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— SPECIAL SECTION THREE —

Making the Temporary Permanent? Approaches to International Protection in the European Union, Türkiye and the United States

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The question of temporary protection has risen in prominence and generated a growing body of scholarship since the Russian invasion of Ukraine in 2022 and the resulting activation of the EU's long-dormant Temporary Protection Directive for the benefit of persons forced to flee Ukraine. In this special section we examine the practical implementation of temporary protection in Poland, a key host EU member state for Ukrainians. We also widen the scholarly inquiry into temporary protection beyond the EU to examine the approach of other important destination states, namely, Türkiye and the United States. The contributions to this special section illustrate a number of key features of temporary protection, including that it is neither a new response to forced migration, nor confined to the Global North. They also make clear that the increasing recourse to temporary protection for persons seeking refuge outside their countries of origin entails not only fixed-term protection statuses but also, often, an accompanying suite of rights that falls short of that traditionally associated with refugee status. While highlighting some key disadvantages endured by temporary protection beneficiaries, such as precarity and uncertainty, the contributions also identify the benefits of such protection, both for host states and some beneficiaries. Collectively, the contributions to this special section sketch the pitfalls that must be avoided if the increasingly widespread recourse to temporary protection is to unfold in a manner that benefits not only host states but also those in need of those states' protection.

Keywords: international protection, Temporary Protection Directive, Refugee Convention, non-refoulement, voluntary

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The concept of temporary protection for persons facing serious harm in their country of origin quickly gained currency in public discourse in Europe following the Russian invasion of Ukraine on 24 February 2022. With lightning speed, the Council of the European Union adopted a Decision¹ that implemented, for the first time, the EU's 2001 Temporary Protection Directive (TPD).² The robust catalogue of rights conferred on beneficiaries by the TPD – and its activation less than two weeks following the Russian invasion – led some to query the preferential, generous protection approach taken by the EU to Ukrainians compared to that taken with persons fleeing conflicts in countries such as Syria, Afghanistan and Tunisia, whose mass displacement had not catalysed the European Union (EU) to implement the TPD (e.g., Īneli-Ciġer 2022, 2023). Despite the perception of 'generosity' that may accompany the EU's extension of temporary protection to persons fleeing the Russian invasion of Ukraine, the contributions to this special section make clear that EU recourse to temporary protection for Ukrainians is symptomatic of a much wider turn to temporary protection for persons seeking refuge outside their countries of origin. This wider turn entails not only fixed-term protection statuses but also, often, an accompanying suite of rights that falls short of that traditionally associated with refugee status. Indeed, the temporary turn extends to refugee status itself. The starkest illustration of the latter is the recent proposal in the UK to increase from 5 years to 20 years the length of time that persons granted refugee status would have to wait before becoming eligible for permanent residence. Every 2.5 years during this 20-year period, refugees would be subject to a review to ascertain their ongoing protection need, in the absence of which they would be removed.³

The turn to temporary protection has already generated an important and fast-growing body of scholarship. An invaluable special issue of the *Journal of Ethnic and Migration Studies* in 2025 explores practices in Denmark and Norway adopted to withdraw or deny the extension of refugees' residence permits in those countries (Sandberg, Schultz and Sypli Kohl 2025), while recent scholarship indicates that the trend in Europe to make temporariness a staple of international protection is unlikely to encounter insurmountable resistance from supranational human rights monitoring bodies (Schultz and Vedsted-Hansen 2025). One of the values of our own special section, however, is that it makes clear that the turn to temporary protection is far from being a European trend. While the first article, by Kindler and Tygielski (2025, in this section), explores the implementation of temporary protection in Poland in response to the relatively sudden large-scale arrival of Ukrainians, the following two articles explore the extensive recourse to temporary protection in Türkiye. The final article, by Talia Inlender, highlights the centrality of precarious, short-term protection status in the international protection landscape in the United States.

The turn to temporary protection may be understood as an addition to the deterrence toolbox of the Global North. Recent decades have seen states in the Global North develop strategies to discourage the arrival on their shores of individuals seeking refuge and to prevent access to international protection procedures (Gammeltoft-Hansen and Feith Tan 2017; Hathaway and Gammeltoft-Hansen 2015). Containment in transit countries and pushbacks and pullbacks from destination countries are key tactics in this deterrence paradigm. The contributions to this special section focus on what might be termed a 'next generation' of legal measures deployed against individuals whose legitimate claim to international protection has been formally recognised by the host state. They illustrate the measures that states adopt to make immigration status more temporary and less protective for asylum-seekers whose arrival those states have been unable or unwilling to prevent and whose claims for protection they have been unable to deny.

At the same time, however, the articles in this special section make clear that neither temporary protection nor the temporary character of international protection, are new. International protection

has always contained within itself a mutability that may be unlocked where host states so desire. In 'The Temporality and Stratification of Refugee Governance in Turkey: An Analysis for Temporary and International Protection from Reception to Return', Ela Gökalp Aras (2025, in this section) locates the temporariness inherent to international protection in the cessation clauses of the Refugee Convention which empower states to transform protection into return once they legally recognise a change in conditions in refugees' origin countries. Similarly, in her paper, 'Temporary Protection in the Shadow of the Refugee Convention: A View from the United States', Talia Inlender (2025, in this section) observes that forms of temporary protection have been a feature of the US legal framework for over 70 years. The turn to temporary protection may therefore be better understood as a centring and intensification of the temporary qualities of international protection, an approach adopted by states in response to migration flows perceived to be too large to be acceptable to host-state populations.

While temporary protection sits alongside refugee status and subsidiary or complementary protection as a form of international protection, some of the contributors to this special section treat temporary protection as a stand-alone, *sui generis* form of protection, which is justifiable given the key distinction of temporary protection status – its non-durable nature. As is evident from the contributions to this special section, one of the consequences of the temporary turn in asylum is the narrowing of access to the durable solutions with which international protection is concerned. Durable solutions are supplanted by sustained precarity under temporary protection – sometimes extended and prolonged over many years – and *de facto* involuntary return. While the articles in the special section vary in their geographical focus and/or methodological approaches, they converge on this central point of the decline of durable solutions. They also, however, identify potential advantages of temporary protection for both host states and protection beneficiaries. They further attest to the fact that, as the following article summaries show, scholarly analysis and engagement can play a role in bringing attention not only to the perils of moving away from durable solutions but also to the pitfalls that must be avoided if the increasingly widespread recourse to temporary protection is to unfold in a manner that benefits not only host states but also those in need of those states' protection.

The contributions

In their contribution, 'How "Special" is the Special Law? Temporary Protection and Migration Infrastructure in Poland Following the Outbreak of the Full-Scale War in Ukraine', **Kindler and Tygielski** (2025, in this section) adopt a critical approach to migration infrastructure to examine Poland's response to the large-scale arrival of forced migrants following the Russian invasion of Ukraine, with which Poland shares a 535 km border. The sudden mass inflow of people from Ukraine catalysed Poland to adopt the Act of 12 March 2022 on Assistance to Citizens of Ukraine in connection with the Armed Conflict on the Territory of the Country, referred to as the Special Law. The authors analyse the impact of this law not only on those it protected but also on the migration-infrastructure actors such as central and local government, civil society, migration lawyers and employee and employer organisations, by drawing on data from 43 semi-structured qualitative interviews with Ukrainian forced migrants and migration-infrastructure actors conducted between March and October 2023 in Poland. The authors carry out a multi-dimensional analysis that reveals that the Special Law facilitated the work of migration-infrastructure actors in the 'humanitarian dimension' by, for example, simplifying processes of entry and residence and access to the labour market, thereby allowing those actors to devote more time to finding work for the Ukrainian arrivals. Analysis of the 'social dimension' of the migration infrastructure – namely, the social networks of migrants – reveals the key role played by

Ukrainians themselves in explaining and circulating information about the protective content of the Special Law and how to access it. Indeed, the information disseminated by Ukrainians to Ukrainians offset the shortcomings revealed by the authors' analysis of the 'technological dimension' of the migration infrastructure. These shortcomings include low levels of database inter-operability between central and regional government and deficient online application processes for residence cards, which meant that Ukrainians had to present themselves in person at government offices to have their fingerprints taken. At the same time, however, the 'technological dimension' was aided by the Special Law's introduction of a number of innovations such as an ICT system facilitating contact between Ukrainian citizens and employers.

Kindler and Tygielski highlight that Poland's Special Law diverged in important ways from the EU's TPD. Chief among these ways was the limitation of the personal scope of the Special Law to Ukrainian citizens. By contrast, the implementation Decision of 4 March 2022 provided that the protection of the TPD would be available not only to Ukrainian citizens who had been residing in Ukraine since before 24 February 2022 but also to stateless persons or non-Ukrainian citizens who held refugee status or another form of protection in Ukraine before 24 February, as well as family members where 'the family was already present and residing in Ukraine before 24 February'. A further area in which the Special Law was more restrictive than the TPD related to accommodation. While the former obliges the state to provide suitable accommodation for beneficiaries of temporary protection, the Special Law was amended in 2023 to require Ukrainians to pay for the collective accommodation facilities provided by the state. As the TPD operates in parallel to – and distinct from – the Special Law, there were situations where it served to fill in protection gaps created by the Special Law. For example, while the Special Law required that Ukrainians' entry into Poland after the Russian invasion had to be recorded by the Border Guard, the TPD did not formulate formal requirements on how a person fleeing war should cross the border and therefore facilitated the legalisation of individuals who had entered illegally in contravention of the requirements of the Special Law.

Kindler and Tygielski's analysis of the Special Law is placed within the wider context of Ukrainian labour migration to Poland. Prior to 24 February 2022, Poland was already host to a substantial population of Ukrainian migrant workers, many of whom engaged in the circular migration facilitated by geographical proximity and the demand for seasonal labour in Poland. The authors note that the characteristics of the post-2022 invasion population differed from those of previous years, with the former being predominantly made up of children, women and the elderly – but they also observe some striking convergences between labour and forced migration. They note that forced migrants continue to maintain transnational connections, mirroring established labour-migration patterns by crossing borders to check on family members who remain in Ukraine, thus underscoring the persistent need for familial and social connectivity despite displacement. They also make the observation that, until recently, the state-defined temporariness of legal statuses was mainly characteristic of labour migration. Persons benefiting from the Special Law and the TPD are therefore, in many respects, more advantaged than migrant workers: the former may bring or be joined by their families, may have fewer restrictions on their access to the labour market and may benefit from a catalogue of state support not provided to migrant workers. Kindler and Tygielski's contribution brings into sharp relief, however, the profound precarity that pervades Ukrainians' temporary presence in Poland. The sense of insecurity is exacerbated in the Polish context by frequent amendments to the Special Law, creating challenges for all migration infrastructure actors. On one view, of course, it is this very mutability and instability that the temporary turn in international protection seeks to foster. It gives rise to the question reasonably

posed by Kindler and Tygielski at the close of their contribution as to whether we are witnessing the emergence of a new normative framework for migrant protection.

In her paper, 'Revisiting the Concept of Flexibility in Temporary Protection Practices at the Intersection of International Refugee and Human-Rights Laws: The Case of Türkiye', **Neva Övünç Öztürk** (2025, in this section) focuses on the intersection of international refugee law and human rights law in the Turkish context to critically re-evaluate the concept of flexibility in temporary protection from a legal perspective. The value of a focus on Türkiye lies in the fact that the country has implemented temporary protection informally since 2012 – and formally since the adoption of the Law on Foreigners and International Protection (LFIP) in 2014. It is, therefore, along with the regime inaugurated in the EU in March 2022, the most significant contemporary practice of temporary protection. It is notable that the legal framework for temporary protection – established in Article 91 of the LFIP and operationalised through the Temporary Protection Regulation (TPR) – is origin-country neutral, a sharp distinction from the geographical limitation that Türkiye applies to the 1951 Refugee Convention, which makes Convention protection available only to persons from Europe.

The author explores whether flexibility, generally seen as a central advantage of temporary protection, may in fact militate against key principles of the international protection and human rights framework such as access to durable solutions and legal safeguards on the limitation of fundamental rights. Övünç Öztürk's (2025, in this section) argument is underpinned by the analysis of two dimensions of (excessive) flexibility, namely, rule-making and implementation. The focus on these dual dimensions highlights how broad discretion may, when exercised without adequate legal safeguards to ensure legal certainty and consistency with the rule of law, limit fundamental rights and create a legal limbo for displaced individuals. The analysis demonstrates that these challenges are exacerbated by the lack of effective international responsibility-sharing mechanisms and the reliance on temporary protection measures.

When it comes to flexibility in rule-making, Övünç Öztürk describes how both Article 91 LFIP and the TPR, which is the main source governing temporary protection in Turkish law, confer broad discretionary powers on the administrative authorities. This means that the authorities enjoy discretion when it comes to the measures to be taken for the reception and prevention of a mass influx; the rights, obligations, stay and exit of persons within the scope of the influx; cooperation and coordination between (inter)national institutions; and the determination of the duties and powers of central and provincial institutions. The author identifies two key implications of this flexibility in the state's authority to design the rules governing temporary protection. First, persons under temporary protection in Türkiye are ineligible to apply for international protection and, given that there is no upper time limit to temporary protection, such persons may remain in a temporary protection limbo until such time as discretion is exercised to terminate that protection if conditions in the origin country permit. With the door closed on the durable solutions inherent in international protection, beneficiaries of temporary protection in Türkiye are effectively left in a sustained state of uncertainty that ultimately erodes the exceptional and transitional character of temporary protection. Making this latter indefinite also raises broader concerns about the role of such protection in situations of protracted displacement. Second, the TPR provides excessive flexibility for the authorities to determine the access to and limitations of fundamental rights such as liberty (freedom from detention) and freedom of movement. The author raises the plausible prospect that the flexibility enjoyed by the authorities in making rules on temporary protection infringes both the Turkish constitution and international human-rights standards.

When it comes to flexibility in the application of rules, Övünç Öztürk identifies Turkish practice around voluntary return and restrictions on freedom of movement and residence to illustrate the adverse consequences of wide discretion in the practical application of rules. Voluntary return is effectively promoted as the only feasible, durable solution for those under temporary protection, in order to reduce administrative burdens and manage migration more efficiently. Some return processes are carried out without providing the affected individuals with the necessary legal safeguards, thus raising concerns about the risk of *refoulement*. Similarly, the requirement that beneficiaries of temporary protection are obliged to obtain a travel permit in order to leave their designated province of residence, without any explicit legal basis in either the TPR or the LFIP, conflicts with international human-rights norms and domestic constitutional standards on freedom of movement. The author explains this excessive flexibility as an outcome of a lack of international responsibility-sharing which produces a demand for migration control that is facilitated by a flexibility that valorises administrative convenience and efficiency over legal accountability.

Övünç Öztürk ultimately identifies temporary protection as a response to the practical gap arising from the absence of a binding, enforceable system for the fair and effective sharing of responsibility for international protection. In the absence of effective responsibility-sharing mechanisms, temporary protection offers a pragmatic and interim solution which emphasises flexibility as a way in which to ease the pressures on states. Temporary protection may, however, undermine the very system of international protection which it may be viewed as buttressing, replacing durable solutions with *de facto* involuntary return – and prolonged precarity and rights restrictions for persons under temporary protection. The EU's *de facto* endorsement of Türkiye as a safe third country legitimises the excessive flexibility that characterises the country's temporary protection regime, marking a troubling shift in the approach to protection, where adherence to international law is increasingly compromised in favour of pragmatic considerations.

While concerned with the dangers of excessive flexibility, the author does not call for the restriction of state discretion in the context of temporary protection. States that perceive their capacity for responsive action as unduly constrained may resort to other, more deleterious, deterrence policies or border closures, thereby undermining the protective aims of the international refugee regime itself. Instead, a calibrated balance between flexibility and legal accountability is essential in order to sustain the functionality of the regime and to preserve states' willingness to cooperate within it. Careful supervision is required in order to ensure that flexibility is operated in a way that is compatible with the principles and spirit of international protection and human-rights standards. In the absence of a standardised and binding international framework, however, states retain significant discretion in how they implement temporary protection measures.

The contribution of **Ela Gökalp Aras** (2025, in this section) also focuses on temporary and international protection in Türkiye. In 'The Temporality and Stratification of Refugee Governance in Turkey: An Analysis for Temporary and International Protection from Reception to Return' she identifies the situation of Syrians under temporary protection in Türkiye as a paradigmatic case of how modern states balance humanitarian commitments with national interests, with the government's open-door policy at the initial stage of large-scale Syrian arrivals evolving into a more regulated, securitised approach, reflecting the complex interplay between domestic politics, regional stability and international obligations. The author's central research question concerns how the mechanisms of temporality and stratification interact to produce and sustain what the author terms a condition of 'governable precarity' that enables the Turkish state to shift flexibly from humanitarian reception to return-oriented policies.

She begins her discussion of temporality by noting its origins, in the context of international protection, in the cessation clauses of the Refugee Convention which institutionalised temporality as a governance tool, thus enabling states to transform protection into return once they legally recognise a change in conditions. As noted by scholars like Alice Edwards (2012), temporary protection regimes operate through the same logic, enabling states to fulfil humanitarian duties while retaining sovereignty over time. This strategic temporal mechanism is domesticated in Article 11 of Türkiye's TPR. In an observation that chimes concordantly with the conclusions proposed by Övünç Öztürk, Gökalp Aras observes that extended temporariness facilitates both humanitarian legitimacy and political flexibility, sustaining governance frameworks that naturally evolve towards repatriation. Temporality in law and policy thus creates the conditions for return to appear legitimate, timely and orderly. The author employs the concept of 'strategic temporality' to capture the intentional use of temporality by state actors to manage, control and ultimately shape the experiences of protection beneficiaries – and identifies this as a central framework for understanding the Turkish response to the Syrian refugee crisis. The strategy is characterised by uncertainty, liminality and complexity, which collectively shape the experiences of refugees and the responses of the various actors involved. Within the legal framework, strategic temporality is implemented through temporary protection statuses, which grant limited rights while maintaining legal precarity. The legal precarity experienced by protection beneficiaries serves as a key component of this governance strategy, ensuring control over their movements and rights.

If temporality normalises the expectation of return, stratification defines who can be returned, when and under what conditions. Legal stratification refers to the creation of hierarchical legal statuses that determine access to rights, services and opportunities. This selective differentiation not only limits beneficiaries' ability to achieve stability but also reinforces their temporality, making it clear that their stay is conditional and subject to change. Legal stratification allows control to be maintained over the refugee population, ensuring that their presence remains manageable and adaptable to the state's shifting priorities. It allows the state to exercise power over the refugee experience, dictating the terms of access to rights and services while keeping the possibility of return open. Within Turkish law, legal stratification is formally embedded in the LFIP and related secondary legislation. Articles 61–63 establish three distinct forms of international protection in addition to the temporary protection codified in Article 91. These layered statuses carry differentiated rights, residence entitlements and access to legal remedies, thereby constructing a legally sanctioned hierarchy of protection. The TPR further codifies this inequality by granting only limited social and economic rights (health, education, work permits) while excluding permanent residence, family reunification or citizenship pathways and permitting the termination of status when 'the situation necessitating it ceases to exist'. Furthermore, a 2016 Regulation restricts labour-market access for temporary protection beneficiaries, deepening legal inequality between such beneficiaries and persons with (other forms of) international protection. This architecture, combining the legal differentiation of protection beneficiaries with temporality, illustrates how temporality and legal stratification interact not just as mechanisms to manage protected persons within Türkiye but also to make the process of return more feasible and justifiable. The temporality embedded in the legal framework helps to normalise the idea of return as an inevitable outcome, while legal stratification ensures that protection beneficiaries remain in a vulnerable position, more willing to accept return as a viable option.

In her paper, 'Temporary Protection in the Shadow of the Refugee Convention: A View from the United States', **Talia Inlender** (2025, in this section) illustrates the implications of the temporary turn in the US through an examination of four country-specific, time-limited humanitarian parole programmes operated by the US government between August 2021 and January 2025 for people from

Afghanistan, Ukraine and Venezuela and Cuba, Haiti and Nicaragua. While forms of temporary protection have been a feature of the US legal framework for over 70 years, Inlender notes that the country has never extended protection to as many people through humanitarian parole programmes in such a short period of time as it did during the Biden administration between summer 2021 and January 2025. She explains this increasing recourse to temporary protection by reference to the attenuation of the US asylum system that began in the 1990s and accelerated during the first Trump administration. The latter saw the introduction of drastic measures that severely curtailed access to the US asylum system. The end result is that the durable protections afforded by the Refugee Convention and incorporated into US law by the Refugee Act of 1980 are now inaccessible to many people seeking safety in the US. The ascent of temporary protection and the corresponding decline of durable refugee status in the US is clear from the numbers: while humanitarian parole was used to extend temporary protection to hundreds of thousands of migrants between August 2021 and January 2025, just a small fraction of that number was granted refugee or asylee status during that period.

Following her richly detailed examination of the four humanitarian parole programmes operated by the US between 2021 and 2025, Inlender draws on them to propose a framework for evaluating temporary protection mechanisms, with the proviso that temporary protection cannot serve as a substitute for access to the more durable protections offered by the Refugee Convention. It is, however, the *de facto* denial of Refugee Convention protection to so many international protection claimants that lends a particular urgency to the elaboration of an evaluative framework for temporary protection.

Inlender identifies three components of the US humanitarian parole programmes that illustrate the benefit of temporary protection, both for those in need of protection and for their host states. The first component is the speed with which temporary protection measures allow the state to respond to the immediate protection needs of large numbers of people, often also providing immediate access to the labour market. By contrast, applicants for Refugee Convention protection often endure a wait of many years before the definitive determination of their refugee status or the realisation of the decision to resettle them. Secondly, the simplicity of humanitarian parole applications allows for them to be completed without intensive legal assistance, again a striking contrast to asylum applications. While the relative simplicity of the application process advantages persons in need of protection, it also helps states to better meet their obligations to afford protection to those in need. The third beneficial component of temporary protection programmes is what Inlender characterises as 'grounding'. This means that they create an opportunity for forced migrants to develop attachments in a safe country that may lead to longer-term protection.

Inlender's examination of the US humanitarian parole programmes also discloses some serious potential limitations. First, she notes the subjectivity of such programmes. This refers to the fact that they may effectively discriminate on the basis of nationality, conferring protection only on persons from a designated country. The subjectivity extends, however, to implementation, with the criteria, scope and content of temporary protection programmes varying from programme to programme, resulting in divergent treatment by country. Second, temporary protection programmes are 'solitary', meaning that they are detached from international norms and accountability, which creates space for unequal treatment for different groups of temporary protection beneficiaries. Finally, Inlender discusses the instability of temporary protection programmes which is inherent in their very nature; their time-limited design puts beneficiaries in a state of prolonged precarity and sustained uncertainty; their mutability militates against the very 'grounding' that they may facilitate. Indeed, the inherent instability of such programmes is starkly illustrated by President Trump's termination of humanitarian parole and other temporary protection programmes upon assuming office in January 2025.

Inlender concludes with a more detailed, albeit brief, sketch of a temporary protection programme that maximises speed, simplicity and grounding while minimising subjectivity, solitariness and instability. In so doing, she outlines a framework for protection that will be of interest to anyone concerned with the specifics of temporary protection and the rapidly shifting international protection landscape more broadly.

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Notes

1. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection [2022] OJ L 71.
2. Council Directive 2001/55/EC of 20 July 2001 on the minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212.
3. Home Office, *Restoring Order and Control: A Statement on the Government's Asylum and Returns Policy*, 21 November 2025. <https://www.gov.uk/government/publications/asylum-and-return-s-policy-statement/restoring-order-and-control-a-statement-on-the-governments-asylum-and-returns-policy> (accessed 16 December 2025).

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