

## I. THE TERM "REFUGEE"

It is only since the beginning of this century that efforts have been made to give the term "refugee" a precise definition and to classify the groups of persons to which it applies. Previously, the term was used in a broad etymological sense as covering all persons seeking refuge from wars, political upheavals or even natural disasters.

In the memorandum presented by UNHCR to the Sixth Session of this Committee it was pointed out that in more recent times the refugee problem had come to be considered as one calling for measures in the legal sphere. Moreover, after the first World War there was general recognition of the fact that the refugee problem is a matter of international concern. The first measures for assisting refugees taken on the international level after the First World War were essentially pragmatic in character. They dealt with specific groups of refugees and with limited matters such as the issue of travel documents.<sup>1</sup> As the later instruments adopted in favour of refugees became more general in character<sup>2</sup> the need for a general definition gradually came to be felt. Refugees whose legal protection is the concern of the international community fall within the clearly defined category of international refugees, i.e. refugees not possessing the nationality of their country of residence or asylum.

1. cf. Arrangement with regard to the issue of Certificates of Identity to Russian Refugees of 5th July, 1922 (League of Nations, *Treaty Series*, Vol. 13, No. 355). Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees of 12th May, 1926. (*Ibid.*, vol. 89, No. 2004).
2. cf. Arrangement relating to the Legal Status of Russian and Armenian Refugees of 20th June, 1928. (*Ibid.*, vol. 89, No. 2005) and Convention relating to the International Status of Refugees of 28th October 1933. (*Ibid.*, vol. 159, No. 3663). These instruments dealt *inter alia* with : personal status, exemption from reciprocity legal assistance, right to work, etc.



The normal individual is a national of some State enjoying the protection of the Government of that State. There are also stateless persons who are not legally entitled to claim the protection of any State. A refugee may or may not, be a stateless person. Quite often he remains a national of the State from which he has had to flee. The peculiarity of the refugee is that he does not in fact enjoy the protection of the government of his State of origin, whether he is legally entitled to such protection or not. It is this lack of protection, in fact, which is the test of a refugee as adopted in the various Arrangements and Conventions.

#### **Definition of Legal Instruments concluded between the two World Wars**

Since, as stated above, the various instruments adopted between the two World Wars were essentially pragmatic in character, they did not contain any definition of refugees in general. It is nevertheless of interest to examine these definitions in order to discover any common features that may be of relevance to a general definition of the concept of "refugee".

The first instrument was the Arrangement of 5 July, 1922 with regard to the issue of certificates of identity to Russian Refugees.<sup>3</sup> This Arrangement did not in fact contain any definition of the term "Russian refugees". The form of the Identity Certificate, annexed to the Arrangement, however described the holder as a "person of Russian origin not having acquired another nationality." The Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees of 12 May, 1926<sup>4</sup> adopted the following definition of the term "refugee". "Russian :—Any person of Russian origin who does not enjoy, or who no longer enjoys the protection of the Government of the Union of Socialist

3. League of Nations, *Treaty Series*, Vol.

4. League of Nations, *Treaty Series*, Vol. 89, No. 2004.

Soviet Republics and who has not acquired another nationality." "Armenian :—Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy, or who no longer enjoys, the protection of the Government of the Turkish Republic and who has not acquired another nationality."

By the Arrangement of 30th June, 1928, the measures taken on behalf of Russian and Armenian refugees were extended to Turkish, Assyrian, Assyro-Chaldean and assimilated refugees.<sup>5</sup> These were defined as follows :

#### **Assyrian, Assyro-Chaldean and assimilated refugees :**

Any person of Syrian or Assyro-Chaldean origin and also by assimilation, any person of Syrian or Kurdish origin who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality ;

#### **Turkish refugee :**

Any person of Turkish origin previously a subject of the Ottoman Empire who under the terms of the Protocol of Lausanne of 24th July, 1923 does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality.<sup>6</sup>

The Convention relating to the International Status of Refugees of 28th October, 1933,<sup>7</sup> designed to supplement and consolidate the work of the League of Nations on behalf of refugees, contained the following definition in Article 1 : "The present Convention is applicable to Russian, Armenian and assimilated refugees as defined by the arrangements of 12 May,

5. *Ibid.* No. 2006.

6. This definition refers to a limited number of Turkish refugees (150) who were excluded from the operation of the Amnesty granted by the Government of the Turkish Republic after the overthrow of the Imperial Dynasty by Kemal Ataturk. (*Ibid.* Vol. 36, p. 145).

7. *Ibid.* Vol. 159, No. 3663.



1926 and 30 June, 1928, subject to such modifications as each Contracting Party may introduce in this definition at the moment of signature or accession". Thus subject to the latter qualification the definition simply adopted the definition given in the previous instruments.<sup>8</sup> In 1945, however, it was extended in France to Spanish refugees defined as "Persons possessing or having possessed Spanish nationality, not possessing any other nationality and with regard to whom it has been established that in law or in fact they do not enjoy the protection of the Spanish Government."<sup>9</sup>

The Provisional Arrangement concerning the Status of Refugees coming from Germany was signed on 4 July, 1936.<sup>10</sup> For the purpose of the Arrangement the term "refugee coming from Germany" was deemed to apply to "any person who was settled in that country, who does not possess any nationality, other than German nationality, and in respect of whom it is established in law or in fact that he or she does not enjoy the protection of the Government of the *Reich*." This definition was widened in the Convention concerning the Status of Refugees coming from Germany of 10 February, 1938.<sup>11</sup> For the purpose of the Convention the term "refugees coming from Germany" was deemed to apply to : (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or

8. As regards the qualification the following reservations were made : Bulgaria limited the Arrangement to such refugees as were on Bulgarian territory at the relevant date ; Great Britain limited its application to Russian Armenian and assimilated refugees no longer enjoying the protection of their country of origin at the date of accession ; Czechoslovakia regarded as refugees within the meaning of Article 1 only such persons who formerly possessed Russian or Turkish nationality, lost it before January 1, 1923 and have not acquired another nationality ; Egypt, on signature reserved the right to extend or limit the definition in any way, apart from such modifications or amplifications as each Contracting Party might introduce.

9. Decree No. 45-766 of 15 March 1945.

10. League of Nations, *Treaty Series*, Vol. 171, No. 3952.

11. *Ibid.* Vol. 192, No. 4461.

in fact, the protection of the German Government ; (b) Stateless persons not covered by previous Conventions or agreements who have left German territory after being established therein and who are proved not to enjoy in law or in fact, the protection of the German Government. Persons leaving Germany for reasons of purely personal convenience were excluded from the definition.

By the Additional Protocol of 14 September, 1939<sup>12</sup> the definitions in the Arrangement of 4 July, 1936 and in the Convention of 10 February, 1938 were extended to refugees coming from Austria.

These various definitions contain certain common features :

(a) It is irrelevant whether or not the refugee in law or in fact still possesses the nationality of the State whose protection he no longer enjoys.

The Arrangements of 5 July, 1922 and 12 May, 1926 referred to "persons of Russian origin". The Arrangement of 12 May, 1926 described Armenian refugees as "former subjects of the Ottoman Empire" without laying down any requirement concerning their present possession or otherwise of Turkish nationality. The same formula was adopted in the Arrangement of 30 June, 1928 as regards Assyrian, Assyro-Chaldean and assimilated refugees and Turkish refugees. France, in extending the Convention of 1933 to Spanish refugees described them as "persons possessing or having possessed Spanish nationality". It is true that the Provisional Arrangement concerning German Refugees of 4 July, 1936 described such refugees as "persons not possessing any nationality other than German nationality". However, in the Convention concerning German Refugees of 10 February, 1938, this formula was amended to "persons possessing or having possessed German nationality". The latter

12. *Ibid.* Vol. 193, No. 4634.



Convention, contained a further provision which again emphasises the difference between refugee status and statelessness. Thus "refugees coming from Germany" were defined as including also "stateless persons not covered by previous conventions or agreements who have left German territory after being established therein". This provision was the forerunner of Article 1 A (2) of the Refugee Convention of 1951 according to which a stateless person may be a refugee if he is outside the country of his former habitual residence.

(b) The person in question is not a refugee if he has acquired or possesses a nationality other than that of the country whose protection he no longer enjoys.

The various instruments provided either that the person in question *must not have acquired* and/or *must not possess* another nationality. Insofar as the relevant provisions specify the absence of another nationality they are the forerunners of Article 1 A (2) second paragraph of the Refugee Convention of 1951 which specifies that, if a person has more than one nationality, the term "country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be regarded as a refugee unless he lacks the protection of each of these countries. Insofar as these provisions of the pre-war instruments refer to the *acquisition* of a new nationality they may be termed "Cessation clauses", corresponding to Article 1 C (3) of the Refugee Convention of 1951 according to which a person ceases to be a refugee if he acquires a new nationality and enjoys the protection of the country of his new nationality.

(c) In order to claim the benefit of refugee status the person in question must not or must no longer enjoy the protection of his country of origin. This characteristic feature of refugee status finds its expression in all the pre-war instruments. The Convention concerning the Status of Refugees coming from Germany of 10 February, 1938 excluded persons leaving

Germany for reasons of purely personal convenience from the definition of "refugee". Apart from this purely negative aspect, however, none of the pre-war instruments give any indication of the reasons *why* he does not enjoy or no longer enjoys the protection of his home country.

#### Definitions developed by writers and international institutions

While the instruments adopted between the two wars, in view of their limited scope, did not develop a general definition of "refugee", the search for such a definition was undertaken by writers and by the International Law Institute at its session in 1936. As pointed out by the first United Nations High Commissioner for Refugees, the late Dr. Von Heuven Goedhart, however, "to define the term 'refugee' presents a few special difficulties; it is in fact impossible to give one single definition which could be used in all circumstances. Both the purpose of the definition and the point of view from which it is drafted affect its form. A sociological definition of the term 'refugee' differs from a legal one; the definition drafted for the purpose of a binding international agreement will look very different from the definition adopted by an association with a humanitarian objective. I should think that in the latter sense (i. e. in the sociological sense) a refugee is a person who has been forced to give up his home because he fears his life or liberty to be in danger. His flight may be motivated by a political event but it may be caused by a war or a natural catastrophe such as an earthquake or a flood. In consequence of these events the refugee moves to another place, either inside his own country or outside. Thus a distinction may be drawn between political refugees, war refugees and refugees from natural catastrophes on the one hand and between 'internal refugees' (persons who have been displaced within their own country) and 'international refugees' (persons who are outside their country of origin) on the other hand".<sup>13</sup>

13. "The Problem of Refugees", *Recueil des cours* 1953, Vol. 1 pp. 267-68.



Already in 1936, the Institute of International Law sought to give a legal definition of the international refugee. According to Article 2 (2) of its Resolution on the legal status of refugees and stateless persons :

"Dans les presents Resolutions le terme 'refugie' designe tout individu qui, en raison d'evenements politiques survenus sur le territoire de l' Etat dont il etait ressortissant, a quitte volontairement ou non ce territoire ou en demeure eloigne, qui n'a acquis aucune nationalite nouvelle et ne jouit de la protection diplomatique d'aucun autre Etat. <sup>14</sup>

Emphasis is here placed on the refugee's lack of protection and this lack of protection must be because of political events. Moreover, it is made clear that the refugee need not necessarily have left his home country because of political events. It is sufficient if he remains outside his home country because of such events if they arise subsequent to his departure.

The significance of the refugee's lack of protection was also emphasised by Simpson :

"The essential quality of a refugee..... may be said to be that he has left his country of regular residence, of which he may or may not be a national, as a result of political events in that country which render his continued residence impossible or intolerable, and has taken refuge in another country, or, if already absent from his home, is unwilling or unable to return, without danger to life or liberty, as a direct consequence of the political conditions existing there. In general, the refugee cannot return without danger to life or liberty, though it may be in some cases, but by no means in all, that complete political submission to the authorities would enable him to return and live at peace. The term political in this description is used

14. *Annuaire* 1936, p. 294.

in a sense wide enough to include religious conditions. Other features of the existence of the refugee, such as the absence of *de jure* national status (i.e. statelessness) may be incidental but are not essential to his quality as refugee in the non-technical sense. <sup>15</sup> He is distinguished from the ordinary alien or migrant in that he has left his former territory because of political events there, not because of economic conditions or because of the economic attractions of another territory". <sup>16</sup>

### Definition of refugee in the Constitution of the IRO

Like the pre-war conventions, the IRO Constitution defined refugees by categories, but at the same time laid down

15. See below page 16.

16. "The Refugee Problem", 1939, pp. 2-4. See also Weis, "The International Protection of Refugees" *American Journal of International Law*, Vol. 48 pp. 193-94.

For a further definition see J. Vernant, "The Refugee in the Post-War World," pp. 4 et seq. The definition of the refugee in international law contains two elements :

1. Persons or categories of persons qualifying for refugee status must have left the territory of the State of which they are nationals.
2. The events which are the root of a person's becoming a refugee must derive from the relations between the State and its nationals.

cf. also Balogh, "World Peace and the Refugee Problem, *Recueil des Cours*, 1949, Vol. 11, p. 373-374 :

"The term 'political refugee' however, is capable of a general definition. Refugees are people who have left their country of origin because of political or religious events. They exist in every country on sufferance and are not legally protected as they are *de facto* or *de jure* outlawed by their former country and therefore lack the consular protection which the ordinary alien enjoys. They are thereby distinguished from the ordinary economic immigrant who has changed his domicile of his own free will in order to find a more prosperous life and better economic conditions in another country but who is not—save by economic reasons—compelled to do so.....

"Another distinction between the political refugee and the economic emigrant is that the latter can return to his country of origin whenever he likes, that as long as he does not accept another nationality he remains a citizen of his home country, and, if he does accept another nationality, this would not prevent his return, no longer as a citizen but still not as an enemy of his fatherland. The refugee cannot return when he likes, as his return depends upon conditions beyond his control...."



certain broad criteria on the lines of the more general definitions mentioned above. The main categories of refugees were briefly : (a) victims of Nazi or Fascist regimes or of regimes which took part on their side in the Second World War ; (b) Spanish Republicans and other victims of the Falangist regime in Spain ; (c) persons who were considered "refugees" before the outbreak of the Second World War for reasons of race, religion, nationality or political opinion ; (d) persons who as a result of events subsequent to the outbreak of the Second World War are unable or unwilling to avail themselves of the protection of the government of their country of nationality or former nationality. Persons falling within these various groups, with certain exceptions, became the concern of the Organisation if they could be repatriated and the help of the Organisation was required for their repatriation, or if they expressed "valid objections" to returning to their countries of nationality or former habitual residence. Such "valid objections" included "persecution, or fear of persecution based on reasonable grounds because of race, religion, nationality or political opinions, provided the opinions were not in conflict with the principles of the United Nations laid down in the Preamble to the United Nations Charter."

#### Definition in the Refugee Convention of 1951

The 1951 Convention moves further away from a definition by categories and indeed only resorts to such a definition in order to bring persons who were refugees under previous instruments within its ambit. Thus according to Article 1 A (1), the term "refugee" shall apply to any person who has been 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, the Protocol of 14 September, 1939 or the Constitution of the IRO. Beyond this the Convention, in Article 1 A (2), lays down a general definition of "refugee" as a 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, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, 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 as a result of such events is unable or, owing to such fear is unwilling to return to it."

In the case of a person who has more than one nationality the term "the country of his nationality" shall mean each of the countries of which he is a national and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

A refugee must, therefore, be outside the country of his nationality or if he is stateless outside the country of his former habitual residence and must not enjoy its protection because he is either unable or unwilling to avail himself of it. The reasons for this lack of protection are comprehensively stated, i. e. fear of persecution for political reasons and the other reasons mentioned. It is sufficient if he finds himself outside his home country for these reasons, i. e. he need not have left his country because of them and they may have arisen subsequent to his departure. As in the pre-War instruments, it is irrelevant whether or not he possesses the nationality of the country in relation to which he is a refugee.

The words "events occurring before 1 January, 1951" may mean "events occurring in Europe" or "events occurring in Europe or elsewhere", according to the meaning chosen by the party on signature, ratification or accession.

Article 1 of the Convention also specifies when a person ceases to be a refugee (so-called cessation clauses) and specifies the circumstances when the Convention does not apply to him (so-called exclusion clauses).



The cessation clauses are contained in Article 1 C. The principal ones are : voluntary re-availment by a refugee of the protection of the country of his nationality ; acquisition of a new nationality ; voluntary re-establishment in the country which he left, or outside which he remained owing to fear of persecution.

The exclusion clauses are contained in Article 1 D, E and F.

According to Article 1 D, the Convention does not apply to persons who are receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolution adopted by the General Assembly of the United Nations these persons shall *ipso facto* be entitled to the benefits of the Convention. This exclusion clause serves the purpose of preventing the overlapping of the competencies of various United Nations Agencies. It applies to Arab refugees from Palestine who fall within the competence of the United Nations Relief and Works Agency (UNRWA) and in the past applied to Korean refugees who were the concern of the United Nations Korean Relief Agency (UNKRA).

According to Article 1 E, the Convention does not apply to a person who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations attached to the possession of the nationality of that country.

Finally, Article 1 F excludes from the application of the Convention persons who have *inter alia* committed war crimes or serious non-political crimes outside their country of refuge prior to their admission to that country as refugees.<sup>17</sup>

17. See below page 15.

### Definition of refugees in the Statute of the Office of UNHCR

The above definition in the Refugee Convention of 1951 is in form largely identical with that contained in the Statute of the High Commissioner's Office. There are certain differences of formulation in some of the cessation and exclusion clauses, but the main difference is that the competence of the High Commissioner is not limited to persons who are outside the country of their nationality or former habitual residence because of events occurring before 1 January, 1951.

It should also be added that in a series of resolutions the United Nations General Assembly has also made it possible for the High Commissioner, at the request of Governments which are faced with refugee problems, to provide his "good offices" on a purely humanitarian and social basis, and without reference to the causes of the particular refugee problem. The word "refugee" in this connection is used in the widest sense of the term and is of a sociological rather than a legal nature.<sup>18</sup>

### Definitions adopted within the frame work of regional organisations and agencies

Apart from the Refugee Convention of 1951 and the UNHCR Statute which are universal in character, efforts to define the concept of "refugee" have also been made on a regional level. Mention should be made in this connection of the Convention on Territorial Asylum, adopted by the Tenth Inter-American Conference in 1954. According to Article 1 : "Every

18. cf. Resolution 1167 (XII) of 27.11.1957 (Chinese refugees in Hong Kong) ; 1388 (XIV) of 20.11.1959 (Authorizing the High Commissioner in respect of refugees who do not fall within the competence of the United Nations, to use his good offices in the transmission of contributions in connection with World Refugee Year) ; 1499 (XV) of 5.12.1960 (Invitation to member states to consult with the High Commissioner in respect of measures of assistance to groups of refugees outside the competence of the United Nations) ; 1671 (XVI) of 18.12.1961 (Angolan refugees in the Congo) ; 1673 of 18.12.1961 (Requesting the High Commissioner to pursue his activities on behalf of refugees for whom he extends his good offices) and 1784 (XVII) of 7.12.1962 (Chinese refugees in Hong Kong).



State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable without, through the exercise of this right, giving rise to complaint by any other State". Article II, paragraph 1, lays down the principle that : "The respect which, according to international law, is due to the jurisdictional right of each State over inhabitants in its territory, is equally due, without any restrictions whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offences".<sup>19</sup>

In Africa the problem of the definition of refugees is at present being dealt with by the Organisation for African Unity (OAU). It is understood that the Refugee Commission (Commission of 10) in its recommendation to the Council of Ministers of the Organisation has suggested that the term "refugee" in respect of persons coming from independent African States, should be reserved for nationals of countries whose political, racial or religious regimes have made it necessary for them to expatriate themselves for fear of oppression, imprisonment or any other hardships.

Finally, reference may be made to the definition of "refugee" adopted by the United Nations Relief and Works Agency (UNRWA), i. e. "a person whose normal residence was Palestine for a minimum period of two years immediately preceding the outbreak of the conflict in 1948 and who, as a result of this conflict, has lost both his home and his means of livelihood. Children of above born less than 2 years before 15

19. Article IV deals with extradition : "The right of extradition is not applicable to persons who, in accordance with the qualifications of the solicited State, are sought for Political offences or for common offences committed for political ends, or whose extradition is sought for predominantly political motives." Pan American Union : *Law and Treaty Series*, Washington, D. C. 1954.

May, 1948".<sup>20</sup> This definition is not, however, general in character and relates to a specific group of persons.

20. To be eligible for UNRWA assistance the refugee must have taken refuge in 1948 in one of the four "host" countries in which UNRWA operates (Jordan, Lebanon, the Syrian Arab Republic and the Gaza Strip). He must also be in need of aid. "UNRWA and the Palestine Refugees—Facts and Figures, 1964". (Based on information contained in the Report of the Commissioner-General of UNRWA to the United Nations General Assembly.)



## II. DISTINCTION BETWEEN REFUGEES AND OTHER ALIENS

A refugee is an alien but an alien of a special kind, since he fears persecution in his home country. For purposes of clarity it is therefore desirable to point out the distinction between refugees and certain other categories of aliens :

### (a) Ordinary aliens—ordinary migrants

Since a refugee fears persecution in his home country and is therefore unwilling to return there or to seek the protection of the authorities of his home country, he differs from the ordinary alien who finds himself in another country as a traveller, or visitor. He also differs from an ordinary migrant who is an ordinary alien who has moved to another country to take up residence there, e. g. for economic reasons.

### (b) Fugitives from justice

Since a refugee is, by definition, a person who is outside his home country because of fear of persecution, a person who has left his country because he fears prosecution for a common crime is not a refugee. There may, however, also be borderline cases in which a person, while fearing persecution may at the same time have committed an ordinary crime in his home country. In this connection reference may be made to Article I F (b) of the Refugee Convention of 1951 according to which the provisions of the Convention shall not apply to any persons with respect to whom there are serious reasons for believing that he has committed a *serious* non-political crime outside the country of refuge prior to his admission to that country as a refugee.<sup>21</sup> The fact that the provision refers to a

21. A similar provision was contained in the Constitution of the IRO (Part II (3) according to which "ordinary criminals who are extraditable by treaty" were not the concern of the Organisation. This was interpreted as excluding serious criminals who would not be regarded as *bona fide* refugees.

*non-political* crime indicates that, where the offence is a political one, the person in question may be a refugee, and in this respect there may be some degree of overlapping between the concept of refugee and that of political offender.<sup>22</sup>

### (c) Stateless persons

It has been seen that the pre-war instruments, the IRO Constitution and the Refugee Convention of 1951 place the main emphasis on the fact that the refugee is without protection, and attach no importance to the fact that he may or may not still formally possess the nationality of his home country. Thus a refugee may or may not be stateless; Article I (1) of the Convention on the Status of Stateless Persons of 1954 defines a "stateless persons" as "a person who is not considered a national by any State under the operation of its law". A similar definition is to be found in Article 2 (1) of the Resolution on the Legal Status of Stateless Persons and Refugees adopted by the International Law Institute in 1936: "*Dans les presents Resolutions le terme 'apatride' designe toute individu qui n'est considere par aucun Etat comme possedant sa nationalite*".

At the same time Article 2 (3) of the Resolution states that "*les qualites d'apatride et de refugie ne s'excluent pas*". Thus, while many stateless persons are refugees, all refugees are not necessarily stateless persons, since they may still possess the nationality of their former home country. Refugees have occasionally been described as *de facto* stateless persons as distinct from *de jure* stateless persons. This terminology is probably inexact since statelessness is a purely legal concept, connoting lack of nationality. It would seem more appropriate to speak of *unprotected persons* who may in turn be subdivided into *de jure* unprotected persons, i. e. stateless persons and *de facto*

22. A refugee is a person who fears persecution *inter alia* because of his political convictions which are known to the authorities of his home country. He may, but need not necessarily, have taken any *active* steps to put these convictions into effect, e. g. by the committing of a political offence.



stateless persons, i. e. refugees, it being understood that there are also refugees who are *de jure* unprotected, i. e. stateless.<sup>23</sup>

### Conclusion

From the above it will be seen what type of problems arise when it is sought to give a general definition of the term "refugee", e. g. the problem of defining persecution; the type of measures which can be said to give rise to a well-founded fear of persecution and the moment at which such a fear must arise, i. e. whether it is necessary for the refugee to have left his home country because he fears such measures or whether it is sufficient if this fear supervenes after his departure and he is unwilling to return for this reason.

23. Weis, "Legal Aspects of the Convention of 28 July, 1951 relating to the Status of Refugees", *British Yearbook of International Law*, 1953, p. 480.

### III. THE RELATION BETWEEN THE PROBLEMS OF REFUGEES AND THE PRESERVATION OF PEACE AND JUSTICE IN THE WORLD

There is a close relationship between the problems of refugees and the preservation of peace and justice in the world. Refugees, as already stated, are the victims of economic, religious, political and social persecution. They are the persons who, as a result of such persecution, have suffered extensive damage and loss (e. g., death of family members, severe deterioration of health, loss of income and employment, loss of property, loss of social status etc.) and stand in dire need of extraordinary humanitarian measures.

The problem of refugees, therefore, deserves to be treated in accordance with the principles of justice toward man, the denial of which will not only constitute violation of human rights, but also may even pose a threat to world peace. Apart from its humanitarian aspect, the problem of Palestine refugees, for instance, is regarded not only by the Arab States but also by the United Nations itself, as the principal obstacle to peace in the Middle East.<sup>24</sup> The appointment of Mr. Joseph Johnson, President of the Carnegie Endowment for International Peace, as Special Representative of the U. N. Conciliation Commission for Palestine, to devise ways of giving the refugees a "free choice" about their future homes, was based on the premise that the refugee problem is central in the Palestine Conflict.<sup>25</sup> These refugees have repeatedly demanded repatriation to Palestine and have refused all proposals and plans which do not lead to their repatriation. This right has also been upheld by

24. See article entitled, "The Arab Refugees—A Changing Problem", *Foreign Affairs*, Vol. 41, 1962-63, p. 558.

25. *Ibid.*



the various resolutions on the refugee's problems adopted by the United Nations.<sup>26</sup> The denial of this right, which is a just right of refugees, is bound to lead to friction and disturb peace in West Asia.

Moreover, "if States were to expel their nationals to the territory of other States without the consent of those States or were to refuse readmission, thus forcing States to retain on their soil aliens whom they have the right to expel under international law, such action would constitute a violation of the territorial supremacy of these States. It would cast a burden on them which, according to international law, they are not bound to undertake, and which, if persistently exercised, would necessarily lead to a disruption of orderly, peaceful relations between States within the community of nations."<sup>27</sup>

26. General Assembly Resolutions of February 12, 1946, December 13, 1946, November 17, 1947 and December 9, 1949.

27. Weis. *Nationality and Statelessness in International Law*, 1956, p. 51.

#### IV. PRINCIPLES GUIDING THE SOLUTION OF THE PROBLEM OF REFUGEES

##### The Right of Asylum

As stated in a note submitted to the General Assembly of the United Nations by the Office of the United Nations High Commissioner for Refugees, "the right of asylum is a prerequisite to the enjoyment of all other rights and freedoms for persons fleeing from persecution. It can be equated to "the right to life, liberty and security of person" which is embodied in Article 3 of the Universal Declaration of Human Rights. The legal aspects of the problem of asylum will be discussed in this section under two distinct heads, namely, (1) Territorial Asylum, i. e. asylum granted by a State within its own territory, and (2) Diplomatic Asylum, i. e. the grant of asylum in a legation or embassy.

##### (1) Territorial Asylum :

Throughout history situations have arisen in which persons have been obliged to leave their country and to seek asylum elsewhere. The problem of asylum is therefore not new. In more recent times, however, there has been increasing acceptance of the view that the grant of asylum to refugees fleeing from persecution is a matter of concern to the international community. At the same time efforts are being made by courts, writers and international bodies to clarify the nature of the right of asylum and its legal basis.

From the point of view of the person seeking asylum, this means the right to enter another State and to find sanctuary there; that is to say protection against rejection at the frontier and protection against extradition, exclusion or return to a country in which he fears persecution for reasons of race, religion,