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# **The British–Jewish Roots of Non-Refoulement and its True Meaning for the Drafters of the 1951 Refugee Convention**

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This article examines the underlying intentions that guided the authors of Article 33, better known as the non-refoulement principle, of the 1951 Refugee Convention, from February 1950 until the signing of the Final Act in July 1951. I begin by explaining the diplomatic context within which the non-refoulement principle was inscribed into the text of the Convention, following the schism between the two opposing groups of member states present at the drafting table. Based on unpublished material from Israeli and UK archives, I then study four specific aspects of the drafting of the non-refoulement article. The first issue concerns the geographical scope of non-refoulement regarding refugees on the high seas. The second concerns the addition to non-refoulement in the first paragraph of Article 33 of the category of ‘a particular social group or political opinion’, in direct contemporary reference to political refugees from the Soviet bloc. The third issue studied here is the development of the text of paragraph 2 of Article 33, one of the major conditions restricting protective measures for refugees. This study uncovers how this paragraph was drafted, where it was initially intended to fit within the Convention text, and how it eventually became a qualifying condition for Article 33. Fourthly, this article considers the embedded meaning of the term ‘national security’ as it was inserted into Article 33 by the UK representatives who drafted it.

**Keywords:** Refugee Convention, non-refoulement, immigration, espionage, protection

## **Introduction**

Much has been written on the non-refoulement principle of the 1951 Refugee Convention (Chétail 2001, 2014). This seemingly simple moral imperative, of not returning refugees into the hands of their tormentors merely because of who they are, has generated a wide range of judicial and governmental interpretations the world over (Kälin *et al.* 2011; Zimmermann and Wennholz 2011). While opinions vary regarding the importance of the Convention’s

*travaux préparatoires* for the determination of the scope and intended meaning of the non-refoulement principle, some High Courts have recently reiterated their relevance and importance (Pinto de Albuquerque 2012: 61–82, n.2–62; Israeli Supreme Court 2013). My aim here is to advance understanding of the non-refoulement principle, by exposing the underlying intentions and meanings upheld by its original drafters, working between January 1950 and the adoption of the final text in July 1951.

The present study continues previous work concerning the historical origins and archives of the 1951 Refugee Convention (Ben-Nun 2014). Much of the drafting of Article 33 took place in the earlier stages of the work on the Convention, alongside two consecutive sessions of ECOSOC's Ad Hoc Committee on Statelessness and Related Problems (Einarsen 2011; Kälin *et al.* 2011; Zimmermann and Wennholz 2011). As with the previous study, this article also draws upon the 'top-secret' reports written by the international jurist Dr Jacob Robinson, in his capacity as the Israeli Ambassador Plenipotentiary to the Refugee Convention. Robinson's reports were addressed to the Israeli Foreign Minister at the time, Moshe Sharett, and to the first director of the Israeli Foreign Ministry, Walter Eytan, and are deposited at the Israeli National Archives in Jerusalem.

While the first study concerning the Refugee Convention's Articles 3 and 6 was based primarily upon Robinson's three weekly reports from the Conference of Plenipotentiaries in July 1951, this current study is based upon a further set of reports, unavailable to me earlier. These include Robinson's reports to Walter Eytan, written from Lake Success in New York, and communicated to Jerusalem during the three weeks of the first session of the Ad Hoc Committee on Statelessness and Related Problems, between January and February 1950 (Einarsen 2011). More importantly, during my initial research in the Jerusalem archive in 2012 which uncovered Robinson's three consecutive reports from the Conference of Plenipotentiaries, I could not locate the fourth and final report so vital for the understanding of the entire drafting process. Both Robinson's Ad Hoc Committee reports, as well as the final report from the Plenipotentiaries' Conference, were located only last year in the Jerusalem archive, filed separately within the material from the Israeli delegation to the UN in New York. In this article I therefore consider the content of these recently uncovered reports.

Robinson's accounts were compared with those of two other primary sources from the 1950s: first, British government files. As a permanent member of both the UN Security Council and ECOSOC, the UK played a vital role in drafting the Convention. The UK delegate, Sir Samuel Hoare, working with Jacob Robinson and the other members of the 'Robinson network', led the humanitarian diplomatic efforts to secure the Final Act (Ben-Nun 2014: 103–109).<sup>1</sup> Comparison of Robinson's reports with those of Hoare serves to corroborate the independent reports made to their respective governments.

Second are the papers and addresses of Rabbi Dr Isaac Lewin from New York. Lewin was the delegate of the ultra-Orthodox Jewish NGO Agudas Israel during the drafting of the Refugee Convention. At the Ad Hoc Committee's first session, Lewin's drafts for both non-expulsion and non-refoulement (Articles 32 and 33) were adopted by the committee as the textual basis for these articles. Lewin's documents shed further light on the thoughts and motivation of the drafters.

All the above contemporary accounts were compared with official UN records of both Ad Hoc Committee sessions and the Conference of Plenipotentiaries (Takkenberg and Tahbaz 1990). Of the commentaries on the 1951 Refugee Convention consulted during this study, two are of specific importance, that of Weis (1995), who took part in all the drafting stages, and Zimmermann *et al.* (2011).

### **The Moral High Ground and the Europeanist–Universalist Divide over the Scope of the Refugee Convention**

To say that non-refoulement was seen as an important issue in the eyes of the drafters of the 1951 Refugee Convention would be an understatement. In the second session of the Ad Hoc Committee, the deliberations over the text of Article 33 (then still Article 28) intensified. Cold War fears of espionage threatened to dilute the Article's protections, formulated only six months earlier (Kälin *et al.* 2011; Zimmermann and Wennholz 2011). In response, President Knud Larsen, who represented Denmark, expressed his conviction of the over-riding importance of non-refoulement. Reminding the other delegates that Denmark had received thousands of refugees as a country of first asylum, Larsen stated:

Even if the work of the Committee resulted in the ratification by a number of countries of Article 28 alone, it would have been worthwhile. He himself would regret any changes in the wording (Takkenberg and Tahbaz 1990 (1): 163).

One of the greatest threats to the eventual adoption of the entire 1951 Refugee Convention was a divide between two groups of member states, referred to as the 'Europeanists' and the 'Universalists' (Ben-Nun 2014: 109–112). This split continued to threaten the Refugee Convention's success even after the endorsement of the Final Act in July 1951, up until its eventual ratification and its coming into force in 1954.<sup>2</sup> On one side of this divide stood countries already accommodating large numbers of refugees, such as Belgium, France, the Netherlands, Denmark and Sweden. On the other, countries that selectively accepted refugees as immigrants, but did not suffer the impacts of mass flows of refugees. This second group was headed by Australia, and included New Zealand, Venezuela, Brazil and Canada (Ben-Nun 2014: 109–112).

The main challenge thus facing the ‘Robinson network’ was to bridge the divide between these two groups, each with common diplomatic interests that contradicted those of the other group. The ‘Robinson network’ consisted of a close-knit circle of like-minded delegates, who laboured towards adequate refugee protections in the draft Convention text (Ben-Nun 2014: 103–109). This network was headed by the Danish delegate (and later Convention President) Knud Larsen, coordinated by Jacob Robinson, and underpinned by Hoare from the UK, along with the US delegate Louis Henkin and the IRO (and later UNHCR) delegate Paul Weis (formerly Robinson’s protégé at the World Jewish Congress) (Ben-Nun 2014). Robinson explained how this schism, between what he initially termed the ‘receiving countries’ and the ‘immigration countries’, manifested itself at the outset of the deliberation of the Ad Hoc Committee:

If we consider the members who took part in the deliberations of the Ad Hoc Committee from the viewpoint of the refugee problem, we will easily discover that they belong to two distinct categories:

- The category of so-called reception countries (Belgium, Denmark, France, UK)
- The category of so called immigration countries (Brazil, Canada, USA)

The countries of reception are such European countries which by their geographic position and/or by their tradition have been bound during the last three decades to receive refugees and keep them there, not having any chance of shipping them away. The immigration countries, while in a way also giving shelter to refugees, do so only to selected categories in accordance with their immigration laws. While Canada, for instance, might have given shelter to a greater number of refugees than the UK the difference between them is that the UK—as a rule—did not select them, while Canada did (Robinson Sixth and Final Ad Hoc Committee Report: 2).

In his final report after the signing of the Final Act at the Conference of Plenipotentiaries in July 1951, some 18 months after the first Ad Hoc Committee report was written, Robinson recaptured this *problématique*, which influenced the entire drafting process throughout all the stages of the Convention’s textual development:

What were the issues? *In appearance* it was first of all the question of the scope of this Conference *ratione personae*. England headed the Universalist Bloc (incidentally this term was coined by myself) while France and USA along with Latin Americans were in favour of a Convention restricted to refugees hailing from Europe (Robinson Final Plenipotentiary Report point 3 p. 3; parentheses and underlining in original, italics added).<sup>3</sup>

It therefore seems, or in Robinson’s words ‘In appearance’, the crux of the divide concerned the question who should be protected by this convention and who should be outside its protection (Schmahl 2011: 470–471). Was this convention only for the benefit of refugees in Europe, or was it intended for the protection of refugees the world over? The representative of the Holy See



suggested the words ‘In Europe and other countries’, which was hailed as a compromise between the ‘Europeanist’ and the ‘Universalist’ positions. The wording in Article 1B, which ultimately read ‘in Europe and elsewhere’, was achieved in the Style Committee, concocted by Robinson and carried forward into what became Article 1B by Hoare. Robinson explained this ultimate compromise between the two camps, referring to his collaboration with Hoare on the matter, as he apologised for his abstention on behalf of Israel in the vote on the clause he himself helped draft, in order to maintain his intellectual integrity:

Here is the place to record that finally a compromise solution sponsored by the Holy See (A.CONF.2/80) was found. Everybody including myself voted for it. This language put the “Universalists” and the “Europeanists” on the same *legal and moral level*. Later, in the Style Committee, I suggested for drafting reasons to have the alternative clauses placed in a particular section of Art. 1 of the Convention. This idea was picked up by the UK and finally drafted by a working group. I abstained in this vote since I felt that it was inappropriate for an Asiatic country to accept a formula “in Europe and elsewhere” which is by implication a Europe-centric formula (Robinson Final Plenipotentiary Report, point 3 p. 3; italics added).

The ‘moral level’ Robinson was referring to was his basic distinction between the categories of ‘reception countries’ and ‘immigration countries’ as stated above. While immigration countries such as Canada and Australia were ‘cherry picking’ their refugees out of the masses, France and Belgium were providing shelter to mass refugee flows, thereby demonstrating moral principle. As Robinson explained:

We should not however be misled to believe that the countries of immigration are more liberal than the countries of reception. The sociological fact remains that only the countries of reception are under moral obligations to receive people whom they do not want, while that is not the case with the countries of immigration (Robinson Sixth and Final Ad Hoc Committee Report: 2).

Consequently both the French and the Belgian representatives at the Plenipotentiaries’ Conference emphasized the moral high ground from which they criticized Australia and other immigration countries. No issue represented their superior morality more than that of the reception of refugees who clandestinely and illegally crossed into France and Belgium.

This issue of the illegal clandestine crossing of borders by people seeking asylum prior to their official recognition as refugees lies at the heart of the non-refoulement principle. Nowadays, the clandestine border crossing, and the later stage of refugee status determination (RSD), have somewhat unofficially become a two-stage process. In the first step the illegal border transgressor is granted non-refoulement protection until the culmination of the second step of RSD (Chétail 2001: 22). Sixty years earlier, as the

Plenipotentiaries' Conference unfolded, this eventuality was anything but obvious. While the reception countries—France and Belgium—were well accustomed to clandestine border crossings followed by applications for asylum, this was rendered illegal and unacceptable by immigration countries such as Australia and New Zealand. During the morning session of the second day of the Conference (July 4 1951), this issue led to open confrontation between the reception and immigration countries. As discussions focused on the issue of non-discrimination (Art. 3) between refugees who illegally entered the country of asylum, and other aliens who went through the whole screening process before being admitted, matters came to a head:

Mr. Rochefort (France): asked the Australian representative for his opinion on what the attitude of a government should be towards refugees entering its territory clandestinely. Would such a government have the right to impose on such refugees conditions of stay based on considerations of race, religion or country of origin, rather than on general consideration of security and like?

Mr. Shaw (Australia): said that the case described by the French representative would be regarded as an illegal entry. He did not presume that the intention was to alter the existing legal arrangements dealing with such cases.

M. Herment (Belgium): said that the Australian representatives' reply did not appear to him to be satisfactory (Takkenberg and Tahbaz 1990 (2): 242).

In the afternoon session of the same day, as deliberations continued around the issue of non-discrimination, the battle for moral superiority between Australia and New Zealand as immigration countries, and Belgium as a reception country, intensified. The Australian amendment to reject the favourable treatment of refugees over that of other aliens was struck down by the Conference, mainly thanks to the Belgian intervention explicitly stating that the Australian amendment was tantamount to the nullification of the entire Convention (Hathaway 2005: 206 n.245; UN Conference of Plenipotentiaries 1951a). Because the Australian representative Shaw made the mistake of claiming the moral high ground, he was emphatically argued down by his Belgian counterpart:

Mr. Shaw (Australia): pointed out that Australia's position was rather a special one, since the country had a large scale migration programme and was annually admitting some 40,000–50,000 alien immigrants...

Mr. Herment (Belgium): pointed out that Belgium was harbouring 400,000 aliens compared with a total population of 9 millions. Despite their great number, Belgium's policy was to give refugees more favourable treatment than other aliens in view of the particularly tragic plight in which they found themselves (Takkenberg and Tahbaz 1990 (2): 248).

It is in large part thanks to the persistence of the UK, Belgium, and the Netherlands, the very countries which were bearing the brunt of the postwar

European refugee crisis, that the Convention was eventually endorsed. In his final report to the British Cabinet, Sir Samuel Hoare explained who sided with the UK for the benefit of refugee protections at the Plenipotentiaries' Conference:

Mr. Larsen proved on the whole a very successful chairman. He was inclined to be slow but his patience and good humour were of particular value in preventing serious disruption of the conference by the provocative outbursts of the French representative Rochefort...of the representatives present the Belgian, Mr. Herment, was our greatest ally...The Netherlands' delegate Baron van Boetzelaer was also helpful and generally shared our point of view. Mr. Robinson, the representative of Israel, made many useful contributions to the debate (Hoare Final Report: 1).

Concerning those who opposed refugee protections, primarily the Australian position, Hoare reports to Whitehall that:

The Australian representative, Mr. Shaw, made such heavy weather of difficulties which the Australian government felt about certain provisions of the Convention as to give the impression that Australia's adherence to the Convention was not very likely (Hoare Final Report: 3).

Robinson confirms Hoare's prognosis as he reports back to Jerusalem:

the Australians were very restrictive during the first week of the conference, introducing numerous amendments to the detriment of the refugees (Robinson Final Plenipotentiary Report, point 3 p. 3).

Most of the Australian amendments were aimed at blocking the adoption of clauses that contradicted Australian (and Canadian) immigration laws. With the European states housing most of the refugees from the Second World War, this position seemed morally untenable. If all states had equal humanitarian obligations, the limiting of these via selective immigration policies, leaving Europe to deal with its vast refugee populations, seemed rather unfair. In order not to lose diplomatic face, many of the Australian amendments were advocated under the pretext of national security, limiting access for refugees whom Australia in fact did not want (Neumann 2004: 15–42). Regarding this problematic usage of the term 'national security' by the Australian delegation, as an all-inclusive phrase covering immigration considerations, Robinson reported to Sharett on his work in that infamous sixth session:

During the 6th session I did my utmost best to weaken as much as possible the element of 'National Security' as an element which would enable member states to treat refugees harshly, and I therefore successfully pleaded against the Australian revision which was struck down by the conference (Robinson First Plenipotentiary Report point 2, p.2).

### **The Geographical Scope of Non-refoulement and the Universalism of Refugee Protections**

Echoing the importance of non-refoulement as referred to by Larsen, as the Ad Hoc Committee's deliberations began, Jacob Robinson provides us with a fascinating insight into the intricate details of the difference in opinions on non-refoulement, between the representatives of different nations, on the question of sea-borne refugees. Referring to the two categories of 'reception countries' and 'immigration countries' he mentioned previously, Robinson explained:

The conflict of the two categories of countries interested in refugees made itself felt in the work of the Ad Hoc Committee as well as in some other organs including the General Assembly...the most manifest of these contradictions between the two categories came out when the problem of non-refoulement was discussed. The countries of immigration were very enthusiastic against refoulement, but they made it clear that the turning back of illegal immigrants would not be considered a refoulement. The ocean protects the countries of immigration also against the need of refoulement, which exists only in countries with contiguous frontiers with other countries from where the stream of refugees comes (Robinson Sixth and Final Ad Hoc Committee Report: 2; all underlines in the original).

This form of words is blunt and clear. Australia, Canada, the US and Venezuela could afford to advocate non-refoulement because they did not have to bear its demographic and social consequences. Robinson was reporting to his headquarters in Jerusalem, in his usual punctual and concise style. The foregoing paragraph, while seemingly reflective and somewhat theoretical, was not the result of abstract thoughts that he decided to share with his headquarters. Rather, Robinson was summarizing a specific discussion that took place during the Ad Hoc Committee's deliberations.

The foregoing discussion concerning the application of non-refoulement to sea-borne refugees, took place during the morning session of 2 February 1950, the day after the Ad Hoc Committee endorsed the draft text for non-refoulement presented by Rabbi Isaac Lewin (discussed below). In a series of questions and answers between the Venezuelan representative and the French and Belgian delegates, the question of non-refoulement of refugees at sea was discussed in the most unequivocal terms. The case in question concerned an incident off the Venezuelan coast in the late 1930s. As Spanish maritime vessels clandestinely disembarked Spanish republicans fleeing persecution by Franco's nationalist forces, the Venezuelan authorities attempted to return these refugees to the vessels. To the question whether the non-refoulement principle (then still known as Article 24) applied in this case, the reply by the Ad Hoc Committee's members from France and Belgium was clear:

Mr. Perez Perozo (Venezuela): On arrival the Spaniards presented themselves to the Venezuelan authorities as refugees. If the existing article 24 were applied, it

appeared that Venezuela, even if it considered the newcomers highly undesirable, would not be able to return them either to Spain where they claimed their life or liberty would be threatened, or to other countries because the latter would refuse to receive them

Mr. Cuvelier (Belgium): replied that the interpretation of article 24 given by the representative of Venezuela was certainly correct . . . the problem of refugees was new to Venezuela and the countries on the far side of the Atlantic, but many countries of Europe had been faced with it in a much more serious form for many years.

Mr. Ordonneau (France): noted that certain countries were beginning to encounter difficulties to which the countries of Europe had long been accustomed. Of course, a country might be reluctant to receive in its territory a large number of aliens, some of whom did not have all the desirable qualifications. The easiest course for that country would be to close its frontiers and to abandon the refugees to their fate; nevertheless, it was not a question of personal convenience or well-being, but a humanitarian problem and it could not be stressed too often that the countries of Europe, in spite of their difficult economic situation and the high density of their population, had not hesitated to admit many refugees of all nationalities (Takkenberg and Tahbaz 1990 (1): 318–319).

The most important words here are those of the French delegate, regarding a state's option to 'close its frontiers and to abandon the refugees to their fate'. The frontier in this case is precisely the boundary with international waters, guarded by the Coast Guard vessels of the immigration country. In this sense 'their fate' implied their remaining on the high seas, and not having anywhere to disembark and come ashore. Though the Venezuelan representative did not accept this interpretation of the Belgian and French delegates, he nevertheless deserved the benefit of the doubt, if only for the fact that non-refoulement was a new concept to him. Article 24 had been accepted by the Ad Hoc Committee only one day earlier, following the endorsement of the draft proposal tabled for the committee's consideration by a seemingly esoteric Jewish NGO with accredited status to ECOSOC. This was the proposal tabled by the ultra-Orthodox Agudas Israel organization, represented by Rabbi Dr Isaac Lewin.

Quoting Grahl-Madsen (1963) and Nehemiah Robinson (1953), Davy provides thematic information on the drafting process of Article 32 and Article 33, explicitly mentioning that the draft chosen for consideration by the Ad Hoc Committee was that submitted by Agudas Israel on 2 February 1950 (Davy 2011: 1285–1286). Weis goes a little further than other commentators and quotes one passage from Lewin's address that day (Weis 1995). Representing neither a member state, nor part of the UN establishment, one is bound to ask how Dr Lewin, an ultra-Orthodox Rabbi speaking on behalf of a religious Jewish NGO, got to the Committee's drafting table in the first place.

Isaac Lewin was born in 1906 in the Polish city of Lodz into a family of Orthodox Jewish Talmudic jurists. His father, the Polish Chief Rabbi, Aaron Lewin, was a member of the Sejm, representing the Jewish minority during the

1930s. Isaac Lewin's education consisted of a mix of Talmudic jurisprudence coupled with extensive Western legal studies. In 1935 he was ordained as a rabbi, and in 1937 he obtained a doctorate in law at the University of Lodz, while serving as an elected official in its city council (Lewin 1992: 1–13). In 1939, upon the German occupation of Poland, he escaped from Lodz to the US, immediately joining Agudas Israel in New York (Lewin 1992: 320).

During the Second World War, Lewin participated in multi-level efforts to save European Jews by granting them Latin-American nationalities, thereby allowing them to leave Nazi-occupied Europe via Latin American consulates in Geneva and Bern. These activities made him well acquainted with refugee issues including problems with travel documents. In 1981, he was awarded the UN Peace Medal for his life-long campaign and final adoption of 'The Declaration on the Elimination of all Forms of Intolerance and Discrimination Based upon Religion or Belief' (Lewin 1992: 320).

Troebst (2012) pointed to the role played by central European Jewish jurists in the making of the UN and the postwar international order. Jacob and Nehemiah Robinson, Paul Weis, Hersch Lauterpacht and Refael Lemkin (initiator of the Genocide Convention), were Central European Jewish jurists who were socially interconnected, all of whom eventually worked in one way or another for the nascent UN in the drafting of its early documents and conventions (Troebst 2013). The relationships between Jacob and Nehemiah Robinson and Paul Weis, and between Robinson and the US delegate Louis Henkin, have been shown in Ben-Nun (2014). It is within this context, and in this milieu, that one ought to place Rabbi Dr Isaac Lewin.

As per their consultative status to ECOSOC, the accredited NGOs could request to address the Ad Hoc Committee, subject to the Committee's consent, and only by invitation of one of the permanent members of ECOSOC. The invitation for Lewin's address on the morning of 2 February 1950 was secured by the formal request of the US delegate Louis Henkin,<sup>4</sup> who knew Lewin well through links to his father at the Yeshiva University in New York.

Following the end of the morning session, Henkin continued to advocate on Lewin's behalf, proposing that the Committee discuss in full his draft which later became the working paper for Articles 32 and 33. The development of the text of Article 32 is well documented in Davy (2011) and Weis (1995). The British delegate, Leslie Brass, opted for the draft tabled by Lewin due to its superior structure in comparison to the other documents available to the drafters. He was immediately supported by Robinson and Henkin, as well as the Canadian Chairman. The Lewin draft was eventually split into two separate articles through a joint Belgian–American proposal.<sup>5</sup> The first dealt exclusively with the expulsion of lawfully admitted refugees, eventually becoming Article 32. The second dealt solely with the turning back of refugees, and became today's Article 33 of non-refoulement.

Lewin's draft, reprinted in its entirety in Zimmermann's commentary, was by no means novel (Davy 2011: 1286). Rather, it was a reworking of elements from previous international instruments, most notably the 1928, 1933, 1936



and 1938 conventions, dovetailed with elements from the French and Secretariat drafts (Davy 2011). It read as follows:

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such refugee shall be only in pursuance of a decision reached in accordance with due process of law. The refugee shall have the right to submit evidence to clear himself and to appeal to be represented before competent authority.
3. The Contracting States shall allow such refugees a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary (Weis 1995: 225).

A comparison between Article 24 of the IRO draft, and Lewin's proposed text, exposes Lewin's 'added value' as he successfully maintained the insertion of the second sentence of paragraph 2 above, until its endorsement in the Final Act:

'The refugee shall have the right to submit evidence to clear himself and to appeal to be represented before competent authority' (UNHCR 2010: 29).

This sentence remained intact throughout the protracted negotiations of both Articles 32 and 33, which took place at the Conference of Plenipotentiaries a year later. In providing this working draft, Lewin succeeded in instilling a refugee's right to some sort of legal consideration and evidence evaluation, by the authorities of his or her host country. Seldom did NGOs, let alone ultra-Orthodox Jewish ones, get the chance to influence the shape and wording of a proposed UN Convention. As Jacob Robinson reported:

During this week some Jewish organisations with consultative status showed up. On Wednesday, February 1<sup>st</sup>, Dr. Lewin (Agudath Israel) addressed the meeting (with long quotations from the book of Amos) on the problem of expulsion and Refoulement and submitted a draft (E/C.2/242 attached herewith) which had certain advantages as compared with the other two drafts (Secretariat and France). At the suggestion of the UK, supported by myself, the Agudath draft was taken as the bar for discussion. Of course the final language of Article 24 differs greatly from the Agudath draft and is the result of long discussions (Robinson Third Interim Ad Hoc Committee Report point 4, p. 1–2).

Robinson's reports are concise and punctual, not least because in many instances the reports were wired via electronic telex from New York and Geneva. The main point communicated to Jerusalem here concerns Lewin's address before the Ad Hoc Committee. Robinson chose to communicate to Jerusalem the fact that Lewin presented 'long quotations from the book of Amos'. He would have only mentioned Lewin's biblical quotations if they had a specific and concrete relevance to the diplomatic issues at stake. The

absence of these biblical quotations from any UN transcripts and other source at the UNHCR archives runs counter to the importance Robinson seemingly vested in them.

Lewin began his address by sorting out the four different issues in Article 24 of the IRO's draft: expulsion, refoulement, lawful admission, and naturalization. He proposed that Article 24 be redrafted in its entirety, and provided the following insight:

Expulsion of a refugee, in the majority of cases, means prolonged agony. It is equivalent to death when he is sent back to his country of origin, and the Draft Convention rightly prohibits this act. In this way it fulfils one of the ethically unsurpassed proscriptions of Jewish law, particularly stressed by the earlier prophets. I have the impression that one of them, Amos, considered the prohibiting of sending refugees back to be a binding rule of international law of his time. He once said that God would never forgive Philistine Gaza and Phoenician Tyre for the crime of expelling the Jewish refugees who had found asylum in their countries delivering them to the enemy, the Kingdom of Edom (Lewin 1992: 161).

Lewin's biblical example is one of refoulement not just expulsion, in the sense of returning refugees specifically into the hands of their tormentors. Universality was at the heart of Robinson's report to headquarters about the claim for an early biblical existence of universally binding international laws, prohibiting refoulement and applicable to all humanity. In the following paragraph, and before submitting his own draft for the Ad Hoc Committee's consideration, Lewin explained the logic behind his seemingly anachronistic claim for the existence of international law in biblical times:

It is obvious that since Amos reprimanded Gaza and Tyre, which were not bound by Jewish law; for that sin—he considered their act a violation of international law. We therefore have a precedent for the present convention dating back from the eighth century B.C.E. (Lewin 1992: 161–162).<sup>6</sup>

The diplomatic relevance of Lewin's biblical quotes for Robinson lay in the clash between the legal position that upheld an *unlimited and universally* binding application of non-refoulement, as advocated by both Lewin and Robinson, versus a more *limited scope* of applicability for Article 33, as advocated by the immigration countries such as Venezuela and Australia.

### **Paragraph 1 and the Inclusion of the Category 'A Particular Social Group or Political Opinion'**

Lewin copied word-for-word the text of paragraph 1 Article 33 from the IRO draft, also known as the Secretariat's draft according to Robinson (Robinson Ad Hoc Second Report, point 6 b p. 3; Glynn 2012). It read:

Each of the High Contracting Parties undertakes not to expel or in any way turn back refugees to the frontiers of territories where their life or freedom



would be threatened on account of their race, religion, nationality or opinions (Kälin *et.al.* 2012: 1338).

In preparation for the Plenipotentiaries' Conference, this text was supplemented by an additional category of people protected from refoulement, consisting of 'members of a particular social group or political opinion', as per the amendment submitted by the government of Sweden.<sup>7</sup> Based upon inconclusive sources, Einarsen posited that this new category possibly referred to refugees fleeing Communist regimes behind the 'Iron Curtain' (Einarsen 2011; Zimmermann and Wennholz 2011). Einarsen's hypothesis is supported by two independent archive sources. The first is Lewin's unrecorded verbal address to the Plenipotentiaries' Conference (UN Conference of Plenipotentiaries 1951c). In his address, Lewin reported that the people being expelled from Budapest, Hungary, were first specifically labelled as belonging to certain social groups and only then, based on that label, were they being expelled:

The basis upon which the deportation is ordered was stated some time ago in the New York Times by John McCormack, in correspondence from Vienna. He reported that the population of Hungary has been placed in five categories: The top category consists of leading Communists, and class five—of exploiters, the Roman Catholic Clergy, Western-minded Protestants, religious Jews, and members of the former middle classes. Class five is being deported '*en masse*' from the larger cities (Lewin 1992: 168; italics and inverted commas in the original).

The second source supporting Einarsen's theory is a handwritten entry in the file of the UK Board of Trade dealing with the Refugee Convention. The entry was written by H. N. Edwards, a legal advisor to the Under Secretary of Trade, P. J. Mantle, charged with reviewing the draft Convention text. Concerning the definition of a refugee, and who ought to be included in it, Edwards explicitly referred to the Hungarian dictator Matyas Rakosi and his ideologically instigated mass deportations between 1950 and 1951 (Gatrell 2013: 112–114).

I think that we should add to the types of refugees suggested by Mrs. Wilson in para. 3, Hungarians, Roumanians, and Bulgarians who have left their countries, or leave before the end of this year, because of well founded fear of being a victim of persecution on account of their political opinions or because they are unpopular with the Communist Government e.g. Rightist Social Democrats in Hungary 'these old traitors who are finally being unmasked and rendered harmless' –M. Rákosi...[signed H.N. Edwards, 18/SEP/1950] (Hoare First Report: back leaflet).

As the Conference of Plenipotentiaries convened, reports of the mass deportations from Budapest began to circulate among delegates, eventually triggering a harsh condemnation by US President Truman (Truman 1951), a day before President Larsen signed the Final Act. The Swedish amendment

concerning the prohibition of refoulement, on the grounds of belonging to a certain social or political group, was being illustrated in Hungary and Romania. Robinson and Lewin issued a joint press statement highlighting Lewin's address, and Robinson's signing of the Convention ([Jewish Telegraphic Agency 1951](#)). Non-refoulement was not an abstract concept in the hands of international lawyers. Lewin had just metaphorically driven the trains from Budapest carrying refugees into exile, directly to the marble floors of the Palais des Nations in Geneva.

### **From Article 2, to Paragraph 2 of Article 33 (Non-Refoulement)**

In his final report written after the Convention's adoption, Robinson lamented the considerable erosion of refugee protections in the final endorsed text:

...we participated in this conference as in the previous ones, with a sincere desire to get a liberal and well drafted convention. Unfortunately the process of de-liberalisation of the substantive provisions of the Conference which started at the second session of the Ad Hoc Committee continued unabatingly during this Conference. The only exception from this tendency was the first Swedish amendment (A/CONF.2/9) extending the criteria of persecution also to 'membership of particular social groups' (Robinson Final Plenipotentiary Report, point 5 p. 5).

According to Robinson, this process of erosion of refugee protections was by no means haphazard, and had a distinct logical thread running through it:

The most important elements of this de-liberalisation were the numerous clauses and references to national security, the reduction of the exemption of reciprocity to legislative reciprocity only, and the reduction of certain standards from higher ones to lower ones (*ibid.*).

Accordingly, the increased protections of Article 33 with its newly added category were diminished by the insertion of the newly proposed Paragraph 2 of this Article, stating the cases where non-refoulement *would not* apply. These cases included the infringement by a refugee of the national security of his receiving state, as well as the execution of criminal acts. Paragraph 2 finally stated:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country ([UNHCR 2010: 30](#)).

A reading of the UN documents and the Refugee Convention commentaries confirms the origins of Paragraph 2, submitted as a joint French-UK

amendment to Article 33 (UN Conference of Plenipotentiaries 1951b; see Weis 1995; Zimmermann and Wennholz 2012).

However, a reading of Robinson's secret report to Sharett provides an account radically different to that of the UN records concerning the chain of events that finally led to the adoption of Paragraph 2. According to Robinson this text was originally *not* intended for inclusion in Article 33 at all. The initial intention of both Belgium and France was to insert a general qualifier to Article 2 for the entire Convention text, regarding the responsibilities of all refugees once admitted.<sup>8</sup> Alarming, the Belgian and French amendments opted for a mechanism by which asylum seekers could be *prevented* from obtaining and securing refugee status, or by which they could lose that status on various grounds:

The Belgian delegation introduced an amendment to Article 2 (General Obligations) according to which (A/CONF.2/10): 'Only such refugees as fulfil their duties towards the country in which they find themselves and in particular conform to its laws and regulations, as well as to measures taken for the maintenance of public order, may claim the benefit of this convention'. I criticized sharply this amendment (A/CONF.2/SR 3) and the Belgian delegate withdrew it. A French substitute for the Belgian amendment was then introduced (A/CONF.2/18). In the plenary meeting (A/CONF.2/SR 4) I asked the French delegate a number of questions to which he tried to reply and took the floor a second time for a procedural suggestion. The subject was turned over to a working group... (Robinson Final Plenipotentiary Report, point 5 p. 5).

As I have previously demonstrated, President Larsen and Robinson developed a strategy for overcoming textual 'stumbling blocks', by turning contentious issues over to subcommittees tasked with returning to the plenary an agreed version of any contested articles (Ben-Nun 2014). Such working groups were created for the tough deliberations concerning Articles 3 (non-discrimination) and 6 (the term 'In the same circumstances'), at the fourth and sixth plenary sessions (Ben-Nun 2014). In creating a working group for Article 2, Larsen, Hoare and Robinson were merely repeating an already established working procedure. At the same time, in this working group a fascinating compromise, hitherto unheard of, was reached:

...The subject was turned over to a working group where I persuaded the French delegate to withdraw his amendment—indicating the irony of a document purporting to solve the refugee problem (resulting incidentally from the institution of déchéance de nationalité) and introducing the analogous institution of déchéance de statut de réfugié...). We settled for a new paragraph (Par. 2) in Article 33 (A/CONF.2/69) (Robinson Final Plenipotentiary Report, point 5 p. 6; all underlines in the original).

This report by Robinson is dramatically different to any other account we possess. None of the known sources, UN documents or otherwise, make any reference whatsoever to any Israeli involvement in the drafting of Article 33's

Paragraph 2. Robinson knew full well the dire implications for refugees should a mechanism for the prevention of their protection be included in Article 2, so near the beginning of the Convention text. If accepted, it could serve as an *a priori* legal condition that member states could lean on whenever they wished to avoid their obligations. Here, Robinson promoted the lesser evil through a shrewd diplomatic gambit. Essentially, he traded his consent for a qualifying clause for Article 33 (non-refoulement) in exchange for the French consent to drop the proposed catastrophic change of the generic Article 2.

Given his ingenious ‘diplomatic trading’, Robinson would never have initiated such a risky move on his own behalf. One partner in this diplomatic triangular trade-off was missing. Given that A/CONF.2/69 was officially a French–UK submitted proposal, Robinson must have secured some sort of endorsement from his close associate, the UK delegate Sir Samuel Hoare.

### **UK Sources Concerning Paragraph 2 Article 33, and the Meaning of the Term ‘National Security’**

Robinson’s diplomatic trade-off calls for a cross-examination of the UK source material, in order to understand whether and how he received Hoare’s approval for his ‘deal’ with the French delegate Rochefort. The documents in the UK archive reveal the efforts undertaken by the British government to enable the Refugee Convention’s successful endorsement. This cardinal role played by the UK merits a short explanation of its archive sources, if only because of their vital importance for future legal interpretations, which at times tend to rely heavily on the *travaux préparatoires*.

In contrast to most governments who tasked their foreign services with the Refugee Convention deliberations, the UK, with its vast experience of refugee absorption before and after the Second World War, saw the issue as fundamentally an internal one. Refugees were first and foremost a matter for consideration by admissions and naturalization authorities. Accordingly, the Cabinet designated the entire Refugee Convention file to the Home Office, specifically to Sir Samuel Hoare, an undersecretary with ambassadorial prerogatives. Hoare was a veteran of the Home Office and an expert on refugee issues (Ben-Nun 2014: 107). Upon receipt of the draft convention text in August 1950, he worked closely with an inter-ministerial taskforce called the ‘International Organizations Committee’ (IOC), consisting of undersecretaries in different government departments. The work of the IOC was coordinated by Hoare in order to be able to refer to a single document each time, comprising the amendments and positions of the UK on each article of the Convention text.

While the files containing the preparatory work of the Foreign and Home Office have unfortunately gone missing from the Archives at Kew, the file of the Board of Trade (UK National Archives file BT 271/349) is available. Of crucial importance are four consecutive Cabinet reports compiled for the IOC

by Hoare and his team, which came out in printed form after each round of inter-ministerial consultations. These reports demonstrate the evolution of British positions regarding the Refugee Convention text, from September 1950 until after the signing of the Final Act in Geneva in July 1951. The first Cabinet report from September 1950 is 35 pages long (Hoare First Report). Over three pages of the report are devoted solely to Article 28 (later Art. 33) concerning non-refoulement. In the document it is argued that the UK must safeguard the right to expel a refugee in cases where he is engaged in serious criminal activity, but only as ‘a last resort’ (Hoare First Report: 27). Highlighting the importance of a limitation to non-refoulement, the document is unequivocal:

Unless the Convention is amended in such a way as to provide for these cases, His Majesty’s Government will be unable to accede to the Convention, and the United Kingdom delegation should make it quite clear at the earliest opportune moment in the discussions (Hoare First Report: 28).

In simple terms non-refoulement, as it stood, was a ‘deal-breaker’ for the UK. If an amendment to Article 36 concerning reservations was unattainable, the document proposed the insertion of a proviso after Paragraph 1 of Article 33, which is the textual ancestor of Paragraph 2 as we know it today. It provided that Article 28 shall not apply to:

1. Cases in which the contracting party is satisfied that the refugee is engaging, or is likely to engage, in activities prejudicial to national security; or
2. Refugees who, despite warning persist in conduct prejudicial to good order and government, and who have not been restrained and show no prospect of being restrained from such conduct by the ordinary sanctions of the law
3. Refugees who at the time of their presentation for admission are known persons who have been convicted of serious crimes (Hoare First Report: 29).

While this proviso of last resort mentions the term ‘national security’, its *raison d’être* is clearly crime-focused, as can be seen in points 2 and 3, as well as in its explanatory subsequent paragraphs.

This focus on criminal activity as the suitable grounds that would permit refoulement changed considerably over the following two months. In the next version of the same document from early November 1950, matters took a very different turn. Referring to the *problématique* of non-refoulement, and Britain’s previous condition that its adoption of the Convention depended on non-refoulement being limited, the issue at hand was now explained differently:

The matter has now been further considered, and it is regarded as important that it should be possible *in one type of case, and one only*—namely, where a

refugee is engaging in activities prejudicial to national security—for the United Kingdom, *in the last resort*, to return a refugee to his own country even if his life or freedom would be endangered thereby. *There is a serious risk that among refugees will be found some who are prepared to act as secret agents.* This risk is so real, and recent examples of cases in which foreigners have abused the hospitality of the country of their residence in this way are so well known (e.g. the Fuchs case), that it should not be difficult to obtain agreement to the proposition that states must reserve their right to get rid of a refugee who engages in such conduct, even, if necessary, by sending him back to his own country... If it is decided to deal with the matter by way of a proviso to Article 28, the amendment should be on the following lines:

- a) Number present text paragraph 1
- b) Add a new paragraph 2:-

“2. A contracting state shall not be bound to comply with the provisions of paragraph 1 in the case of a refugee engaging in activities prejudicial to the national security”.

It is important to make it clear that *it is only in a very few cases that the use of this power would ever be contemplated.* Although the United Kingdom is very anxious to retain the power to deal with this very limited category of cases, it should not be said in the debate that our adhesion to the Convention is dependent upon our securing an appropriate amendment (Hoare Second Report: 27–28; italics added).

Thus is the meaning behind the term ‘national security’ exposed. Refoulement could be undertaken by a Convention signatory in one case, *and one case only*: when espionage was involved, and here too, only as a last resort. The simplification of the proviso, and the removal of its items 2 and 3 dealing with criminal offences, corresponded to another change in policy. Whether the UK’s adhesion to the Convention was still conditional on an amendment to Article 28 is debatable. What is certain is the removal of the request to proclaim this condition, and from now on Hoare’s delegation was to ‘keep a lid’ on it.

As the Conference of Plenipotentiaries approached, the UK further sharpened its definitions for the articles it wished to amend. A week before the Conference, the third guideline text prepared by Hoare for the delegation to Geneva was issued for review by the British Cabinet. The proviso for paragraph 2 qualifying non-refoulement was finally formulated also to include cases where a state suspects refugees of espionage, yet cannot fully substantiate this. The purely criminal grounds that triggered the creation of paragraph 2 in the first place, back in September 1950, were far less important now. Espionage was the main ground for concern to which paragraph 2 now referred:

This amendment should still be proposed, even if the conference decides to exempt from Article 28 “common criminals”... The amendment is required

because not every refugee whose activities are a danger to security can be charged and convicted of a crime, and also because there have been instances (e.g. 13 Poles who were the subject of a recent statement in the House by the Home Secretary) where foreigners have been in the pay of a foreign government for supplying information relating to their own compatriots and not to security matters, though there is every reason to think that they would, if allowed to remain here, act as agents also for information affecting national security (Hoare Third Report: 10).

In his fourth and final report to Cabinet two weeks after the adoption of the Conventions, Hoare laconically remarks about the now renumbered Article 33: ‘The second paragraph of the Article was put forward as a joint Anglo-French amendment and was generally accepted’ (Hoare Final Report: 17). There was no mention of Robinson’s trade-off.

In the absence of further information, one can only hypothesize on how things unfolded within the working group on Article 2, between Hoare, Robinson and Rochefort. In his final report, Hoare refers to Robinson’s position vis-à-vis Rochefort as follows:

Mr. Robinson the representative of Israel made many useful contributions to the debate: he was always ingenious and often convincing, but on several of the main subjects of controversy he remained silent, out of a desire not to antagonise the French (Hoare Final Report: 1–2).

Communicating to Sharett in his final report, Robinson apologetically confirms Hoare’s reading of his somewhat reserved attitude and his choice not always to fight the trend of lowering humanitarian protection standards:

I would have been lacking in fairness, representing as I was a country which has only a few scores of refugees who may fall under the definition of Article 1, had I chosen to fight constantly against the determined will of countries with thousands and tens of thousands of refugees. In some cases I abstained from voting for such de-liberalisation of existing standards, in others I even voted against (Robinson Final Plenipotentiary Report, point 5 p. 5).

We have already established that paragraph 2 was constructed by Hoare’s team at the Home Office between September 1950 and June 1951. Paragraph 2 is to be seen for what it serves, providing the grounds for the stripping of a migrant of his legal refugee status in order to deport him. Robinson refers to this loss of legal refugee status as per the French wording of *déchéance de statut de réfugié*, from the French version of A/CONF.2/18. Robinson’s French was impeccable, and we know that he was commissioned by President Larsen to coordinate both the English and French drafts of the entire Convention text (Ben-Nun 2014). It is safe to assume that any negotiations he would have held with the French delegate Rochefort must have been conducted primarily in French. Weis (1995) quotes verbatim the final text of Paragraph 2, endorsed by the plenary, and explicitly mentions that



this original text of Article 33 during the *Travaux préparatoires* only existed in French! (1995: 239 n.656).

We nevertheless know that paragraph 2 originated and was prepared not by the French, and not in the French language, but in pure English—at the British Home Office. How did it come about that Weis, who was intimately acquainted with the Refugee Convention text after writing much of it himself, came to state in his commentary that only a French version existed of A/CONF.2/69 without any reference to its original English wording?

My hypothesis is simple. Ample evidence indicates that towards the end of the Conference, most delegates (the UK included) had a very negative impression of Rochefort's non-diplomatic behaviour, as evidenced by a request to table an appeal against him at the Quai D'Orsay (Glynn 2012: 6). In all probability, Hoare and Robinson pre-emptively coordinated the insertion of the UK-prepared text of paragraph 2 into Article 33. Knowing that Robinson was one of the last delegates still on good terms with Rochefort, Hoare probably asked him to advocate for this text in Article 33 with Rochefort, to save the Convention's Article 2 from the harmful French amendment (A/CONF.2/18). If so, the reason behind this text initially existing only in French, as Weis commented, was due to it having been negotiated in French in the first place, between Robinson and Rochefort, exactly as he reported to Jerusalem.

### **Conclusion: A Convention for Refugees Drafted by Refugees?**

On 1 August 1951, following his signing of the Refugee Convention, Robinson wrote to Foreign Minister Sharett:

The Convention is now open for signature until the 31 August 1951, in Geneva. The ceremony took place on Saturday, July 28. While I had my powers, I informed the President that I would not be able to be among the first signers because of Sabbath. My colleagues of the Conference were also informed accordingly. The President expressed his regret that I would not be among the first signers, particularly because I represented, in his view, not only a government, but also morally the refugee as such (Robinson Final Plenipotentiary Report, point 2 p. 2).

President Larsen's warm words and Robinson's preference for following his Jewish beliefs over the receipt of diplomatic honours, echoed loudly in both Jerusalem and London.<sup>9</sup> Larsen's words did not refer to Robinson alone. They were meant as a token of respect to all the refugees who took part in the drafting and successful endorsement of the Convention. Robinson from Lithuania, Weis who escaped Dachau, and Lewin from Lodz, were all refugees who found themselves shaping the international instrument for the protection of other refugees like themselves. Alongside them were a host of diplomats who for the most part laboured successfully for a good cause in which they fundamentally believed.



The archive material analysed in this study supports the following conclusions concerning the original intentions of the drafters of the non-refoulement principle. First, that in all probability, non-refoulement did indeed apply to refugees on the high seas, which had been a well known phenomenon since the late 1930s. Second, that the extension of non-refoulement protection to people who belonged to ‘a particular social group or political opinion’, was specifically meant for political refugees who fled the oppressive Soviet-influenced regimes of Hungary and Romania in 1951. This protection could equally have been granted to refugees fleeing Pol Pot’s Khmer Rouge in the 1970s, to South African deportees from District Six in Cape Town in the early 1980s, or to Eritreans fleeing dictatorship today across the Sinai desert into Israel. If one’s membership of a certain social group triggers one’s own persecution, one is then entitled to protection from refoulement.

The third finding concerns Paragraph 2 of Article 33, which removes non-refoulement protection from refugees who place at risk the national security of their host country. For Hoare, who drafted this paragraph, refoulement due to national security considerations was to be invoked on one ground only: *espionage*. The numerous references to the extraordinary circumstances required for the UK to resort to this application are unequivocal. Hoare and Robinson meant Paragraph 2 to be used strictly as a *Consultum Ultimum*. ‘National security’ was never to be used as a ‘basket clause’ masking other purposes such as demographic or political considerations. ‘National security’ must not be employed as a tool against perceived threats stemming from ethnicity, skin colour, religion, or changes in the demographic composition of one’s state. Correspondingly, ‘national security’ as a qualifier to the entire Convention had no place ‘up front’ in Article 2, but was rather reserved for extreme cases outside the Convention’s general scope, as an extraordinary administrative measure.

The first finding, which relates to the debate concerning the applicability of the non-refoulement principle to refugees on the high seas, is worth reiterating here. As the archive sources demonstrate, this problem was already well known to the drafters at the Ad Hoc Committee. The sources leave little doubt as to the intentions of the drafters on this issue. Larsen, Hoare, Robinson, Weis, Henkin, Rochefort and Herment, would all, in one way or another, have argued for some form of applicability of Article 33 on the high seas. At its core, non-refoulement was about a universal moral imperative, and an ancient Jewish decree, of not returning refugees back into the hands of their tormentors, wherever this may take place. The qualifying criterion here was humanity, not geography.

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1. UK National Archives file BT 271/349. The only Home Office file found to date in Kew is HO 352/34, originally referenced as ALG. 5/11/8, which includes Hoare's correspondence after the signing of the Final Act in the months of September 1951 – January 1952. At the back of this file is a clear reference from the late 1950s, explaining the drafting stages of the Convention text and referring to three files under which previous work was filed: ALG.5/7 (for the first session Ad Hoc Committee), ALG.5/9 (for the second session Ad Hoc Committee) and ALG.5/11 (for the Conference of Plenipotentiaries). The helpful and erudite archive staff at Kew could unfortunately not locate these files, and advised filing a request for information to both the Foreign and Home Offices for them. It would be interesting for researchers based in the UK to do so.
2. Evans to Hoare 16 October 1951 following Hoare's request for consultations with Robinson in New York, so as to postpone the submission of the Protocol relating to Stateless Persons, pending the ratification of the Refugee Convention. UK National Archives file # HO/ 274/9.
3. Israel State Archives (ISA) Foreign Ministry Files (MFA) reference #: ISA/RG 93.38/1-31. Full archive address: 02-110-01-01-07 declassified 4 July 2007 open to the public since 2009. This file contains all of Robinson's reports from the Conference of Plenipotentiaries of July 1951 and is part of the Israeli MFA archive files of the delegation to UN New York. All references in Ben-Nun (2013) to these reports are in fact to copies found in the personal files of Foreign Minister Moshe Sharett.
4. Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/C.2/242 reprinted in E/AC.32/SR.19 (1950).
5. Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/C.2/242 reprinted in E/AC.32/L.25 (1950).
6. Lewin's reading of Amos, and his view of it as the first precedent for some sort of international law guaranteeing the protection of refugees, stems from the words 'whole captivity' and 'brotherly covenant'. Lewin refers in his address to Amos 1: 9

'Thus saith the LORD; For three transgressions of Tyre, and for four, I will not turn away the punishment thereof; because they delivered up the whole captivity to Edom, and remembered not the brotherly covenant'.

Lewin's reference to expulsion of refugees stems from the Hebrew words. This translates correctly into 'entire exiled people'. The King James Version of the

English Bible mistakenly translates גלות שלמה as ‘whole captivity’. The correct translation, ‘entire exile’, appears only in very modern translations of the bible such as the Holman Christian Standard (2004). Lewin’s reference to some early form of international law, regarding the abrogation of a ‘brotherly covenant’ and God’s reprimanding thereof as proof of it, stems from medieval Jewish thought. Rashi (died 1105 in France), the foremost of all biblical commentators, explicitly refers to the ‘brotherly covenant’, as the regional political pact between the pagan King Hiram of Tyre and King Solomon in Jerusalem. See 2 Samuel 5: 11 and 1 Kings 5: 14–25 and also 1 Kings 9: 10–16. The conjunction between the expulsion of exiles back to their tormentors (Edom), and the breaking of existing regional diplomatic agreements, was the basis for Lewin’s seemingly anachronistic claim on biblical international law.

7. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons UN Doc A/CONF.2/9. (Submitted 2 July 1951). This amendment by the Swedish government was meant to, and indeed did, change the definition of a refugee, inserting the words ‘membership of a particular social group or political opinion’ into Article 1, A paragraph 2. From there the words were copied and inserted into Article 33 concerning non-refoulement as well.
8. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, amendment proposed by Belgium UN Doc A/CONF.2/10, and amendment proposed by France A/CONF.2/18.
9. Hoare Final report, p. 6, ‘Israel did not sign because it was Saturday, the Jewish Sabbath, but was to sign the following week’.

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