

result of events before then, or as a result of after-effects which occurred at a later date. The date 1 January 1951 was chosen because it is the date of the assumption of Office by the United Nations High Commissioner for Refugees".¹⁴

(B) **International agreements and arrangements concerning refugees adopted between the two World Wars**

26. The legal instruments adopted between the two World Wars were essentially pragmatic in character. They contained no general definition of the term "refugee". They dealt with specifically defined categories of refugees and in part only with specific problems, as and when the need arose. The first instrument was the Arrangement of 5 July 1922 which was specifically concerned with the issue of certificates of identity to Russian refugees.¹⁵ The Arrangement of 31 May 1924 for the issue of Certificates of Identity to Armenian Refugees¹⁶ was similar in type. These two Arrangements were supplemented and amended by the Arrangement relating to the issue of Identity Certificates to Russian and Armenian Refugees of 12 May 1926¹⁷ and the

14. Report of the Ad Hoc Committee on Statelessness and related Problems, (First Session), 17 February, 1950, E/1618, p. 39. As to the application of the Convention to new refugees, see ante paras. 5, 6 and 7.

15. League of Nations Treaty Series, Vol. 13, No. 355. Arrangement did not contain a definition of the term "Russian refugee" but the form of Identity certificate annexed to the Arrangement described the holder as "a person of Russian origin not having acquired another nationality".

16. League of Nations document, CL. 72(a) 1924.

17. League of Nations, Treaty Series, Vol. 89, No. 2094. For the purposes of this Arrangement, Russian and Armenian refugees were defined as follows: *Russian*: Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Republics and who has not acquired another nationality; *Armenian*: Any person of Armenian origin formerly a citizen of the Ottoman Empire who does not enjoy, or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality".

latter was extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees by the Arrangement of 30 June 1928.¹⁸

27. On 30 June 1928, the first international instrument dealing with the legal status of refugees was also adopted, namely the Arrangement relating to the Legal Status of Russian and Armenian Refugees.¹⁹ This was a comprehensive instrument and contained recommendations dealing, *inter alia*, with expulsion, personal status, exemption from reciprocity and the right to work. It also recommended that the services normally rendered to nationals abroad by consular authorities should be discharged by the representatives of the League of Nations High Commissioner for Russian and Armenian refugees. The next instrument adopted, was also of a comprehensive character, and was legally binding: the Convention relating to the International Status of Refugees of 28 October 1933.²⁰ The new refugee problem that arose with the coming to power of Hitler led to the signing of the provisional Arrangement concerning

18. *Ibid*, No. 2006. For the purpose of the Arrangement the categories were defined as follows: "*Assyrian, Assyro-Chaldean and assimilated refugees*: Any person of Assyrian or Assyro-Chaldean origin and also by assimilation any person of Syrian or Kurdish origin who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality; *Turkish refugees*: Any person of Turkish origin previously a subject of the Ottoman Empire who under the terms of the Protocol of Lausanne of 24th July 1923 does not enjoy, or who no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality". (This definition refers to a limited number of Turkish refugees (150) who were excluded from the Amnesty granted by the Government of the Turkish Republic after the Imperial Dynasty was overthrown by Kemal Atatürk (*Ibid*, Vol. 36, p. 145).

19. *Ibid*, No. 2005.

20. *Ibid*, Vol. 159, No. 3663. According the Article 1, the Convention was to apply to Russian, Armenian and assimilated refugees, as defined by the Arrangements of 12 May 1926 and 30 June 1928, subject to such modifications or amplifications as each party may introduce in this definition at the moment of signature or accession.

the Status of Refugees coming from Germany on 4 July 1936²¹ and the Convention concerning the Status of Refugees coming from Germany on 10 February 1938,²² both of which contained comprehensive provisions concerning the basic rights of refugees. By the additional Protocol of 14 September 1939 the Arrangement of 4 July 1936 and the Convention of 10 February 1938 were extended to refugees from Austria.²³

28. The Arrangement of 5 July 1922 was adopted by 53 States; the Arrangement of 31 May 1924 by 35 States; the Arrangement of 30 May 1926 by 20 States; the arrangement of 30 June 1928 by 11 States; the Convention of 28 October 1933 by 8 States; the Provisional Arrangement of 4 July 1936 by 7 States, and the Convention of 10 February 1938 and the Additional Protocol of 14 September 1939 by 3 States.

(C) Legal techniques employed in the pre-War instruments

29. The Arrangements of 1922, 1924, 1926 and 1928 concerning the issue of Identity Certificates (so-called "Nansen Passports") to various groups of refugees were recommendations. So also was the Arrangement of 30 June 1928 relating to the Legal Status of Russian and Armenian Refugees which,

21. *Ibid*, Vol. 171, No. 3952. For the purposes of the Arrangement, the term "refugees coming from Germany" was defined by Article I as "any person who was settled in that country who does not possess any nationality other than German nationality, or in respect of whom it is established that in law or in fact he or she does not enjoy the protection of the Government of the Reich".

22. *Ibid*, Vol. 192, No. 4461. For the purposes of the Convention the term "refugees coming from Germany" was defined by Article I as applying to: "(a) persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government; (b) stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government." Persons who left Germany for reasons of purely personal convenience were excluded from the definition.

23. *Ibid*, Vol. 198, No. 4634. The definition adopted in the Additional Protocol was *mutatis mutandis* the same as that contained in Article 3e of the Convention of 10 February 1938.

as stated above, was the first international instrument of its kind.

As the last mentioned Arrangement was only a recommendation, a separate Agreement was signed between France and Belgium on the same day²⁴ concerning the "quasi-consular" service rendered by the Representatives of the League of Nations High Commissioner for Refugees. In the Agreement the Contracting States expressly consented to the rendering of these services in their territory, thereby giving the documents and certificates issued by the High Commissioner's Representatives the official value of consular documents.²⁵ Moreover, it became generally apparent that recommendations were not sufficient to improve the legal status of refugees. The relevant national legislation was made with the normally protected alien in view and the special position of refugees could only be provided for on a national level by amending legislation or on an international level by treaties legally binding on the Contracting States. The subsequent instruments, i.e. the Convention of 1933, the arrangement of 1936, the Convention of 1938 and the Additional Protocol of 1939 were of this type and imposed binding legal obligations.

From the point of view of the legal techniques adopted, certain provisions of the 1933 and the 1938 Conventions call for special mention: Article I of the 1933 Convention provided that:

"The present Convention is applicable to Russian, Armenian and assimilated refugees as defined by the Arrangement of 12 May 1926 and 30 June 1928, *subject to*

24. Agreement concerning the functions of the League of Nations High Commissioner for Refugees of 30 June 1928, League of Nations, *Treaty Series*, Vol. 93, Pg. 2126.

25. In the Preamble the contracting States expressed the desire "to secure the most effective possible action on the Resolution contained in the Arrangement concerning the legal status of Russian and Armenian Refugees . . ."

*such modifications or amplifications as each contracting party may introduce in this definition at the moment of signature or accession.*²⁶

30. As regards the qualification, *Bulgaria* introduced a limitation concerning the date when the refugees in question were on Bulgarian territory. *Great Britain* limited the application of the Convention to Russian, Armenian and assimilated refugees no longer enjoying the protection of their country of origin at the date of accession. *Czechoslovakia* regarded as refugees within the meaning of Article 1 only such persons who formerly possessed Russian or Turkish nationality; lost it before 1 January 1923 and had not acquired another nationality. *Egypt* reserved the right to extend or limit the definition in any way apart from such modifications or as amplifications each Contracting Party might introduce. In 1945, however, *France* extended the application of the Convention to Spanish refugees.

Article 23 of the 1933 Convention provided that :

"The Contracting Parties may at the moment of signature or accession declare that their signature or accession shall not apply to certain chapters, articles or paragraphs, exclusive of Chapter XI ("General Provisions"), or may submit reservations.

The Contracting Parties shall have the right at any moment to withdraw all or part of their exceptions or reservations by means of a declaration addressed to the Secretary-General of the League of Nations. The Secretary-General shall communicate the said declaration to....."

Similarly Article 25 of the 1938 Convention provided that :

"1. The High Contracting Parties shall, at the time of signature, ratification or accession or declaration

26. Underlining added.

27. Ordinance No. 45-766 of 15 March. Spanish refugees were defined as "persons possessing or having possessed Spanish nationality not possessing any other nationality and with regard to whom it has been established that in law or in fact they do not enjoy the protection of the Spanish Government.

under paragraph 2 of Article 24, 28 indicate whether their signature, ratification, accession or declaration applies to the whole of the provisions of Chapter I, II, III, IV, V and XIII or applies to the Convention in its entirety.

- "2. Failing such indication, the signature, ratification, accession or declaration shall be deemed to apply to the Convention as a whole.
- "3. In addition the High Contracting Parties may make reservations to the articles contained in Chapters to which their obligation extends.
- "4. The High Contracting Parties shall have the right at any time to extend their obligation to cover further Chapters of the Convention, or to withdraw all or part of their exception or reservation, by means of a declaration addressed to the Secretary-General of the League of Nations. The Secretary-General shall communicate such declaration to....."

31. Thus Article 1 of the 1933 Convention expressly permitted the introduction by the Contracting States of modifications or amplifications with regard to its scope. On the other hand, Article 23 of the 1933 Convention and Article 25 of the 1938 Convention made it possible for States to become parties to the Convention without limiting its scope as far as they were concerned, but at the same time enabled them to introduce limitations as regards the substantive provisions of the Convention to be applied. This technique, permitting the adoption of the international legal instruments, in their entirety or in part, which is similar to but possesses certain advantages over the technique of introducing reservations,²⁸ has also

28. Application of Convention to Colonies, Protectorates, Overseas territories, etc.

29. Article 14 of the Provisional Arrangement of 1936 merely provided that : "The Government may make reservations at the moment of signature. The Contracting parties shall have the right at any moment to withdraw all or some of their reservations by means of a declaration addressed to the Secretary-General of the League of Nations . . ."

been employed in other fields not specifically concerned with refugees, e.g. in certain Conventions adopted within the framework of the International Labour Organisation and in the European Social Charter.³⁰

(D) The Constitution of the International Refugee Organisation (IRO)

32. The Constitution of the IRO was an international treaty adopted by the General Assembly in Resolution 62 (I) of 15 December 1946. In accordance with Article 18 of the Constitution the latter came into force on 20 August 1948, when 15 States, whose required contributions to Part I of the operative budget amounted to not less than 75% of the total, had become parties to the Constitution by signature of acceptance. Article 1 of the Constitution provided that the mandate of the organisation was to extend to refugees and displaced persons in accordance with the principles, definitions and conditions set forth in Annex. I, which formed an integral part of the Constitution. Like the pre-War instruments, the IRO Constitution defined refugees by specific categories. At the same time, however, it laid down certain broad criteria on the lines of a more general definition. The definitions in the IRO Constitution are of interest from the point of view of the historical development of the definition in the 1951 Convention. Thus, in addition to specifically defined groups, the mandate of the organisation extended to persons who were considered "refugees", before the outbreak of the Second World War for reasons of race, religion, nationality or political opinions and to persons who as a result of events subsequent to the outbreak of the Second World War were unable or unwilling to avail themselves of the protection of the Government of their country of nationality or former nationality. Persons falling within these various categories, with certain exceptions, became the concern of the Organisation if they could be repatriated and the help of the Organisation was required for their repatriation, or if they expressed "valid ob-

30. See post paras. 105-117

jections" to returning to their countries of former habitual residence. It is in the definition of "valid objections" that we find the elements of a more general definition of the term "refugee". Valid objections included "persecution, or fear based on reasonable grounds, of persecution because of race, religion, nationality or political opinions, provided these opinions were not in conflict with the principles of the United Nations laid down in the Preamble to the United Nations Charter". The IRO finally terminated its activities in 1952.

(E) The Convention of 1951

33. Introduction

In 1947 the Human Rights Commission of the United Nations adopted a Resolution expressing the wish "that early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation."³¹

34. In pursuance of this Resolution, the Economic and Social Council at its Sixth Session adopted Resolution 116 (VI) dated 1 and 2 March 1948. In this Resolution the Council requested the Secretary-General to undertake a study of the existing situation in regard to the protection of stateless persons and of national legislation and agreements and conventions relevant to statelessness and to submit recommendations to the Council on the desirability of concluding a further convention on this subject. In the "Study of Statelessness" prepared by the Secretary-General for submission to the Economic and Social Council attention was drawn to the fact that Resolution 116 (VI) only mentioned the protection of "stateless persons" but did not refer to "refugees" and the following points were made in this connexion: As regards stateless persons these fell into two categories, *de jure* and *de facto*. *De jure* stateless persons were persons not possessing a nationality either

31. UN Document E/600, paragraph 46.

because they had never acquired one, or because they had lost their nationality and did not acquire a new one. *De facto* stateless persons, on the other hand, were persons who, having left the country of which they are nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals. Although there was, in law, a considerable difference between *de jure* and *de facto* stateless persons, their position was in practice similar. The fact that refugees were not mentioned in the Resolution did not mean that they had to be excluded from the scope of Study. In fact, a considerable number of refugees were stateless persons either *de jure* or *de facto*.³² At the conclusion of the "Study of Statelessness", the Secretary-General recommended to the Economic and Social Council *inter alia*, to take the following decisions: To address an invitation to all Member States not yet parties to the Convention of 28 October 1933, the Convention of 10 February 1938 and the Additional Protocol thereto of 14 September 1939, to take the necessary steps as soon as possible to become parties thereto; to urge Member States to refrain from taking any discriminatory measures affecting *de jure* or *de facto* stateless persons; and to improve the conditions of such persons by providing them, through appropriate legislative or administrative action, with a legal status inspired by the principles underlying these agreements to recognize the necessity of a Convention, based on the agreements in force, determining the legal status of stateless persons; to instruct the Secretary-General, in consultation with the Director-General of the IRO and the administrative

32. UN Document E/1112 and E/1115/Add. 1, pp. 9-10. Since statelessness is a purely legal concept, connoting lack of nationality, it might be more appropriate to speak of *unprotected persons* who may in time be divided into *de jure* unprotected persons, i. e. stateless persons and *de facto* stateless persons, i. e. refugees, it being understood that there are refugees who are also *de jure* unprotected, i. e. stateless. Dr. Weis: "Legal Aspects of the Convention of 28 July 1951 relating to the status of Refugees," *British Yearbook of International Law*, 1953, p. 480.

heads of the other specialized agencies concerned, or an ad hoc Committee appointed by the Council, to prepare a draft Convention. The proposed draft Convention was thus to apply to stateless persons in general and was to be based on the principles of the agreements already in force.³³ In the later development, this emphasis on the link with earlier agreements is no longer apparent and the problem of refugees and stateless persons came to be treated separately.

35. In Resolution 248 (IX) B of 8 August 1949, the Economic and Social Council took note of the "Study of Statelessness" and appointed an ad hoc Committee consisting of representatives of thirteen governments³⁴ possessing special competence in this field, to consider, *inter alia*, the desirability of preparing a revised and consolidated Convention relating to the International Status of Refugees and Stateless Persons and, if they considered such a course desirable, to draft the text of such a Convention. The Secretary-General was invited to submit the report of the Committee to governments for comments and subsequently to the Council at an early session accompanied by such comments. The first session of the Ad Hoc Committee was held in New York from 16 January to 16 February 1950. The Committee decided to recommend to the Economic and Social Council that the most effective solution of the problems referred to it was by means of a convention. In view of the urgency of the refugee problem and the responsibility of the United Nations in this field, the Committee decided to devote itself first to the problem of refugees, whether stateless or not, and to leave to later stages of its declarations the problem of stateless persons who are not refugees. The Committee prepared a draft Convention relating to the Status of Refugees and a Separate draft Protocol relat-

33. Study of Statelessness, pp. 72-74.

34. The representatives of 11 governments took part in the work of the Committee: Belgium, Brazil, Canada, China, Denmark, France, Israel, Turkey, United Kingdom, United States, and Venezuela.

ing to the Status of Stateless Persons. The Report of the Committee³⁵ and the comments of governments were transmitted to the Economic and Social Council and considered by the latter at its 11th Session in August 1950.³⁶ It Resolution 319 (XI) B of 16 August 1950, the Council submitted the Report of the Ad Hoc Committee to the General Assembly. It requested the Secretary-General to reconvene the Ad Hoc Committee in order that it might prepare revised drafts in the light of comments of governments and of specialised agencies and the discussions and decisions of the Council at its 11th Session. The revised drafts were to include the definition of "refugee" and the Preamble approved by the Council, and incorporated in the Resolution. The Secretary-General was also requested to submit the drafts as revised by the Ad Hoc Committee to the General Assembly at its 5th Session. The second session of the Ad Hoc Committee was held in Geneva from 14 to 25 August 1950, immediately after the 11th Session of the Economic and Social Council. The draft Preamble and Article 1 (Definition) as approved by the Economic and Social Council and the revised drafts of the remaining Articles were duly submitted to the General Assembly at its Fifth Session, and the question was considered by the Third Committee at its 324th, 325th, 326th and 327th meetings. In Resolution 429 (V) adopted on 14 December 1950, the General Assembly (1) decided to convene in Geneva a Conference of Plenipotentiaries to complete the drafting of and to sign the Convention relating to the Status of Refugees and the Protocol relating to the Status of Stateless Persons; (2) recommended to governments participating in the Conference to take into consideration the draft Convention prepared by the Economic and Social Council, and in particular the text of the definition of the term "refugee" annexed to the General Assembly Resolution; (3) instructed the Secretary-General to invite the governments of all States, both members and non-members of the United Nations, to attend the Conference. The Conference of Plenipotentiaries at which 26 States were

³⁵ Report of the Ad Hoc Committee on Statelessness and related Problems, Document E/1618, 17 February 1950.

³⁶ Document E/AC. 7/SR. 156-169 (Social Committee)

represented by delegates,³⁷ and two by observers,³⁸ met in Geneva from 2 to 25 July 1951. The Conference adopted the Convention relating to the Status of Refugees and a Resolution concerning stateless persons.³⁹ The Final Act of the Conference was signed on 28 July 1951.

36. (ii) Historical development of the definition of the term "refugee" in the 1951 Convention

At the opening of the first Session of the Ad Hoc Committee, the Secretary-General submitted a Memorandum⁴⁰ to which was attached a preliminary Draft Convention. Article 1 of the latter listed three possible solutions for the problem of definition. For the purposes of the Convention the term "refugee" could mean (a) any person placed under the protection of the United Nations in accordance with the decisions of the General Assembly, or (b) refugees covered by the definitions contained in the IRO Constitution, or (c) refugees according to a definition to be drafted by the Ad Hoc Committee. As regards alternative (a) the difficulty appeared to be whether governments would be willing as it were "to sign a blank

37. Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Federal Republic of Germany, Greece, Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, Netherlands, Norway, Sweden, Switzerland (the Swiss delegation also represented Liechtenstein), Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

38. Cuba, Iran.

39. "THE CONFERENCE,

"HAVING CONSIDERED the draft Protocol relating to the Status of Stateless Persons,

"CONSIDERING that the subject still requires more detailed study,

"DECIDES not to take a decision on the subject at the present Conference and refers the draft Protocol back to the appropriate organs of the United Nations for further study."

40. Document E/AC. 32/2, dated 5 January 1950.

cheque".⁴¹ In connexion with alternative (c), it was possible to take over the IRO definitions, where necessary subject to appropriate revision, or to approach the problem completely afresh. Any plan for the revision of the IRO definition, however, would have to take account of two considerations: (1) should all refugees of whatever origin be included in the definition subject, where necessary, to certain exceptions? Or, on the contrary should the various categories whom it was intended to cover be enumerated? (2) Should the definition include future refugees, i. e. refugees belonging to existing categories who may in the future seek refuge in another country and persons belonging to new categories of refugees?⁴²

37. At the beginning of the First Session of the Ad Hoc Committee draft proposals for Article 1 of the Convention were submitted by the *United Kingdom*, *France* and the *United States*. While the United Kingdom, and French draft proposals contained general definitions,⁴³ the *United States* draft proposal

41. It was considered that this difficulty could be overcome by relating the Convention to the situation obtaining at the time when it was concluded. This solution, however, had the drawback of being static. An alternative was to provide for the modification of the Convention, *ipso facto*, in the event of modification by the General Assembly of the scope of the United Nations protection, subject to the right of States to declare their non-acceptance of the modification within a certain period of time. See *Ibid*, pp. 15-17

42. *loc cit*.

43. The United Kingdom draft proposal was originally wide enough to include stateless persons as well as refugees but in its revised form was limited to the latter. According to the revised draft proposal, unless otherwise provided for, the term "refugee" meant "a person who, having left his country of ordinary residence on account of persecution or fear of persecution, either does not wish to return to that country for good and sufficient reason or is not allowed by the authorities of that country to return there and who is not a national of another country". (E/AC. 32/L. 2/Rev. 1)

The Preamble of the French draft proposal stated the principle that subject to the limitations laid down in the Convention refugee status should be granted to all persons who, having left their country of origin, refuse to return to it because of fear of persecution, or cannot return there because they have not obtained the authorisation to do so and for one or other of these reasons are unable or unwilling to avail themselves of the protection of that country, provided they have not acquired the nationality

(Footnote contd.)

contained a definition by categories. —According to the latter draft definition the term "refugee" was to apply in the first place to persons defined as such according to the pre-war arrangements and conventions. Beyond this, the term was to apply to "any person who is and remains outside his country of nationality or former habitual residence because of persecution or fear of persecution on account of race, nationality, religion or political belief, and who belongs to one of the following categories: (a) German, Austrian, Czechoslovak refugees, victims of the Nazi or Fascist regimes, or regimes which took part on their side during the Second World War; (b) Spanish refugees (c) neo refugees, i. e. persons outside their country as a result of events subsequent to the outbreak of the Second World War (subject to certain exceptions); (d) Displaced persons, and (e) unaccompanied children."⁴⁴ The representative of the United States explained that the point of departure of the draft proposal was, subject to certain modifications, the definition in the IRO Constitution.⁴⁵ The term "neo refugees" was not intended to imply the automatic inclusion of any new future group of refugees but to permit their inclusion, if

(Footnote 43 contd)

of another country". (E/AC. 32/L. 3). The draft Article 1 in its revised form provided that: "(1) Subject to any supplementary decisions which may be taken by the General Assembly and to any special agreements which may be concluded between the signatories to the present Convention and the High Commissioner for Refugees the signatures to the present Convention recognise the status of refugee, entitling him to the supreme protection of the United Nations to any person who: (a) seeking asylum or having been granted asylum under the conditions specified in Article 14 of the Universal Declaration of Human Rights; or (b) having left his country of origin and refusing to return thereto owing to a justifiable fear of persecution, or having been unable to obtain from that country permission to return; (c) for either of these reasons indicated in sub-paragraph (d) above, is unwilling or unable to claim the protection of the said country. (E/AC. 32/L. 3/Corr. 1).

44. E/AC. 42/L. 4 and Add. 1. In addition, the term "refugee" was to include "persons in any other categories which might be agreed to by the High Contracting Parties on the recommendation of the General Assembly."

45. E/AC. 32/SR. 5, p. 3

desired, by means of protocols, addenda or later agreements. The essential idea was that Member States should know in advance to what they were committing themselves and it was advisable on a given date to close the enumeration of categories of refugees to whom the Convention would automatically apply.⁴⁶ Although views were expressed in support of a general definition, it was the consensus in the Committee that the term "refugee" should be defined by listing various categories to which the Convention was to apply and the drafting of the definition was entrusted to a drafting group which used the United States draft proposal as a working document.⁴⁷ In its report, the Committee stated that the solution of a general definition had been rejected because "it would be difficult for a government to sign a "blank cheque" and undertake obligations towards future refugees, the origin and number of which would be unknown. It was also felt that since this was a document prepared under the auspices of the United Nations and since the individuals protected by this Convention would probably become the charge of that organ of the United Nations concerned with the protection of refugees, the categories of individuals to be covered should be specified as was done in previous United Nations decisions in this regard".⁴⁸ The text of the definition finally adopted by the Ad Hoc Committee at its first session was, for present purposes, the same as that elaborated by the drafting group referred to above. It was as follows :

Article 1

Definition of the of the term "refugee"

A. For the purposes of this Convention the term "refugee" shall apply to :

46. E/AC. 32/SR. 3, p. 13

47. E/AC. 32/SR. 6, pp. 6-7

48. Document E/1618, p.38

1. Any person who :

- (a) As a result of events in Europe after 3 September, 1939 and before 1 January 1951, has well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion, *and*
- (b) Has left, or owing to such fear is outside the country of his nationality, or if he has no nationality, outside the country of his former habitual residence; *and*
- (c) Is unable or, owing to such fear, is unwilling to avail himself of the protection of the country of his nationality.

2. Any person who :

- (a) (i) Was a victim of the Nazi regime in Germany.....
- (ii) Was, or has a well-founded fear of being, a victim of the Falangist regime in Spain;
- (b) Has left or is outside the country of his nationality, the country of his former habitual residence; *and*
- (c) Is unable or, for reasons other than those of purely personal convenience, is unwilling to avail himself of the protection of the Government of the country of his nationality.

3. Any person who in the period between 3 August, 1914 and 3 September, 1939 was considered to be a refugee".⁴⁹

49. *Ibid*, p. 12

38. In their comments on the report of the First Session of the Ad Hoc Committee, certain governments again expressed themselves in favour of a general definition.⁵⁰ When the Economic and Social Council (Social Committee) at its 11th Session, considered the Report of the Ad Hoc Committee, it had before it draft proposals submitted by *Belgium* and the *United Kingdom* for a general definition.⁵¹ It also had before it a draft proposal by France for a definition by categories.⁵²

39. The question of general definition or a definition by categories was again discussed. A decision of principle was reached that the definition should be based on categories.⁵³

50. Cf. *Austria* (E/1703/ Add. 4, p. 4) and *Italy* (E/1703/Add. 6, page 3), drew attention to the possible exclusion of a future influx of refugees. *France* (E/1703/Add. 5, page 2), while reiterating its previous support for a broad and general definition, pointed out in particular that such a broad definition "could itself in no way involve governments in commitments beyond those they might formally undertake either by means of a clarifying reservation made at the time of signature of the Convention, or by means of a special agreement with the High Commissioner for Refugees."

51. *Belgium*. "The term 'refugee' shall apply to any person outside the country of his nationality or its former habitual residence, who cannot avail himself of the protection of the government of his present or former nationality, or who is reluctant to do so because he has good grounds to fear that he may become the victim of persecution by reason of his race, religion, nationality or political opinions". (E/AC. 7/L. 59)

United Kingdom. For the purposes of this Convention the term 'refugee' shall apply to 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 and (b) (i) if he has a nationality is unable or, owing to such fear is unwilling to avail himself of the protection of the Government of the country of his nationality or (ii) if he has no nationality, is unable, or, owing to such fear is unwilling to return to the country of his former habitual residence (E/AC. 7/L. 63).

52. Document E/L.82

53. Document E/AC. 7/SR. 158, pp. 6-9. Various arguments were put forward in favour of this solution: Previous instruments had always defined refugees by categories; a definition by categories had the advantage of making it quite clear whether a person fell within the scope of the definition or not and also ensured that States did not assume unforeseen obligations. For the latter reason a definition by categories would be more likely to secure the adherence of a larger number of States. (Ibid. pp. 12-20 and SR. 159, pp. 4-7)

The discussion then proceeded on the basis of the draft Article 1 adopted by the Ad Hoc Committee and the French draft amendment. The French draft definition differed from the draft adopted by the Ad Hoc Committee in that, although defining refugees by categories, it made no reference to specific groups, e.g. victims of the Nazi regime in Germany or the Falangist regime in Spain. The draft definition adopted by the Economic and Social Council in Resolution 319 (XI)B of 16 August 1950, was substantially the same as the French draft definition and was worded as follows:

"For the purpose of this Convention the term 'refugee' shall apply to any person:

- (1) Who in the period between 1 August, 1914 and 15 December, 1946 was considered 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;
- (2) Who has been accepted by the International Refugee Organisation as falling under its mandate;
- (3) Who has had, or has, well-founded fear of being a victim of persecution for reasons of race, religion, nationality, or political opinion as a result of events in Europe before 1 January 1951, or circumstances directly resulting from such events, and, owing to such fear, has had to leave, shall leave, or remains outside the country of his nationality, before or after 1 January 1951, and is unable, or owing to such fear or for reasons other than personal convenience, unwilling, to avail himself of the protection of the Government of the country of his nationality or, if he has no nationality, has left or shall leave, or remains outside the country of his former habitual residence."