



REFUGEES AND STATELESS PERSONS

Memorandum by the Secretary-General

PART I: BACKGROUND INFORMATION

1. The General Assembly, on 12 February 1946, proclaimed that the problem of refugees was international in scope and nature.* On 15 December 1946, the Constitution of the International Refugee Organization and the Agreement on Interim Measures were approved by the General Assembly.**
2. The International Refugee Organization came into being in the following year and has since carried out its mandate as laid down in its Constitution. Its headquarters are in Geneva.

Economic and Social Council, ninth session

3. At its ninth session, the Economic and Social Council had before it a communication from the General Council of IRO, dated 11 July 1949, calling attention to the fact that IRO contemplated terminating its activities on 30 June 1950, and suggesting that the Council should examine the problem of future international action on behalf of refugees in the light of that knowledge. The Council also had before it a study relating to stateless persons, prepared by the Secretary-General in accordance with resolution 116 D (VI) adopted by the Council at its sixth session.
4. After examination of the problem, the Council adopted resolutions 248 A and B (IX), on 6 and 8 August 1949 respectively. Resolution 248 A (IX), inter alia, requested the Secretary-General to prepare, in consultation with the Advisory Committee on Administrative and Budgetary Questions, for the consideration of the fourth session of the General Assembly, a plan for such organization within

* Resolution 8 (I).

** Resolution 62 (I).

the framework of the United Nations as might be required to enable the latter to discharge the function of international protection of refugees, and related functions, taking into account various specified alternatives; and it also recommended that the General Assembly should decide the functions and organizational arrangements necessary for such protection after IRO had terminated its activities. Resolution 248 B (IX) established an Ad Hoc Committee to consider various proposals for the solution of the problems relating to the international status of refugees and of stateless persons and the elimination of statelessness.

Fourth session of the General Assembly

5. The General Assembly, at its fourth session, had before it Council resolution 248 (IX) and also a memorandum* addressed to the Assembly by the General Council of IRO in pursuance of a resolution adopted by that body on 20 October 1949, giving an appraisal of the problem of refugees and the latest information concerning IRO operations. The General Council stated that it had agreed to propose to the Governments of its members an additional period of nine months of IRO operations after 30 June 1950. It also pointed out that, if IRO operations were extended beyond that date, it would "still be necessary for the General Assembly to take decisions of principle forthwith and to make preparations for the establishment of the machinery which should come into force at a date no later than 1 January 1951".

6. The General Assembly, after examining these communications, adopted on 3 December 1949, resolution 319 A and B (IV). Resolution 319 A (IV) decided that a High Commissioner's Office for Refugees should be established as of 1 January 1951, the functions of the office being outlined in an annex to the resolution. The Secretary-General was requested to submit to the Economic and Social Council draft provisions to implement the resolution, and to prepare a draft budget for the operation in 1951 of the High Commissioner's Office for Refugees. Finally, the resolution requested the Council to prepare, at its eleventh session, "a draft resolution embodying provisions for the functioning of the High Commissioner's Office for Refugees and to submit the draft resolution to the General Assembly at its fifth regular

* A/C.3/528 (see Official Records of the fourth session of the General Assembly, Third Committee, Annexes, page 43).

session". Resolution 319 B (IV) decided "in the absence of definite data, to postpone, until its fifth regular session, the examination of the problems of assistance" raised by the IRO memorandum of 20 October 1949, "should these problems still be in existence at that date".

Economic and Social Council, eleventh session

7. In accordance with the General Assembly resolution 319 A (IV), the Secretary-General submitted to the Economic and Social Council at its eleventh session a draft resolution* containing provisions for the implementation of the Assembly resolution, based on the annex thereto.

8. The Council, after considering this text, adopted, on 11 August 1950, resolution 319 A (XI), transmitting, for the consideration of the General Assembly, a draft resolution, under the terms of which the Assembly would call upon Governments "to co-operate with the High Commissioner in the performance of his duties concerning refugees falling under the competence of his Office", with special regard to a number of specific measures. Annexed to the draft resolution was a proposed Statute of the High Commissioner's Office for Refugees covering General Principles; Organization; Powers, Functions and Competence; and General Provisions, including the method of election of the High Commissioner and the term of his appointment.

9. The Council also adopted, on 16 August 1950, resolution 319 B (IV), in which it took note of the report of the Ad Hoc Committee on Refugees and Stateless Persons and the draft agreements contained therein, and decided on a draft preamble and definition of the term "refugee" to be included as article 1 of the draft Convention relating to the Status of Refugees prepared by the Ad Hoc Committee (two fundamentally opposite views had been expressed during the discussions, one advocating that the definition of the term "refugee" should set out specific categories of refugees, while the other advocated a broad definition covering all legitimate refugees and considerable discussion had ensued).

* E/1669.

PART II. TRANSMISSION OF DRAFT RESOLUTION

10. The draft resolution and Annex submitted to the General Assembly by the Economic and Social Council and attached hereto have been presented, at the suggestion of the Chairman of the Social Committee of the Economic and Social Council on the proposal of the United Kingdom delegation, in such manner as to indicate the parts which were "new additions to the general principles already adopted by the General Assembly".*

11. The correlation between General Assembly resolution 319 A (IV) of 3 December 1949 and the new draft is indicated in columns 1 and 2.

12. The operative parts of General Assembly resolution 319 A (IV) of 3 December 1949 which have been omitted from the new text given in column 1 are noted in the footnotes given in Appendix I. The wording of General Assembly resolution 319 A (IV) which has not been reproduced in any comparable form in the new draft is underlined in column 2.

13. Any paragraph or clause which has been reproduced in substantially the same form is also indicated in column 2 and any entirely new clause or phrase is indicated accordingly.

14. From these indications the differences between the two resolutions and the measure of any departure from the general principles already adopted can, with the assistance of the footnotes provided in Appendix I, be appropriately evaluated.

* Summary Record of 173rd meeting of Social Committee (eleventh session)
12 August 1950.

REFUGEES AND STATELESS PERSONS

PROVISIONS FOR THE FUNCTIONING OF THE HIGH COMMISSIONER'S
OFFICE FOR REFUGEES

Resolution adopted by the Economic and Social Council on 16 August 1949 for submission to the General Assembly at its fifth session (319 (XI)).

Relevant portion or portions of General Assembly resolution 319 A (IV) of 3 December 1949 and of the Annex thereto.

The Economic and Social Council,

Considering that, at its fourth session, the General Assembly requested the Council to prepare, at its eleventh session, a draft resolution embodying provisions for the functioning of the High

Commissioner's Office for Refugees and to submit this draft resolution to the General Assembly for consideration at its fifth regular session, and

Having considered the draft resolution submitted by the Secretary-General*

Decides to transmit to the General Assembly the following draft resolution for consideration by the General Assembly at its fifth session:

"The General Assembly,

"In view of its resolution 319 A (IV) of 3 December 1949,

"Adopts the Annex to the present resolution, being the Statute of the High Commissioner's Office for Refugees; and

* E/1569.

"Calls upon Governments to co-operate with the High Commissioner in the performance of his duties concerning refugees falling under the competence of his Office, especially by:

"(a) Becoming parties to international conventions providing for the protection of refugees, and by taking the necessary steps of implementation under such conventions;

"(b) Entering into special agreements with him for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;

"(c) Admitting refugees to their territories, not excluding those in the most destitute categories;

"(d) Co-operating with the High Commissioner in efforts to promote the voluntary repatriation of refugees;

"(e) Promoting the assimilation of refugees, especially by facilitating their naturalization;

"(f) Providing refugees with travel and other documents such as would normally

Annex, paragraph 4

The High Commissioner, in order to promote, stimulate and facilitate the execution of the most suitable solution to the problem with which he is entrusted, should provide for the protection of refugees and displaced persons falling under the competence of the Office by:

(a) Promoting the conclusion and ratification of international conventions providing for the protection of refugees, supervising the application of the provisions of such conventions, and proposing any necessary amendments thereto;

(b) Promoting through special agreements with Governments, the execution of any measures calculated to improve the situation of refugees and to reduce the number of refugees requiring protection;

(c) Assisting Governments and private organizations in their efforts to promote voluntary repatriation of refugees or their assimilation within new national communities.

(NEW)

/be provided

be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement; and in particular, where a State is Party to the Inter-

Governmental Agreement on Refugee Travel Documents signed in London on 15 October 1946, by continuing to issue and accept as valid documents as provided by that Agreement until such State shall become a party to any agreement superseding it;

"(g) Permitting refugees to transfer their assets and especially those necessary for their resettlement; and (NEW)

"(h) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them. (NEW)

Annex

"Statute of the High Commissioner's Office for Refugees"

"Chapter I - General Principles"

"(1) It shall be the duty of the High Commissioner for Refugees to provide international protection* for the refugees falling under his competence and to seek permanent solutions for the problems of these refugees, by assisting Governments; and, subject to the approval of the Governments concerned, voluntary agencies, to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

Preamble to the resolution

The General Assembly

Considering that the problem of refugees is international in scope and nature and that its final solution can only be provided by the voluntary repatriation of the refugees or their assimilation within new national communities,

Recognizing the responsibility of the United Nations for the international protection of refugees, (see also paragraphs 4 (c) and (d) and 8 (b) of the annex as regards co-operation with voluntary agencies).

See footnote 1 in Appendix I.

"(2) The High Commissioner shall follow policy directives given to him by the United Nations according to methods determined by the General Assembly.*

"(3) The High Commissioner's work shall be of an entirely non-political character, and shall relate, as a rule, to groups and categories of refugees.

"(4) The High Commissioner's Office shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the High Commissioner's Office shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

"Chapter II - Organization

"A. High Commissioner's Office

"(1) The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General.

* See footnote 2 in Appendix I.

(SAME) Annex, paragraph 1

The High Commissioner's Office for Refugees should

(c) Receive policy directives from the United Nations according to methods to be determined by the General Assembly.

(SAME) Annex, paragraph 8

The High Commissioner's work should be of an entirely non-political character and relate as a rule to groups and categories of refugees ; . . .

(SAME) Annex, paragraph 1 (b)

The High Commissioner's Office for Refugees should:

(b) Be financed under the budget of the United Nations.

(SAME) Paragraph 2 of the resolution, The General Assembly

2. Decides that, unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the High Commissioner's Office should be borne on the budget of the United Nations, and that all other expenditures relating to the activities of the High Commissioner should be financed by voluntary contributions.

Annex, paragraph 9

The High Commissioner should be elected by the General Assembly, on the nomination of the Secretary-General, for a term of three years from 1 January 1951.

The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly.

"The High Commissioner shall be elected for a term of three years, from 1 January 1951.

"(2) The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

"(3) Within the limits of the budgetary appropriations provided, the staff of the High Commissioner's Office shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

"Such staff shall be chosen from persons devoted to the purposes of the High Commissioner's Office

"Their conditions of employment shall be the same as those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

Provisions may also be made to permit the employment of personnel without compensation.

"B. Advisory Committee for Refugees

"The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of

(SAME) Annex, paragraph 10

The High Commissioner should appoint, for a period of three years a deputy High Commissioner, who should not have the same nationality as the High Commissioner ...

(SAME) Annex, paragraph 10

(The High Commissioner) should also appoint, under the regulations of the United Nations, a small staff of persons devoted to the purposes of the Office to assist him.

(NEW)

Annex, paragraph 2.

Means should be provided whereby interested Governments, non-members of the United Nations, may be associated with the work of the High Commissioner's Office. /representatives of

representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

"C. Headquarters

"The High Commissioner's Office for Refugees shall be located in Geneva, Switzerland.

"Chapter III - Powers, Functions and Competence

"A. Powers

"(1) The High Commissioner shall consult the Governments of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative approved by the government of that country. Subject to the foregoing, the same representative may serve in more than one country.

"(2) The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subordinate bodies.

"The High Commissioner shall report annually to the General Assembly through the Economic and Social Council.

(SAME) Annex, paragraph 12

The High Commissioner's Office for Refugees should be located in Geneva.

Annex, paragraph 11

(SAME)

The High Commissioner should consult the Governments of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, he may appoint a representative approved by the Government of that country. Subject to the foregoing, the same representative may serve in more than one country.

(NEW)

Annex, paragraph 7

(SAME) The High Commissioner should report annually on his work to the General Assembly through the Economic and Social Council.

/"(3) The High

"(3) The High Commissioner may invite the assistance of the various specialized agencies.

"B. Functions

(1) In order to promote, stimulate and facilitate the execution of the most suitable solution to the problem with which he is entrusted, the High Commissioner shall provide for the protection of refugees falling under the competence of his office by:

"(a) Promoting the conclusion and ratification of international conventions providing for the protection of refugees, supervising their application and proposing amendments thereto;

"(b) Promoting through special agreements with Governments, the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

"(c) Assisting Governments and private organizations in their efforts to promote voluntary repatriation or assimilation within new national communities;

Annex, paragraph 8 (a)

The High Commissioner should ...
Keep in close touch with Governments* and inter-governmental organizations concerned and invite the assistance of the various specialized agencies.

Annex, paragraph 4

The High Commissioner, in order to promote, stimulate and facilitate the execution of the most suitable solution to the problem with which he is entrusted, should provide for the protection of refugees and displaced persons falling under the competence of the Office by:

(SAME) (a) Promoting the conclusion and ratification of international conventions providing for the protection of refugees, supervising the application of the provisions of such conventions, and proposing any necessary amendments thereto;

(SAME) (b) Promoting through special agreements with Governments, the execution of any measures calculated to improve the situation of refugees and to reduce the number of refugees requiring protection;

(SAME) (c) Assisting Governments and private organizations in their efforts to promote voluntary repatriation of refugees or their assimilation within new national communities;

* See Chapter III B (1) (b) of Annex to Economic and Social Council resolution 319 A (XI).

/"(d) Facilitating the

"(d) Facilitating the co-ordination of the efforts of voluntary agencies concerned with the welfare of refugees;

"(e) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

"(f) Keeping in close touch with the Governments and inter-governmental organizations concerned.

"(2) The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, official agencies which he deems best qualified to administer such assistance.

"The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized."

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

"The High Commissioner shall include in his annual report a statement of his activities in this field.

(SAME) (d) Facilitating the co-ordination of the efforts of voluntary agencies concerned with the welfare of refugees.

(SAME) Annex, paragraph 8 (b)

The High Commissioner should:

(b) Establish contact in such manner as he may think best with private organizations dealing with refugee questions.

(SAME) Annex, paragraph 8 (a)

The High Commissioner should:

(a) Keep in close touch with the Governments and inter-governmental organizations concerned...

(SAME) Annex, paragraph 5

The High Commissioner should distribute among private and, as appropriate, official agencies which he deems best qualified to administer such assistance any funds, public or private, which he may receive for this purpose.

(NEW)

(SAME) Annex, paragraph 5

The High Commissioner should ... not, however, appeal to Governments or make a general appeal to non-governmental sources except with the prior approval of the General Assembly.

(SAME) Annex, paragraph 5

For the information of the General Assembly, the High Commissioner

/should include

"(3) The High Commissioner shall engage in such additional activities, including repatriation and resettlement activities, as the General Assembly may determine, within the limits of the resources placed at his disposal.

"C. Competence

"(1) Persons falling under the competence of the High Commissioner's Office for Refugees shall be those defined in article 1 of the Convention relating to the Status of Refugees as approved by the General Assembly, and such other persons as the General Assembly may from time to time determine.

should include in his annual report a statement of his activities in this field.

Paragraph 1 of the resolution (in part)

The General Assembly

Decides to establish, as of 1 January 1951, a High Commissioner's Office for Refugees in accordance with the provisions of the annex to the present resolution to discharge the functions enumerated therein and such other functions as the General Assembly may from time to time confer upon it.

(SAME) Annex, paragraph 6

The High Commissioner should engage in such additional activities, including repatriation and resettlement activities, as the General Assembly may determine.

(NEW)

Annex, paragraph 3

Persons falling under the competence of the High Commissioner's Office for Refugees, should be, for the time being, refugees and displaced persons defined in annex I of the Constitution of the International Refugee Organization and, thereafter, such persons as the General Assembly may from time to time determine, including any persons brought under the jurisdiction of the High Commissioner's Office under the terms of international conventions or agreements approved by the General Assembly.

/The High

The High Commissioner shall determine which cases fall within the categories mentioned in paragraph c of article 1 of the Convention, and are therefore excluded from his mandate.

(See Appendix II: Article 1 of chapter 1 of the draft Convention on Refugees).

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

"Chapter IV - General Provisions

"(1) The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

"(2) The administration of the Office of the High Commissioner shall be subject to the financial regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

"(3) Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated.

(NEW)

(See annex 1 of the IRO Constitution)

(NEW)

Annex, paragraph 1

The High Commissioner's Office for Refugees should:

(e) Be so organized within the framework of the United Nations as to possess the degree of independence and the prestige required for the effective performance of the High Commissioner's duties.

(NEW)

Annex, paragraph 5

The accounts relating to these funds should be periodically verified by the auditors of the United Nations.

Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the financial regulations of the United Nations and rules promulgated thereunder by the Secretary-General. (NEW)

"(4) The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations. (NEW)

"(5) The General Assembly shall review, not later than at its eighth regular session, the arrangements for the High Commissioner's Office for Refugees with a view to determining whether the Office should be continued beyond 31 December 1953.

"(6) All provisions of General Assembly resolution 319 A (IV) and the Annex thereto not expressly reproduced in this text shall remain in force.*"

Paragraph 5 of the resolution

(SAME) The General Assembly
Decides to review, not later than at its eighth regular session, the arrangements for the High Commissioner's Office for Refugees with a view to determining whether the Office should be continued beyond 31 December 1953.

(NEW)

* See footnote 3 in Appendix I.

APPENDIX I

FOOTNOTES

- 1/ A definition of the words "international protection" is implied in chapter III, of the Annex, section B (Functions) but the protection there envisaged is a long-term function which will normally only operate if repatriation, resettlement and naturalization are impossible and if refugees remain in a country as refugees long enough to benefit by agreements which may involve the passing of laws or ratification of treaties.
- 2/ The General Assembly has given no indication of the methods proposed.
- 3/ No substantive decisions of resolution 319 A (IV) have been omitted from the new text in column 1, although some additions have been made as noted in column 2.

Apart from the Consideranda of resolution 319 A (IV) beginning

"Having examined ..." previous resolutions, and the immediately following paragraph,

"Considering that in its afore-mentioned resolution the Economic and Social Council requested"

the only omissions in the new text are therefore paragraphs 3 and 4 in which the General Assembly requested the Secretary-General and the Economic and Social Council to prepare and transmit the appropriate documentation to the fifth session of the General Assembly. (See, however, the omission of paragraph 1 (a) of the Annex to the General Assembly resolution reproduced in column 2 opposite chapter IV, paragraph 1, of the new statute, as well as various words and phrases underlined in column 2.)

APPENDIX II

DRAFT CONVENTION ON REFUGEES

Definition of the term "Refugee"

(Chapter I, Article I)

"A. For the purposes 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 Conventions of 28 October 1933 and 10 February 1938, and the Protocol of 14 September 1939;

"(2) Who has been accepted by the International Refugee Organization as falling under its mandate;

"(3) Who has had, or has, well-founded fear of being the 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, is unwilling, to avail himself of the protection of the Government of the country of his nationality, or, if he has no nationality, has left, shall leave, or remains outside the country of his former habitual residence.

"The decision as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugees being recognized in the case of persons who otherwise fulfil the conditions of this article.

"B. This Convention shall not apply to any refugee enjoying the protection of a Government because

"(1) He has voluntarily re-availed himself of the protection of the government of the country of his nationality;

"(2) Having lost his nationality, he has voluntarily re-acquired it;

"(3) He has acquired a new nationality and enjoys the protection of the Government of the country of his nationality;

"(4) He has voluntarily re-established himself in the country which he left

/ or outside

or outside which he remained owing to fear of persecution;

"(5) As a former member of a German minority, he has established himself in Germany or is living there."

"C. No contracting State shall apply the benefits of this Convention to any person who, in its opinion, has committed a crime specified in article VI of the London Charter of the International Military Tribunal. No contracting State shall be obliged, under the provisions of this Convention, to grant refugee status to any person whom it has serious reasons to consider as falling under the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights."