. No deception of course would be practised on other countries; the position would be fully explained, but it might happen that such an individual would be more at home in some other country. If however all the efforts of the

Government to obtain permission for a refugee to enter another country proved unavailing, a provision making it illegal to expel him might prove embarrassing. The power to expel him would not of course be employed if it would endanger his life, but if the persecution to which he would be subjected in his country of origin was not very serious, the Government of the country where he had taken refuge might feel a little more inclined to send him there if he refused to mend his ways and could not find any other country to receive him.

He wondered whether any other Governments felt the same difficulty. The United Kingdom Government had not as yet taken any final decision, but it felt that to deprive itself entirely of the power to deport a refugee in such special circumstances would be a serious step. It should be recollected that under article 2 a refugee owed duties to the country of hospitality.

Mr. ROBINSON (Israel) thought that the problem to which the United Kingdom representative had referred was a real one. It was the problem of a socially dangerous individual still legally entitled to liberty. He understood that under United Kingdom law such an individual, once he had served a prison sentence, retained unimpaired his power to do more evil.

He wondered whether the solution might not be to introduce into article 28 something on the lines of the second sentence of paragraph 3 of article 27. He realized that the United Kingdom Government would be unable to accept such a proposal unless its legislation provided for the "internal measures" referred to, but even so it might provide a solution for other countries faced with the same problem.

Mr. HENKIN (United States of America) was sure that the United Kingdom representative would not wish to impair the principle of article 28. He felt that it would be highly undesirable to suggest in the text of that article that there might be cases, even highly exceptional cases, where a man might be sent to death or persecution.

The United Kingdom representative might be able to find a form of words that, while recognizing the principle of article 28, would cover such exceptional

cases as he had referred to, but he was glad that no formal proposals had been made. There would be no objection to accepting the suggestion of the representative of Israel, though it appeared unnecessary, since all rights which Governments did not specifically give up in article 28 were naturally reserved.

Mr. SCHÜRCH (Switzerland) said that his Government had at all times applied the principle stated in that article and that it had no reason to modify its procedure. But the Swiss Government wished to reserve the right in quite exceptional circumstances to expel an undesirable alien, even if he was unable to proceed to a country other than the one from which he had fled, since the Federal Government might easily find itself so placed that there was no other means of getting rid of an alien who had seriously compromised himself.

In addition, he presumed that the article did not mean that a refugee who reported to the authorities at the frontier of a country should be admitted solely because he could not be returned to a country where his life would be threatened. In his understanding, article 28 concerned only refugees lawfully resident in a country and not those who applied for admission or entered the country without authorization. An extraordinary influx of refugees into Switzerland might make it impossible for the Federal authorities to accept them all, despite their desire to receive as many as possible.

Mr. ROBINSON (Israel) thought that the basic idea behind article 28 was that in some circumstances the greatest possible evil for a refugee was to be returned to his country of origin. Governments were to be able to seek for some remedy in cases where an individual was a public nuisance, but they were not to send him back to the country where death awaited him. Perhaps the Committee would be able to find some other means of preventing him being a nuisance to society.

The Swiss observer was apparently under a misapprehension with regard to the application of article 28. In the discussions at the first session it had been agreed that article 28 referred both to refugees legally resident in a country and those who were granted asylum for humanitarian reasons. Apparently the

Swiss Government was prepared to accept the provisions of the article with regard to lawfully resident refugees but not to those entering illegally and granted asylum. He feared that the Swiss Government might find its interpretation in conflict with the general feeling which had prevailed in the Committee when it had drafted the article.

Mr. WEIS (International Refugee Organization) wished to add to the remarks of the representative of Israel only that article 28 meant exactly what it said. It imposed a negative duty forbidding the expulsion of any refugee to certain territories but did not impose the obligation to allow a refugee to take up residence.

Mr. JUVIGNY (France) considered that any possibility, even in exceptional circumstances, of a genuine refugee, that was to say, a person coming under the well-pondered definitions contained in article 1, being returned to his country of origin would not only be absolutely inhuman, but was contrary to the very purpose of the Convention.

Reference to the definition of "refugee" in article 1 would suffice to show how psychological factors had been taken into account even in a legal text. To take such factors into consideration in a definition, on the one hand, and to allow for the possibility, even in exceptional circumstances, of returning a refugee to his country of origin, on the other, were obviously quite contradictory.

He was reluctant to encourage members of a technical committee to go outside the field of law; but he would point out that there was no worse catastrophe for an individual who had succeeded after many vicissitudes in leaving a country where he was being persecuted than to be returned to that country, quite apart from the reprisals awaiting him there.

Mr. HENKIN (United States of America) welcomed the statement of the French representative, since article 28 applied particularly to countries into which illegal entry was easy. Its sole purpose was to preclude the forcible return of a refugee to a country in which he feared both the persecution from

which he had fled and reprisals for his attempted escape; as the United States of America were not so geographically situated as to receive many illegal entrants, the support of the representatives of Belgium and France for the present wording of the article was particularly welcome.

The CHAIRMAN reminded the Committee that Denmark was also a country of first reception and that it was easy to reach one of its 485 islands with their enormous coastline in a rowing boat. Still, he felt that, even if the work of the Committee resulted in the ratification by a number of countries of article 28 alone, it would have been worth while. He himself would regret any changes in the wording but suggested that it be left to the Drafting Committee to decide whether to seek a compromise which would satisfy the objections of the United Kingdom representative without affecting the principle, or whether to adopt the suggestion of the representative of Israel.

It was so agreed.

Article 30: Co-operation of the national authorities with the United Nations

The CHAIRMAN, noting that article 29 had been disposed of at the previous meeting, called attention to article 30 and the relevant United States observations (E/AC.32/L.40, page 59).

Mr. HENKIN (United States of America) thought that the Committee in drafting article 30 had been hesitant to bind Contracting States too definitely to co-operation with the United Nations High Commissioner for Refugees. Since however, the Economic and Social Council had recognized the important link between the provisions of the Convention and the functions of the High Commissioner, there was no reason for that hesitancy. Paragraph 6 of the preamble to the draft Convention Relating to the Status of Refugees, as approved by the Council (E/1818), read "Considering that the High Commissioner for Refugees will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention depends on the full

co-operation of States with the High Commissioner and on a wide measure of international co-operation". He hoped that that link would be recognized when the General Assembly approved the statute of the High Commissioner's Office.

The amendment proposed in the United States comment was therefore designed to remove the hesitant tone of article 30. One slight modification was required in the amendment as contained in document E/AC.32/L.40, since in the deliberations of the Council it had been suggested that it was inappropriate to speak of the successor to a functionary who was on the point of taking office. The words "or any successor agency" in the amendment to paragraph 1 of article 30 should therefore be replaced by the words "or any other agency" and the words "or any successor agency" in paragraph 2, by the words "or any other appropriate agency". With those changes no doubt would be cast on the longevity of the High Commissioner's Office, and furthermore, if the Convention remained in force for a long period, it would be open to the Contracting States to designate any other office they wished to make the reports referred to in paragraph 2.

Mr. ROBINSON (Israel) supported the United States amendment on the understanding that it would be subject to further change if the High Commissioner's terms of reference were modified in the General Assembly.

Mr. JUVIGNY (France) saw no objection to accepting the wording just proposed by the United States representative. But he thought it would be preferable to substitute the phrase "in the requisite form" for the phrase "in the form prescribed", since the latter might suggest that the High Commissioner had some powers vis-à-vis States, whereas the intention was merely to ensure that States would submit the information supplied in a manner sufficiently uniform to facilitate the work of the High Commissioner's Office.

Mr. HENKIN (United States of America) found the suggestion of the French representative acceptable. The word "prescribed" had been employed since it was in the original text of article 30. The matter would be left to the Drafting Committee.

Mr. HERMENT (Belgium) regarded as somewhat infelicitous the provision that Contracting States should "undertake to co-operate .... in the function of supervising the application of the provisions of this Convention" and suggested the substitution of some such phrase as "undertake to facilitate the work of the High Commissioner's Office".

Mr. HENKIN (United States of America) suggested that that matter also could be left to the Drafting Committee.

Article 30 as a whole was referred to the Drafting Committee.

Articles 31-40:

Mr. ROBINSON (Israel) thought that the normal procedure of considering articles first in the Committee, then in the Drafting Committee, and then again in the Committee, could be abandoned in the case of articles 31-40, which did not affect the substance of the document as a whole and were concerned with matters more or less habitual in international conventions.

Mr. HENKIN (United States of America) thought that there could be no objection to the suggestion of the representative of Israel except with regard to the articles on which comments had been submitted, notably article 36.

Sir Leslie BRASS (United Kingdom) hoped that article 31, on which the United Kingdom Government had commented, could be considered first by the Committee.

The CHAIRMAN felt in view of the United Kingdom request that article 31 should be considered by the Committee immediately.

It was so agreed.

Sir Leslie BRASS (United Kingdom) said that the purport of the United Kingdom comment on article 31 was that his Government would prefer a text for that article based on the principle that ratification of or accession to the

Convention implied that a State was already in a position to give effect to its provisions. He had no further observations to make and thought it unnecessary at present to press for an alternative form, but wished to draw attention to the matter to which his Government attached much importance.

Mr. HENKIN (United States of America) thought that there would be no advantage in taking any decision in the Committee, since the matter must be considered again in the General Assembly in any case. It was a question which arose with regard to every international convention. >

It was agreed to refer articles 31, 32 and 33 to the Drafting Committee.

< Mr. HENKIN (United States of America) noted that when article 34 had been drafted the Committee had thought that the Economic and Social Council would be the last body of the United Nations to revise the draft Convention. Since that would not be the case, he saw little point in the words "on behalf of any Member State of the United Nations and on behalf of any non-member State to which an invitation has been addressed by the Economic and Social Council"; those words would raise many irrelevant questions as to which States should receive invitations and which should not.

The CHAIRMAN suggested that the words to which the United States representative had objected be replaced by the words "on behalf of any State, Member or non-member of the United Nations".

Mr. HENKIN (United States of America) felt that that suggestion over-emphasized the point and preferred the words "on behalf of any State".

Sir Leslie BRASS (United Kingdom) saw no objections to the United States suggestion, but felt that time should be allowed for further consideration of the matter and for the Secretariat to be consulted.

It was agreed to refer articles 34 and 35 to the Drafting Committee.

Mr. JUVIGNY (France) believed that the Committee had agreed to postpone discussion of article 36 until all the other provisions had been examined. That decision should be adhered to, if only to save time.

The CHAIRMAN understood the representative of France to suggest that consideration of article 36 be postponed until the rest of the draft Convention had been disposed of and the need for reservations ascertained.

Mr. HENKIN (United States of America) approved that suggestion, and further suggested that members should in the meantime consider how article 36 should be drafted.

The CHAIRMAN concurred.

It was so agreed.

Mr. HERMENT (Belgium) thought that the statement in article 37 that the Convention would come into force after the deposit of the second instrument of ratification or accession might discourage accessions to the Convention and also invalidate arguments in favour of a higher number. He recalled that only three States had ratified the 1938 Convention and proposed that the number of ratifications or accessions required to bring the Convention into force should be raised to six.

Mr. GIRAUD (Secretariat) feared that the number six might be too high and, accordingly, that the Convention might come into force too late or not at all. So far as the present Convention was concerned it would be a good thing to bring it into force, even if only two States acceded to it.

The CHAIRMAN had no objection to the suggestion of the representative of Belgium, but felt that the question was one of some political importance and within the competence of the General Assembly rather than the Committee.

Mr. ROBINSON (Israel) agreed with the Chairman.

Mr. JUVIGNY (France) suggested that it be stated in the Committee's report that certain members had thought it would be preferable, in the interests of the refugees themselves, to increase the number of ratifications or accessions required to bring the Convention into force.

Mr. HERMENT (Belgium) explained that he had referred to the matter on express instructions from his Government, which did not wish to become a party to the Convention if it was ratified by only two States.

Mr. GIRAUD (Secretariat) pointed out that a State could accede to the Convention with the reservation that its accession would be valid only if certain States or a certain number of States also acceded to it. Such a clause was so common in practice that it need not be expressly included in the Convention.

Mr. JUVIGNY (France) pointed out that another possible solution - although he did not support it - would be to leave the number of ratifications required blank and to state in the Ad hoc Committee's report that in view of the political importance of the question the decision in the matter should rest with the General Assembly.

The CHAIRMAN felt that since no comments had been submitted on article 37 except those made at the present meeting by the representative of Belgium, the question could be resolved by leaving the text as it was and including a note in the report of the Committee, as suggested by the French representative.

It was so agreed.

After an exchange of views with regard to a discrepancy between the French texts of article 39 given in document E/1618 and document E/AC.32/L.40,

It was agreed to refer articles 38, 39 and 40 to the Drafting Committee.

Mr. WINTER (Canada), with regard to the proposed addition of a federal clause, wondered whether the Committee was certain that it wanted such a clause.

Mr. HENKIN (United States of America) recalled that the Committee had already expressed an opinion on that question, which was however no longer in its competence, since it was to be referred to the General Assembly.

The meeting rose at 6.5 p.m.