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DEFINITION OF A "REFUGEE"

UNDER PARAGRAPH 11 OF THE GENERAL ASSEMBLY RESOLUTION
OF 11 DECEMBER 1948

Note by the Principal Secretary

This study has been prepared by the Legal Adviser after consultation with the political-juridical protection department of the United Nations High Commissioner for Refugees.

Necessity for a definition

A definition of the term "refugee" appearing in paragraph 11 of the resolution of 11 December 1948 is necessary for the purpose of determining eligibility for both repatriation and compensation as provided for in that resolution. Broadly speaking, it can be said that the aforementioned resolution related to those persons who left their homes to take refuge in the neighbouring countries as a result of the events which occurred in Palestine from 1947 onwards. This definition might be considered adequate for purposes of assistance or reintegration, but it could not serve as a basis for the designation of those persons in whose favour the General Assembly has laid down certain provisions. These provisions concern the rights, property and interests of refugees from Palestine in the literal sense of the term, and all those who are receiving humanitarian assistance are not necessarily refugees, even if such assistance is provided by virtue of a General Assembly resolution.

Constituent factors

A. Citizenship

The chief factor in the determination of the concept of a refugee in the proper sense of the term is citizenship, as opposed to domicile or residence, which enter into consideration in the case of stateless persons. Thus a refugee is a person who has left the territory of a country of which he was a citizen at the time of his departure. But such departure must have taken place as a consequence of physical or moral compulsion. Strictly speaking, persons who leave their country for reasons of personal convenience cannot be considered as refugees. Article I of the Convention of 10 February 1938 relating to refugees from Germany does not regard as refugees "persons who leave Germany for reasons of purely personal convenience".

Persons who, owing to compulsion, leave their native land to take refuge in another country do not enjoy de facto or de jure the protection of the government of the country of which they are citizens. They do not, in particular, enjoy the right to return to their homes, as other nationals would do. Their property is subject to certain measures of exception. Others do not wish to return to their homes for various reasons, even if their country of origin is prepared to accept them. Persons belonging to these two categories are refugees because they are, at least de jure, citizens of the country which they left. Indeed, the General Clause⁽⁺⁾ relating to the protection of refugees by the United Nations High Commissioner stipulates that the following are considered as refugees :

"Any... person who is outside the country of his nationality... because he has or had well founded fear of persecution by reason of his race, religion, nationality or political opinion, and is unable or, because of such fear is unwilling to avail himself of the protection of the Government of the country of his nationality or, if he has no nationality, to return to the country of his former habitual residence."

This definition repeats and expands the definitions provided by the Arrangements of 12 May 1926 and 30 June 1928 relating to Russian and Armenian refugees and to refugees assimilated to these as well as the definitions given in the Provisional Arrangement of 4 July 1936 and the Convention of 10 February 1938 concerning refugees from Germany.

(+) Document A/1682 of 12 December 1950

In Palestine, citizenship was governed by the Palestine Citizenship Order of 24 July 1925, amended by various successive orders. The amended text of the Order of 24 July 1925 is worded as follows :

"Turkish citizens habitually resident in the territory of Palestine upon the 6th day of August 1924⁽⁺⁾ shall become Palestinian citizens."

Turkish citizens born in Palestine who left Palestine before 6 August 1924 were given the right of option on condition that they could prove that they had unbroken ties with their place of origin and give formal assurances of their intention to return to Palestine. The right of option expired on 24 July 1945.

Applicants for naturalization had to fulfil the following conditions :

- a) "That he has resided in Palestine for a period not less than 2 years out of 3 years immediately preceding the date of his application;
- b) "That he is of good character and has an adequate knowledge of either the English, the Arabic or the Hebrew language;
- c) "That he intends, if his application is granted, to reside in Palestine."

All these three categories of Palestinian citizens are refugees under paragraph 11 of the resolution of 11 December 1948, if, after 29 November 1947, ⁽⁺⁺⁾ they left Palestinian territory at present under the control of the Israel authorities, on condition that they are of Arab origin.

There are therefore three categories of Palestinian citizens, namely :

1. Those who became Palestinian citizens by right, by reason of the fact that they normally resided in that country as of right at 6 August 1924;
2. Those who exercised their right of option;
3. Those who obtained naturalization.

B. Ethnical Origin

A second factor to be taken into consideration in the definition of a refugee concerns the race, religion or political opinions

(+) Date of entry into force of the Treaty of Lausanne of 24 July 1923

(++) Date of General Assembly resolution 181 (II) on Palestine

of a person who is obliged to leave his country of origin. Persons falling into the various categories of refugees who have been placed under the protection of the League of Nations and of the United Nations can all be classed as refugees by reason either of their race or religion or of their political opinions. The General Clause (+) relating to the protection of refugees by a United Nations High Commissioner expressly provides for this. As regards refugees from Palestine in particular, they were obliged to leave their homes because they were of Arab origin. This fact is not questioned.

According to the census(++) carried out by the Mandatory power in 1931, the population of Palestine was made up as follows :

Arabs (Moslem and Christian)	772,904
Jews	174,809
Others	<u>21,555</u>
Total	<u>969,268</u>

The total number of foreigners was 80,355 but Moslems of foreign citizenship constituted barely 1 per cent of the total number of Arab Moslems of Palestinian citizenship.

During the preparations for the census, the Arab census committee requested that Arabs be authorized to register as being of "Arab nationality". This idea of "nationality" should, however, not be confused with the concept of nationality in international law, since it implies belonging to a specific race or religion and originated in the practice followed in the Ottoman Empire for the differentiation of different minorities within the Empire. It is called "Nationality in the Citizenship".

Among the 21,555 persons of Palestinian citizenship properly speaking who are neither Jews nor Arabs, there must be some Moslems and some Christians of various origins (Turkish, Greek, Armenian, etc.) of whom 7,902 are natives of Palestine. These persons, who at the time of the census were placed in the general category of "Others", cannot be considered as refugees even if they left Palestinian territory after 29 November 1947. They should be covered by the provisions laid down on that date by the General Assembly

(+) See above

(++) Report on Census of Palestine, Vol. I, Part I, page 73

concerning religious and minority rights in Israel. Moreover, the Arab States could not be required to accept in their territories refugees not of Arab origin.

As regards persons of Arab or other origin - 80,355 in 1931 - who acquired a foreign citizenship prior to 29 November 1947, the protection of their rights, property and interests falls within the competence of the countries of which they are citizens, and they would consequently not be included in the definition of refugees from Palestine.

C. Ancillary factors: domicile, settlement, residence

The definitions given in the Arrangements of 12 May 1926 and 30 June 1928 only take into account ethnical origin without requiring the settlement of the persons concerned in the territory of the country which they left. The Provisional Arrangement of 4 July 1936 relating to refugees from Germany defines a refugee as a person who was settled in that country. This concept of settlement was dropped by the Convention of 10 February 1938 relating to those refugees. It was revived for the exclusive benefit of stateless persons, in lieu of citizenship. The same solution was provided for by the aforementioned General Clause.

It cannot be expected that refugees - especially when they leave a country in exceptional circumstances - will be in a position to produce proof of domicile or settlement. This additional guarantee, however justified it may appear, is impracticable, particularly when a large number of refugees are involved, as in the case of refugees from Palestine.

D. Persons assimilated to Refugees

There are two other categories of persons who, although not refugees in the technical sense of the term, should be assimilated to them. Their rights, property and interests are identical with those of the refugees. The first category consists of persons of Arab origin and of Palestinian citizenship who left Palestine before 29 November 1947 and who had not acquired any other citizenship prior to that date. To this category must be added that of persons of Arab origin who left Palestine before 6 August 1925 and who opted for Palestinian citizenship in accordance with the provisions of the Palestine Citizenship Order referred to above. In effect, in the majority of cases those belonging to the second

category are identical with those in the first. According to the Palestine Citizenship Order they were obliged to state, among other things, their intention to reside in Palestine. However, it can well be imagined that this intention was unrealizable for valid reasons. It is certain that vis-à-vis the State of Israel these two categories are considered as a single group, whatever the date of departure from Palestine. There would appear to be good grounds for applying to them the provisions of the resolution of 11 December 1948 and thus furnishing them with protection which they would not otherwise enjoy.

It follows from the foregoing remarks that the term "refugee" appearing in paragraph 11 of the resolution of 11 December 1948 can be defined as follows :

Article 1

Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.

Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory where they had been settled up to that date.

Article 2

The following shall be considered as covered by the provisions of Article 1 above :

1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that latter date were Palestinian citizens;
2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947.