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The Refugee: A Problem of Definition

Austin T. Fragomen, Jr.

INTRODUCTION

THE ERA SINCE THE END of World War II has been marked by great technological progress and social change. It has also been a time of civil turmoil, war, pestilence, and oppression in many countries of the world. A result of the turbulence and ferment

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that characterizes the past 25 years has been the displacement from their homes of millions of persons each year. The refugee population of the world is growing and continues to grow. In 1959, it was estimated that there were 15 million refugees.¹ In June 1968, the estimate had increased to

17.2 million,² and by June 1969 another 100,000 became statistics in the saga of Man's inability to live with his fellow man.³

The total number of refugees is the aggregate of many individuals who have been uprooted by greatly differing circumstances. The reasons for flight vary for each refugee group as do their opportunities for asylum and resettlement. The Mozambique refugee fleeing to Zambia may have had an entirely different motivation from the Tibetan refugee fleeing to Sikkim. The situation resulting in the displacement of the Palestinian Arab refugee is dissimilar to the factors resulting in the displacement of the Indonesian Chinese refugee within Indonesia. The opportunities for permanent resettlement and integration of the Bulgarian refugee in Belgium are more substantial than those of the Chinese refugee from Communist China in Hong Kong. However, each refugee is a person desperately in need of assistance.

Such aid is available to the refugee on several levels: The United Nations takes an active role in the protection and welfare of ref-

¹ UNITED STATES COMMITTEE FOR REFUGEES, WORLD REFUGEE REPORT 2 (1969).

² *Id.* at 3.

³ UNITED STATES COMMITTEE FOR REFUGEES, WORLD REFUGEE REPORT 2 (1970).

ugees; numerous countries have extensive refugee programs; and assistance on a massive scale is provided by the private sector, particularly voluntary agencies.

Each entity involved in aiding refugees must establish criteria of precisely who is deserving of or entitled to their help. Thus, the formulation of a definition becomes exceedingly important. The policy of any body — international, national, or private — toward the refugee is a function of the definition utilized to designate an individual or group of individuals as refugees. Definitions are customarily adopted which take into account the capability and desire of a State or multi-national body to offer assistance to refugees. The type of assistance to be offered is highly relevant in evaluating the scope of the definition. When material assistance will be supplied to persons in a foreign country a broader definition will usually result than when asylum is offered or rights guaranteed. Each State adopts a definition under its national law dependent upon a complex set of elements motivated by humanitarian concern and by both internal and external political pressures. Formulation of international definitions is similarly a result of these factors.⁴

A definition which is applicable only to a predetermined group leaves little question as to who comes within the criteria of eligibility. Unpredictable occurrences which could result in new groups of persons becoming eligible can be eliminated. A general definition of the term "refugee" contains the risk of future unpredictability. How many persons or what type may fall within the personal scope of the definition and become entitled to the benefits thereunder cannot be foreseen.

Thus, each State, as a result of its geographical location, internal political composition, and national prejudices and philosophy, will react to the question of the refugee in light of its parochial interests. In the formulation of an acceptable international definition, each State will strive to protect its own concerns. The process of political compromise ensues. Because the resultant definition must be acceptable to a maximum number of States, it necessarily will be circumscribed in scope.

⁴ Consider the following statement made by Jacques Vernant, a well-known author on refugees:

The difficulty of confining within the limits of a definition at the same time general and precise, the living reality, coupled with the legitimate anxieties of governments, has the result that in international decisions and agreements the categories of persons to whom they apply have generally been carefully restricted by reference to race, geography, and time.

J. VERNANT, *THE REFUGEE IN THE POST WAR WORLD* 8-9 (1959).

In formulating a strictly national policy, a State may be even more inhibited by internal considerations. Moreover, the individual State must be more aware of the foreign relations aspects of its refugee policy.

This article will examine, in the context of the above general observations, the primary definition in the international arena and the definition utilized by the United States under its national laws, with a view toward enlarging the personal scope of both.

I. INTERNATIONAL POLICY

A. *Historical Background*

Until the past decade, the refugee has been regarded as primarily a European phenomenon. With the upsurge of political unrest in the developing States, the emphasis is beginning to change.

Following World War I, the first international instrument dealing with the refugee was adopted.⁵ This document pertained exclusively to refugees from Russia. Agreements continued to remain narrow in scope — limited to specific groups of refugees, escapees, and displaced persons — until after the termination of World War II.⁶

At the close of World War II, the presence of approximately one million displaced persons, primarily Europeans who refused to be repatriated, compelled the United Nations to approach the problem of the refugee on a broader scale than the previous piecemeal method. The deliberations of the United Nations led to the adoption of the Constitution of the International Refugee Organization.⁷ This organization and its Preparatory Commission carried out all

⁵ Arrangement of 5th July 1922, 13 L.N.T.S. 355.

⁶ See, e.g., Arrangement of 12th May 1926, 89 L.N.T.S. No. 2004; Arrangement of 30th June 1928, 89 L.N.T.S. No. 2005; Convention Relating to the International Status of Refugees of 28th October 1933, 159 L.N.T.S. No. 3663 (all limited to Russian and Armenian refugees); Arrangement of 30th June 1928, 89 L.N.T.S. No. 2006 (limited to Assyrian, Assyro-Chaldian, and Turkish refugees); Provisional Arrangement of 4th July 1936, 171 L.N.T.S. No. 3952 (limited to German refugees). An excellent example of such legislation is the following definition of a Palestinian refugee contained in the United Nations Relief and Works Agency (UNRWA) for Palestine refugees in the Near East which was established in 1949.

A person registered with UNRWA whose normal residence was Palestine for a minimum 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. . . . To be eligible for UNRWA assistance, the refugee must have taken refuge in 1948 in one of the few "host" countries in which UNRWA operates, namely — Jordan, Lebanon, Syria, as well as the Gaza Strip.

⁷ See Weis, *The International Status of Refugees and Stateless Persons*, 83 JOURNAL DU DROIT INTERNATIONAL 12 (1956).

international work for existing groups of refugees from September 1, 1946, to its liquidation in 1952.⁸

In December 1950, the General Assembly of the United Nations adopted the Statute of the Office of the United Nations High Commissioner's Office for Refugees.⁹ Generally, the purpose of this statute was to provide a permanent organization within the United Nations to deal with the subject of refugees in a comprehensive manner.¹⁰ Along with the statute, the General Assembly adopted a resolution to convene a conference with the purpose of finalizing and signing a convention relating to the status of refugees.¹¹ As a result of this conference, in 1951 the Convention relating to the Status of Refugees was opened for signature.¹²

Previous international agreements had applied only to specified categories of persons. The 1951 Convention contained a general definition of the term "refugee."¹³ Upon signing the Convention, each State may limit the personal scope of the Convention to events occurring in Europe.¹⁴

The members of the Conference which adopted the Convention clearly desired it to be broadly interpreted. A recommendation was included in the final Act that the Convention have value as an example exceeding its contractual scope. It provided that all States should be guided by the Convention in their treatment of persons in their territories as refugees who were not covered by the terms of the Convention.¹⁵ The term "events occurring before 1 January

⁸ *Id.* The functions of the International Refugee Organization (IRO) included repatriation, identification, registration and classification, care and assistance, legal and political protection, and resettlement and reestablishment of refugees within the mandate of the organization.

⁹ G.A. Res. 428, 5 U.N. GAOR Supp. 2, at 46, U.N. Doc. A/1750 (1950). The functions of the High Commission for Refugees were to provide international protection, under the auspices of the United Nations, to refugees who fall within the scope of the Statute, to assist governments in seeking permanent solutions to the problems of refugees, and to assist private organizations in facilitating voluntary assimilation of refugees into new national communities. *Id.*

¹⁰ IRO was temporary from its inception.

¹¹ G.A. Res. 429, 5 U.N. GAOR Supp. 20, at 48, U.N. Doc. A/1751 (1950) (Conference to be convened). Simultaneously, a protocol relating to the status of stateless persons was adopted.

¹² Convention Relating to the Status of Refugees, *entered into force* April 22, 1954, 189 U.N.T.S. 137 [hereinafter cited as Convention]. See 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 695 (1967).

¹³ See note 27 *infra* for the text of the Convention's definition of "refugee."

¹⁴ Convention, note 12 *supra*, Art. IB(2). Any State which has adopted the alternative limiting applicability to Europe may extend its obligations at any time by adopting the alternative including events occurring in Europe or elsewhere.

¹⁵ Final Act of the United Nations Conference of Plenipotentiaries on the Status of

1951" has been broadly interpreted.¹⁶ However, thousands of refugees falling within the definition were created after this date. Therefore, a Protocol Relating to the Status of Refugees was adopted and opened for accession on January 31, 1967.¹⁷ The sole purpose of this Protocol was to drop the temporal limitation.¹⁸ Thus, the Protocol gave formal recognition to the fact that refugees have resulted from events no part of which occurred before January 1, 1951. The Protocol also served the purpose of reconciling the scope of the Convention with the competence of the Office of the United Nations High Commissioner for Refugees. The definition contained in the Statute of the Office of the High Commissioner was virtually identical to that contained in the Convention except for the dateline of the Convention.¹⁹

B. *International Definition of "Refugee"*

The primary definition, for international purposes, of the term "refugee" is that set forth in the Convention relating to the Status of Refugees.²⁰ This definition is virtually identical to that contained in the Statute of the Office of the United Nations High Commissioner for Refugees. As noted above, the primary difference in the two definitions is the limitation of the Convention to refugees arising as a result of events occurring prior to January 1, 1951. The Statute

Refugees and Stateless Persons, held at Geneva from July 2, 1951, to July 25, 1951, 189 U.N.T.S. 138. See Weis, *The 1967 Protocol Relating to the Status of Refugees and Some Questions of the Law of Treaties*, 1967 BRIT. Y.B. INT'L L. 40.

¹⁶ See Weis, *supra* note 15, at 40.

¹⁷ G.A. Res. 2198, 21 U.N. GAOR Supp. 16, at 48, U.N. Doc. A/6316 (1966).

¹⁸ *Id.*

¹⁹ Compare G.A. Res. 428, 5 U.N. GAOR Supp. 20, at 46, U.N. Doc. A/1750 (1950), with Convention, *supra* note 12.

²⁰ In the international arena, there is one other definition of the term refugee which is noteworthy. The Intergovernmental Committee for European Migration, established in 1951, defines a refugee as follows:

Among other criteria, a refugee is a person who (1) is stateless or without any country of nationality, (2) has been or will be denied the right of return to his country of nationality or former residence, (3) has been forced to leave his normal country of residence due to racial, political, or religious discrimination, (4) has been the victim of a war or a disaster which has seriously disadvantaged his condition of living, or is unable or unwilling to accept the protection of the government of his country of origin as a result of fundamental political dangers and cannot avail himself of the protection of another government except as a "right of asylum." Moreover, a person would be regarded as "prima facie" within the mandate of other international organizations as the United Nations Relief and Rehabilitation Administration or the International Refugee Organization providing he did not receive resettlement assistance from one of these organizations, or if he did receive such assistance, that his integration in a country of resettlement has not been feasible for reasons beyond his control or due to compassionate circumstances. Obtained from the American Council of Voluntary Agencies in New York (1969).

contains a definition without dateline. Thus, the competence of the Office of the High Commissioner extended to many refugee situations not encompassed by the Convention. The discrepancy was rectified in 1967 with the adoption of the Protocol Relating to the Status of Refugees.²¹ The 1967 Protocol removed the temporal limitation under the Convention in the case of any State acceding thereto. For States signatory to both the Convention and the Protocol, or just the Protocol, the definition of the term "refugee" is virtually identical to that contained in the Statute.

The Convention and the Statute have both direct and indirect effects. The direct effect of the Convention is the establishment of certain basic standards for the treatment of refugees and the creation of certain rights and freedoms for refugees. The Convention recognizes that the most urgent need of the refugee is to be accorded asylum. The Convention does not regulate the right of admission into the country of a refugee, but recognizes the duress to which a refugee is subject when fleeing from a State where he fears persecution and protects him against deportation or forced return to such a State.²² The Convention also sets forth minimum standards for the treatment of refugees by signatory States. Included among the rights guaranteed the refugee within the State of asylum, to the extent such rights are assured nationals of that State, are the following: freedom to practice religion, equal educational opportunities, right to social security and public welfare assistance, right to work, right to obtain housing, and right to acquire property.²³

The basic function of the Statute of the Office of the High Commissioner for Refugees is to provide international protection and material assistance to all refugees within his competence as set forth by the Statute.

²¹ G.A. Res. 2198, *supra* note 17.

²² Weis, *The Convention Relating to the Status of Refugees*, 42 INTERPRETER RELEASES 4 (1965). Weis explains as follows:

Thus, Contracting States may not impose penalties, on account of their illegal entry or presence, on refugees coming directly from a territory where their life or freedom are threatened provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (Article 31(1)). Moreover, no Contracting State may expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. A refugee is thus protected against deportation not only to the country of his nationality but to any country in regard to which he fears persecution. (Article 33(1)).

²³ Convention, *supra* note 12.

Only those persons falling within the definition of the Convention or the Statute are eligible to receive the benefits provided.

The definition contained in these international documents also has an indirect effect. The criteria of eligibility as established by the Convention or Statute are frequently incorporated into the national laws of States in determining the status of the refugee in that particular State. The tendency of States to emulate the international definition is a result of the world wide nature of the refugee situation. In 1960, a public law was enacted in the United States which based the admission of refugees into the United States upon the mandate of the United Nations High Commissioner for Refugees.²⁴ In Germany, persons coming within the definition are granted asylum under national law.²⁵ Under Italian national law, the definition contained in the Convention is considered as a definition of those persons who are entitled to asylum in Italy under Article 10 of the Italian Constitution.²⁶

It is important to analyze the definition and determine precisely to whom it applies. Each phrase has great significance in that entire refugee groups can be either excluded or included from substantial benefits by slight alterations in the language of a particular law. Because of the similarity of the Convention and the Statute, reference will be made to the definition of "refugee" contained in the Convention.²⁷

²⁴ Act of July 14, 1960, Pub. L. No. 86-648, § 1, 74 Stat. 504. Specifically, this law authorized the Attorney General to parole refugees into the United States, under the provisions of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5) (1964), if the alien "(1) applies for parole while physically present within the limits of any country which is not Communist, Communist-dominated, or Communist-occupied, (2) is not a national of the area in which the application is made, and (3) is within the mandate of the United Nations High Commissioner for Refugees." 74 Stat. at 504. The same law provided that an alien paroled into the United States, pursuant to this provision, would be eligible to adjust his status to that of a lawfully admitted permanent resident alien after a period of two years. *Id.* at 505. However, Congress later repealed the parole refugee provision, Act of Oct. 3, 1965, Pub. L. No. 89-236, § 16, 79 Stat. 919, while retaining the provision for an alien paroled into the United States. *Id.*

²⁵ Asylum Ordinance of January 6, 1953, *Bundergesetzblatt*, part I at 3. See Weis, *The Concept of the Refugee in International Law*, 87 *JOURNAL DU DROIT INTERNATIONAL* 941 (1960).

²⁶ *Id.*

²⁷ The term "Refugee," as defined in Article A(1) of the Convention, applies to any person who:

1) 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 International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee

The Convention also sets forth certain categories of persons to whom it does not apply. Included within the exclusionary provisions are the following basic groups: Persons presently receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; persons recognized by competent authorities of the State in which they have taken residence to acquire the rights and obligations attached to the possession of nationality of that State; and persons who are war criminals or who have committed serious non-political crimes outside their State of refuge prior to their admission as refugees.²⁸

Section A(1) is designed to assure continuing refugee classification to the persons falling within the provisions of the designated six prior agreements.²⁹ The second paragraph of section A(1) clearly indicates that the determination of non-eligibility by the International Refugee Organization (IRO) is not absolute. A further determination can be made under the general definition contained in section A(2).

being accorded to persons who fulfill the conditions of paragraph 2 of this section;

2) 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.

²⁸ Convention, art. 1(D)-(F).

²⁹ Arrangement of 12 May 1926 pertained to Russian and Armenian refugees. Arrangement of 30 June 1928 was limited to Assyrian, Assyro-Chaldean, and Turkish refugees. Convention of 28 October 1933, the so-called Nansen Convention, applied to Russian, Armenian, and assimilated refugees as defined in the Arrangements of 12 May 1926 and 30 June 1928. Convention of 10 February 1938 and the Protocol of 14 September 1939 applied to refugees coming from Germany and Austria. See note 6 *supra*. The Constitution of the International Refugee Organization set forth a rather complex definition of the term refugee coming within the competence of the Organization. It was broad in scope and designed to encompass various types of ethnic groups and displaced persons who refused to return to their homelands after World War II.

The determination of whether an individual comes within the purview of one of these agreements can be a difficult task unless there is evidence of the issuance of a travel document, official certificate, and other attesting documentation. Persons falling within the definition of the IRO are not as problematic since the IRO issues eligibility certificates. See Weis, *supra* note 25, at 967.

Article I(B) of the Convention declares that each contracting State *at the time of signature* must determine whether for the purposes of the Convention, the words "events occurring before 1 January 1951" in Article I(A)(2) shall be understood to be limited solely to "events occurring in Europe" during this period or shall be understood to mean "events occurring in Europe or elsewhere" during the same period. Obviously, in so choosing, each signatory has the ability to limit the origin of refugees it will receive solely to European States.

The legislative history pertinent to the temporal limitation of events occurring before January 1, 1951, indicates a somewhat inconsistent philosophy. The Report of the *Ad Hoc* Committee on Refugees and Stateless Persons, which drew up the Convention, acknowledges the political reality that governments would be reluctant to undertake an obligation toward future refugees the origin and number of which would be unknown at the time of signature.³⁰ However, the *Ad Hoc* Committee simultaneously noted that the limitation should be broadly interpreted. Included would be "persons who may become refugees at a later date as a result of events before then, or as a result of after-events which occur at a later date."³¹

The next phrase encountered in the definition, "owing to a well-founded fear of being persecuted," contains both an objective and a subjective criterion. Fear is indeed a very personal response to a situation. However, the fear must not only be present, it must also be reasonable under the circumstances. The *Ad Hoc* Committee described "well-founded fear" to mean "that a person has either actually been a victim of persecution or can show good reason why

³⁰ Report of the *Ad Hoc* Committee on Refugees and Stateless Persons, U.N. Doc. E/1618 at 38 (1951).

The Committee discussed whether it would include in a definition all refugees irrespective of their origin and of the fact that the events which caused the rupture with their country of origin belong to the past or future. The Committee put aside this solution believing it would be difficult for a Government to sign a blank cheque and undertake obligations toward future refugees, the origin and number of which would be unknown.

³¹ *Id.* at 39. The Report also states that in interpreting "as a result of events in Europe" occurrences "which are after-effects of earlier changes" are within the scope of the definition.

Weis refers to two decisions of the Austrian Supreme Court which "held that Hungarian refugees in consequence of events of October 1956 were refugees 'as a result of events before 1 January 1951' as these events were after-effects of earlier changes . . ." The same decision was reached by the Bavarian Administrative Court of second instance in Munich. This view was also taken by the representatives of Austria, Belgium, France, Italy, the Netherlands, and Sweden in the Subcommittee of the United Nations Refugee Fund Executive Committee. See, Weis, *supra* note 255, at 969.

he fears persecution"³² Where the individual in question has actually been a victim of persecution, it is sometimes difficult to ascertain whether the alleged persecution was in fact persecution of the type justifying refugee status under the Convention. Frequently, a mentally unbalanced person will feel that he was subject to persecution when the normal person under similar circumstances would not have reacted in the same manner.

Determining precisely what constitutes persecution can be difficult. The Convention contains no definition.³³ However, Article 33 forbids a contracting State from expelling a refugee to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. Thus, certain conduct, such as threatening life or freedom, would constitute "persecution." Because persecution is a factual question, the official must have broad latitude in making the determination as to whether the person claiming the benefit is in fact persecuted. It is clear, however, that "persecution" is not restricted solely to physical abuse or incarceration.³⁴

Persecution must be "for reasons of race, religion, nationality, membership of a particular social group or political opinion." Once again the official making the determination has discretion. The grounds of persecution set forth by the Convention are sufficiently broad so that the major grounds for discrimination or oppression have been included. The words are self-explanatory. A social group is essentially a social class.

Note the requirement that the refugee

³² *Supra* note 30, at 39.

³³ Weis, *supra* note 25, at 22. He points out that the failure to define the term "persecution" was probably deliberate.

³⁴ *Id.* Officials of the State in which the alleged refugee is seeking the benefits of the Convention must make the determination of persecution. Thus, the analogy to the interpretation of the term "persecution" in national statutes of the State is of significance.

Section 1253(h) of the Immigration and Nationality Act authorizes the Attorney General of the United States to withhold the deportation of an alien "to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion" 8 U.S.C. § 1253(h) (Supp. IV, 1969). Interpretation of section 1253(h) by federal courts establishes that the range of conduct constituting persecution is broad and can include deprivation of economic opportunities as well as corporal punishment or incarceration. See *Soric v. Flagg*, 303 F.2d 289 (7th Cir. 1962); *Diminich v. Esperdy*, 299 F.2d 244 (2d Cir. 1961); *Dunat v. Hurney*, 297 F.2d 744 (3d Cir. 1961). However, the potential of experiencing economic difficulties and physical hardships in a State does not constitute persecution. *Cheng Kai Fu v. Immigration & Naturalization Service*, 386 F.2d 750 (2d Cir. 1967) *cert. denied*, 390 U.S. 1003 (1968).

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.

The primary requirement contained in this definition is that the alien is outside his State of nationality or former habitual residence. Thus, the person must first depart or flee from his homeland before he is eligible for refugee status. If he is outside his homeland when conditions change in such a manner that his return would lead to a well-founded fear of persecution, the person is classified as a refugee. Moreover, conduct in which the person has engaged while outside of his homeland may also give rise to a well-founded fear of persecution upon his return.

The *Ad Hoc* Committee described the term "former habitual residence" of a refugee in a rather straight forward fashion, as "the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned."³⁵

The definition speaks of two groups of persons — those having a nationality and those not having a nationality. According to general principles of international law, the nationality of an individual is to be determined solely by the national laws of the State involved.³⁶

The *Ad Hoc* Committee spoke in more depth concerning the requirement that the alien "is unable, or owing to such fear, is unwilling to avail himself of the protection of that country"

The Committee agreed that for the purposes of this sub-paragraph and sub-paragraph A(2)(c), and therefore for the draft Convention as a whole, "unable" refers primarily to stateless refugees but includes also refugees possessing a nationality who are refused passports or other protection by their own Government. "Unwilling" refers to refugees who refuse to accept the protection of the government of their nationality.³⁷

³⁵ U.N. Doc. E/1618, *supra* note 30, at 39.

³⁶ See Weis, *supra* note 25, at 973. The determination of nationality can be an exceedingly complex question. Under United States law, there are grounds for loss of citizenship, grounds for bars to citizenship, and grounds for expatriation. See Immigration and Nationality Act, tit. III, 8 U.S.C.A. §§ 1401 *et seq.* (1970). Numerous Supreme Court decisions have declared unconstitutional or refined many of these provisions. *E.g.*, *Afroyim v. Rusk*, 387 U.S. 253 (1967); *Marks v. Esperdy*, 377 U.S. 214 (1964); *Sneider v. Rusk*, 377 U.S. 163 (1964); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963); *Polites v. United States*, 364 U.S. 426 (1960); *Hishikawa v. Dulles*, 356 U.S. 129 (1958); *Trop v. Dulles*, 356 U.S. 86 (1958); *Perez v. Brownell*, 356 U.S. 44 (1958); *Ceballos v. Shaughnessy*, 352 U.S. 599 (1957).

³⁷ U.N. Doc. E/1618, *supra* note 30, at 39. The explanation of the term "unable" could assume particular significance in light of the revocation of or refusal to reissue

The refugee must be unwilling to avail himself of protection of his homeland as a result of his fear of persecution.

C. *Who Falls Within the Definition?*

According to the best information and estimates available to the Department of State, there are approximately 3,490,000 refugees in States of asylum throughout the world who meet the definition of "refugee" as set forth in the Statute of the Office of the United Nations High Commissioner for Refugees.³⁸ However, the United States Committee for Refugees estimates that there are 17,318,320 refugees in the world: 5,206,213 from Africa; 7,162,435 from Asia; 1,819,527 from the Middle East; 869,619 from Europe and the United Kingdom; and 2,260,526 from the Western Hemisphere.³⁹

The tremendous discrepancy between the two estimates is the direct result of the structure of the definition. The United States Committee for Refugees attempts to use a more functional definition without regard to political implications. In arriving at the 17.3 million, a person was considered to be a refugee "if his forced movement (whether within his own country or to asylum elsewhere) means that he is deprived of a minimally decent life."⁴⁰

passports to United States military deserters as well as the denial of protection to United States citizens traveling to prohibited countries (China, North Viet Nam, North Korea, and Cuba).

³⁸ S. COMM. ON FOREIGN RELATIONS, PROTOCOL RELATING TO REFUGEES, S. EXEC. REP. NO. 14, 90th Cong., 2d Sess. 16 (1968) (information supplied by the Department of State). The State Department points out, however, that

[t]his total does not take into account (1) an undetermined but relatively small number of the above refugees who have acquired a new nationality during recent years and thus no longer meet the UNHCR eligibility criteria; and (2) an undetermined but relatively small number of refugees who were resettled in earlier years but nevertheless have not yet acquired a new nationality, and thus do fall within the UNHCR definition. Statistics are not available with respect to these two categories.

Because there are various optional limitations available as to the personal scope of the Convention and because some nations have not acceded to the Protocol, it is virtually impossible to estimate the number of refugees within the ambit of these documents. However, the lack of operational alternatives to the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) allows a reasonable estimate as to the number of refugees meeting the international definition.

³⁹ *Supra* note 3, at 2.

⁴⁰ *Supra* note 1, at 3. The full definition is as follows:

Taking into account the many varied legal, political, economic and religious considerations which bear upon his status as a refugee, we say that a person is a refugee if his forced movement (whether within his own country or to asylum elsewhere) means that he is deprived of a minimally decent life.

If he (1) is still in a camp, though he may have a job; (2) has adequate housing, but no place to work; (3) is well cared for, though still separated from his family and uncertain whether they can rejoin him; (4) by his loss

In essence, the primary element of refugee status, under this criterion, is forced movement and consequent deprivation.

The definition contained in the Convention, with its restrictions and options, was the product of political compromise. When the drafters of the Convention defined "refugee," they purposely tried to produce a product likely to be accepted by many Governments.⁴¹

The major group of refugees excluded by the United Nations standard are those who have not departed from their national borders although they may desire to depart and, although they may be discriminated against within their homeland, they remain. This situation is particularly prevalent in States where repression and discrimination are manifest.⁴² In the context of civil wars, mass dislocations of persons inevitably result; however, the displaced person usually remains within the State and thus does not meet the criterion set forth in the definition.⁴³

There are millions of persons, particularly in Communist and Communist-dominated States, who desire to flee and seek asylum.⁴⁴ The 1967 Declaration on Territorial Asylum provides that everyone has the right to seek and enjoy asylum.⁴⁵ Failure to observe this principle has prevented the oppressed from seeking a new life.

The exclusionary provision, which states that the Convention does not apply to a person recognized by his country of residence as having the rights and obligations which are attached to the pos-

of citizenship or forced migration, is deprived of the fundamental elements of a minimally decent life — *he is a refugee.*

⁴¹ *Supra* note 30, at 36.

⁴² The State Department estimates that as of June 30, 1969, there were 40,000 Indo-Chinese displaced within Indochina. The United States Committee on Refugees has the same estimate. *Supra* note 3.

⁴³ The State Department estimates that as of June 30, 1969, there were 1,197,143 Vietnamese refugees displaced within South Viet Nam and 260,000 Laotian refugees displaced within Laos. The United States Committee on Refugees has the same estimates. *Supra* note 3. The United States Committee on Refugees estimates there are 3,500,000 Nigerian and Biafran refugees displaced within Nigeria. *Id.* Thus, from these three sources, there are roughly five million refugees not encompassed by the international definition.

⁴⁴ These persons are prevented from fleeing through tight border control and internal regulation. There is no method of estimating the number of such persons. However, the experience before and after the establishment of rigid controls is instructive. The Department of State estimates that between 1945 and 1961, 3.7 million German refugees fled from the East Zone into West Germany, across the Zonal border or into West Berlin. Between the erection of the Wall and June 30, 1968, this flow totaled only 26,800.

Since Premier Castro took power in Cuba, approximately 600,000 refugees have fled. *Supra* note 3. However, it is becoming increasingly difficult to leave. Several months ago Castro announced that no one would be allowed to go to Spain or Mexico.

⁴⁵ G.A. Res. 2312, 22 U.N. GAOR Supp. 16, at 81, U.N. Doc. A/6912 (1967).

session of the nationality of that State, disqualifies numerous refugees from eligibility.⁴⁶

The definition also excludes persons receiving aid from other organs or agencies of the United Nations. This provision considerably lessens the number of persons coming within the personal scope of the definition.⁴⁷

De facto refugees are often not considered to fall within the personal scope of the Statute because of the traditional distinction drawn between economic and political refugees. Generally, if a person moves for economic reasons, he is not considered to be a refugee. However, this distinction is frequently artificial. A person may be deprived of a minimally decent life through civil strife in his homeland and thus be compelled by circumstances to move. An official, in attempting to determine his status, may determine that although he is outside the State of his nationality, his departure was the result of economic realities rather than persecution. Thus, the distinction is subject to interpretation.

The phraseology "well-founded fear of persecution" raises the extremely difficult question of what constitutes persecution. The determination is usually quite stringent. The *de facto* refugee responds in his own manner to the circumstances in his environment. The interpretation of this phrase, with emphasis on the objective factors, eliminates many who subjectively have reacted by fleeing. The strict interpretation of this provision is primarily the result of the grave political implications inherent in a decision by an official of an international body that another State persecutes groups of its citizens.

Applicants for refugee status may have difficulty coming within one of the enumerated grounds of persecution — race, religion, nationality, membership in a particular social group, or political opinion. Circumstances within their homeland may have forced them to move. The individual cannot ascribe a particular personal injustice to his motivation to depart. Frequently, his movements were the result of a natural calamity, military operations, or civil war. None of these occurrences would result in the person being accorded refugee status. It is also interesting to note that Article

⁴⁶ Convention, *supra* note 12, art. IE. For instance, the State Department estimates that there are 1,000,000 Hindus in India who fled or were evicted from Pakistan in 1963. These Hindus in India are entitled to nationality and thus are not within the definition.

⁴⁷ The State Department estimates that there are 1,616,000 Palestinian Arab refugees in the Middle East. Most of these come within the UNRWA and are excluded from the count.

6(B) of the Statute, which contains the definition without dateline, differs slightly from the Convention in that persecution for reasons of "membership of a particular social group" is excluded from 6(B), whereas it is contained in the Convention. Particularly in Africa, much post-1951 persecution has been social class oriented and would not result in categorizing the oppressed as "refugees" under the Statute.

Recognition of the limited nature of the United Nations definition was manifested by the action of the General Assembly in 1959. A Resolution was adopted which authorized the High Commissioner, "in respect of refugees who do not come within the competence of the United Nations, to use his good offices in the transmission of contributions designed to provide assistance to these refugees."⁴⁸ Although the Good Offices Resolution is important in providing material assistance, the many benefits accompanying the legal status of a refugee under both the Convention and the Statute do not accrue. The Good Offices Resolution nonetheless assures some international aid to *de facto* refugees.⁴⁹

In addition to the combined action of States in promulgating the United Nations definition, the options and restrictions exercised with regard to the definitions by individual States further limit international protection available to the refugee. A State which is geographically adjacent to another from which numerous persons flee may formulate a refugee policy very different from a State insulated from a direct flow of refugees. States of first asylum frequently will accede only to international agreements containing certain restrictions. Because of their geographical situation, they are less able to control the influx of refugees. For instance, it is interesting

⁴⁸ Good Offices Resolution, G.A. Res. 1388 (1959).

⁴⁹ One commentator has observed another advantageous quality of the Good Offices Resolution. Since its initial adoption in 1959, the . . . "Good Offices" role has been referred to in successive resolutions which progress from a call upon the High Commissioner to use his good office' on behalf of specific groups of refugees to more general authorization to assist refugees on this basis of "Good Offices."

Also, whereas the earlier general "Good Offices" Resolution spoke of refugees not under the mandate specifically, the later resolutions do not refer to the mandate specifically, thus enabling certain assistance to new groups without the need for specific determination of eligibility. This became important particularly in Africa where the context and scale made individual determination a difficult practical matter. Additionally, it avoids both the problems of interpreting "well founded fear of persecution" and the corollary necessity for referring by implication to situations within a specific country in what could be considered a negative or pejorative sense.

Address by Gaynor I. Jacobson, The National Conference on World Refugee Problems, Nov. 18, 1969.

to note that 59 States have become party to the Convention relating to the Status of Refugees, whereas only 43 States have become party to the Protocol relating to the Status of Refugees.⁵⁰ As mentioned above, these documents provide for such rights as asylum, work, education, public relief and freedom of religion. Austria, The Federal Republic of Germany, and France, all traditional States of asylum, have not acceded to the Protocol removing the 1951 date-line. Moreover, of the 59 States party to the Convention, 14 have made use of the optional restriction clause to limit the personal scope of the Convention to persons who are refugees as a result of events taking place in Europe.⁵¹ The Protocol explicitly continues the applicability of geographical limitations made under the Convention.⁵² Thus, a State, by acceding to the Convention before

⁵⁰ The following breakdown is from State Department index cards:

Country	Convention	Protocol			
			Israel	X	X
Algeria	X	X	Italy	X	
Argentina	X	X	Ivory Coast	X	X
Australia	X		Jamaica	X	
Austria	X		Kenya	X	
Belgium	X	X	Liberia	X	
Botswana	X	X	Liechtenstein	X	X
Brazil	X		Luxembourg	X	
Burundi	X		Madagascar	X	
Cameroon	X	X	Monaco	X	
Canada	X	X	Morocco	X	
Central African Republic	X	X	Netherlands	X	X
Colombia	X		New Zealand	X	
Congo (Brazzaville)	X	X	Niger	X	X
Congo (Democratic Republic)	X		Nigeria	X	X
Cyprus	X	X	Norway	X	X
Dahomey	X	X	Peru	X	
Denmark	X	X	Paraguay	X	X
Ecuador	X	X	Portugal	X	
Ethiopia	X	X	Senegal	X	X
Federal Republic of Germany	X	X	Swaziland		X
Finland	X	X	Sweden	X	X
France	X		Switzerland	X	X
Gabon	X		Togo	X	X
Gambia	X	X	Tunisia	X	X
Ghana	X	X	Turkey	X	X
Greece	X	X	United Kingdom	X	X
Guinea	X	X	United Republic of Tanzania	X	X
Holy See	X	X	United States		X
Iceland	X	X	Tunisia		X
Ireland	X	X	Yugoslavia	X	X
			Zambia	X	X

⁵¹ Argentina, France, Turkey, Italy, Luxembourg, Monaco, Ecuador, Brazil, Congo (Brazzaville), Dahomey, Madagascar, Peru, Portugal, and Paraguay. *Id.*

⁵² Convention, *supra* note 17, art. 13. "The present Protocol shall be applied by

according to the Protocol, could elect the restriction to events in Europe but not be limited by the dateline.

In restricting the geographic scope of these international documents, there are other devices available as well. For instance, there are approximately 2,085,000 refugees from Communist China who would fall within the standard of eligibility as set forth by the Protocol. Two million are in Hong Kong and 85,000 in Macao, as well as an undetermined number in Burma and other Southeast Asian States.⁵³ When the government of the United Kingdom adhered to the Convention and when it acceded to the Protocol, its actions did not include Hong Kong. Thus, with regard to the two million Chinese refugees in Hong Kong, the United Kingdom is not obligated to accord them those rights granted by the Convention.

States of secondary asylum, however, have the luxury of admitting refugees in a more thoughtful and controlled fashion. Consequently, they might not accede to any international agreement but still treat refugees in accordance with the standards laid down by the Convention.⁵⁴

II. UNITED STATES REFUGEE POLICY

The United States refugee policy is a function of the definition of "refugee" and the administration of that definition. Through the wording of the definition and the regulation of procedures to qualify, the United States is able to control both the quantitative and the qualitative aspects of the admission of refugees. Moreover, the foreign policy interests of the United States are similarly protected.

United States law contains two separate provisions which set forth refugee standards, each for a different purpose.

the States Party hereto without any geographic limitations, save that existing declarations made by States already Parties to the Convention in accordance with article IB(1)(a) of the Convention, shall, unless extended under article IB(2) thereof, apply also under the present Protocol."

⁵³ See S. COMM. ON FOREIGN RELATIONS, *supra* note 39, at 16. (statement of Mr. Dawson). Under the Territorial clause in the Convention, the acceding State has the option of acceding individually for each Territory for whose foreign affairs it is responsible.

⁵⁴ See Weis, *supra* note 7, at 46 & 48. A study of States party to the Convention and/or Protocol would indicate that the majority of States of asylum have acceded. The observation was made by Weis when numerous States, including the United States, generally considered as major countries of asylum had not acceded to the Convention. The basic contention is still valid, however.

Under the allocation of immigrant visas provided for in section 1153(a)(7), a certain number is set aside for

aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode.⁵⁵

The second definition of a refugee merely provides that persons not be deported to a State where "the alien would be subject to persecution on account of race, religion, or political opinion . . ." for that period during which persecution would result.⁵⁶ Thus, the latter provision essentially stays deportation of refugees whereas the former allows the alien entry into the United States.⁵⁷

The elaborate definition of aliens falling within section 1153(a)(7) is quite restrictive in nature. It recognizes only two major types of refugees — those who have fled from Communist or Communist-dominated States and those who have fled from a State in the Middle East. Persons displaced by a natural calamity also

⁵⁵ Immigration and Nationality Act § 203(a)(7), 8 U.S.C. § 1153(a)(7) (Supp. IV, 1969). Subparagraph (7) further defines "general area of the Middle East" as the "area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south . . ."

Under section 1153(a)(7), 10,200 numbers are allotted each fiscal year for persons falling within this definition. Conditional entry status is accorded to the refugee. Under the proviso to section 1153(a)(7), after a period of two years in the United States, a conditional entrant may apply to have his status adjusted to that of an alien lawfully admitted for permanent residence. For the permanent resident alien who does not qualify under any accelerated naturalization provision, five years of permanent resident status is necessary preceding an application for citizenship. 8 U.S.C. § 1427(a) (1964). See generally 8 U.S.C. §§ 1401-89 (1964).

⁵⁶ 8 U.S.C. § 1253(h) (Supp. IV, 1969). After two years of status in the United States pursuant to section 1253(h), the alien is eligible to apply for a visa under the proviso to section 1153(a)(7). See note 55 *supra*.

The determination of eligibility under section 1253(h) is made by the Attorney General. The withholding of deportation is solely a discretionary matter.

⁵⁷ There is a third provision under United States law which is employed to allow the admission of refugees. 8 U.S.C. § 1182(d)(5) (1964). This section grants the Attorney General discretionary power to "parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States . . ." Aliens paroled into the United States pursuant to this provision are eligible after a two year period to apply for permanent resident status under the proviso to section 1153(a)(7). See note 52 *supra*. This provision will be discussed in some depth later.

qualify, but first there must be a specific finding by the President. In this respect, it is not consistently available as are the other two provisions.

The words "well-founded" do not appear in section 1153(a)(7) to modify "fear of persecution," as they do in the Convention. However, "fear of persecution" is interpreted to include an objective element which renders the omission of the qualifying phraseology insignificant. The applicable grounds — "race, religion, or political opinion" — are narrower than those set forth by the Convention. To fall within the definition, the alien must "have fled." This requirement disqualifies numerous persons who would meet the test of being outside their State of nationality under the Convention. Under the "have fled" criterion, the person who has left his homeland for other reasons and cannot return for fear of persecution will not come within the statutory language.

The administration of section 1153(a)(7) greatly limits its scope. As delineated by the statute, the alien must present himself to an officer of the Immigration and Naturalization Service in a non-Communist State. Such offices are located in seven designated countries: France, Germany, Belgium, Austria, Greece, and Lebanon. Therefore, even though an alien may meet all the other requirements, he must also present himself at a designated location. There are no authorized offices in Asia, Africa, or the Western Hemisphere. The combined effect of the definition contained in section 1153(a)(7) and the administration of this provision is to exclude most recognized refugee groups from entry into the United States.

The inadequacy of section 1153(a)(7) to provide a sufficiently flexible refugee policy has resulted in the use of parole authorized by section 1182(d)(5). This provision has been utilized to admit refugees into the United States when they did not qualify under the definition of section 1153(a)(7) or when there were not sufficient numbers available to meet the demand. The most extensive use of section 1182(d)(5) has been to admit Cuban refugees to the United States.⁵⁸ The most recent large scale use of section 1182(d)(5) occurred when the 10,200 numbers available under section 1153(a)(7) for fiscal year 1970 were exhausted by February 1970, five months still remaining before more numbers would become available. However, even the tremendous flexibility afforded by section 1182(d)(5) has not fully compensated for the limitations

⁵⁸ Since the inception of the Cuban airlift in December 1965, approximately 350,000 natives of Cuba have been paroled into the United States.

inherent in section 1153(a)(7). Since the Cuban refugees did not come within the definition of section 1153(a)(7), they were not eligible to adjust their status to lawfully admitted permanent resident aliens after the two year period. Consequently, the Act of November 2, 1966, was passed, permitting Cuban refugees to adjust status.⁵⁹

Section 1253(h) is considered as providing narrower statutory standards for refugee status than that under section 1153(a)(7).⁶⁰

III. MODIFICATION OF EXISTING DEFINITIONS

From the preceding discussion, two propositions clearly evolve. First, the refugee is at the will of a definition and its administration. Second, each definition is basically functional in nature and is created in light of certain predetermined objectives.

It is not essential that every definition be identical. There are legitimate reasons why States of first asylum insist upon certain restrictions not necessary to the ultimate State of immigration or resettlement. The objective of the definition justifies its phraseology. For purposes of providing basic food and material assistance, a definition should be broadly drawn. The scope may be more confined where the granting of a potentially permanent immigration status is involved. The difference in emphasis of international agreements, national laws, and humanitarian organizations should result in each State applying a definition designed to accomplish its specific goals.

However, there presently exists too great a disparity between the various definitions to provide the *de facto* refugee with necessary protection and assistance. The policies of many States contain discriminatory features. Countries, both in structuring international definitions and national definitions, are often too inhibited by parochial interests. The definitions tend to contain artificial distinctions. A definition should be formulated so that it can be applied with flexibility and regard for humanitarian and social factors.

A review of the major definitions and their application in the context of these general observations clearly demonstrates that modification and revision are necessary.

⁵⁹ Pub. L. No. 89-732 (1966), noted at 8 U.S.C. § 1255 (Supp. IV, 1959). See note 52 *supra*.

⁶⁰ Evans, *Political Refugees and the United States Immigration Laws: A Case Note*, 62 AM. J. INT'L L. 921, 926 (1968).

Since section 1153(a)(7) is restrictive and narrow, section 1253(h), which is not as broad in scope, will not be considered in detail, but will be regarded as badly needing reform. 8 U.S.C. § 1153(a)(7) (1964); 8 U.S.C.A. § 1253(h) (1970).

The international definition contained in the Convention and Statute should be modified to include persons displaced within their borders. Obviously, such a modification without further restriction would cause adverse effects where an international body declared persons within national borders to be refugees entitled to certain benefits. At a minimum, the definition should be expanded to include persons displaced as a result of natural calamity or military operations and who are unable to return to their usual place of abode. The concept of "well-founded fear of persecution" should be interpreted in a more flexible manner with regard to specific individuals. The Statute should also be amended to include persecution for reasons of membership of a particular social group.

The geographical limitation of "events occurring in Europe" should be abolished as an option under the Convention and the abolition should be retrospective as well as prospective. However, political realities may prevent the retroactive application of this provision. Certainly, no State should be allowed to accede to the Convention before accession to the Protocol. In this manner, a State can take advantage of the option of limiting the scope of both documents to events occurring in Europe. In fact, it would be advantageous if no State were allowed to accede to the Convention without simultaneous accession to the Protocol. This would also prevent any State from becoming a party only to the Convention, thus limiting its obligation to events occurring before January 1, 1951. This could be accomplished by merely closing accession to the Convention. Ideally, the Convention should be amended to delete the temporal limitation.

However, political realities must be considered here, too, when weighing which course of action to take. It is better to have a State become party to an international agreement with restrictions and limitations than for it to elect not to become party at all. However, certain modifications are urgently needed to offer a modicum of international recognition to the changing characteristics of the ever increasing world refugee population.⁶¹

⁶¹ The legal adviser to the Office of the United Nations High Commissioner for Refugees is particularly concerned about what effect the broadening of the definition will have on States of first asylum. He stated:

It is questionable whether these countries would in the present circumstances agree to a broader definition and that they would open their doors and be willing to grant a favorable status to a much wider group of persons with all the difficulties of identification open to amendment means to expose them to all the hazards of a political discussion, the result of which cannot be foreseen.

The need for revision of the United States refugee policy is much more urgent than reform in the international arena. The definition should be expanded to encompass refugees other than those who are victims of persecution in Communist States or the Middle East. A refugee should be defined as any person who would be subject to persecution regardless of the situs of the oppression. The term should include persons displaced from their usual place of abode, not limited to persons who have fled. The grounds of persecution should be expanded to include nationality and membership in a particular social group. As turmoil in developing States continues to increase, persecution based on these grounds becomes more prevalent, even to the point of virtual genocide.

The limiting nature of the placement of refugee offices should be abolished. Since in most cases it is virtually impossible for the refugee to present himself at the United States border or at one of the designated seven foreign locations, the number of locations should be greatly expanded and distributed in a less discriminatory fashion throughout the world.⁶² The United States proper should be considered a valid location.⁶³ Also, military operation should be included as a valid ground for displacement.

There are significant similarities in the slight modification pro-

Address by Dr. Paul Weis, National Conference on World Refugee Problems, Nov. 18, 1969.

⁶² This could be accomplished through the issuance of visas to refugees rather than conditional entry status. The administration of section 1153(a)(7) would be placed within the purview of the Department of State. Since the Department of State is represented in virtually every State, the processing of refugee applications would not be confined to the present designated countries. Moreover, this would conserve manpower of the Department of Justice which has not processed refugees in many areas because the demand is so small that it does not justify placement of an office. United States Representative Michael A. Feighan and Senator Edward M. Kennedy have introduced bills which would amend section 1153(a)(7) to issue visas rather than conditional entry status. H.R. 15092, 91st Cong., 1st Sess. § 6(a)(7) (1969); S. 2524, 91st Cong., 1st Sess. § 6(a)(7) (1969).

⁶³ Interestingly, the United States is not at present a location from which an alien can petition. 8 C.F.R. § 235.9 (1970); *Tai Mui v. Esperdy*, 371 F.2d 772 (2d Cir. 1966), *cert. denied*, 386 U.S. 1017 (1967) (regulation held valid). See also Smith, *Refugees*, 367 THE ANNALS 43 (1966). The Immigration and Naturalization Service indicates that between June 30, 1946, and June 30, 1969, approximately 896,346 refugees were admitted to the United States. IMMIGRATION & NATURALIZATION SERVICE, ANNUAL REPORT 45 (1969). The projected increase, attributable primarily to Cuban refugees, section 1153(a)(7) refugees, and parolees under section 1182(d)(5), will result in approximately 60,000 refugees for fiscal year 1970. Moreover, the total figure is several hundred thousand below what it should be because it includes only Cubans who have adjusted status under the Act of November 2, 1966, 8 U.S.C. § 1255 (Supp. IV, 1969), rather than the total number of Cubans paroled into the United States. There is no precise figure available for the Cuban refugees. However, since December 1965 48,000 per year have entered on the airlift.

posed to the language of the international agreements and the more pervasive revisions suggested concerning the United States definition.

The United States has traditionally aspired to a leadership role in the treatment of refugees.⁶⁴ It is estimated that since World War II, approximately 1,000,000 refugees have been admitted to the United States.⁶⁵ Particularly in light of the recent accession to the Protocol, the United States should adopt a policy as broad as that in the international arena. Adoption of such a definition would eliminate discriminatory overtones from the general refugee provision. The abolition of the national origins quota system by the Act of October 3, 1965, and the establishment of a non-discriminatory immigration policy should be carried over into the field of refugees where humanitarian concerns are even more significant.

Moreover, adoption of a definition similar to that contained in the international agreements to which the United States has acceded would enable the United States to better comply with the terms of the Protocol. The Convention forbids a contracting State from expelling or returning a refugee to the frontiers of a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.⁶⁶ A "refugee" is defined in far broader terms in the Convention than in section 1153(a)(7) which sets forth the criteria governing those who may be admitted. Furthermore, administration of section 1153(a)(7) prevents the granting of conditional entry at a United States border. Section 1253(h) will protect the refugee once he is admitted, but it will not aid in his entry. Thus, only through the exercise of the discretionary power of section 1182(d)(5) or through returning the refugee to a State where he will not be persecuted can the United States fulfill its obligation.⁶⁷

⁶⁴ S. COMM. ON FOREIGN RELATIONS, *supra* note 3, at 6.

⁶⁵ UNITED STATES COMMITTEE FOR REFUGEES, WORLD REFUGEE REPORT 20 (1969).

⁶⁶ Convention, *supra* note 12, art. 33. By acceding to the Protocol, the party is bound by the substantive provisions of the Convention.

⁶⁷ See Weis, *The International Protection of Refugees*, 48 AM. J. INT'L L. 193, 198-99 (1954). Krenz elaborates on the problem of asylum in general by stating:

The problem of asylum is therefore to be broken down into three separate issues. First, the asylum seeker is to gain physical presence inside the territory of the State of refuge. The duty of States not to repel refugees at their frontiers has been termed the "principle of *non-refoulement*." Secondly, the admittance of an asylum seeker consists in the legitimation of his stay and constitutes, in a sense, the actual recognition of his refugee quality. Only at this point comes the third element, that of the refugee's status in the country of asylum.

Moreover, section 1253(h) standards should also be broadened. The deportation of a refugee coming within the definition of the Convention is an obvious breach of international agreement.

The standard prescribed by section 1253(h) should be identical to that in the general refugee provision. It is absurd to have stricter criteria for withholding deportation than for admission.

By amending the definition, the United States would also be affirming the philosophy of Article 14 of the Universal Declaration of Human Rights which proclaims that "everyone has the right to seek and enjoy in other countries asylum from persecution."⁶⁸ Any broadening of the international definition would similarly serve to implement this Declaration.⁶⁹

Since the United States has no common borders with countries from which asylum seekers pour forth, there would be little danger of inundation with refugees. States having such common borders are necessarily more reluctant to obligate themselves to grant legal admission to all refugees crossing their frontiers.⁷⁰

I would propose that the following basic elements be incorporated into both the international definition and the United States definition:

The term "refugee" means any person, (I) who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside his usual place of abode and is unable or, owing to such fear, unwilling to return there, or (II) who owing to natural calamity or military operations is outside his usual place of abode and is unable to return there.

Krenz, *The Refugee as a Subject of International Law*, 15 INT'L & COMP. L.Q. 90, 103 (1966).

Under this breakdown, the crises under United States law comes in the first stage.

The problem is complicated in the case of a group of refugees presenting themselves because it is possible section 1182(d)(5) is not available. The legislative history surrounding the Act of October 3, 1965, clearly states that the parole provisions were designed to authorize the Attorney General to act only in emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside of the limit of the law. S. REP. NO. 748, 89th Cong., 1st Sess. 17 (1965). H.R. REP. NO. 745, 89th Cong., 1st Sess. 15-16 (1965).

⁶⁸ G.A. Res. 217A, U.N. Doc. A/811 (1948), *reprinted in* 43 AM. J. INT'L L. 127 (Supp. 1949).

⁶⁹ See Weis, *supra* note 67, at 196.

⁷⁰ See Krenz, *supra* note 67, at 105-07, for an interesting discussion concerning the rejection of a right of admission during the deliberations in the United Nations leading to the adoption of the 1951 Convention. The United Nations instead adopted Recommendation D of the Final Act "that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlements." 189 U.N.T.S. 137, 148 (1954).

Appropriate administrative discretion in the application of this definition by the United States could serve as the mechanism to prevent embarrassing foreign relations problems which might result from a determination that certain persons had been dislocated within a State because of persecution. However, reasonable restriction through administration would be far preferable to a general definition lacking necessary flexibility. Moreover, since virtually any *de facto* refugee could qualify under this definition, section 1182(d)(5) could be used primarily to provide extra numbers in exceptional situations but still observe the basic criteria of eligibility.

IV. CONCLUSION

It is necessary to realize that the refugee problem today is world-wide, ever-increasing, and will be with us for an indeterminate period of time. This proposed broadened definition of refugee criteria is important if we are to readily cope with these unfortunate victims of injustice. The States of the international community must recognize their responsibility and come to the assistance of refugees in all categories created through the proposed broadened definition.

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