Who is a refugee?

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1. Introduction

Who is a refugee? The term *'refugee'* is often expressed as a term of art, designated to be a term with content verifiable according to principles of general international law. However, in ordinary usage, the term has a broader and looser meaning – indicating someone in flight with the purpose to escape conditions or personal circumstances that are considered to be intolerable. Within the framework of the term 'refugee', the essential element is the flight to seek freedom, not initially a precise destination. The vital point is, therefore, the possibility to cross the national border to access freedom or safety abroad. Not only that the final destination is unimportant, but the term 'refugee' also signifies that the motives of seeking freedom could be of many different reasons. For instance, flight from oppression, flight from poverty, flight from prosecution, flight from war,flight from civil strife, or flight from a natural disaster. Thus, within the ordinary meaning of the word 'refugee', it emphasizes the notion that the person is worthy of being, and ought to be, assisted, and if necessary, protected from any harm or consequences of fleeing the country of origin.[1] Furthermore, the term 'refugee' points out the correlation that creates between the individual and the national state in regards to interests, treatment, credibility, and responsibility. The "broad and loose meaning" of the term 'refugee' does not initiate that the word lacks any valuable meaning. It is quite the opposite. It indicates its importance and meaning within different dimensions. It signifies the correlation of collectives, categories, and interest, as much as the link with the State. The concept of refugee imposes both rights and obligations and underlines the balance of interest between the individual and the State. The concept of 'refugee' occupies the legal space characterizedby the principle of State sovereignty and territorial supremacy – being two fundamental principles within international law.[2] Furthermore, some meet the legal requirement of being a 'refugee' but are excluded from the right to *refugee status* because the person has been involved in serious crimes.[3] In that context, the term falls within the notion of the "deserving" and "undeserving" refugees. Still, that would not entail that the person is no longer need to be defined as a refugee or seek freedom.Thus, this illustrates the complexity behind the term 'refugee' and its different narratives.

The paper aims to outline the different approaches that can be presented when it comes to defining 'the refugee'. The paper will be introduced with a historical perspective on the definition of a refugee, with a further outline to introduce and discuss further aspects of the concept that has been settled through time. Within this framework, other aspects, such as the context of the "worthy" refugee and the development of categories for refugee rights will be addressed and analyzed.

2. The historical rise of 'the refugee'

The birth of the 1951 Convention Relating to the Status of Refugees (hereinafter the 1951 Refugee Convention or the 1951 Convention) narrates already to historical ad hoc policies that relate to Armenian refugees in 1917 and Jewish refugees in the 1930s.

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[1] Goodwin-Gill, Guy S, McAdam, Jane, The refugee in International Law, third edition, Oxford University Press Inc., New York, 2007, p. 15.
[2] Ibid, p. 12.
[3] Article 1 F of the 1951 Refugee Convention, adopted 28th of July 1951 GA res. 429 (V), enter into force 22th of April 1954.

The history points out the restriction view on migration, with its origin from the 1880s and its influence of the US restriction on migration affecting the mobility from Europe. The standpoint implicated by the US authorities was to restrict the opportunity for paupers and criminals from arriving, which further on expanded by the establishment of controls and barriers at the borders and in the countries of departure. According to Schacher, thirty years before the 1951 Refugee Convention was adopted, the policies and the response to refugee migration were not any different. The suspicious thoughts of migrants being involved in certain crimes or depraved behavior existed already from centuries ago.[4]

The idea about who was an "honest refugee" was put on the agenda before the establishment of the "refugee" definition in the 1951 Refugee Convention. Initially, it existed a fear among decisions makers about setting precedents. There was only interest in permitting the entrance to those people who could present their case to be an exceptional one.[5] Further, they feared that they would be betrayed by "non-deserving" refugees that addressed invented stories that were masterminded by others. However, World War II in combination with the geographical tensions of the Cold War brought the feeling of guilt and mistreatment towards Jewish refugees. Which eventually conducted the interest in establishing an international refugee policy and a need for adopting a legal document protecting those who escaped heinous and inhuman treatment. The 1951 Refugee Convention adopted a central legal definition of a refugee in Article 1A(2), stating the following:

"any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, exists outside the country of his nationality and is unable or, owing to such fear, is unwilling to return to 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."[6]

The original aim conceived by the drafters to the 1951 Convention was to concentrate the purpose of flight due to political, public, or collective motives, rather than on personal or private ones. During the period of 1950s to 1970s, those providing asylum to one 'enemy' was seemed to demonstrate the antagonists' immoral value system. This further put forward the notion of the increment, changes, and unclear dimensions regarding antagonists that been existed over the past 50 years. At the political agenda, the benefits of a humane refugee policy have been designated to be less obvious and more towards a lack of interest in dealing with the refugee problem at the international level – which consequently pointed towards a restrictive discourse. Also, the dimension of asylum cases became shifted.From originally using asylum cases to prove that capitalism trumps communism, it started to commence the failure of the newly decolonized, Islamic, or third-world countries to protect their citizens. In some aspects, it highlighted the superiority of the West against the failing Rest.[7]

2.1 The emergence of the 'New Refugees'

After the Cold War, a new group of people was crossing international borders to seek freedom. The 'New Refugees', as they became called, were people inherited from the NATO countries with the motives of fleeing from the right-wing, rather than the left-wing regimes. The newly established group of refugees was abruptly rooted from different countries and presented different claims. Even if there were an assumption that the New Refugees could enforce new changes in the policy, the policies hardly changed. The Cold War refugees were treated with the same suspicion and fear from the authorities setting precedent and enabling the arrival ofa new type of group. Consequently, the New Refugees experienced the same fears and restrictions as previous refugees. The authorities perceivedsimilarly the men fleeing from communism and those fleeing from military services in the colonial wars. Both groups were trouped in "the image of protest heroes" and dominated the asylum discourse. Only until some decades later, when the public attention shifted from men and hero-refugee to women and victim-refugee.[8]

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[4] Schrover, Marlou, Moloney, M. Deirdre, *Gender, Migration and Categorisation - Making Distinctions between Migrants in Western Countries 1945-2010*, Amsterdam University Press, 2013, p. 25.

[5] Ibid.

[6] Article 1A(2) of the 1951 Convention Relating to the Status of Refugees.

[7] Schrover, Marlou, Moloney, M. Deirdre, *Gender, Migration and Categorisation - Making Distinctions between Migrants in Western Countries 1945-2010*, Amsterdam University Press, 2013, p. 27.

[8] Schrover, Marlou, Moloney, M. Deirdre, *Gender, Migration and Categorisation - Making Distinctions between Migrants in Western Countries 1945-2010*, Amsterdam University Press, 2013, p. 27.

2.2 New categories of persecution

Originally gender-based violence was absent from the 1951 Refugee Convention as a category that could amount to persecution. Those who were victims of accidental or arbitrary rape or women who were raped in order to retrieve information about their families were not granted asylum or were portrayed as victims of persecution. Rape, female circumcision, enforced family policies, domestic violence, or compulsory veiling were not defined by the drafters to be categories that could amount to refugee rights. The gender issue to be conceived to women in the aspect of applying for asylum was not conceptualized at all. However, in recent years, there have been changes in asylum policies and laws, highlighting the opportunity for women to be granted refugee status based on the gender issue. Initially, the aim of the 1951 Convention was to target States' that failed to protect, or deny protection, to a minority of their citizens. As a result of the development of the world legal order, today's refugees or asylum seekers are those fleeing from different governmental exploitations.Such as, government lacking the power to protect their citizens[9], a government that never extended civil rights to half of their citizens, simply because they are women,[10], or even those governments that do not even prevent their citizens to cross the national border.[11]

Primarily, those who were seemed as refugees with strong arguments for refugee claims were those who made references to World War II and the Holocaust. However, new changes emerged that put forward new groups of people fleeing and categories of refugee claims that traditionally were not presented by the drafters. What later on became the development strategy to claim refugee rights was to picture oneself as a victim. This also entailed the migrants to be regarded as a vulnerable group and in need of protection of the State. It also played a constructive role in demonstrating supporting groups and shaped the link with several rights movements (e.g. women's rights, gay rights, and so forth).[12]

2.3 The "deserving" and "undeserving" refugee

Peter Gatrell illustrates in his article, "Refugees – What's Wrong with History", that the category of 'the refugee' connects the experience of refugees to a broader context of political, cultural, and social history. By reference to Janet Chen's book on China under Japanese occupation and the aftermath of war, Gatrell emphasizes the questions that the officials in Shanghai struggled with.Namely – who was a 'genuine' refugee? Who had a valid claim for government support and who belonged to the category of 'beggar'?[13] By defining the concept of who is a refugee, it detects how the concept is broader than simply defining it due to stated elements. It links the concept with other dimensions and questions such as; who is the 'deserving' or 'undeserving' refugee? The historical traces demonstrate how the previous conflicts have been the outset of the development of shaping the modern refugee and how this was linked to the history of an entire society.[14] Furthermore, Gatrell points out a diverse aspect necessary to consider.Mainly that refugee history cannot just be about refugees. With further explanation, Gatrell refers to the statement Laura Madokoro presents in her work by the importance of the historians to consider "refugees as people in motion rather than as subjects constructed to the states that alternately refuse or receive them".[15]

According to Gatrell, the history of refugees must beviewed in the light of a broader set of relations and practices.Something that Gatrell characterizes as '*refugeedom*'. The concept of 'refugeedom' refers to the emergence of a new social category that did not correspond to already existing categories of class or status during the death throes of the Russian Empire. During that time, millions of people had been wrenched from their familiar moorings and are primarily divided into groups of 'forced migrants', 'deportees' or 'genuine refugees' – whereas it simultaneously demonstrated an expression of the treatment performed by the government officials and by the host communities among which refugees were settled.

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[9] Example of countries such as Liberia, Angola, Democratic Republic of the Congo, Somalia and Sierra Leone.

[10] Countries such as Afghanistan.

[11] Schrover, Marlou, Moloney, M. Deirdre, *Gender, Migration and Categorisation - Making Distinctions between Migrants in Western Countries 1945-2010*, Amsterdam University Press, 2013, p. 28.

[12] Ibid, p. 31.

[13] Gatrell, Peter, "Refugees – What's Wrong With History?", Journal of Refugee Studies, volume 30, No. 2, Oxford University Press, 2016, 169, p. 177.

[14] Gatrell, Peter, "Refugees – What's Wrong With History?", Journal of Refugee Studies, volume 30, No. 2, Oxford University Press, 2016, 169, p. 178.

[15] Ibid.

The concept of 'refugeedom' underlines the two exploited dimensions, namely – carrying implications of a new status and a distinctive element of practice in relation to a specific category of humanity.[16]

3. Defining 'the refugee' with different approaches

The category of 'refugee' emerges from several periods and relates to several contexts of political, cultural, social, and legal aspects. The dimension of 'the refugee' could be expressed as something individualized, on the one hand, or something concerning the international community (e.g. states and agencies) by generating an obligation to take immediate action to protect or to be protected, on the other hand.

It has been stated several times that the aftermath of World War II to the end of the Cold War, the decolonization, and the violent conflicted wars between superpowers constituted the largest numbers of refugees. Hence, the category of 'refugee' becomes too often referred to as a paradigm of time connected to the European post-World War II. And consequently, demonstrate the global figure of 'the refugee' mainly in the context of a postwar Europe. So far as it has been possible to determine when the actual transnational movement and mass displacement of people emerged and became standardized and globalized, the initial explanation refers back to postwar Europe containing the key elements of evolving refugees. However, this does not mean that there were no refugees or elements of managing them before World War II. The need of seeking safety and pursue to be a refugee has been demonstrated before the conflicted wars. Still, the concept of 'the refugee' as a social category and a legal problem of global dimension did not exist in its fullest form before the period of postwar and decolonization.[17]

3.1 No existence of the typical 'refugee'

The legal definition of the status of a refugee is regulated in Article 1A(2) of the 1951 Refugee Convention. The definition contained in the Convention has been observed as "the critical event in the institutionalization of the post-World War II regime" for managing refugees.[18] The initial demonstration of the Convention definition was to be the "universal basic definition which can pragmatically be expanded, when the need arises". In its original form, the 1951 Convention was only intended to address the European refugee situation and not consider refugees as a universal phenomenon. However, as a response to the limitation constituted in the Convention, other legal instruments were adopted, such as the 1967 Protocol Relating to the Status of Refugees. With the adoption of the 1967 Protocol, the Eurocentric geographical dimension and the war-linked time restriction became reduced. It has been stated that through the 1967 Protocol, the 1951 Convention became the universal instrument of refugee law.[19] Nevertheless, the concept of 'refugee' contains diverse principal definitions and could be expressed through different terms that are synonymously used, such as; refugee, stateless person, or displaced person.

The definition of a stateless person is "an individual who does not consider by any state to possess its nationality".[20] In light of the term of a 'refugee', a stateless person could be considered as a person that "may possess a nationality or be stateless at the time when he becomes a refugee, and a refugee of the former category may retain or lose his nationality without his quality of refugee being in the least affected".[21] Thus, the core element is not the 'statelessness' being the essential quality. It is a misinterpretation to recall all stateless people to be refugees or that all refugees are technically stateless.[22] Furthermore, a displaced person has come to be used as a wide term for refugees. Even if the two terms might overlap in some contexts (in regards to the legal dimension) – the two terms are not compatible. Internally displaced persons are those who have not crossed a national border and are still located within their national territoryand, therefore, do not qualify as a refugee.[23] This underlines the fact that it does not exist one uniformed "proto-refugee".

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[16]Ibid.

[17]Malkki, H. Liisa, "Refugees and Exile: From "Refugee Studies" to the National Order of Things", Annual Reviews Anthropology, 1995, 495, p. 497 ff.

[18]Malkki, H. Liisa, "Refugees and Exile: From "Refugee Studies" to the National Order of Things", Annual Reviews Anthropology, 1995, 495, p. 501.

[19]Ibid.

[20]Ibid.

[21]Ibid.

[22]Still, in many aspects refugees are referred as stateless persons. Malkki, H. Liisa, "Refugees and Exile: From "Refugee Studies" to the National Order of Things", Annual Reviews Anthropology, 1995, 495, p. 501 ff.

[23]Ibid, p. 502.

The outgrowth of a refugee can emerge by several frameworks as much as the concept of 'the refugee' can be defined and approached in different ways.

3.2 Defining 'the refugee' in light of the constructivist and the realist

Migrants are often not defined by the sociologists of migration.However, the concerns of who is a refugee have been highly debated since exceptions for refugees were constituted in restrictive immigration laws. The label of 'refugee' becomes defined and referred to in diverse categories of everyday usage, law, and social science. The core element of the definition underlines the notion of a matter of life and death, while simultaneously outlining its dimension that stretches to government with the empowerment to admit certain individuals or groups.[24] Thus, the label of 'refugee' indicates the extensive notion of encompassing different features of definitions and connotations. Accordingto FitzGerald and Arar, the term 'refugee' could be delineated and defined throughout different approaches – which they outline as *constructivist approaches* or *realist approaches*.

The constructivist approach focuses merely on the label of 'refugee'. The term 'refugee' was originally entered English to describe the Huguenots expelled from France in the seventeenth century. Further on, during the early twentieth century groups such as White Russians, Armenians, and German Jews were labeled as ad hoc refugees emerging in Europe and needed protection. And considered to be a group that diverged compared to the other mobile people on the continent.

Since the aftermath of World War II, the debates have been proceeded on whether particular groups and individuals were refugees or "simply" immigrants. The centralization of 'persecution' in the refugee definition of the 1951 Convention was no astonishing action. In fact, from ancient Greek, the notions of sanctuary already underlined political persecution, which later became inherited into the mid-twentieth century.[25] During the construction of the 1951 Refugee Convention, the western powers accentuated a classically liberal approach that admitted protection for those refugees who feared persecution based on violations of political or civil rights. As mentioned above, initially the 1951 Refugee Convention contained geographical and temporal limitations focusing on the category of refugees inheriting from Europe that had been displaced as a consequence of World War II. Nevertheless, the 1951 Convention developed to become a universal dimension through the adoption of the 1967 Protocol, which not only reduced the geographical and temporal limitation but also underlined the core principle of *non-refoulement*. A concept that was already established as the central purpose of the 1951 Convention and aims to protect individuals from being deported to countries where they would face persecution. During the implementation of the 1951 Refugee Convention, it was likewise debated whether the Convention should include internally displaced persons in the refugee definition. To respect the non-intervention principle, meaning the principle of sovereignty that underlines the Westphalian system, they concerted that the refugee definition only referred to persons who had crossed an international border. However, after the Cold War, the principle of sovereignty became caved to some sense through the requirement imposed on States' to protect internally displaced persons from heinous crimes against humanity. Alongside the development of the changes in the world order, the 1951 Convention and its Protocol have developed to become the strongest norms, along with antislavery, that legally govern international mobility.[26]

FitzGerald and Arar point out that the categorization of refugees could be described both from above and from below, indicating how one State label a person does not necessarily amount to the explicit label to be transferred to another State. As FitzGerald and Arar designate it, the same person could be considered as a 'refugee' in Kenya and concurrently be labeled as a 'guest' in Jordan, an 'asylum seeker' in Germany, or a 'migrant worker' in the United Arab Emirates. According to FitzGerald and Arar, the need to distinguish between external and self-assigned definitions of refugee status is essential for two reasons. Firstly, the distinction delineates how refugee status considers being a favorable legal category for people to gain admission to a state's territory.

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[24]FitzGerad, Scott David, Arar, Rawan, "The Sociology of Refugee Migration", Annual Review of Sociology, 2018, 387, p. 389.

[25]FitzGerad, Scott David, Arar, Rawan, "The Sociology of Refugee Migration", Annual Review of Sociology, 2018, 387, p. 390.

[26]Ibid.

Secondly, recognizing the fact that some migrants do not aim to label themselves as a 'refugee' provides permission for scholars to discharge the survey of refugee victimization and the chronicles that States and non-governmental organizations distribute themselves as the central saviors.[27]

The realist approach focuses instead on using the refugee category to investigate the experience of individuals and groups who exist independently of how they are labeled. By examining the concept of 'the refugee', it might be described as a category that contains both legal practice and sociologist analysis, which in a sense makes the concept confusing. By demonstrating this, the legal concept presenting the elements of "recognizing" refugees have based on the premise that refugees are an ontologically given category existing in the real worldwaiting to be seen for who they are.[28]The United Nations High Commissioner for Refugees (UNHCR) refers to the determination of the refugee status as follow:

"A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee."[29]

FitzGerald and Arar argue for the sake that sociologists should not limit themselves to a refugee definition established to meet specific political objectives in the era of 1951. Henceforth, it should fall into the responsibility of the legal scholars to proceed with the debate about whether certain grounds for refugee status should extent into domestic and international law.Or continue to remain attentive on persecution determined in light of a more classical interpretation of the five Convention grounds. In comparison, a constructivist approach of the refugee definition does not exclude the legal argument that authorities have obligations to protect individuals who meet the legal standards.

Furthermore, most sociologist refers to the definition of refugees that relates to a set of dichotomies that define refugees against migrants. The core element that has been explained is that refugees have less agency. The refugees' movements are merely involuntary, forced, or reactive. Another category is that refugees are people that often leave for political reasons rather than economic reasons. However, the political and economic dichotomy can only be seemed useful in some cases.And it mainly disguises the diversity of motivation that drives many migrants. Another aspect that complicates the political and economic dichotomy is that people's interests and motivation to achieve such goals and opportunities might be changed over time and through multiple movements. Lastly, FitzGerald and Arar underline the definition of refugee migration as a flight from political violence, including the threat of violence behind the actual persecution. This approach forms a relist conception of refugees as people who are in need to flee, even if it partly depends on political violence, regardless of how the legal authority eventually labels them.[30]

4. Conclusion

To answer the question 'who is a refugee' is perhaps not as easy as it sounds. The historical outline presented *when* and *how* the first refugees emerged. Even if it was during the adoption of the 1951 Refugee Convention that the international community substantively introduced the term 'the refugee', the concept existed long before that time. However, it was probably referred to in a diverse mean with no clear distinction towards other mobile groups. Still, an interesting premise one could consider is if the refugee definition of the 1951 Convention prepossess any clarification on how 'refugee' should be defined. It contains the legal context necessary for the governmental authorities to use to determine if a person meets the standards required for granting refugee status. Yet, enforcing a legal definition of a 'refugee' does not restrict the option for other forms of refugee definition to be expressed. As mentioned, the term 'refugee' is occasionally used synonymously with other terms, such as a stateless and internally displaced person.

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[27]FitzGerad, Scott David, Arar, Rawan, "The Sociology of Refugee Migration", Annual Review of Sociology, 2018, 387, p. 391.
[28]Ibid, p. 392.
[29] UNHCR, HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS - under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Reissued Geneva, December 2011, p. 9, para 28.
[30]FitzGerad, Scott David, Arar, Rawan, "The Sociology of Refugee Migration", Annual Review of Sociology, 2018, 387, p. 392 ff.

However, even if refugees are often referredto as stateless persons, it is a misjudgment to recall all stateless persons as refugees or all refugees as stateless. Also due to internally displaced persons, that by its scope is defined as internally displaced persons because they have not crossed an international border and likewise became explicitly determined to fall outside the scope of the 1951 Convention, could in some instances be referred to as 'a refugee'. Furthermore, in some aspects, the term 'migrants' and 'refugees' are referred to as cross-terms, even if the central dimension that distinguishes those two groups could be outlined. The complexity that delimits 'migrants' and 'refugees' are the close interaction due to their reason to leave. It might, initially, be motivated for an economical reason which further developed to reasons of persecution or the other way around.

People crossing international borders in need to seek safety and asylum but are excluded from the benefit of granting refugee status because of involvement with international crimes becomes placed in a limbo situation. The fact that an authority excludes that person means, in the legal context, that the person cannot claim to have 'refugee status' nor the rights contained in the 1951 Refugee Convention. Still, that does not eliminate the person's need to be defined as a refugee or preserve protection due to personal circumstances. Consequently, this ties in with the different mode of defining 'the refugee'.First and foremost, it does not exist one fundamental "proto-type" of refugees. Also depending on who and which definition of the term is used present different types of 'refugees'. From the states' point of view, it is evident that the individual crossing the territorial border meets the standard required in the legislation. Further, due to the constructivist approach, the label of being *a refugee*is essential. While for the realist – the refugee is someone who is in need to flee, regardless of any label.

The context of 'the refugee' has demonstrated how the phenomenon emerged as a response of guilt towards the ill-treatment of victims of historical wars to later infiltrate into the political debate portrayingrefugees as "the problem" that also potentially causes threats against state security. Whilst the refugee paradigm was initially presented not to be a universal phenomenon, but as a consequence of the developed wars, growth of new refugees, and new categories of persecution, it vastly became the fundamental universal model governing international mobility. History and the development of the world order have presented the outline of originally observing 'the refugee' in one specific means, to later on illustrating new types of 'refugees' and motives for claiming refugee rights. The dimension of 'the refugee' could easily be explained as a far-reaching concept that includes the diverse interest and involvement of different groups and actors, as much as the dissimilar reasons encouraging people to leave or enter national states. Could this mean that new groups of 'refugees' might emergence in the nearest future, and if so, how would they be defined? I guess only time will tell.