Utilizing Eurocentric Temporary Protection Directive as a Global Approach of Refugee Protection

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Abstract: The temporary protection directive is one of the noblest mechanisms of the European refugee protection regime. The European Union has designed it following the principle of temporary protection and non-refoulement of international refugee law. The United Nations Refugee Convention is the institutional root of these principles. In 2001, the EU has adopted the directive to improve its refugee protection mechanism. But they have never activated the directive until the current Ukrainian refugee crisis. This has remained as a piece of paper or unnecessary tool for the European countries. Their reluctance towards activating the directive seems to be hegemonic and political to some extent. Though they had all the grounds for activating the directive during the Syrian, Afghan or Tunisian refugee crisis, they did not choose to activate it. The paper doesn’t oppose the activation of TPD for Ukrainian refugees. It only explores and discusses the dualist role of the EU in activating TPD. The paper is also asking for its universal application for any refugees irrespective of their origin and the EU’s geopolitical interest. Lastly, it solicits for the utilization of the ‘doctrine of temporary refuge’ across the countries in the best possible manner considering the example of EU’s TPD.

Keywords: Temporary Protection Directive; Local Settlement; Exception Measure; Dead Letter; Rational Choice

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INTRODUCTION:

International refugee law considers ‘temporary protection’ as an exceptional measure utilized in mass influx situations.¹ But the European Union has institutionalized it differently. It differs from the normal refugee status determination process of the UN Refugee Convention. They adopted a directive named ‘Temporary Protection Directive (TPD)’ to protect the refugees during mass influx.² Because the normal refugee status determination process takes an individual approach. In contrast, TPD gives group-based protection to the

refugees. UNHCR defines it as a flexible and pragmatic means of protecting refugees.\(^3\) The EU’s TPD despite a refugee law origin differs from the protection given under the UN Refugee Convention 1951. The 1951 convention looks for durable solutions after the admission of refugees and TPD searches for a temporary solution immediately to handle a mass influx. However third-party resettlements among these durable solutions and TPD are found to be similar in nature.

Given the similarity, 1951 convention does not deal with persons fleeing armed conflict, admission, or large-scale movement of forced migrants like TPD. In contrast, TPD deals with some exclusive situations unlike the UN Refugee Convention as a pragmatic tool.\(^4\) Moreover, TPD is an important development of International Refugee Law. EU’s adoption of TPD would have helped to handle refugee movements around Europe. Unfortunately, since the adoption of TPD European Council and European Commission never activated it. Europe has witnessed a number of refugee crises from Syria, Afghanistan, Iraq, Tunisia, Albania and Kosovo etc.\(^5\) However, the EU never made TPD functional in the absence of qualified majority votes in the Council.\(^6\)

TPD is all about burden sharing,\(^7\) but member states never wanted to share the burdens among themselves especially less affected states with an influx. The EU even took hegemonic instances due to political or other considerations. They somehow centered the activation of TPD within Europe and its geopolitical interests. This is very much evident from the recent activation of TPD after the influx of Ukrainian refugees in European countries.\(^8\) The author is not opposing the EU’s stand on protecting the Ukrainian refugees under TPD. Rather the author and the paper are asking for universal application of TPD for any refugees irrespective of their origin and the EU’s geopolitical interest. Also, this paper encourages the application of the ‘doctrine of temporary refuge’ across the countries in the best possible manner considering the example of the EU’s TPD.

So, part II of the paper discovers the idea and origin of the temporary protection directive. It also exhibits different arguments developed by different authors regarding TPD. This part also critically examines the effectiveness and functionality of TPD. Part III tries to find the existence of TPD in different international legal instruments and principles. It takes the reference of different international conventions, which will help to incorporate TPD as a universal practice. Part IV of the pa-

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\(^4\) UNHCR (n 1)


per focuses on the problems of TPD. This part tries to find the roots of these problems. Part V aspires for impartial application TPD. It advocates to apply TPD impartially and universally for the growth of international refugee law. Part VI describes how we can use TPD as comprehensive solution to handle mass influxes. Undoubtedly, TPD has prospects for refugee protection in a newer way. States need to look for the prospects for a better refugee protection era.

ANALYSIS AND DISCUSSION

The Idea of Temporary Protection Directive:

Temporary Protection Directive offers protection to refugees for a minimum of one year after entering a country from a third country due to human rights violations, endemic violence, and armed conflict. They will reside in the host country for that particular period and look for the scope of repatriation within the time frame. And refugees won’t have to suffer for fundamental needs within the host state. EU regulation institutionalized the Directive in 1990 during the Balkan crisis. However the Directive has been in practice since the 1970s during several refugee crises. United Nations High Commissioner for Refugees (UNHCR) has advocated for TPD in its guidelines during mass influxes. Receiving states will determine the parameters of mass influx according to its resources as per UNHCR guidelines. The number of arrivals within a concise period is significant to invoke the mechanism of TPD. TPD is technically a shorter version of local integration according to the UN Refugee Convention 1951. Apart from that, in terms of application, it matches the ‘local settlement’ practice of UNHCR. But TPD introduces other matters related to protecting asylum seekers in a host country. For example, TPD provides a residence permit of one to three years, employment, accommodation, social welfare, medical treatment, education for minors, and a guarantee for a stable asylum procedure in the host country.

TPD is comparatively speedy and flexible compared to local integration or settlement. It asks for impromptu measures to handle cross-border movements, mobilize resources of humanitarian response, and share the burden among the states. The practice is also considered as a benefactor of the principle of non-refoulment. This customary principle of international law protects the refugees by prohibiting the host country from pushing back in times of large influxes. The main criteria of influx are strongly prevalent in both the TPD and non-refoulment. Recently in Russian aggression on Ukraine EU, for the first time, has activated a ‘temporary protection directive.’ It eased the process of protection and gave a sense of belongingness to the refugees in the host country. Generally, the Temporary Protection Directive is the EU’s interim process to provide immediate protection to refugees.

15 UNHCR (n 1)
People who need such protection won’t have to wait for ‘asylum seeker’ status to avail protection under the Refugee Convention. This process helps to reduce well-founded fear and mental stress among asylum seekers. Temporary Protection Directive being of European origin is considerably more Eurocentric, because Europe practices ‘rational choice theory’ about the activation and non-activation of the TPD in times of crisis.\(^\text{17}\) Hence, during several other refugee influxes, action from the EU countries was not the same as the present. There exists duality in applying the Directive.

TPD is a significant contribution from the European Union to refugee law jurisprudence undoubtedly. But the Directive creates classification in contrast to the integration of refugees across Europe. At the same time, Europe seems to be the only region legalizing the practice of TPD in the world. European Union promotes the obligation to provide TPD facilities to the incoming refugees. But during crises, the Directive remained useless due to non-application. Though the Directive was directed to be activated in 2015, it has turned into a piece of paper’ and states seemed reluctant to apply it. The European States applied the choice theory considering two factual situations, a) TPD might work as a pull factor to the refugees coming into European states and b) states who are less infected due to the mass influxes oppose the spirit of burden sharing under the Directive.\(^\text{18}\) These two reasons disturb the process of gaining a qualified majority to activate TPD.\(^\text{19}\)

Due to European countries’ denial of applying the directive in several cases previously, it is also considered a ‘dead letter’ for its failure to safeguard refugees in the crises.\(^\text{20}\) Germany, as one of the main refugee-receiving countries in the last decade, has never proposed to activate temporary protection directive along with other European countries.\(^\text{21}\) Germany, France, and Belgium criticized Italy for giving residence permits to Tunisian refugees in Lampedusa Island in 2011.\(^\text{22}\) In addition, France and Belgium changed their border entry criteria to push back Tunisian refugees.\(^\text{23}\) Italy proposed to activate TPD in the council, but without a qualified majority, it could not activate TPD. States away from the host states were unwilling to welcome the refugees by burden sharing. European countries always seemed to escape the responsibility of activating TPD and opted for regulations helping not to activate TPD. Dublin Regulations, Schengen Code, and Eurodac Regulations were the tools to discourage TPD


\(^{21}\) ibid


\(^{23}\) Ineli-Ciger (n 18), p. 241
and equitable burden sharing. From this perspective, the Directive might be considered a waste of paper. But it has some significant prospects for refugee protection if implemented properly. Turkey might be an important example in this discussion. After a large influx of Syrian refugees, Turkey has activated TPD and provided protection following some criteria. Hence, there are three determining criteria to invoke protection under TPD, i.e., a) a person has to come from an armed conflict area, b) cannot return to his country of origin due to such conflict, c) has to stay within the borders of EU countries. People under international protection’s jurisdiction will unarguably be entitled to seek protection under the Directive. There is no distinction between EU and non-EU countries in terms of seeking protection under TPD. However European countries have been strategically activating the Directive due to the mixed migration flow in Europe. This generally disrupts the temporary protection process as Economic migrants might also abuse it. Activation of TPD has to adopt strategic approaches by implementing its flexible eligibility criteria, broad personal scope, harmonization, and formalization of protection standards. International law’s recognition is a prerequisite to practice TPD more expansively following the above-mentioned standards.

Temporary Protection Directive through the Lens of International Law:

International refugee law, or international law generally, has not defined TPD as a protection standard. But it doesn’t reduce the importance of TPD as a protection mechanism either. TPD is a protection tool to protect persons fleeing from third countries due to armed conflict, inhumane torture, and grievous human rights violations. Though UNHCR hasn’t ascertained the value of TPD as a protection mechanism, it has persuasive value due to its institutional origin. As the institution EU is formed under international law, TPD achieves its legal foundation in the existence of the EU itself. Apart from that, the customary principle of non-refoulment under Article 33 of the UN Refugee Convention 1951, Article 3 of the Convention against Torture 1987, and Article 7 of the Internal Covenant on Civil and Political Rights 1966 have discussed immediate protection of refugees coming from the areas of armed conflict, degrading human treatment and other humanitarian crises. Also, Article 3 of the European Convention of the Human Rights and Qualification Directive encourages subsidiary protection to ensure temporary protection for the refugees. Countries that did not ratify the Refugee Convention of 1951 have complications applying the principle of non-refoulment and providing protection to the refugees. But Hong Kong is an exception, where the country uses Article 3 of the Convention against Torture for the person who might fall prey to torture and in-

25 Gluns & Wessels (n 17), 58
26 Council Directive 2001/55/EC (n 1), Article 2(c)
27 Ineli-Ciger (n 24), p. 16
28 Council Directive 2001/55/EC (n 1), Article 2(c)
29 Ineli-Ciger (n 3).
human treatment after their return. The enforceability of a principle increases if human rights treaties adopt it. Hence the principle of non-refoulement received unexpected acceptance through human rights treaties and customary principles. Cumulative application of the Refugee Convention and Human Rights treaties might increase the protection standard. ICCPR, CAT, and ECHR provide protection only to the refugees or asylum seekers under serious threat of torture and inhuman treatment subject to their return to their origin country.

This means displaced people or the existence of psychological fear among asylum seekers in such returns won’t be considered in terms of giving protection. These human rights treaties overlook mental elements in the protection standard. Overlooking mental elements in providing protection weakens the whole protection mechanism. Also, despite their judicial recognition in all states and strong articulation, these conventions are fragile in delivering protection. The above provisions of different treaties have emphasized the non-refoulement of asylum seekers through immediate protection and reduction of serious harm. The foundation of ‘temporary protection is based on the principle of immediate protection under non-refoulement. The principle of non-refoulement is already an established customary norm or ‘opinion juris’ worldwide. ICJ reiterates a norm to become opinion juris must follow state practice. That practice does not necessarily have to be uniform. The existence of state practice would validate the customary principle. Theoretical analogy emphasizes the connection between non-refoulement and TPD in the current refugee law regime. EU’s selective activation of TPD violates the state practice of the principle of non-refoulement. The stance of the EU violates the customary norm of temporary refuge, which is more relevant to the discussion of TPD.

This norm also prohibits ‘pushback’ of migrants fleeing due to armed conflicts, massive violations of human rights, and indiscriminate violence in its territory. Hence, Lambert solicited that states must immediately admit the fleeing refugees for a temporary period. This is an established practice under the temporary refugee principle. He further emphasized ensuring some fundamental rights for the fleeing person for an ad-interim period. This seems to connect with the current practice of TPD in the EU. Ineli-Ciger argued that the principle of a temporary refugee should not be treated as a distinct principle from the principle of non-refoulement. Rather it should be utilized as a complementary principle to non-refoulement practice. Alike the principle of non-refoulement, the temporary refugee principle also

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32 Ineli-Ciger (n 3), p. 61
34 Ineli-Ciger (n 3), p.76
37 Ineli-Ciger (n 3).
values human life, integrity, and dignity.\textsuperscript{38} It advocates protecting endangered people from immediate harm. But both of them differ in discussing the timeline of that refuge. The principle of non-refoulment is silent about the time of refuge. In contrast, the principle of temporary refuge discusses the ad-interim stay of the refugees in the host country.

The idea of both of these principles as customary norms is established in article 33 of the refugee convention 1951, article 3 of the Convention against Torture, article 7 of the International covenant on civil and political rights, and article 3 of the European Convention on Human Rights. European Court of Human Rights has reasserted this in the case ‘Hirsi v. Italy.’\textsuperscript{39} The court focused on article 3 of ECHR and solicited for giving protection or refuge to fleeing persons due to inhuman or degrading treatment, cruel torture, and massive armed conflict. The legal basis of temporary protection is very strong in the provisions of international law and customary norms. Sometimes state practice may vary due to political considerations, but the existence of the legality of temporary protection is undisputed.\textsuperscript{40} Europe’s stance regarding Syrian refugees was undoubtedly dichotomist. Activating TPD for Ukrainian refugees is more of a political consideration than a legal one. But TPD as a practice shall be addressed for all the incoming refugees in the EU, whether from Syria or Ukraine. Otherwise, it will violate international treaties and customary norms regarding temporary protection prevalent as \textit{opinio juris} or state practice. If the violation frequently occurs, it will lead to some complications in the temporary protection directive mechanism.

\textbf{What are the Complications of the Temporary Protection Directive?}

TPD is one of the finest feasible instruments for mass influx situations in Europe. It does some positive aspects in terms of refugee protection. The author believes the EU has been selectively strategic in activating the Directive. Arab Spring, the refugee crisis in Lampedusa, Syrian or Afghan refugee crisis never attracted the activation of the Directive. Klug pointed out that activation of TPD might attract economic migrants in the region as a pull factor towards the crisis.\textsuperscript{41} Hence EU never considered activating the Directive. Thielemann called this reason for the pull factor by the EU council overrated or overestimated.\textsuperscript{42} He asserted that strong push factors like human rights violations, endemic violence, or armed conflict contribute to the mass influx compared to economic pull factors. In the author’s view, this is a conservative approach by the EU member states even after their collective liberal approach regarding refugee protection. Ineli-Ciger argues that people fleeing from insecurity in their origin state do not necessarily look for a state with better economic conditions.\textsuperscript{43} Rather they search for a state adjacent to their original state or safe haven. People who take refuge in the host state often intend to return without considering the

\textsuperscript{38}UNHCR (n 1), p. 2
\textsuperscript{39} Hirsi Jamaa and Others v Italy (2012) Application No 27765/09
\textsuperscript{40}Lambert (n 36), pp. 730 & 732
\textsuperscript{43}Ineli-Ciger (n 18), p. 234
monetary benefit in the region. The pull factor argument is more of a sword for not activating TPD for the non-Europeans. EU would rather choose to protect any number of refugees under the EU (Recast) Qualification Directive for a temporary period than activate TPD.

Ineli-Ciger pointed out that ensuring a qualified majority vote in the EU council to activate TPD is a strong barrier. States less affected by any mass influx are always unwilling to activate TPD. Though the Directive was adopted to ensure burden-sharing among the EU states, EU states seem to avoid responsibilities focusing on their interests. This is strongly evident from the case of Italy in 2011. Here the states avoided activating TPD, and France and the other two states strengthened their border control policy to ignore the responsibilities of a mass influx in the EU. States also prefer to rely on the Dublin System of refugee burden sharing that works disproportionately. As a result, states that seem less affected by mass influx never voted for a qualified majority vote. This creates peer pressure on the geographically proximate refugee-receiving countries in the EU. Undoubtedly, there is a lack of solidarity among the EU member states. Ineli-Ciger continuously asserted that unless the maximum state’s interest is at stake with a high number of refugees, TPD will not be implemented. In addition, European countries have adopted some escapist approaches to handle mass influx crises in the region, as mentioned earlier.

Dublin Regulation III (System) introduced an early warning mechanism to this end. Preparedness, crisis management, and early warning are the mechanisms accepted by EU countries through article 33 of the said regulation. European Asylum Support Office (EASO) was established under the EASO Regulation to coordinate and assist asylum applications after the mass influxes. Article 33 of the regulation introduced two phases of protection before activating TPD, a) the preventive phase, b) the crisis management phase. The intention of the EU state is very clear. In the first instance, they will try to prevent the crisis of mass influx as much as possible. If the preventive plan fails, the EU state will prepare to introduce a crisis management plan to handle the crisis immediately. EASO will monitor asylum applications and procedures during the crisis management plan.

In the author’s view, EU states are planning an escape from activating TPD through approaches like Dublin Regulation. Because EU’s adoption of TPD would have become a state practice if approved by several states. In the absence of absolute mass influx and affecting the interest of maximum states, the Directive seems to be a letter without postbox or maybe the EU was waiting for selective activism in refugee protection practice. The recent activation of TPD by the EU after the Ukraine crisis might be conclusive proof of the claim. European Commission estimates that, 6.5 million Ukrainian refugees fled to different parts of Europe after Russian aggressions in the region.

45 Ineli-Ciger (n 18), p. 234
46 Ibid, p. 242
sion on Ukraine. For the maximum number of refugees or some other consideration, the EU has activated TPD. Previously, the EU avoided activating TPD in refugee crises from Syria and Iraq, consisting of 3 million and 1 million refugees. According to their requirement of mass influx, these situations might not be coming under the purview.

EU states had this open-ended jurisdiction because TPD did not define mass influx or what number of refugees might constitute mass influx. Using this vagueness, EU member states play a selectively active role in refugee protection, being a forerunner of the same. Also, TPD might be considered an important beneficiary of the UN Refugee Convention because of its protective nature. But TPD allows less number of rights for a shorter period compared to the Convention. TPD’s activation requires the suspension of the UN Refugee Convention too. Considering their similar nature of protection, this is irrational. This affects the whole spirit of international refugee protection. Additionally, TPD emphasizes on forced return of the refugees from the host country. This in no way complies with the ideology of refugee law. TPD needs assimilation with several provisions of the UN Refugee Convention to become more comprehensive and impartial.

Towards the Impartial Application of Temporary Protection Directive:

TPD can work as an ace to protect refugees around the world. As the doctrine of temporary refuge exists in the practice of UNHCR, it will be very easy to implement TPD within EU and non-EU countries. But there remains a problem of subjective choices about when to activate TPD or to avoid activation. From the example of the EU, it is evident that the EU only activates TPD considering political interest rather the humanitarian one. The Afghan, Syrian or Ukrainian refugee crisis better proves the argument. Generally, the EU is very friendly towards refugees and TPD is a result of it. The purpose of article 2 of the Qualification Directive is also broader compared to the UN Refugee Convention 1951. The impartial application of TPD is directly possible through this scope. Article 2 says any displaced person due to endemic violence or systematic human rights violations may seek protection under TPD. In contrast, the UN Refugee Convention has settled some specific ground to seek protection under the Convention. TPD is more universal in protecting the refugees or displaced persons (fleeing from a country) after a mass influx. Due to coordination gaps between European Council and Commission, a directive with so much to offer remained biased. First, the Council and Commission need to find specific requirements to activate TPD and ground coordination between the two. Council may act more proactively to measure any mass movement to

49 UNHCR, ‘Refugees/Migrants Emergency Response – Mediterranean’; OECD (n 5)
52 European Commission (n 47), p. 15
54 Ineli-Ciger (n 18), p. 27
the EU from a single country and the grounds of such movement. This will help the council to reach a decision. For this, the EU might settle the number of displaced persons in a mass influx. Also, it may examine whether the displaced persons can go through the normal asylum process or not. Article 5(4) of the European Qualification Directive discusses this vaguely.\textsuperscript{56} But, this article contains the scope of integrating certain criteria to activate TPD.

Secondly, the European Qualification Directive (EQD) has discussed ‘community solidarity’ in article 25.\textsuperscript{57} This community solidarity leads to burden-sharing among the EU states. Various EU states are/were unwilling to share these refugees’ burdens.\textsuperscript{58} The problem is in the mindset of the countries’ policymakers, who are unwelcoming towards refugees. EU countries need to stand in solidarity to share a mass influx’s physical and financial burden. The EQD does search whether the mass influx is manageable or not. It advises urgent and additional support to the member states to protect the refugees if unmanageable.\textsuperscript{59} This might result in physical burden sharing among the states. Currently, the EU practices Dublin System to share the burden among the member states.\textsuperscript{60} Dublin System prescribes applicants to apply for asylum in the EU. And they will decide which country will examine the application for such asylum. This system encourages individuality rather than community solidarity. It will not help in times of unmanageable mass influxes of displaced. EU shall follow an equitable mechanism in giving refuge to asylum seekers. Burden sharing based on community solidarity might be a comprehensive solution. K. Kerber prescribes ‘double voluntariness’ to activate TPD.\textsuperscript{61} He emphasizes on taking consent from the person seeking protection and the state of destination. Both parties’ willingness to practice and avail temporary protection is a mandatory pre-requisite. But considering the EU’s perspective achieving double voluntariness is tough. Countries less affected by a mass influx often deny protecting TPD. Moreover, the EU needs to fix these complications before it asks for the activation of TPD in the region. European Council might consider changing the definition of mass influx and settling on a minimum number that will provoke the activation of TPD in the region. The council’s decision to activate TPD might be made more flexible considering the gravity of the crisis. In addition, a qualified majority vote for the activation is an unnecessary complication in any violence-induced mass influx. Because a qualified majority is unachievable if several countries’ interests are not at stake. It is nearly impracticable that every state will get equally affected in every crisis.\textsuperscript{62} States less connected with the country of crisis will get less affected. They will not be willing to carry the same share of the burden similar to the proximate state. So, the provision regarding burden sharing needs re-assessment along with the provision of a qualified majority vote. This will make TPD not only feasible but also an impactful solution to

\textsuperscript{56}Article 5 of the Temporary Protection Directive 2001
\textsuperscript{57}Article 25 of the Temporary Protection Directive 2001
\textsuperscript{59}European Commission (n 47), p. 65
\textsuperscript{60}Ineli-Ciger (n 18), pp. 231, 232 & 237
\textsuperscript{62}Ineli-Ciger (n 44), p. 201
refugee crises.

How TPD Can be an Impactful Solution in the Refugee Protection Practice:

Refugee Convention 1951 has specific provisions for protecting the refugees. The provisions are restrictive because it has settled some standards to avail protection under the Convention. TPD requires endemic violence, gross human rights violations, and armed conflict to be effective. But article 1(A)(2) of the Refugee Convention requires race, religion, nationality, participation in a social group, and political opinion to be effective for refugee protection. Comparing the protection mechanisms, TPD seems to be broader. According to TPD state must admit the refugees or migrants fleeing to their state territory due to armed conflict. Once the refugees or asylum seekers reach the border, states shall open it to admit them. The principle of non-refoulment carries the same spirit as TPD. But most ratifying states of the UN Refugee Convention define the principle in a close-fistedly. Also, states other than ratifying states chose the restrictive approach to applying the principle of non-refoulment. Hence there are a lot of examples of pushing back refugees around the world. TPD’s broad application discourages these pushbacks.

TPD also follows a burden-sharing mechanism and encourages community solidarity to share the burden among the states. Advocate General Sharpston says, solidarity is the blood of any European Project. This is visible from Article 25 and 26 of the Temporary Protection Directive that discusses about community solidarity and burden sharing among the European States. Without sharing the burden it is impossible to handle a crisis. TPD is not the only instrument promoting the solidarity in Europe. Article 80 of Treaty on the Functioning of the European Union 2007 (TFEU) has clearly discussed about inter-state solidarity in crisis handling, while focusing on fairness in sharing the responsibilities. The community solidarity and burden sharing in TPD is actually the culmination and projection of TFEU’s Article 80. The member states of the EU is bound to share burdens of refugees equitably from this perspective. In that case, the countries may choose group admission or


64 Ibid., p. 200


individual admission. During the mass influxes, it is tough to individually admit all the refugees. Group admission will ease the process of giving protection. The author is advocating for equitable burden sharing because equally sharing burden is not possible considering the number of refugees, financial resources and geographical backlogs. Countries may admit refugees according to their capacities. This mechanism shall not also overburden while sharing the burden.

Following the inter-state solidarity approach in giving immediate asylum or protection to the refugees, states may also opt for free choice model. Free choice model helps refugees to search for their country of protection after the activation of TPD during a mass influx. This may help in sharing the burden but disproportionately. In these cases refugees might search a country with better economic conditions. States also seem to take that defense while avoiding burden sharing or community solidarity in a refugee crisis. In contrary, refugees coming out of a state of facing aggression, warfare, endemic violence and serious human rights violations will just look for a peaceful safe haven to reside in. From the above discussion, we can say temporary protection may be done based on two approaches. One is free choice model that prescribes absolute freedom on the part of the refugees to opt any country for refuge. The other one is asylum solidarity that pursues for inter-state participation to handle the mass influx. The states will be helping each other to equitably share the burden among themselves.

It has some similarities with the ‘third party resettlement’ solution of the UN Refugee Convention. Third-Party Resettlement (TPR) is one of the durable solutions under the Convention that promotes burden sharing among the member states.\textsuperscript{72} In the TPR mechanism, refugees are taken to a third country other than the host state. Often after a mass influx of refugees, the host states get overburdened by refugees. This lets down refugees’ standard of living in the host country. Third-party resettlement works as an elixir to unburden the host countries regarding social, economic, and security concerns. In nature, TPD or TPR follows the same module of protection. So, the only difference between TPD and TPR is the timeline or longevity of the solution. TPD is effective for one to three years,\textsuperscript{73} subject to extension, whereas TPR does not have a specific time allocation being a permanent solution. Overall, whatever might be the situation equitable burden sharing and immediate protection should be the goal for TPD. Through this TPD might aid the Refugee Convention for safeguarding the refugees temporarily apart from the permanent solutions provided by the UN Refugee Convention.

Undoubtedly, temporary solutions are necessary to ensure protection to growing number of refugees and refugee crises. As permanent solutions need a lot of time to become effective, temporary solutions would change the dynamics of the Refugee Convention 1951 and protection if adopted. UNHCR shall institutionalize TPD under the UN Refugee Convention following the doctrine of ‘tem-

\textsuperscript{72}UNHCR, ‘The 10-Point Plan in Action: Chapter 7, Solutions for Refugees’ (UNHCR) <https://www.unhcr.org/media/10-point-plan-action-chapter-7-solutions-refugees/> accessed 30 August 2023

porary refuge. In this regard, Refugee Convention would need changes adopting current developments regarding TPD. At the same time, there is the principle of non-refoulment to admit refugees in a host state. Still, its restrictive nature does not provide any specific guidelines for refugee protection after not refouling. Based on origin, TPD and the principle of non-refoulment are similar in nature but different in implementation approach. TPD might also work as a bridge or nexus between the principle of non-refoulment and third-party resettlement emphasizing on the similarities. This will also help to reduce the protection gaps in the UN Refugee Convention 1951. It will make article 33 of the Convention more effective and functional by connecting it with durable solutions. Through this process, refugee protection under the Convention will also become meaningful.

On a different note, TPD must comply with UN Refugee Convention and provide some of the convention rights mentioned in articles 2 to 34. TPD’s activation might also reciprocally activate Refugee Convention rather than suspending it. Also, to resolve the protection gaps, such reciprocal activation is inevitable. This will serve the purpose of TPD and International Refugee Law. Undoubtedly, TPD, by origin an extraordinary protection mechanism. But concerned states shall adopt TPD complying with universal human rights standards, fundamental freedom, principle of non-discrimination, safety, and dignity of the asylum seekers. It also shall revisit its returning mechanism to discourage the forced return of refugees protected under TPD in an unstable and hostile environment in the origin country. There should be no premature return from rights-based TPD because such returns (unadvised returns) will contradict the principle of international refugee law as a whole. Moreover, refugees’ admission to return must comply with universal human rights standards and basic minimum treatment under the human rights convention and the UN Refugee Convention.

CONCLUSION
Temporary Protection Directive is an elixir to deal with refugee crisis immediately. TPD is a functionally efficient mechanism to formalize and harmonize refugee protection standards. Because it provides shelter, residence permits, health care and access to labour market for a maximum period of three years. European countries need to liberalize the practice of activating TPD to make it more functional. Europe has always witnessed the movement of refugees even before the adoption of UN Refugee Convention 1951. Hence, it is the

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75 Ineli-Ciger (n 3), pp. 209 & 258

76 Ineli Ciger (n 3), p. 253


78 Ineli-Ciger (n 18), p. 247.

haven for protecting the refugee from the very beginning. EU’s policies have always been refugee-friendly, so does TPD. They just need to change their perception towards the activation of TPD. The EU might reconsider changing the activation mechanism of TPD. Also it might ease the criteria of activating TPD by defining mass influx situations. Undoubtedly it will set example for other regions in handling mass refugee influx situations. Such liberalize practice of the EU will also broaden the aspects of ‘doctrine of temporary refuge.’ Because still countries use this doctrine as an exceptional measure, when it has the potentials of a regular measure of refugee protection following principle of non-refoulment. Universal application of the doctrine is very much required to handle uprising refugee crises worldwide. Third party resettlement practice of the UN Refugee Convention 1951 will also be benefitted from the universal practice. Moreover, TPD might work as a pioneer to utilize the doctrine viably for comprehensive refugee protection era. TPD will not only protect fleeing persons due to armed conflicts but also prevent economic migration across Europe if applied properly. The mechanisms of TPD need to be revisited, revised and amended to make it more refugee-friendly. So that, TPD can close the gaps of protection between UN Refugee Convention and itself. Because it will work as a nexus among doctrine of temporary refugee, principle of non-refoulment and the convention. The European Union’s impartial and humanitarian consideration is very much required on this ground. Other regions will also be following this pioneer role of EU in institutionalizing ‘temporary protection’ mechanism to ensure better protection regime for refugees.

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