

# Temporary Protection: Concept, Principle, Practice?\*

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# Structure of the presentation

- Evolution of the **concept** of ‘temporary protection’ in international refugee law
  - Temporary protection as a **principle** of refugee law?
  - Temporary protection as **practice(s)** within the *unexceptional* application of refugee law: the ‘temporary turn’ in N. Europe
- Dilemmas in terms of **normative standards** and **degraded solutions**

# The legal **concept** of temporary protection: A **bridge** between admissions and solutions



"Vietnamese Boat People - 259 thuyền nhân VN đến cảng Darwin nước Úc ngày 2-11-1977" CC BY 2.0.

## 1. Alternative to IRL

- States not parties to RC, customary law duty to provide refuge to people in distress (Vietnam) --- **resettlement/local integration**

## 2. Exception/prelude to IRL

- Preserving asylum space in times of 'mass influx' of 'war refugees' (Bosnia, Kosovo) – **return?**
- EU Temporary Protection Directive 2001 (Ukraine)

# As a principle of refugee law refugee status *is* meant to be temporary...

Purpose: to restore at-risk individuals to membership in a national community (Hathaway 2014)

Inferred by the treaty text, Articles 1C and 2-34

# .... within the context of a 'durable solution'

**RETURN** (1C Refugee Convention)

**'LOCAL INTEGRATION'**  
(2 RC)-(34 RC)

Fundamental and durable changes

Political membership

Social and economic rights

Voluntary re-availment

Identity docs, freedom of religion



**Practices of temporary protection: facilitated through 'bureaucratic fractioning' (Zetter 2007)**

type of protection need

nationality ('bespoke schemes')

mode of arrival

Mandatory return reviews (cessation, non-renewal)

Erosion of durable solutions: complementary pathways and non-permanent resettlement

Probationary immigration policies - extend temporary residence and exposure to deportation

# Cessation practice

- Weaker standards in the shadows of refugee law (Tan 2020)
  - Premature return to insecure areas
- Divorced from a durable solution
  - 'Return' to internal displacement (IPA practice)
  - Regular protection reviews produce legal insecurity, hinder local integration for people likely to remain

# Probationary immigration policies

- Use of **temporary residence permits** initially for people with refugee status/complementary protection, for longer periods of time
- **Income requirement** for permanent residence
- **Language proficiency** and knowledge of society tests
- Sharpened requirements of **'good character'** – unlawful activities can delay/disqualify from permanent residence or lead to its revocation

..... Not only widen the **'cessation window'** (Tan) but produce a **'continuum of precariousness'** (Neylon 2019) based on the threat of return and the unpredictability of changing, retroactively-applied rules



# Conclusion

- As a **concept**, TP understood as an exception to the normal application of refugee law
- In contrast to this specific application, broader **practices of TP** have entered the mainstream (Schultz 2022), justified by a **'principle'** of temporary protection untethered from durable solutions.
  - Limited rights in country of residence
  - Premature return, continued displacement

More info on the **TemPro** project:  
«Temporary Protection as a Durable Solution? The ‘Return Turn’ in  
European Asylum Policies»

[www.cmi.no/projects/2506-temporary-protection](http://www.cmi.no/projects/2506-temporary-protection)

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Podcast: Refugee Law and Refugee Lives