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SUMMARY RECORD OF THE HUNDRED AND FIFTY-NINTH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 August 1950, at 3 p.m.

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Present:

Chairman:

Mr. DAVIDSON (Canada), Vice Chairman

Members:

Australia

Mr. DESCHAMPS

Belgium

Mr. DELHAYE

Brazil

Mr. PENTEADO

Canada

Miss MEAGHER

Chile

Mr. BERNSTEIN

China

Mr. CHA

Denmark

Mr. FRIIS

France

Mr. ROCHEFORT

India

Mr. DESAI

Iran

Mr. KHALATBARY

Mexico

Mr. de ALBA

Pakistan

Mr. BROHI

Peru

Mr. CABADA

United Kingdom of Great Britain
and Northern Ireland

Mr. FEARNLEY

United States of America

Mr. HENKIN

Representatives of specialized agencies:

International Labour Organisation

Mr. FLORES

International Refugee Organization

Sir Arthur RUCKER

Mr. COHEN

Mr. BLANCHARD

Mr. KULIMANN

Representatives of non-governmental organizations:

Category A

World Federation of Trade Unions

Mr. DESAU

International Confederation of Free
Trade Unions

Miss SENDER

Representatives of non-governmental organizations (continued):

Category B and Register

Catholic International Union for Social Service	Miss de ROMER
Commission of the Churches on International Affairs	Mr. MOURAVIEFF Mr. REES
Consultative Council of Jewish Organizations	Mr. TEMKIN
Friends' World Committee for Consultation	Mr. BELL
International Co-operative Women's Guild	Miss ROSSIER
International Union of Catholic Women's Leagues	Miss de ROMER
International Union for Child Welfare	Miss DINGMAN
Liaison Committee of Women's International Organizations	Miss ROSSIER
World Jewish Congress	Mr. RIEGNER
World's Young Women's Christian Association	Mrs. BERESFORD FOX

Secretariat:

Mr. Humphrey	Director, Division of Human Rights
Mr. Alexander	Department of Social Affairs
Mr. Hogan	Department of Social Affairs
Mr. Dumontet	Secretary to the Committee

1. SECRETARY-GENERAL'S COMMUNICATION

The CHAIRMAN drew the attention of the meeting to the communication from the Secretary-General (E/1807) announcing the adoption by the Security Council on 31 July 1950 of a resolution on assistance for the civil population of Korea.

2. REFUGEES AND STATELESS PERSONS (item 32 of the agenda) (resumed from the 158th meeting)

Report of the Ad hoc Committee on Statelessness and Related Problems

(E/1618, E/1618/Corr.1, E/1703, E/1703/Corr.1, E/1703/Add.1-6, E/1704, E/1704/Corr.1 and 2, E/L.79, E/L.79/Add.1, E/L.81, E/L.82, E/AC.7/L.59 and E/AC.7/L.63)

Definition of "refugee" in article 1 of the draft Convention (continued)

The CHAIRMAN called for a resumption of the discussion on the alternative proposals for the definition of the term "refugee" prepared by the Ad hoc Committee (E/1618) for inclusion in the draft Convention.

Mr. DESCHAMPS (Australia) associated himself with the views expressed by the United States representative at the previous meeting on the object and scope of the definition of the term "refugee". His Government considered it important that the categories covered by that term should be precisely defined in any instrument involving definite legal obligations. He welcomed the United States representative's reply to the representative of Chile, to the effect that section B in the Ad hoc Committee's report was to be taken as a mere recommendation, and that any addition to the categories established in the text of the Convention would require the consent of the Contracting Parties. The provision in that paragraph answered the objection of the Mexican representative that no provision had been made for future emergencies.

Mr. ROCHEFORT (France) observed that the discussion at the previous meeting, while revealing conflicting points of view, had made it clear that

the definition of the term "refugee" now being studied by the Committee was the definition which was to appear in the draft Convention, and that the definition to be embodied in the terms of reference of the High Commissioner for Refugees need not be considered until later.

The amendments submitted by the United Kingdom and Belgian delegations were designed to embody in the Convention a definition of a general nature, whereas the French amendment proposed a definition based on a division into categories. The best procedure would appear to be first of all to decide in principle which of those two alternatives to adopt. Once that principle had been settled, the Committee could proceed to the examination of a detailed text.

Mr. FEARNLEY (United Kingdom) supported the French proposal. While his Government would prefer a broad, general definition, it recognized that governments might take up different positions in relation to the definition to be included in the Convention, which, after all, laid definite legal obligations on the Contracting Parties, and in relation to that to be included in the terms of reference of the High Commissioner. The definition adopted in the former case should not affect that to be adopted in the latter.

Mr. PENTEADO (Brazil) thought a clear and simple description of what should be understood by the term "refugee" in specific cases would be preferable to an all-embracing definition. He supported the French proposal, adding that his delegation would be in favour of definition by categories.

Mr. DELHAYE (Belgium) supported the French proposal that the Committee should first decide the issue of principle.

He also supported the remarks of the United Kingdom representative about the distinction to be made between the definition in the Convention and that in the terms of reference of the High Commissioner.

Mr. CHA (China) favoured a definition by categories. States that were asked to accept the obligations laid on them by the Convention would then know exactly what that would entail.

Miss MEAGHER (Canada) said her Government, which had recently given consideration to the question, favoured, in principle, a broad, general definition. She had not been convinced by the arguments of principle raised against such a definition, but she recognized the force of the argument that a broad definition might entail a substantial reduction in the number of governments prepared to accede to the draft Convention. In principle, the Canadian Government was in favour of a draft Convention of the type submitted, and expected to sign one drafted on such lines. She hoped that it would be possible to agree on a broad definition such as was advocated in the United Kingdom and Belgian proposals (E/AC.7/L.63 and E/AC.7/L.59), or at least on a more comprehensive definition than that provided in the ad hoc Committee's text, but there were grounds for believing that a less satisfactory convention signed by a large number of governments would be preferable to a more satisfactory one to which only a few governments would accede.

Mr. ROCHEFORT (France) drew attention to the fact that if a general definition were adopted in the Convention, many delegations would find it difficult to agree that article 1 of the Convention could not be subject to reservations. However liberal it wished to be, his delegation could not, in a contractual text, give binding force to a definition on the basis of which France would be required unreservedly to grant the status of refugees to all who entered her territory.

The CHAIRMAN called on the Committee to vote, as suggested by the representative of France, on the principle of whether the definition of the term "refugee" should be based on categories, as in the present text of the draft Convention (E/1618, page 12) and the French amendment thereto (E/L.82), or whether it should be couched in general terms, as proposed in the Belgian and United Kingdom amendments (E/AC.7/L.59 and E/AC.7/L.63), which represented a wider deviation from the original text than did the French amendment.

The proposal that the definition should be couched in general terms was rejected, 7 votes being cast against and 7 for, with 1 abstention.

Mr. FEARNLEY (United Kingdom) said he would abstain when a vote was taken on the alternative proposal, in order to avoid the procedural difficulty which would arise if votes were again equally divided. While his Government, as he had said, would have preferred a general definition, he recognized that a number of governments would find it difficult, if not impossible, to accede to the Convention if such a definition were adopted, and he would not therefore press his opposition to a restricted definition at the present stage.

Mr. FRIIS (Denmark) said his Government would have preferred a solution on a broad humanitarian basis, but since it was apparent that a general definition would tend substantially to reduce the number of signatories to the Convention, he had abstained from voting. He would vote in favour of a definition on the lines suggested in the French proposal.

The CHAIRMAN put to the vote the proposal that the definition of the term "refugee" should be based on categories.

The proposal was carried by 8 votes to 2, with 4 abstentions.

Mr. FEARNLEY (United Kingdom) reserved the position of his Government on the question of definition in respect of the future stages in the elaboration of the draft Convention after it had left the Economic and Social Council.

The CHAIRMAN stated that, in view of the decision on principle which had been adopted, the United Kingdom and Belgian amendments would be considered as withdrawn.

Mr. de ALBA (Mexico) said his delegation maintained its attitude on the question of substance. His Government therefore reserved its position, which it would defend when the draft Convention was discussed by the General Assembly.

Miss MEAGHER (Canada) entered a similar reservation on behalf of the Canadian Government, reserving freedom of action to the Canadian representatives in the ad hoc Committee, the General Assembly and any eventual diplomatic conference.

Mr. BROHI (Pakistan) entered a similar reservation on behalf of the Government of Pakistan.

The CHAIRMAN drew the attention of the Committee to the draft definitions given in article 1 of the draft Convention and in the French amendment thereto (E/L.82).

Mr. ROCHEFORT (France), comparing the text of article 1 of the draft Convention prepared by the Ad hoc Committee on Statelessness and Related Problems (E/1618, pages 12 and 13) with the amendment submitted by the French delegation (E/L.82), pointed out in the first place that the differences were more a matter of form than of substance.

Section A, paragraph 1, of the text submitted by the Ad hoc Committee concerned present or future refugees, whereas paragraphs 2 and 3 applied to those who had already become refugees. The French delegation had thought it more logical to deal first with the categories which might be described as "historical", and to reverse the numbering, so as to place last, as paragraph 3, the provisions concerning present or future refugees.

Moreover, it had appeared preferable, for the sake of clarity, to deal with all historical refugees in the same manner, and to draft paragraph 2 of the French amendment in the terms "any person recognised as a refugee by the International Refugee Organization". All those who had been recognised by IRO were refugees, and there was no necessity to re-examine their position.

In paragraph 3 of the amendment, which corresponded to paragraph 1 of the Ad hoc Committee's draft, the French delegation believed that it had improved the wording by removing the inconsistency caused by the use of the present tense in sub-paragraph (a) and the past tense in sub-paragraph (b). Although it might be necessary to leave, in the date of 1 January 1951, which appeared in sub-paragraph (a), in order to facilitate the accession of certain governments, the French delegation wished at least to make that dateline less rigorous by adding the words "or circumstances directly resulting from such events".

The French delegation had thought it necessary to add a new paragraph (E/L.82, page 2), at the end of Section A, providing that a previous negative

decision by the International Refugee Organization (IRO) could not be held against a person claiming refugee status.

That provision was in accordance with the desire expressed by the General Council of IRO itself, which, after explaining in a communication dated 22 March 1950 (GC/153/Rev.1) that the Organization had had to carry out its task with inadequate financial resources, and that the assumption of the functions of protection by the United Nations would open a new phase in that field, had adopted a resolution suggesting that the Economic and Social Council should not "apply any decisions previously made by the General Council or the Administration of IRO restricting the services of IRO to refugees and displaced persons, such as the 'freeze order' and the datelines which were adopted by IRO for purely financial or administrative reasons".

It had therefore appeared advisable to state that the fact of not having been declared eligible should not be a determining factor against bona fide refugees.

The French delegation had also thought it necessary to delete the date "3 September 1939" appearing in paragraph 1, sub-paragraph (a), of the Ad hoc Committee's text, since that date was subsequent to important events which had caused a considerable influx of refugees into France.

In section B, the French delegation proposed the addition of a new paragraph concerning the right of States to conclude private agreements designed to extend the benefits of the Convention to new categories of refugees. The object of that addition was to prevent the adoption of the Convention by the General Assembly from closing the question. Private agreements of that nature had already been concluded, and constituted a most important factor in the system of protection. Consequently, the French delegation did not think that the proposed addition should meet with any serious objections.

With regard to section C of the French amendment, he observed that the draft amendment submitted by the United States delegation (E/AC.7/L.62) called for the insertion of a similar provision in the terms of reference of the High Commissioner. If such a provision were in fact inserted in those terms of reference, the French delegation would not press for the insertion of its text in the draft Convention.

In section E, dealing with the loss of refugee status, the French delegation had added a new paragraph, 4, regarding refugees belonging "to a German minority in a country other than Germany and at the time in Germany enjoying the protection of the German Government".

That case was dealt with in section A of the Ad hoc Committee's draft, but it had seemed preferable to place it in section E, which dealt only with questions of fact.

In conclusion, the French delegation thought that the definition it had proposed, which was the result of long experience, was far better than the Ad hoc Committee's text, which would certainly not provide a good practical instrument in countries, such as France, receiving refugees and which the French Government would be unable to accept.

Mr. CHA (China) asked the French representative how he thought the text he had proposed could be applied to refugees in Korea, whose case had just been brought to the notice of the Council and Committee.

Mr. ROCHEFORT (France) replied that refugees in Korea were in the same position as Frenchmen who, in 1940, had left the north for the south of France, and for whom there had never been any question of international protection, which would have been contrary to the principles of individual State sovereignty.

Mr. CABADA (Peru) was glad to speak after the representatives of those States which were more immediately affected by the refugee problem. Although the definition of the term "refugee" prepared by the Ad hoc Committee was generally satisfactory, he could not accept the first paragraph. Of the alternative definitions submitted, the French text seemed to be best adapted to the United Nations conception of the problem, and was particularly satisfactory in that it was less restrictive than the Ad hoc Committee's draft.

Mr. HENKIN (United States of America) said that he had been prepared to support the draft submitted by the Ad hoc Committee. Since the French draft was based on the same principles and directed to the same ends, however, he would accept it, with certain modifications.

In section A, paragraph 1, there did not seem to be any need to include the first two dates mentioned, though he was not sure whether their inclusion would be harmful. Paragraph 2 would be less ambiguous if it read "any person who has been accepted by the International Refugee Organization as falling under its mandate". The last phrase of paragraph 3: "or circumstances directly resulting from such events and owing to such fear" did not seem necessary, as its meaning was included in the preceding phrase: "as a result of events in Europe before 1 January 1951"; its inclusion might be dangerous. The last paragraph in section A concerning eligibility did not seem necessary in the Convention, though the principle was sound.

With regard to the second paragraph of section B, while it, too, might well be omitted, he would agree to its retention, with certain modifications to clarify its meaning. The phrase "without committing the United Nations" was doubtless intended to mean that no two countries, by bilateral agreement, could bring other categories of refugees under the mandate of the High Commissioner; that should be explicitly stated. The phrase "to categories of refugees not covered by the present Article" should be avoided, as it implied that there were refugees at present requiring protection who would not be covered by the Convention.

He welcomed the statement by the representative of France that he would delete section C, provided the corresponding United States amendment to the Statute of the High Commissioner was accepted.

The word "when" at the end of the first phrase in paragraph E was a mis-translation. The French words "parce-que" should be translated as "because". There were various mis-translations in the first three paragraphs of section E, which he would deal with later, but he wished to endorse strongly the transfer of paragraph 4 from section A to section E, as that change would make it clear that there was no intention of discriminating against a particular racial group. It was important that the Convention should not act as an encouragement to the Federal German Government to lift its protection from the German minorities currently in process of assimilation in that country. However, the following text would seem preferable:

" 4) he is a person who was a member of a German minority in another country, and is in Germany or has taken up residence there".

As it stood, the words "enjoying the protection of the German Government" repeated the first phrase of section E.

Mr. BERNSTEIN (Chile) asked the representative of France the precise meaning of section B of the French amendment. Did it mean that the General Assembly might decide to extend the definition of the term "refugee" to other categories, and that that decision would be binding on all Contracting States, or did it mean that, if the General Assembly were to extend the term "refugee" to other categories, the agreement of all Contracting States would be necessary? In the latter case, a protocol would be required, and paragraph B would therefore be redundant.

Section C seemed to be phrased as a recommendation, and, in that form, should hardly be included among the specific provisions of a convention. Again, in the same paragraph, the High Commissioner for Refugees was mentioned for the first time; it seemed that the whole paragraph needed re-drafting if it was to be included in the Convention at all.

Mr. ROCHEFORT (France), replying to the Chilean representative, said that it would clearly be useless for the General Assembly to recommend the granting of refugee status to persons in new categories if governments did not agree to such a step. Nevertheless, the provision appearing in section B seemed useful, since it indicated that the matter was not closed. If it were desired to broaden the definition of refugees, all delegations would first have to have an opportunity of expressing their views in the General Assembly, and signatory States would then have to take the recommendation into account.

To the second point raised by the Chilean representative, he replied that he had already agreed to delete section C, provided similar provisions were included in the terms of reference of the High Commissioner.

Miss MEAGHER (Canada) asked whether the last five lines in section A were to be taken as referring to the paragraphs 1, 2 and 3 thereof.

Section D seemed to require clarification. It was difficult to understand exactly what was meant by the words "or any other act contrary to the purposes and principles of the Charter of the United Nations". The responsibilities for carrying out the purposes and principles of the Charter were incumbent on Member

States, not on individuals. She asked what sort of person, becoming a refugee, would be denied the benefits of protection under the Convention by that provision. The phrase "in its opinion" in the same paragraph seemed to open the door to serious abuse.

Mr. ROCHEFORT (France) replied, first, that the three provisions contained in section A, paragraphs 1 - 3, of the French amendment formed a complete whole and were intended to apply to the same persons.

Section D reproduced the text of section C of the Ad hoc Committee's text, and also appeared in the Constitution of IRO. It was clear that every sovereign State had the right to deal with war criminals as it saw fit, but the purpose of the text was to make it clear that the benefits of international protection could not be extended to such persons.

Mr. HENKIN (United States of America), speaking as a member of the Ad hoc Committee on Statelessness and Related Problems, explained that there had been considerable divergence of opinion on the drafting of section C of the definition, reproduced as section D in the French text. The object of the provision was to deny the United Nations mantle and international refugee status to war criminals, but as war criminals were difficult to define, and some countries used the term loosely, the determination was left open to the Contracting States in question.

Commenting on the statement made by the representative of France concerning section B, he did not believe that it was necessary to include provision that no two States could bring other categories of refugees under the Convention without the intervention of the General Assembly. As the Convention required the agreement of all Contracting States, a protocol seemed the only means of adding further categories

Mr. FEARNLEY (United Kingdom) suggested that the French draft of article 1 should be taken as the basis for discussion, since no one had objected to it in principle

Annex II of the Ad hoc Committee's report (E/1618, page 39) contained an

interpretation of section A, paragraph 3. Since there was little value in a draft Convention which needed a second document containing special interpretations of it, he thought that the interpretation on that page should be included in the Convention itself, which was what the French draft did.

Paragraph B provided two stages, each of which would present considerable difficulties, before further categories of refugees could be brought within the scope of the Convention. Since it would be difficult enough to ensure agreement by all the Parties to the Convention, he suggested that the provision for a prior recommendation by the General Assembly should be deleted, particularly as such a provision might result in unnecessary delay, if not a complete deadlock.

Mr. HENKIN (United States of America) suggested that, since there had been no objection to using the French text as the basis for further consideration of article 1, a small drafting group might be set up to make the changes already suggested and submit a revised text for consideration at the next meeting.

Mr. de ALBA (Mexico) expressed the view that as several representatives had not yet been given an opportunity of expressing their views on article 1, it would be premature to adopt the French text as the basis for discussion and to re-draft it on the basis of amendments which had themselves been inadequately discussed.

Mr. FEARNLEY (United Kingdom) thought it might be possible to decide at once that further consideration of article 1 should be based on the French text, but that it was too early to re-draft it in accordance with the suggestions made at the present and previous meetings.

Mr. CABADA (Peru) suggested that the Chairman should put the question to the vote.

The CHAIRMAN said that as the United States representative was not pressing his suggestion that a drafting group be set up, and as several delegations had not commented on the French draft, he would be reluctant to ask at that stage for a vote on the question whether that text should become the basis for the Committee's consideration.

The meeting rose at 4.55 p.m.