

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

عوامل الخلل والقصور في معاهدة جنيف 1951 للاجئين

- Dr: Salama Abdelaziz Hassan Aly¹

- Egypt, Assistant professor

Received: 02/04/2022

Accepted: 30/05/2022

Published: 15/06/2022

Abstract:

The topic of the research aims to shed light on the most prominent shortcomings in the 1951 Geneva Refugee Convention and its amending protocols, as the treaty at that time was appropriate for the conditions experienced by countries after World War II, but Now the 1951 Geneva Convention does not meet the minimum level of refugee protection for many reasons, including that the agreement contains contradictory, ambiguous and loose articles, and therefore the problem is that some European countries exploit the ambiguity of the articles to evade their obligations, hence the researcher seeks to shed light on the most prominent defects of the Convention Geneva, and provides the necessary recommendations to address its shortcomings.

Keywords: Geneva - Presecution - Refoulement - Refugees

ملخص:

يهدف موضوع البحث إلى إلقاء الضوء على أبرز أوجه القصور في اتفاقية جنيف للاجئين لعام 1951 والبروتوكولات المعدلة لها ، فقد كانت المعاهدة عند إبرامها عام 1951 تناسب الظروف التي مرت بها الدول، وكانت تكفل الى حد كبير الحماية للاجئين الفارين من ويلات الحرب العالمية الثانية، ولكن الآن ومع تطور المجتمع الدولي أصبحت لا توفر الحد الأدنى من الحماية الواجبة للاجئين، ويرجع ذلك لأسباب عديدة ، منها أن الاتفاقية تحتوي على مواد متناقضة وأخرى غامضة وفضفاضة، ومن ثم فإن المشكلة تكمن في أن بعض الدول الأوروبية تستغل غموض مواد الاتفاقية للتهرب من التزاماتها، وتتوسع في تفسير بنودها لملاحقتهم ، ومن هنا يسعى الباحث إلى تسليط الضوء على أبرز عيوب اتفاقية جنيف، ويقدم التوصيات اللازمة لمعالجة ما يعترضها من عيوب.

الكلمات المفتاحية: - اتفاقية جنيف - الإضطهاد - الإعادة القسرية - اللاجئين

¹- Email: lawyersalama@gmail.com

1. INTRODUCTION

The importance of the 1951 Geneva Convention lies in being the first international legal document on refugees, dealing with the concept of a refugee and the conditions that must be met to obtain asylum, and the rights and obligations of a refugee

Despite the importance of this agreement and the efforts made by states over decades, it was not without flaws, and its provisions sought to distinguish between refugees of different nationalities, which allowed many European countries to evade their obligations and abandon millions of stranded refugees at borders and on the high seas, making the 1951 Geneva Convention in its current form. Unable to keep up with contemporary developments.

1.1- Research Importance

The research aims to shed light on the most prominent defects of the Geneva Convention of 1951 and to clarify the ambiguities in many of its provisions, and to focus on the contradictory texts, And to show the articles of the agreement that sought to distinguish the citizens of the state from the refugees, and The researcher seeks to provide the necessary recommendations to remedy the shortcomings of the Convention

1.2- Methodology

This study relies on the analytical approach of the articles of the 1951 Geneva Convention, to clarify its shortcomings, and to compare the provisions of this treaty with other international treaties such as the American Convention for the Protection of Human Rights and International Humanitarian Law, And the attempt to emphasize that the Geneva Convention of 1951 is outdated, and that that agreement is in dire need of amendment to keep pace with contemporary developments.

1.3- Research problems

A) The problem is that the 1951 Geneva Convention is outdated, and it was drafted to suit European refugees fleeing the scourge of World War II, but now that the refugee problem has become a global problem, and international efforts to protect refugees have come together Through the conclusion of several treaties, such as the 1969 American Convention on Human Rights, the Arab Charter on Human Rights, and the African Charter on Human Rights, all these efforts confirm that the 1951 Geneva Convention is outdated and can no longer fulfill its purpose.

B) Many articles of the 1951 Geneva Convention were formulated vaguely, and this gap allowed member states to evade their obligations towards refugees , Perhaps the clearest example of this is that Article 1 of the Convention did not specify a specific definition of a refugee, The treaty included only the terms persecution, fear and flight, as the treaty considers a refugee to be every persecuted person who flees in fear for his life, and left the space for each state to interpret these terms according to its whims.

C) Certain articles of the 1951 Geneva Convention contained a serious flaw that would absolve the state from its obligations towards refugees.

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

This is because some provisions of the Convention impose the obligation of the state to protect refugees, and the same provisions contain exceptions that allow the state to evade this obligation under any pretext.

D) The Geneva Convention of 1951 contained many weaknesses, because there is a contradiction between its articles, and this contradiction gave the countries of asylum a suitable opportunity to evade their obligations.

E) One of the most important problems that surfaces is the strictness of some European countries in granting protection to refugees, due to their failure to differentiate between an immigrants and a refugees, Despite the official acknowledgment that border controls must respect the basics Rights and the principle of non-refoulement in political declarations and policy documents.

F) Other complex problem is that the legislation of many European countries contradicts international conventions to protect human rights. For example UK ministry of the Interior has resorted many times to detaining large numbers of asylum seekers until their requests are decided upon according to Table No. 2 of the Immigration Law issued in 1971, There is no doubt that This detention is a violation of Article 5 of the International Convention on Human Rights

1.4- The Refugee Definition:

accordind to the 1951 convention ,the article one defined A refugee as every person outside the homeland and does not like to return for fearing of religious or ethnic persecution or for fear of persecution because of expressing his opinion ⁽¹⁾

The American convention for the protection of Human Rights of 1969 defined a refugee as "each person has the right to seek asylum in a foriegn country in accordance with state legislation and international agreements as a result of committing a political crime or other ordinary crime related to him "⁽²⁾

The Arab Charter of Human Rights Stipulates that : every person may seek political asylum to another country to escape persecution , and political refugees may not be extradited ⁽³⁾

The African Charter of Human and people,s Rights stipulated that : each person has the right to seek refuge to a foriegn country to escape persecution , according with state legislations and international agreements ⁽⁴⁾

2.- Shortcomings of the 1951 Geneva Convention and Subsequent Conventions for the Protection of Refugees

2.1- The error in the formulation of the article, and the flexibility and breadth of interpretation:

¹) The 1951 convention, Articl No (1)

²) The American convention for the protection of Human Rights , Article No (22) paragraph (7)

³) The Arab Charter of Human Rights , Article , No (28)

⁴) Human rights in national legislations and international agreements , professor Elwan Yousof , kwait University Faculty of law page 153

Dr: Salama Abdelaziz Hassan Aly

The text of Article (1) of the Geneva Convention for the Protection of Refugees contained an error in formulating , as it excludes from protection every person who has committed a crime against peace, a war crime or a crime against humanity, without distinguishing between a person who has committed a crime. and the other who has been convicted, therefore the formulating of the article should be modified so that the exclusion is limited to refugees who have been finally convicted,

The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

(b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee

(c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity.

(d) he has been guilty of acts contrary to the purposes and principles of the United Nations. ⁽¹⁾

2.2- Ambiguity and flexibility of Article 1 of the 1951 Geneva Refugee Convention:

Article 1 of the 1951 Geneva Convention has been formulated vaguely because its excluded from its protection the perpetrators of non-political crimes, and did not clarify those crimes and left their interpretation to the state of refuge. History has proven that the persecuted in their countries flee from it because of fabricated political and non-political crimes.

It is necessary to reconsider the crimes for which the refugee was convicted, whether they were political or non-political, to determine whether the trial of the refugee in these cases was fair or not, and the political system in the trial country should be known, especially when the asylum seeker is tried in a third world country. Those countries in which the political system always seeks to fabricate political and non-political issues for its opponents in opinion.

2.3- The Shortcoming in the formulating of Article 33 of the 1951 Geneva Convention:

The article stipulated that " No Contracting State shall 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. "⁽²⁾

Therefore, the reader of this article will realize that there is no obligation for states to protect refugees near their borders

Moreover, any interpretation of Article 33 of the 1951 Convention does not obligate the state to protect refugees stranded outside its territory, and therefore

¹) The 1951 Convention for the Protection of Refugees, Article No (1)

²) 1951 Geneva convention , Article No (33)

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

the state is obligated to implement the 1951 Geneva Convention within its territory.

However, the interpretation of Article 33 of the 1951 Geneva Convention in accordance with human rights standards obliges states not to return refugees stranded at borders

Article 22(5) of the 1969 American Convention on Human Rights states "The collective expulsion of aliens is prohibited" (1)

According to IMT Charter Nuremberg Deporting refugees, even if they are outside the territory of the state, and endangering their lives is a crime against humanity, Therefore, Article 33 of the 1951 Geneva Convention can be interpreted in accordance with human rights principles, and thus the state's obligation not to return refugees stranded outside its borders can be interpreted that its obligatory

Article 6 of the 1945 IMT Charter (Nuremberg) provides: The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

c) "Crimes against humanity:" namely ... deportation, and other inhumane acts committed against any civilian population, before or during the war" (2)

Despite the vagueness of Article 33 of the 1951 Geneva Convention and the insufficient formulating of Article 33 on the protection of refugees stranded outside state borders, the Universal Declaration of Human Rights also obligates states to prevent the refoulement of such refugees

The Article (2) of the International Covenant on Civil and Political Rights stipulated that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (3)

3. - The principle of non-refoulement of the refugee and the principle of state sovereignty

3.1- What is meant by non-refoulement ?

The Article (33) of 1951 Geneva convention stipulated that "No Contracting State may expel or return a refugee to the borders of a territory where his life or freedom would be threatened by reason of race, religion, sex or political opinion." (4)

So it,s an obligation on the country to which the refugee has fled to escape religious or ethnic persecution or a threat to his life or freedom, So The country of refuge is forbidden to expel or return him. (5)

¹)The 1969 American Convention on Human Rights, Article No (22) Pragra(5)

²) The 1945 IMT Charter (Nuremberg) ,Article No 6,

³) The International Covenant on Civil and Political Rights Article No (2)

⁴) The 1951 Refugee Convention , Article No (33)

⁵) Wassim Hossam El Din, *The Private Outer Space*, first edition 2011, Al-Halabi Publications for Human Rights, Beirut- Lebanon p. 162

**3.2- non-refoulement of refugees and its relationship to state sovereignty:
Sovereignty concept:**

Sovereignty is supreme authority, which on the international plane means legal authority, which is not in law dependant on any other earthly authority. Sovereignty in the strict sense and narrowest sense of the term implies, therefore, independence all round within and without the borders of the country

3.3- The evolution of the concept of sovereignty

Some cling to the idea of relative sovereignty, while others cling to absolute sovereignty, most of advocate of relative sovereignty, submits that the theory of absolute sovereignty is inconsistent with a system of international law which is itself based on the principle of reciprocal rights and obligations.

According to the theory of absolute sovereignty that emerged in the nineteenth century, States can have a full freedom to either fulfill or disavow their obligations, according to their national interests. ⁽¹⁾

Gradually, states abandoned the theory of absolute sovereignty and accepted a wide range of laws that limit their sovereign right to act as they wish. These limitations on sovereignty are usually interpreted as deriving from consent or self-restriction, but it can easily be shown that in some cases, states have been deemed to be bound by certain rules of international law even though there is no satisfactory evidence that such rules have been expressly accepted or implied.

3.4- The impact of the principle of state sovereignty on its commitment to non-refoulement

I clarified that the international community has gradually abandoned the principle of absolute sovereignty, and states have adopted the principle of relative sovereignty, and have issued many internal legislation that obliges them to respect the provisions of international law, including the refugee's right to non-refoulement.

I would like to say that the entire international community is committed to implementing the principle of non-refoulement, This commitment stems from the Universal Declaration of Human Rights and international humanitarian law, so The implementation of this obligation is not limited to the states party to the 1951 Geneva Convention, but also includes all countries of the world

The state's commitment to non-refoulement does not detract from its sovereignty, because this principle is stipulated in Article No (3) of the 1984 Convention against Torture, which obligates states to refrain from handing over any person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture ⁽²⁾

¹) A K Henrikson , *Sovereignty Diplomacy and Democracy , The Changing character of International Representation – From State to Self* , (2014) (2) (15) *Comparative Politics*, 7-8

²) *The Convention against Torture, cruel, Inhuman or Degrading treatment of Punishment. 1984 , Article No (3)*

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

3.5- Scope of application of the principle of non-refoulement

Does a country that is not a party to the Convention abide by the principle of non-refoulement?

There is a dispute about the scope of application of the principle of non-refoulement, which can be summed up in two jurisprudential opinions as the following:

The first one limits scope of application of the principle of non-refoulement to the states party to the treaty, so any state that has not acceded to the 1951 Geneva Convention is not bound by the principle of non-refoulement , Because international agreements bind only its parties

The other The other extends the scope of application of the treaty to include all countries of the world based on the following:

- The principle of non-refoulement is a customary obligation that states have adhered to since the establishment of the United Nations until now.

- This principle is legally binding in accordance with the Universal Declaration of Human Rights and international humanitarian law

Some argue that the principle of non-refoulement is binding under customary international law, which also binds all states, even those not party to the 1951 Refugee Convention, and that principle must be respected from the moment a person claims protection. It is also known that this principle applies independently of any formal determination of refugee status by the state. Alternatively, the principle of non-refoulement applies

Once the asylum seeker has applied for protection ⁽¹⁾.

The understandable meaning of Article 33 of the 1951 Refugee Convention is that the principle of non-refoulement applies to refugees who suffer persecution and fear for their lives in their country of origin, and therefore the wording of Article 33 must be amended to include all refugees who meet the conditions even if they reside in another country.

3.6- The principle of non-refoulement in other international instruments

The American Convention on Human Rights stipulated at the Article 22 that:

"in no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinion"⁽²⁾

Article 3 of the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulated that: " No State Party shall expel, return ("refouler") or extradite a person to another State where there are

¹) Reinhard Marx, "Non-refoulement, Access to Procedure and Responsibility for Determining Refugee Claims" in Selina Goulbourne, *Law and Migration*, Edward Elgar Publishing, Cheltenham, 1998, p. 96.126 Ibidem, p.96.

²) *The American Convention on Human Rights, Article No (22)*

Dr: Salama Abdelaziz Hassan Aly

substantial grounds for believing that he would be in danger of being subjected to torture.”⁽¹⁾

The Article (2) of the Convention Governing the Specific Aspects of Refugee Problems in Africa stipulated that :

"No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraph 1 and 2 ⁽²⁾

4.- Risks not addressed by the 1951 Geneva Convention

4.1- The 1951 Geneva Convention overlooked gender violence

The 1951 Geneva Convention did not provide women with broader protection and did not address violence against women, although this type of violence is widespread and leads to very serious crimes. Unfortunately, these crimes are treated as a mere violation of human rights.

Regarding Article 1 of the 1951 Geneva Convention not including the right to asylum based on gender violence , The Istanbul Convention expanded in Article 60 in the interpretation of the text of Article 1 of the Geneva Convention and stated that :

“Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A , of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection. “ ⁽³⁾

The obligations set out in Article 60 are designed to ensure that gender-based violence against women may be recognised as a form of persecution and that states recognise that a woman may be persecuted because of her identity and status as a woman. ⁽⁴⁾

5.- The contradictions between the Geneva Convention and other Conventions

?

5.1- Inconsistency between Article No. 1 of the 1951 Geneva Convention and the agreements relating to extradition

Article No. 1 of the 1951 Geneva Convention contains many exceptions that may conflict with international agreements on extradition.

¹) *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article No (3) , Adopted by General Assembly resolution 39/46 of 10 December 1984*

²) *The Convention Governing the Specific Aspects of Refugee Problems in Africa , Article No (2)*

³) *Istanbul Convention ,Actions against violence adainst women and domestic violence , The baseline evaluation reports of GREVIO can be found at: www.coe.int/en/web/istanbul-convention/country-monitoring-work*

⁴) *Gender-Based Asylum Claim and Non Refoulement: Article 60 and 61 Of the Istanbul Convention A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence pag 10*

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

According to the Article (1) of 1951 Geneva convention : The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

(b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee

(c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity.

(d) he has been guilty of acts contrary to the purposes and principles of the United Nations ⁽¹⁾

The question is , Can a country of asylum extradite an asylum seeker to his country because he has been convicted of a crime? Especially if the country of asylum is a party to the extradition agreement? ,This problem has given rise to a wide legal debate.

Some assert that the text of Article 33 of the 1951 Geneva Convention has nothing to do with the extradition of criminals, and therefore if the conditions for extradition are met according to another convention, the state shall extradite the criminal to his state.

Others believe that it is necessary to refer to the general rules in the interpretation of treaties. If the state had signed the extradition agreement first and then signed the 1951 Geneva Convention, it adheres to Geneva 1951 and refrains from extraditing the criminal.

But. If the state signed the Geneva Convention of 1951 first and then the extradition agreement, then the state is obligated to extradite the criminal to his state. ⁽²⁾

Others see the obligation of the state to refrain from returning the criminal to his state because the principle of non-refoulement is a peremptory norm in international law and is superior to any other consideration. Because the Article 3 of the 1951 Geneva Convention included the phrase "No refugee shall be returned under any circumstances."

5.2-The 1951 Geneva Convention contradicts the International Covenant on Civil and Political Rights:

The provisions of the 1951 Geneva Convention were limited to the protection of a certain category of refugees, which are those who suffer persecution because of race, religion or opinion, and therefore the provisions of the convention contradict Article 6 of the International Covenant on Civil and Political Rights , That stipulated:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁽¹⁾

¹) The Geneva Convention Article No (1)

²) Stenberg Gunnel (1989) Non explosion and Non – refoulement Uppsala Iustusorlag (1989) p.201 , doctoral Uppsala University

Dr: Salama Abdelaziz Hassan Aly

The 1951 Geneva Convention did not include the protection of refugees fleeing environmental disasters

Who is the environmental refugee?

Environmental refugees are people who are voluntarily or forcibly forced to leave their country and homes due to natural or human disasters that endanger their lives. (2)

Some argue that although the 1951 Geneva Convention, as amended by the 1967 Protocol, remains the basic document for the protection of refugees and the basic principle of non-refoulement, the Convention may apply in specific cases, and on a small scale, to “victims of natural disasters when their governments impede the transfer of aid for refugees fleeing disasters (3)

It needs to be adjusted to all include those who flee their homes because of poverty, hunger or an unbearable environment

Therefore, these border-crossers fleeing disasters are still outside the protection of the 1951 Geneva Convention because the Convention does not cover them, and in most cases as their number increases, the state refrains from providing them with humanitarian aid.

Although international humanitarian law and human rights law pay great attention to victims of disasters, by urging states to provide humanitarian assistance to them, this attention is not enough, and I believe that the 1951 Geneva Convention still needs to be amended to include those fleeing disasters and hazards in its scope of application

5.3- Inconsistency between the text of Articles 8 and 9 of the 1951 Geneva Convention

Article 8 of the 1951 Refugee Convention provides:

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign state, the Contracting States shall not apply such measures to a refugee who is formally a national of the said state solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees. (4)

It seems that Article 8 of the 1951 Geneva Convention aims to prevent states from taking any exceptional measures against foreign refugees. Although international law allows states to take some measures to the extent necessary to protect national security, The state, for example, has the right to detain refugees for vetting or mass inspections (5)

¹) *The International Covenant on Civil and Political Rights Article No(6) paragraph (1)*

²) *The Politics of ‘Environmental Refugee’ Protection at the united nation Karen Elizabeth McNamara, puplication (2006) page76 Sydney nations*

³) *UNHCR, “Forced Displacement in the Context of Climate Change: Challenges for States under International Law”, Submission to the 6th Session of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, 20 May 2009, pp. 9-10.*

⁴) *The 1951 Refugee Convention, Article No (8)*

⁵) *See, Human Rights Committee, General Comment No (18): Non-Discrimination, 37th sess, UN Doc HRI/GEN/1/Rev.1 (11 October 1989) [13].*

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

I think that Although Article 8 of the 1951 Refugee Convention aims to protect foreign refugees from any exceptional measures that the country of asylum may impose on them, Nevertheless, the state can impose these exceptional measures in accordance with the text of Article 9 of the same Convention, Hence, Article 8 contradicts Article 9 of the 1951 Geneva Convention.

The Article 9 of Geneva convention 1951 stipulated that:” Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security”⁽¹⁾

6.- Conclusion: Resultes and Recommendations

1) Despite the importance of the Geneva Convention, it did not define a specific concept of a refugee, and thus every state was free to define it according to its whims. As a result, many European countries have taken advantage of the ambiguity surrounding the term "refugee" to evade their obligations, sometimes being strict in granting asylum despite the availability of its conditions. , Therefore, I recommend amending the text of Article 1 of the Convention by establishing a clear definition of the concept of refugee, with a penalty imposed on countries that are strict in granting asylum to those who meet its conditions.

2) I believe that Article 1 of the 1951 Geneva Convention is loosely worded because it excludes from protection every person who has committed a crime against peace, a war crime or a crime against humanity, and that the Article did not distinguish between accusation and conviction, and that is why I recommend that the exclusion be limited to convicted refugees, Whereas, the accused may be acquitted.

3) I noticed that Article 33 of the 1951 Geneva Convention was worded inaccurately, stating that a state party to the treaty may not expel or return refugees from its territory, and therefore in the sense of the text, states parties can expel those stranded at borders and at sea outside the territorial waters.

I recommend amending the formulating of Article 33 of the 1951 Geneva Convention to include those stranded at the borders and on the high seas to be covered by the protection of the Convention, because the refugee is the one who fulfills the conditions of Article 1 of the Geneva Convention, whether across the border or not.

4) Some cling to the idea of absolute sovereignty and that the state does what it wants without restrictions, while defenders of relative sovereignty believe that the theory of absolute sovereignty contradicts the system of international law, which in turn is based on the principle of rights and duties, so I see that the theory of absolute sovereignty is outdated because international human rights law has become binding on all states, and I recommend the commitment of

¹) The 1951 Refugees convention, Articl No (9)

states not to forcibly return refugees to their countries so that the state does not bear responsibility for violating the provisions of international humanitarian law

5) I believe that the 1951 Geneva Convention in its current form aims to protect only a certain group, which is the group whose life is threatened because of race, religion or political opinion, so I see that the Convention is in dire need of amendment, and I recommend amending that Convention to include those who flee their country Because of poverty, hunger, I recommend expanding the scope of the risk that allows asylum

6) The Geneva Refugee Convention did not provide protection for people fleeing disasters, earthquakes, volcanoes, climate, hunger and thirst. Therefore, I recommend amending the of the agreement and expanding its scope of application to include disaster victims.

7) The Article 17 of the 1951 Geneva Convention contains the worst forms of discrimination, According to that article, the refugee and the foreigner are subject to the same measures imposed to protect the labor market, But according to Article (17), for a refugee to be equal to the citizens of the state, the refugee must reside in the state for three years or marry a citizen of the country of asylum, or one of the refugee's children obtain the citizenship of the country of asylum. !! .

Therefore, I recommend amending this article with the aim of eliminating all forms of discrimination, because a refugee is not equal to an alien, but must be equal to nationals of the country of asylum from the moment of his arrival, and why should refugee wait three years to be equal to the nationals of the state? And why should refugee marry a citizen of the country to be equal to them? There is no doubt that this article will contribute to the spread of white marriage, which is a marriage that is not for the purpose of marriage

8) The Geneva Convention of 1851 insisted on discrimination against refugees, as Article (19) of the same convention stipulates that a refugee with a recognized degree shall be granted the right to practice any free profession and enjoy the same care granted to foreigners, and therefore, refugees have the same rights as foreigners residing in the country , but they do not enjoy the rights of citizens of the state , Therefore, I recommend amending this article with the aim of eliminating all forms of discrimination, and that it be formulated to achieve equality between refugees and citizens of the state.

9) Many articles of the Geneva Convention conflict with each other, for example Article 8 of the 1951 Geneva Convention aims to prevent states from taking any exceptional measures against foreign refugees, while Article (9) of the 1951 Geneva Convention gave the state the opportunity to say that there is Exceptional circumstances that require temporary measures that it deems necessary for the national security of the state. Therefore, these two articles (8) and (9) are contradictory because this person is in fact a refugee and the term national security is a loose term that the state can abuse to arrest refugees or restrict their freedom.

Factors of Weakness and Shortcomings in the Geneva Convention of 1951

10) The ambiguity of many of the provisions of the Geneva Convention has provided an opportunity for many countries, such as the United States, Italy and Australia, track refugees and detain them for long periods of time for interrogation, often forcibly returning them to their country, at the same time. The majority of European countries are strict in terms of providing protection to refugees and often consider them illegal immigrants. For example, in 2006, the Swiss authorities ratified new asylum and immigration laws, also. Many European countries ignore the rights of refugees under international conventions, close their beaches and borders in the face of refugees, and treat them as illegal immigrants, even though they have reached the territorial waters of the country, and although the 1951 Convention obligated countries not to forcibly return refugees, and the clear example of this Italy that chasing boats which carries Africans coming from Syria, Somalia and areas of armed conflict. Therefore, I recommend re-drafting the articles of the Convention and explicitly obligating states not to forcibly return refugees or migrants, because both enjoy the protection of international humanitarian law.

11) I have realized that there is a loophole in the clause relating to asylum applications, that international agreements on the protection of refugees do not guarantee adequate protection for refugees, because they do not provide protection for refugees and do not obligate states to provide assistance before the refugee reaching to territory of the state, and these agreements do not impose any obligation on states to prevent his persecution or forcible return.

12) The reality confirms that Western countries treat asylum applications with a kind of discrimination. Because the admission of an asylum seeker depends on political and diplomatic relations with the sending country, for example, after the outbreak of the Russo-Ukrainian war, thousands of Ukrainians fled to Germany and other European countries and were granted temporary protection once they arrived. They were also sent to collective shelters, and governments provided them with what they needed in a matter of days. At the same time, there are millions of Asian and African refugees still stranded at the borders. Hence, I recommend eliminating discrimination between refugees.

Referees:

- 1-*The 1951 Geneva convention*
- 2-*The American convention for the protection of Human Rights*
- 3-*The Arab Charter of Human Rights*
- 4-*The African Charter of Human and people's Rights*
- 6-*The 1945 IMT Charter (Nuremberg)*
- 7-*Convention against Torture, cruel, Inhuman or Degrading treatment of Punishment. 1984*
- 8-*The International Covenant on Civil and Political Rights*
- 9-*Istanbul Convention, Actions against violence against women and domestic violence, the baseline evaluation reports of GREVIO can be found at:*
www.coe.int/en/web/istanbul-convention/country-monitoring-work
- 10-*Wassim Hossam El Din, The Private Outer Space, first edition 2011, Al-Halabi Publications for Human Rights, Beirut- Lebanon*
- 11- *A K Henrikson , Sovereignty Diplomacy and Democracy , The Changing character of International Representation – From State to Self , (2014) (2) (15) Comparative Politics*
- 12-*Reinhard Marx, “Non-refoulement, Access to Procedure and Responsibility for Determining Refugee Claims” in Selina Goulbourne, Law and Migration, Edward Elgar Publishing, Cheltenham, 1998*
- 13- *stenberg Gunnel (1989) Non explosion and Non – refoulement Uppsala Iustusorlag*
- 14-*The Politics of ‘Environmental Refugee’ Protection at the united Karen Elizabeth McNamara (2006) Sydney nations*
<http://doi.org/1026190/unsworks/16570>
- 15-*UNHCR, “Forced Displacement in the Context of Climate Change: Challenges for States under International Law”, Submission to the 6th Session of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, 20 May 2009, pp. 9-10.*