

# TURKEY: THE HOST COUNTRY FOR SYRIAN CITIZENS AND THE QUESTION OF SHARING THE BURDEN

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## ABSTRACT

*Internal unrest in Syria which began in early 2011 caused large numbers of Syrian citizens to influx to neighbouring countries. More than 3 million Syrian citizens have come to Turkey approximately in the last six years. Turkey has given “temporary protection” status for these Syrian citizens. In this study, temporary protection status in international refugee law has discussed. Temporary protection accepted as temporary and emergency protection measure to the extraordinary circumstances of a mass influx of asylum seekers. Additionally, the study focuses on the responsibility of the international community in case of mass influx situations as experienced in Syria. The question which will be raised here is to what extend the international community cooperates, and shares the burdens and the responsibilities emerged in this situation. The inadequacy of international cooperation and burden-sharing have been emphasized in this study, and the humanistic dimensions of the circumstances has been ignored.*



**Keywords:** Turkey, Syria, Temporary Protection, Refugee, Convention Relating to the Status of Refugee

## TÜRKİYE: SURIYE VATANDAŞLARINA EV SAHİBİ ÜLKE VE YÜKÜN PAYLAŞILMASI SORUNU

## ÖZET

*2011 yılının erken dönemlerinde başlayan Suriye'deki iç karışıklık, pek çok sayıda Suriye vatandaşının komşu ülkelere akınına neden olmuştur. 3 milyondan fazla Suriye vatandaşı yaklaşık son 6 yıl içinde Türkiye'ye gelmiştir. Türkiye, bu Suriye vatandaşlarına “geçici koruma” statüsü vermiştir. Bu Çalışma'da, Uluslararası Mülteci Hukukunda geçici koruma statüsü tartışılmıştır. Geçici koruma, sığınma arayanların kitlesel akınları gibi olağanüstü durumlar için geçici ve acil koruma*

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*tedbiri olarak kabul edilmiştir. Ek olarak, Çalışma'da, Suriye'de deneyim edildiği gibi kitlesel akın durumlarında uluslararası toplumun sorumluluğu üzerine odaklanılmıştır. Söz konusu durumda, uluslararası toplumun işbirliği, mülteci yükünün ve sorumluluğunun paylaşılması soruları sorulmuştur. Bu Çalışma'da, uluslararası işbirliğinin ve mülteci yükünün paylaşılmasının eksikliği vurgulanmış, olayların insani boyutu gözardı edilmiştir.*

**Anahtar Kelimeler:** Türkiye, Suriye, Geçici Koruma, Mülteci, Mültecilerin Hukuki Statüsüne İlişkin Sözleşme

## Introduction

Syria is surrounded by Israel, Lebanon, Iraq, Jordan, the Mediterranean Sea and Turkey . Its border with Turkey is 911 kilometers. <sup>1</sup>

Syria is a multi- faith and multi-ethnic country in the Middle-East . It is inhabited by Sunni, Shia, Alawite and Christian Arabs, together with Kurds, Assyrians, Turkmen, Druze, Armenians, Jews, and other communities.<sup>2</sup>

The reason of mass influx from Syria to Turkey is the conflict between Syrian government and Syrian protesters. The Syrian protesters, who are composed of people from different religious and ethnic backgrounds, uprising against Ba'ath Party Regime to overthrow the government as the part of Arab Spring.

The United Nations says at least 400.000 people have been killed and more than 6.3 million people have been displaced inside the country,<sup>3</sup> The Office of the United Nations High Commissioner for Refugees (UNHCR) has registered over 4.8 million people who have fled from Syria since 2011. This figure includes 2.1 million of Syrian citizens, who now live in Egypt, Iraq, Jordan and Lebanon. Turkey hosts over 2.7 million Syrian Citizens since April 2011 <sup>4</sup>

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<sup>1</sup> [http://syb.icisleri.gov.tr/ortak\\_icerik/syb/m%C3%BCIki%20idare%20amirleri%20%20s%C4%B1n%C4%B1r%20g%C3%B6revi%20rehberi.pdf](http://syb.icisleri.gov.tr/ortak_icerik/syb/m%C3%BCIki%20idare%20amirleri%20%20s%C4%B1n%C4%B1r%20g%C3%B6revi%20rehberi.pdf) , Date accessed: 09.01.2017

<sup>2</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/PV.80](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/PV.80),Date accessed: 08.01.2017

<sup>3</sup> A/RES/2332, 21 December 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2332\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2332(2016)),

<sup>4</sup> <http://www.unhcr.org/syria-emergency.html>, Date accessed: 09.01.2017

Turkey has accepted the 1951 Convention Relating to the Status of Refugees (Refugees Convention) and the 1967 Protocol, however she has retained the geographical limitation. This is to mean, Turkey can only legally accept European asylum seekers as ‘refugees’ stricto sensu. The reason of this limitation is directly linked with the geographical location of Turkey. Turkey is in a region with high risk of refugee influx, people might come alone, in small groups or in masses.

As a party to the Protocol and the 1951 Refugees Convention, Turkey has retained the geographical limitation, nevertheless she permits the non-European asylum seekers to reside in Turkey for a reasonable period and thus gives temporary asylum right until they are accepted as a refugee by the third country according to 1994 Turkish Asylum Regulation on condition that these people fall under the definition of refugee as laid in the 1967 Protocol. As it is known, Turkey is a European Union (EU) candidate country and has an obligation to comply with *acquis communautaire* of the Union. In line with this, Turkey has planned the necessary legislative and structural changes to comply with EU asylum *acquis*, and she tries to take necessary steps to implement them especially after 2005.

As a neighbour country, Turkey has been directly affected from the conflict in Syria. Arriving to Turkey, as legal procedure, is not complex for them. For Syrians arriving Turkey does not require intricate legal procedures. Turkey has seized to demand visas from Syrian citizens from 23 December 2009 onwards and Syrian citizens with a valid passport were automatically given permission for ninety days of stay in Turkey. Therefore, it may say, for a Syrian citizen entering to Turkey is not difficult.

At first, Turkey has accepted Syrian citizens fled to Turkey as “guests”<sup>5</sup>. Then, they were granted the status of “temporary protection” in April 2012 with a Prime Ministry Circular. This temporary protection status complies with the Turkish Law on Foreigners and International Protection which came into force in April 2013. The Law introduces a comprehensive legal and institutional framework on the legal status of migrants, procedures and safeguards to be followed in the context of detention and expulsion of irregular migrants as well as protection of vulnerable categories of migrants such as minors, with a view to bringing Turkey into line with EU and international standards.

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<sup>5</sup> It is possible to see that the Syrian citizens accepting as a “guest”, and wishing to come back their countries when the time comes.

According to this Law, article 91, “*temporary protection may be provided to foreign nationals who have been forced to leave their countries, who are unable to return to countries they left, who arrive at our border or who have crossed them in large groups to seek immediate and temporary protection*”.

### **I. Turkish Temporary Protection Case from International Legal Perspective**

The Refugee Convention does not effectively grant the right to obtain refugee status. In other words, the contracting States have no obligation to grant a person refugee status.<sup>6</sup> International legal documents have only mentioned of international protection, but not make a distinction between temporary or permanent.<sup>7</sup> Whittaker say that the alternative of “temporary protection” headed the protection agenda when the Balkans were thousands of people were forced out of their homes in 1992.<sup>8</sup> Temporary protection has not defined its meaning and legal basis as a concept of international refugee law. It accepted as “an exceptional measure”, “a pragmatic tool” and “emergency protection measure” to respond to the extraordinary circumstances of a mass influx of asylum seekers. Its relationship with the Refugees Convention and its Protocol relating to the Status of Refugees has not yet been resolved.<sup>9</sup> But, it is accepted that temporary protection is a concept commonly used to describe a short-term emergency response to a “mass influx” of asylum seekers. It has also been applied in situations where it is difficult to distinguish between asylum seekers and others moving in mixed flows as well as to broader categories of persons who fall outside the Refugee Convention definition of a “refugee”<sup>10</sup>

Fitzpatrick said that, Temporary Protection is not a new concept. Its various versions were codified in a 1969 African Refugee Convention, promoted during mass flows from Southeast Asia and vigorously debated in

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<sup>6</sup> Francesco Cherubini, **Asylum Law in the European Union**, Routledge Research in Asylum, Migration and Refugee Law, London and New York, 2015, pp.47

<sup>7</sup> James C. Hathaway&R. Alexander Neve, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection” **Harvard Human Rights Journal**, Vol.10, 1997, pp.156

<sup>8</sup> David J. Whittaker, **Asylum Seekers and Refugees in the Contemporary World**, Routledge,London and New York, 2006, pp.17

<sup>9</sup> Alice Edwards, “Temporary Protection, Derogation and the 1951 Refugee Convention”, **Melbourne Journal of International Law**, Vol. 13, 2012, pp. 596, Note on International Protection, UN General Assembly, A/AC.96/830. 7 September 1994, para 46

<sup>10</sup> Edwards, *ibid.*, pp.599-600

the context of flight from Central American civil war in the 1980s.<sup>11</sup> It was introduced to international arena as an international problem in 1980s and its legality has been discussed.

According to some experts on international refugees law, the Refugees Convention has implied temporary protection status.<sup>12</sup> According to the Article 9 of this Convention ,”*Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.*”

International community embarked on consultations on the meaning and content of temporary protection , in 1981<sup>13</sup>, 1996-1998<sup>14</sup> and in 2001<sup>15</sup>.

Temporary protection described UNHCR’s 1994 Note on International Protection, “temporary protection” as

*a means , in situation of mass flow, for providing refuge to groups or categories of persons recognized to be in need of international protection, without recourse, at least initially, to individual refugee status determination. It includes respect for basic human rights but, since it is conceived as an emergency protection measure of hopefully short duration, a more limited range of rights and benefits offered in the initial stage than would customarily be accorded to refugees granted asylum under the 1951 Convention and the 1967 Protocol.*<sup>16</sup>

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<sup>11</sup> Joan Fitzpatrick, “Temporary Protection of Refugees: Elements of a Formalized Regime” **The American Journal of International Law**. Vol. 94, No.2 (Apr. 2000), pp.279

<sup>12</sup> Edwards, *ibid.*, pp. 595

<sup>13</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx (Geneva 21-24 April 1981) , EC/SCP/16/Add.1, 17 July 1981, <http://www.unhcr.org/3ae68cd04.html>, Date accessed: 10.10.2016

<sup>14</sup> Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It, EC/48/SC/CRP.32, Standing Committee, 25 May 1998, <http://www.unhcr.org/3ae68cff4.html>, Date accessed: 10.10.2016

<sup>15</sup> Protection of Refugees in Mass Influx Situation: Overall Protection Framework, Global Consultation on International Protection, EC/GC/01/4, 19 February 2001, First Meeting, <http://www.unhcr.org/3ae68f3c24.pdf>, Date accessed: 10.10.2016

<sup>16</sup> Note on International Protection, UN General Assembly, A/AC.96/830. 7 September 1994, para 46

*The European Union Temporary Protection Directive, Council Directive 2001/55/EC defines for the purposes Directive , temporary protection as*

*a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their contry of origin, immediate and temporary protection to such persons,in parcular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interest of the persons concerned and other persons request protection<sup>17</sup>*

The UN General Assembly has also acknowledged in 1982, temporary asylum-seekers in situations of large-scale influx.<sup>18</sup>

Temporary protection is recommended in UNHCR's 1994 Note on International Protection for :

- persons who has fled from areas affected by conflict and violence;
- persons who has been or would be exposed to human rights abuses, including those belonging to groups compelled to leave their homes by campaigns of ethnic or religious persecution ; and
- persons who for other reasons specific to their personal situation are presumed to be in need of protection. <sup>19</sup>

Temporary Protection is an exceptional mechanism, providing immediate protection for persons concerned. It does not prejudge recognition of refugee status under the Refugee Convention and the Proposal for a Council Directive establishes access to the normal asylum procedure if persons concerned wish so. The beneficiaries of temporary protection will be given human rights as residence permits, appropriate information, right to work, accommodation, social assistance, health care, and education. At least close family members will be able to reunite.<sup>20</sup> These elements have been classified the Note on International Protection as;

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<sup>17</sup> Council Directive, 2001/ 55/EC, Official Journal of the European Communities, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:115E:0031:0032:EN:PDF>, Date accessed: 10.09.2016

<sup>18</sup> A/RES/37/195, 18 December 1982, <http://www.un.org/documents/ga/res/37/a37r195.htm>, Date accessed: 10.09.2016

<sup>19</sup> Note on International Protection, *ibid.*, para 47

<sup>20</sup> Council Directive

- admission to safety in the country of refuge;
- respect for basic human rights, with treatment in accordance with internationally recognized humanitarian standards;
- repatriation when conditions in the country of origin allow;
- protection against refoulement.<sup>21</sup>

Temporary protection is best conceptualised as a practical device for urgent protection needs in situations of mass influx. Especially, its value in ensuring protection from refoulement and basic minimum treatment in accordance with human rights without over-burdening individual status determination procedures has been demonstrated.<sup>22</sup> It is also an interim solution, used until finding a long-term answers to the situations near in time. But, there is no limitation as to how long “temporary” protection can continue. It rarely convert to permanent status.<sup>23</sup> There is no doubt that the principle of non-refoulement is an important constraint on state sovereignty.<sup>24</sup>

Schuck mentions that temporary protection and mass-influx needs to be given by neighbouring countries. Thus, returning of the migrants to their countries will be minimal level in terms of physiological and economic costs. Moreover, the demand of asylum or permanent settling will be rare. Temporary protection is also a desirable strategy in terms of their own interests of industrialized countries. Because temporary protection keeps the refugees in the Third World Countries safely, and reduces of permanent settlement of them in Western countries.<sup>25</sup>

Therefore, Turkish temporary protection case is provisionally measure which complies with the article of the Refugee Convention. Turkey is faced with more than 2.7 million Syrian citizens came to Turkey within 6 years.

## II. Turkey’s Efforts to Syrian Refugee Crisis

It is known that the large-scale influx bring about serious social and economic burden to the host countries. It also creates serious problems

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<sup>21</sup> Note on International Protection, *ibid.*, para 48

<sup>22</sup> Protection of Refugees in Mass Influx Situation

<sup>23</sup> Peter H. Schuck, “Refugee Burden-Sharing: A Modest Proposal”, *Yale Journal of International Law*, Vol. 22, 1997, pp. 264, Hathaway&Neve, *ibid.*, pp. 132

<sup>24</sup> Matthew J. Gibney, “Liberal Democratic States and Responsibilities to Refugees”, *American Political Science Review*, Vol. 93, No.1, March 1999, pp. 169

<sup>25</sup> Schuck, *ibid.*, pp. 265-266

endangering public order and national security and even international peace and security, the country of refuge, host country, may not have the will to settle them and may only be concerned to obtain their early return or resettlement elsewhere.<sup>26</sup>

As stated before, Turkey is faced with more than 2.7 million fleeing Syrian citizens within 6 years in the the gravest difficulties . She also get a jam in public order and national security.

Turkey has provided many conveniences for the Syrian citizens coming to Turkey. Syrian Citizens whose temporary admission were done are placed various cities bordering Syria.<sup>27</sup> Turkish Govenrment has facilitated a “General Directorate of Migration Management to deal with this humanitarian crisis she faced. Prime Ministry AFAD<sup>28</sup> is also responsible to manage disaster and emergency situations in relating to Syrian citizens in Turkey. It has been coordinating temporary protection for the Syrian Citizens who are accepted to Turkey.<sup>29</sup> AFAD has been trying to satisfy all humanitarian needs of Syrian Citizens in 26 camps which are located in 10 provinces over a year.<sup>30</sup> It is also responsible in building tent and container cities and in ensuring coordination in there as well.<sup>31</sup>

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<sup>26</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>27</sup> Yayladagi, Altinozu, Reyhanli tent cities at the first stage beginning from May-June 2011 .As the date of 26 September 2013, Hatay has 2 for each tent cities in Altinozu and Yayladagi, 1 container city in Apaydin and 1 temporary office of posting in Reyhanli. Sanliurfa has 1 for each tent city in Ceylanpinar and Akcakale and 1 container city in Harran. Gaziantep has 1 for each tent city in Islahiye, Karkamis and Nizip and one container city in Nizip. Kilis has 2 container city in Oncupinar and Elbeyli Besiriye, Kahramanmaraş has 1 tent city in city center, Osmaniye has 1 tent city in Cevdetiye, Adiyaman has 1 tent city in city center, Adana has 1 tent city in Saricam, Mardin has 1 tent city in Midyat and Malatya has 1 container city in Beydagi. Also building activities of Sanliurfa Viransehir, Suruc tent-city, Hatay Güvecci tent-city, have completed. Turkey has 26 temporary housing as of 12 December 2016

<https://www.afad.gov.tr/en/2602/Current-Status-in-AFAD-Temporary-Protection-Centres>, Date accessed: 10.01.2017

<https://www.afad.gov.tr/tr/2374/Barinma-Merkezlerinde-Son-Durum>, Date accessed: 10.01.2017

<sup>28</sup> Republic of Turkey, Prime Ministry Disaster & Emergency Management Presidency, <https://www.afad.gov.tr/EN/Index.aspx> , Date accessed: 10.01.2017

<sup>29</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>30</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>31</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-

Turkish Red Crescent provides service regarding sheltering, food, health, security, social activity, education, religious service, translatorship, telecommunication, banking and other services in the every tent and container cities.<sup>32</sup>

Furthermore, the daily humanitarian needs and health services of more than three hundred thousand Syrian citizens, who live outside the camps in various provinces of Turkey have been also met by related Turkish authorities.<sup>33</sup> They are registered by AFAD . Registered Syrians receive an ID card. This card gives them access to medical and other material assistance services.

All Syrian citizens in Turkey benefit from temporary protection. However, the situation on the ground remains critical. Additional camps need to be set up.

Turkish authorities are responsible for maintaining security and safety in the camps. They have non-refoulement and basic human rights, which is prohibited by the European Convention on Human Rights, the International Covenant of Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and customary international law.<sup>34</sup>

### III. International Community

Contemporary international community consist of States, international organizations, non-governmental organization and persons. It describes the whole international system.<sup>35</sup>In theory, international protection is a collective duty of the community of States including other elements. But, unlike the work which is ideal in real.

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#### Scale Influx

<sup>32</sup> Within the scope of education services 510.000 Syrian students have studied. As of the date of November 30, 2016. 780.000 operations have been carried out, 20.2 million outpatient services have been rendered, and 940.000 hospital patients were treated in camps. Until now 178.000 babies were born in Turkey. The services have provided so far December 2016, Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>33</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>34</sup> “Turkey: National Authorities and the International Community must in Partnership to Meet the Needs of Syrian Refugees” Amnesty International Briefing , Amnesty International Publications 2013, pp.12

<sup>35</sup> Bruno Simma and Andreas L. Paulus, “The ‘International Community’: Facing the Challenge of Globalization”, *European Journal of International Law*, 9 (1998), pp.268

There are more than 65.3 million refugees in the world as of 2016. The biggest producer of new displacement is Syria.<sup>36</sup>

Refugee is heavy burden for the all the world not only in terms of economics but also in terms of political and social aspects. According to the United Nations, there are some 232 million international migrants. The World Bank released that migrants from developing countries alone are expected to send home \$414 billion in 2013.<sup>37</sup> Therefore, the States doesn't want refugees in own country. For example, all Syrian refugees's %8 are hosted by European Union<sup>38</sup>

The main institutions working on the field of refugees is UNHCR and NGOs. Legal texts foreseen that to be shared the burden about refugees and requires cooperation of the States. UNHCR doesn't see the appropriate structure for temporary protection in the cases of mass influx. Because UNHCR and international refugee system were created by the Western bloc nations in 1951 shortly after the start of the Cold War. The system envisioned individuals arriving in small numbers from Communist countries.<sup>39</sup>

### III.A. Burden - Sharing

“Burden” has a multi-faceted connotation which goes beyond financial costs and includes demographic aspects, competition for national food resources, medical services, jobs, and housing. In addition, other unquantifiable costs in terms of environmental and ecological damage, destabilizing effects on local populations, were also raised.<sup>40</sup>

The term burden-sharing was used as first in the context of debates about NATO in the early 1950s. It has been discussed and made a commitment by EU since mid-1980s. This concept recognized in the context of displaced person and refugee unequal distribution of these individuals and their related

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<sup>36</sup> <http://www.unhcr.org/52b310a06.html>, Date accessed: 03.01.2017

<sup>37</sup> <http://www.unicankara.org.tr/v2/pages/posts/at-high-level-meeting-ban-puts-forward-recommendations-to-lsquamake-migration-worksquo-562.php#.UIOd1VD7rLo>, Date accessed: 10.12.2016

<sup>38</sup> <http://beta.worldbank.org/en/news/feature/2016/08/03/municipalities-at-the-forefront-of-the-syrian-refugee-crisis>, Date accessed: 09.09.2016

<sup>39</sup> Ahilan T. Arulanantham, “Restructured Safe Haven “A Proposal for Reform of the Refugee Protection System” **Human Rights Quarterly**, Vol.22, 2000, pp. 3

<sup>40</sup> Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It.

efforts.<sup>41</sup> After 1980s it was emphasised that burden-sharing was a key to ensuring principled responses to influxes of asylum-seekers, particularly mass influxes into developing countries, which satisfy international protection requirements and comply with obligations towards refugees;<sup>42</sup>

Burden-sharing has accepted as a legal obligation in report of the UNHCR Standing Committee.<sup>43</sup> Monetary or materials coming from UNHCR could be considered as an assistance, but not to be viewed as the fulfilment of an international obligation. It has seen inequalities due to fact that burden-sharing has not been considered as a legal obligation. <sup>44</sup>

Some ways have been proposed for serve to reduce disparity in refugee burden-sharing . One of them is a formalized cooperative regime would ensure that the developed States pay compensation to developing States for refugee. This system recommended by Schuck cannot be established. Hathaway formalized this system and to support of protection of refugees and becoming legally binding obligation in practice.<sup>45</sup> Schuck envisaged that to be established a central refugee protection fund for this reason. Creating a centrally administered refugee protection fund into which each State would be obliged to pay a sum equal to its share under the protection criterion. The central authority would then contract with individual States for protection services.<sup>46</sup> It is named as “fiscal” or “financial” burden-sharing as well. <sup>47</sup> This approach entails two important disadvantages. First, it would restrict the acceptable currency of trade to cash . Thereby limiting the number and flexibility of possible transactions. Second, it would be complex and involve higher transaction costs.<sup>48</sup> Furthermore, poor countries may compete with each

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<sup>41</sup> Eiko R. Thielemann “ Towards A Common EU Asylum Policy: The Political Economy of Refugee Burden- Sharing” [http://www.utexas.edu/cola/centers/european\\_studies/\\_files/PDF/immigration-policy-conference/thielemann.pdf](http://www.utexas.edu/cola/centers/european_studies/_files/PDF/immigration-policy-conference/thielemann.pdf), pp.3, Date accessed: 10.08.2016

<sup>42</sup> Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It.

<sup>43</sup> Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It.

<sup>44</sup> Hathaway& Neve, *ibid.*, pp. 141, Schuck, *ibid.*, pp. 254

<sup>45</sup> Hathaway&Neve, *ibid.*, pp. 141, Arulanantham, *ibid.*, pp 31

<sup>46</sup> Schuck, *ibid.*, pp. 284

<sup>47</sup> Agnes Hurwitz, **The Collective Responsibility of States to Protect Refugees**, Oxford University Press, 2009, pp.146, 147

<sup>48</sup> Thielemann, *ibid.*, pp. 20

other to offer developed countries a lower price for their refugee protection burden. This may transform race for providing the cheapest and the quality of protection may decrease.<sup>49</sup>

Another system in burden-sharing is quota. An international agency specify each participating State a refugee protection quota and thus responsibility of each State involves a certain number of refugee defined by this quota. Participating States to quota system could permit use own quota for other State. For using quota pay money or other resources that transferee values.<sup>50</sup> According to Schuck, UNHCR is obvious candidate for executing of this system. UNHCR will be able to assign quota, it hitherto performs some similar functions.<sup>51</sup> There are some objections for quota system. These are unworkability, quality of protection and commodification.

For above mentioned suggestion, burden-sharing should satisfy three criteria of fairness: consent, broad participation and proportionality. Consent is essential. No State should be obliged to participate in the burden-sharing unless it voluntarily undertakes to do so. Broad participation in burden-sharing is justified on the basis of each State's membership in an international community. It is proposed that initially regional basis for burden-sharing thereby within that region becuse of the more firmly entrenched patterns of intraregional influence. The proportionality principle is both a norm of fairness and a constraint dictated by political effect. It demands that a State's share of burden be limited to its burden-bearing capacity relative to that of all other States in the international community.<sup>52</sup>

Another recommendation on refugee burden, is to establish "safe haven". So, the refugee who protected in safe areas will not burden to other countries.<sup>53</sup> Already, the protecting to refugee in third countries have been seen incompatible with the Refugee.<sup>54</sup> Legal basis of the safe haven is identified Security Council' s Declaration of 1992, "*...the non-military sources of instability in the economic, social, humanitarian and ecological fields have*

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<sup>49</sup> Arulanantham, *ibid.*, pp. 37

<sup>50</sup> Thielemann, *ibid.*, pp. 20

<sup>51</sup> Schuck, *ibid.*, pp. 299

<sup>52</sup> Schuck, *ibid.*, pp. 276-277

<sup>53</sup> Arulanantham, *ibid.*, pp. 49

<sup>54</sup> Cherubini, *ibid.*, pp. 248

*become threats to peace and security.”<sup>55</sup> Therefore, safe haven could create under Chapter VII of the Charter of the United Nations, especially in the situations could create influx of refugees.<sup>56</sup> Safe havens allow refugees to avoid the trauma of dislocation to another country while maintaining their protection under international auspices.<sup>57</sup> Safe haven’s disadvantage that refugees may not protect in there against aggression by government or other ethnic groups. Additionally, international staff may not want to go to there. Other than that persons living in safe haven are internally displaced and they need of international protection.*

### **III.B. International Cooperation**

The countries faced with a massive influx differ from each other in respect to financial and physical conditions. Obviously, they cannot cope with the situation alone. Since large-scale influx situations can create problems for the host country .Therefore, international solidarity and co-operation are often essential in this type of situation.<sup>58</sup>

Cooperation between States is one of the defining principles of contemporary international relations as Stated in the United Nations Charter<sup>59</sup>, the Refugees Convention<sup>60</sup> and the 1970 UN Declaration on Principles of

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<sup>55</sup> Decision of 31 January 1992 (3046 th meeting) pp. 821,Repertoire of the Practice of the Security Council, Chapter VIII. Consideration of Questions under the Responsibility of the Security Council for the Maintenance of International Peace and Security.

<sup>56</sup> Arulanantham, *ibid.*, pp. 49

<sup>57</sup> Arulanantham, *ibid.*, pp. 39

<sup>58</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx.

<sup>59</sup> Art. 55. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Art. 56. All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

<sup>60</sup> Preamble. Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation

International Law Concerning Friendly Relations and Cooperation among States.<sup>61</sup>

It is meant that cooperation to international protect is not only State-State but also State-UNHCR.<sup>62</sup> Although an obligation of cooperation put into force in international texts, we cannot say that it could be applied. States are not in collaboration about sharing burden of refugees in the World.<sup>63</sup> But, they have cooperation over control at common borders.<sup>64</sup>

International community is unwilling and inadequate in burden-sharing for Syrian citizens coming to Turkey since 2011, Turkey allocated at least 12 billion \$ to humanitarian relief effort, whereas the international community's contributions remain at 512 million \$.<sup>65</sup> As it is seen, only very limited amount met by international community.

#### **IV. Human Rights Perspective**

When it is looked at the issue from human rights perspective. According to the United Nations Report of Expert Group on Temporary Refugee in Situations of Large-Scale Influx; Vast majority of the refugees in the mass influx are often maintained as destitute persons in large refugee agglomerations. Their accommodation is often of a rudimentary or temporary nature. Their presence is usually subject to restrictive conditions applying to such basic aspects as movement. They are not received into the local community in any meaningful sense. They are, as it were, held at the threshold of the community.<sup>66</sup>

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<sup>61</sup> "States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences."

Hurwitz, *ibid.*, pp. 138

<sup>62</sup> Note on International Protection, *ibid.*, para 45

<sup>63</sup> "...Industrialized States spend billions of dollars annually to process the claims of the small minority of the world's refugee population that manages to evade non-entree schemes and to claim protection in the North. These same wealthy governments contribute less than U.S. \$ 1.2. billion each year to address the needs of the more than eighty percent of refugees remaining in the South..." Hathaway & Neve, *ibid.*, pp. 153

<sup>64</sup> Cherubini, *ibid.*, pp. 133

<sup>65</sup> <https://www.afad.gov.tr/en/2601/Turkey-Response-to-Syria-Crisis>, Date accessed: 07.01.2017

<sup>66</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx,

For various reasons, the most of the countries have been unwilling to provide a sustainable solution for even a limited number of these refugees.

As it is known, host countries may refuse to admit more people or threaten to expel those already in its territory, pleading national security or the need to safeguard local population.<sup>67</sup>

Nevertheless, refugees, asylum seekers and other type of migrations have human rights. Accordingly, the basic minimum standards should be provided for them. For instance, (a) they should not be punished solely on the grounds of their presence or illegal entrance to country; (b) their sorrowful plight should be understood and they should be given special assistance without being exposed to any kind of cruel, inhuman or degrading treatment; (c) they should not be discriminated on account of their race, nationality, country of origin, religion or political opinion; (d) they should enjoy the right to free access to courts in order to protect their legal rights; (e) the restrictions on movement might be admissible only when they are necessary; (f) the safety and well-being of their location in the country of refuge should be a primary consideration; (g) fundamental sanitary and health facilities should be provided to them; (h) the unity of their family should be respected; (i) in an effort to trace their relatives all kinds of possible assistance should be given; (j) both special protection and assistance should be given to women and children; (k) in case of minor unaccompanied children (who have a relative or other close relations) the investigation should be carried out with all due haste. If a child does not have a close relative, the child should, if possible, be accommodated in his/her own linguistic and cultural group. The child's best interests should always be the principal consideration; (l) they should enjoy practising their religion and providing religious education to their children; (m) communication via mail should be allowed; (n) at least material assistance from friends or relatives, on a limited scale, should be allowed; (o) necessary arrangements should be completed where possible, for the registration of births, deaths and marriages; (p) they should be granted all the appropriate opportunities to facilitate obtaining an adequate, durable solution; and lastly (q) they should be allowed to transfer their assets to the country where the long-term solution was obtained.<sup>68</sup>

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<sup>67</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx

<sup>68</sup> Report of the Meeting of the Expert Group on Temporary Refugee in Situations of Large-Scale Influx.

## Conclusion

The validity and existence of temporary protection with regard to human rights is still discussed and is a hot topic in international law. Parties to this discussion have not mutually agreed on a clear definition and mechanism on this issue. Unfortunately, at the present time temporary protection evolves into a mechanism immigration.<sup>69</sup> I exactly join the statement of Hathaway and Neve, “..Refugee protection is a human rights remedy, which should be separated from immigration policies.”<sup>70</sup> It should be distinguished that protection of the refugees as internationally is not international humanitarian aid.<sup>71</sup> There is a need for proportionate sharing of the burden. The funds distribute more equally.<sup>72</sup> Turkey is faced with all this severe conditions with very limited assistance and support from international community. This is not consistent with the burden-sharing principle stated in main international legal documents. Burden-sharing issue should not be left for States or NGOs individual effort.

The deteriorating humanitarian situation in Syria continues a threat to peace and security in the region.<sup>73</sup> Threatening to peace and security in a region is threatening to peace and security in all over the world.

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<sup>69</sup> Emily Copeland, “Global Refugee Policy: An Agenda for the 1990’s”, **International Migration Review**, Vol.26, No:3, (Autumn 1992), pp.994

<sup>70</sup> Hathaway&Neve, *ibid.*, pp. 152

<sup>71</sup> Copeland, *ibid.*, pp. 994

<sup>72</sup> “ in 1993, UNHCR allocated more funds to refugee protection in Europe alone than it did for the protection of three times as many refugees in Africa, Asia and the Middle East combined.” Hathaway&Neve, *ibid.*, pp. 141

<sup>73</sup> A/RES/2332, 21 December 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2332\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2332(2016)), Date accessed: 28.12.2016

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