

Refugee(s)

Concept: Refugee(s)

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Description The term refugee comes from the French term *refugié*, historically attributed to the flight of Huguenots after the revocation of the Edict of Nantes during the absolutist reign of Louis XIV in France in the sixteenth century. Persecution at that time was based on religious grounds as the French Catholic State decided to confiscate property and restrict the rights of Protestants in its territory. There was no rigid content to define who was or was not a refugee, only that they were from a particular religious group and were persecuted by French authorities.

In the current period, however, refugees have certainly become a global issue. Whenever we speak of a refugee, a particular definition comes to mind. It is given by the 1951 United Nations Convention Relating to the Status of Refugees, which states that a refugee is someone "who 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" (Article 1A.2). Based on this legal definition, a refugee must have left her/his country of origin and has to show a "well-founded" fear of persecution from state or non-state agents. In any case, one has to show that the country of origin is unable or unwilling to provide protection for those claiming "refugee status" in a third country.

Though the 1951 Convention is considered to be the cornerstone of the International Refugee Protection Regime, it was designed to deal with the situation of displaced populations in Europe during and after the Second World War. The original version of its Article 1 expressly referred to "events occurring in Europe before 1 January 1951." Also, the conventional definition frames the condition of "refugeeness" on an individualistic basis. It is the individual who can be an asylum seeker and assessment is based on an individual, or at best, family profile. This definition of a refugee became increasingly problematic because from the 1960s onwards, the majority of forced displaced populations were being created outside Europe as a consequence of political and economic upheavals happening mostly in the developing world. The geographical restriction of the 1951 Convention was finally amended in 1967 with an Additional Protocol. As of 2006, 142 countries had ratified the Convention and its Protocol and almost fifty had not taken part in it, among them Cuba, Eritrea, Lebanon, Saudi Arabia, and the Democratic People's Republic of Korea.

Refugee issues are situated in the threshold of both globalization and regionalization processes. In Africa and Latin America, regional instruments arose in an attempt to adjust the refugee definition to a changing reality. The 1969 Convention governing the specific problems of refugees in Africa (mostly known as the Organization of African Unity Refugee Convention) enlarged the definition of a refugee to encompass those who fled their country of origin due to "external aggression, occupation, foreign domination, or events seriously disturbing public order." A similar extension was accorded by the Cartagena Declaration in Latin America, by which "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" could also be granted refugee status. These instruments represented important changes because they accorded more weight to the objective situation in the countries of origin in determining who could be considered a refugee. This kind of definition made a group-based approach possible for the then thousands of asylum seekers coming from conflict zones in Central America and Africa.

One major paradox arising from the conventional definition is that it is considered a human right to request asylum, but not to receive it. States are responsible, in a general sense, to assess the request but it is a state's right to grant asylum or not. Usually, refugee status determination procedures are conducted by the receiving state's officials, in countries that have ratified the 1951 Convention and brought in legislation on the procedural and substantive mechanisms for its implementation. Some countries, though part of the Convention, do not have specific domestic laws regarding refugees or have specifically chosen to make use of the determination procedure and assistance to refugees available from officials attached to the United Nations High Commissioner for Refugees (UNHCR).

The paradox derives from the problematic relationship between the figure of the refugee and a given state. Usually, a refugee condition comes from persecution done by state agents or from an absence of protection and guarantees whose responsibility rests primarily with the given state. We might say then that being a refugee is constituted precisely because a state has failed to fulfill its obligation towards its citizens and they then have to seek protection abroad. However, this protection can only be found within another state and such protection is not automatic. It remains the prerogative of some sovereign authority or state to grant it.

Hannah Arendt was one of the first authors to highlight this ambivalence of the figure of the refugee, one that shows the "decline of the nation-state," or at least of the ability of the state system to provide for the "security" of those who belong to it, and the need to rely on this system in order to concede asylum and thus protection. The actions of states then are both the root problems and the solutions when it comes to refugees. In this

respect, scholars using a more critical approach, emphasize the figure of the refugee as the hallmark of a powerful critique of the modern state system, which is based on the principle of sovereignty, on strict boundaries between insiders and outsiders, and on a fixed, territorial conception of belonging, namely that of citizenship (Soguk 1999; Malkki 1996). Refugees experience a condition of in-betweenness usually associated with movement and mobility, which may provide new ways for thinking about political subjectivity beyond the nation-state.

The question of political agency is a particularly important one, for it directly highlights the relationship between refugees and individual and collective autonomy in a globalized world. The conventional definition associates the refugee with an idea of being a victim or being helpless (Malkki 1996; Nyers 2006). This representation of the refugee makes them out as objects of protection, rather than as persons who have the capacity to change their lives and to assert some control over their own destiny. Traditionally, scholars have framed the refugee definition according to two basic traits: the subjective ones related to fear, trauma, and a psychological condition expected from those who have suffered forms of persecution; and the objective ones, notably related to the often violent situation in the country of origin.

Refugees are primarily assessed for their subjective "traits," for being marked by fear and, for that reason, are treated as not rationally capable of caring for their own lives. The paradox, highlighted by Nyers (2006), lies then in a conceptualization rooted in fear and emotional distress, on one hand, and the need for a "minimal" rational capability that could provide the basis for assessing the asylum claim, on the other. Also, autonomy is framed, according to the liberal traditional idea, in terms of voluntary action. Individuals must be free and rational in order to make decisions. These qualities are "lacking" in the refugee figure, for their flight is necessarily involuntary, following the conventional definition. Individually then refugees are usually not regarded as autonomous agents.

The international regime, as previously stated, is not designed to think about refugees collectively. Consequently, international actors, institutions, and the "global" media usually portray and treat groups of refugees as a "faceless" herd of people, an image commonly seen every time a "refugee crisis" breaks out. The major predicament for contemporary global governance structures is precisely to articulate an understanding of these displaced populations that might take their voices as essential elements for devising alternative responses to their problems and demands. This challenge implies rethinking refugees both in theory and in practice.

Globalizing processes pose many challenges for the refugee definition and the international regime, with its institutional counterparts. Increasingly, refugees are immersed in mixed large migration flows, making it extremely difficult to discern those who fulfill the requirements of the 1951 Convention from other types of displaced populations. Many argue that the

conventional definition does not account for the current reality of displacement, which can result from natural disasters, development-induced projects, or forms of persecution not foreseen at the time the Convention was written. For example, gender persecution is not mentioned on the conventional definition, though a growing number of asylum claims are based on sexual and domestic violence. Some countries have included such aspects in their domestic legislations, as is the case of Canada, but the global and regional regimes remain centered on restricted forms of persecution and violence. Tighter security requirements, xenophobic policies, and border control restrictions also make it very hard for refugees to reach safe havens and to acquire the documentation required for traveling internationally. Many have to resort to smuggling or other forms of trafficking in order to try to flee their countries of origin and reach out for protection. Some argue that the need for refugees to be "outside" their countries in this context violates the spirit of the Convention, because it places limits on rather than promotes protection. To illustrate the point, let's take the case of internally displaced persons (IDPs). The difference between refugees and IDPs is mainly related to the fact that the former must have crossed an international border whereas the latter remain displaced within the territory of their country of origin. As of 2004, approximately 15 million people were considered refugees, whereas approximately an additional 25 million were considered to be internally displaced (UNHCR 2006). Only a small percentage of the IDP population is considered to be "of concern" for UNHCR. Accordingly, although they face similar problems as those of refugees elsewhere, IDPs are not included in the regime mandate.

In sum, refugees are directly involved in the intricacies of globalization and migration and the persistence of large numbers of refugees in the current international context shows that, after fifty years of the Refugee Convention, much is yet to be done, both in terms of rethinking and adapting its traditional definition and in terms of understanding the complex nature of its phenomenon.

- Work Cited: **Arendt, Hannah.** 1951. The decline of the nation-state and the end of the rights of man. In *Imperialism*. 147-182. New York: Harvest.
- Malkki, Liisa.** 1996. Speechless emissaries: Refugees, humanitarianism, and dehistoricization. *Cultural Anthropology* 11 (3): 377-404.
- Nyers, Peter.** 2006. *Rethinking refugees: Beyond states of emergency*. New York: Routledge.
- Soguk, N.** 1999. *States and strangers: Refugees and displacements of statecraft*. Minneapolis: University of Minnesota Press.
- UNHCR (United Nations High Commissioner for Refugees).** 2006. *The state of the world's refugees 2006. Human displacement in the new millennium*. New York: Oxford University Press.