



Who is a Refugee?: A Critical Assessment of the 1951 Geneva Convention

Mülteci Kimdir?: 1951 Cenevre Sözleşmesi'nin Eleştirel Değerlendirmesi

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Öz

Bu makale 1951 tarihli Birleşmiş Milletler Mültecilerin Hukuki Statüsüne İlişkin Cenevre Sözleşmesi'nin ortaya koyduğu uluslararası koruma sisteminin gelişimini eleştirel bir analizle değerlendirmek amacıyla hazırlanmıştır. Literatür taraması ve Göç Araştırmaları Derneği (GAR, <https://gocarastirmalariderneği.org.tr>) tarafından düzenlenen iki çevrimiçi panelin sonucu olarak ortaya çıkan araştırma, İkinci Dünya Savaşı sonrasında gelişen modern sığınma rejimini Sözleşme'nin tarihsel arka planı ve uygulaması açısından değerlendirmektedir. Bugün kapsayıcı uluslararası koruma rejimlerinin yerini güvenli bölge/ülke oluşturarak mültecileri ve göçmenleri uzak tutmaya çalışan dışlayıcı politikaların alması, alanda geçmişten günümüze yaşanan değişimin seyrini gözler önüne sermektedir. Dolayısıyla bu makale, dışsallaştırma/güvenlik odaklı göç/sınır politikaları karşısında, Sözleşme'nin bireyi güvence altına alan politikalar ve kalıcı çözümler üretip üretmediğini değerlendirmektedir.

Anahtar Kelimeler: Uluslararası göç, mülteci, dışsallaştırma, Birleşmiş Milletler, 1951 Cenevre Sözleşmesi

Abstract

This article has been prepared to evaluate the development of the international protection system generated by the 1951 United Nations Geneva Convention on the Legal Status of Refugees. The research, which is the culmination of a literature review and two online panels organized by Association for Migration Research (GAR, <https://gocarastirmalariderneği.org.tr>) discusses the modern asylum regime that emerged after the Second World War, in terms of the historical background and implementation of the Convention. For, the fact that the inclusive international protection regimes are replaced by exclusionary policies that attempt to keep refugees and migrants away by forming a safe zone/country displays the course of the conspicuous change in the field from past to present. Hence, this article evaluated whether the Convention produces durable solutions and policies to protect individual rights in the face of externalization/security-oriented immigration/border policies.

Keywords: International migration, refugee, externalization, The United Nations, 1951 Geneva Convention

Introduction

Since the beginning of the twentieth century, the world has witnessed unprecedented population movements involving millions of people that have fled because of conflict, persecution, discrimination, violence – often mixed with other factors. These growing migration flows in turn laid the groundwork for the genesis of the 1951 United Nations Convention on the Legal Status of Refugees (1951 Geneva Convention)¹. Certainly, the concept of the refugee and refugee law began to form and get systematised with provisional arrangements, agreements, organisations, and practices. As a rising urgent international problem, search for solutions in the social and legal context were gradually intensified. Likewise, the pursuit to form the 1951 Geneva Convention gained momentum with the activities of the two organisations, the League of Nations (LoN) and the United Nations (UN) that took shape in this process (Odman, 1995). These two organisations facilitated the path to the 1951 Geneva Convention.

International protection was introduced in the United Nations for the first time in the 1948 Universal Declaration of Human Rights, the founding text of the organisation. Although the scope of international protection is not directly stated in the declaration, the right to asylum is defined as “the right to seek and to enjoy in other countries asylum from persecution”. With this declaration, it was plainly stated that the person has the right to enter and stay in the relevant country to seek asylum (Goodwin-Gill, 1985; Ergüven and Özturanlı, 2013). The 1951 Geneva Convention is an international document accepted by almost all of the world's states, defining refugee status and providing them with international and complementary protection. It is pivotal to re-evaluate the spirit and basic principles of the Convention in the context of changing migration and asylum movements since 1951. Because whether the Convention delivers robust solutions to today's much more complex mass movements of refugees raises concerns about durable solutions and burden sharing and in turn it continues to be discussed in the academic circles. Though it remains the cornerstone of the international refugee regime, the Convention has several shortcomings. This study is based on two online panels organised by the Association for Migration Research (GAR), with the support of the Turkey Representation of the Heinrich Böll Stiftung Association, and a comprehensive literature review. The panels took place on June 5, 2021 and June 8, 2021, with the participation of people from different views and professions, including academics from the fields of international relations, political science, law and sociology, and refugee and immigrant rights advocates.

1. Toward the 1951 Geneva Convention: Colonialism and Eurocentrism

With the recent impact of the Second World War—including massive displacement and experiences of insufficient state cooperation—the UN founded in 1945, took action (Krasue, 2021). The ‘international community’—headed by the UN—launched initiatives, including the formation of specific agencies such as the International Refugee Organization (IRO) and the UN High Commissioner for Refugees (UNHCR) and remarkably the 1951 Geneva Convention to maintain refugee protection (Krause, 2021). The 1951 Geneva Convention is a multilateral UN convention that outlined refugee status in broad strokes, as well as the rights and responsibilities of countries². The UN's efforts to solve the issue radically, paved the way for the preparation of a new convention via organising a conference and taking into account all documents for refugees. In line with this framework, the Convention was accepted at the end of the conference held in Geneva between 2 July and 25 July 1951 with the participation of 26 countries, various international organisations, and NGOs as observers. However, the idea of refugees as a ‘burden’ can be traced to early international efforts to address refugee situations under the League of Nations, the United Nations Relief and Rehabilitation Administration, and the International Refugee Organisation, where the driving concern was the impact of refugees on host states (Krause, 2021). The drafters of the 1951 Convention inherited this approach. Moreover, as the convention built on refugee definitions in the 1933 Convention Relating to the International Status of Refugees, the 1938 Convention Relating to the Status of Refugees Coming from Germany and the constitution of the International Refugee Organisation, the primacy of Europe was already there.

¹ The 1951 United Nations Convention Relating to the Status of Refugees will be referred to as the 1951 Geneva Convention in the following sections of the text.

² To date, 146 countries are party to the 1951 Convention, and 147 to the 1967 Protocol.

The definition of refugee in the Convention included people who had left their country due to events that had taken place in Europe before 1951. In other words, it envisioned two limitations in terms of “time” and “place”. The limitation of time and place directly excluded people who were persecuted outside of Europe after 1951 and had to leave their country due to this persecution. Therefore, it failed to fully respond to the needs of the international community. Hence, an additional protocol was prepared to which countries can directly join without the condition of being a party to the 1951 Geneva Convention. The geographical and temporal limitation existing in the Convention was removed from the text with the Additional Protocol to the UN Convention Relating to the Status of Refugees (1967 Protocol or the New York Protocol)³. Thus, refugee status began to be granted to “asylum-seekers who may come from outside the European continent” and due to “events that took place before 1951”. As a result, the 1951 Geneva Convention has been amended only once with the 1967 Protocol, and with the lifting of these restrictions, the scope of the Convention was universalized.

However, according to Ulrike Krause, at the founding conference of the Convention colonial and imperial states largely dominated debates. Her study reveals that although, greater number of states supported a universal refugee definition, several others insisted on the focus on Europe—which the adopted version reflects (Krause, 2021). Among the defenders of the limited definition were the delegations of the US, Venezuela and France (Krause, 2021). On the contrary, delegations of Belgium, the Netherlands, the UK, Chile and Yugoslavia supported a universal definition (Krause, 2021). In retrospect, one can detect two positions: The ‘Europeans’, eventually led by the French delegate Robert Rochefort, advocated for a narrow refugee definition for European refugees alone to ensure buy-in from potential signatories. The ‘universalists’, led by the United Kingdom, argued for a broader, more global approach, which would have explicitly addressed refugee situations around the world though not the plight of internally displaced people (Madokoro, 2022). Hence, this outlined the ‘true’ refugee as one in or from Europe, while also ignoring the ‘other’ refugees and regions. Krause (2021) notes that such exclusion did not come from delegates’ lack of awareness; as they already acknowledged the global scope of forced migration, but they partly used it just to promote the focus on Europe. She claims that this not only demonstrates the Convention’s Eurocentric and Western characters but also maintains ‘colonial-ignorant’ perspective, with lasting consequences for today’s global refugee regime. All in all it complicated protection for refugees outside of Europe as grasped in the efforts of the decolonised states that responded to the Western Convention and regime by concluding regional agreements.

As mentioned, the Convention’s founding conferences were dominated by colonial and imperial leaders and opinions rested on different power interests, as the decolonised states were not much active, or even silent during conference debates (Krause, 2021). The Convention offered a Eurocentric perspective in scope and purpose within the framework of the increasingly contentious dynamics of the Cold War. Moreover, these states defended their positions and opposed dominant Western politics in prior debates, but few ended up attending the conference. The adopted Convention demonstrated how decolonised states had little input and still-colonised ones none at all, into the highly Western and ‘colonial-ignorant’ decisions that created it and gave rise to today’s global refugee regime. The definition’s focus on refugees in and from Europe is a case in point here (Krause, 2021). As a result, the Convention, which was criticised by developing countries, eventually led to the advent of regional agreements and laws, from which broader definitions were established. These examples include the 1969 Organization of African Unity’s Refugee Convention signed in Addis Ababa, the capital of Ethiopia, and the 1984 Cartagena Declaration covering some of the Latin American countries. Consequently, it became possible to acquire refugee status in cases of widespread violence, external attacks, internal conflicts, human rights violations, and serious disturbances of public order in addition to the conditions set forth in the 1951 Geneva Convention (Odman, 1995; Barkin, 2014). This inadequacy in international regulations was tried to be eliminated with the Arab Convention Regulating the Status of Refugees in Arab Countries adopted by the Arab League in 1994 (Savar and Kedikli, 2019). With this convention, war, foreign control, serious disruption of public order in the whole or part of the country caused by natural disasters or catastrophic events are included in the conditions under which refugee status can be granted. It is seen

³ 1967 New York Protocol, https://treaties.un.org/doc/Treaties/1967/10/19671004%2007-06%20AM/Ch_V_5p.pdf.

that the deficiencies and inadequacies of the 1951 Geneva Convention have led to the emergence of various regional practices developed in different geographies.

According to Glynn, the Convention helped legalize the position of Second World War refugees 'while apparently shutting the door to future unwanted guests' and enabling 'western governments to attain a sense of control over newcomers' (Glyn, 2012). Both Mayblin (2014) and Krause (2021) refer to the 'intentionality' of including some and excluding 'other' refugees by delegations in the 1951 Geneva Convention's founding conference. Consistently, other scholars admit that the definition excluded refugees 'elsewhere', and especially in (de)colonised states (Krause, 2021; Ballinger, 2012; Goodwin-Gill and McAdam, 2007). In other words, researchers contest liberal notions and disclose how Western politics—encompassing imperialism, nationalism and colonialism—shaped the origin of 'international' law: 'law that was founded on the violence of European imperialism, not law based on global consent' continuing to affect its reading today (Krause, 2021).

2. Toward A Broader Definition of Refugee

The Convention is principally an international legal document on post-war refugee problems. The fundamental basis of the Convention is the Universal Declaration of Human Rights, the UN Charter, and the principle of non-discrimination. In the context of these principles, the Convention has brought an international perspective to the issue within the framework of the concept of the refugee and refugee law and has given the refugee status generally accepted minimum criteria. Expanding the scope of persons in need of international protection, the 1951 Geneva Convention and the 1967 Protocol clearly stated who a refugee is and what kind of protection, what kind of assistance, and social rights they are entitled to. These sister documents remain the cornerstones of refugee protection to this day. However, the determination of the respective statuses is at the discretion of the country of asylum. Although international conventions list minimum conditions, it is ultimately the states that decide how to implement the Convention (Goodwin-Gill, 1985). In other words, the legal protection was left to the disposal of the state to which the asylum seeker applied.

Refugee status is defined by Article 1, Clause A, paragraph 2 of the 1951 Geneva Convention. Accordingly, the refugee is a legal status granted to persons who are outside their country of origin, unable or unwilling to benefit from the protection of their country because of a well-founded fear of persecution because of their "race, religion, nationality, membership of a particular social group or political opinion" following the events taking place before January 1, 1951. In addition, even if the person is stateless, they may require to be outside the country of residence, is unable to go back, or because of the fear in question unwilling to return. In summary, refugees are a specific group of people who have left their country as a result of a serious threat to their life and liberty. One of the conditions for being a refugee according to the 1951 Geneva Convention is that the person must be a foreigner. In other words, one must be outside the borders of one's country. However, this requirement excludes the possibility that the asylum seeker will not be able to leave the country. Still, it is possible to state that this situation, defined as an "internal refugee", more clearly, "the situation of being under pressure for numerous reasons and not being able to leave their own country" has been reflected in practice in recent years (Odman, 1995; Barkin, 2014).

On the other hand, the 1951 Geneva Convention stipulates that, for an individual to be considered a refugee, they cannot enjoy the protection of any country of which they are a citizen. For this reason, the issue of when people with multiple or no citizenship can be considered refugees remains uncertain. In addition to these, a person who does not have a reason to be considered a refugee at the time of leaving the country and does not even have such a demand may be entitled to refugee status due to certain reasons that occurred while the person was abroad. This situation, called "refugee sur place", may have created a well-founded fear and risk of oppression and persecution, and consequently made it impossible for the person to return (Odman, 1995; Barkin, 2014).

3. Different Forms of Oppression and Persecution

One of the important criteria for obtaining refugee status is the existence of well-founded fear of oppression and persecution. For a person to be considered a refugee, persecution is not a necessity, but it is sufficient to try to avoid a situation that may create the danger of oppression and persecution. Yet, the 1951 Geneva Convention did

not define the concepts of persecution, race, and nationality. Furthermore, the fact that the danger of persecution is linked to reasons (race, religion, nationality, membership of a particular social group or political view) prevents asylum seekers under persecution from obtaining refugee status, except for these reasons. While narrowly interpreting the concept of persecution may cause asylum seekers to lose their rights, interpreting the concept too broadly may include anyone who does not have a serious, imminent, or foreseeable danger to their fundamental rights among those who will benefit from the right to asylum (Konyalı, 2021).

3.1. Gender

The different forms of persecution emerging today further challenge the criteria set by the 1951 Geneva Convention. The first of these is gender-based persecution, which is most heavily suffered by women and LGBTI individuals (Benhabib, 2020). Neither the refugee definition nor the 1951 Convention in general refers to sex or gender. It is extremely difficult for people who are persecuted based on gender to gain refugee status through the 1951 Geneva Convention. In such cases, refugee status is sought based on persecution due to belonging to a particular social group. Membership of a particular social group is included in the Convention to ensure that people who are excluded from other components can also be protected, and according to UNHCR, gender-based persecution is attributable to the causes of persecution in the 1951 Geneva Convention in terms of the principle of causality. The most serious examples of gender-based persecution are forced marriage, female genital mutilation, “honour” killings, domestic violence and human trafficking for the purpose of sexual or other forms of quasi-slavery. Although UNHCR has guiding principles and reports, the fact that this condition is not clearly structured in the 1951 Geneva Convention has led to differences in practices by individual states. Consequently, in practice, from time to time many states conclude that people who are persecuted based on gender do not meet the criteria of belonging to a certain social group and do not grant them refugee status. The text, object, and purpose of the 1951 Convention require a gender inclusive and gender-sensitive interpretation.

3.2. Climate and Environment

Climate/environmental refugees/(migrants) are another group that cannot benefit from the international protection offered by the 1951 Geneva Convention. Today, global warming, which is clearly felt by the decrease in water resources and precipitation, and the increase in average temperatures and rise in sea levels, climate and environmental changes due to natural disasters such as floods, hurricanes, tornadoes, earthquakes, food shortages caused by the depletion of arable land and natural resources, and epidemics challenge the limits of refugee status defined in the 1951 Geneva Convention (Ekşi, 2016). Because the increase in the number of international protection requests by the people affected by these disasters and changes who are leaving their country and seeking refuge in others is reflected in various data. In other words, the refugee regime that emerged with the 1951 Geneva Convention and the scope of international protection are brought into question. Indeed, the UNHCR 2020 Global Trends Report (UNHCR 2022) exposed that 80 percent of the world's displaced persons reside in countries or regions affected by severe food shortages and malnutrition, and a substantial portion of these countries face climate change and other disaster risks.

Even though the people in question are referred to as “climate/environmental refugees”, they are not currently recognized as refugees by the states in the context of the 1951 Geneva Convention. In other words, even though climate refugees are concepts used to express people who seek protection as a result of natural disasters and climate change, the status, protection, and resettlement of climate refugees have not yet been clarified in international law. For this reason, it is still uncertain whether states must provide protection to climate refugees in the context of international law, human rights law, and environmental law, and if so, what the scope of this obligation will be. It is also hard to say that a handful of international regulations on climate change⁴ include necessary and sufficient regulations for the Maldives, Marshall Islands, Kiribati, and Tuvalu, which will become

⁴ The United Nations Framework Convention on Climate Change, which was signed in 1992 and encourages the cooperation of states on climate change, and the Kyoto Protocol, signed in 1997, which obliges states to reduce greenhouse gas emissions, are the most important international regulations in this field.

uninhabitable if the sea level rises one metre higher, for Morocco, Tunisia, and Libya, which are falling into the clutches of desertification, or for Bangladesh, which is experiencing a food crisis.

However, the rejection of Ioane Teitiota, who lives in Kiribati, an archipelago in the Pacific, by New Zealand in 2013 due to changing climate and rising sea levels, cleared the way for new developments in this field. Teitiota, known as the first climate refugee, applied to the UN Human Rights Committee after her application was rejected. The UN Human Rights Committee rejected Teitiota's application, stating that he did not face any immediate danger. Yet, the same decision also stated that the people whose lives are at risk due to climate change have the "right to seek asylum" and cannot be sent back. Thus, an international supervisory body cleared the way for the implementation of the ban on refoulement to people displaced due to climate change and opened the door for the recognition of the concept of the climate refugee in the legal order. In other words, the decision paved the way for climate refugee claims, recognizing that climate change can push individuals to seek asylum because of both immediate and long-term harm. Although the UN resolution is not binding for member states, it serves as a clear warning to countries considering sending refugees back.

4. Social Rights

Even though refuge is clearly defined within the scope of the Convention, the concepts included in the definition remain open to the legal interpretation of the states. Whether a person has refugee status or not may vary depending on how broad or narrow the interpretation is. When the social rights offered by the 1951 Geneva Convention are examined, various problems stand out. For instance, because the convention discusses the right to shelter only in the context of the "right to housing", it excludes the positive duties of the state regarding the right to housing of the people living in its territory and removes housing from being a social right (Kaboğlu, 1995). Because the right to shelter provides an environment and conditions for individuals to experience their other rights and freedoms. Likewise, there is no definition or clarification in the Convention on the content of the social assistance and support to be provided. Therefore, the interpretation of the concepts of social assistance and social support is left at the discretion of the states. Thus, the level of social assistance and support to be provided and the areas in which they will be provided are left to the whims and means of the state's parties.

5. Non-refoulement and Sanctioning Power

In fact, the right of non-refoulement is the most effective and important article of the Convention. Because this principle forbids the refoulement of refugees and asylum seekers to places where there is a danger of persecution. Also, as stated above, this principle has become a rule of customary international law. Still, it should not be overlooked that many individual applications have been filed to the UN Human Rights Committee with the allegation that the right of non-refoulement has been violated (Öztürk, 2015; Aytekin, 2020). Denmark ranks first among the countries against which individual applications are filed, followed by Canada, Australia, and Sweden respectively⁵. Consequently, it is hardly possible to talk about the acceptance of a supra-state principle of non-refoulement. Moreover, such practices may weaken the guarantees regarding the right of non-refoulement, which has now become the basic principle of universal law, and more importantly, may open the door to arbitrary state practices.

Evaluating the Convention in terms of sanctioning power, it seems that the control mechanisms outlined in the pertinent articles cannot be effective in the eyes of the international community, as the task of the implementation is left to the international community and other states parties. As a matter of fact, there is an increase in the cases of push-back applied to asylum seekers who set off to EU countries for protection (Köksal, 2020; Yılmaz, 2015). It is

⁵ For examples of decisions regarding Denmark, see: J.R. and J.R./Denmark Decision, Communication No: 2258/2013, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&CountryID=49&DocTypeCategoryID=6&ctl00_PlaceHolderMain_radResultsGridChangePage=6_20>, E.T. 12.02.2020. Denmark Decision, Communication No: 2393/2014, date 16.07.2015, B.L. v. Austria Decision, Communication No: 1957/2010, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&CountryID=49&DocTypeCategoryID=6&ctl00_PlaceHolderMain_radResultsGridChangePage=6_20>, E.T. 12.02.2020.

observed that more restrictive practices have become more visible under the guise of border security protection. This leads to the allegations of treatment contrary to human dignity (Köksal 2020; Yılmaz 2015). The fact that the EU did not take a definite and clear stance on the implementation of guarantees based on the principle of non-refoulement caused the process of protection of fundamental rights to be mismanaged (Köksal, 2020; Yılmaz 2015). The lack of effective sanctions to counter these practices manifest as another important shortcoming of the 1951 Geneva Convention. In this context, the European Court of Human Rights (ECHR) has a wider scope of application compared to the 1951 Geneva Convention. Since it is applied without discrimination regardless of whether one is a refugee or not and it provides an effective judicial system- is more functional (Köksal, 2020; Yılmaz, 2015).

6. Mass Influx of Asylum Seekers

Most states predominantly use the individual status assessment method and decide independently for each person whether or not the refugee status of the individuals applying for asylum will be legally recognized (Hathaway and Foster, 2014; Fitzpatrick, 2000; Öztürk, 2015, 2017). But in cases of (imminent) mass influx of asylum seekers, temporary protection status is often applied, even though, there is no provision in the Convention preventing the recognition of refugee status in mass movements⁶. This status is an exceptional measure to provide immediate and temporary protection to asylum seekers just to meet their urgent needs.

The Temporary Protection Directive (TPD) was adopted following the conflicts in former Yugoslavia in the 1990s. Two reasons come to the fore in the emergence of activities pertaining to temporary protection. The first is the acceptance of non-refoulement as a binding rule in international law (Öztürk, 2017). States have a responsibility, under both the 1951 Geneva Convention and human rights law, not to deport, turn away or extradite individuals to places where their lives or freedoms may be in danger (Öztürk, 2017). The second reason, which is also related to the first one, is the tendency towards not using the protection regime provided by the 1951 Geneva Convention in mass influx of asylum seekers (Öztürk, 2017). Further to them, the failure of efficient cooperation and the inability to activate the ordinary asylum procedure due to the insufficient capacity to evaluate individual applicants emerges as another dynamic that facilitates the temporary protection directive. Following the conflicts in former Yugoslavia, the Temporary Protection Directive, was triggered by the Council in response to the unprecedented Russian invasion of Ukraine on 24 February 2022 to offer quick and effective assistance to people fleeing the war in Ukraine. Indeed, the non-implementation of the 1951 Convention regime shows a tendency to deviate from the protection regime provided by the Convention, rather than a lack of capacity/cooperation to operate individual asylum procedures (Öztürk, 2017). As temporary protection was fashioned as a pragmatic solution that, on the one hand, ensures the operation of the prohibition of refoulement, and on the other hand, refrains from applying the articles of the 1951 Geneva Convention in cases of mass refugee arrivals (Goodwin-Gill, 2007).

Following the war in Yugoslavia, the Syrian refugee “crisis” has trampled the Middle East, cost thousands of innocent lives, and exhausted the resources of neighbouring states. The tensions inherent in the convention’s approach became clear in 2015 when a record 1.3 million refugees sought asylum in Europe. States and opponents resisted this movement by obstructing borders, preventing landings and generating a hostile discourse that depicted arriving migrants as an ‘invasion’ and as hostile to ‘European values’ (Madokoro, 2022) The needs of people seeking refuge were rendered invisible by discourses and actions that criminalised migrants (ignoring the right to seek asylum enshrined in Article 14 of the Universal Declaration of Human Rights and the ‘non-refoulement’ clause (Article 33) of the 1951 Convention). The legal instrument designed to address the situation in Europe after World War II seemed inadequate and the question of Eurocentrism and the 1951 convention returned to the fore. As some European countries (like Hungary) in the EU underline state sovereignty and national security to justify their opposition to more generous refugee resettlement policies, while other countries (like Germany) have opened their borders, at times encouraging thousands of asylum seekers to move through Europe.

⁶ See, UN General Assembly: Note on International Protection, (A/AC. 96/830), 07.09.1994. paras. 26-29, <https://www.refworld.org/docid/3f0a935f2.html>, (Accessed: 15.11.2021.)

The EU has worked to reform its asylum legislation to establish a Common European Asylum System (CEAS). Under the CEAS, protection is granted to migrants who meet the criteria of a refugee based upon a well-founded fear of persecution. New rules have recently been adopted by the parties, establishing standards and cooperation to ensure that asylum seekers are treated equally throughout the EU. Despite efforts to create a consistent body of protections throughout the EU, the EU has reacted with policies of externalization during the Syrian refugee “crisis”. The externalization of European border control can be defined as the range of processes whereby European actors and Member States complement policies to control immigration across their territorial boundaries with initiatives that realize such control extra-territorially and through other countries and organs rather than their own. The Union shifted the burden to the first asylum countries and implemented readmission agreements just to reinforce burden shifting but not sharing, while enhancing border control mechanisms with agencies like Frontex. All in all international cooperation and burden-sharing have not altered the disproportionate burden that refugees place upon states of first asylum.

On the other hand, Russia’s special military operation against Ukraine generated another mass influx of approximately 7.5 million Ukrainian refugees in February 2022. The EU is consistently calling for cooperation to receive and protect refugees from the armed conflict in Ukraine in terms of solidarity. One week after the Russian invasion, the EU unanimously activated the temporary protection directive which had remained inactive in the aftermath of the wars in the former Yugoslavia. It provided immediate protection with urgent services in the spirit of solidarity with the people of Ukraine, contrary to what happened with the displacement of the Syrians in 2015. The decision to invoke the temporary protection is historical and yet disappointing in that it still applies an unequal solidarity which prevents non-Ukrainians from having the same legal protection. As Costella and Foster (2022) states “the cumulative effect of the legal regime has emerged to respond to those fleeing Ukraine places them at a considerable advantage when compared to other protection seekers, - not merely a dual standard but a dual system. Though some refugees were welcomed for their political and economic capital, refugees were often seen as a burden for receiving countries, especially if there were linguistic, ethnic or religious differences (Madokoro, 2022).

Conclusion

The events in 2015 resulted in the broader anti-refugee reactions that framed the evolution of the international refugee regime historically. The Eurocentric nature of the 1951 Convention was, and remains, a challenge but it is important to understand that it was meant to be a solution to the generalised idea of refugees as a problem (Madoroko, 2022). In examining the evolution of the 1951 Convention from its original context of creation, this study aims at indicating the enduring perception of refugee populations as a problem, despite consistent efforts to make legal categories of refugees, and therefore legal obligations for asylum and protection, more inclusive and robust (Madoroko, 2022). The refugee regime framed by the 1951 Geneva Convention falls short in responding to present circumstances. Even though refugee is clearly defined within the scope of the Convention, the concepts included in the definition remain open to the legal interpretation of the states. Whether a person has refugee status or not may vary depending on how broad or narrow the interpretation is. Moreover, different dynamics surrounding the world (gender, climate change, food shortages, epidemics, etc.) have led to the emergence of new refugee definitions in the field of migration and asylum. As conflicts drag on and temporary refugee camps become insufficient, chances of resettlement become much less likely on a global scale as countries close their borders to migrants or because mass migration movements are perceived as a threat to national security and stability (Şimşek, 2019). Similarly, xenophobia is on the rise. This rise is not only evident in the upsurge of distressing violence against asylum seekers, refugees, and migrants by members of the host community, but it is also evident in the statements of government officials and in their implementation of restrictive policies that light the fire of xenophobia (Şimşek, 2019).

In summary, developments in the international community reveal the inadequacies of the 1951 Geneva Convention and its inability to adapt to changing conditions (Özkan and Soykan, 2016; Hathaway, 2016). There is a need for a global asylum/refugee agreement even though it is difficult to achieve in today's conjuncture. However, as the EU closes its borders to asylum seekers leaving the responsibilities to the regions/states in the areas exposed

to the mass arrivals of refugees, the shortcomings and inadequacies in the Convention culminate and become more and more permanent. So much so that the EU continues to invest in advanced monitoring systems to “protect” its borders, provide financial support to member states at the periphery to strengthen their borders, and fund institutions that will provide coordination of border guards to patrol EU borders and operate across Europe. Moreover, there is a possibility that refugees may find themselves back in the country of first entry thanks to some "refugee-specific" practices, such as a safe third country or first country of asylum, which are used to circumvent the safeguards of the 1951 Geneva Convention. As Fiddian-Qasmiyeh (2021) notes the international protection system is in no way restricted to the 1951 Geneva Convention, and, indeed, while critiques of the colonial and Eurocentric nature of the Convention are essential, protection frameworks and systems have not solely been developed and implemented by states from the so-called global North. Indeed, it is “first and foremost in the interests of national and international security, not humanity” (Haddad, 2008). The inappropriateness of the Convention for today’s context makes all parties to reinterpret, compromise, bend the rules or reject the terms of the Convention. The existing regime affords states significant discretion in their interpretation of obligations. Globally, most refugees are recognized not through individualised refugee status determination, but extensively through group-based designations that consider all those fleeing a certain conflict or persecutory setting as refugees. In summary, the refugee regime framed by the 1951 Geneva Convention falls short in responding to present circumstances.

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