

Feb 8 2016

International Refugee Law: Definitions and Limitations of the 1951 Refugee Convention

Leila Nasr

This post is one of four articles to be published as part of this week's intensive series on refugee and migration rights. Stay tuned for tomorrow's article on the principle of non-refoulement.

By André de Lima Madureira* [i]

International Refugee Law (IRL), International Human Rights Law and International Humanitarian Law are considered complementary bodies of law, which possess a common objective: the protection of lives, freedoms and dignity of human beings. IRL, in turn, arose during the twentieth century and aims to develop and implement mechanisms for the protection of forcibly displaced persons owing to well-founded fear of persecution.

Initially, during the first half of the twentieth century, IRL was country-specific – i.e. its instruments only targeted those persons forcibly displaced from certain states. It is only in the aftermath of World War II, within the new United Nations context, that states have put into place the current system for the protection of refugees. This system is universal in its scope and composed of two pillars: the United Nations High Commissioner for Refugees ([UNHCR](#)), created in December 1950; and the 1951 Convention relating to the Status of Refugees ([the 1951 Convention](#)), defining those who can benefit from the refugee status and containing the rights attached to it.

According to the article [1\(A\)\(2\)](#) of the 1951 Convention, “the term ‘refugee’ shall apply to any 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”.

Despite its universal vocation, it is worth noting that this refugee definition contemplates a temporal and a geographic limitation – one being recognised as a refugee only in relation to events occurred in Europe and before 1 January 1951. Such limitations were removed sixteen years later with the adoption of the [1967 Protocol](#) Relating to the Status of Refugees. Therefore, it is only with the 1967 amendments that the 1951 Convention has indeed become a valuable universal instrument for the protection of refugees. —

However, truth must be told: the amended refugee definition contained in the 1951 Convention still presents some shortcomings that become evident during its application. Such shortcomings can be viewed from three angles.

The first is 1951 Convention's lack of a precise definition of the term “persecution”, key element of the refugee definition. In 1979, the UNHCR published the [“Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status”](#), where “persecution” was defined as any threat to life or freedom, whose existence had to be assessed on the basis of both objective and subjective criteria. However, this definition of the term persecution remains unsatisfactory: on one hand, because it is still very broad and therefore difficult to be implemented; on the other, because it is contained in a non-legally binding document.

Another shortcoming regards the five grounds of persecution (race, religion, nationality, membership of a particular social group and political opinion), categorically listed in the refugee definition. These five grounds considerably limit its scope: indeed, only the presence of at least one of them can determine the application of the 1951 Convention. Hence it is worth mentioning the lack of reference to economic, social and cultural rights for the purpose of refugee status determination: for example, people who leave their countries of origin or residence due to the lack of education and/or work are not considered as refugees. Additionally, there is also a lack of gender perspective, not only as a ground of persecution but also as a limitation to the protection of women and homosexuals.

The third limit concerns the lack of a broader integration between the refugee definition and other human rights, as only violations of civil and political rights are considered for determining the refugee status. In light of this, the integration between the three generationsⁱⁱⁱ of human rights is little considered when it comes to the concept of refugee. An example of this fact can be seen in the possible approximation with environmental issues, considering that the right to a healthy environment is a human right of third generation and people who flee climate change and/or natural disasters cannot benefit from the refugee protection.

Over the years, states have sought to address the shortcomings of the 1951 Convention, although on a regional level. The decolonization process and several civil conflicts in the African region brought the Organization of African Unity – now African Union – to formulate a broader definition of refugee contained in the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa ([OAU Convention](#)). Similarly, owing to the increasing numbers of refugees coming from dictatorial regimes, the Latin American states expanded the definition of refugee via the 1984 [Cartagena Declaration on Refugees](#)^[iii]. Thus, these regional instruments have both expanded the traditional definition of refugee^[iv], including, *inter alia*, external aggression, generalized violence and massive violation of human rights as possible reasons for determining the refugee status.

It is undeniable that the international refugee regime is currently well structured and has over the years guaranteed the protection of millions of refugees. However, the gaps in the 1951 refugee definition have impeded to address the protection concerns of even many more forcibly displaced persons. The current protection challenges require that the 1951 refugee definition be reconsidered.

[i] Based on JUBILUT, Liliانا Lyra; MADUREIRA, André de Lima. The Challenges of the Protection of Refugees and Forced Migrants in the Framework of Cartagena + 30. *REMHU, Revista Interdisciplinar da Mobilidade Humana*, vol 22, nº 43, p. 11-33, Brasília, July/dec 2014.

[ii] For further information on the three generations of human rights, please refer to:
<<http://unchronicle.un.org/article/international-human-rights-law-short-history/>>.

[iii] Although the 1984 Cartagena Declaration on Refugees is a non-legally binding document, it has influenced several domestic legislations in the Latin American region to adopt its expanded refugee definition.

[iv] According to the Article I (2) of the OAU Convention, refugee is also any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality. In turn, according to the 1984 Cartagena Declaration, Third Conclusion, the term “refugee” should also apply to those persons who flee their countries 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.

*Masters of Law from Universidade Católica de Santos (UniSantos), MSc Human Rights candidate at LSE, and former Lawyer/RSD Officer at Caritas Arquidiocesana de São Paulo (Brazil) – UNHCR implementing partner.

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