



Monday, 11 December 1950, at 10.45 a.m.

Lake Success, New York

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Chairman: Mr. G. J. VAN HEUVEN GOEDHART (Netherlands).

Refugees and stateless persons (A/1385, A/1396, A/C.3/528, A/C.3/538, A/C.3/540, A/C.3/547, E/1850, E/1850/Annex, A/C.3/L.142 and A/C.3/L.151) (*concluded*)

[Item 32]*

(a) PROVISIONS FOR THE FUNCTIONING OF THE HIGH COMMISSIONER'S OFFICE FOR REFUGEES: DRAFT RESOLUTION PROPOSED BY THE ECONOMIC AND SOCIAL COUNCIL (A/C.3/L.142 and A/C.3/L.151) (*concluded*)

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text prepared by the Committee for the statute of the High Commissioner's Office for Refugees (A/C.3/L.151).

2. Mr. LESAGE (Canada), Chairman of the Drafting Committee, said that all information necessary for a full understanding of the text was contained in the explanatory note. He made it clear that the Committee had not made any change in the substance of the document. The alterations concerned only the form and had been accepted by mutual agreement without being put to the vote.

3. Some alterations of form were still necessary. For example, the last sentence in chapter I, paragraph 1, should be a separate sub-paragraph. Also, the order in paragraph 2 should be reversed and the negative proposition should come first.

4. The CHAIRMAN said that those changes would be made in the final text.

5. Mr. ROBINSON (Israel) noted that in paragraph 6, the last sentence of sub-paragraph (a) (ii) should be a separate sub-paragraph.

6. Mrs. AFNAN (Iraq) thought that since the provision regarding the inclusion of categories by the General Assembly, which had appeared in chapter III, section C, paragraph 1, of the original text (A/1385), had been omitted, paragraph 9 of the text before the Committee (A/C.3/L.151) should also be deleted. If it were decided to retain that paragraph, the original provision regarding competence would have to be restored, as she herself had already suggested.

7. Mr. LESAGE (Canada) said that the Drafting Committee had in fact studied that suggestion, but had thought that there was no point in a specific reference to a provision which was implicit. It was unnecessary to state explicitly that a law or statute could be amended. It went without saying that the General Assembly would have full freedom to broaden or restrict the field of competence of the High Commissioner.

8. Mrs. AFNAN (Iraq) thought that the formula used in paragraph 9 was less specific than the original clause: "and such other persons as the General Assembly may from time to time determine". The new wording might be wrongly interpreted, in the sense that the High Commissioner might assume functions which the General Assembly had not entrusted to him.

9. In the circumstances, she asked for a separate vote on paragraph 9.

10. Mr. ROBINSON (Israel) noted that the original wording mentioned by the representative of Iraq, and the text of paragraph 9 then before the Committee, were based on different considerations. The significance of paragraph 9 lay essentially in the last words, "within the limits of the resources placed at his disposal". That provision was the result of the many discussions which had taken place the year before regarding the financial powers of the High Commissioner. It had been decided

* Indicates the item number on the General Assembly agenda.

at that time that, if the competence of the High Commissioner was extended in the future, it would be within the limits of the resources placed at his disposal. What was implied in paragraph 9 was not therefore an extension of functions *ratione personae*, but simply the exercise of additional functions made necessary by repatriation or resettlement.

11. Mr. MOODIE (Australia) confirmed the Israel representative's interpretation. The text of paragraph 9 had only been adopted after very lengthy discussion. It had been thought that it might eventually be useful for the High Commissioner to assume functions other than those originally provided for, on condition that it was within the limits of his resources. Paragraph 9 therefore fulfilled a definite requirement.

12. Mr. RAAFAT (Egypt) noted that the expression "under the auspices of the United Nations" appearing in chapter I, paragraph 1, was superfluous, since the paragraph already included the words "acting under the authority of the General Assembly".

13. In addition, paragraph 7, sub-paragraph (iii), which was obviously of importance to the Arab refugees, stipulated that the competence of the High Commissioner should not extend to persons who were receiving protection or assistance from other organs or agencies of the United Nations. However, it should be understood that if those agencies ceased to function, all the refugees in question would immediately come under the protection of the High Commissioner. That was how the paragraph should be interpreted.

14. Lastly, chapter III, paragraph 13, provided that the High Commissioner should be "elected by the General Assembly on the nomination of the Secretary-General". He thought that in order to enjoy proper authority, the Deputy High Commissioner should also be appointed by the General Assembly and not by the High Commissioner.

15. The CHAIRMAN noted that that proposal was an amendment of substance and ought therefore to have been submitted before.

16. Mr. ROBINSON (Israel) thought that sub-paragraph (iii) of paragraph 7, in excluding persons receiving protection from other United Nations agencies, should make it quite clear that that exclusion did not apply to persons coming under the competence of IRO.

17. The CHAIRMAN recognized the appositeness of that remark, but explained that that clause, which had appeared in document A/C.3/L.131/Rev.1 (section III, paragraph 2 (c)), had been deliberately omitted when the final vote was taken.

18. Mr. LESAGE (Canada) noted that according to paragraph 6 of the draft statute, the competence of the High Commissioner clearly extended to persons with whom IRO was then dealing. It was therefore unnecessary for the Committee to amend paragraph 7, sub-paragraph (iii), but an explanatory note could be inserted in the report.

19. Mr. ROBINSON (Israel) would have preferred to see the clause which had been deleted restored, but accepted the suggestion of the Chairman of the Drafting Committee that an explanatory note should be inserted in the report.

20. Mrs. AFNAN (Iraq) and Mrs. MENON (India) were opposed to the insertion of an explanatory note regarding paragraph 7, sub-paragraph (iii).

21. Mr. MOODIE (Australia) recalled that when the Australian proposal concerning the definition of the term "refugee" in the draft convention (A/C.3/L.133) had been submitted (332nd meeting), it had not been thought necessary to refer to IRO in the list of exceptions. Subsequently, the Australian amendment had been adopted with regard to the statute and there was therefore no need to introduce a reference which had not been inserted in the first text of the definition.

22. Mr. ROBINSON (Israel) said that, in the circumstances, he would not insist.

23. Mr. BAROODY (Saudi Arabia) noted with regret that the Drafting Committee had not been content with alterations of form but had added provisions to paragraph 9 which had not appeared in the original text.

24. With regard to paragraph 7, sub-paragraph (iii), he felt that, as it stood, its application appeared to be limited to the date on which the statute was adopted. The text advocated by Saudi Arabia, according to which the list of exceptions would remain in force only as long as the other agencies were operating, had been deleted.

25. If the wording which he had proposed could no longer be adopted, he suggested that the words "is receiving" should be replaced by the words "is still receiving", or else that the following phrase should be added: "as long as those organs or agencies remain in operation".

26. Mr. LESAGE (Canada) wished to reply to the two questions raised by the representative of Saudi Arabia.

27. As far as paragraph 9 was concerned, the Drafting Committee had added nothing. A reference to document A/C.3/L.144 and Corr.1, chapter II, paragraph 4, would make that quite plain. The text adopted by the Third Committee already contained the clause which appeared in paragraph 9 of the text before the Committee.

28. With regard to the words "as long as those organs or agencies remain in operation", which Mr. Baroodi suggested should be added, he himself felt that they would add nothing to the text. It was not the length of time for which these agencies existed which mattered, but the fact that they were protecting refugees. Moreover, it was important to maintain the harmony and balance between the various sub-paragraphs of paragraph 7. If sub-paragraph (iii) were amended, it would also have to be made plain in sub-paragraph (i) that the exclusion did not apply only at the time when the statute was adopted. It was quite obvious that the clause did in fact apply, like the other sub-paragraphs, at the time when the case was considered. In any event, any decision regarding a revision of the text of that paragraph would require a two-thirds majority in the Committee.

29. Mr. DAVIN (New Zealand) agreed with the comments of the Canadian representative. He explained

that a legislative text was usually drawn up in the present tense, although it applied to the future.

30. Moreover, the words "as long as those organs or agencies remain in operation" were superfluous, since it was impossible to see how the refugees could benefit from the protection of agencies which had ceased to exist.

31. Mr. PEREZ PEROZO (Venezuela) noted that, although the various sub-paragraphs of paragraph 7 were set forth in the same form in the English text, that was not so in the Spanish text, and the comment of the representative of Saudi Arabia was not without force. He did not think, however, that anything should be added to the sentence and felt that, in the Spanish text, the use of the subjunctive in all the sub-paragraphs of paragraph 7 would settle the difficulty.

32. Mr. RAAFAT (Egypt) did not think that a decision by a two-thirds majority would be required in order for the Committee to alter the sub-paragraph in question, since the matter involved was the interpretation of the text and not a revision properly so called. He felt, moreover, that it would be sufficient to indicate in the report how sub-paragraph (iii) should be interpreted.

33. Mr. BAROODY (Saudi Arabia) was not opposed to the idea of giving an interpretation of the sub-paragraph in the report, although the indications in the report would have no binding force.

34. In answer to the second argument raised by the New Zealand representative, he pointed out that there had been a time when the League of Nations had been in existence although it could not be said that it was in operation.

35. Mr. NORIEGA (Mexico) considered that the suggestion made by the Egyptian representative would make it possible for the problem to be solved. However, if all those delegations which were opposed to the alteration suggested by the representative of Saudi Arabia were sincere in saying that it was impossible to give the sub-paragraph any other interpretation than that embodied in the altered text, he could not see why they would not agree to make that alteration. He felt, in fact, that the indication, in the Committee's report, of the meaning which should be attributed to the sub-paragraph would not be sufficient to prevent misinterpretations, since the officials of the High Commissioner's Office might not be familiar with the report, might not have it available and might apply the sub-paragraph literally.

36. Mr. LEQUESNE (United Kingdom) associated himself with the objections of the Canadian representative and thought that the addition proposed by the representative of Saudi Arabia, far from simplifying the problem, would even complicate it by raising two difficulties.

37. First, sub-paragraph (iii), instead of defining only one of the cases enumerated in paragraph 7, as it did in its existing form, would specify two interconnected conditions; but although the organs concerned might still be exercising their functions, they might no longer be according protection.

38. Consequently, the representative of Saudi Arabia had raised a fresh complication by throwing doubt on

the meaning of the expression "in operation", and that would require an explanatory note.

39. Mr. NORIEGA (Mexico) said that legal textbooks gave prominence to *locus* and time with regard to the application of law. The literal meaning of sub-paragraph (iii) would seem to be that the High Commissioner would in future automatically cease to protect persons with whom other organs were concerned. It was essential that the continuity of the protection of refugees should be ensured. The Saudi Arabian proposal seemed entirely logical.

40. Competence was implicit in the idea of protection, because the fact that persons were receiving protection from certain organs meant that those organs were in fact performing their functions.

41. In reply to Mr. LESAGE (Canada), who cited an example from the penal code to show that law was not only intended to punish offences committed at the time of its promulgation, Mr. NORIEGA (Mexico) pointed out that penal legislation demanded that the time when the crime had been committed should be settled, because it did not recognize the principle of retroactivity.

42. Mr. RAAFAT (Egypt) explained that the question was a serious one because, as everyone was aware, it had a bearing on the Palestine Arab refugees. Nevertheless, the wording of the addition suggested by the Saudi Arabian representative was not satisfactory and he proposed that it should read as follows: "so long as they continue to receive protection from these organs or agencies". If the Committee failed to find the solution to that question immediately, the question would undoubtedly be brought before the General Assembly.

43. He therefore formally proposed that the Committee should either adopt the amendment submitted by the Saudi Arabian delegation or include in its report some interpretation of that sub-paragraph.

44. Mr. ROCHEFORT (France) reminded the Committee that the list of exceptions had been submitted originally by the Saudi Arabian, Egyptian and Lebanese delegations (328th meeting). Their amendment had meant that the Arab refugees were provisionally excluded from the terms of reference of the High Commissioner so long as the organ set up to help Palestine refugees functioned, but would come within the competence of the High Commissioner as soon as that organ ceased to exist.

45. The Committee should endeavour to adopt a solution that would be as satisfactory as possible to the delegations concerned.

46. Mr. MOODIE (Australia) reminded the Committee that the sub-paragraph under discussion had originally been based on an Australian proposal but, he had no objection to the alteration of the text in order to allay all misgivings.

47. Mr. ARUTIUNIAN (Union of Soviet Socialist Republics) requested that the vote should be taken unless the representatives of Saudi Arabia and Egypt objected.

48. Mr. BARODY (Saudi Arabia) said he had no objection.

49. He pointed out that there were two texts before the Committee: the Saudi Arabian one substituting the words "who is still receiving" for the words "who is receiving", and the Egyptian proposal for the addition of the phrase proposed by that representative.

50. The CHAIRMAN called for a vote on the motion for the closure of the debate on the text as a whole.

The motion was adopted by 43 votes to none, with 2 abstentions.

51. The CHAIRMAN asked the Committee to decide whether it wished to revise the text of sub-paragraph (iii) of paragraph 7. Such a decision would require a two-thirds majority.

It was decided by 23 votes to 5, with 18 abstentions, that paragraph 7, sub-paragraph (iii), should be revised.

52. The CHAIRMAN put to the vote the Saudi Arabian amendment to substitute the words "who is still receiving" for the words "who is receiving".

That amendment was adopted by 22 votes to 1, with 23 abstentions.

53. In reply to Mr. LESAGE (Canada), who asked what interpretation should be given to sub-paragraph (iii) if the organs or agencies concerned accorded their protection to a new group of refugees, the CHAIRMAN said that he could not make interpretations.

54. He reminded that Committee that the representative of Iraq had requested a separate vote on paragraph 9 of the draft statute.

55. He put paragraph 9 of the draft statute to the vote.

The paragraph was adopted by 18 votes to 11, with 14 abstentions.

56. The CHAIRMAN put to the vote the draft resolution as amended (A/C.3/L.142), together with the annex to the draft resolution (draft statute of the High Commissioner's Office) (A/C.3/L.151), as amended.

That draft resolution and the annex thereto were adopted by 26 votes to 5, with 12 abstentions.

Complaint of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory (A/1339, A/1339/Add.1 and A/C.3/L.145/Rev.1) (continued)

[Item 67]*

57. Mr. PAZHAWAK (Afghanistan) said that he would confine himself to replying to remarks made with regard to the amendment submitted by his delegation (A/C.3/L.148).

58. He had been glad to note that the sponsors of the joint draft resolution had taken points 3 and 4 of his amendment into account when drafting their revised text (A/C.3/L.145/Rev.1).

59. They had said that they were not opposed to the adoption of point 1 of his amendment: but in re-

questing the alteration of the title, he had meant that the title "Measures for the peaceful solution of the problem of prisoners of war" should be substituted for the title "Complaint of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory". They had, however, retained the original title and had simply added the title proposed by the Afghan delegation as a sub-title.

60. He had not thought that there could be any mistake as to his meaning. When he had submitted those amendments (342nd meeting), he had expressed his wish that the Committee should adopt a resolution making no direct allusion to any country and no accusation. He had also said that the question of prisoners of war was of general concern and that if the United Nations wanted it to be examined by the Third Committee, which was particularly concerned with humanitarian questions, the title used until then would make that difficult.

61. He had also thought that the very wording of the Afghan amendment made its intention quite clear. He had specifically explained that one title should be substituted for another. It was the more surprising that a new sub-title had been added to the former title inasmuch as the whole spirit of the new proposal was quite different from that of the original text.

62. In proposing the substitution for the "present title", the Afghan delegation had thought that that word could be applied only to the item itself. If it had meant the title of the draft resolution, it would have used the expression "sub-title" instead of "title".

63. He had not proposed the deletion of paragraph 3. Obviously his delegation did not in principle oppose the establishment of a United Nations commission for prisoners of war, which was one of the steps the United Nations had the right to take towards the peaceful solution of the problem of prisoners of war.

64. The Afghan delegation had had an additional reason to believe that the Committee had not misunderstood the meaning of the amendment which it had submitted. In all the documents before it the title was the one which the Afghan delegation had wished to see altered and there had been no question of a sub-title. In all those documents the draft resolution was referred to only as the draft resolution submitted by Australia, the United Kingdom and the United States of America, without any reference to its purpose or content.

65. He was convinced that by accepting his amendment, the sponsors of the joint draft resolution had shown that they realized that the amendment was intended to render their draft objective. In order to ensure the continuation of the spirit of co-operation and understanding among the members of the Committee, it would be wise to accept the Afghan amendment, bearing in mind the remarks about its meaning which he had just made.

66. The CHAIRMAN noted that the decision as to the title of a given agenda item rested with the General Assembly and that the Committee had no right to alter it.

67. Mr. LEQUESNE (United Kingdom) said the Committee could, if it wished, use the title proposed by the Afghan representative as the heading of the draft resolution.

68. Mr. LANNUNG (Denmark) stressed the magnitude of the humanitarian problem which the Committee was called upon to consider. Even if all prisoners of war, apart from some isolated cases due to special circumstances, had been repatriated—an assumption which had been strongly contested by some representatives—it would still seem from all the documents that there remained a relatively large number of war prisoners whose fate had not been ascertained. He understood that the Soviet Union considered that it was so in particular in the case of a certain number of Japanese prisoners who, according to the USSR, had never been subject to the control of the Soviet Government—a statement denied by the authors of the joint draft resolution. On the other hand, it was asserted by the sponsors that there were a considerable number of prisoners of war who had not been accounted for by the Soviet Union. In the circumstances, he should have thought that both parties would be glad to authorize a commission to study the question in order to throw light on the situation. That, however, did not seem to be the case.

69. His delegation was fully aware of the anxiety felt by families living in uncertainty about the fate of one of their members from the moment that that member had been made a prisoner. His delegation was therefore prepared, in principle, to vote for the joint draft resolution (A/C.3/L.145/Rev.1), at the same time welcoming the amendment made by Afghanistan (A/C.3/L.148) and the amendments submitted jointly by Lebanon and Syria (A/C.3/L.146), as far as they were accepted by the sponsors.

70. Although the sponsors of both texts were guided by the same considerations, there was one important point on which their attitudes did not coincide: the sponsors of the draft resolution were requesting the establishment of a United Nations commission on prisoners of war which would be requested to seek from the governments or authorities concerned full information regarding prisoners who, coming within the custody or control of any foreign government as a consequence of military operations of the Second World War, had not been repatriated, or otherwise accounted for. The delegations of Lebanon and Syria felt that it would be easier, if such a commission were not established to obtain the information in question by calling upon all governments concerned to transmit to the Secretary-General, before a specified date, any relevant information they might wish to furnish.

71. His delegation believed that it would be regrettable if, owing to that divergency of views, the Committee could not adopt a draft resolution on the question or would have to adopt a text which would afford little satisfaction to many of its members. It therefore wondered whether it would not be possible to adopt a compromise formula by using both of the suggested procedures. It would be possible to provide, as suggested by the Lebanese-Syrian amendment, that the governments should be called upon to transmit, either before 1 July 1951 or at an earlier date, the

information at their disposal regarding unrepatriated prisoners of war. However, in the event that that procedure did not yield satisfactory results, it might be provided forthwith that the Secretary-General should, at a later date, establish a commission of the kind suggested in the joint draft resolution.

72. If the time limit contemplated in the Lebanese-Syrian amendment were shortened, the procedure which he was suggesting would result in only a small loss of time. It was to be assumed that even if the United Nations commission on prisoners of war were to begin its work at once, before taking other steps it would have to take certain preliminary measures which would in fact correspond to those provided for in the Lebanese-Syrian amendment.

73. Mr. HUMPHREY (Secretariat) stated that the Secretariat had brought the text of the joint draft resolution (A/C.3/L.145/Rev.1), as well as that of the amendment submitted by the delegations of India and Iraq (A/C.3/L.149), to the attention of the International Red Cross. Under the terms of the joint amendment, the General Assembly would invite the International Red Cross to establish a commission consisting of qualified and impartial observers to settle the question of war prisoners amicably.

74. In accordance with that communication, the Secretariat had received two cablegrams (A/C.3/555), which he proceeded to read. The first cablegram, from the League of Red Cross Societies, stated that the question of the fate of prisoners of war was one of the essential prerogatives of the International Committee of the Red Cross. The second cablegram, sent by the International Committee of the Red Cross, stated that in accordance with article 75 of the Convention signed at Geneva in 1929 relative to the Treatment of Prisoners of War, which provided for the repatriation of prisoners of war after the conclusion of the peace treaty and not at the end of hostilities, the International Committee had, as early as 1945 and on several subsequent occasions, reminded the principal Powers holding prisoners and their national Red Cross societies that in accordance with the spirit of the humanitarian conventions, repatriation should be arranged as soon as possible.

75. In revising the text of humanitarian conventions, the International Committee had sought to clarify the repatriation provisions. Those provisions had been embodied in article 118 of the 1949 Geneva convention, which provided for the liberation and repatriation of all prisoners of war.

76. The International Committee recalled that in its memorandum of 12 September 1939 to all governments and national Red Cross societies, it had defined its position on the question, which had remained unchanged: the International Committee of the Red Cross—the neutral organ of the International Red Cross—could act only with the consent of governments. Consequently, the International Committee could not proceed to appoint a commission such as the one provided for in the amendment of India and Iraq (A/C.3/L.149) unless all the governments concerned gave their agreement to the draft resolution drawn up by the Third Committee.

77. Mr. KAYALI (Syria) asked whether the Secretariat could circulate, that very day if possible, the text of the communications from the International Red Cross which the Director of the Division of Human Rights had just read.

78. Mrs. MENON (India) moved the adjournment of the meeting.

The motion was adopted by 23 votes to 12, with 5 abstentions.

The meeting rose at 1.15 p.m.