

15 November 1951
Original: ENGLISH

High Commissioner's Advisory Committee
on Refugees
(First Session 1951)
Item 6 of the Agenda

MEMORANDUM BY THE HIGH COMMISSIONER
ON CERTAIN PROBLEMS RELATING TO THE
ELIGIBILITY OF REFUGEES

1. Under Resolution 428 (V) which established the Office of the United Nations High Commissioner for Refugees, the General Assembly stipulated that the High Commissioner should "assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations, to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities".
2. The actual text of the Statute and the provisions preceding it bring out clearly one of the fundamental principles of international protection, namely that the work of the High Commissioner should be carried out at all times in close collaboration with Governments, and frequently through them. In adopting Resolution 428 (V), the General Assembly did not establish an authority to take the place of the authority of States in the field of refugee policy. Nevertheless, the States concerned did recognize the High Commissioner's right to act and mediate on behalf of refugees. They accepted his good offices and they undertook to assist him in his work to enter into agreements and to take measures designed to ensure for refugees the fullest possible enjoyment of human rights and fundamental freedoms.
3. The High Commissioner has thought fit to consider, in the light of the provisions mentioned in paragraph 1, what his precise function should be in

determining the refugee status of individual applicants (eligibility). Certain provisions in the Statute and in the United Nations Convention relating to the status of refugees adopted in Geneva on 28 July 1951, appeared to give some indications on this subject. On the one hand, Article 6 of the Statute states that "the competence of the High Commissioner shall extend to any person", on the other hand, Article 2 provides that the work of the High Commissioner "shall relate as a rule to groups and categories of refugees". Finally, in Article 8 b of the Statute, it is laid down that the High Commissioner shall provide for the protection of refugees "by promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the numbers requiring protection". Furthermore, the Convention relating to the Status of Refugees contains in Article 1 the words "For the purposes of the present Convention the term "refugee" shall apply to any person who ..."

4. In the light of these provisions, and the practical problems which have arisen, the High Commissioner has attempted to formulate his policy in the question of eligibility determination. He realizes that he will not encounter the same difficulties as the International Refugee Organization, and in consequence he does not intend to set up special administrative machinery to determine eligibility. The I.R.O. had to operate under a system of definitions which contained a series of exclusion clauses. Moreover, it was essentially an international body whose purpose was to provide services such as care and maintenance, repatriation and resettlement. In view of the considerable cost incurred on behalf of each refugee within its mandate it was necessary for the I.R.O. to determine the eligibility of each individual applicant.

5. In accordance with the terms of Article 8 b of his Statute, interested Governments are at liberty to seek the co-operation of the High Commissioner, in an agreement which would define the particular services which they may wish to entrust to his Office.

6. The High Commissioner points out that the current practice varies from one State to another, especially in connection with the determination of eligibility, whether for the purpose of regularization of sojourn of a refugee in the territory of the State concerned, or for the purpose of issuing a travel document or other documentation which may be required by refugees. Certain Governments have sought the co-operation of the responsible international authority, while other Governments have not considered this to be necessary.
7. One Government has already requested the High Commissioner to assume the task of determining the eligibility of refugees within its territory. It is not impossible that other Governments will make the same request.
8. During the past few months, the High Commissioner was faced with a situation in which the determination of eligibility seemed the only effective means of implementing international protection. He was advised that the expulsion was imminent of certain refugees within his mandate who were not in possession of valid national passports. Under these circumstances the High Commissioner proposed to the Government concerned that he should deliver eligibility certificates to the persons under his protection. The Government, which did not desire to conclude a formal agreement, approved this procedure, which enabled the refugees who were certified to be within the High Commissioner's mandate to escape the risk of immediate expulsion.
9. In the first of the cases mentioned above, the Government took the initiative in requesting that the function of eligibility determination should be assumed by the High Commissioner on a permanent basis. In the second instance, the initiative was taken by the High Commissioner, but it was made possible by the fact that the Government concerned undertook to give more favourable treatment to the persons who were certified to be within the mandate than to those who were not. The determination of eligibility carried out directly by an international authority met a specific need. In the opinion of the High Commissioner, this procedure

should be regarded as an exceptional one.

10. The different procedures adopted by Governments in the matter of eligibility determination, and the urgent demands of international protection may make it necessary for the High Commissioner to assume definite functions in respect of eligibility determination in specific situations. In his opinion, the provision in the Statute of his Office which states that his work should as a rule be concerned with groups and categories, should not prevent a working procedure which should be as flexible as possible, taking into account the requirements of individual Governments, and his paramount concern to perform an effective function of protection. Furthermore, the High Commissioner considers that the above-mentioned provision should be considered as a guiding principle for his whole operation rather than as a hard and fast rule which would exclude any activity connected with individual cases.

11. To sum up, in view on the one hand of the non-mandatory character of the provision mentioned above, and the specific wishes of certain States on the other hand, of his authority to conclude special agreements to promote the execution of measures calculated to improve the situation of refugees, and in view also of the serious situations which might arise, the High Commissioner has reached the conclusion that under his Statute, it is his duty to assume responsibility for determining eligibility in any circumstances which may make this function necessary. Such a necessity might arise out of the periodic representations which he might be called upon to make to Governments, or the request of a Government for collaboration with the High Commissioner. This collaboration might have as an object either the regularization of refugees vis-à-vis the competent authorities, or be connected with the issuance of travel documents or other documentation required by refugees.

12. In submitting these considerations to the members of the Advisory Committee, the High Commissioner would welcome the opinions and the advice which the members of the Committee may wish to offer.

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