


**THE TEMPORARY PROTECTION OF REFUGEES OR LIVES IN LIMBO? THE
CASE OF SYRIAN REFUGEES IN TURKEY**

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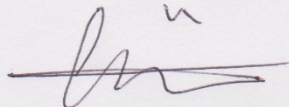
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ABSTRACT

In contemporary international refugee protection, the cases of mass influx highlight the problem of the narrow definition of a refugee contained in 1951 Convention and the reluctance of states to grant legal protection to large numbers of displaced people. This study focuses on the 'temporary protection' which is offered as a pragmatic tool to fill the protection gaps during mass refugee influx. It is argued that the protection provided by temporary protection is problematic in terms of securing the legal status of refugees and guaranteeing their rights. The recent situation of the temporary protection of Syrian refugees in Turkey is taken as a case study in order to better understand the effects of temporary protection on the lives of refugees. The legal status of Syrian refugees, their access to rights and durable solutions is examined in order to demonstrate the effects of temporary protection.

INTRODUCTION

Needless to say, the refugees are one of the most visible victims of the contemporary international legal system. In the system which is premised on the division of world among territorially bounded sovereign states, individuals acquire rights and legal protection by their attachments to those states. Nevertheless, the refugees, in contrast to proper citizens, remain outside the protection of their states of origin. Arendt characterizes this vulnerable condition as the *rightlessness*: ‘once they had left their homeland, they remained homeless, once they had left their state they became stateless, once they had deprived of their human rights they were rightless, the scum of earth.’¹

At the same time, since the adoption of the Charter of the United Nations² and the Universal Declaration of Human Rights³ (UDHR), it has been affirmed that human beings shall enjoy fundamental rights and freedoms without discrimination. Considering the universality of human rights, the international refugee law has been developed with the purpose of providing legal protection to refugees.⁴

In the international law, the refugee is defined as a person who is outside of her country of nationality due to the well-founded fear of persecution.⁵ However, increasingly large numbers of displaced people do not fall within this strict definition. The world has witnessed a huge growth in the number people, driven from their countries due to reasons other than the fear of political persecution, notably the armed conflicts, natural or manmade disasters, extreme poverty or massive human rights abuses. More often than not, those compelling reasons result in mass influx in contrast to the individually defined refugee status.

This study will focus on the Temporary Protection as a form of complementary protection in international refugee law to be applied in situations of mass influx of refugees. To what extent it provides effective legal protection to refugees and remedy their ‘rightlessness’ is the central question of the thesis. It will be argued that the protection provided is problematic in terms of securing the legal status of refugees and guaranteeing their basic human rights. The recent situation of the Syrian refugees in Turkey under temporary protection regime will be taken as

¹ Hannah Arendt, *The Origins of Totalitarianism*, (Harcourt Brace Jovanovich, 1973),267

² The Charter of United Nations (26 June 1945)

³ Universal Declaration of Human Rights (10.12.1948) UNGA Res 217 A(III) (UDHR)

⁴ Convention Relating to the Status of Refugees (adopted 28.07.1951, entered into force 22.04.1954) 189 UNTS 137 (Refugee Convention), Preamble

⁵ *ibid.*,Article 1(A)

a case study in order to better understand the effects of the temporary protection on the lives of refugees and demonstrate its failures.

To this end, in the first chapter, the development and the content of temporary protection in international refugee law will be outlined. In the second chapter, a brief account of Turkish asylum policies will be given. In the third chapter, the temporary protection of Syrians in Turkey will be analysed in terms of the legal status of refugees, their access to rights and durable solutions.



1. INTERNATIONAL REFUGEE LAW AND TEMPORARY PROTECTION

Contemporary international refugee law is comprised of international and regional conventions, General Assembly resolutions, customary law and domestic legislation. The sole internationally binding legal sources are the 1951 Convention relating to the Status of Refugees⁶ (1951 Convention or the Convention) and the 1967 Protocol Relating the Status of Refugees⁷ (1967 Protocol). At the present, 145 states are party to the Convention and they reaffirmed the key position of it 2001.⁸ The United Nations High Commissioner of Refugees (UNHCR or the Office) is the key international organization acting under the authority of United Nations General Assembly (UNGA) with the functions of providing international protection and seeking permanent solutions to refugee problem.⁹

In the Preamble of the Convention, member states considered the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. They also considered that the UN manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms.¹⁰ To this end, the Convention defines who would be considered as a refugee and lists the rights of refugees and state obligations towards them.

Accordingly, refugee is a person who ‘as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’¹¹ 1967 Protocol lifted the temporal and geographical limitations in the definition and the Convention gained a universal coverage.¹²

⁶ Refugee Convention, n.4

⁷ Protocol Relating to the Status of Refugees (adopted 31.01.1967, entered into force 4.10.1967) 606 UNTS 267 (Protocol)

⁸ UNHCR, Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol Relating to the Status of Refugees, 16.01.2002, HCR/MMSP/2001/09, para. 2 (hereinafter Declaration Relating to the Status of Refugees)

⁹ Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute), (14.12.1950), A/RES/428(V), Article 1

¹⁰ Refugee Convention, Preamble

¹¹ Refugee Convention, Article 1(A)

¹² Protocol, Article 1(2), Article 1(3)

The basic aspects of refugee protection in the Convention is the principle of *non-refoulement* and the guaranteeing of the basic rights. The principle of *non-refoulement* is endorsed by the Article 33 which states that ‘refugees shall not be expelled or returned 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’¹³ It has a special importance in refugee protection since it would be impossible to talk about rights if there would be obstacles to the admission of refugees beforehand. Although the rights of refugees were also protected by the subsequent human rights instruments, the Convention keeps its key position in securing basic human rights of refugees due to the derogation clauses of human rights instruments at emergency times and the absence of the refugee specific concerns such as *non-refoulement*, protection against penalties due to illegal entry, or need to obtain identity papers.

The rights secured in the Convention includes the freedom of religion (Article 4); free access to courts (Article 16); freedom of movement (Article 26); right to engage in wage-earning employment (Article 17); right to property (Article 14); housing (Article 21); access to public education (Article 22). Moreover, the host States are responsible for providing identity papers (Article 27) and travel documents (Article 28) and facilitating the assimilation and naturalization of refugees (Article 34).

Despite all the efforts to provide a legal and material protection to refugees, the international refugee law is regarded as an incomplete legal regime of protection so far as the refugees and asylum seekers denied protection or safe return.¹⁴ Hathaway and Neve started their oft-cited article by declaring that the ‘international refugee law is in crisis.’¹⁵ One of the major aspect of the crisis of international refugee law is its failure to provide protection in situations of mass influx.

¹³ Refugee Convention, Article 33

¹⁴ Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law*, (3rd ed. OUP 2007),352

¹⁵ James Hathaway & R. Alexander Neve, ‘Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection’, (1997) 10 Harvard Human Rights Journal 115,115

1.1. The International Refugee Law and Mass Influx

The ordinary meaning of the term mass influx refers to ‘the sudden and rapid crossing of international borders by large numbers of uninvited foreigners who are seeking safety from acute danger or other threats to their life and liberty.’¹⁶

Indeed, the term is not mentioned in the Convention or the Protocol as an exception to the international refugee protection. However, starting from the drafting process, states have showed their reluctance to admit large numbers of refugees into their territories. The British and Swiss delegates to the Ad Hoc Committee argued that there should be exceptions to the principle of *non-refoulement* when required by vital national security interests.¹⁷ At the Conference of Plenipotentiaries, Switzerland and the Netherlands argued the obligation of *non-refoulement* untenable during large-scale influx.¹⁸ In 1967, the UNGA Declaration on Territorial Asylum reflected such kind of concerns and endorsed the exceptions to the principle of *non-refoulement* to be made for overriding reasons of national security, including the mass influx.¹⁹

Although it is not mentioned in the letter of Convention, the restricted definition of refugee puts the mass influx situations in a controversial place in international refugee law. First, according to the Article 1(A), the well-founded fear of persecution is the sole criteria for acquiring refugee status. However, at the times of mass influx people may not necessarily flee for Convention reasons. As the UN High Commissioner acknowledged in the ‘Note of International Protection’ submitted to UNGA, some of them ‘are fleeing the indiscriminate effects of armed conflict and the accompanying disorder, including the destruction of homes, harvests, food stocks and the means of subsistence, with no specific element of ‘persecution’’.²⁰ Second, the refugee in the Convention is defined as an individual person.

¹⁶ Ann Vibeke Egli, *Mass Refugee Influx and the Limits of Public International Law*, (Martinus Nijhoff Publishers, 2002), 23

¹⁷ Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twentieth Meeting Held at Lake Success, (10.02.1950), E/AC.32/SR.20; Second Session: Summary Record of the Fortieth Meeting Held at the Palais des Nations (27.09.1950), E/AC.32/SR.40

¹⁸ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fifth Meeting, (03.12.1951), A/CONF.2/SR.35

¹⁹ UNGA, Declaration on Territorial Asylum (14.12.1967), A/RES/2312, Article 3(2)

²⁰ UNGA, ‘Note on International Protection’ (07.09.1994), A/AC.96/830, 15

During the mass influx, individual assessments of asylum-seekers of such large numbers might be impossible.²¹

The reason behind the reduced international refugee identity occasionally been explain from a liberal point of view. Price, for instance, argues that the political persecution of individuals by their states is a special kind of harm that brings an end to the state-citizenship bonds. This in return should be remedied by other states in the form of granting asylum, i.e new membership. In other instances, humanitarian assistance for victims of disasters or wars would suffice since the membership in the state of origin continues.²² However, such arguments miss the fact that the armed conflicts or extreme poverty may lead to losing of bonds between the state of origin and the refugee on equal account.

On the other hand, some authors point to the European origins of the refugee relief and the Cold War context during when the Convention was written down. Goodwin-Gill describes the refugee relief during the Cold War as ‘part of an overall strategy to defeat or contain communism’.²³ To this end, the European states and USA used the grant of asylum to those who were persecuted by the Soviet regime to affirm the failures of communism. In Loescher’s words, ‘Escapees’ who crossed over to West ‘voted with their feet’ and represented a significant political and ideological asset for the West.’²⁴

A number of regional instruments aim at overcoming shortcomings in the definition by adopting more inclusive ones.²⁵ On international plane, one of the response to the increasing number of non-Convention refugees and emergency situations of mass influx is the expansion of UNHCR’s mandate by UNGA Resolutions to assist the victims of generalized violence.²⁶

²¹ Susan M. Akram & Terry Rempel, ‘Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees’, (2004) 22 Boston University International Law Journal 1,11

²² Matthew E. Price, *Rethinking Asylum: History, Purpose, and Limits*, (CUP, 2009),167-173

²³ Guy S. Goodwin-Gill, ‘The Refugee Identity and Protection’s Fading Prospect’ in Frances Nicholson & Patrick Twomey (ed.) *Refugee Rights and Realities: Evolving International Concepts and Regimes*, (CUP, 1999),223

²⁴ Gil Loescher, *The UNHCR and World Politics: A Perilous Path*, (OUP 2001),7

²⁵ The Organization of African Union (OAU) included the reasons of external aggression, occupation, foreign domination, or events seriously disturbing public order, Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), (10.09.1969), 1001 UNTS 45, Article 1 (2); the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama incorporated persons ‘threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order’, Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22 November 1984)

²⁶ ‘Requests the High Commissioner ‘to pursue his activities on behalf of the refugees within his mandate or those for whom he extends his good offices’, UNGA Resolution 1673 (18.12.1961) A/RES/1673; ‘Requests High Commissioner to pursue his efforts with a view to ensuring an adequate international protection of refugees

Besides the protection of Convention, in 2001, States Parties declared the customary legal status of the principle of *non-refoulement*.²⁷ The supporters of the customary legal status of the principle refer to the endorsement of the principle by the 1951 Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁸, and the regional instruments²⁹ as the *opinio juris* component.

In regard to the mass influx, a number of commentators support the extended scope of customary legal obligation to include the victims of war or generalized violence.³⁰ For instance, Lauhterpacht and Bethlehem argue that in the light of the developments that UNGA expanded the scope of UNHCR mandate, the regional instruments adopted an extended definition of refugees, and the Convention against Torture expands the scope of *non-refoulement* where persons would be subjected to torture, gross, flagrant, or mass violations of human rights, the scope of *non-refoulement* in customary law is expanded as well.³¹ In opposition, scholars such as Hailbronner and Hathaway disputes the customary legal status of *non-refoulement* by pointing the lack of consistent state practice that can be inducted from the restrictive asylum and entrance policies and the lack of *opinio juris*.³²

All in all, the mass influx has a controversial place in the international refugee protection. Yet, the mass influx situations constitutes the majority of world refugees: only 29 per cent of the people to whom UNHCR assisted in 2013 were the Convention refugees.³³ It is in this context that the temporary protection is developed with an aim to address the situations of mass influx.

and to providing satisfactory permanent solutions to the problems affecting the various groups of refugees within his competence', UNGA Resolution 2039, (17.12.1965) A/RES/2039

²⁷ Declaration Relating to the Status of Refugees, preamble para.4

²⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10.12.1984, entry into force 26.06.1987) UNTS vol. 1465, Article 3

²⁹ OAU Convention, Article 2(3); Cartagena Declaration Section 3, para.5; American Convention on Human Rights, (1969), 9 ILM 673, Article 22 (8)

³⁰ Guy S. Goodwin-Gill, 'Non-Refoulement and the New Asylum-Seekers', (1985-1986) 26 Virginia Journal of International Law 897; Joan F. Hartman & Deborah Perluss, 'Temporary Refuge: Emergence of a Customary Law', (1985-1986) 26 Virginia Journal of International Law 551; Egli, n.16, 166; Elihu Lauterpacht & Daniel Bethlehem, 'The Scope and Content of the Principle of non-refoulement: Opinion', in Feller (et al.), *Refugee Protection in International Law - UNHCR's Global Consultations on International Protection* (CUP 2003)

³¹ Lauterpacht and Bethlehem, *ibid.*, 124

³² Hailbronner characterizes the attempts to prove customary legal status as a wishful thinking. Particularly, the asylum laws of United States, Canada and Western Europe does not support non-refoulement of all humanitarian refugees. Kay Hailbronner, 'Non-Refoulement and Humanitarian Refugees: Customary International Law or Wishful Legal Thinking?', (1985-1986) 26 Virginia Journal of International Law 857, 858; Hathaway underlines that most of the states in Asia and Near East have refused to be bound by *non-refoulement* and the non-entree policies of several developed states reveals the reluctance of states in admitting refugees. James C. Hathaway, *The Rights of Refugees under International Law* (CUP, 2005), 364

³³ UNHCR Global Appeal 2014-2015, 5, <http://www.unhcr.org/528a0a0fe.html>, accessed 14.08.2014

1.2. The Development of the Temporary Protection

In fact, the state practice of granting temporary refuge as a humanitarian response to mass displacement of people has a long history.³⁴ Still, the first authoritative endorsement of the idea has been manifested in the UNHCR Executive Committee (ExCom) Conclusion of 1979 which states that ‘in cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge.’³⁵ The same principle has been reiterated in 1981 by the ExCom Conclusion No.22.³⁶ Those conclusions have a persuasive authority as consensus resolutions. In this regard, Article 35 of the Convention can be taken as the basis for authority of the Conclusions. It requires the Contracting States to co-operate with the Office. Particularly, they are required to report on the conditions of refugees, the implementation of the Convention and the laws, regulations and decrees in force if needed.³⁷ Hence, as Hathaway puts it, ‘UNHCR may legitimately expect states to respond concerns about the adequacy of refugee protection as measured by reference to Conclusions adopted by the state members of its Executive Committee, though it has no power to require compliance with those.’³⁸

Against this background, the contemporary understanding of temporary protection in international refugee law is related to the European practice during the refugee crisis of Yugoslavian conflict in 1990s.³⁹ The conflict forced thousands of Bosnians in 1992 and Kosovars in 1999 to leave their countries. The European States facing large scale refugee movements at their borders feared that their asylum systems would be overwhelmed.⁴⁰ In that context, UNHCR urged European governments to grant temporary protection to asylum-

³⁴ For further information see, Hartman & Perluss, n.30,551

³⁵ Executive Committee of the High Commissioner’s Programme, ‘Refugees Without an Asylum Country’, (16.09.1979), No.15

³⁶ Executive Committee of the High Commissioner’s Programme, ‘Protection of Asylum-Seekers in Situations of Large-Scale Influx’, (21.10.1981), No.22

³⁷ Refugee Convention, Article 35

³⁸ Hathaway, n.32, 114

³⁹ Goodwin-Gill & McAdam, n.14,340

⁴⁰ UNHCR, Protection of Refugees in Mass Influx Situations: Overall Protection Framework’, EC/GC/01/4, (19 February 2001), 3 (hereinafter Overall Protection Frame)

seekers. Brochmann argues that the pressing consideration for the Office was to ensure that recipient countries should at least keep their borders open.⁴¹ Likewise, Loescher explains that the High Commissioner was aware that if the European states did receive those refugees, at least on temporary basis, the role of international refugee regime would be seriously undermined.⁴² As a compromise, the Bosnian and Yugoslavian refugees were admitted in European countries under the varied laws or regulations of temporary protection.

Since early 1990s, the temporary protection is debated and further developed under the UNHCR umbrella.⁴³ However, besides the ExCom Conclusions and the disputed customary law status of the extended scope of the *non-refoulement*, the temporary protection is not based on a well-developed legal criteria. Moreover, its relation to the 1951 Convention is not defined. In the Global Consultations of UNHCR, it is defined as ‘a practical device for meeting urgent protection needs in situations of mass influx. Its value in ensuring protection from *refoulement* and basic minimum treatment in accordance with human rights without overburdening individual status determination procedures has been demonstrated’⁴⁴. In this description, it seems that UNHCR acknowledges that individual assessments can be suspended during mass influx and the temporary protection can be applied to Convention refugees in emergency situations.⁴⁵ Hence, it might lead to derogation from Convention, although the legal grounds of such derogation is not defined.

1.3.The Scope of the Temporary Protection

The temporary protection secures the admission to safety and protection against *refoulement*. In terms of the rights and benefits, the ExCom Conclusion no.22 calls for the enjoyment of the fundamental civil rights and necessary assistance such as food, shelter, and health

⁴¹Grete Brochmann, ‘Bosnian Refugees in the Scandinavian Countries: A Comparative Perspective on Immigration Control since 1990s’, (1997) 23 Journal of Ethnic and Migration Studies 495, 500

⁴² Loescher, n.24, 315

⁴³ Note on International Protection; UNHCR, ‘Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It’, (30.05.1997), EC/47/SC/CRP.27; Overall Protection Framework, EC/GC/01/4; Executive Committee of the High Commissioner’s Programme, Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations, (08.08.2004), No.100; UNHCR, Guidelines on Temporary Protection or Stay Arrangements (February 2014) (hereinafter 2014 Guidelines)

⁴⁴ Overall Protection Framework, 3

⁴⁵ Alice Edwards, ‘Temporary Protection, Derogation, and the 1951 Refugee Convention’ (2012) 13 Melbourne Journal of International Law 1, 7

facilities.⁴⁶ Goodwin-Gill describes the temporary protection as a trade-off: for accepting the obligation to admit large numbers of refugees, states *de facto* suspend most immediate and compelling protections provided by the Convention.⁴⁷

The European practice of granting temporary protection to Bosnians and Kosovars reflects this compromise. The rights of refugees were differed from one state to another, none of them amounted to the Convention's scope. In France, for instance, Kosovar Albanians were granted permission to work, yet were not legally entitled to family unification.⁴⁸ In Germany as well Bosnian refugees were not entitled to family unification while their right to work was limited.⁴⁹ The humanitarian leave to remain in UK offers a range of rights that comes closest to the scope of the Convention but failed to grant the proper travel documents.⁵⁰ The European states have had a great deal of discretion to grant or withhold rights that Gibney describes the temporary protection as a *tabula rasa* for receiving states.⁵¹

The *ad hoc* responses were standardized by the Council Directive of the European Union (EU Council Directive) in 2001.⁵² The entitlements included the access to residence permits, social welfare, medical assistance, and education.⁵³ However, the right to engage in employment is restricted by the general labour market policies and the member states hold the right to prioritize EU citizens.⁵⁴

2014 Guidelines on Temporary Protection and Stay Arrangements of UNHCR sets the most detailed outline of the required treatment. It includes the guarantees of shelter/housing, access to health and other basic services, and education; freedom of movement- except as may be warranted by national security public order or public health considerations; opportunities for reunification with separated family members; self-sufficiency or work opportunities.⁵⁵ The flexible language reveals the humanitarian character of temporary protection in contrast to the legal protection sought by the Convention. According to the 'Note on International

⁴⁶ ExCom Conclusion No. 22

⁴⁷ Goodwin-Gill & McAdam, n.14, 336

⁴⁸ Danish Refugee Council, Legal and Social Conditions for Asylum Seekers and Refugees (May 2000), 102-103 <http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/00/legalsoc.pdf>, accessed 26.08.2014, 102-103

⁴⁹ *ibid.*, 122-123

⁵⁰ Matthew J. Gibney, 'Between Control and Humanitarianism: Temporary Protection in Contemporary Europe' (2000) 14 Georgetown Immigration Law Journal 689, 698

⁵¹ *ibid.*, 697

⁵² Council of the European Union, Council Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, (7.08.2001), OJL.212/12-212/23, 2001/55/EC, (EU Council Directive)

⁵³ *ibid.*, Article 13-14

⁵⁴ *ibid.*, Article 12

⁵⁵ 2014 Guidelines, 5

Protection’, a more limited range of rights and benefits are offered in the initial stage of temporary protection since it is conceived as an emergency protection measure of hopefully short duration.⁵⁶ At that rate, 2014 Guidelines states that in cases of extended stay, the standards of treatment would need to be gradually improved.⁵⁷ Still, the improvement of treatment is a loose advice, falling short of defining the ‘extended stay’ and identifying the standards of improvement.

1.4.The Cessation of Temporary Protection and Access to Durable Solutions

The beneficiaries of temporary protection are admitted with the understanding that they would eventually be repatriated when conditions in the country of origin allow. Gibney refers it as a gamble for states on the possibility that the conflict from which they take refugees will be short in duration.⁵⁸ On the contrary, the widespread protracted refugee situations⁵⁹ in the world reveals the fact that the conflicts may not necessarily come to an end in a short period of time. According to UNHCR statistics, at the end of 2003, there were 38 different protracted situations in the world, accounting for some 6.2 million refugees in total.⁶⁰ The European practice of temporary protection displays the unpredictable manner of conflicts: 400.000 refugees who settled across Europe have failed to return to their homelands even after eight years of displacement despite encouragement of their host states.⁶¹

EU Council Directive standardized the duration of temporary protection as one year. This period can be extended by six month periods for another year. If the member states apply to the Council, it may be extended for additional one year. In the African context, it varies from state to state. Although they are various long stays, instances of forced repatriations are also frequent.⁶² 2014 Guidelines states that ‘although the determination of an exact duration for a TPSA may not always be possible because of the complex or fluid nature of the movements and their root causes, States may agree to set timeframes, to be extended as conditions

⁵⁶ Note on International Protection, 22

⁵⁷ 2014 Guidelines, 5

⁵⁸ Gibney, n.49, 689

⁵⁹ According to UNHCR definition, ‘a protracted refugee situation is one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile.’ UNHCR, ‘Protracted Refugee Situations’, (10.06.2004), EC/54/SC/CRP.14

⁶⁰ *ibid.*

⁶¹ Gibney, n.49, 691

⁶² Akram & Rempel, n.21, 101

persist.⁶³ Kagan's observation is revealing, 'UNHCR seems to accept that "temporary" might sometimes go on indefinitely, because that's how long the root causes of forced migration sometimes persist.'⁶⁴ In return, the prolongation of the conflict might keep those refugees with limited rights for an indefinite period of time.

It should be noted that, there is not an established obligation of states to grant asylum for aliens. Although the Article 14 of UDHR grants everyone the 'right to seek and to enjoy in other countries asylum from protection'⁶⁵ there is no corresponding state obligation to receive them. Hence, both the Convention and the temporary protection are of limited duration. Nonetheless, the withdrawal from the protection provided by the Convention is formalised by the cessation clauses in Article 1(C). Accordingly, the protection for the Convention refugees ends when the refugee has voluntarily re-availed himself of the protection of the country of origin; enjoy the protection of a country of his new nationality; can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.⁶⁶

Moreover, despite the absence of it in the Convention letter, UNHCR acknowledges that the 'principle of voluntariness is the cornerstone of international protection with respect to the return of refugees.'⁶⁷ In this regard, while not binding, there is a persuasive authority to support the voluntary repatriation of refugees. UNHCR Statute refers the facilitation and promotion of it among the functions of the High Commissioner.⁶⁸ The ExCom Conclusions stress that the essentially voluntary character of repatriation should always be respected.⁶⁹ Several UNGA Resolutions referred it among the durable solutions.⁷⁰ The OAU Convention endorses the principle that the voluntary repatriation shall be respected in all cases.⁷¹

In contrast, the repatriation of refugees under temporary protection is not standardized. Fitzpatrick warns that 'a system of protection rigidly designed to provide only short-term refuge for expanded categories of refugees would be counterproductive if premature and

⁶³ 2014 Guidelines, 5

⁶⁴ Michael Kagan, 'UNHCR Issues New Guidelines on Temporary Protection. They Need a Rewrite', <http://rsdwatch.wordpress.com/2014/03/20/unhcr-issues-new-guidelines-on-temporary-protection-they-need-a-rewrite/>, accessed 23.08.2014

⁶⁵ UDHR, Article 14

⁶⁶ Refugee Convention, Article 1(C)

⁶⁷ UNHCR, Handbook on Voluntary Repatriation: International Protection, (1996), chapter 2.3

⁶⁸ The Statute, para.1, para.8(C)

⁶⁹ Executive Committee of the High Commissioner's Programme, Voluntary Repatriation, (16.10.1980), No. 18 Executive Committee of the High Commissioner's Programme, Voluntary Repatriation, (18.10.1985), No.40

⁷⁰ UNGA Resolution 40/118 (13.12.1985), A/RES/40/118; UNGA Resolution 49/169 (23.12.1994), A/RES/49/169; GA Res. 52/103 (09.02.1998) A/RES/52/103

⁷¹ OAU Convention, Article 5

unsafe repatriation emerged as the likely endgame.⁷² In this regard, the repatriation to post-conflict societies is a challenging one- owing to damaged infrastructure, pervasive violence, and distrust or hatred between communities.⁷³ To put it differently, the assessment of the circumstances in the state of origin in the absence of a formalized rules may lead to unsafe return. Loescher, points to the Bosnian case as an example in regard to the withdrawal of the temporary protection in some European states soon after the signing of peace accords in Bosnia despite the continuation of ethnic division and hatred in the country.⁷⁴

To sum up, temporary protection with shaky legal grounds in the international law, limited package of rights and undefined duration and cessation arrangements makes the protection of refugees in mass influx dependent on the discretion and generosity of the receiving government. In that regard rather than securing rights of the refugee, as Fitzpatrick argues, ‘TP can form part of a strategy to de-legalize refugee protection and to relocate it in the realm of politics and humanitarian assistance.’⁷⁵

⁷² Joan Fitzpatrick, ‘Temporary Protection of Refugees: Elements of a Formalized Regime’, (2000), 94 *American Journal of International Law* 279, 288

⁷³ Fitzpatrick, n.72, 299

⁷⁴ Loescher, n.24,316

⁷⁵ Fitzpatrick, n.72, 281

2. TURKISH ASYLUM POLICIES

Turkey is among the original signatories of the 1951 Convention⁷⁶ and acceded to the 1967 Protocol as well.⁷⁷ Upon the ratification of the Convention, she opted to limit the scope of it to European refugees with a declaration in accordance with the Article 1(B). The government maintained the declaration upon the accession to 1967 Protocol as well.⁷⁸ As it is, Turkey's obligations in regard to the Convention is only confined to refugees with European origins.

This chapter will provide a brief account of the conditions of non-European refugees in Turkey in order to prepare the ground for the detailed analysis of the temporary protection regime of Syrian refugees.

2.1. The Protection of the Non-European Refugees in Turkey

Until 1994, the Law on Settlement (1934) was the main legal source for refugee policy. Accordingly, only those refugees from Turkish descent and culture had the right to stay and integrate in Turkey.⁷⁹ The law was in line with the nation-formation policies of the early Republican era which aimed at creating a homogeneous Turkish nation from the remnants of the multi-ethnic Ottoman Empire.⁸⁰ After the ratification of the Convention, Turkey extended *de jure* refugee status to European refugees.

The crisis of the uncoordinated asylum policies became tantamount especially in 1980s. The number of non-European asylum-seekers rapidly increased because of the instability in Middle East, Africa, and South East Asia. Particularly, the Iranian Revolution of 1979 led to large numbers of Iranians escaping to Turkey. Turkey allowed UNHCR to temporarily shelter

⁷⁶ Ratified on 29.08.1961, Law no.359, Official Gazzete, 05.09.1961, no.10898, 5927

⁷⁷ Promulgated into national law on 01.07.1968 by the Council of Ministers Decision No.6/10266, Official Gazzete, (05.08.1968), No. 12968

⁷⁸ UNTC, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V5&chapter=5&lang=en#EnDDec, accessed 07.09.2014

⁷⁹ Iskan Kanunu (Law on Settlement) Law No. 2510, (14.06.1934) Official Gazzete, No.2733 (25 June 1934), Article 3

⁸⁰ Ahmet Icduygu & Kemal Kirisci 'Turkey's International Migration in Transition', in Ahmet Icduygu & Kemal Kirisci (eds.) *Land of Diverse Migrations: Challenges of Emigration and Immigration in Turkey*, (Istanbul Bilgi University Press 2009), 10

those refugees until the Office concludes arrangements for resettlement of them in third countries.⁸¹ Second, the country faced a number of mass refugee influx. She hosted Iraqi Kurds following the 1988 Halapja massacre, Bulgarians with Turkish origin in 1989, and Bosnians in 1992 with the ‘guest’ status. In 1991, however, the government closed the border to thousands of Iraqi Kurds escaping from gross human rights violations of the Iraqi regime.⁸²

In 1994, Regulation on Asylum⁸³ adopted to deal with the increasing numbers of asylum-seekers and situations of mass influx. In line with the geographical reservation to the Convention, 1994 Regulation defines two categories of aliens seeking protection in Turkey. While an alien who fits into the refugee definition of the Convention is identified as a ‘refugee’, while an alien with non-European origins who fits into the refugee definition is defined as ‘asylum-seeker’.⁸⁴ The Ministry of Interior is authorised for the refugee status determinations (RSD) of asylum-seekers⁸⁵ and they are granted temporary stay in Turkey until UNHCR would complete the resettlement process.⁸⁶ However, the process became complicated. In order to have an access to resettlement in a third country, refugees are required to pass through RSD process conducted by both Turkish authorities and UNHCR. In the case that Turkish authorities did not regard applicant as a refugee, they faced the risk of deportation even if UNHCR grants refugee status to the applicant. As Zieck argues, this ‘parallel tracks’ system was seriously flawed from a procedural point of view.⁸⁷

The deportations are against the principle of *non-refoulement*.⁸⁸ On the one hand, even if the principle is accepted to acquire a customary legal status, Turkey would be considered as a persistent objector in regard to the non-European refugees. However, Turkey is bound by 1950 Convention for the Protection of Human Rights and Fundamental Freedoms to refrain from deporting non-Europeans.⁸⁹ Article 3 which states that ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment’ is interpreted by the European

⁸¹ Icduygu & Kirisci, n.80, 16

⁸² Taner Kilic, ‘Asylum as a Human Right’, in *8-11 December 2005 International Migration Symposium Communique*, (Baski Press 2006), 522

⁸³ Regulation on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country (last amended 2006), (19.01.1994), No. 1994/6169 (hereinafter 1994 Regulation)

⁸⁴ *ibid.*, Article 3

⁸⁵ *ibid.*, Article 6

⁸⁶ *ibid.*, Article 4

⁸⁷ Marjoleine Zieck, ‘UNHCR and Turkey, and Beyond: of Parallel Tracks and Symptomatic Cracks’, (2010) 22 *International Journal of Refugee Law* 593, 609

⁸⁸ *ibid.*, 615

⁸⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, (04.11.1950), ETS 5

Court of Human Rights as implying the prohibiting the expulsion of aliens to a place where they would face a real and substantiated risk of ill-treatment.⁹⁰

In cases of mass influx, Article 8 of the 1994 Regulation flatly states that ‘it is essential that population movements be stopped at the border, and that asylum seekers be prevented from crossing over into Turkey.’⁹¹

2.2.2013 Law on Foreigners and International Protection

It was only in 2013 that the Law on Foreigners and International Protection⁹² for the first time offered a comprehensive legislation on asylum policies. Together with the ongoing need for a comprehensive regulation, the accession process of Turkey to EU membership forced the government to harmonize asylum policies with Europe.

The geographical reservation is not lifted. However, the terminological confusion related to the terms of asylum seekers eliminated by the introduction of the term ‘conditional refugees’ to describe non-European refugees and they are granted temporary stay pending their resettlement by UNHCR.⁹³ An important aspect is the incorporation of *non-refoulement* in Article 4 which extends the prohibition of return to a place where ‘he or she may be subject to torture, inhuman or degrading punishment or treatment.’⁹⁴

The temporary protection is also adopted in line with the harmonisation with European asylum policies. Article 91 states, ‘temporary protection may be provided to foreigners who, having been forced to leave their country and cannot return to the country they left, have arrived at or crossed the borders of Turkey in masses seeking emergency and temporary protection.’⁹⁵ However, unlike the EU Council Directive, the said article does not give a detailed account of the conduct of temporary protection arrangements, leaving it to the decisions of the Council of Ministers at the time.

⁹⁰ Ahmed v. Austria, 71/1995/577/663, (ECHR, 17.12.1996); Chahal vs. the United Kingdom 70/1995/576/662 (ECHR, 15.11.1996)

⁹¹ 1994 Regulation, Article 8

⁹² The Law on Foreigners and International Protection, No.2013/6458 (04.04.2013, entry into force 4.04.2014) (hereinafter 2013 Law)

⁹³ *ibid.*, Article 62

⁹⁴ *ibid.*, Article 4

⁹⁵ *ibid.*, Article 91

3. THE TEMPORARY PROTECTION OF SYRIANS IN TURKEY

Turkey is facing the largest refugee movement resulting from the eruption of the civil war in Syria in March 2011. UN High Commissioner describes the Syrian crisis as the biggest humanitarian emergency of our era with the ‘horrifying conditions inside the country where populations are surrounded, people are going hungry and civilians are being targeted or indiscriminately killed’.⁹⁶ Syrians constitute the world’s largest refugee population under UNHCR mandate as the recorded number of refugees hit three million.⁹⁷

First group of refugees arrived Turkey in April 2011. Turkish state pursued an open border policy towards Syrians from the beginning in contrast to the 1994 Regulation which calls for the population movements to be stopped at the borders.⁹⁸ The Syrian refugees are hosted under the temporary protection regime and the number of beneficiaries exceeded one million within three years.⁹⁹

This chapter will focus on the basic tenets of the temporary protection of Syrian refugees in Turkey. The aim is to evaluate the effects of the temporary protection of refugees on the lives of refugees.

3.1.The Principles of Temporary Protection Regime

In line with the geographical limitation, Syrians who arrived Turkey are not recognized as refugees. However, they are not treated as asylum-seekers as they would be under 1994 Regulation. Instead, the Turkish government recognized them as ‘guests’¹⁰⁰ and settled them in the temporary shelter camps near the Syrian border. However, beyond the generosity it implies, the term ‘guest’ does not carry with it any legal meaning.

⁹⁶ UNHCR, ‘Refugee Total Hits 3 million as Syrians Flee Growing Insecurity and Worsening Conditions’, (29.08.2014), <http://www.unhcr.org/53ff78ac9.html> accessed 31.08.2014

⁹⁷ *ibid.*

⁹⁸ The 1994 Regulation, Article 8

⁹⁹ Republic of Turkey, Prime Ministry Disaster and Emergency Management Presidency (herein after AFAD), <https://www.afad.gov.tr/TR/IcerikDetay1.aspx?IcerikID=747&ID=16> accessed 08.09.2014

¹⁰⁰ The President of Turkish Red Crescent, for instance, stated that ‘We are acting in line with the Prime Minister Erdogan instructions that Syrians are our guests and should not be referred as refugees or migrants.’ ‘Başbakan Erdogan’dan ‘Misafir’ Talimatı’ [The Guest Instruction from Prime Minister Erdogan], (22.06.2011), <http://www.akparti.org.tr/site/haberler/babakan-erdoandan-misafir-talimat/9522#1>, accessed 10.07.2014

The coordination of humanitarian response and administration of camps are conducted by the The Prime Minister's Disaster and Emergency Management Presidency (AFAD).¹⁰¹ UNHCR does not engage in operational activities but has a presence in all camps with functions of consulting, monitoring returns, and providing technical support.¹⁰² The humanitarian support to Syrians in camps has been majorly provided and financed by the Turkish government.¹⁰³

It was in October 2011 that the Syrian guests were given the temporary protection status. In the absence of national legislation on the temporary protection, the Ministry of Interior adopted the Regulation No.62 to administer the protection regime of Syrians in March 2012.¹⁰⁴ However, the Regulation is denied public address.

The principles of temporary protection are the open border policy, protection against *refoulement*; and humanitarian support inside the camps. UNHCR finds the temporary protection provided by Turkey in line with international standards: 'Syrians are to be provided with protection and assistance in Turkey, which includes unlimited stay, protection against forcible returns and access to reception arrangements where immediate needs are addressed.'¹⁰⁵

The open border policy has been respected with minor interruptions stemming from the security concerns.¹⁰⁶ However, Syrians without valid passports are admitted depending on the availability of places within the camps- except for the ones requiring emergency medical treatment. The restrictive entrance at the official borders forced Syrians to seek irregular entry with the assistance of smugglers.¹⁰⁷

¹⁰¹ AFAD, <https://www.afad.gov.tr/TR/IcerikDetay1.aspx?IcerikID=747&ID=16>, accessed 08.09.2014

¹⁰² UNHCR, 'Frequently Asked Questions: Syrian Refugees in Turkey' (October 2013), http://www.unhcr.org/tr/uploads/root/faq_english.pdf, accessed 24.07.2014 (hereinafter Frequently Asked Question)

¹⁰³ President of AFAD stated that as of April 2014, Turkey's expenses have surpassed 2.5 billion US dollars while the international aid that Turkey received is only 183 million US dollars. <http://www.orsam.org.tr/en/showArticle.aspx?ID=2632> accessed 12.07.2014

¹⁰⁴ Regulation on Reception and Accommodation of Syrian Arab Republic Nationals and Stateless Persons Who Reside in Syrian Arab Republic, Who Arrive to Turkish Borders in Mass Influx to Seek Asylum, (30.03.2012) No.2012/62

¹⁰⁵ Frequently Asked Questions, n.102

¹⁰⁶ 'In the course of 2013 sporadic security incidents such as in the province of Hatay, at the border area of Reyhanlı, prompted authorities to temporarily close specific borders', UNHCR, '2014 Syrian Regional Response Plan: Turkey' (2014), 4, <http://www.unhcr.org/syriarrp6/docs/syria-rp6-turkey-response-plan.pdf>, accessed 04.09.2014 (hereinafter 2014 Response Plan)

¹⁰⁷ *ibid.*, 5

The Turkish government predicted a quick resolution to the conflict in Syria.¹⁰⁸ As the conflict in Syria worsened, it became clear that there is no hope for a speedy recovery of the situation. Within one year, the number of Syrians who sought refuge in Turkey exceeded the 100,000 refugee limit number Foreign Minister Davutoglu had stated previously as a physical barrier.¹⁰⁹ As of July 2014, the number of refugees reached 220.000 in camps while 890.000 Syrians are present in the country outside of the camps.¹¹⁰ Thus, the analysis will be made separately for the camp and non-camp refugees.

3.2.The Minimum Standards of Treatment in the Camps

As of September 2014, there are 22 camps in Turkey located in 10 cities close to Syrian border.¹¹¹ The quality of the standards in the camps are appreciated by national and international community and experts. International Crisis Group defines the camps as the best refugee camps ever seen.¹¹² Ferris, the co-director of the Brookings-LSE Project on Internal Displacement, told in an interview with International Crisis Group representative that “I can clearly say the camps in Turkey are magnificent [in] the level of resources, infrastructure, services, space and security provided.”¹¹³

In fact, the encampment of refugees is a frequent practice in international refugee protection. Morjane, Assistant High Commissioner, argues ‘Camps and idle populations do not simply appear as a natural consequence of forced displacement – they are established in response to political realities and constraints which stem from a lack of political will to resolve conflicts and find a durable solutions for refugees.’¹¹⁴ Loescher, defines it as a more pragmatic but less protectionist tool in refugee protection. In this regard, the encampment makes it easier for

¹⁰⁸ Foreign Minister Davutoglu stated that, ‘I do not think that this painful period would last long. It should be reffered by months or weeks by now, rather than years.’ “Davutoğlu Esad'a ömür biçti [Davutoğlu determines lifespan for Assad],” *NTVMSNBC*, 24.08.2012, <http://www.ntvmsnbc.com/id/25376791> accessed 27.07.2014

¹⁰⁹ ‘Turkey keeps its door open for Syrian influx’, *Hurriyet Daily News*, 16.10.2012, <http://www.hurriyetdailynews.com/turkey-keeps-its-door-open-for-syrian-influx.aspx?pageID=238&nID=32509&NewsCatID=338>, accessed 20.07.2014

¹¹⁰ AFAD, <https://www.afad.gov.tr/TR/IcerikDetay1.aspx?IcerikID=747&ID=16> accessed 08.09.2014

¹¹¹ *ibid.*

¹¹² International Crisis Group, ‘Blurring the Borders: Syrian Spillover Risks for Turkey’, (April 2013), Europe Report No.225, 9 (hereinafter *Blurring the Borders*)

¹¹³ International Crisis Group, ‘The Rising Costs of Turkey’s Syrian Quagmire’ (April 2014), Europe Report No.230, 4 (hereinafter *Turkey’s Syrian Quagmire*)

¹¹⁴ *Protracted Refugee Situations: Impact and Challenges’ A Speech by the Assistant High Commissioner for Refugees, Mr. Kemal Morjane, Copenhagen (23 October 2002), 1*

receiving state to provide shelter, distribute food and benefits. Moreover, the segregation of refugees from the host community diminishes the risk of instability in the receiving state.¹¹⁵

In Turkey as well, the immediate needs of refugees such as shelter, food, health, education, and security are met in those camps. Each camp resident is provided with monthly financial aid that is registered on to electronic cards to be used on the food program which is run by government in coordination with the World Food Program.¹¹⁶ According to the data provided by AFAD in 2013, approximately 90 percent of Syrian refugees utilize the health facilities in the camps¹¹⁷ and the rate of school attendance among children 6-11 years old amounts to 83 percent.¹¹⁸

Despite the high quality of the camps, majority of Syrians do not want to stay in the camps-except for vital economic and security necessities.¹¹⁹ The field survey results show that, the major resentments of refugees are the restrictions of freedom of movement.¹²⁰ Another prominent resentment is the boredom and the dissatisfaction among refugees with doing the same things every day.¹²¹

In fact, to what extent it is possible to respect basic human rights when people are confined to live in a closed and isolated spaces is doubtful. Both the 1951 Convention (Article 26) and the International Covenant on Civil and Political Rights (Article 12)¹²² protects the freedom of movement of refugees and aliens. However, based on the limitations and derogations at the times of emergency¹²³, the camps are not denounced in international refugee law.

¹¹⁵ Gil Loescher, Alexander Betts & James Miller, *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection into the Twenty-First Century* (Routledge, 2008), 35-38

¹¹⁶ Kemal Kirisci, 'Syrian Refugees And Turkey's Challenges: Going Beyond Hospitality', (Brookings, 2014), 27

¹¹⁷ AFAD, 'Syrian Refugees in Turkey 2013: Field Survey Results', (2013), 2 (hereinafter AFAD Field Survey), 38

¹¹⁸ *ibid.*, 50

¹¹⁹ According to AFAD Field Survey, nearly 40 per cent of put forward the economic reasons; 25 per cent raised security concerns, and one in half refugee stated accommodation facilities for their reasons to stay in the camps. *ibid.*, 46

¹²⁰ Turkey's Syrian Quagmire, n.113, 6

¹²¹ ORSAM, 'The Situation of Syrian Refugees in the Neighbouring Countries: Findings, Conclusions and Recommendations', (April 2014), Report No.189, 13, (hereinafter *The Situation of Syrian Refugees in the Neighbouring Countries*)

¹²² 'Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence', International Covenant on Civil and Political Rights (adopted 16.12.1966, entered into force 23.03.1976) 999 UNTS 171, Article 12(1),

¹²³ ICCPR refers to exceptions 'which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others', *ibid.*, Article 12(3); 1951 Convention puts it as 'subject to any regulations applicable to aliens generally in the same circumstances.' Refugee Convention, Article 26

In practice, the discourse on ‘perfect refugee camps’¹²⁴ prevents the questioning of encampment of people. As Verdirame underlines, the camp administrators will unlikely accept that ‘there is something irremediably wrong about forcing individuals to live like inmates in segregated, isolated and highly regulated spaces, depriving them of basic freedoms.’¹²⁵ It is not surprising that throughout the interviews conducted by Mazlum-Der, Turkish NGO working in refugee fields, several Syrian refugees in Istanbul described the camps like prisons.¹²⁶

3.3. The Minimum Standards of Treatment of Syrians Outside of the Camps

Since the national laws or the regulations on temporary protection does not spell out the rights of beneficiaries, the regulation of the treatment of Syrians outside of the camps tried to be addressed by *ad hoc* government initiatives.

The registration of Syrians without valid passports has a tantamount importance, since it is the only way that Syrians acquire identification cards and have a legal status. Furthermore, the ID cards enable access to social benefits. The registration process started in January 2013, nearly one year after the introduction of the temporary protection system. The coordination centres are established to undertake the job but the number of unregistered Syrians in urban centres remained high. AFAD statistics reveals that about 31 percent refugees out of the camps has no registration at all. Furthermore, since the total number of refugees out of the camps is not known with certainty, the proportion of the refugees who have no registration at all are thought to be much larger.¹²⁷

The only official assistance for housing/shelter is to reside in the camps. Those outside of the camps have to cover the expenses of accommodation on their own. According to the ORSAM survey, thousands of Syrians are hosted by their relatives or friends in Turkey without seeking

¹²⁴ McClelland M. ‘How to Build a Perfect Refugee Camp’, The New York Times, 13.02.2014, http://www.nytimes.com/2014/02/16/magazine/how-to-build-a-perfect-refugee-camp.html?_r=0, accessed 09.09.2014

¹²⁵ Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (CUP 2011), 278-279

¹²⁶ İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği, Halim Yılmaz (ed.), ‘Türkiye’de Suriyeli Mülteciler - İstanbul Örneği - Tespitler, İhtiyaçlar ve Öneriler’, [Syrian Refugees in Turkey- The Example of Istanbul – Findings, Necessities, Suggestions] (2013), 9

¹²⁷ AFAD Field Survey, n.117, 20

assistance from official institutions.¹²⁸ However, since their stay in Turkey prolonged and the number of Syrians increased rapidly, the hospitality of local community remained insufficient. While the rapid increase in demand for accommodation lead to the rising rents,¹²⁹ refugees without savings became unable to find shelter. According to AFAD, one in four refugees live in ruins, plastic, or open areas. More than half of the Syrians live in crowded places and find their housing unit as not enough. 53 per cent of Syrians find their shelter uncomfortable while 20 percent complain about the security of their living spaces.¹³⁰

The access to medical care outside of the camps is regularized by a circular issued by AFAD in January 2013. Accordingly, Syrian nationals who are not registered at camps can receive medical care at health centres or hospitals free of charge.¹³¹ The education as well regularized by the Ministry of Education, Syrians with residence permits can register at Turkish schools.¹³² However the enrolment to schools remained low.¹³³ More than half of the Syrians in Turkey are children aged between 0-18.¹³⁴ Language is an important barrier in their education. There are centres organized by the municipalities, NGOs, or the Syrian citizens teaching in Arabic. Some of them follow Syrian curriculum. However, in this case, the future recognition of certification is uncertain.¹³⁵ Up to date, the displacement of refugees exceeded three years. As UNHCR warns, the children now faces the risk of becoming a lost generation.¹³⁶

The most problematic aspect of the temporary protection is the failure to grant the right to work to beneficiaries. Considering the extended period of time they spend in Turkey, large numbers of Syrians need to earn income in order to survive. AFAD survey reveals that 77 percent of Syrian residing outside of camps are looking for jobs- although it is not permitted.¹³⁷ Current Regulation Regarding Work Permits for Foreigners in Turkey makes it very hard for Syrians to obtain a work permit. They need to have residence permit for at least

¹²⁸ The Situation of Syrian Refugees in the Neighbouring Countries, n.121, 17

¹²⁹ Kirisci, n.116, 28

¹³⁰ AFAD Field Survey, n.117 34-36

¹³¹ AFAD, Suriyeli Misafirlerin Saglik Hizmetleri [Health Services of Syrian Guests] Circular 2013/1 (23.01.2013) <http://www.tkhk.gov.tr/TR,2690/18012013suriyeli-misafirlerin-saglik-hizmetleriafad-gen-.html>, accessed 12.07.2014

¹³² Ministry of Education, Ulkemizde Gecici Koruma Altında Bulunan Suriye Vatandaşlarına Yonelik Egitim Ogretim Hizmetleri [The Educational Services for Syrian National under Temporary Protection in Our Country], (26.09.2013)

¹³³ Only 14 per cent of school aged children outside camps are attending schools AFAD Field Survey, n.117, 50

¹³⁴ ibid., 24

¹³⁵ Turkey's Syrian Quagmire, n.113, 9

¹³⁶ 2014 Response Plan, n.106, 25

¹³⁷ AFAD Field Survey, n.117, 52

six months- excluding many Syrians without registration, and the employer has to prove that a Turkish national for the specific position could not be found.¹³⁸ In April 2013, Labour and Social Security Ministry announced that Syrians with residence permits can obtain work permits without being subjected to further evaluation criteria.¹³⁹ Nonetheless, Syrians without residence permits are left outside of the scope of announcement.

The absence of right to work forced Syrians to work illegally for less wages with no social security. The absence of regular income ended up in increasing numbers of child labours and exploitation of women including practices of forced marriage, survival sex, and religious marriages as second wives.¹⁴⁰ Due to the increasing number of illegal workers working for less wages, the wages went down in the labour market worsening the already poor conditions.¹⁴¹

Together with the rising rents, the decline of the wages not only affected Syrians but had an adverse effect on the living conditions of the local community as well. The economic problems in return caused anti-Syrian public feeling among Turkish population.¹⁴² Moreover, in urban centres, the images of many Syrians living in parks and children begging for money in the streets cause discomfort in the neighbourhood. In response, the Ministry of Interior announced in August 2014 that Syrians will be taken out of streets and will be sent to refugee camps.¹⁴³

In this context, the rhetoric of charitable work instead of discourse based on rights feeds the negative public attitude. Many people express their discontent with Turkish government which allocates resources to Syrians instead of Turkish people.¹⁴⁴ The depiction of Syrians as ‘guests’ instead of right holders feed the local community’s attitude not to treat Syrians as

¹³⁸ Yabancıların Çalışma İzinleri Hakkında Kanunun Uygulama Yönetmeliği [Regulation Regarding Work Permits for Foreigners], Official Gazzete no.25214, (29.08.2003) 25214, Article 7, Yabancıların Çalışma İzinleri Hakkında Kanunun Uygulama Yönetmeliğine Dair Değişiklik Yapılmasına Dair Yönetmelik [Regulation on the Amendment on the Regulation Regarding Work Permits for Foreigners], Official Gazzete no.27918, (28.04.2011), Article 13

¹³⁹ <http://www.csqb.gov.tr/csqbPortal/yabancilar.portal?page=duyurular>, accessed 10.09.2014

¹⁴⁰ 2014 Response Plan, n.106, 62, Allegations of abuse of women refugees and of girls being forced to prostitute themselves are persistent,” confirmed Rajaa Altalli, a Syrian women’s activist.’ Syrian Women in Turkey at Risk, Economist, (14.06.2014) <http://www.economist.com/news/europe/21604213-sexual-exploitation-syrian-women-and-children-increasing-risk>, accessed 10.09.2014

¹⁴¹ Kirişçi, n.116, 21

¹⁴² The Situation of Syrian Refugees in the Neighbouring Countries, n.121, 18

¹⁴³ 81 valilige Suriyeli mülteci genelgesi [The Circular on Syrian Refugees Sent to 81 Governorates], Radikal, (02.08.2014), http://www.radikal.com.tr/turkiye/81_valilige_suriyeli_multeci_genelgesi-1204767, accessed 03.08.2014

¹⁴⁴ Senay Ozden, ‘Syrian Refugees in Turkey’, (May 2013) MPC Research Reports 2013/05, 5

equal legal subjects. Already strained relations between refugees and local population reflected itself in the anti-Syrian protests in response to instances of offences.¹⁴⁵

3.4. Access to Durable Solutions: Syrian Refugees in Limbo

Although individual assessments are not conducted, according to UNHCR most of Syrians would fulfil the requirements of 1951 Convention.¹⁴⁶ However, as to be recalled, the temporary protection is acknowledged to apply for Convention refugees as well during mass influx situations. In that regard they are denied the right to seek asylum in third countries. They cannot lodge an application to UNHCR for resettlement.¹⁴⁷ Still, UNHCR is coordinating resettlement programs for the most vulnerable Syrian refugees including women at risk, older adults, refugees with disabilities, lesbian, gay, bisexual, transgender, intersex refugees at risk, and the ones facing serious physical threats.¹⁴⁸ Nonetheless, the resettlement does not offer a considerable relief to refugees considering the limited offers. The total pledges for Syrian refugees since 2013 only amounted to the 0.4 percent of total Syrian refugees in neighbouring countries of Lebanon, Jordan, and Turkey.¹⁴⁹

As the situation in Syria worsens, there is no hope for a quick resolution of the conflict. Even if the war ends, the conditions for safe repatriation may not be sustained.¹⁵⁰ However, the temporariness of the protection regime is underlined by the Turkish authorities. Prime Minister, Erdogan stated that, ‘We embraced our Syrian fellows. This is not a permanent situation and will not last indefinitely. When the conditions in Syria will improve, when the bloody regime in Syria will be toppled, our fellow Syrians will turn back to their cities, villages, and homes.’¹⁵¹ However, AFAD survey reveals that roughly half of the refugees plan

¹⁴⁵ In response to alleged beating of two Turkish children by Syrians, local community attacked Syrians living in the city with stones and sticks in Sanliurfa. Şanlıurfa’da Suriyeli gerginliği, [Syrian Tension in Sanliurfa], Radikal, (01.08.2014), http://www.radikal.com.tr/turkiye/sanliurfada_suriyeli_gerginligi-1204613, accessed (02.08.2014), In response to the murder of Turkish landlord by Syrian tenant anti-Syrian protests started in Gaziantep, Gaziantep’te Suriyeli Gerginliği [Syrian Tension in Gaziantep], (12.08.2014) http://www.radikal.com.tr/turkiye/gaziantep_suriyeli_gerginligi-1206541, (accessed 13.08.2014)

¹⁴⁶ UNHCR, ‘International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II’, (22.10.2013), 8

¹⁴⁷ Frequently Asked Questions, n.102

¹⁴⁸ UNHCR, ‘Finding Solutions for Syrian Refugees: Resettlement and Other Forms of Admission of Syrian Refugees’ (27.06.2014), 3

¹⁴⁹ UNHCR is proposing that countries should admit 30,000 Syrian refugees from 2013 to 2014, and an additional 100,000 Syrian refugees from 2015 to 2016’ *ibid.*, 3

¹⁵⁰ ICC 2013, 12

¹⁵¹ ‘Erdogan: Turkiye’deki Suriyeliler Ulkelerine Geri Donecek’ [Erdogan: Syrians in Turkey will Turn Back to Their Country], Radikal, (07.08.2014), http://www.radikal.com.tr/politika/basbakan_erdogan_gaziantep_konusuyor-1205603, Accessed 09.08.2014

to return to Syria when the conflict ends while 5 percent of those in the camps and 8 percent of those out of the camps never plan to return to Syria. Also, many refugees think that they will not have shelter and job in Syria when they return.¹⁵²

Although the 2013 Law brought with it a defined temporary protection regime, in its original form it does not spell rights as well. As a result of the law, the Directorate General on Migration Management is established and became operational in April 2014. Its role is more along the lines of policy making while AFAD will continue to be responsible for running camps and catering for the needs of refugees in general.



¹⁵² AFAD Field Survey, n.117, 54

CONCLUSION

‘Being a strong state means that you feel pity. The Turkish state feels pity towards Syrians and this is why we feed them and let them stay in Turkey’.¹⁵³ These comments are made by an official in Islahiye refugee camp. Although it can be regarded as his personal comments, this dissertation tried to show that the charitable discourse remains as the basis of temporary protection regimes in general, and the Turkish one in particular.

In the first chapter, it is shown that the cases of mass influx of refugees highlight the restricted refugee identity contained in the 1951 Convention. Together with the states’ reluctance to admit large numbers of refugees, the restricted definition contained in the Convention kept millions of refugees displaced due to wars, disasters and generalized violence out of the protection of international refugee law. The temporary protection regimes developed in order to address those situations, yet fell short of securing basic human rights and access to durable solutions. In contrast to the temporality of protection, the widespread protracted situations showed that the temporary protection might turn into permanent condition, while the beneficiaries denied their basic rights.

In order to show the adverse effects of limited package of rights under temporary protection, the situation of Syrian refugees in Turkey is taken as a case study. In the second chapter, it is revealed that traditionally, Turkish state pursued anti-immigration and restrictive asylum policies. In this regard, the application of temporary protection to Syrians, and its incorporation into national law served to the state interest as a compromise for providing protection on a limited basis without having resort to the integration of refugees.

The third chapter aims to link the legal discourse to practice. Through the analysis of the conditions of Syrians in Turkey, it is argued that the lack of clear legal status, the deprivation

¹⁵³ Ozden, n.114, 5

of human rights, and the lack of access to durable solutions keep refugees' lives in limbo-dependent on the generosity of the Turkish state. In this regard, the open-border policy and the humanitarian assistance can be regarded as a life-saving one since millions of Syrians are admitted into the country. However, the limited rights of refugees, especially the restrictions of the freedom of movement in the camps and the absence of right to work, put infringements on the basic human rights of the refugees. Furthermore, it opens the way for further violations indicated by the increasing number of illegal workers, child labour and exploitation of women. Together with the economic problems, the rhetoric of charity as oppose to depicting Syrians as 'right holders' feeds the negative public opinion towards refugees.

Arendt argues that 'at the moment human beings lacked their government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.'¹⁵⁴ This study shows that the paradigm of 'rightlessness' is still relevant for the millions of refugees fleeing as part of mass influx. Taking into account the fact that the numbers of non-Convention refugees overwhelm their Convention counterparts, one should reconsider the validity of contemporary international refugee law as a whole in providing the legal protection to those in need.

¹⁵⁴ Arendt, n.1, 292

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