

# **The Genesis and Development of Article 1 of the 1951 Refugee Convention**

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**Abstract:** This article details the central role – often overlooked in the literature – played by committed individuals and interested parties in establishing the refugee definition contained in the 1951 Refugee Convention. It conveys the struggle that took place between the two camps of national representatives who finalized the convention, termed the ‘universalists’ and ‘Europeanists’ by one contemporary diplomat because of their contrasting geographical and conceptual preferences. Although various regional and international developments have complemented and broadened Article 1 significantly over the last 60 years, none of them have actually replaced it. Recent discussions over the need to adapt a more ‘political’ or ‘humanitarian’ refugee definition do not represent a new phenomenon; they merely resemble a modern continuation of the contrasting views put forward by a variety of personalities involved in the formation of the 1951 Refugee Convention.

**Keywords: IRO, 1951 Refugee Convention, political negotiations, refugee definition**

‘The less clear the definitions are, the more scope there will be for divergences of interpretation’

Michael Hacking (IRO) to Paul Weis (IRO), 4 February 1950

Unlike the revolutionary refugees who wandered around Europe in the nineteenth century, such as Mazzini, Marx or Bakunin, refugees in the twentieth century no longer solely represented people who ‘dared to defy the established powers with the pen, the revolver, or in armed campaigns’ (Kirchheimer 1959: 986). Instead, it became clear that refugees in the twentieth century often comprised people escaping persecution, wars and humanitarian disasters, as demonstrated by the over one million Russian refugees who left their homelands after the 1917 Russian Revolution, the ensuing civil war and the 1921 famine. So why then, if refugees represented such a broad array of people, did the definition contained in the 1951 Convention maintain that a person fleeing a natural disaster or a civil war failed to qualify as a refugee unless they had ‘a well-founded fear’ of persecution?

On the sixtieth anniversary of the 1951 Convention, this paper seeks to explain how such a refugee definition emerged. There are two main reasons for writing a history of Article 1 of the Refugee Convention: first, because it has played, and continues to play, such a crucial role in the immigration and refugee policies of so many democratic industrialized countries around the world since 1951; and, second, because historians have largely ignored it. The latter has transpired partly because two legal experts, Guy Goodwin-Gill and James Hathaway, have already done an excellent job of discussing the various legal debates on refugeehood that took place on the 1951 convention. Nonetheless, this paper contends that some interesting details relating to the history of the Refugee Convention, such as the central involvement of the International Refugee Organization (IRO), have been somewhat overlooked. The first part of this article, therefore, deals with the IRO legal division’s role in establishing, in late 1949, a ‘realistic’ draft that went on to become the template for the later convention. That same organization’s sometimes ‘horrified’ reaction to changes made to the text by the Ad Hoc Committee of states, most notably relating to the imposition of time and geographical restrictions and the exclusion of the right to asylum, will also be explained. The subsequent section of the paper will recount the debate between national representatives who finalized the Convention, particularly the two groups termed, by the Israeli representative at the 1951 plenipotentiaries’ conference, the ‘universalists’ and the ‘Europeanists.’ How the convention

has developed since 1951, including the 1967 protocol to the Convention, will then be discussed before concluding with some remarks on how experts today view Article 1 of the Refugee Convention.

### **The Forgotten Role of the IRO in the 1951 Convention**

Three figures dominated the IRO input into the 1951 Refugee Convention: Paul Weis and Gustave Kullmann, who worked on refugee-related issues during the Second World War and who both went on to work for UNHCR after the IRO was wound up, and Jacques Rubinstein, a Russian refugee who helped author the 1928 League of Nations arrangement on Russian refugees and the 1933 convention relating to refugees. By analysing the input of these three individuals, this section aims to reveal how the IRO and earlier refugee initiatives affected the 1951 Refugee Convention.

In March 1948, the Economic and Social Council of the United Nations requested the UN Secretary-General to undertake a study of the existing situation regarding protection of refugees and the stateless, with a view to making recommendations on how best the UN could protect them (Robinson 1953: 4). In response to the UN's study, the Economic and Social Council appointed an Ad Hoc Committee comprising representatives from 13 states on 8 August 1949. When state delegates met at Lake Success, New York, for the first time in January 1950, the UN presented them with a provisional Refugee Convention drafted in the preceding months. Most of the work behind the draft convention on refugees came from several leading members of the legal division of the IRO, which the UN had set up in 1947 to resettle refugees.

Many of the IRO personnel responsible for writing the draft had personal experience of asylum. The wife of the Swiss legal expert who led these efforts, Gustave Kullmann, had fled Russia after the 1917 Revolution. Kullmann occupied the post of Deputy High Commissioner for Refugees in the League of Nations during the Second World War. Paul Weis, who represented the IRO at discussions in New York in early 1950, had escaped to the UK in 1939 from Austria after spending several months imprisoned in a concentration camp. He worked for the World Jewish Congress during the war before joining the IRO in September 1947 and he represented that organization at discussions on the 1948 Universal Declaration on Human Rights (UDHR).<sup>1</sup> The IRO frequently consulted Jacques Rubinstein also. Rubinstein was one of the Russian and Armenian legal experts and refugees from the Commission Centrale pour l'Étude de la Condition des Réfugiés Russes et Arméniens who pushed for a draft convention on the rights of Russian and Armenian refugees from the late 1920s onwards (Gousseff 2008: 236; see also Rubinstein 1936). They first helped produce the Arrangement on Russian and Armenian Refugees in 1928, which provided non-binding recommendations relating to refugees' right to work, their right to access the courts and their protection from expulsion (Hathaway 2005: 86). Rubinstein then went on to play a prominent role in the establishment of the 1933 Convention Relating to the International Status of Refugees, which codified many of the recommendations set out in the 1928 arrangement, and contained a number of significant recommendations relating to labour conditions, industrial accidents, and welfare and education (Beck 1999: 622).

After extensive consultation with the Human Rights Division of the United Nations in New York in November 1949, most notably with the Canadian legal scholar John Humphrey, the first Director of the Human Rights Division in the UN Secretariat, and the French lawyer and academic Émile Giraud, the Head of the Research Section in the same division, the IRO draft became the template for future discussions on the Refugee Convention (Humphrey 1994: 244–253). Kullmann termed the IRO draft a 'realistic' refugee convention:

The Draft is 'realistic' in the sense that it aims at not going beyond what can reasonably be demanded of a liberal democratic State.

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<sup>1</sup> Kullmann to Biehle, 17 Jan 1950, PW/PR/IRO/6 and short biography contained in the Paul Weis archive at the University of Oxford.

It was appreciated that in contradistinction to previous instruments, the Draft had to be framed in such a way as to secure as universal application as possible. It was also appreciated that it had not to be designed for one category of refugees alone, but for all categories which might come under the mandate of the new High Commissioner.<sup>2</sup>

Nonetheless, the UN secretariat submitted the draft under its own designation to the Ad Hoc Committee set up to discuss the convention in New York in mid January 1950 because, according to Kullmann, 'a draft under [the] IRO flag might meet with more opposition and prejudice than a draft under [the] SG flag.'<sup>3</sup>

Soon after convening, the Ad Hoc Committee decreased from 13 to 11 members, as the Soviet Union and Poland left because of the continued presence of the [Republic of] China representation. The remaining countries represented in the committee were Belgium, Brazil, Canada, [Republic of] China, Denmark, France, Israel, Turkey, the UK, the US and Venezuela. Paul Weis acted as the IRO representative.

After a few days of discussions, Weis wrote to Kullmann in Geneva to inform him that three countries, the UK, France and the US, had each taken a different stance regarding the definition of a refugee; a pattern that continued throughout subsequent negotiations. The UK favoured a definition that 'included all unprotected persons'; the French proposal gave a wide definition of the term 'refugee' 'based on the right of asylum'; while the US suggestions amounted to an 'historical enumeration of the various categories of refugees, based on the Constitution of I.R.O. with certain amendments'. Following on from discussions over the definitions set out in the draft, a working group comprising France, the UK, the US and Israel further analysed the meanings attached to the IRO propositions, with Paul Weis in attendance. Their tentative conclusions, resembling the US proposals, considerably narrowed the scope of the draft by severely restricting the refugee definition. As Weis noted,

The United States does not want to include unknown groups in the definitions, fearing that this may result ultimately in financial commitments. France and Great Britain were in favour of a broad definition of refugees—the United States in favour of enumeration. The latter point of view prevailed.<sup>4</sup>

In its lengthy refugee definition, the Working Group's draft noted that the convention would only apply to those termed refugees before the Second World War, victims of the Nazis and of the Falangist regime in Spain, as well as 'those persons whose persecution or fear of persecution is due to events in Europe after the outbreak of the Second World War and before July 1, 1950'.<sup>5</sup> The IRO's desire to create a convention that would cover all categories of refugees coming under the mandate of the new UN High Commissioner for Refugees appeared obsolete.

Internally, the IRO expressed its dismay, with one official writing to Weis that after discussing the Working Group's definitions with another colleague they 'were both horrified by it'. The main problem, the IRO felt, related to the draft convention's use of the rushed and finite 1947 IRO constitution as a template for its definitions:

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<sup>2</sup> Inter-office IRO memo from Gustave Kullmann to Donald Kingsley, 20 Dec 1949. Taken from the Paul Weis archive, PW/PR/IRO/6.

<sup>3</sup> Taken from Kullmann to Biehle (Operations Officer, IRO Washington), 17 Jan 1950, PW/PR/IRO/6. To the surprise of the IRO and the UN Secretariat, France also produced a draft for the Ad Hoc Committee. According to the rules of procedure, the French draft would have had priority over the IRO/UN Secretariat draft (see Weis to Kullmann, 19 Jan 1950, PW/PR/IRO/6). However, the French, according to Weis, were most 'obliging' in discussions, deferring frequently to the IRO/Secretariat draft. See Weis to Kullmann, 25 Jan 1950, PW/PR/IRO/6.

<sup>4</sup> Weis to Kullmann, 10 Feb 1950, PW/PR/IRO/6.

<sup>5</sup> Ad Hoc Committee on Statelessness and Related Problems, 'Provisional draft on parts of the definitions. Article of the preliminary draft convention relating [sic] the status of refugees prepared by the Working Group on the article', 23 Jan 1950, PW/PR/IRO/6.

The existing I.R.O. Definitions were produced without any detailed knowledge of the refugees they were intended to cover. They are not, as you know, easy to apply. It would, in our view here [Geneva office], be the gravest possible mistake if new Definitions were to be drafted without seeing how they would work out in practice. ... We all know that bad cases make bad law; it is equally obvious that no cases make no law.<sup>6</sup>

Weis succeeded in making small changes to the draft declarations after submitting a memo to the Working Group detailing the IRO's input and objections. Nevertheless, the IRO remained perturbed by developments, fearing the consequences of the Working Group's draft for future refugee policy:

I suppose at the most we as an Organisation can do is point out the difficulties as cogently as possible and let the Committee stew in its own juice. The less clear, however, the Definitions are, the more scope there will be for divergences of interpretation ... I have a dim vision of the chaos that will ensue and I can only hope that the Ad Hoc Committee rather than myself will see it face-to-face.<sup>7</sup>

The IRO remained especially sceptical of the consequences a specific dateline would have, with Kullmann telling Weis that it represented a solution that was 'not merely unjust but also impractical'.<sup>8</sup> Jacques Rubinstein too wrote of his disapproval to Weis. Rubinstein maintained that governments remained haunted by the idea that history began in 1939 and finished in 1944. He deplored this narrow-sightedness, telling Weis that not all refugees represented people displaced by war.<sup>9</sup> But the Ad Hoc Committee, led by the United States, believed that a general definition without specific parameters 'would be a blank cheque' and would 'undertake obligations towards future refugees, the origin and number of which would be unknown'.<sup>10</sup> Another IRO grievance related to the Ad Hoc Committee's decision to relegate the article stipulating refugees' 'right to asylum' to the preamble. In Kullmann's words, this represented 'a very poor compensation'.<sup>11</sup> By the time delegates finalized the convention, no place existed for the 'right to asylum'—even in the preamble.

### **'Europeanists' versus 'Universalists'**

After month-long talks in New York in early 1950, Paul Weis wrote to the head of the IRO underlining France's willingness to compromise: 'The Committee worked on the whole in a spirit of mutual understanding and collaboration, and the French delegation, in particular, showed great readiness to reach unanimous solutions.'<sup>12</sup> Yet in Geneva in July 1950, France began to change tack by favouring a more restrictive approach to refugees and started to side with the Americans, in that they too stated that the convention should only be confined to events in Europe preceding 1951; a process that appears to have commenced when Robert Rochefort took over as the French representative. In discussions relating to the statute of the new UNHCR office, one of the UK representatives recorded that 'the French no longer favour a broad definition in the High Commissioner's terms of reference.'<sup>13</sup> In discussions in August 1950, Rochefort outlined the problem France had between advocating a liberal refugee policy 'where hospitality was given

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<sup>6</sup> Hacking to Weis, 27 Jan 1950, PW/PR/IRO/6.

<sup>7</sup> Hacking to Weis, 4 Feb 1950, PW/PR/IRO/6.

<sup>8</sup> Kullmann to Weis, 3 Feb 1950, PW/PR/IRO/6.

<sup>9</sup> Rubinstein to Weis, 3 Feb 1950, PW/PR/IRO/6.

<sup>10</sup> In relation to the American domination of discussions, Weis records 'that the representative of the United States made himself most frequently spokesman'. Weis to Kingsley, 7 March 1950, PW/PR/IRO/6.

<sup>11</sup> Kullmann to Humphrey, 8 March 1950, PW/PR/IRO/6.

<sup>12</sup> Weis to Kingsley, 7 March 1950, PW/PR/IRO/6.

<sup>13</sup> Beith (UK delegation to the Economic and Social Council [ECOSOC]) to the UK Foreign Office, 27 July 1950, FO 371/87400, UK National Archives, Kew.

without the slightest discrimination' and a more discriminatory naturalization policy.<sup>14</sup> There were also, as Loescher (2001) has noted, personal reasons for Rochefort's determination to row in behind the Americans. John Humphrey had no doubts regarding Rochefort's—and, by extension, France's—change of heart. He noted in his diary that Rochefort called on him

to tell me that he wants to be at least deputy High Commissioner for Refugees. He seems to think that an American will get the higher post. I am beginning to understand why he has been supporting the American thesis for a definition by categories (Humphrey 1996: 94).

The UN General Assembly convened a conference of plenipotentiaries to finalize the convention. Delegates from 26 states, two observer states and a variety of NGOs and international organizations attended the conference in Geneva in July 1951 (Bem 2004: 610).

Rochefort's behaviour became even more remarkable during the plenipotentiaries' conference. This was partly due to Rochefort having been passed up for the position of deputy High Commissioner in late 1950. Humphrey remarked in his diary at the start of the conference that Rochefort's 'bile is even more acute and his brilliant interventions are even more manifestly anti everything that is not European than they were during the Session of the General Assembly' (Humphrey 1996: 231). The British representative, Samuel Hoare, wrote to a colleague in the Home Office following the conference to say that Rochefort 'behave[d] fractiously and generate[d] so much ill-will'.<sup>15</sup> The exasperation of several parties with Rochefort's behaviour reached a climax when France and Belgium clashed in mid July. Due to the heated nature of their exchange the discussion was struck out of the conference proceedings although Humphrey recorded in his diary that Rochefort had controversially 'accused the Belgians of smuggling refugees over the border on moonless nights' (Humphrey 1996: 234).

In line with the American argument and following on from their conversion in the summer of 1950, the French suggested that only Europe 'was ripe for the treatment of the refugee problem on an international scale'.<sup>16</sup> The US backed the French stance by recommending that the committee take 'one constructive step at a time'.<sup>17</sup> The French change of heart meant that the Palestinian refugees forced to leave their homeland in 1948 and the Jews leaving Arab countries in North Africa and the Middle East would remain outside the terms of the convention. The Arab states present at the July 1951 conference backed this measure because they felt that their interests and those of the Palestinians would be served better by the UN agencies set up especially to deal with Palestinian refugees, such as the UN Relief and Works Agency for Palestinian Refugees (UNRWA).<sup>18</sup> Similarly, the United Nations Korean Reconstruction Agency (UNKRA) assisted those fleeing North Korea and people displaced by the war there from late 1950. Significantly, both of these operations contributed to the US goal of stabilizing areas deemed under threat of communism (Loescher 2001: 57). The millions of Pakistanis and Indians who became displaced after the Transfer of Power from Britain to the two newly formed states in August 1947, however, failed to come under the terms of another UN agency or the Refugee Convention, which Gil Loescher (2001: 57) has suggested was because the region remained outside US and western interests. Bem (2004: 614) adds that India supported the more exclusive refugee definition because it feared that a 'broad definition would make a satisfactory solution of certain problems connected with refugees less probable'.

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<sup>14</sup> Robert Rochefort, Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Thirty-Third Meeting Held at the Palais des Nations, Geneva, on Monday, 14 August, 1950, E/AC.32/SR.33.

<sup>15</sup> Hoare to Scopes, 17 Aug 1951, FO 371/95931, UK National Archives, Kew.

<sup>16</sup> Rochefort (France), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Nineteenth Meeting, 13 July 1951, A/CONF.2/SR.19.

<sup>17</sup> Warren (USA), *ibid.*

<sup>18</sup> Mostafa Bey (Egypt), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

The French and American views found favour with the South American representatives from Venezuela and Columbia. By contrast, most of France's European neighbours—with the notable exception of Italy (participating as an observer) and, belatedly, Germany—appeared to favour a broader conception. The UK led the way in voicing its support for as broad a definition as possible. After already having made a concession regarding the date-line change because 'the Convention had to be made acceptable to a larger number of States than those sharing the UK view', Britain voiced its disquiet about having to make 'a further limitation' regarding the geographical span of the convention. To counter this, the UK representative adopted a remarkably progressive stance:

Even if an eastward movement were to take place, the European countries would be able to control it. They would, in fact, in relation to any such movement, become countries of immigration in the same way as the countries on the Continent of America were at present countries of immigration for European refugees and would enjoy the same controls.<sup>19</sup>

The large group of NGOs present at the conference backed the British stance, with the International Association of Penal Law calling for the implementation of a 'world-wide convention that would become the Magna Carta for the persecuted'.<sup>20</sup> Belgium also took up the fight, even accusing France of assuming an 'attitude of self-defence vis-à-vis refugees'.<sup>21</sup> Iraq and Egypt backed this broad stance. Canada and Switzerland, while both willing and able to support a comprehensive definition, pleaded for agreement and hence sought to find a balance between the camps that the Israeli representative later referred to as the 'Europeanists' and the 'universalists.' The Vatican brokered a compromise by proposing to insert the line 'in Europe, or in Europe and other continents' as specified in a statement to be made by each country when signing the convention.<sup>22</sup> In addition, Sweden successfully introduced a vital condition: 'members of a particular social group' that faced persecution would also be eligible to attain refugee status.<sup>23</sup> On 25 July 1951, the conference of plenipotentiaries was declared closed except for the signing of the convention.

The convention's classification of a refugee borrowed heavily from various definitions of refugees formed since the late eighteenth century. It took in the French Constitution of 24 June 1793, which declared that the French people gave 'asylum to foreigners banished from their land for the cause of liberty' (see Noiriél 1991: 31–32). However, the 1951 Refugee Convention emphasized individual persecution, much like the British 1905 Aliens Act, which had included a stipulation that leave to land would be provided for an

immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life and limb, on account of religious belief (quoted in Collyer 2005: 289).

The 1951 definition also reflected the League of Nations' definitions in the 1920s by underlining that a refugee was a migrant unable to attain any protection or representation from his or her own country:

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<sup>19</sup> Hoare (UK), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

<sup>20</sup> Habicht (International Association for Penal Law Representative), *ibid.*

<sup>21</sup> Herment (Belgium), *ibid.*

<sup>22</sup> Comte (Holy See), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-third Meeting, 16 July 1951, A/CONF.2/SR.23.

<sup>23</sup> Petrin (Sweden), *ibid.*

... 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. (Article 1, UN Refugee Convention)

### **The Development of the Convention since 1951**

As Goodwin-Gill (1996: 6) has noted, ‘the preferred approach to a refugee definition moved from a basis in flexible or open groups and categories, to an apparently more closed and legalistic one’. The 1951 UN Convention Relating to the Status of Refugees legalized the situation of many of the people who remained displaced after the Second World, while apparently shutting the door to future unwanted guests. This enabled western governments to attain a sense of control over newcomers to their lands. It also transferred considerable power back to states after the interstate coordination of the immediate post-war years. Nevertheless, the convention went on to cause various problems for western states in the longer term, albeit rather unwittingly, due to UNHCR’s success in expanding its position and broadening the terms of the convention throughout the 1950s and 1960s.

The convention’s definition of a refugee created confusion over the role of the recently formed UNHCR. In addition to aiding those people defined as refugees by the convention, UNHCR’s statute, signed six months before the convention in late 1950, asserted that the organization would also take responsibility for ‘[a]ny other person who ... has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion’.<sup>24</sup> Significantly, this definition included no time or geographical limits—unlike the convention. This meant, as Rochefort explained in mid 1951, that ‘[t]hose who became refugees as a result of events occurring after 1 January 1951 would be just as much within the competence of the Office of the High Commissioner for Refugees’ as those fleeing from Europe before 1951.<sup>25</sup>

Apart from the large exodus into West Germany in the early 1950s and the approximately 200,000 who fled Hungary in 1956, the number of refugee aspirants remained relatively small and politically convenient in the decade following the signature of the convention, leading these people to be ‘endowed with protection and assistance that went far beyond the international obligations imposed on receiving states’ (Joppke 1998: 111). Throughout the 1960s, and especially in the wake of the appearance of the Berlin Wall, escape from Soviet Europe became more difficult. Instead, most refugees in the 1960s originated from Africa and fled to neighbouring African countries—an area that UNHCR had little dealings with until the late 1950s.

Reacting to the outflows of people from the Algerian war of independence, the UN General Assembly asserted in 1958 that UNHCR could also assist those Algerian refugees in Morocco and Tunisia (Goodwin-Gill 2008: 20). Some years later, UNHCR sought to address the discrepancy that existed between its increasingly global role in assisting refugees, as set out in its own statute, and the limited time and geographic restraints that applied in the Refugee Convention.

Article 8 (a) of the UNHCR statute allowed the High Commissioner to propose amendments providing for protection of refugees falling under his or her mandate (Weis 1967: 41). Making use of this instrument, the High Commissioner at the time drew up plans to address the convention’s oversights by convening a colloquium of various international legal experts to debate ‘whether any—and if so what—measures can be taken to adapt international law relating to refugees to present conditions’.<sup>26</sup> Funding came from the Carnegie Endowment for International Peace for a

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<sup>24</sup> Chapter II, Article 6 (B), *Statute of the Office of the United Nations High Commissioner for Refugees*, 1950.

<sup>25</sup> Rochefort (France), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twentieth Meeting, 13 July 1951, A/CONF.2/SR.20.

<sup>26</sup> Invitation letter from Joseph Johnson of the Carnegie Endowment to International Peace to Michel Potuliki, Secretary-General of the International Committee for Voluntary Agencies, 3 March 1965, 16/1/3/AMEND International

conference to take place at the Rockefeller villa in Bellagio, Italy, in April 1965. The idea for the colloquium became clear in the address of the High Commissioner, Felix Schnyder, on the first day:

If considered exclusively from the point of view of legal technique, the problem of the dateline could be relatively easily solved. It would only be to envisage an appropriate legal instrument removing the dateline from the Convention, thereby extending its provisions to all refugee situations both present and future.<sup>27</sup>

In addition to approaching the subject of the removal of the dateline, the High Commissioner for Refugees recommended that the colloquium consider whether specific regional approaches should be adopted for refugee problems in certain areas and whether any legal instrument should include a 'right to asylum'.

The colloquium believed a new convention would be too time-consuming and laborious to achieve the immediate goals at stake. Therefore, it decided that a protocol to the convention would provide the best solution.<sup>28</sup> Regional actions, the colloquium recorded, might be beneficial but they had to take place under the international framework of the UN. The 'right to asylum', it adjudged, would be too controversial and complicated to insert in this protocol because it might give rise to serious political implications.<sup>29</sup> All countries—that is those that had already signed the convention and those that had yet to sign—would have the option of subscribing to the protocol that would remove geographical and time constraints:

[The colloquium] noted that it was now increasingly recognized that the refugee problem was universal in nature and of indefinite duration and that, in this respect, the Convention was no longer adequate. ... The members of the Colloquium therefore considered that it was urgent for humanitarian reasons that refugees at present not covered by the Convention should be granted similar rights by means of an international instrument.<sup>30</sup>

Moreover, new signatories would, on ratification, be bound to the conditions of the 1951 convention, as modified by the protocol.<sup>31</sup>

Ten African countries,<sup>32</sup> as well as Pakistan, tabled a draft resolution to the UN General Assembly in late 1966 pressing for the protocol's acceptance. Thereafter, it entered into force in October 1967 when Sweden became the sixth country, following the Holy See, the Central African Republic, Cameroon, Gambia and Senegal, to sign up to the protocol (Weis 1967: 48). Other states quickly followed and numerous countries that had never signed the 1951 Refugee Convention, such as the United States, signed the protocol. The eagerness of western governments to sign the protocol was, according to Loescher (1996: 80), at least partly motivated by the attempts of the African Union's precursor, the Organization of African Unity (OAU), to conceptualize a more sympathetic definition of a refugee that included people fleeing their homes because of 'external aggression, occupation, foreign domination or events seriously disturbing public order'. The prospect of this competing with the already familiar UN model apparently encouraged western countries to sign the

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Status of Refugees—Convention Relating to the Status of Refugees (Protocol); Series 1; Fonds 11, Records of the Central Registry; Archives of the UNHCR. Hereafter referred to as 16/1/3/AMEND).

<sup>27</sup> Statement by Felix Schnyder, UN High Commissioner for Refugees, at the Colloquium on the Development in the law of Refugees with particular reference to the 1951 Convention and the Statute of the UNHCR, 22 April 1965, 16/1/3/AMEND.

<sup>28</sup> A. Martin, 'Rapport General, Colloque sur les aspects juridiques des problèmes relatif aux réfugiés', August 1965, p. 6. Contained in 16/1/3/AMEND.

<sup>29</sup> *Ibid*, p. 14.

<sup>30</sup> Memo from the UN High Commissioner for Refugees on the Report of the Colloquium on Legal Aspects of Refugee Problems held in April 1966', 9 Aug 1965, 16/1/3/AMEND.

<sup>31</sup> States that had already ratified the 1951 Convention retained the option of applying its terms to Europe only. Italy and Turkey chose to adhere to the geographical restrictions of the 1951 definition.

<sup>32</sup> Algeria, the Congo (Brazzaville), Guinea, Libya, Mali, Mauritania, Morocco, Sudan, Tunisia and Zambia.

protocol.

Much has happened since the late 1960s. Instability, violence and conflicts in Asia, Africa and the Middle East, as well as the end of the Cold War, including the breakup of the former Yugoslavia, have led to massive increases in the numbers of refugees and displaced persons worldwide. Furthermore, the more widespread availability of commercial transport has facilitated people in seeking refuge further from home.

One could argue that western states had not, in agreeing the 1951 Convention, set out to provide non-Europeans, especially those hailing from non-communist regimes, with the privileges granted to communist defectors from Soviet Europe. Their arrival consequently caused various degrees of confusion and anxiety among industrialized states. To check this development, sophisticated and restrictive asylum systems have been established in industrialized states, including alternative forms of protection for those falling outside the Convention scope as these states see it. In the meantime, both the OAU in the form of a legal Convention (1969), and the Latin American states in the form of the Cartagena Declaration (1984) have broadened their definitions of a refugee to meet their contemporaneous circumstances.

### **Conclusion**

The term 'refugee' continues to attract controversy as a result of its restrictive application. While some, such as Chimni (2009: 16), lament academia's failure to adequately challenge the convention's 'unethical definition of "refugee"', various academics have condemned the definition for being too narrow, unfairly restricting access to refugee status to a very lucky few. These academics support more generous proposals that advocate refugee status for people whose state failed to provide them with the basic safety and subsistence needs necessary to survive. For Shacknove (1985: 277), for example, refugees represent 'persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.' Zolberg *et al.* (1989: 33) agree: refugees move abroad 'in order to survive, either because their own state is the cause of their predicament or because it is unable to meet these basic requirements'. Gibney (2004: 7) concurs but specifies further. For him, refugees require

a new state of residence, either temporarily or permanently, because forcing them to return home or remain where they are would—as a result of either the brutality or inadequacy of the state—seriously jeopardize their physical security and vital subsistence needs or potentially expose them to persecution.

Some experts even advocate refugee status for people escaping extreme poverty. Dummett (2001: 37), for instance, claims that 'all conditions that deny someone the ability to live where he is in minimal conditions for a decent human life ought to be grounds for claiming refuge elsewhere'.

More recently, certain authors have highlighted how international agencies and governments ignore people whose livelihoods are threatened because of various environmental problems (Myers 2005). Many specialists have refrained from calling for a revision of Article 1 to embrace environmental refugees, however, because of the need for further research and understanding on the issue (see Black 2001; Boano *et al.* 2008). Nonetheless, environmental factors have made up part of a recent call to redefine Article 1 to encompass 'survival refugees': people who leave because of a combination of state collapse, livelihood failure, and environmental disaster (Betts and Kaytaz 2009).

Disparagement of the Refugee Convention has not been one-sided, however. According to Price (2009: 11), a 'humanitarian' conception of refugeehood has emerged that 'empties asylum of its ideological significance' and reinforces national trends towards more restrictive asylum policies. For various western states, asylum has become too liberal and provides economic migrants with an unfair opportunity to bypass migration restrictions that would otherwise bar their entry. As a

consequence, states continue to interpret the term ‘persecution’ in a variety of politically convenient ways despite the pretence that asylum determination should be apolitical (Zetter 2007: 184). As Goodwin-Gill (2008: 21) notes, the persecution-oriented definition ‘continues to limit and confuse, not only at the international operations level, but also in national asylum procedures’.

This article provides a historical account of the way in which the refugee definition contained in the 1951 convention has emerged and developed over the last 60 years. It documents how the definition of a refugee included in the 1951 Convention resulted from the legal debates and interpretation provided by committed individuals and interested parties, such as Weis, Rubinstein, Kullman, and Rochefort; and the corresponding responses from national governments. The struggle between universalists and Europeanists, some of whom sought to restrict the definition of a refugee, profoundly influenced refugee protection in the aftermath of the war but as noted above, regional developments in Africa (1969), Latin America (1984) as well as the UN’s own protocol (1967), have complemented and broadened Article 1 significantly over the last 60 years. While these elaborations have not actually replaced the convention, they have caused it to continually evolve. Recent discussions over the need to adapt a more ‘political’ or ‘humanitarian’ refugee definition do not, therefore, represent a new phenomenon; they merely resemble a modern continuation of the contrasting views put forward by a variety of personalities involved in the formation of the 1951 Refugee Convention. As Marfleet (2006: 13) notes, the term refugee ‘has always been mutable: for over 300 years the term has been defined and redefined by politicians and officials’ (Marfleet 2006: 13). There is every reason to believe that this process will continue in the future.

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