THE IMPACT OF EUROPEANIZATION ON DOMESTIC POLICY STRUCTURES: ASYLUM AND REFUGEE POLICIES IN TURKEY'S ACCESSION PROCESS TO THE EUROPEAN UNION

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
MIDDLE EAST TECHNICAL UNIVERSITY

BY

BAŞAK KALE

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY
IN
INTERNATIONAL RELATIONS

DECEMBER 2005

Approval of the Graduate School of Social Sciences

Prof. Dr. Sencer Ayata
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Doctor of Philosophy.

Prof. Dr. Meliha Altunışık
Head of Department

This is to certify that we have read this thesis and that in our opinion it is full adequate, in scope and quality, as a thesis for the degree of Doctor of Philosophy.

Prof. Dr. Atila Eralp
Supervisor

Examining Committee Members

Prof. Dr. Atila Eralp (METU, IR) _____

Prof. Dr. Kemal Kirişçi (Boğaziçi University, POL&IR) _____

Assistant Prof. Dr. Sevilay Kahraman (METU, IR) _____

Assistant Prof. Dr. Fulya Kip-Barnard (METU, IR) _____

Associate Prof. Dr. Mehmet Okyayuz (METU, ADM) _____

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Başak Kale

Signature:

ABSTRACT

THE IMPACT OF EUROPEANIZATION ON DOMESTIC POLICY STRUCTURES: ASYLUM AND REFUGEE POLICIES IN TURKEY'S ACCESSION PROCESS TO THE EUROPEAN UNION

Kale, Başak

Ph.D., Department of International Relations

Supervisor: Prof. Dr. Atila ERALP

December 2005, 288 pages

This thesis analyzes the impact of Europeanization on domestic policy structures in states which are not European Union (EU) members within the framework of asylum and refugee policies. It focuses on the influence of Europeanization during Turkey's pre-accession process to the EU after 1999. This thesis has three main goals. The first one is to provide a comprehensive analysis of the dynamics behind Europeanization of asylum and refugee policies. The second goal is to highlight the institutional, administrative and ideational environment in which these policies take place. Finally, it aims to analyze how the dynamics of European integration through legislative harmonization creates systemic transformation in domestic governance systems in the EU candidate countries in their pre-accession process.

Keywords: Europeanization, Turkey-European Union relations, Turkey's accession process, asylum and refugee policies, international refugee regime, Justice and Home Affairs policy

ÖZ

AVRUPALILAŞMANIN ULUSAL POLİTİKA YAPILARI ÜZERİNE ETKİSİ: TÜRKİYE'NİN AVRUPA BİRLİĞİNE GİRİŞ SÜRECİNDE İLTİCA VE MÜLTECİ POLİTİKALARI

Kale, Başak

Ph.D., Uluslararası İlişkiler Bölümü

Danışman: Prof. Dr. Atila ERALP

Aralık 2005, 288 sayfa

Bu tez, 'Avrupalılaşma' olgusunun, Avrupa Birliğine üye olmayan ülkelerde ulusal politika yapıları üzerine olan etkisini, iltica ve mülteci politikaları bağlamında analiz etmektedir. Bu analiz, Türkiye'nin 1999 yılından itibaren Avrupa Birliği'ne giriş sürecinde Avrupalılaşmanın tesiri üzerine odaklanmaktadır. Bu tezin üç ana amacı bulunmaktadır. İlk amaç, iltica ve mülteci politikalarının Avrupalılaşmasının arkasında yatan dinamiklerin kapsamlı bir analizini sunmaktır. İkinci amaç, bu politikaların yer aldığı kurumsal, yönetsel ve fikirsel ortamı vurgulamaktır. Son olarak, Avrupa bütünleşmesinin dinamiklerinin Avrupa Birliği'ne aday ülkelerinin giriş süreçlerinde yasal uyum süreci çerçevesinde ulusal yönetim sistemlerinde nasıl sistemik bir değişme yol açtığını analiz etmeyi amaçlamaktadır.

Anahtar kelimeler: Avrupalılaşma, Türkiye-Avrupa Birliği ilişkileri, Türkiye'nin Avrupa Birliği'ne giriş süreci, iltica ve mülteci politikaları, uluslararası mülteci rejimi, Adalet ve İçişleri Politikası

To my family for their endless support, encouragement
and for their love...

ACKNOWLEDGEMENTS

I am grateful to several institutions and individuals, who have contributed in many ways to the process of writing and research of this dissertation. First of all, I would like to thank to the Middle East Technical University offering me research support in a highly stimulating research environment. I am also grateful to the British Chevening Scholarship which generously funded my research for the 2003-2004 academic year at the University of Oxford. I have greatly benefited from my year at the Refugee Studies Centre, Queen Elizabeth House and the Centre on Migration Policy and Society (COMPAS).

Many colleagues and friends have provided help and assistance during the research and writing of this dissertation, and I am grateful to them all. Particular thanks are due to the members of my Ph.D. dissertation examining jury for their critical reading of the thesis and their friendly and encouraging support during my research; Prof. Dr. Atila Eralp, Prof. Dr. Kemal Kirişçi, Assist. Prof. Dr. Fulya Kip-Barnard, Assist. Prof. Dr. Sevilay Kahraman and Assoc. Prof. Dr. Mehmet Okyayuz. I would also like to thank to my Ph.D. qualifier exam jury for devoting time and energy from their busy schedules; Prof. Dr. Ali Karaosmanoğlu, Prof. Dr. Necati Polat, Assist. Prof. Dr. Gamze Öz, Assist. Prof. Dr. Fulya Kip-Barnard and Prof. Dr. Atila Eralp.

I would like especially thank to my supervisor Prof. Dr. Atila Eralp for providing encouragement during my entire Ph.D. studies without his guidance this dissertation will never come to existence. Precious feedback from Prof. Dr. Kemal Kirişçi enabled me to think through important questions that I had left out and his guidance helped me to overcome the obstacles I have faced during the completion of this thesis.

I would like also to thank in particular to my college supervisor Dr. Renee Hirschon who was more than a supervisor during my studies at the St. Peter's College, University of Oxford. Her encouragement and support still continues to this date.

I am also indebted to my interview partners from various national and international institutions for their kind assistance and for sharing their insights with me. The British Council, Ankara requires a special appreciation for supporting my studies and providing endless support. My distinctive thanks go to Mr. Tony Lockhart and Mr. Serdar Dinler for their belief in me and in my studies. The UNHCR, Ankara office has always provided enduring and friendly support. My dissertation would never come into existence without the immeasurable support of Mr. Metin Çörebatır.

I have immensely benefited from my work at the Secretariat General for the European Union Affairs. I have gained indefinitely from the highly challenging work

I have undertaken for the European Convention process with the inspiring guidance of Ambassador Volkan Vural, Secretary General. During the same period, I have learned greatly from working with the Political Affairs Section under the supervision of Mrs. Ayşe Asya, Department Head and the Ambassador Volkan Bozkır, Deputy Secretary General. Returning back to the EUSG for the preparation of the National Programme next year, excessively contributed to my thesis. I am grateful to Mrs. Aslıgül Üğdül, Department Head and Ambassador Ahmet Acet, Deputy Secretary General for their guidance. I have significantly benefited working with my colleagues from various departments of the EUSG who provided a very enjoyable work environment.

Of course, I am also indebted to Mr. Bruce Scoffield who encouraged my preliminary research. My interest to my dissertation topic would not come into existence without him.

I would also distinctly thank to Prof. Dr. Raşit Kaya who has endlessly backed my enthusiasm to pursue an academic career from my undergraduate studies onwards. My incessant gratitude goes to Mrs. Judy Onulduran, Prof. Dr. Meliha Altunışık, Prof. Dr. Hüseyin Bağcı, Assist. Prof. Dr. Pınar Bedirhanoğlu, Assist. Prof. Dr. Zana Çıtak, Prof. Dr. Ali Gitmez, Assist. Prof. Dr. Şule Güneş, Assist. Prof. Dr. Oktay Tanrısever, Prof. Dr. Mustafa Türkeş, Assist. Prof. Dr. Galip Yalman and Prof. Dr. Nuri Yurdusev for their friendly support during my studies. I would specially like to thank to Assist. Prof. Dr. Fatih Tayfur for his friendly encouragement.

My endless thanks go to Prof. Dr. Ayşe Ayata and Prof. Dr. Sencer Ayata who have supported me during my research in Oxford and onwards.

My friends and colleagues at METU receive special thanks for making a painful journey of completing a Ph.D. as enjoyable as possible. In that respect, I would like to thank first of all, my dear friends Ömür Bostan and Assist. Prof. Dr. Özlem Tür who were with me when I needed the most. I deeply acknowledge their moral support and help, but most importantly their truthful friendship. I am mostly grateful to Çağrı Öztürk for his technical expertise, this thesis in its every bit benefited greatly from his help. I am thankful to Arıkan Açar for helping me with my thesis title. In addition, this work benefited from fruitful and enjoyable conversations with several members of my Ph.D. class at METU and from my research assistant friends Sait Akşit, Zeynep Civcik, Ceren Ergenç, Umut Koldaş, Cengiz Sürücü and İnan Rüma. I would also like to thank to Syed Ali, Can Aydın, Paul Gardner and Nathan Lack for taking time and proof reading my chapters. İrem İnceoğlu provided her endless moral support during my entire studies. Başak Yakış, as a friend, was always there for me. Finally, Ms. Zerrin Eşcan has always given me tremendous encouragement and guidance.

Last but not the least, I would like to thank to my brother Ata Can Kale for his technical support and to my parents Hülya and Hasan Kale for their continuous love

and patience during my entire education leading towards an academic career. This dissertation with all modesty is dedicated to them.

TABLE OF CONTENTS

LIST OF TABLES

TABLES

LIST OF FIGURES

FIGURES

LIST OF ABBREVIATIONS

ABGS	Avrupa Birliği Genel Sekreterliği
AKP	Justice and Development Party (Adalet ve Kalkınma Partisi)
AP	Accession Partnership
ARGO	Administrative Cooperation on External Borders, Visa, Asylum and Immigration
ASAM	Association for Solidarity with Asylum Seekers and Migrants
BMMYK	Birleşmiş Milletler Mülteciler Yüksek Komiserliği
CAHAR	Ad Hoc Committee of Experts on the Legal Aspects of Refugees
CAP	Common Agriculture Policy
CEE	Central and Eastern Europe
CEECs	Central and Eastern European Countries
CEG	Capabilities-expectations Gap
CELAD	European Committee to Combat Drugs
CFSP	Common Foreign and Security Policy
CIREA	Center d'information, de Recherche et d'Echanges en matiére d'Asile (Center for Information, Reflection and Exchange on Asylum)
CIREFI	Center d'information, de Recherche et d'Echanges en matiére de frenchissement des Frontiéres et d'Immigration (Center for Information, Reflection and Exchange on Immigration)
CNG	Central Negotiation Group (of Schengen)
CSCE	Conference on Security and Co-operation in Europe
CUP	Committee on Union and Progress
EC	European Community
EEC	European Economic Community
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EPC	European Political Cooperation
EIS	European Information System
EP	European Parliament
EPC	European Political Cooperation
EMU	European Monetary Union
EU	European Union
EUSG	Secretariat General for the European Union Affairs
EURODAC	European Automated Fingerprint Recognitions System
HLWGAI	High Level Working Group on Asylum and Migration
ICAO	International Civil Aviation Organization
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICJ	International Court of Justice
ICMC	International Catholic Migration Commission
IDP	Internally Displaced Persons
IGC	Intergovernmental Conference
IKGV	Human Resource Development Foundation
IOM	International Organization for Migration
IR	International Relations
IRO	International Refugee Organisation
ITL	Integration Through Law
JHA	Justice and Home Affairs
LI	Liberal Intergovernmentalism
MAG	Mutual Assistance Group (in the Frame of Customs)
MFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
NAP	National Action Plan for Asylum and Immigration
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organization
NGOs	Non-governmental Organisations
NPAA	National Programme on the Adoption of the Acquis
OAU	Organisation of African Unity
OJ	Official Journal of the European Communities
OLAF	European Antifraud Office
OSCE	Organisation Security and Cooperation in Europe
PAA	Pre-Accession Advisor
PESC	Politique Etrangère de Sécurité Commune
PHARE	Poland and Hungary: Aid for Economic Restructuring
PKK	Kurdistan Workers' Party (Kürdistan İşçi Partisi)
RAP	Revised Accession Partnership
RMUA	Resolution on Manifestly Unfounded Applications
RNPAA	Revised National Programme for the Adoption of the Acquis
RSD	Refugee Status Determination
SEA	Single European Act
SIS	Schengen Information System
TEU	Treaty on European Union
TGNA	Turkish Grand National Assembly
TREVI	Terrorism, Radicalism, Extremism, Vandalism International
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UNRRA	United Nations Relief and Rehabilitation Agency
USA	United States of America
USSR	Union of Soviet Socialist Republics
WW I	World War I
WW II	World War II

CHAPTER I:

INTRODUCTION

This study investigates the influence of 'Europeanization' in the domestic asylum and refugee policy area during the Turkish pre-accession process to the European Union (EU). The focus of this work is based on the assumption that both the member and candidate states of the EU are directly influenced by the increased pace of 'Europeanization' in their domestic policy-making. Turkey, as a candidate state has accepted the transformation of its political and legal system with the adoption of the EU *acquis communitaire*. This is achieved through legislation and policy harmonization in its pre-accession process. This process of alignment with the EU *acquis* generates legislative, administrative and ideational transformation leading towards a systemic transformation in several policy areas of the national governance system.

This thesis includes research on the prospects of asylum and refugee protection in Turkey with a specific concentration on the effects of policy harmonization with the EU. It incorporates an analysis which explores the stability of the international refugee regime and the responses given by the EU member states to the internal transformation of the Union in this area. It presents the argument that the enhanced intergovernmental cooperation at the EU level leading towards a common policy by supranational cooperation is a result of a proactive approach to changes in the international system.

In the post-Cold War era, the growing global magnitude of international migration has raised concerns among the Western European governments. The persistence of ethnic and political conflicts all over the world caused increasing numbers of

refugees and asylum seekers. In this context, the perception of refugees in the West has changed from freedom fighters to a challenge which constitutes a threat to national security and stability. This brings the issues of asylum and immigration to a status of high politics throughout the western world extending the conception of security. Hence, European governments aimed at achieving common policies in order to respond to the challenge of coping with irregular migration.

The developments regarding the immigration and asylum policy field within the EU in the last decade highlight the importance of intergovernmental cooperation through the intergovernmental bargaining process. The treaty formation with the Maastricht and Amsterdam Treaties has transformed the fields of immigration, asylum, and visa and border control towards further integration. This lead to an increased influence of European integration over the member states on policies regarding these issues. With respect to the non-member states such as the candidate states, the adaptative pressure of the accession processes influenced the policy and legislative harmonization; resulting in an increased pace of 'Europeanization.'

This study acknowledges the importance of grand theories of European integration in explaining the process of change within the EU and in its member states. However, in order to deal with the questions arising from the influence of European integration at the domestic level and in the external territories beyond the borders of the EU, it is necessary to utilize different approaches. Europeanization in this regard can provide certain answers to the questions posed in explaining the policy transfer both within the EU and beyond the EU territories. In that respect, the study of the impact of Europeanization can only be possible by defining conceptually the term 'Europeanization.' Various scholars define the term 'Europeanization' differently in European integration literature. In its most general form it can be defined as the transformation of traditional modes of governance across policy-making levels and areas.

In this study, Europeanization is understood as an important catalyst of policy change in the pre-accession process allowing an increased pace of transformation of the

Turkish legislative, administrative and political system. This policy change brings positive elements to Turkish asylum system such as institution building, increased legislative adoption in this policy area, endorsement of certain rules and procedures, increased international cooperation and collaboration, and increased involvement of Non-Governmental Organizations (NGOs). This process also brings some negative restrictive elements such as establishment of refugee detention houses, adoption of EU *acquis* on visa policy which brings visa requirements for Turkey's neighbouring countries and restrictions on migration policy with regard to family reunification. Therefore, it is not possible to argue that the overall picture reflecting the transformation within Turkey represents solely positive outcomes.

This thesis also argues that Europeanization is a powerful tool for exporting European level policies, policy structures, practices, procedures and ideational frameworks to extra-EU territories. In order to support this hypothesis Turkish asylum and refugee policy is analyzed as a test case in the pre-accession process. The EU achieves its objective of transferring its policy structures with the coercive measure of conditionality for membership. The conditionality for membership is one of the main motives for further alignment in this area with the EU *acquis*. The voluntary alignment is another motive behind this process. This is mainly because alignment with the EU *acquis* is beneficial for domestic purposes such as institutionalising this policy area and formalizing the existing domestic arrangements. Furthermore, due to the mounting pressure of increased irregular migration to Turkey, official policy formation or transformation is inevitable in the post-Cold War era.

Europeanization of asylum policy inevitably encapsulates a change in the existing practices and accepted values in refugee protection. The transformation of the existing policy structure provides a departure from the existing standards of protection established under the United Nations (UN) framework with the application of the *1951 UN Geneva Convention Relating to the Status for Refugees (1951 Convention)*. Although it is not explicitly mentioned in EU official documents, the acceptance of the EU *acquis* in this field and the transformation of the existing

policy system leads towards the development of European level norms and standards for protection with the proposed new principles such as 'country of first asylum', 'third safe country principle', and the readmission agreements. This is an inevitable result of the process of Europeanization as a process of institutionalisation involving the transfer of not only tasks, powers, and responsibilities between the levels of government but also the changes in ideational and cognitive structures- ideas, beliefs and norms- in which certain political actions are embedded.

This Europeanization process of national governance structures extends to policy paradigms, styles and ways of doing things. As a result, changes in the administrative, legislative, governmental and ideational levels cause structural transformation of the refugee protection system at the domestic level. In that respect, Europeanization as an affective process of change not only brings positive elements to the refugee and asylum policy area in the pre-accession process but it can also cause changes in the liberal understanding of refugee protection with the acceptance of EU policies and standards towards more restrictions and limitations in terms of the implementation of protection.

Turkish perception of immigration has formed through centuries with the heritage of an established immigration and settlement policy of the Ottoman Empire. This established system of immigration transformed into a system to justify the creation of a nation-state after the declaration of the independent Turkish state. Homogenizing nationhood with Turkic origins formed the basis of a domestic immigration policy. Therefore, immigration policy and practices were based on the principle of serving the official formulation of the Turkish national identity. Turkey's pre-accession process brings new challenges to this formulation as it involves a systemic transformation in the formulation of asylum and refugee policies.

1.1 Framework for Analysis: Towards a More Restrictive Refugee Protection Regime

In the last decade of the 20th century and in the beginning of the 21st century, maintenance of international peace and security has been challenged by several ethnic conflicts, armed conflicts, human rights violations and other humanitarian issues. The collapse of the Cold War discipline imposed by the two superpowers has promoted this escalation in humanitarian violations. Increasingly, humanitarian crises are recognized as important factors affecting both national and international security while having a powerful impact on world politics. Refugees and other displaced peoples are the victims of inter- and intra-state conflicts, ethnic clashes, and human rights violations that are beyond the control of the victims. As a consequence of these events, the number of refugees and forcefully displaced persons has escalated through the recent years to millions; indicating a clear problem for the international community in the 21st century.

Global security heavily relies on the effective management and containment of inter and intra-state conflicts through global international organizations such as the UN or through regional organizations like the EU. Ethnic and armed conflicts causing mass influx situations create burdens for the countries where these kinds of situations occur. Mechanisms of international cooperation to share burden and responsibility in mass influx situations need to be developed in order to establish a stronger framework for international refugee protection.

In the last decade, mass influx situations happened in Africa, Central Asia, South America, and the Balkans.[1] With the conflicts in the Balkans, the neighboring and

[1] In the Iraqi crisis of 1991, 450,000 Iraqis of Kurdish ethnicity fled to Turkey while 1,3 million of them fled to Iran. In East Timor 250,000 people became internally displaced and 290,000 of them fled to West Timor. Nearly 2 million fled to Somalia in 1992 and similarly the crisis in Rwanda in 1994 caused 2 million people to flee. The Liberian crisis lead to the creation of 1,7 million displaced people of which nearly 800,000 of them became refugees in Sierra Leone, Guinea and Côte d'Ivoire. Decades of strife and war caused millions of Afghans to become internally displaced and some crossed the borders of Pakistan and the Islamic Republic of Iran. In the most recent crisis 200,000 people fled from the Darfur crisis and crossed the Chad–Sudan border. See also; the UNHCR statistics at http://www.unhcr.ch/cgi-

receiving countries shared the burden of large numbers of arrivals and shouldered a disproportionately heavy burden in fulfilling their obligations under international refugee law.[2] These states had to tackle serious developmental, economic, infrastructural, environmental, social, political, and national security problems which arose from the influx. As a response, a common policy has been progressively developed by the EU. This policy aimed at addressing mass influx situations and general internal security issues inclusive of common responsibility and burden-sharing.

Throughout the years institutional capacity building has been established in the EU by increased legislation and policy formation. Working in cooperation with the international organizations such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), the EU has adopted several documents which are a combination of binding conventions and non-binding intergovernmental agreements to which most, but not always all, member states are party. Nonetheless, through the introduction of the pillar system with the Treaty of the European Union (TEU) the Justice and Home Affairs (JHA) Policy that has become one of the major policy areas of the EU. Progressively, this intergovernmental pillar transformed into an area that has elements providing for the establishment of a common policy.

There are two main reasons for the development of a common policy. First of all, with the end of the Cold War the security challenges brought to the EU member states from the international political sphere generated the urge for communitarization of asylum and immigration policy. Secondly, an effective functioning of the Single Market necessitated free movement of goods and persons

bin/texis/vtx/statistics; UNHCR (2004), *UNHCR Global Report*, http://www.unhcr.ch/cgi-bin/texis/vtx/template?page=publ&src=static/gr2004/gr2004toc.htm

[2] In the Balkans, in Croatia 200,000 people fled and 350,000 became internally displaced in 1991. In 1992 the Bosnia and Herzegovina crisis caused approximately 1 million people to flee. By 1995 this number reached to 4.4 million of which 1,3 million were internally displaced. The Kosovo crisis of 1998 caused 800,000 people to flee or be expelled from Kosovo by the end of 1999. For more details and figures on these crises see also UNHCR (2000), *The State of World Refugees: Fifty Years of Humanitarian Action*, Oxford: Oxford University Press.

without internal border checks within the Community. This has helped the member states to achieve the objective of removal of internal frontiers. Abolishing internal borders inevitably necessitated the strengthening of external borders with striker border checks and the establishment of a common visa regime. With strengthened checks at the external borders and a strict visa regime, "getting into" the EU became much more difficult. Creating such a "fortress Europe" has also generated a path towards a more restrictive asylum and refugee policy within the EU. This has meant the creation of a buffer zone around the EU by the enlargement countries in Central and Eastern Europe (CEE).

As a result of the aim to create a zone of peace and stability around itself, the EU with its economic and political tools of foreign policy promoted the ideas of democracy and free market economy throughout the continent. The EU enlargement process also assists to establish a stable and peaceful zone of neighbouring countries surrounding the EU. This is realized through the establishment of a "zone of peace" out of a "zone of conflict" in that region. The Central and Eastern European Countries (CEECs) anchored to the West with financial aid and through the strengthening of their democratic institutions and governance practices. CEECs had to harmonize their legislations including their immigration and asylum legislation with the EU *acquis* which was at that time still developing within the EU itself. These former EU candidate states some of which become new member states acted as buffer zones to safeguard the external frontiers of the Union from irregular migration flows, which has also included asylum seekers and refugees.[3]

Turkey, both with its geographical proximity and with its pre-accession process has been involved in this development. Neighbouring Middle Eastern states and the Former Soviet Republics, Turkey became a challenge of its own for the EU. As the Turkish accession process brings a new eastern border dimension to the progressive

[3] These candidate countries which become member states on the 2nd October 2004 are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Bulgaria and Romania are acceding countries which are set to join in 2007 or 2008. Turkey and Croatia are candidate countries by 3rd October 2005.

development of the JHA area, various aspects of this subject create major concerns for the current member states. These aspects can be listed as irregular and illegal immigration, transit passage to the EU member states, border control, migrant smuggling, human trafficking, mass influx of refugees and asylum seekers, and the status of the *1951 Convention*. Not only the concerns about the eastern border of Turkey but also the current legislative and procedural situation raised eyebrows about the existing Turkish immigration and asylum policy. Especially, the issue of granting refugee status in Turkey through the *1951 Convention* and national legislations can cause important consequences for the EU member states.

The issue of granting refugee status to asylum seekers is particularly important because in the recent decades the increased number of complex humanitarian emergencies has dominated the international human rights and international security agendas. The issues relating to asylum seekers, refugees and illegal immigrants have brought more and more challenges not only to the world as a whole, but also to the EU and to individual countries. Regarding immigration and asylum as an internal security issue of the Union, the member states emphasised the JHA pillar of the EU. Thus, JHA is creating grounds for an increasingly restrictive European regime on refugee protection.

The effects of the emerging EU refugee regime on European non-member states and in particular on Turkey are significant. As a result of its geographical location, Turkey has been experiencing considerable refugee, as well as legal and illegal immigrant flows for decades. In that respect, this research can be deemed timely. In the incoming years of Turkey's accession process this topic will dominate the agendas of both the EU and Turkey. Turkey with a complicated refugee protection system during the EU pre-accession process, on the one hand has to adapt to EU *acquis* through the EU harmonisation process, and at the same time it has to broaden its refugee protection to include non-European refugees. Currently, with a geographic limitation on the *1951 Convention* Turkey only grants refugee status to asylum seekers coming from Europe. With the EU pre-accession process Turkey will have to

lift this geographic limitation on the *1951 Convention* to include refugee status applications regardless of geographical location.

This study acknowledges the link between the cross-pillar interaction relating to comprehensive security aspects of refugee and immigration issues. Especially after the events of 11th September 2001 the link between "high security" issues within the framework of Common Foreign and Security Policy (CFSP) and organized crime and terrorism under the JHA pillar became inevitably interlinked. However, the scope of this study does not cover the linkages between "high security" and "low security" issues excluding a focus on legal and illegal immigration on refugee policy.

1.2 Research Design and Methodology

The structure of this research is composed of two different parts involving different phases of research. The research of the first part is started in Turkey and completed in the United Kingdom (UK). It involved a literature review on the development of a common European asylum policy at the European level. It had a special focus on the impact of Europeanization on different national asylum policies as well as on the perception of the international refugee regime. The relevant theoretical framework formed the basis to understand and analyse intricacies between national and European asylum policies. Within this framework basic questions regarding the impact of Europeanization on asylum and refugee policies during the Turkish pre-accession process are posed. At this phase a detailed literature review is made not only on the development of the international refugee regime but also concerning the EU documents accepted as a result of the intergovernmental bargaining process. The results of the conceptual debate on this topic can be found in Chapter Two.

The second part of this study is completed in Turkey. In this phase background interviews are conducted in order to create a theory-based and well-researched analysis of the actors and decision-making processes of asylum and refugee policy. The essential part of this research is comprised of interviews conducted during the

period of 2000-2005. These interviews are made with top-level government officials and bureaucrats who are involved in the process of harmonization of legislation in the JHA area. In addition, several informal interviews, talks and speeches with the officials, experts, practitioners, and scholars form a fundamental background of this study.[4]

The interviews were conducted in; Ankara, Turkey; at the UN Offices in Geneva, Switzerland; at the EU institutions in Brussels, Belgium; and during the research period at the University of Oxford, UK. Interviews with the Turkish government officials, UNHCR representatives and NGO representatives were held in Ankara, Turkey in three different periods. The first round of interviews was completed in the first half of 2000 which is just after the Helsinki Summit where the Turkish candidacy was officially declared. In between two rounds of interviews a research work was undertaken at the Secretariat General for the European Union Affairs (EUSG)[5], Ankara between February-December 2002. This study also benefited from the work undertaken for the Political Affairs Section of the EUSG for the coordination of the preparation of the JHA section *Revised National Program of Turkey* in June 2003. The second round of interviews was completed before the European Council Brussels Summit of December 2004 which officially declared the date of the opening of accession negotiations with Turkey. Thus, with the data received from the interviews the study aims to integrate the theoretical framework with the current legislative adaptation review within Turkey.

The interviews that took place at the UN Offices in Geneva, Switzerland in July 2000 involved officials from the UN Geneva Office, UNHCR Headquarters and the United Nations High Commissioner for Human Rights (UNHCHR). Therefore, the study is mainly based on qualitative work with the utilization of first hand information as much as possible. In the final phase of the research, covering the period between

[4] For the list of the interview questions see Apendix A and for the interviewed individuals see also References.

[5] The Secretariat General for the European Union Affairs (EUSG) is *Avrupa Birliği Genel Sekreterliği (ABGS)* in Turkish.

September 2003-September 2004 several interviews and informal talks with the affiliated scholars and experts from the Refugee Studies Centre, Queen Elizabeth House, and the University of Oxford contributed to the development of this thesis.

During the interviews several questions were posed to practitioners and governmental officials on the impact of the European integration process on asylum and refugee policy such as the reason behind the increased pace of transformation in the refugee and asylum system in Turkey, the link between the pre-accession process and the issue of national sovereignty, the tension points in this process and the impact of legislative harmonization. A complete list of these questions is presented in Appendices.

1.3 Thesis Plan

The main focus of this analysis is based on the 'Europeanization' of asylum policy in Turkey through the EU pre-accession process. In order to create a basis for a conceptual framework, both the development of international refugee regime and the European asylum policy is analysed. The research also includes an analysis of the interaction between theory and practice laying forth the answer to the research question: whether and how the EU pre-accession process frames and influences the changes in policy formation, legislation and institutions within Turkey in the case of 'Europeanization' of asylum and refugee policies. The findings of this analysis can also provide a basis for further studies on this topic or for the analysis of 'Europeanization' of other policies within the EU and even for testing the impact of Europeanization in the former candidate states which have recently become members to the EU.

The body of this text is divided into six chapters. Chapter 2 of this study lays out the conceptual framework for discussion of the Europeanization debate in literature. This chapter provides the basis for the analysis in the following chapters. It reviews the current debate on Europeanization by different scholars. In addition, it analyses how

transforming Turkish asylum and refugee policies add to the European integration process debate in order to better understanding the dynamics of the 'Europeanization' of domestic policies.

Within the scope of this research Chapter 3 analyzes the development and evolution of the international refugee regime. In this analysis the basic legal documents are the *195 Geneva Convention* and the *1967 Protocol.* In addition to these basic legal documents, the norms and practices developed through the operation of the UNHCR are also fundamental for this study. This reflects the underlying nature of Turkish asylum and refugee policies and the condensed involvement of UNHCR in this structure.

Chapter 4 provides a historical survey of the development of a common policy through the intergovernmental bargaining process. The main documents concerning the JHA section of the analysis are the treaties which have founded and developed the Third Pillar. These Treaties can be cited as the Maastricht Treaty, the Amsterdam Treaty and the Draft Treaty Establishing a Constitution for the Europe *(Constitutional Treaty)*. In addition to these basic texts, development and implementation of the asylum policy within the EU has been further enhanced through various decisions, opinions, recommendations and regulations.[6] The Presidency Conclusions and agendas in various member state presidency periods can

[6] For details see, European Council (1996a), Community Legislation in Force, 'Council Decision of 22 December 1995 on Monitoring the Implementation of Instruments Already Adopted Concerning Admission of Third-Country Nationals', *Official Journal C 011*, 16.01.1996, p.0001, European Council (1997c), Community Legislation in Force, 'Council Decision of 26 June 1997 on Monitoring the Implementation of Instruments Adopted Concerning Asylum', *Official Journal L 178*, 07.07.1997, pp. 0006-0007, European Council (1996a), Community Legislation in Force, 'Council Conclusions of 20 June 1994 Concerning the Possible Application of Article K.9 of the Treaty on European Union to Asylum Policy', *Official Journal C 274*, 19.09.1996, p.0034., European Council (1996b), Community Legislation in Force, 'Council Conclusions of 20 June 1994 on the Commission Communication on Immigration and Asylum Policies', *Official Journal C 274*, 19.09.1996, p.0049, European Council (1996d), Community Legislation in Force, 'Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of Acts and Other Texts Adopted by the Council in the Field of Immigration and Asylum', *Official Journal C 274*, 19.09.1996, pp. 0001-0002.

usually shape further developments in this area.[7] The *Constitutional Treaty* of the European Convention also includes articles regarding this policy area.[8] This chapter provides the outline of the development of this policy area. It also provides an outline of the asylum-related priority list of the EU.

Chapter 5 analyzes the Turkish asylum and refugee policy prior to the pre-accession process. It explains the fundamental principles of this policy and the historical roots of these principles. It elaborates the strengths and weaknesses of the asylum policy structure in Turkey and how the actors involved in this process relate to domestic and international dynamics. For the section concerning the analysis of the current situation of asylum policy in Turkey, the "*Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country*" (hereafter the "*Asylum Bylaw*" or the "*1994 Bylaw*")[9] used as basic document. In addition to supplementary official reports and documents[10] interviews conducted with experts and officials in related public offices are considered to be fundamental in this study.

Chapter 6 analyzes implications of Europeanization on domestic politics. It analyzes multiple influences within the state to shape domestic policies while taking asylum policy as the case study. Transformation of Turkish state and politics is analyzed in this chapter through the EU harmonization process. It is applied in the light of

---

[7] Duquesne, A. (2001), *Priorities of the Minister for Home Affairs During the Belgian Presidency,* 27.06.2001, http://www.eu2001.be/VE_ADV_PRESS/detail.asp?cat_code=AA&item_id=130&sess=549801949&lang=en&reference=92-01&

[8] http://european-convention.eu.int/docs/Treaty/cv00820-re01.en03.pdf

[9] The name of the Bylaw in Turkish is *"Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanabilecek Usul ve Esaslar Hakkında Yönetmelik."*

[10] Ministry of Foreign Affairs, (1998), *A Strategy for Developing Relations Between Turkey and the European Union - Proposal of Turkey*, 17.07.1998, http://www.mfa.gov.tr/grup/ad/adab/strategy.htm, see also; European Communities (1998), *European Strategy for Turkey- The Commission's Initial Operational Proposals*, Brussels: European Commission, 04.03.1998

asylum and refugee policies while studying the potential for Europeanization of each aspect of this policy. This chapter also highlights the findings of the interviews made with the government officials and diplomats. The Conclusion reiterates some of the findings of Chapter 5 and Chapter 6.

CHAPTER II:

CONCEPTUAL FRAMEWORK

Different theoretical approaches provide the means to explain different phases of development of a common refugee and asylum policy within the EU. It will be necessary to make a comparative analysis for the relevance of these various theories of the European integration process in order to create the basis for comparative analysis. Most of the approaches relating to the European integration such as functionalism, neo-functionalism, and liberal intergovernmentalism can be regarded as grand theories providing a good framework for understanding the EU. However, these grand theories of European integration are not able to sufficiently explain every aspect of European integration especially after the increase of the EU regulatory output with the establishment of Single Market.

Meso theories of European integration are proposed to deal with this gap with respect to explaining the changing nature of integration after 1990s. Europeanization in that respect can be accepted as a meso theory in relation to neo-functionalism and intergovernmentalism.[11] Before going into a greater detail of discussion of the conceptualisation of Europeanization it will be necessary to have an overall perspective of the development of asylum and refugee field within the EU in relation to its linkages with the European integration theories.

[11] Howell, K. (2004), 'Developing Conceptualisations of Europeanization: Synthesising Methodological Approaches', *Queen's Papers on Europeanization*, Belfast: Queen's University, No.3/2004.

2.1 A Survey of Theories Explaining European Integration: A Need for a New Approach

From the stand-point of dividing development of the asylum and refugee field within the EU into phases, there exist three main periods. The first period includes functioning of intergovernmental bargaining processes in this policy field with prevailing national prerogatives between the years 1957-1992. The second period includes the years 1992-1999 when the major treaty developments had impact on this area. The third period incorporates the developments from the year 1999 onwards. For these different periods it is necessary to functionalize different theoretical approaches to provide a systematic analysis of the asylum and refugee policies.[12] In that respect, the approach developed in this analysis will argue that various dimensions of different integration theories explain the emergence, development, and dominance of this crucial policy field. However, it is necessary to move beyond the traditional understanding of integration theories by adopting new approaches such as Europeanization.

In the first period, the early attempts of integration from the founding years of the European Economic Community (EEC) were more or less related to the interests and power of the big founder member states. In these years from a Realist point of view, integration was used by the big founder member states to control each other. This situation emphasizes the role of the state interests in the founding years. In the 1970s because of the lack of major institutional developments such as the increased role of the European Parliament (EP), the political integration seemed to stagnate. Nonetheless, even during this intergovernmentalist period further integration has been achieved by integration through law with a focus on legal interdependencies.[13]

---

[12] Similarly, Wiener proposes that there are different phases of integration theory which are explanatory, analytical, and constructive. See also Wiener, A. (1998), *European Citizenship Practice: Building Institutions of a Non-State*, Boulder, CO: Westview; Wiener, A. (2000), 'Finality vs. Enlargement. Opposing Rationales and Constitutive Practices Towards a New Transnational Order', *Jean Monnet Working Paper*, No. 8/02, New York: NYU School of Law.

[13] Caporoso, J. and Keeler, J.T. (1995), 'European Union and the Regional Integration Theory', in Rhodes, C. (ed.), *The State of the European Union*, Vol.3, Boulder, CO: Lynne Reinner.

With the launch of the Single European Act (SEA) in 1986, the whole integration debate has shifted towards the discussion on the role and formation of the state preferences.[14] Until SEA, asylum and refugee policy field was recognized to be in the domain of member states. Member states decided who shall be granted entry and stay within their territories. It was an issue of national sovereignty and national interest. Although the asylum and refugee policies of the member states were highly influenced by the developments in the international sphere such as under the UN framework, the strong role of the nation-states was indisputable. Therefore, the direct link to the notion of state sovereignty and the rights of states to control entry into their territory was the central theme in this area providing the basis for intergovernmental cooperation for strong national interests. Thus, the conceptualisation of state sovereignty as "the institutionalisation of public authority within mutually exclusive jurisdictional domains" confirms the role of the nation-state on that regard.[15] For this reason, during that period there was not a strong interest of bringing immigration, asylum and refugee issues into the Community framework.

In 1986 the SEA marked a turning point in intergovernmental cooperation. SEA created a single internal market which envisaged abolishing of internal borders of the European Community (EC) while tightening the external common frontiers.[16] Until the SEA issues relating to the admission of third state nationals and refugees were not parts of the EC agenda.[17] With the SEA the member states' governments adopted

[14] Moravcsik, A. (1991), 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization*, No.45, pp.19-56. See also Moravcsik, A. (1993), 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, No.31, pp. 473-520.

[15] Ruggie, J. G. (1986), 'Continuity and Transformation in World Polity, Toward a Neorealist Synthesis', in Keohane, R.O. (ed.) *Neorealism and Its Critics*, New York: Columbia University Press, p.143.

[16] Loescher, G. (1989a), 'The European Community and Refugees', *International Affairs*, No. 65, pp.618-636.

[17] Geddes, A. (2000), *Immigration and European Integration. Towards Fortress Europe?,* Manchester: Manchester University Press.

a general declaration affirming their national rights with regard to immigration from third countries, as well as issues concerning terrorism, crime and trafficking of drugs.[18] On the other hand, a political declaration added to the SEA affirmed the agreement of the member states' governments to cooperate intergovernmentally. The *Schengen*[19] and *Dublin Conventions*[20] proved that despite the willingness of the member states to cooperate in order to solve common problems the motivation to keep these issues under intergovernmental framework prevailed.

The understanding of keeping this area under intergovernmental domain necessitated a revision with the changing context of international politics by the end of the Cold War. Shaping history, the collapse the Communist Bloc influenced the dynamics of the European integration. While leaving the central problems and the questions concerning a better understanding of the political structure of the world valid, the language and the methods of theory in international relations have changed dramatically. The stability or instability of the present order, likely direction of change and the tools of description, explanation and prediction are all re-questioned in the new realm of international politics. Under these circumstances, European integration process presented a good opportunity to analyze the changing world politics and its response to integration. After the end of the Cold War, there was not a single dynamic influencing European integration. Rather, the process of European integration was and always has been a multi-faced, multi-actor and multi-speed process. From 1989 onwards international and national dynamics influenced the necessity to deepen integration in certain policy areas that need common responses such as immigration and asylum.

---

[18] European Council (1985), *Declaration*, Luxembourg, 09.09.1985

[19] *Schengen Agreement* (1985), Schengen, 14.06.1985

[20] European Communities (1990), *Dublin Convention determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities*, 15.06.1990, Dublin, entry into force 01.09.1997, Official Journal, No.254, 19.08.1997, Preamble.

The period of 1992-1999 represents major treaty developments in immigration and asylum policy field. In respect to the changing international political dynamics the EC member states responded with the Treaty on the European Union (TEU). TEU accelerated the political integration process, which was revitalized before the SEA. In order to respond to the need of strengthening the political stance of the Community in the world, TEU brought the concept of a 'Union' into the discussion. However, the ambition to strengthen the political aspect of the Community and to revitalize the integration processes was not unproblematic. Divergent national interests between the member states clashed on many "high politics" areas such as the CFSP and the JHA. The compromise solution resulted with the introduction of the pillar structure of the Union. The pillar structure with the establishment of the third JHA pillar, proposed an area of freedom and justice for the Union member states. Although this new pillar was situated in the intergovernmental sphere it was still a fundamental and significant step for establishing a common ground to reinforce cooperation in that sphere.

The development of an individual pillar for JHA policy area with respect to immigration and asylum can be explained from a neo-functionalist perspective. Neo-functionalism's main features are based on the functionalist premises.[21] It aimed to

[21] The founding father of the functionalist theory David Mitrany with his classic text, *A Working Peace System* made the most important contribution to the development of a functionalist theory of international society. In the interwar years *A Working Peace System* had a normative agenda such as; through a network of transnational organizations on functional basis it could be possible to constrain states and prevent prospective wars. This theoretical understanding had a global concern and it did not concentrate solely on Europe. He was an opponent of regional integration as he saw it as a replicate of the nation-state obstructing his global intentions. Most of the scholars accepted his approach as the starting point of the modern integration theory today. His theory reflects a number of assumptions, such as the problems and opportunities produced by economic development, states coming closely together in fruitful partnership for eliminating war from the international society. It is important to understand his argument within the historical context of the inter-war period and the Second World War. The timing of the emergence of his central ideas is significant, as he was critical of the grand theories of the political and social pre-First World War period. Moreover, he was the first one developing the idea of 'world politics'. For details see Taylor, P., (1993) *International Organization in the Modern World*, London: Pinter Publishers, p.126. Mitrany mainly argued that politics is evil and create problems between the states, and the rational allocation of the scarce resources was the key element of human cooperation in order to maintain a 'working peace system'. See also Mitrany, D. (1943), *A Working Peace System*, London: Royal Institute of International Affairs.

move away from an anarchical understanding of the state system towards supranational institution building.[22] In neo-functionalism societal and market patterns push élite behaviour towards common market building. This is mainly done through shared policy initiatives in "low politics" areas with the potential for "spilling over" into other policy areas. This is called the *functional spill-over*. From this perspective, the *functional spill-over* concept explains the reason to cooperate in areas where member states traditionally perceive national prerogatives and aim to keep in their domain. Accordingly, immigration and asylum matters were brought to the policy agenda of the Union by the third pillar -JHA pillar- of the TEU in order to coordinate the member states' efforts to find common grounds for advanced intergovernmental cooperation on these matters.

As defined by Haas' terms 'integration' in this policy area involved the process "whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions process or demand jurisdiction over the pre-existing national states."[23] This is a neo-functionalist definition of integration which involves an advanced social setting rather than an intergovernmentalist understanding of integration. Intergovernmentalists focus more on the political processes than the social processes.

---

[22] Neo-functionalism as a deliberative paradigm represented a reaction by a group of American theorists that regard the previous attempts inadequate in explaining the logic of contemporary international change. Functionalism has also been criticised on the grounds that the practical reality of the Community drew attention to the insufficiency of the general theory of functionalism as an appropriate explanation of the process of integration. The response to that debate was the development of the theory of neofunctionalism by Ernest Haas, specifically designed to address the Community experience. Principles of neo-functionalism include a normative objective of a European federation; central institutions with supranational authority are providing the means to achieve this. The process of integration is to begin with the economic sector and is dependent on interest group involvement leading to integration. Hass opposes the central integrative role conferred on change by Mitrany that integration is not initially depending on mass support. It is directed towards political union, but identical aims on the part of the participants in the process are not essential. There may be different advantages for integration for different groups. Haas argued that successful integration was dependent on the idea of 'spillover'. See also Haas, E.B. (1968), *The Uniting of Europe*, Stanford: Stanford University Press; Haas, E.B. (1964), *Beyond the Nation State*, Stanford: Stanford University Press.

[23] Haas, E. (1968), *op.cit*., p.16.

The commonality of these approaches is that they are both concerned with the process of integration than with the political system to which the integration leads.[24]

The TEU's inclusion of the previously over-protected policy area of immigration and asylum into its pillar structure considered to be a major step for intensifying collaboration. Immigration and asylum policy area was an over-protected policy area in the sense that national prerogatives eliminated the possible emergence of a supranational authority. On the other hand, the pillar structure inevitably complicated the policy formation and implementation in that highly politicised field. The introduction of the Amsterdam Treaty indicated the *functional spillover* effect with the transfer of the immigration and asylum matters to the Community's first pillar. Therefore, the Amsterdam Treaty symbolizes the departure from earlier intergovernmental coordination and assigns greater powers to supranational institutions. Still, the provisions on an "area of freedom, security and justice" influenced by the inheritances of transgovernmentalism.

The shift from intensive intergovernmentalism in the field of asylum and immigration towards more integration was a consequence of Treaty formation in a period encompassing less than a decade. Not being mentioned in the founding treaties, these policy areas provided an additional dimension to the complexity of the EU's policy system. Not only through new treaties but also through the decisions of the European Court of Justice (ECJ) the pace of furthering integration elevated. Although the EU governance at the 'super-systemic' level[25] is considered to be primarily intergovernmental and élite controlled,[26] the ECJ in rare cases is the only

[24] Diez, T. and Wiener, A. (2004), 'Introducing the Mosaic of Integration Theory', in Diez, T. and Wiener, A. (eds.), *European Integration Theory*, Oxford: Oxford University Press, p.3.

[25] Peterson makes the distinction between levels of analysis for decisions within the EU as super-systemic, systemic and sub-systemic with policy types being; history-making, policy-setting, and policy-shaping. For more details see also Peterson, J. (2001), 'The Choice for EU Theorists: Establishing a Common Framework for Analysis', *European Journal of Political Research,* No: 39, pp. 289-318.

[26] Moravcsik, A. (1998), The *Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press, pp.164-220.

authority that can challenge the European Council. However, intergovernmentalists tend to miss the importance of the ECJ, because they believe that the EU is "an international organization…which does not have a court that exercises judicial review in the sphere of constitutional law as opposed to international law."[27] The role of the Court in pushing integration forward through history making decisions of various cases such as the *Van Gend and Loos*, *Van Duyn*, and *Strauder* boots neofunctionalism. As the integration advanced the issues before the Court become politically more significant.[28]

Approaching integration from this juridical perspective, the 'Integration Through Law' (ITL) perspective examines the role of law in the process of European integration.[29] EC law as Snyder describes "represents, more evidentially perhaps than most other academic law subjects, an intricate web of politics, economics and law" which needs to be understood by means of an interdisciplinary, contextual approach to law.[30] The role of the ECJ in the process of integration is very effective by lifting the EC legal order from classical international into a supranational or in other words

[27] Sbragia, A. (1993), 'The European Community: A Balancing Act', *Publius,* Vol. 23, pp. 23-38, p. 34.

[28] Burley and Mattli argue that there are both divisions and linkages to locate ITL in the wider field of European integration theory. Liberal intergovernmentalism looks like to be the farthest compared to the ITL. Mattli, W. and Burley, A.M. (1993), 'Europe Before the Court: A Political Theory of Legal Integration', *International Organization*, Vol. 47, pp.41-76. Weiler argues that liberal intergovernmentalism seems like a Newtonian model of the EU where big things moving at a low speed compared to the Einsteinian ITL model where small things are moving at a higher speed. Weiler, J. (1998) 'Europe: The Case Against the Case for Statehood', *European Law Journal*, Vol.4 No.1, pp.43-62. On the other hand, multilevel governance theory has parallel arguments with ITL as they both share the view of the complexity of the EU's policy system. Marks, G., Hooghe, L., and Blank, K. (1996), 'European Integration from the 1980s: State-Centric vs. Multi-level Governance', *Journal of Common Market Studies*, Vol. 34, No.3, pp.341-378; Pernice, I. (1999), 'Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-making Revisited?', *Common Market Law Review*, No.36, pp.703-50.

[29] Haltern, U. (2004), 'Integration Through Law', in Diez, T. and Wiener, A. (eds.), *op.cit.,* p.177.

[30] Snyder, F. (1990), *New Directions in European Community Law*, London: Weidenfeld and Nicolson, p. 9.

constitutional sphere through developed principles of direct effect, supremacy, and pre-emption of the EC law.[31]

The period after the ratification of the Amsterdam Treaty represents a new era of policy-making in the field of immigration and asylum. The emergence of cooperation at the European level led to an institutional structure of intergovernmentalism between bureaucratic networks while weakening the role of international organizations which has traditionally safeguarded the international refugee regime. As it will be discussed in Chapter 4, this movement departing from the humanitarian value of refugee protection challenged the asylum concept in Europe. Therefore, intensified integration alters the factual and normative representation of social problems and thereby modifies the terms of political discourse.[32]

This new understanding has inevitable consequences by emphasizing the priority of control and internal security over the humanitarian value of refugee protection, working to limit the humanitarian traditions in member states. This creates a dilemma within the EU itself. While moving away from the humanitarian value of the refugee protection the EU contradicts with its aim to become a politically strong entity safeguarding human rights protection. Human rights argument seems ideal to verify ITL approach's claim that common rights, via common values. They are linked to a culture of rights giving birth to a common sense of belonging. Thus, human rights protection marks the boundary between "us" and "them".[33]

Considering that what is at stake is modernity's obsession with determining identities, it is not surprising that much of the battle over Europe after the end of the Cold War takes place on the field of human rights protection.[34]Although the

[31] Weiler, J. (1981), 'The Community System: The Dual Character of Supranationalism', *The Yearbook of European Law*, Vol.1, pp. 267-306.

[32] Lavenex, S. (2001), *Europeanization of Asylum Policies: Between Human Rights and Internal Security*, Hampshire: Ashgate, p.4.

[33] Haltern, U. (2004), *op.cit.,* p.184.

[34] For more details see Coppel, J. and O'Neill, A. (1992), 'The European Court of Justice: Taking Rights Seriously?', *Common Market Law Review*, Vol.29, No.4, pp.669-92; Weiler, J.

founding Treaties initially did not include any provisions for the protection of fundamental rights from 1969 onwards with the *Stauder* ruling[35] of the ECJ, the Court has developed rich and nuanced human rights jurisprudence. With this case the Court has stated that fundamental rights form an integral part of the general principles of EC law. The reason for that was if EC law did not offer similar safeguards of fundamental liberties to those found in national constitutions, it would lead to situations arising where national courts would be given a choice between either refusing to apply Community law or neglecting fundamental liberties enshrined in their national constitutions.[36] The Court argued to draw inspiration from constitutional traditions common to the member states and from international conventions, particularly the European Convention of Human Rights and Fundamental Freedoms (ECHR) of 1950.[37] Weiler argues that *Stauder* case was not

---

and Lockhart, N. (1995), 'Taking Rights Seriously: The European Court and Its Fundamental Rights Jurisprudence', *Common Market Law Review*, Vol.32, No.51-94, pp.563-80; Bogdandy , A. von (2000), 'European Union as a Human Rights Organisation? Human Rights and the Core of the European Union', *Common Market Law Review*, Vol.37, pp.1307-38.

[35] The incorporation of fundamental rights into the Community legal order is a fundamental step towards constitutionalisation of the EC Treaty by suggesting it enjoys a higher legal status to that enjoyed by national constitutions. The EC Treaty contains a number of economic rights but only very limited civil, political and social rights. In these circumstances, the constitutionalisation of the EC Treaty has only a limited emancipating effect. Weiler argues that it is the granting of a 'constitution without constitutionalism'. See also Weiler, J. (1996), 'European Neo-constitutionalism: in Search for Foundations for the European Constitutional Order', in Bellamy, R. and Castiglione, D. (eds.) *Constitutionalism in Transformation: European and Theoretical Perspectives,* Oxford: Blackwell*,* pp.105-106. In its early judgements the Court refused to tolerate arguments based on the alleged breach by the Community Institutions of some right which was protected in national constitutions. These cases include Case 1/58 *Stork v High Authority* [1959] ECR 17; Joined cases 36,37,38 and 40/59 *Geitling v High Authority* [1960] ECR 423; Case 40/64 *Sgarlata v Commission* [1965] ECR 215, [1966] CMLR 314. By *Van Eick* case the ECJ has admitted a secondary, interpretive role for fundamental rights. See Case 35/67 *Van Eick v Commission* [1969] ECR 329. *Stauder* case explicitly accepted the protection of fundamental human rights 'in the general principles of Community law and protected by the Court'. Case 29/69 *Stauder v City of Ulm* [1969] ECR 419, [1970] CMLR 112. For *Stauder* case, see Chalmers, D. (1998), *European Union Law*, Vol.1, Ashgate: Hants, pp.290-326.

[36] Chalmers, D. (1998), *European Union Law*, Vol.1. Ashgate: Hants, p.292.

[37] Haltern, U. (2004), *op.cit.,* p.185.

primarily about human rights but it was rather about supremacy of Community law which would otherwise have ended its uniform application within the Community.[38]

Accepting the important integrative role of the treaties and EC law, the multilevel governance approach acknowledges the increasingly produced legislation on the European level with respect to immigration and asylum policy field. The growing amount of legislation on immigration and asylum inevitably changes the internal dynamics of domestic politics. The increase in the EU's regulatory output shows the deprivation of the national parliaments' policy setting power. Moreover, the increased role of the lobbying on the European level contributes to the transformation of the role of the state. From this perspective, the modern state is relegated from being a superior institution to a mediator institution.[39] The Council negotiations and the committee work also make it easy for the governments to escape from their political accountability.[40] Therefore, for the multilevel governance approach, integration is a complex balance between the legislative and the executive. The increasingly important role of the transnational expert groups/technocrats or in other words the epistemic communities with their control of access to international arena can share exclusive knowledge and contacts. Through this mechanism they gain autonomy from any kind of national control.[41]

Jachtenfuchs and Kohler-Koch argue that although the perspectives of classical integration theory, policy analysis, and the constitutional debate try to explain how the EU works, none of them are able to adequately deal with the interaction between citizens, organized groups, and the member states. It is argued that governance

---

[38] Weiler , J. (1986), 'Eurocracy and Distrust: Some Questions Concerning the Role of the European Court of Justice in the Protection of Fundamental Human Rights Within the Legal Order of the European Communities', *Washington Law Review*, Vol.61, p.1119.

[39] Jachtenfuchs, M. and Kohler-Koch, B. (2004), 'Governance and Institutional Development', in Wiener, A. and Diez, T. (eds.), *op.cit.,* p.111.

[40] Benz, A. (2003), 'Compound Representation in EU Multi-level Governance' in Kohler-Koch, B. (ed.), *Linking EU and National Governance*, Oxford: Oxford University Press.

[41] Lütz, S. (2002), *Der Staat und die Globalisierung von Finazmarketen*, Frankfurt/m.: Campus Verlag, pp 328-30 cited in Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit.,* p.111.

perspective can bring those things into place by drawing attention to democracy, legitimacy, normative assessment of the EU political order, while treating the EU system as a whole rather than a single level assessment. The complex structure of governance in this viewpoint can be understood with the changes in the overall architecture of the system.

Bringing a broader view of the integration process the governance theory reflects the EU as a larger research programme on the study of governance beyond the nation-state.[42] It allows the study to involve comparisons across institutional boundaries involving policy networks. This is a powerful reminder that the EU is not simply an institution for economic benefits but it is a political order which make deep impact on member states as well as their citizens. While doing so it does not only include grand intergovernmental bargaining processes for constitutional conventions, but also gradual steps done through regulatory actions and legislative decisions. It leads to an influence on the nature of the traditional nation-state through gradual the transformation its role and function within the society and beyond its traditional territorial boundaries. This brings the notion of doing things together rather than doing things alone.[43] In modern societies opposed to the Weberian type of hierarchy, the policy networks form a type of governance which is a product of mutuality and interdependence. Network is defined as clusters of different kinds of actors who are linked together in political, social, or economic life.[44] This is particularly valid in certain policy areas than others. The impact of policy networks is relatively low in immigration and asylum field.

---

[42] Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit*, p.114.

[43] Kooiman, J. (1993), *Modern Governance: New Government-Society Interactions*, London: Sage, p.1, Thompson, G. and Frances, J. (eds.) (1991), *Markets, Hierarchies and Networks: The Coordination of Social Life*, Buckingham and London: Sage and Open University Press; Peters, B. (1996*), The Future of Governing: Four Emerging Models*, Lawrence: University Press of Kansas, Rhodes, R. (1997), *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, Buckingham: Open University Press.

[44] Peterson, J. (2004), 'Policy Networks', in Wiener, A. and Diez, T. (eds.), *op.cit.,* p.117.

Looking at different theoretical approaches assigned to explain the dynamics of European integration in different periods it is possible to conclude that the central belief uniting the students of the EU is that "the Union is a polity that operates simultaneously at different levels."[45] In the EU; international, supranational, transnational, national, regional and sub-national levels are linked to create multi-tiered governance. Peterson argues that usually different theoretical perspectives seek to explain outcomes at one level. However, he believes that none does a good job of explaining outcomes at all levels.[46] He proposes a portfolio of theoretical understandings for explaining EU governance outcomes. Borrowing his argument this study confirms the need for a portfolio of theories bringing various aspects of the dynamics of European integration on asylum and refugee policy field together.

Within this perspective one may conclude that European integration process has had tremendous impact on member states with regards to domestic policy changes. Nonetheless, the growing influence of the Union on many actors beyond its territory encompassed a different dimension of the European integration process. The external effects of common European policies with the "ever closer Union" project creates the ambitious aim to deepen integration with many other policy areas which traditionally were not considered to be under Community competence. This needs an extension of the explanations of integration theories. They remain somehow limited in exploring the conditions for the creation of common institution and policies at the European level.

Contemporary European integration studies are currently in a highly creative phase.[47] At this stage the issue is raised as whether a range of theoretical perspectives are competing with one another or if they aim to explain distinctly different pieces of the EU puzzle. Since the dissuasion between the grand theories of European integration

[45] Peterson, J. (2001), 'The Choice for EU Theorists: Establishing a Common Framework for Analysis', *European Journal of Political Research*, Vol.39, No.3, p.290.

[46] Peterson, J. (2001), *op.cit,* p.291.

[47] Peterson, J. (2001), *op.cit*., p.289.

particularly the Haas versus Hoffman debates more than twenty years ago, scholarship of the EU has entered into a comparatively dynamic phase.[48] Peterson argues that the theories of European integration remained in the domain of international relations and comparative politics for many years.[49] However, in the 1990s comparative theorists realized that they possessed very few theoretical tools that appeared directly applicable to their topic of analysis.[50] Over the years different theoretical approaches are developed for intense and deep explanations of what the EU does and why.

These different theoretical approaches developed to provide stronger explanations are multi-level governance,[51] variants of institutionalism,[52] and policy network analysis.[53] The contemporary grand theory of European integration has been the revised version of the intergovernmentalist theory which is being firmly rooted in the international relations discipline. The Liberal Intergovernmentalism (LI) developed by Moravcsik[54] uses most of the conceptual tools of the comparativist.[55] Unlike the

[48] See also Haas, E.B. (1975), *The Obsolescence of Regional Integration Theory*, Berkeley, CA: Institute of International Studies; Hoffman, S. (1982), 'Reflections on the Nation-State in Western Europe Today', *Journal of Common Market Studies*, No.21, pp. 21-37.

[49] Peterson, J. (2001), *op.cit*., p.290.

[50] Pierson, P. (1998), 'The Path to European Integration: A Historical Institutionalist Analysis', in Sandholtz, W. and Stone Sweet, A. (eds.), *European Integration and Supranational Governance*, Oxford: Oxford University Press, p.28. pp.27-58.

[51] Marks, G. (1996), 'Exploring and Explaining in EU Cohesion Policy', in Hooghe, L. (ed.), *Cohesion Policy and European Integration*, Oxford: Oxford University Press; Marks, G. Hooghe, *et. al.* (1996), *op.cit.,* pp. 341-378.

[52] Garrett, G. and Tsebelis, G. (1996), 'An Institutionalist Critique of Intergovernmentalism', *International Organization*, Vol. 50, No.2, pp. 269-299; Pollack, M. (1997), 'Delegation, Agency and Agenda Setting in the European Union', *International Organization*, Vol. 51, No.1, pp.99-134; Armstrong, K. and Bulmer, S. (1998), *The Governance of the Single European Market*, Manchester: Manchester University Press., Sandholtz, W. and Stone Sweet, A. (eds.), *European Integration and Supranational Governance*, Oxford: Oxford University Press.

[53] Rhodes, R.A. (1997), *op.cit*; Peterson, J. (1999), 'The Santer Era: The European Commission in Normative, Historical and Theoretical Perspective', *Journal of European Public Policy*, Vol. 6, No.1, pp.46-65.

[54] Moravcsik, A. (1998), *op.cit.*

other governance theories seeking to explain the complex and pluralistic political process of the EU, LI is not offered as a theory of everyday policy-making. Most of the EU policy debates are not merely about the discussion on how much competence the Union should enjoy. Hix thinks there is more to EU politics than just how "actors align themselves on a continuum between 'more' and 'less' integration."[56]

In the contemporary world there is a lack of rival theories of EU governance. The leading models explain different outcomes at different levels in a multi-level system of governance.[57] In the absence of a general theory of EU governance the scholar is given the choice to choose which type of outcome they wish to explain. Puchala's famous analogy in the classic "blind men and elephants" article reminds us of the dangers when "different researchers …looking at different parts, dimensions or manifestation of the same phenomenon", and then claim "that their parts are infact the whole beasts, or that their parts were the most important ones, the others being of marginal interests."[58] After 25 years of this remark it is possible to see that there is no single grand theory that explains European integration and its influences as a whole. Even Puchala argues "elaborating some version of a unified theory is probably a mistake."[59]

However, it is possible to have a framework or portfolio of different theories aiming to explain the influence of Europeanization on different policy developments in different phases of integration. As discussed above the central belief uniting EU scholars is that "the Union is a polity that operates simultaneously at different

---

[55] Wallace, H. (1999), 'Piecing the Integration Jigsaw Together', *Journal of European Public Policy*, Vol. 6, No. 1, pp. 155-159.

[56] Hix, S. (1998), 'Contributing to Integrating Left and Right: Studying EU Politics', *ESCA Review*, Fall, pp.2-3.

[57] Peterson, J. (2000), *op.cit.*, p.290.

[58] Puchala, D. (1972), 'Of Blind Men, Elephants and International Integration', *Journal of Common Market Studies*, Vol. 10, No. 2, pp. 267-278.

[59] Puchala, D. (1999), 'Institutionalism, Intergovernmentalism and European Integration: A Review Article', *Journal of Common Market Studies*, Vol. 37, No. 2, pp. 317-331.

levels."[60] In the EU; international, supranational, transnational, national, regional and sub-national levels are linked to create multi-tiered governance. Peterson argues that usually different theoretical perspectives seek to explain outcomes at one level. However, he believes that none of those theoretical approaches does a good job of explaining outcomes at all levels.[61] He proposes a portfolio of theoretical understandings for explaining EU governance outcomes. Explaining the EU is difficult task as most of the key actors in EU politics "simultaneously posses multiple interests and identities" and their actions may be motivated by different rationalities at different times.[62]

The developments in the immigration and asylum field necessitate moving beyond the institutional confines of the EU. This new influential process has to be referred with something different than the existing European integration theories and approaches. This can be regarded as the Europeanization process. Looking at the explanations of the most comprehensive definition of the process of Europeanization it is possible to conclude that situating the impact of Europeanization on asylum and refugee policy constitutes an important step. Different theoretical approaches complement the explanation of the process of Europeanization in asylum and refugee policy field in Europe. Asylum and refugee policies are influenced by the international and domestic dynamics shaping the development of this policy field. Incorporating Turkey as a candidate country during its pre-accession process between the years 1999-2004 adds a supplementary dimension to this framework.

The dynamics pushing integration forward in the asylum field are important in order to get a better understanding of how the European level dynamics shape policy-formation in that area. Chapter Four analyzes in details the move towards more integration in the field of asylum at the European level. In addition, the ability to understand the current set of institutions helps to formulate issues about the future

[60] Peterson, J. (2001), *op.cit*., p.290.

[61] Peterson, J. (2001), *op.cit*., p.291

[62] Peterson, J. (2001), *op.cit*., p.292.

developments and institutional behaviour within the EU. Moreover, European integration theory helps to highlight concerns and assumptions while understanding the normative issues. In other words, it helps to conceptualize integration in different policy fields including asylum policy. This provides the necessary theoretical framework to utilize the empirical research. If this is not done then pure empirical knowledge on the asylum policy area will only provide a superficial understanding of facts.

2.2 Conceptual Framework: Defining and Situating 'Europeanization'

The main focus of this study covers the impact of European integration on domestic policy change due to the export of European set of norms and standards to non-member countries such as Turkey via the accession process to the EU. The accession process challenges the traditional modes of governance across domestic policy-making levels and arenas. This transformation is evident even in the process of pre-accession when the exposure to the impact of European integration on state sovereignty, authority and rule is relatively limited within the non-member nation-state. Locating Europeanization as a concept which impacts domestic policy structures and perceptions brings the challenge to link European level institution-building with domestic level processes through institutionalisation of domestic policies. The following sections of this chapter investigate this transformation.

Traditionally the debate on European integration centres around whether the member states are in control of what steps the states and the EU are to take on different aspects of the European integration project. Within this context, state-centric intergovernmentalism[63], neo-functionalism[64], supranational governance which is

[63] Hoffman, S. (1982), *op.cit.,* pp. 21-37; Moravcsik, A. (1991), 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization*, No.45, pp. 19-58; Moravcsik, A. (1993), 'Preferences and Power in the European Community: a Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, No.31, pp. 473-520; Moravcsik, A. (1998), *op.cit*.

neo-functionalism's contemporary counterpart[65] and to a lesser extent the multi-level governance approach[66] focus on the development of the supranational system and the implications of this system for the institutions and policies of the EU. The question of how the supranational system of cooperation and the intergovernmental bargaining process affect the national political systems has recently been asked by scholars. Therefore, it may be argued that "Europeanization" has been recently emerging dimension of the European integration theoretical debate.

It is a fact that European integration process has always influenced domestic policy-making and policy implementation in member states while impacting their domestic legislative and administrative structures. In the last decade Europeanization has increasingly gained scholarly attention as a result of the increased pace of institutional reform within the EU due to the Eastern Enlargement.[67] This recently developing research agenda of Europeanization enriched the study of European

---

[64] Haas, E.B. (1968)*;* Haas, E.B. (1964), *Beyond the Nation State*, Stanford: Stanford University Press; Lindberg, L.N. (1963), *The Political Dynamics of European Economic Integration*, Stanford: Stanford University Press; Mitrany, D. (1943), *op.cit.*

[65] Sandholtz, W. and Stone Sweet, A. (eds.) (1998), *European Integration and Supranational Governance*, Oxford: Oxford University Press.

[66] Hooghe, L. and Marks, G. (2001), *Multi-level Governance and European Integration*, Lanham: Rowman and Littlefield; Kohler-Koch, B. and Eising, R. (eds.) (1999), *The Transformation of Governance in the European Union*, London: Routledge.

[67] Featherstone, K. and Radaelli, C. (eds.) (2004), *The Politics of Europeanization*, Oxford: Oxford University Press; Green Cowles, M., James A. C., and T. Risse (eds.) (2001), *Transforming Europe. Europeanization and Domestic Change*, Ithaca: Cornell University Press; Gustavsson, S. and Lewin, L. (eds.) (1996), *The Future of the Nation State: Essays on Cultural Pluralism and Political Integration*, Stockholm: Nerenius and Santerus Publishers; Héritier, A., Kerwer, D., Knill, C., Lehmkuhl, D., Teutsch, M., and Douillet, A.C. (eds.) (2001), *Differential Europe: The European Impact on National Policymaking*, Lanham: Rowman and Littlefield; Knill, C. (2001), *The Europeanization of National Administrations, Patterns of Institutional Change and Persistence,* Cambridge: Cambridge University Press; Kohler-Koch, B. (ed.) (2003), *Linking EU and National Governance*, Oxford: Oxford University Press; Olsen, J. P. (2002), '*The Many Faces of* Europeanization', *Arena Working Papers*, No:1-2; Radaelli, C.M. (2000b), 'Wither Europeanization? Concept Stretching and Substantive Change', *European Integration Online Papers*, http://eiop.or.at/eiop/texte/200-008.htm; Radaelli, C. M. (2000c), 'Policy Transfer in the European Union: Institutional Isomorphism as a Source of Legitimacy', *Governance,* No. 13, pp. 25-43; Wallace, H. (2000a), 'Europeanization and Globalisation: Complementary or Contradictory Trends?', *New Political Economy*, Vol.5, No.3, pp. 369-382.

integration by pointing out some previously under-researched questions related to the domestic implementation of European politics.[68]

The study of European institutions via the national political domain has started from 1990s onwards by the shift of understanding the institutional adaptation of states to EU membership. In that respect, the new research agenda has now evolved to acquire a more comprehensive understanding of the influence of European integration on changes in national political systems.[69] From this perspective, it is understood that as an influential phenomenon Europeanization shapes domestic policies, practices, structures and politics. With the evolving focus on changes in national political systems that can be attributed to European integration, the new research agenda encompass fields that have traditionally been assumed to be less subject to European influence, such as political parties[70], party systems[71], and issue areas like citizenship[72] or refugee policies[73]. Although policy structures and their exposure to EU level requirements are issue specific and may vary quite substantially across

[68] Vink, M. (2002), 'What is Europeanization? And Other Questions on a New Research Agenda', paper presented at the *Second YEN Research Meeting on Europeanization: "Towards the Europeanization of Political representation? Theory, Political Parties and Social Movements in the Multilevel Governing Europe*", University of Bocconi, Milan, 22-23 November 2002, p.2.

[69] Börzel, T. and Risse, T. (2000*), op. cit.*; Green Cowles, M. et al. (2001); Hix, S. and Goetz, K. (eds.) (2000), 'Europeanised Politics? European Integration and National Political Systems', *Special Issues of West European Politics*, Vol.23, No.4; Knill, C. And Lehmkul, D. (*2002),* 'The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms', *European Journal of Political Research*, Vol.41, No.2, pp.255-280; Radaelli, C.M. (2000b), *op. cit.*

[70] Ladrech, R. (2002), 'Europeanization and Political Parties: Towards a Framework of Analysis', *Party Politics*, Vol.8, No.4, pp.389-403.

[71] Mair, P. (2000), 'The Limited Impact of Europe and National Party Systems', *West European Politics*, Vol.23, No.4, pp.27-51.

[72] Checkel, J. T. (2001), 'The Europeanization of Citizenship', in Green Cowles, et al. (eds.), pp.180-197; Vink, M. (2001), 'The Limited Europeanization of Domestic Citizenship Policy: Evidence from the Netherlands', *Journal of Common Market Studies*, Vol.39, No.5, pp.875-896.

[73] Lavenex, S. (2001), *op.cit.*

policy sectors in a given domestic area, most of the domestic policy areas are affected by this influence.

In general, the conceptual and empirical research on the impact of Europeanization on domestic change has been restricted to EU member states.[74] Research on the candidate countries has recently started. However, Europeanization has been an influential phenomenon affecting not only the EU member states but also the candidate countries. Through the membership processes of the candidate countries, the EU has started to govern beyond its territory. The compliance of prospective entrants with the EU requirements in their political, legal and administrative structures is the *sine qua non* for their accession. Through that the EU's governance structures and regulatory models expand to candidate countries during different phases of their membership process. Recently due to the recent EU enlargement process the emerging Europeanization literature which has focused exclusively on the member states has started to move the attention to encompass the candidate countries.[75]

---

[74] Börzel, T. A. (1998), 'The Greening of a Polity? The Europeanization of Environmental Policy-Making in Spain', *Southern European Society and Politics,* Vol. 2, No.1, pp. 65-92; Börzel, T. (1999), 'Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain', *Journal of Common Market Studies*, Vol.39, No.4, pp. 573-96; Featherstone, K. (1998), ''Europeanization' and the Centre Periphery: The Case of Greece in the 1990s', *South European Society and Politics,* No. 3, pp. 23-39; Héritier, A., Knill, C., and Mingers, S. (1996), *Ringing the Changes in Europe. Regulatory Competition and the Redefinition of the State: Britain, France, Germany*. Berlin, New York: De Gruyter; Ladrech, R. (1994), 'Europeanization of Domestic Politics and Institutions: The Case of France', *Journal of Common Market Studie*s, Vol. 32, No. 1, pp. 69-88; Radaelli, C. (1997), 'How does Europeanization Produce Policy Change? Corporate Tax Policy in Italy and the UK', *Comparative Political Studies*, No. 30, pp. 553-575.

[75] Falkner, G. and Netwich, M. (2001), 'Enlarging the European Union. The Short-term Success of Incrementalism and Depoliticisation', in Richardson, J. (ed.), *European Union. Power and Policy-Making*, London: Routledge, pp.260-282; Grabbe, H. (1999), 'A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants', *EUI Working Paper,* No. RSC 99/12, Florence: European University Institute; Grabbe, H. (2001), 'How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy*, Vol. 8, No.6, pp.1013-1031; Lendvai, N. (2004), 'The Weakest Link? EU Accession and Enlargement: Dialoguing EU and Post-Communist Social Policy', *Journal of European Social Policy,* Vol.14, No.3, pp.319-333; Lippert, B., Umbach, G., and Wessels, W. (2001), Europeanization of CEE Executives: EU Membership Negotiations as a Shaping Power, *Journal of European Public Policy*, Vol.8, No.6, pp. 980-1012; Umbach, G. and Lippert, B. (eds.) (forthcoming) (2005), *Pressures of*

This chapter presents an analysis on the conceptual search for finding a common understanding for the various definitions of Europeanization. Later, it highlights the questions underlying the Europeanization in non-member states as an independent variable and discusses the concept of "Europeanization" used within this framework. It argues that the analysis of European integration in asylum policy field, which is closely tied to normative political understandings and humanitarian values, requires broadening of dominant approaches to European integration process. Bringing different aspects of state centric-intergovernmentalist and institutionalist-supranationalist views together it allows for the consideration of Europeanization with the dynamics and constraints of European integration.[76]

This chapter finally presents how Europeanization of refugee and asylum policies impacts the domestic politics a candidate state such as Turkey. It raises questions like how dynamics of European integration through Europeanization affect domestic policy structures in the pre-accession process. In this analysis Europeanization is understood as an independent variable with the power to institutionalize decision-making at the European level. Thus, Europeanization of domestic asylum and refugee policy is taken as a dependent variable. Europeanization of domestic policy implies to the extent how asylum and refugee policy is Europeanised. This is presented as the impact on a candidate country with wider changes in its "organizational logic of national politics and policy-making."[77] The next section covers the discussion of how the concept of 'Europeanization' is defined in the literature and how it is utilized in this analysis.

Europeanization. From Post-Communist State Administrations Towards Normal Players in the EU System, Baden-Baden: Nomos.

[76] Lavenex, S. (2001), *op. cit.,* p. 1.

[77] Ladrech, R. (1994), *op. cit.,* p.70; Börzel, T. (1999), *op.cit.;* Falkner, G. (2001), 'The Europeanization of Austria: Misfit, Adaptation and Controversies', *European Integration Online Papers (EIOP)*, Vol.5, No.13, http://eiop.or.at/eiop/texte/2001-013a.htm

2.3 Defining 'Europeanization'

For decades European integration debate focused on the development of the supranational system and the implications of this system for the institutions and policies of the EU.[78] In traditional sense, the state-centric view asserts that member states make decisions according to their relative power and domestically defined national preferences which are independent of the existence of the EU. In this respect, the evolution of the European integration project is shaped by the conscious calculations of the member states. The influences of the EU reinforce member state governments' controls over their domestic politics. On the contrary, the institutionalist view insists that institutions cannot be ruled out in explaining integration. The member states' preferences and decisions for further integration are definitely influenced by the EU institutions. The existence of the EU alters options available to the member states. The options based on the final decisions are made by the member states are often shaped by previous integration. These two opposing views cover main points in the research agenda of European integration studies up until the mid-1980s.

Mainly after the increase of EU Regulation in the mid-1980s research on Europeanization became an ever-growing area covering a broad research agenda.[79] By mid- 1990s the influence of European level decision-making of various policies in the member states as a part of the integration process dominated the minds of scholars. Although there has been lively debate and research in the European integration field in general, the empirical analysis of the conceptual limitation of the definition of the term 'Europeanization' has recently started. As a concept Europeanization acquires various definitions which are limited to specific article or

[78] European integration process has gone through various phases which had political impact reflected on its name. Evolving from European Economic Community (EEC) to European Community (EC) in the 1986 and to the European Union in 1992 had inevitable economic and political consequences. This chapter will use the current name of the project which is the European Union (EU) in order to maintain consistency through out the analysis.

[79] Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit.,* p.109.

book chapter.[80] Hix argues that it is still a very vague concept to be referred to as a defining figure of the European integration process.[81] The divergent research interests embrace divergent theoretical approaches which in turn make the definition of the Europeanization an ambiguous concept.[82] However, the recent studies argue that Europeanization can be perceived as a meso theory in respect to neo-functionalism and intergovernmentalism.[83]

The term is used in a number of ways to describe a variety of phenomena and processes of change.[84] It has been argued that the term is unwieldy and that it is "futile to use it as an organising concept."[85] This brings us to the point where Europeanization as a concept needs to be defined at least for the purposes of this study. The following discussion analyzes different explanations of the concept of "Europeanization". From these various approaches a synthesis understanding will be adopted to present the case of Europeanization of asylum and refugee policies of Turkey in its pre-accession process to the EU.

In the political science discipline, as in any other discipline, when the concepts are not well defined this may lead to confusion and misunderstanding. Conceptual analysis is a fundamental step in comparative political science.[86] Nevertheless, the study of comparative politics is vulnerable to the unreliable state of affairs. In this

---

[80] Olsen, J.P. (2001a), 'The Many Faces of Europeanization', *Arena Working Papers,* No.01/2*,* p.1.

[81] Hix, S., Discussion and comments at the session 'National Political Parties and European Integration', *ECPR 2nd Pan-European Conference*, John Hopkins University SAIS Bologna Center, Italy, 24-26.06.2004.

[82] Radaelli, C.M. (2000a), *op. cit.*

[83] Howell, K. (2004), op.cit., p.2.

[84] Olsen, J.P. (2001a), *op.cit,* p.1.

[85] Kassim, H. (2000), 'Conclusion', in Kassim, H. Peters, B.G., and Wright, V. (eds.), *The National Coordination of EU Policy*, Oxford: Oxford University Press, p.238.

[86] Sartori, G. (1970), 'Concept Misformation in Comparative Politics', *American Political Science Review*, Vol. 64, No.4, December, pp. 1033-53.

environment it is necessary to develop conceptual tools that will allow the comparison of political structures more attainable.[87] However, the more complicated the world politics become the more scholars find themselves in *"conceptual stretching"* which can be defined as the attempt to make the concepts more vague, unstructured, and largely undefined that the concepts will become value free. [88] As Radaelli argues, this enables defining the concepts broadly in general.[89]

Defining the concepts broadly serves the purpose of bringing them to the point where they become universally applicable for any time and for any place. This was done in the late 1960s and 1970s when the political science discipline was largely dominated by the ideological discourses of its time. Sartori states "…It appears that we can cover more…only by saying less in a far less precise manner".[90] Additionally, *conceptual stretching* would produce elusiveness and indefiniteness. If the concepts are not defined by boundaries then these concepts will be without negations in a non-empirical universe and they may indiscriminately point to everything.[91] If Sartori's analysis is comparable with the conceptualization of 'Europeanization' it is possible to see that 'Europeanization' as a concept assigns various definitions. The following covers the conceptual discussion of the problematic on the definition of what Europeanization is.

2.4 'Europeanization' or 'Europeanizations'

Conceptualization and definition of 'Europeanization' can often be a problematic issue as it covers various policies, polities and issues at the domestic and European

[87] Sartori, G. (1970), *op. cit.,* p.1034.

[88] Ibid.

[89] Radaelli, C.M. (2000b), *op.cit.*

[90] Sartori , G. (1970), *op. cit.,* p.1035.

[91] Sartori , G. (1970), *op. cit.,* p.1042.

levels.[92] 'Europeanization' is defined differently by different scholars for explaining different phenomena. As a result, it is possible to argue that the existing shared definition of this defining concept is recently developing. Europeanization can acquire meanings depending on the level of analysis of the researcher. Ranging from supranational institution building to structural changes at domestic policy level or to the expansion of a European system of governance structures with the enlargement process, Europeanization is used to define various and interlocking network of processes.

Generally, in its most simplest and comprehensible form Europeanization can be defined as changes caused by European integration process at the domestic level. Héritier defines Europeanization "as the process of influence deriving from European decisions and impacting member states' policies and political and administrative structures."[93] Therefore, in this definition the process of influence is accepted to be generated at the European level to affect the domestic level. Jachtenfuchs and Kohler-Koch think that this definition is open to empirical verification.[94] Within this definition of Europeanization it is possible to test various domestic level policy changes with respect to European level policies. From this perspective Europeanization is related to the supranational institutional set up for the influence of the sharing of competences. In this respect, institutional and policy transformation within the nation-state becomes the main research focus of the contemporary

[92] In order to avoid any confusion with the terms used in this section the EU level politics is referred as 'European politics' and the member states' national politics is referred as 'domestic politics'. While using the term 'domestic politics' the politics of member states and the politics of candidate states are not differentiated.

[93] Héritier, A. (2001), 'Differential Europe: The European Impact on National Policymaking', in Héritier, A. *et. al., op. cit.,* pp. 185-206.

[94] Jachtenfuchs, M. and Kohler-Koch, B. (2004), 'Governance and Institutional Development', in Wiener, A. and Diez, T. (eds.), *op.cit.*, p.109.

European integration research agenda.[95] With this explanation the issue of sovereignty gains importance.

Similarly, Lawton suggests that Europeanization is the transfer of sovereignty to the EU level. Accordingly, Europeanization can be identified with the emergence of EU competencies and the pooling of power.[96] On the other hand, Börzel is more interested in the Brussels process after power has been transferred from the member state level to the European level. Her definition explains Europeanization as a "process by which domestic policy areas become increasingly subject to European policy-making."[97] This argument suggests that in certain domestic policy areas the impact of European integration is becoming increasingly more eminent than others. This is not only suggesting that some domestic policies are increasingly dominated by European decision-making but also some of the policy areas are experiencing the EU dimension more than the others.

Adding to that argument, Börzel thinks that Europeanization is a two-way process which involves the evolution of European institutions that impact political structures and processes of the member states. This understanding in its most explicit form conceptualizes Europeanization as the process of "downloading" EU directives, regulations, and institutional structures to the domestic level.[98] From this perspective member states "download" European policy outcomes when adapting to them. In this perspective Europeanization is understood as a "top-down" process of changes. It is a "top-down" process in the sense that decisions at the EU level are "downloaded" in order to be implemented at the domestic level.

---

[95] Knill, C. (2001), *The Europeanization of National Administrations: Patterns of Institutional Change and Persistence*, Cambridge: Cambridge University Press.

[96] Lawton, T. (1999) 'Governing the Skies: Conditions for the Europeanization of Airline Policy', *Journal of Public Policy*, Vol. 19, No.1, pp. 91-112.

[97] Börzel, T. (1999), *op.cit.,* p.574.

[98] Howell, K. (2002), 'Developing Conceptualizations of Europeanization and European Integration: Mixing Methodologies', presented paper at the *ESCR Seminar Series: UACES Seminar Group on the Europeanization of British Politics*, Sheffield University, 29.10.2002.

At the same time member states "upload" their policies to the European level in order to minimize the costs of "downloading" afterwards.[99] Thus, Europeanization indeed does not only consist of a "top-down" approach dictating the member states to adopt themselves to the Brussels made decisions and policies. At the same time member states are influential for the policy outcomes at the European level. Nevertheless, the decision-making process at the European level is not immune form the member states' policy preferences and interests. This constitutes the "bottom-up" aspect of Europeanization process. Hence, Europeanization is experienced at different levels and it is a multi-level process. It is experienced at the European level where certain policy areas become increasingly subject to European decision-making. It is also experienced at the domestic level where member states are adopting themselves to policy outcomes which were traditionally not governed by the European level decision-making. This conceptualization has enhanced in the literature to cover uploading process to the EU in a way that domestic policy decisions impact the European level. Howell argues that there is also cross-loading of the process where there is a linkage between the macro level (member state) and micro level (sub-national interests) for vertical policy transfer.[100]

European integration has always been motivated by the willingness to overcome collective problems through collective actions.[101] In general, this collective action at the European level may also add further complications to decision makers of the member states.[102] Arguably, however, the process of Europeanization can be used to

[99] Börzel, T. (2002), 'Member States' Responses to Europeanization', *Journal of Common Market Studies*, Vol.40, No.2, pp.193-214.

[100] Howell, K. (2004), *op.cit.*

[101] Moravcsik, A. (1991), 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization*, Vol.45, No.1, pp.19-45.

[102] Thielemann, E.R. (2000), 'The Costs of Europeanization: Why European Regional Policy Initiatives are Mixed Blessing', *Regional and Federal Studies*, Vol.12.

overcome some of the domestic institutional constraints.[103] In this respect, it is possible to suggest that European integration and the process of Europeanization is the interaction between European and domestic dynamics. This two-way process shapes domestic policies.[104] Using the logic of two level games, Putnam suggests that domestic policy-makers can conform to the pressures from the European level in order to implement those domestic policy reforms that they would otherwise be unable to enact.[105] Thielemann further argues that domestic actors import legitimacy to their policies, not only affected from the domestic political clashes, but also from the intra-governmental competition for agenda control between various ministries, institutions and departments.[106] Consequently, domestic policy-makers strategically use the European level to increase their margin of manoeuvre at home.[107]

Within this perspective the transition of the domestic policies to the European policy area should be differentiated from "Communitarization", "Brusselization", or "EU-ization". Europeanization is far more complex process than mere supranational decision-making or pooling of competences to the European level. Ladrech describes the transitional process as an "incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of adaptive processes of organizations to a changed or changing environment of national politics and policy-making."[108] Vink argues that "Europeanization is not just EU-ization."[109] It includes a wider range of processes

[103] Thielemann, E.R. (2001), 'Explaining Stability and Change in European Asylum Policy', presented paper at the 42nd American Political Science Association Annual Meeting, San Francisco, 30th Agust-2nd September 2001.

[104] Bomberg, E. and Peterson, J. (2000), 'Policy Transfer and Europeanization: Passing the Heineken test?', presented paper at the PSA Annual Conference, London, 10-13.04.2000.

[105] Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, Vol.42, No.3, pp: 427-460.

[106] Thielemann, E.R. (2001), *op.cit.,* p.11.

[107] Ibid., p.13.

[108] Ladrech, R. (1994), *op.cit.*, p.69.

[109] Vink, M. (2002), *op cit.*, p.6.

and institutions in different political and economic spheres. Therefore, Europeanization is a far more complex process than harmonization of laws and the adoption of the EU *acquis* by the domestic legislative structures.

Europeanization includes a wider range of processes as some scholars analyze an additional dimension of the integration process which is "ideational". Looking at different understandings in a concise definition, Radaelli takes Europeanization as an independent variable, which influences domestic processes, policies and institutions. In addition, he introduces a comprehensive definition of Europeanization that includes processes and mechanisms through which changes happen at the domestic level. For him there are three broad mechanism of Europeanization: presence of a European model, "negative" integration, and framing.[110] The first two indicate market-making and market-correcting policies.[111] The third involves "framing" which is the ideational type of European integration that tries to set norms in areas where "the underlying conflicts of interests between the member states only allow it to adopt policies which are vague and more or less symbolic."[112] It is possible to set common guidelines for policy practices in policy areas where divergent policy interest between member states exists such as the asylum and refugee policy area. Thus, Europeanization is not only restricted to complying with the EU Regulations and implementing certain directives. While complementing to harmonization and adoption of the *acquis,* Europeanization can also involve the framing of domestic beliefs and expectations.

From the perspective of enhancing the simplistic understanding of Europeanization as "changes in domestic policies" Radaelli suggests that the definition of Europeanization can take various forms.[113] According to Radaelli, in a more

[110] Radaelli, C. (2000b), *op.cit.*, p. 12-16.

[111] Scharpf, F. (1999), Governing in Europe: Effective and Democratic, Oxford: Oxford University Press.

[112] Knill, C. and Lehmkul, D. (2002), *op cit*., p.272-275; Lavenex, S. (2001), *op cit.*

[113] Radaelli, C.M. (2000b), *op. cit.,* p.1.

sophisticated understanding Europeanization can refer to "processes of construction, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies".[114] Europeanization in terms of ideational transformation included changes in the cognitive structures, ideas and norms in which the political action is embedded.[115]

This normative understanding of Europeanization is also embraced by Coppieters *et al*. who considers that Europeanization "as a normative process, with the European institutions working as actors to orient policies and as providing the framework for national and sub-national actors"[116] Adding to that argument Olsen questions how existing institutional arrangements impact institutional change in structures of meaning and peoples' minds.[117] He argues that changes first occur in political organization of "the development of an organizational and financial capacity for common action and governance through processes of reorganization and redirecting of resources."[118] In addition, there are changes on the development and redefinition of political ideas such as common visions and purposes, codes of meaning, causal beliefs and worldviews that give direction and meaning to common capabilities and capacities. With this the EU develops a political understanding which influences European and domestic level politics.

---

[114] Radaelli, C.M. (2000b), *op. cit.,* p.3.

[115] Olsen, J.P. (1995), *op.cit*.

[116] Coppietiers, B., Huysseune, M., Emerson, M., Tocci, N. and Vahl, M. (eds.) (2003), 'European Institutional Models as Instruments of Conflict Resolution in Divided States of the European Periphery', *CEPS Working Document*, No.195, p.2.

[117] Olsen, J.P. (1997), 'The Changing Political Organization of Europe: An Institutional Perspective on the Role of Comprehensive Reforms', in Hesse, J.J., and Thoonen, T.A. (eds.), *The Yearbook of Comparative Government and Public Administration*, Vol. II, Baden-Baden: Nomos; Olsen, J.P. (2001b), 'Organizing European Institutions of Governance: A Prelude to an Institutional Account of Political Integration', in Wallace, H. (ed.), *Interlocking Dimensions of European Integration*, Houndmills: Palgrave, pp.323-353; March, J.G. and Olsen, J.P. (1995*), Democratic Governance*, New York: Free Press.

[118] Olsen, J.P. (2001a), *op.cit.*, p.5.

2.5 Europeanization in Non-member States

The impact of the process of Europeanization on non-member states is a recently developing field of study. An enhanced conceptualization of the process of Europeanization accepts that it can also influence non-member states through the institutionalization of the system of governance equipping the EU with the tools to influence the non-member states. Imposition of the modes of governance through enlargement is argued by some to be a foreign policy tool of the EU.[119] It is particularly valid for the candidate countries by the introduction of various compliance criteria for entry through enlargement process of the EU. These criteria generate the necessity to comply with certain standards and procedures for membership. Hoping to meet certain criteria for membership, candidate countries target certain evolved common standards of truth and morals.

In one of the few exceptions for the study of Europeanization in the candidate states Lippert *et al.* refers to the five phases of Europeanization in the CEECs relations with the EU since 1988. These phases can be regarded as the late 1980s (pre-stage), the introduction of the European Agreements (first stage), the pre-accession strategy (second stage), the opening of accession negotiations (third stage) and the post-accession (fourth stage).[120] Likewise Grabbe identifies Europeanization as "the impact of the EU accession process on national patterns of governance."[121] In practice Europeanization through the pre-accession and accession processes in the last decade have been influential in shaping and transforming policies in candidate countries of the EU. Kubicek argues that conditionality is the most effective approach the EU can adopt for membership.[122] Through this mechanism the EU can

[119] Kahraman, S. (2004), Argument raised at the *CES-METU Workshop*, Centre for European Studies METU and Sussex European Institute joint workshop, 04.12.2004, Ankara: METU Culture and Convention Centre

[120] Lippert, B. et. al. (2001), *op. cit.,* p.34.

[121] Grabbe, H. (2001), *op. cit.,* p.1014.

[122] Cooley, A. and Kubicek, P. (2003), 'Western Conditions and Domestic Choices: The Influence of External Actors on the Post-Communist Transition', in *Nations in Transit 2003: Democratization in East Central Europe and Eurasia,* Lanham: Rowman and Littlefield.

push a candidate state to comply with certain criteria and attain a certain standard. In that respect the Europeanization process has been sufficiently powerful to shape candidate states' policies, by engaging respective candidate states' bureaucrats and intellectuals as agents of European level policies.

Changes in territorial reach of the EU with enlargement process are interpreted as the expansion of the reach of Europeanization with rule application. In that respect Europeanization is the transformation of traditional modes of governance across policy-making levels and arenas. Furthermore, it is also interpreted as export of a European model of political organization as a process of diffusion.[123] The EU's export of modes of governance is not limited to the candidate countries but to a wider area where European forms of organization and governance diffuse beyond the European region.[124] In the same way, Olsen defines Europeanization as processes which make 'Europe' a more significant political community, thereby making European boundaries more relevant politically.[125] According to Olsen a first step towards understanding Europeanization is to separate five possible uses of different phenomena referred by the same term. Thus, Olsen argues that Europeanization can be defined as (1) changes in external territorial boundaries through enlargement, (2) the development of institutions of governance at the European level, (3) central penetration of national and sub-national system of governance, (4) a political project aiming at a unified and politically stronger Europe, finally (5) exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory.[126]

Within this perspective, an account of how Europeanization takes place requires an understanding of the structure and dynamics of each of these change processes which

[123] Olsen, J.P. (2001a), *op.cit.*, p. 4.

[124] Olsen, J.P. (2003), 'Europeanization', in Cini, M. (ed.), *European Union Politics*, Oxford: Oxford University Press.

[125] Olsen, J.P. (1995), *op.cit.*, p.21.

[126] Olsen, J.P. (2001a), *op.cit*, p.3.

are complex mixes of practices. In complex and dynamic contexts like European one, purposeful actors may influence the processes and structures within which change takes place. Historically Europe has successfully exported European modes of polity and society throughout the globe.[127] This spread of European models of organization and governance has taken the forms of colonization, coercion and imposition.[128] The receivers accepted European arrangements because of their perceived functionality, utility or legitimacy.[129] In the contemporary world the same process of spreading European institutions and principles outside Europe is experienced with "logic of the attractiveness of European prescriptions and normative standards and exposure to European forms."[130] Recently the attractiveness of European normative standards is reflected in the pre-accession and accession strategies of the candidate countries.

Candidate states willingly comply with certain European prescriptions as a result of the attractiveness of the prospective entry to the EU. The process of enlargement represented a colossal exercise in policy transfer when the EU tries to "export the *acquis communitaire* lock, stock and barrel."[131] The pre-accession process followed by the negotiations period of the accession process prepares the candidate state's membership. The pre-accession strategy and the opening of accession negotiations are both powerful periods when candidate states experience the impact of Europeanization in their domestic policies and policy structures. In these processes European modes of governance are introduced to candidate states with the requirement to comply with the policies decided at the European level. Contrary to the member states which are involved in the decision-making process of the European level policies and decision-making, candidate states are "decision-takers"

[127] Geyer, (1989), *op.cit.,* p.339.

[128] Tilly, C. (1990), *Coercion, Capital and European States*, Princeton: Princeton University Press.

[129] Olsen, J.P (2001a), *op. cit.*, p.17.

[130] Olsen, J.P (2001a), *op. cit.*, p.18.

[131] Bulmer, S. and Radaelli, C. (2004), 'Europeanisation of National Policy?', *Queen's Papers on Europeanization*, No.1/2004, p.2.

at the process. They implement policies imposed by Brussels in order to become members and have the opportunity to contribute to the decision-making process in the long-term. Therefore, in that respect the experience of Europeanization differs for the member states and the candidate state.

2.6. Europeanization as an Independent Variable

Europeanization is taken either as an independent or dependent variable depending on the specific level of analysis. Taken as a dependent variable the impact of states and states' preferences to the process of Europeanization can be a way of studying certain aspects of this process. Europeanization take as an independent variable to measure the changes in the domestic level can be another method of testing Europeanization. In this study Europeanization is taken as an independent variable impacting policy formation and governance structures of a candidate state's pre-accession process. Turkey is selected as the case study as it provides the necessary framework with a specific focus on its asylum and refugee policy.

The usage of Europeanization as the independent variable to measure the impact on polity, policy and governance of each and every individual state is not unproblematic. It is a challenging task, because the impact of European integration for historical reasons is different in each and every member state. The impact is different as a result of the domestic and international constraints that an individual member state experiences through its integration period. From this point of view, the effects of Europeanization differ for each and every member state. According to liberal intergovernmentalist understanding, the complexity of political issues gives rise to competing domestic interest formation in different member states. The membership process of each member state may be different compared to the other which entirely depends on the membership experience. For example, Britain became a member after the adoption of a Common Agricultural Policy (CAP). Therefore, Britain was not in the bargaining process when CAP was adopted. Before its membership to the EU, the British were opposed to the notion of a common

agricultural policy. On the contrary, French were keen to launch it. Only after CAP was established France gave up its opposition to British membership.[132] Therefore, Britain did not have the same experience as France in terms of the influence of European integration on its agricultural policy.

The main reason behind this divergent interests lies at the domestic structural differences of these two countries. In France farming employed 25 percent of Frenchmen, creating France as large surplus producer and exporter of agricultural products. This has clearly given rise to French motivation for a more intensely favoured liberalization of commodities trade within the preferential European zone with modest support prices.[133] Not only the quantitative element but also the qualitative element in its policy formation was different in France compared to Britain. To give an example, the farming lobby in France was far more organized than any of its counterparts in Europe. The farmers' associations have intense preferences and exercise strong influence on governments in France.[134] From the beginning of the formation of CAP until its implementation the strong agricultural orientation was influential on French policies. The political structure and the complexities in the preference and interest formation in the French political system have also influenced the further implications of European integration on French politics. Compared to France, Britain was sceptical of a common agricultural policy and favoured a liberalization of global agricultural trade.[135] Having only 5 percent of its employed people on the farming sector, Britain was a net importer of agricultural goods and it was interested in maintaining its preferential agreements with the Commonwealth in order to buy agricultural products at relatively low prices. In

[132] Schimmelfenning, F. (2004), 'Liberal Intergovernmentalism', in Wiener, A. and Diez, T. (eds.), *op.cit.*, p. 86.

[133] Moravcsik, A. (1998), *op. cit.*, pp.164-220.

[134] Schimmelfenning, F. (2004), *op.cit*.

[135] Moravcsik, A. (1998), *op.cit*., p.161.

addition, Britain was uncompetitive in agricultural sector and it would possibly not benefit intra-EC liberalization.[136]

The brief comparative discussion on the French and the British positions on agricultural policy explain the differences between member states' policy preferences and structures. Jachtenfuchs and Kohler-Koch argue that although there are empirical studies on causes and effects of the impact of the EU on member states in terms of changing policies, it is very difficult to make generalizations on the policy Regulation and administrative policy change.[137] This brings the question of why it is difficult to make generalizations in these analyses. It is mainly because by making generalizations it will be possible to miss the complex dynamics of political process induced by the European policy inputs at the domestic level.[138]

It will be possible to see both in Héritier's and Knill's discussions that historically member states responded quite differently to identical EU input even under similar external and internal conditions.[139] Jachtenfuchs thinks that the main reason behind this is the differentiative adaptation costs. In addition, national and sub-national actors have considerable room for manoeuvre when implementing an EU policy.[140] Compliance and implementation also depends on the scale of the alteration that has to be made on domestic policies and structures. It may range from restricted sector Regulation alterations to a core change of national administrative traditions.[141] It is also important to take into account the administrative capacity for reform of the particular country.

---

[136] Moravcsik, A. (1998), *op.cit*., pp.89-90.

[137] Jachtenfuchs, M. and Kohler-Koch, B. (2004), 'Governance and Institutional Development', in Wiener, A. and Diez, T. (eds.), *op.cit*. , pp. 97-115.

[138] Héritier, A. (2001), *op.cit*., p 9; see also; Knill, C. (2001), *op.cit*., pp.201-204.

[139] Knill, C. (2001), *op.cit*., p.357.

[140] Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit*., p.110.

[141] Knill, C. (2002), *op.cit.,* pp.41-45.

The generalization that can be made through this analysis is that enhanced policy-making at the European level has forced the individual member states to adopt themselves to the European level. Wessels argues that national institutions have participated intensively in the process of preparing, negotiating, implementing, and controlling the European level decisions.[142] The conclusion to be drawn is that for many decades the EU attempts of harmonization and systems competition have definitely left a mark on national systems. However, Jachtenfuchs and Kohler-Koch argue that this process has no unifying affect.[143] It is mainly because of the fact that national systems resist dramatic modifications. Maurer, Mittag and Wessels have argued that national systems are resistant and flexible enough to be sufficiently capable of coping with the challenges from the European level.[144] Jachtenfuchs suggests that in order to get a complete picture it is necessary to study further dimensions of Europeanization for national governance. According to his suggestion in order to acquire sufficient empirical research to make meaningful generalizations the shifting boundaries between the public and private sphere, changes in public accountability, and the equilibrium between the legislative and the executive, the organization of interest mediation and the relationship between the political parties have to be explored.[145]

From this picture the main generalization we can make is that European integration brings about certain policy changes towards a more European way. This makes us to conclude that European integration has been a powerful tool of policy transformation for the member states for decades. In the recent years it has become a powerful tool not only for the member states but also for the candidate states. In that respect, it is

[142] Wessels, W. (2000), *Die Öffnung des Staates*, Opladen: Leske und Budrich.

[143] Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit*., p. 110.

[144] Maurer, A., Mittag, J., and Wessels, W. (2003), 'National Systems' Adaptation to the EU System. Trends, Offers, and Constraints', in Kohler-Koch, B. (ed.), *Linking EU and National Governance*, Oxford: Oxford University Press, pp: 53-81.

[145] Jachtenfuchs, M. and Kohler-Koch, B. (2004), *op.cit*., p. 111.

an undeniable need to expand research on the empirical verification of the impact of Europeanization in candidate countries.

The development of a common asylum policy represents an instance of political integration which consists of the institutionalisation of organisational structures and substantive guidelines of policy-making in this area. Taking a multi-level perspective on the interaction between domestic and European levels of governance in this process of Europeanization, a combination of different approaches is proposed.[146] In this regard, Europeanization of the refugee and asylum policy area within a candidate state, Turkey will provide the analysis of different dynamics of this process.

2.7 Europeanization of Asylum and Refugee Policies

Immigration, asylum and refugee policies are not immune from the influence of Europeanization. The growing impact of common policy building in the EU can be observed in these policies. The intergovernmental framework of cooperation in migration and refugee related issues within the EU have gradually involved supranational elements for common actions. Starting from intergovernmental efforts the EU's initiative to develop a common migration regime is a priority which is explicitly expressed in the Amsterdam Treaty. When Europeanization is defined in terms of "a process of change in national institutional and policy practices that can be attributed to European integration" then its dynamics can be explored in the non-member states' various policies.[147] Therefore, the development of common policies in the Union generates a strong impact for member and non-member states as well as other actors in the global arena. Moreover, the transnational nature of the migration flows generates a growing impact of this embryonic regime not only in Europe but also in other regions of the world. Although there is a lack of coherent global

[146] Lavenex, S. (2001), *op.cit*., p. 8.

[147] Hix, S. and Goetz, K. (2000), *Europeanised Politics? European Integration and National Political Systems*, London: Frank Cass Publications, p.27.

migration regime this development can be regarded as an important experiment for common multilateral action.

This emergence of a common migratory space regulated by a common set of rules with regard to external borders and common asylum procedures highlights the territorial identity of the Union. In addition, it points to Union's gradual transformation from "a primarily economic identity into a political actor with its own political principles and values."[148] Its impact is beyond the institutional developments in this area. One has to look at this issue from an angle beyond the traditional inward looking focus of policy development within the EU. This is mainly because the influences of Europeanization process encompass implications of a particular policy field for countries outside the EU with a variety of normative effects.

From this perspective, it may be argued that Europeanization has been the conscious action of the adoption and import of the concepts and policies developed in the EU with regard to refugee and asylum policies to non-member states. This is particularly important as it may lead to conception changes in these countries with respect to refugee and asylum policies. This can be achieved by various ways from fully voluntary to more constrained means of adoption of these policies. The most convenient conceptualization to explain this adoption process is the policy transfer argument. Moving on from March's definition of policy transfer Europeanization can be explained as an influential process for non-EU states. This influential process is "which knowledge about policies, administrative arrangements, institutions, etc. in one time/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place."[149] The transfer of policies can be

[148] Lavenex, S. and Uçarer, E. (2002), 'The Emergent EU Migration Regime and Its External Impact', in Lavenex, S. and Uçarer, E. (eds.), *Migration and the Externalities of European Integration*, Oxford: Lexington Books, p.2.

[149] Dolowitz, D. and Marsh, D. (1996), 'Who Learns What from Whom: A Review of the Policy Transfer Literature', *Political Studies*, No. 44, p.344.

understood in a broad manner where institutional practicalities not only transfer but also transform within this context.

Olsen adds to Marsh's ideas that the transfer process does not only involve transfer of knowledge but also it involves transfer of norms, values, standards, perceptions and ways of doing things.[150] Lavenex provides the analysis of Europeanization as an ideational process in the field of refugee policy involving the core element of national sovereignty.[151] The concept of sovereignty has its normative and moral quality in national traditions. Therefore, coordination in this policy field differs from coordination in the field of economic policies. It is a challenge of redistribution among the member states and it raises the problem of coordination between national interests and collective goals.

The EU is engaged in a formidable export of its regulatory pillar while seeking to transfer the normative pillar.[152] The transfer of policies leads to a comprehensive transformation of domestic institutions, administrative and attitudes. This transfer of rules and norms of democratic behaviour to new member states which goes well beyond the domain of the single market.[153] This may even lead to a departure from the existing applied domestic principles and norms of the state involved in the policy transfer process. This departure towards to the European standards and principles generate fundamental changes in institutional and administrative settings. While transferring policies, administrative arrangements and institutions with the adoption of the *acquis* certain procedures are also transferred from the EU to the third country. This inevitably brings with itself the adoption of the EU practices and principles. This adoption involves a normative nature which presents itself with the transformation of the established domestic refugee protection standards and practices.

[150] Olsen, J.P. , (1995).

[151] Lavenex, S. (2001), *op.cit*., p.21.

[152] Bulmer, S. and Radaelli, C. (2004), *op.cit*., p.2.

[153] Ibid.

In terms of refugee and asylum policies this is most evident when the shift from international norms towards European agreed norms and procedures becomes highly visible. In that respect, the substance of collective interest in having a common refugee policy at the European level is an inevitable result of a hybrid arrangement of internal security and human rights issue. The member states reflect to this understanding while aiming to provide a balance between these two notions. The constructed understanding of security is reflected in the member states' perception and definition of a certain problem. It also provides the basis for the development of interests and the formulation of the policies.

The policy discourses in the refugee and asylum area is then redefined and reformulated within this constructed understanding. This may force member states to reformulate their asylum policies and refugee protection standards. Variations in the refugee protection standards and access to asylum system create an imbalanced distribution of asylum seekers among the member states. Ideally higher level of protection standards and liberal access to asylum procedures may be preserved by member states in order to provide higher humanitarian means of protection for the asylum seekers and refugees within their territories. One the other hand, higher level of protection standards in one member state may act as a pull factor for a potential asylum seeker. This creates an increasing overload of the asylum system in that particular state. In general, it may be expected that states will harmonize their legislation to keep the minimum required standard without jeopardizing their international obligations arising form international legal documents like the *1951 Convention*.

Lavenex and Uçarer suggest that the scope and shape of policy transfer is conditioned by existing institutional links between the EU and the countries concerned, the domestic political situation, and the costs of non-adoption with an EU policy.[154] They argue that both formal obligations and informal dynamics escalate

[154] Lavenex, S. and Uçarer, E. (2004), 'The External Dimension of Europeanization: The Case of Immigration Policies', *Journal of the Nordic International Studies Association*, Vol. 39, No.4, p.417.

the effects of EU's external policy impact. Either done through formal obligations or through informal adoption policy transfer is the means of exporting certain European principles, procedures and norms. A mix of voluntary and involuntary adoption may occur when the third country perceives the necessity to change its policy.[155] The most common way of involuntary adoption in the case of the enlargement process of the EU is the conditionality for membership. The EU membership is made conditional upon the adoption of the *acquis* which includes the policy area of asylum and immigration.

The traditional perception of the standards of protection may evolve in this process to create a hybrid form of refugee protection involving international, European and domestic norms, perceptions and practices. The stable international refugee regime is then challenged by the transformation of the refugee protection norms and standards with the policy transformation process. Within this perspective, the developing European migration regime influences the international refugee regime and the domestic implementation of this regime in third countries including Turkey.

2.8 Europeanization in the Context of Turkish Pre-accession Process

Turkey as a non-member state in its pre-accession process is influenced by Europeanization in many of its domestic policy sectors. The Turkish pre-accession strategy targets compliance with certain political and economic standards of the EU. The priorities set by the EU for Turkey in terms of fulfilling progress towards accession is targeted by the *Turkey's National Programme on the Adoption of the Acquis (NPAA). National Programme* is not primarily a list of EU legislation required to be harmonized in the pre-accession process. It evidently involves the list of *acquis* on many policy areas. In addition, a comprehensive set of domestic policy reforms target major transformation in the Turkish legislative, administrative, institutional and ideational structures with certain standards and procedures for

[155] Ibid,, p.421.

membership. The reforms involved in this process generate legislative, administrative and ideational transformation which is at the end leads towards a systemic transformation.

This process affirms that the enlargement process with the institutionalization of the system of governance equips the EU with the tools to influence the non-member states. The introduction of various compliance criteria for entry through enlargement process of the EU not only involves institutional and governance requirements but also for meeting certain evolved common standards of morals**.** Therefore, Europeanization is the impact of the EU accession process on domestic patterns of governance.[156] The EU's adoption of conditionality as an effective approach for pushing a candidate state like Turkey to comply with certain criteria and attain standards has been a mechanism used by the EU since 1999 Helsinki Summit.[157]

The empirical study indicates that since the declaration of Turkey as an official candidate of the enlargement process of the EU in December 1999 in the Helsinki Summit, there have been significant governance changes with political implications. In that process a European model of organization is diffused to the Turkish political and administrative system. In addition to the diffusion of European type institutions and principles to the Turkish administrative and governance system, a parallel process of cognitive change of normative and ideational standards and understanding is experienced in Turkey. The attractiveness of the prospective entry to the EU with the European normative standards and the willingness of the candidate state to comply with certain European prescriptions are validated by Turkish case of accession.

Defining with Olsen's categories two parallel processes of Europeanization operates actively and simultaneously in Turkish pre-accession process. The first process of Europeanization is the development of institutions of governance and ideational

[156] Grabbe, H. (2001), *op. cit.,* p.1014.

[157] Kubicek, P., *et al.* (2003), *op.cit*.

structures in the field of immigration and asylum at the European level since the TEU and the Amsterdam Treaty. The second process of Europeanization involves Turkey with the EU's export forms of political organization and governance that are typical and distinct for Europe beyond the European territory.[158] Europeanization of refugee policies involves an institutional aspect in which powers and competences among actors involved in the asylum and refugee policies are redistributed. This is mainly because traditional modes of governance are transformed in the Europeanization process. New institutions are established or existing institution gain or loose some of their previous powers in this process. This may create a resistance to change by actors which are formerly in charge of influencing the policy-making arena with their capacity to enforce their own perceptions and interests.

In this analysis the scope of Europeanization operating in Turkey is defined as the process of influence deriving from European decisions and impacting domestic policies and political and administrative structures. This explanation adopts Héritier's definition. In the pre-accession process, which will be followed by the negotiations period for accession by 3rd October 2005, there are already significant changes in the Turkish governance structures. The legislative transformation results from the adoption of the *acquis* and the inevitable consequences resulting from this adoption. Legislative transformation is accompanied with administrative transformation involving elements of institutionalisation and changing patterns of administrative functioning. The significant changes also impact the cognitive (ideational) understanding of the policy formation in Turkey. For example, the refugee policies have traditionally been understood in the UN framework under the *1951 Convention*. Before the pre-accession process Turkish asylum and refugee policies were based on the practices resulting from international humanitarian norms and values.

The pre-accession process signifies important changes on the asylum and refugee policy area. On that area legislative and administrative changes brought changes in

[158] Olsen, J.P. (2001a), *op.cit.,* p.3.

the traditional perceptions in the asylum and refugee policy field. The institutional impact of Europeanization on traditional way of governance has significantly transforms the refugee protection system in Turkey. Chapter 5 examines Turkish refugee and asylum policy before the pre-accession period while Chapter 6 will present the changes after the 1999 Helsinki decision. This thesis argues that Europeanization creates a systemic transformation as a result of the transformation in the legislative, administrative and ideational spheres. This is explained in the below specified diagram.

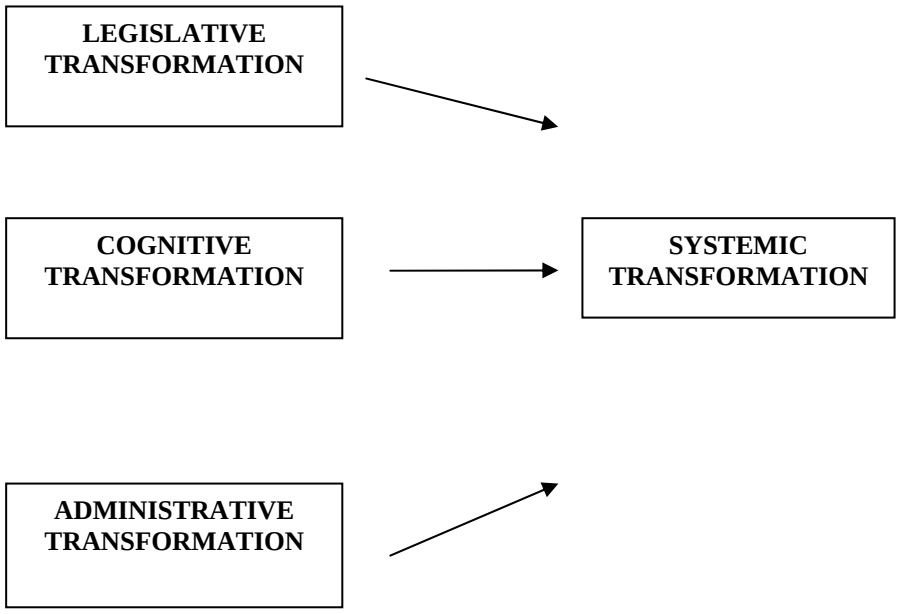

Figure I. Europeanization as a Form of Systemic Transformation

The argument of this thesis is that Europeanization in the pre-accession process of Turkey is a complex process of legislative, administrative and cognitive (ideational) transformation. Providing the necessary changes in the structure of refugee protection system, Europeanization produces a process of systemic transformation. This thesis argues that in a domestic policy area such as the refugee and asylum policy area, change occurs in various levels. Change is most evident at the legislative

level where the harmonization of Turkish refugee and asylum legislation with EU *acquis* takes place. In the accession process before becoming a full member of the EU, Turkey has to adopt EU *acquis* on asylum and migration. This adoption involves a comprehensive list of Council Recommendations, Decisions, Regulations and Directives.[159] Nonetheless, Turkey also targets to adopt domestic legislation such as Asylum Bill during this process. This Bill will specify the necessary arrangements for the implementation of refugee and asylum policy at the domestic level.

The second pillar of transformation encapsulates administrative transformation in the asylum field. Turkish National Program on the Adoption of EU *Acquis* Communitaire identifies the priorities of improving administrative and technical capacity in the field of asylum.[160] The foreseen improvement in the National Program carried out with the twinning projects to envisage a road map of administrative changes. The road map of administrative changes is presented in the *National Action Plan for Asylum and Immigration (NAP)*.[161] These changes involve the operational capacity building of the authorities in terms of coordination, human resources, materials and institutionalization. The administrative changes involves an Asylum and Migration Specialization Unit, a Training Academy (Institute), training of existing and prospective personnel, language training courses for refugees, asylum seeker reception and accommodation centres and refugee guesthouses, return centres, transforming employment procedures of personnel working in asylum field (selection, appointment, and career development), electronic storage of information with the Country of Origin and Asylum Information System, and also gathering, analyzing, and disseminating reliable statistical information.

[159] See also *National Action Plan for Asylum and Migration* for the list of present and future EU *acquis* on asylum and migration.

[160] Official Journal (2003), *Turkish National Program on the Adoption of EU Acquis Communitaire*, No.25178, 24.07.2003.

[161] Ministry of Interior (2005), *National Action Plan for Asylum and Immigration*, General Directorate of Security, 17.01.2005, No.B.05.1.EGM.013.03.02.

The third pillar which is the pillar of cognitive (ideational) transformation goes hand in hand with legislative and administrative transformation. Cognitive transformation is defined for the purposes of this thesis as the changes of understanding in the field of asylum at the domestic level. It is a dual process of transformation. The dual process of transformation means there is a change in the perception of refugee and asylum field. The perception of asylum policy field is shifted from the field of humanitarian protection towards the field combining asylum with irregular migration control bringing asylum to migration nexus. This is a direct result of the influence of European integration. The details of the changing perception of refugees and asylum policy at the European level are discussed in Chapter 4. On the other hand, there is a change at domestic level with respect to the rights of refugees. This new formation brings the concept of social integration of refugees into asylum agenda.

There is also a cognitive change in the perception and understanding of officials working in this field. Traditionally this field is perceived to be under state prerogative. This is reflected in the organisational structure of the department working on this area. The General Directorate of Security has a special department on Foreigners, Border and Asylum. In the pre-accession process a civilian authority to process asylum applications is foreseen. In addition, the working methods of security forces currently dealing with these matters are transformed as a result of the pre-accession process since 2001.

As a result of the synchronized changes at the legislative, administrative and cognitive levels, an overall systemic transformation is experienced in the field of asylum during the Turkish pre-accession process to the European Union. The adoption of EU legislation proposes administrative changes. These administrative changes are reflected in the application of asylum policy. The initiatives for building up the administrative technical capacity of Turkey are aiming to bring the change of lifting the geographic limitation on the *1951 Convention*. Lifting this limitation will create a major transformation within this area. Therefore, a systemic change including transformation of legislation, governance structures, practices, and perceptions is inevitable.

2.9 Conclusions

Explaining the EU is a difficult task as most of the key actors in EU politics "simultaneously posses multiple interests and identities" and as their actions may be motivated by different rationalities at different times.[162] However, in this complex web of relations the certainty is that European integration process has always influenced domestic policy-making and policy implementation in member states while impacting their domestic legislative and administrative structures. This influence can be most generally defined as the Europeanization process at European and domestic levels.

Finding a consensus among the scholars for defining Europeanization is a difficult mission. Looking at different explanations of Europeanization it is possible to argue that the different conceptions of Europeanization complement, rather than exclude each other. Dynamics of Europeanization refer to complementary processes of change which are well known from other institutionalized systems of governance.[163] Therefore, Europeanization of domestic policy reflects two interrelated processes: Both the emergence of supranational policies at the EU level and the domestic convergence towards these policies. Europeanization can be defined as a process whereby domestic discourses, public policies, political structures and identities aim to shape European integration.

The principal aim of this analysis is to contribute to the field of study of the impact of the process of Europeanization on non-member states by focusing on the influence of the EU's governance structures and regulatory models on the specific policy area of asylum and refugees in Turkey. Turkey clearly presents a case in which the effects of Europeanization are experienced in the governance and ideational levels. In addition, Europeanization is experienced in the level of policy transformation from the normative level. This leads to a shift from international norms towards European

[162] Peterson, J. (2001), *op.cit,* p.292.

[163] March, J. G. (1981), 'Footnotes to Organizational Change', *Administrative Science Quarterly*, No.26, pp. 563-77.

norms and procedures for refugee and asylum policies shaping a hybrid way of arrangement.

CHAPTER III: THE STABILITY IN THE INTERNATIONAL REFUGEE REGIME

"There is no greater sorrow on earth than the loss of one's native land."

Euripides, 431 B.C.

The ever increasing number of refugees and other displaced people who are the victims of events beyond their control such as persecution, armed conflict, and human rights violations made the development of international refugee law and the establishment of institutions devoted to the protection of refugees and other displaced people inevitable. The institution of asylum is first established in Western Europe with a commitment to respond to international humanitarian crises. The system of refugee protection has gradually developed and stayed relatively stable in the last quarters of the 20th century. As a result of the political and socio-economic reasons, it is in the same region that the strength and effectiveness of this institution is now tested.[164] In the five decades following World War II there has been a tenfold increase in the world refugee population.[165] In 1951 the UNHCR estimated the

[164] Van der Klaauw, J. (1997), 'Refugee Protection in Western Europe: A UNHCR Perspective', in Carlier, J.Y. and Vanheulle, D. (eds.), *Europe and Refugees: A Challenge?*, The Hague: Kluwer Law International, p.227.

[165] Bocardi, I. (2002), *Europe and Refugees: Towards an EU Asylum Policy*, The Hague: Kluwer Law International, p.1.

existence of 2,116,000 refugees in the world. This number had grown to 22.3 million by 31st December 1999.[166]

In 1989 with the end of the Cold War, it was estimated that ideological divisions of the world has ended and left global politics with the only alternative of democratic governance. This optimistic idea was immortalised with the famous article of Francis Fukuyama:

> The twentieth century saw the developed world descend into a paroxysm of ideological violence, as liberalism contended with the remnants of absolutism, then bolshevism and fascism, and finally an updated Marxism that threatened to lead to the ultimate apocalypse of a nuclear war. But the century that began full of self-confidence in the ultimate triumph of Western liberal democracy seems at its close to be […] the end of history as such: that is, the end point of mankind's ideological evolution and the universalisation of Western liberal democracy as the final form of human government.[167]

The 'new world order' rising from the ashes of the bipolar global political system does not necessarily proclaim an end to issues and conflicts producing refugees. On the contrary, in the new world order liberal democracy based on the respect for fundamental human rights has remained a privilege for few countries. Refugee crisis, as an influential tragic humanitarian phenomenon of the 20th century, seem to exist in the 21st century as well.[168]

The refugees of the 21st century as the refugees of the 20th century globally rely on the framework of international protection developed within the UN system. The primary instrument established within this framework is the 1951 *UN Geneva Convention Relating to the Status for Refugees*. The *1951 Convention* constitutes the

[166] UNHCR (2000), *The State of World Refugees: Fifty Years of Humanitarian Action,* Oxford: Oxford University Press.

[167] Fukuyama, F. (1989), 'The End of History?', *The National Interest*, No.16, p.3.

[168] Bocardi, I. (2002), *op.cit.,* p.1.

legal ground both for signatory states for defining refugee status and for refugees in respect to their rights. The *1951 Convention* is developed within the Cold War context just after World War II (WW II). However, the initiatives for granting rights and benefits refugees go before that period, to the end of World War I (WW I).

Before going in to a deeper analysis of the evolution of asylum policy within the EU, it is necessary to analyze the roots of the development of the international refugee regime and how it preserved its essential characteristics within the last five decades. This chapter analyzes the development of the international refugee regime and major motives behind it. It explores the basic tenets of the international regime and prepares the ground for the analysis of the restrictive policy development in Europe. It argues that the rights-based approach of the international refugee regime is challenged in the last decade with the growing securitization approach to refugees in Europe. The next section of this chapter clarifies certain aspects of the development of international humanitarian action on refugee protection.

3.1 Development of International Refugee Protection from Rights Based Approach

World War II and the events after the war have produced the largest population displacement in modern history.[169] After the war it was estimated that there were 40 million displaced people in Europe excluding 13 million ethnic Germans who were expelled from the Soviet Union, Poland, Czechoslovakia and other East European countries.[170] In the following years it become apparent that many other displaced people would join the existing ones after fleeing from the new totalitarianism imposed by the Union of Soviet Socialist Republics (USSR) leader, Joseph Stalin.

[169] UNHCR (2000), *op.cit.,* p. 13.

[170] Hobsbawn, E. (1994), *The Age of Extremes: The Short Twentieth Century*, London: Michael Joseph Publishers, pp. 50-52.

For that reason, thousands of people fleeing across the devastated European continent were a major concern dominating the post-war agenda.

In that era throughout the West, asylum was bound up with the concept of 'protection' which meant actually the protection from Communism, and the terms 'refugee' and 'defector' used synonymously.[171] The public associated refugees with the freedom fighters and rebels against the suppressive, authoritarian, and undemocratic regimes of the Eastern bloc. West provided necessary protection to these displaced people, offering ideological and moral support. Additionally, prevention of human rights violation and promotion of humanitarian values were targeted. In that respect, the notion of refugees as persons whose basic human rights are violated and who seek refuge in another country, derived from universal human rights. In that respect, after the Word War II the right of asylum was formalised with the codification of international human rights in an international regime and in national laws.

The principle of protecting refugees is related to the universality of the human rights norms which apply to every human being without regard of national boundaries. However, the direct link to the notion of state sovereignty and the rights of states to control entry into their territory cannot be ignored. Thus, the conceptualisation of the protection of the refugees is linked to the emergence of the modern state system during the 19th century.[172] This emergence confirmed the state sovereignty as "the institutionalisation of public authority within mutual exclusive jurisdictional domains."[173] With the birth of the nation-states the demarcation of boundaries

[171] Gibney, M.J. and Hansen, R. , 'Asylum Policy in the West: Past Trends, Future Possibilities', presented paper at the *World Institute for Development Economics and Research (WIDER) International Conference on Poverty, International Migration and Asylum*, Helsinki, 27-28-09.2002, p.2.

[172] Hathaway, J. (1991), The *Law of Refugee Status*, Toronto: Butterworth, p.1; Goodwin-Gill, G. (1996), *The Refugee in International Law*, Oxford: Clarendon Press, p.9.

[173] Ruggie, J. G. (1986), 'Continuity and Transformation in World Polity, Toward a Neorealist Synthesis', in Keohane, R.O. (ed.) *Neorealism and Its Critics*, New York: Columbia University Press, p.143.

between territories and people has been established.[174] These boundaries show the relationship between the rights and duties of the citizens to the state and vice-versa. In accordance with this idea, the primacy of personhood vis-à-vis state is secured within the context of the republican notion of universal human rights. These are expressed in the *French Declaration of the Rights of Man and Citizen* of 1789, the *American Declaration of Independence* of 1776, and the *Virginia Bill of Rights*.[175] The civil and political rights such as the right to life, the right to liberty, the prohibition of torture, and the freedom of expression limits the state's freedom of action towards the individual.

The idea that sovereignty resides with people dates back to the French Revolution. From this perspective the institutionalisation of citizenship has been shaped. In conformity with the enlightenment theories of Locke and Rousseau, civil and political rights constitute the basis for the jurisdiction and legitimisation of a state government. For Locke, the state should be conceived as an instrument for the defence of the 'life, liberty, and estate' of its citizens, the state's *raison d'etre.* Locke argues that it is the protection of individuals' rights as laid down by God's will as enshrined in law.[176] Locke also argues that humans are free and equal so that they enjoy natural rights. As a result, the right of governing one's affairs and enforcing the law of nature creates the obligation to respect the rights of others.[177] In other words, civil and political human rights became "the modern pillars of legal legitimacy and political power".[178] In that respect, the government apparatus no longer merely

[174] Brubaker, R. (1992), *Citizenship and Nationhood in France and Germany*, Cambridge MA: Harvard University Press, p.21.

[175] Habermas, J. (1996), 'The European Nation State: Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship', *Ratio Juris*, Vol. 9, No. 2, pp.125-137.

[176] Dunn, J. (1969), *The Political Thought of John Locke*, Cambridge: Cambridge University Press.

[177] Locke, J. (1963), *Two Treaties of Government*, Cambridge University Press: Cambridge, p.395.

[178] Habermas, J. (1994), 'Human Rights and Popular Sovereignty, the Liberal and Republican Versions', *Ratio Juris,* Vol. 7, No.1, pp. 1-13.

safeguards the prerequisites for the production process. Thus, the universalistic value systems of "bourgeois ideology has made civil rights, universal."[179]

Independent from historical and political aspects, human rights are considered to have universal validity. It applies to each and every state with the promotion of the realisation of universal values. On the other hand, the principle of universal application of human rights contradicts the concept of territorial sovereignty in the transnational sphere. Nation-state under the principle of territorial sovereignty presupposes to a certain degree the inclusion of members and exclusion of non-members. Through that process it aims to control the composition of its territory. Therefore, for the nation-state borders represent crucial conditions of popular sovereignty. As a consequence, the movements across the boundaries of the space that the state administers involve its vital interests.[180] A loss of control over the movement of persons to that territory would threaten the basis of its legitimacy.[181]

Although the refugee concept is directly linked to codification of international human rights, the admission of refugees and granting of protection are subject to the fundamental norm of state sovereignty which provides the right of states to admit or refuse the admissions of aliens into their territory.[182] Lavenex argues that the existence of individuals who lost the basic level of protection from their country of origin is "an anomaly in the nation state system."[183] Refugees, seeking the protection of another state "are transnational phenomena which conflict with the territorial organisation of states and rights."[184] In a world which is divided into territorial states

[179] Habermas, J. (1984), 'What does a Legitimisation Crisis Mean Today? Legitimation Problems in Late Capitalism', in Connoly, W. (ed.), *Legitimacy and State*, Oxford: Basil Blackwell, p.138.

[180] Brubaker, R. (1992), *op.cit,* p.25.

[181] Jacobson, D. (1996), *Rights Across Borders, Immigration and the Decline of Citizenship*, Baltimore: John Hopkins Press, p.4.

[182] Hathaway, J. (1991), *op.cit.*, p.1.

[183] Lavenex, S. (2001), *op.cit.*, p.10.

[184] Ibid.

without a space existing as "no man's land", the production of refugees automatically becomes a problem of international interdependence. This tension is expressed as "In such a world, a person cannot be expelled from one territory without being expelled into another, cannot be denied entry into one territory without having to remain in another."[185] Thus, refugees are a classic example of international interdependence and their situation requires the remedial action of another state in the international community.[186] Therefore, production of refugees by one state automatically impacts upon others. Accordingly, "the denial of protection by potential host country directly shifts the responsibility to provide shelter to another."[187] Leading towards a tension between the universal application of human rights and particular application of territorial sovereignty resulted with the development of a common ground for defining who is a refugee in need of protection and who is not.

Under these idealistic circumstances the very first step for the development of an international refugee regime was by international legal documents. These efforts date back to the League of Nations era. It was necessary to make definition and description of refugees in order to facilitate, justify, aid and protect them. Additionally, their entitlement of certain rights and benefits was crucial. Therefore, it was important in international law to take into account a comprehensive set of mechanisms including the traditional sources such as treaties and practices of states in addition to the practices and procedures of the various bodies established by the international community to deal with the problems of refugees.

Achieving a consensus on the definition of the highly political term 'refugee' was a problematic issue in the first place. The *Oxford English Dictionary* defines a 'refugee' as "one who, owing to religious persecution or political troubles, seeks refuge in a foreign country; originally applied to the French Huguenots who came to

[185] Brubaker, R. (1992), *op.cit* , p.26.

[186] Goodwin-Gill, G. (1996), *op.cit,* p.167.

[187] Lavenex, S. (2001), *op.cit* , p.10.

England after the revocation of the Edict of Nantes in 1685"[188] Then 'refuge' is defined as "shelter or protection from danger or trouble, succour sought by, or rendered to a person… A place of safety or security; a shelter, asylum, stronghold."[189] Hence, 'refugee' literally means someone who is in flight from intolerable conditions and circumstances to freedom and safety with the assumption that the person concerned is worthy of being assisted and protected from the causes of that flight. The reasons of the flight may be oppression, a threat to life or liberty, prosecution, deprivation, poverty, war or civil strife, the consequences of natural disasters such as earthquake, flood, drought, and famine.[190] As a result of this definition, ordinary non-political criminals fleeing from criminal prosecution are excluded from the category of refugees.

Consensus on a definition is important since it entitles rights to these people fleeing from the causes listed above, and requires states to fulfil obligations to these people. Expectably, with the willingness not to be bound with a relatively broad definition of the term states have insisted on fairly restrictive criteria for defining those who are to benefit from refugee status.[191] The following section looks through the early efforts to define refugees in an international framework of protection with legal instruments.

[188] *Shorter Oxford English Dictionary* (1985), Oxford: Clarendon Press.

[189] Ibid.

[190] Goodwin-Gill, G. (1985), *The Refugee in International Law*, Oxford University Press: Oxford, p. 1-4, Goodwin-Gill argues that for victims of natural disasters the fact is sufficient to make a claim but for the disaster with human origin additional clarifications will be needed. See further UN (1980), General Assembly Resolution, A/RES/35/228, par.19-25; UN (1980), *Report of the Joint Inspection Unit*, JUI/REP/80/11; UN (1981), General Assembly Resolution, A/RES/36/73

[191] Goodwin-Gill, G. (1985), *op.cit* , p. 3-4.

3.1.1 Early Efforts to Define Refugees in International Instruments (1922-46)

Refugee protection as a phenomenon is as old as the history of mankind.[192] Although throughout history people have had to abandon their homes and seek safety elsewhere to escape persecution, armed conflict or political violence, there were no universal standards for the protection of such people until the 20th century. It is possible to argue that it was not until after World War I, when the League of Nations came into being, that the refugee issue regarded as an international problem that had to be tackled at the international level.[193] These were all important steps providing the basis of the international refugee regime with developed certain standards of protection.

A category of approaches to the definition of refugees was adopted in treaties and arrangements concluded under the League of Nations. According to this group of refugee definition there should be two conditions for someone to be defined as refugee. This person has to be outside the country of origin and he/she has to be without the protection of the government of that state. Under these conditions presence outside the country of origin was not explicitly required, but this was implicit in the objectives of the arrangements, such as, the issuing of identity certificates for the purpose of travel and settlement.[194]

---

[192] Kimminich, O. (1978), 'Die Geschichte des Asylrechts', Amnesty International (ed.), *Bewahrungsprobe für ein Grunrecht.* Art. 16 Abs. 2 Satz 2 Grundgesetz, 'Politisch Verfolgte Geniessen Asylrecht', Baden-Baden: Nomos, pp.19-66. cited in Lavenex, S. (2001), *op.cit.,* p.27.

[193] UNHCR (1995), *The State of World Refugees: In Search of Solutions*, New York: Oxford University Press, p.1.

[194] It was also provided that certificates should ceased to be valid if the bearer returned to their country of origin. See form and wording of the certificate attached to the arrangement of League of Nations (1922), 13 LNTS No. 355, 5.7.1922; Res. 9 of the arrangement of League of Nations (1928), 89 LNTS No. 2005, 30.6.1928; Certificate attached to the League of Nations (1938), *Convention Concerning the Status of Refugees Coming from Germany*, 192 LNTS No.4461, 10.02.1938

A sim;ilar approach was adopted in 1936 for the arrangements in respect to those fleeing Germany.[195] This was later developed by Article 1 of the 1938 Convention to cover:

> (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are opposed not to enjoy, in law and in fact, the protection of German Government.
>
> (b) Stateless persons not covered by previous conventions or arrangements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German government.[196]

These definitions excluded involuntary emigration from Germany and Austria, as a result of political opinion, religious belief, or racial origin. It covers German nationals and stateless persons who are not under the protection of the German government. Consequently, Simpson argues all of these definitions have their inherent deficiencies. He emphasises the "essential quality" of the refugee as one "who has sought refuge in a territory other than that in which he was formerly resident as a result of political events which rendered his continued residence in his former territory impossible and intolerable."[197] The notion of "impossibility or intolerability" of continued residence was not precisely defined after World War II. A more precise criteria involving 'political events' was laid down. This was evident first in the Constitution of the International Refugee Organization (IRO), then in the Statute of the UNHCR, and finally in the provisions of the *1951 Convention Relating to the Status of Refugees*.

---

[195] League of Nations (1936), *Provisional Arrangement Concerning the Status of Refugees Coming from Germany*, 171 LNTS No.3952, 4.7.1936, Art. 1.

[196] League of Nations (1938), *Convention Concerning the Status of Refugees Coming from Germany*, 192 LNTS 59. The definition was subsequently extended to cover persons coming from Austria, following the *Anschluss*; see League of Nations (1939), *Additional Protocol*, 198 LNTS No.4634, 14.09.1939.

[197] Simpson, J. (1938), *Refugees: A Preliminary Report of a Survey*, London: Royal Institute of International Affairs, p.1

3.1.2 The Attempts for Institutionalization: The UNRRA as the Direct Predecessor of the UNHCR

Long before World War II has ended, the United Nations Relief and Rehabilitation Administration (UNRRA) was set up in November 1943 with the initiation of the Allies and the Soviet Union. It was replaced by the IRO in 1947. These two organizations were direct predecessors of UNHCR. UNRRA was not created specifically as a refugee agency; it provided emergency assistance to refugees and displaced persons in areas under Allied control. Until the end of the war, UNRRA was principally concerned with the repatriation of the millions displaced by the Nazi and Fascist regimes and by the effects of the war. It was not authorised to resettle the displaced persons or to deal with refugees as such. It worked closely with the Allied forces, which provided logistics and material support. Following the end of the war, UNRRA assisted the repatriation of refugees. There has been an increasing controversy of many refugees refusing to return back to their country of origin. These refugees were especially coming from countries which went under communist rule.[198]

The reluctance of refugees to return back to their country of origin remained a fundamental problem in the post-war years. The debate whether or not people should have the right to choose their country of residence and flee oppression became apparent with the East and West divide. The Eastern Bloc countries were insisting that UNRRA should provide assistance to those who want to return back. On the contrary, the US government was insisting that there should not be any discrimination for assistance on the grounds of the decisions of the refugees. This debate led to the termination of UNRRA and replacement of the UNRRA by a new organisation with different orientation and mandate. Undoubtedly, UNRRA has added to the development of an international refugee regime with the protection of victims of persecution and war as one of the humanity's moral and legal responsibility.

[198] For more details see also; UNHCR (2000), *op.cit,* p.14.

3.1.3 The International Refugee Organization and the Question of 'Who Deserves Refugee Protection?'

The International Refugee Organization (IRO) was created in 1947 as a non-permanent UN specialized agency. It had a three-year programme to be completed by 1950. Distinct from the UNRRA it was the first international body to deal with every aspect of refugee issues. The organization had a very broad mandate including a comprehensive approach of assisting the refugees without being limited only with the function of repatriation. However, its work was limited to assist only European refugees. The IRO Constitution included the objective of "bringing about a rapid and positive solution to the problem of *bona fide* refugees and displaced persons, which shall be just and equitable to all concerned."[199] Doing so the IRO Constitution highlighted two important aspects which later constituted the basis of refugee protection. The first one was the voluntary repatriation and the second one was the definition of the term 'refugee'.

First of all, there was a clear shift from the policy of repatriation of the UNRRA mandate. The US government was critical of forcibly returned refugees to their home countries. The IRO Constitution aimed to change this issue. The IRO Constitution's principal task was concerning the displaced persons. It was stated that the main aim was "to encourage and assist in every way possible their [displaced persons'] early return to their countries of origin".[200] Unlike the UNRRA, the IRO aimed to resettle the refugees from countries of asylum to third countries. It emphasized the UN Resolution of 12th February 1946 regarding the problems of refugees, which declared that "no refugees or displaced persons shall be compelled to return to their country of origin".[201] Moreover, it also recognized that individuals might have 'valid objections' to return to their country of origin including the persecution or fear based on

[199] International Refugee Organization (IRO) (1946), *International Refugee Organization Constitution,* 18 UNTS 3, Annex 1, Art. 1(a).

[200] IRO (1946), Annex 1, Art. 1 (b).

[201] UN (1946), *General Assembly Resolution*, A/RES/17, 12.02.1946.

reasonable grounds of persecution because of race, religion, nationality or political opinions and objections "of a political nature judged by the IRO to be valid."[202] In this respect, the early indications of the development of the principle of *non-refoulement* can be seen in the IRO Constitution and later in IRO's practices.

This policy shift from repatriation to resettlement impelled criticisms from the Eastern bloc countries. It was argued that resettlement was used as a means of acquiring labour by the West and offering shelter to subversive groups which might threaten international peace.[203] On the contrary, the IRO Constitution clearly defined under which circumstances a refugee or a displaced person shall be protected. According to Article 1 (c) of the Constitution: "no international assistance should be given to traitors, quislings and war criminals, and nothing should be done to prevent in any way their surrender and punishment."[204] The Constitution also included the article "It should be the concern of the Organization to ensure that its assistance is not exploited in order to encourage subversive or hostile activities directed against the Government of any United Nations."[205] These articles aimed at achieving impartiality on the organization for providing assistance to refugees and displaced persons in need of protection.

In terms of the concerns for using refugees as a ready source of labour for the Western economies the constitution included a clause for the distinction between a refugee and an immigrant. Article 1 (e) highlights this distinction as such: "it should be the concern of the Organization to ensure that its assistance is not exploited by persons in the case of whom it is clear that they are unwilling to return to their countries of origin because they prefer idleness to facing the hardships of helping in the reconstruction of their countries, or by persons who intend to settle in other

[202] IRO (1946), Annex 1, Part I, Section C, 1 (a) (ii).

[203] UNHCR (2000), *op.cit,* p.17.

[204] IRO (1946), Annex 1, General Principles, Art. 1 (c), see also; UN (1946), *Economic and Social Council Resolution*, No. 8(I), 16.2.1946.

[205] IRO (1946), Art. 1 (d).

countries for purely economic reasons, thus qualifying as emigrants."[206] This article was not sufficient to settle the criticisms that the IRO was used as a tool by Western bloc countries for providing labour force for their economies. The IRO resettled over a million people with the majority going overseas such as the United States, Canada, Australia, Israel, and various Latin American countries.

Despite the criticism in terms of the resettlement issue, the IRO Constitution was useful for developing the definition of refugees and displaced persons. It brought a broad and comprehensive understanding of refugee definition. Although it was not legally binding upon the member states, the IRO refugee and displaced person definition was the broadest of all the definitions developed afterwards through international covenants and conventions. It aimed at several categories of these people to be assisted. It aimed that no *bona fide* and deserving refugee or displaced person is to be deprived of the IRO assistance.

As a consequence, Part I and Section A of the Constitution included the 'definition of refugees' within the meaning of the Resolution adopted by the Economic and Social Council of the UN.[207] In the IRO Constitution the term 'refugee' applied to a person who has left, or who is outside of, his country of nationality or of former habitual residence. In addition, in the IRO definition there was no pre-condition for protection of the persons to be without nationality. In this respect, the term 'refugee' applied to a person who, whether or not he had retained his nationality. Consequently, the category of 'refugees' included victims of the Nazi or Fascist regimes or similar regimes which assisted them against the UN, certain persons of Jewish origin, Spanish Republicans and other victims of the Falangist regime in Spain, or stateless persons who had been victims of Nazi persecution, as well as persons considered refugees before World War II for reasons of race, religion, nationality, or political opinion. In addition, the IRO Constitution included "those unable or unwilling to

[206] IRO Constitution (1946), Art. 1 (e).

[207] IRO Constitution (1946), Annex 1, Art. 1 (c).

avail themselves of the protection of the government of their country of nationality or former residence" as "refugees".[208]

Adding to that provision IRO Constitution makes a clarification that the term 'refugee' excludes persons, other than a 'displaced person' defined in Section B of the Annex.[209] From this perspective, the term 'displaced person', applies to a person who, as a result of the actions of the authoritative regimes has been deported from, or has been obliged to leave his country of nationality or former habitual residence. It also included the "persons who are compelled to undertake forced labour or who are deported for racial, religious and political reasons."[210] This provision was to provide adequate protection and assistance for people who suffered in the concentration camps. The Constitution added that if the reasons for these peoples' "displacement have ceased to exist, they should be repatriated as soon as possible."[211] During its operation IRO assisted with the repatriation of 73,000 people.[212] This could be regarded as a relatively small number compared to 1 million of them resettled in other countries.

A whole section of the IRO Constitution was devoted to the conditions under which 'refugees' and 'displaced persons' would become the concern of the Organization if they were considered to have valid objections for repatriation. It was claimed that after full knowledge of the facts, including adequate information from the governments of the countries of the refugees and displaced persons nationality or former habitual residence, they may decide to opt out from repatriation. However, it was required that this objection of repatriation or in other words returning back to those countries had to be on valid grounds. The following was considered as valid

[208] IRO Constitution (1946), Annex 1, Art. 1 (c).

[209] For more details of the definition of the term 'displaced persons' see also IRO (1946), *Constitution*, Annex 1, Part I, Section B.

[210] IRO (1946), *Constitution,* Part I, Section B.

[211] Ibid.

[212] UNHCR (2000), *op.cit.,* p.17.

objections: “Persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinions, provided these opinions were not in conflict with the principles of the United Nations”[213] or as a result of “compelling family reasons arising out of previous persecution, or, compelling reasons of infirmity or illness.”[214] These paragraphs gave the right for the refugees and displaced people to consider resettlement into another country rather than returning back to the country of origin in case they may face persecution. There was also room for fear of possible persecution for valid objection to return back to the country of origin.

Notwithstanding its efforts to find durable solutions to the refugee problem with the development of a resettlement policy and defining who deserved protection and who did not in its Constitution, IRO was unable to solve the refugee problem in Europe. The organization finally closed down in February 1952 when there were around 400,000 people remained displaced within the continent. IRO was useful for the practice of a specialized refugee organization especially for the establishment of UNHCR. It also contributed to the definition of a general conceptualisation of the term ‘refugee’.

3.1.4 International Protection Instruments Developed within the United Nations

In the Interwar period the efforts to regard the refugee issue as an international problem that had to be tackled at the international level were localized and *ad hoc* in nature. Additionally, the management of the refugee problems was slow and not continuous. Even though tackling the refugee problem throughout the European continent was a major issue after the end of WW II, there were no legally binding instruments for states. Until 1950-51 the international community had still not established a network of institutions, systems, and legislation to deal with the refugee

[213] IRO (1946), *Constitution*, Part I, Section C, 1 (a) (ii).

[214] IRO (1946), *Constitution,* Part I, Section C, 1 (a) (iii).

problem in a global manner. The efforts of UNRRA and IRO were only regional in nature. Furthermore, the spirit of these organizations did not reflect a compromise between the two blocs of the Cold War. For this reason, the practices of these organizations raised concerns and their impartiality were questioned. Divergences to set a specialized refugee organization were apparent in the first place since traditionally the US was the main country providing the funding for such organizations including the former UNRRA and IRO. From this perceptive, a uniform interpretation of the term 'refugee' was particularly problematic.

Adding to the understanding on the refugee concept built before and during World War II, the establishment of the United Nations was important. The refugee related developments within the UN have affected the construction of 'refugee' as a concept. The basis for an international legal concept of refugee can be sought in treaties, in UN practice, and in the UNHCR Statute. One of the most important of these legal instruments is the Universal Declaration of Human Rights. According to Article 14 of the Universal Declaration of Human Rights: "(1) Everyone has the right to seek and enjoy in other countries asylum from persecution. (2) This right may not be invoked in case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."[215] Therefore, to seek asylum is a basic human right to be enjoyed by individuals. Member states of the UN are bound by the application of this basic human right and the citizens of these countries can fully enjoy this right. On the other hand, this is not a legally binding document for states to grant admission to their territory with an unconditional right of asylum. Likewise, states were reluctant to limit their sovereign authority of controlling their borders.

Nonetheless, inclusion of the asylum right to the Universal Declaration of Human Rights was a fundamental step for the development of an international regime for the protection of refugees. This notion was further institutionalized by the Statute of the UNHCR. In December 1949, the UN General Assembly decided to establish the

[215] UN (1948), *Universal Declaration of Human Rights*, A/811, 10.12.1948, Art. 14 adopted by the United Nations General Assembly,1012.1948

Office of the UNHCR for the initial period of three years from 1st January 1951. The consensus of the US and other Western states vis-à-vis their counterparts in the Eastern bloc and the differences between the US and Western European states in their immediate priorities were reflected in the Statute of the UNHCR.[216] Reflecting the realities of the Cold War era the Statute highlighted the non-political character of the work of the High Commissioner. From this perspective, it was aimed to prevent a paralysis of the Organization in dealing with the refugee issues. In the next section the nature of the Statute of the UNHCR will be analyzed.

3.1.4.1 The Statute of the United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees was established as the principal UN agency concerned with refugees; it has also affected the development of the refugee concept. UNHCR was established by the General Assembly of the UN to provide the necessary protection for the refugees and to seek permanent solutions for the problems of refugees.[217] According to its Statute the work of the UNHCR has to be entirely non-political, humanitarian, and social and it has to relate to groups and categories of refugees. It is the first organization providing solutions to global refugee issues.

The Statute brings within UNHCR's competence refugees covered by various earlier treaties and arrangements. Chapter II of the Statute includes into the definition: "Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization."[218] It defines refugees without temporal or geographical

[216] UNHCR (2000), *op.cit,* p.19.

[217] UN (1950), *Statute of the Office of the United Nations High Commissioner for Refugees*, General Assembly Resolution, 428 (V), 14.12.1950.

[218] UN (1950), *op.cit*, Chapter II, Article 6 A (i).

limitations. Therefore, it has universal application. Moreover, it includes refugees resulting from events occurring before 1 January 1951. Article 6 A (ii) defines a 'refugee' to be:

> Any person who, …owing to a well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.[219]

The Statute also states that the competence of the High Commissioner shall extend to "Any person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reasons of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence."[220] By this statement the Statute also includes persons who do not have a nationality, but reside in a country other than his country of origin.

This broad refugee definition does not necessarily mean that there are no restrictions for coverage of persons to be defined as refugees. The main criterion for protection is the lack of safeguard by the government of the fleeing person. The restrictions clauses of the Statute list provisions under which circumstances the competence of the High Commissioner cease to apply.[221] This provision distinguishes refugees from ordinary aliens. The definition is in vital importance as it also entitles the High

[219] UN (1950), *Statute of the UNHCR*, Chapter II, Article 6 A (ii).

[220] UN (1950), *Statute of the UNHCR*, Chapter II, Article 6 B.

[221] UN (1950), *Statute of the UNHCR*, Chapter II, Article 6 B. (a)-(f) and Art. 7 (a)-(d).

Commissioner to provide protection and assistance to refugees falling under the competence of his Office. Therefore, the protection of the refugee's basic human rights, including the right to life, liberty, and the security of the persons are guaranteed under the UN system. Although the Statute outlines a detailed and broad definition of refugee and the circumstances in which persons will be entitled to protection by the organization, it does not constitute a legally binding document that the states are obliged to provide protection.

The first legally binding document for the protection of refugees was through the 1951 *Convention Relating to the Status of Refugees*. The term refugee was then legally defined and accepted by this Convention. Later on, the relation of asylum to persecution is maintained in the *1967 Declaration on Territorial Asylum* which also deals with the circumstances in which "the right to seek and to enjoy asylum" may not be invoked.

3.1.4.2 The United Nations Convention Relating to the Status of Refugees

The adoption of the *1951 United Nations Convention Relating to the Status of Refugees (1951 Convention)* together with the UNHCR provided for the first time a formal structure for responding to the needs of refugees and standards for the protection of refugees under international law.[222] The *1951 Convention* was adopted by the United Nations Conference on the Status of Refugees and Stateless Persons which was held in Geneva on 2-25 July 1951. It was opened for signature on 28 July and entered into force on 22 April 1954. The rights and obligations set out in the 1951 UN Convention lie at the heart of UNHCR's work.

The Convention pointed out the obligations and rights of refugees, and additionally the obligations of states towards refugees. It is also the first global document setting out the international standards for the treatment of refugees. In addition to that it

[222] UNHCR (1995), *op.cit,* p.2.

embodies principles that promote and safeguard refugees' rights in the field of employment, education, residence, freedom of movement, access to courts, naturalization and, above all, the security against returning to a country where they may risk persecution. The Convention created new obligations which would be binding under international law. The states participating in the drafting process aimed to restrict the definition to categories of refugees towards whom they would be willing to assume legal obligations.

While Article 1 of the *1951 Convention* gives the definition of the term 'refugee', usually the term is misused. The term has slipped into common usage to cover a range of people, including those displaced by natural disaster or environmental change. Besides, refugees are often confused with migrants and with asylum seekers whose status has not yet been determined by consensus under international law. Article 1 of the *1951 Convention* clearly defines the specific meaning of a 'refugee'. Before giving the definition of who is a 'refugee' it may be necessary to clarify the other terms that cause confusion. One of them is the term 'asylum seeker'. An 'asylum seeker' is a person who has left his/her country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on his/her application. Moreover, the common usage of the term 'economic refugee' is definitely not correct. The accurate description of a person who leaves his/her country or place of residence because he/she seeks better life opportunities is an 'economic migrant'. Migrants make a conscious choice to leave their country of origin and they can return back to their country of origin if they wish to do so. It is safe and possible for them to return back to their home countries if their achievements in the country of destination do not correspond to their expectations. One other term is 'internally displaced persons' who are compelled to move but do not cross international borders.[223]

This confusion and misunderstanding of the term refugee necessitated a universal definition accepted by a consensus of the UN member states. Several attempts to

[223] Chimini, B.S. (ed.) (1999), *International Refugee Law: A Reader*, London: Sage Publications, p.1.

define the term 'refugee' have been made in the course of the Twentieth Century. Thus, the General Assembly of the UN decided to organize a conference for the drafting and signing of a convention relating to the status of refugees. The General Assembly Resolution 429(V) of 14th December 1950 called for a Conference of Plenipotentiaries in Geneva. The result of the United Nations Conference on the Status of Refugees and Stateless Persons[224] held in Geneva on 2-25 July 1951 was *the Convention Relating the Status of Refugees*. As stated in the Convention's Preamble, the Conference used as the basis of its discussion the draft Convention Relating the Status of Refugees and the draft Protocol Relating to Refugees and Stateless Persons prepared by the *ad hoc* Committee on Refugees and Stateless Persons at its second session held in Geneva on 14-25 August 1950, with the exception of the preamble and article 1 defining the term 'refugee' of the draft Convention.[225] The text of article 1 was recommended by the General Assembly on 14th December 1950 and contained in the Annex to Resolution 429 (V).[226]

The Convention comprises a fundamental step for policy change from various aspects. The Convention highlighted a range of issues which then became the principal foundations of international refugee protection. These were the widest possible exercise of fundamental human rights and freedoms by refugees, individual application of those rights to refugees, international cooperation on burden-sharing for refugees, respecting the notion of family as a unit, and the principle of *non-refoulement*. Moreover, the Convention has become an internationally binding instrument bringing together the preceding legal documents and practices developed both within the League of Nations and the United Nations mechanisms. It stresses the desire "to revise and consolidate previous international agreements relating to the

[224] Twenty-six states were represented by delegates authorized to participate in the Conference. Within these twenty-six countries neither Soviet Union nor any of the Eastern bloc countries were present. Cuba and Iran participated as observers. For the full list of these twenty-six states see also UN (1951), *Convention Relating to the Status of Refugees*, Text: 189 UNTS 150

[225] UN(1951), *Convention Relating to the Status of Refugees*, Text: 189 UNTS 150, Preamble.

[226] UN (1950), *Economic and Social Council Resolution*, Annex 429 (V), 319 B II (XI).

status of refugees and to extend the scope and the protection accorded by such instruments by means of a new agreement."[227]

First of all, the adoption of the definition of the term 'refugee' marked a significant change in policy. Before the adoption the refugees in the preceding years were identified as a group. The Convention refers to the Charter of the UN and the *Universal Declaration of the Human Rights*. The reference is through the affirmation of the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. From a rights based approach, considering refugees as individuals whose fundamental human rights and freedoms are violated, the concept of protection of those rights is underlined. The emphasis is given that "the UN has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms."[228] It is to ensure that refugees being unable to avail themselves from their governments shall not be excluded from fulfilment of their basic human rights.

Secondly, the Convention draws attention to burden-sharing. It argues that the grant of asylum may place disproportionately heavy burdens on certain countries. Therefore, a satisfactory solution of a problem of which the UN has recognized with an international scope and nature cannot be achieved without international cooperation. In that case, all the member states shall recognize the social and humanitarian nature of the problem of refugees. Moreover, the UN recommends through this convention that they shall do everything within their power to prevent this problem from becoming a cause of tension between states. In due course the High Commissioner recommends assisting with the efforts to take effective coordination measures to deal with the refugee related problems with the task of supervising international conventions.

[227] UN (1951), *Convention Relating to the Status of Refugees*, Text: 189 UNTS 150, Preamble.

[228] *Ibid.*

Thirdly, the Convention recognizes that the unity of the family, the natural and the fundamental group unit of society, is an essential right of the refugee, and that such unity is constant. The governments are recommended to take necessary measures for the protection of refugee's family. It is commented that the rights granted to a refugee are extended to the members of his family.[229] Ensuring the unity of the refugee family is thus, recommended to be guaranteed by the Convention. The comprehensive coverage of the refugee with his/her family was an initiative step for further advancement in this area.

Most importantly, the Convention provided the legally binding apparatus for states to decide who under what circumstance deserve legal protection of its signatory states. As a phenomenon, the definition of the term 'refugee' provoked major controversy. Through the Convention governments participated to the conference achieved a consensus on a universally applicable definition of the term 'refugee' centred on the concept of well-founded fear of persecution. Some states such as United States favoured a narrow definition in order to avoid the legal obligations that a broader definition would impose. Some other Western European countries on the other hand, favoured a broader definition in order to provide wider protection of refugees while at the same time ensuring a wider application of protection of human rights. As a result of this second group's efforts the legal obligation imposed upon the signatory states was a major limitation to the state sovereignty.

3.1.5 Who is a Refugee and Who is Not?

The most widely accepted definition of a 'refugee' is contained in the 1951 Convention. The Convention acknowledges the previous arrangements to define refugees. Moreover, it provided the first globally accepted definition of a term 'refugee.' The definition of 'refugee' in international law is of critical importance as

[229] UN (1950), *Official Commentary of the ad hoc Committee Statelessness and Related Problems*, E/1618, Lake Success, New York, 16 January to 16 February 1950.

it can mean the difference between life and death for an individual seeking asylum.[230] A refugee can be defined in three ways: legally as stipulated in national and international law; politically as interpreted to meet political exigencies; and sociologically as reflecting an empirical reality.[231] Different international legal instruments encompass different definitions and these different definitions may impose "finite limits on human problems" and they may often "tend to raise form over substance, class over need, [and] characterization over purpose."[232] Therefore, the universal definition of the term 'refugee' in the 1951 Convention is of critical importance.

According to Article 1 paragraph A (1) of the Convention, the term 'refugee' applies to any person who: "has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization." It also accepts that decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of Article 1 paragraph A (2) of the Convention which defines who shall be a 'refugee'.

The universal definition of 'refugee' safeguarded under international law is explained in Article 1 of the 1951 Convention.

> A (2) [Any person who]…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling

[230] Chimini, B.S. (1999) (ed.), *op.cit,* p.1.

[231] Suhrke, A. (1983), 'Global Refugee Movements and Strategies of Response', in Kritz, M. (ed.), *US Immigration and Refugee Policy: Global and Domestic Issues*, DC Heath: Lexington, pp. 157-62.

[232] Goodwin-Gill, G. (1990), 'The Beningo Aquiono Lecture in Human Rights: Refugees and Human Rights: Challenges for the 1990s', *International Journal of Refugee Law*, Special Issue, September, p.34.

> to avail himself of the protection of that country of his former habitual residence …is unable or, owing to that fear, is unwilling to return it…[233]

The refugee definition contained in the 1951 Convention was limited to persons who became refugees "as a result of events occurring before 1 January 1951." This was the time limitation of the Convention. The time limitation was removed by the 1967 Protocol Relating to the Status of Refugees, which came into force on 4th October 1967.[234] Although the 1967 Protocol is integrally related to the 1951 Convention, it is an independent legal instrument. In accepting it, states agree to apply Articles 2-34 of the 1951 Convention to all persons covered by the refugee definition. Acceding to the Protocol alone is sufficient to make most of the Convention's provisions applicable to the acceding state. Most states, however, have preferred to ratify both the Convention and the Protocol, thus reinforcing the two instruments' authority as the basis of international refugee law.[235]

In the Convention there is also a geographical limitation for the refugees. Convention clarifies the words "events occurring before 1 January 1951" to mean "events occurring in Europe or elsewhere before 1 January 1951."[236] Thus, the 1951 Convention has been criticized to be Eurocentric in focus and carrying Cold War origins. When becoming a party to the 1951 Convention states also had the right to make a declaration limiting their obligations under the Convention to refugees fleeing from events occurring in Europe. One of the examples of such countries is Turkey. Turkey, as a signatory state to the 1951 Convention uses its right arising

[233] UN (1951), *Convention Relating to the Status of Refugees*, Art. 1.

[234] UN (1967), *Protocol Relating to the Status of Refugees*, 606 UNTS 267.

[235] By 31st December 1999, one hundred and thirty four (134) states had acceded to the 1967 Protocol. At that time the only states, which had acceded to the 1951 Convention, but not to the 1967 Protocol were Madagascar, Monaco, Namibia, St. Vincent and the Grenadines. The only states which had acceded to the 1967 Protocol but not to the 1951 Convention were Cape Verde, the United States and Venezuela.

[236] UN (1951), *Convention Relating to the Status of Refugees*, Art. 1., parag. B (1) (b).

from the Convention to grant refugee status only to persons coming from European countries. Signing the 1967 Protocol Turkey lifted the time limitation for granting refugees status while reserving the geographical limitations.

Table I. States that adopted the geographical limitation as of 1st October 2004

States	Acceptance date of the 1951 Convention	Acceptance date of the 1967 Protocol
Congo	15 Oct 1962 s	10 Jul 1970 a
Madagascar (C)	18 Dec 1967 a	
Monaco (C)	18 May 1954 a	
Turkey	30 Mar 1962 r	31 Jul 1968 a

Notes:

* Ratification (r), Accession (a), Succession (s)

** (C) denotes States Parties to the 1951 Convention only.

Source: UNHCR[237]

There are several conditions in the Convention stating how and when the Convention will cease to apply.[238] The exclusion clauses of the Convention list the categories of persons who do not deserve international protection. Clause F of Article 1 clarifies under which circumstances a person ceases to be protected. According to this provision, persons who have committed "a crime against peace, a war crime, or a crime against humanity" or "a serious non-political crime outside the country of refuge prior to admission to that country as a refugee" become excluded from the

[237] See also the UNHCR webpage for the list of states parties to the 1951 Geneva Convention and the 1967 Protocol, http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d9abe177 and the webpage for the list of states having reservations and declarations to the Convention and the 1967 Protocol http://www.unhcr.ch/cgi-in/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d9abe177

[238] UN (1951), *Convention Relating to the Status of Refugees*, Art. 1., parag. C-F.

protection of the Convention. In that respect, the aim is to protect persons who have not committed ordinary crimes or crimes against humanity. While doing so the Convention safeguards the rights of *bona fide* refugees defined in the IRO Constitution. The 'cessation clause' contained in clause C of Article 1 discusses the circumstances which international protection may cease. The cessation clause is exhaustive in its listings.[239] It is generally agreed that the enumeration of cessation clauses in Article 1C of the 1951 Convention and in the second section of Paragraph A of the UNHCR Statute is exhaustive. Thus, once a person has become a refugee as defined in Article 1 of the Convention or paragraph 6A of the Statute, he continues to be a refugee until he falls under any of those cessation clauses.[240]

The refugee definition of the 1951 focusing on well-founded fear of persecution reflects a fundamental change in the definition. It replaces the earlier method of defining refugees by categories. Before the adoption of 1951 definition the refugees in the preceding years were identified as a group such as persons of a certain origin not enjoying the protection of their country. After the adoption they were identified as individuals on a case-by-case basis by the general concept of 'fear' for a relevant motive. While fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. In this context, it is possible to ask if an 'objective' measure of well-founded fear is possible at all. For example, it is doubtful that the availability of a huge quantity of information on human rights record of the country of origin offers a method of determining well-founded fear.

The phrase 'well-founded fear' used in the 1951 Convention carries major controversies by itself. Its interpretation generates debate on how to determine 'well-founded fear' of being persecuted can be applied to the objective or subjective test. Hathaway suggests objective tests and argues that granting refugee status has little to

[239] Chimini, B.S. (1999) (ed.), *op.cit,* p.7.

[240] Grahl-Madsen, A. (1966), *The Status of Refugees in International Law*, Leiden: A. W. Sijthoff, Vol.1, p.369.

do with the state of mind of the individual concerned.[241] He argues that the refugee claimant must be genuinely at risk. Believing to be in jeopardy is not enough. There should be objective facts to provide concrete foundations for the concern to seek protection in another state. Unfortunately, any determination of well-founded fear is an interpretation which is deeply influenced by state policies.[242]

While protecting civil and political rights the 1951 Convention does not mandate protection for those whose socio-economic rights are at risk. Even though it is difficult to sustain a clear distinction between political and economic causes of flight, the Convention does not include protection for persons fleeing as a result of economic reasons.[243] Thus, it is defined in the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* that if a person is moved exclusively by economic considerations, he/she "is an economic migrant and not a refugee".[244] Therefore, states can regard individuals with such claims as economic migrants. However, the inextricably intertwined relationship between economic and political measures is acknowledged. Since primarily an economic motive may also involve a political element, the victim may as well become a refugee upon leaving the country.[245]

The denial of the socio-economic rights as the basis of refugee status is supported on the grounds that "…hundreds of millions of people, including the entire Third World…suffer the deprivation of the 'right' set forth in the Covenant [on Economic, Social, and Cultural Rights], thus implying a right of asylum for anyone from an economically backward society."[246] Conversely, it is difficult to agree that

---

[241] Hathaway, J. (1991), *The Law of Refugee Status*, Toronto: Butterworth's, pp.2-6.

[242] Chimini, B.S. (1999) (ed.), *op.cit.*, p.3.

[243] UNHCR (1979), *Handbook on Procedures and Criteria for Determining Refugee Status,* Geneva: UNHCR.

[244] UNHCR (1979), *op.cit,* parag. 62.

[245] UNHCR (1979), *op.cit,* parag. 63-64.

[246] Burke, S. (1984), 'Compassion versus Self-interest: Who should be Given Asylum in the United States?', *Fletcher Forum*, Vol.8, pp. 319-320.

broadening protection to include social and economic rights at risk certainly does not mean that every poor person can claim refugee status in economically advantageous states of the world. The refugee protection becomes relevant on the grounds to vindicate the right to everyone the social, economic, and cultural attributes which are essential to human dignity stated in the *International Covenant on Economic, Social, and Cultural Rights (ICESCR).*[247]

1951 Convention became the very power tool for maintaining the rights of refugees in a global scale. The power of the Convention came from the number of countries that ratified the Convention. Similar rights have been set out in the 1933 *Convention Relating to the International Status of Refugees*. However, this convention was only ratified by eight states. Another relevant international instrument was the 1938 *Convention Concerning the Status of Refugees* from Germany. This one as well was ratified by a very small number of states; only two ratifications including the United Kingdom and the Netherlands.

The 1951 Convention can be regarded as a significant mechanism as it is the only universal instrument of the international refugee law. Although it was initially limited to the refugees of Europe, it provided a general definition of refugee.[248] Also it recognizes that people who fall into refugee definition should benefit from certain rights, and that helping refugees should not simply be a question of international compassion or a political advantage. This develops a mechanism in which sovereign power of states are to a certain extend limited with an international convention.

[247] Hathaway, J. (1991), *The Law of Refugee Status*, Toronto: Butterworths, pp.116-17.

[248] UNHCR (2000), *op.cit.,* p.24.

3.1.5.1 The Mandate and the Role of the UNHCR

Primary responsibility for protecting and assisting refugees lies with the countries of asylum to which refugees flee.[249] Nonetheless, UNHCR also has an important role in promoting and monitoring states' loyalty to the Convention and enabling them to offer adequate protection to the refugees on their territory. While working in corporation with states, it has a mandate to provide international protection and solution for refugees. This relationship of UNHCR with states is not always smooth. Although the states are UNHCR's partners, tension can be particularly evident in UNHCR's relationship with states. On the one hand, states are the ones who established the framework of international refugee law that guides the UNHCR's work and they are represented on UNHCR's Executive Committee. In addition, states donate funds and provide UNHCR with permission to operate on their territory. On the other hand, on several occasions the UNHCR's role and operation is challenged by states "either for causing refugee movements for failing to provide adequate protection and assistance to refugees and asylum seekers".[250]

The major aspects of the mandate and the activities of UNHCR are to safeguard the rights and benefits of refugees. The organization's activities during the early years of its existence and in its later years have differed considerably. UNHCR's activities during its early years usually described as having been reactive, exile-oriented and refugee specific.[251] These activities are reactive in the sense that UNHCR dealt with refugee problems primarily in the country of asylum. They were also exile-oriented because efforts were focused on activities in the country of asylum, and responsibility for solving refugee problems was seen as resting with countries receiving refugees rather than those producing them. These efforts were refugee

[249] UNHCR (2000), *op.cit.*, p.2.

[250] UNHCR (2000), *op.cit.*, p. 3.

[251] UNHCR (1995), *op.cit.*, pp. 30-35.

specific, because UNHCR generally did not concern itself with other forms of forced displacement.[252]

Compared to early years, UNHCR's activities in the later years like in the post-Cold War period have been described as proactive, homeland-oriented and holistic.[253] These activities were proactive as the organization has been much more willing to engage in activities aimed at preventing the human rights abuses and situations, which give rise to displacement. They were homeland-oriented because UNHCR's strategy has increasingly emphasized not only the duties of the host countries but also the obligations of countries from which refugees flee. The activities were holistic, because the organization has sought to promote a more comprehensive approach to the problem of forced displacement. This approach can be considered as more long-term and it takes into consideration the needs of not only refugees but also the internally displaced people, returnees, asylum seekers, stateless people and others. Article 9 of the Statute of the organization provides the legal ground for the expansion of UNHCR's mandate to include non-refugee populations such as internally displaced people, returnees, asylum seekers, stateless people, war-affected populations and others with the provision that "[the organization]…shall engage in such activities…as the General Assembly may determine."[254]

High Commissioner for Refugees Sadako Ogata argues that if these increasing numbers of forced migrants fleeing from their homeland and seeking refugee in another state may generate tensions and insecurity particularly in countries, which are unable to meet the needs of their citizens, let alone thousands of displaced and distressed new arrivals.[255] At the moment the traditional UNHCR position has problems. In the classical UNHCR position 'physical location' matters as UNHCR waits for refugees to cross an international border before providing them with

[252] UNHCR (2000), *op.cit.*, p. 4.

[253] *Ibid.*

[254] UN (1950), *Statute of the UNHCR,* Art.9.

[255] UNHCR (1995), *op.cit.*, p.9.

protection and assistance.[256] Coupled with the growing scale of the refugee problem, the changing nature of the international political and economic order have forced UNHCR to develop a new approach to the question of human displacement.

3.1.5.2 The Principle of *Non-refoulement*

The principle lying in the very heart of refugee protection is the principle of *non-refoulement*. This principle is developed through the 1951 Convention and is the fundamental element of the international refugee protection. The 1951 Convention does not contain a 'right of asylum'. On the other hand, one of the key provisions is the obligation of states which are party to the convention not to expel or return a refugee to a state where he/she would face persecution. Similar rights had been set out in the 1933 Convention Relating to the International Status of Refugees, which was the first international instrument to refer to the principle that refugees should not forcibly be returned to their country of origin.[257]

The term *non-refoulement* derives from the French refouler, which means to drive back or repel, as of an enemy who fails to breach one's defences. Actually, the words 'expel or return' in the English version of Article 33 has no precise meaning in general international law.[258] While developing this principle, the states were not prepared to incorporate any article in the Convention on admission of refugees to their territories. The principle of *non-refoulement* in a limited obligation may be seen as the un-wished-for duty to grant asylum.[259]

The prohibition of expulsion or return of the refugee is set out in Article 33 of the 1951 Convention: "No Contracting State shall expel or return ("refouler") a refugee

[256] Sobel, L. (1998), *Refugee: A World Report*, Michigan: Bell and Howell Company, p.19.

[257] Goodwin-Gill, G. (1996), *op.cit,* p. 118.

[258] Goodwin-Gill, G. (1996), *op.cit* , p. 69.

[259] Goodwin-Gill, G. (1996), *op.cit* , p. 74.

in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion…"[260] According to the principle of *non-refoulement* no refugee should be returned to any country where he/she is likely to face persecution or danger to life or freedom.

The general usage of *non-refoulement* is that a state will not refuse admission to a refugee and will at least offer the person temporary asylum. Grahl-Madsen argues that Article 33 is limited to those present lawfully or unlawfully in the territory of contracting states, and protection depends upon having "set foot" in that territory.[261] In 1951, the principle of *non-refoulement* was binding solely on the conventional level, and it did not encompass non-rejection at the frontier.

Non-refoulement is not an absolute principle. In the previous conventions "national security" and "public order" have long been recognized as potential justifications for derogation.[262] The exception to the *non-refoulement* principle is when a refugee creates "a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."[263] It is the same case for expulsion. It is stated in Article 32 that "the contracting states shall not expel a refugee lawfully in their territory on grounds of national security or public order". This Article prohibits arbitrary decisions of expulsion of refugees. The exception for the implementation of this provision is when there is compelling reasons of national security required to do otherwise. In that case, expulsion can only be possible with a decision reached in accordance with the due process of law. Therefore, "the refugee shall be allowed to

[260] The principle of *'non-refoulement'* is in Article 33 of *the 1951 UN Convention Relating to the Status of Refugees.*

[261] Grahl-Madsen, A. (1966), *op.cit* , pp.94-99.

[262] League of Nations (1933), *Convention Relating to the International Status of Refugees*, 159 LNTS 199, Art. 3, see also League of Nations (1938), *Convention Concerning the Status of Refugees Coming from Germany*, 192 LNTS 59, Art. 5(2).

[263] UN (1951), *Convention Relating to the Status of Refugees*, Art. 33.

submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority."[264] The contracting state in this situation is allowed to use internal measures. The refugee is then allowed to seek legal admission into another country.

In contrast to the 1951 Convention, the *Organization of African Unity (OAU) Convention I* of 1969 declares the principle of *non-refoulement* without any exception. There are "no formal concessions made to overriding considerations of national security, although in cases of difficulty in continuing to grant asylum appeal may be made directly to other member states and through the OAU."[265] Nevertheless, in the *Declaration on Territorial Asylum*, adopted by the General Assembly just two years before the *OAU Convention*, national security is acknowledged as an exception. It also authorizes further exceptions, in order to safeguard population of the state providing protection, as in the case of mass influx of persons.[266] This exception reappeared at the 1977 *Conference on Territorial Asylum*. Related to this issue, Turkey proposed an amendment whereby *non-refoulement* might not be claimed "in exceptional cases, by a great number of persons whose massive influx may constitute a serious problem to the security of the Contracting State."[267] Every case of mass influx situation may differ and by itself it should not justify a policy of *non-refoulement.*

The principle of *non-refoulement* today forms a part of general international law. The principle is binding in all states, independently of specific assent. Therefore, from

[264] UN (1951), *Convention Relating to the Status of Refugees*, Art. 32 (2).

[265] Goodwin-Gill, G. (1996), *op.cit* , p. 96.

[266] UN (1967), *Declaration of Territorial Asylum*, General Assembly Resolution, 2312 (XXII), 14.12.1967, Art. 3.

[267] UN (1977), A/CONF.78/C.1/L.28/Rev.1; UN (1977), Report of the United Nations Conference on Territorial Asylum, A/CONF.78/12, 21.2.1977, parag. 62.

1951 onwards Article 33 reflected and crystallized a rule of customary international law. Article 33 of the *1951 Convention* is of a "fundamentally norm-creating character."[268] The issue that *refoulement* is permitted in exceptional circumstances does not deny this principles premise. Contrary, this indicates the boundaries of discretion. The principle of *non-refoulement* has critical importance as if each state remains absolutely free to determine the status of asylum-seekers and either to abide by or ignore the principle of *non-refoulement*, then the refugee's status in international law is denied. Moreover, in such a case the authority and the effectiveness of the principles and institutions of protection are seriously undermined.

3.2 Challenges Brought to the International Refugee Protection by the End of the Cold War

By the end of the Cold War, the stable system of international refugee regime was challenged profoundly by the changing characteristic of global politics. Two features influenced the changes in the post-Cold War era; globalization and the terrorist attacks of 11th September 2001 (9-11). Firstly, globalization as a process intensified after the 1970s and was an influential complex phenomenon. In that process international population movements constitute a key dynamic. One of the defining features of the post-Cold War era was the growing magnitude of international migration in all areas of the world.[269] As widely known, the most striking features of globalization are the cross-border flows of not only capital, goods, and ideas but also flow of people. The increased scale of international migration is accepted to be a natural element of the increase pace of globalization. Transnational flow of people acknowledged stimulating economic growth through providing cheap skilled and unskilled labour to industrialized economies.

[268] International Court of Justice (1969), *North Sea Continental Shelf Case*, ICJ Rep. 1969, 20.02.1969

[269] Castels, S. and Miller, M. (2003), *The Age of Migration,* Hampshire: Macmillan, p.1.

Within this context, the normative core of the asylum concept becomes increasingly blurred with the multiplication of the migration flows world-wide and the end of the East-West ideological antagonism.[270] Castles argues that international population movements are reforming states and societies around the world in ways that affect bilateral and regional relations, security, national identity and sovereignty. In the globalization process international migration as a key dynamic is contributing to fundamental transformation of the international political order.[271] On the other hand, what sovereign states do in the realm of migration policies continues to matter a great deal. The notion of open borders remains elusive even within regional integration frameworks, except for European citizens circulating within the EU. At the heart of the debate in Europe lies the confusion of the difficulty to determine who deserves which kind of protection and who does not.

The end of the Cold War marked a new era of change and uncertainty. The nature of warfare changed from violence waged between states to fighting within the boundaries of a state.[272] Majority of the post-Cold War era do not involve classic conventional warfare between states. Entire regions in Africa, Europe, Latin America and Central Asia are influenced by turbulent changes creating large numbers of internally displaced peoples. Some scholars argued that the world is in systemic transformation and the global order based on sovereign nations-states is changing towards an order involving more transnational relations. In contrast, some scholars argue that despite the growth of global markets, multilateralism, and regional integration nation-state is still endures its primary importance.

In addition to the process of globalization, just after a decade from the end of the Cold War, the terrorist attacks of the 11th September 2001 (9-11) as a single event

[270] Loescher, G. (1993), *Beyond Charity: International Cooperation and the Global Refugee Crisis*, New York and Oxford: Oxford University Press; see also Zolberg, A. (1989), *Escaping from Violence, Conflict and Refugee Crisis in the Developing World*, Oxford: Oxford University Press.

[271] Castels, S. and Miller, M. (2003), *op.cit*., p. X, Preface.

[272] UNHCR (2000), *op.cit.*, p.277.

appeared to reshape the public perceptions of peoples about migrants and international migration in Western world. With the 9-11, the perception and conceptual definition of security has been fundamentally altered. The concept of security is now includes not only "hard security" matters of militarily security but also "soft security" matters of terrorism, transborder organized crime, drug and human trafficking, environment, and issues relating to society. Unfortunately, migration issues and migrants have been adversely affected by the changes in the redefinition of the security concept.

Undeniably 9-11 has been influential. Nevertheless, globalization is a complex process and it is not possible to argue about a sudden fundamental change in the dynamics of contemporary age of migration with a single event. However, governments all around the world is now struggling to adjust their policies to the altered global political circumstances mainly because of the transformed security dilemma of the world's most powerful state. New security conceptualisation bears evidence that characterize this period of globalization and increasing population mobility. Nowadays, Western democracies considered transborder population movements as a source of insecurity.

While influenced by the changing conceptualization of security international migration acquires new features such as dual citizenship, human trafficking, combating human trafficking, and demographic change especially within Europe, multiculturalism, and integration. Weaver argues that in the post-Cold War era it is possible to see a social construction of security. In that respect, the concept of security is re-conceptualized.[273] The security concept is widened and security no longer refers to military defence of the state but it also includes various other aspects which were not considered couple of decades ago. The national security of each an every state is fundamentally dependent on international dynamics is the only thing that has not changed.[274] Weaver argues that power holders or élites of any state can

[273] Weaver, O. (1995), 'Securitization and Desecuritization', in Lipschutz, R. (ed.), *On Security*, New York: Colombia University Press, p.48.

[274] Weaver, O. (1995), *op.cit.*, p.49.

always try to use the instrument of securitization of an issue to gain control over it. By definition, if something is a security problem when the élites declare it to be so. Through that élites label issues and developments as "security" problems to put securitization on the agenda.[275]

During 1960-1990s there was a guaranteed stability of status quo in Europe. The securitization was concerned with the East-West relations. At the same time, the field of human rights evolved into an attempt to develop a new aspect in the non-military arena. Human rights became "the label for a specific political struggle/negotiation over the border between security and politics, intervention and interaction."[276] The process of human rights protection leads to an instrumental change in the Eastern bloc.

Starting from the 1990s a new concept of "societal security" is developed especially in Europe. Its aspects of this new phenomenon include arguments for defining immigrants and refugees as security problems. Weaver then suggests a re-conceptualization of the security field in terms of a duality of state security and societal security.[277] However, if certain societal issue such as migration is securitized there may be some troubling effects. In Europe immigration has been viewed previously as a humanitarian and an economic issue. It is now transformed into security threat.[278]

[275] Weaver, O. (1995), *op.cit.*, p.58.

[276] Weaver, O. (1995), *op.cit.*, p.59.

[277] Weaver, O. (1995), *op.cit.*, p.67.

[278] Ferris, E. (1993), *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era*, Geneva: WCC Publications.

3.2.1 The 1951 Convention: Still a Valid Instrument for Protection?

The traditional international refugee regime and the role of UNHCR have been shaped in the Cold War context. In that regard the implementation of these norms and practices have carried the characteristics of the stability of this period from 1945 till 1990. Through out these years and today the main international document has been the 1951 *UN Geneva Convention Relating the Status of Refugees*.[279] Though international context has changed fundamentally after the collapse of the Soviet Union, in the turbulent context of the post-Cold War, it was difficult to develop coherent and consistent policies in relation to mass population displacements.[280] Therefore, there have been a number of lively controversies within and amongst the governmental, international and non-governmental institutions dealing with refugee problems.

As the *1951 Convention* was signed just after World War II within Cold War context it was more or less Europe oriented, but later it has functioned and served globally. In 2001 for the fifty years of the *1951 Convention*, UNHCR proposed to launch global consultations[281] on refugee protection in order to revitalize the refugee

[279] The 1951 Convention Relating to the Status of Refugees was opened for signature on 28 July 1951 and it entered into force on 22nd April 1954.

[280] UNHCR (1995), *op.cit.*, p.5.

[281] Global Consultations process were held by the leadership UNHCR involving governments, non-governmental organizations, other groups and experts which continued into 2002 which served as a guide in strengthening refugee protection. Following the final Global Consultations meeting in May, 2002 UNHCR completed an Agenda for Protection deriving from the entire Global Consultations process. The Agenda is the first comprehensive framework for global refugee policy in five decades, combining clear goals and objectives with suggested activities to strengthen refugee protection. The Agenda for Protection was the subject of lively debate by UNHCR's Standing Committee at a meeting in late June, which agreed to refer it to the 53rd session of UNHCR's Executive Committee for endorsement. Many delegations stressed that, while not a legally binding text, the Agenda for Protection provides an excellent basis for future cooperation among States, UNHCR, UN and other intergovernmental organisations, and non-governmental organisations - all of whom have participated actively throughout the Global Consultations process. The Agenda for Protection has six main goals: strengthened implementation of the *1951 Convention* and 1967 Protocol; protecting refugees within broader migration movements; sharing of burdens and responsibilities more equitably and building of capacities to receive and protect refugees; addressing security-related concerns more effectively; redoubling the search for durable solutions; and meeting the protection needs of refugee women and children. For more details see also www.unhcr.ch

protection regime.[282] As a matter of fact, the circumstances and the challenges of the post-Cold War period are radically different than the Cold War period. Subsequently it is necessary to make considerable modifications in the *1951 Convention* with the intention of enhancing the coverage of protection of other categories of displaced people. Conversely, from UNHCR's perspective the Convention remains as relevant as ever.[283] It has been argued the Convention as the only refugee instrument, has made it possible for ten millions of refugees, in all parts of the world, over the last half century, to be protected from danger. Although the number of people that seek protection rose to a record number of 27 million in 1995, UNHCR's mandate is able to cover 22.3 million of them. Of this number, 7.4 million comprising the largest group are in Europe where the *1951 Convention* took shape and where its relevance ironically is now being questioned.

The question if the *1951 Convention* is valid in the post-Cold War era arises from the problem of protection of refugees in mass influx situations. Actually, the *1951 Convention* proved to be a particularly flexible instrument, having offered protection from persecution and violence to millions of refugees over five decades, in all parts of the world. It was adopted against the background of mass migration resulting from war and dissolution of empires. The fact that not just individuals but communities were affected in recent examples of mass movements caused by religious, political or ethnic violence in the aftermath of the Cold War does not change the quality of persecution.

In that respect, it is argued that the *OAU Convention* provides a more comprehensive definition to include displaced people fleeing civil disturbances, violence and war. There is an ongoing scholarly debate for the need to bring the 1951 definition in line with the OAU definition. Some scholars even argued that the 1951 refugee definition

---

[282] Feller, E. (2000a), *Statement*, Director, Department of International Protection, 51st Session of the Executive Committee of the High Commissioner's Programme, Geneva: UNHCR, 3.10.2000

[283] Feller, E. (2000b), *Speech*, Director, Department of International Protection, *UNHCR News*, Geneva, 15.6.2000

was not a moral definition.[284] This is a as a result of the strategic dimension of the definition. Western states gave successful efforts to offer priority to persons whose flight was motivated by pro-Western political values. It was agreed to restrict the scope of protection only to persons who feared 'persecution' because of their civil and political status would fall within the international political mandate. This neutral formulation facilitated the condemnation of Soviet bloc politics through international law. While doing so Hathaway argues the *Convention* adopted an incomplete and politically partisan human rights rationale.[285] On the other hand, it seems unlikely to have an expansion of the 1951 definition in the near future since the Western European governments seek to avoid the responsibilities arising from the already existing definition.

In the recent years in order to deal effectively with the refugee problem the attention has been shifted from countries of asylum to actual and potential refugee producing states. Therefore, the policy has been shifted to become proactive and preventive rather than reactive in refugee policies. In addition, there is an ongoing debate to enhance the scope of protection and assistance to many other categories such as internally displaced people, refugees who have returned to their home countries, war affected communities, and those who are at risk of conflicts being uprooted.[286]

In this regard there have been arguments concerning the necessary changes in the international refugee regime. Aleinikoff argues that not merely a big part but an increasingly big part of the refugee problem results from the international regime of refugee law. That has its primary commitment not to the refugees but to the states.[287] He adds even if expressed in humanitarian terms the bias of refugee law and policies

---

[284] Kamenka, E. (1989), 'On Being a Refugee', in Saikal, A. (ed.), *Refugees in the Modern World*, Canberra: Australian National University, p.15.

[285] Hathaway, J. (1991), *op.cit* , p. 6-10.

[286] UNHCR (1993), *The State of World Refugees: The Challenge of Protection*, London: Penguin, p. 183.

[287] Aleinikoff, A. (1995), 'The Refugee Mistrusts and Mistrusted' in Valentine, D. and Knudsen, J. *Mistrusting Refugees*, LA: University of California Press, p. 48.

toward controlling the source rather than toward the provision of asylum ends up being more about containment of migration than the improved protection of refugees. Hathaway argues in a similar way that the refugee law as it exists today is fundamentally concerned with the protection of powerful states.[288] Gordenker claims government authorities invariably react to refugee situations by first to contain them and later to eliminate them.[289]

These arguments and the current situation of the migration movements and refugee situation indicate that there is a need to reconsider the traditional role and norms of the international and national institutions in line with the changing global trends. In the upcoming years it will be possible to see some alterations in international refugee regime. This will also affect the development of the European asylum policy and refugee protection, which will in turn influence the policy formation in many other countries such as Turkey.

This section does not aim to go into further discussion about the validity of the 1951 Convention in the post-Cold War era. On the other hand, in order to set a framework for analysis it will be necessary to cover the challenges brought by the end of the Cold War to the European refugee protection in the next chapter. This will provide the necessary background for the analysis of the development of a common European asylum policy.

3.3 From a Right Based Approach towards a State Centric Approach: Debate between National and International Factors for Asylum and Refugee Policies

There are two major factors in asylum policies. These dynamics are national interests pulling to tighten asylum and international norms and morality pulling to loosen it.

[288] Aleinikoff, A. (1995), *op.cit.,* p.45.

[289] *Ibid.*

These two opposing dynamics are in a rug-of-war as Steiner calls it.[290] This continuous struggle is one of the motives behind the construction of the asylum policy. Its complexity is reflected in the rhetoric of these debates. Loescher defines this struggle: "the formulation of refugee policy invokes a complex interplay of domestic and international factors at the policy-making level and illustrates the conflict between international humanitarian norms and sometimes narrow self-interest calculations of sovereign nation states."[291] This makes us to re-examine how we conceptualize the setting of asylum policies.

The two conflicting policy frames interact with each other relating to refugee policies the principle of human rights and national sovereignty. They derive from two major theoretical traditions in International Relations (IR) theory, namely realism and idealism. The philosophical basis of these two IR paradigms essentially contrasts with regard to their concept of the relationship between human rights and state sovereignty. The identification of these divergent normative orientations provides useful analytical categories in the empirical study of refugee policy change.

The first paradigm involves the frame of universal human rights. In this traditional humanitarian framework basic human rights principles are safeguarded. The emphasis is made to the individual level where every individual will have the right to enjoy these basic human rights. In that respect the central unit of analysis in the international system is the individual as a universal 'community of mankind'. From this perspective, a refugee is a person who lost the basic level protection from his/her country of origin and seeking a protection from another state. This argument is based on the moral ideas based on central tenets of Liberalism.

According to the liberal thinking war is not a natural state in international relations. There are several moral imperatives necessary to find means of abolishing war. The

[290] Steiner, N. (2000), *Arguing about Asylum: The Complexity of Refugee Debates in Europe*, London: Macmillan, p.133.

[291] Loescher, G. (1989b), 'Introduction', in Loescher, G. and L. Monahan (eds.) *Refugees and International Relations*, New York: Oxford University Press, p.8.

means of doing that is to assume the existence of a universal moral order and to create common laws and institutions. The bases of these ideas go back to the Kantian tradition in liberal thought. From a Kantian perspective, the purpose of states is promoting the realisation of universal values. This would enable the prevention of independent sovereignties from manipulating the rights of individuals and would allow the safeguarding of universal norms by a "united power and the law-governed decisions of a united will".[292]

In relation with refugees Kant claims the principle of 'universal hospitality' towards strangers in someone else's territory. In that respect, strangers have the right to be treated with hospitality and should never be turned away or directed towards places where their lives would be threatened.[293] In view of that refugees are not primarily a question of state sovereignty but individuals carrying certain rights.[294] They are considered to be persons who have been violated in their human rights and they are in need of protection. Lavenex adds "violations of human rights in this perspective are not a matter of state sovereignty, but a common concern for a cosmopolitan community. Since human rights are common to all human beings, regardless of their membership of a particular country, culture or group, their protection are a common good and a condition for peace."[295] Therefore, it is the international community's responsibility to ensure the prevention of human rights abuses and the events promoting the production of refugees.

While liberals in the literature stress that equality promoting cosmopolitanism with a more open world and that liberty demands freer movement of people and less state power, world politics is dominated with the national interests of nation-states. Despite Kantian ideals of the international system composed of universal values,

---

[292] Kant, E. (1991), 'The Perpetual Peace', in Reiss, H. (ed.), *Kant Political Writings*, Cambridge: Cambridge University Press, p. 106.

[293] *Ibid.,* p.105.

[294] Lavenex, S. (2001), *op.cit.*, p.15.

[295] *Ibid.*

growing interdependence, and the increasing institutionalisation of common laws and regimes structuring these interaction, realism sees the international system as free from norms or common principles. The key actors in the international system are the sovereign states willing to control its internal security and its territory. Under a competitive system states aim to maximize their power.[296] Thus, the notions of "universal" norms are only the reflection of the norms valid in respective hegemonic states.[297] Therefore, the pursuit of human rights in foreign policy is seen as the imposition of one state's own moral principles upon another.[298]

In this framework where sovereignty and the internal security of the nation-state is concerned the asylum issue creates a highly politicized notion for the modern state system. From this perspective, the issue of refugees must be seen primarily in the context of state sovereignty, including the state's control over its territory and population. It is argued that the admission of refugees and the granting of protection are subject to the fundamental norm of state sovereignty which provided the right of states to admit or refuse the admission of aliens into their territory.[299] Hence, refugees constitute a threat to the internal security of the country concerned. They undermine state's sovereign authority over its own territory and it also threatens its social, economic and political fabric. In addition, large scale refugee flows can seriously affect relations between the sending and receiving countries and ultimately represent a threat to peace.[300]

This state centric notion and understanding of refugee protection deeply influenced the European refugee protection in the last two decades. In general, the moral argument in Western European nations is that the events in World War II era pose a

---

[296] Waltz, K. (1979), *Theory of International Politics*, Reading, MA: Addison-Wesley, p.131.

[297] Carr, E.H. (1946), *The Twenty Years Crisis: 1919-1939*, New York: Harper and Row, p. 87.

[298] Morgenthau, H. (1973), *Politics Among Nations: The Struggle for Power and Peace*, New York: Knopf, p.4.

[299] Lavenex, S. (2001), *op.cit* , p.7.

[300] Zolberg, A. (1989), *op.cit.*

moral obligation to grant asylum to refugees. In the recent years this moral obligation is challenged if this moral obligation to accept refugees means that all refugees must be accepted.[301] In the last couple of years the EU member states have gone furthest in coordinating their policies in order to restrict access to asylum.[302] One of the main reasons for that is in Europe nation-states have lost the capacity to limit asylum seekers' entry and the institution of asylum has become a form of uncontrolled immigration.[303]

In the last two decades two distinct concepts and processes of asylum and immigration have merged into one. This fusion is evident most in Europe where 'immigrants' and 'asylum seekers' are used interchangeably. Usually the terms asylum seekers and refugees are blurred up as a result of the politicisation of the subject. In fact as defined in the previous sections these two groups are at quite different stages in the asylum process: 'asylum seekers' are seeking asylum, as 'refugees' have received it. Asylum seekers generally receive suspicion as they are believed to make illegitimate claims. This blurred terminology makes discussions on asylum issues much more difficult. In some countries such as in Britain supporters of tighter asylum policies can use rhetorical tactics to further obscure the terms asylum-seekers, refugees, and immigrants.[304]

This change of understanding is due to the changes in the domestic political agendas in the EU member states. In EU member states domestic political agenda is influenced by domestic issues such as national elections. External factors also affect the discussion at home. In that sense there are several conceptual tools influencing the formation of asylum policy. Although there are supporters and opponents of tighter asylum policies in each and every member state none of the politicians would

[301] Steiner, N. (2000), *op.cit* , p.139.

[302] Gibney, M.J. and Hansen, R. (2002), *op.cit,* p.2.

[303] *Ibid.*

[304] Britain has a special negative view on immigration. British politicians associate asylum with immigration hoping to win political points.

explicitly argue against refugees or the principle of asylum. While this is the case none of the politicians would explicitly argue against refugees or against the principle of asylum. In general, the politicians and parliamentarians all become a *refugee advocate* and defenders of asylum.[305] Most parliamentarians who opposed tightening asylum were unwilling to argue their case so strongly. They argue that the concept of liberty had to protect their own citizens from poorly conceived and unjust laws. In other words, liberal arguments were less conceived with granting asylum to refugees and more concerned with protecting citizens from an instructive state. In any of those arguments not a single parliamentarian rejected the abstract principle of helping refugees. On the other hand, they disagreed about how to get this principle into practice.

The domestic politics and the political agenda in all of those countries are influenced by not only through domestic issues but also through external policies. The external factors significantly affect these discussions. In addition national elections significantly influence the debate at home[306] without contextualizing these debates it would be possible to make a deeper analysis. In that sense it is possible to argue that there are several conceptual tools influencing the formation of asylum policy: National interest, international norms, and morality act. What is found in the literature in general argues that national interests try to tighten the asylum policy and international norms and standards try to loosen it. Politicians would generally argue that they are constraint to serve for the national interest, conformed to international norms and fulfil moral obligations. The supporters for a tighter asylum policy in Germany argued that the law would further Germany's foreign policy goal of European unity by promoting the harmonization of asylum laws. Another moral obligation raised by the supporters of tighter asylum, the parliamentarians toward their own citizens. They argue that overwhelming majority of people supported tightening asylum and they need to listen the will of people. The main challenge is

[305] Steiner, N. (2000), *op.cit,* p.134.

[306] *Ibid.*

then how to balance the two obligations one towards the citizens and the other one towards refugees.

How to fight asylum abuse has been the principal question for most of the Member States. It has been argued by the supporters of tighter asylum laws that such laws were moral cause because they helped "real" refugees by weeding out asylum abuse committed by "undeserving" ones. Some supporters of tighter asylum policies suggested that it is unclear whether granting asylum to refugees is even the best possible way to help them. They argue that it may be better to help refugees in their own region rather that granting asylum in Europe. While parliamentarians acknowledge and abstract moral responsibility towards refugees the difficulty of its practical implementation led to bitter disagreements about both the quantity and the quality of this obligation. This distance between abstract and the practical set an important limitation on the effect of morality had in these parliamentary asylum debates.

3.4 Conclusions

This chapter encapsulates the development of a stable refugee regime in the 20th century through the legal practices of international institutions. The refugees of the 21st century rely on the framework of international protection developed within the UN system through a rights based approach. The primary instrument established within this framework is the *1951 Convention*. This constitutes the legal ground both for the signatory states for defining refugee status and for the refugees for their rights. The 1951 Convention is developed within the Cold War period just after World War II and it carries the Cold War context.

The principle of protecting refuges is related to the universality of the human rights norms which apply to every human being across national boundaries. In lie with this understanding a category approach to the definition of refugees was adopted in treaties and arrangements concluded under the League of Nations. In addition, the

practices and the legal documents developed by the predecessors of UNHCR, which are the UNRRA and the IRO added to the understanding built before the WW II. The establishment of the UNHCR; as the principal UN agency concerned with refugees; brought within UNHCR's competence refugees covered by various earlier treaties and arrangements. However, it was not until 1951 that a universally accepted definition of term 'refugee' was finalized. The adoption of the *1951 Convention* provided for the first time a formal structure for responding the needs of refugees and standards for the protection of refugees under international law.

The Convention had critical importance of pointing out the obligations and rights of refugees. It also adopted the 'refugee' definition. The 1951 'refugee' definition centres on the notion of "well-founded fear of persecution" reflecting a fundamental change in policy. Before the 1951 definition the refugees were not identified as individuals. This new definition replaces the earlier method of defining refugees by categories.

Although the refugee concept is directly linked to codification of international human rights, the admission of refugees and granting of protection are subject to the fundamental norm of state sovereignty. The principle of protecting refuges is directly linked to the notion of state sovereignty and the rights of states to control entry into their territory. Therefore, there exists two conflicting policy frames interacting with each other; the principles of human rights and national sovereignty. The philosophical basis of these two IR paradigms essentially contrasts with regard to their concept of the relationship between human rights and state sovereignty.

This chapter argued that rights based approach of the international refugee regime is challenged in the last decade with the growing securitization approach of refugees in Europe. The traditional international refugee regime and the role of UNHCR have been shaped in the Cold War context. In that regard the implementation of these norms and practices have carried the characteristics of the stability of this period from 1945 till 1990. By the end of the Cold War, the stable system of international refugee regime has been challenged profoundly by the changing characteristic of

global politics. In this framework where sovereignty and the internal security of the nation-state is concerned the asylum issue creates a highly politicized notion for the modern state system. From this perspective, the issue of refugees is begun to be see in the context of state sovereignty, including the state's control over its territory and population. This chapter explored basic tenants of the regime and prepared the ground for the analysis of the restrictive development in Europe which will be analyzed in the next chapter. In the next chapter, how EU member states have restricted access to asylum while at the same time respecting the *1951 Convention* and their own national constitutions are analyzed.

CHAPTER IV:

EUROPEANIZATION OF ASYLUM AND REFUGEE POLICIES

"Nowhere is more than 18 hours from this airport."

Billboard at the London Heathrow Airport

The billboard at the London Heathrow Airport clearly exposes the current situation of global transportation, transforming the world, "for better or worse, into a global community."[307] Through enhanced web of transportation links more and more people are travelling to more places than ever before. The movement of people beyond borders is becoming one of the main transnational forces pushing for the emergence of new global set of principles influencing the world. Not only transportation links but also transnational corporations, global economic forces, global communication networks, and instruments of international cooperation are all binding the world through an increasing interdependence. This increasing interdependence triggers the awareness that the European continent is not and will not be immune from transnational movement of people, either as migrants or refugees.

In the post-Cold War era, the persistence of ethnic and political conflicts all over the world accompanied the increasing numbers of refugees and asylum seekers. In this context, the perception of refugees in the West has changed from freedom fighters to a challenge which constitutes a threat to national security and stability. This brings the issues of asylum and immigration to a status of high politics throughout the

[307] Ferris, E. (1993), *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era*, Geneva: WCC Publications, p. xiv.

Western world. In that regard, European governments talk about devising common policies in order to respond to that challenge.

Due to easier transport links and changing feature of humanitarian emergencies the number of asylum seekers to Western Europe has significantly increased over the past 15 years. There has been an increase in asylum applications from 50,000 in 1983 to more than 690,000 in 1992.[308] However, it is not possible to see a steady increase in numbers as the number of application descends from peak to 353,000 in 1998.[309] As a result, especially during the last decade political discussions about asylum trends dominated national agendas across the EU. Despite the fact that refugees only represented an average 0.07 per cent of the total population of the member states, it is still considered as a serious issue threatening sovereignty of member states.[310] Compared to a total number of 22.3 million refugees globally Western European industrialized nations only accommodated the total number of 2,079,273 by 2000.[311] Loescher argues that as a result of the negative attention of media refugee movements are considered increasingly with negative connotations such as "waves", "floods" and even "invasions" by governments. Most of the EU member states increasingly view the protection of the victims of international conflicts and human rights abuses as burden.[312]

Within this context, asylum and immigration matters dominated the European agenda towards a way of becoming an integral part of EU policy-making. The communitarization of these policies has started with intergovernmental efforts through treaty formation and legislative adoptions. Fifteen years after the beginning

[308] Loescher, G. (2002), *op.cit* , p.33.

[309] *Ibid.*

[310] UNHCR estimates for the end of the year 2000 cited in Bocardi, I. (2002), *Europe and Refugees: Towards an EU Asylum Policy*, The Hague: Kluwer Law International, p.1.

[311] UNHCR (2000), *op.cit.*

[312] Loescher, G. (2002), 'State Responses to Refugees and Asylum Seekers in Europe', in Messina, A.M. (ed.), *West European Immigration and Immigrant Policy in the New Century*, London: Praeger, p.33.

of intergovernmental cooperation, the establishment of a common European asylum system has become a priority of the EU politics. Having the legal base in the Amsterdam Treaty, this priority focuses on the central elements in the development of an "area of freedom, security and justice".[313] The developments in the last decade has intensified to the extent that it is influencing every single Member State and their legislative and policy developments. It is a powerful tool of policymaking and it is influencing the political and legislative structures of even the non-member states such as the candidate states to the EU.

Bearing in mind the critical importance of this policy area this chapter covers the discussion and analysis of the communitarization of refugee policies within the EU. The section starts with the analysis of the gradual development of a common set of policy instruments all the way through intergovernmental cooperation in the mid 1980s until today. There is no doubt that this topic is continuously evolving. Therefore, in this analysis it was only possible to incorporate the developments until the end of May 2004. The study of the gradual development is necessary to understand the emergence of cooperation at the European level within its historical context. The scope and the limits of an evolving common European refugee policy are also included in this analysis. In order to establish a comprehensive framework it is necessary to include the influential domestic and international factors.

Within the framework of this analysis some basic questions will be included to prepare basis for discussion. Why is it important to analyze the communitarization of asylum and refugee policies? Is Europeanization process powerful enough to shape the politics within the Member States while influencing the non-members? Does intensified communitarization of refugee policies lead towards more institutionalisation? If so does higher degree of institutionalization provides a more restrictive form of refugee protection? And finally if a more restrictive form of refugee protection policy is developed and adopted within the EU will this mean increased securitization will override higher standards of human rights protection?

[313] European Union (1997), *Consolidated Version of the European Communities Treaty*, Title IV.

These questions provide the basis of the analysis upon which this study investigated the impact of refugee cooperation at the EU level on domestic policies in a candidate country Turkey.

This chapter is divided into four sections. Section one discusses as a way of introduction the development of a European approach to refugee issues after WW II. Additionally, the beginnings of cooperation and the development of harmonization of asylum and refugee policies in the earlier efforts within the framework of Council of Europe is covered in this section. The section two examines the shifted efforts of harmonization from Council of Europe to the first generation cooperation among EU member states up until 1992 Maastricht Treaty. The first generation cooperation includes the most important intergovernmental agreements, namely the Schengen and Dublin Conventions. In the third section the launching of a new generation of cooperation with the Maastricht Treaty's third pillar and its communitarization with the Amsterdam Treaty is examined. The fourth section brings in the "fortress Europe" and "safety belt" concepts to the discussion.

4.1 Growing Numbers and the Growing Need for a Common European Approach

After World War II, Europe faced a massive humanitarian challenge by over 40 million displaced people who needed to be repatriated or resettled. Additionally, in 1956 some 200,000 people fled following the USSR crushing of the Hungarian uprising, and in 1968 a smaller number left Czechoslovakia after the USSR suppression of the "Prague Spring"[314]. At that time this massive amount of people perceived to be an international issue rather than a solely European one. As discussed in Chapter Three, post-World War II situation lead to the development of international legal instruments such as the *1951 Convention* and its *1967 Protocol*. While the *1951 Convention* provided the international legal framework for the

[314] UNHCR (2000), *op.cit.*, p.156.

protection of these refugees, asylum in Europe had an ideological aspect. It reflected broad political commitment to take in refugees from communist countries. Western European countries had a moral commitment associated with the events occurred as result of the WW II. Consequently, moral obligation to protect these refugees these countries feel.[315]

Not only as a result of moral obligations but also as a result of the ideological antagonism of the East-West divide the refugees from communist bloc were seen to be particularly not a European issue, requiring particularly a European solution. In the Cold War period, the refugees from Eastern Europe and from the Soviet Union were either resettled in Western Europe or in North America, New Zealand and Australia. It was during 1970s when first refugees from other continents arrive in Europe in large numbers. They were fleeing from Latin America as a result of military coups in Chile and in Uruguay in 1973 and in Argentina in 1976.[316] Also after 1975 230,000 refugees fleeing from Indochina were settled in Western Europe. It was after 1980s when increasing numbers of people from all over the world were fleeing directly to Europe. In the mid-1980s spontaneous arrivals of asylum-seekers began to cause a serious concern within European countries. The number of asylum seekers in Western Europe increased from 50,000 in 1983 to over 200,000 in 1989, as a result of internal conflicts and human rights violations in Africa, Asia, Latin America and the Middle East.[317]

The other side of the story relates to the immigration policies of Western European countries. During the 1960s, Western European governments allowed temporary labour immigration in order to meet their need for labour in their booming economies.[318] Most Western European countries allowed for the temporary work

[315] Steiner, N. (2000), *Arguing About Asylum: The Complexity of Refugee Debates in Europe*, London: Macmillan, p. 133.

[316] UNHCR (2000), *op.cit.*, p.156.

[317] *Ibid.*

[318] Ferris, E. (1993), *op.cit.*, p.244.

migration of so-called "guest workers" who had only provisional resident status. By the early 1970s, with the stabilized migration routes and family members joining the relatives there were about 10 million guest workers and 2 million people from former colonies admitted to the Western European countries.[319] However, during the economic recession of the 1970s this situation has changed. In that period many European countries ended their labour migration programmes. To give an example, in 1971 France received 100,000 foreign labourers. In 1989 this number descended to 15,000.[320] As a result, the right to seek asylum together with the right of family unification has become the main legal channel for the would-be migrants.[321]

This has negatively affected the image of the asylum seekers and refugees and particularly the refugee policies in Europe. Coupled with economic difficulties, rising unemployment and particularly the entry of increased numbers of asylum seekers, the reaction to foreigners became increasingly negative. Therefore, politicization of the asylum issue was directly linked to the backlog of the asylum system in the EU member states. Closing or restricting legal access to Western European countries was one of the reasons channelling persons on the move towards asylum. Certainly this was not the only explanation for the fundamental increase in asylum applications. End of the Cold War, dissolution of the Soviet Union, interstate and ethnic conflicts were all root causes of displacing people in the last decade. Other important factors in the increase in asylum numbers can be regarded as improved communication links, easier access to air transport and growing numbers of people seeking better economic and social opportunities.[322]

---

[319] Loescher, G. (1992), "Mass Migration as a Global Security Problem", *World Refugee Survey*, Washington D.C: US Committee for Refugees, p.12.

[320] *Time*, 26.8.1991, p.22.

[321] Lavenex, S. (2001), *op.cit.*, p.3.

[322] Joly, D. (1996), *Haven or Hell? Asylum Policies and Refugees in Europe*, New York: St. Martin's Press, p. 48.

One of the critical aspects with regard to securitization of the asylum policies in Europe is its strengthening linkage with legal and illegal migration. In addition to the Dublin Convention of 1990, the Schengen Agreements of 1985 and 1990, humanitarian aspects of the refugee and asylum issues moved away from their humanitarian framework and subsumed under a variety of migratory movements with their border-crossing quality.[323] The questions of asylum seekers and refugees were not even mentioned in Schengen I while it set strict conditions for the crossing of external borders and fight against illegal immigration. The developed structure of intergovernmental cooperation at the EU level supported a technical perspective on refugees as one cross-border phenomenon among others. In this conception, "…little differentiation was made with other cross-border flows related to illegal migration; indeed, the isolation of European cooperation from the humanitarian context of the *1951 Convention*, the UNHCR or the Council of Europe shifted the human rights core of the refugee concept into the background."[324]

Externally and internally the EU became involved with the increased number of asylum applications. The EU is involved externally in order to become active in finding of solutions and remedies to interstate and ethnic conflicts. During the last decade of the 20th century, due to the technological developments affecting media broadcasting; governments, international organizations and public became more aware of the problems faced by refugees and internally displaced people. Europe was also influenced by this process. Although the problem of forced displacement was never a new phenomenon of the 20th century as a result of live television reports, which provided dramatic images of desperate people fleeing from places like Bosnia and Herzegovina, Chechnya, Iraq, Kosovo and Rwanda resulted an increase in the scope of the involvement by humanitarian organizations, human rights organizations,

[323] Lavenex, S. (2001), *op.cit.*, p. 95.

[324] Lavenex, S. (2001), *op.cit.*, p. 138.

multinational military forces, peace negotiators, journalists and a range of other external actors.[325]

In this range of external actors the EU existed with its new willingness to be globally involved in humanitarian issues. This was a part of the new strategic understanding developed within the EU both as a result of the public awareness and necessitates of the international dynamics. The EU aimed to enhance and strengthen its commitment as a global actor part of these humanitarian actions as a consequence of its moral responsibility.[326] The result can be seen in the EU's involvement in the situation of Balkan crisis, Rwanda and to certain extend in the Caucasus. The EU's involvement in these issues mainly based on to the common positions taken under the framework of the CFSP.

Internally, the EEC motivation to take action was resulted with the internal transformation of the Community with the launch of the Single Market and abolishment of the internal borders. Internal border removal started the discussion of the necessity of strengthening the external frontiers of the Union. Even before the SEA of 1986 there have been discussions about how to successfully achieve a common single market. It has been discussed that only through an effective visa regime it is possible to achieve a common position throughout the Community that would enable the efficient functioning of the common market. Two member states were against to any kind of supranational development; Denmark and the UK. However, the establishment of unimpeded freedom of movement of persons through the abolition of border controls called for supporting measures such as the harmonization of provisions to combat crime, and development of a common European immigration and asylum policy.[327]

---

[325] UNHCR (1995), *op.cit.*, p.1.

[326] Mayer, H. (2004), 'EU's International Role and Global Responsibility', *CES Conference Series*, Public Lecture, Cultural and Convention Centre, Ankara: Middle East Technical University, 22.11.2004.

[327] Hailbronner, K. (2000), *Immigration and Asylum Law and Policy of the European Union*, The Hague: Kluwer Law International, pp. 356-357.

This necessity intensified with the German unification and the collapse of communism in Eastern Europe. The opening of the borders to the East made Germany vulnerable to migration flows. The influx of many East and Central Europeans to Germany has increased the questions of harmonization of the immigration policy measures in Germany. Following the German unification, the crisis in Bosnia and Kosovo resulted with European refugees arriving to the EU member states which had relatively liberal asylum policies or higher refugee recognition rates. Germany as a result of its liberal asylum laws and its geographic position received over 60 percent of the regional burden in 1992.[328] This led the way both to a constitutional change in Germany and a change in citizenship law. After these legal changes asylum applications declined from 438,000 claims in 1992 to 149,000 in 1996. The German case has also raised concerns on the issue of burden sharing among the member states of the EU.

On that regard, burden sharing and equal distribution of asylum applications within the EU came into the agenda. This urge with the increased public demand to regulate asylum and refuge policies have given rise to increased harmonization starting from intergovernmental bargaining and leading towards supranational policy planning. These issues brought a new dimension to EU integration agenda. The following section covers a detailed analysis of development of a common European framework on asylum issues initiated by European states through intergovernmental cooperation.

4.2 European Integration Process and the Development of Community Cooperation with Intergovernmental Initiatives

As discussed in Chapter Three, the basic principles of European asylum policy relates to the period of post-World War II. These basic principles are formed through international conventions such as the *1951 Convention* and its 1967 Protocol. National asylum policies are affected by these international legal instruments. In

[328] UNHCR (2000), *op.cit.*, p.158.

addition the jurisprudence arsing from international courts such as the European Court of Human Rights (ECtHR) constitute a set of widely recognized international norms and Regulations. Over time these international instruments are incorporated into the constitutions and legislations of the EU member states. Despite the migratory pressures of previous decades until early 1990s EEC's member states' asylum policy has stayed relatively unchanged. After 1990s remarkable changes were seen as a result of the increase in asylum applications. The already existing capacity of the refugee policies were overwhelmed at that period. Western European governments appeared to be increasingly ill equipped to cope with that pressure. With this challenge a new defensiveness appeared in Western European countries' asylum policies. Most of the EU member states began to tighten their asylum legislations and refugee policies with restrictive measures to asylum procedures.

Tightening and restriction are directly linked to the political aspects of this issue. In contrast to the main body of the European *acquis*, which focuses on economic matters, the development of a common refugee policy addresses a deeply political issue which is directly linked to both the questions of human rights and state sovereignty.[329] In general control over territory and borders is one of main features of nation-state. Despite international safeguards to strengthen the standards of refugee protection, national authorities have always been effective to restrict the limits and scope of protection in the asylum policy area. The debate on the extend which nation-state is effective on its own territory has been in the agenda of most theorists. From liberal perspective international human rights agreements form international norms and principles which at the end constrain power and autonomy of states.[330] Some other scholars argued that legitimacy of rights, lies beyond the nation-state and

[329] Lavenex, S. (2001), *op.cit* , p.7.

[330] Rawls, J. (1971), *A Theory of Justice*, Cambridge, Massachusetts: Harvard University Press, see also; Ruggie, J.G. (1982), 'International Regimes, Transactions and Change: Embedded Liberalism in the Post-war Economic Order', *International Organisation*, Vol. 36, Spring, pp.379-415.

therefore they must be enacted accordingly.[331] Border controls, composition of the population of states, citizenship, identity, integration, legal and illegal immigrants, refugees and asylum seekers are all matters related to sovereignty of states. The issue of territorial sovereignty of nation-state therefore, was the core reason beneath the reluctance of EU member states to harmonize their refugee as well as immigration policies under Community competence.

Despite the reluctance of the member states to carry this policy area to the Community competence the necessity to cover the area of immigration and asylum within the Community framework was gradually recognized through several IGCs and adopted treaties. In that respect, the Maastricht Treaty[332] has been a compromise on many aspects between intergovernmental and supranational decision-making. Creating a pillar structure where two of the policy areas were excluded from the Community competence, TEU ensured its ratification. As a result, the second pillar of the Treaty announced the CFSP and the third pillar declared the JHA policy. Both of these policy areas were considered to be high politics fields. However, the created pillar structure of the TEU was not very helpful for the practicalities of these policies. The pillar structure and the complicated decision-making mechanisms further hampered the application. The pillar system introduced by the TEU has created an artificial system dividing security into internal and external spheres. In the post 9/11 context it is more evident that this division is very superficial. A more comprehensive framework in security is necessary in order to tackle the complicated security problems that the world is facing today.

As a response to the criticisms to the TEU, the Amsterdam Treaty came along in 1997. The Treaty of Amsterdam confirmed the willingness of the member states to

[331] Soysal, Y. (1994) *Limits of Citizenship: Migrants and Post-colonial Membership in Europe*, Chicago: University of Chicago Press, see also; Sassen, S. (1996), *Losing Control?,* New York: Colombia University Press.

[332] The 'Maastricht Treaty' and the 'Treaty on European Union' are used interchangeably through out this analysis.

advance the process of harmonization in the field or asylum and immigration.[333] With the Amsterdam Treaty a comprehensive reform of the third pillar was aimed. It primarily aimed at remedying the ongoing difficulties arising from the specific institutional configuration of the JHA cooperation. It was a response to the growing public and political awareness in the member states for the need to enhance intergovernmental cooperation. This brought the application of the third pillar under the community competence with the allowance for certain member states to be able to opt out if they wish to do so.[334] Following this aim, the Convention on the Future of Europe in 2002 developed a constitutional treaty which aimed at simplifying not only the working procedures of the Union but also the artificial pillar structure.[335]

Transforming from the rights based approach of the *1951 Convention* to the intergovernmental bargaining process of the JHA policy, refugee policies of the Union has extensively evolved within fifteen years. The member states' reluctance to bring this policy area within the community competence was evident in the beginning of the 1990s. After TEU it became apparent that intergovernmental efforts were not sufficient to provide the necessary result on this policy framework. Harmonization of refugee policies brought the challenge of further political integration through this policy area which was increasingly considered within the security framework.

[333] Hailbronner, K. (2000),*op.cit.,* p.356.

[334] The United Kingdom, Ireland and Denmark no longer participate under the new Title brought by the Amsterdam Treaty. Additional Protocols of the Treaty enable these states to choose between participating and remaining outside with respect to every measure undertaken through this title.

[335] See also; www.europa.eu.int

4.2.1 The Beginnings of Cooperation for a European Asylum Policy under the Council of Europe Framework

In the recent years European countries are accused of moving a way from a rights based approach towards a restrictive protection regime for refugees. The move from liberal approach of moral commitment to refugee protection towards the development of a more restrictive refugee policy was a result of the intergovernmental cooperation efforts. The beginnings of intergovernmental cooperation at the European level among European states were first initiated under the Council of Europe framework.

The restricted system of exclusionary controls and agreements has started with the intergovernmental cooperation resulting from multilateral and bilateral forums of discussion of common concerns for planning common strategies.[336] Decades before the start of harmonisation of policies and activities relating to refugees and asylum seekers under the EU framework, European states sought to harmonise their national policies within the framework of the Council of Europe.[337] Although the ECHR of 1950 did not include a right of asylum, the issue of refugee protection has always been on the agenda of Council of Europe.[338] The first attempt to include asylum was made in a statement given by the Consultative Assembly of the Council of Europe to the Council of Ministers in 1961. It proposed the insertion of a substantive right of asylum in the second protocol of the ECHR.[339] In 1961 a substantive right of asylum granted by the member states of the Council of Europe was considered to be far from the acceptable. As a result, this initiative has failed.

[336] Collinson, S. (1993), *Beyond Borders: West European Migration Policy Towards the 21st Century*, London: RIIA/Wyndham Place Trust.

[337] Lavenex, S. (2001), *op.cit,* p. 76.

[338] Council of Europe (1950), *European Convention on Human Rights* (ECHR), ETS No.5.

[339] Lavenex, S. (2001), *op.cit,* p. 31.

More than a decade later on 5 December 1977 the *Convention on Territorial Asylum*[340] was adopted by the member states of the Council of Europe. In this initiative asylum was confirmed as a prerogative of the state.[341] In line with the attempts to enhance the scope of protection available to *1951 Convention* refugees, the norm of *non-refoulement* was gradually strengthened in the *Convention on Territorial Asylum* which is now represents the crucial humanitarian norm of international refugee regime.[342]

Within this framework, the humanitarian mandate of the Council of Europe aimed at achieving three objectives. First, improvements in the situation of asylum seekers during national status determination procedures and after their recognition as refugees are aimed. Second, codification of formal status for *de facto* refugees who are not recognized under the formal persecution criteria but are tolerated on humanitarian grounds is the principle to be attained. Third, it is aimed to achieve enhancement of cooperation among the Council of Europe member states in the spirit of solidarity and burden sharing.[343]

4.2.1.1 Contribution of the Council of Europe on Harmonization of Standards on Refugee Protection: An Idealist and Humanitarian Perspective

While the ECHR does not include a right of asylum it underlines that "no one shall be subjected to torture or to inhumane or degrading treatment or punishment" in Article 3.[344] In line with this commitment to strengthen the commitment to prohibit

[340] Council of Europe (1977), Convention on Territorial Asylum, 5.12.1977.

[341] Hathaway, J.C. (1991), *The Law of Refugee Status*, Toronto: Butterworth.

[342] Lavenex, S., 2001, *op.cit,* p. 31.

[343] Leuprecht, P. (1989), 'Bestrebungen des Europatz zur Harmonisienung des Asylrechts' in Barwing, K., Lorcher, K. and Schumacher, C. (eds.), *Asylrecht and Binnenmarkt*, Baden-Baden: Nomos, pp. 237-250.

[344] Council of Europe (1950), *European Convention on Human Rights* (ECHR), ETS No.5.

the human rights violations, the Council of Europe gave emphasis ensuring the protection of persons from victims of such treatments. One of the first and very important attempts in asylum matters was the proposal to include a provision on the asylum right into the Second Protocol to the ECHR in 1961. Unfortunately, as mentioned above it was not possible to include a right of asylum in a legally binding document of the Council of Europe. This aim was not successful as a result of member states "hesitation to grant their asylum decisions control to an international system instituted by the Convention."[345] Therefore, the emphasis is given to the coordination efforts for asylum and refugee matters of member state countries and strengthening of the *'non-refoulement'* principle. In 1965 the Council of Europe resolution re-oriented the efforts to strengthen Article 3 of the ECHR in terms of *non-refoulement* of the refugees. This resolution "which, by prohibiting inhuman treatment, binds contracting Parties not to return refugees to a country where their life or freedom would be threatened".[346] The Council of Europe was considered to be an effective ground for such activities since it has included a broad range of members not only the EEC member states.[347]

In line with these efforts two specialized committees have been set up in order to deal with asylum and refugee matters in the Council of Europe. One of the specialized committees is working for the Parliamentary Assembly and the other one is subordinating to the Council of Ministers. Among these committees the Committee on Migration, Refugees and Demography (CDMG) is the main intergovernmental organ of the Council of Europe with the mandate to follow the development of European cooperation concerning migration, with regard to the integration of immigrants in host societies, and the situation of refugees.[348] The Committee

[345] Lavenex, S. (2001), *op.cit.,* p.76.

[346] Council of Europe (1965), *Parliamentary Assembly, Recommendation*, No.434 (1965).

[347] The member states of the European Council in 1961 included Austria, Belgium, Luxembourg, the Netherlands, Norway, Sweden, Turkey, the United Kingdom, Cyprus, Denmark, France, Germany, Greece, Iceland, Ireland, and Italy.

[348] Council of Europe (1996), *Activities of the Council of Europe on Migration Area*, Strasbourg, CDMG, No.96.

prepares non-binding reports, resolutions and recommendations for the Parliamentary Assembly of the Council of Europe in the field of asylum seekers and refugees. The work of the Committee forms the basis for the Parliamentary Assembly's non-binding recommendations. These recommendations have focused on the elaboration of appropriate instruments for the protection of *de facto* refugees, questions related to specific groups of refugees in their regions of origin, and the harmonisation of admission policies and status determination procedures. These recommendations have shaped significantly the work done by the Committee of Ministers which is the decision-making body of the Council of Europe.

The first legally binding resolution of the Committee of Ministers focusing on the European solidarity was adopted in 1967.[349] It provided that governments "should act in particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory". The wording of the resolution emphasizes the liberal interpretation of the moral responsibility of the European states towards refugees. In addition, it underlines the importance of cooperation among member states "in a spirit of European solidarity and of a common responsibility in this field". The emphasis for a European approach towards refugee protection seems to emerge during these years under the Council of Europe intergovernmental cooperation.

The Council of Europe also provided the fora for discussion of these matters when a broader scope of dialogue failed under the UN framework. After the failure of the *UN Conference on Territorial Asylum* in 1977 the Committee of Ministers adopted the "Declaration on Territorial Asylum".[350] This declaration affirmed the positive attitude of the Council of Europe member states towards refugee protection. In order to highlight this commitment the Ad Hoc Committee of Experts on the Legal Aspects of Refugees (CAHAR) was set up as an intergovernmental initiative.[351] It was

[349] Council of Europe (1967), Committee of Ministers, *Resolution*, No.67 (14), 29.06.1967.

[350] Council of Europe (1977), Committee of Ministers, *Declaration on Territorial Asylum*, 28.11.1987.

[351] Lavenex, S. (2001), *op.cit.,* p.77.

composed of governmental experts in the fields of asylum and refugee policy, experts in the field of refugee law and protection, and the representatives of UNHCR as observers to examine Parliamentary Assembly recommendatory for the adoption of legal instruments including conventions.[352] It aimed at the pursuit of an intergovernmental dialogue on the situation of the system regarding refugee protection. This institutional body still elaborates the juridical instruments such as conventions and recommendations adopted by the Committee of Ministers with the 'liberal and humanitarian spirit' of the member states of the Council of Europe.[353]

One of the main objectives of this intergovernmental cooperation is to find concrete solutions with regard to harmonisation of standards of domestic asylum policies. As a result of this cooperation some early attempts of harmonisation of procedural standards and *de facto* policies were seen under the Council of Europe framework. Compared to the Community's efforts to harmonize the standards of refugee protection in Europe the Council of Europe have followed a relatively 'idealist and humanitarian perspective' aiming at strengthening and harmonising the implementation of the international refugee regime.[354] Unlike Community efforts the unit of concern in the Council of Europe activities is refugee as an individual. Therefore, the focus is that person's human rights with respect to the persecutor and protector state. As it is seen in the following decades there will be a shift form this humanitarian and idealistic perspective towards a more security based approach in European countries.

The main contributions of the Council of Europe in the improvement of the situation of recognized refugees can be listed as; strengthening of cooperation and solidarity among European states and with the countries of origin and transit, elaboration of common principles for a harmonised approach towards *de facto* refugees and asylum

[352] *Ibid.*

[353] Council of Europe (1996), *Activitiés de Conseil de l'Europe dans le domaine de migrations*, Strasbourg, CDMG (96).

[354] Lavenex, S. (2001), *op.cit.,* 78.

procedures, and efforts to establish a system of regional cooperation based on the 'first country of asylum' concept.[355]

One of the main contributions of the Council of Europe on the harmonisation of procedural standards was on the issue of *de facto* refugees.[356] In 1976, the Parliamentary Assembly noted the existence of considerable number of such refugees and argued that their situation requires some sort of harmonisation and Regulation. With a recommendation it is claimed that the provisions of the *1951 Convention* should be applied to these refugees and the member states are invited to apply liberally the refugee definition in order to encompass a broad range of refugees.[357] This need is further emphasised in other recommendations of the Council of Europe.[358]

Another contribution of the Council of Europe has been the harmonisation of formal status determination procedures in member states by establishing common guidelines for the examination of asylum claims. It is acknowledged that individual asylum claims were decided in a very disparate manner in each member state. This resulted with important differences in the recognition rates of the countries.[359] In order to combat with the significant differences in recognition, non-binding common procedural standards by the Committee of Ministers were adopted.[360] However, these common procedural standards did not necessarily restrict the interpretation of the refugee definition. On the contrary, the list of these principles reflected the Council of Europe's aim to establish high standards of refugee protection throughout Europe.

---

[355] Lavenex, S. (2001), *op.cit.,* 78.

[356] *De facto* refugees are not recognized under the Geneva Convention refugee definition. However, these people are defined as refugees unable or unwilling to return their countries of origin. Goodwin-Gill, G. (1985), *op.cit*.

[357] Council of Europe, (1985),Parliamentary Assembly, *Recommendation*, No.1016.

[358] Council of Europe, (1988), Parliamentary Assembly, *Recommendation*, No.1088.

[359] Council of Europe, (1976), Parliamentary Assembly, *Recommendation*, No. 878.

[360] Council of Europe, (1981), Committee of Ministers, *Recommendation*, R (81) 16, 5.11.1981.

These common principals included the rights to remain in the territory of the state during the demand examination process, objective judgement, referral of the decision to an independent agency, possibility of a review of the recognition decision and the clear instructions against refoulement.[361] However, this recommendation was not legally binding and its impact was very limited. As a result, the principles hardly constituted the basis for the harmonisation of national asylum procedures.

In 1985 the restricted attitudes of the member states was criticized by a recommendation of the Parliamentary Assembly and it sought a more comprehensive harmonisation of domestic asylum law. This recommendation argued that "the number of refugees in Europe does not justify the restrictive attitudes of the receiving countries." It proposed a liberal way for refugee status determination procedures and the harmonisation of the substantive recognition criteria.[362] Moreover, the recommendation called for the enhancement of cooperation between the member states on the basis of existing international conventions, recommendations and resolutions. It also raised the problem of 'refugees in orbit' who are not ale to find a state willing to examine their claim. As a solution it proposed the harmonisation the definition of the notion of 'country of first asylum.'

The 1988 recommendation outlined that granting of asylum is "a humanitarian act based on the principles of political freedom and human rights". It asked for the preservation of the right of asylum as "one of the generous liberal traditions of democracy".[363] In addition, it requested the adoption of a coherent refugee policy in a spirit of burden sharing and solidarity. Aiming at preserving and improving protection standards in Europe, it made a note of the need for amelioration of the unequal distribution of burden on certain member states of the Council of Europe.

---

[361] *Ibid.*

[362] Council of Europe, (1985), Parliamentary Assembly, *Recommendation*, No.1016.

[363] Council of Europe, (1988), Parliamentary Assembly, *Recommendation*, No.1088.

From the point of view of the communitarization of refugee policies among the EU member states the first attempts to establish a system of allocating responsibility based on harmonised notion of the 'county of first asylum' is predominantly significant.[364] The cooperation under the framework of CAHAR was particularly important in bringing the key provisions of the Schengen and Dublin Conventions in discussion. Even though it did not provide a political agreement over this concept it presented the basis for the development of the notion 'safe third country' laid down in 1992 resolution.

The cooperation under the Council of Europe framework called for higher protection standards. It also had a redistributive logic of burden occurring as a result of the refugee related activities. This elaborates the interesting struggle between generosity and restrictiveness. The Council of Europe's broad and heterogeneous membership significantly hampered the adoption of common measures in the filed of refugee policy.[365] Therefore, the analysis of the developments occurred within the Council of Europe framework makes possible to understand and identify the ideational shift which has occurred with the EU intergovernmental context.

4.2.1.2 Between Regimes: In Search for Solutions?

By the end of the 1970s the economic recession and the changing immigration policies of the European states indicated the reorientation of the efforts in refugee protection from humanitarian approach to a more restrictive approach. The differences between the refugee protection schemes of the European states intensified the need to establish a system for the allocation of responsibilities in the examination of the asylum claims. In that era a general improvement in international protection standards were sought. Within this context the Western European governments searched for a harmonised approach.

[364] Lavenex, S. (2001), *op.cit.,* p. 80.

[365] Lavenex, S. (2001), *op.cit.,* p. 89.

The international community required enhancing states' commitment to refugee protection, particularly to ensure that every asylum seeker has the chance to have their claim examined. It became particularly apparent with the UN Conference on Territorial Asylum in 1977. It aimed at achieving an international subjective asylum right. While respecting the state sovereignty of each contracting state the proposed the Draft Convention on Territorial Asylum asked from states to "endeavour in a humanitarian spirit to grant asylum in its territory to any person eligible for the benefits of this Convention".[366] It also included that "asylum should not be refused by a Contracting State solely on the ground that it could be sought from another state".[367] The exception brought to this principle is when "it appears that a person requesting asylum has a connection or close links with another state, the contracting state may, if it appears fair and reasonable, require the asylum seeker first to request asylum from that state".

This initiative aimed at combating the phenomenon of 'refugees in orbit', defined as "persons who are not granted asylum, have not been send back to the country where they may face persecution, but still in less refugee status, in any country which they make an application for asylum".[368] As a result these persons travel from one country to another in constant quest for asylum. Inclusion of this article was a consequence of certain states practices of excluding some categories of asylum seekers from refugee status including "those who failed to lodge their claim within a certain period after they have left their country of origin or after they had entered the potential host country; or those who had spent some time in a third country, where they were safe from refoulement, before claiming asylum in another state".[369]

---

[366] United Nations (1977), *Draft Convention on Territorial Asylum*, Text of Articles Considered at the United Nations Conference on Territorial Asylum held in Geneva from 10.1-4.2.1977, Art. 1.

[367] United Nations (1977), *Draft Convention on Territorial Asylum*, Art. 1.

[368] Melander, G. (1978), 'Refugees in Orbit', in Amnesty International (ed.), *Bewahrungsprobe für ein Grunrecht.* Art. 16 Abs. 2 Satz 2 Grundgesetz, 'Politisch Verfolgte Geniessen Asylrecht', Nomos: Baden-Baden, p.71.

[369] Lavenex, S. (2001), *op.cit.,* p.81.

The UNHCR Executive Committee accepted Article 1 of the *Draft Convention on Territorial Asylum* in 1979.[370] It aimed at the adoption of common criteria according to which responsibility for the examination of an asylum claim could be allocated in a positive manner. This means in a positive manner for the benefit of the asylum seeker if the claimant has not found protection in another country. In the cases when there is mass in flux of refugees than in the spirit of burden sharing other states would be requested for help.

The Council of Europe worked in a liberal and humanitarian spirit to adopt a harmonised definition for such people. It also had the motivation to avoid the production of 'refugees in orbit' situation. While doing so it tried to find a balance between the interests of the asylum seeker and the first and second countries of asylum. However, it was not possible to find a political consensus among national governments due to the opposition from several member states with external borders. This was as a result of the major differences existing between the traditional transit countries and the countries of asylum. The transit states like Italy or Austria where many of the asylum applicants seeking to enter into Europe felt that they would end up with the responsibility of examining the bulk asylum requests in Europe.[371]

This phase of the beginning of 1980s show the shift from the humanitarian orientation of the Council of Europe and the UNHCR towards to a new intergovernmental fora composed of selected EEC member states. It lead to way to the development of initiatives for further cooperation under a system of responsibility adopted by EU member states through the 1990 Schengen and Dublin Conventions.

[370] UNHCR (1979), UNHCR Executive Committee, Conclusion, No.15.

[371] Lavenex, S. (2001), *op.cit.,* p.82.

4.2.2 Initiatives of Intergovernmental Cooperation among Member States

In the mid-1980s a shift has occurred in the centre of European cooperation regarding refugee matters away from the humanitarian framework of the UN and the Council of Europe to a newer intergovernmental for a composed of the representatives of the EEC member states. Since the mid-1980s Community cooperation and integration on migration and refugee policies have intensified. This Communitarization of policies had important implications on the formation of a European refugee policy. This section outlines the explanations for the development of EU cooperation. The development of this area is interesting as it involves both supranational and intergovernmental elements. In this section the interaction of these elements will be analyzed.

As discussed in Chapter Three the *1951 Convention* is the cornerstone of international refugee protection and it has universal application. However, different countries have their own systems of deciding whether a person fits the UN definition and national courts may interpret the *1951 Convention* differently.[372] This has been also the case for the European states. The differentiated interpretation was aimed to be harmonised under the Council of Europe framework. However, the fragmented interests and the idealistic perspective of the Council of Europe prevented a common ground for action. By the end of the 1980s and the beginning of 1990s a complicated set of causes were the catalyst affect for further cooperation on those matters. The launch of the SEA and the common market, following respectively the abolishing internal borders, the need for a common visa regime, and the Yugoslavian refugee crisis within Europe were all among those causes.

In 1986 the SEA marked a turning point in intergovernmental cooperation. SEA created a single internal market based on four fundamental freedoms: the free movement of goods, capital, services and persons.[373] With the creation of the single

[372] Shutter, S. and Niaz, A. (2002), *Asylum: Changing Policy and Practice in the EU, UK and Selected Countries*, London: Justice, p.7.

[373] European Community (1986), *Single European Act*, Art. 8 (a).

market the necessity of establishing compensatory measures emerged. SEA envisaged abolishing of internal borders of the Community while tightening the external common frontiers.[374] Thus, the member states set up new working parties dealing with these issues outside the Community framework. These parties included the A*d Hoc* Immigration Group in 1986, the European Committee to Combat Drugs (CELAD) in 1989 and the Mutual Assistance Group (MAG) for customs matters. These issues in general were concluded in an intergovernmental process including observers from the European Commission.

Until the SEA of 1986 issues relating to the admission of third sate nationals and refugees did not enter the European agenda.[375] The aim to realise the single market project and to abolish internal borders were achieved through Article 8 (a) of SEA. This article provided for the free movement of persons within the Community. However, the member states refused the transfer of sovereignty in these matters to Community competence. This is reflected in the debate how to interpret the 8 (a) of SEA and whether or not this provision should apply to third state nationals in addition to citizens of the member states. The member states' governments adopted a general declaration affirming their national rights with regard to immigration from third countries, terrorism, crime and trafficking of drugs.[376] On the other hand, a political declaration added to the SEA affirmed the agreement of the member states' governments to cooperate intergovernmentally on these matters.

Faced with a strong opposition, the need to leave the asylum and immigration field to the discretion of the member states was clear. By that time, the continuing difficulty to achieve further developments within the Community framework forced some of the member states such as, France, Germany and the Benelux countries to conclude an agreement in this area in an intergovernmental forum outside of the Community

[374] Loescher, G. (1989a), 'The European Community and Refugees', *International Affairs*, No. 65, pp.618-636.

[375] Geddes, A. (2000), *Immigration and European Integration. Towards Fortress Europe?,* Manchester: Manchester University Press.

[376] European Council (1985), *Declaration*, Luxembourg, 09.09.1985.

framework at Schengen in 1985. The Schengen Implementing Convention was signed in 1990 as the implementation convention of the 1985 Schengen Agreement and it effectively abolished internal border checks while improving controls at external borders and harmonizing arrangements relating to visas, asylum and police and judicial cooperation.[377]

Instead of pursuing harmonisation of national asylum policies within the humanitarian framework of the Council of Europe or the supranational system of the EU, EU member states choose to cooperate at a purely intergovernmental level.[378] This intergovernmental cooperation has lead to the institutionalisation of what has been formerly understood as structures of "intensive transgovernmentalism".[379] These structures challenged the knowledge about the dynamics of European integration and the application of the Community method of policy-making.[380] It is important to understand this intensive transgovernmentalism in asylum and immigration matters for two reasons: firstly, to understand the persistence of the intergovernmental elements in the current framework of cooperation. Secondly, it is important to comprehend the limited scope of refugee protection provoked by this cooperation.[381]

Accusing the European states for their commitment to develop a more restrictive approach Erika Feller, Director of the Department of International Protection at UNHCR questions if Europe as argued by most is being swamped by asylum seekers with the end of the Cold War. She argues: "…the horrors of Bosnia and Kosovo have reminded us that no continent is immune to refugee-producing crises. On balance,

[377] Dinan, D. (1999), *Ever Closer Union?*, London: Lyne Rienner Publications, p.183.

[378] Lavenex, S. (2001), *op.cit.,* p.86.

[379] Wallace, H. (2000b), 'Institutional Setting, Five Variations on a Theme', in Wallace, H. and Wallace, W. (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press, pp.3-36.

[380] Den Boer, M. (2000), 'Justice and Home Affairs', in Wallace, H. and Wallace, W. (eds.), *op.cit.,* Oxford: Oxford University Press, pp.493-518.

[381] Lavenex, S. (2001), *op.cit.,* p.86.

however, wealthy countries host only a fraction of the world's refugee population. The brunt of the effort is borne by some of the poorest, least equipped and most unstable nations."[382]

Despite the increase in numbers of people migrating to Europe in the last decade it is possible to argue that after the end of the East-West division the numbers estimated to arrive from Central and Eastern Europe has been less than expected. However, in the last decade or so the countries of origin and destination have been changed blurring the traditional concept of North Western European countries being the country of destination. The changes have also included the changes in the gender of the displaced people. Growing participation of women and this tendency towards the feminization of migration flows is one of the new features of international migration.[383]

From this perspective scholarly attention has focused on the changing dynamics of displacement of persons. In the recent literature it has been argued that a new theme emerged in European migration which can be identified as "new migration."[384] In the literature the concept of "new migration" is growingly emphasised. It is reflected in the heart of the dynamic between geopolitical and geo-economic changes and evolving patterns and processes of migration. These changes had a great influence in Europe.[385] Thus, the increased number of displaced persons within Europe by the beginning of the 1990s as a common challenge clearly indicated the need to search for common solutions and actions.

---

[382] UNHCR (1995), *op.cit.,* p.1.

[383] Castles, S. and Miller, M.J. (1993), *The Age of Migration*, London: Macmillan.

[384] Koser, K. and Lutz, H. (1998), 'The New Migration in Europe: Contexts, Constructions and Realities' in Koser, K. and Lutz, H. (eds.), The New Migration in Europe: Social Constructions and Social Realities, New York: St. Martin's Press, pp.1-17.

[385] For more details see Castles, S. and Miller, M.J.(1993), *op.cit.,* Gould, W.T.S. and Findlay, A.M. (eds.), (1994), *Population Migration and Changing World Order*, London: Belhaven, Richmond, A.H. (1995), *Global Apartheid* Toronto: Oxford University Press.

The shift from the liberal approach towards a more restrictive approach in refugee protection was also a result of these changing patterns of migration. The pressure of immigration on most member states created the context where perception of refugee question was downsized to border-crossing quality of asylum seekers. This has limited the focus of refugee protection under the broader phenomenon of voluntary migration.[386] In addition, political and ideological changes in international and regional context were influential. As discussed in Chapter Three after World War II, Europe was the principal region for refugee. At that time granting refugee status was relatively easy as it was reaffirming the failure of communism and political success of the West. Another reason for the encouragement of asylum seekers in West was the economic and employment situation in Europe in late 1950s and 1960s. As a result of post-war reconstruction and economic recovery West European countries were experiencing manpower shortages. They actively sought refugees and migrant workers.[387]

This has gradually changed with the oil shock of 1973. Mainly, the economic stagnation resulted by the oil shock inevitably forced Western European governments' migration schemes to change. Most European states stopped recruiting foreign workers. The official halt to foreign labour recruitment in the mid-1970s lead to a potential migrant to discover asylum as an optional path of entry to the EU.[388] As a result, there has been an overburdening of asylum systems in the main receiving countries. It has also contributed to the widespread perception of an abuse of asylum procedures.[389]Additionally, increased structural unemployment in most West European states created xenophobia and anti-refugee sentiments.

---

[386] Lavenex, D. (2001), *op.cit.,* p. 139.

[387] Loescher, G. (2002), 'State Responses to Refugees and Asylum Seekers in Europe', in Messina, A.M. (ed.), *West European Immigration and Immigrant Policy in the New Century*, London: Praeger, p.36.

[388] Loescher, G. (2002), *op.cit.,* p.36.

[389] Lavenex, S., (2001), *op.cit.,* p.3.

Another reason for this change in the liberal perceptions of European states on refugee matters has been the growing politicization of the refugee issue all over the world. With the end of the old bipolar global system, the conceptualization of security and threat to national security has acquired more comprehensive meaning. Security threat for a country was no more nuclear ballistic missile threat but it could rather come in a more decisive and unconventional way. Ethnic and political conflicts all over the world, the gap between the rich and poor added to a growing perception of the refugee problem as a threat to national stability and national security.[390] In that context security has been one of the justifications for the arguments for the restrictive migration policies. It justifies the argument of the flood of migrants that threatens the survival of Western Europe in the aftermath of the end of the Cold War. Needless to say the increased number of asylum seekers and immigrants in the Western societies has raised socio-political and economic concerns relating the welfare system, criminality and unemployment. It has also raised question relating the identity and citizenship matters. In that sense the construction of "frontiers of identity" against the "other" has intensified.[391]

On the one hand, changes in this area could be regarded as a movement towards further integration with the improved intergovernmental cooperation. On the other hand, the nature of the cooperation process lead to certain problems including the democratic deficit and duplication of the works done. This intergovernmental approach enabled neither the European Parliament nor the national parliaments to control the measures taken. Moreover, the various working groups established separately over the years to report to different groups of ministers resulting in the duplication of the work. The drafting of resolutions, conclusions and recommendations has been used as instruments of intergovernmental cooperation. The area of JHA has been accused usually of being ineffective that further modifications were expected to be made. In order to improve the effectiveness of cooperation in this field and to ensure more democratic control, the working parties

[390] Lavenex, S., (2001), *op.cit.,* p.3.

[391] Cohen, R. (1994), *Frontiers of Identity: The British and the Others*, London: Longman.

and the policy implementation needed to be brought under one umbrella within the legal framework of the EU. With the end of the deadline made to establish to create a single market in 1993 the Treaty on the European was signed.

The increasing awareness of the 1990s to refugee issues made clear that the eastern border of the EU has to be secured from further refugee flows. This shift occurred by the beginning of 1990s resulted with a process of harmonisation of legislation and policies of the EU member states, who were originally the architects of the international refugee protection regime and whose jurisprudence and political example are widely followed throughout the world. Is this still the case in the recent years or this situation has gradually changed with the change in understanding towards asylum seekers, refugees, and immigrants? This question is examined in the next section.

4.2.2.1 To Be or Not to Be a European? A Paradoxical Democracy without Democratic Rights for Non-Europeans

This section focuses on the political significance of the migration question in the EU. It will involve the argument that migration is not simply a managerial issue to be addressed. Its nature is more complex and it is necessary to understand it in a more comprehensive manner. It covers the management of transnational population flows and the integration of immigrant communities. Migration is not only important in the context of the functioning of the welfare state but at the same time it has implications on the political identity of the EU.

Migration and the term "migrant" has become an increasingly political name within the EU. Migration has become two-dimensional embedded in the inclusion and exclusion debate. On the one hand, there is a process for the improvement of the rights of refugees and immigrants to integrate them to the society and on the other hand there are restrictions on rights to immigrate and seek asylum. For example, The Asylum and Immigration Appeals Act of 1993 and the 1996 Asylum and

Immigration Act of the United Kingdom denied access to certain classes of asylum applicants to social security and legal aid. This was aiming to discourage asylum seekers to apply for asylum in the UK. It was agreed by consensus by different political parties in the UK that asylum applications were too many and it was not no longer possible to control these increased numbers.[392] Tougher measures are introduced to prevent potential migrants gaining access to asylum procedures. These measures can only produce short term results as at the long run the pressure at the points of entry continue to increase without providing a sustainable solution. Therefore, building walls for entry will not stop persons passing international frontiers to seek asylum or to seek a better living. There is a clear need for a radical rethinking of the current agendas on asylum.[393]

For the ones who are able to get inside the borders of an industrialised state and legally stay in there the problems do not finalize. There are reductions in the rights of immigrants and asylum seekers in the Western world. This brings the argument of the necessity to improve these standards. The improvement of the right and duties of the immigrants and the refugees brings the debate of benefits and losses to become a multicultural political community. It has been argued that political and social right within a society should not be granted on the basis of nationality but on the basis of residence and other non-ethnic criteria. According to this argument migration brings the distinctive opportunity to establish a multicultural society. Therefore, the constraints of the nation-state are eased through the Europeanization process.[394]

---

[392] Schuster, L. and Solomos, J. (1999), 'The Politics of Refugee and Asylum Policies in Britain: Historical Patterns and Contemporary Realities', in Bloch, A. and Levy, C. (eds.), *Refugees, Citizenship and Social Policy in Europe*, London: Macmillan, pp.51-52.

[393] Schuster, L. (2003), *The Use and Abuse of Political Asylum in Britain and Germany*, London: Frank Cass, p.277.

[394] Ireland, P.R. (1991), 'Facing the True "Fortress Europe": Immigrant and Politics in the EC', *Journal of Common Market Studies*, Vol.29, No.5, pp.457-80.

Derrida argues that Europeanization of the migration policy while integrating migrants call Europe to be responsible towards migrants.[395]

Through the regulative framework of increasing Europeanization there is continuous restriction on the rights of immigrants, refugees and asylum seekers.[396] This is an interesting aspect of Europeanization as European integration is trying to establish an upper level of European value system with respect to human rights and fundamental freedoms, democracy and free market economy. These values are the centre of this created and constructed European identity. This establishes a paradoxical situation concerning the development of a European political identity based on the support for human rights and democracy. Habermas argues that:

> The European states should agree upon a liberal immigration policy. They should not draw their wagons around themselves and their chauvinism of prosperity, hoping to ignore the pressures of those hoping to immigrate or seek asylum. …Only within the constitutional framework of a democratic legal system can different ways of life coexist equally. These must, however, overlap within a common political culture, which again implies an impulse to open those ways of life to others.[397]

The Habermasian view stresses the need to separate political culture from national culture through establishing a democratic political culture with which Europeans identify at the European level.[398] This post-national political space will allow immigrants and refugees to be involved in the political community actively.

---

[395] Derrida, J. (1992), *The Other Heading: Reflections on Today's Europe*, Bloomington: Indiana University Press.

[396] Lavenex, S. (1998), 'Transgressing Borders: The Emergent European Refugee Regime and "Safe Third Countries"', in Cafruny A. and Peters P. (eds.), *The Union and the World*, London: Kluwer.

[397] Habermas, J. (1992) 'Citizenship and National Identity: Some Reflections on the Future of Europe', *Praxis International*, Vol. 12, No. 1, p.17.

[398] Huysman, J. (2000), *op.cit.,* p. 159.

One has to be careful while making the argument on the creation of a multicultural and supranational Europe. As on the one hand, the EU projects a "civilian" image with the sustainability of the multicultural European society[399] at the same time it struggles over improvement of the rights of immigrants, refugees and asylum seekers. In that sense it is possible to argue that migration policy is one of the issues included in the European integration debate to deepen the political integration. This debate is multidimensional including formation of a political cooperation through the development of a common foreign policy as well as a constitutional treaty of the Union. The political deepening can only be legitimized and supported through masses by creating a supranational belonging of the EU citizens. At the moment the citizens of the member states feel themselves belong to a nation-state rather than belong to a Union involving economical and political elements.

Huysmans argues that although migration is often represented as a managerial problem it is also a force which has a capacity to support a struggle about responsibility of an institutionalized political community.[400] His main argument arises from the Habermas' argument on transnational immigrants: "The transnational immigrants' movements function as sanctions which force Western Europe to act responsibly in the aftermath of the bankruptcy of state socialism. Europe must take a great effort to quickly improve conditions in the poorer areas of middle and Eastern Europe or it will be flooded by asylum seekers and immigrants."[401]

Habermas argues the Union's responsibility is not only limited to its citizens but it encompasses the responsibility of persons within its immediate vicinity. Bringing into the attention of Western European states to take responsible steps in order to improve the political and economic condition of its Eastern neighbours, Habermas' point is clear: restrictive policies have retroactive affects. If the solutions for the

[399] Huysman, J. (2000), *op.cit.,* p. 165.

[400] Huysman, J. (2000) 'Contested Community: Migration and the Question of the Political in the EU' in Kelstry, M. and Williams, M. C. (eds.), *International Relations Theory and the Politics of European Integration: Power, Security and Community*, London: Routledge, p.149.

[401] Habermas, J. (1992), *op.cit.,* p.13.

increased immigration and refugee challenges are not presented to tackle with the root causes then durable solutions will never become attainable. Otherwise the citizens of economically less developed and politically unstable countries will always be a source of refugees and immigrants. Additionally, the mentality which ignores the root causes of flight of these people also perceives these people as threat to Western society's stability and solidarity.

There are various explanations why immigrants and refugees are attributed as threats to Western societies. Immigrants, refugee and foreigners can call for action to preserve the society as it is[402], they can also call into to question the notion of citizenship and identity, no need to mention the arguments concerning the welfare system of the societies. The main question in this argument is that whether or not migration in general is intimidating society. On the contrary to the arguments that migration is a threat to community it is also possible to argue that it works as a catalyst for political movements seeking the transformation of the political community.[403] Therefore, several issues are brought into question within the securitization of immigration and refugee issues. How politically significant is migration? Is there a paradox between securing rights for the EU citizens for the sake of limiting rights of the foreigners within the EU territory? Therefore, is political community in Europe under test today with the "migrant" and the "refugee"?

Some attention to be paid is necessary on the relationship between European integration process and the challenges of political legitimacy. It is mostly arguable that a restrictive migration and refugee policy is a reaction to an increasing pressure of transborder movement of persons. It is simply another challenge that presents itself in front of the policymakers and demands effective action.[404] Thus, the link between post-national and multicultural European Union and the politicisation of migration appears to be clear. Accordingly, this is reflected in the debate of political

[402] Huysman, J. (2000), *op.cit.,* p.149.

[403] Huysman, J. (2000), *op.cit.,* p.151.

[404] *Ibid.*

identity crisis in Europe today. Immigrants and refugees therefore are in the middle of the battlefield of identity politics.

From this perspective it is possible to argue that the new set of measures to discourage asylum seekers coming to particular countries and the limitations of certain rights and freedoms on their arrival build a system of restrictive democratic practices under the notion of state sovereignty and security. The European countries are moving far a way from a rights based approach to those displaced persons. The development of this restrictive system of protection of refugees and the limitation of rights of immigrants bring the dilemma of democratic practices for the EU nationals and non-nationals. If the following question is asked will it constitute a radical exposition of this trend? Are these new practices build up a differentiative system where there exist different categories of persons entitled to different categories of economic, political ad social rights within a nation-state?

In EU countries the more institutionalised the asylum policy the more limitation exist in terms of rights and freedoms of asylum seekers. There are sets of measures limiting the freedom of movement of asylum seekers with enforced detention. In Finland 80 percent of asylum seekers appear to be detained.[405] The position of asylum seekers is worst in the UK where asylum seekers "spend longer in prison than anyone else held Immigration Act powers."[406] Special detention centres are built to keep the growing number of asylum seekers where the security procedures are similar to prisons. They are built in isolated places far from inhibited areas such as towns or cities. Protected by high walls and wires, asylum seekers brought to the centre late at night or very early in the morning at dark. Isolation from the local

[405] European Consultations on Refugees and Exiles (ECRE) (1989), *Participants' Meeting Conclusions*, April 1989.

[406] Cohen, R. (1989), 'The detention of asylum seekers in the UK', in Joly, D. And Cohen, R. (eds.), *Reluctant Hosts: Europe and its Refugees*, Aldershot: Gower, p.148.

community is one of the main characteristics of these detention centres in order to provide deterrence measures for the would-be asylum seekers.[407]

There are significant legislative and procedural differences between countries. This is largely because the *1951 Convention* does not contain procedures for determining refugee status.[408] In some countries immigration laws and their appended rules apply.[409] In some others, the *1951 Convention* is incorporated into national law and a specific body deals with asylum seekers and refugees.[410]

The situation in terms of limitation of rights and freedoms of the immigrants is not much different. Immigrants' rights are being gradually limited in the last couple of years within the European countries. Immigrants working in legal jobs are tax payers. They do have duties and obligations vis-à-vis state. Their entitlement to rights and especially to political rights is gradually being limited. This process moves towards to a point where the immigrants have difficulties for family union, difficulties for rights to citizenship, no rights for voting in elections, or related other political rights. Immigrants forming the labour force expected to work but not to think or not to involve. They are expected to obey rules and Regulations of the social and legal order of the society they live in, but they are expected not to actively participate and shape that society. As a result, they have difficulties in integration and belonging to the society they migrate.

Huysmans argues that migrants are members of society and therefore entitled to rights and duties. However, they cannot be fully members of this society because they are late enterers. Therefore, the time of belonging is crucial. As a citizen you have to belong to a group from the beginning without importing to that group some

---

[407] Cornelius, W. (2004), *COMPAS Seminar*, "Controlling or Uncontrolling the Borders", Oxford: Oxford University, 12.08.2004.

[408] Joly, D. (1996), *Haven or Hell?: Asylum Policies and Refugees in Europe*, New York: St. Martin's Press, p. 44.

[409] These countries can be listed as Denmark, Ireland and the UK.

[410] One example is France with the *Office Français pour les Réfugiés et Apatrides, OFPRA*.

strange qualities.[411] Traditionally immigrants are often pictured as ideally as labour force. Not only refugees and asylum seekers but also economic immigrants raise questions about housing, social rights, and political rights, etc.[412] They are regarded as non-nationals in the national order.[413] This challenges the nationalist classifications. Actually immigrants do not fully belong to the community they emigrate from or they do not belong to the community they have immigrated to. This creates a paradoxical situation where the immigrants stay between those communities and raise the questions of belonging and not belonging.[414] Creating discrimination and endangering solidarity of Western European societies this issue is increasingly being addressed.

Will this situation create second class members for societies without certain rights? Does the EU citizenship help on that matter or does it enhance the gap between immigrants and EU citizens? Does EU membership create an upper ground for membership for European societies? These are all question which will have to be addressed soon if this move away from the rights based approach of the UN and the Council of Europe continues towards Communitarization of asylum and immigration policies within the EU. The question of the role that the EU played with intergovernmental initiatives in the field of refugee policy and how does this role influenced the changing understanding of refugee protection is analyzed in the next section.

---

[411] Simmel, G. (1964) 'The Stranger', in Wolf, K.H. (ed.) *The Sociology of Georg Simmel*, New York: The Free Press, p. 402.

[412] Soysal, Y. (1994) *Limits of Citizenship: Migrants and Post-colonial Membership in Europe*, Chicago: University of Chicago Press.

[413] Sayad, A. (1991), *L'Immigration ou les Paradoxes de l'Altérité*, Brussels: De Boeck, p. 292.

[414] Huysman, J. (2000), *op.cit.,* p.151.

4.2.2.2 Schengen and Dublin Conventions: One for All, All for One

The EU member states' efforts to harmonise their asylum and immigration policies coincided with efforts to achieve closer economic and political integration through the creation of a single European market. When this cooperation is analyzed it is possible to examine that over the last fifty years the Member States have increased cooperation in the field of justice and home affairs at various levels: bilaterally, regionally (within the Council of Europe) and globally (the United Nations). The Rome Treaty of 1957 establishing the European Community includes as one of its objectives the free movement of persons within the Community. However, it does not deal with the crossing of borders, immigration or visa policy. Freedom of movement was viewed in purely economic terms and concerned only workers. The cooperation within this field is more a recent development. The internal and external dynamics have shaped the development in that area within the framework of Community policies. The growing importance of certain challenges, as mentioned before, such as increased number of asylum applications, the increased burden of these applications on certain member states, illegal immigration, and cross-border organized crime, as well as the willingness to extend freedom of movement from workers to everyone encouraged the EU Member States to increase cooperation in the field of justice and home affairs.

Attempts by Member States of the EU to create an "ever closer union" have included moves to harmonize their policies on immigration and asylum. The *1967 Naples Convention* on cooperation and mutual assistance between customs and administrations provided the first framework for exchanges between the Member States.[415] From 1975 onwards, this intergovernmental cooperation slowly began to develop outside the Community's framework for dealing with immigration, the right of asylum, and police and judicial cooperation. This intergovernmental cooperation among national enforcement agencies developed from the mid-1970s in response to

[415] Lambert, H. (1999), 'Building a European Asylum Policy under the 'First Pillar' of the Consolidated Treaty Establishing the European Community', *International Journal of Refugee Law*, Vol. 11, No. 2, p. 329.

the developments in trans-border terrorism, drug traffic, and organized crime included informal arrangements, which were established for sharing experiences, exchanging information and setting up networks to facilitate contacts between Member States. Several working groups have been established by with this purpose.

The Trevi Group is an example of these working groups; it consists of officials from the appropriate departments in the Member States. Trevi group was coordinated by the rotating Council Presidency, with little political accountability and few links with EC institutions. De Boer argues that Trevi was one of the two important developments "in preparing the ground for the policy-making process and the achievement of a degree of consensus in the field of justice and home affairs cooperation."[416] Trevi was created in 1976 under the framework of European Political Cooperation (EPC) as a forum to exchange strategic information for anti-terrorist purposes. Its limited scope of terrorism and organized crime was later extended in 1985 to include illegal immigration. It was not until SEA that cooperation on justice and home affairs policy area intensified. Since SEA envisaged a single market for goods, services and people to be established by 1992, further integration on this policy area was indispensable.

Schengen was another intergovernmental initiative. Schengen was a group which was originally composed of five member states-France, Germany, and the Benelux countries. The Schengen Agreement of 1985 has formalized an intensified cooperation of asylum seekers and refugee related issues. Accordingly, in 1990 the justice and home affairs cooperation among the member states of the EC started when two overlapping and partly differing intergovernmental fora adopted two partially corresponding international agreements. The Communitarization of refugee matters were shaped in these two intergovernmental fora namely, Ad Hoc Group on Immigration and the Schengen Group. In 1990 these two groups adopted two

[416] Den Boer, M. (1998), 'Justice and Home Affairs: Cooperation without Integration', in Wallace, H. and Wallace, W. (eds.), *op.cit.*, p.390.

international agreements, the Schengen Implementation Agreement and the Dublin Convention. The Schengen and Dublin Conventions established the basic pillars and guidelines for further elaboration of common asylum and immigration policies in the EC. These agreements constituted a framework for policy which permits asylum seekers to lodge an application only in one state and allowing about the applicants' information to be extensively shared among member states.[417] This was basically aiming to prevent the so-called asylum shopping.

Following the 1992 Programme and the Schengen Agreement to abolish internal borders within the Community, initiatives were started for further institutionalisation of these developments. Among a smaller group of member states the Maastricht Treaty's 'third pillar' as a project was developed.[418] As a result, the Schengen process was a typical example of differentiated integration initiated by a limited number of EU member states. It was in the beginning launched as a Franco-German initiative to abolish controls at the borders of Germany and France. Later, the initiative became a pilot project negotiated between a limited number of member states which would serve as an example of EU-wide cooperation. The Schengen Treaty was used as a chance to promote joint intergovernmental approaches to common transnational challenges such as organised crime, terrorism, illegal immigration, and asylum seekers. The Treaty also included an annex which linked the abolition of internal border controls to the necessity of elaborating 'compensatory measures' for the safeguarding of internal security.[419] This annex initiated a dynamic process of cooperation among he interior ministers of the Schengen countries.

From this perspective, the Schengen group, Ad Hoc Group on Immigration and Trevi provided an overlapping structure of differentiated membership in order to diffuse policy approaches among Western European countries. It was relatively more fruitful than the Council of Europe initiatives as a small number of "like-minded" EU

[417] Loescher, G. (2002), *op.cit.,* p.37.

[418] Den Boer, M. (1998), *op.cit.,* p.389.

[419] Lavenex, S. (2001), *op.cit.,* p. 88.

states were involved. The Schengen initiative brought together countries which face similar situations with regard to the percentage of third country nationals living in their respective territories and a comparable intake of asylum seekers. This process turned into a motor for EU-wide and later pan-European approximation of refugee matters. In order to avoid any possibility of conflict of interests the traditional emigration and transit countries which had opposed harmonisation in the council of Europe were not allowed to adhere before conclusion of Schengen II.[420]

With regard to asylum and immigration both the Schengen group's and the Ad Hoc Group on Immigration's mandates were restricted to the elaboration of common high standards of control at the external borders, tight entry conditions for third country nationals, the fight against illegal immigration and fight against "bogus asylum" applications. Both intergovernmental processes were launched outside the Community framework and with no formal linkage to the EC treaties' provisions. In view of that, the supranational EU institutions had no competencies in these negotiations. Only the European Commission was allowed in as an observer after the drafting of the Second Agreement of the Schengen group in 1990.

These intergovernmental groups were working on technocratic terms with the rule of non-political bureaucratic experts acting outside the public space.[421] The relevant negotiations took place in working groups composed of representatives from the interior ministries. In contrast to the CAHAR group in the Council of Europe neither academic/professional experts nor the UNHCR as the watchdog of the international refugee regime were allowed to assist with the sessions. The UNHCR was informed of the intergovernmental agreements only after the completion of the drafts. Total secrecy of the activities of the intergovernmental fora was dominant. Neither the EP,

[420] Lavenex, S. (2001), *op.cit.,* p. 89.

[421] Curtin, D. and Meijers, H. (1995), 'The Principle of Open Government in Schengen and the European Union, Democratic Retrogression?', *Common Market Law Review*, Vol.32, No.2.

nor the national parliaments were informed about the proceedings from the intergovernmental negotiations.[422]

Avoidance of the development of any Community competence over the sensitive matters of national sovereignty maintained these intergovernmental fora. Thus, cooperation in asylum and immigration matters became a prototype of the differentiated integration process promoted by a core of member states. The main communitarian objective was the abolition of the internal border controls and dealing with the possible resulting consequences. Initial aims were nothing to do with the harmonisation of national asylum policies but the questions of freedom of movement and territorial borders in the EU. This is evident in the First and Second Schengen Agreements (1985 and 1990) and in the Dublin Convention of 1990.

In the First Schengen Agreement of 1985 there was no mention made of refugees or asylum seekers. In the Second Schengen Agreement the emphasis was made to internal security through alternative control mechanisms in a territory and the heightened control standards at external borders. The biggest consensus among the contracting parties was manifested in question relating to the fight against illegal immigration and the intake of asylum seekers. The provisions relating to asylum seekers moved this issue away from their traditional humanitarian framework and underlined the primacy of state. From state's ability to control cross-border movements of foreigners into their territory, refugees were considered as irregular movements of persons. As a result, the issue of refugees has moved much closer to the phenomenon of illegal immigration.

Both Schengen II and the Dublin Convention reaffirm the contracting parties' obligations under the *1951 Convention* and the *1967 Protocol*. Although no reference is made to other related human rights provisions, Schengen II confirms that parties "undertake to process any application for asylum" lodged within their territory.[423]

[422] *Ibid.*

[423] *Schengen Implementation Convention* (1990), Article 29.

However, the confirmation was also made that this did not entail the right of asylum seekers to enter or stay in the territory. Schengen II in Article 29 paragraph two affirms that "Every Contracting Party shall retain the right to refuse entry or to expel any applicant for asylum to a Third State on the basis of its national provisions". Although there was no reference made on the *non-refoulement* principle, states' sovereign discretion over the entry and stay of asylum seekers was ensured.

According to Article 29 of the Schengen Agreement and Article 3 of the Dublin Convention, only one party shall be responsible for processing an application. This determination of criteria for processing an application is a significant departure from the traditional system of refugee protection which bound every single state to provide protection under the *1951 Convention*.[424] On the other hand, the Preamble of the Dublin Convention refers to the problem of refugees in orbit. It claims to provide a guarantee that an asylum application will be examined in one of the member states so that the applicants "are not referred successively from one member state to another without any of these states acknowledging being competent to examine the application of asylum".[425] This was departure from the state responsibility commonly refereed as the 'country of first asylum' to the notion of "first host country for asylum". This new concept refers that for an asylum applicant in order to be sent back should actually already have found protection or asylum. The aims was to reduce the number of asylum applications in the contracting countries by implementing strict requirements for entry into the territory and re-enforcing control standards and by abolishing the possibility of multiple asylum applications by one asylum seeker in different member states.

Based on the perception of refugee protection as a zero-sum game, the provisions of the Schengen and Dublin Conventions set up a redistributive system to handle

[424] Lavenex, S. (2001), *op.cit.,* p. 96.

[425] European Communities (1990), Dublin Convention determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities, 15.06.1990, Dublin, entry into force 01.09.1997, Official Journal, No.254, 19.08.1997, Preamble.

asylum claims. Therefore, the responsibility for handling an asylum claim is placed on the state which first enables the entry of an asylum seeker into the common territory.[426] This rule puts considerable burden on the countries possessing an external border of the Union, thereby modifying traditional refugee flows which tend to find their final destination in the centre of Western Europe.

Within these provisions there is a lack of reference to solidarity among the member states and the possibility of burden-sharing. These are values at the core of the normative framework of international refugee law and mentioned regularly at the texts of the Council of Europe. In addition, there was no mention made to the aim of improving protection standards in Europe. Therefore, the issue was shifted form a humanitarian "low politics" arena into a "high politics" one concerned with cross-border threats to internal security. Within this framework refugees are presented as a threat to the internal security of both the member states and European integration including freedom of movement in the Union.

Within this context the EP provided a counter frame taking the situation of asylum seekers and refugees in the member states as their point of departure.[427] The EP underlined states' obligations under international law and emphasise the human rights dimension of this policy field. The EP texts appealed for stronger solidarity and cooperation with the countries of origin of the asylum seekers, and those texts called for the requirement of Communitarization of refugee issues. Additionally, they stressed the need to cooperate with other organizations on these issues with the rational that "an international problem cannot be dealt with by national provisions, because this only means that the problems are passed on to another country".[428]

In this context, in the first generation intergovernmental cooperation on asylum and refugee matters, the core of the cooperation was based on a 'realist' perspective

[426] Lavenex, S. (2001), *op.cit.,* p. 99.

[427] Lavenex, S. (2001), *op.cit.,* p. 101.

[428] European Parliament (1987a), Committee on Legal Affairs and Citizens' Rights, *Resolution on the Right of Asylum*, Doc. A2-227/86/A and A2-227/86/B of 23.2.1987.

safeguarding the principle of state sovereignty and internal security. On the other hand, it has also involved some idealist elements where strengthening the regional cooperation among EU member states. Especially through the EP contribution it was evident in the context of the legal norms and principled beliefs of the international refugee regime. The next section deals with the interactions between these 'realist' and 'idealist' elements in the development of a common European refugee policy.

4.2.3 The Treaty of European Union's Temple Framework for Cooperation: A Move for Consolidation?

The Maastricht Treaty or in other words the Treaty on the European Union (TEU) of 1993 provided a new basis for collaboration between the Member States in the field of JHA and formally institutionalized cooperation in this field. JHA has usually been referred as an area consists of intergovernmental cooperation rather than close Community integration. For many years as a result of the differences of national police and legal cultures, issues of sovereignty and civil liberties, and popular distrust for common action this area of policy remained under intergovernmental cooperation. This mistrust has delayed the implementation of the Schengen agreements while inhibiting further institutional or policy development of the field on asylum and immigration.

The EU member states' concerns about developing immigration and asylum area are not exclusively as a result of humanitarian reasons. As discussed above the EU's perception of asylum issue as an internal security and order matter having direct consequences on each and every member state has shaped the general development in that area. This is mainly due to the fact that with the end of the Cold War the security conceptualisation in Europe has acquired a broader meaning and understanding. In the post-Cold War period it was feared in Europe that the danger of the widespread disorder in the disintegrated Soviet bloc and in Central and Eastern Europe would lead problems of security and instability within the European continent. The Union was concerned that there would be mass migration flows from

those countries to the EU member states. Consequently that would create major social, economic and political challenges that the Union was not prepared to cope with.

In due course in January 1991 the Luxembourg Council Presidency submitted a working paper proposing three alternatives extending the EC's competence to JHA issues for the Intergovernmental Conference that prepared the Treaty.[429] According to this proposal the first alternative was to continue cooperation on these issues outside the Community framework. The second was to draft a series of specific treaty provisions defining the issues to be covered and the decision-making machinery to be employed. And finally, the last alternative was to bring all these issues into the action area of the Community and Communitarize it with the EC decision-making.

None of these options was favoured by all the member states and the response of the Council was to prepare a draft treaty in order to accommodate the greatest number of member states. It was clear that there was a consensus among the member states not to keep the issue completely out of the Community's competence. The result of the IGC was creation of a three-pillar structure to the Community, JHA being the third pillar.[430] The new form of cooperation covered nine areas considered to be of common interest with Title VI of the Treaty. These were asylum policy, the crossing of the external borders, immigration, combating drug addiction, and judicial cooperation in civil and criminal matters, customs cooperation and police

[429] Uçarer, E. (1999), ' Cooperation on Justice and Home Affairs', in Cram, L., and Dinan, D. (eds.), *Developments in the European Union*, London: Mac Millan, p.249.

[430] The first pillar included the issues covered in the Treaty of Rome, which are supranational, the second pillar was called 'Common Foreign and Security Policy', and the third was called as the 'Justice and Home Affairs' pillar. The established structure was called as 'The European Temple.'

cooperation. Title VI of the TEU symbolized a considerable progression in the effort to coordinate international justice cooperation within the EU.[431]

The Treaty established a five-tiered negotiation framework, transforming the already existing mechanism into a further complex formation. There have been certain problems in the implementation of policy in the established pillar system. The institutional dynamic was complicated and additionally the decision-making apparatus was confusing. The Treaty established three legal instruments with Title VI: joint positions, joint actions and conventions. Joint positions set out the Union's approach towards a particular question.[432] Joint actions are employed when the objectives of the Union can be attained better by joint action than by the member states acting individually.[433] The Treaty included a "*Declaration on Asylum*" in the Final Act stating that "the Council will consider as a matter of priority questions concerning Member States' asylum policies, with the aim of adopting, by the beginning of 1993, common action to harmonise aspects of them". The goal was to attain a lowest common denominator for European refugee policies.

The initial drive of the new impetus for common action on asylum matters was to fight against abusive asylum claims in the member states. Restrictive measures were introduced in order to reduce the potential for asylum claims in various ways. Clearing House (CIREA) was established in order to gather and exchange information on asylum seekers in 1992. Similarly for fighting against multiple asylum applications a computerized fingerprint identification system for asylum seekers, namely European Automated Fingerprint Recognitions System (EURODAC) was developed. For assisting the implementation of tight external border controls, fight against illegal immigration and improve expulsion procedures a

[431] Anderson, M., Den Boer, M., and Miller, G. (1994), 'European Citizenship and Cooperation in Justice and Home Affairs', in Duff, A., Pinder, J., and Price, R. (eds.), *Maastricht and Beyond: Building the European Union*, London: Routledge, p.115.

[432] The first joint position adopted by the European Union related to the definition of the term refugee as used in the 1951 Geneva Convention and ensured that the same criteria for granting refugee status were applied in all the member states.

[433] European Communities (1992), *Treaty on the European Union*, Art. K.3.

Centre for Information, Discussion, and Exchange on the Crossing of Borders and Immigration (CIREFI) was set up.

London Resolutions and Conclusions followed these developments for introducing simplified procedures for "manifestly unfounded applications for asylum". These aimed at restricting access to domestic asylum procedures for certain categories of persons who are seen not to be "in genuine need of protection within the member states".[434] The first *Resolution on Manifestly Unfounded Applications (RMUA)* may provide the means for member states to use accelerated procedures for certain case where "there is clearly no substance to the applicant's claim to fear persecution in his own country".

From an institutional perspective, the third pillar as constructed by the TEU has given the Community institutions only a limited role and no real opportunity to control decisions taken by the member states. The limitations on legal control by the Court of Justice, the lack of information reaching the European Parliament, the unanimous rule of Council's decision-making and the Commission's limited area of action built up the discussions before and after the 1996-7 Intergovernmental Conference and later produced the Treaty of Amsterdam.

Through the developments in the international context the role played by the EU in developing Community legislation which eventually controls asylum policy across all member states has increased. It has become especially evident with the TEU in 1993. Since the TEU the EU has been working towards a Europe-wide "area of freedom, security and justice". The 1999 Amsterdam Treaty towards the harmonization of asylum policies and practice further extended this aim.[435] The whole mentality behind the harmonization of asylum policy is to ensure that asylum seekers should apply for asylum only once within the EU, and the treatment of applications as chances of getting accepted should be same in each country. The aim

[434] European Council (1992), *Presidency Conclusions*, Edinburgh, 11-12.12.1992.

[435] Shutter, S. and Niaz, A. (2002), *op.cit.,* p. 9.

is to enable an equal distribution of asylum-seekers between countries. In other words it aimed to disable the so-called "asylum shopping" and to enable "burden sharing".

4.2.4 The Amsterdam Treaty: A Step Further?

Through out the years the EU has adopted several documents, which are a combination of binding conventions, and non-binding intergovernmental agreements to which most, but not always all, member states are party.[436] Nonetheless, through the introduction of the pillar system with the Treaty of the European Union, Justice and Home Affairs policy has become one of the major policy areas in the EU. Progressively, this intergovernmental pillar moved towards establishing a common policy. The JHA pillar aimed to be developed to cover the issues falling under this topic.[437] With the 1996-7 Intergovernmental Conference and following the Amsterdam Treaty, immigration and asylum issues have moved towards the top of the EU policy agenda. Through the transnational cooperation between the networks of European police and security experts there has been a development of an increasingly restrictive asylum regime. Shifting these efforts from intergovernmental framework towards the Community framework a more balanced approach was aimed to be achieved.

The final text of the Amsterdam Treaty reflects a compromise, changing the nature of the cooperation in the field of JHA by defining the area of freedom, security and justice in more ambitious and more precise terms, by improving its effectiveness, by making it more democratic and by establishing a better balance between the roles of the various institutions. The aim is to establish the free movement of the European Union citizens and non-EU nationals throughout the Union within the next five

[436] Bieber, R. and Monar J. (eds.) (1995), *Justice and Home Affairs in the European Union*, College of Europe, Brussels: European Interuniversity Press.

[437] Monar, J. and Morgan, R. (eds.) (1994), *The Third Pillar of the European Union*, Brussels: European Interuniversity Press.

years, while guaranteeing public security by combating all forms of organized crime and terrorism. In addition to that the matters of common interest listed in the TEU have been increased in number and divided into categories.

A new title is inserted in the EC Treaty entitled "Visa, asylum, immigration and other policies related to the free movement of persons". This title covers measures concerning external border controls, asylum, immigration and judicial cooperation in civil matters, bringing these areas under the first pillar, where they can be subject of Community directives, regulations, decisions, recommendations and opinions. However, it was agreed that for the first five years after the entry into force of the Treaty of Amsterdam, these areas would only be partly under the Community umbrella, as the Commission continues to share its right of initiative with the member states, Council decisions would still have to be unanimous and the European Parliament would still not directly be involved in decision-making.

The Amsterdam Treaty lists six areas of refugee policy which minimum standards should be agreed on by the Member States. In those areas there are EU Directives now in force or draft Directives or Regulations are under consideration. For the total agreement the target was December 2004.[438] The issues covered under were temporary protection, carriers' sanctions, EURODAC, and the European Refugee Fund.

The United Kingdom, Ireland, and Denmark have indicated in various protocols to the Treaty that they did not wish to participate fully in all the measures relating to JHA. Later in July 1998, the European Commission published a communication on the area of freedom, security and justice setting out the basis, form and objectives. In December 1998 a Council and Commission action plan provided a detailed list of objectives to be achieved in the medium term and the long term. Following that at the Cologne European Council of 3-4 June 1999, it was decided to draw up a charter of the basic rights of EU citizens by December 2000.

[438] Shutter, S. and Niaz, A. (eds.) (2002), *op.cit.,* p. 9.

The composition and the method of work of this charter were approved at the extraordinary meeting of the European Council held at Tampere on 15-16 October 1999.[439] In that summit, it was considered that the establishment of an area of freedom, security and justice was as important as the establishment of the single market. The aim is to develop an open and secure the European Union, fully committed to the obligations of the *1951 Convention* and other relevant human rights instrument and to improve European citizens' access to justice throughout the Union. It is emphasized that this issue will be in greater importance with the forthcoming enlargement concerning the harmonization process of the candidate countries.

The critical aspect of the Tampere Summit is that it emphasised the fundamental importance of a basic human right: "freedom of movement". In the Presidency Conclusions it states: "The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all." [440] The most important aspect of the Conclusion is that it does not limit this right solely to Union citizens. It states that "…This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory."[441]

Promoting these liberal ideas Tampere also foresees the development of common asylum policy. "… requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders…" It is a fundamental move from the security perspective of the previous developments in this policy field developed in the former years. The fundamental departure from international humanitarian norms and values were aimed to be

[439] European Council (1999b), *Presidency Conclusions*, Tampere, 15-16 October 1999.

[440] *Ibid*.

[441] *Ibid*.

compensated by the Tampere decisions. The humanitarian aspect of the Tampere Conclusions targeted to promote these international standards. It was clearly stated in the Conclusion as "…The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.' In that respect, the departure from the traditional understanding established under the UN framework and promoted by various institutions including the European Council were put in place again in this historical Summit.

4.2.4.1 Demolishing Walls or Constructing Walls: A Fortress Europe?

While the *1951 Convention* provided the international legal framework for the protection of displaced people of post-WW II, asylum in Europe also had an ideological aspect. It reflected a broad political commitment to take in refugees from communist countries. However, through the years the number of asylum applications to the EU member states increased fundamentally. After the fall of the Berlin Wall in November 1989 the concerns on the free flow of people from the former communist bloc increased dramatically in Western Europe. In the years between 1989 and 1994 the opening of borders triggered the migration of up to 4 million people in Europe.[442] In addition, the events in the Former Yugoslavia added 5 million refugees to that figure.[443] These figures however, do not include refugees and repatriates in the territory of the Soviet Union.[444] The attention of Western European governments the

[442] Fassman, H. and Münz, R. (1994), *European Migration in the Late Twentieth Century*, Edward Elgar: Aldershot.

[443] UNECE (1995), *Population Trends and Population Related Issues in Countries in Transition: The Need for International Assistance*, Geneva: UN Population Activities Unit, These figures can only represent rough estimations as in the field of international migration there are data deficiencies.

[444] Salt, J. and Clarke, J. (1996), 'International Migration in Central and Eastern Europe', *New Community*, Vol. 22, No. 3, pp. 513-29.

realization that they were not immune from forced population movements originating in their immediate vicinity.[445]

The arrival of the increased number of refugees created many European governments suspicion of whether the primary motivation of these people is political or economic and whether they might have found an alternative state to seek protection closer to their home countries as a safe country.[446] Also the cost of administration of determination of refugee status required by the European asylum procedures and the need to provide at least minimum social and assistance to the asylum seekers escalated the financial burden. The UNHCR's estimations point out that the total cost of administering asylum procedures and providing social welfare benefits to refugee claimants in thirteen major industrialized countries rose from around US $ 500 million in 1983 to US $ 7 billion in 1990.[447]

As a matter of course Western European countries have adopted to this changes with tightening increasingly their provisions regarding the admission and processing of asylum claims. This has indicated the development of a new understanding with the changing policy structures towards defensiveness. These restrictive policies introduced in Western Europe in order to develop certain measures to tackle with the increased number of illegal migrants and the abuse of asylum system turned out to become a new understanding of building a 'fortress Europe."[448] The notion "fortress Europe" means there are several restrictions and deterrence measures for the third country nationals to get in to the Union as they would have the freedom of movement within the EU when they get in.

---

[445] Van Selm-Thornburn, J. (1998), *Refugee Protection in Europe: Lessons of the Yugoslav Crisis*, The Hague: Kluwer Law International.

[446] Byrne, R. (1996), 'The Safe Country Notion in European Asylum Law', *Harvard Human Rights Law Journal*, Vol. 9, Spring 1996.

[447] UNHCR (1995), *op.cit.,* p.199.

[448] For this argument see Geddes, A. (2000), *op.cit.*, pp. 104-6.

As a result, different restrictive mechanisms are produced for discouraging the asylum seekers to arrive to the EU's member states' territories. Accordingly, several deterrence measures for potential asylum seekers such as carrier sanctions, imposing strict visa regulations, detention of asylum seekers, created safe havens, readmission agreements, safe third country provisions, in country processing of asylum applications, closure of resettlement channels, temporary protection schemes, and exclusion from asylum procedure, limiting financial support systems, unifying the policies and sharing information with other countries are developed at the intergovernmental level.[449]

In that respect, these measures can be interpreted as adoption of "non-arrival" policies in order to prevent improperly documented aliens who included potential asylum seekers from reaching Europe. Moreover, for those asylum seekers despite these efforts who managed to arrive at the borders, "diversion" policies were designed, shifting the responsibility to other countries for assessing asylum seekers' claims and providing them the protection. As a result, the EU governments drew up lists of 'safe third countries' to the east of the EU, creating a kind of a "buffer zone."[450] Restrictive measures against the migrants and the asylum seekers resulted with an increased vulnerability of displaced persons. Soon after the legal entry began to close after the liberal policies on immigration and asylum began to change the problems of increasing involvement of smugglers and traffickers used by illegal migrants, asylum seekers and refugees to reach Western Europe began to appear. Smugglers become the key element for the undocumented migrants and asylum seekers deprived of welfare.[451]

In 1992, High Commissioner Sadoka Ogata expressed her concern about the future of Western Europe's refugee protection:

[449] Shutter, S. and Niaz, A. (2002), *op.cit.,* p. 8.

[450] Byrne, R., (1996), *op.cit.*

[451] Koser, K. and Lutz, H. (1998), *op.cit.,* p.4.

> …As we move into the 1990s there is no doubt that Europe is at a crossroads. Will Europe turn its back on those who are forced to move? Or will it strengthen its long tradition of safeguarding the rights of the oppressed and the uprooted? Will Europe build new walls, knowing that walls will not stop those who were fleeing totalitarian persecution in the past? [452]

This criticism was as a result of the changing protection schemes of European countries. In the Yugoslavian crisis the European governments decided to deal with large-scale influx of refugees by establishing temporary protection regimes. In general within Europe there are two alternative forms of protection for people who fail to be recognized as refugees.[453] These can be categorized as 'temporary protection' and 'subsidiary protection.'[454] Temporary protection refers for displaced persons for measures of protection of a temporary nature. On the other hand, subsidiary protection relates to the harmonization of the asylum policies relating to individuals who do not qualify for refugee status such as *de facto* refugees. Nevertheless, de facto refugees cannot be returned to their country of origin as a result of the application of the *non-refoulement* principle on humanitarian basis.

According to the temporary protection regime, the normal asylum procedure based on the *1951 Convention* must apply unless there is "a mass flight of persons" or a "sudden arrival within the Union of a significant number of persons". In that case a regime of temporary protection in the Union would be established. In that respect, temporary protection is offered on a temporary basis and without prejudice to recognition of a refugee status in accordance with the *1951 Convention*. This regime

---

[452] Ogata, S. (1992), High Commissioner of the UNHCR, *Statement* for the international conference on 'Fortress Europe? Refugees and Migrants: Their Human Rights and Dignity', Graz: Academie Graz, 23.05.1992

[453] Recognition is made within the meaning of Article 1 A (2) of the *1951 Convention Relating the Status of Refugees*.

[454] Lambert, H. (1999), 'Building a European Asylum Policy under the 'First Pillar' of the Consolidated Treaty Establishing the European Community', *International Journal of Refugee Law*, Vol. 11, No. 2, p.329.

will apply to 'person in need of protection' who has fled from areas affected by armed conflict or persistent violence, and to 'a person who has been or who runs serious risk of being exposed to systematic widespread human rights abuses, in particular any person belonging to a group compelled to leave their place of origin by campaigns of religious and ethnic persecution."[455]

At the EU level there has been a tendency towards harmonization of temporary protection legislation and practices. This was a result of the desire to ensure uniform rights for displaced persons in all Member States embracing a common European legal framework involving the provisions of domestic law as well as the practices of states. In order to achieve a common ground on combating the unilateral return of displaced persons to unsafe conditions or in human treatment the Commission announced two proposals for joint action. The first one was about temporary protection of displaced persons.[456] The second one was concerning the solidarity in the reception and residence of beneficiaries of temporary protection.[457]

Both of these joint actions have basis on Title VI of the Amsterdam Treaty, which was formerly Article K 3(2) (b) of the TEU.[458] In the meantime the joint actions were described as framework decisions laying down general principles. In order to obtain practical effects implementing measures were necessary for each individual case. According to Article.61 the Union will be obliged to adopt measures on "minimum standards of giving temporary protection to displaced persons" within five years after the entry into force of the Amsterdam Treaty.[459]However, measures on "promoting a

[455] *Ibid*.

[456] European Communities (2001), *Official Journal*, No. L 85/13

[457] European Communities (2001), *Official Journal*, No. L 85/22

[458] When adopted these measures will become politically binding. The Council of Ministers will re-evaluate every text of *acquis* during the 'five year window' following the entry into force of the consolidated EC Treaty. With that some of the issues will shift from 'Third pillar' (Title VI) to the 'First Pillar' (new Title IV). The British, Danish and Irish have opted out of Title IV.

[459] European Communities (1992), *Treaty on the European Union*, Art. 63(2)(a).

balance of effort between Member States in receiving and bearing consequences of receiving refugees and displaced" are not subject to the five-year period.[460]

According to these articles to achieve these objectives legislative procedures would vary on when the text is adopted. This is mainly because during the "five year window" initiation right was shared under the 'third pillar' between the Commission and the Member States. The changes in the new proposals were relating to the role of the European Parliament, the powers of the ECJ and finally the interaction between the 'first' and 'third pillars.' Concerning the Parliament's role compared to previous application on Union's asylum instruments with the new proposal the EP's amendments would carry more weight with respect to the two joint actions. The Parliament will have to be consulted before adoption of a position in the Council rather than just being informed as under the 'third pillar.'[461] This consultation is carried out as if the joint action was a 'first pillar' instrument. According to these joint actions the powers of the ECJ on matters of immigration and asylum will be restricted. This can be interpreted as before the expiry of the 'five year window' the Commission may not regain its sole right of initiative, and the ECJ will not have its full powers or the Parliament will have its power of co-decision.[462]

A proposal was made for joint action on 5 March 1997. It was an important proposal and it could be regarded as a cornerstone for the *communitarization* on those matters. It was the fist time that the Commission used its right of initiative regarding asylum matters. This initiative represented a search towards finding common solutions for the common problems. In other means a search for *communitarization*. The European Parliament applied this proposal on 23rd October 1997 wit the note of it would be subject to amendments.[463]

---

[460] European Communities (1992), *Treaty on the European Union*, Art. 63(2)(b)

[461] European Council (1997b), *Council Letter*, 16 May 1997, C4-0247/97.

[462] Monar, J. (1998), 'Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation', *European .Law Review*, No. 23, pp.320-335.

[463] European Communities (1997), *Official Journal*, No. C339/146

Following the approval by the Parliament, the Commission adopted a new proposal in February 1998 incorporating some of the suggested amendments.[464] However, the Commission decided to withdraw its proposal as a result of the disagreement between the Member States on the issue of 'burden sharing.' The disagreement resulted from Article 5 of the original proposal stating that the Council would decide "how best to assist Member States which have been particularly affected by the mass influx of persons."[465] In that respect there has been a polarization between the Member States. While Germany and Austria wanting for a more comprehensive system of burden-sharing to incorporated into the proposal, the United Kingdom and France were against the concept of a joint regime. As a result, the Commission proposed two joint proposals dealing with temporary protection and concrete solidarity measures. Lambert argues that the principles laid down in the text of these joint actions offer a realistic and to some extend satisfactory solution to refugee protection in the Union.

4.2.4.1 A New Regime for Managing a Safety Belt

The increase in the number of applications of asylum to the fifteen member states of the EU since the end of the Cold War, created the motives for modifications in the asylum regimes in the member states. The initiative of cooperation under the Schengen intergovernmental fora began to create this notion of a "*cordon sanitaire*" around the common borders of the member states of the EU, by transforming its neighbourhood into a region of states struggling to keep refugees away fom the Union and handle these refugees demands.[466] As the EU surrounds itself with a "*cordon sanitaire*", Turkey becomes one of the countries where illegal immigration, asylum seeker and refugees will aim to be blocked. The member states of the EU,

[464] Lambert, H. (1999), *op.cit.,* p.330.

[465] *Ibid*.

[466] Buuren, J. (1999), 'When the EU Surrounds Itself with a Cordon Sanitaire', *Le Monde Diplomatique*, www.monde-diplomatique.fr

which each are already engaged in a security approach of the immigration try to delegate their responsibilities to third countries like Turkey.

According to Buuren, the evolved new regime of immigration and asylum of the EU can be analyzed through five different categories. These can be defined as; instruments and status determination, protection, procedures and access, standard of protection in reception countries, scope of protection and institutional actors.[467] There has been a significant change in the instrument with the new regime. The old regime is accepting the *1951 Convention* as a binding instrument with a liberal interpretation of the definition. In this new understanding, the *1951 Convention* becomes residual and several other instruments are used. For the status determination, protection, previous universal definition and the individual determination are seemed to be replaced by no universal definition and group determination. The procedure and access to the reception country has changed from relatively easy to difficult. For example, in the old regime it was possible for an asylum seeker to apply to refuge status in different EU countries but with the new regime it is only possible to apply just in one country.

The standard of protection in reception countries has also changed. The aim was stay permanently so the program and facilities were towards this aim. In the new regime as the aim is to return of refugees with temporary stay; there are no program and facilities towards integration. For the scope of protection in the old regime, the scope was covered in the country of reception only.

The new regime has a more comprehensive approach. It aims to establish internationally protected zones with a burden-sharing approach. It aims action in the countries of origin and reception in the region of origin including protection. For the role of the institutional actors, the old regime accepts individual governments' decision on status with limited discretion on decisions. The new regime introduces intergovernmental agreements, creating a broader space to individual governments

[467] *Ibid*.

for discretion on decisions. In these intergovernmental arrangements harmonization is also aimed. The new regime gives UNHCR an enhanced role in Europe and more responsibilities to other institutional actors such as; the European Parliament, The European Commission, the Organisation Security and Cooperation in Europe (OSCE), the Council of Europe and other NGOs.

On the issue of immigration, the need for harmonization of the conditions for admission and residence by the Tampere European Council the Commission took a first step towards an EU policy on immigration by proposing a directive on the right to family reunification. For the justification of the proposal, the Commission did not only describe family reunification as a necessary way of making success of the integration to third-country nationals residing lawfully in the Member States but also suggested at the need for the Member States to allow for legal immigration in order to counterbalance the effects of demographic factors such as the ageing of the population with their impact on welfare protection and the funding of pension schemes.[468]

4.2.5 Recent Developments: What is Next?

The growing anxiety concerning irregular movement of persons to the Union shaped the recent developments for a move towards establishing common measures for a common European asylum policy. The defensive policies adopted by the EU member states strengthen the concerns of UNHCR on the future of international refugee protection. The EU's new measures that are moving towards building up a new buffer zone neighbouring the EU can also be regarded as a belt of third safe countries including Turkey for protection of refugees.

Developing a common set of principles and standards within the Union was reflected in the legislative framework of the EU. The major development in the field of asylum

[468] Monar, J. (2000), 'Justice and Home Affairs', *Journal of Common Market Studies*, Vol. 38, Annual Review, p. 128.

was establishing common standards for asylum in the Union. In order to ensure a uniform application and observance of these common set of principles the *Constitutional Treaty of the European Convention* formed an overall legal framework.

Observing the laid down principles and rights with respect to asylum in the Constitutional Treaty is not a coincidence which is developed immediately. Prior to the European Convention process which has prepared the Constitutional Treaty several other initiatives prepared the ground work for the legislative framework of the development of a common asylum policy of the Union. The Council Decision of 28th September 2000 specified the need of establishment of European Refugee Fund with the support of the "objective of gradually creating an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union."[469] It was targeted that 'The preparation of a common policy on asylum, including common European arrangements for asylum is a constituent part of the European Union's above-mentioned objective.[470]

It was argued that in order to have an effective common asylum policy support mechanisms has to be established. The justification of the establishment of a European Refugee Fund was made on these grounds in the same Council decision: "Implementation of such a policy should be based on solidarity between Member States and requires the existence of mechanisms intended to promote a balance in the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European Refugee Fund should be established".[471] Therefore, the objective of this Fund would be 'to support and encourage the efforts made by the Member States in receiving and bearing the

[469] European Council (2000), *Council Decision*, Establishing a European Refugee Fund, 28.09.2000, (2000/596/EC).

[470] *Ibid.*

[471] *Ibid*.

consequences of receiving refugees and displaced persons."[472] Establishment of the Refugee Fund was a major step in creation of a financial mechanism to ease the burden of a common asylum policy.

This was followed by the Council Directive on "Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences" adopted on the 20th July 2001.[473] This directive specifies the need to establish "minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons". The justification for developing measures for these kinds of efforts were made in the opening paragraph of the Directive as such: "Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection"[474] The main examples of such cases where persons were displaced as a result of armed conflict given as the Former Yugoslavia crisis and the Kosovo crisis.

The efforts for harmonizing asylum procedures were followed by the Council Decision of 13th June 2002 on "*Adopting an Action Programme for Administrative Cooperation in the Fields of External Borders, Visas, Asylum and Immigration*."[475] This Decision acknowledged the importance of border controls before the acceptance of ten new member states of the Union in the case of the Eastern Enlargement. It

---

[472] *Ibid*.

[473] European Council (2001), *Council Directive*, 'Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences', No. 2001/55/EC, 20.07.2001

[474] *Ibid*.

[475] European Council (2002a), Council Decision, 'Adopting an Action Programme for Administrative Cooperation in the Fields of External Borders, Visas, Asylum and Immigration (ARGO Programme)', No. (2002/463/EC), 13.06.2002.

justified the need for developing a new Community action programme which is called the "ARGO Programme" to support and complement the actions undertaken by the Community and the Member States in the implementation of Community legislation founded on Articles 62, 63 and 66 of the Amsterdam Treaty. It stated that: "Responsibility for controls at the EU's external borders will become all the more important now that a significant enlargement of the Union is scheduled to take place during the period in which the administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO) will be operational. Accordingly, ARGO should be seen simply as a modest forerunner of more extensive activities in this field."[476]

ARGO Programme aimed at promoting "uniform application of Community law in order to harmonise decisions taken by the national agencies of Member States, thereby avoiding malfunctioning likely to prejudice the progressive establishment of an area of freedom, security and justice." It has also aimed to promote "cooperation between national agencies in implementing Community rules with special attention to the pooling of resources and coordinated and homogeneous practices".[477] Harmonization and uniform application of Community law on the area of freedom, security and justice was therefore, aimed to be achieved by these directives and decisions.

The efforts to harmonise these subjects under a single common policy with the discussions held for the "Future of Europe Debate" of the European Convention is an indication of the given importance to these policies at the European level. The Working Group X (Freedom, Security and Justice) concluded its Final Report by 2nd December 2002 and presented at the Convention's General Assembly. It included important propositions concerning the further development in this field.[478] The

[476] *Ibid*.

[477] *Ibid*.

[478] European Convention (2003), Final Report, Working Group VII, http://european-convention.eu.int/doc_register.asp?lang=EN&Content=WGX

progress and a fruitful outcome on this area will depend on the consensus reached on certain issues. These can be listed as a common general legal framework recognising the particularities of this area, an introduction of the separation between legislative and operational tasks, clearer identification of the scope of the Union legislation, and strengthening operational collaboration. The development of a European regime of refugee protection in order words the Europeanization of asylum and refugee policies have external effects on the principles and norms of the international refugee regime. The effect of the emerging EU refugee regime on European non-member states such as Turkey is a significant issue.

As along the years the EU planned a series of measures to harmonise standards in asylum and to create limitations of protection all around EU. In May 2004 just before the acceptance of 10 new Member states to the Union the Council in Brussels accepted a directive relating to the common standards for the asylum applications. These efforts have been criticized as diminishing the standards of protection while imposing "lowest common denominator" for protection which is acceptable for all member states.[479] An example for these countries is the UK which traditionally has liberal understanding of asylum and refugee protection. In the UK the legislative framework controlling asylum got under review several times. In the year 2002, a White Paper called Secure Borders, Safe Heaven was published. In the same year the Nationality, Immigration and Asylum Bill was adopted on 12 April 2002. The Bill proposed several changes for an increased control of asylum seekers. These included re-designating detention centres as removal centres within the UK.

In order to ensure legally binding common sets of principles for fundamental rights the second part of the Draft Treaty Establishing a Constitution for Europe constituted

[479] Britain and its EU partners agreed common rules for handling asylum seekers, narrowly meeting their deadline for a deal in time for the Union's enlargement to 25 members. This deal will establish common procedures for granting and withdrawing refugee status and agreeing lists of safe countries to which rejected asylum seekers can be sent. The idea behind this was to end the differences in the approaches to eliminate so-called 'asylum shopping' when asylum-seekers pick the country offering them the most advantageous conditions. This will enable the fight against the abuse of the refugee status. For more details see also; Black, I. (2004), *Guardian Online News*, 30.4.2004, http://www.guardian.co.uk/guardianpolitics/story/0,3605,1206647,00.html

the Charter of Fundamental Rights. Treaty Establishing a Constitution for Europe was submitted to the European Council Meeting in Thessaloniki, Greece on 20th June 2003.[480]

In various articles within the Constitutional Treaty there are reference to fundamental human rights and freedoms. Title I of the Draft Treaty relates to "Definition and Objectives of the Union." Under that Title Article 2 specifies the Union's values as: "The Union is founded on the values of respect fro human dignity, liberty, democracy, equality, the rule of law and respect fro human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination." Promotion of these values are safeguarded with the "…protection of human rights…as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter."[481]

Adding to the above mentioned articles, Article 7 specifies that "The Union shall recognize the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II of this Constitution." In the Charter for Fundamental Rights Article II-18 explicitly mentions a "Right to Asylum". According to this article the right of asylum is guaranteed as such: "The right to asylum shall be guaranteed with due respect for the rules of the *1951 Convention* of 28 July 1951 and the Protocol of 31 January 1967 relating the status of refugees and in accordance with the Constitution." Although the Treaty has not yet been ratified by the member states of the Union this right of asylum can still be regarded as an important step towards a establishing a common right binding all member states.

[480] European Communities (2003a), *Draft Treaty Establishing a Constitution for Europe*, Luxembourg: Office for Official Publication of European Communities.

[481] European Communities (2003a), *Draft Treaty Establishing a Constitution for Europe,* Article 3, Paragraph 4.

A specific emphasis was also given for the establishment of a common EU asylum policy in the Chapter IV of the Area of Freedom, Security and Justice of the Constitutional Treaty. According to Article III-266:

> The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.[482]

In order to secure the development of such policy on asylum, subsidiary protection and temporary protection the Constitutional Treaty envisions the adoption of laws and framework laws to lay down measures for a common European asylum system. This is specified in the second paragraph of the same article as such:

> For the purposes of paragraph 1, European laws or framework laws shall lay down measures for a common European asylum system comprising:
>
> (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
>
> (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
>
> (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
>
> (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
>
> (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

[482] European Communities (2003a), *op. cit.*

> (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
>
> (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.[483]

The Constitutional Treaty explicitly set forth all the necessary measures for establishing a common European asylum system applicable to all member states. Within this framework common standards form the basis of uniform application of common measures. Adding to that common mechanisms and criteria and establishing common standard form an inevitable part of legislation building.

Following these developments the Council Directive of 27th January 2003 targeted to systematize the minimum reception standards for the asylum seekers. This Directive aim was specified as: "Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down."[484] It was argued that "The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception." In that respect, with this Directive; "The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy."

The Council Regulation of 18th February 2003 on "*Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National*" was followed the Council Directive of 27th January 2003. Therefore, with the aim of laying down the criteria and mechanisms for determining which member

[483] *Ibid*.

[484] European Council (2003a), *Council Directive*, 'Laying Down Minimum Standards for the Reception of Asylum Seekers', No.2003/9/EC, 23.01.2003

state is responsible for examining an application for asylum lodged in one of the Member States by a third-country national was specified. The Regulation targeted "the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities[485], signed in Dublin on 15 June 1990, whose implementation has stimulated the process of harmonising asylum policies."[486]

Arguing that the "Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status", the EU intended that "Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States." However, it was clear in the wording of this legislation that the major concern for the approximation of rules on the recognition and content of refugee and subsidiary protection status was helping "to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks."[487] This Directive was a critical development for the introduction of common criteria for recognizing applicants for asylum as refugees within the meaning of Article 1 of the *1951 Convention*.

---

[485] European Communities (1997b), *Official Journal*, No. 254, 19.8.1997, p. 1.

[486] European Council (2003b), *Council Regulation*, 'Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National', No.343/2003, 18.02.2003

[487] European Council (2004a), *Council Directive*, 'Minimum Standards for the Qualification and Status of Third Country nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted', No.2004/83/EC, 29.04.2004

The major development in this field was the introduction of the Hague Programme with the Presidency Conclusions of 4-5 November 2004.[488] The Hague Programme Annexed to the Brussels Presidency Conclusions underlined the linkage between migration and asylum. Explicitly the EU's position in situating asylum within the framework of international migration was clarified in this Programme. It was stated in this Programme that "…The ongoing development of European asylum and migration policy should be based on a common analysis of migratory phenomena in all their aspects. Reinforcing the collection, provision, exchange and efficient use of up-to-date information and data on all relevant migratory developments is of key importance."[489]

The linkage between asylum and migration is specified as it was argued in the Programme that international migration will continue. A comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies is needed. This comprehensive approach means practical and collaborative cooperation of member states. In addition, as "asylum and migration are by their very nature international issues" then a developed EU policy "should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return."[490]

Although there are clear references in this Programme and in all the other adopted Directives, Regulations and Decisions that the developing Common European Asylum System will be based on the full and inclusive application of the *1951 Convention* and other relevant treaties the wordings and the procedures adopted in

[488] European Council (2004b), *Presidency Conclusions*, Brussels, 4-5.11.2004.

[489] *Ibid*.

[490] *Ibid*.

these legislation indicates a move towards a security framework linking asylum with migration.

In the next chapter the current situation in Turkey, the problems faced in the refugee and asylum policies is analyzed. Chapter Five will be followed by the Chapter Six elaborating on the consequences of the Turkish pre-accession process to the EU after the European Council Meeting in Helsinki on December 1999.

CHAPTER V:

TURKEY'S ASYLUM AND REFUGEE POLICY PRIOR TO THE PRE-ACCESSION PROCESS

Turkish-EU relations entered a new era after the decision of the European Council Meeting in Helsinki on 10-11 December 1999 to declare Turkey an official candidate country for full membership to the EU. Following the Helsinki decision, the *Accession Partnership (AP) Document* in 2001 launched a pre-accession process between Turkey and the EU which addresses the critical preparations necessary for the start of negotiations. With the launching of negotiations, the pre-accession process will end and the accession process will start. The date indicating the start of accession negotiations with Turkey was officially declared at the European Council Meeting on the December 17th, 2004 as to become October 3rd, 2005.[491]

The Turkey's pre-accession process to the EU involves the harmonization of Turkish legislation with the EU *acquis*. Harmonization with the EU *acquis* generates an impact of Europeanization on many domestic policy areas in Turkey, including asylum and immigration. Thus, the pre-accession process has a profound impact on the Europeanization of domestic refugee and asylum policies. In this process a comprehensive policy transfer occurs from the EU level to the domestic level.

The issues that fall under the 'Justice and Home Affairs' heading, such as asylum, immigration, border control, and the status of non-European refugees are all important for smooth progression of the accession process. To successfully

[491] European Council (2004c), *Presidency Conclusions*, Brussels, 17.12.2004, http://www.mfa.gov.tr/MFA/ForeignPolicy/MainIssues/TurkeyAndEU/2004_Brussels_ECPConclusions.htm

harmonize, Turkey has to adopt the EU *acquis* and at the same time broaden its refugee protection policy by lifting the geographical limitation to include refugees coming from regions other than Europe. However, officials dealing with immigration and asylum matters in Turkey are concerned that, without immediate admission to the EU, by lifting the geographical limitation Turkey will face major difficulties pertaining to asylum applications and processing. Similar to other European countries, these issues relating to asylum seekers and refugees are traditionally considered to be under the state prerogative and comprise of a "national security" issue.

In general, it is possible to argue that Europeanization of asylum policies is not only affected by domestic perceptions at the national level, but also by the legal and political developments at the EU level. In this chapter, the key factors of the refugee and asylum policy in Turkey before the Helsinki decision and likewise before the impact of Europeanization are assessed. This chapter covers the early roots of an established system of refugee protection in Turkey from the Ottoman Empire onwards, the impact of the Cold War on changing international circumstances and its impact by increasing international demands from Turkey, the selective protection framework of the Turkish asylum policy, and the 1994 Bylaw. In addition to reports and legal documents, data received from conducted interviews with officials, supplement the information gathered from the legal documents.

Before discussing the impact of Europeanization on the policy formation and legislative adoption in the asylum policy area Turkey, the first section will cover the features of the period of stability of the Turkish refugee policy until 1994 before the By-law regulating asylum applications was accepted. The second section will cover the rationale behind the acceptance of the By-law within the international context. Finally, the third section will describe the overall assessment of the stability of asylum and refugee policies in Turkey up until 1999.

5.1 The Historical Roots of a Stable System of Refugee Protection in Turkey: Perception of Immigration as a Historical Phenomenon

Turkish perception of immigration has been formed through centuries emerging from the early Ottoman times until the end of the Empire. Considering migration and immigration as a natural element of a multi-ethnic and multi-religious society of the Empire with the composition of different languages, ethnic groups and religions a general state policy of migration was laid down during the Ottoman Empire.[492] The self-balancing multi-ethnic and multi-religious organization formed the basic foundation of the classical Ottoman state.[493] As a consequence of the changing political and international situation of its neighbouring countries, the Ottoman Empire received waves of immigration.[494] Respectively, settlement and resettlement arrangements have continued through out many centuries, bringing the situation to the attention of contemporary researchers and practitioners.

5.1.1 The Immigration and Refugee Policies of the Ottoman Empire

The Ottoman Empire had a state policy on migration and settlement based on specified settlement rules and principles. The general state policy on migration was based on population movements to safeguard sustainability of agricultural production, and tax revenues as well as to support the development of villages into towns in the entire Empire.[495] This was especially true for the early decades of the Ottoman Empire when housing and development (*imar ve iskan*) was aimed at the conquered lands. Systematic migration and settlement policies also provided the

[492] Özbilgen, E. (2003), *Bütün Yönleriyle Osmanlı: Adabı-ı Osmaniye*, İstanbul: İz Yayıncılık, p. 357.

[493] Karpat, K. (1974), *The Ottoman State and Its Place in World History*, Leiden: Brill, p. 3.

[494] Karpat, K. (1985), *Ottoman Population 1830-1914: Demographic and Social Characteristics*, The University Press of Wisconsin: Wisconsin, pp.65-9; see also Şimşir, B. (1968 and 1970), *Rumeliden Türk Göçleri*, Vol. I-II, Ankara: Türk Tarih Kurumu Yayınevi

[495] Özbilgen, E. (2003), *op.cit*, p. 357.

means to populate the deserted land with labourer, villagers and farmers.[496] It also provided the means to settle nomad Turkmen communities especially after the 1699 Karlofça Treaty.[497] Thus, this policy served for various economic and social purposes.

The migration and settlement policy change character with the loss of the Ottoman land after the failure of the Vienna Besieging in 1683. Decline of the Ottoman Empire and loss of Ottoman territories resulted with massive immigration of Muslims from those lost lands to the territories of the Empire.[498] In particular after the Crimean War (1853-56) hundreds of thousands of Crimean Tatars[499] migrated as a result of the expulsion from the Crimea. After Russians had conquered the land and "retained it after the Crimean war an entire population was displaced or destroyed."[500] The Crimean Tatars were exiled from their home land in the Russian Empire on the grounds that they sided with the invading allied forces. They migrated to the Ottoman domains.

Historically, the Ottoman Empire, in its last century, experienced large waves of migration from the Balkans, as well as from the Caucasus. From the beginning of the 14th and 15th centuries not only Muslims, but also Jews migrated to the Ottoman Empire. Moreover, in the 19th century the Ottoman Empire received a significant migration of many Hungarians and Poles. Especially, the period of late Ninetieth and early Twentieth centuries saw a significant migration to the Ottoman Empire with the creation of modern nation-states. The rise of nationalism in the Balkans was

[496] *Ibid*, p.360.

[497] *Ibid*, p.362.

[498] Ağanoğlu, Y. (2001), *Balkanların Makus Talihi: Göç*, İstanbul. Kum Saati, p. 32.

[499] Crimean Tatars were Muslim Turks who were linguistically and culturally similar as the Ottoman Turks. Nonetheless, Crimean Tatars had a sense of separate identity.

[500] McCarthy, J. (1997), *The Ottoman Turks: An Introductory History to 1923*, London: Addison Wesley Longman, pp. 329-330.

influential for the disintegration of the huge multi-ethnic Ottoman and Austro-Hungarian Empires.

The Ottoman Empire was a state that contained not only Turks but also Greeks, Arabs, Armenians, Bulgarians, Serbs, Albanians, and many others. The society was composed of villages and cities containing mixed Christian, Muslim and Jewish populations speaking many different languages. The mixed population of the Ottoman lands created a problem once separatist nationalist movements became active to carve new states from the Ottoman Empire. It was assumed that a Greece, Bulgaria, Serbia, or Armenia with a large Turkish or Muslim population would be in danger of revolt. Muslims would remain loyal to the Ottomans and would not be loyal to the new non-Muslim states. The solution was to force the Turks from these new states to exile.

After the establishment of the Russian rule in Crimea nearly half a million Tatars fled to the Ottoman Empire.[501] Similar migration happened from the Caucasus in the 1820s. In 1826 the population of the Russian province of Erivan was in majority composed of Turkish Muslims. In order to create and Armenia in Erivan, Russia had a forced exchange of population which at the end caused suffering of both Turks and Armenians.[502] This was followed by further Caucasian exiles of the Circassians, the Abhazians, and the Laz who lived on the Black Sea coast. In 1829 Turks from Erivan, in 1864 Circassians and in 1864 Abhazians from Caucasus, in 1878 Laz and Turks from the Russo-Ottoman War fled to Anatolia. The total number of refugees from the Crimea and the Caucasus were equal to almost 10 percent of the population of Ottoman Anatolia.[503] This then created financial difficulties for the Ottoman State to support such an influx of refugees. As in those years along with the costs of

[501] 100,000 Tatars fled their country in the late 1700s. More than 300,000 fled to the Ottoman Empire after the Crimean War. Figures given in McCarthy, J. (1997), *op. cit*., pp.332-333.

[502] For more details see McCarthy, J. (1997), *op. cit,* see also http://www.humanities.ualberta.ca/ottoman/module4/lecture4.htm

[503] McCarthy, J. (1997), *op. cit.*, p. 337.

the wars that the Empire fought in different regions, the costs of the refugees tremendously weakened the Ottoman Empire.[504]

The issue of forced migration and refugee influx to the Ottoman mainland was also an influential phenomenon in the Balkan Peninsula in the Nineteenth and the early Twentieth Centuries. The formation of nation-states and the disintegration of the Ottoman Empire created fundamental population shifts in these lands. Muslims were the majority community in the Ottoman Balkans before the Balkans Wars.[505] They were the largest single religious community in provinces of Edirne, Selanik, Manastır, İşkodra, and in Kosova.[506] By 1911, Muslim migrants had been leaving their homelands and coming to other Ottoman lands. Like the Russo-Turkish War of 1877-78, the end result of the Balkan Wars was the creation of Christian states in the expense of forceful displacement of Muslims from those territories.

The gradual emergence of the independent nation-states in the Balkans with the changes in frontiers was often accompanied by violence. These radical political and demographic changes, occurring throughout the regions of the Balkans, inevitably led to the displacement of large numbers of people as the newly emerging states tried to achieve religious and ethnically homogenous states.[507] The 1912-13 Balkan Wars were a critical turning point in spreading a climate of instability in the wider region.[508] Intensification of the nationalist movements, and the struggle to wrest

---

[504] *Ibid*.

[505] There is great variation in the sources dealing with ethnic and religious distribution of the Ottoman population in the Balkans. Despite a considerable agreement about the total size of the Ottoman population in the Balkans, the figures given for the proportion of Bulgarians, Greeks, and Turks form a wide range. Karpat argues that compared to the Balkans, sources of information about the ethnic and religious distribution of the Ottoman population in the Asian provinces are fewer. See Karpat, K. (1985), *Ottoman Population (1830-1914),* Wisconsin: The University of Wisconsin Press.

[506] For details and numbers see McCarthy, J. (1995a), *Death and Exile: The Ethnic Cleansing of Ottoman Muslims*, New Jersey: Darwin Press, p.135.

[507] Hirschon, R. (2003), ‘‘Unmixing Peoples’ in the Aegean Region’, in Hirschon, R. (ed.) *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghahn, p.3.

[508] Hirschon, R. (2003), p.3-4.

territory from the Empire to create the nation-states of Serbia, Bulgaria, and Greece lead to the break up of the Ottoman Empire.[509] The shrinking Ottoman world, as a result of the bloody conflicts in the Balkans, paved the way to an unorganized influx of hundreds of thousands of Muslims with different ethnic backgrounds who were living in Ottoman territories to the Ottoman heartland.[510] Refugees fled to the Ottoman heartland before and after the Balkan Wars in order to find refuge and settle.

Affecting millions people with forced displacement migration both within and to the Ottoman territory was accepted as a regular phenomenon. The immigrants and refugees from different regions with various ethnic and religious origins fleeing to the Ottoman heartland were all welcomed by the Ottoman Empire with the urge for a formulation of a long-term settlement policy for the new-comers. There were also attempts at formalizing the unmixing of populations at the international level. The 1913 Peace Treaty between the Ottoman Empire and Bulgaria included a protocol on the reciprocal and voluntary exchange between Bulgarian and Turkish populations.[511]

The first institution to deal with the requests and needs of the immigrants, refugees or displaced persons in the Ottoman Empire was established during the *Tanzimat* period. As a result of the increasing immigration to the Ottoman heartland, it was not possible to deal with the growing demands of refugees and immigrants. Therefore, it became apparent to establish an institution with permanent staff to deal with this growing number of refugees. The urgency of the need to have an established institution was explained and proposed to the Sultan Abdülmecid I on the 4th January 1860. The Sultan accepted the proposal to establish the Ottoman Refugee

[509] Hirschon, R. (2003), p.3.

[510] McCarthy, J. (1983), *Muslims and Minorities: The Population of Ottoman Anatolia and the End of the Empire*, New York University Press: New York, see also McCarthy, J. (1995a), *Death and Exile: the Ethnic Cleansing of the Ottoman Muslims (1821-1822)*, Princeton, N.J: Darwin Press.

[511] Barutciski, M. (2003), 'Population Exchanges in International Law and Policy', in Hirschon, R. (2003), *op.cit.,* p.25.

Commission (*Muhacirin Komisyonu*) on the 5th January 1860.[512] This event demonstrated the urgency to form an institution to deal with the immigration and refugee policies of the Ottoman Empire. This was due to the requirement of the turbulent conditions of the late 18th century that necessitated durable and comprehensive solutions for the growing immigration situation within the Empire.

This Refugee Commission was the Ottoman Agency which was directly in charge of assistance to refugees. McCarthy argues that in areas which Ottoman governmental control was strong, the Commission took detailed, family-by-family and person-by-person counts of refugees which was dating back to the period of the Crimean War. The total number of 413,922 Muslim refugees coming from the Balkans was recorded by the Refugee Commission during 1912-20.[513] These refugees were settled in different places in Thrace and Anatolia. The Commission continued to work until the dissolution of the Empire.

5.1.2 The Immigration and Refugee Policy Practices of the Republic of Turkey

Immigration continued to be one of the important issues during the early years of the Turkish Republic. Migration to the newly founded Republic also included involuntary emigration and immigration. The Balkan Wars, World War I and the War of Independence, were all responsible for the high mortality rate among the Ottoman Muslim and non-Muslim population. The change in the composition of the population was influenced by factors beyond the detrimental affects of the war. There were also deliberate attempts of changing the composition of the Ottoman

[512] Original Ottoman Proposal and *Hatt-ı Hümayun* cited in Eren, A.C. (1966), *Türkiye'de Göç ve Göçmen Meseleleri*, İstanbul: Nurgök, p.58.

[513] The number is cited in McCarthy, J. (1995a), *op.cit,* p.161 as the Turkish Ministry of Interior statistics. He accepts these statistics as authentic as various scholars gave the same figures and listed the same source - the Ottoman Ministry of Refugees. Toynbee's figure of 413,922 coincides with the same number. McCarthy therefore argues that it is most likely that these are actual Ottoman statistics. See also Toynbee, A.J. (1922), *The Western Question in Greece and Turkey*, London, p.138; Ladas, S. P. (1932), *The Exchange of Minorities: Bulgaria, Greece and Turkey*, New York, p.16.

population with the population exchange treaty with Bulgaria as mentioned in the former section. Migration in that respect served as an instrument of nation building and homogenising the ethnic composition of the state.

This understanding of migration as an instrument of nation building was mainly adopted by the Committee of Union and Progress (CUP) following the Balkan Wars. During the rule of the CUP, one of the main ideologies became the emphasis on the ethnic Turkish identity and Turkishness.[514] This became more evident after the beginning of World War I with nationalist policies affecting economic and political spheres of the Empire such as the language reform of 1915 and the abolishment of Capitulations in 1916. These early attempts of nation building were later followed by the Republic of Turkey.

The demographic structure of the new Republic was composed of mainly Muslims from different ethnic backgrounds as a result of centuries long forced and voluntary migration from the surrounding regions. The former policies implemented by the CUP government in the last decades of the Ottoman Empire to homogenise the population for building a nation-state was accepted as a rational model by the founders of the new Republic.[515] In order to homogenise the population further measures were taken such as the compulsory exchange of populations between Greece and Turkey.

The Lausanne Convention of January 1923 was a significant final act in long lasting movements of populations in ethnically, linguistically and religiously mixed lands. The Convention and Protocol on the Exchange of Greek and Turkish Populations was one of eighteen instruments created at the Lausanne Conference on Near Eastern Questions, 1922-23.[516] The Lausanne Convention specified the conditions for the

[514] Ahmad, F. (2005), *Modern Türkiye'nin Oluşumu*, İstanbul: Kaynak.

[515] Ülker, E. (2003), *Homogenizing A Nation: Turkish National Identity and Migration-Settlement Policies of the Turkish Republic (1923-1939),* unpublished MSc. Thesis, İstanbul: Boğaziçi University, p. 54.

[516] Oran, B. (2003), 'Lessons from Articles 1 and 2 of the 1923 Convention', in Hirschon, R. (2003), *op.cit.,* p.97.

compulsory population exchange between the countries of Turkey and Greece.[517] The 1923 compulsory population exchange involved the movement of about 1.5 million people with profound long-term consequences.[518] It was the first example of an international legal instrument of regulating 'compulsory' population exchange.[519]

The Convention defined who were to be included in the exchange and those who were exempted from it.[520] It was interesting to see that the criterion for deportation was based on faith and not ethnic origin.[521] Article 1 of the Convention clarified who has to be exchanged: "From the First of May, 1923 a start will be made with the forced exchange of the Turkish citizens of Greek Orthodox faith who live on Turkish soil with the Greek citizens of Muslim faith who live on Greek soil…"[522] It also included the conditions for transferring property and subsequent compensation, and the setting up of as Mixed Commission to supervise the emigration and to oversee the liquidation of property.[523] Therefore, the Lausanne Convention provided a

[517] The compulsory exchange of populations of 1923 between Greece and Turkey is a part of the Lausanne Peace Conference concluding the Treaty of Lausanne. The Treaty of Lausanne signed at the end of the Turkish War of Independence which lasted between the years 1919-1922. The Treaty set a precedent in international politics and is used frequently as a reference point for the mass population displacements in many parts of the world. It is considered to be a successful example of population exchange as a solution to interstate minority problems. See Hirschon, R. (2003), *op.cit*.

[518] Hirschon, R. (2003), *op.cit.,* p.3.

[519] The 1913 Peace Treaty between the Ottoman Empire and Bulgaria included a protocol on the reciprocal and voluntary exchange of Bulgarian and Turkish populations. The 1919 Peace Treaty of Neuilly-sur-Seine included a Convention providing for a 'reciprocal voluntary emigration of the racial, religious and linguistic minorities in Greece and Bulgaria'. However, at the core of these Treaties remains the notion of 'voluntary emigration'. The first international legal instrument of compulsory emigration is the Lausanne Convention. See also League of Nations (1919), *Greco-Bulgarian Reciprocal Emigration Convention*, League of Nations Treaty Series No.67, signed at Neuilly-sur-Seine on 27th November 1919.

[520] League of Nations (1925), 32 *Convention and Protocol Concerning the Exchange of Greek and Turkish Populations*, League of Nations Treaty Series No.807, signed at Lausanne on 30.01.1923, Art. 1-2.

[521] Zürcher, E. J. (2000), 'Young Turks, Ottoman Muslims and Turkish Nationalists: Identity Politics 1908-1938, in Karpat. K. (ed.), *Ottoman Past, Today's Turkey*, Leiden: Brill, p. 171.

[522] Parla, R. (1985), *Belgelerle Türkiye Cumhuriyeti'nin Uluslararası Temelleri*, Lefkoşe: Private Publication, p. 72.

[523] Hirschon, R. (2003), *op.cit.,* p.9.

comprehensive framework for the exchange of minorities between newly founded nation-states.

Until the late Ninetieth Century the Ottoman government purposefully ignored the Turkish features of society and state. Islamic characteristics were emphasized in the second half of the Fiftieth Century in order to consolidate the Balkan conquests and "integrated the newly converted Bosnians, Albanians et. al. into the Ottoman Islamic society."[524] Disregard for the ethnic character of the population and using faith as the uniting bound was later challenged by the raising nationalism in the Balkans. Therefore, reacting to political climate changes resulted that the Turkishness of the Ottoman state was reaffirmed late in the Ninetieth Century and throughout the Twentieth.[525]

During the last periods of the Ottoman Empire and eventually in the Republic of Turkey, different identities merged to create one. Karpat points out that "three pre-existing identities - Ottoman, Muslim and Turk – one imperial, the others religious and ethnic, evolved, amalgamated, and fused into a single "national" identity although officially the Islamic and Ottoman components were ignored or even condemned."[526] By the 1930s this fusion of identities was yet to be separated to create a narrowly focused Turkish ethnic nationalism. As a result Turkishness (*Türklük*), which was a search for the ethnic, cultural, literary and linguistic roots of the Turks' identity, had changed into Turkism (*Türkçülük*) which state used to define the identity of the Turkish national state.[527] This policy intended to ensure the survival of the newly founded nation-state. The desire to create an "authentic" Turkish national identity rooted in the popular experience was also reflected in the "Historical Society Congress of 1932, which sought to revive the Turks' Central

[524] Karpat, K. (2002), *Studies on Ottoman Social and Political History*, Leiden: Brill, p.11.

[525] *Ibid*.

[526] Karpat, K. (ed.) (2000), 'Historical Continuity and Identity Change or How to be Modern, Muslim, Ottoman and Turk', in Karpat, K., *op.cit*, p. 1.

[527] Karpat, K. (ed.) (2000), *op.cit*, p. 2.

Asian past and assert the Turkish character of Anatolia while ignoring the immediate Ottoman past."[528]

This new concept of the national identity with the emphasis on Turkish ethnic origin was further reflected in the immigration and refugee policies of the Republic. Turkish language and ethnic affiliation was emphasised in respect to Turkey's immigration policies. Kirişçi argues that as a result of this ideological shift Turkey has formed a much more restrictive policy compared to the Ottoman Empire. He states that "though Turkey has been willing to extend asylum to a broad range of people, it has restricted full refugee status only to people who qualify as potential immigrants."[529] On the other hand, it is not possible to diversify a distinct ideological shift with respect to admitting immigrant and refugees with the establishment of the Republic in 1923. The search for creating a ethnically homogeneous nation-state is have to be searched back to the last decades of the Ottoman Empire with the rise of nationalism in the Balkans. Therefore, it is possible to argue that this ideological shift occurred during the Ottoman Empire, starting gradually after the Crimean War which later followed by the devastating affects of the Russo-Turkish War of 1877-78 and the Balkan Wars. These wars resulted with the pouring of migrants and refugees with Muslim faith and/or Turkish ethnic origin to the remaining Ottoman lands. Although this result was not a deliberate state policy of the Ottoman Empire the end result was neither rejected nor prevented.

Even though there was a continuum in policies from the late Ottoman to the new Republic, the Turkish Republic emphasis on immigration of persons with the "Turkish descent and culture" became deliberate. This is most apparent in the application of the state policies on settlement of persons. In the early years of the Republic the major legislation governing immigration into Turkey was the Law of Settlement (No.885) of 1926. It was the first official text regulating the voluntary

[528] Karpat, K. (ed.) (2000), *op.cit*, p. 27.

[529] Kirişçi, K. (2000b), 'Disaggregating Turkish Citizenship and Immigration Policies', *Middle Eastern Studies*, Vol.36, No.3, p. 3.

immigration.[530] The content of this law revealed who can and who cannot be admitted as an immigrant or refugee to the country. According to Article 2 of this piece of legislation individuals who do not belong to the Turkish culture could not be admitted to Turkey. Although the Law did not specify who would be accepted as belonging to the Turkish ethnic culture a published "Memorandum of Settlement" of 1st August 1926 clarified this issue.[531] According to the first article of this memorandum "…Pomaks, Bosnians, Tatars are deemed as bounded to Turkish culture and the applications of the Albanians, who came to Turkey before and were registered, with respect to the admission of their families are being granted."[532] Both of these legislations indicated the official state preference of ethnic origins of potential immigrant to the newly founded Republic.[533] Aiming at keeping a balanced ethnic composition the integration of Muslim immigrants from Balkans was clearly favoured.

A new Law on Settlement (No.2510) was adopted in 1934 by the Turkish Grand National Assembly (TGNA). In the new Law of Settlement, migration and settlement of persons only with "Turkish descent and culture" (*Türk soyu ve kültürü*) was permitted in Turkey. The immigrants coming to Turkey benefited from the status of 'settled immigrants' (*iskanlı göçmen*) promoting the settlement of persons with Muslim origins if not Turkish emphasized the cultural and ethic homogeneity; in other words, the "Turkishness" of the country.[534] Similarly, Turkish speaking communities in the Balkans and Caucasus have also benefited from this policy since

[530] TGNA (1926a), Law on Settlement (*İskan Kanunu*), No.885, 31.06.1926, *Düstur*, Tertip: 3, Vol. 7, pp.1441-1443, cited in Ülker, E. (2003), *op. cit.*

[531] Ülker, E. (2003), *op.cit,* p. 66.

[532] TGNA (1926b), *Memorandum on Settlement* (*İskana Ait Muhtıra*), Tertip: 63, 01.08.1926, cited in Kökdemir, N. (ed.) (1952), *Eski ve Yeni Toprak: İskan Hükümleri ve Uygulama Klavuzu,* Ankara, pp.192-208.

[533] Pomaks are Slavaphone Muslims living in the Balkans within different countries including Greece and Yugoslavia. See also Oran, B. (ed.) (2003), *Türk Dış Politikası*, Vol. II, İstanbul: İletişim, p.98.

[534] Kirişçi, K. (2000b), *op.cit.,* pp.6-7 and p.20.

the beginning of the Republic.[535] With this law the definition of the Turkish national identity with the objective of having an ethnically homogeneous nation-state was shaped at the discursive level while resettlement policies within Turkey played a critical role.[536]

Until World War II, continuous migration movement occurred from the Balkans to Turkey. Population exchange with Greece resulted with massive movements of Muslims from Greece to Turkey which also included Pomaks. In addition there were Turks, Pomaks and Roma who moved from Bulgaria to Turkey between the years 1923-1939. Likewise, Turks, Tatars and Circassians from various regions of Romania resettled in Turkey in the same period. From Yugoslavia, Turks as well as Bosnians and Albanians came to settle in Turkey.[537]

The settlement of Balkan migrants and refugees were welcomed and preferred compared to migrants from other neighbouring regions by the state. Kirişçi argues that one of the main reasons for this was the belief that immigrants and refugees from Balkans would be able to integrate into the society easier.[538] Moreover, the bureaucratic, military and legislative elite in the new Republic came also from the Balkans. The positive bias towards Muslim immigrants originating from the Balkans was also put against the other religious minorities within the country. As a result of the proximity of the Greek islands and the presence of Italy in the Aegean Sea the mistrust of non-Muslim minorities was exacerbated.[539]

Accepting immigration and asylum policies as tools for social engineering the state policy favoured a settlement policy to construct a Turkish national identity.

---

[535] Odman, T. (1995), *Mülteci Hukuku*, No.15, A.Ü.S.B.F. Ankara: İnsan Hakları Merkezi Yayınları.

[536] Kirişçi, K. (2000a), 'Zorunlu Göç ve Türkiye', in UNHCR, *Sığınmacı, Mülteci ve Göç Konularına İlişkin Yargı Kararları*, Ankara: BMMYK, pp.37-68.

[537] Kirişçi, K. (2000b), *op.cit,* pp. 7-8.

[538] Kirişçi, K. (2000b),*op.cit.,* p.16.

[539] *Ibid*.

Immigrants in that respect were categorized on the basis of Turkishness such as Turks and as individuals bounded to Turkish culture by the 1934 Law. The 1934 Law clearly indicated that individuals who did not have these bounds with Turkish culture cannot be admitted to the country as immigrants.

A circular was adopted in 7th August 1934 to specify a hierarchy of individuals to be admitted. The "*Circular Regarding Rapid Completion of Settlement and Demographic Actions*" provided different categories of individuals under this hierarchy.[540] At the top of the hierarchy there existed "…the individuals of Turkish race or the individuals bounded to Turkish culture who speak Turkish and who do not know any other language…"[541]. According to the same article "…Pomaks, Bosnians, Tatars, Karapapaks will be treated in the same way…" The second category of individuals was "…Georgian Muslims, Lezgis, Chechens, Circassians, Abkhazians, and other Muslims who are deemed as bounded to Turkish culture…". These individuals' requests were investigated before they were admitted to Turkey. The third category of individuals which were not accepted as to be bound by the Turkish decent and culture were "…Foreign Kurds, Arabs, Albanians; other Muslims who speak languages other than Turkish and all foreign Christians and Jews…". These individuals were classified that they "…cannot be given nationality declaration. And they cannot be given immigrant paper. They will be treated completely as foreigners."[542]

Analyzing this hierarchy of preference indicates that the priority was given to persons with ethnic Turkish origins and who can actually speak Turkish. The second of these preferences was the issue of faith. Individuals with Muslim faith were also accepted under investigation presuming that their integration to the society would be difficult compared to Turkish speaking Turkish immigrants but not impossible. The

[540] TGNA (1934b), *İskan ve Nüfus İşlerinin Sür'atle İkmali Hakkında Tamim*, No: 15035/6599, 07.08.1934, cited in Ülker, E. (2003), *op. cit.*

[541] TGNA (1934b), *op.cit,* Article 4, cited in Ülker, E. (2003), *op. cit.*

[542] *Ibid.*

problem occurred in cases when there were no bounds on ethnic grounds or on grounds of faith. On such cases, granting immigrant status and later integrating these immigrants as Turkish citizens were thought to jeopardize the homogeneity of the society. The zones of resettlement of these immigrants were also based on their hierarchical rank. For security reasons the first category of immigrants were allowed to settle in any part of the country. However, the settlements of other categories of individuals were closely regulated by the government preference as an issue of national security.[543]

The Law of Settlement was the only official document regulating the procedures regarding migrants and refugees. There were no other official documents for Refugee Status Determination (RSD) of asylum seekers until the adoption of the *1951 Convention*. However, this did not prevent refugee movements to Turkey between the years 1923-1951. During World War II, many Jewish origin German speaker refugees fled to Turkey from Nazi persecution. Jews from Poland, Greece, and Yugoslavia sought freedom under the Turkish government's protection.[544] Although it is not possible to have definite figures, it is estimated that one hundred thousand Jews "may have used Turkey as their first country of asylum."[545] Turkey was also used as a transit country for Jewish refugees who were moving to Palestine.[546]

With the end of World War II, Turkey was deeply affected by the ideological division in its neighbouring countries. Particularly it was affected by the establishment of socialist regimes in Bulgaria and Yugoslavia. Turkey found itself

[543] Kirişçi, K. (2000a), *op.cit.,* pp.5-6. For more details for the link between Turkish national identity, immigration and citizenship see also Çağaptay, S. (2003), 'Citizenship Policies in Interwar Turkey', *Nations and Nationalism*, Vol. 9, Part 4; and Çağaptay, S. (2002), 'Kemalist Dönemde Göç ve İskan Politikaları: Türk Kimliği Üzerine Bir Çalışma', *Toplum ve Bilim*, No.93, pp.218-241; Tekeli, İ. (1991), 'Osmanlı İmparatorluğu'ndan Günümüze Nüfusun Zorunlu Yer Değiştirmesi ve İskan Sorunu', *Toplum ve Bilim*, No.50, pp.49-71.

[544] Shaw, S. (1991), *The Jews of the Ottoman Empire and the Turkish Republic,* New York University Press.

[545] Kirişçi, K. (2002), *op.cit,* p.13.

[546] Shaw, S. (1991), *op.cit.*, p. 257.

surrounded by the Soviet ideological sphere of influence. Turkey regarded this as a critical factor to search for Western support by joining Western international organizations and alliances such as NATO and the UN. As one of the consequences of this search, Turkey in 1951 signed the *1951 Convention* with the geographic limitations. The Convention carried influences of the Cold War reflected in its ideological perspective. It provided the basis to expect asylum-seekers and refugees from Turkey's western borders which meant from the countries of the Communist Bloc.

Turkish expectations of refugees and immigration to come from its western borders during the Cold War period were consistent with the refugee flow from Bulgaria. As a result of the Bulgarian governments' policies towards the Turkish minority in Bulgaria, Turkey experienced two major refugee flows between the years 1950-51 and later in 1989. During these flows nearly half a million Bulgarian Turks immigrated to Turkey. In the Cold War context due to similar policies of the Yugoslavian governments towards its minorities, large numbers of immigrants came to Turkey. These were Bosnian Muslims, Pomaks and Albanians.[547] During different periods of the Cold War, Romania and Greece were the other countries sending refugees to Turkey.

Turkey experienced its first major eastern flow of refugees in the early 1970s. Turkey received applications of asylum seekers from the Caucasus and Central Asia who were either prisoners of war or defectors from the Soviet Armed Forces.[548] After radical political changes in Iran many refugees originated from this country. It is estimated that during that period nearly one million Iranians used Turkey as a transit country on their way to other Western countries. The second major refugee event of Turkey from its borders was in the year 1988 from Iraq. In that year, the Iraqi Kurds in order to escape from the suppressive Saddam regime fled to Turkey.

---

[547] Rothschild, J. (1974), *East Central Europe Between the Two World Wars*, Seattle: University of Washington Press, p.203.

[548] Ramazan, M. (1997), *Bir Kafkas Göçmeninin Anıları*, İstanbul: Şamil Eğitim ve Kültür Vakfı.

The Gulf War of 1991 marked an important turning point in terms of refugee protection in Turkey. In 1991 nearly one million Kurdish refugees fled to Turkey to escape from the Saddam's regime. In that influx of refugees Turkey had difficulties at its eastern border in facilitating the reception and accommodation of this huge number of refugees. Not being able to receive sufficient international support for handling the demands of these refugees, Turkey refused to accept anymore Kurdish refugees. Failing to implement a burdensharing approach to the situation in Northern Iraq, the international community was paralyzed to respond. This single event indicated the urgency to adapt Turkey's refugee policy to the changing circumstances of the refugee situation in the post-Cold War world. Moreover, the 1991 Gulf War also pointed out the vulnerability of Turkey within a politically unstable neighbourhood. The events in 1991 underlined the necessity to develop an institutionalized asylum and refugee policy in Turkey.

Until signature and the ratification of the *1951 Convention*, Turkey did not have a national legislation governing asylum to foreigners. The only existing document was the Law No. 2510 which clarified that only individuals of "Turkish descent and culture" could be granted refugee status. After Turkey signed the *1951 Convention* the legal grounds of asylum and refugee policies in Turkey were based on this widely accepted international legal instrument. The events at the end of the Cold War represented the need for change in legislative development. The intricacies of the application of the *1951 Convention* are analyzed in the following sections. Furthermore, the next section elaborates on the changing international circumstances with the end of the Cold War and its implications on Turkey with regard to refugee protection.

5.1.3 Changing International Circumstances and Growing Demands with the End of the Cold War: Turkey Emerging as a "Buffer Zone"

Historical examples demonstrate Turkey's vulnerability to irregular migration as a result of its immediate neighbourhood. The changing political circumstances in its

neighbouring countries directly influence Turkey. This is mainly because of Turkey's critical geographical position. Turkey is situated between the democratic and politically stable countries of the West and political instability prone countries of the East. During the Cold War period Turkey was accepted as a buffer and safety zone for the Western countries against a possible Soviet threat. Its role also involved performing a "stability zone" accessing to the Middle East and the Caucasus. This "buffer-zone" function also involved immigration and refugee movements. In the Cold War many people escaped from repressive and undemocratic regimes to liberal democratic countries. This escape more or less reflected the ideological division of the world. Turkey's function as a gateway from the Soviet threat and from the repressive Communist regimes of the Eastern Bloc facilitated the refugee flows to the Western European countries. This function worked to a great extent effectively for many years.

With the end of the Cold War, the composition of conflicts changed radically. The realities of the Cold War were replaced by the changing patterns of international politics. In this new system there are more people affected by intra-state conflicts than inter-state conflicts. Consequently, there are more civilians vulnerable to repression and violence due to ethnic, religious and civilian conflicts within states. Thus, this results with increased poverty of the internally displaced persons and refugees. These problems are mainly seen in countries where there either exist authoritarian regimes or infant democracies. The Middle East, the Balkans and the Caucasus are some of the regions where these problems most often occur.

Consequently, in the post-Cold War era, Turkey began to function as a transit country for illegal immigrants, refugees and asylum seekers from its turbulent neighbourhood. As mentioned above, the geographic position of Turkey serves as a gateway between the unstable, undemocratic and poorer countries of the East to stable and richer countries of the West. This is particularly valid in terms of refugee influx situations. Turkey experienced refugee flows from its Eastern border during the Iraqi crisis in 1988 and the Gulf War in 1991. Similarly, it experienced refugee flows from its Western borders with the Bosnian and Kosovo crises in 1991 and

1999. During these events Turkey had many refugees both from the Balkans and the Middle East. In addition to the mass influx of refugees in crises with humanitarian nature there is also a continuous flow of immigrants entering Turkey either legally or illegally.

This vulnerability of Turkey in terms of its geographical location can be controversial. Accepting the asylum and refugee policy area as a national security issue, the work undertaken by the related political and judicial institutions working on asylum seekers, refugees, and immigrants is not always smooth. As a consequence, in the post-Cold War era, Turkey faced several challenges concerning immigrants and refugees. Especially after 1991, Turkey encountered political, economic and social challenges that it has to deal with in regards to asylum seekers and refugees. These can be listed as increasing number of asylum applications, securitization of refugee related issues, lack of international burden-sharing, lack of domestic long-term policy-planning, lack of institutionalization on refugee and asylum policy areas, complex structure of policy implementation, and finally competing views of different national and international actors on this policy specific policy field.

In the post Cold War period, illegal immigration, in addition to the refugee influx situations is another influential phenomenon affecting Turkey. Illegal immigrants crossing the borders of Turkey originate from countries which do not even have direct access to Turkish borders, such as Pakistan or Afghanistan. The unofficial numbers gathered by Turkish authorities working on illegal migration demonstrate the fact that there has been an overall increase in the numbers of illegal immigrants caught.[549] It is not possible to receive reliable data for all the individuals who have entered and stayed in Turkey though illegal means. There can also be individuals who have entered Turkey through legal means with valid passports and visas but overstayed their limit of stay. The numbers can only represent figures for individuals

[549] MIO (2000 and 2004), Interviews, Ankara.

who are caught by the Turkish authorities.[550] The majority of these individuals' country of origin can be listed as Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran and Iraq. The majority of these individuals enter Turkey from its Eastern border. They travel through Turkey and aim at reaching other destination countries. In this process, Turkey is used as a transit country by illegal immigrants for staying temporarily before departing for their final destinations. In general, the destination countries are Western countries such as the member states of the EU, Canada or the United States of America (USA).

Turkey has become a country receiving an increasing number of illegal workers from the Balkan countries and from former Soviet Republics. In addition people come to Turkey from Iran, Iraq and Africa in order to make a living while overstaying their visas and involving the black market.[551] Entering the country through illegal means and getting involved with migrant smugglers many illegal immigrants get involved in illegal activities, including prostitution or trafficking of illicit drugs. It is not possible to attain any reliable data that confirms Turkish politicians' exaggerated figure of 1 million illegal workers in Turkey.[552] Nonetheless, it has become increasingly common to ascertain individuals with valid visas entering legally to Turkey searching for ways of staying. Within this context of growing irregular movement of persons, Turkish officials were concerned that Turkey has become a buffer zone for preventing refugees and illegal immigrants reaching to Europe.[553]

The next section elaborates on the analysis of the asylum framework in Turkey. It also describes the relationship between actors which are actively involved in the Turkish asylum and refugee policy. The intricacies between these actors are

[550] For actual figures please see Table II in page 224.

[551] Kirişçi, K. (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, Istanbul : TESEV Publications, p.12.

[552] Okuyan, Y. (2000), *Statement* by the Turkish Minister of Labour and Social Security, *Radikal*, 30.12.2000, cited in Kirişçi, K. (2002), p.12.

[553] Kirişçi, K. (2000b), *op.cit.,* p.23.

explained and evaluated in the following section. The need for the development of a more institutionalized approach to asylum and refugee policy is clarified.

5.2 The Framework of Turkey's Asylum Policy: A Selective Protection

Turkish refugee protection is based on the implementation of national and international legislation regarding this policy area. There are national laws that govern directly and indirectly this policy field. There are also international documents that Turkey has signed and obliged to comply with such as the *1951 Convention* and its *1967 Protocol*. These legal instruments operate through a cooperative framework involving several national and international institutions and organizations. The origins of Turkey's asylum policy were highly influenced by the dynamics and the ideologies of the establishment of an ethnically homogeneous nation-state. This ideal of 1920s and 1930s later included the influences of the Cold War with the *1951 Convention*. During the Cold War years the international tenants of the Turkish asylum and refugee policies were based fundamentally on this single international legal document and its 1967 Protocol. [554] Consequently, the implementation of the Convention was affected by the Cold War context. Turkey signed the *1951 Convention* with geographic limitations. This situation meant refugees were expected basically from the Communist Bloc countries.

Despite the end of the Cold War and the developments in the European context, Turkish asylum and refugee system remained relatively stable prior to the December 1999 European Council Helsinki Summit. During the period between 1951 and 1999, the policy did not receive any fundamental alterations. In due course the refugee protection system established after 1951 was never fundamentally altered. In that respect, the non-existence of a long-term policy planning regarding asylum and refugee policy area in Turkey continued through those years.

[554] Kirişçi, K., (2002) 'Immigration and Asylum Issues in EU-Turkey Relations: Assessing EU's Impact on Turkish Policy and Practice', in Lavenex, S. and Uçarer, E. (eds.), *op.cit.,* p.127.

Turkey signed the *1951 Convention* while taking an active role in defining the 'refugee' concept. Turkey was among the twenty-six participant countries to the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held in Geneva on 2-25 July 1951. Its active role is represented in the presentational composition of the Conference. As a matter of fact, "the Conference elected Mr. Knud Larsen, of Denmark, as President, and Mr. A. Herment, of Belgium, and Mr. Talat Miras, of Turkey, as Vice-President."[555] Jackson argues that Turkey is likely to have been among the countries which supported the geographical limitation in the Convention.[556] As discussed in Chapter 3 Article 1 B (1) of the *1951 Convention* clearly gives a choice for the signatory states either to validate the Convention's scope of application with geographical limitations within Europe or to validate it without any geographical limitations. It included a time limitation in the definition of refugee status. According to Article 1 A (2) of the *1951 Convention* the term 'refugee' shall apply to any person who, as a result of events occurring before 1st January 1951 and owing to well-founded fear of persecution, is unwilling to return to his or her country.

Being one of the participants to the Conference, Turkey signed the Geneva Convention in 1951. Upon signature of the Convention the Turkish Government made a declaration to clarify that it considers the term "events occurring before 1 January 1951" refers to the beginning of these events. Therefore, it shall not be used in manner to associate the events happened after 1951. Turkey also declared that "since the pressure exerted upon the Turkish minority in Bulgaria, which began before 1 January 1951, is still continuing, the provision of this Convention must also apply to the Bulgarian refugees of Turkish extraction compelled to leave that country as a result of this pressure and who, being unable to enter Turkey, might seek refuge on the territory of another contracting party after 1 January 1951."[557] This declaration

[555] UN (1951), *Convention*, Preamble.

[556] Jackson, I., (1999), *The Refugee Concept in Group Situations*, The Hague: Martinus Nijhoff Publishers.

[557] UN (2004), Declarations and Reservations to the 1951 Convention Relating to the Status of Refugees as of 1st October 2004, www.unhcr.ch

aims at ensuring protection for Turkish minority in Bulgaria in a possible refugee influx situation. It targeted the protection of individuals with affiliation to the Turkish ethnic identity and language. This is a clear indication of the willingness to restrict refugee status only to people who qualify as potential immigrants.[558] This declaration justifies the argument that Turkish refugee policy has been biased in favour of "Turkish descent and culture."[559]

In the Declaration of the signature of the Convention the following statement was made: "The Turkish Government will, at the time of ratification, enter reservations which it could make under article 42 of the Convention."[560] The Convention was ratified a decade later in the TGNA on 5th September 1961.[561] It came into force six months later on 30th March 1962.[562] In the ratification law, the text of the Convention is preceded by a Declaration which contains geographic limitation and in which Turkey makes, *inter alia*, a reservation that refers to the arrangements of 12th May 1926 and 30th June 1928 with regard to Article 1 (a) of the Convention concerning the definition of the term 'refugee'.[563] It is stated in the Declaration of ratification that "The Government of the Republic of Turkey is not a party to the Arrangements of 12 May 1926 and of 30 June 1928 mentioned in article 1, paragraph A, of this Convention. Furthermore, the 150 persons affected by the Arrangement of 30 June 1928 having been amnestied under Act No.3527, the provisions laid down in this Arrangement are no longer valid in the case of Turkey. Consequently, the

[558] Kirişçi, K. (2000b), *op.cit.*, p. 3.

[559] Kirişçi, K. (2000b), *op.cit,* p. 4.

[560] UN (2004), *op.cit.*

[561] International treaties ratified by Turkey are incorporated into national legislation. They take precedence over municipal law.

[562] Odman, T. (2004), 'Coğrafi Sınırlamanın Kaldırılması ve Avrupa Birliği Müktesebatına Uyum', *Umuda Doğru*, August, no.14, pp.2-4., p.2.

[563] *Official Gazette of the Turkish Republic (T.C. Resmi Gazete)* (1961), No.10898, 05.09.1961 see also; Jaeger, G. (ed.) (1983), 'Asylum in Turkey', *Europe: A Handbook for Agencies Assisting Refugees*, Brussels: European Consultation on Refugees and Exiles, p.351.

Government of the Republic of Turkey considers the Convention of 28 July 1951 independently of the aforementioned Arrangements."[564]

It is also stated in the Declaration that "…The Government of the Republic understands that the action of "re-availment" or "reacquisition" as referred to in Article 1, Paragraph C, of the Convention-that is to say: "If (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily reacquired it"-does not depend only on the request of the person concerned but also on the consent of the State in question."[565] Therefore, the automatic application of such process was broken and Turkish state's discretion on accepting such persons was strengthened.

In the *1951 Convention* there is also a geographical limitation for defining who shall be granted refugee status. The Convention clarifies the words "events occurring before 1 January 1951" to mean "events occurring in Europe or elsewhere before 1 January 1951."[566] When becoming a party to the *1951 Convention,* states also had the right to make a declaration limiting their obligations under the Convention to refugees fleeing from events occurring in Europe. Turkey, as a signatory state to the *1951 Convention* grants refugee status only to persons coming from European countries.

The Turkish Ministry of Foreign Affairs (MFA) argues that the geographic limitations are the legal rights of Turkey based on the Convention. Moreover, it has been argued that many other signatory states have limitations of this kind. On the other hand, most of the states have overruled these limitations in time.[567] In addition to Turkey, the only three European countries, which still had limitations on the *1951 Convention* in 1999, were Monaco, Hungary, and Malta. Hungary and Malta

[564] UN (2004), *op.cit.*

[565] *Ibid.*

[566] UN (1951), *Convention*, Art. 1., parag. B (1) (b). For details of this discussion see also Chapter Three.

[567] See also Chapter Three for the table indicating countries with geographic limitation.

overruled geographic limitation during their accession process to the EU. This then left Turkey and Monaco as the only remaining "persistent objectors" in Europe.[568]

The 1967 UN Protocol lifted the time limitation for the application of the Convention in general for the signatory states. By signing the *1967 Protocol* which came into force 5th August 1968, Turkey accepted lifting the time limitation for granting refugees status. However, geographical limitation has been reserved. In that respect, only people fleeing persecution from Europe, or in other words from Turkey's Western border, can be able to apply for refugee status from Turkey. Nonetheless, people fleeing persecution from non-European countries can apply to receive refugee status in Turkey and but not from Turkey. This means there is a distinction between "asylum seekers coming from Europe" and "asylum seekers coming from non-European regions". This indicates a differentiation between 'European asylum seekers' and 'non-European asylum seekers'. This reflects the distinction made in Article 1 of the Convention as individuals coming from Europe or from other regions of the world.

After the ratification of the *Convention* and acceding to the *Protocol*, Turkey made the following declaration: "No provision of this Convention may be interpreted in such a manner as to grant more rights to a refugee than to Turkish citizens in Turkey."[569] This declaration clearly indicates the concerns of the government for providing protection and enabling the rights of refugees within its territories. This principle as it will be seen in the next chapter provided the basic principle for the limits of reforms in Turkey.

The *1951 Convention* with "geographic limitations" established the main basis of Turkish asylum policy and refugee protection. During the Cold War period, most refugees were expected to come from the Communist bloc countries. Therefore,

[568] Kirişçi, K. (2001), 'UNHCR and Turkey: Cooperating Towards an Improved Implementation of the 1951 Convention', *International Journal of Refugee Law*, 13, No.1-2, pp.71-79.

[569] Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1961), No.10898, 05.09.1961

application of *1951 Convention* did not cause major problems within the Turkish asylum system. There were very few asylum applications each year from Turkey's Western border from individuals in flight from the Communist bloc. Without a national legislation specifically regulating the asylum and refugee policy field, various national legislations were used in conjunction with the *1951 Convention*. The major relevant legislations used in conjunction with the *1951 Convention* are the Law on Settlement[570] and the Law on Sojourn and Travel of Aliens in Turkey[571]. Moreover, the general provisions of the Passport Law[572] and the Citizenship Law[573] provided bases for a refugee protection system.

The "geographical limitation" for the acceptance of refugees and the *'principle of non-refoulement'* create the basis of Turkish asylum policy.[574] Kirişçi argues that geographical limitation led to the evolution of a two-tiered asylum policy.[575] The first tier effectively covered asylum seekers within the geographical limitation of the *Convention*. According to the geographical limitations, Turkey agrees to be bound by the terms of the *Convention* for the refugees fleeing persecution in Europe.[576] This was the direct reflection of the Cold War context where the signatory states expected refugees from the Communist bloc, such as from the Soviet Union or from the Central and Eastern European countries. In that respect Turkey, granted the right to seek asylum to Turkey only to those individuals fleeing communist persecution. In

[570] TGNA (TBMM) (1934), Law on Settlement (İskan Kanunu), Law No. 2510, 14.06.1934, Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1934), No.2733, 21.06.1934

[571] TGNA (TBMM) (1950b), Law on Sojourn and Movements of Aliens in Turkey (Yabancıların Türkiye'de İkamet ve Seyehatleri Hakkında Kanun), Law No.5683, 15.07.1950, Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1950), No.7564, 24.07.1950

[572] TGNA (1950c), *Passport Law (Pasaport Kanunu),* Law No.5682, 15.07.1950

[573] TGNA (TBMM) (1950a), *Citizenship Law (Vatandaşlık Kanunu),* Law no.5687, 15.07.1950

[574] United Nations (1951), *Convention Relating to the Status of Refugees*, Article 33.

[575] Kirişçi, K., (1991), 'The Legal Status of Asylum Seekers in Turkey: Problems and Prospects', *International Journal of Refugee Law*, Vol. 3, No.3.

[576] Ministry of Foreign Affairs (2000), Interview, Ankara, April 2000.

principle, these people are granted the 'refugee status' and they are allowed to stay in Turkey.

Between the years 1970 and 1996 the Ministry of Interior indicated that 13,500 asylum seekers benefited from the protection of the *1951 Convention*.[577] Unfortunately, there is not accurate data prior to 1970 that indicates the number of asylum seekers and refugees before that date. In the six month period starting from March 1999, 17,746 Kosovars were granted temporary residence with the cooperation of UNHCR in Turkey.[578] Adding to this number, a total of 40,000 Bosnians and Kosovars were granted temporary asylum in Turkey during the 1990s.[579] The majority of these people returned back when political situations calmed down in their home countries.[580]

This differentiation between European and non-European asylum seekers and the two-tiered policy unofficially created "European refugees" and "non-European refugees" upon the confirmation of their refugee status. This creates a problematic situation with the "non-European refugees". Since Turkey as a result of its geographic limitation does not accept refugees from regions other than Europe, but at the same time complies with the principle of *non-refoulement,* it does not send asylum seekers back to the countries of origin where they may face prosecution. The second tier "non-European" refugees are individuals fleeing persecution from geographical regions outside Europe. These asylum applications which are accepted as "non-European refugees" are determined in a complicated process that involves international actors such as the UNHCR and national actors such as Ministry of Interior (MOI). When their status is determined and they are granted refugee status they are resettled in a third country. Turkey cooperates with the UNHCR in the field of resettlement of refugees in a third safe country.

---

[577] Numbers cited in Kirişçi, K. (2004), op.cit., p.194.

[578] Ministry of Interior (2000), *Interview,* Ankara, July 2000.

[579] Numbers cited in Kirişçi, K. (2004), *op.cit.,* p.194.

[580] Ministry of Interior (2000), *Interview,* Ankara, July 2000.

In order to offer protection to those persons, Turkey aimed at achieving a pragmatic and flexible system of protection involving temporary protection of those persons for resettlement in third countries.[581] The liberal visa regime of providing no visa requirement for some of the neighbouring countries such as Iran, contributed to the evolution of such policy. From 1980 onwards as a result of the Ayatollah Khomeini's regime, refugees came to Turkey and they were granted residence permits to stay for a temporary period of time before they were permanently resettled into third countries by the UNHCR.[582] Although there are no precise statistics on the number of Iranian refugees who arrived in Turkey, it is estimated that 1.5 million of them came through Turkey between 1980 and 1991. Similarly, asylum seekers from countries other than Iran benefited from such arrangements: Iraqis, Afghans, Somalians, Sri Lankans, Tunisians, Sudanese, Palestinians, and Jews from Iraq.

Prior to the acceptance of the 1994 Bylaw on Asylum Turkey did not have any national legal provision to cover the status of the people coming from outside of Europe. This vagueness was covered by a complicated refugee protection system involving various international and national actors. The responsible authorities and agencies in Turkey for asylum, refugee status determination, refugee protection, the economic and social integration of refugees, and immigration are various. The General Directorate of Security under the Ministry of Interior (MOI) and the MFA are the main bodies responsible for asylum and refugee policy. In addition to these national bodies, the UNHCR is included both in the refugee status determination procedures and the refugee protection mechanism. National and international NGOs, such as the Representation of the International Catholic Migration Commission (ICMC) and Human Resource Development Foundation (IKGV) which are based in Istanbul play useful roles for support and reception of refugees. The Association for Solidarity with Asylum Seekers and Migrants (ASAM) is another NGO based in Ankara that works on the economic, social and legal needs and problems concerning asylum seekers, refugees and migrants.

[581] Kirişçi, K. (2002), .*op.cit.,* p.17.

[582] *Ibid*.

As a result of the two-tier asylum and refugee status determination system, the role of the UNHCR is critical for Turkey. Traditionally, the UNHCR has relatively strong position in Turkey in the refugee status determination process. Turkish governments allow the UNHCR to the considerable flexibility in providing temporary shelter to non-European asylum seekers. [583] When they are recognized as refugees their resettlement work for third countries is undertaken by the UNHCR.

Article 35 of the *1951 Convention* regulates the patterns of cooperation between national authorities and the UNHCR. According to this article, the UNHCR is given the power to exercise its functions and facilitate its duty by supervising the application of the provisions of the *1951 Convention*. Cooperating states of the Convention empower the UNHCR, or any other organization which may succeed it to make reports to the competent organs of the UN. While doing so the contracting states undertake "to provide them in the appropriate form with the information and statistical data requested concerning: (a) the condition of refugees, (b) the implementation of the *1951 Convention*, (c) laws, Regulations and decrees which are, or may hereafter be, in force relating to refugees".[584] However, this article does not specifically set aside a role for the UNHCR. Getting its main power from this article, in practice the UNHCR Representative in Ankara Office plays a significant role in the refugee status determination procedures.

5.2.1 The Refugee Status Determination Process

In practice, the refugee status determination process in Turkey is under a framework of cooperation involving various national and international actors. Before the

[583] Kirişçi, K. (2004), 'Turkey's Pre-Accession and Immigration Issues', paper presented at the international conference organized by the *Turkish Family Health and Planning Foundation*, 11-12.10.2004, Istanbul, published as 'Turkey's Pre-Accession and Immigration Issues', in *Population Challenges, International Migration and Reproductive Health in Turkey and the European Union: Issues and Policy Implications*, İstanbul: Turkish Family Health and Planning Foundation, p.195.

[584] UN (1951), *Convention*, Article 35.

acceptance of 1994 Bylaw, there was no specific national legislation dealing with the Refugee Status Determination Process (RSD) procedures. The lack of specific legislation was compensated by a combination of national legislations regulating different aspects of this process. Different aspects of various national legislations were utilized to fill the gap in this policy area. These arrangements necessitated the involvement of various national and international actors creating the problem of identifying the responsible institution. Not having a definite national legislation created vagueness in the execution of this policy field during the years 1923-1994. Shortcomings of this vagueness were intended to be balanced with a relatively flexible system of protection.

The indirect legal provision regarding the responsible authority for admittance of refugees to Turkey was set by the Passport Law No.5282. It specified the competent authority as the MOI as follows: "In general the admission in Turkey, with or without passports, of refugees or of aliens who come to settle outside the provisions of the immigration law, is subject to a decision by the Ministry of Interior."[585] Without having legislation directly dealing with the refugee status determination process the Passport Law differentiates between the potential immigrants and refugees. For the admittance of refugees the MOI was directly authorized.

In such a position during the Cold War period, the refugee status determination process was made by the coordination of different national authorities. For the asylum seekers coming from Europe, the system were different than asylum seekers coming from non-European regions. Following the application to the Turkish authorities, European asylum seekers' RSD was made by the Turkish MOI. When a decision was reached, the file of the applicant would then be sent to the MFA for examination. When the file was received by the MFA, it was investigated for the obligations of Turkey under the *1951 Convention*. Later, the MFA gave its opinion to the MOI. If the applicant was considered a genuine refugee, then he or she was able to benefit from the rights and obligations that arose from the *1951 Convention*. In

[585] TGNA (1950c), *Passport Law (Pasaport Kanunu),* Law No.5682, 15.07.1950, Art.4 (4).

this process, if applicable, the İstanbul Office of ICMC was also informed. If the asylum seeker's application was not considered credible, it was rejected. In such cases, in order to respect the principle of *non-refoulement* the asylum seeker was not returned to his/her country of origin. However, not being able to benefit from the rights of a recognized refugee status those individuals experienced an awkward and difficult situation of being stuck in the country. In this process, the UNHCR had a supervision function with the European asylum seekers and refugees. On behalf of the asylum seekers or refugees, the UNHCR had a supervision role checkeing whether the legal obligations arising from the *1951 Convention* were met by the Turkish authorities.

For the non-European asylum seekers, the process operated in the same framework; with the same institutions involved in different degrees. The asylum seekers after entering Turkey through legal or illegal ways would apply to Turkish authorities or directly to the UNHCR. If the application was received by Turkish authorities, then the asylum seeker would be directed to the UNHCR office in Ankara. The UNHCR office would open a file for the applicant, while starting the refugee status determination process. During the refugee status determination process the Directorate of Security would issue an alien's residence permit (*yabancılara mahsusu ikamet tezkeresi*) marked "refugee status under consideration" (*ilticası tetkik edilen mülteci*) for the asylum seeker. When a decision was reached by the UNHCR, this decision would then be submitted to the MOI. The UNHCR would later get in contact with various Western governments' embassies based in Ankara for the resettlement of these non-European refugees. These countries included Australia, Canada, Germany, Norway, the Netherlands, Sweden, Switzerland, UK and USA. This process is still valid for today. If a country accepted to resettle a recognized refugee, permission to exit would have to be authorized by the MOI.

During the asylum period, in principle, no measures of removal, in other words return or *refoulement,* would be taken by the Turkish authorities. Nonetheless, Article 19 of the Law No. 5683 provides the conditions of extradition: "Aliens whose sojourn is considered by the Ministry of Interior to be contrary to the national

security or political or administrative practice are requested to leave Turkey within a given time. Those who have not left Turkey when the period has elapsed shall be expelled." A request to leave, on order of expulsion shall be issued within the limitations of the *1951 Convention* in line with Articles of 31, 32 and 33. There were examples in the case of international political tensions that the application of this principle of *non-refoulement* caused problems in terms of returning recognized refugees to the neighbouring countries. This was especially valid with the asylum seekers form Iran and the Soviet Union.

In order to respect the principle of *non-refoulement*, asylum seekers who were not officially recognized as refugees for substantive reasons were permitted to remain in Turkey. They kept an alien's residence permit stamped as "refugee status under consideration." In case of a need to travel to a third country, they were issued an alien's passport (*yabancılara mahsus Türk pasaportu*) by the MOI which would normally be valid for six months.[586]

In terms of the refugee rights and protection standards, Turkish protection procedures have relatively liberal standards. To give an example, asylum seekers and refugees enjoy the usual civil rights, in accordance with the Turkish law. Moreover, refugees can claim specific rights deriving from the *1951 Convention*. Likewise, refugees may engage in wage-earning employment on the same terms as Turkish citizens. In terms of self-employment, a refugee allowed to reside in Turkey may require a permit to engage in crafts and trades. Refugees employed in Turkey, are subject to and benefit from the same provisions as Turkish citizens with respect to labour legislation and social security. On the other hand, they are not entitled to become involved in politics and they do not have voting rights.[587] Similarly, they are not eligible for public office unless they become Turkish citizens.

[586] These passports are normally issued to stateless and assimilated persons under TGNA (1950), Law No. 5282, Article 18.

[587] Jaeger, G. (ed.) (1983), *op.cit.,* p.357.

Between 1962, which was the year when the *1951 Convention* came into effect, and 1994, when the Asylum Bylaw was accepted there was no national asylum policy or institution dealing specifically with asylum matters in Turkey. Between those years there was no specific procedure for asylum seekers other than the general procedures applicable to aliens under the Passport and Sojourn Laws. Moreover, there was no such official 'asylee' status. However, the overall comparison of the application of the rights of asylum seekers and refugees with the requirements of the obligations of the contracting states of the *1951 Convention* demonstrated that Turkish practices were relatively compatible.[588]

5.3 Securitization of the Asylum Issue with the Refugee Influx Situations

Securitization of the asylum issue intensified with the end of the Cold War. The collapse of the Soviet Union and the emergence of the newly independent states reinforced political changes in Turkey's neighbours. In addition, the turbulent changes in the Eastern border of Turkey contributed immensely, with mass influx of refugees. This especially became apparent in 1988 and after the Gulf War in 1991 when more than half a million Kurdish refugees crossed Turkey's eastern border to seek asylum.[589] Being unable to deal with such an influx of refugees, the security concerns of Turkey were intensified. The problems which began to arise mainly with the end of the Cold War reinforced the apparent vulnerability of Turkey.

Following the 1988 gassing of thousands of Kurds in Northern Iraq, in 1991 repeated repression by the Saddam Hussein regime forced thousands to flee towards the Turkish and Iranian borders. Unable to deal with a half a million refugees, Turkish government searched for humanitarian assistance from international community. Turkey perceived the influx of Kurdish refugees as a deliberate attempt by Iraq to

[588] Rights based on Passport Law, Law on Settlement, Citizenship Law and Sojourn Law compared to obligations of states towards asylum seekers and refugees in Articles 17-24 cited in the *1951 Convention*.

[589] Kirişçi, K. (2002), *op.cit,* p.14.

create a mass exodus of Iraq's unwanted Kurdish minority to create security problems in Turkey's already problematic south-eastern region. Thus, after receiving hundreds of thousands of Iraqi Kurdish refugees, Turkey decided to close its borders to further refugee movements from Northern Iraq.[590] Turkish refusal to allow the Iraqi Kurdish minority from crossing Turkish-Iraqi border to seek asylum resulted with severe criticisms from the UNHCR and various other human rights advocacy groups.[591] Turkey argued that it had the right, for such an action due to Article 9 of the *1951 Convention,* which allows the contracting state to take provisional measures that "it considers to be essential to the national security" in "time of war or other grave and exceptional circumstances" refused admission any further asylum seekers from its Iraqi border. Turkey argued to justify its action on two grounds. It argued that first of all, the refugee influx situation endangered its national security. Secondly, Turkey also argued that its request for international humanitarian assistance received no response.

The refugees in the northern border of Iraq created a problematic situation in terms of refugee protection in the international sphere. Not being able to cross an international border, the refugees were trapped within the northern Iraqi territories became internally displaced persons (IDP), falling beyond the scope of the *1951 Convention*. The Convention deals with refugees who cross internationally recognized borders. Therefore, it was necessary to develop alternative models of protection for these persons.[592] The US led multilateral operation was lacking international legal justification to create basis in terms of humanitarian intervention to protect those persons in need of protection. The UN Resolution 688 partially provided this justification, as an attempt of collective action under Chapter VII to protect regional peace and security when it is threatened by an outpouring of

[590] Selm-Thornburn, J. (1998), *op.cit.*, pp.108-9.

[591] Adelman, H. (1992), 'Humanitarian Intervention: The Case of Kurds', *International Journal of Refugee Law*, Vol.4, No.1.

[592] Loescher, G. (1993), *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Oxford: Oxford University Press, p.28.

persons.[593] The creation of the safe zone beyond the 36th parallel of Northern Iraq, led to the Turkish arguments that refugees were free from persecution in these safe areas.[594]

Turkey was not willing to play the role of the country of first asylum with temporary protection schemes if the resettlement of refugees in third countries was not guaranteed did not happen successfully in this crisis.[595] The Preamble of the *1951 Convention* clearly specifies that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the UN has recognized the international scope and nature cannot therefore be achieved without international cooperation."[596] Therefore, the Convention expresses the wish that 'all States, recognizing the social and humanitarian nature of the problem of refuges, will do everything within their power to prevent this problem from becoming a cause of tension between States".[597] This provision clearly demonstrated that the contacting states of the Convention in 1951 foresaw the prospective problems accompanying granting refugee status. In order to respond to the future challenges, which might bring a heavy burden on a particular state was aimed to be eliminated with this provision. However, the events occurring after the end of the Cold War proved that international cooperation to ease the burden on a particular country, where a refugee influx situation occurs, is relatively limited.

The Western states were reluctant to share the burden or to participate in massive resettlement programmes to assist Turkey in 1991. Moreover, they demonstrated that they are unlikely to offer guarantees of resettlement, even when there exist a severe

---

[593] United Nations (1991), *Security Council Resolution*, No. 688, Adopted at its 2982nd Meeting, 05.04.1991

[594] Kirişçi, K. (1993), 'Provide Comfort and Turkey: Decision Making for Humanitarian Intervention', *Kent Papers in Politics and International Relations*, Series 3, No.3, Canterbury: University of Kent

[595] Selm-Thornburn, J. (1998), *op.cit.,* p.106.

[596] UN (1951), *Convention*, Preamble.

[597] UN (1951), *Convention*, Preamble.

crisis is in their midst.[598] This has brought the issue of burdensharing into the limelight in the debate of international refugee protection. In that respect, most states and commentators agreed that in order to avoid the resettlement policy other tools were prioritized. These tools were financial burden-sharing, allowing refugees to remain in a country where they are as close as possible to their country of origin with the aim to return these refugees back to their country of origin while permitting the host states to bear the burden.

The primary justification given for such a position by the Western states was that sharing the physical burden by resettlement programmes will inevitably involve the violation of the refugee's right of the freedom of movement.[599] On the other hand, in a case of humanitarian crisis, the risk arises when a host state realizes that it can no longer cope with the heavy burden of accommodating the refugees and starts to return them back to their country of origin, needs to be acknowledged. In such a situation, the right to life has to prevail to the right to freedom of movement. In the 1991 event, Turkey came under increasing international pressure to accept all the Iraqi Kurdish refugees fleeing persecution. This created serious tensions with the UNHCR on the grounds that Turkey was violating its international legal obligations; this situation underlined not only the lack of serious international cooperation but also the deficiency in the lack of national legislation for non-European refugees and the procedures to deal with refugee influx situations in Turkey.

Unlike tensions associated with the Iraqi Kurdish refugees in 1991, refugees with ethnic Turkish and Muslim origin were relatively welcomed in Turkey causing less domestic tensions. Violence associated with ethnic conflicts in the Balkans and in the former Soviet Union territories resulted with the displacement of persons with Turkic and Muslim origins. These displaced persons fleeing from persecution came to Turkey. However, their acceptance to the country has been heavily political and rather complicated. As a result of the possible negative consequences attached to

[598] Adelman, H. (1992), *op.cit*.

[599] Selm-Thornburn, J. (1998), *op.cit.,* pp.156-7.

granting refugee status to such people, Turkey developed an unofficial policy to let these people stay or even settle and benefit from special laws for persons with Turkish descent. This gave the right to acquire Turkish citizenship without granting the refugee status. These were persons of Azeri, Ahıska Turk (*Meshketian Turk*), Uzbek and Chechens in origin.

Kirişçi argues that there were two major reasons behind this policy of Turkey. Mainly Turkey refrained from offending the governments of Azerbaijan, Russia and Uzbekistan.[600] The other apparent reason was refraining from a clear signal to the potential asylum seekers that Turkey pursues a liberal and open refugee policy.[601] Arguably, this could have been the reason not to accept a large group of Chechen refugees from Georgia at the Turkish borders in 2000.[602] On the other hand, the nationals of the former Soviet Republics benefited from the relatively liberal visa policies. For example, Ahıska Turks attempted to seek asylum in Turkey when they were displaced from their ancestral homes by the repressive regime in 1944.[603] Reluctant to grant refugee status to these approximately 15,000 displaced persons Turkey let them to enter its territories. Many of the Ahıska Turks overstayed their visas and settled in Turkey.[604] Similar to the Ahıska Turks case, Chechens with valid travel documents were able to easily enter Turkey.

The outbreak of hostilities coupled with the war in Bosnia-Herzegovina in 1992 caused more than 2 million persons to flee their homes. A large proportion of these internally displaced persons and refugees were Bosnian Muslims. Among those

---

[600] Kirişçi, K. (2001), *op.cit.,* p.75.

[601] Kirişçi, K. (2002), *op.cit.,* p.15..

[602] *Milliyet*, 22.02.2000.

[603] Kirişçi, K. (2001), *op.cit.,* p.75-76. For a detailed analysis see also Avşar, Z. and Tunçalp, Z. S. (1995), *Sürgünde 50.Yıl: Ahıska Türkleri*, Ankara: TBMM Publications; Ataöv, T. (1989), 'Mesket Türkleri', *Milliyet*, 4.06.1989; *Russian Experience of Ethnic Discrimination: Meskhetians in Krasnodar Region* (2000), Moscow: Memorial Human Rights Centre.

[604] Kirişçi, K. (2001), *op.cit,* p.75.

around 20,000 Bosnian Muslims sought refugee in Turkey.[605] Compatible with the Western European practices in the case of the Netherlands, Slovenia, Germany, the UK and Austria these persons were granted temporary protection in Turkey.[606]

Following the Dayton Peace Agreement in 1995 the majority of the Bosnian refugees returned back to their country of origin. A similar scheme is used for the Albanian and Kosovars in 1998 and in 1999. Following the outbreak of the conflict in Kosovo, Turkey has offered to host 20,000 refugees from Kosovo under temporary protection schemes.[607] As a consequence of the Humanitarian Evacuation Programme during the Spring of 1999, Albanian refugees were brought to the refugee camps used formerly for the Bosnian refugees who did not have any family connections in Turkey. At its peak 8,700 refugees were housed in those camps.[608] Compared with conditions in refugee camps in Albania and Macedonia, the camp benefited from a smaller number of people in a wealthier country which as a result provided better conditions for its beneficiaries.[609] The strong compulsion to help these refugees was mainly as a result of the religious affinities of these displaced people with Turks and the historical ties of Turkey in the Balkans. In total it is estimated that in total of 18,000 refugees from Kosovo were granted temporary protection in Turkey.[610] Acceptance of historical ties with the Balkans created fewer tensions with respect to perception of national security in accepting refugees.

---

[605] Kirişçi, K. (2001), *op.cit,* p.75-76.

[606] Selm-Thornburn, J. (1998), *op.cit*.

[607] This can be regarded as a relatively high number compared to the total of number of 20,500 Kosovo Albanians who applied for asylum in Europe in June 1999. See also UNHCR Statistics, http://www.unhcr.ch/statist/0002euro/text.htm

[608] *Annual Activity Report* (1999), Ankara: Anatolian Development Foundation.

[609] Kırklareli Refugee Camp, *BBC News*, 11.05.1999.

[610] Information received from the Directorate of Security, Foreigners, Borders and Asylum Department, MIO.

5.3.1 The Role of Illegal Immigration

Adding to the refugee influx situations in the post-Cold War period transit migration and illegal immigration has been a significant phenomenon in Turkey. Using Turkey not as a country of final destination, immigrants entering Turkey legally or illegally aimed at either reaching an EU member state or even to North American countries, such as the USA or Canada. In the last decade, prevention of illegal immigration became a major concern for Turkey. A combination of security forces are involved in the process dealing with the prevention of illegal migration in Turkey. These can be listed as the Turkish Police Forces, the Land Forces General Command, the Coastal Security Command, and the Gendarmerie General Command. The majority of the illegal immigrants are caught at the land border between Turkey and Greece, as most of these illegal immigrants attempted to reach an EU member state.[611]

In 2004 the Directorate General of the Security reported 61,228 persons were caught as illegal immigrants in Turkey. The figure is critical in representing the magnitude of such flow. Over the past years except the 10,000-15,000 asylum seekers who received UNHCR's aid and guidance as recognized refugees the rest of foreigners entering Turkey did not apply for a refugee status and they have found their own ways to reach their final destinations.

Table II. Number of Illegal Immigrants Caught by the Turkish Security Forces (1995-2004)

YEAR	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Numbers	11.362	18.804	28.439	29.426	47.529	94.514	92.364	82.825	56.219	61.228

Source: Department of Foreigners, Border and Asylum, Directorate General of Security [612]

[611] Interviews with the officials of the Ministry of Interior, General Directorate of Security, May-June 2000.

[612] These figures represent the overall number of illegal immigrants caught in Turkey by the Turkish Police Forces, the Land Forces General Command, the Coastal Security Command, and the Gendarmerie General Command in the years 1995-2004. Figures representing the years 2002-2004 are gathered from the Department of Foreigners, Border and Asylum, Directorate

Table II clearly indicates that between the years 1995-2004 more than half a million of illegal immigrants were caught in Turkey. Undoubtedly, these numbers do not reflect the actual figures as most of the illegal entries find their ways to their final destinations if not permanently or temporarily settle in Turkey. Turkey has for a long time, formed *ad hoc* arrangements to the problems in this area. For the past twenty years the solutions were not long-term government policies, but they rather were daily solutions to long-term problems. In that respect, with the mounting pressures from the EU and North American governments, Turkey started to develop projects to find durable solutions to illegal immigration problem.[613] The major development was the formation of a national legal instrument, the 1994 Bylaw.

5.4 On the Way towards Institutionalization: The Acceptance of the 1994 Bylaw

The end of the Cold-War and the increasing number of irregular migration to Turkey created the need to adopt national legislation dealing specifically with asylum seekers, refugees and the refugee status determination process. Since there was no national law dealing with "non-European refugees", it was also an attempt to institutionalize the already existing procedures dealing with the increasing number of such refugees. In addition, illegal migration intensified the concerns of officials at the MOI. Violations of domestic laws and failure to implement these laws, with the growing inability to control the borders for entry and exit, urged the need to formalize these arrangements. Adding to the security concerns of the officials of MOI and the security forces, terror in the southeast region of Turkey complicated the situation. Deportations of persons who entered Turkey by illegal means but recognized by the UNHCR as genuine refugees created tensions with the UNHCR. This mounted the international pressure on Turkish politicians, to keep their international obligations. Moreover, the lack of international burden sharing in case

---

General of Security, Ministry of Interior, December 2004. The figures for the years between 1995-2001 are taken from the source Abadan-Unat, N. (2002), *Bitmeyen Göç*, Istanbul: Bilgi University Publications, p.334.

[613] *Hürriyet*, 7.7.2002, p.21.

of refugee influx situations revealed the need for national legislations in such situations.

Within this context, the 1994 *"Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country"* was accepted. The Asylum Bylaw which indicated procedures applicable to refugees was a major step for legislation formation and policy building.[614] The 1994 Bylaw basically elucidated the procedures which were already in practice. Still, it was a major step for institutionalization of this policy. It introduced procedures and principles to govern asylum in Turkey. From 1994 onwards, the Bylaw has been the basic national legal document for refugee status determination, which in turn forms the basis for Turkey's national refugee and asylum policy.

According to the 1994 Bylaw, there is a clear distinction between "European refugees" within the scope of *1951 Convention*, and "non-European refugees" which are considered to be asylum seekers from regions outside Europe within the scope of geographic limitations. From this perspective, the 1994 Bylaw makes the distinction between a 'refugee' and an 'asylum seeker' under Turkish legislation. In that respect, a 'refugee' (*mülteci*) is defined in terms of the *1951 Convention* definition of Article A (1) (a) for foreigner/alien (*yabancı*) fleeing persecution with geographic preference within the scope of Europe.[615] Similarly, an 'asylum seeker' (*sığınmacı*) is person as defined in the Bylaw as a foreigner/alien (*yabancı*) seeking asylum while fleeing persecution from regions outside Europe.[616] These definitions are different from the

[614] The Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country (*Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanabilecek Usul ve Esaslar Hakkında Yönetmelik*), *Official Gazette*, 30.11.1994, No: 22217.

[615] *Official Gazette of the Turkish Republic (T.C. Resmi Gazete)* (1994), *Bylaw*, Art. 3

[616] *Ibid*.

1951 Convention, definition as there is a clear distinction between the European and non-European refugee categories.

The problem arises in respect to the translation mistake of the *1951 Convention* term well-founded fear of 'persecution.'[617] This term was translated incorrectly in the ratification Declaration in 1961 as well-founded fear of 'prosecution.'[618] In the 1994 Bylaw this mistake was not corrected. According to the Redhouse English-Turkish Dictionary 'persecution' is explained as *"zulüm; eza etmek; baskı yapmak; bir fikre veya dine olan inancından dolayı eza etmek veya öldürmek."* [619] However, the term 'prosecution' is defined in the same dictionary as *"takibat; hukuk; dava; davacı."*[620] Therefore, the definition of the term 'refugee' acquires a new meaning within the scope of this Turkish legislation. Although the term is used to indicate the same meaning as in the case of the definition of the *1951 Convention*, it is also possible to argue that it might have broaden the scope of protection in terms of Turkish legislation.

The Bylaw also defines the principles and procedures in situations of mass population movements (*nüfus hareketleri*) to the Turkish borders or mass influx of population movements crossing the Turkish borders.[621] In addition, it puts forward the responsible agencies for the "non-European refugees." Definition of the 'individual foreigner/alien' acknowledges the right of having a family since Article 3 of the Bylaw defines the 'individual foreigner/alien' (*münferit yabancı*) as "the single person or the family composed of the mother, the father, and the accompanied

[617] The *Cambridge Dictionary* defines "persecution" as the noun form of persecute "…to treat someone unfairly or cruelly over a long period of time because of their race, religion, or political beliefs or to annoy someone by refusing to leave them alone."

[618] The *Cambridge Dictionary* defines "prosecution" as the norm form of prosecute as "…to officially accuse someone of committing a crime in a court of law, or (of a lawyer) to try to prove that a person accused of committing a crime is guilty of that crime."

[619] *Redhouse English-Turkish Dictionary* (1975), İstanbul: RedHouse Yayınevi, p. 719.

[620] *Ibid.*, p.774.

[621] *Official Gazette of the Turkish Republic* (1994), *Bylaw*, Art. 3

children under the age of eighteen." The same Article describes the term 'combatant member of foreign army' (*muharip yabancı ordu mensubu*) as the soldier whose country is in war or in military strife with a third country.

Implementation of the 1994 Bylaw has not been smooth and easy in terms of differentiation between an 'asylum seeker' and a 'refugee'. Although the Bylaw formalized the protection procedure for non-European refugees it still led to major criticisms from various international human rights advocacy groups and Western governments on the grounds that the Bylaw was security oriented and restrictive.

In the overall essence of the Bylaw, it is possible to see that the aim is to provide control over undesired population movements and mass influx situations while defining the competent domestic authorities on such situations. This is apparent in the terminology of the Bylaw where there are references to 'disarmament', 'guarding/preservation and discipline' of 'the refugees and asylum seekers', and their 'contact with public and their reception of visitors' when there is mass influx of persons for asylum and population movements in the borders.[622] In such a case, the Command of the General Staff of Turkey (*Genel Kurmay Başkanlığı*) is responsible for the coordination of the gathering/collecting zones/camps (*toplama bölgeleri/kampları*) beyond the external borders of Turkey in collaboration with the MOI.[623]

These criticisms find their basis in Article 4 of the Bylaw which makes a differentiation between legal and illegal entries to the country. According to that Article foreigners/aliens either applying for 'asylum' in Turkey or applying for a residence permit in Turkey to 'seek asylum' in another country, have to approach and present themselves to local authorities within a five day period starting from the date of entry to the country. A confusion regarding terminology is seen in this article. It does not refer to the term of seeking asylum in order to apply for 'refugee status'.

[622] For details see *Official Gazette of the Turkish Republic* (1994), Art. 9, 11, 12, 15 and 17.

[623] *Official Gazette of the Turkish Republic* (1994), Art. 11.

Rather the term used here is 'seeking asylum to Turkey'. If a person enters Turkey legally then he/she is required to approach the local authorities within the immediate vicinity. However, if a person enters Turkey via illegal means then he/she will have to approach the local authorities at the point of entry to the country. This provision is criticized as that it makes a clear differentiation between legal and illegal entry giving admittances to the former one.

In a geographically sizeable country like Turkey, it may take a long journey for an asylum seeker to reach to the point of entry to present himself/herself to the local authorities. It will probably take at least one day to travel from İstanbul to the Eastern or South-eastern borders. It has been argued that this is particularly problematic for Iranian and Iraqi asylum seekers to return to the 'dangerous war zone' in south-eastern Turkey within a 'very short period of time' to register their claims.[624] From the *1951 Convention* perspective, Article 31 requests that contracting parties shall not "impose penalties, on account of their illegal entry or presence…provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." In that respect, it is possible to argue that the 1994 Bylaw is in contradiction with the Convention. Similarly, it can be argued that the time limitation of five days to contact the authorities creates an indirect barrier for the asylum seeker in case of an illegal entry.

This situation was also problematic in the case of illegal entrants when they did not present themselves to the Turkish authorities, but only to the UNHCR. In such cases, the refugee status is recognized by the UNHCR for the non-European refugees and their resettlement arrangements are progressed. If the resettlement is organized in a third country their exits from Turkey become problematic. This is mainly because they become illegal resident within Turkey as they are not registered by the Turkish authorities. In addition, in some cases there is the possibility that these illegal entries might have violated Passport Law. Under domestic law governing the area of foreigners' illegal residence, breach of Sojourn Law and Passport Law occurs. In that

[624] Frelick, B. (1997), 'Barriers to Protection: Turkey's Asylum Regulations', *International Journal of Refugee Law*, Vol.9, No.1, pp.8-34.

respect, their situation became highly problematic since a breach of national law and legislation occurs. This created tensions with the UNHCR willing to resettle genuine refugees to third countries. On the other hand, Turkish authorities became increasingly uncomfortable with the illegal entry and illegal residence situation within the country.

Several deportation cases occurred when refugees tried to exit Turkey for resettlement purposes to other countries. In these cases Turkey was criticized to fail to comply with the principle of *non-refoulement*. Paragraph 2 of Article 31 of the *1951 Convention* clarifies the situation that "the contracting states shall not apply to the movements of such refugees [refugees unlawfully in the country of refuge] restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."[625] Therefore, the deportation and limitations of movement of asylum seekers that were recognized as genuine refugees, on the grounds that asylum seekers entered Turkey by illegal means or failed to present themselves within five days period to Turkish authorities, is not justified from the perspective of the *1951 Convention*.

The Bylaw's five days time limit for presenting a claim was also severely criticized by the UNHCR, Western governments, and by other human rights organizations.[626] It was claimed that for an asylum seeker who is an alien to the procedures in a foreign country, a five day period to apply to local authorities is a very short period of time. Arguably a five day period can be regarded as a deterrence measure to reach asylum procedures. Turkish authorities argued that compared to Western governments' practices of the time limit being 24 hours, five days period is relatively liberal. These

[625] UN (1951), *Convention,* Article 31 (2).

[626] Amnesty International (1997), *Turkey: Refoulement of Non-European Refugees- A Protection Crisis*, Document EUR:44/031/1997, London: Amnesty International Secretariat. See also; US Department of State (1997), Turkey Country Report on Human Rights for 1996, http://www.state.gov

tensions caused by deportations, resulted with the revision of the 1994 Bylaw in 1999. The revision included the extension of the time period from 5 days to 10 days.[627] The extension anticipated the prevention of deterrence of persons to seek asylum and go underground to become illegal immigrants. The result was improved cooperation with the UNHCR. The essence of the Bylaw was to indicate the cooperative role of the UNHCR in the first place. It has been argued that the Bylaw has modified the central role of the UNHCR in refugee status determination,[628] especially for the non-European refugees, to the limited role of resettlement in collaboration with the International Migration Organization (IMO).[629] However, the result was enhanced cooperation with the international agencies.

Following the application to the Turkish authorities, European asylum seekers' initial screening is made by the police. In the initial screening, which can comprise of one to three days, police officers will place the applicant in a safe location under their supervision. The file of the applicant will then be examined by the MOI. The decisions of the MOI, will be send the MFA for their opinion. When the file is received by the MFA, it is investigated for the obligations of Turkey under the *1951 Convention*. Later, the MFA give its advisory opinion to the MOI. If the applicant is considered a genuine asylum seeker he or she is referred to the Refugee Reception Centers, while the police informed the MOI, General Directorate of Security and, if applicable, the İstanbul Office of ICMC. If the application is not considered credible or receivable, the asylum seeker's application is then rejected. In this process, the UNHCR has a supervision function with the European asylum seekers and refugees. On behalf of the asylum seeker or the refugee, the UNHCR supervised if the legal obligations arising from the *1951 Convention* are met by the Turkish authorities.

---

[627] Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1999), Council of Ministers Decision amending the Art.4 of the Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country, Official Gazette No: 22217, 13.01.1999.

[628] Kirişçi, K. (2002), *op.cit.,* p.22.

[629] *Official Gazette of the Turkish Republic (T.C. Resmi Gazete)* (1994), Art. 7.

An appeal to Administrative Courts (*İdare Mahkemeleri*) is possible in principle against any administrative measures covering the rejection of an asylum application on the grounds of violation of time limitation by the asylum seeker. If the initial screening results in temporary admission, the General Directorate of Security will determine the refugee status of the applicant on the basis of the file submitted by the concerned local police and informs the same police authorities of its decision. In case of a rejection of the application of the asylum seeker then an appeal against negative decision of the Administrative Court can be brought to the Council of State (*Danıştay*).

From an overall perspective, the 1994 Bylaw aimed at regulating procedures and principles of national refugee status determination process both in cases of individual applications, and in cases of mass influx situations. It also aimed at providing temporary protection for the mass influx situations.[630] Proposing collection areas *(toplama bölgeleri)* for refugees in refugee influx situations, the Bylaw had obviously entailed security perspective resulting from the previous experiences where Turkey suffered from the lack of international solidarity with a spirit of burden-sharing.[631]

The application of the Bylaw by security forces is considerable inflexible. This inflexibility led to serious criticisms on the grounds of violation of international humanitarian standards and the obligations arising from the *1951 Convention*. Revision of the text and closer cooperation of national officials with their international counterparts resulted with the easing of these tensions. Despite these criticisms the 1994 Bylaw has been a major step for institutionalization of the asylum and refugee policies in Turkey. It set aside a main body of legislation for the day-to-day application of asylum and refugee policies. It has also clarified the competent agencies dealing with the asylum applications.

[630] *Ibid.,* Art. 26.

[631] *Ibid.,* Art. 11.

5.5 Conclusions

The general principles of the asylum and refugee policy in Turkey are based on international norms and principles developed in international legal documents, with the *1951 Convention* being the main document for refugee protection standards in Turkey. This is inline with the application of the international refugee regime. For a long period of time, there was no specific domestic legislation complementing to this main piece of international legal document. The lack of specific legislation dealing with refugee status determination was therefore filled with provisions of domestic laws on passport, foreigners and sojourn.

The traditional Turkish perception of immigration as an essential element of a multi-ethnic society during the Ottoman Empire, was changed with the establishment of the Republic of Turkey in 1923. Aiming to establish an ethnically homogeneous nation-state Turkey favoured accepting refugees and asylums seekers with "Turkish descent and culture". At the discursive level the nation building efforts were systematically reflected to migration and settlement policies of the newly founded Republic. During the Cold War, the asylum and refugee policy system operated smoothly in cooperation with the UNHCR. During that period, there were very few asylum applications from Europe and from regions outside Europe, creating a lack of institutionalized RSD procedures without a specific piece of national legislation focusing on asylum policy arrangements. With the end of the Cold War, this situation changed with political and international situation of Turkey's neighbouring countries. As a consequence, Turkey received refugees continuously.

Adding to the influences of the end of the Cold War, refugee influx situations and the increased number of illegal immigrants necessitated the formalization of this policy area by a specific law indicating the responsible agencies. The 1994 Bylaw was the response to that need. This Bylaw with its security focused approach was an attempt to institutionalize the already existing arrangements. Time limitation for the refugee status determination applications and the distinction between illegal and legal entries of the asylum seekers caused criticisms from international actors. Despite its

deficiencies, the 1994 Bylaw was the first attempt to institutionalize this policy in Turkey.

The next Chapter investigates the further institutionalisation in this area, with the influence of the European integration through the EU pre-accession process. It will involve the analysis of the harmonization with the EU *acquis* with respect to asylum and immigration. This harmonisation generates the impact of Europeanization on many domestic policy areas. Thus, the pre-accession process has had a profound impact on the Europeanization of refugee and asylum policies. In this process a comprehensive policy transfer occurs from the EU level to the domestic level. The following Chapter will elaborate on this argument.

CHAPTER VI:

HARMONIZING ASYLUM AND REFUGEE POLICIES IN THE TURKEY'S PRE-ACCESSION PROCESS

After the European Council Meeting in Helsinki on 10-11 December 1999, Turkey was declared as an official candidate for full membership to the EU. This decision reinforced the launch of a process of pre-accession including a transitional period of policy and legislation adoption and harmonization. The adoption of the EU *acquis communitaire* will inevitably mean the modification of existing national policies. In addition, the adoption of the EU's JHA policies will be especially important in the process of preparation for full membership. In this process, the issues relating to migration, asylum and border controls are vitally important topics for the EU in general and for its member states in particular.

This chapter assesses the influence of the integration process in a European non-member state. The issues covered are national legislation changes concerning asylum and immigration through the adoption of EU norms and standards, legislative harmonization, institution building, policy formation and the implementation of these policies in line with EU standards. In order to assess these developments, legal documents such as the *Accession Partnership (AP)*, *National Programme for the Adoption of the Acquis (NPAA), Revised Accession Partnership (RAP)*, *Revised National Programme for the Adoption of the Acquis (RNPAA)* and the *National Action Plan for Asylum and Immigration* (*NAP*) will form the basis for this analysis. Additionally, interviews conducted with the officials involved in this process supplement the information and data collected from these legal documents.

Chapter Six is divided into five sections. Before discussing the impact of Europeanization on the policy formation and legislative adoption in the asylum area within Turkey, the first section will consider challenges brought by the *AP* document. The second section will cover the discussions and the impact of the *National Programme* of 2000. The third section will then look at the changes brought by the *Revised AP* document. Following that analysis, the next section covers the revisions in the *RNPAA* of 2003. The final section will analyze the intensified changes in this policy area in the pre-accession process with the *National Action Plan*. It will then conclude that although the changes that took place after the Helsinki decision cannot bring explicit result until the launch of the accession negotiations concerning Turkish membership was officially declared, significant policy transfer has already been experienced in the current process with systemic changes in the asylum policy field.

6.1 The Changes After the Helsinki Summit with the Official Declaration of Turkish Candidacy

The Helsinki European Council stated that: "Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms. As a key feature of such a strategy, an Accession Partnership will be drawn up on the basis of previous European Council conclusions."[632] This statement affirmed Turkish official candidature and launched a pre-accession process.

In the Turkish pre-accession period, especially after the declaration of the *Accession Partnership Document,* it is possible to see that there are increased expectations from Turkey to handle the demands and needs of asylum seekers and refugees. In this process, Turkey is encouraged to change the basic premises of its asylum policy:

[632] European Council (1999a), *Presidency Conclusions*, Helsinki, 10-11.12.1999

lifting of the geographic limitations in the field of asylum and developing accommodation facilities and social support for refugees.[633] Arguably, with Turkey's limited capacities to perform these functions, there will be a gap between the expectations of the EU and the capabilities of Turkey to meet these expectations.[634] In order to fill this gap, the *NP* of Turkey involves several provisions to increase the technical and administrative capacity involved in this policy area.

Within this context, an influence of increased institutionalisation of this area is seen in Turkey. Aiming at bringing the domestic Turkish legislation and practices in line with the EU practices, further institutionalisation and harmonisation with the EU *acquis* led to the Europeanization of this policy area in Turkey. Europeanization in that respect involves the transfer of general principles guiding the exercise of a policy, norms, specific policy instruments, policy programs and procedures.[635] It also involves an institutional transfer with the creation of specialized administrative agencies dealing with asylum and immigration.

Chapter 5 discussed the nature of immigration and asylum policies in Turkey. For asylum up until 1994 there was no national legal provision dealing specifically with non-European asylum seekers. Lack of specified legislation and a expert institution was an influential phenomena in this policy field. Traditionally, international humanitarian norms and standards of the international refugee regime are respected. The principles of the *1951 Convention* are respected for refugee protection with geographical limitations. The end of the Cold War and the changing international context necessitated an adjustment for formalizing the practices with specific

[633] Accession Partnership with the Republic of Turkey, Helsinki European Council Decision http://www.mfa.gov.tr/grupa/ad/adc/Accession.partnership.pdf

[634] The 'expectations-capabilities gap' term is developed by Christopher Hill in reference to EU's Common Foreign and Security Policy. Hill, C., (1993) 'The Capabilities-expectations Gap, or Conceptualizing Europe's International Role', *Journal of Common Market Studies,* Vol.31, No.3, pp. 305-28.

[635] Lavenex, S. and Uçarer, E. (2004), 'The External Dimension of Europeanization: The Case of Immigration Policies', *Journal of the Nordic International Studies Association*, Vol. 39, No.4, p.419.

regulations. The challenges of increasing irregular migration, refugee influx situations and changing perceptions of security were all major reasons behind a policy modification need.

The 1994 Bylaw is a response to these challenges. It has not brought radical policy alterations to the existing asylum and refugee policy. In contrast, it has only formalized the existing practices. Prior to the 1994 Bylaw it was not clear which administrative and political body was responsible for which part of the refugee status determination procedure. While formalizing these procedures the 1994 Bylaw has inserted an additional dimension to these practices. This insertion was official securitization of asylum and refugee concept. It was possible to clearly examine the reflection of national interest, internal security and stability concerns in this Bylaw. The internal security concerns escalated in the early 1990s with respect to south-eastern region of Turkey resulting from the PKK problem. The Iraqi crisis of 1991 escalated these concerns in terms of the sudden change in the Kurdish population in the south-eastern region of Turkey. The lack of interest for international burdensharing in the Iraqi refugee influx created the understanding in Turkey that challenges have brought by similar situations to be eliminated by domestic level arrangements in the future.

These security aspirations resulted with the categorization of asylum applications in terms of their ways of entry to the country. Indirect penalization of the illegal entries was with strict application of "five days of time limitation" for access to refugee status determination procedures. This limitation was used as a deterrent measures for potential and actual asylum seekers. The Cold War understanding of accepting refugees as a result of respected international humanitarian norms and principles has slightly changed with this broadening understanding of security. The comprehensive security approach in this new era involved securitization of many issues which were not traditionally perceived within the security agenda such as environment, refugees, human rights, identity, and composition of societies.

These changes in understanding of refugee issue were also influenced by the developing migration regime in Europe. Chapter Three analyzed how international refugee regime developed after the WW II within the Cold War context. Although it is not possible to argue completely that the *1951 Convention* provided the ideal protection standards for displaced persons who are in need of protection, it has at least provided a universally applicable definition of the term 'refugee'. In that respect, the *1951 Convention's* basis for internationally applicable rules reflected European needs. Changing circumstances with the end of the Cold War visualized again the need to respond these issues collectively by the European states. The development of a cooperation framework from intergovernmental level arrangements towards the advanced pillar structure of the Union explains why there was an enthusiasm of developing a European migration regime. The Union used its comparative advantage of possessing already existing common policy experiences to bring immigration and asylum topic from the intergovernmental framework of cooperation towards communitarization.

The EU aimed at achieving better management of migration and asylum with a principle of burden-sharing within the Union. This has resulted with several restrictions on the liberal understanding of many member states' asylum policies. The reflections of these restrictions with tighter visa regimes, sanctions, and developed principles of 'third safe country' or 'first country of asylum' were all echoed to the neighbouring countries surrounding the EU. Intentionally the EU wants to export its developing migration regime to third countries with the 'safe third country' principle.[636] With this principle the EU targets a redistributive policy to relieve the EU's domestic asylum procedures.[637]

Europeanization from that perspective is a powerful tool of exporting certain principles, norms and procedures along with legislation and certain instruments. In

[636] Lavenex, S. and Uçarer, E. (2002), 'The Emergent EU Migration Regime and Its External Impact', in Lavanex, S. and Uçarer, E. (eds.), *Migration and the Externalities of European Integration*, Oxford: Lexington Books, p.3.

[637] *Ibid*.

the pre-accession process of Turkey, policy transfer occurs from the EU level to the domestic level to a third country. In this process expectations from Turkey are high in order to comply with the needs of the accession process in general. The following section examines how Turkey's role and involvement will increase to meet these needs in the changing understanding of Modernization.

6.2 Europeanization as a Powerful Policy Tool and Turkish Perception of 'Modernization' as 'Westernization'

The term 'Europeanization' is appearing more frequently as a theme European integration vernacular. The Communitarization of certain policy developments in the last decade have intensified to the point that they are influencing the legislative and policy developments in every member state. In fact, Europeanization is such a powerful tool of policymaking that it is influencing the political and legislative structures of even the non-member states, such as Turkey in its pre-accession process. In that respect, European integration is influencing domestic change outside the territory of the Union.

European integration in general has always been motivated by the willingness to overcome collective problems through collective actions.[638] In general this collective action at the European level may also add further complications to decision makers of the member states.[639] Arguably however, the process of Europeanization can be used to overcome some of the domestic institutional constraints.[640] In that respect, it is possible to suggest that European integration and the process of Europeanization is

[638] Moravcsik, A. (1991), 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization*, Vol.45, No.1, pp.19-45.

[639] Thielemann, E.R. (2000), 'The Costs of Europeanization: Why European Regional Policy Initiatives are Mixed Blessing', *Regional and Federal Studies*, Vol.12, No.1.

[640] Thielemann, E.R. (2001), 'Explaining Stability and Change in European Asylum Policy', presented paper at the *42nd American Political Science Association Annual Meeting*, San Francisco, 30 Agust-2 September 2001.

the interaction between European and domestic dynamics. This two-way process shapes domestic policies.[641] Therefore, Europeanization can be a process whereby domestic discourses, public policies, political structures and identities aim to shape European integration. Using the logic of two level games, Putnam suggests that domestic policy-makers can conform to the pressures from the European level in order to implement those domestic policy reforms that they would otherwise be unable to enact.[642] Thielemann further argues that domestic actors import legitimacy to their policies, not only affected from the domestic political clashes, but also from the intra-governmental competition for agenda control between various ministries, institutions and departments.[643] Consequently, domestic policy-makers strategically use the European level to increase their margin of manoeuvre at home.[644]

In practice, Europeanization through the pre-accession and accession processes in the last decade have been influential in shaping and transforming policies in candidate countries of the EU. As discussed in detail in Chapter Two, conditionality is one of the most effective approaches that the EU can adopt for membership.[645] Through that mechanism the EU can push a candidate state to comply with certain criteria and attain a certain standard. In that respect, the Europeanization process has been sufficiently powerful to shape candidate states' policies, by engaging respective candidate states' bureaucrats and intellectuals as agents of European level policies. In a way, enlargement has been one of the most successful foreign policy tools of the

[641] Bomberg, E. and Peterson, J. (2000), 'Policy Transfer and Europeanization: Passing the Heineken test?', presented paper at *the PSA Annual Conference*, London, 10-13 April, p.1.

[642] Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, Vol.42, No.3, pp: 427-460.

[643] Thielemann, E.R. (2001), *op.cit.,* p.11.

[644] *Ibid*., p.13.

[645] Kubicek, P., and Cooley, A., (2003), 'Western Conditions and Domestic Choices: The Influence of External Actors on the Post-Communist Transition', in *Nations in Transit,* Lanham: Rowman and Littlefield.

EU.[646] In an authoritative manner in the enlargement process the membership in the EU has been made conditional on adaptation in the area of asylum and immigration. This has been valid in the case of Turkish pre-accession process. This has been the external reason for Europeanization through the policy transfer process.

The complementary internal reason behind the increased pace of Europeanization of most domestic policies in Turkey is mainly related to change in the traditional Turkish perception of modernization as 'Westernization'. Westernization-modernisation debate has its roots from the late Ottoman period. Turkey has been part of the European state system since the 19th century in terms of diplomacy. Ottoman Empire was included in the Concert of Europe and at the Paris Conference in 1856; Europe's great powers decided that the territorial integrity of the Ottoman Empire was essential for European stability.[647] Despite being a member of the Concert of Europe, there were difficulties regarding the Ottoman Empire as an equal member by its counterparts. Tsar Nicholas I regarded declining Ottoman Empire in his famous phrase as the "sick man of Europe". The religious and cultural differences created perceptions that "deny Ottoman's equal status within the community of Europe."[648] When Ottoman fell behind the technological development and military superiority of Europe, Ottoman élite looked for Europe for inspiration.

The reform efforts for "saving the state" were based on the acceptance of Western superiority and the need of borrowing Western institutions and training.[649] Ottomans started the early attempts of Westernisation with limited reforms to selected

[646] For a more comprehensive analysis of EU foreign policy initiatives see also; Petersen, J. and Sjursen, H. (eds.) (1998), *A Common Foreign Policy for Europe? Competing Visions of the CFSP*, London: Routledge; Piening, C. (1997), *Global Europe: The European Union in World Affairs*, Boulder: Rienner Publishers.

[647] Larabee, S. And Lesser, I. (2003), *Turkish Foreign Policy in the Age of Uncertainty*, Arlington: RAND Publications, p.45.

[648] Neumann, I. B. (1999), *Uses of the Other: The "East" in European Identity Formation*, Minneapolis: University of Minnesota Press, p. 59.

[649] Altunışık, M. B. and Tür, Ö. (2005), *Turkey: Challenges of Continuity and Change*, Oxford: Routledge, pp. 2-3.

institutions, such as the army, the technical schools, the bureaucracy and the administrative organs. They did not transfer directly the 'alien' frame of reference to the social and cultural life.[650] On the other hand, Ertuğrul argues that the Turkish Republic adopted "the post-Enlightenment European modernity as the "universal" civilisation and as the ideal model."[651] It was understood as the replication of the European way of development rather than development within the anti-colonialist framework. In that respect, for the Ottoman élite, Europe became "a mirror" through they perceived their own weaknesses, differences and traits.[652] Through various reforms Europeanness was accepted to be a fundamental dimension of the process Turkish modernization.

Modernisation was defined as Westernisation by Turkish élites as closer association with Europe. First, since the establishment of the Republic in 1923, Modernization has aimed to be achieved through various mechanisms, such as reforms in various domestic policies, institution building and policy developments. During the Republic period, the intense modernization and Westernization movement was administrative, legislative, political and cultural in nature.[653] The ideals behind the country's transformation were the promotion of democratic governance, functioning of an effective legislative system with a Western civil code and constitution, market economy and a modern education system.[654] Second, it has also been the tradition of

[650] Ertuğrul, K. (2000), *Contemporary Image of European Identity and Turkish Experience of Westernisation*, unpublished doctoral dissertation, Department of Political Science and Public Administration, Ankara: Middle East Technical University, p.12.

[651] *Ibid*.

[652] Müftüler-Baç, M. (2000), 'Through the Looking Glass: Turkey in Europe', *Turkish Studies*, Vol.1, No.1, p. 28.

[653] It had a focus to make modern Turkey to reach its potential and become one of the modern civilized countries. The concept of 'civilization' in that sense was mainly the 'Western civilization'.

[654] Although the democratic movement in Turkey was not able to establish a multiparty system for a long time and its democratic functioning was disrupted by *coups d'etat* for twice, in general it aimed to establish a functioning democracy modelling European democracies. Turkey transformed to pluralistic multiparty system after the end of World War II in 1946. In 1960 and in 1980 there have been two military interventions. In each instance, civilian control was restored after a transition period.

Turkey to follow the Western led principles in international affairs. Turkish domestic and foreign policy has been influenced by this idea for decades. Since the proclamation of the Turkish Republic, Turkey has tried to become a member of the Western political and security organizations.[655] In these two respects, the Turkish application to the EU has been considered as the natural element of this Westernization process.[656] The European vocation in that matter has helped Turkey's project of Westernisation which has been the guiding principle of the Turkish Republic.[657] It was understood as a "civilising mission" by Turkish élites bringing an increasing section of the Turkish population into contact with Western lifestyles, behaviour and methods.[658]

This perception of modernization has gathered an additional European dimension with the Association Agreement between Turkey and the EEC on 12th September 1963. The prospects of membership to the EEC reaffirmed the Europeanness of Turkey. In addition, it was perceived as the peak point of the Westernisation process. It was perceived in a very strong manner that İsmet İnönü stated "…We have already initialled the agreement today that would bind Turkey to Europe eternally."[659] It is seen that expectations from the Association Agreement to become part of the common market was relatively high in that period. It was not only the economic side of the common market that was appealing for Turkey, but it was also the political and cultural aspects. Membership prospects were embracing the idea that being part

[655] Turkey was the founding member of the United Nations in 1945, Member of the Council of Europe in 1949; it joined NATO in 1952, and became an associate member of the European Economic Community in 1963.

[656] Turkey has applied to join the EEC in July 1959. The EEC responded with the suggestion to build association between Turkey and the EEC until the conditions for membership will permit Turkey to join. The Ankara Agreement was signed with the EEC and Turkey in 1963. It came into force in 1964.

[657] Eralp, A. (2005), Turkey and the Enlargement Process of the European Union, in Nikolov, K. (ed.), *The European Union After 1 May 2004: Is There a Shock from Enlargement?*, Sofia: BESCA Publications, p.143.

[658] *Ibid*.

[659] İnönü, İ. (1963), Speech, *Milliyet*, 13.09.1963.

of the "European civilization" will be affirmed with this membership. Therefore, the issues attached to this membership were accepted to be voluntarily practiced as an important part of the civilization project.

Nearly two decades later, Turkey applied for 'full membership' to the EC on 14th April 1987. This decision of the Özal government presented as the "turning point in Turkish history". One of the most important daily national newspapers announced this application as "a first step in Europeanization".[660] However, the concept of Europeanization shall not be understood in the context of the discussion in Chapter Two of this study. Europeanization (*Avrupalılaşmak*) is understood in this context of modernity in terms of culture, economics and politics. From that perspective, Turkey's application to full membership to the EC was supported and legitimized.

The defining moment in that respect for understanding Europeanization as a complex and influential phenomenon was with the Customs Union. Since 1st January 1996 with the establishment of the Customs Union[661] the focus on 'Westernization' has changed its essence and it has become more or less identifiable with the 'Europeanization' of certain policies.[662] The completion of the Customs Union with the EU was a result of the Turkey-EU Association Council Decision on 6th March 1995.[663] The Decision was about changing Regulations and legislations which were already operating in Turkey with respect to economic rights, taxing, agricultural products, free movement of goods, customs policies, technical standards and competition policy.

---

[660] *Milliyet*, 14.04.1987.

[661] Customs Union Agreement is signed in 1995 and came into force in 1996. For a detailed historical development of this topic please see Turkish Ministry of Foreign Affairs website http://www.mfa.gov.tr/grupa/ad/adab/relations.htm

[662] In the 1997 Luxemburg Summit, Turkey was not included among the official candidate list of the EU. Turkey was hoping to become a full member soon and this delay caused frustrations. Having itself fully committed to Western traditions and values for more than a century and particularly after 1923, Turkey was expecting to be recognized as a formal candidate. This was considered to be the recognition of the long-lasting efforts of Westernization in Turkey.

[663] Turkey-EU Association Council (1995), *Decision*, No. 1/95, 06.03.1995

With the Customs Union Decision a legislative and institutional adaptation period launched a comprehensive harmonisation process. A new institution such as the Competition Board was established in order to establish a watch-dog institution for competition practices to be in line with the Union's practices. The aim was to abolish the commercial public monopolies and to open up the public procurement to the EU firms.[664] With that Decision, Turkey started to harmonize its customs legislation with the Union's. It was an interesting case as Turkey was the only country to go through a harmonisation process without being an official candidate to the EU. Therefore, Turkish Europeanization has started with the legislative harmonisation, policy adaptation, and institution building starting from a limited and sector based process.

The Luxembourg European Council Presidency Conclusion brought resentments for non-inclusion of Turkey within the candidate states to the EU. The reactions from press and from Turkish élite who were supporters of this modernization project regarded this as a failure for the approval of "Turkish Europeanness." At the end, the perception of combining two processes; Westernization and modernization was needed to be changed in order to dissociate these two phenomena from each other.[665]

Two years after the Luxembourg Summit, the European Council Meeting in Helsinki in 1999 has served as the cornerstone in the relationship between Turkey and the EU. According to Helsinki Decision, Turkey was included in the single enlargement framework and recognized as an official candidate country. According to Article 12 of the Presidency Conclusions it was stated that: "Turkey is a candidate State destined to join the Union on the basis of the same criteria applied to the other candidate states."[666] This statement created a nation wide rejoice for the approval of "Turkish Europeanness." It has been regarded that it was a result of the efforts to integrate Turkey with the 'Western civilization' for decades.

---

[664] Karluk, R. (1996), *Avrupa Birliği ve Türkiye*, İstanbul: İMKB, p. 530.

[665] Erdoğan, K. (2000), *op. cit*., p.295.

[666] European Council (1999a), *Presidency Conclusions*, Helsinki, 10-11.12.1999

Within this perspective, the meaning attached to the concept 'Europeanization' has to be differentiated from the understanding of Westernization or affirmation of Europeanness. Apart from this understanding of Europeanization, from 1999 onwards 'Europeanization' as an influential process had powerful impact in Turkey. Helsinki decision started a process of pre-accession including a transitional period of policy and legislation adoption and harmonization in order to prepare domestic legislation and policies for opening up the negotiations period. With the beginning of the pre-accession process after the 1999 Helsinki decision, 'Europeanization' of policies has become more and more evident. With an increased pace of adoption of the *acquis,* Turkey is trying to comply with the priorities set in its National Program stemming from the priorities set in the *AP* document of the European Council. *AP* has also involved a comprehensive set of political criteria to accelerate political transformation and democratisation in Turkey. After Helsinki, the general project of Westernisation turned into one of "a concrete project of Europeanization -a more complex process of not only adapting of common values but also of transformation of political and economic structures and governance systems."[667] Eralp argues that harmonizing legislation indicates a change in domestic political practices and institutions as well as the approach to political problems, "which requires a mental shift to think and act within the larger context of the EU."[668]

In the enlargement process in general, Europeanization is the institutionalization of the system of governance which equips the EU with the tools to influence the non-member states. Imposition of the modes of governance through enlargement is particularly valid for the candidate countries by the introduction of various compliance criteria for entry through enlargement process of the EU. It is the export of a European model of political organization as a process of diffusion in Turkey. EU pre-accession process not only involves institutional and governance requirements but also for meeting certain evolved common standards of truth and morals. Therefore, Europeanization is the impact of the EU accession process on domestic

[667] Eralp, A. (2005), *op. cit*., p.143.

[668] *Ibid*.

patterns of governance.[669] In that process, a comprehensive policy transfer occurs involving various domestic policy areas. The transfer of policies leads to a comprehensive transformation of domestic institutions, administrative and belief structures. This leads to a departure from the existing applied domestic principles and norms applied in Turkey. This departure towards to the European standards and principles generate fundamental changes in institutional and administrative settings. The evaluation of changes in the legislation, administrative and cognitive (ideational) structures is assessed in the next section.

6.3 Post-Helsinki Developments

After the official declaration of Turkish candidature to the EU in the Helsinki Summit an accession strategy has been adopted. One year after the Helsinki decision through the usual development of the accession process, the EU Commission prepared *AP Document* for Turkey on 8th November 2000. This document identified short and medium term political and economic priorities, intermediate objectives and conditions on which accession preparations must concentrate on. On the basis of this document Turkey was expected to adopt its *National Programme*. The AP was adopted by the European Council Meeting in Nice in December 2000.

It was the first road map for Turkey to reflect the immediate and intermediate priorities of the Union before the decision to start of accession negotiations could be announced. It was expected that Turkey would respond to the priorities of the EU by its own set priorities in its National Programme for the adoption of the *acquis* which was prepared in the following months. Launching Accession Partnership with Turkey clearly signified the EU's willingness to provide financial and technical support to prepare Turkey for membership like the other candidate countries.

[669] Grabbe, H. (2001), *op. cit.,* p.1014.

After the Helsinki Summit Turkey entered a new period of democratisation with several democratisation reform packages in order to comply with the Copenhagen political criteria. During this process, the Westernisation project turned into a more concrete project of Europeanization, which is a more complex process of adapting common values, transforming political and economic structures and governance systems.[670] In the last couple of years the political practices, institutions and approach to political problems are dramatically changing in Turkey. This requires a major mental shift to think and act within the larger context of the EU. Asylum and refugee policies are not immune from that mentality change. Issues which have not previously discussed transparently and openly such as the geographic limitation on *1951 Convention* specified openly in legal documents which are exchanged between Turkey and the EU.

6.3.1 Opening a New Era for Asylum Policy: The Accession Partnership Document

With the 2000 *AP* document major transformations shaped the policy and legislative arena. In the pre-accession strategy, the *AP* document identifies short and medium term priorities, intermediate objectives and conditions on which accession preparations must concentrate.[671] The document was accepted on the 8th March 2001 by the European Council.[672] The document's indication of the priority areas for Turkey's membership preparations was critical.

The Turkish Government, however, argued that the *AP* included content that was perceived to be controversial on certain grounds. The political criteria section of the

[670] Eralp, A. (2004), *op.cit.,* p.143.

[671] European Communities (2001), *Official Journal*, No. L 85/13, Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_085/l_08520010324en00130023.pdf

[672] *Ibid*.

AP particularly evoked tensions and severe reactions from Turkish press and élite. The sensitive issues included the abolition of the death penalty, permitting education and broadcasting rights in languages other than Turkish, and abolishing the state of emergency laws. Despite these raised concerns the *NPAA* was accepted on 19th March 2001.[673]

The JHA component of the *AP* document covers three issues relating specifically to immigration and asylum: "geographic limitation" for asylum, illegal immigration and border controls. The *AP* was the first official document between Turkey and the EU which had touched on asylum and refugee issues. Before the declaration of this document it is not possible to observe any significant reference to asylum in any of the other official documents concerning Turkey and the EU. In that respect, the *AP* not only outlines the pre-accession process of Turkey to the EU, but also for the first time mentions refugee and asylum related issues.

The reference to the asylum topic was also mainly a result of the developments within this field in the EU. It was reflection of the developing European migration regime. Lavenex and Uçarer argue that the impact of EU legislation on member states is achieved through Europeanization.[674] The same affect is achieved on non-member states through policy transfer. Europeanization is the transfer of policies, instruments, programs and norms in the accession processes. The Accession Partnership provides the guidelines for conditionality starting accession negotiations. The document presented under which conditions the Commission considers Turkey is prepared for accession.

With the accession conditionality and the obligations to implement the EU *acquis* in full, the enlargement preparations are considered as a specific form of

[673] For the English and the Turkish versions of the Program please see the website of the Secretariat General of the European Union Affairs, http://www.euturkey.org.tr/abportal/category.asp?TreeID=161&VisitID={76020F74-A533-4CF3-AE6E-3092A9251AC4}&Time=3056

[674] Lavenex, S. and Uçarer, E. (2002), *op.cit*.,

'Europeanization' of non-EU member states.[675] In order to secure compliance with conditionality it is specified in the Preamble of the *AP* that "the Community assistance is conditional on the fulfilment of essential elements, and in particular on progress towards fulfilment of the Copenhagen criteria." Accordingly, in order to accelerate the reform process to fulfil the Copenhagen political criteria several democratisation packages had to be presented and accepted by the Turkish Parliament. However, it was not easy to break the resistance to adoption of these reforms.[676] The resistance came from different sectors of Turkish society such as from the members of the parliament, bureaucracies, military, civil society, and even from academics and journalists.[677]

While the discussions centred on the short and medium-term political criteria of the *AP* document, issues which fall under the medium-term criteria of the Justice and Home Affairs did not receive immediate attention. The JHA component of the *AP* document consists of issues that are important for Turkey. These are lifting geographical limitation for asylum applications, illegal immigration and border controls. The main challenge brought by the *AP* concerned asylum applications. The document includes a section in the medium-term criteria under the 'Justice and Home Affairs' heading mentioning the "lifting of the geographical reservation of the 1951 Convention" in the field of asylum. Accordingly, in order to prepare itself to the full membership, Turkey should, consequently include in its *NPAA* the following priority: "Lift the geographical reservation to the 1951 Geneva Convention in the field of asylum and develop accommodation facilities and social support for refugees."[678]

---

[675] Lavenex, S. and Uçarer, E. (2002), *op.cit*., p.422.

[676] For more details of the domestic negotiation process of reforms see Kirişçi, K. (2005), 'Turkey and the European Union: The Domestic Politics of Negotiating Pre-Accession', *Macalester International*, Vol.15, pp.44-80.

[677] *Ibid*.

[678] http://www.euturkey.org.tr/abportal/uploads/files/kob_en_2001.pdf, L 85/22

This statement not only underscores the importance of the lifting of the geographical limitation but also highlights the consequences of probable changes in the present asylum system. The lifting of the geographical limitation will inevitably require major alterations in the current system. Therefore, it will be necessary to make indispensable adaptations for the accommodation and social support for refugees. This issue is significantly important for Turkey as it involves humanitarian, social, political, economical and international aspects. In addition, financial and social burdens are likely to intensify with this new refugee protection system and its application.

With respect to refugee and asylum policy the *AP* is a pioneer document outlining the importance of Turkey's geographical limitation.[679] It also highlights the impossibility to achieve an immediate result on this matter. It has a realistic approach and places the geographical limitation criterion in the medium term of the JHA section rather than in the short term priorities section. The reasons of this approach can be attributed to two main reasons. Firstly, as any other refugee receiving country, refugee and asylum issues in Turkey are perceived as an issue of internal security. Secondly, the current asylum application and processing system is very complex in terms of its functioning mechanism. Therefore, it is difficult to alter the system within an immediate time frame. It acknowledges that it will require the involvement of many governmental, non-governmental and international actors during the complicated transformation process.

Concerning geographic limitations on asylum, the term "reservation" is stated in the *AP* document. Turkish Ministry of Foreign Affairs states that Turkey does not have "geographical reservations", but it uses its legal right of "geographical preferences"

[679] The *AP* states the necessity of lifting of "geographical reservation" in the medium term. Turkish Ministry of Foreign Affairs prefers to use the term "geographic preferences" rather than "geographic reservation". The term "geographic limitations" is used by the UN in its official documents regarding the *1951 Convention*. Turkey claims limitation is the legal right of Turkey emerging from the *1951 Convention*. Moreover, it has been argued that many other signatory states had limitations of this kind. On the other hand, most of the states have lifted the limitations in time. The only European country which still had limitation on the *1951 Convention* in addition to Turkey by the time the interview was made was Monaco and Malta. Interviews made with the officials from the Ministry of Foreign Affairs, May 2000, Ankara.

arising from the Convention.[680] The *1951 Convention* gives room for the signatory states to apply the Convention in order to grant refugee status only for persons fleeing persecution from Europe. However, this choice does not necessarily mean that there is no possibility of changing limitations in the Convention for the signatory state. The territorial application clause in Article 40 of the Convention includes that "any state may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible."[681] Therefore, it is possible to extend the application of this Convention to cover not only European refugees but also refugees coming from any other region at any time.

In case of lifting of the geographical limitations, Turkish diplomats and officials in various state departments are concerned about the possibility of mass influx of situations and a sudden increase in asylum applications.[682] This is mainly because Turkey has historically experienced difficulties arising from mass refugee influx situations.[683] Turkey already had several cases it had to manage without major international contribution.[684] The burdensharing dimension of this situation was a critical point which was mentioned in the prospective official documents exchanged between the EU and Turkey.

---

[680] Ministry of Foreign Affairs (2000), *Interview*, Ankara, April 2000; EUSG (2001), *Interview*, Political Affairs Section, Ankara, May 2001.

[681] UN (1951), *Convention*, Article 40.

[682] Interviews with experts and diplomats at the Ministry of Foreign Affairs and Ministry of Interior, May-June 2000, December 2004 and January 2005.

[683] In 1988 there has been a flow of Iraqi Kurds fleeing from the regime in Iraq to Turkey. The next influx was with the Gulf War in 1991 when Turkey had difficulties in its eastern borders concerning the reception of these refugees. Turkey has experienced refugee influxes solely from its Eastern borders such as in the Iraqi crisis in 1988 and the Gulf War in 1991 as well as from its Western borders with the Bosnian and Kosovo crisis in 1999.

[684] Turkey cooperates with the UNHCR in the field of resettlement of the refugees to a third safe country. For six months as from March 1999, 17,746 Kosovo refugees were granted temporary residence in Turkey in cooperation with the UNHCR.

It was argued that as an immediate response to the *AP* document's priorities, Turkey would not include measures for lifting the geographical limitations in its *NPAA*. The geographic limitations would possibly remain for a relatively long period of time.[685] However, it was envisaged that there would certainly be transformations in Turkey's policy. This transformation would be progressive in the sense that the adopted 1994 Bylaw in the last decade reinforced further developments.[686] The 1994 Bylaw was modified in order to comply with its European examples.[687] The time limitation to apply for refugee status in Turkey was extended from five days to ten days after severe criticisms received as a result of the difficulties experienced by asylum seekers. Nevertheless, it was argued that the refuges statues determination system has been developed through recent years and it has performed an effective function.[688] This function has also defined the special nature of UNHCR's work in Turkey. Therefore, changes in the current cooperative system seemed unlikely to be altered or modified in the near future.[689] The following developments in the legislative sphere proved this to be the opposite.

6.3.1.1 Responses to the Accession Partnership Document: Turkey's Concerns on Lifting the Geographic Limitations

Receiving irregular migration as a result of the changing political and international situation of its neighbouring countries, Turkey was performing for many years a transit country function. In the year 2000, Turkey was concerned about the

[685] Kale, B. (2001b), 'Turkey-EU: Asylum and Immigration Policies', *Turkish News*, 3-4.02.2001

[686] *Ibid*.

[687] With the Council of Ministers decision on 13th January 1999, the 1994 Bylaw's period for the asylum application has been extended from five days to ten days. Art 4 has been modified by the Council of Ministers decision on 13.01.1999.

[688] Ministry of Interior (2000), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, July 2000 and December 2004..

[689] Kale, B. (2001b), *op.cit.*

possibility of an increase in the number of asylum applications from its eastern neighbours when geographical limitations would be lifted. Turkey raised its concerns as a result of having negative experiences to cope with in the past and having difficulties of establishing a national refugee status determination system.

In the Turkish pre-accession period, especially after the declaration of the Accession Partnership document, it was possible to see that there were increased expectations from Turkey to handle the demands and needs of the refugees and asylum seekers. The document emphasized the need of changes in the administrative and cognitive spheres in the field of asylum. The document encouraged Turkey to lift the geographic limitation in the field of asylum and develop accommodation facilities and social support for refugees. Several bureaucratic circles argue that with Turkey's limited capacities to perform these functions, there will be an expectations-capabilities gap.[690] It was argued that this gap would generate tensions in the international arena if Turkey would not be able to cope with the mounting pressure of asylum applications and accommodating refugees.[691] It was also argued that the already existing problems in the current refugee status determination system would intensify with the prospective transformations.

The existing problems concerning asylum and immigration policies of Turkey are mentioned in the previous chapter. These are lack of long-term policy planning, lack of single institutional structure and complicated structure of policy implementation. The lack of long-term policy planning was a major issue in this new process of pre-accession. The traditional method of solving migration and asylum related challenges on an *ad hoc* basis would not be possible if harmonisation with the *acquis* had to be achieved in the medium-term.

Another aspect of the lack of policy planning was the lack of specialization in immigration and asylum policy field. There has not been specialization on

[690] Hill, C. (1993), *op.cit.*

[691] Interviews with experts and diplomats at the Ministry of Foreign Affairs and Ministry of Interior, May-June 2000.

immigration and asylum related issues in related ministries except from the General Directorate of Security. In this Directorate General the security officials are trained as asylum and refugee policy experts at the Foreigners, Borders and Asylum Department.

For many years these trained officials worked on a rotation basis. This meant any official trained to be specialized on asylum matters would be send to any other department under the General Directorate of Security. A police officer working on asylum matters could easily become a traffic police in years ahead. This has inevitably jeopardized the possibility of specialization and accumulation of expertise knowledge in this area. The pre-accession process and lifting of the geographical limitation would have to be accompanied by a change in this approach of specialization. The necessity to build up the technical and administrative capacity in the asylum and refugee policy field was responded by international agencies such as the UNHCR, the European Commission, and by representations of Western states with providing training programmes to the personnel working in this field.[692]

Another issue was the non-existence of a single institutional body dealing with the issue of immigration and asylum. Several actors are involved in this process with different degrees of participation. The actors concerned with this policy are diversified as national and international actors. These actors cooperate with each other and the efficiency of the process depends on the success of this cooperation. There is no established 'Ministry of Immigration' or 'Agency of Immigration and Asylum' that is only dealing with this field. This is complicating the policy-making and policy implementing structure. If a single immigration and asylum ministry, directorate general or agency was established then the policy would be planned, implemented and would be kept under monitoring by the experts in this field. The single institutional body will also reduce the workload of other national actors such as the MOI and the MFA or other international actors such as the UNHCR.

[692] UNHCR (2000), *Interview*, Ankara, May 2000 and UNHCR (2004), *Interview*, Ankara, December 2004.

While immigration and asylum issues are implemented through several governmental procedures, MOI and MFA work in cooperation on this matter. Also the UNHCR is engaged with a relatively greater degree of involvement compared to its role in the other countries. Turkey cooperates with the UNHCR in the field of training and resettlement of the refugees to third safe countries. In this matter, the UNHCR encourages Turkey to become more active in the RSD process.[693]

In the process of pre-accession after the *AP*, the mounting pressure coming from the EU in order to make Turkey change its attitude towards geographic limitations became more visible. In 2001 just before the *NPAA* it seemed that in the short term any major transformation in the immigration and asylum policies was not likely to appear. The geographic limitations will be kept by Turkey for some period of time but there will certainly be a progressive shift in Turkey's policy towards taking more responsibility in the policy-making. However, in 2001 it seemed that the cooperative system was unlikely to be altered or modified in the near future. It was argued that this policy was developed through years and it has performed a very effective function.[694]

Under the existing framework of asylum and refugee policy, with the above mentioned challenges in mind, lifting geographic limitations was not considered immediately possible. This was reflected in the steps taken by the Turkish government after the *AP*. However, in order not to intensify the actual problems in the refugee protection system the *AP* document acted as a tool to reconsider changes and transformation of implementing practices and arrangements. Even without lifting the geographical limitations harmonisation with the EU *acquis* would bring fundamental changes to the existing asylum and refugee protection system. The adoption of the EU *acquis* would simply mean adoption of European standards and norms on this policy area.

---

[693] UNHCR (2000), *Interview*, Ankara, May 2000.

[694] Ministry of Interior (2000), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, May 2000.

The emphasis on border controls in the *AP* document is important as the EU's immigration and asylum policies seem to be in a trend where the EU is combining these two separate notions together while building a fortress around itself. With "the fortress Europe", the EU tries to hold back the migrants in their countries of origin or transit. This is done through the principle of 'third safe country'[695] or 'country of first asylum.'[696] When the EU exports these principles to Turkey, then Turkey will become one of the countries where the immigration and refugee flows will be blocked. Since Turkey is one of the countries sending immigration to Europe it performs a buffer zone role for illegal immigration flows originating mainly from the Middle East and Asia. In the ten years ahead with the developments within the EU, the area of 'Freedom, Security and Justice' will develop and it will be integrated further in the Community framework. The legal and political harmonization process of Turkey with the EU will be affected by this change. It was possible to examine the reflections of these changes from the Nice Summit of December 2000 onwards.

6.3.2 Meeting the Needs or Not?: National Program for the Adoption of the *Acquis*

The stability of asylum policy and the refugee protection system has been challenged after the *AP* document. As a response to the priority descriptions mentioned in the *AP*, Turkey prepared and adopted in March 2001 its *NPAA* without major discussions or oppositions. The reforms addressed political and economic matters as well as legislative and administrative issues. Although it has been criticised having a number of vague provisions on sensitive matters such as the political criteria, the Program

[695] European Council (2002b), *Declaration*, on 'Safe Third Countries', No.15067/02 Asile 76, 28.11. 2002.

[696] European Commission (2003b), 'Regulation laying down detailed rules for implementation of Council Regulation 343/2003/Ec of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by third –country national', No. 1560/2003/EC, O.J.L 222, 05.09.2003.

was acknowledged as the most comprehensive reform program for Turkey by the European Enlargement Commissioner, Günter Verheugen.[697]

In the *NPAA* under the JHA heading, the asylum issue was referred in Article. 4.25.2. It included a provision for lifting of the geographical limitations. It mentioned that: "Lifting the geographical reservation on the 1951 United Nations Convention Relating to the Status of Refugees will be considered in a manner that would not encourage large-scale refugee inflows from the East, when the necessary legislative and infra-structural measures are introduced, and in the light of the attitudes of the EU Member States on the issue of burden-sharing."[698] This provision clearly acknowledges lifting of geographic limitations. However, it also foresees that it is not going to be materialized in the immediate time frame. It underlines that priority should be given to burden-sharing and to the elimination of possible negative impact of prospective mass influx situations.

Although Article only gives a conditional response to the lifting of geographical limitations it clearly gives a signal for policy change in the future. From a realist stand point, it acknowledges that lifting geographical limitations may encourage large-scale refugee inflows. Therefore, the possible risks are aimed to be eliminated by preventive domestic and international measures. The proposed domestic precaution on that matter involves the development of legislative and infra-structural measures. This statement affirms that existing legislative and infra-structural measures are already insufficient. The international precaution is the call for attention of the EU member states on the concept of 'burdensharing'. The Iraqi crisis clearly highlighted the necessity for the establishment of a structural framework of international cooperation for such crisis.

---

[697] Cited in Kale, B., (2001a), 'Turkish EU National Program and the Changing Status of Turkey', *Strategic Analysis*, No.13, pp.20-27.

[698] For details see Art. 4.25.2 in Justice and Home Affairs Section, National Program for the Adoption of the EU *Acquis*, http://www.euturkey.org.tr/abportal/content.asp?CID=866&VisitID={76020F74-A533-4CF3-AE6E-3092A9251AC4}&Time=1446

In terms of cooperation the provision signifies the importance of intense cooperation of various actors in this policy field. This becomes clear with the reference to the development of cooperation in the next paragraph "with the assistance of the UNHCR, the IOM, and NGOs". With this article the involvement of various non-governmental actors are highlighted. Acknowledging the need of policy change in asylum with the pressure coming from the EU, it was not clarified in the short-term policy objectives.

After the adoption of the *NPAA* the impact of Europeanization became immediately visible in the implementation phase. In order to comply with the EU *acquis* on JHA in the field of migration and asylum, Turkey formed a Special Task Force involving various state agencies responsible for border control, migration and asylum. Three working groups in fields of "borders", "migration" and "asylum" were established for developing an overall strategy in this field. These working groups became operational on 18th June 2002 onwards.

These working groups met in order to prepare national strategy papers for these three complementary fields. These strategy papers aimed at bringing the important issues to the attention and preparing a national action plan for immigration and asylum. This was a very important study to find out the strengths and weaknesses of the current refugee protection system in Turkey. Moreover, it was important for mapping out the differences between the Turkish refugee protection system with its European counterparts. The result was the production of the following strategy papers:

- "Strategy Paper on the Protection of External Borders in Turkey" in April 2003,

- "Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey's Accession to the European Union (Asylum Strategy Paper)" in October 2003,

- "Strategy Paper to Contribute Migration Management Action Plan in Turkey (Migration Strategy Paper)" in October 2003.

Establishing a system of discussion, collaboration and exchange of ideas, the production of these papers were the first example of such a work in the refugee and immigration policy field. They put forward the basic tenants of what will be later called the *National Action Plan on Asylum and Migration(NAP)*.

6.3.3 Revised Accession Partnership Document

Accession Partnership triggered a reform and democratisation process in the Turkish legislative, administrative and political system. The goal to meet the Copenhagen political criteria made Turkey take a number of steps to address EU concerns. While it took some time after the *AP* to prepare certain legislative changes, the Turkish Government introduced a number of measures to improve the implementation of constitutional and legal guarantees in the sphere of political criteria, between October 2001 parliamentary session and the 3rd November 2002 early general elections.[699]

In that period, the Turkish Parliament passed a series of reforms aiming at reducing restrictions on certain political rights and fundamental freedoms. The first democratisation package involving thirty-four articles which was nearly one fifth of the Turkish Constitution amended with absolute majority on 3rd October 2001.[700] It was a comprehensive set of constitutional amendments of provisions on the enhancement of freedom of expression, prevention of torture, strengthening democracy and civilian authority, privacy of individual life, freedom and security of the individual, freedom of communication, residence and movement, freedom of association, and gender equality.

These constitutional changes were complemented by five successive packages of legislative reform. The first legislative package, adopted in February 2002, amended

[699] Aksoy, O. (2004), 'The Relations Between the EU and Turkey Until 2003', in Taşhan, S. and Clesse, A. (eds.), *Turkey and the European Union: 2004 and Beyond*, Luxembourg: Luxembourg Institute for European and International Studies:, p.176.

[700] TGNA (2001), Law no.4709, 03.10.2001, published in the *Official Gazette*, 17.10.2001.

various existing acts, which were usually criticized as being the legal basis on which to detain and sentence intellectuals for expressing their opinions. The second legislative package, which entered into force in April 2002, extended the scope of freedom of thought and expression, freedom of press, freedom of association and of peaceful assembly. It involved provisions for prevention of torture and ill-treatment.

On 3rd August 2002, the Turkish Parliament adopted the most comprehensive reform package which included all the controversial issues debated by the Turkish public. These issues were abolishing the death penalty; lifting restrictions on broadcasting and learning in different languages and dialects other than Turkish; extension of freedom of the press; procedures pertaining to the functioning and the activities of Turkish and foreign associations and foundations; added new provisions to the Turkish Penal Code to define the crime of migrant trafficking and to provide penalties for perpetrators of this crime.

These reform packages were welcomed by the European Commission. On the other hand, the Progress Report released by the EU in October 2002 made clear that Turkey still had a way to go to fulfil the political Copenhagen criteria.[701] Following the Progress Report of 2002, the Copenhagen European Council meeting took place in December 2002. The Presidency Conclusions of this meeting fell short of Turkey's expectations. According to these conclusions, the decision to start accession negotiations with Turkey was postponed until the European Council at the end of 2004.

With the changing context of pre-accession after various constitutional reform packages, the Commission reconsidered the priorities to be given in the pre-accession process. The European Council adopted the Revised *AP* document of 2003 following the *NPAA* of 2001. The Revised *AP* involved adjusted priority areas to reshape the road map of Turkey's accession towards membership. It dismissed certain priority areas from the list of priorities assuming that they were fulfilled.

[701] European Commission (2002), *Regular Report on Turkey's Progress Towards Accession*, Brussels, SEC (2002), 1412, October, 2002.

However, it further emphasised certain areas where more progress has to be made to fulfil the objectives of the Union.

In the Revised *AP* document one of such issues where priority should be given for harmonization with the EU *acquis* was the area of asylum. Since the 2001 *AP* document, no major amendment was made in the policy harmonisation or policy transfer in that area. Therefore, a fundamental change in this policy area was envisaged and emphasised again in the new document prepared by the European Council. Under the medium-term priorities of this JHA heading, the following developments were envisaged: "start with the alignment of the *acquis* in the field of the asylum including lifting the geographical reservation to the 1951 Geneva Convention and straighten the system of hearing and determining applications for asylum; develop accommodation facilities and social support for asylum seekers and refugees."[702] This provision strengthened the position to encourage Turkey to lift the geographic limitations.

Despite the discouraging Copenhagen 2002 Presidency Conclusions for not giving a date for opening up accession negotiations for Turkey, the Justice and Development (AKP) proceeded with the efforts to harmonise Turkish legislation with the *acquis* in order to meet the Copenhagen criteria. In that period, the emphasis was given by the government to meet the necessary requirements for fulfilling the Copenhagen political criteria. Policy areas where more technical or highly sensitive issues existed were left to be aligned later in the process. Asylum and refugee issues were among those topics that were not deeply touched between the years 2001 and 2003. However, the EU was concerned that harmonisation process with the *acquis* has to be started immediately.

During that period the European Commission pushed Turkey to take steps on the way towards lifting geographical limitations and changing the asylum and refugee policy. Definitely, a single provision in the *AP* to lift the geographical limitations

[702] For details see, European Council (2003), *Revised Accession Partnership Document,* http://www.euturkey.org.tr/abportal/uploads/files/kob_2003.pdf

would fundamentally alter the refugee protection system. As discussed in the previous chapters the two-tiered structure established after the signature of the *1951 Convention* is the basis of Turkish asylum system. Abolishing this two-tiered structure would mean major implications for the national and international actors involved in this process. In addition, security concerns complicated the possibility of putting this provision into practice and provided a supplementary dimension. Turkish MFA preferred to postpone the lifting of geographical limitations until the negotiation process when accession negotiations will provide the comprehensive framework of policy transformation.[703]

Responding to Turkey's preference for negotiating the conditions upon which progressively make policy modifications in the field of asylum, the EU envisaged taking gradual steps. In the 2001 *AP,* a strong emphasis was giving with the statement: "Lift the geographical reservation to the 1951 Geneva Convention in the field of asylum." It has clearly requested an immediate and definite approach to that demand. After keeping Turkish demands in a dialog through the sub-committee meetings between the years 2001-2003, a more realistic approach was adopted in the revised document. The 2003 Revised *AP* mentions that in order to lift the geographical limitation Turkey should first "start with the alignment of the *acquis* in the field of the asylum." It envisages that the harmonisation with the EU *acquis* will bring certain procedural and administrative changes to this policy. It also calls for a systematic change for "straightening the system of hearing and determining applications for asylum."

Adoption of the EU *acquis* and the proposal to make modifications in the system of hearing and determining applications for asylum requires reconsideration of modifications in this policy area. The domestic need to modify and institutionalize this policy area as a result of domestic interests coincides with the conditionality of accession to the Union. In that respect, as a candidate state, Turkey had to formulate

[703] 4th Round of the European Commission-Turkey, Preparatory Working Group for Sub-Committee 8, Asylum and Immigration Meeting Report, February 2004, Ankara, Paragraph 6.2.

the best means to satisfy these demands. The EU's push for change in the current system was justified by the necessity to institutionalize the existing arrangements in the R*NPAA*.

6.3.4 Compromising with Justification: Revised National Program for the Adoption of the *Acquis*

As a response to the *Revised AP* document, Turkey prepared and adopted its *Revised National Program (RNPAA)* in June 2003. It was prepared under the coordination of the Secretariat General for EU Affairs with several government ministries. Reconsidering the revised priorities of the new *AP* document, it was understood by the Turkish government that the process of harmonisation needs to be intensified. In fact, there were two main reasons behind the enhanced commitment to the EU accession process: the domestic level internal politics factor and the European level conditionality factor. Turkey's domestic concerns with the economic volatility generated domestic constraints between the years 1999-2002. This has put Turkey on a "slow track" compared with other accession countries in the present enlargement process.[704] This domestic situation was joined with the EU's ambivalent attitude towards Turkey, slowing down the alignment and harmonisation processes.

This process was accelerated after the AKP government came into power in the early elections in November 2002. One of the main arguments of the AKP government in their election campaign was the commitment to the membership of Turkey to the EU. It was perceived as a major project in their agenda. In the election declaration under the foreign policy heading Turkey's long lasting historical relations with the European continent was acknowledged. It is stated in the declaration that relations with the European states will continue to be at the top of the Turkish foreign policy agenda. It adds that Turkey, in its relations with the EU as any other candidate state,

[704] Eralp, A. (2004), 'Turkey and the Enlargement Process of the EU', in Taşhan, S. and Clesse, A. (eds.), *Turkey and the European Union: 2004 and Beyond*, Luxembourg: Luxembourg Institute for European and International Studies, p.195.

will immediately fulfil all the obligations arising from its accession process.[705] Before the elections, the sincerity of this commitment was questioned by different circles. This commitment was tested later after AKP came into power.

The commitment to the reform and harmonisation process reflected in the government's programme. It was mentioned in the government programme that "Turkey is a part of the European value system."[706] Within this context, it was declared that Turkey is determined to fulfil necessary conditions to comply with the Copenhagen political criteria. With this enhanced commitment and ongoing interest to the EU accession process, harmonisation with the EU was accelerated after 2003. This understanding is also reflected in the *RNPAA,* where sensitive issues which were not previously openly stated were also included. Aimed at demonstrating Turkish commitment to EU accession project, a comprehensive and detailed alignment plan was incorporated to the *RNPAA*. Therefore, by the pushing domestic factors, *RNPAA* published in July 2003 was "in much greater harmony with the new Accession Partnership document adopted by the EU in March 2003."[707]

These were the main reasons behind the domestic level political factors of the changing attitude towards the pre-accession process. Putnam's two-level games approach explains this interplay of how the EU's push for domestic legislative and political change was justified by the necessity to institutionalize the existing arrangements in the *Revised NPAA*. The domestic need to institutionalize the asylum and refugee policy of Turkey was acknowledged by the national actors involved in this process for many years.[708] However, the division occurred on the ways and when to achieve this institutionalization.

---

[705] http://www.akparti.org.tr/beyanname.doc

[706] http://www.akparti.org.tr/program.doc

[707] Kirişçi, K. (2005), *op.cit.,* p.55.

[708] Interviews with the MOI and the MFA on May-June 2000 and December 2004-January 2005.

The European level factor behind the shift of this accelerated interest of harmonisation was the EU's pressure for alignment. With an obliged and coerced transfer, the EU used its leverage to make Turkey take necessary steps for fulfilling Copenhagen criteria with the conditional clause of opening negotiations. The importance of the date to start accession negotiations formed a critical and fundamental threshold. The binding nature of compliance with Copenhagen political criteria was the major "stick" in this process.

Within this context, under this multi-level concerns and constraints, the *Revised NPAA* was adopted. In the *Revised NPAA*, as a response to the JHA priority of the 2003 Revised *AP,* the politically sensitive policy area of asylum and immigration is addressed under the Heading 4.25.2. A major change of policy is envisaged under this heading. The issue of geographic limitations in the 2001 *NPAA* was handled with caution. The issue was considered under several preconditions of burdensharing, building up legislative and infrastructure capacity, and deterring refugee influx situations from the East. Keeping these conditions as a starting point there has not been any major development or alignment in this field until the R*NPAA*. However, there has been a major change in perception of addressing this issue.

The heading indicated that the issue of geographic limitation would be addressed during the progression of EU accession negotiations of Turkey. It foresees that "the geographic limitation will be lifted in the accession process, on the condition that it should not encourage large scale refugee inflows to Turkey from the East, upon the completion of the necessary legislative and infra-structural measures and in line with the sensitivity of the EU Member States on the issue of burden-sharing."[709] It was a critical provision and turning point in the approach of Turkey on this issue. It was decisive in the 2003 *NPAA* that Turkey accepted to lift geographic limitation.

[709] Priority Heading 4.25.2 Measures for Harmonization with the EU Legislation and Implementation: Alignment with the EU *Acquis* and Capacity Building in the Field of Asylum, Revised National Program 2003, http://www.abgs.gov.tr/NPAA/up_files/doc/IV-24(eng).doc

This indicates that there will be a major policy change in this area following the implementation of the R*NPAA*. The mentality and understanding of refugee policy will be altered, which leads towards a cognitive transformation with the indication of this commitment. Lifting geographical limitations will inevitably mean changing the two-tiered refugee policy structure. This is a fundamental shift from differentiating European and non-European refugees in Turkey. Acknowledging the possible impact of this change on the asylum and refugee policy the same Heading clarifies the necessary infrastructure and administrative steps to take in order to achieve this objective. It elaborates on the approach as "the alignment of the *acquis* in the field of asylum, and for the development of administrative and technical capacity in this field will begin, including improvement of accommodation facilities and the social support system for refugees."[710]

Alignment of the *acquis* in the field of asylum necessitates adoption of the European administrative arrangements, knowledge about policies and institutions. It also imposes adoption of standards, procedures and values attached and developed at the European level. With the *Revised NPAA* it was clear that this policy transfer process in the field of asylum will intensify in the upcoming years. Compliance with the R*NPAA* on asylum area necessitated a comprehensive work involving various national and international actors. Moreover, improvement of accommodation facilities and social support system for refugees will necessitate administrative transformation in the existing system.

The R*NPAA* undertakes that: "Following the enactment of the Draft Bill on Asylum, administrative arrangements shall be put into force and the harmonisation process with the EU legislation shall continue." This provision proposes enactment of a specialized Bill on Asylum which is a critical turning point in the institutionalisation of asylum policy in Turkey. On the way towards finding the critical points in the field of asylum, Asylum and Migration Task Force set up in 2002 produced an EU *acquis* alignment strategy *"Strategy Paper on Activities Foreseen in the Field of*

[710] *Ibid*.

Asylum within the Process of Turkey's Accession to the European Union (Asylum Strategy Paper)" with the help of EU experts in October 2003 and submitted it to the European Commission in December 2003.[711]

This strategy outlined the fundamental principles, strategies and priorities that should guide Turkey's efforts to review its asylum legislation, administrative structures and practices within the framework of its candidacy and adopt the EU *acquis*. Moreover, it envisaged the establishment of a specialized, civilian unit for migration and asylum issues under the Ministry of Interior, which will be responsible for migration management and for receiving and deciding on requests for residence permits of foreigners and asylum applications in the first instance. It also commits Turkey to prepare a new asylum law in conformity with the relevant international conventions and the EU *acquis* and to lifting the geographical limitation to the *1951 Convention* in the process of accession to the EU.

The most fundamental outcome of this paper was proposing the establishment of the structure of a specialised agency with powers and responsibilities that will operate in the field of asylum. This proposes that EU harmonisation process not only transfers general principles guiding the exercise of a policy, norms, specific policy instruments, policy programs, procedures, but also involves institutional transfer of creation of specialized agencies dealing with asylum and immigration.[712] Therefore, it is a specific form of Europeanization on non-EU member states.

In the new institutional structure the proposed specialised agency will have decision-making powers and clearly defined competences and responsibilities to assess asylum applications and to conduct asylum procedures under the body of the authority where the specialised unit is currently located. This means the specialised institution will be established under the framework of MOI which is currently

[711] Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey's Accession to the European Union (Asylum Strategy Paper), limited access document.

[712] Dolowitz, D. and Marsh, D. (1996), 'Who Learns What from Whom: A Review of the Policy Transfer Literature', *Political Studies*, No. 44

responsible of refugee status determination procedures. Currently, police officers working under the Deputy Directorate of Foreigners, Asylum and Borders are responsible for this process. Although the paper involved a vague wording in the new institutional framework this may also change as a result of the institutional structure of this agency which necessitates personnel with long-lasting career objectives and specialisation on this area.[713]

One of the criticisms made by international agencies such as the UNHCR for many years was the limited number of specialized personnel in government offices in this area.[714] The UNHCR was criticized that the limited number of personnel was not able to provide long-term career involvement in their offices. Turkish legislation regulating working procedures of law enforcement officers does not allow their long-standing career involvement in the same department. Law enforcement officers are required to shift their work field and region in every couple of years. Therefore, the training taken by these officers from the training programs on asylum do not have long-term impact. This is a self-criticism made by law enforcement officers as well.[715]

Establishment of a specialized agency and specialized work force does not only result from the coercive pressure from the EU but it is also a voluntary modification of existing policies and structures at the domestic level. In order to meet the domestic needs Europeanization of this policy area is incorporated to Turkish willingness to institutionalize the field. This is perceived at the domestic level as an opportunity to formalize the already existing domestic arrangements.[716]

---

[713] Ministry of Interior (2004), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, July 2004.

[714] UNHCR (2004), *Interview*, Ankara, December 2004.

[715] Ministry of Interior (2004), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, July 2004.

[716] *Ibid.*

This is also reflected in the fundamental principles of the Strategy Paper. According to the principles mentioned in the Strategy Paper it is stated that it is necessary to review all relevant domestic laws, regulations, circulars and practices, and most particularly the laws and Regulations specified in the *NPAA* to asses their conformity with the EU *acquis*. This will help to improve the administrative structure governing asylum and to align national legislation with the EU *acquis*. According to the Strategy Paper this will be done under three main principles. First of all, the actors involved in this process will continue not to treat asylum-seekers in a negative manner on account of their nationality or country of origin, race, religion or political opinion. This work will be carried out to identify safe third countries and safe third countries of origin. Bringing the 'safe third country' principle into the agenda of asylum policy in Turkey clearly indicates that there will be a departure from traditional Turkish perception of refugee protection.

Secondly, the Paper accepts Turkish security concerns regarding borders and illegal migration. It proposes that foreigners who have physically reached Turkish borders shall be given the right to apply for asylum and temporary protection. This principle aims to deter any rejection at borders in case of a possible refugee influx situation. This is mainly to avoid a potential crisis like the one which which occurred in the 1991 Gulf War. Thirdly, it proposes that time limitation for asylum applications shall be abolished. This was another major criticism brought to Turkish asylum system by international actors and NGOs.

In that respect, several steps were taken on paper in order to comply with the *Revised NPAA*. In terms of practical changes, Accession Partnership process established eight sub-committees to discuss the harmonisation process to the EU. The 8th sub-committee is dealing with JHA issues. The 4th Round of the Turkey-EU sub-committee meeting was held on 15th December 2003 where several issues were addressed relating to asylum and illegal immigration. These two issues create the main topics under this heading. Sub-committee meetings bring actors that are involved in the asylum process but in general do not have the opportunity to come together to discuss these matters transparently. These are MFA, Directorate Security

under MOI, European Commission Representation to Turkey, Coastal Guards, Gendarmerie, Chief of Command for Border Controls and finally the Secretariat General for European Affairs which has the coordination function. These discussions stimulate fundamental changes in sharing information, discussing possible solutions for common concerns among these various actors.

Concerning the pre-accession preparations, the Report of the Meeting highlights major development in this area was Draft Bill on Asylum (Asylum Bill).[717] The Report recognized the ongoing efforts of Turkey for preparing an Asylum Bill aligned with the EU *acquis*. However, the concerns were raised by the EU side that in order to guarantee a compatible alignment the draft version of this bill should be presented to the European Commission and the UNHCR for their opinion. The EU argued that this would enable the Commission to assess whether the draft bill was in line with the EU *acquis*. It is noteworthy that this cooperation would speed up the alignment process. On the other hand, the possible positive outcome of this request is doubtful as the asylum issue is accepted as an internal security matter.

The Report also included provisions on the Joint Action Programme on Illegal Migration[718] and the Readmission Agreements.[719] This is a very problematic topic since Turkey is the only country that has not started negotiations. The progress in this area may then become slower than any other area. The EU expressed its willingness to negotiate the Readmission Agreement with Turkey in March 2004. Turkey argues that the EU had not countered such an agreement with any other candidate country. Therefore, some concrete projects about the readmission of the illegal migrants by the country of origin had been put forward by Turkey. Turkey argues that it has already been implementing an effective readmission policy.[720] Turkish nationals are

[717] 4th Round of the European Commission-Turkey, Preparatory Working Group for Sub-Committee 8, Asylum and Immigration Meeting Report, February 2004, Ankara, Paragraph 6.2.

[718] 4th Round of the European Commission-Turkey, Paragraph 6.3.

[719] 4th Round of the European Commission-Turkey, Paragraph 6.4.

[720] Ministry of Foreign Affairs (2004), *Interview*, December 2004.

readmitted in accordance with Turkish Constitution and passport legislation. Consequently, the third country nationals who have valid Turkish residence permits are readmitted in Turkey. Moreover, nationals of third countries departing the Turkish territory by plane are also readmitted in accordance with International Civil Aviation Organization (ICAO) rules.

At this point, Turkey's priority seems to be concluding readmission agreements with its neighbouring countries and with the countries of origin.[721] In this context, Turkey has signed bilateral Readmission Agreements with Greece, Syria and Kyrgyzstan. Moreover, the negotiations have been concluded with Romania. On the other hand, negotiations are underway with Bulgaria, Uzbekistan, Libya and Ukraine. Turkey has also proposed bilateral agreements to some other countries of origin. In addition to that priority, Turkey expects to strengthen its border controls, develop better institutional and technical capacity at the borders. Concerning the readmission agreement between the EU and Turkey, Turkey seems reluctant to act until the timetable for opening accession negotiations with Turkey would be determined at the end of 2005.[722]

Another development relates to the establishment of a national unit for JHA issues. On 6th January 2004 a national unit (national office) was established in line with the practices in the EU. With this development it is envisaged that with the contribution of all law enforcement units, this National Office will ensure communication, exchange of information and cooperation between Europol, Schengen, Interpol, and European Antifraud Office (OLAF). Accordingly, the decision of the Council of Ministers on the Agreement between Turkey and the International Organization for Migration on the Legal Status, the Privileges and Immunities of the Organization and its Office in Turkey was ratified by the Parliament on 16th October 2003 and was published in the Official Gazette on 8th January 2004. These developments indicate the intensification of the integration in the JHA field in Turkey.

[721] For details see 4th Round of the Turkey-EU Sub-Committee Meeting Report, Paragraph 6.4.

[722] Ministry of Foreign Affairs (2004), *Interview*, December 2004.

6.4 Bringing the Pieces Together: National Action Plan on Asylum and Migration (NAP)

The next step following the Strategy Paper was to prepare a national action plan in the field of asylum and migration. This step aimed at helping the alignment with the EU *Acquis* on asylum and immigration. In order to achieve that objective, an EU funded Twinning project on asylum and immigration partnership covenant was signed on 8th March 2003. The Twinning programme, which is designed to prepare the candidate countries like Turkey for accession, relies on an administrative partnership between a candidate country and one or more Member States on the basis of which long, medium and short-term experts from Member States are seconded to the Candidate Countries' administrations. This was the first project in the area of justice and home affairs to be supported through EU-pre-accession funds.[723] 516.000 Euros of the European Community budget was earmarked for this Twinning project.

The project acknowledged that due to the requirement to lift the geographical limitation of the *1951 Convention* and the scope of illegal migration, Turkey faces challenges as a transit and increasingly as a destination country. Thus, asylum and migration will be one of the biggest challenges for Turkey in aligning with the EU *acquis* and its implementation. The project targeted to provide "support to the development of an Action Plan to implement Turkey's asylum and migration strategy".[724] The overall objective of the project was to align Turkey's asylum and migration legislation and practice with the corresponding elements in the EU *acquis*, aimed at the establishment of an overall asylum and migration strategy. The beneficiary of the project was the MOI in partnership with three partner administrations Turkey, Denmark and the United Kingdom.

In this project, the main long-term expert from the Member States' administrations, called the Pre-Accession Advisor (PAA), was an expert from the Danish

[723] European Commission (2003), *EU Flash*, EU Representation of the European Commission to Turkey, 31.03.2003

[724] *Ibid*.

Immigration Service and was hosted in the MOI, specifically in the Department of Foreigners, Borders and Asylum of the Turkish National Police, for one year to help with the adoption and implementation of accession related legislation and practices. TR02-JH-03 Asylum and Immigration Twinning Project the implementation stage commenced on 8th March 2004 and ended on 31st March 2005. It has been carried out in connection with High Level Working Group on Asylum and Migration (HLWGAI) project. It was a pioneer project situating a foreign expert within the Department of Foreigners, Borders and Asylum.[725] This indicates a major mentality change in terms of national security understanding within the Turkish public administration and governance.[726] The European integration process then provided the means for a more cooperative governance practice. The mentality change was a result of a change in perception of the relevant governmental Ministries. Realizing a EU perspective in these areas, these Ministries become more cooperative and collaborative in these field while being more transparent and sharing information openly.[727] In that respect, the *Turkey's National Action Plan on Asylum and Migration (NAP)* is considered as a "fundamental step" by the European Commission Representation of Turkey.

As discussed in the previous sections, in the process of alignment with the EU, Turkey is not only expected to lift the geographical limitation to the *1951 Convention*, but also carry out procedures for refugee status determination and take the necessary measures for the integration of refugees to the Turkish society. One of the major concerns of Turkish government is handling the demands of increased numbers of asylum seekers and their integration to Turkish society. The need of an Action Plan arises from these concerns. In order to prepare Turkey to higher numbers of asylum seekers, refugees and migrants (both legal and illegal) and to implement a

[725] Ministry of Interior (2004), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, July 2004.

[726] European Commission Representation to Turkey (2004), Interview, Ankara, December 2004.

[727] *Ibid*.

strategy in the field of asylum and migration, an Action Plan constituted the roadmap for Turkey's alignment with the EU. It intended to set out needs in the fields of legislative approximation, training of personnel, institutional reform and the purchase of physical infrastructure and equipment. Although there were training programmes of personnel before the *NAP* with the initiative of the UNHCR and the EU funding, it was not possible to argue that they were commenced as capacity building initiatives.[728]

The Plan also aimed for a comprehensive and detailed assessment of Turkish needs due to the scale of investment required to align with the EU in this area such as reception centres for asylum seekers and refugees. Keeping these ideas in its essence the project is expected to produce the following outputs: "Drafting and approval of a National Action Plan to implement the asylum and migration strategy, detailed project proposals and technical specifications for future EU assistance, increased understanding of the EU *acquis* among Turkish officials, dissemination of the strategy and *NAP* to all the agencies involved in its implementation."[729]

One year after the initiation of the Twinning project the National Action Plan was formally adopted by the Turkish government and signed by the Prime Minster Recep Tayyip Erdoğan on 15th March 2005. It was later circulated among the agencies involved in its implementation. The letter from the Ministry of Interior to the Secretariat General for EU Affairs dating 17th January 2005 clarifies that "throughout the activities of the project all relevant Ministries, Institutions, Organisations, International Organisations and Non-Governmental Organisations identified the gaps between the EU *acquis* system and Turkey's current legislation and institutional structure for asylum, migration and foreigners. The group formulated a set of recommendations targeting identified gaps."[730]

---

[728] *Ibid*.

[729] *Ibid*.

[730] Ministry of Interior (2005), General Directorate of Security, 17.01.2005, No.B.05.1.EGM.013.03.02

The adopted Action Plan forms the fundamental basis for Europeanization of asylum and refugee policies in Turkey.[731] National Action Plan's scope cover the legal arrangements that should be put into force within the harmonisation process and measures and investments essential for finalising administrative set up and physical infrastructure in order to align the Turkish asylum and immigration legislation and its system with the EU. This indicates an overall systemic transformation of the Turkish asylum structure. Providing changes in the structure of the refugee protection system, Europeanization produces a process of systemic transformation. This thesis argues that in a domestic policy area such as the refugee and asylum policy area, change occurs in various levels. The Table III shows in greater detail under which spheres transformation is envisaged by the *NAP*.[732]

The *NAP* explicitly reflects the findings under which spheres Europeanization is and will be experienced in the asylum and refugee policy in Turkey. It indicates a complex process of legislative, administrative and cognitive (ideational) transformation. Like the *NPAA* and the *Revised NPAA*, the *NAP* also envisages harmonization of Turkish refugee and asylum legislation with EU *acquis*. It argues that becoming a full member of the EU, Turkey has to adopt EU *acquis* on asylum and migration. The comprehensive list of Council Recommendations, Decisions, Regulations and Directives which have to be adopted are also included in the Plan.[733] This list not only encompasses the present EU legislation but it also includes the future EU legislation on migration and asylum.

Turkey also targets to adopt domestic legislation such as the Asylum Bill during this process. This Bill will specify the necessary arrangements for the implementation of refugee and asylum policy at the domestic level. Therefore, a major development in

[731] For the presentation of the findings in the National Action Plan for Asylum and Migration see Table III in Apendix C.

[732] For Table III see Apendix C.

[733] Turkish Ministry of Interior (2005), General Directorate of Security, *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration*, No.B.05.1.EGM.013.03.02, 17.01.2005

the institutionalisation of asylum policy can be regarded as the proposal of the adoption of the Draft Bill on Asylum. The Action Plan analyzed existing Turkish legal arrangements in the field of asylum and their loopholes. The findings of this analysis were proposed to be used in the formulation of the Draft Bill on Asylum. Although this bill is considered to be prerogative in the national interest, the Action Plan states that considerable effort has been spent for the harmonisation of the draft bill concerned with the EU *acquis*. However, adoption of this draft bill is postponed for a later stage in the accession negotiations for political reasons.[734]

Lavenex and Uçarer argue that the broader the scope of policy transfer and the more specific its contents, the more binding its legal effects, the stronger is the external impact of the EU migration regime on third country concerned.[735] Taking Turkey as the test case for this argument, it is visible that in order to minimise the binding legal impact, acceptance of the Draft Bill of Asylum is left for the accession negotiations. This clearly indicates the limitations of Europeanization in an early stage of the accession process of a candidate country.

The second sphere of transformation elaborates on the administrative transformation in the asylum field. *NAAP* identifies the priorities of improving administrative and technical capacity in the field of asylum.[736] The foreseen improvement in the National Program carried out with the Twinning projects envisage a road map for administrative changes. The road map of administrative changes is presented in the *NAP*.[737] These changes involve the pillars of operational capacity building of the authorities in terms of human resources, technical and physical infrastructure, materials and institutionalization.

---

[734] Ministry of Interior (2004), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, July 2004

[735] Lavenex, S. and Uçarer, E. (2002), *op.cit*., p.4.

[736] Official Journal (2003), *Turkish National Program on the Adoption of EU Acquis Communitaire*, No.25178, 24.07.2003.

[737] Turkish Ministry of Interior (2005), *NAP*.

The administrative capacity building is composed of three main aspects. First, it involves technical capacity building. This involves changing ielectronic storage of information with the Country of Origin and Asylum Information System and also gathering, analyzing, and disseminating reliable statistical information. Secondly, physical capacity building in asylum field necessitates establishment of an Asylum and Migration Specialization Unit. This Unit will be set up to increase the capacity in the field of migration and asylum.[738] It will be based under the MOI and will be responsible not only for asylum policy but also for migration policy. Establishing a specialized institution strengthens the humanitarian dimension of this policy area. The Commission Representation argues that with the EU pre-accession process, the security dimension of this policy area is weakened while the humanitarian dimension reinforced.[739] This argument is justified on the grounds that during the pre-accession process it is understood that the asylum policy field should not only be governed through security officials' framework. On the other hand, civilian involvement such as the involvement of NGOs is also necessary.[740] In addition to the Specialization Unit, asylum seeker reception and accommodation centres and refugee guesthouses are to be built for the changing asylum policy. Moreover, return centres are foreseen to host aliens to be returned until relevant procedures are completed.[741]

Thirdly, building up the human resource capacity involves establishment of a Training Academy (Institute) in order to ensure continuity in the training of existing and prospective personnel in this field.[742] It also proposes changes for recruitment and training of personnel while transforming the employment procedures of personnel working in asylum field in terms of selection, appointment, and career

[738] Turkish Ministry of Interior (2005), *NAP*, Article 4.1.

[739] European Commission Representation to Turkey (2004), Interview, Ankara, December 2004

[740] *Ibid*.

[741] Turkish Ministry of Interior (2005), *NAP*, Article 4.4.5.

[742] Turkish Ministry of Interior (2005), *NAP,* Article 4.4.4.

development. The *NAP* even introduces branch system to ensure continuous occupation of these positions in this field.[743]

The cognitive (ideational) transformation sphere goes hand in hand with legislative and administrative transformation. Cognitive transformation is defined for the purposes of this thesis as the changes in mentality in the field of asylum at the domestic level. It is a dual process of transformation. The dual process of transformation means there is a change in the perception of refugee and asylum field. Although the Commission Representation argues that there has been a shift from a security oriented approach of the Turkish governmental officials towards a more humanitarian framework, with the involvement of NGOs, and the shift in the mentality of governmental officials in the perception of asylum, there has been a linkage of asylum and migration. The perception of asylum policy field is shifted from the field of humanitarian protection towards the field combining asylum with irregular migration control bringing asylum to migration nexus. The Plan involves an entire section on illegal migration,[744] human trafficking[745] and establishing international cooperation for combating human trafficking.[746] This can be regarded as a direct result of Europeanization.[747]

The growing magnitude of legislative development in the EU which links asylum and refugee protection with international migration and the combat of illegal migration to the EU are discussed in Chapter 4. Even though the European Commission Representation indicates the distinction between "migration", "illegal migration" and "legal migration" as distinct phenomena from "asylum" and "refugee

[743] Turkish Ministry of Interior (2005), *NAP*, Article 4.3.

[744] Turkish Ministry of Interior (2005), *NAP*, Article 3.2.7.

[745] Turkish Ministry of Interior (2005), *NAP*, Article 3.2.8.

[746] Turkish Ministry of Interior (2005), *NAP*, Article 3.2.8.1.

[747] Twinning Project on Asylum and Migration (2005), *Interview* with the Coordinator Thomas Vom Braucke, EU Financial Assistance Programme to Turkey, Ministry of Interior, General Directorate of Security, Foreigners, Borders and Asylum Department, Ankara, January 2005

protection" the efforts to brings these issues together is reflected in the essence and wording of the *NAP*. The Draft version of the *NAP* separated immigration and asylum from each other while proposing two distinct plans for these two separate fields.[748] With the pressure exerted by the European Commission these draft versions were transformed into one single document emphasizing the linkage between these separate but not separable field.[749] In the *NAP* this linkage is clearly identified as: "It should be kept in mind that asylum, migration and illegal migration have internal dynamics and elements affecting one another, and that the principles and practices in these areas are subject to constant change and renewal. For this purpose the asylum and migration policies and legislation should be handled in a holistic approach, open to international developments and be subject to review according to emerging conditions."[750] This reflects the influence of Europeanization in the domestic policy making in Turkey.

There is also a cognitive change in the perception and understanding of officials working in this field. Traditionally this field is perceived to be under state prerogative. This is reflected in the organisational structure of the department working on this area. The General Directorate of Security has a special department on Foreigners, Border and Asylum. In the pre-accession process a civilian authority for processing asylum applications is foreseen. The implications of this change seem that it will bring fundamental changes in the implementation of this policy.

One of the major aspects of the change in this policy area is the willingness to build a long-term policy of asylum and immigration with an overall strategy. This is reflected in the *NAP*. There have always been criticisms by international agencies

[748] *Draft National Action Plan for Asylum* and *Draft National Action Plan for Migration*, Restricted access document, November 2004.

[749] Twinning Project Coordinator (2005), *Interview*, Ankara, January 2005.

[750] Turkish Ministry of Interior (2005), *NAP*, Article 4.5.

that there is a "lack of vision" and a "lack of long-term strategy" in the field of asylum and refugee protection in Turkey.[751]

As a result of the synchronized changes at the legislative, administrative and cognitive levels, an overall systemic transformation is experienced in the field of asylum during the Turkish pre-accession process to the European Union. The adoption of EU legislation proposes administrative changes. These administrative changes are reflected in the application of asylum policy. The initiatives for building up the administrative technical capacity of Turkey are aiming to bring the change of lifting the geographic limitation on the *1951 Convention*. Lifting this limitation will create a major transformation within this area. Therefore, a systemic change including transformation of legislation, governance structures, practices, and perceptions becomes inevitable.

Action Plan's proposals of career development of the existing and prospective personnel, institutionalisation of this policy area, focus on illegal immigration, establishing a refugee integration system, proposing an accelerated refugee status determination procedure, free residence of refugees, appeal procedures against negative asylum decisions, temporary protection in mass influx situations, proposed long-term policy planning, and the involvement of academics and NGOs into the process all indicate transformation in the overall asylum and refugee protection system. The limitations and results of this systemic transformation will be visible after the opening of negotiations with Turkey in the accession process.

6.5 Conclusions

Asylum and refugee policy in the Turkish pre-accession process involves humanitarian, social, political, economical and international issues. Therefore, it will

[751] European Commission Representation to Turkey (2004), Interview, Ankara, December 2004; UNHCR (2000), *Interview*, Ankara, May 2000; UNHCR (2004), *Interview*, Ankara, December 2004; UNHCR (2005), *Interview*, Ankara, January 2005.

have significant impact on progress towards accession. Although a rapid transformation of the whole immigration and asylum policy of Turkey does not seem possible, significant developments have been made in the recent years. This can be regarded as Europeanization of refugee and asylum policies in Turkey as a result of policy transfer from the EU to Turkey.

Despite the concerns and tension regarding the lifting of geographical limitations for asylum seekers originating from non-European regions of the world, the pre-accession process and Europeanization seems like a powerful tool to shape domestic politics. Tensions arise in the case of a major prospective policy change of Turkey granting refugee status to asylum seekers from its Eastern borders. Due to the possibility of a fundamental transformation in Turkey's existing asylum system, major social and economic challenges will have to meet by Turkey.

Considering the existing asylum policy and implementation process within Turkey, it is obvious that there have been fundamental modifications in the last couple of years. These modifications will be in line with the National Action Plan for Asylum for the formation of long-term policy building and implementation. This will not necessarily be made because of the criteria existing in the *AP* document but mainly because of the necessities emerging with the circumstances with the end of the Cold War. The existing system has been developed through decades. Its effective functioning involves close cooperation between several national and international actors. The developments show that there will be certain changes on the Turkish policy of the immigration and asylum issues brought by the challenges with the Revised National Program. However, an immediate and radical change cannot be expected until the launching of the accession negotiations. This is justifying the limitations of Europeanization process.

CHAPTER VII:

CONCLUSION

With the end of the Cold War the changing international political circumstances influenced refugee and asylum issues in the world. The number of refugees and other displaced persons has escalated through the recent years creating a major concern for the international community in the 21st century. With the conflicts in the Balkans, the members of the European Union realized that they are not immune from refugee influx situations. Many European Union member states had to tackle serious developmental, economic, infrastructural, environmental, social, political, and national security problems, which resulted from these influxes. Therefore, a need for a common policy concerning not only mass influx situations with the intention of forming a common policy shaped by internal security consideration an inclusion of the sense of burden-sharing has been progressively developed by the EU member states.

Through the introduction of the pillar system with the Treaty of the European Union the Justice and Home Affairs Policy has become one of the major policy areas in the EU. Progressively this intergovernmental pillar moved towards establishing a common policy. It implicitly aims to create a zone of peace and stability around the EU. While the concerns of the EU are developing, Turkish candidature and later the accession process to the EU brought further concerns for the current member states. Neighbouring Middle Eastern states and the Former Soviet Republics, Turkey became a special challenge in these issues for the EU. Not only the eastern border of Turkey but also the current legislative and procedural situation increased the worries about the current Turkish immigration, refugee and asylum policy of Turkey.

An accession strategy has been developed and adopted after the Turkish candidature to the EU by the Helsinki Summit in 1999. Through the usual development of the accession process, Turkish Accession Partnership Document has been prepared by the EU Commission that contains short and medium-term political and economic priorities. Turkey adopted its *National Program* on the basis of this document. The statement for Turkey to lift the geographical limitation of the *1951 Convention* in the field of asylum carries concerns. This issue is significantly important for Turkey as it involves aspects of humanitarian, social, political, economical and international issues. Turkey holds great concerns on lifting the geographical preferences on the *1951 Convention*. Turkey calls for burden sharing on this matter with the EU member states as it argues that it will increase the burden on Turkey.

The transfer of policies from the EU level to non-member states in the enlargement process presents itself in the Turkish pre-accession process. Explaining the EU is a difficult task as it is formed of a complex web of relations. In that respect, the certainty is that European integration process has always influenced domestic policy-making and policy implementation in member states while impacting their domestic legislative and administrative structures. This influence can be most generally defined as the Europeanization process at European and domestic levels.

Accepting that finding a consensus among the scholars for defining Europeanization is a difficult mission, it is understood as a complementary processes of changes, which are well known from other institutionalized systems of governance. In this analysis, the Europeanization of domestic policy reflected two interrelated processes. Both the emergence of supranational policies at the EU level and the domestic convergence towards these policies. Therefore, Europeanization can be defined as a process whereby domestic discourses, public policies, political structures and identities aim to shape European integration.

The focus of this analysis looked at the impact of the process of Europeanization on non-member states by focusing on the influence of the EU's governance structures and regulatory models on the specific policy area of asylum and refugees in Turkey.

Turkey clearly presents a case in which the effects of Europeanization is experienced in the governance and ideational levels. In addition, Europeanization is experienced in the level of policy transformation. This leads to a shift from international norms towards European norms and procedures.

The general principles applied in the asylum and refugee policy in Turkey are based on the international norms and principles set through the international legal documents. Therefore, the *1951 Convention* is the main document for refugee protection standards in Turkey. This is inline with the application of the international refugee regime. In addition to this main piece of international legal documentation, for a long period of time the lack of specific legislation dealing with refugee status determination has been filled with domestic laws on passport, foreigners and sojourn.

The traditional Turkish perception of immigration as a natural element of a multi-ethnic society of the Ottoman Empire continued until the establishment of the Republic of Turkey in 1923. The new understanding of defining a national identity with the emphasis on Turkish ethnic origin was further reflected in the immigration and refugee policies of the Republic. Turkish language and ethnic affiliation was emphasised in respect to Turkey's immigration policies. Accepting immigration and asylum policies as tools for social engineering, the state policy favoured a settlement policy to construct a Turkish national identity. Immigrants in that respect were categorized on the basis of Turkishness such as Turks and as individuals bounded to Turkish culture by the 1934 Law. Even though there was a continuum in policies from the late Ottoman to the new Republic, with the establishment of the Turkish Republic, emphasis on immigration of persons with the "Turkish descent and culture" became deliberate. This is most apparent in the application of the state policies on settlement of persons.

As a consequence of the changing political and international situation of Turkey's neighbouring countries, refugee influx situations and the increased number of illegal immigrants necessitated the regulation of this policy area by a specific law indicating the responsible agencies with the end of the Cold War. The 1994 Bylaw was the

response to that need. This Bylaw securitizing this policy area with a move away from the international humanitarian concerns aimed at regulating the *ad hoc* arrangements. Time limitation for the refugee status determination application and the distinction between illegal and legal entry caused criticisms from international organizations. Despite its deficiencies, the 1994 Bylaw was the first attempt to institutionalize this policy in Turkey.

Although it has been argued that a rapid transformation of the whole immigration and refugee policies of Turkey does not seem possible in the very near future, the recent *NAP* proved to be challenging. Considering the strengths and weaknesses of the existing immigration and asylum policy and implementation process within Turkey, it seems that there will be certain modifications in the future. These modifications should be in line with the formation of a long-term policy building and implementation. This will not necessarily be because of the criteria existing in the Accession Partnership Document but mainly because of the necessary circumstances emerging after the end of the Cold War. The system has been established for years and its effective functioning involves close cooperation between several national and international actors. This system is unlikely to be changed within a short period of time. However, the current developments with the *Revised NPAA* and *NAP* reflect the findings under which spheres Europeanization is and will be experienced in the asylum and refugee policy in Turkey. It indicates a complex process of legislative, administrative and cognitive (ideational) transformation leading towards a systemic and overall change in the asylum and refugee policy field.

Despite the concerns and tension regarding the lifting of geographical limitations for asylum seekers originating from non-European regions of the world, the pre-accession process and Europeanization seems like a powerful tool to shape domestic politics. Tensions arise in the case of the major prospective policy change of Turkey granting refugee status to asylum seekers from its Eastern borders. Due to the possibility of a fundamental transformation in Turkey's existing asylum system major social and economic challenges will have to meet by Turkey.

Considering the existing asylum policy and implementation process within Turkey, it is obvious that there have been fundamental modifications in the last couple of years. These modifications will be in line with National Action Plan for Asylum for the formation of a long-term policy building and implementation. This will not necessarily be made because of the criteria existing in the *AP* document but mainly because of the necessities emerging with the circumstances with the end of the Cold War. The existing system has been developed through decades. Its effective functioning involves close cooperation between several national and international actors. The developments show that there will be certain changes on the Turkish policy of the immigration and asylum issues brought by the challenges with the Revised National Program. However, an immediate and radical change cannot be expected until the launching of the accession negotiations. This is justifying the limitations of Europeanization process.

The conditionality for membership is one of the main motivations for further alignment in this area with the EU *acquis*. The transformation of the existing policy structure provides a departure from the existing standards of protection established under the UN framework. Although it has never been mentioned in the EU official documents, the acceptance of the EU *acquis* in this field and the transformation of the existing policy system leads towards the European level developed norms and standards. This justifies that Europeanization is a powerful policy tool in the enlargement process exporting EU level policies, policy structures, practices, procedures and ideational frameworks to extra-EU territories. Turkish asylum and refugee policies in the pre-accession process are test case that proves this hypothesis.

REFERENCES

BOOKS

Abadan-Unat, N. (2002), *Bitmeyen Göç*, İstanbul: Bilgi University Publications

Ağanoğlu, Y. (1995), *Osmanlıdan Cumhuriyete Balkanların Makus Talihi*, İstanbul: Kum Saati

Ahmad, F. (2005), *Modern Türkiye'nin Oluşumu*, İstanbul: Kaynak

Altunışık, M.B. and Tür, Ö. (2005), *Turkey: Challenges of Continuity and Change*, Oxford: Routledge

Arat, T. (1993), *Avrupa Toplulukları Adalet Divanı*, Ankara: ATAUM Publications

Armstrong, K. and Bulmer, S. (1998), *The Governance of the Single European Market*, Manchester: Manchester University Press

Avşar, Z. and Tunçalp, Z. S. (1995), *Sürgünde 50.Yıl: Ahıska Türkleri*, Ankara: TBMM Yayınları

Bağcı, H. (2001), *Türk Dış Politikasında 1950'li Yıllar*, Ankara: METU Press

Bellamy, R. and Castiglione, D. (eds.) (1996), *Constitutionalism in Transformation: European and Theoretical Perspectives*, Oxford: Blackwell

Bieber, R. and Monar J. (eds.) (1995), *Justice and Home Affairs in the European Union, College of Europe*, Brussels: European Interuniversity Press

Bloch, A. and Levy, C. (eds.) (1999), Refugees, *Citizenship and Social Policy in Europe*, London: Macmillan

Bocardi, I. (2002), *Europe and Refugees: Towards an EU Asylum Policy*, The Hague: Kluwer Law International

Brubaker, R. (1992), *Citizenship and Nationhood in France and Germany*, Cambridge MA: Harvard University Press

Buz, S. (2004), *Zorunlu Çıkış Zorunlu Kabul*, Ankara: ASAM Publications

Carr, E.H. (1946), *The Twenty Years Crisis: 1919-1939*, New York: Harper and Row

Castels, S. and Miller, M. (2003), *The Age of Migration*, Hampshire: Macmillan

Chalmers, D. (1998), *European Union Law*, Vol.1. Ashgate: Hants

Chimini, B.S. (ed.) (1999), *International Refugee Law: A Reader*, London: Sage Publications

Cini, M. (ed.) (2003), European Union Politics, Oxford: Oxford University Press

Clesse, A. and Taşhan, S. (eds.) (2004), *Turkey and the European Union: 2004 and Beyond*, Luxembourg: Luxembourg Institute for European and International Studies

Cohen, R. (1994), *Frontiers of Identity: The British and the Others*, London: Longman

Collinson, S. (1993), *Beyond Borders: West European Migration Policy Towards the 21st Century*, London: RIIA/Wyndham Place Trust

Cram, L., and Dinan, D. (eds.), *Developments in the European Union*, London: Mac Millan

Deringil, S. (2000), *Denge Oyunu: İkinci Dünya Savaşında Türkiye'nin Dış Politikası*, İstnabul: Tarih Vakfı Yurt Publications

Derrida, J. (1992), *The Other Heading: Reflections on Today's Europe*, Bloomington: Indiana University Press

Diez, T. and Wiener, A. (eds.) (2004), *European Integration Theory*, Oxford: Oxford University Press

Dinan, D. (1999), *Ever Closer Union?,* London: Lyne Rienner Publications

Dunn, J. (1969), *The Political Thought of John Locke*, Cambridge: Cambridge University Press

ECRE (1983), Europe*: A Handbook for Agencies Assisting Refugees*, Brussels: European Consultation on Refugees and Exiles

Eralp, A. (1996), *Devlet, Sistem ve Kimlik*, İstanbul: İletişim

Eren, A.C. (1966), *Türkiye'de Göç ve Göçmen Meseleleri*, İstanbul: Nurgök

Fassman, H. and Münz, R. (1994), *European Migration in the Late Twentieth Century*, Aldershot: Edward Elgar

Featherstone, K. and Radaelli, C. (eds.) (2004), *The Politics of Europeanization*, Oxford: Oxford University Press

Ferris, E. (1993), *Beyond Borders: Refugees, Migrants and Human Rights in the Post-Cold War Era*, Geneva: WCC Publications

Findlay, A.M. (eds.) (1994), *Population Migration and Changing World Order*, London: Belhaven

Geddes, A. (2000), *Immigration and European Integration. Towards Fortress Europe?*, Manchester: Manchester University Press

Giddens, A. (1999), *The Third Way*, Oxford: Polity Press

Goodwin-Gill, G. (1996), *The Refugee in International Law*, Oxford: Clarendon Press

Goodwin-Gill, G. (1985), *The Refugee in International Law*, Oxford: Oxford University Press

Grahl-Madsen, A. (1966), *The Status of Refugees in International Law*, vol.1, Leyden: A.W.Sijthoff

Green Cowles, M., James A. C., and T. Risse (eds.) (2001), *Transforming Europe. Europeanization and Domestic Change*, Ithaca: Cornell University Press

Gustavsson, S. and Lewin, L. (eds.) (1996), *The Future of the Nation State: Essays on Cultural Pluralism and Political Integration*, Stockholm: Nerenius and Santerus Publishers

Gürbüz, B. (1995), *Batıdan Doğuya Uzanan Çizgide Balkanlar ve Türkler*, Konya: Çizgi Kitabevi

Haas, E.B. (1975), *The Obsolescence of Regional Integration Theory*, Berkeley, CA: Institute of International Studies

Haas, E.B. (1968), *The Uniting of Europe*, Stanford: Stanford University Press

Haas, E.B. (1964), *Beyond the Nation State*, Stanford: Stanford University Press

Hailbronner, K. (2000), *Immigration and Asylum Law and Policy of the European Union*, The Hague: Kluwer Law International

Halliday, F. (2002), *2000'lerde Dünya*, İstanbul: İstanbul Bilgi University Publications

Hathaway, J. (1991), *The Law of Refugee Status*, Toronto: Butterworth

Héritier, A., Kerwer, D., Knill, C., Lehmkuhl, D., Teutsch, M., and Douillet, A.C. (eds.) (2001), *Differential Europe: The European Impact on National Policymaking*, Lanham: Rowman and Littlefield

Héritier, A., Knill, C., and Mingers, S. (1996), *Ringing the Changes in Europe. Regulatory Competition and the Redefinition of the State: Britain, France, Germany. Berlin*, New York: De Gruyter

Hill, C. (1996), *The Actor's in Europe's Foreign Policy*, London: Routledge

Hirschon, R. (2003), *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghahn

Hix, S. and Goetz, K. (2000), *Europeanised Politics? European Integration and National Political Systems*, London: Frank Cass Publications

Hobsbawn, E. (1994), *The Age of Extremes: The Short Twentieth Century*, London: Michale Joseph

Hooghe, L. and Marks, G. (2001), *Multi-level Governance and European Integration*, Lanham: Rowman and Littlefield

İhsanoğlu, E. (2002), *History of the Ottoman State, Society and Civilization*, İstanbul: Research Centre for Islamic History, Art and Culture Publications

İnalcık, H. (1993), *The Middle East and The Balkans under the Ottoman Empire: Essays on Economy and Society*, Bloomington: Indiana University Press

İnalcık, H. (1995), The Ottoman Empire: The Classical Age 1300-1600, London: Phoenix

İnalcık, H. (1998), *Essays in Ottoman History*, İstanbul: Eren

İpek, N. (1994), *Rumeli'den Anadolu'ya Türk Göçleri*, Ankara: Türk Tarih Kurumu Publications

Jackson, I., (1999), *The Refugee Concept in Group Situations*, The Hague: Martinus Nijhoff Publishers

Jacobson, D. (1996), *Rights Across Borders, Immigration and the Decline of Citizenship*, John Hopkins Press: Baltimore

Joly, D. (1996), *Haven or Hell?: Asylum Policies and Refugees in Europe*, New York: St. Martin's Press

Karluk, R. (1996), *Avrupa Birliği ve Türkiye*, İstanbul: İMKB Publications

Kabaalioğlu, H., Dartan, M., Akman, S., and Nas, Ç. (eds.) (2005), *Europeanization of South-Eastern Europe*, İstanbul: Marmara University European Community Institute Publications

Karaosmanoğlu, A. and Taşhan, S. (eds.) (2004), *The Europeanization of Turkey's Security Policy: Prospects and Pitfalls*, Ankara: Foreign Policy Institute Publications

Karpat, K. (2003), *Osmanlıda Nüfus 1830-1914: Demografik ve Sosyal Özellikler*, İstanbul: Tarih Vakfı Yurt Publications

Karpat, K. (2002), *Studies on Ottoman Social and Political History*, Leiden: Brill

Karpat, K. (2000), *Ottoman Past and Today's Turkey*, Leiden: Brill

Karpat, K. (1985), *Ottoman Population 1890-1914: Demographic and Social Characteristics*, Wisconsin: University Press of Wisconsin

Karpat, K. (ed.) (1974), *The Ottoman State and Its Place in World History*, Leiden: Brill

Karpat, K. (1973), *Social Change and Politics of Turkey: A Structural-Historical Analysis*, Leiden: Brill

Kassim, H. Peters, B.G., and Wright, V. (eds.) (2000), *The National Coordination of EU Policy*, Oxford: Oxford University Press

Kirişçi, K. (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, İstanbul: TESEV Publications

Knill, C. (2001), *The Europeanization of National Administrations, Patterns of Institutional Change and Persistence*, Cambridge: Cambridge University Press

Kohler-Koch, B. (ed.) (2003), *Linking EU and National Governance*, Oxford: Oxford University Press

Kohler-Koch, B. and Eising, R. (eds.) (1999), *The Transformation of Governance in the European Union*, London: Routledge

Kooiman, J. (1993), *Modern Governance: New Government-Society Interactions*, London: Sage Publications

Kökdemir, N. (ed.) (1952), *Eski ve Yeni Toprak: İskan Hükümleri ve Uygulama Klavuzu*, Ankara

Laçiner, S., Özcan, M., and Bal, İ. (eds.) (2005), *European Union with Turkey*, Ankara: ISRO Publications

Ladas, S. P. (1932), *The Exchange of Minorities: Bulgaria, Greece and Turkey*, New York: Macmillian

Larabee, S. and Lesser, I. (2003), *Turkish Foreign Policy in the Age of Uncertainty*, Arlington: RAND Publications

Lavanex, S. (2001), *Europeanization of Asylum Policies: Between Human Rights and Internal Security*, Hampshire: Ashgate

Lipschutz, R. (ed.) (1995), *On Security*, New York: Colombia University Press

Lindberg, L.N. (1963), *The Political Dynamics of European Economic Integration*, Stanford: Stanford University Press

Locke, J. (1963), *Two Treaties of Government*, Cambridge: Cambridge University Press

Loescher, G. (1993), *Beyond Charity: International Cooperation and the Global Refugee Crisis*, New York and Oxford: Oxford University Press

Lüthem, Ö. and Coşkun, B.D. (eds.), *Balkan Diplomasisi*, Ankara: ASAM Publications

March, J.G. and Olsen, J.P. (1995), *Democratic Governance*, New York: Free Press

McCarthy, J. (1997), *The Ottoman Turks: An Introductory History to 1923*, London: Longman

McCarthy, J. (1995a), *Death and Exile: the Ethnic Cleansing of the Ottoman Muslims (1821-1822)*, Princeton, N.J: Darwin Press

McCarthy, J. (1995b), *Müslümanlar ve Azınlıklar*, İstanbul: İnkılap

McCarthy, J. (1983), *Muslims and Minorities: The Population of Ottoman Anatolia and the End of the Empire*, New York: New York University Press

Memorial Human Rights Centre (2000), *Russian Experience of Ethnic Discrimination: Meskhetians in Krasnodar Region,* Moscow: Memorial Human Rights Centre Publications

Mitrany, D. (1943), *A Working Peace System*, London: Royal Institute of International Affairs

Monar, J. & Morgan, R. (eds.) (1994), *The Third Pillar of the European Union*, Brussels: European Interuniversity Press

Moravcsik, A. (1998), *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press

Morgenthau, H. (1973), *Politics Among Nations: The Struggle for Power and Peace*, New York: Knopf

Nagata, Y. (1995), *Studies on the Social and Economic History of the Ottoman Empire*, İzmir: Akademi Kitabevi

Neumann, I. B. (1999), *Uses of the Other: The "East" in European Identity Formation*, Minneapolis: University of Minnesota Press

Nikolov, K. (ed.) (2004), *The European Union After 1 May 2004: Is There a Shock After Enlargement?,* Sofia: Bulgarian European Community Studies Association

Oran, B. (ed.) (2003), *Türk Dış Politikası*, Vol. II, İstanbul: İletişim

Odman, T. (1995), *Mülteci Hukuku*, Ankara: A.Ü.S.B.F. İnsan Hakları Merkezi Publications

Peters, B. (1996), *The Future of Governing: Four Emerging Models*, Lawrence: University Press of Kansas

Petersen, J. and Sjursen, H. (eds.) (1998), *A Common Foreign Policy for Europe? Competing Visions of the CFSP*, London: Routledge

Palmer, A. (1994), *The Decline and the Fall of the Ottoman Empire*, New York: Barnes and Noble

Parla, R. (1985), *Belgelerle Türkiye Cumhuriyeti'nin Uluslararası Temelleri*, Lefkoşe: Private Publication

Piening, C. (1997), *Global Europe: The European Union in World Affairs*, Boulder:. Rienner Publishers

Pultar, G. (2005), *Türkiye Kültürleri*, İstanbul: Tetragon

Ramazan, M. (1997), *Bir Kafkas Göçmeninin Anıları*, İstanbul: Şamil Eğitim ve Kültür Vakfı

Rawls, J. (1971), *A Theory of Justice*, Cambridge, Massachusetts: Harvard University Press

Redhouse English-Turkish Dictionary (1975), RedHouse Yayınevi: İstanbul

Rhodes, C. (ed.) (1995), *The State of the European Union*, vol.3, Boulder, CO: Lynne Reinner

Rhodes, R. (1997), *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, Buckingham: Open University Press

Richmond, A.H. (1995), *Global Apartheid*, Toronto: Oxford University Press

Rothschild, J. (1974), *East Central Europe between the Two World Wars*, Seattle: University of Washington Press

Russian Experience of Ethnic Discrimination: Meskhetians in Krasnodar Region (2000), Moscow: Memorial Human Rights Centre

Sandholtz, W. and Stone Sweet, A. (eds.) (1998), *European Integration and Supranational Governance*, Oxford: Oxford University Press

Sassen, S. (1996), *Losing Control?,* New York: Colombia University Press

Sayad, A. (1991), *L'Immigration ou les Paradoxes de l'Altérité*, Brussels: De Boeck

Scharpf, F. (1999), *Governing in Europe: Effective and Democratic*, Oxford: Oxford University Press

Schuster, L. (2003), *The Use and Abuse of Political Asylum in Britain and Germany*, London: Frank Cass

Selm-Thornburn, J. (1998), *Refugee Protection in Europe: Lessons of Yugoslav Crisis*, The Hague: Martinus Nijhoff

Shaw, S. (1991), *The Jews of the Ottoman Empire and the Turkish Republic*, New York: New York University Press

Shorter Oxford English Dictionary (1985), Oxford: Clarendon Press

Shutter, S. and Niaz, A. (2002), *Asylum: Changing Policy and Practice in the EU, UK and Selected Countries*, London: Justice

Simpson, J. (1938), *Refugees: A Preliminary Report of a Survey*, London: Royal Institute of International Affairs

Snyder, F. (1990), *New Directions in European Community Law*, London: Weidenfeld and Nicolson

Sobel, L. (1998), *Refugee: A World Report*, Michigan: Bell and Howell Company

Soysal, Y. (1994) *Limits of Citizenship: Migrants and Post-colonial Membership in Europe*, Chicago: University of Chicago Press

Steiner, N. (2000), *Arguing about Asylum: The Complexity of Refugee Debates in Europe*, London: Macmillan

Şimşir, B. (1968 and 1970), *Rumeliden Türk Göçleri,* Vol. I-II, Ankara: Türk Tarih Kurumu Yayınevi

Taylor, P., (1993) *International Organization in the Modern World*, London: Pinter Publishers

Thompson, G. and Frances, J. (eds.) (1991), *Markets, Hierarchies and Networks: The Coordination of Social Life*, Buckingham and London: Sage and Open University Press

Tilly, C. (1990), *Coercion, Capital and European States*, Princeton: Princeton University Press

Toynbee, A.J. (1922), *The Western Question in Greece and Turkey*, Boston: Houghton Mifflin Company

Umbach, G. and Lippert, B. (eds.) (2005), *Pressures of Europeanization. From Post-Communist State Administrations Towards Normal Players in the EU System*, Baden-Baden: Nomos

UNHCR (2000), *The State of World Refugees: Fifty Years of Humanitarian Action*, Oxford: Oxford University Press

UNHCR (2000), *Sığınmacı, Mülteci ve Göç Konularına İlişkin Yargı Kararları*, Ankara: BMMYK and ASAM Publications

UNHCR (1995), *The State of World Refugees: In Search of Solutions*, New York: Oxford University Press

UNHCR (1994), *Mülteci Çocuklar*, Geneva: UNHCR Publications

UNHCR (1993), *The State of World Refugees: The Challenge of Protection*, London: Penguin

UNHCR (1979), *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva: UNHCR Publications

US Committee for Refugees (1992), *World Refugee Survey*, Washington D.C: US Committee for Refugees

Van Selm-Thornburn, J. (1998), *Refugee Protection in Europe: Lessons of the Yugoslav Crisis*, The Hague: Kluwer Law International:

Waltz, K. (1979), *Theory of International Politics*, Reading, MA: Addison-Wesley

Weis, P. (1995), *The 1951 Refugee Convention*, Cambridge: Cambridge University Press

Wessels, W. (2000), *Die Öffnung des Staates*, Opladen: Leske und Budrich

Wiener, A. and Diez, T. (2004), *European Integration Theory*, Oxford: Oxford University Press

Wiener, A. (1998), *European Citizenship Practice: Building Institutions of a Non-State, Boulder*, CO: Westview

Wolf, K.H. (ed.) (1964), *The Sociology of Georg Simmel*, New York: The Free Press

Zolberg, A. (1989), *Escaping from Violence, Conflict and Refugee Crisis in the Developing World*, Oxford: Oxford University Press:

ARTICLES

Adelman, H. (1992), 'Humanitarian Intervention: The Case of Kurds', *International Journal of Refugee Law*, Vol.4, No.1

Akgündüz, A. (1998), 'Migration to and from Turkey', *Journal of Ethnic and Migration Studies*, Vol.24, No.1

Aksoy, O. (2004), 'The Relations Between the EU and Turkey Until 2003', in Taşhan, S. and Clesse, A. (eds.), *Turkey and the European Union: 2004 and Beyond*, Luxembourg: Luxembourg Institute for European and International Studies

Aleinikoff, A. (1995), "The Refugee Mistrusts and Mistrusted" in Valentine, D. and Knudsen, J. *Mistrusting Refugees*, LA: University of California Press

Anderson, M., Den Boer, M., and Miller, G. (1994), 'European Citizenship and Cooperation in Justice and Home Affairs', in Duff, A., Pinder, J., and Price, R. (eds.), *Maastricht and Beyond: Building the European Union*, London: Routledge

Ataöv, T. (1989), 'Mesket Türkleri', *Milliyet*, 4.06.1989

Avşar, Z. and Tunçalp, Z. S. (1995), *Sürgünde 50.Yıl: Ahıska Türkleri*, Ankara: TBMM Publications

Benz, A. (2003), 'Compound Representation in EU Multi-level Governance' in Kohler-Koch, B. (ed.), *Linking EU and National Governance*, Oxford: Oxford University Press

Barutciski, M. (2003), 'Population Exchanges in International Law and Policy', in Hirschon, R., *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghahn

Black, I. (2004), *Guardian Online News*, 30.4.2004, http://www.guardian.co.uk/guardianpolitics/story/0,3605,1206647,00.html

Bogdandy , A. Von (2000), 'European Union as a Human Rights Organisation? Human Rights and the Core of the European Union', *Common Market Law Review*, vol.37

Bomberg, E. and Peterson, J. (2000), 'Policy Transfer and Europeanization: Passing the Heineken Test?', presented paper at the *PSA Annual Conference*, London, 10-13 April 2000

Börzel, T. (2002), 'Member States' Responses to Europeanization', *Journal of Common Market Studies*, Vol.40, No.2

Börzel, T. (1999), 'Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain', *Journal of Common Market Studies*, Vol.39, No.4

Börzel, T. A. (1998), 'The Greening of a Polity? The Europeanization of Environmental Policy-Making in Spain', *Southern European Society and Politics*, Vol. 2, No.1

Brockett, G.D. (1998), 'Collective Action and the Turkish Revolution: Towards a Framework for the Social History of the Atatürk Era: 1923-38', *Middle Eastern Studies*, Vol. 34, No.4

Bulmer, S. And Radaelli, C. (2004), 'Europeansiation of National Policy?', *Queen's Papers on Europeanization*, No.1/2004

Burke, S. (1984), 'Compassion versus Self-interest: Who Should be Given Asylum in the United States?', *Fletcher Forum*, Vol.8

Buuren, J. (1999), 'When the EU Surrounds Itself with a Cordon Sanitaire", *Le Monde Diplomatique*, January 1999, www.monde-diplomatique.fr

Byrne, R. (1996), 'The Safe Country Notion in European Asylum Law', *Harvard Human Rights Law Journal*, Vol. 9, Spring 1996

Caporoso, J. and Keeler, J.T. (1995), 'European Union and the Regional Integration Theory', in Rhodes, C. (ed.), *The State of the European Union*, Boulder, CO: Lynne Reinner

Checkel, J. T. (2001), 'The Europeanization of Citizenship', in Green Cowles, et al. (eds.) *Transforming Europe. Europeanization and Domestic Change*, Ithaca: Cornell University Press

Clay, C. (1998), 'Labour Migration and Economic Conditions in Nineteenth-Century Anatolia', *Middle Eastern Studies*, Vol.34, No.4

Cohen, R. (1989), 'The Detention of Asylum Seekers in the UK', in Joly, D. And Cohen, R. (eds.), *Reluctant Hosts: Europe and its Refugees*, Aldershot: Gower

Coppel, J. and O'Neill, A. (1992), 'The European Court of Justice: Taking Rights Seriously?', *Common Market Law Review*, Vol.29, No.4

Coppietiers, B., Huysseune, M., Emerson, M., Tocci, N. and Vahl, M. (eds.) (2003), 'European Institutional Models as Instruments of Conflict Resolution in Divided States of the European Periphery', *CEPS Working Document*, No.195, July 2003

Curtin, D. and Meijers, H. (1995), 'The Principle of Open Government in Schengen and the European Union, Democratic Retrogression?', *Common Market Law Review*, Vol.32, No.2

Çağaptay, S. (2003), 'Citizenship Policies in Interwar Turkey', *Nations and Nationalism*, Vol. 9, No. 4

Çağaptay, S. (2002), 'Kemalist Dönem'de Göç ve İskan Politikaları: Türk Kimliği Üzerine Bir Çalışma', *Toplum-Bilim*, No: 93

Çağaptay, S. (2002), "Otuzlarda Türk Milliyetçiliğinde Irk, Dil ve Etnisite" in Bora, T. and Gültekingil, M. (eds.), *Modern Türkiye'de Siyasi Düşünce: Milliyetçilik***,** İstanbul: İletişim Yayınları, Vol: 4

Den Boer, M. (2000), 'Justice and Home Affairs', in Wallace, H. and Wallace, W. (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press

Diez, T. and Wiener, A. (2004), 'Introducing the Mosaic of Integration Theory', in Diez, T. and Wiener, A. (eds.), *European Integration Theory*, Oxford: Oxford University Press

Dolowitz, D. and Marsh, D. (1996), 'Who Learns What from Whom: A Review of the Policy Transfer Literature', *Political Studies*, No. 44

Eralp, A. (2005), Turkey and the Enlargement Process of the European Union, in Nikolov, K. (ed.), *The European Union After 1 May 2004: Is There a Shock from Enlargement?,* Sofia: BESCA Publications

Eralp, A. (2004), 'Turkey and the Enlargement Process of the EU', in Taşhan, S. and Clesse, A. (eds.), *Turkey and the European Union: 2004 and Beyond*, Luxembourg: Luxembourg Institute for European and International Studies

Falkner, G. (2001), 'The Europeanization of Austria: Misfit, Adaptation and Controversies', *European Integration Online Papers (EIOP),* Vol.5, No.13, http://eiop.or.at/eiop/texte/2001-013a.htm

Falkner, G. and Netwich, M. (2001), 'Enlarging the European Union. The Short-term Success of Incrementalism and Depoliticisation', in Richardson, J. (ed.), *European Union. Power and Policy-Making*, London: Routledge

Featherstone, K. (1998), ''Europeanization' and the Centre Periphery: The Case of Greece in the 1990s', *South European Society and Politics*, No. 3

Feller, E. (2000), Statement by the Director of the Department of International Protection, *51st Session of the Executive Committee of the High Commissioner's Programme*, UNHCR: Geneva, 3.10.2000

Frelick, B. (1997), 'Barriers to Protection: Turkey's Asylum Regulations', *International Journal of Refugee Law*, Vol.9, No.1

Fukuyama, F. (1989), 'The End of History?', The National Interest, No.16

Garrett, G. and Tsebelis, G. (1996), 'An Institutionalist Critique of Intergovernmentalism', *International Organization*, Vol. 50, No.2

Gibney, M.J. and Hansen, R. (2002), 'Asylum Policy in the West: Past Trends, Future Possibilities', presented paper at the *World Institute for Development Economics and Research (WIDER) International Conference on Poverty, International Migration and Asylum*, Helsinki, Finland, 27-28 September 2002

Goodwin-Gill, G. (1990), 'The Beningo Aquiono Lecture in Human Rights: Refugees and Human Rights: Challenges for the 1990s', *International Journal of Refugee Law*, Special Issue, September 1990

Grabbe, H. (1999), 'A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants', *EUI Working Paper*, No. RSC 99/12, Florence: European University Institute

Grabbe, H. (2001), 'How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy*, Vol. 8, No.6

Hoffman, S. (1982), 'Reflections on the Nation-State in Western Europe Today', *Journal of Common Market Studies*, No.21

Habermas, J. (1984), 'What does a Legitimisation Crisis Mean Today? Legitimation Problems in Late Capitalism', in Connoly, W. (ed.), *Legitimacy and State*, Oxford: Basil Blackwell

Habermas, J. (1996), 'The European Nation State: Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship', *Ratio Juris*, Vol. 9, No. 2

Habermas, J. (1994), 'Human Rights and Popular Sovereignty, the Liberal and Republican Versions', *Ratio Juris*, Vol. 7, No.1

Habermas, J. (1992) 'Citizenship and National Identity: Some Reflections on the Future of Europe', *Praxis International*, Vol. 12, No.1

Haltern, U. (2004), 'Integration Through Law', in Diez, T. and Wiener, A. (eds.), *European Integration Theory*, Oxford: Oxford University Press

Héritier, A. (2001), 'Differential Europe: The European Impact on National Policymaking', in Héritier, A. et. al. *Ringing the Changes in Europe. Regulatory Competition and the Redefinition of the State: Britain, France, Germany. Berlin*, New York: De Gruyter

Hill, C., (1993) 'The Capabilities-expectations Gap, or Conceptualizing Europe's International Role', *Journal of Common Market Studies*, Vol.31, No.3

Hirschon, R. (2003), ''Unmixing Peoples' in the Aegean Region', in Hirschon, R. (ed.) *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghahn

Hix, S. (1998), 'Contributing to Integrating Left and Right: Studying EU Politics', *ESCA Review*, Fall 1998

Hix, S. and Goetz, K. (eds.) (2000), 'Europeanised Politics? European Integration and National Political Systems', *Special Issues of West European Politics*, Vol.23, No.4

Howell, K. (2004), 'Developing Conceptualisations of Europeanisation: Synthesising Methodological Approaches', *Queen's Papers on Europeanization*, No.3/2004

Howell, K. (2002), 'Developing Conceptualizations of Europeanization and European Integration: Mixing Methodologies', presented paper at the ESCR Seminar Series: *UACES Seminar Group on the Europeanization of British Politics*, Sheffield University, 29.11.2002

Huysman, J. (2000) 'Contested Community: Migration and the Question of the Political in the EU' in Kelstry, M. and Williams, M. C. (eds.), *International Relations Theory and the Politics of European Integration: Power, Security and Community*, London: Routledge

Ireland, P.R. (1991), 'Facing the True "Fortress Europe": Immigrant and Politics in the EC', *Journal of Common Market Studies*, Vol.29, No.5

İçduygu, A., Çolak, Y., and Soyarik, N. (1999), 'What is the Matter with Citizenship? A Turkish Debate', *Middle Eastern Studies*, Vol.35, No.4

Jachtenfuchs, M. and Kohler-Koch, B. (2004), 'Governance and Institutional Development', in Wiener, A. & Diez, T. (eds.) *European Integration Theory*, Oxford: Oxford University Press

Jaeger, G. (1983), 'Asylum in Turkey', in ECRE, *Europe: A Handbook for Agencies Assisting Refugees*, Brussels: European Consultation on Refugees and Exiles

Kale, B., (2001a) 'Turkish EU National Program and the Changing Status of Turkey', *Strategic Analysis*, No.13

Kale, B. (2001b), 'Turkey-EU: Asylum and Immigration Policies', *Turkish News*, 3.2.2001

Kamenka, E. (1989), 'On Being a Refugee', in Saikal, A. (ed.), *Refugees in the Modern World*, Canberra: Australian National University

Kant, E. (1991), 'The Perpetual Peace', in Reiss, H. (ed.), *Kant Political Writings*, Cambridge: Cambridge University Press

Kassim, H. (2000), 'Conclusion', in Kassim, H. Peters, B.G., and Wright, V. (eds.), *The National Coordination of EU Policy*, Oxford: Oxford University Press

Kirişçi, K. (2005), 'Turkey and the European Union: The Domestic Politics of Negotiating Pre-Accession', *Macalester International*, Vol.15

Kirişçi, K. (2004), 'Turkey's Pre-Accession and Immigration Issues', in *Population Challenges, International Migration and Reproductive Health in Turkey and the European Union: Issues and Policy Implications*, İstanbul: Turkish Family Health and Planning Foundation

Kirişçi, K., (2002) 'Immigration and Asylum Issues in EU-Turkey Relations: Assessing EU's Impact on Turkish Policy and Practice', in Lavenex, S. and Uçarer, E. (eds.), *Externalities of EU Immigration and Asylum Policies*, Lanham: Lexington Books

Kirişçi, K. (2001), 'UNHCR and Turkey: Cooperating Toward an Improved Implementation of the 1951 Convention', *International Journal of Refugee Law*, Vol.13, No.1-2

Kirişçi, K. (2000a), 'Zorunlu Göç ve Türkiye', in UNHCR, *Sığınmacı, Mülteci ve Göç Konularına İlişkin Yargı Kararları*, Ankara: BMMYK (UNHCR) Publications

Kirişçi, K. (2000b), 'Disaggregating Turkish Citizenship and Immigration Practices', *Middle Eastern Studies,* Vol. 36, No.3

Kirişçi, K. (1993), 'Provide Comfort and Turkey: Decision Making for Humanitarian Intervention', *Kent Papers in Politics and International Relations*, Series 3, No.3, Canterbury: University of Kent

Kirişçi, K., (1991), 'The Legal Status of asylum seekers in Turkey: Problems and Prospects', *International Journal of Refugee Law*, Vol.3, No.3

Knill, C. And Lehmkul, D. (2002), 'The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms', *European Journal of Political Research*, Vol.41, No.2

Koser, K. and Lutz, H. (1998), 'The New Migration in Europe: Contexts, Constructions and Realities' in Koser, K. and Lutz, H. (eds.), *The New Migration in Europe: Social Constructions and Social Realities*, New York: St. Martin's Press

Kubicek, P. and Cooley, A., (2003), 'Western Conditions and Domestic Choices: The Influence of External Actors on the Post-Communist Transition', in *Nations in Transit*, Lanham: Rowman and Littlefield

Ladrech, R. (2002), 'Europeanization and Political Parties: Towards a Framework of Analysis', *Party Politics*, Vol.8

Ladrech, R. (1994), 'Europeanization of Domestic Politics and Institutions: The Case of France', *Journal of Common Market Studies*, Vol. 32, No.1

Lambert, H. (1999), 'Building a European Asylum Policy under the 'First Pillar' of the Consolidated Treaty Establishing the European Community', *International Journal of Refugee Law*, Vol. 11, No. 2

Lavenex, S. (1998), 'Transgressing Borders: The Emergent European Refugee Regime and "Safe Third Countries"', in Cafruny, A. and Peters P. (eds.), *The Union and the World*, London: Kluwer

Lavenex, S. and Uçarer, E. (2004), 'The External Dimension of Europeanization: The Case of Immigration Policies', *Journal of the Nordic International Studies Association*, Vol. 39, No. 4

Lavenex, S. and Uçarer, E. (2002), 'The Emergent EU Migration Regime and Its External Impact', in Lavanex, S. and Uçarer, E. (eds.), *Migration and the Externalities of European Integration*, Oxford: Lexington Books

Lawton, T. (1999) 'Governing the Skies: Conditions for the Europeanization of Airline Policy', *Journal of Public Policy*, Vol. 19, No.1

Lendvai, N. (2004), 'The Weakest Link? EU Accession and Enlargement: Dialoguing EU and Post-Communist Social Policy', *Journal of European Social Policy*, Vol.14, No.3

Leuprecht, P. (1989), 'Bestrebungen des Europatz zur Harmonisienung des Asylrechts' in Barwing, K., Lorcher, K. and Schumacher, C. (eds.), *Asylrecht and Binnenmarkt*, Nomos: Baden-Baden

Lippert, B., Umbach, G., and Wessels, W. (2001), 'Europeanization of CEE Executives: EU Membership Negotiations as a Shaping Power', *Journal of European Public Policy*, Vol.8, No.6

Loescher, G. (1992), 'Mass Migration as a Global Security Problem', *World Refugee Survey*, Washington D.C: US Committee for Refugees

Loescher, G. (1989a), 'The European Community and Refugees', *International Affairs*, No. 65

Loescher, G. (1989b), 'Introduction', in Loescher, G. and L. Monahan (eds.) *Refugees and International Relations*, New York: Oxford University Press

Loescher, G. (1989c), 'The European Community and Refugees', *International Affairs*, No. 65

Loescher, G. (2002), 'State Responses to Refugees and Asylum Seekers in Europe', in Messina, A.M. (ed.), *West European Immigration and Immigrant Policy in the New Century*, London: Praeger

Loizos, P. (1999), 'Ottoman Half-lives: Long-term Perspectives on Particular Forced Migrations', *Journal of Refugee Studies*, Vol.12, No.3

Lütz, S. (2002), Der Staat und die Globalisierung von Finazmarketen, Frankfurt.: Campus Verlag in Jachtenfuchs, M. & Kohler-Koch, B., "Governance and

Institutional Development", in Wiener, A. & Diez, T. (eds.) *European Integration Theory*, Oxford: Oxford University Press

Mair, P. (2000), 'The Limited Impact of Europe and National Party Systems', *West European Politics*, Vol.23, No.4

March, J. G. (1981), 'Footnotes to Organizational Change', *Administrative Science Quarterly*, No.26

Marks , G., Hooghe, L., and Blank, K. (1996), 'European Integration from the 1980s: State-Centric vs. Multi-level Governance', *Journal of Common Market Studies*, Vol. 34, No.3

Marks, G. (1996), 'Exploring and Explaining in EU Cohesion Policy', in Hooghe, L. (ed.), Cohesion Policy and European Integration, Oxford: Oxford University Press

Mattli, W. and Burley, A.M. (1993), 'Europe Before the Court: A Political Theory of Legal Integration', *International Organization*, Vol. 47

Maurer, A., Mittag, J., and Wessels, W. (2003), 'National Systems' Adaptation to the EU System. Trends, Offers, and Constraints', in Kohler-Koch, B. (ed.), *Linking EU and National Governance*, Oxford: Oxford University Press

Melander, G. (1978), 'Refugees in Orbit', in Amnesty International (ed.), *Politisch Verfolgte Geniessen Asylrecht*, Nomos: Baden-Baden

Monar, J. (1998), 'Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation', *European Law Review*, No. 23

Monar, J. (2000), 'Justice and Home Affairs', *Journal of Common Market Studies*, Vol. 38

Moravcsik, A. (1993), 'Preferences and Power in the European Community: a Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, No.31

Moravcsik, A. (1991), 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', *International Organization*, No.45

Müftüler-Baç, M. (2000), Through the Looking Glass: Turkey in Europe, *Turkish Studies*, Vol.1, No.1

Odman, T. (1995), *Mülteci Hukuku*, No.15, Ankara: A.Ü.S.B.F. İnsan Hakları Merkezi Publications

Odman, T. (2004), "Coğrafi Sınırlamanın Kaldırılması ve Avrupa Birliği Müktesebatına Uyum", *Umuda Doğru*, August, No.14

Olsen, J.P. (2003), 'Europeanization', in Cini, M. (ed.), European Union Politics, Oxford: Oxford University Press

Olsen, J.P. (2001a), 'The Many Faces of Europeanization', *Arena Working Papers*, No. 01/2

Olsen, J.P. (1995), 'Europeanization and Nation State Dynamics', *Arena Working Papers* No.9

Olsen, J.P. (1997), 'The Changing Political Organization of Europe: An Institutional Perspective on the Role of Comprehensive Reforms', in Hesse, J.J., and Thoonen, T.A. (eds.), *The Yearbook of Comparative Government and Public Administration*, Vol. II, Baden-Baden: Nomos

Olsen, J.P. (2001b), 'Organizing European Institutions of Governance: A Prelude to an Institutional Account of Political Integration', in Wallace, H. (ed.), *Interlocking Dimensions of European Integration*, Houndmills: Palgrave

Oran, B. (2003), 'Lessons from Articles 1 and 2 of the 1923 Convention', in Hirschon, R. (2003), *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghahn

Pernice, I. (1999), 'Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-making Revisited?', *Common Market Law Review*, No.36

Peterson, J. (2004), 'Policy Networks', in Wiener, A. and Diez, T. (eds.), *European Integration Theory*, Oxford: Oxford University Press

Peterson, J. (2001), 'The Choice for EU Theorists: Establishing a Common Framework for Analysis', *European Journal of Political Research*, Vol.39, No.3

Peterson, J. (1999), 'The Santer Era: The European Commission in Normative, Historical and Theoretical Perspective', *Journal of European Public Policy*, Vol. 6, No.1

Pierson, P. (1998), 'The Path to European Integration: A Historical Institutionalist Analysis', in Sandholtz, W. and Stone Sweet, A. (eds.), *European Integration and Supranational Governance*, Oxford: Oxford University Press

Pollack, M. (1997), 'Delegation, Agency and Agenda Setting in the European Union', *International Organization*, Vol. 51, No.1

Puchala, D. (1972), 'Of Blind Men, Elephants and International Integration', *Journal of Common Market Studies*, Vol. 10, No. 2

Puchala, D. (1999), 'Institutionalism, Intergovernmentalism and European Integration: A Review Article', *Journal of Common Market Studies*, Vol. 37, No. 2

Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, Vol. 42, No.3

Radaelli, C. (1997), 'How does Europeanization Produce Policy Change? Corporate Tax Policy in Italy and the UK', *Comparative Political Studies*, No. 30

Radaelli, C. (2000a) 'Wither Europeanization? Concept Stretching and Substantive Change', presented paper at the *PSA Annual Conference*, London, 10-13.04.2000

Radaelli, C.M. (2000b), 'Wither Europeanization? Concept Stretching and Substantive Change', *European Integration Online Papers*, http://eiop.or.at/eiop/texte/200-008.htm

Radaelli, C. M. (2000c), 'Policy Transfer in the European Union: Institutional Isomorphism as a Source of Legitimacy', *Governance*, No. 13

Ruggie, J. G. (1986), 'Continuity and Transformation in World Polity, Toward a Neorealist Synthesis', in Keohane, R.O. (ed.) *Neorealism and Its Critics*, New York: Columbia University Press

Ruggie, J.G. (1982), 'International Regimes, Transactions and Change: Embedded Liberalism in the Post-war Economic Order', *International Organisation*, Vol. 36

Salt, J. and Clarke, J. (1996), 'International Migration in Central and Eastern Europe', *New Community*, Vol. 22, No.3

Sartori, G. (1970), 'Concept Misformation in Comparative Politics', *American Political Science Review*, Vol. 64, No.4

Sbragia, A. (1993), 'The European Community: A Balancing Act', *Publius*, Vol. 23

Schimmelfenning, F. (2004), 'Liberal Intergovernmentalism', in Wiener, A. and Diez, T. (eds.), *European Integration Theory*, Oxford: Oxford University Press

Schuster, L. And Solomos, J. (1999), 'The Politics of Refugee and Asylum Policies in Britain: Historical Patterns and Contemporary Realities', in Bloch, A.

and Levy, C. (eds.), Refugees, *Citizenship and Social Policy in Europe*, London: Macmillan

Simmel, G. (1964) 'The Stranger', in Wolf, K.H. (ed.), *The Sociology of Georg Simmel*, The Free Press: New York

Suhrke, A. (1983), 'Global Refugee Movements and Strategies of Response', in Kritz, M. (ed.), *US Immigration and Refugee Policy: Global and Domestic Issues*, DC Heath: Lexington

Thielemann, E.R. (2000), 'The Costs of Europeanization: Why European Regional Policy Initiatives are Mixed Blessing', *Regional and Federal Studies*, Vol.12, No.1

Tekeli, İ. (1991), 'Osmanlı İmparatorluğu'ndan Günümüze Nüfusun Zorunlu Yer Değiştirmesi ve İskan Sorunu', *Toplum ve Bilim*, No.50

Thielemann, E.R. (2001), 'Explaining Stability and Change in European Asylum Policy', presented paper at the *42nd American Political Science Association Annual Meeting*, San Francisco, 30 August-2 September 2001

Uçarer, E. (1999), 'Cooperation on Justice and Home Affairs', in Cram, L., and Dinan, D. (eds.), *Developments in the European Union*, London: Mac Millan

Ülker, E. (2005), 'Contextualising 'Turkification': Nation-building in the Late Ottoman Empire, 1908-1918', *Nation and Nationalism*, Vol.11, No.4

Van der Klaauw, J. (1997), 'Refugee Protection in Western Europe: A UNHCR Perspective', in Carlier, J.Y. and Vanheulle, D. (eds.), *Europe and Refugees: A Challenge?,* The Hague: Kluwer Law International

Vink, M. (2001), 'The Limited Europeanization of Domestic Citizenship Policy: Evidence from the Netherlands', *Journal of Common Market Studies*, Vol.39, No.5

Vink, M. (2002), 'What is Europeanization? And Other Questions on a New Research Agenda', paper presented at the *Second YEN Research Meeting on Europeanization*: *Towards the Europeanization of Political representation? Theory, Political Parties and Social Movements in the Multilevel Governing Europe*, Milan: University of Bocconi, 22-23.11.2002

Wallace, H. (2000a), 'Europeanization and Globalisation: Complementary or Contradictory Trends?', *New Political Economy*, Vol.5, No.3

Wallace, H. (2000b), 'Institutional Setting, Five Variations on a Theme', in Wallace, H. and Wallace, W. (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press

Wallace, H. (1999), 'Piecing the Integration Jigsaw Together', *Journal of European Public Policy*, Vol. 6, No. 1

Weaver, O. (1995), 'Securitization and Desecuritization', in Lipschutz, R. (ed.), On Security, New York: Colombia University Press

Wiener, A. (2000), 'Finality vs. Enlargement. Opposing Rationales and Constitutive Practices Towards a New Transnational Order', *Jean Monnet Working Paper*, No. 8/02, New York: New York University School of Law

Weiler, J. (1998) 'Europe: The Case Against the Case for Statehood', *European Law Journal*, Vol.4, No.1

Weiler, J. (1996), 'European Neo-constitutionalism: in search for Foundations for the European Constitutional Order', in Bellamy, R. and Castiglione, D. (eds.) *Constitutionalism in Transformation: European and Theoretical Perspectives*, Oxford: Blackwell

Weiler , J. (1986), 'Eurocracy and Distrust: Some Questions Concerning the Role of the European Court of Justice in the Protection of Fundamental Human Rights Within the Legal Order of the European Communities', *Washington Law Review*, Vol. 61

Weiler, J. (1981), 'The Community System: The Dual Character of Supranationalism', *The Yearbook of European Law*, Vol.1

Weiler , J.and Lockhart, N. (1995), 'Taking Rights Seriously" Seriously: The European Court and Its Fundamental Rights Jurisprudence', *Common Market Law Review*, Vol.32, No.51

Zürcher, E. J. (2000), 'Young Turks, Ottoman Muslims and Turkish Nationalists: Identity Politics 1908-1938', in Karpat. K. (ed.), *Ottoman Past Today's Turkey*, Leiden: Brill

OFFICIAL DOCUMENTS

Accession Strategy of Turkey to the European Union (2004), 4th Round of Meetings of the European Commission and Turkey, Preparatory Working Group for the 8th Sub-Committee, *Asylum and Immigration Meeting Report*, February 2004, Ankara

Convention Implementing the Schengen Agreement (1990), 19.06.1990

Council of Europe (1996), *Activitiés de Conseil de l'Europe dans le domaine de migrations*, Strasbourg, CDMG (96).

Council of Europe, (1988), Parliamentary Assembly, *Recommendation*, No.1088.

Council of Europe, (1985), Parliamentary Assembly, *Recommendation*, No.1016.

European Convention (2003a), *Treaty Establishing a Constitution for Europe*, CONV 850/03

European Commission (2003b), 'Regulation laying down detailed rules for implementation of Council Regulation 343/2003/Ec of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by third –country national', No. 1560/2003/EC, O.J.L 222, 05.09.2003.

European Commission (2002), *Regular Report on Turkey's Progress Towards Accession*, Brussels, SEC (2002), No.1412, October 2002

European Commission (1999), *Enlargement Commission Report 1999: Report on Turkey*

European Commission (1998), *European Strategy for Turkey: Commission's Initial Operational Proposals*, Brussels, 04.03.1998

European Communities (2003a), *Draft Treaty Establishing a Constitution for Europe*, Luxembourg: Office for Official Publication of European Communities.

European Communities (2003b), Revised Accession Partnership with the Republic of Turkey: Adopted by the General Affairs Council of the European Union, *Official Journal*, 2003/398/EC, L85/13, 12.06.2003

European Communities (2001a), Accession Partnership with the Republic of Turkey: Adopted by the General Affairs Council of the European Union, *Official Journal*, 2001/235/EC, L85/13, 24.03.2001

European Communities (2001b), *Official Journal*, No. L 85/13

European Communities (1998a), *Official Journal*, No. C268/13

European Communities (1998b), *Official Journal*, No. C268/22

European Communities (1998c), *European Strategy for Turkey- The Commission's Initial Operational Proposals*, Brussels: European Commission, 4 March 1998.

European Communities (1997a), *Official Journal*, No. C339/146

European Communities (1997b), *Official Journal*, No. 254, 19.8.1997

European Communities (1992), *Treaty on the European Union*

European Communities (1990), *Dublin Convention determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities*, 15.06.1990, Dublin, entry into force 01.09.1997, Official Journal, No.254, 19.08.1997.

European Convention (2003), *Final Report*, Working Group VII: Area on Freedom, Security and Justice, http://european-convention.eu.int/doc_register.asp?lang=EN&Content=WGX

European Council (2004a), *Council Directive*, 'Minimum Standards for the Qualification and Status of Third Country nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted', No.2004/83/EC, 29.04.2004

European Council (2004b), *Presidency Conclusions*, Brussels, 4-5.11.2004.

European Council (2004c), *Presidency Conclusions*, Brussels, 17.12.2004

European Council (2003a), *Council Directive*, 'Laying Down Minimum Standards for the Reception of Asylum Seekers', No.2003/9/EC, 23.01.2003

European Council (2003b), *Council Regulation*, 'Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National', No.343/2003, 18.02.2003

European Council (2002a), Council Decision, 'Adopting an Action Programme for Administrative Cooperation in the Fields of External Borders, Visas, Asylum and Immigration (ARGO Programme)', No. (2002/463/EC), 13.06.2002

European Council (2002b), *Declaration* on 'Safe Third Countries', No.15067/02 Asile No. 76, 28.11. 2002

European Council (2001), *Council Directive*, 'Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences', No. 2001/55/EC, 20.07.2001

European Council (2000), *Council Decision*, Establishing a European Refugee Fund, 28.09.2000, (2000/596/EC)

European Council (1999a), *Presidency Conclusions*, Helsinki, 10-11.12.1999

European Council (1999b), *Presidency Conclusions*, Tampere, 15-16.10.1999

European Council (1997a), Community Legislation in Force, 'Council Decision of 26 June 1997 on Monitoring the Implementation of Instruments Adopted Concerning Asylum', *Official Journal L 178*, 07.07.1997

European Council (1997b), *Letter*, No. C4-0247/97, 16.05.1997

European Council (1996a), Community Legislation in Force, 'Council Conclusions of 20 June 1994 Concerning the Possible Application of Article K.9 of the Treaty on European Union to Asylum Policy', *Official Journal C 274*, 19.09.1996

European Council (1996b), Community Legislation in Force, 'Council Conclusions of 20 June 1994 on the Commission Communication on Immigration and Asylum Policies', *Official Journal C 274*, 19.09.1996

European Council (1996c), Community Legislation in Force, 'Council Decision of 22 December 1995 on Monitoring the Implementation of Instruments Already Adopted Concerning Admission of Third-Country Nationals', *Official Journal C 011*, 16.01.1996.

European Council (1996d), Community Legislation in Force, 'Council Decision of 23 November 1995 on publication in the Official Journal of the European Communities of Acts and Other Texts Adopted by the Council in the Field of Immigration and Asylum', *Official Journal C 274*, 19.09.1996

European Council (1992), *Presidency Conclusions*, Edinburgh, 11-12.12.1992

European Council (1985), *Declaration*, Luxembourg, 9.09.1985

European Union (1997), *Consolidated Version of the European Communities Treaty*

International Court of Justice (1969), *North Sea Continental Shelf Case*, ICJ Rep. 1969, 20.2.1969

International Refugee Organization (1946), *International Refugee Organization Constitution*, 18 UNTS 3

League of Nations (1939), *Additional Protocol*, 198 LNTS No.4634, 14.09.1939

League of Nations (1938), *Convention Concerning the Status of Refugees Coming from Germany*, 192 LNTS no.4461, 10.02.1938.

League of Nations (1936), *Provisional Arrangement Concerning the Status of Refugees Coming from Germany*, 171 LNTS No.3952, 04.07.1936

League of Nations (1933), *Convention Relating to the International Status of Refugees*, 159 LNTS 199

League of Nations (1928), 89 LNTS No. 2005, 30.06.1928

League of Nations (1925), *Convention and Protocol Concerning the Exchange of Greek and Turkish Populations*, League of Nations Treaty Series no.807, Lausanne: League of Nations, 30.01.1923

League of Nations (1922), 13 LNTS no. 355, 5.7.1922

League of Nations (1919), *Greco-Bulgarian Reciprocal Emigration Convention*, League of Nations Treaty Series No.67, Neuilly-sur-Seine, 27.11.1919

Ministry of Interior (2005), *National Action Plan for Asylum and Immigration*, General Directorate of Security, 17.01.2005, No.B.05.1.EGM.013.03.02.

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (2003), Turkish National Program on the Adoption of EU Acquis Communitaire, No.25178, 24.07.2003

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (2001), Turkish National Program on the Adoption of EU Acquis Communitaire, No. 24352, 27.03.2001

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1999), Council of Ministers Decision amending the Art.4 of the *Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country, Official Gazette* no: 22217, 13.01.1999

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1994), *Bylaw on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country (Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanabilecek Usul ve Esaslar Hakkında Yönetmelik),* No: 22217, 30.11.1994

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1961), No.10898, 05.09.1961

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1950), No.7564, 24.07.1950

Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1934), No.2733, 21.06.1934

Official Journal (2003), *Turkish National Program on the Adoption of EU Acquis Communitaire*, No.25178, 24.07.2003.

Schengen Agreement (1985), Schengen, 14.06.1985

Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey's Accession to the European Union (Asylum Strategy Paper), Ankara, limited access document

Turkish Grand National Assembly (TGNA) (2001), Law No.4709, 03.10.2001

TGNA (1950a), *Citizenship Law (Vatandaşlık Kanunu),* Law no.5687, 15.07.1950

TGNA (1950b), *Law on Sojourn and Movements of Aliens in Turkey (Yabancıların Türkiye'de İkamet ve Seyehatleri Hakkında Kanun),* Law No.5683, 15.07.1950

TGNA (1950c), *Passport Law (Pasaport Kanunu),* Law No.5682, 15.07.1950

TGNA (1934a), *Law on Settlement (İskan Kanunu),* Law No. 2510, 14.06.1934

TGNA (1934b), *İskan ve Nüfus İşlerinin Sür'atle İkmali Hakkında Tamim*, No: 15035/6599, 07.08.1934.

TGNA (1926a), Law on Settlement (*İskan Kanunu*), No.885, 31.06.1926, *Düstur*, Tertip: 3, Vol. 7, pp.1441-1443

TGNA (1926b), *Memorandum on Settlement (İskana Ait Muhtıra)*, Tertip: 63, 01.08.1926

Turkey-EU Association Council (1995), *Decision*, No. 1/95, Ankara, 06.03.1995

Turkish Ministry of Foreign Affairs, (1998), *A Strategy for Developing Relations Between Turkey and the European Union-Proposal of Turkey*, 17.07.1998

Turkish Ministry of Interior (2005a), General Directorate of Security, *Statement by the Minister of Interior Abdülkadir Aksu on Turkish National Plan on Asylum and Migration*, No.B.05.1.EGM.013.03.02, 17.01.2005

Turkish Ministry of Interior (2005b), General Directorate of Security, *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration*, No.B.05.1.EGM.013.03.02, 17.01.2005

Turkish Ministry of Interior (2004), *Draft National Action Plan for Asylum* and *Draft National Action Plan for Migration*, Restricted access document, November 2004.

Turkish Ministry of Labour and Social Security (2004*), 2003 Yılı Raporu: Yurtdışındaki Vatandaşlarımıza İlişkin Gelişmeler ve Sayısal Bilgiler*, Ankara: Çalışma ve Sosyal Güvenlik Bakanlığı

United Nations (2004), *Declarations and Reservations to the 1951 Convention Relating to the Status of Refugees* as of 01.10.2004

United Nations (1991), *Security Council Resolution*, No. 688, Adopted at its 2982nd Meeting, 05.04.1991

United Nations (1981), *General Assembly Resolution*, A/RES/36/73

United Nations (1980), *General Assembly Resolution*, A/RES/35/228

United Nations (1980), *Report of the Joint Inspection Unit*, JUI/REP/80/11

United Nations (1977a), *Report of the United Nations Conference on Territorial Asylum*, A/CONF.78/12, 21.2.1977

United Nations (1977), A/CONF.78/C.1/L.28/Rev.1

United Nations (1967), *Declaration of Territorial Asylum*, General Assembly Resolution, No. 2312 (XXII), 14.12.1967

United Nations (1967), *Protocol Relating to the Status of Refugees*, 606 UNTS 267

United Nations (1951), *Convention Relating to the Status of Refugees*, Text: 189 UNTS 150

United Nations (1950), *Statute of the Office of the United Nations High Commissioner for Refugees*, General Assembly Resolution, No.428 (V), 14.12.1950

United Nations (1950), *Official Commentary of the ad hoc Committee Statelessness and Related Problems*, E/1618, Lake Success, New York, 16.01-16.02.1950

United Nations (1948), *Universal Declaration of Human Rights*, A/811, 10.12.1948, adopted by the United Nations General Assembly, 10.12.1948

United Nations (1946a), *General Assembly Resolution*, A/RES/17, 12.02.1946

United Nations (1946b), *Economic and Social Council Resolution*, No. 8(I), 16.02.1946

United Nations High Commissioner for Refugees (2004), *UNHCR Global Report*, http://www.unhcr.ch/cgi-bin/texis/vtx/template?page=publ&src=static/gr2004/gr2004toc.htm

United Nations High Commissioner for Refugees (2000), 'The 1951 Convention: Lasting Cornerstone of Refugee Protection', *Statement,* Geneva: UNHCR

United States Department of State (1997), *Turkey Country Report on Human Rights for 1996*, Washington D.C.

ELECTRONIC RESOURCES

http://european-convention.eu.int/docs/Treaty/cv00820-re01.en03.pdf

http://www.abgs.gov.tr

http://www.abgs.gov.tr/NPAA/up_files/doc/IV-24(eng).doc

http://www.akparti.org.tr/beyanname.doc

http://www.akparti.org.tr/program.doc

http://www.europa.eu.int

http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_085/l_08520010324en00130023.pdf

http://european-convention.eu.int/doc_register.asp?lang=EN&Content=WGX

http://www.eu2001.be/VE_ADV_PRESS/detail.asp?cat_code=AA&item_id=130&sess=549801949&lang=en&reference=92-01&

http://www.euturkey.org.tr/abportal/uploads/files/kob_2003.pdf

http://www.euturkey.org.tr/abportal/category.asp?TreeID=161&VisitID={76020F74-A533-4CF3-AE6E-3092A9251AC4}&Time=3056

http://www.euturkey.org.tr/abportal/content.asp?CID=866&VisitID={76020F74-A533-4CF3-AE6E-3092A9251AC4}&Time=1446

http://www.euturkey.org.tr/abportal/uploads/files/kob_en_2001.pdf

http://www.euturkey.org.tr/abportal/uploads/files/kob_en_2001.pdf, L 85/22

http://www.guardian.co.uk/guardianpolitics/story/0,3605,1206647,00.html

http://www.humanities.ualberta.ca/ottoman/module4/lecture4.htm

http://www.mfa.gov.tr/MFA/ForeignPolicy/MainIssues/TurkeyAndEU/2004_Brussels_ECPConclusions.htm

http://www.mfa.gov.tr/grup/ad/adab/strategy.htm

http://www.mfa.gov.tr/grupa/ad/adc/Accession.partnership.pdf

http://www.mfa.gov.tr/grupa/ad/adab/relations.htm

http://www.mfa.gov.tr/grup/ad/adab/strategy.htm

http://www.state.gov

http://www.unhcr.ch

http://www.unhcr.ch/cgi-bin/texis/vtx/statistics

http://www.unhcr.ch/statist/0002euro/text.htm

http://www.unhcr.ch/cgi-bin/texis/vtx/template?page=publ&src=static/gr2004/gr2004toc.htm

OTHER DOCUMENTS

Anatolian Development Foundation (1999), *Annual Activity Report*, Ankara: Anatolian Development Foundation

Amnesty International (1997), *Turkey: Refoulement of non-European Refugees- A Protection Crisis*, Document EUR: 44/031/1997, London: Amnesty International Secretariat

BBC Online News (1999), Kırklareli Refugee Camp, *BBC News*, 11.05.1999

Cambridge Advanced Learners Dictionary, http://dictionary.cambridge.org/

Cornelius, W. (2004), COMPAS Seminar, "Controlling or Uncontrolling the Borders", Oxford: Centre on Migration, Population and Society, University of Oxford, 12.08.2004

Duquesne, A. (2001), 'Priorities of the Minister for Home Affairs during the Belgian Presidency', *Statement,* 27.06.2001

Erener, T. and Göral, C. (2001), 'Avrupa Birliği'nin Adalet ve İçişleri Alanı ile İlgili Internetten Derlenen Haberler', *Report*, Ankara: T.C. Başbakanlık Avrupa Birliği Genel Sekreterliği, Siyasi İşler Dairesi Başkanlığı

Ertuğrul, K. (2000), 'Contemporary Image of European Identity and Turkish Experience of Westernisation', *unpublished doctoral dissertation*, Department of Political Science and Public Administration, Ankara: Middle East Technical University

European Consultations on Refugees and Exiles (ECRE) (1989), *Participants' Meeting Conclusions*, Brussels: ECRE

European Commission (2003), *EU Flash*, EU Representation of the European Commission to Turkey, 31.03.2003

Feller, E. (2000a), *Statement*, Director of the Department of International Protection, *51st Session of the Executive Committee of the High Commissioner's Programme*, Geneva: UNHCR, 03.10.2000

Feller, E. (2000b), *Speech*, Director of the Department of International Protection, *UNHCR News*, Geneva: UNHCR, 15.06.2000

Hix, S. (2004), Discussion and comments at the session 'National Political Parties and European Integration', *ECPR 2nd Pan-European Conference*, John Hopkins University SAIS Bologna Center, Italy, 24-26 June 2004

İnönü, İ. (1963), Speech, *Milliyet*, 13.09.1963

Kahraman, S. (2004), Argument raised in *Centre for European Studies-METU and Sussex European Institute joint workshop*, METU Culture and Convention Centre, Ankara, 4th December 2004

Mayer, H. (2004), 'EU's International Role and Global Responsibility', CES *Conference Series*, Public Lecture, Cultural and Convention Centre, Ankara: Middle East Technical University, 22.11.2004

Ogata, S. (1992), High Commissioner of the UNHCR, *Statement* for the international conference on 'Fortress Europe? Refugees and Migrants: Their Human Rights and Dignity', Graz: Academie Graz, 23.05.1992

Okuyan, Y. (2000), *Statement* by the Turkish Minister of Labour and Social Security, Ankara

UNHCR (2000), *UNHCR News Letter*, Geneva: UN Press, 15.06.2000

Ülker, E. (2003), *Homogenizing A Nation: Turkish National Identity and Migration-Settlement Policies of the Turkish Republic (1923-1939),* unpublished MSc. Thesis, İstanbul: Boğaziçi University

NEWSPAPERS and JOURNALS

BBC

Financial Times

Guardian

Hürriyet

Milliyet

Newsweek

Radikal

Time

INTERVIEWS

ASAM, Association for Solidarity with Asylum Seekers and Migrants (2004), *Interview*, Ankara, December 2004

EUSG (2001), *Interview*, Ankara, April 2001

EUSG (2004), *Interview*, Ankara, December 2004

International Catholic Migration Commission (2000), *Talk*, Ankara, May 2000

International Organisation for Migration (2005), *Talk with the Chief of Mission*, İstanbul, August 2005

International Organisation for Migration (2000), *Talk with the Head of the Counter-Trafficking Service*, Geneva, August 2000

Ministry of Foreign Affairs (2000), *Interview*, International Organisations Section, Ankara, April 2000

Ministry of Foreign Affairs (2004), *Interview*, Directorate General for Consulate Affairs, December 2004

Ministry of Interior (2000), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, May 2000

Ministry of Interior (2004), Directorate General of Security, Department of Foreigners, Asylum and Borders, *Interview*, Ankara, December 2004

Organization for Security and Co-operation in Europe (2005), *Talk* with the Special Representative on Combating Human Beings, İstanbul, August 2005

Organization for Security and Co-operation in Europe (2005), *Talk*, Anti-Trafficking Assistance Unit, İstanbul, August 2005

Representation of the European Commission to Turkey (2004), *Interview*, Justice and Home Affairs Section, Ankara, December 2004

The Human Resource Development Foundation (2004), *Talk,* Ankara, November 2004

Twinning Project on Asylum and Migration (2005), *Interview* with the Coordinator Thomas Vom Braucke, EU Financial Assistance Programme to Turkey, Ministry of Interior, General Directorate of Security, Foreigners, Borders and Asylum Department, Ankara, January 2005

United Nations High Commission for Human Rights (2001), *Talk*, Geneva, July 2000.

United Nations High Commissioner for Refugees (2001), *Talk with the Representative in Turkey*, Mr. Mirza Hussain Khan, Ankara, December 2000

UNHCR (2005), *Talk with the Representative in Turkey*, Mrs. Gesche Karrenbrock, Ankara, January 2005

UNHCR (2005), *Interview* with the Public Affairs Officer, Mr. Metin Çörebatır, Ankara, January 2005

UNHCR (2004), *Interview* with the Public Affairs Officer, Mr. Metin Çörebatır, Ankara, December 2004

UNHCR (2000), *Interview* with the Public Affairs Officer, Mr. Metin Çörebatır, Ankara, May 2000

UNHCR (2000), *Talk* with the Public Affairs Officer, Public Affairs Unit, Geneva, July 2000

APPENDICES

APPENDIX A

Interviews with the Agencies Involved in the Asylum and Refugee Policy Area during the Turkish Pre-Accession Process to the European Union

By Başak Kale, Ph.D. Candidate - Research Assistant, METU

Questions for Interview:

Name of the Institution:

(The views expressed in the interview are personal views of the contributors. They in no way may bind their institution, agency or country. This questionnaire aims to provide an academic insight into how the impact of Europeanization influence legislation, administration and ideational transformation within the asylum and refugee policy area in Turkish during the pre-accession process to the EU)

1. Can the reason behind the increased pace of transformation in the asylum and refugee policy in Turkey be attributed to the Turkey's pre-accession process to the EU?

2. Do you think that the pre-accession process to the EU influenced formation asylum and refugee policies in Turkey? YES NO
3. Why/ Why not?

4. Do you think that there is a transformation process of the asylum and refugee policy in Turkey? YES NO
5. Why / Why not?

6. Do you think that there has been a change in the policy formation with the end of the Cold War? YES NO
7. Why / Why not?

8. What are the elements or factors behind the change in legislation with the end of the Cold War?

9. Do you think that there has been a change in the policy formation in the asylum and refugee policy area with the Helsinki Summit of 1999? YES NO
10. Why / Why not?

11. What were the dynamics behind the asylum and refugee policy before the Helsinki Summit of 1999?

12. What are the dynamics or factors behind the change in legislation with the Helsinki Summit of 1999?

13. Do you think that there is link between Turkish pre-accession process and policy development in the asylum and refugee policy field? YES NO
14. Why / Why not?

15. Do you think there are tension points between the pre-accession process of Turkey and the issue of national sovereignty?

16. What do you think are the tension points in this process?

17. Do you think that the ongoing development of a common European asylum system is a challenge fro Turkey during its candidature? YES NO
18. Why / Why not?

19. What will the contribution of Turkey on the developing a common European asylum and refugee policy?

20. What will Turkey bring as limitations to the developing common European asylum policy?

21. Will there be a Turkish contribution to EU *acquis* in this field? YES NO
22. Why / Why not?

23. Do you think that there is a link between asylum policy field and migration policy field? YES NO
24. Why / Why not?

25. What do you think the influence of the EU in shaping asylum and refugee policy area?

26. What are the internal dynamics shaping asylum and refugee policy area?

27. What are the external dynamics shaping asylum and refugee policy area?

28. Is there a link between illegal migration issue and asylum phenomenon? YES NO
29. Why / Why not?

30. How this policy field influence Turkey's relations with the EU?

31. During the pre-accession process of Turkey do you see a rise in the standards of refugee protection? YES NO
32. Why / Why not?

33. Do you think Turkey has reservations concerning the issue of burden-sharing with the EU? YES NO
34. Why / Why not?

35. Is there a institutional, administrative, legislative or financial constraint on behalf of Turkey in implementation of a asylum and refugee policy change?

36. Is there a possibility of lifting of the geographic imitations? YES NO
37. Why / Why not?

38. In case of lifting of geographic limitations what will be the tension points for Turkey?

39. In case of lifting of geographic limitations what will be the tension points between Turkey and the EU?

40. In case of lifting of geographic limitations what will be the tension points between Turkey and the UNHCR?

41. Is there a need of administrative transformation in the field of asylum in Turkey? YES NO
42. Why / Why not?

43. Is there a need of legislation transformation in the field of asylum in Turkey? YES NO
44. Why / Why not?

45. Why there is a need of legislative harmonisation in the field of asylum with the EU's?

46. Is there a need of ideational transformation in the field of asylum in Turkey? YES NO
47. Why / Why not?

48. Does administrative, legislation, ideational transformation leas to a systemic transformation in the field or asylum and refugees in Turkey? YES NO
49. Why / Why not?

50. Is Europeanization a catalyst for change in Turkey in this policy field? YES NO
51. Why / Why not?

APPENDIX B

Statistics on Non-European Asylum Seekers' Applications to the UNHCR (1994-2004)

Table IV: Total Number of Non-European Asylum Applications[1]

Years	Case Numbers	Persons in Numbers
1994	2,077	4,458
1995	1,892	3,977
1996	2,015	4,437
1997	2,124	4,639
1998	3,668	7,329
1999	3,662	7,228
2000	3,931	7,016
2001	3,204	5,931
2002	2,371	4,313
2003	2,457	4,274
2004	2,237	3,898

[1] The figures are gathered from the UNHCR Ankara Office, August 2005.

APPENDIX C

Table III: Presentation of the Findings in the National Action Plan for Asylum and Migration-I

Legislative Transformation	Administrative Transformation	Cognitive (Ideational) Transformation	Systemic Transformation
Harmonization with the EU *acquis*	Institutionalization	Linkage between Migration and Asylum	Lifting Geographic Limitation
Draft Bill on Asylum	Asylum and Migration Specialization Unit	Creating Awareness in Society	Personnel Selection, Appointment, Career Development
Circular on Transfer of Authority	Training Academy (Institute)	Dissemination of Information: TOT, booklets on refugee rights	Institutionalisation: Specialized Unit on Asylum and Immigration
Administrative and Judicial Appeals	Training of existing and prospective personnel	Administrative and Judicial Appeals	Focus on Illegal Migration
Applying to Administrative Justice against Asylum Decisions	Language Training Courses for Refugees	Applying to Administrative Justice against Asylum Decisions	Institutional and Administrative Reform

Table III: Presentation of the Findings in the National Action Plan for Asylum and Migration-II

Accelerated Procedure	Transforming the Employment Procedures: Selection, Appointment, and Career Development (Civilian Personnel, Consistency, Sustainability, Branch System)	Accelerated procedure	Establishing a Refugee Integration System
Elimination of Restrictions to Labour Market	Asylum Seeker Reception and Accommodation Centres and Refugee Guesthouses	Abolishing Time Limitation for Asylum Applications	Long-term Policy Planning
Long-term policy planning	Return Centres	Emphasis on Non-refoulement	Involvement of NGOs and academics in the process
Subsidiary Protection	Identification methods	Establishing a Refugee Integration Program	
	Electronic Storage of Information: Country of Origin and Asylum Information System	Language Training Courses for Refugees	
	Gathering, Analyzing, and disseminating Reliable Statistical Information	Free Residence of Refugees	

APPENDIX C
CURRICULUM VITAE

BAŞAK KALE

Department of International Relations, METU, 06531, Ankara • (90) 532 3334639 • basakkale@yahoo.com

EDUCATION

MIDDLE EAST TECHNICAL UNIVERSITY (METU) **Ankara, Turkey**
Doctorate of Philosophy, International Relations *December 2005*

- 'The Impact of Europeanization on Domestic Policy Structures: Asylum and Refugee Policies in Turkey's Accession Process to the European Union'
- Refugee Law Certificate, International Humanitarian Law Centre, San Remo, Italy, April 2001.

UNIVERSITY of OXFORD, St. Peter's College **Oxford, United Kingdom**
Graduate Research Student *September 2003-September 2004*

- Conducted research with the Chevening Scholarship and Harborne Award
- Advanced courses on International Human Rights Law, International Refugee Law, Queen Elizabeth Development Studies Centre and Refugee Law Centre

LONDON SCHOOL OF ECONOMICS (LSE) **London, United Kingdom**
Master of Science, European Studies *October 1999*

- Modules taken: Economics of European Integration; Governance, Law and Politics of the EU and International Politics of Western Europe
- Dissertation: "Development of Common Foreign and Security Policy with the Treaties of Maastricht and Amsterdam"

MIDDLE EAST TECHNICAL UNIVERSITY **Ankara, Turkey**
Bachelor of Science, Political Science and Public Administration *July 1997*

- Graduated with an Honours degree
- Certificate on European Integration, European Communities Research Centre Certificate Program on European Integration, Ankara University, September 1997

TED ANKARA COLLEGE **Ankara, Turkey**
High School Diploma *July 1993*

- Graduated with Merits Degree from mathematics section

ACADEMIC AWARDS

Chevening Scholarship and Harborne Award **September 2003**

- In addition to the Chevening Scholarship granted to Harborne Academic Excellence Award by the British Government

UNHCR Grant **April 2001**

- Granted by UNHCR in cooperation to participate to the International Humanitarian Law Program, San Remo, Italy.

European Commission Jean Monnet Scholarship **September 1998**

- Awarded to full scholarship for postgraduate study in the United Kingdom to conduct studies at LSE

PROFESSIONAL EXPERIENCE

MIDDLE EAST TECHNICAL UNIVERSITY **Ankara, Turkey**
Department of International Relations,
Research Assistant *January 2001- September 2005*

- Postgraduate academic advisor of the MSc. students of the Department of International Relations
- Involved in the academic team for designing the CESCER project to bring the Centre for European Studies (CES) to the standards of a centre of excellence which received a substantial grant from the European Commission

SECRETARIAT GENERAL for the EUROPEAN UNION AFFAIRS Ankara
Policy Advisor, European Convention *February 2002- July 2003*

- Appointed by the Centre for European Studies, METU as a policy advisor to the Secretary General on matters relating to European Convention
- Participated in the coordination of the preparation of the section on "Justice and Home Affairs" of the 2003 *Revised National Program of Turkey for the Adoption of the EU Acquis* involving legal and institutional reform during May-July 2003.

LEADERSHIP AND OTHER EXPERIENCE

VARIOUS INTERNATIONAL REPRESENTATIONS

- Selected to represent Turkey in Economic Development and Poverty Reduction Committee of the UN Graduate Study Program at the UN Office in Geneva, June 2000
- Selected as a member of the Youth Convention on the Future of Europe in 2002, re-selected for the follow-up meeting to evaluate the Constitutional Treaty prepared by the European Convention in 2003.
- Elected as the AIESEC Intern of the year, Lappeeranta University of Technology, Business Economics Department, Finland, July 1996.

PUBLISHED ARTICLES AND PRESENTED PAPERS:

- "Trafficking of Human Beings within the Context of Turkey's Accession Process to the EU", 11th Workshop of the PfP Consortium Study Group: "Regional Stability in South East Europe", *"Trafficking in Persons in South East Europe – A Threat to Human Security"*, 25th –27th August 2005, İstanbul, Turkey.
- "Europeanization of Refugee and Asylum Policies: Turkish Pre-Accession Process to the European Union", The ECPR standing Group on the European Union, *2nd Pan-European Conference on EU Politics*, June 24-26 2004, SAIS Bologna Centre, Italy.
- "European Youth Convention", *Newspot*, September 2002.
- "Turkish Accession Process from the Perspective of Immigration and Asylum Policies", METU International Relations Conference, 5th July 2002, presented paper.
- "Turkish EU National Program and Changing Status of Turkey", *Strategic Analysis*, no.13, May 2001, pp.20-27.
- "Turkish Status in the EU: Perpetual Candidacy", Strategic Analysis, no.12, Mar.2001, pp.21-27.
- "Turkey-EU: Asylum and Immigration Policies", *Turkish News*, February 3-4 2001.
- "Changing Perspectives in Security and Defence Polices of the EU", *Strategic Analysis*, no.10, Feb. 2001, pp.19-25.
- "The EU's Balkan Policy", in *The Balkans and the International Politics*, Ömer Lüthem ed., Balkan Series, Ankara: ASAM Publications, 2001.
- "A New Page in Turkey's European Adventure: Accession Partnership Document", *Strategic Analysis*, no.8, Dec.2000, pp. 5-25.
- "The UN Millennium Summit and Turkey", *Strategic Analysis*, no.6, Oct. 2000, pp. 34-40.

APPENDIX D

TURKISH SUMMARY

TÜRKÇE ÖZET

AVRUPALILAŞMANIN ULUSAL POLİTİKA YAPILARI ÜZERİNE ETKİSİ: TÜRKİYE'NİN AVRUPA BİRLİĞİ'NE GİRİŞ SÜRECİNDE İLTİCA VE MÜLTECİ POLİTİKALARI

Bu çalışma 'Avrupalılaşma' olgusunun ulusal siyasal yapılar üzerine olan etkisini incelemeyi amaçlamaktadır. Nüfuzu giderek artan 'Avrupalılaşma' olgusundan hem üye hem de aday ülkelerin kararalma süreçlerinde doğrudan etkilendikleri hipotezi üzerine odaklanmaktadır. Türkiye, Avrupa Birliği'ne (AB) aday ülke olarak, bu süreçten doğal olarak etkilenmektedir. AB müktesebatını kabul etmekle Türkiye, politik ve yasal sisteminin değişimini de kabul etmiş bulunmaktadır. Bu, AB'ye giriş sürecinde hukuksal ve siyasal uyumla sağlanmaktadır. AB ile uyum süreci yasal, yönetsel ve fikirsel değişimi de beraberinde getirirken, bu geniş kapsamlı sistemsel bir değişime yol açmaktadır.

Bu tez 'Avrupalılaşma' olgusunun iltica ve mülteci politikaları üzerine olan etkisini incelerken, Türkiye'yi örnek olarak almaktadır. Amacına ulaşabilmek için uluslararası mülteci rejimindeki durağanlık ve AB üye devletlerinin, Birliğin iç değişimine verdikleri tepkiler de ele alınmıştır. Tez, Türkiye'nin 1999 yılından itibaren Avrupa Birliği'ne giriş sürecinde Avrupalılaşmanın nasıl tesiri altında kaldığı üzerine odaklanmaktadır. Bu tezin üç ana amacı bulunmaktadır. İlk amaç, iltica ve mülteci politikalarının Avrupalılaşmasının arkasında yatan dinamiklerin kapsamlı bir analizini sunmaktır. İkinci amaç, bu politikaların yer aldığı kurumsal,

yönetsel ve fikirsel ortamı vurgulamaktır. Son olarak bu tez, Avrupa bütünleşmesinin dinamiklarinin Avrupa Birliği'ne aday ülkelerinin giriş süreçlerinde yasal uyum süreci çerçevesinde ulusal yönetim sistemlerinde yol açtığı sistemik değişmin özelliklerini analiz etmeyi amaçlamaktadır.

Soğuk Savaşın sona ermesiyle birlikte küresel alanda artan uluslararası göç, Batılı hükümetlerin bu konuda olan endişelerinin de artmasına yol açmıştır. Dünyanın her yerinde vuku bulan etnik ve siyasal çatışmalar, mülteci sayısının artmasına yol açmıştır. Bu artış, Batılı ülkelere yapılan iltica başvurularının da artmasıyla desteklenince mültecilerin Batıda genel anlamda kabul gören "özgürlik savaşçısı" ya da "zulüme maruz kalmış" insan kanaati değiştirmiştir. Bu görüş hızla yerini iltica kavramının toplumlar için bir ulusal güvenlik ve istikrar tehditi oluşturduğu inanışına bırakmıştır. Bu değişen anlayış, mültecilerin gelişen kapsamlı güvenlik algılayışı çerçevesinde yer edinmesine neden olmuştur.

Özellikle Soğuk Savaş sonrasında Avrupalı devletlerin yasal göçe katı sınırlamalar getirmeleri, iltica başvurusunu Batıya olan göçün yegane yasal yolu hale getirmiştir. Bu da Avrupa Birliği üye devletlerine olan düzensiz göçün artmasına ve göçün kontrolünün giderek zorlaşmasına neden olmuştur. İltica başvurularının artması bu başvuruların değerlendirme süreçlerini uzatmış ve hükümetler için mali yükümlülükleri de artırmıştır. Bu durumla ortak başa çıkmayı hedefleyen AB üye devleti hükümetleri ortak bir takım çalışmalara imza atmışlardır. Ortak sorunlara ortak çözümler üretme anlayışıyla hareket ederek, hükümetlerarası işbirliği çerçevesinde ortayan konan çözüm önerileri, ortak bir politika oluşturulmasının ilk adımlarını oluşturmuştur.

AB, 1993 yılındaki Maastricht ve 1997 yılındaki Amsterdam Antlaşmaları ile kendi içerisinde yeniden yapılanmaya gitmiş, hükümetlerarası platformda sürdürülen göç, iltica, vize ve sınır kontrolleri gibi konuların AB içerisinde daha fazla görüşülmesini sağlamış ve bu konularda Birliğin nüfuzunu artırmıştır. Adalet ve İçişleri Politikası'nı da bu program dahilinde yeniden gözden geçirerek, ortak bir politika

haline getirilmesi için gerekli adımları atmıştır. Buna göre, üye devletlerin iltica başvuruları ve değerlendirmeleri konusundaki politikalarının yardımlaşma ve işbirliği içerisinde yürütülmesi gerekliliği sonucuna varılmıştır. Maastricht ve Amsterdam Antlaşmaları, Birliğin bu konularda daha fazla söz sahibi haline gelmesi ve kararalma süreçlerini etkilemesi, üye devletlerin Birlik seviyesinde alınan kararlara uyum sağlamaları zorunluluğunu getirdiğinden 'Avrupalılaşma' olarak tanımlanan bu olgunun etkin hale gelmesine neden olmuştur. Avrupalılaşma olgusu sadece üye devletleri değil, aynı zamanda aday devletleri de adaylık süreçlerinde etkisi altına almaktadır.

Bu çalışma Avrupa bütünleşme teorilerinin, AB'nin gelişimini ve üye devletlerle olan ilişkisini açıklamada yararlı olduğunu kabul etmektedir. Aynı zamanda üye devletlerin ulusal politikalarına AB'nin nasıl bir etkide bulunduğunu ve AB yönetsel alanı dışında AB'nin nasıl bir etkisi olduğunu açıklamada yeterli olamadığı düşüncesindedir. Bu oluşumları açıklamada farklı yaklaşımların kullanılması yarar sağlayacaktır. 'Avrupalılaşma' bu süreci açıklamaya çalışan bir yaklaşımdır. Farklı sosyal bilimciler tarafından farklı şekillerde açıklanmaya ve tanımlanmaya çalışılmıştır.

En genel ve en geniş anlamıyla Avrupalılaşma, geleneksel yönetim sistemlerinin kararalma düzeyleri ve alanları arasındaki değişimi olarak tanımlanabilir. Bu tez, Avrupalılaşmayı, politika değişiminde önemli bir hızlandırıcı olarak kabul etmektedir. Avrupalılaşma, Türkiye'nin AB'ye giriş sürecinde yasal, yönetsel ve siyasal değişimi hızlandıran önemli bir etkendir. Mülteci politikasında değişim gerçekleşirken kurumsallaşma, gelişen uluslararası işbirliği, Sivil Toplum Kuruluşlarının (STK) rolünün artması gibi olumlu gelişmeleri beraberinde getirebilirken, aynı zamanda mülteci politikasının daha sınırlı hale gelmesi, AB müktesebatına uyumla birlikte vize politikasının sınırlanması gibi olumsuz bir takım gelişmelere de yol açabilmektedir. Bu nedenle bu surecin tam anlamıyla olumlu bir süreç olduğu söylemek doğru olmayacaktır.

Bu çalışma aynı zamanda, Avrupalılaşmanın, Avrupa düzeyinde yer alan politikaları, siyasal yapıları, prosedürleri, uygulamaları ve fikirsel yapıları AB dışına ihraç etmenin önemli ve güçlü bir aracı olduğunu savunmaktadır. Bunu sağlayabilmek için AB iki farklı yöntem kullanmaktadır. İlk olarak, AB üyeliğini ve buna bağlı olan üyelik şart ve kriterlerini zorlayıcı bir yöntem olarak kullanmaktadır. İkinci olarak, gönüllü uyum süreciyle ülkeler kendi yararlarına olabilecek bir takım gelişmeleri kendi istekleriyle kabul etmektedirler. Güncel şartların getirdiği bazı zorunlu uyum gereklilikleri bunun için bir örnektir.

İltica ve mülteci politikalarında AB'nin geliştirmekte olduğu ortak politika ile uyumlu hale gelmeye çalışmak, ister istemez, Türkiye'de halihazırda kabul gören bir takım uygulama ve anlayışın değişmesini gerektirmektedir. Türkiye, iltica ve mülteci politikasında *1951 Birleşmiş Milletler (BM) Mültecilerin Statüsüne Yönelik Cenevre Sözleşmesi'nin (1951 Sözleşmesi)* hükümleriyle hareket etmektedir. Türkiye, *1951 Sözleşmesi*'ni ilk imzalayan ülkelerden biridir. Sözleşmeyi imzalarken Türkiye, zaman ve coğrafi alanda kısıtlamalar koymuştur. Bu kısıtlamaları dönemin şartlarında uyulması gereken bir gereklilik olarak kabul etmiş ve mülteci politkasını bu ayrımın üzerine inşa etmiştir. *1951 Sözleşmesi*'ne göre *Sözleşme*'ye imza atan ülkeler, iltica başvurularını "Avrupa kıtasından" ya da "Avrupa kıtası dışından" kabul edebilmektedirler. Yine aynı *Sözleşme*'ye göre ülkeler, mülteci tanımını "1951 öncesinde gerçekleşmiş olan olaylar nedeniyle mülteci durumda kalan kişiler" olarak sınırlandırabilmektedirler. 1967 yılında imzalanan ek *Protokol* ile Türkiye, zaman sınırlandırmasını kaldırmış olmasına rağmen günümüze kadar coğrafi sınırlandırmayı kaldırmamıştır.

Coğrafi kısıtlama, iltica başvurularında "Avrupa'dan gelen" ve "Avrupa'dan gelmeyen" iltica sahibi ayrımına neden olmuştur. "Avrupa'dan gelen" kişilerin iltica başvurularını Türkiye devleti değerlendirerek, karar sornasında mülteci satüsü verilen kişilerin Türkiye'de kalmasına izin verilirken, "Avrupa'dan gelmeyen" kişilerin iltica başvurularını, Birleşmiş Milletler Mülteciler Yüksek Komiserliği'nin (BMMYK) işbirliği ile değerlenirip, mülteci satüsü verilen kişilerin üçüncü bir

ülkeye yerleştirilmeleri işlemlerin yapılması sağlanmaktadır. Bu ayrım, *1951 Sözleşmesi'nin* imzalanmasından itibaren uluslararası işbirliği çerçevesinde yürütülürken, Soğuk Savaşın sona ermesi ile birlikte değişen uluslararası siyasal ortamın gerekliliklerine cevap verememiştir.

Soğuk Savaşın sona ermesi ve Sovyetler Birliği'nin dağılmasıyla birlikte Türkiye, doğusundan gelen göç akımlarına maruz kalmıştır. Gerek eski Sovyet Cumhuriyetleri'nden, gerekse Türkiye'nin diğer komşuları olan İran, Irak, Suriye'den ya da Türkiye'nin komşusu olmayan Pakistan ve Afganistan'dan, Ortadoğu'daki diğer ülkelerden Türkiye, ekonomik ya da siyasi sebeplerden dolayı düzensiz göç hareketleri üzerinde yer almıştır. Türkiye'nin üzerinden gerçekleşen göç, Türkiye'yi transit bir ülke konumuna getirmiştir.

Düzensiz göç hareketleirne ek olarak, 1991 Irak krizi ile birlikte kurumsallaşmış ulusal bir mülteci ve göç politikasının gerekliliği doğrudan ortaya çıkmıştır. Kitlesel mülteci akınlarına maruz kalma sürecinde Türkiye'nin uluslararası yardım görmede sıkıntıya düşmesi, kendi ulusal politikasını geliştirmesi gerekliğini vurgulamıştır. Bu nedenle *1994 Yönetmeliği* hazırlanmıştır. *1994 Yönetmeliği* Türkiye'nin bu alanda hazırladığı ilk konuya yönelik yasal metindir. Bu nedenle büyük önem taşımaktadır. Ancak, *Yönetmelik* 1991 Irak krizinden hemen sonra hazırlanmış olması nedeniyle güvenlik bakış açısını yansıtmakta, iltica başvurularına hem süre olarak hem de prosedürel olarak bir takım kısıtlamalar getirmektedir. Uygulamada bu kısıtlamaların iltica başvurularını yapan kişilere getirdiği zorluklar hem BMMYK, hem de bir çok ulusal ve uluslararası STKlar tarafında dile getirilmiştir. 1999 yılında bu isteklere cevap olarak, yeni bir düzenlemeye gidilmiş ve iltica başvurularının yapılması için verilen süre beş günden on güne çıkarılmıştır.

Türkiye'nin AB'ne resmi aday olarak kabul edildildiğinin açıklandığı 1999 Helsinki Zirvesi'nden sonra Türkiye, AB'ye giriş sürecine başlamıştır. Bu süreç, AB müktesebatına uyumu da beraberinde getirmiştir. Katılım öncesi stratejisinin kapsamında ortaya çıkan *Katılım Ortaklığı Belgesi (KOB),* bu sürecin başlamasında

önemli bir adımdır. *KOB*, 8 Kasım 2000 tarihinde açıklanmış ve Türkiye'nin AB'ye üyeliği için gerekli öncelik alanlarını belirleyerek, kısa ve orta vadeli hedefler ortaya koymuştur. Bu belge ile AB, Türkiye'nin üyeliği için bir yol haritası çizmeyi amaçlamıştır.

KOB, kısa ve orta vadeli öncelikleri, ara hedefleri, siyasi ve ekonomik kriterler ışığında katılım hazırlıklarının hangi koşullar altında gerçekleşeceğini ve üye devletin, Topluluk müktesebatını üstlenme, uygulama ve hayata geçirmeye ilişkin yükümlülüklerini tanımlamaktadır. Buna göre, Katılım Ortaklığı, katılım öncesi stratejisinin odağını oluşturmaktadır. Temelinde AB Konseyi'nin, Helsinki Toplantısı'nda, daha önceki AB Konseyi sonuçları temelinde bir katılım ortaklığı belgesinin hazırlanması yatmaktadır. Bu karara göre belge, siyasi ve ekonomik kriterler ile üye ülke yükümlülüklerinin ışığında, katılım hazırlıklarının yoğunlaşması gereken öncelikleri içerek ve müktesebatın benimsenmesi için Ulusal Program'a eşlik etmiştir.

AB uyum sürecinde AB müktesabatının kabul edilmesi, *KOB'*da yer alan önceliklerin *Ulusal Program'da (UP*) yer alması şartıyla ortaya çıkmıştır. *UP*, AB müktesabatının üstlenilmesine yönelik birçok hükmü içerirken, Adalet ve İçişleri alanında önemli gelişmeleri de beraberinde getirmiştir. Özellikle Türkiye'nin coğrafi kısıtlamayı kaldırması konusu iltica alanında kapsamlı yeniden düzenlemeyi gerektirmektedir. 2001 yılının Mart ayında kabul edilen *UP*'de açık olarak coğrafi kısıtlamanın kaldırılacağı hükmü yer almamakla birlikte, gerekli yasal, yönetsel ve altyapı değişikliklerinin yapılması ve AB üye devletleriyle yük paylaşımına gidilmesi şartları yerine getirilmesi halinde bu konunun yeniden gözden geçirileceği hükmü yer almıştır.

UP, bu nedenle AB kural, standart, uygulama ve anlayışının benimsenmesi bağlamında önemli bir adım sayılabilir. Türkiye'nin uyum sürecinde gerçekleştirdiği yasal değişiklikleri gözönüne alan AB, yeniden gözden geçirdiği katılım öncesi öncelikleri 2003 yılında açıkladığı gözden geçirilmiş *Katılım Ortaklığı Belgesi*'yle

açıkladı. 2003 yılının Haziran ayında kabul edilen *2003 Ulusal Programı,* bu önceliklere bir cevap niteliğini taşıyordu. *2003 Ulusal Programı*, iltica alanında önemli bir gelişmeyi beraberinde getirdi. Coğrafi kıstlamanın kaldırılacağı ibaresini taşıyan hükmü bu alanda kritik bir gelişmeydi.

2003 yılından itibaren iltica ve göç alanında AB müktesebatına uyum konusunda hukuksal açıdan giderek artan çalışmaları gözlemlemek mümkündür. Geleneksel olarak iltica alanında birarada çalışan develet kurumları, AB süreci çerçevesinde "Çalışma grupları" içerisinde Avrupa Birliği Gneel Sekreterliği (ABGS) koordinatörlüğünde Avrupa Birliği Komisyonu ile bir araya gelerek gereken değişiklikleri tartışma fırsatı bulabilmiştir. Bu çalışma ortamı geleneksel kamu yönetimi çalışma düzeni açısından oldukça önemli bir değişikliktir.

Geleneksel olarak birlikte çalışmakta olan kurumların yanı sıra birarada çalışma geleneği olmayan bir çok kamu kurum ve kuruluşu, aynı ortamda bulunurak, görüş ve önerilerini dile getirme fırsatı bulabilmiştir. Bu çalışma şekli sonucunda *"İltica ve Göç Strateji Belgesi"* ortaya çıkmıştır. Bu belgenin devamında Twinning projesi çerçevesinde gerçekleştirilen bir yıllık kapsamlı çalışma, Türkiye'nin iltica ve göç alanındaki uygulamalarını ortya çıkarmış ve bu alanda geçekleştirilmesi gereken uyum çalışmaların yapısını oluşturmuştur. Bu çalışmanın ana ürünü olarak ortaya çıkan *"İltica ve Göç Eylem Planı"* alanında bir ilktir.

İltica ve Göç Ulusal Eylem Planı, kapsamlı olarak gerçekleştirilecek olan çalışmaların alt yapısını oluştururken bu alanda Türkiye'de gerçekleşen hukuksal, yönetsel ve fikirsel değişikliğin önemli bir göstergesidir. Plan, Türkiye'nin iltica sisteminin kökten değişmesini gerektiren hükümlerin nasıl uygulanacağı ve bu değişikliğin gerçekleşebilmesi için ne gibi yasal, alt yapısal, politik değişikliklere gidilmesi gerektiği konularında bir yol haritası oluşturmayı amaçlamaktadır.

1999-2005 yılları arasında AB girişi sürecinde gerçekleşen bu değişiklikler, AB müktesebatının kabul edilmesinin, sadece yasal olmayan sonuçlarının göstergesidir.

AB müktesebatının yüklenilmesiyle birlikte Avrupalılaşma olgusu, Türkiye'nin iltica politikasında kendisini yasal, yönetsel ve fikirsel değişiklilerin kabul edilmesi olarak göstermiştir. Bu değişiklikler, ulusal politikalarda sistemik değişiklikleri de beraberinde getirmektedir.

Türkiye'nin iltica politikasının incelenmesi 1999-2005 yılında gerçekleşen değişiklilerle ele alınınca, tezin Avrupalılaşma olgusunun sadece üye devletleri etkileyen bir konu olmadığı, aynı zamanda aday ülkeleri de adaylık süreçleri içerinde etkilediği ve sistemik değişikliklere yol açtığı hipotezini desteklemektedir. Bu anlamda, Türkiye'nin iltica ve mülteci politikasıyla ilgili yapılan inceleme, Avrupalılaşma olgusunun nasıl AB dışı ülkelere AB müktesebatının yüklenilmesi süreciyle ihraç edilebildiği ve ulusal politka sistemlerini etkisi altına aldığını açıklamaktadır. Türkiye'nin AB'ye giriş süreci bu alanda önemli bir örnek teşkil etmektedir.