A CRITICAL ASSESSMENT OF TURKEY'S MIGRATION REGIME:
SECURITIZATION VERSUS HUMAN RIGHTS?

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ABSTRACT

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Given the fact that migration policy is shaped by security concerns and human rights, this thesis employs twin axes of securitization and human rights in order to shed light on to what extent both securitization and human rights dimensions have play out in the migration policy making and shape phases of change in the Turkish case. It is argued that since the proclamation of the Republic, migration policy has played a crucial role in the process of nation building and national identity creation and it has responded to the ideological and political preferences of the Turkish state throughout the Republic but has not given due account to the human rights dimension of the policy. However, thanks to the Law on Foreigners and International Protection, Turkey's migration policy has changed profoundly with human rights guarantees for those who are in need of protection and assistance.

As Turkey is situated at the external borders of the EU and is a candidate country under the obligation of assuming the acquis, Turkey-EU relations on migration policy is analyzed through a critical reading of Europeanization literature. The thesis argues that even though there are ground-breaking developments with regard to human rights, there is also an increased securitized approach to the migration management, in particular in the area of irregular migration.

Finally, within the context of Turkey's new legal migration environment, future course of Turkey's Syrian refugee policy is discussed with reference to the securitization theory.

Keywords: Turkish migration policy, irregular migration, geographical reservation, readmission agreement, Syrian refugees.

ÖZ

TÜRKİYE'NİN GÖÇ REJİMİNİN ELEŞTİREL BİR DEĞERLENDİRMESİ: GÜVENLİKLEŞTİRMEYE KARŞI İNSAN HAKLARI?

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Bu tez, güvenlikleştirme yaklaşımı ve insan hakları ekseninde Türkiye'nin göç rejimini incelemektedir. Güvenlikleştirme ve insan hakları sorunsalının göç politikalarının iki ayrı ekseni olduğu göz önüne alınarak, bu iki bağlamın Türkiye'nin göç politikasında ne ölçüde belirleyici olduğu tartışılmıştır.

Cumhuriyetin kuruluşundan bu yana göç politikası, ulus ve ulusal kimlik yaratımı sürecinde önemli bir rol üstlenmiş ve Cumhuriyet tarihi boyunca farklı amaçlar ve şekillerde kurgulanarak devletin gereksinimlerine yanıt vermiş fakat konunun insan haklarını boyutunu özellikle mülteci politikası bağlamında büyük oranda ıskalamıştır. Bununla birlikte, 6458 sayılı Kanun ile Türkiye'nin göç politikası radikal bir dönüşüm geçirmiş ve konunun insan hakları boyutunda oldukça önemli bir iyileşme sağlamıştır.

Türkiye'nin değişen göç politikası ve göç yönetimi, Türkiye'nin AB'nin güney sınırlarında konumlanan ve müktesebatı yüklenme durumunda olan bir aday ülke olduğundan hareketle, eleştirel bir Avrupalılaşma literatürü üzerinden incelenmiştir.

Son olarak, göç politikasındaki değişim ve dönüşümün belirgin olarak gözlemlendiği Türkiye'nin Suriye mülteci politikasının gelecekteki seyri güvenlikleştirme yaklaşımı çerçevesinde incelenmiştir.

Anahtar Kelimeler: Türkiye'nin göç politikası, düzensiz göç, coğrafi kısıtlama, geri kabul anlaşması, Suriyeli mülteciler.

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LIST OF ABBREVIATIONS

EU	European Union
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IDPs	Internally Displaced Persons
PKK	Kurdistan Workers' Party
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
RA	Readmission Agreement
NPAA	National Programme for the Adoption of the Acquis
APD	Accession Partnership Document
LFIP	The Law on Foreigners and International Protection
TCNs	Third Country Nationals
TAF	Turkish Armed Forces

CHAPTER I

INTRODUCTION

Migration is a complex and multifaceted policy and has connections with a wide array of areas such as human rights, security, development, and foreign policy. It is instrumentalized for different purposes range from being used for controlling the nature and size of population through forced migration to being used as a measure to justify security-related measures at the national, supranational, and international levels. Therefore, it is quite a challenging job to study migration as a policy area to be studied solely on its own. Therefore, a holistic approach to migration helps us better position a country in the international migration regime.

Turkey is a country that has been experiencing migratory movements from, to, and through its territory even before the proclamation of the Republic. Although the first half of the 20th century was characterized by the international migratory movements from and to Turkey in the context of nation building; historically the country was conceptualized as a country of emigration.[1] Starting from 1960s under guest worker programs, Turkish nationals migrated to Western European countries which later continued in the form of family reunification. The asylum track of the country throughout 1980s and 1990s contributed to Turkey's conceptualization as a country of emigration. However, 1980s witnessed dramatic changes in Turkish migration regime. For the first time in its history, mass immigration of "non-Turks" forced Turkish state to take measures to deal with immigrants and asylum seekers.[2]

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[1] Kirişçi, K. (2003). Turkey: A Transformation from Emigration to Immigration. *Migration Policy Institute* http://www.migrationpolicy.org/article/turkey-transformation-emigration-immigration retrieved at 4.1.2015

[2] İçduygu, A. and Kirişçi K. (2014). Introduction: Turkey's International Migration Transition. In Ahmet İçduygu and Kemal Kirişçi (Eds.). *Land of Diverse Migrations, Challenges of Emigration and Immigration in Turkey*. (1-25). İstanbul: Bilgi University Press.

Meanwhile, the country's role as a transit country has gained prominence due to its geographical location and closeness to the European Union (EU), Middle East and North Africa regions.[3] Lately, the Syrian crisis caused a profound change in Turkey's position in the international migration regime as the country has been hosting the biggest refugee population in the world as of February 2015.[4] Based on these, it is possible to conclude that several diverse and dynamic international migration patterns overlap in the Turkish context.[5] In that vein, analyzing international migration in Turkey bears importance, it helps mapping Turkey in the contemporary global setting with respect to the twin axes of securitization and human rights.

Migration studies begin with the very basic question of why do people move from one place to another? In an attempt to answer this question, voluntary migration theories are developed and they are based on the promise that people migrate voluntarily for an enhanced well-being. Forced migration on the other hand, prioritizes the rights of certain group of people, mostly refugees.[6] Under 1951 Geneva Convention and 1967 Protocol, people fleeing from well-founded fear of being persecuted should have international protection. While international human rights provide minimum standards which shall apply to everyone irrespective of their legal status; international refugee regime guarantees human rights of refugees. 1951 Geneva Convention strictly defines who the refugee is and conditions to be eligible as a refugee are limited to race, religion, nationality, and membership of a particular

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[3] Fargues, F. (Eds.). EU Neighborhood Migration Report 2013. *European University Institute, Migration Policy Center.* http://cadmus.eui.eu/bitstream/handle/1814/27394/MPC_EU_NeighbourhoodMigrationReport2013_web.pdf?sequence=5 retrieved at 4.1.2015

[4] United Nations High Commissioner for Refugees (UNHCR) (2015, February 26). Press Release, UN High Commissioner for Refugees, Antonio Guterres- Written text of speech to the UN Security Council http://www.unhcr.org/54ef66796.html retrieved at 27.2.2015

[5] İçduygu, A. and Yükseker, D. (2010). Rethinking Transit Migration in Turkey: Reality and Representation in the Creation of a Migratory Phenomenon. *Population, Space and Place,* 18:4, (441-456).

[6] Betts, A. (2009). *Forced Migration and Global Politics*, p.4. MA: Wiley-Blackwell.

social group or political opinion. (1951 Geneva Convention, Article 1). As the international legal framework for refugee protection is far from addressing protection needs of forcibly displaced populations, including internally displaced persons, great majority of forcibly displaced persons are beyond the reach of international refugee protection regime in legal terms. Therefore, since its adoption the term "refugee" has become a generic label for a wide spectrum of forced migrants including those who are not *prima facie* refugees under 1951 Geneva Convention.[7]

Responses by the developed countries to migration movements induced by forced migration dynamics and globalism led to highly selective migration policies with a strong focus on highly skilled migration. United Nations (UN) notes that governments open their door to regular migration in the last two decades with a "greater selectivity towards highly skilled workers."[8] On the other hand, for those who are not classified as "highly" skilled labor, protections challenges are growing as migrant receiving countries closing their doors to them. In fact, even refugees themselves are refused to be granted protection and subjected to human rights violations to a large extent. Genuine asylum seekers are prevented to lodge asylum claims and sent back home and/or to transit countries.[9]

1990s was decade of asylum crises while the growth in irregular migration flows directed to developed countries increasingly gained prominence in migration

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[7] Zetter, R. (2007). More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization. *Journal of Refugee Studies*, 20:2, (172-192).

[8] United Nations (2013). *International Migration Policies: Government Views and Priorities,* pp.5-6. United Nations, Department of Economic and Social Affairs, Population Division ST/ESA/SER.A/342
http://www.un.org/en/development/desa/population/publications/pdf/policy/InternationalMigrationPolicies2013/Report%20PDFs/z_International%20Migration%20Policies%20Full%20Report.pdf#zoom=100 retrieved at 4.3.2015

[9] Inter Parliamentary Union (2001). *Refugee Protection: A Guide to International Refugee Law,* p.6
http://www.ipu.org/pdf/publications/refugee_en.pdf retrieved at 4.3.2015

policy.[10] From 1990s onwards, international community responded to refugee influxes through delivering humanitarian assistance and in some cases through encouraging large scale repatriation programs. Today, while millions of forced migrants have been trapped in protracted refugee situations, others struggle to survive in camps and urban communities in different parts of the world. Meanwhile, the vast majority of forcedly displaced persons have been in exile for years.[11] Struggling to survive; they are confronting restrictive policies of states which force them to resort to irregular means in an attempt for security and safety. At the same time, refugee influxes give rise to security concerns on the part of states which in fact reinforce restrictive trends in states policies towards irregular migrants and refugees. Therefore, based on these, it is possible to conclude that the shared element in contemporary migration policies is the restrictive trend employed by migrant receiving countries against irregular migrants, including genuine asylum seekers.[12]

Migration policy is awash with terms in an effort to categorize migrants. Migrants are referred to as regular, irregular, unwanted, documented, undocumented, trafficked, forced, voluntary migrant and so on so forth.[13] In that vein, Newman argues that "how governments regulate immigration and define categories of immigrants has, over time, led people to view migration as an issue related to the

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[10] Doomernik, J. (2004). Migration and Security: The Wrong End of the Stick? In van den Anker, C. (Eds.). *Political Economy of New Slavery*. (37-54). Basingstoke: Palgrave Macmillan.

[11] Loescher, G., Milner J., Newman E. and Troeller G. (2005). Introduction: The Significance of Protracted Refugee Situations, p.3. In Loescher G. and Milner J. (Eds.). *Protracted Refugee Situations: Domestic and International Security Implications*. New York: Routledge for the International Institute of Strategic Studies.

[12] Organisation for Economic Co-operation and Development (2001). *Annual Report, 2001 Edition, Trends in International Migration: Continuous Reporting System on Migration* http://www.oecd.org/migration/mig/2508596.pdf retrieved at 5.3.2015

[13] Global Migration Group (2013). *Thematic Paper, Exploitation and Abuse of International Migrants, Particularly Those in an Irregular Situation: a Human Rights Approach,* p.3 http://www.globalmigrationgroup.org/sites/default/files/uploads/news/GMG-Thematic-Paper-20131224-updated.pdf retrieved at 5.3.2015

security both of the state and of existing citizens and legal residents."[14] Since migratory patterns have changed profoundly in the age of globalization and refugee influxes are experienced worldwide, amongst these categories, irregular migration has become the top policy concern of the migrant receiving countries.[15] However, to a large extent, migrant receiving countries prefer to use the term "illegal" instead of irregular/unauthorized migration. For example, the common EU immigration policy aimed at combatting illegal immigration as if irregular migrants are the enemy of the EU.[16] In fact, the term "illegal" connects people with criminality, contributes to the negative discourses on migration, and legitimizes militarized options towards migrants, refugees and asylum seekers. Indeed, the term "illegal" is a highly political choice, it masquerades the fact that most people do not have a choice but to migrate. For migrants, refugees, and asylum seekers especially when they are deemed "illegal", it is difficult for them to have their human rights respected.[17] In fact, migrants have their human rights respected according to the category that they belong to and the reasons underlying the migration.[18] In general, migrants,

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[14] Newman, E. (2003). Refugees, International Security, and Human Vulnerability: Introduction and Survey, p.4. In Newman E. and van Selm, J. (Eds.). *Refugees and Forced Displacement, International Security, Human Vulnerability, and the State*. Tokyo; New York: United Nations University Press.

[15] Although there is no universally accepted definition of irregular migration, movement that takes place outside the regulatory norms of the countries is referred to as irregular migration. See International Organization for Migration. Key Migration Terms http://www.iom.int/key-migration-terms#Irregular-migration retrieved at 5.3.2015. However, as states determine which types and levels of migration are permitted and which are not, irregular migration is emerged out of social, political, and legal constructs. See Düvell, F. (2014). Framing and Reframing Irregular Migration, p.1. In Anderson, B. and Keith, M. (Eds.). *From Migration: A COMPAS Anthology*. COMPAS: Oxford.

[16] See Lisbon Treaty Article 63a. Walters, W. (2010). Imagined Migration World: The European Union's Anti-Illegal Immigration Discourse, p.82. In Geiger, M. and Pécoud A. (Eds.). *The Politics of International Migration Management*. (73-95). New York: Palgrave Macmillan.

[17] Dembour, M. B. and Kelly, T. (2011). Introduction, p.1. In Dembour, M. B. and Kelly, T. (Eds.). *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*. New York: Routledge.

[18] Grant, S. (2005). Migrants' Human Rights: From the Margins to the Mainstream. *Migration Policy Institute, Online Special Issue: Migration and Human Rights*. March 2005.

particularly those in an irregular situation, are very likely to being exploited during their journey and/or upon arriving in their destination country. "Illegal" migrants are deprived of security and protection, subjected to humiliation and in most cases put in detention and they are deported to home/origin/transit country.[19]

1.1. Conceptualization

Migration policy is shaped by the twin discourses of security and human rights while a growing conflict of interests between the two is experienced worldwide.[20] Although in the official discourse, human rights of migrants are welcomed, militarized policies against migrants are employed by the migrant receiving countries. Militarized policies employed in the name of migration management are justified on the ground to protect human rights of migrants against human traffickers and smugglers.

Considering both the universality of human rights and securitization trend in migration policy, the UN Special Rapporteur on the human rights of the migrants notes that there is "the gap between policy and practice" [21] while others address "the

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http://www.migrationpolicy.org/article/migrants-human-rights-margins-mainstream   retrieved   at 5.3.2015

[19] Global Migration Group (2013). *Thematic Paper.*

[20] Biehl, K. (2009). Migration Securitization and its Everyday Implications: an Examination of Turkish Asylum Policy and Practice, p.5. *European University Institute, Robert Schuman Center for Advanced   Studies,   Best   Participant   Essay   Series   2009/1* http://cadmus.eui.eu/bitstream/handle/1814/11761/CARIM_SS_IV_Essay_2009_01.pdf?sequence=1 retrieved at 5.3.2015

[21] Crépeau, F. (2012). Report by the Special Rapporteur on the Human Rights of Migrants, Regional Study: Management of the External Borders of the European Union and Its Impact on the Human Rights   of   Migrants,   p.10.   *United   Nations   A/HRC/23/46* *http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en. pdf* retrieved at 5.3.2015

gap between policy and protection" in migration policy.[22] Although the gap between policy and practice is an undisputable reality on the ground, causes suffering of migrants worldwide, the problem is deeper than the so called "gap". The whole design of migration policy seems problematic. This is because of the fact that migration is closely related to human mobility regimes worldwide. While movements of people across borders have become global, international migration becomes central to domestic and international politics with enormous economic, political, and social consequences. Globalization has triggered free movement of goods, capital, and services and resulted in lowering of barriers to trade and services whereas the free movement of people is not pursued as such.[23] In that vein, De Giorgi argues that "[i]n the last quarter of the 20th century, (…) the partial de-bordering of the western world under the impulse of economic and financial globalization has been complemented by a simultaneous process of re-bordering (…) against global migrations."[24] The tightening of borders against migrants manifested itself in increasingly complex and sophisticated non-entrée regimes that are designed to preclude access to territory.[25] Besides, globalization and interdependence have led to the creation of new institutions in relation to both human mobility and non-mobility. States' institutionalized international cooperation has direct and indirect consequences for the refugee protection.[26] According to Betts, the international refugee regime is no longer isolated from other areas of international governance.

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[22] Grant, S. (2005). Migrants' Human Rights; Zard, M. (2005). Human Rights Strengthen Migration Policy Framework. *Migration Policy Institute, Online Special Issue: Migration and Human Rights.* March 2005 http://www.migrationpolicy.org/article/human-rights-strengthen-migration-policy-framework retrieved at 6.3.2015

[23] Gilpin, R. (2000). *The Challenge of Global Capitalism: the World Economy in the 21st Century*. Princeton, NJ: Princeton University Press.

[24] Giorgi, A. (2010). Immigration Control, Post-Fordism, and Less Eligibility, A Materialist Critique of the Criminalization of Immigration across Europe, pp.150-151. *Punishment & Society,* 12:2.

[25] Zetter, R. (2015). Protection in Crisis: Forced Migration and Protection in a Global Era, p.14. *Migration Policy Institute*. 1.4.2015

[26] Betts, A. (2010). The Refugee Regime Complex. *Refugee Survey Quarterly*, 29:1, (12-37).

For example, institutionalized cooperation on travel overlapped with the refugee regime since the cooperation on travel has significant repercussions for the right to enter to the territory of a state.[27]

In a nutshell, states prefer to securitize migration in an effort to address the challenges of changing migration dynamics. Migration has been increasingly portrayed as a security issue since the end of Cold War. It is increasingly conceptualized within the realm of security as a "problem" which in turn legitimizes restrictive policies of migrant receiving countries.[28] States employ a wide range of securitized policies such as tightened border controls, tough visa requirements and surveillance mechanisms to block migrants' access to their territories. As such, securitization of migration is presented as part of the solution, it marks a ''shift from the protection of asylum seekers to protection from them.''[29]

1.2. Securitization

Securitization was first introduced by the Copenhagen School of Critical Security Studies. While traditional approaches to security largely focus on power relations between nation states, securitization theory aimed at broadening the traditional notion of security and focuses on the social construction of security in an attempt to understand dynamics and processes of security and "securitized" issues.[30] It studies

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[27] Ibid.

[28] Pécoud, A. and Guchteneire, P. (2006). International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility, p.70. *Journal of Borderlands Studies,* 21:1.

[29] Uçarer, E. M. (2001). Managing Asylum and European Integration: Expanding Spheres of Exclusion?, p.289, *International Studies Perspectives*, 2:3.

[30] Buzan, B., Wæver, O., and de Wilde, J. (1998). *Security: A New Framework for Analysis,* p.vii. Boulder, Colo.: Lynne Rienner Pub.

how and *when* an issue becomes a security issue.[31] Securitization is a constructive process through which "an issue is dramatized and presented as an issue of supreme priority; thus by labelling it as security an agent claims a need for and a right to treat it by extraordinary means."[32] New security issues encompass a wide range of policy areas, range from terrorism, drug trafficking, and climate change to irregular migration. In the wake of September 9/11 and following attacks on the Western countries, fear of terrorism and islamophobia have strengthened security discourse on migration and justified restrictive and exclusive policies of immigration countries.[33] Lahav discusses that following September 9/11, migration issues have raised to high politics issues.[34] In this context, the issue of border security emerged as a key concern on the part of migrant receiving countries.[35] Controlling migration discourse gained prominence in the immigration policy with the distinctive role for the so called cooperation with source and transit countries.

Securitization legitimizes state actions against external threats thereby confer legitimacy on state policies while simultaneously consolidates certain categories of measures and policies which would not otherwise considered legitimate.[36] Following "the war on terror", Western states have adopted a broad range of policies to restrict asylum and immigration, as migrants and asylum seekers are increasingly connected

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[31] Ibid.

[32] Ibid, p. 26.

[33] Maggie, I. (2005). The Securitization of Migration: A Racial Discourse. *International Migration,* 43:5, (163-187); Kaya, A. (2009). *Islam, Migration and Integration: The Age of Securitization*. London: Palgrave.

[34] Lahav, G. (2003). Migration and Security: the Role of Non-State Actors and Civil Liberties in Liberal Democracies, p.90. *United Nations, Population Division, New York: UN/POP/MIG/2003* http://www.un.org/en/development/desa/population/events/pdf/2/ITT_COOR2_CH16_Lahav.pdf retrieved at 2.4.2015

[35] Pécoud, A. and Guchteneire, P. (2006). International Migration, p.70.

[36] Buzan, B., et al, (1998). *Security,* pp. 24–25.

to terrorism somehow.[37] Migration is increasingly subjected to politicization and framed within the context of the problems that migrant receiving countries face. Migration is presented as a threat to culture/identity, hold responsible for socio-economic problems that migrant receiving countries face, and provide the ground for justification of restrictive policies that are employed to keep migrants in their homes.[38] Therefore, securitization of migration has made possible the use of more restrictive policies acceptable and even made these policies necessary since migration has become "new focus for insecurity".[39] The overwhelming concern in migrant receiving countries is to stop and/or combat irregular migration as if it is possible to do so. As long as systematic factors that produce conflicts, wars, natural disasters etc. do not change fundamentally and continue in the way they are and displace people from their homes; they will lead to displacement across the globe. The absence of sufficient regular migration channels and opportunities contribute to irregular migration flows as well while migrants are increasingly forced to resort to irregular migration channels in an attempt for security and protection.[40]

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[37] Betts, A. (2009). Forced Migration, pp.75-76.

[38] Huysmans, J. (2006). *The Politics of Insecurity: Fear, Migration, and Asylum in the EU*. New York: Routledge.

[39] Waever, O., Buzan, B., Kelstrup, M. and LeMaitre, P. (1993). *Identity, Migration and the New Security Agenda in Europe*. London: Pinter; Buzan et al. (1998). Security; Ceyhan, A. and Tsoukala, A. (2002). The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies. *Alternatives: Global, Local, Political,* 27:1, (21-39).

[40] United Nations Human Rights Office of the High Commissioner (2013). *Migration and Human Rights: Improving Human Rights-based Governance of International Migration*, p.7 http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf retrieved at 4.4.2015; The International Federation for Human Rights (FIDH)- Migreurop- Euro-Mediterranean Human Rights Network (EMHRN). (2015). *Frontex between Greece and Turkey: At the Border of Denial*. https://www.fidh.org/IMG/pdf/rapport_en_web.pdf retrieved at 5.4.2015.

1.3. Human Rights

The Universal Declaration of Human Rights (1948) guarantees that everyone has the right to leave any country, including his own, and to return to his country (Article 13/2). However, there is no corresponding right to enter or to remain in another country. The decision on who is entitled to enter a country belongs to nation states.[41] Nation states sovereignty on regulating the entry and stay of non-nationals in their territory is not limitless though. States should act within the limits of their human rights obligations as the core principle of the human rights is human rights universality. States of origin, transit, and destination should all be responsible for the protection of migrants' human rights.[42] While states expel migrants irregularly staying on their territory, international human rights law requires that states should protect migrants' rights without discrimination as long as they remain on their territory, irrespective of their status. Therefore, a human rights-based approach to migration calls for the recognition of the fact that migrants, irrespective of their legal status, should have their human rights protected and respected.[43]

States have responded to irregular migration flows through border enforcement policies, anti-trafficking initiatives and immigration control measures which fail to take into account human rights of migrants to a large extent.[44] Migration governance on the other hand, gives a systematic reference to human rights of migrants and has

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[41] Touzenis, K. and Cholewinsk, R. (1999). The Human Rights of Migrants – Editorial Introduction. *International Journal on Multicultural Societies*, 11:1, (1-18).

[42] Global Migration Group (2008). *International Migration and Human Rights, Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights,* p.3. http://www.unhcr.org/49e479cf0.pdf retrieved at 5.4.2015.

[43] Ibid.

[44] Bustamante, J. (2008). Report of the Special Rapporteur on the Human Rights of Migrants, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. *United Nations, A/HRC/7/12.* http://www.globaldetentionproject.org/fileadmin/docs/Special-Rapporteur-on-the-Human-Rights-of-Migrants-2008a.pdf retrieved at 5.4.2015.

prioritized combating human trafficking and other forms of organized crime.[45] Therefore, in the official discourse human rights of migrants play a central role. In fact, migration governance and related policies to that end employ humanitarian discourse to justify their restrictive policies. For example, policies employed to block/prevent "illegal migration" are justified on the ground that people fall into hands of human smugglers and traffickers. In return, states polices are designed to protect migrants themselves against organized crime. Thus, human rights are instrumentalized in migration management and as such, they confer legitimacy on states' restrictive policies. However, policies employed to that end have produced contrary results. It is well documented that strict border control measures fail to "prevent" irregular migration; instead they push migrants and asylum seekers into the hands of human traffickers and human smugglers.[46] Migrants, genuine asylum seekers, and refugees are prevented to enter into potential countries of asylum under restrictive border measures and forced to fall into the irregular migrant category.[47] In most cases, preventive measures that do not address *causes* of human trafficking and smuggling give rise to the "zones of grey" as a result of closure of borders by migrant receiving countries which characterized by migrants' deaths.[48]

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[45] Waters, W. (2010). Imagined Migration World, p.73.

[46] Amnesty International (2014). *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*. EUR 05/001/2014 E http://www.soseuropeamnesty.eu/content/assets/docs/The_Human_Cost_of_Fortress_Europe_July_2014.pdf retrieved at 5.4.2015; Burridge, A. (2012). The Added Value of RABITs: Frontex, Emergency Measures and Integrated Border Management at the External Borders of the European Union. *RISC Consortium Working Papers, N.1* http://www.risc.lu/sites/default/files/editorfiles/burridge_risc_wp1_2012.pdf retrieved at 4.4.2015

[47] Cornelius, W. (2005). Controlling "Unwanted" Immigration: Lessons from the United States, 1993–2004. *Journal of Ethnic and Migration Studies*, 31:4, (775–794); Spijkerboer, T. (2007). The Human Costs of Border Control. *European Journal of Migration and Law*, 9, (127-139).

[48] Wihtol de Wenden, C. (2007). The Frontiers of Mobility, p.56. In Pecoud, A. and De Guchteneire, P. (Eds.) *Migration without Borders: Essays on the Free movement of People.* Paris: UNESCO Pub.

While states give a systematic reference to human rights of migrants in theory, they refrain from entering into legally binding commitments in practice. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families that was adopted in December 1990 grants human rights of migrants and their families. Treaty's ratification record provides a clear example on states stance towards a right based approach in migration policy since no Western migrant receiving country, including the United States of America and the EU member countries, ratify it.[49] In fact, rather than entering into legally binding commitments, migrant receiving countries favor non-binding platforms and consultative process such as best practices and/or recommendations which do not bind them before international law. Martin Geiger and Antoine Pécoud called it as "victimhood approach" which does not allow adoption of any binding legal commitment to protect migrants' human rights even though states employ strict human rights arguments in the discourse.[50] On the other hand, migrant receiving countries increasingly intervene to regulate migration which is crystallized in policies, such as employer sanctions[51] and strict border control policies.[52] Therefore, "[t]he way in which migration is regulated at the global level matters significantly

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[49] See, United Nations Treaty Collection.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en
retrieved at 5.4.2015

[50] Geiger M. and Pécoud A. (2010). The Politics of International Migration Management, p.13. In Geiger M. and Pécoud A. (Eds.). *The Politics of International Migration Management*. (1-20). New York: Palgrave Macmillan.

[51] The Employer Sanctions Directive sets out minimum standards on measures and sanctions against employers of irregularly staying third country nationals in the EU. See, European Union (2009). Directive 2009/52/EC. Official Journal of the European Union, L 168/24, 30.6.2009
http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF   retrieved at 5.4.2015

[52] Stephan, C. and Miller, M. (2009). *The Age of Migration* (Fourth Edition), p.306. Basingstoke New York: Palgrave Macmillan.

(…) because it affects individuals' and communities' access to human rights, human development, and security." [53]

1.4. Research Design and Methodology

Given the fact that migration policy is shaped by security concerns and human rights, this thesis employs twin axes of securitization and human rights in order to shed light on to what extent both securitization and human rights dimension have play out in the migration policy making and shape phases of change in the Turkish case. As Turkey is situated at the external borders of the EU and is a candidate country under the obligation of assuming the acquis, Turkey-EU relations on migration policy is analyzed through a critical reading of Europeanization literature.

This research is consisted of three main topics discussed in three separate chapters. The first chapter presents dynamics and underlying drivers of voluntary and forced migration distinction with a literature review of the international migration theories. It later analyzes trends and challenges in forced migration dynamics and takes a snapshot of international migration governance to identify policy making at the international level. The second chapter analyzes the EU migration policy in order to shed light on the external dimension of the policy with an aim to identify drivers of policy making and its repercussions on third countries. It then examines Turkish case through a critical reading of Europeanization literature. The third chapter deeply studies Turkish migration policy from the very beginning. It examines the drivers of policy making with respect to securitization and human rights dimensions. More specifically, this study aims to explore the following research questions:

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[53] Betts, A. (2008). Global Migration Governance, p.7. *Global Economic Governance Programme Working Paper 2008/43* http://www.migrationpolicycentre.eu/docs/SummerSchool2013/readings/Awad_Reading.pdf retrieved at 5.4.2015

Research Question 1: To what extent security and human rights concerns do play out in migration policy making and shape phases of change in the Turkish case?

Research Question 2: Situated at the external borders of the EU and as a candidate country under the obligation of assuming the acquis, to what extent Turkey's migration policy is Europeanized?

CHAPTER II

INTERNATIONAL MIGRATION

This chapter analyzes dynamics and underlying drivers of voluntary and forced migration distinction based on a critical reading of this linear distinction. It then provides a short literature review of the international migration theories and sheds light on trends and challenges in forced migration dynamics with a critical analysis of forced migration studies. This chapter argues that a strict categorization of migrants lead to an impasse in terms of migrants' access to protection channels. In the last part, it takes a snapshot of international migration governance in order to identify the characteristics of the policy making at different levels.

International migration poses challenges to nation states both in terms of sovereignty and national identity. While movement of people across borders challenges states ability to control their borders, immigrants (others/non-citizens) challenge cultural identity of states.[54] However, states have constantly adapted themselves to the forces and changes in the international system. The growth of global interdependencies in the world economy under globalization and other transnational forces has transformed nation states.[55] From the end of World War II, international migratory movements have grown in volume and also changed in character due to processes of global integration that were marked by two phases.[56] The first phase, continued from 1945 to the early 1970s under the high rates of economic development, was the era of immigration in the developed countries. Developed countries of Western Europe and North America had imported labor from underdeveloped/developing countries to

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[54] Sassen, S. (2005). Regulating Immigration in a Global Age: a New Policy Landscape, p.35. *Parallax,* 11:1.

[55] Ibid.

[56] Stephan, C. and Miller, M. (2009). *The Age of Migration*, p.96.

meet their labor demand which took the form of "guestworker systems" in Western Europe. As immigration to developed countries became a government policy, migration theories were developed with a motivation to answer the question of why people decide to migrate. Meanwhile, the oil crisis of 1973-1974 marked the end of first phase in the developed countries and led to restructuring of the world economy. As a result, European countries put an end to import labor force while anti-immigration policies and the motto of "combating illegal migration" emerged as popular themes in the European landscape. The second phase started in the mid-1970s and has gained momentum since then.[57]

While movements of people across borders have shaped states and societies in multiple ways, international migration from 1980s onwards has a distinctive character as "globalization of migratory flows" occurs throughout the world.[58] While movement of people across borders have become global, migration becomes central to domestic and international politics with enormous economic, political, and social consequences.[59] While states have sought to liberalize trade and investment, they have largely opposed to liberalize migration.[60] Therefore, choose to open economically but remain closed politically, states are in a paradox with respect to free movement of people.[61] While migrant receiving states close their borders to migratory movements, a growing conflict of interests between the security of states

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[57] Ibid.

[58] Wihtol de Wenden, C. (2007). The Frontiers of Mobility, p.52.

[59] Stephan, C. and Miller, M. (2009). *The Age of Migration.*

[60] World Bank (2002). *Globalization, Growth, and Poverty: Building an Inclusive World Economy.* World Bank Policy Report http://wwwds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2002/02/16/000094946 _0202020411335/Rendered/PDF/multi0page.pdf retrieved at 6.4.2015.

[61] Hollifiled, J. F. (2012). Migration and International Relations, p.373. In Rosenblum, M. R. and Tichenor, D. J. (Eds.). *Oxford Handbook of the Politics of International Migration*. New York: Oxford University Press.

and human rights of migrants is experienced worldwide with enormous consequences for human rights of migrants.[62]

2.1. Voluntary and Forced Migration

Migration studies begin with the very basic question of why do people move from one place to another? Voluntary migration assumed to be driven by economic reasons and is based on the promise that people migrate voluntarily. There are mainly four theories that seek to answer this question and they somehow assume that people migrate for an enhanced well-being for whatever reasons. In other words, these four theories refer to the voluntary migration of people and do not address involuntary/forced migration.

The distinction between voluntary and forced migration stems from the desire to prioritize the rights of certain group of people, mostly refugees.[63] After the end of World War II, volume and significance of displaced persons were of major concern of the international community and it gave rise to 1951 Geneva Convention and later 1967 Protocol. These instruments are based upon the promise that people fleeing from well-founded fear of being persecuted should have international protection. 1951 Geneva Convention defines race, religion, nationality, and membership of a particular social group or political opinion as grounds for well-founded fear of persecution (Geneva Convention, Article 1). Therefore, the term refugee applies to the *specific* categories in the Geneva Convention and wide categories of involuntary/forced migration surpass this narrow definition of the refuge as "the refugee problem has undergone drastic quantitative and qualitative changes."[64] In

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[62] Biehl, K. (2009). Migration Securitization, p.5.

[63] Betts, A. (2009). *Forced Migration,* p.4.

[64] United Nations Human Rights, Office of the High Commissioner for Human Rights. Fact Sheet No.20, Human Rights and Refugees, p.1 http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf retrieved at 7.4.2015

other words, forced migration is driven by reasons other than those that defined in the Geneva Convention.[65] Most migration flows and refugee influxes have a mixture of a range of factors and the dichotomy between voluntary and forced migration is quite problematic as the distinction is based on the assumption that these categories exist on a linear spectrum.[66] In fact, "[i]n terms of underlying "deep" causes, the "forced"/"voluntary" distinction may sometimes be arbitrary or misplaced" in terms of embedded economic, social, and political contexts that give rise to voluntary and forced migration.[67] Vast majority of migrants who do not fit either the category of voluntary (economic) migrant or refugee reflect diversity of the drivers of migration.[68] Categories, such as "mixed-migration flows"[69], "asylum-migration nexus"[70], "refugee-like situations"[71] are employed to identify people in need who are

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[65] Zetter, R. (2014). Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward, p.21. *Federal Commission on Migration* http://www.ekm.admin.ch/content/dam/data/ekm/dokumentation/materialien/mat_schutz_e.pdf retrieved at 7.4.2015.

[66] Betts, A. (2009). *Forced Migration.*

[67] Collinson, S. (2011) Forced Migration in the International Political Economy, p.306. In Betts, A. and Loescher G. (Eds.). *Refugees in International Relations*. New York: Oxford University Press.

[68] Betts, A. (2009). *Forced Migration,* p.160.

[69] International Organization for Migration defines mixed flows as "complex population movements including refugees, asylum seekers, economic migrants and other migrants". See International Organization for Migration (2004). *International Migration Law: Glossary on Migration*, p.42 http://publications.iom.int/bookstore/free/IML_1_EN.pdf retrieved at 7.4.2015

[70] As persons in need of international protection increasingly take irregular means to reach their destination country, there is an overlapping relation between irregular migration and asylum which is often referred to as the "asylum-migration nexus". Papadopoulou, A. (2005). Exploring the Asylum-Migration Nexus: a Case Study of Transit Migrants in Europe. *Global Migration Perspectives, No. 23* http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp23.pdf retrieved at 8.4.2015.

[71] UNHCR defines people who are in refugee like situations as "persons who are outside their country or territory of origin and who face protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained." See UNHCR (2013, January 1). Statistical Online Population Database: Sources, Methods and Data Considerations http://www.unhcr.org/45c06c662.html retrieved at 8.4.2015.

not *prima facie* refugees under the Geneva Convention.[72] In particular, mixed-migration flows make it difficult to distinguish between asylum and other forms of human mobility. Therefore, voluntary and forced migration distinction is highly problematic categories to capture multi-dimensionality and multi-causality of migration.[73] However, for analytical reasons, the thesis will follow voluntary and forced migration distinction with the recognition of the fact that whatever the underlying reasons causing either internal or international displacement, forcibly displaced persons should get protection and have their human rights respected.

2.1.1. Voluntary Migration: Theories of Migration

Mainstream theories of voluntary migration are the neoclassical economics, the new economics of labor migration, world systems theory, and migration systems theory. These theories study migration from both micro and macro levels.

Neoclassical economics aimed at developing a universal theory of migration at a time when migration flows were of great interest after the World War II. On the macro level, it is based on the assumption that pull factors of economic growth and prosperity pull migrants to new places whereas push factors such as economic stagnation push people out of their origin countries.[74] In other words, on the macro level, economic differences and competitive advantages between countries are the primary reasons of migration while on the micro level, based on these assumptions, individuals make rational decisions whether to migrate or not. It assumes that

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[72] Zetter, R. (2014). Protecting Forced Migrants, pp.21-22.

[73] Marfleet, P. (2006). *Refugees in a Global Era*. Basingstoke: Palgrave.

[74] Fussell, E. (2012). Space, Time, and Volition: Dimensions of Migration Theory, p.27. In Rosenblum, M. R. and Tichenor, D. J. (Eds.) *the Oxford Handbook of the Politics of International Migration*. (25-52). Oxford: Oxford University Press.

international migratory movements will come to an end when equilibrium is achieved in the labor markets.[75]

The new economics of labor migration on the other hand asserts the fact that the decision to migrate is not made by rational individuals contrary to the neoclassical economics, but by family members, household, and community.[76] Since most migration flows are from developing and under developed countries to the developed countries, it is not only the economic differences between countries that give rise to migration of people but also other factors such as credit markets and labor markets.[77]

The neoclassical economics and the new economics of labor migration are criticized of not taking into account the structure of the capitalist system. They are accused of being individualistic as "rational" individuals in search of better life opportunities. Therefore, both theory are regarded as over simplistic. To overcome this, the world system theory states that expansion of capitalist markets to the developing countries displaces people from their livelihoods. In that vein, migration is an inevitable outcome of the capitalism.[78] Based on this, the world system theory argues that the decision to migrate is not based on individuals' rational decisions, but is occurred due to intersection of economic and political conjuncture of the world capitalist market. It rejects economic reductionism of the classical economics and analyzes international migration with embedded economic, political, and social aspects. It is argued that market expansion triggers technological and ideological linkages thus

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[75] Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., Taylor, and J. E. (1993). Theories of International Migration: A Review and Appraisal. *Population and Development Review*, 19:3, (431-466).

[76] Stephan, C. and Miller, M. (2009). *The Age of Migration.*

[77] King, R. (2012). Theories and Typologies of Migration: An Overview and a Primer. *Willy Brandt Series of Working Papers in International Migration and Ethnic Relations 3/12.* https://www.mah.se/upload/Forskningscentrum/MIM/WB/WB%203.12.pdf retrieved at 8.4.2015

[78] Wallerstein, I. (1974). *The Modern World System, Capitalist Agriculture and the Origins of the European World Economy in the Sixteenth Century.* New York: Academic Press.

allows people as well as goods to move between places. Since the structure of the capitalist system leads to uneven distribution of wealth, it reproduces inequalities between core and periphery countries. Therefore, contrary to the classical economics assumptions, people are not free to move but are constrained by the economic, political as well as social factors.[79]

While the neoclassical economics is accused of not having a historical framework to explain migration deeply and being over simplistic, world system theory is criticized of over emphasizing the role of capitalist world market, as migration is too complex to be explained by the supremacy of economic factors. In that vein, migration systems theory not only takes into account political and economic structure but also the historical contexts.[80] Accordingly, it is argued that the history of colonialism, trade and cultural linkages link two or more countries. On the macro level, political economy of the world market is decisive whereas on the micro level, individual and group networks shape decisions of people whether to migrate or not. Established networks sustain strong ties across borders and lead to chain migration.[81]

All these theories analyze why people migrate. They seek to explain economic differences between rich and poor countries that give rise to voluntary migration; thereby they are motivated to explain underdevelopment from different theoretical lenses.[82]

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[79] Stephan, C. and Miller, M. (2009). *The Age of Migration.*

[80] King, R. (2012). Theories and Typologies of Migration

[81] Massey, D. S., et al. (1993). Theories of International Migration.

[82] Contrary to the common belief, Massey claims that international migration is not an outcome of underdevelopment but it stems from the economic development itself as economic, political and social integration triggers population movements. Massey, D. (1988). Economic Development and International Migration in Comparative Perspective. *Population and Development Review*, 14:3, (383-413).

2.1.2. Forced Migration: Refugees and Beyond Refugees

Before the international law, a refugee is the person who owing to well-founded fear of persecution is outside of his or her country of nationality (Geneva Convention, Article 1). Geneva Convention sets the legal criteria to be defined as a refugee while vast categories of people fall outside of this narrow legal definition of the refugee as explained above. For that reason, who the refugee is a central question in refugee and forced migration studies and no consensus for the actual definition of the refugee exists in theory.

Refugee and asylum policies were designed after the World War II with the Nazi experience in mind. Emergence of human rights as an important concern of the post-war international community played a key role for the development of refugee regime as well. In the Cold War period, protection of refugees and access to asylum procedure for those flying from persecution and repression were used as a part of foreign policy of the Western states in their "war against communism". Welcoming refugees who were in small numbers due to exit restrictions of Soviet bloc were back in time provided a solid ground for the propaganda of the Western states.[83] Starting from 1950s onwards, large scale refugee movements experienced worldwide mostly due to changes in the international arena. Following the end of Cold War, refugee flows increased rapidly. In general, forced migration flows witnessed a dramatic increase with the occupation of Iraq and Afghanistan and other conflicts around globe and lately reached peak due to the Syrian civil war.

Since the narrow legal definition of the refugee has been challenged, other groups of forced migrants who somehow trapped in refugee-like situations or flee from persecution but not crossed international borders has forced actors to address a broad

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[83] Martin, S. (2002). Towards a Global Migration Regime. Politics and Diplomacy, p.122. *Georgetown Journal of International Affairs,* 12:1.

range of "people of concern".[84] While refugees have been displaced across international borders, even greater numbers of people remain within their country of origin as internally displaced persons (IDPs). They are excluded from international protection regime due to the definition of the refugee according to which the refugee is a person who is *outside* the country of his nationality (1951 Geneva Convention, Article 1). In that sense, it is important to remember the spatial and political construction of categories such as refugee, IDPs, and forced migrant as they have the very potential of misleading the actual reality.[85] This is because of the fact that categories are not fixed but constructed by actors and they are far from answering the protection needs of people.[86]

Emma Haddad states that it is not possible to solve the refugee problem as long as political borders constituting nation states are defining character of the international society.[87] She holds nation states responsible for the refugee problem and in that vein prompts cosmopolitan idea of international human rights in which belonging to a political entity is not the condition for enjoying the basic human rights.[88] In fact, rather than international system consisting of nation states is responsible for refugee problem, "the question of whether capitalism is inherently violent and exploitative is

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[84] Betts, A. and Loescher, G. (2011). Refugees in International Relations, p.2. In Betts, A. and Loescher, G. (Eds.). *Refugees in International Relations.* Oxford: Oxford University Press. For people of concern, See UNHCR (2006). Persons of Concern to UNHCR. In *UNHCR and International Protection: A Protection Induction Programme.* (16-32). http://www.unhcr.org/44b4bbcd2.html retrieved at 9.4.2015; UNHCR. About Refugees http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=179&Itemid=54 retrieved at 9.4.2015.

[85] Haddad, E. (2008). *The Refugee in International Society: between Sovereigns,* p.213. Cambridge University Press.

[86] Ibid.

[87] "It is somewhat imperfect mixture of sovereignty, borders and territory that makes the state system responsible for the creation of refugees". Ibid, p.7.

[88] Ibid, p.203.

particularly important for understanding processes of forced displacement."[89] As long as, systematic factors that lead to forced displacement do not change fundamentally, continue in the way they are, and displace people from their homes; they will continue to produce forced migration flows. International migration studies are far from explaining the *politics* of forced migration as "the structure of the global capitalist system in its neoliberal form is taken for granted, and not taken as part of the problem".[90] Therefore, "whatever the theoretical lens used, what is of critical importance is to appreciate the centrality of processes of "deep" historical, social, economic, and political change".[91]

2.2. International Migration Governance

International migration by definition has across/trans-border character and is closely associated with globalization. Globalization facilitates movement of people across borders as well as free movement of capital and goods. While there are international regimes for the movement of goods and capital, there is no *actual* international regime for the movement of people. Movement of people across borders is addressed through the refugee regime, international travel regime, and labor migration.[92] Rather than forming an international migration regime based on formal and informal networks, states prefer to collaborate at different levels and contexts. This in turn enables states discretionary power to decide *how* to address migration *in which context* they want.[93] In addition, governance of migration is interlinked with the other

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[89] Collinson, S. (2011). Forced Migration, p.305.

[90] Boucher, G. (2008). A Critique of Global Policy Discourses on Managing International Migration, p.1462. *Third World Quarterly,* 29:7.

[91] Collinson, S. (2011). Forced Migration, p.305.

[92] Betts, A. (2010). Introduction: Global Migration Governance, p.12. In Betts, A. (Eds.). *Global Migration Governance.* (1-33). Oxford: Oxford University Press.

[93] Ibid.

issue areas such as organized crime, human trafficking, and terrorism while addressing root causes approach emerged as a popular theme in the Western states' discourse.[94]

Internationally, global governance of migration is in the process of making through different forms of collaboration, partnership, and regional integration initiatives.[95] Meanwhile, migration policy has witnessed proliferation of actors dealing with the issue at different levels. Walters calls this as "the new politics of migration".[96] The new politics of migration manifested itself not only in the rise of actors dealing with the migration in recent years, but also in the way how they *frame* migration internationally. Migration is presented largely as a technical problem thereby it is strategically depoliticized.[97] In general, policy discourse on international migration tends to approach migration something to be "managed" and if managed properly, it could produce "win-win" outcomes beneficial to all parties alike, including migrants themselves.[98] At the national and/or regional level, policy discourse on migration over emphasizes interests of state and/or region in question while human rights of migrants are not pursued as such.[99]

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[94] Düvell, F. (2012) Irregular Migration, p.99. In Betts A. (Eds.). *Global Migration Governance*. Oxford: Oxford University Press.

[95] Geiger M. and Pécoud A. (2010). The Politics of International Migration Management.

[96] Ibid.

[97] Walters, W. (2010). Imagined Migration World.

[98] Kundz, R. and Lavanex, S. (2010). Partnerships in International Migration Governance: The Missing Link? *Swiss Network for International Studies (SNIS) Working Paper* http://www.snis.ch/system/files/2008_-_lavanex_-_ndeg250_-_migration_partnerships.pdf retrieved at 9.4.2015

[99] Kalm S. (2010). Liberalizing Movements? The Political Rationality of Global Migration Management, p.22. In Geiger M. And Pécoud A. (Eds.) *The Politics of International Migration Management*. Palgrave Macmillan.

Migrant receiving countries have realized that unilateral restrictive policies, to close and control borders, are insufficient on their own to prevent irregular migration.[100] Nonetheless, this realization on the part of migrant receiving states does not mean that they do lessen border control measures. On the contrary, they employ stricter border control mechanisms and introduce tough visa requirements. At the same time, they also develop new mechanisms to cope with migration in general and irregular migration in particular. Both of these mark a shift from control to manage migration at the international level with the distinctive role that "non arrival measures" have played out.[101] While migration control mechanisms employ a range of policies, migration management policies are centered on the cooperation with third countries.[102] To that end, migrant receiving countries have employed three policy measures. First, governments try to restrict the flow of refugees through strict border controls and cooperation with countries of origin and transit. Secondly, they conceptualize migration something to be managed and engage in "migration management" efforts. Thirdly, they are aimed at addressing the root causes of migration, at least in theory.[103]

There are mainly two systems employed by the migrant receiving states for asylum seekers and refugees. In the United States, Canada, and Austria, refugee protection is granted through resettlement whereas in Europe and in much of the developing world, refugee protection is granted upon entry to territory of a state and lodging the

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[100] Uğur, M. (2007). The Ethics, Economics and Governance of Free Movement. In Pecoud, A. and de Guchteneire, P. (Eds.). *Migration without Borders: Essays on the Free movement of People*. (65-96). Paris: UNESCO Pub.

[101] Mertus, J. (1998). The State and the Post-Cold War Refugee Regime: New Models, New Questions. *International Journal of Refugee Law*, 10:3, (321-348); Shacknove, A. (1993). From Asylum to Containment. *International Journal of Refugee Law*, 5:4, (516-533).

[102] Castles S. and Van Hear N. (2011). Root Causes. In Betts, A. (Eds.). *Global Migration Governance*. (287—306). Oxford: Oxford University Press.

[103] Ibid.

claim for asylum.[104] Therefore, controlling access to territory constitutes one of the most critical aspects of the asylum and refugee politics. In that vein, Castles and Van Hear state that "non departure" measures of the Cold War shifted to "non arrival measures"[105] and containment becomes the norm in the refugee regime, as states have focused on keeping refugees in their home countries.[106] Policy of containment employs a vast category of measures such as *non-arrival policies* (carriers' sanctions and strict visa requirements), *diversion policies* (safe third country principle and readmission agreements) and *deterrent policies* (detention of asylum seekers and restrictive application of the 1951 Convention).[107] These policies enable states to reduce genuine asylum seekers' access to the territory of migrant receiving countries and "have enabled Northern States -especially European States- to bypass the 1951 Convention and UNHCR without overtly violating their obligations under international refugee law".[108]

Migrant receiving countries cooperation with source and transit countries constitutes the external dimension of irregular migration.[109] Migration is being negotiated alongside issue-areas such as development, trade and the environment in ways that create incentives for source and transit countries.[110] Nonetheless, how migration is

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[104] Betts, A. (2010). The Refugee Regime Complex, p.25.

[105] Castles S. and Van Hear N. (2011). Root Causes, p.292.

[106] Shacknove, A. (1993). From Asylum to Containment.

[107] Castles S. and Van Hear N. (2011). Root Causes.

[108] Betts, A. (2010). The Refugee Regime Complex, p.35.

[109] Düvell, F. (2012). Irregular Migration, p.79.

[110] Betts, A. (2006). Conceptualizing Interconnections in Global Governance: the Case of Refugee Protection. *RSC Working Paper No. 38* http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp38-concep tualising-interconnections-global-governance-2006.pdf retrieved at 10.4.2015

negotiated alongside issue areas matters significantly as the agenda is dominated by the developed countries.[111] For example, nearly all the EU agreements with source and transit countries include paragraphs on "illegal" migration and these agreements are used as a means to reduce the number of irregular migrants' access to the EU. In other words, irregular migration is used a kind of stick by the EU in exchange for development aid and/or a trade agreement. It forces third countries to comply with EU policies without taking into account political, economic, and structural realities of origin and transit countries.[112] Cooperation with countries of origin and transit on irregular migration later crystallized in the formation of regional and international regimes of migration, with regional dimension strikingly gaining importance in time.[113] Regional integrations namely the EU and North American North American Free Trade Agreement regimes yield to expand their regimes "from intra to inter-regionalism" and increasingly exporting their regimes to the transit and origin countries with an aim of managing of migration.[114] In other words, irregular migration is inherently regional in character and governance of it is increasingly addressed in their regional contexts.[115]

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[111] Aubarell, G., Zapata-Barrero R., Aragall, X. (2009). New Directions of National Immigration Policies: The Development of the External Dimension and Its Relationship with the Euro-Mediterranean Process. *EuroMesco Paper 79* http://www.euromesco.net/euromesco/images/paper79eng.pdf retrieved at 12.4.2015

[112] Ibid.

[113] Koslowski, R. (2011). International Travel. In Betts, A. (Eds.). *Global Migration Governance*. (109-132). Oxford: Oxford University Press.

[114] Ibid.

[115] Düvell, F. (2012) Irregular Migration, p.79.

CHAPTER III

THE EU MIGRATION REGIME

This chapter aims to briefly analyze the EU migration policy as the EU migration regime has strategically shaping certain dimensions of the Turkish migration policy. The first part of this chapter sheds light on the EU migration policy making with a view to analyze drivers of the policy and its repercussions on third countries. The second part of the chapter examines the Turkish case with regard to "Europeanization beyond the EU borders" through a critical reading of Europeanization literature.

3.1. The EU Migration Regime

Migration has always been a fundamental part of European history. As of November 2014 out of 507 million people living in the EU, around 20 million are citizens of third countries.[116] Yet, migration has increasingly become a sensitive topic in the European landscape. It is accused of causing the problems that Europe has for decades, range from the crisis of welfare state to the rise in unemployment rates. It constitutes a critical part of the elections in most European countries.[117] In particular, irregular migration has been constructed as a security issue over the years. The EU

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[116] European Commission (2014). The EU Explained: Migration and Asylum, p.3 http://europa.eu/pol/justice/flipbook/migration/en/files/migration-and-asylum_en.pdf retrieved at 10.4.2015

[117] Huysmans, J. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies*, 38:5, (751-777).

immigration policy is crystallized in combating/preventing illegal immigration discourse.[118]

Following the oil crisis of 1973-1974, European states put an end to labor recruitment policies and started to implement restrictive immigration policies with an aim to control the flow of migrants as highlighted in Chapter 2. The period between 1973 and 1989 characterized in "zero immigration" policy in the European landscape with authority rested within member states primarily.[119] In fact, in the beginning of the European integration, migration was of a national policy while after the creation of Single European Market (1986) competences gradually shifted to the supranational level. Single European Act aimed at establishing an internal market without internal frontiers (Article 8/a). However, abolition of internal borders gave rise to concerns over the control of external borders so as to guarantee security inside the EU. In the Post-Cold War period new security threats accompanied with changing international migration patterns as well as the dynamics of economic integration forced the EU to develop a common migration policy.[120] While changing international migration patterns push more and more migrants and asylum seekers to the EU; security concerns inside the Union for the sustainability of the area of freedom, security and justice pave the way for the construction of an understanding of immigration to the EU as a threat.[121] The rise in the number of refugees as well as

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[118] Under the Lisbon Treaty the common EU immigration policy aimed at prevention of illegal immigration. See, Lisbon Treaty Article 63a; European Council (2002). Council Framework Decision of 28 November 2002. Official Journal of the European Communities, L 328/1, 5.12.2002 http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32002F0946&from=EN retrieved at 10.4.2015

[119] Thränhardt, D. (1992). *Europe, a New Immigration Continent: Policies and Politics in Comparative Perspective*. Muenster, Hamburg: Lit Verlag.

[120] Carr, M. (2012). *Fortress Europe: Dispatches from a Gated Continent*. London: Hurst Publishers.

[121] Yıldız, A. G. (2012). The External Dimension of the European Union's Immigration Policy and Its Implications for Transit Countries: a Comparison of Turkey and Morocco, p.37. *Middle East Technical University, Unpublished PHD Thesis.*

irregular migration flows from Central and Eastern European countries later contributed to the securitization of migration in the EU circles.[122] With the Eastern enlargement (2004), the EU has become closer to the challenging countries of the Middle East and Caucasus and this in turn led to intensification of cooperation efforts with third countries pertaining to issues of Justice and Home Affairs with an aim to address irregular migration. Later September 9/11 strengthened security concerns inside the Union and gave rise to migration-security discourse in the EU.[123]

Schengen Agreement (1985) paved the way to develop common EU border policies. It stipulated removal of internal borders for the free movement of persons, development of common rules for the external borders of the EU for third country nationals, harmonization of rules on visas, enhanced police and judicial cooperation and establishment of the Schengen Information System.[124] Therefore, abolition of the internal borders within the Union for the free movement of persons gave rise to consolidation of external borders inevitably. It created an internal-external security nexus within the EU.[125] The non-EU nationals are considered as a security issue based on the understanding of "the logic of 'safe(r) inside' versus 'unsafe(r) outside".[126] In fact, the Schengen process "invented" the common EU external border which as a concept and construct not existed before.[127]

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[122] Boswell, C. (2003). The External Dimension of EU Immigration and Asylum Policy, p.621. *International Affairs*, 79:3.

[123] Bermejo, R. (2009). Migration and Security in the EU: Back to Fortress Europe? *Journal of Contemporary European Research*, 5:2, (207-224).

[124] European Parliament (1999). *Free Movement of Persons in the European Union: Specific Issues.* Directorate General for Research, Working Paper. 05–1999 http://www.europarl.europa.eu/workingpapers/libe/pdf/100_en.pdf retrieved at 10.4.2015

[125] Yıldız, A. G. (2012). The External Dimension of the European, p.36.

[126] Monar, J. (2000). Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion, ESRC 'One Europe or Several?' *University of Leicester, Working Paper 07/00* http://www.mcrit.com/scenarios/visionsofeurope/documents/one%20Europe%20or%20Several/J%20Monar%20.pdf retrieved at 10.4.2015

All these developments represented a shift in the EU migration discourse from control to the manage migration in parallel to the developments in the international arena as explained in the introduction part.[128] In that vein, in Tampere European Council (1999) development of a common EU asylum and migration policy with stronger external action defined as the priority area.[129] Following Seville European Council (2002), integration of migration into the EU's external policy advanced remarkably.[130] In Seville European Council, it was stated that cooperation with the countries of origin and transit is crucial for the EU and cooperation with third countries should be managed in a way that ensure block of "illegal" migration flows to the EU.[131] All in all, the increased cooperation in immigration and asylum with third countries advanced remarkably in an effort to manage irregular migration to the EU.[132] Lavanex states that in contrast to gradual transition from governmental to supranational coordination, the external dimension of European immigration policy

[127] Kasparek, B. (2010). Borders and Populations in Flux: Frontex's Place in the European Union's Migration Management, p.122. In Geiger, M. and Pécoud, A. (Eds.). *The Politics of International Migration Management.* London: Palgrave Macmillan.

[128] Geddes, A. (2009). Migration as Foreign Policy? The External Dimension of EU Action on Migration and Asylum. *Swedish Institute for European Policy Studies (SIEPS), 2009:2* http://www.sieps.se/sites/default/files/528-2009-2rapport.pdf retrieved at 12.4.2015

[129] European Commission. Fact Sheet 3.1, Tampere: Kick-start to the EU's Policy for Justice and Home Affairs http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf retrieved at 12.4.2015

[130] Yıldız, A. G. (2012). The External Dimension of the European, p.89.

[131] European Council (2002). Seville European Council, 21 and 22 June 2002. Presidency Conclusions, Paragraph 27 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72638.pdf retrieved at 12.4.2015

[132] Lavenex, S. and Uçarer E. M. (Eds.) (2002). *Migration and the Externalities.*

has rapidly developed into a key focus of cooperation with the greater involvement of sending and transit countries.[133]

3.2. The External EU Migration Policy

The EU's relations with third countries have been studied under the externalization and/or internalization of the EU policies. Extension of the different EU policies to non-member countries is conceptualized mainly under three heading. Rijpma and Cremona call this process as "extra-territorialisation", Lavanex calls it as "external governance", Schimmelfenning calls "Europeanization beyond the borders of the EU" while the EU itself uses "external dimension" to refer to the EU involvement directed beyond its borders.[134] In academic works, the impact of the EU immigration policy beyond its borders is discussed under "the externalization of immigration policy" or "extra-territorialization of immigration policy".[135]

Agnieszka Weinar argues that external EU migration policy has been implemented through being part of international agreements and being as a policy in its own right. While international agreements including clauses on migration preceded the latter, the two overlap together. Association and cooperation agreements include clauses on readmission of its citizens as well as third country nationals (TCNs); migration clause aimed at cooperation with third countries on a wide range of issues, such as

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[133] Lavanex, S. (2006). Shifting Up and Out: the Foreign Policy of European Immigration Control. *West European Politics*, 29:2 (329-350).

[134] Rijpma, J., and Cremona, M. (2007). The Extra-Territorialisation of EU Migration Policies and the Rule of Law. *European University Institute Working Papers, RSCAS, Law No. 2007/01*. European University Institute, Robert Schuman Centre for Advanced Studies; Lavenex, S. (2004). EU External Governance in "Wider Europe. *Journal of European Public Policy*, 11:4, (680–700); Schimelfenning, F. (2010). Europeanisation beyond the Member States. *Zeitschrift für Staats- und Europawissenschaften,* 8:3, (319-339); Yıldız, A. G. (2012). The External Dimension of the European, p.17.

[135] Aubarell, G., et al (2009). New Directions of National Immigration.

irregular migration, border control, and visa policy.[136] Boswell identifies two main approaches to externalization of migration policy in the context of cooperation with sending and transit countries: "remote control" and "root-cause" approaches.[137] While remote control approach is security based and aimed at restriction of free movement of people; root causes approach seeks to influence movement of people through addressing push factors and it has a preventive dimension.[138]

Following the Seville European Council, "positive conditionality" was introduced into the EU's relations with third countries in exchange for undertaking reforms in areas such as irregular migration policy and readmission agreement.[139] Regarding conditionality, the EU is the driver of change in candidate countries under the membership perspective. For countries with no membership perspective, because of the power and influence it wields, the EU shape the policies of third countries as well through "rewards" such as financial aid, trade cooperation, and visa facilitation.[140]

The EU aimed at the prevention of illegal immigration and trafficking in human beings (Treaty of Lisbon, Article 63a). The EU recognizes that "illegal" migration can mainly occur at two levels. On the basis of unauthorized border crossings and on the violation of residency permits such as overstaying visa or "illegal"

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[136] Weinar, A. (2011). EU Cooperation Challenges in External Migration Policy, pp.8-9. *European University Institute, Research Report Background paper EU-US Immigration Systems* http://www.eui.eu/Projects/TransatlanticProject/Documents/BackgroundPapers/EUCooperationChalle ngesExternalMigrationPolicy.pdf retrieved at 12.4.2015

[137] Boswell, C. (2003). The External Dimension, pp.619-620.

[138] Aubarell, G., et al (2009). New Directions of National Immigration, p.14.

[139] Yıldız, A. G. (2012). The External Dimension of the European, p.90.

[140] Geddes, A. (2009). Migration as Foreign Policy?

employment.[141] Although the overwhelming majority of irregular migrants enters the EU through legal channels and then overstayed their visas and become irregular, it is the irregular migration flows directed to the EU that the Union is obsessed with.[142] Irregular migration constitutes the central part of the EU's relations with third countries. The EU overwhelmingly targets migrants before they reach to the EU territory. As such, it makes a distinction between the "insider" and "outsider" and employs much of its resources on external border management and partnership with third countries.[143] It gives priority to the territorial character of the irregular migration and focuses on the control and surveillance of its external borders through different policies such as tight visa requirements, border control measures, and carrier sanctions.[144] On the other hand, the first country of asylum and safe third country principles aim at reducing the possibility of succeeding in lodging asylum claims.[145] All these policies in turn dramatically reduce the possibility of being

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[141] Walters, W. (2010). Imagined Migration, p.84.

[142] Düvell, F. (2011). Paths into Irregularity: The Legal and Political Construction of Irregular Migration, p. 276. *European Journal of Migration and Law,* 13.

[143] Walters, W. (2010). Imagined Migration.

[144] Ibid. Carrier sanctions imposed on companies failed to check validity documents of passengers at third countries before they reach the EU territory. See, European Council (2001). Council Directive 2001/51/EC of 28 June 2001. Official Journal of the European Union, L 187/45, 10.7.2001. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF retrieved at 14.4.2015

[145] If an asylum seeker has been recognized as a refugee or enjoys sufficient protection in a country, that country can be considered to be a first country of asylum for a particular applicant. See Council Directive 2005/85/EC of 1 December 2005. Official Journal of the European Union, L 326/13, 13.12.2005 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0085&from=EN retrieved at 15.4.2015. The safe third country concept applies where a person might have requested protection in a third country which is safe and able to offer protection in line with the 1951 Geneva Convention and with which the person has a connection. European Commission (2010). COM (2010) 465 final, p.11 http://ec.europa.eu/dgs/home-affairs/news/intro/docs/com_2010_465_en.pdf retrieved at 15.4.2015

recognized as a refugee in the EU.[146] In a nutshell, the EU immigration policy focuses on the security aspects of irregular migration. No matter the EU declarations call the need for a balanced approach that does not sacrifice the EU's "official" commitment to human rights, the EU largely sees migration as a problem of security to be addressed first and foremost by measures of security.[147] The EU migration policy favors security concerns of its member states over human rights of migrants. UN Special Rapporteur on the human rights of migrants notes that in the EU circles, rather than migrants' rights, it is countries capacities to stop irregular migrants that dominate the EU migration policy.[148]

While more and more people are reported to die attempting to cross the Mediterranean, the EU is far from presenting viable solutions to the problem but more concerned with the human smuggling dimension as if these people have nothing but to resort to irregular means.[149] While human traffickers and smugglers

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[146] Walters, W. (2010). Imagined Migration; Tokuzlu, L. B. (2010). Burden Sharing Games for Asylum Seekers between Turkey and the European Union, p.5. *European University Institute Working Papers, RSCAS 2010/05* http://cadmus.eui.eu/bitstream/handle/1814/13096/RSCAS_2010_05.pdf?sequence=1 retrieved at 15.4.2015

[147] Walters, W. (2010). Imagined Migration World, pp.78-79. However, in the official discourse respect for the EU Charter of Fundamental Rights is a key component of EU policies on migration. See European Commission (2011). COM (2011) 743 final http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52011SC1353&from=EN retrieved at 15.4.2015

[148] Crépeau, F. (2012). Regional Study: Management of the External, p.15.

[149] Wunderlich, D. (2013). Towards Coherence of EU External Migration Policy? Implementing a Complex Policy, p.26. *International Migration,* 51:6. Lately in April, 2015, about 800 migrants have died while attempting to cross the Mediterranean. The Mediterranean has witnessed more than 50-fold increase in migrant and refugee deaths since the beginning of 2015. See Amnesty International (2015, April 15). *Mediterranean Crisis: UN points to 50-fold Increase in Deaths amid European Government Inaction.* https://www.amnesty.org/en/articles/news/2015/04/mediterranean-crisis-50-fold-increase-in-deats-amid-european-inaction/ retrieved at 18.4.2015; European Council (2015). Special meeting of the European Council, 23 April 2015 http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/ retrieved at 25.4.2015

certainly play a role, employing militarized policies to address this challenge is nothing but a clear manifestation of the EU's securitized approach to migration. In other words, rather than a balance between human rights and security needs of the Union stemming from irregular migration, there is prioritization of security measures over human rights of migrants and refugees. In fact, all these are a clear manifestation of "Fortress Europe"[150] where migration and border controls have been effectively integrated into security frameworks that emphasize criminality.[151] In a similar vein, Waters argues that "the EU is clearly engaged in an almost worldwide campaign to promote border control as a central plank of good governance".[152]

Since 2005, Global Approach to Migration and Mobility defines the overarching framework of the EU external migration and asylum policy and sets out parameters of the EU policy dialogues and cooperation with third countries.[153] Based on four pillars, the Global Approach to Migration and Mobility aims to organize legal migration, prevent and combat irregular migration while eradicating trafficking in human beings, to address developmental aspect of migration and mobility, and finally to promote international protection with a view to enhance external dimension of asylum.[154] Respect for the human rights is defined a cross-cutting priority.[155] Despite being so ambitious in the theory, security measures (such as border control

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[150] Carr, M. (2012). *Fortress Europe.*

[151] Crépeau, F. (2012). Management of the External Borders, p.11.

[152] Walters, W. (2010). Imagined Migration World, p.90.

[153] European Commission. Global Approach to Migration and Mobility
 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index_en.htm retrieved at 28.4.2015

[154] Ibid.

[155] Ibid.

and readmission agreements) dominate over development and legal migration measures.[156] Düvell argues that in the EU "the meaning attached to the security of external borders goes beyond the material" and closely related to the political construction of irregular migration phenomenon in the EU political landscape.[157] In such an environment, source and transit countries neighboring to the EU has been exposing enormous pressure to tackle with irregular migration on different levels. On the other hand, migrants and asylum seekers are forced to take more dangerous routes to reach the EU territory as the legal entry channels effectively blocked by the EU. Since "[t]he changes induced by the EU migration regime affect more generally the balance between politics of inclusion and exclusion in the emerging political union, and its relations with the outside world,"[158] management of external borders of the EU has a clear cut impact on human rights of migrants, asylum seekers, and refugees, and on third countries as well.

3.3. The EU beyond Its Borders: The Turkish case

Europeanization has become a very fashionable study topic within the European integration studies. With the Eastern enlargement of the EU, Europeanization of candidate countries has gained momentum. Although the literature is quite rich analyzing Europeanization of different policy areas, there is no precise definition of Europeanization and the term seems to remain elusive.[159] Europeanization is

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[156] Wunderlich, D. (2013). Towards Coherence of EU External, p.26.

[157] Düvell, F. and Vollmer, B. (2009). Undocumented Migration: Irregular Migration in and from the Neighborhood of the EU: A Comparison of Morocco, Turkey and Ukraine, p.5. *European Commission, CLANDESTINO: Undocumented Migration: Counting the Uncountable. Data and Trends across Europe*.
http://www.hwwi.org/typo3_upload/groups/31/4.Background_Information/4.6.Link_library_InternalDocuments/Transit_report_COMPAS_Sept09.pdf retrieved at 28.4.2015

[158] Lavenex, S. and Uçarer E. M. (Eds.). (2002). *Migration and the Externalities,* p.12.

[159] Kassim, H., Peters, G. and Wright, V. (Eds). (2000). *The National Co-ordination of EU Policy: The Domestic Level*. Oxford: Oxford University Press.

"processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are (…) incorporated in the logic of domestic discourse, identities, political structures and public policies".[160]

Schimmelfennig employs the literature on Europeanization in candidate states for the analysis of Europeanization beyond Europe.[161] The literature on Europeanization beyond the EU borders studies the Europeanization process through conditionality, socialization, externalization, and imitation.[162] For candidate countries, conditionality is the core part of the Europeanization process as candidate countries are obliged to assume the acquis. In other words, conditionality is the central part of Europeanization since membership (the ultimate goal) is made conditional on the adoption and implementation of the EU acquis.[163] In case of candidate countries, the effectiveness of conditionality depends upon credible membership perspective as well as the level of domestic costs of compliance. Europeanization literature inclines to bound domestic changes in candidate countries mainly to Europeanization process through various conditions and mechanisms employed.[164] Although Europeanization literature glorifies policies employed in line with the acquis, it is far from enlightening *what kinds* of politics are in force and to *what end*. There is over determination of the EU factor when explaining domestic change and it makes

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[160] Radaelli, C. M. (2003). The Europeanization of Public Policy, p.30. In Featherstone, K. and Radaelli, C. M. (Eds.). *The Politics of Europeanization*. New York: Oxford University Press.

[161] Schimmelfennig, F. (2012). Europeanization beyond Europe. *Living Reviews in European Governance*. 7:1.

[162] Schimelfenning, F. (2010). Europeanisation beyond the Member States.

[163] Grabbe, H. (2006*). The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*. Palgrave Macmillan.

[164] Hughes, J., G. Sasse, and C. Gordon (2004). Conditionality and Compliance in the EU's Eastward Enlargement. *Journal of Common Market Studies*, 42:3, (523–51).

difficult "to detect what causes what"[165] both in the case of globalization and domestic actors/factors, as in the case of intertwined factors it is difficult to explain changes.[166] In case of candidate countries, mainstream Europeanization literature does not take into account embedded economic, political, social and cultural contexts in explaining change while it over stresses the so called "external EU anchor".[167]

In general, development of the Turkish migration policy since 2000s is attributed mostly to the EU accession process. Europeanization of Turkish migration policy is very much appreciated on its way towards membership.[168] Academic works dealing with domestic changes attributed to Europeanization blossomed when Turkey-EU relations were on record as the perspective of opening of accession negotiations was credible at the first half 2000s. Since the relations are not going well particularly from the 2005 onwards, Europeanization works dealing with different aspect of domestic policy are on the decline in contrast to the burgeoning literature of 2002-2005 in Turkey. As a result, deteriorated course of relations give way to studies that examine the future of Turkey-EU relations with possible scenarios that could prevail in the medium to long term.[169]

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[165] Graziano, P. and Vink, M. P. (Eds.). (2008). *Europeanization: New Research Agendas*. Palgrave Macmillan.

[166] Critics argue that Europeanisation is nothing new but a manifestation of the capitalism in the era of neoliberalism. See Yalman, G. (2007). Rethinking the Nature of the Beast: The Turkish State and the Process of Europeanisation. In Köse, H. A., Şenses, F. and Yeldan, E. (Eds.). *Neoliberal Globalisation as New Imperialism: Case Studies on Reconstruction of the Periphery*. (225-243). Nova Science Publications. In a similar vein, Füsun Özerdem argues that Europeanization is a neo-liberal project in practice. See Özerdem, F. (2012). Europeanisation: An Answer to Globalisation, p.123. *Ankara Avrupa Çalışmaları Dergisi*, 11:2.

[167] See Tocci, N. (2005). Europeanization in Turkey: Trigger or Anchor for Reform? *South European Society and Politics*, 10:1, (73–83).

[168] See Kale, B. (2005). The Impact of Europeanization on Domestic Policy Structures: Asylum and Refugee Policies in Turkey's Accession Process to the European Union. *Middle East Technical University, Unpublished Phd Thesis.*

[169] Narbone, L. and Tocci, N. (2007). Running Around in Circles? The Cyclical Relationship between Turkey and the European Union. *Journal of South European Politics and Society*, 9:3, (233-245);

It is not possible to dedicate certain changes solely to the Europeanization process of Turkey. Before underwent Europeanization process, the country already introduced a number of reforms so as to improve human rights record of the country. Kirişçi states that reforms were encouraged by the UNHCR Turkey Office.[170] In a similar vein, Lami Bertan Tokuzlu points to the fact that rather than the EU, the European Court of Human Rights is the main driving force behind Turkey's reform process in the field of migration.[171] In fact, Turkish migration policy before underwent significant changes was already an unsustainable policy with different actors responsible for different parts of the policy. This was particularly true of asylum and refugee policy of the country since there was no primary legislation on the issue but of secondary legislation of 1994 Asylum Regulation. Given the fact that from 1980s onwards the country has been constantly subject to refugee movements and irregular migration flows, it was no longer possible "to left blank" this policy area or to continue to leave it to the UNHCR in Turkey. In that climate, Turkey was forced to reform its migration policy. It is the *direction of the change* that matters regarding the EU crucially plays the key role in the transformation of the Turkish migration policy.

In Chapter 24 of Justice, Freedom and Security, Turkey-EU relations have been developing progressively as an exception to the deteriorated course of relations

Müftüler-Baç, M. and Stivachtis, Y. A. (Eds.). (2008). *Turkey-European Union Relations. Dilemmas, Opportunities and Constraints.* Lanham: Lexington Books.

[170] Kirişçi, K. (2007). Border Management and EU-Turkey Relations: Convergence or Deadlock? p.12. *European University Institute, Research Reports 2007/03* http://cadmus.eui.eu/bitstream/handle/1814/7988/CARIMRR_2007_03.pdf?sequence=1 retrieved at 29.4.2015

[171] Sabancı University (2013). *Turkey's Migration Policy from 2002 to 2012: An Assessment of the AKP's Reforms Workshop Report,* Istanbul Policy Center http://ipc.sabanciuniv.edu/en/wp-content/uploads/2013/02/Workshop-Report.pdf retrieved at 29.4.2015. In that vein, Umut and Kirişçi argue that both the UNHCR and the European Court of Human Rights had impacts on the socialization of the Turkish officials. Aydın U. and Kirişçi, K. (2013). With or Without the EU: Europeanisation of Asylum and Competition Policies in Turkey. *South European Society and Politics,* 18:3, (375-395).

between parties since late 2005.[172] This is due to the fact that, the EU recognizes Turkey as one of the most crucial irregular crossing points to the EU territory and tries to fortify Turkish borders so as to prevent irregular border crossings from and through Turkey to the EU.[173] Turkey in turn opts to cooperate with the EU in accordance with its interests. In that vein, the EU's pressure on Turkey to develop a comprehensive framework for migration and asylum is enormous while human rights of migrants, refugees and asylum seekers are kept secondary in comparison. To that end, the EU offers visa free dialogue for Turkish nationals in exchange for readmission agreement, funds projects for removal centers and invests in technological and material infrastructure of the country so as to fortify the Turkish borders in an effort to block irregular migration flows.[174]

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[172] European Council (2006, December 11). Press Release, C/06/352 16289/06 (Presse 352) http://europa.eu/rapid/press-release_PRES-06-352_en.htm?locale=en retrieved at 29.4.2015

[173] See Frontex Annual Risk Analyses http://frontex.europa.eu/ retrieved at 30.4.2015

[174] Baklacioğlu, N. Ö. (2009). *Building "Fortress Turkey": Europeanization of Asylum Policy in Turkey* http://www.jhubc.it/ecpr-porto/virtualpaperroom/096.pdf 1.5.2015

CHAPTER IV

TURKISH MIGRATION REGIME

This chapter will examine historical development of the Turkish migration policy in order to shed light on the migration policy design and making with reference to securitization and human rights. To that end, it examines historical development of Turkish migration and asylum policy with an aim to identify drivers of policy. It continues with the analysis of the so called Europeanization process of Turkey through a detailed examination of Turkish new legal environment under the Law on Foreigners and International Protection. It then examines readmission agreement between Turkey and the EU under possible scenarios that will prevail for both human rights of migrants as well as for Turkey's position as the gatekeeper of Europe. In the second part, Turkey's Syrian refugee policy will be analyzed deeply with projections for both Syrian refugees and the Turkish public.

4.1. Politics of Migration: a Historical Analysis of Turkish Migration and Asylum Policy

Historically, to decide who has the right to enter a country and who has not has been a prerogative of nation states. Based on the territorially sovereign nation state principle, states prefer to admit individuals who have the possibility to strengthen a country's designated national citizenship ideals.[175] Both emigration and immigration have been instrumentalized for the nation building and national integrity in the

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[175] Cohen, R. (1999). Shaping the Nation, Excluding the Other: the Deportation of Migrants from Britain. In Lucassen, J. and Lucassen, L. (Eds.). *Migration, Migration History, History: Old Paradigms and New Perspectives.* (351-373). Bern: Switzerland quoted in Biehl, K. (2009). Migration Securitization.

Turkish case as well.[176] In fact, instrumentalization of the migration policy was at force prior to the proclamation of the Republic during and after the World War I.[177] When Ottoman Empire had collapsed following the World War I, it left behind many Turkish and Muslim origin communities in various parts of Balkans. The Law on Settlement (Law no 2510) that was enacted in 1934 provided the legal ground for the immigrants and refugees of only Turkish descent/ethnicity/culture to settle and integrate in Turkey while preventing those who were neither of Turkish descent nor culture.[178] It provided the legal ground for Turkish and Muslim origins' immigration to Turkey, particularly from Balkan countries and aimed at homogenization of the population through emigration of non-Muslim populations either voluntarily or forcefully.[179] In an effort to build a homogeneous identity, immigrants without Turkish descent and culture seen as a threat to the Turkish state with the distinction role that the official national identity formulation based on a homogeneous design of the Turkishness had played out.[180] Under facilitating immigration policy of Turkey favoring those with Turkish descent and culture, more than 800.000 people came to

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[176] İçduygu A. and Aksel, D. B. (2013). Turkish Migration Policies: a Critical Historical Retrospective, p.167. *Perceptions,* Autumn, XVIII:3, (167-190).

[177] İçduygu A. and Sirkeci, İ. (1999). Cumhuriyet Dönemi Türkiyesinde Göç Hareketleri. In Metin Celal (Eds.). *75 yılda Köyden Şehirlere.* İstanbul: Tarih Vakfı Yurt Yayınları.

[178] Kirişçi, K. (2003). Turkey, UNHCR, and 1951 Convention Relating to the Status of Refugee: Problems and Prospects of Cooperation. In Selm, J., Kamanga, K., Morrison, J., Nadig, A., Spoljar-Vrzina, S., Willigen L. (Eds.) *Refugee Convention at Fifty: a View from Forced Migration Studies.* New York and Oxford: Lexington Books. Turkish descent and origins immigration to Turkey also enabled the country to compensate population loses due to wartime. İçduygu, A. and Sert, D. (2009). Country Profile 5: Turkey, p.2. *Focus Migration* http://focus-migration.hwwi.de/uploads/tx_wilpubdb/CP_05_Turkey_2009.pdf retrieved at 1.5.2015

[179] İçduygu A. and Aksel, D. B. (2013). Turkish Migration Policies, pp.170-171.

[180] İçduygu, A., Göker, Z. G., Tokuzlu, L. B., Elitok, S. P. (2013). Migration Profile: Turkey, The Demographic-Economic Framework of Migration, The Legal Framework of Migration, The Socio-Political Framework of Migration, p.16. *European University Institute Migration Policy Center* İçduygu, A. and Sert, D. (2009). Country Profile 5; Kirişci, K. (2000). Disaggregating Turkish Citizenship and Immigration Practices. *Middle Eastern Studies*, 36:3, (1-22).

Turkey between 1923 and 1945.[181] On the other hand, Turkish state led to 196,800 non-Muslims' migration from the country between 1935 and 1950.[182] All in all, mobility and population management were used as one of the main tools of nation-state building through both Turkification and Islamisation politics in earlier periods of the Republic.[183] In that vein, The Law on Settlement underlined the crucial role that migration and asylum had played out in the nation building process of Turkey since only those with Turkish descent and culture were permitted to settle in the country.[184]

After the World War II, both economic modernization and intensive urbanization triggered new problems in the design of the migration politics.[185] In the context of the economic dynamism of the post-World War II era, nationalist values of migration (favoring Turkish and Muslim origins' immigration to the country) were affected by both developmentalism and market freedoms thereby caused to a change, from nationalist mentality to a more development oriented paradigm.[186] Therefore, 1970s witnessed Turkish state policy change towards Turkish-Muslims origins' immigration to the country since population increase triggered economic problems

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[181] Kemal, K. (1995). Post Second World War Immigration from Balkan Countries to Turkey, p.65, *New Perspectives on Turkey*. 12.

[182] İçduygu A. and Aksel, D. B. (2013). Turkish Migration Policies, p.171.

[183] İçduygu, A. (2014). Turkey's Migration Transition and Its Implications for the Euro-Turkish Relations, p.3. *Global Turkey in Europe, Working Paper 07* http://www.iai.it/sites/default/files/GTE_WP_07.pdf retrieved at 1.5.2015; Akar, R. (2000). *Aşkale Yolcuları: Varlık Vergisi ve Çalışma Kampları*. İstanbul: Belge Yayınları quoted in Özgür, N. and Özer, Y. (2010). *Türkiye'de Sığınma Sisteminin Avrupalılaştırılması*, p.116. İstanbul: Derin Yayınları.

[184] Ihlamur-Öner, S. G. (2013). Turkey's Refugee Regime Stretched to the Limit? The Case of Iraqi and Syrian Refugee Flows. *Perceptions*, XVIII:3 (191-228).

[185] İçduygu A. and Aksel, D. B. (2013). Turkish Migration Policies.

[186] İçduygu, A. (2014). Turkey's Migration Transition, p.4.

and caused to rise in unemployment rates.[187] Economic modernization, urbanization, migration from rural areas to cities, and the rise in unemployment rates put unemployment on the top of the agenda of the Turkish state. The First Five Year Development Plan (1963-1967) suggested exporting labor force to industrialized countries in order to stabilize labor market by decreasing the supply.[188] In that regard, Abadan-Ünat claims that migration politics was used as a governmental tool for controlling both the nature and size of the population.[189] Official agreements were signed with the Western European countries with a view to stabilize labor market of the country and benefit remittances.[190] By doing so, the country used emigration as a governmental tool to reduce both demographic and unemployment pressures.[191]

Meanwhile, Turkey articulated international refugee regime and became a party to the Geneva Convention (30 March 1962) and 1967 Protocol (31 July 1968) with a geographical reservation that grants refugee status only to people coming from

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[187] Özgür, N. and Özer, Y. (2010). *Türkiye'de Sığınma Sisteminin Avrupalılaştırılması,* p.122. İstanbul: Derin Yayınları.

[188] Abadan-Ünat, N. (2006). *Bitmeyen Göç - Konuk İşçilikten Ulus - Ötesi Yurttaşlığa*. İstanbul: İstanbul Bilgi Üniversitesi Yayınları.

[189] Ibid.

[190] Çalışma ve Sosyal Güvenlik Bakanlığı (2014). *Uluslararası İşgücü Anlaşmaları, Yayın No: 07,* Ankara http://www.casgem.gov.tr/Casgem/content/conn/casgem/path/Contribution%20Folders/Casgem/AnaS ayfa/Yay%C4%B1n_ve_Dokumantasyon/6- %C4%B0%C5%9EG%C3%9CC%C3%9C%20ANLA%C5%9EMALARI.pdf;jsessionid=TPbrTsHZF y2PV28Glf2KtWND22cwKj0QpgK9mf2G2LlLJxCvl0yS!-962447794 retrieved at 2.5.2015

[191] While originally aimed at channeling remittances to the country so as to achieve economic development, 1980s witnessed a shift regarding the Turkish state position towards Turkish-origin migrants living in Europe. This phase witnessed the politicization of the Turkish communities living abroad which was back then in line with the foreign policy of the Turkish state. Turkish state started to work on improving living conditions of the Turkish origin migrants living abroad and provided political, legal, and financial measures to maintain and to monitor its relations with them. See İçduygu, A. and Sert, D. (2009). Country Profile 5: Turkey; İçduygu A. and Aksel, D. B. (2013). Turkish Migration Policies.

Europe.[192] Kemal Kirişçi states that the reason behind holding geographical reservation due to Turkey's conceptualization of the neighboring countries of the Middle East challenging in terms of their nature to produce refugee flows. Refugee flows directed to Turkey are considered as a challenge to Turkish national security.[193] Together with Law on Settlement, 1951 Geneva Convention with the geographical reservation defined Turkey's overall policy on refugee and asylum. Its refugee and asylum policy separated into two domains with different actors responsible for different part of the policy which was crystallized in a two-tiered refugee and asylum policy.[194] Refugees coming from European countries were handled by the Ministry of Interior whereas non-Europeans were taken care of by the UNHCR.[195] Non-European refugees were subject to general legal provisions for foreigners, cannot be granted with the refugee status but could be resettled to third countries with close cooperation with UNHCR and were subjected to encouragement for voluntary repatriation. In that context, UNHCR emerged as the key actor for Turkey's refugee and asylum policy. UNHCR had sound relations with Turkish state since the very beginning and it processed refugee status determination for non-European refugees and ensured that refugees were resettled to the Western countries or repatriated to their country of origin if the conditions improved there.[196] However,

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[192] UNHCR. The 1951 Refugee Convention: Reservations and Declarations http://www.unhcr.org/3d9abe177.html retrieved at 2.5.2015. At the time when the country signed 1951 Geneva Convention, Turkey did not have legislation on asylum apart from the provisions of Law no 2510. Kirişci, K. (2000). Disaggregating Turkish Citizenship, p.10.

[193] Kirişçi, K. (1996). Is Turkey Lifting the 'Geographical Limitation'? The November 1994 Regulation on Asylum in Turkey, pp.308-309. *International Journal of Refugee Law,* 8:3.

[194] Ibid.

[195] Biehl, K. (2009). Migration Securitization, p.4.

[196] Kirişçi, K. (1993). Provide Comfort and Turkey: Decision Making for Refugee Assistance. *Low Intensity Conflict and Law Enforcement*, 2:2.

its relations with the Turkish state deteriorated over time due to asylum and refugee policy and practice of the Turkish state as will be explained in the coming pages.

1980s witnessed dramatic changes in the Turkish migration regime due to transformation in global politics, changes in international migration patterns, and developments in the internal affairs of Turkish politics as well. Firstly, prior to 1980s, migratory movements to Turkey were rather small and mostly coming from European countries. However, from 1980s onwards Turkey has been constantly subjected to migratory movements from Middle East, Asia, Africa, and Eastern Europe.[197] As a result, the country emerged as a transit country to Europe.[198] Secondly, the end of the Cold War resulted in irregular labor migration flow to Turkey. In the face of economic problems that Eastern bloc countries had, citizens of these countries come to Turkey in search of work and many individuals become irregular by overextending their visa. This period resulted in the emergence of the country as a destination country for years to come.[199] All in all, remarkable changes both in size and nature of migration flows directed to the country pointed to the beginning of new era in Turkish migration history.[200] For the first time in its history, mass immigration of "non-Turks" to the country forced the Turkish state to take measures to deal with migrants and asylum seekers.[201] However in each case, Turkish state response to migratory flows was quite different from each other. Response to each case was determined by the political and ideological apparatus of

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[197] İçduygu, A. and Sert, D. (2009). Country Profile 5: Turkey.

[198] Düvell, F. and Vollmer, B. (2009). Undocumented Migration, p.11.

[199] İçduygu, A. and Aksel, D. B. (2012). Irregular Migration in Turkey. *International Organization for Migration, Research Series, no:99.* http://www.turkey.iom.int/documents/IrregularMigration/IOM_Report_11022013.pdf retrieved at 2.5.2015

[200] Biehl, K. (2009). Migration Securitization, p.6.

[201] İçduygu, A. and Sert, D. (2009). Country Profile 5: Turkey.

the state in line with the security considerations of the state which was based on the official national identity definition and formation favored those with Turkish descent and culture. For those who were neither Turk nor Muslim, it is hard to conclude that their human rights were respected as will be explained below.

After 1979 Iran revolution, people fleeing from the new regime came to the country mostly without visa and they were permitted to stay temporarily. Turkey's policy towards the Iranian refugees was a kind of a flexible and pragmatic policy because of the fact that Turkey did not wish to offend the Iranian government at that time by accepting them in large numbers. Most of Iranians migrated to third countries in time.[202] Following the Iranian refugee flow, Turkey experienced three major refugee influxes from Iraq. The first influx occurred in 1988 following the end of the war between Iraq and Iran. The second influx was during the Gulf crisis. Then, invasion of Kuwait by Iraq led to the biggest refugee influx to Turkey. Apart from Iraqi refugee influxes, in the summer of 1989, Turkey experienced one of its massive migration flows in its history, more than 300,000 Pomaks and Bulgarian Turks fleeing from the communist regime in Bulgaria come to Turkey. [203] Later during the war in Former Yugoslavia, Turkey granted asylum to 25,000 Bosnians and 18,000 Kosovars as well.[204]

In the first Iraqi refugee influx, Turkey's initial reaction was to keep its borders closed although under a mixture of international and domestic criticisms, it was

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[202] Kirişci, K. (2000). Disaggregating Turkish Citizenship. The numbers of Iranians seeking asylum in Turkey at that time is not known exactly, estimates varied between 500,000 and 1, 5 million. İçduygu, A. and Sert, D. (2009). Country Profile 5: Turkey, p.5.

[203] Latif, D. (2002). Refugee Policy of the Turkish Republic. *The Turkish Yearbook*, XXXIII, (1-29).

[204] Sert, D. (2014). Elements of Uncertainty in Turkey's Refugee System, p.161. *Turkish Politics Quarterly*, 13:1.

forced to open the borders.[205] Turkey declared that it accepts the Iraqis temporarily without granting refugee status.[206] To that end, Turkey used the terms "peshmerga" and "temporary guest", but not refugee.[207] As the Iraqi refugee influx presented enormous challenges for asylum policy and humanitarian intervention, UNHCR Ankara office had become paralyzed on the Iraqi refugee crisis.[208] Even before the mass influx of 1991, UNHCR's Ankara Branch Office described the Iraqi Kurdish refugee problem as the "most contentious issue in our [UNHCR's] relations with Turkey" because of "the political and international sensitivities surrounding the Kurdish question".[209] Turkish government on the other hand, did not seek to collaborate with the UNHCR in the initial stage[210] as the UNHCR tried to persuade the Turkish government to open its borders in the first place.[211] The disputes between

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[205] Latif, D. (2002). Refugee Policy of the Turkish; Kirişçi, K. (2014). Syrian Refugees and Turkey's Challenge: Going beyond Hospitality, p.7. *Brookings Institute*. http://www.brookings.edu/~/media/research/files/reports/2014/05/12-turkey-syrian-refugees-kirisci/syrian-refugees-and-turkeys-challenges-may-14-2014.pdf retrieved at 3.5.2015

[206] Oran, B. (2001). *Türk Dış Politikası: Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar*. Vol. II 1980-2001, İstanbul: İletişim Yayıncılık.

[207] Latif, D. (2002). Refugee Policy of the Turkish, p.10.

[208] For a detailed examination on Turkey and Iraq border in 1991, See Long, K. (2010). No Entry! A review of UNHC's Response to Border Closures in Situations of Mass Refugee Influx. *United Nations, United Nations High Commissioner for Refugees Policy Development and Evaluation Service (PDES) PDES/2010/07* http://www.unhcr.org/4c207bd59.pdf retrieved at 5.5.2015

[209] Long, K. (2010). No Entry!, p.17.

[210] Ihlamur-Öner, S. G. (2013). Turkey's Refugee Regime, p.196. In April 1990, Turkey even withdrew its authorization that was given to the UNHCR to build an accommodation center for Iraqi refugees at Yozgat whose cost would be totally covered by the UNHCR. Parliamentary Assembly of the Council of Europe (1991). *"Recommendation 1151 (1991) on the Reception and Settlement of Refugees in Turkey,* paragraph 11. http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15185&lang=en retrieved at 5.5.2015

[211] Later UNHCR participated in Operation Provide Comfort and assumed overall responsibility. Long, K. (2010). No Entry!, p.23.

the UNHCR and Ankara particularly intensified after the end of the Gulf crisis since Turkish state refused to apply its working relationship with the UNHCR to the people coming from Northern Iraq.[212] In that vein, Mannaert concludes that "[i]n light of this policy [Turkey's Kurdish refugee Policy], Turkey wished to prevent these groups form being granted refugee status and hence denied them access to UNHCR protection and assistance."[213] Parliamentary Assembly of Council of Europe on the other hand, noted that Turkey's Iraqi refugee policy rather intended to discourage refugees' integration to Turkey.[214]

1980s witnessed the emergence of identity politics inside Turkey in parallel to the rise of identity politics worldwide. Turkey's war against Kurdistan Workers' Party (PKK) made situation of the Kurdish refugees' in particular a quite sensitive national security issue at a time when Turkey denied existence of a separate Kurdish identity.[215] Within this context, invasion of Kuwait by Iraq led to the largest refugee influx to Turkey that the country ever faced up to 1990s and caused a national security emergency on the part of Turkish state. This time, Turkey assessed the refugee influx solely through the lenses of national security, closed its Iraqi border, and declared that a military intervention was under consideration to prevent the

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[212] Kirişçi, K. (1996). Is Turkey Lifting, p.298.

[213] Mannaert, C. (2003). Irregular Migration and Asylum in Turkey, p.3. UNHCR. *New Issues in Refugee Research, Working Paper, No. 89* http://www.unhcr.org/3ebf5c054.pdf retrieved at 5.5.2015

[214] Parliamentary Assembly of the Council of Europe (1991). *Recommendation 1151 (1991,* Paragraph 10.

[215] Turkey's war against PKK in particular and the Kurdish problem in general led to forced migration flow in Turkey during the course of 1990s. See Yüceşahin, M. M. and Özgür, E.M. (2006). Türkiye'nin Güneydoğusunda Nüfusun Zorunlu Yerinden Oluşu: Süreçler ve Mekânsal Örüntü. *Coğrafi Bilimler Dergisi*, 4:2, (15-35); Türkiye Ekonomik ve Sosyal Etüdler Vakfı (2008, March). *"Zorunlu Göç" ile Yüzleşmek: Türkiye'de Yerinden Edilme Sonrası Vatandaşlığın İnşası.* İstanbul: Türkiye Ekonomik ve Sosyal Etüdler Vakfı Yayınları.

refugee influx.[216] Nonetheless, under the severity of humanitarian crisis, it was forced to revise its policy; no matter Turkish authorities stated that "they would not repeat the mistake they did in 1988."[217] Under international and domestic criticisms, Turkish government mounted an international diplomatic effort for the creation of no-fly zone in order to keep refugees out of the Turkish territory.[218] Turkish diplomatic efforts resulted in the United Nations Security Council Resolution on Iraq which declared that repression of the Iraqi civilians threatens international peace and security in the region.[219] Following United States-led Operation Provide Comfort, a safe haven was created in Zakho. Upon the creation of the safe haven, Turkey opened its borders and around 250,000 refugees entered to Turkey.[220]

In 1989, more than 300,000 Bulgarian Turks and Pomaks were expelled from Bulgaria by the Communist regime. In the Bulgarian case, Turkish state response was completely different in contrast to the Iraqi refugee crises. Turkish-Bulgarian border opened immediately and Bulgarians were provided protection and assistance in the first place. Even though Turkey considered that Bulgarians did not fall within the scope of 1951 Geneva Convention like the Iraqi refugees, they were granted the right to settle in Turkey as they were considered "national" refugees.[221] To facilitate

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[216] Latif, D. (2002). Refugee Policy of the Turkish, p.12. In particular, Turkey deeply concerned about the implications of the crisis on the Kurdish issue. Kirişçi, K. (1994). Provide Comfort or Trouble: Operation Provide Comfort and Its Impact on Turkish Foreign Policy. *Turkish Review of Middle East Studies.*

[217] Statement of Kamran İnan, the Minister of State, Milliyet 4 April 1991, quoted in Latif, D. (2002). Refugee Policy of the Turkish Republic, p,13.

[218] Kirişçi, K. (1993). Provide Comfort and Turkey.

[219] United Nations (1991). *Security Council Resolution 688 of 5 April 1991* http://www.interventionism.info/en/UNSC-Res-688 retrieved at 6.5.2015

[220] Kirişçi, K. (1993). Provide Comfort and Turkey.

[221] Bulgarians were considered "our cognates" (*soydaş*) by the Turkish state. It is manifestation of a policy that is based on having Turkish and Muslim origin in contrast to a right based refugee relief

their integration to the country, a wide array of policy measures were implemented, including housing projects and assistance for finding job. Even though most of the Bulgarians returned soon after the regime change in Bulgaria in 1990, the rest were later given Turkish citizenship.[222]

At a time when Turkey had to deal with both the Iraqi and the Bulgarian refugee crises, its response in terms of the level of protection and assistance provided was unacceptable as Turkey did not treat equally and fairly in both cases. Its policy response depended on refugees' origin, favoring Bulgarian refugees as they considered having Turkish and Muslim origin.[223] This differentiation on the part of Turkish state for refugee relief together with its refusal to grant the Iraqi Kurds refugee status, led the Parliamentary Assembly of the Council of Europe to issue "Recommendation 1151 (1991) on the Reception and Settlement of Refugees in Turkey". Parliamentary Assembly's Resolution asked Turkey to lift geographical reservation to the Geneva Convention and treat all the *de facto refugees* from different origins equally and fairly.[224] In that vein, Katy Long notes that "[t]he

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system. See Parliamentary Assembly of the Council of Europe (1991). Recommendation 1151; Kemal Kirişçi, Turkey: Kirişçi, K. (2003). Turkey: A Transformation from Emigration.

[222] Kirişçi, K. (2003). Turkey: A Transformation from Emigration. During the wars in Bosnia and Kosovo, Turkey also granted asylum to 25,000 Bosnians and 18,000 Kosovars. This time Turkey followed a kind of flexible policy and in cooperation with the UNHCR Ankara Office, they were assisted for family reunification as well as for voluntarily repatriation. UNHCR (1999). *Country Operation: Turkey at a Glance* http://www.unhcr.org/3e2d4d681c.pdf retrieved at 10.5.2015. Sert concludes that "[t]he policy response to the refugee crises during the wars in Bosnia and Kosovo resembled neither the hesitant reaction towards the Kurdish refugees, nor the welcoming attitude towards the flows from Bulgaria." Sert, D. (2014). Elements of Uncertainty, p.163. Turkey in the mid and late 1990s received around 50,000 Albanian and Bosnian refugees as well. Once the situation in refugees' countries stabilized, most of them returned to their homes and the rest stayed in Turkey and integrated into the country. Kirişçi, K. (2014). Syrian Refugees and Turkey's Challenge, p.8.

[223] Ihlamur-Öner, S. G. (2013). Turkey's Refugee Regime.

[224] Iraqis and Bulgarians were regarded as "*de facto* refugees" by the Parliamentary Assembly of the Council of Europe as Turkey's geographical reservation do not let them be granted refugee status. Parliamentary Assembly of the Council of Europe (1991). *Recommendation 1151 (1991),* paragraph 3 and 4.

reluctance to accommodate the Kurds was political rather than capacity-based, as evidenced by the willingness of the Turkish state to receive 350,000 Bulgarian Turks."[225] In fact, 1991 refugee influx experience defined Turkey's overall policy on non-Conventional refugee and asylum policy and had a deep and long-lasting impact on Turkish asylum policy up to 2000s.[226] Its policy was strictly security oriented and was based on coping with refugee influxes directed to Turkey through creating safe zones/heavens/no-fly zones and resettlement to third countries.[227] Until non-Conventional refugees were resettled to third countries, they were permitted to stay in the country but were not given the right for permanent stay in the country. As the resettlement figures by the UNHCR are quite low compared to the asylum applications, this led to a situation where asylum seekers are become trapped in the country and/or forced to take irregular means in an effort to reach the EU.[228]

Turkey granted refugee status to individuals fleeing from communist regimes in the Cold War period.[229] Turkish state stance towards refugees fleeing from communist regime based on two political realities of that time. Firstly, granting refugee status to persons fleeing from communist regimes was seen as a natural requisite of its anti-

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[225] Long, K. (2010). No Entry!, p.7.

[226] Kirişçi, K. (2014). Syrian Refugees, p.7; Özgür, N. and Özer, Y. (2010). *Türkiye'de Sığınma,* pp.124-125.

[227] Baklacioğlu, N. Ö. (2009). *Building "Fortress Turkey"*, p.2.

[228] Hammarberg, T. (2009). Report on Turkey: Issue Reviewed: Human Rights of Asylum Seekers and Refugees, p.8. *Council of Europe, COMMDH(2009)31* https://wcd.coe.int/ViewDoc.jsp?id=1511237&Site=COE retrieved at 15.5.2015

[229] Although the actual numbers were not known exactly, it was stated that about 13,500 individuals were granted international protection under the Geneva Convention between 1970 and 1996. See Kirişçi, K. (2004). Global Migration Perspectives, Reconciling Refugee Protection with Efforts to Combat Irregular Migration: the Case of Turkey and the European Union, p.4. *Global Commission on International Migration, No. 11* https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp11.pdf retrieved at 15.5.2015

communist policy. Secondly, asylum seekers' numbers were small in numbers and Western block's commitment to resettle them in the West positioned Turkey as a staging post.[230] Given the fact that Western world would take care of refugees, Turkey did not face any particular problems associated with the refugees in the Cold War context.[231] However, in the light of changing migratory patterns directed to the country as mentioned above, post-Cold War era presented enormous challenges for Turkish migration and asylum policy since the Western world were no longer eager to resettle refugees in the Western countries. Refugees were left to their fate as explained in Chapter II. Turkey conceptualized most of irregular migrants including genuine asylum seekers as "illegal" or economic migrants and conducted deportations which in turn led to growing human right criticisms on the behalf of Turkey for the violation of non-refoulement principle.[232] In such a climate, there were disputes between UNHCR and Ankara over status determination process and particularly over asylum seekers and refugees who had entered the country and had not registered to the Turkish police. Moreover, in the face of growing numbers of non-Convention refugees and irregular migrants, Turkish state on the other hand, worried that movement of people across and within its borders became uncontrollable and thereby posed security challenges to the state order.[233] In a nutshell, all these factors contributed to a policy change as the country did not have a proper framework for asylum seekers and refugees.

The lack of a proper legislative framework on asylum and refugee policy until 1994 could be explained from different perspectives. Firstly, in the international arena Turkey from the very beginning conceptualized as an emigration country. Once

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[230] Kirişçi, K. (1996). Is Turkey Lifting, pp.295-296.

[231] Ibid.

[232] Biehl, K. (2009). Migration Securitization, p.4.

[233] Kirişçi, K. (1996). Is Turkey Lifting.

conceptualized as such, attention was given to emigrants rather than immigrants, although the latter has been a decisive factor in the history of modern Turkey as explained above. Secondly, relations between the UNHCR and Ankara were operating smoothly until 1980s as the first had a decisive authority for the refugees coming from non-European countries. Therefore, Turkish authorities showed no particular concern for non-European refugees.[234] Thirdly, the persistent ignorance on the part of Turkey seem to be both a political and an ideological strategy in the Cold War context, as the country positioned as a buffer zone between Eastern and Western blocks. Given the fact that the country subjected to refugee influxes mainly from non-Convention countries in the post-Cold War period, not having a proper legislation to govern the status of non-Convention refugees was no longer sustainable. All in all, in the light of changing migratory patterns directed to Turkey from non-Convention countries and intensified security concerns over refugee influxes, the country was forced to revise its refugee and asylum policy with the distinctive role that security concerns played out. In November 1994, Council of Ministers adopted "Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country".[235] Growing security concerns played a crucial role in the adoption of the regulation which aimed "to replace the previous practice, which they [Turkish authorities] have come to consider as too liberal and life threatening to Turkish security".[236]

1994 Regulation clearly reflected security concerns' priority on the part of the Turkish state over human rights. Under 1994 Regulation, asylum seekers and foreigners had to apply both to the Ministry of Interior and UNHCR for asylum with

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[234] Ibid.
[235] Official Gazette of Turkey dated 30.11.1994.

[236] Kirişçi, K. (1996). Is Turkey Lifting.

the condition that once recognized with a refugee status, they had to be resettled in a third country. Amongst others, the 1994 regulation aimed to put all status determination practices under the control of the Turkish government via the Ministry of Interior and to regulate all asylum applications. To that end, strict timing for asylum application was designated. Either to seek asylum from Turkey or to request residence permit to seek asylum from a third country, asylum seekers had to apply to the Turkish authorities in five days (Article 4 of the 1994 Regulation). The five day limit was widely criticized by the human rights advocates and Turkey lost cases before European Court of Human Rights and Turkish administrative courts.[237] As a result, five day limit rose to ten days in the first place and then dropped out completely. Therefore, in the face of international and national criticisms before underwent Europeanization process, the country already introduced a number of reforms, including judicial appeal so as to make improvements in the policy area.[238]

Based on the accounts above, it is possible to conclude that migration politics was used as a governmental tool for controlling both the nature and size of the population.[239] Migration and asylum policy have been designed along Turkish state's ideological, economic, social and political needs. Amongst others, security concerns of Turkish state from the very beginning concerning nation building and identity played the crucial role. Its official national identity formation clearly favored to those with Turkish descent and culture while discouraging those who were neither Turk nor Muslim. Its refugee and asylum policy on the other hand, built upon clear distinction between European and non-European refugees, leaving the latter mostly to the UNHCR in the Cold War period. However, post-Cold war era presented significant challenges for Turkey's migration policy as it brought a paradigm shift in

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[237] Tokuzlu, L. B. (2010). Burden Sharing Games.

[238] Kemal Kirişçi argues that reforms were encouraged by the UNHCR Turkey Office. Kirişçi, K. (2007). Border Management and EU-Turkey Relations, p.12.

[239] Abadan-Ünat, N. (2006). *Bitmeyen Göç.*

international refugee regime in the sense that refugees no longer represented an ideological value in contrast to the Cold War period. Western countries started to implement policies aimed at keeping refugees out of their territory.[240] This policy change on the part of Western state pointed a ''shift from the protection of asylum seekers to protection from them'' as explained in Chapter II.[241] In that context, Western countries commitment to resettle refugees in their country which positioned Turkey as a staging post was no longer valid.[242] Therefore, its unsustainable policy on migration together with Turkey's bid for the EU membership triggered deep transformations from 2000s onwards. In that context, Turkey's wish to become the EU member and the accompanying political liberalization to that end increasingly strained the state's traditional concept of national identity to a certain extent though.[243]

4.2. Europeanization of the Turkish Migration Policy from 2000s onwards

Irregular migration and refugee flows have been one of the most challenging issues before the international politics. As international migratory movements have grown in volume and also changed in character, migrant receiving countries implement more restrictive migration and refugee recognition standards.[244] Fortified borders, hostile and insecure conditions, and involuntarily return are a few measures that

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[240] Crisp, J. (2003). A New Asylum Paradigm? Globalization, Migration and the Uncertain Future of the International Refugee Regime. *UNHCR Working Paper No.100* http://www.unhcr.org/3fe16d835.html retrieved at 15.5.2015; Mertus, J. (1998). The State and the Post-Cold War.

[241] Uçarer, E. M. (2001.) Managing Asylum, p. 289.

[242] Kirişçi, K. (1996). Is Turkey Lifting, pp.295-296.

[243] İçduygu, A., et al. (2013). Migration Profile: Turkey, p.16.

[244] Stephan, C. and Miller, M. (2009). *The Age of Migration*, p.96.

industrialized countries are put into force.[245] Repercussion of this political and legal environment for migrants, refugees, and asylum seekers are devastating as well for countries of source and transit.

Situated at the external borders of the EU, Turkey has been subjected to externalization of the EU migration regime. On the part of the EU, integration of Turkey to the EU's external migration regime is important for the security of the EU's southern borders as the security at the EU's southern borders will enhance "furthers Europe" inside the Union.[246] Defined as a major "illegal" entry point to the EU in the last decades, the EU put enormous pressure on Turkey to develop a comprehensive migration regime in accordance with the EU standards.[247] The EU's leverage over Turkey to get the country to develop a migration regime along with the *acquis* and according to the EU priorities is remarkable, as Turkey is under the obligation of acquis in the field of migration and asylum. Although the relations between parties have not been going well particularly from late 2005 onwards, both Turkey and the EU always find ways to keep relations on track somehow. No matter how the EU's credible membership perspective is fading away in Turkish context, the interests of both Turkey and the EU make possible to advance harmonization in the field of migration and asylum. For example, in order to bypass deadlock and "to bring fresh dynamics into the EU-Turkey relations", *"Positive Agenda"* has been launched in 2012 which amongst others includes migration as an area of "joint interest".[248]

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[245] United Nations (2012). *The State of the World's Refugees: In Search of Solidarity*. http://www.unhcr.org/4fc5ceca9.html retrieved at 15.5.2015
[246] Carr, M. (2012). *Fortress Europe.*

[247] See Frontex, Annual Risk Analyses.

[248] European Commission (2012). Press Release, 17 May 2012. MEMO/12/359 Brussels. http://europa.eu/rapid/press-release_MEMO-12-359_en.htm?locale=en retrieved at 16.5.2015

Turkey-EU relations on migration policy have been dominated by two policy areas to a greater extent. The first one is the irregular migration. The magnitude of irregular migration flows from and through Turkey to the EU makes "migration management" a kind of conditionality in the Turkish case.[249] While border security plays a crucial role in stopping irregular migrants before they reach the EU territory, readmission agreement provides the legal ground for readmission of TCNs by Turkey. The second issue dominating the relations between parties is Turkey's geographical reservation to the Geneva Convention. The EU wants Turkey to lift geographical reservation to Geneva Convention. Regarding geographical reservation, in the National Programme for the Adoption of the Acquis (NPAA) dated 2001 it was stated that Turkey will consider lifting of geographical reservation when infrastructural and legislative measures are introduced in the light of burden sharing with Turkey in a manner that would not encourage large scale refugee movements from the East to the country.[250]

Turkey preserved its position in the 2003 NPAA as well. In the 2008 NPAA, the only reference to geographical reservation was within the context of legislative alignment and it was stated that an asylum law will be prepared to enable harmonization of Turkish legislation with that of the EU while keeping the geographical reservation.[251] Therefore, the 2008 NPAA signaled a policy change regarding the lifting of the geographical reservation. Later, in the course of Turkey-EU readmission agreement,

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[249] İçduygu, A. (2011). The Irregular Migration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement, p.2. *European University Institute, Research Report 2011/14* http://cadmus.eui.eu/bitstream/handle/1814/17844/EUUS%20Immigration%20Systems%202011_14.pdf?sequence=1 retrieved at 18.5.2015

[250] National Programme of Turkey for the Adoption of the EU Acquis 2001, p. 446 http://www.abgs.gov.tr/index.php?p=195&l=2 retrieved at 1.6.2015

[251] National Programme of Turkey for the Adoption of the EU Acquis 2008, p. 259 http://www.abgs.gov.tr/files/UlusalProgram/UlusalProgram_2008/En/pdf/iv_24_justicefreedomandsecurity.pdf retrieved at 1.6.2015

it is stated that Turkey will consider lifting geographical reservation to the Geneva Convention upon her accession to the EU.[252]

With the coming into power of one party rule of Justice and Development Party in 2002, Turkey underwent a deep reform process in all policy areas, including migration and asylum policy so as to fulfill Copenhagen criteria with a view to start accession negotiations. In the Accession Partnership Documents (APDs) the EU enlisted the reforms that Turkey should undertake in its way towards membership.[253] In that vein, both timing and direction of change of Turkey's migration and asylum policy underlie the crucial role the EU played. In June 2002, "*Task Force on Asylum, Migration and Protection of External Borders*" became operational. This task force dealt with migration, asylum, and external borders separately and prepared strategy papers for each of them enlisting necessary reform reforms to be undertaken.[254] In reply to APDs, Turkey adopted 2001, 2003, and 2008 NPAAs. Under NPAAs Turkey started to implement a comprehensive reform program in the area of migration, asylum and border management. In 2005, "*the National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration*" was adopted which identified in detail areas of fit and misfit between the acquis and Turkish legislation.[255]

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[252] Ministry of Foreign Affairs of Turkey. First Meeting of the EU-Turkey Visa Liberalization Dialogue Agreed Minutes
http://www.mfa.gov.tr/data/agreed%20minutes%20ve%20annotated%20roadmap.pdf   retrieved   at 1.6.2015

[253] European Commission. Accession Partnership documents with Turkey dated 2001, 2003, 2006, and 2008. http://www.abgs.gov.tr/index.php?p=46226&l=2 retrieved at 1.6.2015

[254] Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration (2002). http://www.carim.org/public/legaltexts/LE2TUR003_EN.pdf retrieved at 10.6.2015

[255] Ibid. Tolay argues that the adaptation of the National Action Plan is a clear outcome of the conditionality. Tolay, J. (2012). Turkey's "Critical Europeanization": Evidence from Turkey's Immigration Policies, p.46. In Elitok, S. P. and Straubhaar, T. (Eds.) *Turkey, Migration and the EU: Potentials, Challenges and Opportunities.* Hamburg University Press.

Even though Turkey's wish to become the EU member and the accompanying political liberalization triggered a deep change in migration policy in the course of Europeanization process of the country, the process has its limitations as well. The Law on Settlement (Law no 2510) was repealed by the New Law on Settlement (Law no 5543) enacted in 2006. Under the New Law on Settlement, an immigrant is those who has Turkish descent and Turkish culture and come to settle in Turkey alone or *en masse* and is accepted according to the provisions of the Law (Article 3/d). Therefore, official definition of the immigrants is still defined according to having Turkish descent and culture as in the case of repealed Law. Therefore, there has not been much change; the official definition of immigrant is still security oriented favoring those with Turkish descent and culture in the light of official policy of the Turkish state.

In line with the National Action Plan, "*Asylum and Migration Unit for the Development and Implementation of Legislation and Administrative Capacities*" was set up in 2008. This task force drafted a new law on asylum and foreigners and delineated a new agency responsible for asylum and migration as well. As a result, the Draft Law on Foreigners and International Protection submitted to the Parliament as of May 3, 2012.[256]

4.2.1. The Law on Foreigners and International Protection

The Law on Foreigners and International Protection (LFIP) (Law no 6458) was enacted by the Turkish Parliament in April 4, 2013. The LFIP represents a groundbreaking development in Turkish migration policy and favors a more balanced approach to migration management in terms of security concerns and human rights.[257] The LFIP aims to bring Turkish migration in line with the

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[256] Turkish Parliament (2012). Draft Law on Foreigners and International Protection. http://www2.tbmm.gov.tr/d24/1/1-0619.pdf retrieved at 10.6.2015

[257] Açıkgöz, M. and Ariner, H. O. (2014). Turkey's New Law on Foreigners and International Protection: An Introduction. *University of Oxford, Turkish Migration Studies Group (TurkMiS)*

international human rights standards and the EU acquis. The LFIP regulates entry, stay, and exit from Turkey of foreigners, the scope and implementation of the protection to be provided for them and organization, responsibilities and duties of Directorate of Migration Management. However, the LFIP continues to uphold geographical reservation thereby it limits refugee status only to those coming from European states.[258] Nonetheless, the LFIP sets out different protection regimes for both Convention and Non-Convention refugees. It guarantees human rights of foreigners, asylum seekers and refugees through a right based system and provides a wide range of procedural safeguards in relation to international protection claims, guaranteed access to the UNHCR and legal assistance against negative asylum decision and deportation orders. It is the first primary legislation of Turkey regulating refugee and asylum policy since refugee and asylum policy was regulated by the secondary legislation (1994 Regulation) up to the LFIP. Settling up the General Directorate of Migration Management is an important step in terms of management of migration by a single organizational body as well. Integration of foreigners and those under the international protection regime into Turkish society (Article 96) is a quite positive development in the design of the migration policy which was completely neglected area up to the LFIP as well.

The LFIP provides three types of international protection regime. *Refugee* status shall be granted for those coming from Europe upon completion of the refugee status determination process (Article 61). *Conditional refugee* has been introduced for non-European refugees and stateless persons and they are allowed to temporarily reside in Turkey until resettled to a third country (Article 62). *Subsidiary protection* is

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Briefing *Paper* *2.* https://www.compas.ox.ac.uk/fileadmin/files/Publications/Briefings/TurkMiS/Brief_2_Ariner_Acikgoz_2014.pdf retrieved at 10.6.2015

[258] For a detailed assessment of deficiencies of the LFIP, See, Yöney, Y. (2013). Türkiye Mülteci Korumasını Dar Yorumluyor. (2013, April 5). *İstanbul-BİA Haber Merkezi* http://www.bianet.org/bianet/goc/145648-turkiye-multeci-korumasini-dar-yorumluyor retrieved at 10.6.2015

provided for those who could not be qualified neither as a refugee nor conditional refugee. They are allowed to reside in Turkey as well (Article 63). Apart from these international protection regimes, the LFIP regulates temporary protection regime as a *separate* protection regime from the international protection regimes that explained above. Temporary protection is granted for foreigners who have arrived at or crossed Turkish borders *en masse* seeking protection (Article 91). Given the fact that Turkey has been exposed refugee movements constantly, one article on population movements *en masse* is not sufficient. The LFIP leaves the issues pertaining to all aspect population movements *en masse* to the secondary legislation issued by Council of Ministers. Based on Article 91 of the LFIP, Temporary Protection Regulation issued by the Council of Ministers entered into force as of October 10, 2014 (Official Gazette of Turkey dated 22.10.2014).

Under the LFIP, persons who apply to the governorates for international protection within a reasonable period of time on their own accord shall not be subjected to criminal action for breaching the terms and conditions of legal entry into Turkey or illegally staying in Turkey provided that they shall provide acceptable reasons for such illegal entry or presence (Article 65). Accordingly, those who breach the terms and conditions of legal entry into Turkey or illegally staying in Turkey have to lodge their international protection claims within a reasonable time period. First of all, as Turkey's geographical reservation to the Geneva Convention does not grant refugee status for non-Europeans, many of non-Europeans choose not to apply to the Turkish authorities. Secondly, the crucial issue is whether irregular migrants are able to access to channels for international protection claims. Within this context, one must say that possibility of lodging asylum claims at the borders is not a common practice. In order to lodge asylum, authorities should be aware of the rights of irregular migrants and should guarantee access to protection channels as well. Last but not least, irregular migrants should be provided the necessary information on how to lodge asylum application by the authorities and to do so, communication between

irregular migrants and officials must be ensured through interpreters.[259] Since "a common practice is returning irregular migrants from the border or forcing them to make a border crossing back to where they just came from",[260] the distinction between irregular migrants and those in need of international protection is of crucial importance. In Turkish context, the issue of irregular migration is closely associated to asylum and refugee policy. This is particularly due to the fact that those apprehended in an irregular situation assessed mostly on the basis of irregularity even if they have claims for asylum.[261] As such, the implications of Turkey's policy on irregular migrants are remarkable in terms of human rights of asylum seekers and refugees as "[t]he issue of asylum often takes place beneath the reforms in fighting irregular migration and border management".[262]

While security-related measures are justified on the ground of blocking the flow of irregular migration flows and protecting human rights of migrants against human smugglers, the reality is far from it. This is not to say that countries should not implement measures to enhance their border security. On the contrary, they have the right to do so, but to deal with the irregular migration through security related policies contributing death of irregular migrants worldwide. These policies are far from producing viable solutions to the issue. For example, Turkey-Greece land border and route to Greece through Aegean Sea have been the main focus of the EU in its relations with Turkey for years because of being of one of the main entry routes for irregular migrants to reach the EU territory.[263] As of 2010, European Agency for

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[259] Soykan, C. (2010). The Migration-Asylum Nexus in Turkey, p.11-13. *Enquire,* 5.

[260] Ibid, p.12.

[261] United States Committee for Refugees and Immigrants (2009). *World Refugee Survey 2009: Turkey* http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/Turkey.html retrieved at 10.6.2015

[262] Baklacioğlu, N. Ö. (2009). *Building "Fortress Turkey",* p.3.

[263] İçduygu, A. (2011). The Irregular Migration Corridor.

the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) declared that "[t]he Greek-Turkish land border became the centre of gravity of all land border activities" and since then both Frontex and Greek national operations are in force to detect irregular border crossings from and through Turkey to the EU.[264] Frontex has been conducting sea and land Poseidon operations in order to "combat illegal immigration" flows across the EU borders.[265] Indeed, Greece built a 12, 5 km fence along its land border with Turkey to keep irregular migrants out of its territory in 2012.[266] Since the border control and surveillance mechanisms are strengthened, there are displacement effects forcing irregular migrants including genuine asylum seekers to take more dangerous means to reach the EU.[267] This is very true of Turkey-EU cooperation on Greek borders as well. Irregular migration flows from and through Turkey has been shifting between Turkish-Greek and Turkish-Bulgarian borders depending on the operations, intensity of border controls, and degree of cooperation between the relevant authorities.[268] For example, since controls on Turkish-Greek borders intensified, irregular border crossings are shifting between Turkish-Greek and Turkish-Bulgarian borders. Bulgaria experiences a steady increase in irregular border crossings with

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[264] Frontex (2010). General Report 2010, p.40
http://frontex.europa.eu/assets/About_Frontex/Governance_documents/Annual_report/2010/frontex_general_report_2010.pdf retrieved 12.6.2015

[265] Frontex. Archive of Operations
http://frontex.europa.eu/operations/archive-of-operations/?year=&type=&host=Greece retrieved at 15.6.2015

[266] Nielsen, N. (2012). Fortress Europe: a Greek Wall Close Up. *EUobserver*. https://euobserver.com/fortress-eu/118565 retrieved at 15.6.2015

[267] Popp, M. (2014). Europe's Deadly Borders: An inside Look at EU's Shameful Immigration Policy. (2014, November 10). *Spigel Online International* http://www.spiegel.de/international/europe/europe-tightens-borders-and-fails-to-protect-people-a-989502.html retrieved at 15.6.2015; Burridge, A. (2012) the Added Value of RABITs

[268] Crépeau, F. (2012). Regional Study: Management of the External, p.4.

many of them are Syrians.[269] Lately, Bulgaria has completed the construction of a 30 km wall at Turkish-Bulgaria border to reduce the number of irregular migrants and increased the number of border patrols on the Bulgarian side of the border.[270]

The policy areas that the EU provides financial assistance is crucial in terms of determining both the design and implementation of concerned policy area. Within this context, the investment the EU makes in Turkey clearly prioritizes security approach to the issue over human rights of migrants and points to the securitization trend in Turkey's migration management.[271] In other words, to a large extent the EU focuses on curbing irregular migration and securing Turkish borders.[272]

Pre-accession assistance is provided on areas such as integrated border management, the fight against "illegal migration", funding of detention centers, capacity building,

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[269] Frontex (2013). FRAN Quarterly Quarter 3, July–September 2013, p.13 http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2013.pdf retrieved at 15.6.2015

[270] Lyman, R. Bulgaria Puts Up a New Wall, but This One Keeps People Out. (2015, April 5). *Newyork Times* http://www.nytimes.com/2015/04/06/world/europe/bulgaria-puts-up-a-new-wall-but-this-one-keeps-people-out.html?_r=0 retrieved at 15.6.2015; Human Rights Watch (2014). *"Containment Plan": Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, p.23 http://www.hrw.org/sites/default/files/reports/bulgaria0414_ForUpload_0.pdf retrieved at 15.6.2015

[271] Crépeau, F. (2012). Regional Study: Management of the External, p.9.

[272] The Ministry of Foreign Affairs of Turkey and Frontex signed a Memorandum of Understanding at May, 28 2012 which establishes a framework for enhanced operational cooperation between parties. The Memorandum of Understanding focuses on areas such as border surveillance, exchange of strategic information including threat assessment, and risk analysis. Later in February 2014, parties signed a cooperation plan including risk analysis and training activities for the period 2014- 2016. All of these policy measures are security oriented to detect irregular migration flows. Ministry of Foreign Affairs of Turkey (2012). Press Release 28 May 2012 regarding the Signing of the Memorandum of Understanding on Cooperation with Frontex http://www.mfa.gov.tr/no_-148_-28-may-2012_-press-release-regarding-the-signing-of-the-memorandum-of-understanding-on-cooperation-with-frontex.en.mfa retrieved at 15.6.2015; European Commission (2012). Turkey 2012 Progress Report, p.76 http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf retrieved at 15.6.2015; European Commission (2014). Turkey 2014 Progress Report, p.66 http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf retrieved at 15.6.2015

and so on so forth.[273] There are a wide range of studies/reports highlighting the fact that the EU is employing detention as a tool in border control.[274] In parallel, Turkey increasingly makes use of detention against those apprehended in an irregular situation through the EU's financial assistance.[275] The UN Special Rapporteur on the human rights of migrants observes that "the EU focus on heightening border security has led to an increased prioritization of detention as a solution, including plans for the funding of new detention centres in Turkey by the EU" with an aim to ensure that irregular migrants and asylum seekers are stopped in Turkey before they reach to the EU.[276] In a similar vein, Migreurop states that "Turkey's asylum system is in the process of changing (…) to an in-camp system, which involves the European style of camps, with an obligation for asylum seekers to live in a centre that is managed by the authorities."[277] In fact, for irregular migrants including undocumented asylum seekers, it is not possible to exit Turkey legally as Turkish border authorities do not allow undocumented people to exit from Turkey through official border crossing points. Therefore, there is no way for undocumented irregular migrants including asylum seekers to exit Turkey legally in order to seek asylum at Europe. Since the

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[273] Baklacioğlu, N. Ö. (2009). *Building "Fortress Turkey"*.

[274] Amnesty International (2014). *The Human Cost of Fortress Europe*; Burridge, A. (2012) the Added Value of RABITs.

[275] Crépeau, F. (2012). Regional Study: Management of the External. Detention and removal centers have become a common practice in irregular migration policy of the county. Under the LFIP, foreigners subject to administrative detention shall be held in removal centers (Article 58/1). Concerning irregular migration, administrative detention shall be issued for those who breach the terms and conditions for legal entry into or exit from Turkey (Article 54/h).

[276] Crépeau, F. (2012). Regional Study: Management of the External, p.11.

[277] Migreurop (2011). At the Margins of Europe: the Externalization of Migration Controls, p.27. *Migreurop* *2010-2011* *Report* http://www.migreurop.org/IMG/pdf/Rapport_Migreurop_2011_Version_anglaise_27012012_pour_de rniere_relecture_et_validation_FASTI-SM.pdf retrieved at 15.6.2015

vast majority of them do not have proper travel documents, they are somehow forced to take irregular means to reach the EU.[278]

4.2.2. Readmission Agreement with the EU

Readmission agreements (RA) define and set out the conditions under which parties to the agreement readmit their citizens and TCNs who pass through the territory of contracting parties.[279] Since 1990s, more than two hundred bilateral RAs were signed worldwide and most of them were concluded by the EU member states.[280] While the EU as a part of its overall migration management strategy makes pioneering of RAs actively, RAs actual contribution to the reduction of irregular migrant flows remains doubtful.[281] RAs implementation involves uncertainties for human rights of migrants as there is no *actual* protection mechanisms employed in RAs apart from standard sentences stating that RA shall be without prejudice to the rights, obligations, and responsibilities arising from international law of the Union, its member states and the country in question.[282]

Readmission of TCNs constitutes the crucial part of the RAs. Behind the inclusion of TCNs, there lay the basic assumption that return of people to the transit countries will send a signal to people willing to migrate to the EU, discourage them, and

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[278] Human Rights Watch (2014). *"Containment Plan"*, p.23.

[279] Parliamentary Assembly of the Council of Europe Resolution (2010). *1741 (2010) Final Version Readmission Agreements: a Mechanism for Returning Irregular Migrants* http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17874&lang=en retrieved at 15.6.2015

[280] Coleman N. (2009). *European Readmission Policy: Third Country Interests and Refugee Rights.* Leiden: Netherlands Martinus Nijhoff Publishers.

[281] İçduygu, A. (2011). The Irregular Migration Corridor, p.12.

[282] See, for example the preamble of the readmission agreement between Turkey and the EU.

reduce the number of irregular migrants in the EU.[283] Under the Article 13 of the 1948 UN Declaration of Human Rights, everyone has the right to return to his country. This forms the legal ground for a state to admit its citizens in RAs. Contrary to this, "there is no corresponding international law obligation for states to admit non-nationals (…) even though some argue that the general international legal notion of 'good neighborly relations' would establish such an obligation."[284] In an effort to give readmission of TCNs a legal base in the international law, it is claimed that neighboring countries have a mutual interest and responsibility for readmission of TCNs. However, readmission of TCNs is a political rather than a legal principle as RAs are regarded as a mechanism that shifts protection obligations from destination to source and/or to transit countries.[285]

As a matter of fact, third countries are unwilling to sign RA with the EU as protection obligations is shifted to third countries. Therefore, the EU always offers "benefits" so as to conclude RAs with source and transit countries. That's why RAs are negotiated and concluded in the wider context of the relations between the EU and third countries.[286] RA concluded with Central European countries were achieved in the wider context of enlargement whereas agreements with Moldova, Russia and lately with Turkey accompanied with the visa facilitation or visa free regime between parties. Under Ankara Agreement and its Additional Protocol visa facilitation is perceived as a step back from the existing rights of Turkish citizens. Therefore, the visa free regime together with prospect of membership determined Turkey's

[283] Roig, A. and Huddleston, T. (2007). EC Readmission Agreements: A Re-evaluation of the Political Impasse, p.379. *European Journal of Migration and Law,* 9.

[284] Ibid, p.364.

[285] İçduygu, A. (2011). The Irregular Migration Corridor between the EU and Turkey, p.14.

[286] Tokuzlu, L. B. (2010). Burden Sharing Games.

motivation for concluding RA with the EU.[287] The conclusion of the RA with Turkey was envisaged by the European Council in 2002 and the Council authorized the Commission to start negotiations with Turkey.[288] The RA with Turkey sets out the conditions under which both parties readmit TCNs and stateless persons for a transitional period of three years after enter into force of the agreement (Article 24). Turkey will readmit its own nationals (Article 3) and all TCNs and stateless persons in an irregular situation on the territory of an EU member state (Article 4) if they have a valid visa issued by Turkey and entered the EU directly from Turkey (4a); hold a residence permit issued by Turkey (4b); or illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Turkey (4c). Articles 5 and 6 provide the same obligations for the EU member states. Following "*Roadmap towards a visa-free regime with Turkey*" at the end of 2012, the RA was signed at December 16, 2013.[289] In fact, RA negotiations stalled many times as Turkey demanded that visa free regime for Turkish nationals should be linked to negotiations on the RA and did not separate these two issues. In other words, Turkey strategically used "migration diplomacy" as a bargaining tool during the RA negotiations and established a direct link between the RA and visa free regime.[290] Based on these, it is possible to conclude that there is a RA-visa free regime axis on the part of Turkey. The EU on the other hand, refuses to establish

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[287] Elitok, S. P. (2013). Turkey's Prospective EU Membership from a Migration Perspective: Two Steps Forward, One Step Back? *Perceptions*, XVIII: 3, (1-11).

[288] European Commission (2002). General Affairs and External Relations, 2463rd Council meeting. 18 November 2002. 14183/02 Presse 350 https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/73248.pdf retrieved at 15.6.2015; European Commission (2003). COM (2003) 144 final http://ec.europa.eu/transparency/regdoc/rep/1/2003/EN/1-2003-144-EN-F1-1.Pdf retrieved at 15.6.2015.

[289] European Commission. Roadmap towards a Visa-free Regime with Turkey. http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf retrieved at 15.6.2015

[290] İçduygu, A. (2011). The Irregular Migration Corridor, p.3.

such a direct link. "Roadmap towards a Visa-Free Regime with Turkey" consisted of four blocks makes the fulfillment of conditions set out in the Roadmap conditional for a visa free regime with Turkey.[291]

The RA is debated in Turkish Parliament almost solely with reference to the visa free travel regime for Turkish citizens.[292] During the Parliamentary sessions of the RA, deputies of Justice and Development Party discussed readmission of TCNs with reference to Turkey-Greece RA and stated that there are tough safeguard mechanisms in the agreement in order to convince the opposition that Turkey will not readmit every TCNs upon the request of requesting state as it does not do in the case of the RA with Greece.[293] In other words, low numbers of admitted TCNs under the RA with Greece are presented as an evidence to make Turkish public relaxed against concerns that Turkey would become a dumping ground for irregular migrants. However, unlike Turkey-Greece RA, RA with the EU could provide the necessary political weight to ensure higher readmission rates by Turkey in the light of envisaged visa free regime.[294] In other words, the prospect of the visa free regime could provide the so called political will on the part of Turkey indeed.[295] In this case,

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[291] These are documents security, migration and border management, public order and security, fundamental rights. See European Commission. Roadmap towards a Visa-free Regime.

[292] For the discussions in Turkish Parliament during the negotiations of the RA. See, Parliamentary Minutes of the Turkish Parliament. Turkish Parliament (2014, June 19). Parliamentary Minutes https://www.tbmm.gov.tr/tutanak/donem24/yil4/ham/b10601h.htm retrieved at 15.6.2015; Turkish Parliament (2014, June 25). https://www.tbmm.gov.tr/tutanak/donem24/yil4/ham/b10801h.htm 15.6.2015

[293] Since 2010, Turkey readmitted 1,474 irregular migrants out of 46581 readmission requests by Greece. Ibid.

[294] Euro-Mediterranean Human Rights Network (2013). *An EU-Turkey Readmission Agreement-Undermining the Rights of Migrants, Refugees and Asylum Seekers? p.8.* Policy Brief http://euromedrights.org/wp-content/uploads/2015/03/En_TurkeyReadmis_Pb_web.pdf retrieved at 15.6.2015

[295] Accordingly, the first report on the implementation of Roadmap towards a Visa-free Regime with Turkey states that Turkey is well advanced on several of the benchmarks. See European Commission (2014). COM(2014) 646 final, p.39

if Turkey could not return readmitted TCNs to their countries of origin, it wil result in their stay in Turkey with no proper system in place to support them and would force them to reattempt to enter the EU irregularly.[296] Upon the implementation of the RA, irregular migrants including genuine asylum seekers will get protection in Turkey.[297] In this case, Turkey would be safe third country *in practice* and positioned as "the gatekeeper of Europe."[298] Nonetheless, as readmission of TCNs involves a high level of bureaucracy and there are certain mechanisms to guarantee both parties' rights, it is hard to foresee whether this scenario will prevail given the fact that realization of this scenario depends on the wider course of Turkey-EU relations as well. Since the country's resources and infrastructure have been extensively used for the Syrian refugees, in the implementation of the RA, the question of how readmitted TCNs and stateless persons will be offered protection remains to be answered.[299] In anticipation of the RA with the EU, Turkey seeks to sign RA with other source and transit countries so as to ensure that TCNs apprehended in border regions upon arrival or intercepted at sea would be returned to the countries concerned in order to prevent the country becoming a dumping ground for irregular migrants. However,

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http://ec.europa.eu/dgs/homeaffairs/elibrary/documents/policies/internationalaffairs/general/docs/turkey_first_progress_report_en.pdf retrieved at 15.6.2015

[296] Crépeau, F. (2012). Report by the Special Rapporteur on the Human Rights of Migrants, Addendum, Mission to Turkey (25–29 June 2012), p.10. *United Nations A/HRC/23/46/Add.2* http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.2 retrieved at 15.6.2015

[297] Özgür, N. and Özer, Y. (2010). *Türkiye'de Sığınma Sisteminin*, pp.144-145.

[298] Frantz, E. (2013). *Report on the Situation of Refugees in Turkey: Findings of a Five-week Exploratory Study, December 2002-January 2003*, p.45. American University of Cairo Forced Migration and Refugee Studies http://www.aucegypt.edu/GAPP/cmrs/reports/Documents/frantz.pdf retrieved at 15.6.2015. A third country can only be considered as a safe third country if it ratifies and observes the provisions of the Geneva Convention without any geographical limitations. Therefore, Turkey due to the geographical reservation cannot be *legally* safe third country. See European Commission (2013). Directive 2013/32/EU, Article 39. Official Journal of the European Union, L 180/60,29.6.2013 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN retrieved at 15.6.2015; Human Rights Watch (2014). *"Containment Plan"*, pp.27-28.

[299] Crépeau, F. (2012). Regional Study: Management of the External, p.16.

Turkey's leverage to persuade source and transit countries is strong enough remains to be seen as Turkey in contrast to the EU has not much at its disposal to offer these countries.[300]

RAs are problematic tools by definition because of the very possibility that individuals despite of being eligible for the refugee status are likely to face detention or deportation.[301] Even though individuals who need international protection should not be subject to readmission in theory, it is very likely that in the implementation of the agreement some would be denied access to asylum procedure.[302] In addition, accelerated readmission procedure (Article 7(4)) further reduces the possibility for apprehended irregular migrants and stateless persons to lodge asylum claims. RAs also reduce the possibility of judicial protection, such as access to effective legal remedies against deportation or rejection of the asylum application.[303] Upon readmission by Turkey, TCNs may subject to arbitrary detention or deported despite being eligible for refugee status.[304] This is quite worrisome given the widespread detention practice of Turkey against migrants apprehended in an irregular situation.[305] To what extent Turkey is ready for the readmission of irregular migrants is still debatable as there has not been a preliminary study concerning potential

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[300] Derviş, K., Emerson, M., Gros, D. and Ülgen, S. (2004). *The European Transformation of Modern Turkey,* p.41. Centre for European Policy Studies. Turkey has RA with Greece (2001), Syria (2001), Kyrgyzstan (2003), Romania (2004), Ukraine (2005), Pakistan (2010), Russia (2011), Nigeria (2011), Yemen (2011), Moldova (2012), and Bosnia (2012). See Ministry of Foreign Affairs of Turkey. Türkiye'nin Yasadışı Göçle Mücadelesi http://www.mfa.gov.tr/turkiye_nin-yasadisi-gocle-mucadelesi-.tr.mfa retrieved at 15.6.2015

[301] Euro-Mediterranean Human Rights Network (2013). *An EU-Turkey Readmission*, p.3.

[302] Ibid, p.10.

[303] Council of Europe (2010). Readmission Agreements.

[304] Euro-Mediterranean Human Rights Network (2013). *An EU-Turkey Readmission*, p.7.

[305] Crépeau, F. (2012). Mission to Turkey, p.10.

burden sharing of the agreement. Given the fact that, the EU's stance towards Turkey on burden sharing with Syrian refugees is unpromising, it is unlikely that the EU would share the burden with Turkey in the implementation of the agreement.[306]

In a nutshell, Turkey has undergone a deep reform process since 2000s in the field of migration and asylum. Europeanization led to significant legal, political, institutional, and technical developments. Among policy areas, "fight against irregular migration" is the most visible "Europeanized" policy.[307] Concerning irregular migration, financial assistance that the EU provides to Turkey allows for investment in technological and material infrastructure of the country and becomes decisive in country's policy on irregular migration. As such, the EU has also shaped the border regime of Turkey. However, as the control and management of Turkish borders is a difficult task for several reasons, the country is in a position to control exits, but not entries.[308] Given the fact that Turkey does not grant refugee status coming from non-European countries, asylum seekers from non-European countries have to wait for the UNHCR refugee status determination process which can take years thereby "resulting in an unintended and long stay in Turkey."[309]

4.3. Syrian Refugees in Turkey and Beyond

Turkey's relations with its immediate neighbors have changed dramatically since the beginning of Arab Spring in general and Syrian crisis in particular. The crisis in Syria has resulted in the largest forced displacement crisis in the world since the end

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[306] Elitok, S. P. "Vizesiz Avrupa" İçin İmzalanan Anlaşma Geri Kabul mü, Geri Adım mı?. (2014, January 9). *T24*. http://m.t24.com.tr/haber/geri-kabul-mu-geri-adim-mi/247989 retrieved at 18.6.2015

[307] Özgür, N. and Özer, Y. (2010). *Türkiye'de Sığınma Sisteminin*, p. 145.

[308] Sert, D. (2013). Turkey's Integrated Border Management Strategy. *Turkish Policy Quarterly*, 12:1, (173-179).

[309] Düvell, F. and Vollmer, B. (2009). Undocumented Migration, pp.12-13.

of World War II.[310] Global forced displacement has reached 50 million for first time in post-World War II era and the increase was mainly driven by the Syrian crisis according to the UNHCR.[311] UNHCR states that more than 6, 8 million Syrians require humanitarian assistance.[312] The crisis has forced more than 3, 3 million people to flee from Syria and the vast majority of them have sought protection in Syria's neighboring countries including Turkey, Jordan, and Lebanon; another 6, 5 million people are displaced within Syria's borders.[313] In parallel to the deteriorated security situation in the neighboring countries, there has been considerable arrival of non-Syrians into the country as well.[314] The security situation in Iraq deteriorated so badly that the number of new arrivals predominantly from Iraq increased drastically as well and about 100,000 people seek protection in Turkey by the end of 2014 according to the UNHCR.[315] Non-Syrians include asylum seekers from Afghanistan, Iran, Iraq, and Somalia with most of them coming from protracted countries affected by the conflict. Continuing refugee flows to the country undoubtedly place significant strains on Turkey's capabilities to offer protection and assistance for non-

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[310] UNHCR states there has not been such a frightening refugee flow since the Rwandan genocide. See, The Telegraph (2013, July 16). Syria Refugee Crisis as Bad as Rwanda Genocide, UN says http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10183899/Syria-refugee-crisis-as-bad-as-Rwanda-genocide-UN-says.html retrieved at 18.6.2015

[311] UNHCR (2014, June 20). *Global forced Displacement Tops 50 Million for the First Time in the Post World War II Era* http://www.unhcr.org.tr/?content=561 retrieved at 18.6.2015

[312] UNHCR (2014). *2014 UNHCR Country Operations Profile-Syrian Arab Republic* http://www.unhcr.org/pages/49e486a76.html retrieved at 18.6.2015

[313] Amnesty International (2014, September 22). *Turkey: Closing Border Crossings with Syria will Put Lives in Jeopardy.* http://www.amnesty.org/en/news/Turkey-closing-border-crossings-syria-will-put-lives-jeopardy-2014-09-22 retrieved at 18.6.2015

[314] UNHCR (2014). *2014 UNHCR Country Operations Profile Turkey.* http://www.unhcr.org/pages/49e48e0fa7f.html retrieved at 18.6.2015

[315] UNHCR (2013). *Global Report 2013, Turkey* http://www.unhcr.org/pages/49e48e0fa7f.html retrieved at 19.6.2015

Syrian refugees since country's resources have been extensively used for Syrian refugees present in Turkey.[316]

The first Syrian refugees began to cross into Turkey in April 2011 at a time Turkey-Syria relations were still on track. When protests against the Assad regime began in March 2011, Turkish government pushed hard to convince the Syrian regime to avoid harsh security measures against its citizens and tried to broker a political compromise with Assad regime. Upon refusal of Turkey's proposal by the regime in August 2011, Turkey broke ties with Syria and has been advocating for regime change in Syria since then.[317] Turkey-Syria relations deteriorated so fast that by the end of 2012 the Turkish government recognized the then Syrian National Council as the legitimate representative of Syrian people.[318]

Although the LFIP provides the legal ground for protection in case of refugee influxes to the country, the actual course of Turkey's Syrian refugee policy is also determined by the country's foreign policy as Turkey envisaged that its open door policy would hasten regime change in Syria.[319]

Turkey, in line with the international community, envisaged that the Assad regime would not last long. Against that background, it declared an open door policy

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[316] UNHCR (2014). *2014 UNHCR Country Operations Profile Turkey.*

[317] Stein, A. (2014). For Turkey, It's All about Regime Change in Syria. (2014, October 8) *Aljazeera* http://www.aljazeera.com/indepth/opinion/2014/10/turkey-it-all-about-regime-chan-201410785656887159.html retrieved at 19.6.2015

[318] Ntvmsnbc (2012, November 15). Türkiye Suriyeli Muhalifleri Resmen Tanıdı. http://www.ntv.com.tr/arsiv/id/25398128 retrieved at 19.6.2015

[319] Stein, A. (2014). An Evolving Challenge: Deconstructing Turkey's Syria Policy. (2014, November 26). *The Royal United Services Institute (RUSI) Newsbrief* https://Turkeywonk.wordpress.com/2014/11/27/an-evolving-challenge-deconstructing-Turkeys-syria-policy/ retrieved at 19.6.2015

towards people fleeing from Syria in October 2011. In the beginning of the crisis, the general expectation of Turkey was temporary stay of refugees and it was believed that they would be able to return Syria within a short time period. Besides, Turkey expected that once the post-Assad Syria emerged, its policy towards refugees would bring positive gains to Turkey. As such, Syrian crisis has been profoundly impacting Turkey that was not anticipated either by Turkish government or the international community.[320]

Turkey had declared that 100,000 refugees on its territory fleeing from the conflict was its "psychological threshold". In August 2012, the then Foreign Minister Ahmet Davutoğlu declared that the threshold was already crossed in October but it continued to accept the Syrians fleeing from the conflict.[321] Turkey has a visa-free regime for Syrians since late 2009; Syrians with valid passports can enter visa-free to Turkey. Since the very beginning of the Syrian crisis, under open door policy, those without passports are admitted to the refugee camps. Those who enter to the country irregularly can regularize their stay through registration.[322] Of 1, 6 million Syrians present in Turkey, as of February 27, 2015, approximately 252,545 of them live in 22 camps established in 10 cities in coordination with the Prime Ministery Disaster and Emergency Management Authority.[323] The Disaster and Emergency Management Authority and Turkish Red Crescent provide protection and assistance to refugees in

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[320] Kirişçi, K. (2014). Syrian Refugees and Turkey's Challenge.

[321] Ntvmsnbc (2012, October 15). Suriyeli Sığınmacı Sayısı 100 Bini Aştı, http://www.ntv.com.tr/arsiv/id/25390179 retrieved at 19.6.2015

[322] Dinçer, O. B., et al, Turkey and Syrian Refugees, p.5; Amnesty International (2014). *Struggling to Survive: Refugees from Syria in Turkey*, p.9. EUR 44/017/2014 E https://www.amnesty.org/en/documents/EUR44/017/2014/en retrieved at 19.6.2015; Temporary Protection Regulation, Article 5.

[323] Erikan, İ. Türkiye'deki Suriyeli Sayısı 1 milyon 600 bin. (2014, October 20). *Anadolu Ajansı.* http://www.aa.com.tr/tr/turkiye/407125--suriyelilere-turkiye-kadar-yardim-yapan-ulke-olmamistir retrieved at 20.6.2015

camps. Access to basic services and the quality of the services including health services offered to refugees are worthwhile. Based on the quality of accommodation, International Crisis Group refers these camps as the "best refugee camps ever seen" and international experts describe standards as "five star".[324] However, the challenge for the Turkish state is not the sustainability of such high standards, but to develop policies to embrace the refugee population especially those living outside the camps. The overwhelming majority of Syrian refugees prefer to live in cities since refugee camps are no longer the main destination for refugees.[325] More than 1, 3 million Syrian refugees live outside the camps, in cities along with the Turkish people. Whether camp-based or non-camps, registration is required for access to the state services. Those registered have access to the state services including health and education while non-registered do not. As such, the situation with registered and non-registered refugees gives rise to a two-tiered system in which registered refugees have access broader rights than others.[326] However, the Turkish state performed quite well and as of March 2015, succeeded to register more than 1, 7 million Syrians.[327] From April 2011 to mid-2012, the Turkish government admitted Syrian refugees as guests.[328] Once the number of refugees increased considerably, they were given temporary protection.[329] Currently, the country has been offering temporary

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[324] International Crisis Group (2013). *Blurring the Borders: Syrian Spillover Risks for Turkey,* p.8. Europe Report N°225 http://www.crisisgroup.org/~/media/Files/europe/turkey-cyprus/turkey/225-blurring-the-borders-syrian-spillover-risks-for-turkey.pdf retrieved at 20.6.2015.

[325] Zetter, R. (2014). Protecting Forced Migrants, pp.36-37.

[326] Dinçer, O. B., et al, Turkey and Syrian Refugees, p.24.

[327] UNHCR (2014). *Asylum Trends 2014, Levels and Trends in Industrialized Countries,* p.11 http://www.unhcr.org/551128679.html retrieved at 20.6.2015

[328] Çorabatır, M. Suriyelilerin Koşulları Düzelecek mi? (2014, November 7). *Zaman* http://www.zaman.com.tr/yorum_suriyelilerin-kosulari-duzelecek-mi_2256012.html retrieved at 20.6.2015

[329] While the rights and obligations of individual asylum seekers and refugees are guaranteed by the 1951 Geneva Convention, *en masse* asylum cases are defined by the UNHCR Executive Committee decisions and general international humanitarian law. Temporary protection was originally proposed by the UN as a part of response to the crisis in the former Yugoslavia, it then adopted by the EU

protection regime to the Syrian refugees who have arrived Turkey *en masse*. Temporary protection regulation provides a more solid legal status, the right to get identity cards for certain or unlimited time period, and protection against forcible returns (Temporary Protection Regulation, Article 22). If those who enter the country irregularly regularize their stay within a reasonable time period, they are not subject to administrative fines (Temporary Protection Regulation, Article 5). Therefore, Syrians are not at risk for detention for irregular entry to Turkey in the first place. In case they attempt to leave the country irregularly, they may very likely to subject to detention though.[330] Temporary protection regulation provisional Article 1 states that as of 28.4.2011, for Syrian citizens, stateless and refugees coming from Syria *en masse* or individually, temporary protection regime is in force and individual international protection requests shall not be processed. Therefore, Syrian citizens, stateless and refugees coming from Syria *en masse* or individually cannot apply for individual international protection. As the Syrian refugees cannot apply for individual protection requests, it gives the impression that Turkish state designated temporary protection regime as an alternative to international protection regimes that set out in the LFIP.[331] Given the fact that non-Europeans cannot already obtain refugee status in Turkey with regard to geographical reservation, Turkish style of

through European Council's 2001 Directive. For the scope of international protection in mass influx, See UNHCR (1995). *The Scope of International Protection in Mass Influx*. EC/1995/SCP/CRP.3 http://www.unhcr.org/3ae68cc018.html retrieved at 20.6.2015

[329] European Council (2001). Council Directive 2001/55/EC of 20 July 2000. Official Journal of the European Communities, L 212/12, 7.8.2001 http://www.refworld.org/pdfid/3ddcee2e4.pdf retrieved at 20.6.2015

[330] UNHCR (2014). *Syrian Refugees in Europe, What We Can Do to Ensure Protection and Solidarity,* p.36 http://www.unhcr.at/uploads/tx_n4mteaserobjects/UNHCR_Report_on_Syrian_Refugees_in_Europe.pdf retrieved at 20.6.2015

[331] Çorabatır, M. Suriyelilerin koşulları düzelecek mi? Zaman, 7 November 2014 http://www.zaman.com.tr/yorum_suriyelilerin-kosullari-duzelecek-mi_2256012.html retrieved at 20.6.2015

temporary protection regime for Syrians is a quite complicated issue that needs to be studied deeply.[332]

The response of the Turkish government to the Syrian refugee crisis in terms of seeking international assistance and help has changed over time. In the beginning of the crisis (from April 2011 to late 2012), Turkish government refused to accept international assistance, including UNHCR based on the estimation that the crisis would not last long. For that reason, Turkey wished to remain in control exclusively.[333] Besides, the government wanted to give the message that Turkey is a strong state enough to deal Syrian refugees with its own resources.[334] In that vein, Metin Çorabatır argues that not seeking international help in refugee movements is a state tradition in Turkey's refugee policy that goes back to 1920s.[335] However, in late 2012, with refugees continue pouring into the country, the Turkish government signaled a policy change and started to accept support from international organizations and later joined Regional Response Plan of the UNHCR as it becomes impossible to deal with the refugee flow on its own.[336]

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[332] Çorabatır, M. Suriyelilerin koşulları düzelecek mi? Zaman, 7 November 2014 http://www.zaman.com.tr/yorum_suriyelilerin-kosullari-duzelecek-mi_2256012.html retrieved at 20.6.2015

[333] International Crisis Group (2014). *The Rising Costs of Turkey's*, p. 15; European Commission (2013). Turkey 2013 Progress Report, p.16 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/Turkey_2013.pdf retrieved at 20.6.2015

[334] Yinanç, B. (2013). Poor Transparency Shadows Turkey's Syria Refugee Policy. Hurriyet Daily News, May 27, 2013, http://www.hurriyetdailynews.com/?PageID=238&NID=47639 retrieved at 20.6.2015

[335] T24 (2013, November 5). Türkiye, Suriyelilere BM Yardımını Hiçbir Zaman Kabul Etmedi. http://t24.com.tr/haber/turkiye-suriyelilere-bm-yardimini-hicbir-zaman-kabul-etmedi,243322 retrieved at 20.6.2015

[336] UNHCR (2013). *Syria Regional Response Plan - January to December 2013- Turkey Response Plan* http://www.unhcr.org.tr/uploads/root/turkey_response_planpdf.pdf retrieved at 20.6.2015

As the initial expectation of Turkey was the quick resolution of the Syrian crisis, providing humanitarian assistance was the priority of Turkish state over security concerns.[337] However, the unprecedented increase in the number of refuges which coupled with growing needs of them, forced Turkey to develop alternatives including the idea of safe zone, zero point delivery, makeshift camps emerged on the Syrian side of border to keep IDPs on Syrian territory, and so on so forth.[338] In other words, Turkey increasingly tends to address the humanitarian situation inside Syria. Suna Gülfer Ihlamur-Öner states that like in the Kurdish refugee influx of 1991, Turkish state preferred policy solution is to keep refugees outside the Turkish territory but inside Syria. A policy has yet to find the international support.[339] However, the idea of safe zone in Syrian case is not only about refugee problem but also is connected to the wider security context in the region. In fact, the idea of safe zone/haven was adopted in fall 2012 when Turkish authorities realized that it becomes much harder to host ever increasing number of refugees in its territory.[340] The then Foreign Minister Davutoğlu addressed the idea of internationally imposed safe zone/safe haven at the UN General Assembly in August 2012.[341] No matter the Turkish authorities call for a safe zone, its refugee policy has changed considerably as indicated by the course of open door policy.[342] Indeed, its legal environment has been

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[337] International Crisis Group (2014). *The Rising Costs of Turkey's.*

[338] Dinçer, O. B., et al, Turkey and Syrian Refugees.

[339] Ihlamur-Öner, S. G. (2013). Turkey's Refugee Regime, p.191.

[340] International Crisis Group, *Blurring the Borders*, p.30.

[341] Ibid, p.39. It is claimed that Turkey wants a safe haven for refugees and also for the rebels so as to enable the latter a ground for their war against the Assad regime. See Phillips, C. (2012). Into the Quagmire: Turkey's Frustrated Syria Policy, p.8. *Chatham House, Briefing Paper MENAP BP 2012/04* http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Middle%20East/1212bp_phillips.pdf retrieved at 20.6.2015

[342] The sustainability of hosting the refugees in the absence of meaningful international burden sharing, continuing refugee influx, and deteriorated security situation inside the Syria have all lead to

developed significantly thanks to LFIP. On other words, whatever the underlying motivations of Turkey are as explained above, its open border policy represents a major break from its past practices and deserves appraisal.

In the meantime, the Turkish Parliament authorized the government to send the Turkish Armed Forces (TAF) to Syria as of 4.10.2012.[343] Parliament's resolution states that the ongoing crisis in Syria and its effects on regional stability and security, as well as its repercussions for Turkish national security necessitated deployment of TAF in foreign countries. In Parliament's resolution of October 2012, there was no argument put forward regarding the Syrian refugee influx.[344] Authorization of the TAF to that end was extended for one additional year as of 3.10.2013 by the resolution no.1047 of Turkish Parliament.[345] This time migration movement originated from Syria is defined as an indirect threat to the country in terms of its possible outcomes.[346] Meanwhile, in addition to the Syrian refugees, Turkey has also exposed to the refugee influx from Iraq due to the Islamic State's terrorist activities. For that reason, as of 2.10.2014, Turkish Parliament authorized the government to send the TAF to foreign countries including Syria and Iraq. Mass migration once again assessed through national security concerns and it was stated that depending on

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restriction of implementation of the open door policy in some cases though. As of second half of 2012, the Turkish government started to limit entry. Reports indicate that in some cases those without passports are denied access to the Turkish territory except in cases of emergency medical treatment which in turn result in attempts of irregular border crossings. Dinçer, O. B., et al, Turkey and Syrian Refugees, p.5; Mülteci Hakları Koordinasyonu (2014, February 18). Kapılar "Açık" Kalsın. https://amnesty.org.tr/icerik/37/1086/kapilar-acik-kalsin retrieved at 20.6.2015

[343] Turkish Parliament (2012). Regulation no. 1025
http://www.tbmm.gov.tr/tbmm_kararlari/karar1025.html retrieved at 20.6.2015

[344] Ibid.

[345] Turkish Parliament (2013). Regulation no. 1047
http://www.tbmm.gov.tr/tbmm_kararlari/karar1047.html retrieved at 20.6.2015

[346] Ibid.

the course of conflict, the scope of migration movement would likely to expand and reach a massive size.[347] This change was the result of Turkish state growing security concerns with regard to complicated security situation in the region and continuing refugee flows into the country.

In the international arena, Turkey has been criticized of holding geographical reservation to the Geneva Convention. However, the response of the international community to the Syrian crisis is a shame with denied safety and security in practice. Legal channels are effectively blocked for those who are in need of help. Funding, resettlement, and other forms of admission by industrialized countries are ridiculous. Scale and magnitude of the Syrian refugee influx is beyond the capacity of any state to respond in the way guaranteed by the Geneva Convention and 1967 Protocol.[348] In fact, the international refugee regime is more appropriate for individual cases rather than mass influxes as proved by the Syrian crisis. Neighboring countries to Syria including Turkey are left on their own to deal with refugee flows. As of October 2014, Turkey spent 5, 2 billion dollars on Syrians, and international community has offered 300 million dollars.[349] In terms of international humanitarian response, it puts Turkey the third largest donor with $1.6bn dollars in 2013.[350] Therefore, in the absence of effective burden sharing by the international community, Turkey has been facing challenges in terms of the protection needs of the refugees and the country has

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[347] Turkish Parliament (2014). Regulation no. 1071
https://www.tbmm.gov.tr/tbmm_kararlari/karar1071.html retrieved at 20.6.2015

[348] Amnesty International (2014). *Struggling to Survive*, p.7.

[349] The Prime Ministry Disaster and Emergency Management Authority (2014, October 10). *Suriye İnsani Yardım Raporu*.
https://www.afad.gov.tr/UserFiles/File/Suriye%20%C4%B0nsani%20Yard%C4%B1m%20Raporu/Suriye%20%C4%B0nsani%20Yard%C4%B1m%20Raporu_%2010%20ekim%20(yeni).pdf retrieved at 20.6.2015

[350] Global Humanitarian Assistance (2014). *Global Humanitarian Assistance Report 2014,* p.4
http://www.globalhumanitarianassistance.org/wp-content/uploads/2014/09/GHA-Report-2014-interactive.pdf retrieved at 20.6.2015

been doing quite well so far.[351] By mid-2013, Turkey was the world's sixth largest refugee population, with Syrians making up the largest asylum seeker group in the country.[352] As of February 2015, the UN High Commissioner in his speech to the Security Council stated that Turkey has become the biggest refugee hosting country in the world.[353] The country has been hosting the biggest refugee population in the world and offers considerable protection to them in spite of the challenges they pose in terms of protection and assistance. They have access to state services including free health and right to education. For that reason, it must be acknowledged that Turkey does offer protection and assistance to Syrian refugees at a time when migrant receiving countries of the West closing their doors to them.

The primary purpose of the UNHCR is to safeguard the rights and well-being of refugees while the *ultimate* goal is to help international community find durable solutions for refugees.[354] Voluntary repatriation, local integration and resettlement to a third country are presented policy options to that end.[355] Concerning well-being of the refugees, the international community is deeply failed to respond meaningfully to humanitarian aspect of Syrian crisis. UNHCR has experienced limitations in its operations concerning Syrian refugees due to underfunding. In 2013, the so called funding gap corresponded to 45% percent of its overall requirements[356] while the

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[351] İçduygu, A. (2015). Syrians Refugees in Turkey: The Long Road Ahead. *Migration Policy Institute* http://www.migrationpolicy.org/research/syrian-refugees-turkey-long-road-ahead retrieved at 20.6.2015

[352] UNHCR (2013). *Mid-Year Trends 2013* http://www.unhcr.org/52af08d26.html retrieved at 20.6.2015

[353] UNHCR (2015, February 26). Press Release.

[354] UNHCR. Durable Solutions http://www.unhcr.org/pages/49c3646cf8.html retrieved at 20.6.2015

[355] Ibid.

[356] UNHCR (2015). *Global Appeal 2015 Update,* p.96 http://www.unhcr.org/5461e5f30.html retrieved at 20.6.2015

Syria Regional Response plan is only 30% funded.[357] Challenges for humanitarian actions are tremendous while funding is far beyond even cover the essential needs. Given the fact that Syrian crisis is far from peaceful solution, voluntary repatriation is not possible in the short/medium term. Concerning resettlement, pledges for resettlement by industrialized countries are shamefully scarce as well as other forms of admission such as humanitarian admission, labor migration schemes, and private sponsorship. As of February 2015, there are 47,059 total places in Europe for Syrian refugees with Germany offering 30,000 places[358] while 217,724 asylum applications had been lodged by Syrian refugees to EU+ countries including Norway and Switzerland between April 2011 and December 2014.[359] As of 2014, Turkey is the third largest recipient of individual asylum applications among 44 industrialized countries with 87,800 asylum applications.[360] Since the country has not sufficient infrastructure and resources to deal with this, it has been left on its own by the international community. Given the fact that "two-thirds of refugees and displaced persons continue to wait in exile for over five years, in some cases for generations" Turkey is at the risk of becoming a country where refugees are trapped for an indefinite period.[361] In that vein, Ahmet İçduygu concludes that Syrians protracted displacement presents significant challenges for both Turkey and the international

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[357] UNHCR (2014). *2014 Syria Regional Response Plan Strategic Overview Mid-Year Update*, p.9 http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-strategic-overview.pdf retrieved at 20.6.2015

[358] UNHCR (2015, February 11). *Fact Sheet on Resettlement and Other Forms of Admission.* http://data.unhcr.org/syrianrefugees/asylum.php retrieved at 20.6.2015

[359] UNHCR. Map: New Asylum Applications http://data.unhcr.org/syrianrefugees/asylum.php retrieved at 20.6.2015

[360] UNHCR (2014). *Asylum Trends 2014.*

[361] Fiddian-Qasmiyeh, E., Loescher, G., Long, K., Sigona, N. (2014). Introduction: Refugee and Forced Migration Studies in Transition, p.4. In Fiddian-Qasmiyeh, E., Loescher, G., Long, K., Sigona, N. (Eds.) *The Oxford Handbook of Refugee and Forced Migration Studies.* (1-19). New York: Oxford University Press.

community in terms of burden sharing and solidarity with Turkey.[362] Based on these, the only remaining durable solution for Syrian refugees is the local integration unless there is a solution to the Syrian crisis.

It is estimated that 1, 2 million Syrian refugees are likely to stay in the country.[363] In order to enable refugees' integration to the country, Turkey has to develop policy options, including residency status, work visa, citizenship and so on so forth as temporary protection regime would probably experience its limitations in time. In fact, UNHCR Guidelines on Temporary Protection or Stay Arrangements states that temporary protection regimes end when:

(i) The situation causing the displacement has ended, and voluntary return is reasonable

(ii) Temporary protection has been replaced by another form of protection, including transition to refugee status

(iii) An individual has transitioned to an alternative status (including, for example, residency status, work visa, or another migration status)

(iv) An individual has been admitted to a third State on a humanitarian basis or through resettlement.[364]

Turkey, for the first time in its migration management introduced a legal provision concerning the integration of migrants into the Turkish society as the country turned a blind eye to the issue since the very beginning.[365] In fact, Turkey's refugee and asylum policy until the adoption of the LFIP were based on "resettling or repatriating asylum seekers and refugees rather than providing for their long-term integration into Turkish society."[366] Article 96 of the LFIP stipulates that Directorate General of

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[362] İçduygu, A. (2015). Syrians Refugees in Turkey.

[363] Erdoğan, M. M. Türkiye'deki Suriyeliler. (2015, March 27). *Aljazeera Turk* http://www.aljazeera.com.tr/gorus/turkiyedeki-suriyeliler retrieved at 20.6.2015

[364] UNHCR (2014). *Guidelines on Temporary Protection or Stay Arrangements*, pp.4-5 http://www.unhcr.org/542e99fd9.pdf retrieved at 20.6.2015

[365] Açıkgöz, M. and Ariner, H. O. (2014). Turkey's New Law on Foreigners, p.22.

[366] Mannaert, C. (2003). Irregular Migration and Asylum, p.7.

Migration Management, to the extent possible in terms of Turkey's economic and financial capacity, in collaboration with relevant stakeholders implement policies to facilitate integration of foreigners and beneficiaries of international protection regime into the Turkish society. For those within the temporary protection regime, Temporary Protection Regulation stipulates that health, education, access to labor market, social assistance, translation services and similar services shall be provided (Article 26). Migration Policy Board shall determine the procedures and principles to that end.[367] Concerning integration of Syrian refugees into Turkey, citizenship could be an option, although granting citizenship to refugees is not a common practice at the international level.[368] Turkish Citizenship Law (Law no 5901) allows for the naturalization of those who have been residing in Turkey without interruption for a certain period of time, as they fulfill other conditions set out in the Citizenship Law. However, fulfilling the requirements that set out in the Law does not mean an absolute right for the acquisition of the Turkish citizenship as the relevant authorities has an absolute right to decide on the issue (Article 10). The issue of citizenship would be a very divisive and controversial issue in Turkish politics for the years to come.[369] Whether the Syrian refugees will be given Turkish citizenship in the end remains to be seen.

As the vast majority of Syrian refugees live outside the camps, they live on their lives with little or no assistance either from Turkish government/international community or non-governmental organizations. Living conditions for a great majority of non-camp Syrian refugees are dire, they do not even access to adequate

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[367] Migration Policy Board determines Turkey's migration policies and strategies and follows upon their implementation. Article 105 of the LFIP.

[368] Karakaya, İ. Turkey Debates Citizenship for Syrian Refugees, (2013, September 1) *Today's Zaman* http://www.todayszaman.com/national_turkey-debates-citizenship-for-syrian-refugees_324930.html retrieved at 20.6.2015.

[369] Kirişçi, K. (2014). Syrian Refugees, p.20.

food and shelter.[370] Based on fieldwork, Nurcan Özgür Baklacıoğlu argues that refugees in Turkey are passivized through domestic poverty discourse. Disassociated from social rights and the state's social responsibility, refugees are leaved to "mercy of society" which in the end narrows down social citizenship rights of the refugees in Turkey.[371] As Syrians to a great extent do not have the right to work in legal terms, they are forced to find jobs at low wages in the informal economy. This is in turn, gives rise to exploitation of the Syrians and their perceived economic competition with the Turkish citizens and causes resentment among Turkish public.[372] The Law on Work Permits for Foreigners (Law no 4817) grants foreigners work permits upon fulfilling the strict conditions that set out in the law. The LFIP on the other hand, stipulates that only beneficiaries of the international protection regime could work independently or be employed (Article 89). Since Syrian refugees are granted to temporary protection regime and they are neither refugee nor beneficiary of subsidiary protection, they are not entitled to work in legal terms according to the LFIP. However, under the Law on Work Permits for Foreigners and the Implementation Regulation on the Law on Work Permits for Foreigners, those including Syrian refugees having residence permits at least for 6 months can apply to Ministry for Labor and Social Security for work permits.[373] Since getting work

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[370] Erdoğan, M. M. (2015). *Türkiye'deki Suriyeliler: Toplumsal Kabul ve Uyum*. İstanbul: Bilgi Üniversitesi Yayınları; Ortadoğu Stratejik Araştırmalar Merkezi (2015). *Suriyeli Sığınmacıların Türkiye'ye Etkileri*. Rapor No: 195
http://www.tesev.org.tr/assets/publications/file/09012015104258.pdf retrieved at 20.6.2015; İnsan Hakları Derneği (2013). *Yok Sayılanlar; Kamp Dışında Yaşayan Suriye'den Gelen Sığınmacılar: İstanbul Örneği*. http://www.ihd.org.tr/images/pdf/2013/YokSayilanlar.pdf retrieved at 20.6.2015

[371] Baklacıoğlu, N. Ö. (2009). Hayır Kurumlarında Mültecinin Yeniden İnşası: Uluslararası Sosyal Aktörden Sadakanın Nesnesine, *Uluslararası Sosyal Haklar Sempozyumu Bildirileri, Antalya, Türkiye, 22-24 Ekim 2009*, cilt.1, (442-452); Baklacıoğlu, N. Ö. (2011). İltica Alanında Dolaylı Sınırdışı Pratiği Olarak Entegrasyon Politikası. In Çelebi, Ö., Özçürümez, S. and Türkay, Ş. (Eds.). *İltica, Uluslararası Göç ve Vatansızlık*. (357-373) UNHCR, Ankara.

[372] Erdoğan, M. M. (2015). *Türkiye'deki Suriyeliler*; İçduygu, A. (2015). Syrians Refugees in Turkey.

[373] Ministry for Labor and Social Security (2003). *Implementation Regulation on the Law on Work Permits for Foreigners,* Article 7
http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.6244&MevzuatIliski=0&sourceXmlSearch=yabanc%C4%B1lar%C4%B1n%20%C3%A7al%C4%B1%C5%9Fma retrieved at 20.6.2015

permit is not easy and the design of the policy is inflexible to answer the needs of the foreigners including Syrians, Turkish government submitted a draft Law on Foreigners' Employment to the Parliament as of 9.2.2015 which proposed major improvements on the issue.[374] However, the draft law could not pass from the Parliament and became invalid as of 7.6.2015. It is possible that in the new legislative term the draft may be submitted to the Parliament once again. Whether the Syrians will be given work permits in the end remains to be seen with the increased resentment among Turkish public on the issue.

4.3.1. Projections for the Syrian Refugees Present in Turkey

Since the outbreak of the Syrian war, Turkey's open door policy deserves appraisal amid a truly international failure. In that regard, Turkey migration policy redesign in April 2013 through enacting of LFIP was a groundbreaking policy change. The LFIP is in a sharp contrast with Turkish migration policy until the 2000s. The country has made remarkable progress in terms of guaranteeing human rights of all who need protection. In other words, it is possible to conclude that the LFIP put an end to the country's security oriented refugee and asylum policy. Turkey's refugee and asylum policy is no longer assessed solely through the lenses of national security and human rights of those are taken due account in the design of the policy thanks to LFIP.

Ayse Ceyhan and Anastassia Tsoukala state that "[t]he securitization of migration involves a symbolic process and the deployment of a corpus of rhetorical arguments."[375] They define four axes of securitization to that end.

> 1. A socioeconomic axis, where migration is associated with unemployment, the rise of informal economy, the crisis of the welfare state, and urban environment deterioration

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[374] Turkish Parliament (2015). Prime Ministry Draft Law on Foreigners' Employment https://www2.tbmm.gov.tr/d24/1/1-1035.pdf retrieved at 20.6.2015

[375] Ceyhan, A. and Tsoukala, A. (2002). The Securitization of Migration, p.23.

2. A securitarian axis, where migration is linked to the loss of a control narrative that associates the issues of sovereignty, borders, and both internal and external security

3. An identitarian axis, where migrants are considered as being a threat to the host societies' national identity and demographic equilibrium

4. A political axis, where anti-immigrant, racist, and xenophobic discourses are often expected to facilitate the obtaining of political benefits.[376]

Although reports indicate that Turkish society's acceptance of Syrian refugees is relatively high, it is likely that migration would subject to securitizing measures for the years to come due to problems associated with incredible number of Syrian refugees present in the country.[377] According to the 2014 Transatlantic Trends report from the German Marshall Fund, 67% percent of the Turks have disapproved of Turkish government handling of immigration while 66% percent stated that Turkish government should follow more restrictive refugee policies.[378] Since the processes determine the course of securitization, "the context in which certain issues become politically salient will strongly influence whether the Turkish public will be receptive and inclusive of migrants and refugees, or rather suspicious and exclusive."[379] In that vein, it is likely that the Syrian refugees will subject to politicization increasingly for years to come with growing challenges for both Syrian refugees and Turkish public.

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[376] Ibid, pp.23-24.

[377] Düvell, F., (2013). Turkey, the Syrian Refugee Crisis and the Changing Dynamics of Transit Migration. *IEMed Mediterranean Yearbook,* (278-281).

[378] The German Marshall Fund of the United States (2014). *Transatlantic Trends, Key Findings 2014* http://trends.gmfus.org/files/2012/09/Trends_2014_complete.pdf retrieved at 20.6.2015; The German Marshall Fund of the United States (2014). *Transatlantic Trends: Mobility, Migration and Integration Key Findings from 2014 and Selected Highlights From Transatlantic Trends and Transatlantic Trends: Immigration 2008-13.* http://trends.gmfus.org/files/2014/09/Trends_Immigration_2014_web.pdf retrieved at 20.6.2015

[379] Tolay, J. (2014) Praising Turkish Policy towards Syrian Refugees, Keeping an Eye on the Politics, p.75. In *Transatlantic Academy, the State of the Transatlantic World 2014.* Transatlantic Academy, April 2014 http://www.transatlanticacademy.org/sites/default/files/publications/GMF_StateTransatlanticWorld_4 cWeb.pdf retrieved at 20.6.2015

Syrian refugees also pose remarkable challenges to the migration regime of the Turkey in its relations with the EU since "increasing number of migrants stranded in Turkey and wishing to enter the EU."[380] As the number of Syrian refugees made Turkey hosting the largest refugee population in the world, "Turkey's position at the frontier of 'Fortress Europe' " is strengthened.[381] Given the fact that there has been 600% increase in unofficial border crossings to Bulgaria from Turkey in 2013 compared to the previous year, it puts more pressure on the Turkish state to block irregular migrants' flows from and through Turkey to the EU.[382] All in all, it is possible to conclude that Turkey has finally become the buffer state between East and West.[383]

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[380]   Frontex   (2013).   FRAN   Quarterly   Quarter   2,   April–June   2013,   p.5. http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2013.pdf   retrieved   at 20.6.2015

[381] Phillips, M. and Starup, K. (2014). The Syria Crisis, Displacement and Protection (27-30). In *Forced Migration Review*. September 2014, Issue 47. http://www.fmreview.org/en/syria/syria.pdf retrieved at 20.6.2015

[382] Frontex (2013). FRAN Quarterly Quarter 3, p.6.

[383] Düvell, F., (2013). Turkey, the Syrian Refugee Crisis, p.281.

CHAPTER V

CONCLUSION

Turkey has been experiencing migratory movements from, to, and through its territory since before the proclamation of the Republic. Although the first half of the 20th century was characterized by the international migratory movements from and to Turkey in the context of nation building; historically the country was conceptualized as a country of emigration due to the Turkish nationals' emigration to the Western countries. However, Turkey from the very beginning is also a country of immigration as explained in Chapter IV. Since its foundation, migration policy of Turkey served as a governmental tool for controlling both the nature and size of the population for the creation of a homogenous nation and national identity along with the ideological and political agenda of the Turkish state. The Law on Settlement enacted in 1934 provided the legal ground to the state apparatus for these ends. It allowed for immigrants and refugees of only Turkish descent/ethnicity/culture to settle and integrate in Turkey while preventing those who were neither of Turkish descent nor culture. Crystalized in both Turkification and Islamisation politics of the Republic, it underlined the crucial role that migration had played out in the nation building process of Turkey. Based on these, it is possible to conclude that migration policy of Turkish state from the very beginning is security oriented that serves to the ideological preferences of the Turkish state in line with the official definition of Turkishness.

Its refugee and asylum policy on the other hand is determined by the national security concerns. Eastern countries are conceptualized challenging in terms of their nature to produce refugee flows. Therefore, Turkey from the very beginning has the fear of becoming a buffer zone between refugee originating countries of the East and West. Refugee flows from non-European countries are seen as a direct threat to Turkey which found its expression in the geographical reservation to the Geneva

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Convention. In the Cold War period, Turkey had no legislation on asylum and refugee policy apart from the provisions of the Law on Settlement and Geneva Convention. Refugee and asylum policy of the country functioned as a part of foreign policy of the Western block in their war against communism. In fact, the ideological division between Eastern and Western blocks positioned Turkey as a staging post given the Western block commitment to resettle them in the West which manifested itself a persistent political and ideological ignorance on the issue in the Turkish context. However, the end of Cold War triggered deep transformations in migratory movements which brought a paradigm shift in the refugee regime as explained in Chapter II.

The end of Cold War and globalization has facilitated economic and financial integration with partial de-bordering of the capitalist economies. Simultaneously, in an effort to control labor mobility, Western countries have re-bordered their frontiers against migratory movements which manifested itself in increasingly complex and sophisticated non-entrée regimes designed to preclude access to territory. "Non departure" measures of the Cold War shifted to "non arrival measures" and containment becomes the norm in the refugee regime, as states have focused on keeping refugees in their home countries. The repercussions of this new environment are devastating for migrants, asylum seekers, and refugees as well as for source and transit countries as explained in Chapter II.

In the light of these, 1980s triggered dramatic changes in the Turkish migration regime as the country are subjected constantly to migratory movements from the neighboring countries with the Iraqi refugee influx had the deepest impact on the country's refugee and asylum policy. Indeed, the country's response to refugee movements was also determined by the so called "Turkishness". In the Bulgarian and the Iraqi refugee flows, Turkish state response was completely different in terms of the level of protection and assistance provided. It exemplified the security oriented refugee and asylum policy of the country in line with the national security considerations of the Turkish state. Turkey did not treat equally and fairly in both

cases and its response depended on refugees' origin. Its policy favored the Bulgarian refugees as they considered having Turkish and Muslim origin. Kurdish refugees were on the other hand, were denied of protection, assistance, and integration to a large extent. Iraqi refugee flows to Turkey resulted in a refugee and asylum policy aimed at creation of safe zones/heavens/no-fly zones and resettlement in third countries rather than providing protection and assistance. However, its unsustainable migration policy together with Turkey's bid for the EU membership triggered deep transformations from 2000s onwards. In other words, Turkey's EU membership aspirations and the accompanying political liberalization to that end increasingly strained the state's traditional concept of national identity and triggered a change in country's migration policy with certain limitations though which manifested itself in the official definition of the immigrant. The official definition of the immigrant has not changed; it is still security oriented along with the ideological preferences of the Turkish state as explained in Chapter IV.

In an aim to start accession negotiations, the so called Europeanization process of Turkey also triggered ground breaking development in country's migration policy. In that vein, The LFIP represents a groundbreaking development in Turkish migration policy and favors a more balanced approach to migration management in terms of security concerns and human rights. International protection regimes that set out in the LFIP i.e. refugee, conditional refugee, and subsidiary protection guarantee human rights of asylum seekers and refugees. However, geographical reservation to the Geneva Convention still denies the right to seek asylum in Turkey for non-Europeans. Turkey already declared that it will consider lifting geographical reservation to the Geneva Convention upon her accession to the EU. Given that Turkey's EU membership is far from realization, country's unsustainable policy regarding non-European asylum seekers and refugees force these people to live their lives in Turkey in limbo. It also results in attempts to cross the Turkish borders irregularly in order to reach the EU territory.

Even though the reform process of Turkish migration policy is attributed mostly to the EU accession process, Europeanization of Turkish migration and asylum policy paved the way for an increasingly security oriented migration management, in particular in the area of irregular migration flows from and through Turkey to the EU. No matter how the EU's credible membership perspective is fading away in Turkish context, the interests of both Turkey and the EU make possible to advance harmonization in the field of migration and asylum. On the part of the EU, integration of Turkey to the EU's migration regime is important for the security of the EU's southern borders since the security at the EU's southern borders will enhance "furthers Europe" inside the Union. Therefore, the investment the EU makes in Turkey clearly prioritizes security approach to the issue over human rights of migrants. The way Turkey deals with the irregular migrants has strategically shaped by the EU migration regime through security related policy measures such as increasing employment of detention practices by Turkey. The Readmission Agreement with the EU on the other hand, constitutes another crucial component of the relations between parties. In the implementation of the agreement, the EU will shift protection obligations to Turkey. Turkey on the other hand, established a direct link between the Readmission Agreement and visa free regime for Turkish nationals and instrumentalized readmission agreement to that end. However, the readmission agreement could lead to gross human right violations both on the part of Turkey and the EU as explained in Chapter IV.

As the control and management of Turkish borders is a difficult task for several reasons, the country is in a position to control exits, but not entries as explained in Chapter V. Open door policy in the Syrian crisis further poses challenges to the border regime of Turkey as well. For irregular migrants including undocumented asylum seekers, it is not possible to exit Turkey legally as Turkish border authorities do not allow undocumented people to exit Turkey through official crossing points. Therefore, more and more people are forced to take more dangerous ways to reach the EU or become trapped in Turkey.

Although the LFIP provides the legal ground for protection in case of refugee influxes to the country, the actual course of Turkey's open door policy in the Syrian crisis is also determined by the country's foreign policy in the sense that Turkey envisaged that its open door policy would hasten regime change in Syria. Even though in the Syrian case like in the Kurdish refugee influx in 1991, Turkish state called for internationally imposed safe zone, its open door policy is a major change from its past practices. In other words, whatever the underlying motivations of Turkey are in the Syrian crisis, its open border policy represents a major break from its past practices and it deserves appraisal in the midst of a truly international failure. However, the persistence of the refugees in Turkey and the ever growing number of them are putting significant challenges on refugees' protection environment as well as on the Turkish state capacity to continue to offer assistance and protection for the refugees. Given the estimates that 1, 2 million Syrian refugees are likely to stay in the country, Turkey needs to develop policies aimed at integration of refugees into the Turkish society which is already a divisive issue in the Turkish politics. In that context, it is likely that the issue will be politicized increasingly for years to come with growing challenges for both Syrian refugees and Turkish public as explained in the last part of Chapter IV. As the number of Syrian refugees made Turkey hosting the largest refugee population in the world, it poses remarkable challenges to the migration regime of Turkey in its relations with the EU as well since increasing number of irregular migrants including the Syrian refugees wishing to enter the EU. Therefore, based on the accounts above it is possible to conclude that Turkey's position at the frontier of 'Fortress Europe' is strengthened and the country has finally become the buffer zone between East and West.

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APPENDICES

A. TURKISH SUMMARY

Bu tez, güvenlikleştirme yaklaşımı ve insan hakları ekseninde Türkiye'nin göç yönetimini incelemektedir. Güvenlikleştirme ve insan hakları sorunsalının göç politikalarının iki ayrı ekseni olduğu literatürde büyük ölçüde kabul görmektedir. Bununla birlikte, göç politikalarının güvenlik boyutunu ön plana alınması, buna karşılık pratikte konunun insan hakları boyunu büyük ölçüde ıskalaması, göç politikası özelinde teori ve pratik arasında bir "boşluk" olduğu tartışmalarını beraberinde getirmektedir. Aslında göç politikası, güvenlik ve insan hakları tartışmalarını aşan, kapitalizmin emek üzerindeki kontrolü ile yakından ilgili bir konudur. Bu çerçevede, göç çalışmalarında kapitalizmin verili alınması, literatürün özellikle zorunlu göç olgusunun açıklamasında oldukça yetersiz kalmasına neden olmaktadır. Sermaye ve finans hareketlerinin liberalleşmesine karşın, emeğin serbest dolaşımının üzerindeki denetim, kişilerin serbest dolaşımı karşısındaki engellerin, kapitalizmin doğası ile yakından ilişkili olduğunun kanıtıdır. Finansal sermaye hareketleri karşısında devletler sınırlarını açarken, (*de-bordering*) kişilerin serbest dolaşımına karşı sınırlarını yeniden çizmektedirler (*re-bordering*). Göç alan devletlerin göç politikası, nitelikli emek göçüne sınırlarını açarken, "niteliksiz" olanlar için çok büyük oranda sınırlayıcı ve kısıtlayıcı bir niteliğe sahiptir. Göç politikası özelinde, Batılı gelişmiş devletlerin sınır güvenliklerini arttırması, kontrol eksenli göç yönetimi çabalarının temel bir politika alanı hale gelmesi gibi uygulamalar, sınırların güçlendirilmiş ve yeniden çizilmiş bir hale getirilmesinin iyi birer örneğidir. Bir bütün olarak, göç alan ülkelerin göç politikalarının ortak paydasının, özellikle düzensiz göç politikası bağlamında, kısıtlayıcı ve güvenlik eksenli olduğu söylenebilir. Bu kapsamda, çalışmanın 1. ve 2. bölümleri çalışmanın teorik çerçevesini çizmektedir.

Teorik olarak yukarıda anlatılan bir çerçeveye sahip olan bu çalışma, 3 farklı bölümden oluşmaktadır. İlk bölümde zorunlu ve gönüllü göç ayrımının nedenleri ve bu keskin ayrımın özellikle karma göç dalgaları (*mixed migration flows*) ve göç-iltica bağı (*migration-asylum nexus*) gibi göç hareketlerini açıklamakta yetersiz olduğu tartışılmıştır. Bununla birlikte, okuyucuya bir çerçeve sunmak amacıyla gönüllü göç ve zorunlu göç ayrımı temel alınmıştır. Fakat bu çalışma, nedeni ne olursa olsun, ulusal sınırlar içinde olan veya uluslararası sınırları geçmiş, zorla yerinden göç ettirilmiş olan kişileri mülteci olarak kabul etmektedir. Çalışma, özellikle ülkesinde zorla yerinden edilmiş kişiler (*internally displaced persons*) bağlamında, göç konusundaki isimlendirmenin yetersizliğine vurgu yapmaktadır. Düzensiz, düzenli, yasadışı ve yasal göçmen gibi tanımların, göçmenlerin, sığınmacıların ve mültecilerin insan haklarına saygı gösterilmesinde temel belirleyici olması tartışılmıştır. Göç alan devletlerin ve Avrupa Birliği'nin "düzensiz göçmen" yerine "yasadışı göçmen" tanımlamasını kullanmasının, göçün güvenlikleştirilmesine ve bu kişilerin insan haklarının ihlal edilmesine katkıda bulunduğu savunulmaktadır. Yine aynı şekilde, "yasadışı göç"ün devletlerin politikaları ile belirlenen bir alan olduğundan hareketle, göçmenlerin, sığınmacıların ve mültecilerin koruma ve güvenliğe erişimine ulaşmasında temel belirleyici olmasının sakıncalarına değinilmiştir. Bu kapsamda, birinci bölümde öncelikle gönüllü göç kavramı ve gönüllü göçü açıklamayı hedefleyen ana akım teoriler açıklanmıştır. Buna bağlı olarak, ana akım teorilerin büyük oranda göçe neden olan gelişmişliği ve az gelişmişliği farklı teorik çerçevelerden açıklamaya çalıştığı görülmüştür. Bu kısmın devamında, zorunlu göç ve zorunlu göçün geçirdiği değişim ve dönüşüm incelenmiştir. Nitelik ve nicelik olarak çok büyük bir değişim geçiren zorunlu göç olgusunun, Cenevre Sözleşmesinde tanımlanan dar mülteci tanımını çoktan işlevsiz bıraktığı tartışılmıştır. Bu bölümün son kısmında, uluslararası alanda göç yönetiminin temel parametreleri, mağduriyet yaklaşımı (*victimhood approach*), devletlerin göç alanında yasal bir yükümlülüğe girmek istememelerinin nedenleri gibi temel meselelere ışık tutularak, göç politikasının teorik çerçevesi çizilmiştir. Bu kapsamda Uluslararası Göçmen İşçiler ve Ailelerinin Haklarını Koruma Konvansiyonu'nun Amerika Birleşik Devletleri ve Avrupa Birliği gibi göçmenlerin

ve sığınmacıların hedefi olan gelişmiş batı ülkeleri tarafından neden imzalanmadığı tartışılmıştır. Bu kapsamda, göç konusunda, hak temelli bir anlayış yerine mağduriyet söylemli fakat güvenlik eksenli bir yaklaşımın tercih edilmesi, göç politikasının ekonomi-politiğinin incelenmemesi fakat kapitalizmin küreselleşme çağındaki neoliberal formunu verili alınmasının göç çalışmalarının temel çıkmazlarından biri olduğu tartışılmıştır.

Çalışmanın, 2. bölümünde, göç politikasının yönetiminde bölgesel boyutun, özellikle düzensiz göçle mücadele bağlamında giderek artan oranda önem kazanması ve Türkiye'nin aday ülke olmasından hareketle göç müktesebatını üstlenme durumunda olmasından dolayı, Avrupa Birliği göç politikasının temel çerçevesi incelenmiştir. Bu çerçevede, Avrupa Birliği göç politikasının teoride insan haklarına vurgu yapmasına ve insan haklarını özellikle düzensiz göçle mücadele bağlamında araçsallaştırmasına karşın, kendi güvenliğini önceleyen, konunun insan haklarını ikincil plana atan, koruma yükümlülüğünü 3. ülkelere transfer etme ekseninde bir politika izlediği tartışılmıştır. Avrupa Birliği göç politikasının dış boyutunun giderek artan oranda aday ülkeler dâhil üçüncü ülkeler için sonuçlar doğurmasından hareketle Avrupa Birliği'nin göç politikası üçüncü ülkeler bağlamında ayrı bir başlık altında incelenmiş ve Avrupa Birliği'nin üçüncü ülkelerle göç alanındaki işbirliğinin temel hedefinin kaynak ya da transit üçünü ülkelerden Avrupa Birliği'ne düzensiz göçün önlemesi olduğu tartışılmıştır. Aday ülkeler özelinde ise Avrupa Birliği'nin koşulluluk ilkesi ile bu ülkelerin göç politikalarının değişim ve dönüşümünde temel belirleyici olması tartışılmıştır. Bu kısmın devamında Avrupa Birliği göç politikasının uluslararasılaşma (*internationalization*), dışsallaştırma (*externalization*) ve Avrupa Birliği sınırları ötesinde Avrupalılaşma (*Europeanization beyond the borders of the EU*) literatürlerinden; Türkiye'nin aday ülke olmasından hareketle "Avrupa Birliği sınırları ötesinde Avrupalılaşma" literatürü temel alınarak eleştirel bir Avrupalılaşma yaklaşımı çerçevesinde, Türkiye'nin 2000'li yıllardan itibaren geçirdiği değişim ve dönüşümün temel dinamiklerine ışık tutulmuştur. Bu kısımda 2000'lerin ilk yarısında Avrupa çalışmaları literatürünün göz bebeği olan Avrupalılaşma yaklaşımının, üyelik perspektifinin kredibilitesini kaybetmesi ve

Türkiye-Avrupa Birliği ilişkilerinin çıkmaza girmesi karşısında, Avrupalılaşma literatürünün geneline hâkim olan "Avrupa Birliği faktörüne" aşırı bir belirleyici değer atfedilmesinin, Türkiye'nin geçirdiği karmaşık değişim ve dönüşüm süreçlerinde, hangi faktörün hangi şartlar altında nasıl bir değişime sebep olduğunu açıklamakta yetersiz olduğu tartılmıştır. Buna karşılık, Türkiye-Avrupa Birliği ilişkilerinin tarihsel gelişiminden açıkça görüleceği üzere, Türkiye-Avrupa Birliği ilişkilerinin birlikte çalışmaya olanak verecek şekilde yenilikçi yapısı, taraflar arasında göç konusunu da içeren "Pozitif Ajanda" örneğinde olduğu gibi, belirli politika alanlarında işbirliğini mümkün kılmasının dinamikleri açıklanmıştır. 24. fasıl kapsamında müktesebata uyum çalışmalarının göç politikası özelinde, taraflar arasındaki ilişkilerin çıkmaza girdiği bir dönemde ilerleme kaydetmesi bu durum en belirgin örneklerindendir. Yukarıda anlatılan bir çerçeveye sahip 2. bölüm taraflar arasındaki ilişkilerin göç politikası özelinde, Türkiye'den Avrupa Birliği'ne düzensiz göçün önlenmesine odaklandığını fakat nasıl göçmenlerin, sığınmacıların ve mültecilerin insan haklarının ikincil planda tuttuğunu incelemiştir.

3. bölümde Türkiye'nin göç politikası tarihsel bir çerçevede incelenmiştir. Bu bölümün alt kısmında 2. bölümde tartışılan Avrupalılaşma yaklaşımın eleştirel değerlendirmesi, özellikle düzensiz göç bağlamında ayrıntılı bir şekilde incelenmiştir. Güney sınırlarını koruma altına almak isteyen Avrupa Birliği'nin, düzensiz göçle mücadele konusunda Türkiye üzerinde önemli bir baskı kurması ve özellikle mali yardım aracı ile Türkiye'nin düzensiz göç politikasının şekillenmesinde önemli bir rol oynadığı tartışılmıştır. Bu kapsamda, Avrupa Birliği'nin insan hakları ihlalleri konusunda yoğun eleştiri alan geri gönderme merkezleri ve idari gözetim politikası, Avrupa Birliği'nin mali yardımları ile Türkiye'nin düzensiz göçle mücadelesinin şekillenmesinde temel bir rol oynaması incelenmiştir. Bu tez, düzensiz göçle mücadelenin Avrupalılaşmanın en belirgin olduğu alanlardan birisi olduğunu tartışmıştır. Türkiye ise çıkarları ve politika öncelikleri doğrultusunda, 24. fasıl kapsamında Avrupa Birliği ile ilişkilerinin rayında tutulmasına önem vermektedir. Geri kabul anlaşması, Türkiye'nin vizesiz seyahat ile geri kabul anlaşmasını birlikte okumasına neden olmuş ve Türkiye

tarafında göç diplomasisinin (*migration diplomacy*) ikili ilişkilerde bir pazarlık unsuru olarak kullanılmasına neden olmuştur. Buna karşılık Avrupa Birliği'nin geri kabul anlaşması-vize muafiyeti birlikteliğini reddetmesi Türkiye ile Vizesiz Rejime Doğru Yol Haritası (*Roadmap towards a Visa-free Regime with Turkey*) üzerinden incelenmiştir. Bu bölümün alt kısmında, Türkiye-Avrupa Birliği geri kabul anlaşması konunun insan hakları boyutunda tartışılmıştır. Ayrıca, Türkiye'nin geri kabul anlaşmasını imzalanmasının arkasındaki motivasyonlarını göstermesi nedeniyle, anlaşmasının Türkiye Büyük Millet Meclisinde görüşme tutanakları incelenmiştir. Türkiye'nin geri kabul anlaşması konusundaki temel kaygısı, Türk vatandaşlarına Avrupa Birliği ülkelerine vizesiz seyahat imkânının sağlanmasıdır. Anlaşmanın Türkiye Büyük Millet Meclisindeki görüşmelerinde konunun insan hakları boyutundan ziyade, Türkiye'nin "yasadışı göçmen deposu" haline geleceği tartılmıştır. İktidar partisi, Türkiye-Yunanistan arasındaki geri kabul anlaşması kapsamında Türkiye'ye geri kabul edilen düzensiz göçmenlerin sayısının azlığı ile kamuoyunu rahatlatmaya çalışmıştır. Her halükarda, geri kabul anlaşmasının etkin bir şekilde uygulanması hem Avrupa Birliği hem de Türkiye için insan hakları ihlallerine neden olabilecek potansiyeldedir. Bu durumun nedenleri, hızlandırılmış prosedür gibi özel durumlar, Türkiye'nin üçüncü ülkeler ile kaynak ve transit diğer ülkelerle geri kabul anlaşmaları imzalama çabasının nedenleri gibi konular bu kısımda incelenmiştir. Ayrıca, Türkiye'nin güvenli üçüncü ülke (*safe third country*) olma senaryosu incelenmiştir. Bu bölümün son kısmında, Türkiye'nin dünyada en fazla mülteciye ev sahipliği yapmasıyla sonuçlanan açık kapı politikası çerçevesinde Suriye krizinde mülteci politikası incelenmiştir.

Bu tez temel olarak aşağıdaki iki sorunsala yanıt vermeyi amaçlamıştır.

Sorunsal 1: Güvenlik ve insan hakları Türkiye'nin göç politikasında ve bu politikanın değişim sürecinde ne ölçüde belirleyici olmuştur?

Sorunsal 2: Türkiye'nin Avrupa Birliği'nin güney sınırlarında konumlanan ve müktesebatı üstlenme durumunda olan aday ülke olmasından hareketle Türkiye'nin göç politikası ne ölçüde Avrupalılaşmıştır?

2. Dünya Savaşı sonrasında oluşturulan 1951 Cenevre Sözleşmesi ve anlaşmadaki zaman kısıtını kaldıran 1967 Protokolü, mülteci tanımını ırkı, dini, milliyeti ya da belirli bir sosyal ya da politik gruba mensubiyeti nedeniyle zulme uğrayan kişilerle sınırlamaktadır. Soğuk Savaş sonrası dünyada, zorunlu göç olgusu, Cenevre Sözleşmesinde tanımlanan dar mülteci tanımını kat ve kat aşmaktadır. Göç hareketlerindeki niteliksel ve niceliksel değişimin sonucu olarak, göç alan ülkelerin politikaları, konunun yapısal boyutunu ele almaktan çok, mültecilerin kendi ülkelerinde tutulmasını ve/ veya uluslararası sınırları aşmamalarına odaklanmaktadır. Giderek artan oranda güvenlikleştirmeye maruz kalan göç politikası, göçmenlerin, mültecilerin, sığınmacıların insan haklarını değil, devletlerin güvenliğini öncelemektedir. Buna karşılık göç politikası söylemleri ve teorisi, konunun insan haklarını önceleyen bir görünüm sergilemekte ve fakat dünya çapında güvenlik eksenli bir politika göçmenlerin, sığınmacıların ve mültecilerin insan haklarını ihlal etmektedir.

Türkiye, uluslararası alanda uzun yıllar boyunca göç veren bir ülke olarak konumlanmıştır. Fakat Türkiye, Cumhuriyetin kuruluşundan da öncesine dayanan bir tarihsel geçmişle aynı zamanda göç alan bir ülkedir. 1934 tarihli İskân Kanunu Türkiye'ye ulus ve ulusal kimlik inşasında önemli bir ideolojik ve yasal bir zemin sağlamış, yalnızca "Türk soyundan meskûn veya göçebe ferdler"in Türkiye'ye kabul edilmelerine imkân sağlamıştır. Cumhuriyetin ilk on yıllarında, Türk ve Müslüman olanlara dayalı bir ulus devlet politikası güden Türkiye, göç politikasını, ulus ve ulusal kimlik inşasında bir araç olarak kullanmıştır. Güvenlik eksenli bu yaklaşım, gayri Müslümlerin zorunlu göçü örneğinde olduğu gibi, yaygın insan hakları ihlallerine neden olmuştur. Türkiye'nin geçirdiği ekonomik ve sosyal dönüşüm, 1960'lı yıllardan itibaren göç politikasının, işsizlik üzerindeki baskıyı hafifletmek ve ülkeye işçi dövizlerinin girmesini sağlamak için yeniden kurgulanmasına neden

olmuştur. Batı Avrupa ülkeleri ile imzalanan işgücü anlaşmaları ile Türkiye, Cumhuriyet tarihi boyunca ilke defa Türklerin yurtdışına göçüne tanık olmuştur. Bu durum, göç politikasının devletlerin siyasal, ekonomik ve sosyal durumlarına göre dizayn edilmesinin bir diğer örneğini oluşturmaktadır. Ülkenin, göç ve mülteci politikası ise 1951 tarihli Cenevre Sözleşmesine konulan coğrafi çekince çerçevesinde belirlenmiştir. Avrupa ülkeleri dışında, özellikle komşu Ortadoğu ülkelerinden kendisine yönelen mülteci hareketlerini, ulusal güvenliğine tehdit olarak gören Türkiye, 2015 itibarıyla Avrupa'da tek ve dünyada ise coğrafi çekinceyi koruyan birkaç ülkeden birisidir. Ülkenin, Doğu ve Batı arasında bir tampon bölge olma korkusu, coğrafi çekincenin korunmasındaki en önemli nedenlerden biridir.

Soğuk Savaş sonrasında giderek artan oranda transit ve hedef ülke haline gelen Türkiye, tarihsel olarak sıklıkla mülteci akınına uğramaktadır. Soğuk Savaşın sona ermesi, eski Doğu Bloku ülke vatandaşlarının Türkiye'ye düzensiz emek göçüne neden olmuş ve giderek artan oranda Türkiye'nin varış ülkesi haline gelmesinin önüne açan sürecin başlangıcını oluşturmuştur. Avrupa Birliği'ne komşu olması nedeniyle de, Birliğe geçişte transit ülke olarak kullanılmaya başlanmıştır. Türkiye ayrıca 1980'lerin sonunda itibaren mülteci hareketlerine maruz kalmaktadır. Irak ve Bulgaristan mülteci dalgaları bu kapsamda akla gelen en önemli örneklerdendir. Türkiye'nin özellikle Iraklı Kürt mülteciler ve Bulgar mülteci göçü konusundaki taban tabana zıt politikaları, mülteci politikasının devletin resmi politikaları ve güvenlik tehdit algılamasıyla yakından ilişkili olduğunun en önemli kanıtıdır. Irak mülteci krizinde, ülkenin PKK ile olan sıcak savaşı, o dönem ayrı bir Kürt kimliğinin varlığını inkâr eden ülkemizde, mültecilere koruma ve güvenlik sağlanmasının önünde ayrıca bir engel oluşturmuştur. Bulgar mülteci göçü ise devletin resmi "Türklük" tanımına uyan "soydaşlarımız" Bulgar Türklerine vatandaşlık verilmesi dâhil geniş kapsamlı bir koruma rejiminin sağlanmasını mümkün kılmıştır. Dolaysıyla ülkenin güvenlik eksenli mülteci politikası, kendi içinde bile devletin ideolojik ve politik tercihlerine, güvenlik ve tehdit algılamalarına göre çeşitlilik göstermiştir. Özelikle Iraklı Kürt mülteci dalgası, Türkiye'nin göç ve sığınma politikasına damgasını vurmuştur. Kitlesel mülteci hareketlerine karşı güvenli bölge

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oluşturulması ve üçüncü ülkelere yerleştirme bu politikanın temel belirleyicisi olmuştur. İltica ve mülteci hareketlerine güvenlik ekseninden yaklaşan Türkiye, konunun insan hakları boyutunu büyük oranda ıskalamıştır. Soğuk Savaş döneminde, Batı blokunun mültecilere sığınma hakkı vermesi, aslında Türkiye'nin mülteciler için geçici bir durak olmasına imkân sağlamıştır. Fakat Soğuk Savaş sonrası dönemde giderek artan oranda sürdürülemez bir hale gelen sığınma ve iltica politikası, 1994 tarihli mülteci ve sığınma yönetmeliğinin kabul edilmesi ile ikincil mevzuatta da olsa, konuya yasal bir zemin kazandırmıştır. Güvenlik kaygılarının egemen olduğu bu yönetmelik, Türkiye'nin geri gönderme ilkesi dâhil, temel koruma ilkelerini ihlal etmesi sonucunu doğurmuştur. Giderek artan oranda insan hakları ihlallerinde bulunan Türkiye, Avrupa İnsan Hakları Mahkemesinde de pek çok dava kaybetmiştir.

Bir bütün olarak 1990'ların sonunda sürdürülemez bir hale gelen göç politikası, Türkiye'nin aday ülke ilan edilmesinin ardından müzakerelere başlamak isteyen Türkiye'nin reform sürecine girmesi ile birlikte yeni bir dönemece girmiştir. Bu kapsamda kabul edilen 4.4.2013 tarihli ve 6458 sayılı Yabancılar ve Uluslararası Koruma Kanunu, Türkiye'nin göç yönetiminde çok önemli bir dönüm noktasını temsil etmektedir. Güvenlik ve insan hakları dengesini gözeten bu Kanun, coğrafi çekinceyi korumakla birlikte, farklı uluslararası koruma rejimleri ile Avrupa ve Avrupa dışından gelen yabancılara yasal bir koruma rejimi sağlamaktadır. Bu kapsamda mülteci, şartlı mülteci, ikincil koruma rejimleri ile mülteci ve sığınmacıların hakları güvence altına alınmıştır. Coğrafi sınırlamanın korunması, şartlı mülteci kapsamında olan ve Avrupa ülkeleri dışından gelen sığınmacılar için, Türkiye'deki kalış sürelerinin, üçüncü bir ülkeye yerleştirilinceye kadar geçici olmasını yasal güvence altına almıştır. İkincil koruma kapsamında olanlar içinse, Türkiye'deki kalış sürelerine ilişkin Yabancılar ve Uluslararası Koruma Kanununda bir değerlendirmeye yer verilmemiştir. Ayrıca, Yabancılar ve Uluslararası Koruma Kanunu kitlesel olarak Türkiye sınırlarına gelen veya sınırları geçen yabancıların geçici koruma rejimi altına alınmasına olanak sağlanmıştır. Fakat geçici koruma rejiminin dizaynı ve uygulanması, Bakanlar Kurulunun 22 Ekim 2014 tarihinde

çıkardığı Geçici Koruma Yönetmeliğine bırakılmıştır. Türkiye'nin tarihsel olarak kitlesel mülteci akınlarına sahne olduğu göz önüne alındığında, bir maddede düzenlenen geçici koruma rejiminin kanunen daha ayrıntılı düzenlenmesi gerektiği düşünülebilir. Ayrıca, geçici koruma yönetmeliği uyarınca geçici koruma rejimi altında olanların bireysel koruma talebinde bulunamaması, geçici koruma rejiminin Yabancılar ve Uluslararası Koruma Kanununda öngörülen uluslararası koruma rejimlerine bir alternatif olarak dizayn edildiği izlenimi oluşmaktadır. Bu durum ise, Birleşmiş Milletler Mülteciler Yüksek Komiserliğinin "Geçici Koruma ya da Kalış Düzenlemeleri Rehberi" (*United Nations High Commissioner for Refugees Guidelines on Temporary Protection or Stay Arrangements*) uyarınca geçici olması gereken, geçici koruma rejiminin kalıcı bir hale dönüştürüldüğü izlenimini vermektedir.

Bir bütün olarak 6458 sayılı Yabancılar ve Uluslararası Koruma Kanunu ile Türkiye'nin göç politikası çok önemli bir değişim ve dönüşüm geçirmiştir. Bunula birlikte Türkiye'nin geçirdiği değişim ve dönüşümün münhasıran Avrupalılaşma lüteratürü üzerinden okuması ve ülkenin ekonomik, politik ve siyasal alanda büyük değişim ve dönüşümler geçirmesine karşın, devletin kimlik politikasının güvenlik ekseninin değişmesinin belirli bir sınırı olduğu 2000'li yıllarda açıkça görülmüştür. Bu durumun en açık örneği devletin resmi "göçmen" tanımlamasında görülmektedir. 2510 sayılı İskân Kanunu 2006 yılında kabul edilen 5543 sayılı yeni İskân Kanunu ile yürürlükten kaldırılmıştır. Fakat devletin göçmen tanımlaması Türk soyundan ve Türk kültürüne bağlı olup, yerleşmek amacıyla tek başına veya toplu halde Türkiye'ye gelip İskân Kanunu gereğince kabul olunanlardır (5543 sayılı İskân Kanunu, madde 3/d). Dolayısıyla Türk soyu ve Türk kültürü hala, göçmen statüsünü elde etmek için gereklidir. Görünen o ki, 1934 tarihli İskân Kanunundan bu yana ulusal kimlik bağlamında, göçmen kabul edilmenin parametreleri pek değişmemiştir. Türkiye örneği, göç politikası aracılığıyla devletlerin tarihsel olarak kendi kimliklerini koruma potansiyeli olan kişileri vatandaşlığa kabul etmesinin bir örneğini oluşturmaktadır.

Türkiye'nin Suriye krizindeki açık kapı politikası, ülkenin güvenlik eksenli göç politikasından keskin bir ayrılışı ifade etmektedir. Her ne kadar, Türkiye güvenli bölge için uluslararası arenada çaba gösterse ve açık kapı politikasının Türkiye'nin dış politika hedefleriyle bağlantılı olduğu tartışılsa da açık kapı politikası, gelişmiş Batı ülkelerinin mültecilere kapılarını kapatıp onları kaderlerine mahkûm ettiği bir dönemde takdiri hak etmektedir. Uluslararası toplumun Türkiye dâhil, Suriyeli mültecileri kabul eden komşu ülkeleri yalnız bırakan tavrı, Suriye krizinin çözümden uzak olduğu göz önüne alındığında, Türkiye dâhil mülteciler ev sahipliği yapan bütün ülkeler açısından büyük sıkıntılara gebedir. Birleşmiş Milletler Mülteciler Yüksek Komiserliğinin kalıcı çözümleri olan gönüllü geri dönüş, yerel entegrasyon ve yerleştirme, Suriye krizi konusunda ümit vaat etmekten çok uzaktadır. Kriz kısa/orta dönemde çözülemeyeceğinden geri dönüş, Batılı gelişmiş ülkelerin yerleştirme kotalarının absürd derecesinde az oluşu ise yerleştirmeyi anlamlı bir politika aracı olmaktan uzaklaştırmıştır. Dolasıyla entegrasyon, Suriyeli mülteciler için elzemdir. Türkiye, Suriyeli mülteci konusunda entegrasyona yönelik politikalar geliştirmek zorundadır. Bu tez, kalıcı çözümler konusunda dramatik bir şekilde değişme olmaması halinde, entegrasyonun Türkiye için hayati önemde olduğunu savunmaktadır. Aksi takdirde, Türkiye giderek artan oranda mültecilerin güvenlikleştirme ve politik malzeme olarak kullanılarak politizasyona maruz kalacağını savunmaktadır. Ayrıca, ülkenin mülteciler için ayrılan kaynaklarının, Suriyeli mülteciler için kullanılması, Suriyeli olmayan mültecilere sağlanan koruma rejiminde önemli sıkıntıları da beraberinde getirmesi incelenmiştir. Bu durum, giderek artan oranda, mülteci politikası üzerinde baskı kurmaktadır.

Bir bütün olarak, Suriye mülteci krizinde izlenen açık kapı politikası nedeniyle Türkiye, Şubat 2015 itibarıyla dünyada en fazla mülteciye ev sahipliği yapan ülke konumundadır. Bu durum, uzun yıllar boyunca göç veren bir ülke olarak konumlanan Türkiye'nin, uluslararası göç rejimindeki yerinde çok büyük bir değişime işaret etmektedir. Suriye krizinin çözümden uzak oluşu ve uluslararası toplumun Türkiye'yi yalnız bırakan toplumu, mülteci politikasının, Türk siyasal hayatında önümüzdeki dönemlerde daha belirgin bir rol oynayacağının işareti sayılabilir.

Türkiye'nin iltica ve göç politikasının temel belirleyeni coğrafi kısıtlamadır. Doğu ve Batı arasında tampon bölge olma korkusu, coğrafi kısıtlamanın sürdürülmesine neden olmaktadır. Suriye mülteci krizinde Avrupa Birliği'nin sınırlarını birer kaleye dönüştüren politikaları, yerleştirme için sağladığı dalga geçer derecedeki düşük kotalar ve sorunun çözümden uzak olması, mültecilerin Türkiye'de kalıcı görünen varlığı göz önüne alındığında, Türkiye'nin tampon bölge olma korkusunun aslında gerçek olduğunun kanıtıdır. Türkiye'nin Kale Avrupası'nın sınırı olma durumu Suriye krizi ile keskinleşmiştir. Türkiye-Bulgaristan arasında düzensiz göçmen geçişlerindeki dramatik artış göz önüne alındığında, düzensiz göçle mücadele ve mültecilerin düzensiz yollarla Avrupa geçişinin önünün kesilmesi, Türkiye-Avrupa Birliği ilişkilerinin giderek artan oranda düzensiz göçle mücadele etrafında belirleneceğine örnek teşkil etmektedir. Türkiye çok farklı nedenlerle, sınırlarına girişi değil, daha ziyade sınırdan çıkışları kontrol edebilen bir ülke konumundadır. Bu nedenle, göçmenler, sığınmacılar ve mülteciler, üçüncü bir ülkeye yerleştirilinceye kadar Türkiye'de kalmaktadırlar. Uzun yıllar alan bu süreç, bu kişilerin Türkiye'deki kalışlarını arafta bırakmaktadır. Pek çok kişi, Türkiye'de kısıtlı kalmakta ve/veya yerleştirme kotalarının azlığı nedeniyle, Türkiye'de yaşamak zorundadır. Yasal olarak gerekli belgelere sahip olmayan kişiler ise, Türkiye'yi yasal yollardan terk edememektedirler. Zira Türkiye, bu kişilerin kendi sınırlardan çıkışlarına izin vermemektedir. Bu durumda Avrupa'ya ulaşma umudundaki pek çok düzensiz göçmen ve sığınmacı yasadışı yollardan ülkeyi terk etmektedir. Bu durum ise, büyük bir insanlık ayıbı olarak göçmenlerin hayatlarını kaybetmesine neden olmaktadır. Bu durum, Avrupa Birliği'nin Türkiye üzerinde Birliğe düzensiz göçün engellenmesi konusunda baskı kurmasına da neden olmaktadır. Bir bütün olarak, coğrafi kısıtlamayı kaldıran ve Avrupa Birliği ile geri kabul anlaşmasını uygulayan bir Türkiye, Avrupa Birliği müktesabatı gereği yasal olarak "güvenli üçüncü ülke" statüsünde olacaktır. Bu senaryo, Türkiye'nin altyapısı ve kaynakları göz önüne alındığında, göç yönetiminde en büyük zorluklardan birini temsil edecektir.

APPENDICES

B. TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü	☐
Sosyal Bilimler Enstitüsü	☒
Uygulamalı Matematik Enstitüsü	☐
Enformatik Enstitüsü	☐
Deniz Bilimleri Enstitüsü	☐

YAZARIN

Soyadı : Aydınlı
Adı   : Kübra
Bölümü : Avrupa Çalışmaları

TEZİN ADI (İngilizce) : A Critical Assessment of Turkey's Migration Regime: Securitization versus Human Rights?

TEZİN TÜRÜ : Yüksek Lisans ☒   Doktora ☐

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir. ☐

2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir. ☐

3. Tezimden bir bir (1) yıl süreyle fotokopi alınamaz. ☒

TEZİN KÜTÜPHANEYE TESLİM TARİHİ: