

# Refugees and Stateless Individuals: Who Wins and Who Loses?

**Tamara Joan Duraisingam**  
**INTI University College**  
**Malaysia**

Upon arrival in a particular country, one may provisionally be categorized by immigration officers, in unsavory ways. These include so-called “asylum seekers” as they are perceived to be. The terms refugees, undocumented persons, illegal immigrants or stateless individuals are categorically more specific terms that may be used to describe such people. These terms, however, have a central underlying theme which one may neglect while discharging his or her duties at particular checkpoints, and that is this: they are dealing with human beings in desperate circumstances.

Individuals with improper travel papers enter a particular state with the hope of securing at least one of these unsavory designations, to a greater or lesser degree. One may prefer to be declared a refugee rather than a stateless individual. This is due to the fact that being termed a refugee may safeguard one’s rights more effectively than being stateless.

In the course of my paper I will attempt to distinguish between the refugee and the stateless individual. I will then probe into the treaties which provide for rights to these sets of individuals and determine who ends up with a better deal. I will conclude by looking at whether there is a possibility for the lesser privileged group to gain access to rights allocated to the more privileged group of undocumented persons.

## **The Refugee and the Stateless Individual**

Article 1 of the **Convention relating to the Status of Stateless Persons 1954**<sup>1</sup> defines the “stateless person” as a person who is not considered as a national by any State under the operation of its law. As at December 2008, sixty-three states have acceded this convention.

The **Convention relating to the Status of Refugees 1951**<sup>2</sup>, on the other hand,

defines, in Art 1A(2), a refugee as one owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular 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.

There are now approximately 147 states which are party to this convention and its protocol.

At first blush it seems that the two conventions deal with entirely different sets of individuals. However, after a little more scrutiny into the second limb of the definition article to the Refugee Convention, it seems as if this convention may encompass the stateless individual in limited circumstances.

A brief look at the run-up following the creation of the two treaties will give one an idea of what the states expected from these conventions. Looking at the law as it stood in 1938, refugees and stateless individuals were viewed in tandem. Article 1 of the 1938 Convention Concerning the Status of Refugees Coming from Germany applied to the following individuals:-

(a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or fact, the protection of the German Government.

(b) Stateless persons not covered by previous conventions or agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government.

In 1949 the Secretary General of the United Nations proposed the creation of a Convention that encompasses all persons without diplomatic protection. The Economic and Social Council approved the drafting of a convention that would include stateless persons as well as refugees who are considered to be de facto stateless, as their state of nationality would be unwilling to protect them. The states had divergent opinions on this broad-based form of protection proposed. On one side of the spectrum, countries like the USSR believed that only those de jure stateless persons deserve assistance from the United Nations, as refugees were deemed to be traitors of their home states. At the other end of the spectrum were states like France and the United States, which asserted that refugees present a more serious problem of