

57. The detailed provisions prepared by the Secretary-General for the implementation of General Assembly Resolution 319 (IV) and the Annex thereto<sup>118</sup> were considered by the Social Committee of the Economic and Social Council in the course of six meetings at its Eleventh Session.<sup>119</sup> In its report to the Economic and Social Council,<sup>120</sup> the Social Committee recommended a draft resolution, with a draft Statute attached for ultimate adoption by the General Assembly. The report of the Social Committee was considered by the Economic and Social Council at its 414th meeting<sup>121</sup> where the draft resolution and annexed draft Statute of the High Commissioner's Office were approved without the change and, with the addition of an appropriate preamble, were adopted as Economic and Social Council Resolution 319 (XI) A of 11 August 1950.

58. The draft resolution and *Annex* contained in the latter Resolution were transmitted to the General Assembly at its Fifth Session in a Memorandum from the Secretary-General in which the action taken by the United Nations was summarised to date.<sup>122</sup> The question of refugees was discussed during seventeen meetings of the Third Committee.<sup>123</sup> In its report the Third Committee<sup>124</sup> gave an account of the action taken by it, and submitted draft resolutions, to one of which was annexed the draft Statute of the High Commissioner's Office. The report of the Third Committee was considered by the General Assembly at its 325th Plenary Meeting in the course of which the Resolution and the annexed Statute were adopted without change (Resolution 428 (V) of 14 December 1950).

118. Document E/1669.

119. Summary Records E/AC.7/SR.156, 169, 170, 171, 172 and 173.

120. Document E/1831.

121. Summary Records E/SR.414.

122. Document A/1385.

123. Document A/C.3/SR.324-328, 341 and 344.

124. Document A/1682.

(ii) Historical development of the term "refugee" in the Statute of the Office of the United Nations High Commissioner for Refugees

59. Economic and Social Council Resolution 248 (IX) A of 6 August 1949, requesting the Secretary-General to prepare a plan for such organisation within the framework of the United Nations as may be required for the international protection of refugees contained no definition indicating which categories of refugees were to be the concern of the new organisation. However, in his report the Secretary-General took the view that the term "refugees" was used in the Resolution in the sense in which the term had been used in the Constitution of the IRO. He did not, therefore, consider that he was called upon to propose a new definition.<sup>125</sup>

60. As mentioned above, at the Fourth Session of the General Assembly, the Third Committee had before it a draft Resolution submitted by *France* and one submitted by the *United States* which were withdrawn and replaced by a joint resolution.<sup>126</sup> According to the draft Resolution submitted by *France*<sup>127</sup> the General Assembly would decide to establish a High Commissioner's Office for Refugees in accordance with

125. Document A/C.3/527, pp. 32-33. This view was based on a reading of the Resolution as a whole. Thus in the second paragraph the Council took cognizance of the communication from the General Council of the International Refugee Organisation and in the third paragraph stated that: "The question of the protection of refugees who are the concern of the IRO is an urgent one owing to the fact that the IRO expects to terminate its services about 30 June 1950". In the fifth paragraph the Council noted the conclusions submitted by the General Council of the IRO and in the sixth paragraph it requested: "Governments which are Members of the United Nations and all other States, to provide after the termination of the IRO, the necessary legal protection for refugees who have been the concern of the IRO under its mandate".

126. *Ante* para. 56.

127. Document A/C.3/529.



the principles and procedures annexed to the draft Resolution. Chapter III of the *Annex* relating to the "Powers of the High Commissioner" contained *inter alia*, the following :

- "(a) The powers of the High Commissioner shall extend to all refugees ;
- "(b) The definition provisionally adopted shall be that contained in the Constitution of IRO ;
- " The High Commissioner shall be responsible to the General Assembly for his interpretation of that definition,
- " He shall consider the inclusion in his mandate of categories of refugees which IRO was unable for purely financial reasons to bring under its protection.
- " In addition, he shall at the earliest possible date examine, with particular reference to the work of the Committee appointed to prepare a convention for the protection of refugees, the conditions under which the aforesaid definition should be modified so as to include all categories of persons who, for political, religious or racial reasons, are or may in future be deprived of the protection of their country of origin."

61. This draft Resolution was subsequently replaced by a different one also submitted by *France*,<sup>128</sup> the annex to which, containing the draft "Terms of Reference of the High Commissioner" included the following :

- "(a) The High Commissioner shall be competent to deal as a provisional measure, with refugees as defined in the Constitution of the IRO. He shall also be

128. Document A/C.3/L.26.

competent to deal with the categories of refugees covered by the international convention referred to in Resolution 248 (IX) of the Economic and Social Council dated 8 August 1949.<sup>129</sup> He will further deal with such categories of refugees as may be defined by the General Assembly or the Economic and Social Council....."

62. At the same time a draft resolution was submitted by the *United States*<sup>130</sup> according to which it would be decided to establish an office of the High Commissioner for Refugees and that :

"the persons falling under the competence of the Office of the High Commissioner for Refugees shall be those defined in *Annex I* of the Constitution of the International Refugee Organisation."<sup>131</sup>

In addition the Economic and Social Council was requested :

(a).....

(b) to transmit to the General Assembly at its Fifth Regular Session such recommendations as the Council may deem appropriate as to additional categories not defined in the Constitution of the International Refugee Organisation which should become the concern of the Office of the High Commissioner for Refugees."

63. Thus according to the *United States* draft proposal, persons falling within the competence of the High Commissioner would in principle be limited to those covered by the definitions in the IRO Constitution and such additional categories as the

129. *Ante* para. 35.

130. Document A/C.3/L.28.

131. *Ante* para. 56.



Economic and Social Council might recommend to the General Assembly at its Fifth Session. The *French* draft proposals, however, already contained in themselves the possibility of future extension on the basis of Resolutions of the Economic and Social Council or of the General Assembly.

64. The French and United States draft resolutions were subsequently withdrawn in favour of a joint text, which contained alternative provisions on points on which agreement could not be reached. Paragraph 3 of the *Annex* to the joint draft Resolution was worded as follows :

“(France) 3. Pending the adopting by the General Assembly of new definitions for the term “refugee” the definitions contained in *Annex I* of the Constitution of the IRO should provisionally be applied by the High Commissioner”.

“(United States) 3. Persons falling under the competence of the Office of the High Commissioner for Refugees should be refugees and displaced persons defined in *Annex I* of the IRO and such others as the General Assembly may from time to time determine.”<sup>132</sup>)

65. As regards the High Commissioner's competence, the representative of the *United States* expressed the view that “the General Assembly should decide specifically for what particular groups of refugees it was willing to accept responsibility. Such groups should be carefully identified after full consideration of the circumstances which had brought them into existence. The League of Nations had found it necessary to identify specific groups of refugees falling within its competence. The IRO Constitution also covered specific and identified categories of refugees. In that connection, the High Commissioner would not be limited in the application of the IRO definitions by any

132. Document A/C.3/L. 29.

restrictions which the IRO had had to adopt for administrative or financial reasons. Regarding additional categories of refugees not covered by the IRO Constitution, the Economic and Social Council would have ample opportunity to make recommendations to the General Assembly which could consider them before the service of protection was initiated by the High Commissioner on 1 January 1951. The *French* delegation had argued that the High Commissioner should be free to intervene in any emergency which might arise before action had been taken by the General Assembly. The acceptance of responsibility for refugees by the United Nations was, however, a serious matter on which only the General Assembly should decide. A High Commissioner with such broad authority might easily involve the United Nations, in responsibilities which the United Nations might not desire to assume.<sup>133</sup>

66. The representative of France pointed out that the United States text spoke of “categories of refugees” a term that had never been used in the IRO Constitution and its adoption would in effect mean that the High Commissioner's field of action would be restricted indefinitely to the refugees who fulfilled the requirements of the IRO definitions. The French text, on the other hand, made it clear that the application of those definitions would only be provisional, pending the adoption by the General Assembly of new definitions for the term “refugee”. His text made no mention of “categories”, because he did not think that refugees should be divided strictly into categories. All those who came under the new definitions should automatically be eligible for any protection and assistance provided by the High Commissioner.” He also pointed out that the IRO had sometimes made unjust decisions for administrative or financial reasons.<sup>134</sup>

133. Document A/C.3/SR.262, pp. 2-3, Similarly *Ibid*, SR. 261, p. 10 and SR.264, pp. 8-9.

134. *Ibid*, SR. 262, pp. 4-5.



67. Several delegations in addition to the French delegation expressed themselves in favour of a wide definition covering persons other than those included in the categories listed in the IRO Constitution.<sup>135</sup>

68. At the end of discussion the *French* variant for paragraph 3 of the *Annex* was adopted.<sup>136</sup> When the matter came up for consideration at the plenary meeting of the General Assembly the latter adopted an amendment submitted by the *United States* delegation,<sup>137</sup> for an alternative wording for the paragraph 3 of the *Annex* to Resolution 319(IV) A of 3 December 1949, worded as follows :

3. "Persons falling under the competence of the High Commissioner's Office for Refugees should be, for the time being, refugees and displaced persons defined in *Annex I* of the Constitution of the International Refugee Organisation and, thereafter, such persons as the General Assembly may from time to time determine, including such persons brought under the jurisdiction of the High Commissioner's Office under the

135. Cf. *Netherlands*: While there was no objection to adopting the same definition as in the IRO Constitution, the time was ripe to give some thought as recommended in the French draft (i. e. the First draft) to the fate of those categories of refugees which the IRO had for financial reasons not taken under its protection (A/C.3/SR.257, p.2).

*United Kingdom*: There was no need to adopt a definition of the term "refugee" similar to that used in the IRO Constitution. The High Commissioner should act as an adviser for questions concerning all those who might become stateless either *de jure* or *de facto* (*ibid*, p.8). *Mexico* supported the French draft Resolution (second) because it was more general in character (A/C.3/SR.261, p.5) and *Belgium* considered that the problem of refugees could no longer be confined within the strict definitions laid down in the IRO Constitution (*ibid*), p.7. *Greece*, *ibid*, SR.263, pp.13-14).

136. Document A/C.3/SR.264, p.13.

137. Document A/1162

terms of international conventions or agreements approved by the General Assembly."<sup>138</sup>

69. By Resolution 319(IV) A of 3 December 1949, the General Assembly requested the Secretary-General, *inter alia*, to prepare detailed draft provisions for the implementation of the Resolution and the *Annex*, to circulate the draft provisions to governments for comments and to submit them together with any such comments to the Economic and Social Council at its 11th Session. The General Assembly also requested the Economic and Social Council to prepare, at its 11th Session, a draft Resolution embodying the provisions for the functioning of the High Commissioner's Office for Refugees and to submit the draft Resolution to the General Assembly at its Fifth Session; and to transmit to the General Assembly at its Fifth Session such recommendations as the Council may consider appropriate regarding the definition of the term "refugee" to be applied by the High Commissioner.

70. These detailed provisions prepared by the Secretary-General, in accordance with Resolution 319(IV), were dated 25 April 1950. It will be recalled that the First Session of the Ad Hoc Committee dealing with the draft Convention had been held from 16 January to 16 February 1950. Its report,<sup>139</sup> which contained a draft Convention, was transmitted to the Economic and Social Council and also considered by the

138. The representative of the United States explained that the new text left the door open for the inclusion, within the competence of the High Commissioner, of other persons to be defined in future international instruments which might be initiated by the Ad Hoc Committee established by the Economic and Social Council to study the problem of stateless persons and their protection. The United States considered the text to be more precise. Under it, the General Assembly, which had already approved *Annex I* of the Constitution of the IRO, would know to exactly what categories of refugees it was extending its protection. (A/SR.264, pp. 17-18)

139. Report of the Ad Hoc Committee on Statelessness and related problems, document E/1618, 17 February 1950.



latter at its 11th Session.<sup>140</sup> Thus at its 11th Session, held in August 1950, the Economic and Social Council considered the report of the First Session of the Ad Hoc Committee and also, in accordance with General Assembly Resolution 319(IV) of 3 December 1949, prepared a draft Resolution embodying provisions for the functioning of the High Commissioner's Office for consideration by the General Assembly at its Fifth Session.

71. The introductory remarks to the detailed provisions prepared by the Secretary-General<sup>141</sup> for submission to the Economic and Social Council at its 11th Session contain the following comments regarding paragraph 3 of the *Annex* to General Assembly Resolution 319 (IV) A:

"The definitions contained in Article 1 of the draft Convention and *Annex I* of the Constitution of the IRO differ somewhat. Since this difference between the two definitions may make the task of the High Commissioner unnecessarily complicated, the General Assembly may wish to decide that the later definition (i.e. the one in the draft Convention) should determine the persons falling within the competence of the High Commissioner's Office."

In paragraph 5 of the draft Resolution submitted by the Secretary-General to the Economic and Social Council, paragraph 3 of the *Annex* to General Assembly Resolution 319(IV) A would be replaced by the following :

"Persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in Article 1 of the draft Convention relating to the Status of Refugees."

140. See *ante* para. 34.

141. Document E/1669.

72. At the 11th Session of the Economic and Social Council, (Social Committee), the *French* delegation submitted a working paper<sup>142</sup> which was accepted as a basis for discussion,<sup>143</sup> to which was annexed a draft Statute of the High Commissioner's Office for Refugees. Chapter III(C) relating to competence, contained the following draft provision ;

- "1. Persons falling under the competence of the High Commissioner shall be the groups of refugees defined in Article 1 of the Convention relating to the Status of Refugees adopted by the General Assembly and groups forming the subject of recommendations made by the General Assembly in pursuance of Article 1, paragraph B of that Convention<sup>144</sup> or who are brought within his competence under the terms of international conventions or agreements approved by the General Assembly or under amendments to the above Convention approved by the General Assembly ;
- "2. In the case of events occurring in Europe, after 1 January 1951, between the Sessions of the General Assembly, the High Commissioner may, with the concurrence of the Economic and Social Council, or in a case of emergency between the sessions of the Council, with the concurrence of the Advisory Council for Refugees, recommend to States, whether members of the United Nations or not, that the benefits of the Convention be extended to refugees who are victims of such events."

73. To this draft provision amendments were submitted by the *United States* and the *United Kingdom*. The *United*

142. Document E/AC. 7/L.60.

143. Document E/AC.7/SR.169, p. 16.

144. See *ante* para. 46.



*States* proposed amendment, like the draft provision itself, referred to refugees as defined by Article 1 of the Convention whereas the amendment proposed by the *United Kingdom* contained a more general definition.

74. According to the proposed *United States* amendment which was ultimately adopted, as paragraph C (1) and (2) of the *Annex* to Economic and Social Council Resolution 319(XI) A of 11 August 1950, the above draft provision would be replaced by the following :

- "1. Persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in Article 1 of the Convention relating to the Status of Refugees, as approved by the General Assembly and such other persons as the General Assembly may from time to time determine. The High Commissioner shall determine whether a person falls within the categories mentioned in paragraph C of Article 1 of the Convention and is therefore excluded from his mandate."
- "2. In his discretion the High Commissioner may, after consultation with the Advisory Committee on Refugees, intercede with Governments on behalf of new categories of refugees which might arise, pending consideration by the General Assembly as to whether to bring such new categories within the mandate of the High Commissioner's Office for Refugees."<sup>145</sup>

75. According to the amendment proposed by the *United Kingdom* the draft provision proposed by France would be replaced by the following :

145. Document E/AC.7/L.73, paragraph 14, originally presented as an amendment (E/AC.7/L.62) to the draft Resolution proposed by the Secretary-General in document E/1669. This wording was substituted for the corresponding provision in the French working paper which was withdrawn (Document E/AC.7/SR.172, p.4)

### "C. Competence

There shall fall under the High Commissioner's competence any person who

- (a) is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence owing to well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion.
- (b) (i) if he has a nationality, is unable or, owing to such fear unwilling to avail himself of the protection of the Government of the country of his nationality ;
- (ii) if he has no nationality, is unable or, owing to such fear unwilling to return to the country of his former habitual residence."

"In the case of a person having more than one nationality."<sup>146</sup>

76. Thus the draft provisions proposed by *France* and the *United States* defined the scope of the competence of the High Commissioner by categories while the draft provision proposed by the *United Kingdom* contained a general definition. The discussion in the Social Committee proceeded on similar lines to that which took place in regard to the draft Convention. The representative of the *United Kingdom* explained that during the discussions on the draft Convention it had been decided to define refugees by categories. There was no need,

146. Document E/AC.7/L.72. Originally submitted as an amendment (E/AC.7/L.61) to draft Resolution proposed by the Secretary-General in document E/1669.



however, to link the definition in the Convention, which imposed definite obligations upon governments, with the definition in the draft Resolution embodying provisions for the functioning of the High Commissioner's Office for Refugees.<sup>147</sup> It had to be remembered that the High Commissioner would be vested with an international authority derived from the United Nations, and would act on behalf of all refugees in the world. In such cases a limited definition was not only unnecessary but would be highly inappropriate.<sup>148</sup> The representative of the United Kingdom considered that the definition for the High Commissioner's Statute proposed by the United States and France was still too restrictive and took no account of refugees other than those defined in Article 1 of the draft Convention. This Article did not, however, cover all refugees in the world and the *United States* proposal held out little hope that they could ever be brought under the aegis of the High Commissioner's Office. The draft convention and the Statute of the High Commissioner's Office were quite different instruments, and although his Government would have preferred a broad definition in both cases, it was evident that those definitions need not necessarily be identical. He also pointed out that under the draft Convention certain legal obligations were to be assumed by countries who acceded to it, while the terms of reference of the High Commissioner laid no obligations on a country unless that country voluntarily agreed to accept them.<sup>149</sup>

147. During the discussions in the Social Committee in the draft Convention the view had already been expressed that the scope of the terms of reference of the High Commissioner need not be identical with the scope of the Convention. In particular, the activities of the High Commissioner were not dependent upon the existence of the Convention; the High Commissioner could be competent with regard to States which were not parties to the Convention and with regard to persons not falling within its scope. The definitions need not therefore necessarily be the same. (e.g. *United Kingdom*, E/AC.7/SR. 156, pp. 14-15; *Canada*, *Ibid.*, p. 17, *Mexico* *ibid.* p. 88, *France*, *Ibid.*, SR. 158, pp. 5-6.

148. Document E/AC.7/SR. 169, pp. 14-15.

149. Document E/AC.7/SR.172, pp. 13-15 *passim*.

77. The representative of *France* considered the difficulty of a general definition to be *inter alia* that in practice the *sine qua non* of any action by the High Commissioner was the consent of States. Certain States were not, however, prepared to agree to relinquish their sovereignty especially to the extent to which the High Commissioner's world-wide competence would imply.<sup>150</sup>

78. The representative of the *United States* supported the more limited definition on various grounds. In particular, the High Commissioner should in principle concern himself with refugees in groups and categories. This was possible under the *United States* definition but not under *United Kingdom* definition in which every individual refugee could be included according to the merits of his case. The High Commissioner would thus be obliged to take up the case of every individual who appealed to him from all over the world which would lead to undesirable consequences from the point of view of administrations and costs. Moreover, the definition should be the same in the Convention and in the Statute. It would create a confusing situation if the High Commissioner could refer to a Convention in some cases but not in others. The *United Kingdom* delegation would have preferred a broad definition for both. The Council had, however, already accepted a definition for categories for the Convention, and should therefore do the same for the High Commissioner's mandate. The essential difference between the *United States* and the *United Kingdom* definitions lay in the terms "Europe" and "1951". The *United States* delegation had supported the addition of the reference to "Europe", its intention being simply to include those persons who ought to be included and excluded those who ought to be excluded. There was no desire on the part of the *United States* delegation to limit the definition to Europe. The issue simply was whether any particular group ought to be covered or not. As regards the date

150. *Ibid.*, pp. 7-11 *passim*.



"1951", the effect was simply to state what categories were involved. The High Commissioner would have discretion to act provisionally in respect of a new category of refugees pending a decision by the General Assembly for its formal inclusion in his mandate. The *United Kingdom* definition, on the other hand, committed the High Commissioner and the General Assembly in advance.<sup>151</sup>

79. After a discussion in which the representatives of various countries expressed support either for a general definition or for a definition by categories, the *United Kingdom* amendment was rejected,<sup>152</sup> and the *United States* amendment accepted.<sup>153</sup>

80. After consideration by the Economic and Social Council, the draft Resolution and attached Statute prepared by the Social Committee were adopted by the Economic and Social Council, without any change,<sup>154</sup> in Resolution 319 (XI) A of 11 August 1950 and transmitted for consideration by the General Assembly at its Fifth Session.<sup>155</sup>

81. At the Fifth Session of the General Assembly the draft Statute for the High Commissioner's Office was examined by the Third Committee which, as has been seen<sup>156</sup> also con-

151. *Ibid*, pp. 15-20, *passim*.

152. By 6 votes (*Brazil, Chile, France, India, Mexico, USA*) to 5 (*Belgium, Canada, Denmark, Peru, United Kingdom*) with 3 abstentions (*China, Pakistan, Australia*) (vote by roll call). Document E/AC.7/SR.173, p. 11.

153. By 8 votes to 3 with 3 abstentions. (*Ibid*, p. 12)

154. 414th Meeting (E/SR.414)

155. On 16 August 1950 the Economic and Social Council adopted Resolution 319(XI) B in which it took note of the report of the First Session of the Ad Hoc Committee and submitted this report, together with the Comments of governments, and the records of the proceedings of the Council to the General Assembly, and requested the Secretary-General to reconvene the Ad Hoc Committee in order that it may prepare revised drafts of these agreements and submit them to the General Assembly at its Fifth Session (See *ante* para. 34).

156. *Ante* paras. 35 and 40

sidered the draft Convention. As regards the draft Statute the Committee had before it a draft amendment by the *United Kingdom* proposing a general definition both for the Statute and for the Convention.<sup>157</sup>

82. In a joint draft amendment submitted by *Belgium, Canada, Turkey* and the *United Kingdom*, a draft general definition was proposed for the Statute and for the Convention in the following terms :

"(a) The term "refugee" shall apply to any person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has well-founded fear for victimization by reason of his race, religion, nationality or political opinion and is unable, or because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality or, if he has no nationality, to return to the country of his former habitual residence.

"(b) A person who is a national of more than one country....."<sup>158</sup>

83. For a definition by categories, the Third Committee had before it firstly paragraph C of the *Annex* to Economic and Social Council Resolution 319 (XI) of 11 August 1950 which it will be recalled was worded as follows :

#### "C. Competence

"1. Persons falling under the competence of the High Commissioner's Office for Refugees shall

157. A/C.3/L.115. The definition was the same as that proposed by the *United Kingdom* at the 11th Session of the Economic and Social Council. (See *ante* para. 75).

158. A/C.3/L.130. This draft provision with certain differences in wording was also contained in another joint amendment submitted earlier by the same countries and *Chile* (A/C.3/L.27).



be those defined in Article 1 of the Convention relating to the Status of Refugees as approved by the General Assembly, all and such other persons as the General Assembly may from time to time determine. The High Commissioner shall determine which cases fall within the categories mentioned in paragraph C of Article 1 of the Convention and are therefore excluded from his mandate.

- "2. At his discretion, the High Commissioner may intercede with Governments on behalf of other categories of refugees pending consideration by the General Assembly as to whether to bring such categories within the mandate of the High Commissioner's Office for Refugees".

84. In addition a proposal for a draft definition by categories was submitted by *Venezuela* worded as follows :

- "1. The High Commissioner for Refugees shall grant international protection to the refugees defined in this section. For this purpose the term "refugee" means any person :
- (a) Who since 1 August, 1914 has been recognized as a refugee under the Arrangements of 12 May 1926 and 30 June, 1928, or under the Convention of 28 October, 1933 and 10 February, 1938 and the Protocol of 14 September, 1939, or under the Constitution of the International Refugee Organisation;
- (b) Who, as a result of events in Europe before 1 October, 1951 and owing to well-founded fear of persecution for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or,

owing to such fear, unwilling to resort to the protection of the government of the country of his nationality; or who, not having a nationality, being outside the country of his former habitual residence, is unable, or owing to such fear as aforesaid, unwilling to return to that country....."

If a person has more than one nationality.....  
A decision concerning eligibility taken by the International Refugee Organisation during the period of its activities.....

- "2. Cessation provisions.
- "3. and 4. Exclusion provisions.
5. The High Commissioner may recommend to the General Assembly the inclusion of other categories of refugees in his terms of reference and may, pending a decision by the General Assembly on his recommendation, intercede with the Government on behalf of any additional category".

85. The refugee items were discussed in the Third Committee during seventeen meetings.<sup>159</sup> In regard to the definition of refugees in the Statute, the discussion again centred largely around the basic question whether this definition should be general or by categories.<sup>160</sup> The representatives of

159. Document A/C.3/SR.324-338, 341 and 344.

160. A general definition in the Statute was supported by: *Belgium* (A/C.3/SR.324, p.337), *Netherlands* (*Ibid*, SR. 325, pp. 336-337), *Chile*, (*Ibid*, pp.337-338), *Yugoslavia* (*Ibid*, pp. 339-340), *Australia* (*Ibid*, SR. 326, p.341), *United Kingdom* (*Ibid*, pp. 345-346), *Turkey* (*Ibid*, SR.329, pp. 361-362) *China* (*Ibid*, p. 362), *Canada*, *loc. cit.*, *New Zealand* (*Ibid*, p. 364). A definition by categories was supported by: *France* (*Ibid*, SR. 324, pp. 329-330), *United States* (*Ibid*, SR.326, p. 331 and pp. 343-344), *Venezuela* (*Ibid*, SR. 325, pp. 338-339), *South Africa* (*Ibid*, SR. 326, pp. 341-342), *Israel*, (*Ibid*, SR. 328, pp. 357-358), *Egypt*, (*Ibid*, SR. 328) *Lebanon*, *loc cit*; *Saudi Arabia*, (*Ibid*, p. 329).



various States considered that a definition by categories was more appropriate for the Statute, as such a definition would prevent the High Commissioner from becoming involved in political issues. Thus the representative of *France* considered it essential that the High Commissioner should know exactly which refugees would be placed under his protection. A general definition implied a greater delegation of powers by the General Assembly to the High Commissioner. When a new refugee problem arose, the High Commissioner would be drawn into political controversy and in order to avoid this would tend to await the decision of the General Assembly. This would involve a loss of time and, in practice, a return to a limited definition. The latter was preferable because it did not force the High Commissioner to assume political responsibility.<sup>161</sup> The representative of the *Lebanon* considered that a distinction should be drawn between the universal nature of the refugee problem and the particular tasks which would be imposed on the High Commissioner in the course of actual events. The High Commissioner should not be given the competence to deal with all the refugees in the world on his own initiative. The question of refugees was not invariably a purely humanitarian matter; it often had important political aspects. If the entire initiative were left to the High Commissioner, his prestige and authority might be imperilled.<sup>162</sup> A similar though not identical view was put forward by the representative of the *United States*. The amendments submitted for a general definition widened the High Commissioner's powers and placed a heavier responsibility on the General Assembly. They did not specify exactly which refugees they proposed should come under the new definition nor which country should be their country of residence. Before adopting such a vague solution, the difficulties which the United Nations had already experienced in meeting its

161. *Ibid*, SR. 326, p. 345 and SR. 328 pp. 364-365

162. *Ibid*, SR. 328-358

obligations in connection with the Palestine refugees should be remembered, and some consideration given to the burden which would be placed on the United Nations by the Korean refugees. The definition proposed by the Economic and Social Council did not, however, prevent the United Nations from later expanding its action on behalf of the refugees if this was considered necessary.<sup>163</sup> On the other hand, the representative of *Canada*, supporting a general definition, considered that since the High Commissioner's Office would have more limited functions than the IRO and would only be concerned with legal protection, his competence should not be restricted. To the argument that the definition of the Economic and Social Council could be extended to other categories of refugees, it could be objected that this would cause not only loss of time but also political controversies in what ought to remain a strictly humanitarian question.<sup>164</sup>

86. A definition by categories was also supported from the administrative and financial point of view. The representative of *South Africa* considered that as the High Commissioner's Office was being established for a particular purpose it would be unwise to broaden its function at that moment.<sup>165</sup> The representative of *Chile* considered that the definition to be applied by the High Commissioner must inevitably be limited by its administrative and financial implications for the United Nations,<sup>166</sup> and the representative of *Venezuela* stated that the question was one of pledging United Nations funds and it was essential that the members of the Organisation which could be called upon to supply the necessary funds should know which persons would benefit from them.<sup>167</sup>

163. *Ibid*, SR. 326, p. 344

164. *Ibid*, SR. 329, p. 362

165. *Ibid*, SR. 326, pp. 341-342

166. *Ibid*, SR. 328, p. 355

167. *Ibid*, SR. 329, p. 365



87. As regards the inter-relationship between the definition in the draft Convention and in the draft Statute, the view was generally expressed at this stage in the Third Committee that the two definitions need not be identical.<sup>168</sup> The representative of *Venezuela* agreed with the view of the Economic and Social Council that the definition should be the same in the draft Convention and in the Statute of the High Commissioner's Office.<sup>169</sup> He drew attention, however, to the possibility that the draft Convention might be referred to a Conference of Plenipotentiaries. Chapter III, Section C of the draft Statute annexed to Economic and Social Council Resolution 319 (XI) was unacceptable to his delegation because the Conference would be free to modify Article 1 of the draft Convention as it chose.<sup>170</sup> His delegation had submitted its amendment<sup>171</sup> in order to minimise the possibility that the Conference would adopt a definition by categories for the purposes of the draft Convention while the General Assembly might approve a general definition for application by the High Commissioner or *vice versa*.<sup>172</sup> The definition in the draft

168. The representative of *Chile* considered that the definition should be as broad as possible in the Convention in order that refugees should obtain the fullest possible rights in receiving countries, whereas the definition applied by the High Commissioner should be limited by its administrative and financial implications for the United Nations. (*Ibid.*, SR. 328, p. 355). The representative of *South Africa* supported the adoption of the draft definition proposed by the *United Kingdom* for the draft Convention, but of a more restricted definition for the Statute of the High Commissioner's Office (*Ibid.* SR. 326, pp. 341-342). The representative of *France* supported the view expressed by the representative of the *United Kingdom* at the 11th Session of the Economic and Social Council that the definition in the Statute need not be the same as that in the Convention imposed legal obligations on States whereas the obligation under the Statute would be only a moral one (*Ibid.*, SR. 328, p. 356.) The representative of the *United Kingdom* considered that while there was no objection to two separate definitions, one definition was adequate and the *United Kingdom* amendment (A/C.3/L.115) had been submitted with that end in view (*Ibid.*, p. 357). The representative of *China* favoured separate definitions (*Ibid.*, SR. 329, p. 362).

169. Document A/C.3/SR. 325, p. 339.

170. *Ibid.*, SR. 329, p. 365.

171. *Ante para.* 84.

172. *Ibid.*, SR. 328, p. 359.

Statute, together with the definition in the draft Convention was referred to the informal working party established during the 329th meeting of the Third Committee.<sup>173</sup> The representative of *United States* described the results achieved by the informal working party in the following terms :

"The working party had decided that two texts—one for the draft Convention and the other for the draft Statute should be submitted. The two texts had been made consistent with each other. It had been decided to delete the words 'in Europe' from the texts of the definition. The text proposed by the Economic and Social Council in Resolution 319 (XI) had been amended in several respects for the draft Convention, and a combination of that text with the one presented by *Belgium*, *Canada*, *Turkey* and the *United Kingdom* (A/C. 3/L. 130) was being proposed for the draft Statute. The informal working party believed that the result of its work would prove reasonably satisfactory to many delegations, though it might not entirely satisfy any one of them. A remarkable spirit of cooperation had characterised the work of the group."<sup>174</sup>

88. The definitions adopted by the informal working party were as follows :<sup>175</sup>

(a) For Article 1 of the draft Convention :

"A. For the purposes of this Convention, the term "refugee" shall apply to any person who :

"(1) Since 1 August 1914 has been considered a refugee under the arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October

173. *Ante para.* 40.

174. Document A/C.3/SR. 330, p. 367.

175. Document A/C.3/L. 131/Rev. 1



1933 and 10 February 1938, the protocol of 14 September 1939 or the Constitution of the International Refugee Organization ;

"Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of the refugee being accorded to persons who fulfil the condition of paragraph 2 of this Article ;

"(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable, or owing to such fear or for reasons other than personal convenience is unwilling, to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear or for reasons other than personal convenience, is unwilling to return to it ;

"In the case of a person who has more than one nationality, the above term 'country of his nationality' shall mean any of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national ;

"B, C, D.....

89. This definition was finally adopted in almost identical terms as an *Annex* to General Assembly Resolution 429(V) of 14 December 1950.

(b) For the Statute it adopted the following definition :

"1. The persons to whom the competence of the High Commissioner extends shall include :

"(a) Persons who are refugees within the terms of Parts A and B of Article 1 of the draft Convention,"

(i.e. the above definition)

"(b) Any other person who is outside the country of his nationality, or, if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of victimization because of his race, religion, nationality or political opinion and is unable or, because of such fear is unwilling to avail himself of the protection of the government of the country of his nationality or, if he has no nationality, the country of his former habitual residence ;

"2. Provided that the competence of the High Commissioner as defined in paragraph 1 above shall extend to

.....(Exclusion provisions)

90. This definition, as subsequently amended by the Third Committee was finally adopted by the General Assembly as paragraphs 6 A and B of the Statute of the Office of the United Nations High Commissioner for Refugees, i.e. the *Annex* to Resolution 428(V) of 14 December 1950, in the following terms :

"6 A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions