

## TEMPORARY PROTECTION OF THE REFUGEE UNDER INTERNATIONAL LAW

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**ABSTRACT:** *the world is endowed with many conflicts generating a large number of refugees, who flee the unsafe and insecurity places looking for a refuge in a very safe where they can at least enjoy their rights, so, in order to make refugees feel not abandoned ,states at the international level have set in place international instruments relating to the status of the refugees: the 1951 Convention and the 1967 Protocols ratified by 134 States respectively establishing a certain number of provisions for the wellbeing of refugees away from their country of origin, the way they should be treated being out of their habitual residence, that is why based on these international legal instruments we could say that refugees are matters of international law, to the extent they derive from one of the accepted trio of international law sources, treaties ,customs or general principles of law .so international refugee law ,which governs refugee protection as a branch of international law has been and still in the center of debates among scholars trying to find out Good solutions for the Protection of the refugees, then at least in law, temporary protection is already the universal norm. The intention here is to highlight the very position of international law concerning temporary protection of the refugees, and some challenges that states have been facing during the protection of the refugees, and some states behaviors during repatriation which breach the international law related to the refugees, temporary protection is a valuable norm in that it codifies a commitment to ensuring the safety and dignity of refugees until they are able to return to their own states.*

**KEYWORDS:** Temporary protection, international law, refugees, international refugee law, repatriation, country of origin, return.

### INTRODUCTION

The more a very large number of conflicts around the world will be maintained the more many refugees will be spread out, that is why states at the international level have set in place a certain number of instruments in order to give help to the refugees, but, International instruments do not establish a right of refugees to permanent admission to an asylum state, where as humanitarian or human rights concerns would arguably dictate the grant to refugees of some form of durable protection where safe repatriation is impossible. International law refugee law presently obligates the state of reception only to avoid the return (refoulement) of a refugee to a country where she or he may face persecution(convention relating to the status of refugees 1951,art33(1),there is no binding requirement to grant permanent residence in the asylum state, so the host Country grants temporary protection depending on the situation in the country of origin of the refugee determining his return, we have for instance the Cambodians refugees in the neighboring countries in 1979 and onwards,number of half million people at the end of 1979,beginning of 1980.The majority of approximately 200,000 Cambodians refugees who had sought refuge abroad(mainly in Vietnam)since 1975 had, at

the time of onset of the new outflow from Cambodia in 1979 returned home<sup>1</sup>. Others had been resettled in third countries or were still awaiting resettlement. so before they get back home a temporary protection has been given to them by Thailand even though the Cambodian refugees found themselves as not considered as refugees by the country of asylum: Thailand was not a party of the 1951 Convention or the 1967 protocol, Its Actual policy was formally based on the 1979 Immigration Act (Amended in 1980),by virtue of this Act ,the refugees were considered 'illegal immigrants or illegal entrants and as such liable to Deportation'<sup>2</sup>.

International refugee law ,which governs refugee protection as a branch of international law,originates from the revolution in Russia and the collapse of the ottoman Empire after the First World war in Europe ,events which caused mass movements of people ,The international community modified the legal basis for international action in the early 1950s creating a new regime to respond to the refugee flows of the darks years of the second World war and in the era of the Cold war .this regime-the international refugee regime –was initially established to regularize the status of victims of persecution, and to coordinate refugee policy among western European states. There exist two fundamental theories on which international refugee breaths, one is normative, that is the Convention, and the other is operational, that is the United Nations high commissioner for the refugees (UNHCR). The international refugee regime originates in the nation –state system of international politics .the regime is not equipped with the means to guarantee the full realization of the ideas and principle of human –rights –based protection<sup>3</sup>.

The Absence of any explicit correlation between refugee status and permanent residence was the price demanded by states to secure their participation in the Convention based refugee protection sytem.While willing to provide protection against return to persecution, states insisted that they be Allowed to remain there, and ultimately who should be permanently resettled. This position, argued as a necessary incident of sovereignty, is at the root of the failure to include any duty to grant asylum in either the refugee Convention or the 1967 protocols, Refugee status is explicitly conditioned on the continuation of a risk for refugees in the Country of origin, Refugee status may legitimately be revoked whenever there has been a sufficient change of circumstances in the country of origin to undercut the need for protection.<sup>4</sup>. If the asylum state is satisfied that protection is once more viable in the refugee 'state of origin, it may deem refugee status to have come to an end<sup>5</sup> this provision was intended to allow a state to divest itself of the protection'burden'when the government of the home country is judged to have become an appropriate guardian of the rights of its involuntary expatriates. In Africa for example, temporary protection is the usual practice, some 3,5 million African refugees having successfully repatriated between 1971 and 1990.

The united Nations high commissioner for refugees, representation in the Republic of Congo signed an important Agreement with The Republic of Congo and the Republic of Angola on the establishment of a commission in order to freely and without force repatriate Angolan refugees back home, the Agreement has been signed on may 9<sup>th</sup> 2003,

<sup>1</sup> Title of a book on the Cambodian refugees, by Reynell

<sup>2</sup> Muntarbhon,1992 at 133,134,Ministry of Interior Thailand ,Operation Centre for Displaced persons, 'An instrument of foreign Policy ,Indochinese displaced persons,september 1981

<sup>3</sup> Refugee law and Practice in japon,Osamu Arakaki,Ashgate publishing limited

<sup>4</sup> Reconceiving international refugee law,James C.hathway(editor) Martinus Nijhoff publishers page 2

<sup>5</sup> Convention relating to the status of refugees,1951,art,1C(5) & (6)

The Amnesty law N 24/91 of July 12 1991 and amnesty law 4/02 of 4<sup>th</sup> April 2002 constitute a formal guarantee for Angolan refugee to go back home safe and not be subject to any legislation, judicial or Administrative measures by reasons of acts or offense they have been accused before or during their exile. Talking on the temporary protection of the refugees has a very practical importance because it highlights the situation of refugees, their status during temporary protection, and the commitment of international organizations and states in the process of protection, and a very controversial issue on the fact that clauses of the Geneva convention should be applied but on the other side states are also concerned on the security matter of their nations, that is why there are some cases of refoulements to dangerous places, today everywhere around the world the issue of refugees is discussed and debated among scholars trying to find out good solutions. In this paper in order to understand or have a clue of what we are trying to figure out, we will talk first on the Understanding of the temporary Protection under international law (I) and then the Great challenge of temporary protection of the refugee (II) and finally the Structuration of the Temporary Protection (III)

## **CHAPTER I: UNDERSTANDING TEMPORARY PROTECTION**

**On this chapter it is going to be more crucial to define first the temporary protection (A) then go through the legal context (B)**

### **A) WHAT IS TEMPORARY PROTECTION**

Temporary protection is a system of protection that is applied to a refugee for a certain period of time depending on the unstable situation of his habitual residence. International law does not contain any rule to the effect that asylum needs to be permanent, the following durable solution exists for the refugees: repatriation, local settlement, resettlement in a third State<sup>6</sup> some states criticize the application of temporary protection to mass flux, but the UNHCR executive committee has adopted various conclusions in which it urges granting at least temporary protection in cases of mass-influx. The principle of non-refoulement needs of course to be observed. In understanding simply Temporary Protection we may go through its purpose, the first one is to Grant Protection or some minimal protection and to await repatriation, but through this process it has three goals: 1) Administrative and economic resources are served through the absence of a full Asylum Procedure assessing individual claims by instead applying a prima facie group determination.

2) Politically it becomes easier to return refugees if the situation in the country of origin changes, in this way a signal is sent to the refugee that his or her stay in the specific country is only temporary

3) finally but not least temporary a signal is sent to the public at large that this refugee situation is purely a matter of protection without element of voluntary migration. After understanding briefly the Temporary protection let's talk now on its legal scope

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<sup>6</sup> G.S Godwin-will The refugee in international law (second edition)

## B) LEGAL FRAMEWORK

The current international legal regime for refugees is a relatively, recent one. Established under the framework of the 1951 Geneva Convention relating to the status of refugees<sup>7</sup> with the entry into force of the refugee convention and the establishment of the UNHCR, the international legal norm affecting bilateral and multilateral arrangements concerning refugees shifted in a manner of significant ways. Although the refugee Convention was drafted to address the mass displacement caused by World War II in Europe and has provisions for group or category determination, it has been viewed by states primarily as an instrument for individualized refugee assessment.<sup>8</sup> Because individual assessment is considered inappropriate for mass influx, some states view the refugees' convention as inapplicable to situations of mass refugee flow<sup>9</sup>.

New instruments and policies have been devised to bridge the gap between states-Obligations of non-refoulement and the need for a durable solution in situation where individualized asylum claims overwhelm the capacity of systems or where the cause of flight is for non-Convention reasons, it is in this context that temporary protection has emerged as a regularized status in recent years. Temporary Protection in its more recent, formalized sense<sup>10</sup> takes a number of different forms in the areas of the world where it has been implemented and covers migrants or putative refugees fleeing various types of crises in their home states. As Joan Fitzpatrick states: 'Temporary Protection is like a magic gift, assuming the desired form of it enthusiasts 'policy objectives simultaneously, it serves as a magic mirror of its observers, era for refugee advocates, TP(Temporary protection) expands the protection of forced migrants who cannot and satisfy the criteria under the 1951 convention and its promises group-based protection when the determination of an individual 's status proves impossible. '

From the perspective of the state granting the status, Temporary protection has the following advantages,(1) it is a humanitarian response to situations of mass influx, whether toward person who might qualify as refugees under the refugee convention definition, or would not qualify ,but are fleeing emergency situations in their home countries and observe humanitarian treatment in their place of refuge (2) it offers an alternative to the receiving states ,obligation to provide the full asylum procedures otherwise required for persons seeking refuge status,

<sup>7</sup> Convention relating to the status of refugee adopted in July 28,1951(entered into force Apr22,1954)its companion 1967 protocol(Refugee Protocol) protocol relating to the status of refugees of refugees adopted January 31,1967(entered into force in October 4 1967)

<sup>8</sup> Fitzpatrick ,Temporary Protection of refugees, at 182

<sup>9</sup> See Generally Fitzpatrick, Revitalizing the 1951 refugee convention ,also Bonaventure Rutinwa,Temporary protection and its expression under the reformulation of refugee law, model in perspective on refugee protection in south Africa, at 50(Jeff hand maker et al-ed 2001)

<sup>10</sup> For a Thorough study of temporary protection on the range of practice of temporary protection, see inter-Governmental consultations on asylum refugees and Migration policies in Europe, North America and Australia(1995) A review of literature on temporary protection shows contrasting perspectives: Temporary Protection/safe –heaven as a non-formalized ,non –specific status of states tolerance of refugees ore 'refugee-like 'persons for short or long periods of time in their territories, or the more specific status of temporary protection with specified parameters for beneficiaries, duration of status of temporary protection, standards of rights ,and criteria cessation included in domestic legislation. For views of some of the commentators on TP see Joan Fitzpatrick, Flight from Asylum, trends towards Temporary 'refugee and local responses to forced Migrations, Morton Kjaerum,Temporary Protection in Europe in the 1990s,Susan Martin et.al ,Temporary protection towards a New regional and domestic Framework,Immrr,L.G 531,1998

conserving resources in often overstretched adjudication system<sup>11</sup> making sure that temporary protection is now seen like a universal norm which is applied by the majority of states so what can we say on the treatment that those states give to refugees during their Temporary protection?

## CHAPTER II: REFUGEE TREATMENT DURING ITS TEMPORARY PROTECTION

**Based on the universal declaration of human rights, a human being deserves a respect of his rights, the 1951 Geneva Convention also urges states to respect the rights of refugees (A) then prohibits Discrimination among and Between Refugees (B) sometimes States have different behaviors towards refugees based on what I call Double interest(C) then this can explain a great challenge (D)**

### (A) Reference to human rights

Refugee during the temporary protection should live their lives in dignity, this is not simply a matter of meeting the minimum standards set by international human right instruments, but rather requires full respect of the needs and reasonable aspirations of the refugees. It's imperative that Government respect the fulsome expression of the principle of non-refoulement by allowing potential refugees admission to their territory pending assessment of their claims. Among some cases of non-refoulement we have Sale V Haitian council in 509,US.155(1993) before the supreme court in which the president has directed coast guard to intercept illegally transporting passengers from Haiti to the US and to return those passengers to Haiti without determining whether they may qualify as refugees then the question presented in this case was whether such forced repatriation authorized to be undertaken only beyond the territorial sea of the US violates the immigration and Nationality Act of 1992(INA) and the 33 article of the United states Convention related to the status of the refugees, the INA 'text 243(h)(g) provides that 'the attorney general should not deport or return any alien to a country if the Attorney General determines that such aliens life or freedom would be threatened in such Country, on the foundation of article 33 and the INA text the refugee right not to be returned to a dangerous place where his life or her life would be at risk should be respected. So beyond the protection against refoulement the 'core rights' to be ensured during temporary protection are those set out in the refugee Convention and general norms of international human rights law. the rights guaranteed to refugees should be constitute a meaningful response to the concern, a refugee should not be obliged to return to a country if there are valid grounds for assuming that he would run the risk of being subjected to inhuman treatment or punishment, or death penalty in the state ,he should rather be highly protected by the host country, including the family of the refugee, the principle of the family united has been supported by the Board in regard of the final Act issued by the United Nations Congress of plenipotentiaries on the Status of refugees and stateless persons<sup>12</sup>The Council of State Confirmed the principle of family unity in a ruling of principle referring to Article 1 of the Geneva Convention specifying that: the general principles of law applicable to refugees ,springing notably from the stipulation of the Geneva Convention, make it imperative, in order to fully secure for the refugee the protection referred to in the said convention, for the same status to be granted to any person of the same nationality who was united by marriage to a refugee on the date upon which the latter requested refugee status<sup>13</sup>.

<sup>11</sup> Fitzpatrick, Temporary protection of refugees.

<sup>12</sup> F.Tiberghien, Protection,o.c,p32.

<sup>13</sup> C.E,Assembly,2 December, ,RFDA,1995,p.93,1995,D,som.171,note F.julien –Laferrriere(Liberia, no) see previous CRR,18 April 1986,34,906,in F.Tiberghien,protection,oc,p.301(Zaire, yes).

So the requirements of a dignified temporary protection regime vary over time and with the specific Conditions of individual, families and groups. So during the temporary protection the refugee has the right to be unified to his or her family, or even to get married in the host country being complied with the law of the so called country, so there is no justification for the separation of family members who arrive in a country of refuge together. Insofar as the refugee is not accompanied by his or her family, dignified temporary protection should allow for early family reunification where this logistically possible.

During the earlier part of the twentieth century, refugee allowed to enter an asylum status nonetheless often found themselves vulnerable to expulsion on grounds that they had committed even minor criminal offenses or were deemed to public charges because they were unable to meet their own need due to negligence or health as Grahl Madsen describes the problem: it became the habit of certain states to expel refugees...and push those so expelled across the frontier to a neighboring country, this practice caused considerable hardship to the refugees ...the expulsion became a matter of concern to the international community. the question has been dealt with in all international instruments relating to the status of refugee since 1928<sup>14</sup>A high proportion of the rules of international law is concerned to set in place a legal regime of public international order prescribing permissible spheres of actions by states, so when the behavior of a state goes beyond such spheres, the basic problem confronting the international legal system is to determine the legality of the acts in question and if they be wrongful ,to apportion responsibility for the acts in question, in this way states Responsibility seek to hinder recourse to illegal acts which give rise to a multitude of undesirable consequences on the international plane, including the forced displacement of population <sup>15</sup> during the temporary protection of the refugees states should abide by international law related to the status of Refugees ,states should for example avoid discrimination between and among refugees

### **B-PROHIBITION OF DISCRIMINATION BETWEEN AND AMONG REFUGEES**

The general purpose of the legal duty of non-discrimination is defined by Fredman as being to ensure that individual should be judged according to their personal qualities<sup>16</sup>Consideration has also been given to such keys questions as the differences between formal equality (equality before the law) and substantive quality (equality protection of the law) the relative importance of intention and effect in assessing whether discrimination of either kind is demonstrated ,and the extent to which international law requires positive efforts to remedy unjustifiable distinctions ,rather than just a duty to desist from discriminatory conduct.

The earlier focus was on whether the broad duty of non-discrimination in particular that set by art 26 of the civil and political covenant might actually be sufficient in and of itself to require the equal protection of refugee ,so concerning the Responsibility of states ,they have to really make sure that protection is given to refugee without any kind of discrimination.

To a real extend, the inappropriate of differential allocation of refugee right is clear from the fact that the language of the refugee Convention presupposes that whatever entitlements are held by virtue of refugee status should inhere in all refugee.

<sup>14</sup> A.Grahl Madsen: the Status of refugees in international law(vol II,1972) at 442-443

<sup>15</sup> Choloka beyani:State Responsibility of the prevention and Resolution of forced population Displacement in international law, international journal of refugee law(special case issue ,1995),pp.131-37

<sup>16</sup> S .Fredman,Discrimination law(2001) at 66

In setting the Refugee Convention definition the drafters of the Convention were at pains carefully to limit the beneficiary class, they excluded for example persons who have yet not to leave their own country, who cannot link their predicament to civil or political status who are found not to deserve protection<sup>17</sup> yet there are in fact often significant differences in the way that particular subsets of convention refugees are treated by states. Perhaps most commonly differentiation is based upon nationality. Saudi Arabia recognized Iraqis displaced as a result of the Gulf war as refugees even as it left thousands of refugees from other countries within its borders without status and summarily deported at risk Somalis India has allowed Tibetan refugees full access to employment, but limited in some cases severely the opportunities to earn a livelihood for refugees from Sri Lanka and in particular those from Bangladesh<sup>18</sup>

### **C: DOUBLE INTEREST**

Some states may be confronted to food predicaments, shortage of land, may force refugees to return home, on the other hand because of the lack of stability in a country of origin refugees may refuse to go or return back to their habitual residence, there is an existing double interest from the two sides, the hosting country and the refugees. For the case of Japan an estimated 2,000,000 and 2,400,000 Koreans who were forced to work in Japan or who entered in Japan for other reasons from Korea, then a Japanese colony, remained in Japan immediately after the war. For security reasons and because of the food shortage at that time, the Japanese Government desired that they return to their homeland. However approximately 500,000 Koreans could not return or refused to do so, the notion of monoethnicity was tactically stressed for the purpose of controlling the remaining Koreans and assimilating them into Japanese society.<sup>19</sup>

Each country wants to protect its security system, and the clauses of international instruments relating to the status of the refugees forbid the refoulement of refugees, they should be taken care according to the international law of the refugees, this becomes a very big challenge for some countries that do not have a powerful economy, and countries that really give much more attention to security, without any feasible strategies to resolve the root causes, and given the complexity of the globalised political economy, preventive measures and imposed regional solutions create a security dilemma, there is a risk that forced migrants who are not permitted entry by developed states but who cannot return to their home states, may be dragged into the extra-legal and non-formal system of transborder activities, including smuggling of arms and drugs and recruitment of terrorists it's true that they can become a direct or indirect threat to the security of both individual states and the international community. It's ironic that people in safe places fear people who escape from fear in unsafe places; it's even more ironic that actions in the name of security create further insecurity.

<sup>17</sup> See generally, Grahl-Madsen, Status of Refugees I, Refugee Status, see also James C. Hathaway on the rights of refugees under international law p 239

<sup>18</sup> Tibetan refugees have been issued certificates of identity which enable them to undertake gainful employment. Sri Lanka refugees in contrast have been allowed to engage only in self-employment while Bangladeshi refugees have not been allowed to undertake employment of any kind. B. Chimni, 'The legal condition of refugees in India (1994) 7(4) Journal of Refugee Studies 378 at 393-394

<sup>19</sup> Kazuyuki Aizawa, Zanichi Gaikokujin Bengo no Tachiba Kara (Alien Residents in Japan from the Stance of an Attorney) Chikuma Shobou, Japan 2000

In some countries around the world the refugee policy is more conservative than others, a fear that a generous policy would cause a floodgate effect and security concerns can also be cited, so making more and more restrictive refugee policy will hinder it to progress

#### **D: THE GREAT CHALLENGE OF TEMPORARY PROTECTION UNDER INTERNATIONAL LAW**

With the crisis in Syria escalating, and the fracturing, and the spill over into neighboring countries now of enormous proportions, with over 1 million refugees<sup>20</sup> thought it opportune to reflect on the state of international refugee protection regime to respond to the many dimensions of contemporary conflicts. Syria is not the only crisis to which UNHCR and the broader international community must respond, but it does serve as a reference point for the many issues, confronting the international regime in the second decade of the new millennium. In fact, UNHCR is being pulled in multiple directions. Old and new conflicts test the capacity of the international community on a daily basis, many of them protracted or cyclical.

The High commissioner for refugees told the UN Security Council that that the crisis in Syria was reaching ‘terrifying proportions’, noting that almost half of Syria’s 20.8 million people could be in need of humanitarian help by the end the Year<sup>21</sup> he Had earlier warned that the refugee influx into neighboring countries could overwhelm them, as well as humanitarian response-saying that Syria was at a ‘tipping point’. He described the situation: in early December 2012, some 20 months after the crisis began, refugees figures stood at 500,000, it has only taken three months for that number to double, As violence in Syria spirals out of control, more than 7,000 people arrive in Jordan, Lebanon, Turkey and Iraq every single day. Others make their way to Egypt and Europe. Three Quarters of refugees are women and children.

Two factors make this crisis dramatic, one is the complete absence so far of a political solution, and the other is the staggering pace at which the refugee crisis has escalated in recent months of the year of 2012. As in Syria the lack of political solution is the primary reason for the continuation of many modern conflicts, whether in Mali, Sudan/south Sudan, or the Democratic Republic of Congo. In summary, two main trends can be observed in respect of contemporary armed conflicts: first is a rise in non-international armed conflict involving a diversity of armed actors along with different modes of violence thus blurring the traditional boundaries between peace and war and between combatants and civilians, the second observation is that while there has been a general decline in the lethality of armed conflict, there has been an increasing targeting or terrorizing of civilians and other form of coercive violence aimed at controlling the population.

The Syrian refugee crisis is very escalating one, 2014, 2015, 2016 have been witnessing the displacement of refugees from the unstable place looking for refuge in safe place, in Europe, many European States are endowed with refugees from unstable countries but most coming from Syria, the presence of those refugees generate many negative situations such irregular migrants, terrorism, smugglers, States have to enhance the level of control, that is why in order to end irregular migration from Turkey to EU on 18 March 2016 following on from the EU-TURKEY Joint Acts plan activated on 29 November and the 7 March EU-Turkey Statement.

<sup>20</sup> See, e.g. I. Cotter ‘human as the modern tool of revolution in .K, Mahoney and P, Mahoney eds, Human rights in the twenty-first century, A global challenges (1993) at 10

<sup>21</sup> Antonio Guterres, one million Syrian refugees, OpEd, New York times, 5 March 2013

So irregular migrant will be return from the Greek island to turkey because they do not benefit international protection on the legal foundation of the bilateral readmission agreement between Greece and Turkey from 1 June 2016 succeeded by the EU-Turkey readmission Agreement, following the entry into force of the provisions on readmissions of third country nationals of this agreement.

So this has been implemented from the 20 March 2016, in full accordance with EU and international law. So According to the Agreement: for every Syrian being returned to turkey, from Greek islands, another Syrian will be resettled from Turkey to European union, the mechanism has been established with the Assistance of the commission, EU agencies and the other members states as well as the UNHCR, to ensure that this principle will be implemented as from the same day the return starts<sup>22</sup>.so when states receive a large number of refugees within their territories some others states because of personal interests most of times based on security, and economics aspects do not accept a high number of refugees, that is what have been seen recently with Syrian refugees, it is what I call by the challenge of the double interest ,after this there is a problem of how can be the structuration of the temporary protection of the refugees

### **CHAPTER III STRUCTURATION OF TEMPORARY PROTECTION**

**On this chapter we are going to discuss first on the Designating State of temporary protection (A)then the cessation of that Temporary Protection(B)**

#### **A) Designating the State of temporary protection**

For most refugees the choice of a country of first asylum is less a question of rational deliberation than it is the result of a complex combination of Geographical, political and cultural constraints. In many cases, there is only one option because of this ground reality, it must be clearly agreed that no state will impede access by refugees to safety (non-refoulement). There is a little logic to a regime that imposes all responsibility for ongoing protection of refugees on whatever states they happen to arrive in.

The apparent arbitrariness of this present rule, coupled with the sheer size of contemporary refugee's flows, no doubt contributes to the increasing reluctance of states to admit refugees to their community (non-entrée) even for the purpose of providing Temporary Protection. There is a clear need to diversify and distribute Responsibility for refugee protection on a more principled basis, but to do so in a way that respects the importance of sustaining the integrity of refugee families and communities.

The ISA should therefore initiate a process of consultation with the refugees, host government, and members of the broader international community to determine whether the country of first asylum is also the most appropriate site in which to provide temporary protection. Particular attention should be given to issues of physical security, functional compatibility, cultural harmony, and Geographical proximity. Physical security issues are much more important for refugees coming from armed conflict. Their placement must take into account both the importance of providing secure conditions of temporary protection for the refugees, and also the importance of not exacerbating social and political tensions. If a refugee has to reside in a country that already feels at risk because of geographical proximity to turmoil ,responsibility

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<sup>22</sup> EU-Turkey statement on 18 March 2016 International summit European Council of the EU

for the well being of refugees may inadvertently tip the scales in favor of that country deciding to take an active part in the conflict.

Attention should also be paid to the relationship between a potential host government and the government of the country of origin, Temporary protection in an unfriendly country may, ironically, sometimes be a safer solution for refugees, given that its authorities are less likely to collude with those of the country of origin<sup>23</sup>. Security concerns must be paramount in the process of designating a state of temporary protection. While functional compatibility, cultural harmony and geographical proximity are all valid concerns, none is as critical as both ensuring the basic security of refugees and avoiding the intensification of conflict in the region. So States that cannot meet the basic security interests of a particular refugee group should not be given responsibility for its protection.

Beyond this most immediate and absolute security concern, another aspect of security involves scrutiny of the ability and willingness of the potential host community to guarantee the 'core right' of temporary protection. The ISA will need to shape the specific application of broadly defined rights to meet particular circumstances, and should undertake an 'honest broker' role in encouraging frank and respectful negotiations between refugees and their hosts regarding their Application in practice during temporary Protection.

A second concern In the designation of an appropriate state of temporary protection is the desirability of 'functional compatibility' between the refugee and host communities. The Concern is to ensure that the refugees are positioned to engage in productive activities that are compatible with the local economy; considerations should also be given to enabling refugees to resume their traditional occupations, or to be retrained for work that takes account of their abilities and experience.

A Third concern is the preference for a site of temporary protection which afford refugees a high degree of cultural compatibility ,Co-ethnicity or a shared religion, for instance often prove major factors in avoiding disharmony and conflict, in a broader sense similarities among population may help to create better environment for reception and eventual healthy interaction. In Mexico for example the presence of refugees has allowed relationships between Mexicans and Guatemalans in some Indians communities to become extensions of cultural identity based upon common origin and language, and the awareness of both groups of ethnic condition.

Finally, proximity to the country of origin is desirable in order to facilitate eventual repatriation, and to allow for the prospect of greater ongoing contact between refugees and those of their community whose have not left the home country.

## **B-CESSATION OF TEMPORARY PROTECTION**

As the applicability of refugee law is triggered by violation of certain human rights, principally civil and political rights, one is tempted to assume its applicability would cease as soon as those human rights violations have ended and are replaced by observance of the pertinent rights, which due to the nature of the rights involved, boils-predominantly albeit not solely –down to the state abstaining from inference with the exercise of these rights.<sup>24</sup>This assumption is indeed

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<sup>23</sup> James C.Hathaway(editor) Preconceiving International refugee law page 15

<sup>24</sup> On the nature of civil and political rights in contradistinction to economic, social and cultural rights, see in particular Vierfag, 1978,and the response by Van Hoof ,1984.

borne out by refugee law. However, refugee law contains yet another basis for ceasing to be applicable. Together the two modes of cessation show refugee law as having the character of a closed circuit. In a way, the system created by the 1951 Convention, the 1967 Protocol and UNHCR's Statute displays a perfect internal logic<sup>25</sup> Voluntary repatriation where it is possible, is both more respectful of individual autonomy and less socially problematic than is mandated return. So it is important to notify that the temporary protection regime be constructed in a way that enables refugees freely to assess the desirability and appropriateness of a decision to return to their home state. So when a refugee does no more benefit temporary protection from the host country he loses his refugee rights in order to avail himself at the protection of the country of nationality. There exist three requirements that are paramount, first the refugee must act voluntarily, and this condition is not met when he is obliged by circumstances beyond his control to have recourse to a measure of protection from his country. Second, he must have the requisite intention, a condition which is not met when the refugee merely obtains documents from national authorities for which foreigners would likewise have to apply.<sup>26</sup> Because the test to be applied to signal the possibility of a safe and dignified repatriation will be quite strict, it will no doubt be the case that some refugees will see return as logical at an earlier stage. They may for example, feel that the personal or social benefits of return to their community of origin outweigh whatever remaining degree of risk exists in the home state, the ISA in such circumstances should be to ensure that the information relied upon by refugees to make their autonomous decision to return is accurate timely, and that the decision to return is truly voluntary.

Some of the Somalis refugees in Kenya have been returning to Somalia especially in Kismayo a region in Somalia, under the pressure of the Kenyan Government, Kismayo still a dangerous place under control of some terrorists, so returnees cannot enjoy security, decision making by Somalia refugees to return was not that accurate, so Kenya, the UN and Donors must stop this crisis in the making before it is too late and re-frame the whole exercise in a carefully planned manner that will prioritize sustainability irrespective of the time it takes to get it right<sup>27</sup>

The clauses which describe the grounds for cessation of refugee status and with it termination of the applicability of refugee law, link up with both unwillingness and inability by focusing on facts and circumstances which lift unwillingness and inability, both the statute and the 1951 Convention contain six cessation clauses which can be divided into two groups on the main criterion they contain as a ground for cessation.<sup>28</sup>

So far, Unwillingness means and refers to the disinclination to invoke the protection of the country of nationality respectively to return to the country of former habitual residence, based

<sup>25</sup> See UNHCR Handbook on Procedures and criteria for determining Refugee status under the 1951 Convention and the 1967 protocol relating to the status of refugees, January 1992 (hereafter: UNHCR Handbook), 98, 99, Grahl-Madsen, 1966- at 255.

<sup>26</sup> International Migration law, revised second edition by Richard Plender, Martinus Nijhoff Publishers at 438

<sup>27</sup> Michel Gabaudan, President of Refugee International, worldpost [www.mhuffpost.com/us/refugee](http://www.mhuffpost.com/us/refugee)

<sup>28</sup> The stipulation in Conclusion 12 of UNHCR's Executive Committee (XXIX) (1978) sub(d) is worth mentioning here because, in so far as it implies that the application of exclusion clauses does not work *ex tunc*, treats the possibility of invoking exclusion clauses on the same par, hence with the same function and effect as cessation clauses: 'Noted that persons considered as refugees under article 1 A(1) of the convention maintain their refugee status unless they fall under a cessation or exclusion clause' For the exclusion clause, see article 1 D, E, and F, 1951 Convention, Art. 7, Statute, Note the legacy of the second world war in Art. 1 F sub(a), 1951 Convention, Resp. Art. 7 sub(d), statute

on a well-founded fear of persecution, a combination of Objective and subjective factors. The meaning of inability hence varies along with possession respectively lack of nationality. Nationality in turn dictates the Object of the inability concerned. In case of nationals, inability relates to availment of protection, particularly to obstacles which preclude that. The inability may originate from circumstances which prevent the country of nationality to extend protection to its national or from express denial to extend protection, for instance, when a request for a national passport is turned down<sup>29</sup>.

## CONCLUSION

Beyond Protection against refoulement, the 'core rights' to be ensured during temporary protection are those set out in the refugee Convention and general norms of international human right laws. So more fundamentally account should be taken of the fact that refugees are involuntary migrants who have been forced to flee their homes, that the conditions they face are very stressful and that the uncertainty about their future options will be a source of anxiety for them, rights guaranteed to refugees should constitute a meaningful response to these concerns. Temporary Protection is a good solution taken by states to remedy the very tricky situation of the refugees, States should avoid discrimination among refugees during their temporary protection, they should enjoy their rights, having jobs, but in practice most of countries fail to abide by the clauses of the Geneva Convention on the refugees status, sometimes some refugees are repatriated from the borders to the dangerous unsafe place. even some efforts have been shown by international community, and some providers international humanitarian organizations to give much importance to the refugees status but some efforts need to be made again by receiving States during the treatment of refugees in their temporary protection. As the period of that temporary protection depends on the situation of the country of origin of the refugee, meaning if the conflict still ongoing the refugee will not return, from this situation and if the unstable situation lasts can permanent status or protection be taken place in favor of the refugee?

## ABBREVIATIONS

TP: Temporary protection

UNHCR: United Nation high commissioner for the refugee

UN: United nations

ISA: International supervisory Agency

GA: General Assembly

UNGA: United nation General Assembly

IC: International Community

UNTS: United Nations treaties series

EU: European Union

INA: Immigration and Nationality Act

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<sup>29</sup> See UNHCR Handbook on procedures and Criteria for determining Refugees Status under the 1951 Convention and the 1967 Protocol relating to the status of refugees, January 1992 (hereinafter: UNHCR Handbook) 98, 99, Grahl-Madsen, 1966 at 255

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## INTERNATIONAL INSTRUMENTS MATERIALS RELATIONG TO THE REFUGEES

- 1- the 1951 Convention relating to the status of the refugees
- 2- the 1967 Protocol on the status of the refugees
- 3- the African Union convention Governing specific aspects of refugee problem in Africa
- 4- Universal Declaration of human rights(1948)
- 5- African charter on the Rights and welfare of the Child(1990)

### **CASES CONCERNING NON-REFOULEMENT**

**1 SALE V HAITIAN CTR.COUNCIL IN, 509,US.155(1993)BEFORE THE US SUPREME COURT**

**2 IN ABDI V MINISTER OF HOME AFFAIRS 734/10(2011) ZASCA 2(15 FEBRUARY 2015) BEFORE THE SOUTH ARICA COURT**

**3-CASE, IMMIGRATION AND NATURALIZATION SERVICEV ELIAS ZACARIAS**

**4 IN IMMIGRATION AND NATURALISATION SERVICE V STEVICT SALE V HAITIAN CENTERS COUNCIL,Inc.**

### **ADDITIONAL RESOURCES**

- 1- **UNHCR for the protection of internally displaced persons**
- 2- **UN. Office for the coordination of humanitarian affairs guiding Principles on internal displacement**
- 3- **UNHCR HANDBOOK on procedures and criteria for determining Refugees status under the 1951 Convention and the 1967 protocol relating to the status of the refugees**
- 4- **[www.m.huffpost.com/us/refugee](http://www.m.huffpost.com/us/refugee),Michel Gabaudan president of Refugee international**
- 5- **EU-Turkey statement 18 March 2016,International summit European council of the EU**