

The Contemporary Limitations of the 1951 Convention Relating to the Status of Refugees

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Abstract: The 1951 Refugee Convention's definition of a refugee is based on the five elements of "well-founded fear" and "persecution", but due to its historical context, its scope of protection fails to encompass contemporary refugee issues such as climate change and internal displacement. Regional conventions (e.g., the *Convention Governing the Specific Aspects of Refugee Problems in Africa*) offer lessons for reform by expanding the subject matter of persecution and recognizing collective exile. This paper proposes to include climate refugees, internally displaced persons, etc. in the protection system through flexible paths such as supplementary protocols and expanding legal interpretations, so as to enhance the adaptability and inclusiveness of the conventions and respond to modern refugee crises. The reform should safeguard the core principles of the Convention while incorporating regional practices to build a human rights protection framework that better meets contemporary needs.

Keywords: 1951 Refugee Convention; Climate Refugees; Internally Displaced Persons; Supplementary Protocols

1. Introduction

The *1951 Convention Relating to the Status of Refugees* (hereinafter referred to as the *Refugee Convention*) is a legal framework developed to respond to the massive population displacement after World War II [1]. However, as the global situation develops, especially with the increase in civil wars and new crises such as climate change, the limitations of the current convention are increasingly in conflict with the protection of human rights in today's society. This article will explore the limitations of the definition of refugees in the *Refugee Convention* and, drawing on relevant regional conventions,

propose suggestions for building a more inclusive and flexible refugee protection framework for the Refugee Convention.

2. The definition of refugee in the 1951 Refugee Convention

According to Article 1 of the *Refugee Convention*, a refugee is a person who is outside the territory of a State and is unable or unwilling to avail himself of the protection of the State of his nationality or habitual residence because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. On this basis, the *1967 Protocol Relating to the Status of Refugees* removed the time and geographical restrictions and expanded the scope of protection for refugees [2]. The following is a detailed analysis of the elements that constitute refugees.

The first element is "well-founded fear". The analysis of this element needs to be analyzed from both subjective and objective aspects. The first is the subjective aspect. "Fear" is the psychological state of refugee applicants, reflecting their anxiety and concerns about personal safety. This "fear" not only stems from the persecution that refugee applicants have suffered in the past, but may also stem from a premonition of potential threats in the future [3]. The second is the objective aspect. In *Chan v Minister for Immigration & Ethnic Affairs*, the court stressed that "reasonable fear" must have an objective basis. Therefore, the "fear" of a refugee applicant needs to be objectively analyzed based on the refugee applicant's own situation and the actual situation in the country of origin. If there is indeed a refugee claimant who would face persecution if he or she continues to stay in or returns to his or her country of origin, then it can be determined that there is an objective fact of "well-founded fear" [4].

The second element is "persecution".

"Persecution" usually has two important components. First of all, "persecution" must involve serious violations of an individual's basic human rights, such as the right to life, freedom, etc., rather than some insignificant violations. It should be noted that, as seen in *HJ (Iran) and HT (Cameroon) v SSHD*, the key to determining whether persecution constitutes is the seriousness of the acts, not whether they are continuous. Although "persecution" is not required to be continuous, if small-scale infringements appear to be systematic and persistent, they can also constitute serious persecution. Second, persecution requires that the state is unable or unwilling to provide effective protection. In the case of *Minister for Immigration and Multicultural Affairs v Khawar*, the court confirmed that the failure of the state to provide protection is also persecution in the refugee definition, even if the persecution is carried out by non-state actors, as long as the state fails to provide effective protection to the victim. Therefore, the definition of persecution not only requires the existence of serious harm or threat, but also emphasizes the failure of the state or other ruling entity to provide effective protection. The combination of these two can constitute a complete concept of "persecution" [5].

The third requirement is "By reason of". When analyzing whether a refugee applicant meets the requirements for refugee status, it is necessary to analyze whether there is a causal relationship between the "persecution" faced by the refugee applicant and the "Five grounds of persecution" stipulated. When making judgments, the "Contributing Cause" standard can be adopted, that is, as long as a certain reason plays a certain role in the persecution faced by the refugee, even if it is not the only or main reason, it should be considered to meet the requirements of the "By reason of" clause [6].

The fourth element is the "Five grounds of persecution". The Refugee Convention stipulates that the reason for persecution suffered by refugee applicants when applying for refugee status should be one of the five grounds of race, religion, nationality, social group or political opinion. These five grounds provide a specific basis for assessing whether a person is eligible for refugee status. If the harm suffered by the applicant is not related to

any of these five grounds, it does not meet the requirements [1].

The fifth element is "Alienage". "Alienage" is a necessary condition for applicants to apply for refugee status. The protection of refugees by the international community must not infringe upon the territorial jurisdiction of their countries of origin. In *CRI028 v Republic of Nauru*, the Court distinguished between Internally Displaced Persons and refugees, stressing that only persons who have crossed an international border meet the basic definition of refugee status. Therefore, a person is eligible for international protection only if they have left their country of nationality and are unable or unwilling to return to that country [5].

In summary, the definition of refugees in the *Refugee Convention* consists of the above five core elements. It should be noted that people who have committed serious crimes that violate the basic values of the international community do not enjoy refugee status even if they meet the above five factors.

3. The Limitations of the Refugee Convention in the Modern Refugee Crisis

Although the *Refugee Convention* has historical significance, its definition appears to have its limitations in the modern context.

The first part is the limitations of the reasons for persecution. The Refugee Convention was formulated in the context of the Cold War, and the five reasons for persecution stipulated in it were politically related. Not only did this not become an obstacle to refugee recognition at the time, it actually prompted some countries to actively accept refugees. However, after the end of the Cold War, the reasons for refugee persecution are no longer limited to politics. More and more refugees are forced to flee due to non-political factors such as harsh environment, war or poverty [7]. For example, "climate refugees" are people who have been forced to leave their homes due to climate disasters. Their migration conditions are basically the same as those of traditional refugees. Therefore, although "climate refugees" are caused by climate issues, they should be regarded as meeting traditional refugee standards and their refugee status should not be restricted. The analogy is consistent with other new types of refugees. In addition, Article 14 of the *Universal*

Declaration of Human Rights clearly stipulates everyone's right to seek asylum. Therefore, this restriction on the causes of persecution clearly violates the international community's expectations for human rights protection [8]. The second part is the restriction that excludes "Internally displaced persons" from its protection scope. "Internally displaced persons" refer to those who are forced to leave their original place of residence due to armed conflict, natural disasters and other persecutions, but have not crossed the border. The reason why the *Refugee Convention* excludes them is that internally displaced persons are still within the borders of their country of origin, which may claim that they are still able to protect them. Therefore, including internally displaced persons in the refugee definition may raise sovereignty disputes. However, in civil wars or ethnic conflicts, the government is often the perpetrator of violence, or the government may not be able to control the conflict area at all. Therefore, these people naturally cannot get the protection of their own government. And it is very likely that the failure of "internal displaced persons" to leave their country of origin is often a direct result of their persecution [9]. In this case, it is a disrespect for human rights to put the responsibility of protecting internally displaced persons entirely on the government. Secondly, cross-border migration also carries huge risks. The death of Syrian child Aylan Kurdi on his way to escape reflects the dangerous journey faced by thousands of people fleeing war and violence [10]. If "internal displaced persons" can be included in refugee protection, the risk of cross-border migration will be greatly reduced. In summary, the definition of the Refugee Convention has obvious limitations in the modern context. Therefore, in order to better respond to the global refugee crisis, the revision or expansion of the Convention has become an urgent issue that the international community needs to address.

4. The Evolution of the Concept of Refugee in Regional Conventions

The definition of "refugee" is not static as the times progress. Some regional documents in the field of international law have made corresponding modifications to the concept of "refugee" to keep pace with the times in

response to current affairs in the region.

First, the *Convention Governing the Specific Aspects of Refugee Problems in Africa*. This convention was born against the backdrop of political turmoil and colonial liberation movements on the African continent, and was drawn up to address the problem of large numbers of people being displaced due to war, civil war, foreign aggression and social unrest. This convention basically absorbs the definition of refugees in the Refugee Convention, and adds foreign aggression, occupation or serious social disorder to the reasons for refugee persecution. This expansion has greatly improved the efficiency of African countries in responding to large-scale refugee crises. The most striking example is that after the Rwandan genocide, millions of Rwandans fled to neighbouring countries. Due to the broad definition of refugees in the Convention, African countries can treat these escapees as refugees, allowing these escapees to quickly receive asylum and humanitarian assistance, thus avoiding large-scale humanitarian disasters [11].

Second, the *Cartagena Declaration on Refugees*. The Declaration was adopted in the context of the refugee crisis in Central America and the Caribbean, in response to the large number of refugees fleeing their homes due to violent conflict and social unrest. The declaration expanded the traditional definition of refugees in the Refugee Convention, and also considered people who fled due to large-scale violence, foreign aggression, internal conflicts or serious disruptions to social order as refugees. It abolished the requirement for individuals to be directly persecuted and emphasized the phenomenon of collective flight. This expansion allows more people who fled due to non-personal persecution factors such as social unrest or civil war to obtain refugee status, providing a more flexible framework for refugee protection in Latin American countries and around the world [12].

In summary, it can be seen that the definition of refugees is not static, and some regional conventions have evolved with changes in regional situations, allowing people who need refugee rights to be protected.

5. Changes that should be Made to the Refugee Convention

In the face of the increasingly severe global refugee situation, it is necessary to make corresponding amendments and supplements to the *Refugee Convention* to promote the smooth resolution of the refugee issue.

First, expand the definition of refugees. Currently, groups such as new types of refugees and "internally displaced persons" are excluded. This narrow definition cannot cope with many real humanitarian challenges. And with the improvement of the international community's awareness of human rights protection and the change of the concept of sovereignty, the international community's intervention in a country that cannot fulfill its obligations to protect human rights is less and less restricted by sovereignty. Therefore, incorporating new types of refugees and "internally displaced persons" into the refugee definition can make the Refugee Convention more effective in responding to modern complex humanitarian crises [13].

Second, reforms can be made through the signing of supplementary protocols. The *Protocol Relating to the Status of Refugees* is a typical example, which expanded the scope of application of the *Refugee Convention* by expanding the time and geographical restrictions on refugees. In the future, similar protocols can be passed to further expand the scope of application of the convention without modifying the core content of the original convention. For example, refugee problems caused by climate change or other uncontrollable factors can be solved through new supplementary protocols. This approach can avoid the complexity of treaty amendments and can flexibly respond to changes in the global situation.

Finally, modern issues can be addressed by broadening the interpretation clause. The United Nations High Commissioner for Refugees or relevant agencies could issue authoritative interpretations to expand the interpretation of existing convention provisions. For example, the definition of "persecution" or "social group" could be expanded to include groups that are not currently included. Such interpretation of provisions can flexibly respond to real-life modern refugee problems without changing the text of the Convention [14].

In summary, in the face of modern refugee issues, the Refugee Convention can adopt a

variety of response options to enable the Convention to better adapt to the current complex international migration situation and continue to provide protection for persecuted people around the world.

6. Conclusion

In conclusion, as a historic international legal document, the Refugee Convention has played a key role in the definition and protection of refugees. However, with the changes in the global situation, especially the emergence of climate change, civil war and other emerging crises, the limitations of the Convention have become increasingly apparent. Therefore, the international refugee protection system needs to be more flexible and inclusive in order to provide more comprehensive legal protection for individuals who have been persecuted. By expanding the definition of refugees, signing additional protocols, or interpreting existing provisions by authoritative institutions, the international community can effectively respond to contemporary complex humanitarian crises and adapt to the new challenges of global refugee issues.

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