of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1938 or the Constitution of the International Refugee Organisation ;

(ii) Any person who 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.

Decisions as to eligibility taken by the International Refugee Organisation during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph ;

"The competence of the High Commissioner shall cease to apply to any person defined in section A above if ;

(Cessation provisions)

"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 persecution 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."

91. It will be seen that apart from paragraph 6B, which also covers persons who are refugees otherwise than as a result of events occurring before 1 January 1951, there are certain slight differences between the definition adopted by the General Assembly in the Statute, and in the draft definition for the Convention recommended by the General Assembly to the Conference of Plenipotentiaries. The definition in the Convention was subjected to certain further amendments when considered by the Conference of Plenipotentiaries.

(iii) Widening of the framework of the High Commissioner's activities

(a) Extension of the material scope of the High Commissioner's functions in the social field

92. As mentioned above [176] when the Office of UNHCR was established in 1950, the main emphasis was placed on the basic task of international protection. The original mandate, however, already envisaged in the social field and the material scope of these activities has been progressively extended by various General Assembly resolutions. These resolutions indicate an increasing awareness that the need of refugees for assitance in this field was perhaps more far-reaching and more lasting than was originally believed when the Statute was adopted.

93. Thus by Resolution 538 (VI) of 2 February 1952 the High Commissioner was authorized under paragraph 10 of his to Statute [177] for appeal funds for the purpose of enabling *emer-*

176. *Ante* para. 13.

177. "The High Commissioner shall not appeal to governments for funds or make a general appeal without the prior approval of the General Assembly."

gency relief to be given to refugees within his mandate. In Resolution 832 (IX) of 21 October 1954, the General Assembly noted that, in spite of efforts made, "there was little hope that at the present rate of repatriation, resettlement or integration—a satisfactory solution to these problems will be reached *within a reasonable period of time*. "Going beyond the scope of its earlier Resolution 538 (VI) which was limited to emergency relief, the General Assembly, authorized the High Commissioner to undertake a programme designed to achieve permanent solutions for refugees within the period of his current mandate. Furthermore, arrangements were made for creating a fund known as the United Nations Refugee Fund (UNREF) to be devoted principally to the promotion of permanent solutions, and also to permit emergency assistance to the most needy cases, such fund to incorporate the fund authorized by Resolution 538 (VI), and the High Commissioner was authorized to appeal for funds for this purpose. At the same time the Economic and Social Council was requested either to establish an Executive Committee responsible for giving directives to the High Commissioner in carrying out his programme and for exercising the necessary financial control, or to revise the terms of reference and composition of the High Commissioner's Advisory Committee to enable it to carry out the same duties. The Advisory Committee was reconstituted as an Executive Committee, known as the United Nations Refugee Fund (UNREF) Executive Committee, by Resolution 565 (XIX) of the Economic and Social Council of 31 March, 1955.

94. In Resolution 1166 (XII) of 26 November, 1957, the General Assembly noted with approval that the UNREF programme, if it received the necessary funds, would by 31 December, 1958, have reduced the number of non-resettled refugees under the programme to a point where most countries of asylum would be able to support these refugees without international assistance. It was, however, recognized that after 31 December, 1958, there would be a residual need for international aid in

certain countries and among certain groups and categories of these refugees. Furthermore, *new refugee situations requiring international assistance had arisen to augment the problem since the establishment of the fund and other situations might arise in the furture wherein international assistance might be appropriate.* [178] Recalling its earlier resolutions the General Assembly authorized the High Commissioner to appeal for additional funds needed for closing the refugee camps. It also requested the Economic and Social Council to establish an Executive Committee of the High Commissioner's Programme whose terms of reference were *inter alia* :

(i) To give directives to the High Commissioner for the liquidation of the UNREF Fund;

(ii) To advise the High Commissioner as to whether it is appropriate for international assistance to be provided through his Office in order to help solve specific refugee problems *remainining unsolved after 31 December. 1958 or arising after that date* [179].

(iii) To authorize the High Commissioner to appeal for funds to enable him to solve these refugee problems. At the same time the High Commissioner was given a general authorization to appeal for funds, under conditions approved by the Executive Committee.

95. It has thus to be recognized that in the social field UNHCR is called upon to deal with continuing refugee problems and new refugee problems which may arise in the future. This development is emphasized by the establishment,

178. Underlining added.

179. Underlining added.

on the institutional level, of the Executive Committee of the High Commissioner's Programme and the general authorization given to the High Commissioner to appeal for funds subject to the Executive Committee's approval.

(b) **Development of the "Good Offices" function**

96. As mentioned above, there have also been certain developments, resulting from various General Assembly resolutions regarding the personal scope of the competence of UNHCR to deal with refugee problems in the social field as distinguished from the field of international legal protection.

97. The beginning of this development may be found in Resolution 1167 (XII) of 26 November, 1957 concerning Chinese refugees in Hong Kong. In this resolution the General Assembly *inter alia* recognized that this refugee problem was of concern to the international community. It took into account the need for emergency and long-term assistance, and authorized the United Nations High Commissioner for Refugees to use his good offices to encourage arrangements for contributions. The problem of refugees from Mainland China gave rise to particular difficulty owing to the reluctance of United Nations bodies to take a decision on their eligibility due to the issue of the "two Chinas". In view of this difficulty it was clearly for UNHCR to take an interest in the problem otherwise than on the basis of the Statute. [180]

98. The problem of Algerian refugees in Tunisia and Morocco was also the subject of various General Assembly Resolutions. In Resolution 1268 (XIII) of 5 December, 1958, the General Assembly *inter alia* noted

180. In Resolution 1784 (XVII) of 7 December 1962, also concerning Chinese refugees in Hong Kong, the General Assembly requested the High Commissioner to use his good offices, in agreement with the governments concerned, to provide assistance to these refugees.

the action taken in 1958, by the High Commissioner on behalf of refugees from Algeria in Tunisia and, considering that a similar problem existed in Morocco, recommended the High Commissioner to continue his action on behalf of those refugees in Tunisia on a substantial scale and to undertake similar action in Morocco. In Resolution 1389 (XIV) of 20 November 1959, the General Assembly recommended that the High Commissioner continue his efforts on behalf of these refugees pending their return to their homes and in Resolution 1500 (XV) of 5 December 1960 the General Assembly recommended that the High Commissioner should continue his present action on behalf of refugees from Algeria in Morocco aud Tunisia and use his influence to ensure the continuation of the operation carried out jointly by the Office of UNHCR and the League of Red Cross Societies. Finally, in Resolution 1672 (XVI) of 18 December, 1961, the General Assembly *inter alia* requested the High Commissioner to : (a) continue his present action jointly with the League of Red Cross Societies until the refugees from Algeria in Morocco and Tunisia returned to their homes; (b) use the means at his disposal to assist in the orderly return of these refugees to their homes and consider the possibility, when necessary, of facilitating their resettlement in their homeland as soon as circumstances permit; (c) persist in his efforts to secure the resources which will enable him to complete his task. The fact that a formal eligibility decision could be avoided was of considerable importance with regard to widening the scope of the measures which UNHCR, in cooperation with the League of Red Cross Societies, could carry out to help governments of asylum countries to assist these refugees and certainly made it easier for UNHCR to obtain the required support for this important programme, especially also from the French Government.

99. In Resolution 1671 (VI) of 18 December, 1961 the General Assembly dealt with the problem raised by the situation of Angolan refugees in Congo. The General Assembly *inter alia* recommended that the United Nations in the Congo,

in close co-operation with the United Nations High Commissioner for Refugees and the League of Red Cross Societies and other voluntary organisations, should continue to provide emergency assistance for as long as necessary and enable the refugees to become self sufficient as soon as possible; requested the High Commissioner to continue to lend his good offices in seeking appropriate solutions to the problems arising from the presence of Angolan refugees in the Republic of the Congo (Leopoldville), *inter alia*, by facilitating, in close collaboration with the authorities and organisations directly concerned, the voluntary repatriation of these refugees, and urged States Members of the United Nations and members of the specialized agencies to make available to the competent organs of the United Nations the means required for such measures of assistance.

100. In addition to the above Resolutions dealing with specific refugee problems, there are also various General Assembly Resolutions which give the High Commissioner a general authorization to act in refugee situations by extending his "good offices". In Resolutions 1388 (XIV) of 20 November, 1959, the General Assembly *inter alia* invited the States Members of the United Nations and members of the specialized agencies to devote, on the occasion of World Refugee Year, special attention to the problems of refugees coming within the competence of the United Nations High Commissioner for Refugees, and authorized the High Commissioner, in respect of refugees "who do not come within the competence of the United Nations" to use his good offices in the transmission of contributions designed to provide assistance to these refugees.

101. In Resolution 1499 (XV) of 5 December 1960 the General Assembly noted that pursuant to Resolutions 1167 (XII) of 26 November 1957 and 1388 (XIV) of 20 November 1959, increasing attention was being paid in many countries, by Governments and by non-governmental organisations, to

the problems of refugees "who do not come within the immediate competence of the United Nations." It also invited States Members of the United Nations and specialized agencies *inter alia* to continue to consult with the High Commissioner in respect of measures of assistance to groups of refugees "who do not come within the competence of the United Nations."

102. In Resolution 1673 (XVI) of 18 December 1961 the General Assembly *inter alia* noted with satisfaction the efforts made by the High Commissioner in his various fields of activity for groups of refugees for whom he lends his good offices and requested the High Commissioner to pursue his activities on behalf of refugees within his mandate or those for whom he extends his good offices.

103. In Resolution 1783 (XVII) of 7 December 1962 the General Assembly *inter alia* commended the High Commissioner for the efforts he had made in finding satisfactory solutions of problems affecting refugees within his mandate and those for whom he lends his "good offices". Finally in Resolution 1959 (XVIII) of 12 December 1963 the General Assembly *inter alia* requested the High Commissioner to continue to afford international protection to refugees and to pursue his efforts on behalf of the refugees within his mandate and of those to whom he extends his good offices, by giving particular attention to new refugee groups in conformity with the relevant resolutions of the General Assembly and the directives of the Executive Committee of the High Commissioner's Programme.

(G) Legal techniques considered or adopted in other fields

104. The above examination of the definition of the term "refugee" in the pre-War instruments, and in the Constitution of the IRO and of the historical development of the definitions in the 1951 Convention and in the Statute has shown the various problems which have arisen as regards legal technique, when it has been sought to make provision for new

groups of refugees. Mention has already been made [181] of the possible reluctance of Governments to assume unrestricted obligations as regards new refugee groups, and of the need which may therefore arise to permit the introduction of some limitation by means of appropriate legal techniques. It is, therefore, proposed to mention briefly various legal techniques adopted with regard to multilateral treaties in certain other fields which may be of relevance to the present problem.

(i) **Provision in international instruments for their adoption in their entirety or in part**

105. It has been seen that Article 23 of the Refugee Convention of 1933 permitted the Contracting Parties, at the moment of signature or accession, to declare that their signature or accession did not apply to certain Chapters, Articles or Paragraphs (exclusive of Chapter XI) ("General Provisions") or to submit reservations. A variant is to be found in Article 25 of the Refugee Convention of 1938. This enabled the Contracting Parties at the time of signature, accession, etc. to indicate that such signature, ratification, accession, etc. applied to specifically enumerated chapters or to the Convention in its entirety. Failing such indication, the signature, ratification, accession, etc. was deemed to apply to the Convention as a whole. In addition, the Contracting Parties were permitted to make reservation to articles in chapters to which their obligation extended[182]. The technique whereby the obligations of an international agreement may be adopted in their entirety or in part can also be found in certain other pre-war multilateral instruments not dealing specifically with refugees. Mention may be made in this connexion of the Inter-American Radio Communications Convention of 1937[183] and of the General Act

181. *Ante* para. 17.

182. *Ante* para. 30.

183. *Article* 25. "The ratifications or adherences to the present Convention may refer to the totality thereof or to two or more of its parts; provided that, in every case Parts One and Four (Conferences and General Provisions) be ratified or adhered to." Hudson, *International Legislation*, Vol. VII, p. 910.

for the Pacific Settlement of International Disputes of 26 September 1928[184]. The latter instrument also enabled the Contracting Parties to make reservations[185]. The Revised General Act for the Pacific Settlement of International Disputes adopted by the United Nations General Assembly on 28 April 1949, contains corresponding provisions[186].

106. The "partial adoption" technique, which bears a certain similarity to but is different from the legal technique enabling the Contracting Parties to make specifically defined reservations[187] has also been employed in a number of conventions adopted by the ILO prior to but mainly after the Second World War.

184. *Article* 38. "Accessions to the present General Act may extend: A. Either to all the provisions of the Act (Chapters I, II, III, and IV); B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV); C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV). The Contracting Parties may benefit by the accessions of other parties only insofar as they have themselves assumed the same obligations." Hudson, *Ibid*, vol. IV, p. 2541.

185. *Article* 39. 1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraphs. These reservations must be indicated at the time of accession. 2. These reservations may be such as to exclude from the procedure described in the present Act: (a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute; (b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States; (c) Disputes concerning particular cases or clearly specified subject matters, such as territorial status, or disputes falling within clearly defined categories. 3. If one of the parties to a dispute had made a reservation, the other parties may enforce the same reservation in regard to that part 4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

186. United Nations Treaties Series 71/12, p. 101, Reg. No. 912.

187. For examples of this latter technique see *Handbook of Final Clauses*, United Nations Document ST/LEG (16, 5 August 1957, pp. 99-103)

107. It would seem that within the framework of the ILO, the "partial adoption" technique has been considered especially suitable for securing extensive ratification where, owing to their special circumstances, Member States might not be able to accept the full or more onerous obligations of a Convention. As used in the ILO conventions the technique has a number of variants:

(a) **Exclusion of a specified part or parts**

108. Convention No. 63 of 1938 concerning Statistics of Wages and Hours of Work contains six parts. Of these Part II relates to Statistics of Average Earnings and of Hours Actually Worked in Mining and Manufacturing Industries and Part III to Statistics of Mining and Manufacturing Industries and Part III to Statistics of Time Rates of Wages and of Normal Hours of Work in Mining and Manufacturing Industries. During the Conference at which this Convention was adopted, it was decided that both classes of statistics had their uses and that the Convention should provide for both on an equal footing[188]. A paragraph was, however, inserted in the Preamble stating that although it was desirable that all Members of the Organization should compile statistics of the type covered by Part II, it was nevertheless desirable that the Convention should be open to ratification by Members which are not in a position to comply with the requirements of that Part. Article 2, paragraph 1 of the Convention thus provided that a Member might, by a declaration appended to its ratification, exclude from its acceptance of the Convention (a) Parts II, III or IV, or (b) Parts II and IV; or (c) Parts III and IV. (Parts IV concerned Statistics of Wages and Hours of Work in Agriculture.)

109. The Labour Inspection Convention (No 81) of 1947 contains two parts requiring mention: Part I—Labour Inspection in Industry and Part II-Labour Inspection in Commerce.

188. ILO Conference, 24th Session, Report VI, Part. I, Section III, p. 56.

Article 25 provides that any Member may, by a declaration appended to its ratification, exclude Part II—from its acceptance.[189]

110. The Wages, Hours of Work and Manning (Sea) Convention (Revised) (No. 109) of 1958 included a Part I (General Provisions), Part II (Wages) Part III Hours of Work on Board Ship) and Part IV (Manning). According to Article 5, paragraph 1, each Member was permitted to append to its ratification a declaration excluding Part II of the Convention.[190]

(b) **Acceptance of one of two parts in the alternative**

111. The Fee—Charging Employment Agencies (Revised) Convention (No.96) of 1949 contains a provision (Article 2) enabling Members to indicate in their instrument of ratification whether they accept Part II of the convention (Progressive *Abolition* of Fee--Charging Employment Agencies) or Part III of the Convention (*Regulation* of Fee-Charging Employment Agencies).

(c) **Acceptance of part containing basic provisions and possibility of acceptance of other parts**

112. Article 2 of the Social Security (Minimum Standards) Convention (No. 102) of 1952 provides that each Member shall comply with Part I, at least three of Parts II to X and the relevant provisions of Parts XI, XII and XIII and Part XIV. Parts I and XI-XV contain provisions of a general character

189. During the Conference which adopted the Convention, the question arose as to whether there should be a single Convention covering inspection in industrial and commercial undertakings or separate instruments for each of these categories. It was considered that a single Convention would not be ratified by a substantial number of Members, unless, perhaps, it was framed in such general terms as to have the undesirable effect of weakening the entire Convention. On the other hand, there would be certain disadvantages in adopting two separate Conventions. *Ibid.* 30th Session, *Report IV*, pp. 155 *et seq.*

190. This provision was included on the proposal of several government representatives that Members should be enabled to exclude the wage clause from their ratification. 41st Session, *Report II*, pp. 1 *et seq.*

and Parts II to X deal with specific kinds of social security benefits. In connexion with the preparation of the Convention the ILO had prepared a study with a view to determining the extent to which the various Members would be able to apply Parts II to X. This showed that, especially in the less developed countries, Parts III (Sickness Benefit) and V (Old-Age Benefits) and Parts VIII Maternity Benefit), IX (Invalidity Benefit) and X (Survivors Benefit) could be immediately applied. In the less developed countries, however, Medical Benefits (Part II) were rarely granted to members of an insured person's family and the system of Family Benefits (Part VII) and Unemployment Benefits (Part IV) had not yet been established.[191]

113. Similarly, the Equality of Treatment (Nationals and Non-Nationals) Social Security Convention (No. 118) of 1962 lays down general obligations regarding equality of treatment. According to Article 2 each Member may accept these obligations in respect of one or more of the branches of social security listed in that Article [192] for which it has ineffective operation legislation covering its own nationals within its territory. This provision was introduced in order to give the Convention a character favourable to numerous ratifications and for this reason no obligations had been adopted imposing acceptance of more than one branch of social security.[193]

(d) Acceptance of entire Convention containing basic provisions and optional acceptance of one or several annexes

114. Finally, the Migration for Employment (Revised) Convention (No. 97) 1949 contains provisions covering migration for employment in general and 3 *annexes* dealing with

191. *Ibid.* 35th Session, Report (V) a (2), p. 78.

192. i. e. medical care, sickness benefit, maternity benefit, invalidity benefit, old age benefit, survivors benefit, employment injury benefit, unemployment benefit and family benefit.

193. *Ibid.* 46th Session, *Report* V (1) pp. 4-5.

specific matters: *Annex I*—Recruitment, Placing and Conditions of Labour for Employment recruited *otherwise* than under Government-sponsored arrangements for Group Transfers; *Annex II*—The same for Migrants for Employment recruited *under Government-sponsored arrangements for Group Transfers; Annex III*—Importation of Personal Effects, Tools and Equipment of Migrants for Employments. Article 14 enables Members to append to their ratification a declaration excluding any or all of the *Annexes* from their acceptance of the Convention.

115. It is a feature of the ILO Conventions referred to above that they all provide that the part or parts which have not been accepted, may be accepted at a later date. This dynamic aspect is emphasised by the provisions in several of the Conventions as to reporting in regard to that part of the Convention which has not been accepted. Thus article 2 paragraph 3 of Convention No. 63 provides that "Any Member for which a declaration made under paragraph 1 of this article is in force shall indicate each year in its annual report on the application of this Convention the extent to which any progress has been made with a view to the application of the part or parts of the Convention excluded from its acceptance.[194]

116. A variant is to be found in Article 3 paragraph 2 of Convention No. 102 which provides that "Each Member which has made a declaration under paragraph 1 of this Article shall include in its annual report.....a statement in respect of each exception of which it avails itself; (a) that its reason for doing so subsists; or (b) that it renounces its right to avail itself of the exception in question as from a stated date." Finally, in certain Conventions it is expressly provided that in respect of a part

194. Similarly Convention No. 81, Article 25 paragraph 3; Convention No. 96, Article 2 paragraph 2; Convention No. 109, Article 5 paragraph 3.

which has not yet been accepted, a Member may declare its willingness to accept that part as having the force of a recommendation.[195]

117. The technique of enabling the parties to a multilateral Convention to accept it in its entirety or in part has also been employed in the European Social Charter[196] in a similar manner to that adopted in the ILO Conventions referred to above.

(ii) Recommendation relating to de facto stateless persons in the Final Act of the Status of Stateless Persons Convention

118. It has been seen above that Economic and Social Council Resolution 116 (VI) of 1 and 2 March 1948, in pursuance of which the Secretary-General prepared the *Study of Statelessness* did not mention refugees, but only "stateless persons." In the further preparatory work for the 1951 Convention, only the problem of refugees received detailed

195. Similarly Convention No. 97, Article 4 paragraph 4; Conevntion No. 109, Article 5 paragraph 5.

196. *Article* 20. "1. Each of the Contracting Parties undertakes:

(a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;

(b) to consider itself bound by at least five of the following Articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19;

(c) in addition to the Articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of Articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of Articles or numbered paragraphs by which it is bound is not less than 10 Articles or 45 numbered paragraphs.

"2. The Articles or paragraphs selected in accordance with sub-paragraphs (b) and (c) of paragraph 1 of this Article shall be notified to the Secretary-General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party is deposited.

"3. Any contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any Articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of Paragraph 1 of this Article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification."

attention. The Conference of Plenipotentiaries which adopted the 1951 Convention did not deal with the draft Protocol relating to the Status of Stateless Persons originally prepared by the Ad Hoc Committee at its First Session[197] and adopted the following Resolution in its Final Act :

> "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."

119. The Economic and Social Council, therefore, convened a special Conference of Plenipotentiaries to consider the Protocol, which was held in New York in September 1954. The Conference adopted not the Protocol, but an independent Convention relating to the Status of Stateless Persons closely modelled on the Refugee Convention.

120. For the purpose of the Convention the term "Stateless person" is defined by Article 1 as "a person who is not considered a national by any State under the operation of its law" (i. e. *de jure* stateless persons).

121. The question of so-called *de facto* stateless persons,[198] i. e. persons who possess a nationality, but do not enjoy the protection of the State of nationality, nor of any other State, gave rise to much discussion at the Conference. The Belgian delegation proposed the inclusion in the definition

197. *Ante* para. 34.

198. For the difference between *de jure* and *de facto* stateless persons, see *ante* para. 34.

of "persons who invoke reasons recognized as valid by the State in which they are resident for renouncing the protection of the country of which they are nationals. A drafting Committee on the definition of stateless persons submitted in addition to the definition of stateless persons which has been incorporated in Article 1 of the Convention, three alternatives for a second paragraph designed to cover *de facto* stateless person :

Alternative A

"For the purpose of this Protocol (Convention), the team "stateless person" shall also include a person who invokes reasons recognized as valid by the State in which he is resident, for renouncing the protection of the country of which he is a national."

Alternative B

"A Contracting State may, at the time of signature, ratification or accession make a declaration extending the paovisions of the Protocol (Convention) to any person living outside his own country who, for reasons recognized as valid by the State in which he is resident, has renounced the protection of the State of which he is, or was a national.

"Any State which has not made a declaration at the time of signature, ratification or accession may at any time extend its obligations by means of a notification addressed to the Secretary-General of the United Nations."

Alternative C

"Nothing in this Protocol (Convention) shall be construed to mean that its provisions cannot be made applicable to any person living outside his country who, for reasons recognized as valid by the State in which he is resident, has renounced the protection of the State of which he is, or was, a national."

122. It will be seen that the legal technique proposed in Alternatives B and C bear some resemblance to the legal technique adopted in Article 1 of the Refugee Convention of 1933.[199] When a vote was taken, the definition of *de jure* stateless persons and Alternative C were adopted.[200] Doubts, however, arose as to whether the inclusion of *de facto* stateless persons by a Contracting State by virtue of the permissive clause adopted, would have extraterritorial effect, i. e. whether it would bind other Contracting States to apply the provisions of the Convention to *de facto* stateless persons. The Conference finally decided not to include in the Convention a clause concerning *de facto* stateless persons which would have extra-territorial effect,[201] but adopted the following recommendation which was included in the *Final Act* of the Conference :

"*The Conference*

"Recommends that each Contracting State when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons, and

"*Recommends further* that in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other Contracting States also accord him the treatment provided for by the Convention."

---

199. *Ante* para. 36

200. The United Kingdom delegation subsequently proposed to add to the wording adopted for paragraph 2 of the definition the words "or who has been refused protection and assistance by the State of which he is a national."

201. Document E/CONF.17/SR.14, p. 10

123. It will be seen that there is a certain difference between this Recommendation and Recommendation E of the Final Act of the 1951 Convention.[202] The latter expresses in general terms the hope that the Convention will serve as an example exceeding its contractual scope and that all nations will be guided by it in granting, as far as possible to persons in their territory as refugees, and who would not be covered by the terms of the Convention, *the treatment for which it provides*. The Recommendation in the Final Act of the Conference on the Status of Stateless Persons would, however, seem to be stronger in that it contains an element of reciprocity, i. e. *if a State in whose territory a de facto* stateless persons resides, decides to accord him the treatment provided for in the Convention, *other Contracting States are recommended to accord him the same treatment*.

124. On the other hand, being only a recommendation, the Recommendation in the Final Act of the Conference relating to the Status of Stateless Persons gives rise to the difficulties already mentioned above[203] in connexion with recommendations in general. In particular, it is unlikely that a decision by a State to grant treatment for which the Convention provides to *de facto* persons would have extra-territorial effect to the extent to which such extra-territorial effect is not recognized by other States Parties to the Convention.[204]

202. *Ante* paras. 8, 51-54.

203. *Ante* paras. 8 and 41.

204. See generally P. Weis: "*The Convention relating to the Status of Stateless Persons*". *International and Comparative Law Quarterly*. April 1961.

III. THE PROBLEM RESTATED IN THE LIGHT OF THE LEGAL TECHNIQUES CONSIDERED

125. It has been seen that, although definitions in the Convention and in the Statute are not identical, such identity existed in practice at the date when the two instruments were adopted. With the passage of time, the discrepancy between the groups of persons covered by the two instruments has gradually grown due to the increasing number of refugees for whom the High Commissioner is competent under the Statute but who are not covered by the Convention due to the dateline of 1st January, 1951. In addition there are new groups of refugees to whom the High Commissioner extends his good offices not on the basis of the Statute, but of various Resolutions of the General Assembly.[205] Moreover, by various General Assembly Resolutions the High Commissioner's competence has been extended as regards the tasks entrusted to him.[206] When considering the historical development of the definition of the term "refugee" both in the Convention and in the Statute, it has been seen that various States did not favour a general solution but adopted a more restrictive approach. The possibility cannot be excluded that a similar approach might be adopted with regard to measures, proposed for solving the present problem. In proposing such measures, therefore, it might be desirable to provide for the introduction of certain limitations, should this prove necessary, and it is here that the possibilities provided by the various legal techniqnes may be of interest.

205. *Ante* paras. 96-103.

206. *Ante* paras. 93-95.