

The Causes for Asylum, the Rights and Obligations of Refugees in International law

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Abstract

Due to the increasing number of refugees, the increase in their suffering, the importance which they represents, and their need for an assistance and ensuring their rights stipulated by the agreements and international treaties in international law to secure the protection and shelter for them; the current research came to detect the reasons that force the refugees to asylum, as well as to display the rights and duties stipulated by the agreements and international conventions. In order to achieve the objectives of the research; the researcher used the inductive analytical approach by referencing to the legal books and the Arab and Foreign studies that dealt with this topic. In addition, the researcher refers to the declarations, conventions and international covenants on human rights in general and on asylum in particular, and the review and analysis of data and reports. The researcher has concluded that asylum is a contract, which includes many conditions that ensure its validity, and it is possible to dissolve it if the refugee has issued any acts that contrary to the laws of the host country or if the refugee did not perform the duties imposed on him/her. As well as, asylum is humanitarian situation that calls for states to intervene to help refugees. In addition, the researcher found that the general principles of the protection of refugee rights in international law in general proved to be valid for every time and place. In order to overcome the vulnerabilities associated with the issue of refugees, the researcher propose several recommendations, including; states must adopt new concepts and proposals that raise the human niche, issuance of new laws that aim to protect refugees and not to protect certain people or certain interests, the imposition of prior commitments to the states towards refugees, the demand to enable refugees to exercise various rights and freedoms set forth in international covenants and agreements especially in the time that there are many violations against refugees, and there should be a new realisation aimed at addressing the issue of refugees in an integrated manner. As well as, the researcher highlighted the importance of increasing the awareness of the refugees regarding their rights and their duties.

Keywords: Asylum, Rights, Obligations, Refugees, International law

1. Introduction

The twentieth century has witnessed many developments in many areas of life, and perhaps one of the phenomena that have witnessed a remarkable development is the issues relating to asylum and refugees, where the world countries are facing many difficulties in dealing with large groups of refugees, since those refugees are moving to another countries as a result of many reasons to search for the security, protection, care, and so on.

It is known that the phenomenon of asylum is considered as old as human society, the human history has shown through days various forms of asylum, and the refugee issue has imposed itself as one of the leading contemporary issues of international law. In this regard, there is an international consensus that the person who has committed a crime that breach the security or non-political crime will not be considered as a refugee, as well as the refugee status does not apply to those who committed a war crime or a crime contrary to the principles and objectives of the United Nations (Hisham, 2015).

Although this phenomenon considered ancient; however, the legal protection of the refugees did not show until the beginning of the twentieth century, and the reason for this is due to the increasing numbers of refugees in various regions of the world, which prompted the world to adopt many of the agreements that have shown the rights of refugee and his/her duties (Jabour, 2010). These agreements have accompanied with a remarkable development, where it was confined at first on a certain class of refugees, but after that, the agreements have evolved, and the international conventions become defining the refugee in away characterised with inclusiveness, and the agreements became dealing with refugees, regardless the state from which the refugee has come from (Ibrahim, 2001).

The challenges that have emerged in the twenty one century due to armed conflict, violence and human rights violations, and others have led to many violations in the human freedom, his/her rights and his/her security, forcing him/her often to flee their country seeking asylum to other countries (Hathaway, 2005). This person remains carries the recipe "refugees" until the competent authorities, in the country that have resorted to it, issue a decision regarding his/her issue, which creates a kind of problematic, where the situation of this refugee will remain not clear, as the international agreements mainly focused on refugee rights statement and its obligations without exposure to the many stages which the refugee will go through (Feller et al, 2003).

The annual report that issued by the High Commissioner of the United Nations in 2006 indicated that

the number of refugees in the world rose from 100 million people in 1960 to 175 million people in 2000 (Sa'wi, 2007). The reports also clarified that the suffering of these refugees are increasing, as this is attributable to the difficulties faced by refugees after the events of September 11, 2001, due to increased security concerns, which led to emphasis on the procedures of granting asylum and tightening border control in many parts of the world.

According to the latest annual survey conducted by the UN High Commissioner for Refugees in 2015; the number of refugees has reached a high record in the world, exceeded 65.3 million people, where the number rose sharply compared with 2014, reaching 95.9 million people (Lectau, 2015).

The current research aims to detect the reasons that force the refugees to asylum, as well as to display the rights and duties stipulated by the agreements and international conventions. Therefore, the researcher hopes through this research to raise the amount of countries interest in this subject, in addition to increase the awareness of the refugees regarding their rights and duties to let them know what are their rights (which will lead to protect them from exposing to exploitation) and to let them know what are their duties (which will lead to not fall short in performing their duties)

2. Research Problem

The problem of the current research shows from the refugee problem as one of the important problems in the current century as a result of the increasing numbers of refugees from the wars, armed conflicts, poverty, natural disasters and other things that push the refugee to leave his/her homeland (Jabour, 2010).

Due to the increasing number of refugees, the increase in their suffering, the importance which they represents, and their need for an assistance and ensuring their rights stipulated by the agreements and international treaties in international law to secure the protection and shelter for them; the current research came to detect the reasons that force the refugees to asylum, as well as to display the rights and duties stipulated by the agreements and international conventions. The main reason that prompted the researcher to conduct this paper is that many countries neglect the refugee issue, and due to lack of refugees' awareness in their rights and duties stipulated by international conventions. The problem of current research can be summarised in the following main question: **What are the causes that lead to asylum? What are the rights and duties of refugees in international law?**

3. Research Methodology

In order to achieve the objectives of the research and answer the research's question; the researcher used the inductive analytical approach by referencing to the legal books and the Arab and Foreign studies that dealt with this topic. In addition, the researcher refers to the declarations, conventions and international covenants on human rights in general and on asylum in particular, and the review and analysis of data and reports.

This paper aims to illustrate the reasons that force the refugees to asylum, as well as to display the rights and duties stipulated by the agreements and international conventions to raise the amount of countries interest in this subject, in addition to increase the awareness of the refugees regarding their rights and duties to let them know what are their rights.

4.0 The theoretical literature

The current section aims to demonstrate the theoretical literature related to the subject of this paper. The section includes; clarifying the development stages of refugee concept, investigating the causes for asylum in international law, detecting the rights of refugees under international law and detecting the duties of refugees under international law.

4.1 The development stages of refugee concept

The definition of a refugee is an important issue in itself, which is also critical in addressing the refugee issue; this definition used to determine the legal protection that is available to those who meet the definition, and the definition of a refugee varies depending on its users, and depending on the difference in the geographical areas and treaties (Faraj, 2009).

Sa'wi (2007) has clarified that the International law does not give one definition for the refugees, but it gives more than one definition. There are many international documents that define the refugees in the governance of their application, and determine the minimum basic standards for the treatment of refugees (Hisham, 2015). Hisham (2015) clarified that the most important of these documents at the international level are the United Nations Convention of 1951 on the Status of Refugees, and the Protocol in 1967 in the same regard. The United Nations Convention of 1951 in the first article has represented a specific definition to the term refugee, where it represent that it applies to any person who has witnessed the events that occurred before the first of January of 1951 and because of his/her fear of exposure to persecution for reasons due to race, religion, nationality, membership for membership in a social group or certain political views outside the State of his/her nationality and he/she is unable or, do not want to avail himself/herself under the protection of his/ her country

(Costa, 2006).

After the United Nations Convention of 1951 has given a definition for refugee with two Limitations (Limitations of time and place); arbitrary discrimination has appeared between two types of refugees, one of them is the refugees before January 1, 1951 and in Europe-wide, and the second is the refugees after January 1, 1951 inside or outside Europe-wide (Hisham, 2015).

The urgent need pushed to abolish the limitation of time and place, and the United Nations make sure to come to another document that dealing with this situation, and that was represented in the Protocol of 1967, where these two limitations have already been abolished (Feller et al, 2003). Through adopting this protocol, the international refugee law has recorded remarkable progress in the definition of refugees, and by this, the protocol has been adopted the definition contained in the Convention of 1951 free of spatial restriction, where it did not link the refugees in Europe or elsewhere, as well free of temporal limitation, where it focused on the deletion of the phrase "as a result of events occurring before the first of January 1951" (Juma, 1997; Feller et al, 2003; Hisham, 2015).

Although the 1967 Protocol successes to overcome the temporal and spatial limitation in the definition of refugees, but it kept the only reason for asylum and is being persecuted for reasons of religion, sex, or otherwise (Hisham, 2015). Based on some of the General Assembly of the United Nations, Economic and Social Council, and the Executive Committee of the UNHCR resolutions, the UN High Commissioner for Refugees (UNHCR) decided to extend the protection to persons who are forced to seek refuge outside their country of origin, or country of citizenship, due to external aggression or occupation or alien domination or events that put the public system in danger, in all or some of this country (Feller et al, 2003; Hisham, 2015)

Many definitions have given to a refugee. Abuhif (1975) has clarified that a refugee is every human that his/her life, his/her physical integrity, his/her freedom would be threatened to danger through breaching the principles of the Universal Declaration of Human Rights and he/she has the right to seek refuge. Also, a refugee is a person who abandoned his/her native country or forced to leave it using means of intimidation and resorted to the territory of another state for protection or to deprive him/her of a return to his/her native country (Ghanem, 1967; Feller et al, 2003; Sa'wi, 2007; Lectaui, 2015). As well as, asylum is the legal protection granted by the state in the face of another state, as this is done in certain places (either in the territory of the State or somewhere outside continued to the state) (Guild and Lax, 2013).

Asylum dictating rights and duties over it limbs, and as the state of refuge must commit in providing the rights and guarantees for refugees, refugees must also commit in making their duties for the state of refuge.

4.2 The causes for asylum in international law

The reasons that calling for acceptance the refugee have mentioned in the United Nations Convention regarding refugees in the year 1951 and the Protocol of the United Nations on Territorial Asylum in 1967, these causes including (Sa'wi, 2007; Hisham, 2015):

1. **Fear:** fear means what was the result of being subjected to torture and persecution, and it is a psychological condition that needs from refugee to escape to a place that he/she feels safe in.
2. **Persecution:** It is resulted from exposure to threatening the life, the liberty, and through violating the human rights stipulated in international declarations and covenants.
3. **Discrimination:** It called on the differences in treatment, and the rights and opportunities, which generate a sense of insecurity.
4. **Ethnicity:** it called on the affiliation to a particular social group constitutes a minority within a population.
5. **Religion:** religion is a belief espoused by human. The freedom of religious is guaranteed in accordance with international declarations and documents.
6. **Affiliation:** affiliation will be a cause of asylum if there were no trust to that class or if there were no loyalty to the ruling political system, which exposes them to prosecution and persecution.
7. **Political opinion:** It is caused by embracing political opinions that contrary with the believes and thoughts of the ruling political system, political views, leading to fear of persecution, but that fear must be justified by actual violations such as imprisonment.
8. **Nationality:** the coexistence of two or more categories within the borders of one country may causes cases of conflict and persecution, as there are many minorities (which belong to a certain category) exposed to serious violations in different continents because of their nationality.

There are many reasons that will force the individual to resorting to another state, but the final result will be the same, which is deporting people from their original homeland forcibly. Many of refugees may be unaware with their rights that must be providing for them, which could lead in many cases to exposure to exploitation. The next part of the research aims to clarify the rights of refugees under international law.

4.3 *The rights of refugees under international law*

A refugee is an individual which the circumstances forced him/her to leave his/her native country to search for refuge provides him/her with protection. Regardless of the reasons that forced him/her to asylum, a refugee is an individual bearing with problems and difficulties, and this situation requires from states to respect and alleviate their suffering and help them to get out of their plight. It known that refugees are subjected to the laws of the host country, and they have rights and duties. Thus refugee is an individual who deserves all the rights and freedoms that set forth and announced by the international conventions in this regard. Besides; asylum becomes meaningless if the safety of refugee has been threatened and been violated, where the basic principle is to enjoy the refugee with the rights that given to him/her by the International conventions (Sa'wi, 2007). The vast majority of refugees do not have access to these rights for many reasons; such as weakness, ignorance, lack of awareness of their rights, fear of demand their rights, and many other reasons (Hisham, 2015).

The United Nations focused on the rights of refugees, and it seemed so obvious at (Abu al-Wafa, 2000; Sa'wi, 2007):

1. The call of the United Nations Conference on refugees and stateless persons, where this conference adopted the agreement which related to the status of refugees in 1951.
2. Adopting the Protocol related to the Status of Refugees (Supreme Economic and Social Council resolution No. (1186), and the Resolution of the United Nations General Assembly No. (2198) of 1966).
3. The adoption of the statute of the United Nations High Commissioner for Refugees in 1951.
4. The adoption of the Declaration on Territorial shelter (General Assembly Resolution No. (2312) for the year 1967).
5. The attention of the General Assembly of the United Nations with the refugee problems and their legal status (Resolution No. (73/51) for the year 1996).
6. The attention of the United Nations General Assembly with protecting the refugees (Resolution No. (150/50) of 1995).

There are many rights of refugees in the international law that have mentioned in the declarations and international convention. These rights are (Sa'wi, 2007; Faraj, 2009):

- First: the right of refugees not to be returned to the State of persecution

This right is considered the cornerstone of the asylum law, and according to the importance of this right; the international covenants has focused on it, as stated in the first paragraph of Article III of the United Nations Declaration that the refugees should not be exposed to procedures such as; prevent of entry the border, or returned forcibly to any country that they will exposure in it to the persecution

- Second: Restrict the power of the state to move the refugees

This right is considered an application for the previous right, regarding prohibiting the forced return to the persecution state. The 1951 Convention relating to the legal status of refugees, as well as the additional protocol to the year 1967, have contained what emphasises on that, where the Article 32 of the 1951 Convention has included three guarantees, namely:

- A. Restrict the power of the state with respect to the removal of a refugee, and the prohibition of expulsion as a general rule.
- B. The procedures that must be followed when issuing the expulsion decision, where it must be done through the legal procedures, and that the refugees have the right to prove his/her innocence, the objection and legal representation .
- C. To allow the refugees reasonable deadline when it becomes a final deportation decision; to be able to search for a new refuge.

- Third: the right of refugees to equality and non-discrimination

When the concern of the human rights have started at the international level, the principle of non-discrimination between the people was one of the most important pillars upon which the international documents concerned in this regard, and this principle occupied a prominent place in the Refugee Convention in 1951, where Article (3) clarified that the Contracting States must apply the provisions of the Convention related to refugees without discrimination between them on the basis of ethnicity, religion or domicile.

- Fourth: The right of refugees to move freely

Move freely means the possibility of changing one's place, according to his/her freedom, and some have called this right the "freedom of movement". There are many types of movement that can distinguish between them, where there is a possibility of movement by air and by land, and sea, but the most prevalent is the ground movement due to the general nature of the asylum. The emphasis on the freedom has contained in Article 26 of the Convention relating to the Status of Refugees of 1954.

- Fifth: The right of refugees to return

Stated in the Universal Declaration of Human Rights the emphasise on the right of return, where it is stated in Article 13 of the that Declaration that everyone has the right to leave any country, including his/her own, as well as his/her right to return to his/her country.

- Sixth: The right of refugees to compensation

The compensation means here: the refugees compensation for the loss of financial gain as a result of their displacement from their country and their inability to protect their rights on their property. As well as the compensation includes the refugees compensation for psychological suffering caused to them due to their displacement. The right to compensation came for the first time in the United Nations General Assembly's decision in paragraph (11).

- Seventh: The right of refugee education.

Stated in Article (22) of 1951 Convention relating to the Status of Refugees that the States shall accord to refugees the same treatment accorded to nationals with respect to elementary education. It should be noted here that the right to education is one of the public rights in which all people are equal.

- Eighth: The right of refugees to health care

The WHO summarised the concept of primary health care as a basic health care available to everyone in the country, which will be provided in an acceptable manner: for individuals, families and society, as it requires the full participation, and it will be provided with a cost in the range of community capabilities.

- Ninth: The right of a refugee in naturalisation.

Nationality means the person affiliation to a particular nation, and thus described the benefits for its owner on a particular nationality based on the existence of social relationship in the habits and the desire for shared living.

- Tenth: The right of a refugee in the food and clothing

- Eleven: The right of refugees to work

Where the article (17) (relating to work unpaid) and Article 18 (relating to the free work) and Article (19) (relating to liberal professions) in the 1951 Refugee Convention have affirmed this right.

- Twelve: The right of a refugee in litigation before the courts

Where the article (16) of the 1951 Refugee Convention has affirmed this right.

- Thirteen: The right of refugees to establish associations and organisations

Refugees are susceptible to many bad conditions and pressures, ranging from forcing them to leave their countries, moving to resorting to another country, so refugee is a person who is bearing with problems and difficulties, and this humanitarian situation imposes on States the necessary need to alleviate their suffering, helping them out of the ordeal, and giving them the rights they deserve. From the other hand, refugees have duties that must be performed in the appropriate way.

4.4 Duties of refugees in international law

It must be pointed out that the agreements on the subject of refugees have focused on the rights of refugees more than their duties, and this is due to that refugee is the weaker party in the asylum equation, in addition to the poor conditions of the refugees around the world, making it imperative to focus on their rights more than their duties (Sa'wi, 2007).

In the 1951 Convention, the obligations of refugees toward the host country have expressly stated, where Article (1) of this agreement has clarified that all refugees have duties imposed to them for the host country, and in particular to abide by its laws and regulations, and to comply with the measures taken for the maintenance of public order (Jastram and Achiron, 2001; Costa, 2006).

The duties of refugees in international law are divided into three main sections, as follows (Jastram and Achiron, 2001; Sa'wi, 2007):

First: the duties concerning the maintenance of public order and national security to the State of refuge

As the article (2) of the 1951 Convention shows that refugee must maintain national security and public order. The Declaration on Territorial Asylum in Article (4) pointed out that the State that grant asylum must not allow for refugees to carry out activities that are contrary to the goals of the United Nations and its principles.

Second: The duties imposed by maintaining friendly relations among nations considerations

When refugees leave their country, this may lead to dissatisfaction with the original state, as the individual resorting means committing this country to practices that violate human rights and dignity. And in some cases, the refugee may participate in guided activities against the Origin State in the host country, so most of the conventions and declarations of the refugee imposed on the asylum state an obligation to impose restrictions on the refugees to prevent them from exercising their political activities which could threaten any other state regimes. Article (4) of the United Nations Declaration on Territorial Asylum, and Article (1/3) of the African Convention of 1969, and Article (2) and Article (32) of the 1951 agreement have confirmed on this duty.

Third: Variety duties of the individual toward the community and toward others

There are variety duties of the individual toward the community and toward others, it includes:

1. Sufficient awareness of the laws and provisions.
2. Performing the civil services that ask from him/her.
3. Cooperating with the State in the field of security and social welfare.

4. Preserving the natural environment.
5. Avoiding misuse their rights.
6. Preserving the cultural values.
7. Avoiding interfere in state policy.

5. Conclusion

The asylum problem has remained for long periods just a regional issue that does not interest the international community until the founding of the League of Nations, which has made a great effort in order to lay the foundations of legal rules to deal with the problem, and put the necessary arrangements to cope with asylum cases that the First World War created as well as the establishment of the High Commissioner Office for refugees (UNHCR) where it success to put international conventions to deal with specific groups of refugees.

Because of what the nation and the whole world is experienced today from conflicts and wars, a huge numbers of refugees who are looking for a safe place have emerged. It was and still the refugee issue one of more pressing issues. Refugees are the most vulnerable to suffering, and that suffering has increased in the past few years; because of the emergence of a stream of refugees' compromise on this sacred right: compensation or resettlement. So I have seen it is important at this particular time where the world is going through turmoil, racist and malicious plots of conspiracy against the sacred right to look in this important issue.

Therefore; the current paper aimed to illustrate the reasons that force the refugees to asylum, as well as to display the rights and duties stipulated by the agreements and international conventions to raise the amount of countries interest in this subject, in addition to increase the awareness of the refugees regarding their rights and duties to let them know what are their rights. The researcher went back to Arab and Foreign studies that dealt with this topic. In addition, the researcher refers to the declarations, conventions and international covenants on human rights in general and on asylum in particular, and the review and analysis of data and reports.

The researcher has found that refugees have many rights that the international law have mentioned in the declarations and international conventions, including; the right not to be returned to the State of persecution, restrict the power of the state to move the refugees, the right to equality and non-discrimination, the right to move freely, the right to return, the right to compensation, the right to educate, the right to have health care, the right of in naturalisation, the right of in the food and clothing, the right to work, the right in litigation before the courts and the right to establish associations and organisations.

As well as, the refugees have many duties which the international law have mentioned in the declarations and international conventions, including, the duties concerning with the maintenance of public order and national security to the State of refuge, the duties imposed by maintaining friendly relations among nations considerations and the variety duties of the individual toward the community and toward others.

The researcher has concluded that asylum is a contract, and includes many of conditions that ensure its validity, and it is possible to dissolute it if the refugee has issued any acts that contrary to the laws of the host country or if the refugee did not perform the duties imposed on him/her. As well as, asylum is humanitarian situation that calls for states to intervene to help refugees. In addition, the researcher found that the general principles of the protection of refugee rights in international law in general proved to be valid for every time and place.

In order to overcome the vulnerabilities associated with the issue of refugees, the researcher propose several recommendations as follows:

1. States must adopt new concepts and proposals that raise the human niche.
2. Issuance of new laws that aim to protect people and not to protect certain people or certain interests.
3. Imposition of prior commitments to the states towards refugees.
4. The demand to enable refugees to exercise various rights and freedoms set forth in international covenants and agreements especially in the time that there are many violations against refugees.
5. There should be a new realisation aimed to addressing the issue of refugees in an integrated manner.
6. Increasing the awareness of the refugees of their rights and their duties.

References

- Abu al-Wafa, A. (2000). The international protection of human rights in the framework of the United Nations and specialized international agencies. Dar Arab renaissance, Cairo, the first edition, pp. 64-65.
- Abuhif, A. S. (1975). Public international law. Knowledge House, Alexandria, Eleventh Edition.
- Costa, R. D. (2006). LEGAL AND PROTECTION POLICY RESEARCH SERIES Rights of Refugees in the Context of Integration: Legal Standards and Recommendations. DIVISION OF INTERNATIONAL PROTECTION SERVICES. United Nations High Commissioner for Refugees 2006.
- Faraj, S. A. T (2009). Rights (UNHCR) in Islamic law and international law. Islamic University Magazine (Islamic Studies Series), vol. XVII, No. I, pp. 159-188.

- Feller, E., Turk, V., and Nicholson, F. (2003). Refugee Protection in International Law. UNHCR's Global Consultations on International Protection.
- Ghanem, M. H. (1967). Common law principles. House New Renaissance Press, Cairo.
- Guild, E. and Lax, V. M. (2013). CURRENT CHALLENGES FOR INTERNATIONAL REFUGEE LAW, WITH A FOCUS ON EU POLICIES AND EU CO-OPERATION WITH THE UNHCR. Policy Department DG External Policies.
- Hathaway, J. C. (2005). THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW. (Cambridge University Press, New York, 2005).
- Hisham, M. (2015). "Recourse in international law ... Controls and limitations". Thought site.
- Ibrahim, A. I. (2001). Private international law: the citizen, the foreign center .Dar Arab renaissance, Cairo.
- Jabour, (2010). Legal organization to refuge to international and national levels. A thesis in a master's degree in Law, University of Isra Private, Dean of Graduate Studies.
- Jastram, K. and Achiron, M. (2001). REFUGEE PROTECTION: A Guide to International Refugee Law. Published by the Inter-Parliamentary Union with the Office of the United Nations High Commissioner for Refugees.
- Juma, H. H. (1997). The concept of refugees in international and regional treaties (Cairo, Research Center for Political Studies).
- LECTAUI, M. (2015). UNHCR: forced to refuge smashes records. Arab Orient Centre for Studies and Strategic civilization - London.
- Sa'wi, A.A. (2007). The rights of refugees between Sharia and Law (comparative analysis). Thesis in a master's degree in criminal justice. Naif Arab University for Security Sciences, Graduate School, specialization in criminal policy.