CHAPTER 1

The Convention relating to the Status of Refugees, Protection Gaps and Temporary Protection

1 Introduction

One of the main objectives of this book is to propose a temporary protection model, in particular a temporary protection regime for the protection of persons fleeing armed conflict, which operates within the boundaries of international law and human rights without compromising the elements that make it a practical and efficient framework to cope with large scale influx situations. Therefore, it is first necessary to explain the rationale of such a temporary proposal. In other words, it is crucially important to identify the reason that the cornerstone of refugee protection namely, the Convention relating to the Status of Refugees (the 1951 Convention) does not address all the challenging questions posed by large scale movement of persons fleeing armed conflict hence, the need for a temporary protection regime as well as a proposal arises.

Once the temporal and geographical restrictions in the refugee definition were abolished by the 1967 Protocol relating to the Status of Refugees, the 1951 Convention became the cornerstone of universal refugee protection. Today, 145 states are parties to the 1951 Convention whereas 146 States have signed the 1967 Protocol. Article 1 A 2 of the 1951 Convention defines a refugee as,

2 Convention relating to the Status of Refugees (signed 28 July 1951, entered into force 22 April 1954) 189 UNTS 150.
Any person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Being a refugee entitles the status holders protection from *refoulement*, a number of basic survival and dignity rights; documentation of their status, access to national courts for the enforcement of their rights and a range of civil and socioeconomic rights. The comprehensive rights that the 1951 Convention provides to refugees and almost universal ratification of the Convention makes it central for the protection of refugees worldwide however, the 1951 Convention does not address all challenging questions posed by contemporary forced migration.

This Chapter examines the reasons that the 1951 Convention does not address all the challenging questions posed by large scale movement of persons fleeing armed conflict and discusses how temporary protection regimes can address those challenging questions. Section 2 defines protection gaps and discusses the right way to interpret the 1951 Convention. While Section 3, Section 4 and Section 5 explore the extent to which the 1951 Convention deals with persons fleeing armed conflict, admission, mass influx and burden sharing, respectively. Section 6 examines how temporary protection regimes can remedy the outlined protection gaps and provide effective response to large scale movement of persons fleeing armed conflict.

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